

REMY, THOMAS, MOOSE and MANLEY, LLP

MICHAEL H REMY
1944 – 2003

—————
TINA A THOMAS
JAMES G MOOSE
WHITMAN F. MANLEY
ANDREA K LEISY

—————
BRIAN J. PLANT
JOSEPH J. BRECHER
OF COUNSEL

ATTORNEYS AT LAW

455 CAPITOL MALL, SUITE 210
SACRAMENTO, CALIFORNIA 95814

—————
Telephone: (916) 443-2745
Facsimile: (916) 443-9017
E-mail: info@rtmmlaw.com
<http://www.rtmmlaw.com>

JENNIFER S HOLMAN
TIFFANY K WRIGHT
ASHLE T. CROCKER
SABRINA V. TELLER
MICHELE A. TONG
MEGHAN M. HABERSACK
ANGELA M. WHATLEY
AMY R. HIGUERA
HOWARD F. WILKINS III
CARRIE A. ELLIS
CATRINA L. FOBIAN
MEGAN M. QUINN

VIA HAND DELIVERY

January 30, 2006

Mayor Heather Fargo
Members of the City Council
Sacramento City Hall
915 I Street, 5th Floor
Sacramento, CA 95814

Re: Islands at Riverlake Project—Responses to Comments Regarding EIR
Certification and Project Approval

Dear Honorable Mayor Fargo and Councilmembers:

We are writing in response to Ms. Brandt-Hawley's January 9, 2006, letter (Brandt-Hawley Letter) regarding the Islands at Riverlake Project (Project) EIR Certification and Project Approval. In her letter Ms. Brandt-Hawley asserts that the EIR is inadequate and the Planning Commission certification of the EIR and approval of the Project must be overturned. These assertions are without merit. The EIR is a legally adequate and complete document. For the reasons discussed below, we urge the Council to deny the Pocket Protectors' appeal, grant Regis Homes' appeal, certify the EIR, and approve the Project.

Contrary to what Ms. Brandt-Hawley wishes were true, the Third District Appellate Court's opinion that there may be a fair argument of significant impact for certain resource areas does not equate to a de facto significant impact. The Court of Appeal opined that there may be a fair argument that the Project could result in significant impacts in several discrete resource areas, and thus, an EIR was prepared in order to analyze those potential impacts and address the Court's concerns. "The Court of Appeal did not reach any independent conclusions regarding the merits of the project, nor did it make any ultimate determinations of the significance of any of the impacts in controversy." (Response 31-46, FEIR, p. 169.) The EIR concluded, after analyzing the

Project for consistency with City standards and policies and Appendix G of the CEQA Guidelines, that any potential impacts were less than significant. Ms. Brandt-Hawley's entire analysis is based on the inaccurate assumption that the Court's opinion somehow created de facto significant impacts.

Under this mistaken logic, Ms. Brandt-Hawley suggests that any "fair argument" identified by the Court of Appeal should have been tagged a "significant impact" in the EIR and should have been "mitigated" regardless of what the actual analysis showed about the severity of potentially significant impacts. (CEQA Guidelines, § 15126.4, subd. (a)(3) ("[m]itigation measures are not required for effects which are not found to be significant[.]").) This conclusion is erroneous, but remains the constant mantra of Ms. Brandt-Hawley's letter. Ms. Brandt-Hawley's letter does not raise any issues that have not already been raised and answered repeatedly during the EIR process. Nonetheless, we offer the following brief responses to her erroneous claims for the both the Council's convenience, and, since we assume litigation, the Court's convenience.

Contrary to Ms. Brandt-Hawley's statement that the City Council somehow believes there is an "obligation" to approve the proposed project, the City Council has full discretion to approve or disapprove the Project as proposed. Bill Heartman and Regis Homes respect the discretion vested in the Council and understand that the Council's discretion extends to selection of any of the analyzed alternatives or a hybrid of those analyzed alternatives. The only remaining issue before the Council is a design preference. The Pocket Protectors' suggested alternative provides another design option. Thus, the question for the Council could be broadly characterized as a choice between whether to rely on the inexperienced opinion of the Pocket Protectors or the opinion of its staff, the Planning Commission, and the demonstrated building excellence of Regis Homes, SACOG's 2003 "Business of the Year." (Exhibit A, List of Regis Homes' Awards.)

In an ironic twist, the Pocket Protectors testified at the September 15, 2005, Planning Commission hearing that it supported a recently-approved project called "Reflections at Rush River." Reflections at Rush River is a project similar to the Islands at Riverlake in many ways. (See Exhibit B, Reflections at Rush River Documentation.) First, like Islands at Riverlake, Reflections is zoned R1-A, designated in the PUD for a "townhouse and related development," proposes 11 single-family homes at a density of 9.5 units per net acre (to Islands' 7 units per net acre) with 45% lot coverage (to Islands' 49.5%).

Second, Reflections has a 20-foot private road, slightly narrower than Islands' 22-foot private road. The ONLY difference between these two projects is the location of the private road within the project site. Thus, the issue before the Council can be defined as a design issue, framed by the following question: should the narrow private road run against the existing fence, thus creating a buffer from existing neighbors, or should the private road serve two rows of homes, creating a neighborhood with "eyes on the street?" This is a discretionary design decision wholly vested in the City Council. We urge the Council to deny the Pocket Protectors' appeal, grant Regis Homes' appeal, certify the EIR, and approve the Project.

Aesthetics

As discussed above, the Court of Appeal opined that there may be a fair argument that the Project could result in significant impacts in the area of aesthetics, and thus, an EIR must be prepared in order to analyze potential aesthetic impacts. The EIR concluded, after analyzing the current iteration of the Project for consistency with City standards and policies and Appendix G of the CEQA Guidelines, that any potential aesthetic impacts were less than significant.

Ms. Brandt-Hawley generally objects to the standards of significance chosen by the City to evaluate the Project's potential to cause aesthetic impacts. (Brandt-Hawley Letter, Aesthetics Section, pp. 2-3.) Ms. Brandt Hawley, citing a February 2005, email from this office to Lezley Buford, also suggests that our office, as attorneys for the Applicant, improperly tainted the process of choosing these criteria. However, this is not the case. Tom Pace and Gary Stonehouse set the significance criteria; we embraced their criteria and repeated it to planning staff. (Brandt-Hawley Letter, Aesthetics Section, p. 5.) As explained in response to the letter from Ms. Skewes-Cox, the standards were carefully selected to facilitate as much analysis as possible:

Because of the specificity of the neighbors' comments and the Court of Appeal's opinion regarding "fair arguments" of potentially significant aesthetic impacts, the City believed that its standard criterion -- "demonstrable negative aesthetic effect" -- did not provide any useful way to quantify this effect with objective data. Therefore, the City developed the additional criteria noted by [Ms. Skewes-Cox], basing them on the specific factors identified by the neighbors and the Court as the ones that raised a "fair argument" of potentially significant aesthetic impacts. These factors included setbacks, landscaping and lot coverage, and density. The City included others, such as the Single-Family Residential Design

Principles, that it considered relevant to an analysis such as this one that is focused heavily on issues that are traditionally considered in the context of the design review process, in an attempt to quantify this subjective impact to the extent possible.

(Response 1-38, FEIR p. 40.) Ms. Brandt-Hawley claims that the City did not apply its own criteria to the Project. (Brandt-Hawley Letter, Aesthetics Section, p. 3.) The Draft EIR contains an adequate analysis of the Project with respect to these significance standards, and additional explanation is provided in the FEIR in response to specific comments from Ms. Skewes-Cox, various members of the Pocket Protectors, and other commenters. Thus, Ms. Brandt-Hawley's claims are belied by the factual record.

Ms. Brandt-Hawley makes other claims regarding the EIR's analysis of aesthetics that are similarly baseless. In her discussion of Potential Impacts AES-1 and AES-2, Ms. Brandt-Hawley demonstrates a complete lack of understanding of the distinction between the City's R-1 and R-1A zoning designations and the purpose for comparing the two in the aesthetics section of the EIR. (Brandt-Hawley Letter, Aesthetics Section, pp. 3-5.) The R-1A zone is "intended to permit the establishment of single-family, individually owned, attached or detached residences where lot sizes, height, area and/or setback requirements vary from standard single-family." (Sacramento City Zoning Code, § 17.020.010.) Thus the Zoning Code provides that in the R-1A zone, minimum yard requirements, maximum lot coverage and minimum lot area per dwelling unit would ordinarily be the same as would be required in the standard, single-family R-1 zone, but may be varied by the planning commission or City Council in order to provide the intended flexibility. (Sacramento City Zoning Code, §§ 17.060.020, 17.060.030(5).) The Project site is zoned R-1A, which means the City can allow deviation from R-1 requirements. For the purposes of analyzing potential aesthetic impacts, the EIR compared the Project's proposed setbacks, lot sizes, and lot coverage to those ordinarily required for R-1, and by extension, R-1A. The EIR concluded that none of the Project's minor deviations from the typical standards result in any significant aesthetic impacts. (Response 1-43 contains a chart showing average mass/bulk statistics for the entire LPPT PUD.)

Ms. Brandt-Hawley misunderstands this analysis, and equates it to an "admission" that the R-1A requirements cannot be met. *The entire purpose of the R-1A designation, however, is to give the City discretion to allow exactly these types of minor deviations to produce a desirable housing product.* The exercise of such discretion by the City is appropriate where, as here, the variation results in no significant aesthetic impacts. (See also, discussion of R-1 and R-1A in Land Use section, *infra*.)

Ms. Brandt-Hawley attacks the use of the City's Single-Family Residential Design Principles (SFRD Principles) to evaluate the aesthetics of the Project. (Brandt-Hawley Letter, Aesthetics Section, pp. 5-7.) Her criticism boils down to an assertion that to conclude there is a "less than significant" impact with respect to AES-3, the Project would have to perfectly embody each and every one of the SFRD Principles. The SFRD Principles themselves contradict this assertion:

The following residential design principles are provided to assist developers, homebuilders, and architects in the design of new single family residences and subdivisions. The text and illustrations give a *general idea* of basic principles expected by the Planning Commission. ¶ The principles are not intended to list or illustrate all possible solutions to all situations. . . . This document is *not intended to represent mandatory requirements*, but instead, *suggested principles* for sustainable development.

(City of Sacramento, Single-Family Residential Design Principles (2000), at p. 4, italics added.) The SFRD Principles are, by definition, *suggested* guidelines, not mandatory requirements. Thus, the EIR properly concluded that the Project is consistent with the SFRD Principles and that comparing the Project to the SFRD Principles does not result in any significant aesthetic impacts.

Ms. Brandt-Hawley's unsupported claim that the EIR did not include analysis of AES-4, is unfounded. The EIR discusses the density and intensity of the Project compared to other projects built and unbuilt in the City of Sacramento and concluded that there were no significant aesthetic impacts associated with density or intensity. (DEIR, pp. 143-144, 155, 159-186; see also, Response 1-49, FEIR, pp. 42-43.)

As explained in draft findings submitted to the Planning Commission, City staff has concluded, based on project design modifications as analyzed in the EIR, that any potential "canyoning" or "tunneling" effect is less than significant. (January 31, 2006, City of Sacramento Staff Report (Findings for Impact AES-5), p. 49; see also, Master Response 11, FEIR, p. 24 ("[t]he 'fair argument' noted by the Court that the project may result in significant impacts resulting from the 'tunneling' effect of two rows of two-story houses was resolved through design modifications".)) Thus, City staff has concluded that early project design modifications eliminated any concerns staff may once have had regarding such a potential effect. This project design that was ultimately submitted as *the* project application incorporated the mitigation measures suggested by staff in the preliminary review, which is the goal of the pre-application process.

Nonetheless, Ms. Brandt-Hawley continues to insist that a significant effect requiring mitigation will continue to exist until the “planner who recommended that mitigation was needed to address the ‘canyoning’ effects of the project . . . has [] come forward to suggest that the effect has been rectified.” (Brandt-Hawley Letter, Aesthetics Section, p. 9.) The staff’s position on this allegation is clearly set out in the Final EIR, which contains the following response to comments from Pocket Protectors Martha and Roger McCardle:

Due to the changes made in the project design from the time that it was first reviewed by the long-range planning staff in 2001 and the City Council’s June 2003 approval, staff no longer considers the project to create any risk of a significant or adverse visual “canyoning” or “tunnel” effect. Please see Master Response 11 and Response to Comment 37-10 below. Additionally, the portion of the 2001 staff assessment cited by the commentors suggested consideration of a reduced unit design or different configuration with a single row of houses on deeper lots. These variations on the project design were aspects of some of the alternatives studied in the Draft EIR. Please see pages 194-199 (analysis of Alternative A5) and pages 199-206 (analysis of Alternative A6) of the Draft EIR, in which two different designs incorporating deeper lots and a single row of homes were considered. Additionally, Alternatives A4 and A6 included fewer units (126 and 100, respectively) than the proposed project (139 units).

(Response 37-2, FEIR, p. 3-191.16.) Interestingly, Mr. McCardle has candidly admitted his lack of experience in designing subdivisions. (See Planning Commission Transcript (September 15, 2005), pp. 104-108, attached as Exhibit C; see also Exhibit D, p. 2, showing Mr. McCardle’s former employment as an architect for Lawrence Livermore National Laboratories.) Concerns regarding “canyoning” and “tunneling” have been the Pocket Protectors’ refrain throughout the litigation, yet, the only time the term was mentioned was by one City planner in 2001 during the pre-application project review. City staff no longer has concerns regarding tunneling or canyoning, and indeed, has not had such concerns for several years.

Similar to comments made by Ms. Skewes-Cox, Ms. Brandt-Hawley raises contradictory points regarding trees and shade. (Brandt-Hawley Letter, Aesthetics Section, pp. 7, 11-12.) As explained in Master Response 6, some commenters complained that the Project would have too few trees, and other commenters complained that the Project’s trees would cause too much shade on their existing homes. (FEIR, pp.

18-20.) Because trees and shade were discussed by the Pocket Protectors and the Court of Appeal, Regis Homes retained Quadriga, a landscape architecture and planning firm, to prepare a conceptual landscape plan, which was included in the DEIR, showing the placement and species of trees for each yard in the proposed project. (Master Response 11, FEIR, p. 24; DEIR, Exhibit D.) The EIR concluded that the current version of the project does not result in any significant impacts related to trees or shade. (DEIR, p. 146; FEIR, pp. 18-20.)

In addition, the Project as proposed includes an average of 44% landscape coverage. (DEIR, pp. 141-142.) This exceeds the 25% minimum coverage requirement set forth in the LPPT PUD Development Guidelines. (*Ibid.*)

In short, all of Ms. Brandt-Hawley's, the Pocket Protectors' and the Court of Appeal's aesthetics concerns have been addressed in the EIR, and the EIR's conclusions are supported by substantial evidence. The ultimate design preference decision rests with this Council, not the Pocket Protectors.

Land Use

The Islands at Riverlake Project is subject to several layers of land use regulations, including the City Zoning Code, the Pocket Area Community Plan—South Pocket Specific Plan (PACP-SPSP), and the L and P-Pacific Teichert Planned Unit Development Guidelines (LPPT PUD). A threshold misunderstanding reflected in Ms. Brandt-Hawley's claims regarding supposed land use impacts centers on the City's definition of R-1A and how that definition interacts with other layers of applicable land use regulations for the project. The City's Zoning Code defines R-1A as follows:

R-1A—Single-Family Alternative Zone. This is a low to medium density residential zone intended to permit the establishment of single-family, individually owned, attached or detached residences where lot sizes, height, area and/or setback requirements vary from standard single-family. This zone is intended to accommodate alternative single-family designs which are determined to be compatible with standard single-family areas and which might include single-family attached or detached units, townhouses, cluster housing, condominiums, cooperatives or other similar projects. Approximate density for the R-1A zone is ten (10) dwelling units per acre. Maximum density in this zone is fifteen (15) dwelling units per net acre.

(Sacramento City Zoning Code, § 17.020.010.) As explained in the EIR, “[t]he project site is zoned R-1A because the shape of the property does not allow development of the site at the specified density (7-15 dwelling units per acre in the PACP-SPSP) with the R-1 development standards.” (DEIR, p. 87.) As discussed above in the context of aesthetics, the Zoning Code provides that in the R-1A zone, minimum yard requirements, maximum lot coverage and minimum lot area per dwelling unit would ordinarily be the same as would be required in the R-1 zone, but may be varied by the planning commission or City Council in order to provide the zone’s intended flexibility. (Sacramento City Zoning Code, §§ 17.060.020, 17.060.030(5); see also Master Response 3, FEIR, pp. 14-15.) The analysis in the EIR evaluated potential impacts that could result from the City exercising that discretion as proposed for the project and allowing variation from R-1 setback, density, and lot coverage standards. That analysis concluded that no significant environmental impacts would result.

Furthermore, the City has approved variations from the R-1 development standards for other developments zoned R-1A, including previously approved but unbuilt development on this very project site. Specifically, the City has recently approved several projects with lot coverages similar to the Islands’ 49.8% coverage (incorrectly stated as 46% in the Findings): Natomas Field (48.5-53.5%), Candela (45%), Riverdale North (50%), Natomas Central (45%). Even the Pocket Protectors’ proposed alternative has a 48% lot coverage. (DEIR, pp. 186-194.) In addition, the Reflections at Rush River project touted by the Pocket Protectors at the Planning Commission meeting on September 15, 2005, has a density of approximately 9.5 du/acre in an R-1A-PUD zone and a lot coverage of 45%.

Whereas the Islands project proposes a 22-foot wide interior private street, the Reflections project includes only a 20-foot wide street running behind the homes in an alley-like style similar to the Pocket Protectors’ alternative and other alternatives for this project. (See attached Reflections site plan, Exhibit B.) As explained in the EIR, unlike the alley-style designs that have been suggested, the proposed project design provides “eyes on the street”, which the City has deemed to have safety benefits. (See Master Response 7, FEIR, p. 21; Response 1-59, FEIR, pp. 43-44; Response 19-3, FEIR, p. 112.) In addition, the central street design provides a greater sense of community than an alley-style design. Streets in Land Park, Curtis Park, McKinley Park, Midtown, and Downtown have similar configurations, and 20-foot wide streets are common in Sacramento and throughout the United States. Narrower streets have also been found to promote pedestrian, bicycle, and vehicle safety by reducing vehicle speeds. (See FEIR, p. 21.)

The project has been acclaimed by SACOG as being “clearly in the spirit of the Blueprint growth principles.” (See SACOG letter, dated August 22, 2005, attached as Exhibit E, at p. 1.) As SACOG stated, “[c]ompact development is considered essential for the Blueprint to succeed.” (*Ibid.*) Regis Homes urges the Council to weigh heavily the comments of this agency with expertise in land use planning, rather than the unreasonable complaints of neighbors with no expertise in urban land use and planning matters in Sacramento. Even Ms. Skewes-Cox, a planner, has no particular knowledge of Sacramento zoning or land use planning practices. Thus, her comments regarding “standard planning practice” have no bearing on the decisions of this Council. (See, e.g., Brandt-Hawley Letter, Land Use Section, pp. 8-9.) Rather, the Council is allowed to disregard Ms. Skewes-Cox’s interpretation and instead rely on the expertise of the Planning Commission, the City staff, and Mr. Heartman, who has built numerous units, including popular and acclaimed infill projects, in the cities of Sacramento and West Sacramento. (See Exhibit A, List of Regis Homes’ Awards.)

Ms. Brandt-Hawley attacks the proposed amendment to the LPPT PUD and PACP-SPSP definitions of “R-1A” that would cause it to encompass the same range of uses allowed in the City’s general R-1A definition. (Brandt-Hawley Letter, Land Use Section, pp. 7-9; see DEIR, p. 100.) The EIR explains the need for this clarification, as exemplified by the following response to a comment from one of the Pocket Protectors:

One of the issues identified by the Court of Appeal as supportive of a “fair argument” of a potentially significant impact associated with the project’s consistency with existing land use plans was the site’s designation for “townhouses and related development.” It was the consistent position of City staff that this designation, coupled with the fact that the site is zoned R-1A, was intended to include a broad variety of alternative housing types, other than standard-sized-lot, single-family detached homes or multi-family. The list of housing types allowed under the R-1A zone includes attached and detached units, as well as townhouses, cluster housing, condominiums, cooperatives or similar projects. (SCC Title 17.20.010.) Neither the term “townhouse,” nor “related development,” was defined in the PUD Development Guidelines or elsewhere in the City’s zoning ordinance. At the time that the PUD designation was made, the term “townhouse” was being used to broadly describe housing products that were more densely arranged or smaller than the standard, 5,200-square-foot-lot single-family detached developments. It is the City planning staff’s understanding of the “townhouse and related development” designation that at the time it was adopted, it was aimed more at achieving a certain density

for the project site (maximum 8 du/acre) and less at requiring a specific housing product, such as attached townhomes. Moreover, other “townhouse (R-1A)” designated areas within Riverlake have been developed with detached, single-family homes on smaller-than-standard lots and were determined to be consistent with this designation. Therefore, it is the planning staff’s interpretation that the type of housing product allowed under the “townhouse and related development” designation includes the type of housing proposed by the project applicant. Because this was an area of ambiguity identified by the Court of Appeal, however, the City has required the additional proposed revisions to the PUD Guidelines and the PACP-SPSP to clarify any remaining confusion. The language of the proposed revisions to those plans is not specific to the proposed project, although the project site is likely to be the only parcels within Riverlake to be affected by the change because it has the only remaining undeveloped lots designated for “Townhouse R-1A” within the PUD boundaries.

(Response 6-10, FEIR, pp. 62-63; see also DEIR, pp. 98-100.) The best examples of detached housing products in the context of the “Townhouse R-1A” designation are the 1984 and 1987 approvals for this site, which included both attached *and detached* units (see DEIR, p. 168); the recent approval of Reflections at Rush River, also R1-A (Exhibit B); and the April 6, 2005, approval of the 2200 5th Street project, where “townhouse” is described as “three story single-family detached residences.” (See Exhibit F.) While Ms. Brandt-Hawley is entitled to her opinion that this change is unnecessary, and that instead, the Project should not be built, the change is nonetheless recommended by City planning staff to clarify their long-standing and consistent interpretation of “townhouse and related development.” (See January 31, 2006, Staff Report, p. 1; DEIR, p. 5; FEIR, p. 3.)

As explained in Master Response 3, all development within the LPPT-PUD, including the project, requires a “special permit” simply by virtue of being located within the PUD. (FEIR, pp. 14-15.) There is nothing magical or mysterious about the “special permit” and in fact, the special permit becomes the conduit for the variations in setbacks, lot coverage, and density that allows the City to have flexibility in guiding land use development in R-1A zones. (Master Response 3, FEIR, pp. 14-15.) Regis agrees that a special permit is “not the automatic right of any applicant”. (Sacramento City Code, § 17.212; Land Use Section, p. 9.) The grant of the special permit is within the City’s discretion, but Regis believes that substantial evidence in the record supports granting the requested special permit for this project.

With regard to Ms. Brandt-Hawley's comments regarding the adequacy of the street width (Brandt-Hawley Letter, Land Use Section, p. 10), the relevant City departments have signed off on the 22-foot street width. (See e.g., Exhibit G, Memo to Kimberly Kaufman-Brisby from Michael Root, Solid Waste Division (April 6, 2005) ("[t]he Solid Waste Division would be able to provide solid waste services to this development without adverse impacts"); Memo to Kimberly Kaufman-Brisby from Angie Shook, Fire Department (July 22, 2005) (unobstructed width of 20-feet or more is adequate).) Notably, Reflections at Rush River contains a 20-foot wide street.

In sum, Ms. Brandt-Hawley's complaints regarding Land Use have no basis in fact or law and have been repeatedly addressed during the EIR process, if not well before.

Traffic

Ms. Brandt-Hawley asserts that the Draft EIR fails to adequately analyze traffic impacts. This assertion is misleading and incorrect. (Brandt-Hawley Letter, Traffic Section, p. 1.)

The City of Sacramento completed two Initial Studies for this Project, one in June 2002, and one in February 2005. Both Initial Studies reached the same conclusion with regards to traffic; the Project would not result in any significant impacts. (Initial Study, p. 28; FEIR, p. 2; Findings, pp. 38-39.) As stated in the EIR:

The Third District Court of Appeal identified issues where it found that there might be a fair argument the project could result in significant impacts. The Court's decision, and the arguments upon which the Pocket Protectors prevailed, were limited to three specific areas; the Court did not rule, nor did the Pocket Protectors argue, that the record supported a fair argument for the other resource areas. Comments on the NOP also raised these three issues, along with new issues. Based on the Initial Studies, the appellate court's decision, and comments received from the public and reviewing agencies in response to the 2005 NOP, the City determined that the DEIR should address the following potentially significant issues in depth: Land Use Plans and Policies; Aesthetics; and Recreational Resources.

[Transportation/Circulation and other topics] were evaluated in the 2002 Initial Study. The Third District Court of Appeal did not find that there was a fair argument that a significant impact would result for any of these

resources. These topics were analyzed again in the 2005 Initial Study, which concluded that these impacts would be either less than significant or less than significant with the incorporation of mitigation measures.

(DEIR, p. 3; see also, Master Response 2: Traffic Study, FEIR, p. 14.)

Nevertheless, a traffic analysis was conducted. As stated in the DEIR,

[t]he traffic resulting from the Islands at Riverlake Project would not generate any unanticipated traffic impacts other than those already evaluated in the SGPU DEIR. Therefore, the City Public Works Department determined that impacts resulting from increased traffic volume would not surpass the significance threshold of LOS C or worse. [Citation.]

The City of Sacramento referenced traffic counts conducted for Pocket Road. Then the City conducted additional traffic counts on Pocket Road at West Shore Drive and East Shore Drive on 10 April 2002. Traffic counts were conducted at Pocket Road and Dutra Bend Drive on 18 June 2002. With the traffic count data, the City determined existing peak hour volumes and the average daily trips. The traffic counts demonstrated that Pocket Road currently operates at approximately half of its designed capacity.

(DEIR, p. 125.) Even though the Initial Study and the EIR concluded that there would be no significant impacts to traffic, the City, did, as Ms. Brandt-Hawley references, conducted a traffic study “as a courtesy to Caltrans . . . [a]lthough not required by CEQA or the Court of Appeal.” (Brandt-Hawley Letter, Traffic Section, p. 1; FEIR, p. 14.) The traffic study confirmed the conclusions of the Initial Study and the DEIR: the Project will not result in any significant adverse effects on traffic. (Exhibit H, Email exchange between Samar Hajeer, Senior Engineer, Development Engineering and Finance Development Services, and Katherine Eastham, Chief, Office of Transportation Planning, Caltrans, District 3.)

Ms. Brandt-Hawley states in her letter that Caltrans did not agree with the traffic study. There are significant problems with this assertion. First, the purported conversation between Katherine Eastham of Caltrans and Ms. Brandt-Hawley’s law clerk took place off the record, and as repeated, is hearsay; it does not constitute Caltrans’ official position on this issue.

Furthermore, Caltrans' concerns have, in fact, been addressed. (See Exhibit H, Email exchange between Samar Hajeer, Senior Engineer, Development Engineering and Finance Development Services, and Katherine Eastham, Chief, Office of Transportation Planning, Caltrans, District 3.) In a January 12, 2006, email from Samar Hajeer to Katherine Eastham, Ms. Hajeer writes:

[Y]ou know that we prepared a traffic study for this project which is included in the FEIR and this traffic study did not show any significant impacts on the freeway system analyzed within the study area. I did not receive any comments from [] Caltrans on this project after the FEIR, and my understanding at the Planning Commission hearing [was] that you are satisfied with this traffic study. Please let me know if you have any comments on the traffic study presented in the FEIR.

We also received a letter of appeal from the Pocket Protectors, and in the packet they included a letter from Rachel Howlett, [of the] Brandt-Hawley Law Group, addressed to you and dated November 15, 2005. Howlett in her letter indicated that she understood [that] you have several concerns on the traffic study. I will fax you this letter if you would like [,] and I would like to hear from you regarding this issue. [I]f you have any concerns on the study we need to discuss [them] and make sure [] all your concerns are addressed.

As reflected by Ms. Eastham's reply to this email, all of Caltrans' concerns have, indeed, been addressed. Ms. Eastham's reply states, in pertinent part:

Caltrans initially had concerns regarding the draft EIR as the Traffic study was not included in the circulation and in fact was not completed until after the final date for comments. The review of the traffic study revealed that the mainline future AADT may be less than what Caltrans staff anticipates; however, this would lead to the project having *less* impact to the cumulative mainline than stated in the traffic study.

(See Exhibit H, Email exchange between Samar Hajeer, Senior Engineer, Development Engineering and Finance Development Services, and Katherine Eastham, Chief, Office of Transportation Planning, Caltrans, District 3 (emphasis added).) Moreover, Caltrans has never testified or submitted its own written communication expressing any concerns about the City's traffic analysis. This absence of concern can be likened to the evidentiary import of Sherlock Holmes' dog that did not bark. Certainly, if Caltrans was

concerned about the traffic impacts of this Project, they would have commented, as they have on many other projects in the City.

In any event, the Pocket Protectors are foreclosed from raising traffic as an issue at this point in the process. Issuance of a writ in a CEQA case does not send respondents back to square one. To the contrary, CEQA explicitly provides that writs in CEQA cases are to be narrowly drafted to specifically address identified defects. (Pub. Resources Code, § 21168.9.) A reviewing court must “specifically address each of the alleged grounds for noncompliance[]” with CEQA. (Pub. Resources Code, § 21005, subd. (c); see also § 21168.9, subd. (b) (the reviewing court’s order shall include only the mandates necessary for CEQA compliance).) Thus, where, as here, the Third District Court of Appeal articulated specific areas in which it found there existed a fair argument that a significant impact would occur, and required preparation of an EIR on those bases, the City is presumed to have complied with CEQA in all other respects. (*Ibid.*; see *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1387.) Thus, any criticism of the Riverlake EIR must be limited to the environmental impact areas identified by the Court of Appeal.

In addition, the Pocket Protectors are explicitly precluded, under the legal principle of *res judicata*, from challenging this EIR on issues that were not identified by the Court of Appeal as requiring additional study. In *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2004) 126 Cal.App.4th 1180 (“*Federation*”), the respondent city certified an EIR for a general plan framework. In the first appeal, petitioners argued that the city’s findings that water resources would be sufficient to serve the project and that significant traffic impacts would be mitigated were not supported by substantial evidence. (See 83 Cal.App.4th 1252.) The Court of Appeal agreed as to traffic, but denied the appeal on all other grounds. On remand, the city adopted a new set of findings and a statement of overriding considerations that was substantially the same as its original set of findings, except with respect to traffic impacts. Petitioners then challenged the city’s findings on water, wastewater, solid waste, open space, and utilities. The Court of Appeal held that all of petitioners’ challenges were barred either because the issues had already been decided against the petitioners or because the issues could have been, but were not, raised in the first challenge to the EIR:

Petitioners could have challenged the city’s findings on waste water, solid waste, open space, and utilities in the prior proceeding, but did not. *Res judicata* bars Petitioners’ challenges to those findings. Having unsuccessfully challenged the finding on water resources in the prior

proceeding, Petitioners are also barred from challenging that finding again in this proceeding.

(*Id.* at p. 1204.)

The scope of the Riverlake EIR is properly limited to the areas of potential impact identified by the Third District Court of Appeal in its opinion and confirmed through the Initial Study and scoping process: Land Use Plans and Policies; and Aesthetics; and Recreational Resources. (*The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 939; DEIR, pp. 3-4.) The Court did not rule, nor did the Pocket Protectors argue, that the record supported a fair argument for other resource areas. Thus, as in *Federation, supra*, the Pocket Protectors are precluded from challenging this EIR on issues that the Court of Appeal did not identify for additional environmental review. This approach is consistent with CEQA policy that once an EIR has been prepared and certified, project applicants and agencies are entitled to a certain degree of finality. (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1074.) Further, as stated in the City's responses to comments:

The Planning Commission and Third District Court of Appeal did not make definitive conclusions as to the level of significance of any impacts of the project. Rather, they identified areas for which they believed a "fair argument" existed that there may be significant impacts. The Court of Appeal's ruling limited further study to the areas evaluated in the DEIR – land use planning consistency, aesthetics, and recreational resources. Any additional issues not raised by the Pocket Protectors in their appeal, and for which the Court of Appeal did not identify a "fair argument," are considered waived for the purposes of further analysis. The DEIR evaluated these potential impacts and concluded, based on the available evidence and the planning staff's experience and judgment that the proposed project will not result in significant impacts in any of these areas.

(Response 13-1, FEIR, p. 91.) In sum, traffic was not one of the discrete resource areas specified as an area of concern by the Court. Moreover, the Initial Study, EIR, and traffic study confirmed there would not be any significant traffic effects, and Caltrans is not currently concerned about traffic generated by the Project.

Alternatives

Ms. Brandt-Hawley states that the EIR fails to provide adequate analysis of alternatives for several reasons. (Brandt-Hawley Letter, Alternatives Section.) The EIR, however, provides a reasonable range of alternatives as required under CEQA and complies with all requirements under CEQA. Alternatives are required only when a project has significant impacts. CEQA Guidelines, section 15126.6, states:

- (a) An EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

In other words, an alternatives analysis is only required when a project has significant unavoidable effects. Here, the project does not have any significant, unmitigable effects, yet, the EIR still analyzed a reasonable range of alternatives to facilitate informed decision-making. Further, the range of alternatives in the EIR complies with CEQA requirements, even though the analysis itself was not required.

Ms. Brandt-Hawley attacks the adequacy of the alternative analysis by claiming that the City's decision not to hold a public scoping meeting was a "misstep." As this office responded, and Ms. Brandt-Hawley admits (Brandt-Hawley Letter, Alternatives Section, p. 2), no scoping process was required under these circumstances because the Third District Court of Appeal and the City's subsequent Initial Study established the scope of the EIR, and the project is not one of statewide, regional or areawide significance, where scoping is mandatory. (Master Response 10, FEIR, p. 23; Exhibit I, June 10, 2005, letter from Joe Cerullo, Senior Deputy City Attorney, to Gary Hartwick.)

Under CEQA, the lead agency (the City) may, but is not required to, decide to involve the public in the scoping process by consulting with any person or organization it believes will be concerned with the environmental effects of the project. (CEQA Guidelines, § 15083.) Some level of public involvement may be mandatory, however, for projects of statewide, regional, or areawide significance, which this project is not. (CEQA Guidelines, §§ 15083, 15206.)

For projects of statewide, regional or areawide significance, the lead agency is required to call at least one "scoping meeting" and provide notice of that meeting. (Pub. Resources Code, § 21083.9, subd. (b); see also CEQA Guidelines, § 15082, subd. (c)(1).) The lead agency presumably must consider whatever feedback it receives at such a

meeting, including thoughts expressed by participating members of the public. This is not the case in this situation. Here, the Islands at Riverlake project most definitely does *not* fall into this category that would require a scoping meeting. It is an approximately 20-acre project that will contain 139 residential dwelling units—*not* a project of statewide, regional or areawide significance. (FEIR, p. 2.)

Ms. Brandt-Hawley quotes the CEQA Guidelines, section 15083, at length, to imply that the City somehow “truncated” the EIR process by not holding a voluntary scoping meeting. This is simply not true. The public scoping process described by CEQA Guidelines section 15083, was *not* required for the Islands at Riverlake project. In this case, the City properly relied on the Initial Study and the Third District’s ruling to guide the scope of the EIR and Alternatives. (DEIR, pp. 3-4.) Further, as stated by City Attorney Samuel Jackson and Senior Deputy City Attorney Joseph Cerullo, in their June 10, 2005, letter to Gary Hartwick, it is the City’s decision which alternatives to include for study in the EIR. (See Exhibit I, June 10, 2005, letter from Joe Cerullo, Senior Deputy City Attorney, to Gary Hartwick.) That letter states:

[It is not true that the EIR must consider the Pocket Protector’s alternative project.] Under the CEQA Guidelines, it is the city alone that determines which project alternatives the EIR should analyze. No ‘ironclad rule’ governs this determination []. Instead, guided by the ‘rule of reason’ the city must select ‘a range of reasonable alternatives to the project’ that would ‘feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project’—all with the goal of ‘foster[ing] meaningful public participation and informed decision making.’ [CEQA Guidelines, § 15126.6.] Consistent with the Guidelines’ requirements, the EIR will analyze a meaningful range of alternatives, including the alternative the Pocket Protectors presented to the city council during the May 2003 hearing.

The City’s Master Response 7 further addresses and settles all of Ms. Brandt-Hawley’s concerns. Master Response 7 states, in pertinent part:

CEQA requires an EIR to describe and analyze a “reasonable range” of alternatives to the proposed project that could feasibly attain the objectives of the project and reduce or avoid project impacts. (CEQA Guidelines, Section 15126.6(a).) A “reasonable range” is not numerically defined in CEQA, but it is generally understood by CEQA practitioners to mean at least three project alternatives (i.e., not including the required “No Project”

alternative or the project itself). The DEIR presented and evaluated six project alternatives, plus the required "No Project" alternative.

The Third District Court of Appeal found a "fair argument" under CEQA that potentially significant impacts in land use planning consistency, aesthetics, and associated recreational resources might result. The second Initial Study prepared following the Court order did not find any new, potentially significant impacts. Therefore, the scope of the DEIR focused on these three areas. The selection of the project alternatives was driven by the scope of the DEIR. At various times in the three-year process for this project, the Pocket Protectors and other neighbors have asserted that previously approved developments for the project site would be more acceptable or less environmentally significant than the proposed project. For that reason, Alternatives A2 and A3, both previously approved projects determined by previous City decision making bodies to meet the requirements for a special permit (including the requirement that they shall comply with "sound principles of land use") were selected for analysis in this EIR. The designs of these alternatives and the resulting analysis were based on the previously approved tentative maps for these projects, showing the projects' layouts and amenities and the design details that were available in the City's records of these projects.

Prior to the City Council's original approval of the proposed project, the Pocket Protectors proposed a new alternative consisting entirely of halfplexes, which the group argued would be preferable and environmentally superior to the proposed project. Therefore, this alternative was included in the DEIR as Alternative A4. The site layout of the A4 Alternative was based on the information provided by the Pocket Protectors at the City Council's May 2003 meeting on the Islands at Riverlake project. As noted in the DEIR, this A4 Alternative was scanned, scaled and placed on a digital basemap of the project parcels to determine how many units could be constructed under this alternative plan. That process showed that 126 units, in 63 halfplexes, could be constructed on the project site under this Alternative.

The Zero Lot Line Alternative (A5) was developed in order to compare the proposed project to an alternative housing development that would be allowed under the existing R-1A zone, at nearly the maximum density allowed by the LPPT PUD Schematic Plan (8 du/acre maximum). This

alternative was included also to show a single family residential alternative, detached housing design that incorporates the location of the private street along the existing fence, as suggested by the Pocket Protectors, with the narrow and deep lot configuration that was approved for the Coleman Ranch subdivision (R-1A zoned) that was annexed into the Riverlake Community Association, across Pocket Road to the south of the proposed project site. The lot width of 30 feet would be narrower than the 45 – 50-foot typical lot width in Coleman Ranch.

The Rezone Alternative (A6) was developed as a result of the notice taken by the Court of the previously adopted (but now expired) Development Agreement for the project site that required a rezoning from R-1A to R-1 for single-family detached housing to be built on the site. Earlier in the City's review and approval process, several commentators also recommended that the developer obtain a rezone to R-1. The request for rezone was based on the opinion that the proposed housing product was standard single-family detached housing that required a rezone to R-1. Commentors cited their own preference for such housing product and their views that the Development Agreement required it. The City interpreted the Development Agreement to require a rezone to R-1 only if R-1 standard-sized lots were being proposed for the site. Therefore, this alternative was included in the DEIR to assess the project site's suitability for R-1 standard single family detached housing, where 100 units could be constructed on standard, 5,200-square-foot lots.

Alternative A7 (R-1A Mixed) evaluates a synthesis of the proposed project and Alternative A2. The lot and road layout would be the same as the proposed project but would introduce a mix of detached and halfplex units like Alternative A2. The overall number of units, 139, would be the same as the proposed project.

(Master Response 7: Alternatives Analysis, FEIR, pp. 20-21.) The foregoing discussion lays to rest any claims that the EIR did not analyze a "reasonable range" of alternatives.

Next, Ms. Brandt-Hawley seems to assert that the Project Objectives in the Draft EIR are inadequate. She quotes only a portion of the Project Objectives and criticizes the content, specifically the definition of "alternative housing." The *complete* Objectives of the Proposed Project show a clear statement of purpose and objective as required under CEQA:

The purpose of the Islands at Riverlake project (P01-133) is to provide residential housing in the LPPT PUD in a manner that is consistent with the planning goals, policies, and objectives of the City of Sacramento and the Sacramento Area Council of Government's "Blueprint."

The applicant's objective for the Islands at Riverlake project is to develop an alternative housing type at a density that is not currently provided in the Riverlake community.

The applicant believes that the proposed design provides value to homebuyers by creating housing opportunities that integrate in to an existing community while achieving the higher densities intended for the parcels under the LPPT PUD Schematic Plan. The applicant believes that small lot detached homes provide opportunities for a growing market that desires new home ownership without the requirements of large yards and without necessitating dwellings with common walls.

The applicant believes that by combining the proposed design with quality construction and attention to detail, it can achieve the higher density intended for the parcels compatibly with the surrounding subdivisions in Riverlake.

(DEIR, p. 40.) The statement of Project Objectives thus complies with the requirements of CEQA Guidelines, section 15124, subdivision (b), which states:

A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

The Project Objectives are clearly written and include the underlying purpose of the Project and comply with the requirements of CEQA. It is clear that "alternative housing" has been used throughout this Project to describe what type of housing is allowed in the R1-A zone. All but one of the project alternatives examines designs that constitute "alternative housing" types; the remaining alternative analyzes a R-1, standard-sized 5,200-foot lot home for the sake of comparison to the "alternative housing" designs presented for the project and the other alternatives. In any event, as stated above, an

analysis of alternatives is only required when there are significant adverse impacts. The EIR determined that the Project has no significant impacts; therefore, an alternatives analysis is not even required in this case. Even if it were required, however, the alternatives analysis meets CEQA's minimum standards.

EIR Process

Ms. Brandt-Hawley argues that the EIR process was inadequate. This is not true and is refuted multiple times in the existing record.

First, Ms. Brandt-Hawley implies that the City and this office did not adequately respond to her Public Records Act ("PRA") request. (Brandt-Hawley Letter, Cover Letter, p. 5; EIR Process Section, p. 1.) As stated in our November 16, 2005, letter to Ms. Brandt-Hawley on this subject, this office voluntarily complied with the PRA request to the extent allowed by attorney-client privilege, even though, as a private applicant, Regis Homes is under no such obligation to respond. (See Exhibit J, November 16, 2005, letter from Remy, Thomas, Moose and Manley to Susan Brandt-Hawley regarding the Pocket Protectors Public Records Act Request.) Further, we are certain that the City, as well, diligently complied with the request, especially in light of the pending litigation. Any perceived delay experienced by Ms. Brandt-Hawley, could likely be attributed to the City moving its offices during the latter part of 2005.

Second, Ms. Brandt-Hawley mistakenly asserts that an applicant may prepare a draft EIR but not a final EIR. The court in *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 144 ("*Friends of La Vina*"), however, explicitly states that an applicant may draft responses to comments, which, as defined by the court, "principally convert the draft EIR into the final EIR." (*Friends of La Vina*, 232 Cal.App.3d at p. 1456.) The Court states:

We are not unsympathetic to the policy concerns that an agency be required wholeheartedly, thoughtfully, and actively to prepare responses to comments on its draft EIR. But those concerns simply do not engender legal interdiction of an applicant's consultant's drafting the written responses [i.e., the final EIR]. [No] authorities [] dictate such a rule [and] the Guidelines' general terms prescribe no bar" In short, in accordance with consistent practice and judicial application, *the independent review analysis and judgment test, not the proposed physical draftsmanship test, applies to the EIR as a whole, including responses to comments.*

(*Ibid.* (emphasis added).) The *Friends of La Vina* court further states:

[T]he ‘preparation’ requirements of CEQA (§§ 21082.1, 21151) and the Guidelines turn not on some artificial litmus test of who wrote the words, but rather upon whether the agency sufficiently exercised independent judgment over the environmental analysis and exposition that constitute the EIR.

(*Id.* at 1455.) In other words, the court in *Friends of La Vina* addressed the exact concern that Ms. Brandt-Hawley raises. (Brandt-Hawley Letter, EIR Process Section, pp. 2-3.) Ms. Brandt-Hawley ignores, however that court’s clear conclusion that an applicant’s consultant may draft responses to comments, which is, in effect, drafting the final EIR. (Brandt-Hawley Letter, EIR Process Section, pp. 2-3, and EIR Process attachment.) Ms. Brandt-Hawley, instead, surprisingly attaches the dissent of *Friends of La Vina* and asserts that a project applicant may not prepare a final EIR. This is a direct contradiction of the holding in *Friends of La Vina*, and the dissent, although agreeable to Ms. Brandt-Hawley, is decidedly *not* the law. (Exhibit K, *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 144, included in its entirety; Exhibit L, January 9, 2006, letter from Tina A. Thomas to Eileen M. Teichert, Sacramento City Attorney, regarding Applicant Participation in the Preparation of an EIR, pp. 8-9.)

Indeed, Joe Cerullo, Senior Deputy City Attorney, has already clarified the City’s position on this point, which mirrors the *Friends of La Vina* holding. In his July 15, 2005, letter to Susan Brandt-Hawley Mr. Cerullo states:

As I explained previously, on most projects neither the applicant nor the applicant’s attorney prepares or works on the city’s responses to comments on the draft EIR. But when litigation is threatened, the city has worked with the applicant’s attorney in responding to comments. Because litigation is obviously threatened here, therefore, I anticipate that city staff will be working with Regis’s attorneys, with Remy, Thomas, Moose & Manley, on the city’s responses to some or all of the comments received. Be assured, however, that the final comments themselves—as well as the final EIR—will reflect the city’s independent judgment and analysis.

(Exhibit M, July 15, 2005, letter from Deputy City Attorney Joe Cerullo to Susan Brandt-Hawley, p. 3; Exhibit N, November 18, 2003 Comments of Ellie Buford on Proposed Scope of Services Contract Between Regis Homes and Sycamore Environmental

Consultants.) Moreover, the City exercised its independent judgment and analysis to review administrative drafts of the draft and final EIRs. Sycamore Consultants incorporated verbatim the City's comments into the draft and final EIRs, which then became the finalized version of those documents. The applicant did not comment on or make new changes after submitting the document to the City for its review. The CEQA Guidelines, case law, and legislative history support this approach. (See Exhibit L, January 9, 2006, letter from Tina A. Thomas to Eileen M. Teichert, Sacramento City Attorney, regarding Applicant Participation in the Preparation of an EIR, pp. 8-9.)

Finally, Ms. Brandt-Hawley claims that there was a lack of due process. This is patently untrue, as can be readily surmised from the lengthy public review this Project has undergone. Even though CEQA "does not require formal hearings at any stage of the environmental review process," the Project's public review, which began approximately four years ago, included several opportunities for the public to be heard. (CEQA Guidelines, § 15202.) The 2002 Initial Study/Mitigated Negative Declaration was circulated for public comment from June 25, 2002, through July 25, 2002; the City then extended the comment period through July 29, 2002. (FEIR, p. 2.) During this first comment period, the City received many comments from public and private organizations. (FEIR, p. 2.) The City of Sacramento Planning Commission held a public hearing on August 8, 2002. The Pocket Protectors participated in yet another opportunity to voice their opposition and present their alternative design at the May 27, 2003, City Council meeting regarding the Project. Pocket Protectors filed a petition for writ of mandamus, which the Superior Court heard on December 19, 2003. The Court of Appeal heard the case again on November 22, 2004. The Draft EIR prepared in response to the Court of Appeal's decision, was released for public comment on June 21, 2005. The City accepted comments through August 9, 2005, an additional five days beyond the close of the official 45-day review period. (FEIR, p. 1.) After several continuances, the City Council will hold another public meeting on January 31, 2006. The City has fulfilled its duty to provide due process regarding the Islands at Riverlake Project.

* * *

In conclusion, Ms. Brandt-Hawley's letter does not raise any new issues. All of these concerns have been addressed and allayed in the lengthy environmental review process for this Project. Ms. Brandt-Hawley and her clients simply want an outcome different than the proposed staff report recommends. As outlined and underscored in this letter, this is a simple design dispute. The Council in its discretion selects that design.

Mayor Heather Fargo
Members of the City Council
January 30, 2006
Page 24

Therefore, we respectfully request that the City Council deny the Pocket Protector's appeal and approve the Islands at Riverlake Project as proposed.

Sincerely,



Tina A. Thomas

- Exhibit A: List of Regis Homes' Awards
 - Exhibit B: Reflections at Rush River Documentation.
 - Exhibit C: Planning Commission Transcript (September 15, 2005)
 - Exhibit D: Lawrence Livermore National Laboratories Publication
 - Exhibit E: SACOG letter, dated August 22, 2005
 - Exhibit F: April 6, 2005, approval of the 2200 5th Street project
 - Exhibit G: Memo to Kimberly Kaufman-Brisby from Michael Root, Solid Waste Division (April 6, 2005)
Memo to Kimberly Kaufman-Brisby from Angie Shook, Fire Department (July 22, 2005)
 - Exhibit H: Email exchange between Samar Hajeer, Senior Engineer, Development Engineering and Finance Development Services, and Katherine Eastham, Chief, Office of Transportation Planning, Caltrans, District 3
 - Exhibit I: June 10, 2005, letter from Joe Cerullo, Senior Deputy City Attorney, to Gary Hartwick
 - Exhibit J: November 16, 2005, letter from Remy, Thomas, Moose and Manley to Susan Brandt-Hawley
 - Exhibit K: *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 144
 - Exhibit L: January 9, 2006, letter from Tina A. Thomas to Eileen M. Teichert, Sacramento City Attorney
 - Exhibit M: July 15, 2005, letter from Deputy City Attorney Joe Cerullo to Susan Brandt-Hawley
 - Exhibit N: November 18, 2003, Comments of Ellie Buford on Proposed Scope of Services Contract Between Regis Homes and Sycamore Environmental Consultants
- cc: Susan Brandt-Hawley Via Federal Express
Bill Heartman
Sabina Gilbert
Joe Cerullo

REGIS HOMES—AWARDS

2004

Markethouse Lofts

Builder Magazine

Builder's Choice Grand Award

Urban Infill Community

Ross Woods

Builder Magazine

Builder's Choice Merit Award

Townhouse, more than 2,000 sq. ft.

Ross Woods

Pacific Coast Builder's Conference

Gold Nugget Merit Award

Attached home larger than 12 units

2003

Markethouse Lofts

National Association of Home Builders

Silver Award

Best Urban Sales Office over 600 sq. ft.

2001

Markethouse Lofts

AIA Santa Clara County

Special Recognition Design Award

Unbuilt Project

Montelena

Pacific Coast Builder's Conference

Gold Nugget Merit Award—Best in West

Best Residential Project Site under 25 acres

Humboldt Square

Pacific Coast Builder's Conference

Gold Nugget Merit Award—Best in the West

Best Redevelopment Rehab or Infill Site

2000

Humboldt Square

AIA San Mateo County

Honor Award

Montage

AIA Santa Clara County

Honor Award

1999

Montage

Builder Magazine

Builder's Choice Merit Award

Designing and Planning

1998

Metro Square

AIA Sacramento County

Honor Award

Metro Square

Major Achievement in Merchandising Excellence

(MAME)

Community of the Year

Metro Square

Pacific Coast Builder's Conference

Gold Nugget Merit Award—Best in the West

Best Single Family (Small Lot) Detached

Home under 1,400 sq. ft.

(Found at, www.regishomes.com.)

CITY PLANNING COMMISSION
SACRAMENTO, CALIFORNIA
MEMBERS IN SESSION:

ITEM # 3
September 11, 2003
PAGE 1

P02-066 – REFLECTIONS AT RUSH RIVER

- REQUEST:
- A. Environmental Determination: Exempt 15332;
 - B. Community Plan Amendment to redesignate 1.46± acres from Residential 3-6 du/na to Residential 7-15 du/na; *Withdrawn by Staff*
 - C. Tentative Parcel Map to subdivide the 1.46± acre parcel into 11 parcels for single-family residential units in the R-1A PUD zone; and,
 - D. Special Permit to allow the development of 11 single-family detached residential units within the R-1A-PUD zone;

LOCATION: Northeast Corner of Rush River Drive and Delta Wind Drive
APN: 031-1440-024
South Pocket Community Plan Area
Sacramento City Unified School District
Council District 7

APPLICANT/OWNER:	Tony Zogopoulos, 916-771-8551 Network Builder Services 8265 Sierra College Blvd., Ste. 316 Roseville, CA 95661
APPLICATION FILED:	May 22, 2002
APPLICATION COMPLETED:	May 14, 2003
STAFF CONTACT:	Ellen Marshall, (916) 264-5851

SUMMARY:

The applicant is proposing to subdivide a 1.46± acre parcel into 11 lots for a single family residential development. The applicant is also requesting approval of a Special Permit to construct 11 single family homes. The project was heard by the Planning Commission on July 10, 2003 and continued to give the applicant and the neighbors the opportunity to resolve issues relating to private driveway adjacent to the northern property line.

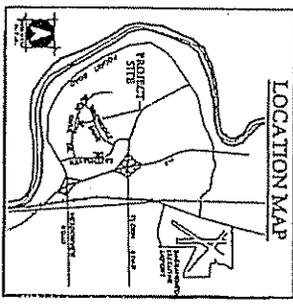
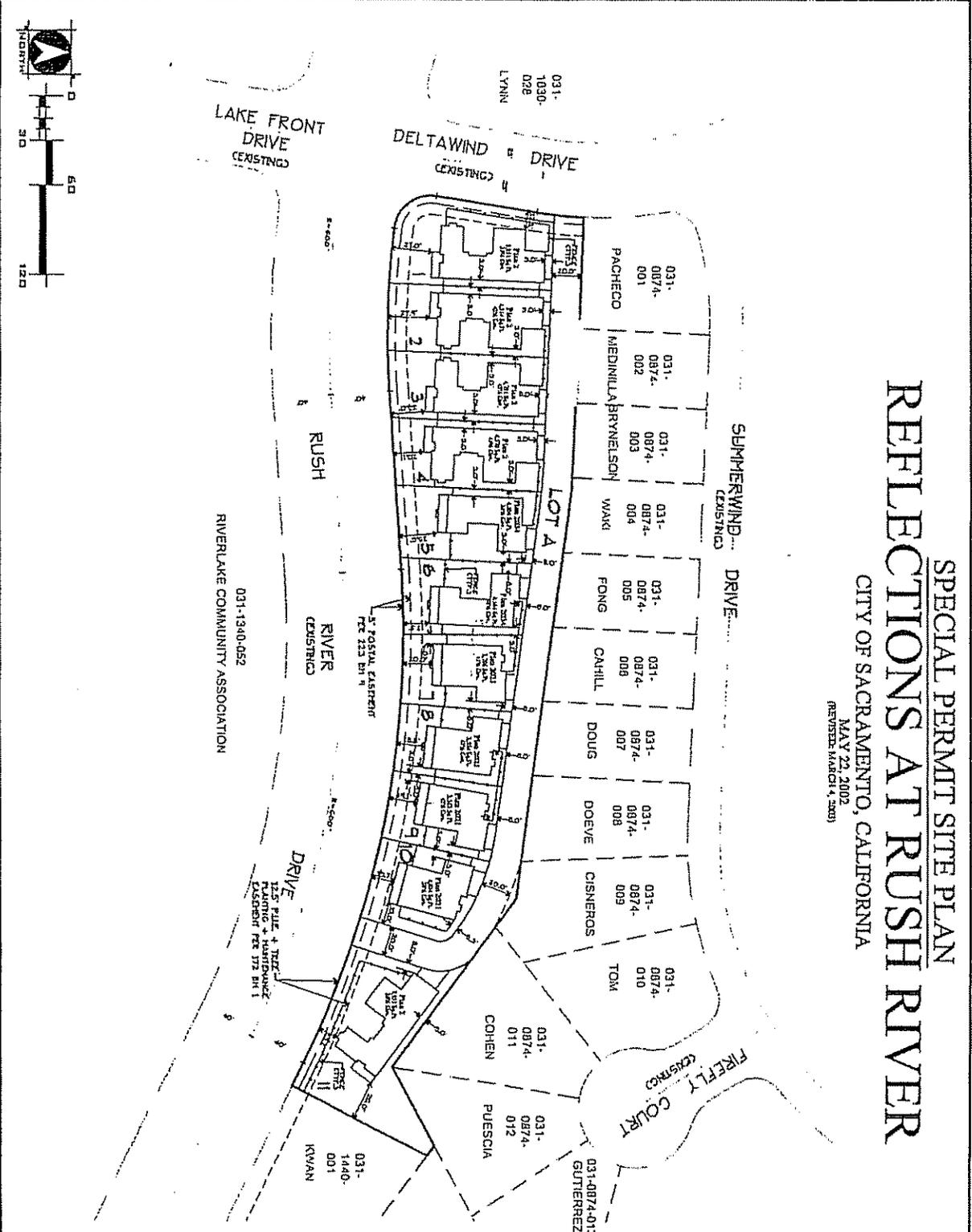
RECOMMENDATION:

Staff recommends approval subject to conditions. The recommended approval is based on the project's consistency with the General Plan, the South Pocket Community Plan, and compliance with Zoning Ordinance requirements

SPECIAL PERMIT SITE PLAN REFLECTIONS AT RUSH RIVER

CITY OF SACRAMENTO, CALIFORNIA

MAY 21, 2002
(REVISED MARCH 4, 2001)



PROJECT NOTES

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CITY OF SACRAMENTO PLANNING COMMISSION



••• AGENDA •••

City Planning Commission will meet *Thursday* at 5:30 p.m.
1231 I Street – First Floor

July 10, 2003

Meeting Coordinator: Gary Lane, 264-5608

NOTICE TO THE PUBLIC

The City Planning Commission welcomes and encourages participation in the meetings. Public testimony may be given on any item as it is called. Matters under the jurisdiction of the Planning Commission, and not on the posted agenda, may be addressed by the general public following completion of the regular agenda.

For purposes of the Brown Act (Government Code Section 54954.2(a)), the numbered items as shown on this agenda give a brief general description of each item of business to be transacted or discussed at this meeting. The recommendations of the staff, as shown, do not prevent the City Planning Commission from taking other action.

CONTINUED ITEMS are items which have been rescheduled for a later hearing date. No action to approve or deny the project is recommended by staff to be taken on these items at this meeting.

CONSENT ITEMS are non-controversial items that may be approved at the beginning of the meeting by the Planning Commission. The Chairperson will ask for those item numbers which are requested to be removed from the consent calendar.

HEARING ITEMS are items which require Planning Commission action as a public hearing and are neither continued nor consent items.

INFORMATIONAL ITEMS are items which are presented to the Planning Commission for information only and require no formal action.

APPEALS on the Planning Commission decision to the City Council must be filed at 1231 I Street, Room 200, within 10 calendar days of this meeting. If the 10th day falls on a Sunday or holiday, the appeal may be filed on the following business day.

STAFF REPORTS are available six calendar days prior to the Commission meeting in the Planning and Building Department, Planning Division, 1231 I Street, Room 300, phone 264-5381.

****PLEASE TURN ALL CELL PHONES AND PAGERS OFF IN THE MEETING****

Visit us on our Website at www.cityofsacramento.org.

	AGENDA ITEM	FILE	STAFF RECOMMENDATION
3.	<p>Reflections at Rush River located at the Northeast corner of Rush River Drive and Delta Wind Drive Entitlements to allow the construction of 11 single family units on 1.46 acres in the Single Family Alternative (R-1A) zone within the South Pocket PUD (D7) APN: 031-1440-024.</p> <p>A. Environmental Determination: Exempt 15332; B. Community Plan Amendment to redesignate 1.46± acres from Residential 3-6 du/na to Residential 7-15 du/na; WITHDRAWN BY STAFF C. Tentative Parcel Map to subdivide the 1.46 acre parcel into 11 parcels for single-family residential units in the R-1A PUD zone; D. Special Permit to allow the development of 11 single-family detached residential units within the R-1A-PUD zone.</p> <p style="text-align: right;">Continued from June 26, 2003</p>	P02-066 Consent	Ellen Marshall, 264-5851 A-D Adopt Notice of Decision and Findings of Fact for Approval
4.	<p>Buchman Circle Apartment located at the south side of San Juan Road, bounded by Buchman Circle, North Natomas. Entitlements to allow the development of a 302-unit multi-family apartment complex on 12.4± undeveloped acres in the Employment Center-50 (EC-50) Planned Unit Development (PUD) Zone; (D1) APN: 225-0220-094;</p> <p>A. Environmental Determination: Negative Declaration; B. Mitigation Monitoring Plan; C. Special Permit to develop a 302-unit multi-family apartment complex on 12.4 ± undeveloped acres in the Employment Center-50 (EC-50) Planned Unit Development (PUD) Zone; D. Special Permit to establish gates at private vehicular entrances.</p>	P02-076 Consent	Kenny Wan, 808-2222 Continued to July 24, 2003

CITY PLANNING COMMISSION

SACRAMENTO, CALIFORNIA

MEETING IN RE ISLANDS AT RIVERLAKE

MINUTES - SEPTEMBER 15, 2005, 5:37 P.M.

---o0o---

COMMISSIONERS PRESENT:

D.E. "RED" BANES

JOHN VALENCIA

MICHAEL NOTESTINE

DARREL WOO

JOHN BOYD

STAFF PRESENT:

KIMBERLY KAUFMANN-BRISBY

THOMAS PACE

SABINA GILBERT, ESQ.

DAVID KWONG

ORIGINAL

1 same density, the exact same density. This is common
2 sense.

3 Now let me ask where the coverage came from that
4 the attorney from Regis said. There is a couple
5 percentage points' difference between the ground
6 coverage of the Islands project versus the alternative.
7 We don't agree with that number. We didn't participate
8 in the development of that number. I don't know where
9 that number came from. Look at the pictures. There's a
10 whole lot less ground coverage from this unit than there
11 is from the other units.

12 Another misconception is that the Pocket
13 Protectors are opposed to any development. That is not
14 true. Everybody keeps saying that. Everybody knows
15 this isn't going to remain a greenbelt. It certainly
16 isn't a greenbelt now.

17 The facts are there have been a lot of projects
18 in the Pocket area, small projects, large projects, that
19 have been built there, and there hasn't been this kind
20 of widespread community protest about this.

21 There are other projects in the area, including
22 the Reflections project, that have similar land
23 constraints, and they're not being opposed. This
24 project is being opposed because the developer is
25 creating visual blight along Pocket Road because of that

1 double row of houses.

2 The change that was made didn't make much of a
3 change. Put all the two-story houses on Pocket Road,
4 because we are sensitive of the neighbors in the back.
5 Now you have a mile of two-story houses right next to
6 each other, seven feet in between these buildings.

7 Finally, in terms of misconceptions, we're not
8 just NIMBY fence folk here who have our own interests at
9 heart. That isn't what's happened. The fact is, we're
10 mostly Pocket residents looking for the best interests
11 of Sacramento here.

12 This project is wrong because it's drastically
13 incompatible with the surrounding neighbors. The
14 two-story mass of buildings is nearly a mile long, and
15 it's right on Pocket Road. That is the gateway to our
16 community. If you take a look at Reflections, you know
17 what, little infill: 11 homes. You take a look at some
18 of the larger things, they're not right at the gateway
19 to the Pocket area.

20 I'd like to put up a photograph now, the first
21 photograph in your package. This is for the audience.
22 It's a little glossy, so it doesn't show up very well
23 for the audience. But this photograph is of the
24 Reflections project. This is not Islands at Riverlake.
25 This is viewed from the [unintelligible] end of the

1 project. There are 11 homes here on this land. You can
2 see where the back wall is. Let me tell you, the width
3 of this property, with a single road, similar, 20-,
4 22-foot road over there, and a single row of houses,
5 this property is actually wider than Islands at
6 Riverlake.

7 I have other photographs here of both the
8 Islands project and of the Reflections project so that
9 you can kind of compare these projects.

10 VICE-CHAIRPERSON BANES: Sir, why don't you give
11 that to staff so they can give it to us?

12 MR. DURAN: I don't think you need to look at
13 these. They are very similar to the two photos that are
14 in your package.

15 This photograph is of Islands at Riverlake. The
16 audience has some glare here, but you folks can see.
17 This is looking at the end of the project, and what it
18 shows here is that same 120-foot width of property with
19 a road in the center and two rows of houses on the side.

20 And the final photograph in your package is a
21 view from the street, a view looking -- taken from the
22 sidewalk, looking towards the back fence line. From
23 those weeds to the fence is a hundred and twenty feet.
24 You can see there how close the houses are and where
25 things are going to be.

CITY PLANNING COMMISSION

SACRAMENTO, CALIFORNIA

MEETING IN RE ISLANDS AT RIVERLAKE

MINUTES - SEPTEMBER 15, 2005, 5:37 P.M.

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THOMAS PACE

SABINA GILBERT, ESQ.

DAVID KWONG

ORIGINAL

1 next to each other right next to Pocket Road. Put up
2 some grape stakes or 1 x 4s or something or another. Do
3 a little mockup of a few of these buildings if you're
4 inclined to consider this.

5 Don't let this project damage our city. It
6 should be held to the same standards, and you shouldn't
7 have to make the kinds of concessions that you're being
8 asked to make. It doesn't fit on this site; great
9 project, great buildings, lots of demand, all that kind
10 of stuff, in a different kind of configuration.

11 I ask that you not let this project degrade this
12 city. I ask you to reject the environmental impact
13 report as being incomplete based on faulty analysis,
14 being misleading, dismissive of valid concerns, and
15 basically wrong because it lacks objectivity. I ask you
16 not to approve this project.

17 I'll take your questions.

18 VICE-CHAIRPERSON BANES: Any questions?

19 COMMISSIONER BOYD: Chair, I don't think I have
20 a question for this witness per se, but he did reference
21 the alternate, and I was wondering if we were going to
22 be able to hear a little more detail about the
23 alternative or hear from the architect, that first board
24 that you presented to us. Is the architect scheduled?

25 MR. DURAN: The architect is here with us

1 tonight, and he would be very happy, I'm sure, to speak
2 with you about this.

3 COMMISSIONER BOYD: Sir, did you fill out a
4 speaker slip?

5 MR. DURAN: He's already spoken. Roger.

6 COMMISSIONER BOYD: I have a few questions, I
7 think, for you.

8 VICE-CHAIRPERSON BANES: Please come forward,
9 Mr. McCardle.

10 COMMISSIONER BOYD: Could you very briefly tell
11 me about this alternate? And talk to me about your
12 experience, and point me to some of the other
13 communities that you've been the architect on.

14 MR. MCCARDLE: Thank you very much for having me
15 come back and try to answer some of your questions.

16 First, let me try to stage how this all came
17 together. I'm not taking credit for this project as
18 being the architect per se. This was made up by a group
19 of people that were talking amongst themselves, and they
20 said, "I bet you in a couple of hours, we could come up
21 with a solution that would be better, that the community
22 could might get behind."

23 So we had a group of people sitting around
24 somebody's dining table. Somebody brought over some
25 scissors, another person bought over some paper, and we

1 cut up little squares. And we basically took the areas
2 that were already existing in the Regis plan, and we
3 just took those squares like paper dolls, basically, and
4 started moving them around. And we tried to identify
5 some things that we felt were really important: have a
6 separation between the existing houses, not having two
7 houses on each side of a very narrow street.

8 So all of these parameters were thrown out on
9 the table in a brainstorming session, and we just put
10 all kinds of wild ideas -- some were thrown out as being
11 too wild or too crazy or unworkable or whatever. We
12 took all of that and condensed it into kind of a
13 background drawing that made some sense.

14 Then I took it and committed it to a CAD program
15 and tried to scale it and make sure it kind of looked
16 reasonable and so forth, and that's how this plan was
17 generated.

18 It's not a design. This is a concept. All we
19 were trying to do, basically, early in this project, was
20 to identify that there are other alternatives, creative
21 alternatives, that could be looked at. We didn't spend
22 two years of design time and hundreds of thousands of
23 dollars in design time. This was a combination of ideas
24 from some local people, and we put it on a piece of
25 paper.

1 That's basically what that represents. It's a
2 concept. We're asking for Regis to take that concept
3 and take it back to his architect and work with the
4 community, work with the Riverlake Association, work
5 with the community representatives. And we'll all sit
6 down and roll up our sleeves and come up with a good
7 solution. We're not against homes. We're not against
8 anything.

9 VICE-CHAIRPERSON BANES: Can I ask a question
10 here?

11 Is that what you wanted answered there?

12 COMMISSIONER BOYD: I just wanted to get a
13 general idea how this emerged. And to sum up what I
14 think I heard you say was it was a community effort.

15 Have you oversaw an exercise like this before?

16 MR. McCARDLE: I participated in brainstorming.
17 I was an architect -- planning/design architect with the
18 University of California. This is kind of our
19 bread-and-butter type of referral. It's just
20 brainstorming. I worked for a research institution, and
21 we tried to have a real open mind to come up with good
22 solutions for all kinds of problems. And I've been very
23 much involved over the years, 25, 30 years, of doing
24 that type of thing, trying to get good ideas together.
25 Good projects are made from good ideas from good people.

1 This is what this represents.

2 COMMISSIONER BOYD: This is the first time you
3 tried to do a community-housing-type concept like this?

4 MR. McCARDLE: I've done residential housing.
5 I've done individual housing. I've done everything from
6 convalescent hospitals to individual houses. I've done
7 projects as far away as Vancouver, Washington.

8 COMMISSIONER BOYD: When was the last time you
9 tried to do a project like this?

10 MR. McCARDLE: I haven't done one per se like
11 this. This, like I say, was kind of a real challenge,
12 getting all these people with crazy ideas together and
13 glue these ideas together; and hopefully, we could pass
14 it on to the developer and come up and -- and they could
15 make an improvement on that basic idea, that basic
16 concept. That's what we're looking at.

17 COMMISSIONER BOYD: Sir, I appreciate your
18 clarification.

19 VICE-CHAIRPERSON BANES: Thank you very much.
20 And we need -- are you almost finished?

21 MR. DURAN: I'm done if you're done with me.

22 VICE-CHAIRPERSON BANES: Any questions of this
23 speaker, please.

24 COMMISSIONER VALENCIA: I just have a comment.
25 I earlier asked if the exhibit in the draft EIR which



Published weekly for employees of Lawrence Livermore National Laboratory

Friday, January 11, 2002

Vol 27, No. 2



The Keck 'virtual' guide star, showing the orange laser beam emerging from the dome of the Keck II Telescope atop 14,000 foot Mauna Kea volcano in Hawaii.

Guide star helps Keck see the light

By Anne M. Stark
NEWSLINE STAFF WRITER

Lab scientists in collaboration with the WM Keck Observatory have created a "virtual" guide star over Hawaii. The virtual guide star will be used with adaptive optics on the Keck II telescope to greatly increase the resolution of fine details of astronomical objects.

Installed in 1999, the Keck adaptive optics system has enabled astronomers to minimize the blurring effects of the Earth's atmosphere, pro-

ducing images with unprecedented detail and resolution. The adaptive optics system uses light from a relatively bright star to measure the atmospheric distortions and to correct for them, but only about 1 percent of the sky contains stars sufficiently bright to be of use. The new virtual guide star will enable Keck astronomers to study nearly the entire sky with the high resolution of adaptive optics.

The virtual guide star, which achieved first

See GUIDESTAR, page 5

Process to select Lab's next director under way; employee input requested

The official process to select a new Laboratory director is under way and employee input is desired, says John McTague, UC vice president for Lab Management.

McTague briefed LLNL senior management earlier this week on the anticipated schedule and how the process will work. "It is important that Lab employees take an active role in this process," he said. "We definitely want suggestions and input as to the type of person who would make a good director."

The process to appoint a new director is a formal UC procedure — one that has been used to appoint Laboratory directors since 1972. The job description and advertisement for the position is already appearing in a number of national magazines, and a Feb. 15 deadline for submission of applications and nominations has been set.

In addition, a screening committee, chaired by John Birely, an independent consultant who formerly had the positions of assistant to the secretary of defense for atomic energy and associate director for nuclear weapons at Los Alamos National Laboratory, is now in place.

"We expect the screening committee to produce a short list of candidates by early March," said McTague. This list will then be given to a more formal UC advisory committee, made up of UC Regents, research scientists and administrators. "We hope the advisory committee will begin to interview candidates in the late March/early April timeframe," said McTague. "If all goes well, we should have recommendations for the UC

See SELECTION, page 8

Labs looking into control of access along East Avenue

Lawrence Livermore and Sandia national laboratories are exploring the feasibility of controlling access to East Avenue between Vasco and Greenville roads. This is a result of the heightened security across the nation following the events of Sept. 11.

LLNL and Sandia's California site are working with the DOE/NSA to explore limiting access to the mile-long stretch of East Avenue between the two labs. The labs, working with Alameda County and the City of Livermore, are looking into the impact of controlling access and any inconvenience to nearby residents.

Controlling access along East Avenue would serve as a deterrent to potential terrorist threats; enhance the safety of the people who work at and visit the two laboratories; enhance security for surrounding neighborhoods; allow open access between Sandia and LLNL; improve vehicle and pedestrian safety around and between the two laboratories; as well as provide for common service areas.

Abraham learns of Lab's subcrit work at NTS

MERCURY, Nev. — Secretary of Energy Spencer Abraham visited the Nevada Test Site on Monday to learn about the Nevada Center for Combating Terrorism. Livermore is a partner in the center, and the Lab's Big Explosive Experimental Facility (BEEF) is considered part of the center complex. Afterward, the secretary toured Livermore facilities at U1a, the underground subcritical experiment laboratory, located nearly 1,000 feet beneath the surface at the NTS.

"Down hole," Livermore's Subcritical Test Director Walter Dekin briefed the secretary on the purpose of the "subcrit" program, including the concept and development of the underground laboratory, the successes of our experiments to date, and our anticipated future schedule.

Abraham was particularly interested in the

Laboratory's development of a containment vessel, about the size of an oil drum, for small subcritical experiments.

The vessel has allowed long-term use of diagnostic set-ups and experiment chambers, saving millions of dollars in the process. The eight containment-vessel experiments conducted so far by Livermore have provided a fast and cost-effective method of obtaining data to assess the aging of nuclear weapons components. Dekin explained that the results are used to improve the models of plutonium behavior in ASCI computer simulations. These simulations are used to evaluate the long-term performance of the weapons in the enduring stockpile, an important goal of the science-based Stockpile Stewardship Program.



Remembering RUTH

— Page 3



UC approves project plan

— Page 5



Report shows owls' well

— Page 7



LAB COMMUNITY NEWS

Weekly Calendar

Technical Meeting Calendar, page 4

Saturday
12

There will be a scheduled power outage in Bldg. 551E and 551W from 7 a.m. to 3:30 p.m. Contact: Mark Cardoza, 3-0490.

Wednesday
16

The Laboratory will hold its annual celebration honoring Martin Luther King at 1:15 p.m. in the Bldg. 123 auditorium Art Jackson, a performance improvement educator and consultant, will present "Hanging 'Round the Barrel: Leading a Life of Significance." Winners of the scholarship essay contest, sponsored by the Affirmative Action & Diversity Program, will read their winning entries. Music will be provided by the Castler Vocal Ensemble.

Thursday
17

An Al-Anon group is starting onsite. The group will meet on Thursdays from noon-1 p.m. in Trailer 3520, room 1174 (Sycamore Room). Contact: Jane P., 4-4689, or Mike F., 3-4827.

Saturday
19

Melody of China, an ensemble of professional musicians presenting Chinese classical, folk, contemporary music, will perform at 8 p.m. in Livermore at First Presbyterian Church, 4th and L. streets. Tickets are \$12 for adults, \$9 for seniors/students, and free for youth through high school. Contact: Del Valle Fine Arts, 447-2752 or visit <http://www.delvallefinearts.org>.

Up
Coming

A representative from Fidelity Investments will be on-site to meet with employees Jan 23-24. Fidelity Investments are available to UC's 403(b) participants in addition to the UC-managed investment funds. To make an appointment, call Fidelity 1-800-642-7131. Be sure to specify you are an LLNL employee.

The Eldercare Support Group sponsored by Health Services will have a networking meeting at noon on Tuesday, Jan 29, in the press room Trailer 6575 (between Visitor Centers and Credit Union). Family members of Lab employees and contract workers are welcome to attend. Badges are not required. Reservations are not required. Contact: Marnette Yeager 2-1217.

The Benefits Office is offering a workshop on the fundamental principals of investing titled, "Basic Investment Planning and Savings," on Tuesday, Jan 22, at 8:30 a.m.-noon or 1-4:30 p.m. at the Training Center. The cost of this workshop is \$45. Pre-registration is required. You can register by visiting the Benefits Office Website at www.llnl.gov/jobs/benefits and click on Seminars/Workshops or call the Training Center at 4-3849.

Retirees travel extensively in 2001

By Bob Becker

LLNL RETIREE

The suggestion that retirees send me copies of their Christmas letters proved to be quite productive; therefore, much of the information in this month's column came from these letters. By the way, if you send me a note or e-mail, please include the date you retired and your department and/or program where you worked; send these to Bob Becker, 1690 Frederick Michael Way, Livermore, 925-447-3867, or e-mail rbeccker@aol.com.

Barbara Costello Anderson (Dosimetry)

had an eventful year, including cruising the Sea of Cortez, a visit to the Copper Canyon, trips to Sweden and Walt Disney World, and then the more routine things, like security escorting at the Lab, being a custodian at Holy Cross Lutheran School and a coordinator at the Alameda County Amateur Gardening Department. She also celebrated her 70th birthday at a big party that her children arranged (I hope she doesn't mind me saying this).

Leonard Allen (Electronics) now lives in Railroad Flat, about 60 miles east of Stockton, and would like to hear from his friends (209-293-4013, callendeelen@volcano.net). The Allens had a busy year. In June, they took a trip to eastern Canada, followed by a trip in their camper to Markleyville, a trip to Africa with hunting on several game farms, a visit to the French Riviera and a camper trip to Joshua National Park. I wonder if Lab retirees should make the book of records for the amount of travel they accomplish.

Wilma McGurn (Director's Office), took a trip to Cuba, which was sponsored by a local college.

Lorene Stack Olsen (Human Resources) has taken up acupuncture and Chi Gong to ward off some of her pains, and it seems that the results have been quite good. Lorene attended an all-school reunion at Multnomah, Ore., and Alpha Chi Omega, class of '47, gathered for a grand event on John Day land.

Gordon Repp (Physics), whom I may have mentioned before, was in a very long-standing car pool from Danville to the Lab that was noteworthy for its many years of existence, as well as special rules that defined how many drops of rain on the windshield it took to establish their special rules that governed rainy days. Gordon finally retired as newsletter chairman for the Northern California Association of Phi Beta Kappa. The events of Sept. 11 did not delay the Repp's trip to Lisbon, Portugal, and Spain.

Bill Mumper (B Division, Site 300), celebrated his 75th birthday and his wife Marion indicates that he is just as ornery as ever. Bill still spends a day or two a week at the Lab and still gets together for coffee on Tuesdays with some of his friends from the Lab. The big event of the year was their 50th wedding anniversary. They also took a paddlewheeler for a seven-day cruise on the Columbia River. Billiards on Tuesday night and pinocle on Thursday are still part of Bill's routine.

RETIREMENT

Phil Govenor

Phil Govenor of Facilities & Maintenance Management Division is retiring after 39 years at the Lab.

A retirement party is scheduled for Friday, Jan 25 at the Clubhouse at Las Positas from 4-7 p.m. Cost is \$20 and includes appetizers, beverage and gift. RSVP by Jan 18 to Angel Harmon, 3-1274, or Brenda Terry, 3-0729.

Edgar Peck (Chemistry and Defense Systems), is serving as the interim pastor at the First Christian Church in Corning. Edgar and Janet took a mini vacation to Kansas City.

Paul and Lu Phelps (Electronics), live near Inverness with a beautiful view of Tomales Bay. Their activities include a Chinese healing group, a spirituality group, a mystery book group, a road board, a coastal alliance board and a garden club board, etc. In their spare time, they have finished their wood-fired bread oven and plan to explore the nuances of bread making (focaccia, pizza, etc.). Their entertaining will be centered around their bread oven and their wine cellar. Paul has his extra class radio license, teaches and has given the exams for new licensees and is the leader of the West Marin Radio Amateur Group. They still ride their bikes and took a trip to Yosemite. It's not clear from their letter what they do in their spare time.

I received a long holiday letter from the Lims (Chemistry and Business Services). In addition to their many family activities, the Lims took trips to Hawaii, Lake Tahoe, Angel's Camp, and Anna took a trip Cancun and Florida.

Get out your calendar to list some of the activities of the Retirees networking group:

- Dinner dance on Jan. 18; Springtown; 931 Larkspur Drive; cost: \$23; reservations by Jan. 11 Call Dick Hatfield, 426-9707

- Travel slide shows; fourth Tuesdays, 2 p.m.; Livermore Library Upcoming programs include: Jan. 22: Eastern Central Asia; Pakistan. Kazakhstan, Kyrgyzstan and Uzbekistan — the Chins. Feb. 26: England, Scotland and Wales — Richard Hasbrouck.

- March 26: New Zealand — Gil Cruz
- Luncheons will continue to be held at Cattlemen's Call Pauline Floyd, 449-8594

Linda Lucchetti, Visitors Center coordinator, is anxious to recruit retirees to act as docents. If you are interested, contact her at 925-422-5815.

The LLNL Industrial and Commercialization Office (IPAC) is gathering information on start-up companies based on Lab technology to publicize during the Lab's 50th anniversary. Specifically, they need the assistance of retirees to track down start-up companies that have been formed by former Lab employees or others based on LLNL technology, inventions, software, or Lab state-of-the-art know-how. If you know of any such companies, contact Richard Ragaini at 925-423-2307 or ragaini@llnl.gov.

In a recent column, I fouled up and mentioned Roger Arch instead of Roger McCardle. Roger Arch is Roger McCardle's AOL name. He requested that I correct this error.

Newslines

Newslines is published weekly by the Internal Communications Department, Public Affairs Office, Lawrence Livermore National Laboratory (LLNL) for Laboratory employees and retirees.

Contacts:

Managing editor: Lynza Seaver, 3-3103

Contributing writers: Sheri Byrd, 2-2378; Don Johnson, 3-4902; Elizabeth Raj, 4-5006; David Schweingler, 2-6900; Anne Stark, 2-9799; Steve Wampler, 3-3107; Gordon Yano, 3-3117. For an extended list of Lab beats and contacts, see <http://www.llnl.gov/dfo/IGNews/News/Advis/contact.html>

Designer: Julie Korhummel, 2-9709

Public Affairs Office, L-191 (Phone 3177) LLNL, P.O. Box 808, Livermore, CA 94551-0808

Telephone: (925) 422-4191; Fax: (925) 422-9351

Annual circulation: 6000 copies for nonmembers/6000 copies

Web site: <http://www.llnl.gov/IGAD>

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August 22, 2005

ATTACHMENT E

Lauren Hammond
Councilmember/SACOG Director
City of Sacramento
730 I Street, Suite 321
Sacramento, CA 95814

Dear Director Hammond:

I am writing this letter in response to your request for review of the Islands at Riverlake Project. Thank you for the invitation to comment on this unique infill project as it relates to the Preferred Blueprint Scenario map and goals.

Remember that the Blueprint map is a conceptual map, intended to be interpreted and used as a concept level illustration of the growth principles. For this reason, it is risky to apply it at a parcel level. Through the Blueprint study, we have identified the need to aggressively utilize existing infill opportunities. The proposed Islands at Riverlake site plan is nearly identical to the Preferred Blueprint Scenario map. Its use of medium density housing and the inclusion of landscaped pocket parks and a linear parkway that provide bicycle and pedestrian connections to existing facilities fully embody the Blueprint growth principles. The proposed site plan for the Islands at Riverlake is clearly in the spirit of the Blueprint growth principles.

Findings and Evaluation

SACOG used the PLACE³S modeling software to review the application, which revealed a number of observations related to the principles of the Blueprint Project:

- The project offers non-motorized transportation opportunities. The proposal provides connections to existing bicycle and pedestrian facilities along Pocket Road that connects to other significant bike/pedestrian facilities such as the Pocket Canal Parkway and the Sacramento River Parkway and to recreational facilities at Garcia Bend Park. In addition, trails and sidewalks are included throughout the development.
- Compact development is considered essential for the Blueprint to succeed. This project proposes medium density residential in an infill setting; this is consistent with the Blueprint.
- A variety of housing options are important to the Blueprint principles so that multiple segments of the housing market can be met. The Island at Riverlake proposal offers a housing type that is currently in small supply within the Sacramento Region, is different than other types in the Riverlake Community Association area, and is expected to be more affordable than the average home in the same area.

Auburn
Citrus Heights
Colfax
Davis
El Dorado County
Elk Grove
Folsom
Galt
Grleton
Lincoln
Live Oak
Mammoth
Marysville
Placer County
Placerville
Rancho Cordova
Rocklin
Roseville
Sacramento
Sacramento County
Sutter County
West Sacramento
Wheatland
Winters
Woodland
Yuba County
Yuba City
Yuba County

Director Hammond

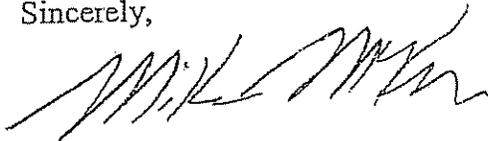
Page 2

August 22, 2005

- Focusing development in infill areas better utilizes the public infrastructure and helps reduce the consumption of open space along the urban periphery. The proposed project is located on some of the last undeveloped parcels in the immediate neighborhood.
- The inclusion of landscaped pocket-parks and the linear parkway and the preservation of off-site Swainson's hawk habitat are consistent with the Blueprint Natural Resource Conservation Principle.

Overall, the Islands at Riverlake proposed site plan is consistent with the Blueprint Preferred Scenario and Goals. If you have any questions, please feel free to contact me. Thank you for your consideration.

Sincerely,



Mike McKeever
Executive Director

MM:AH:ts
Enclosure

cc: Sabrina Teller; Remy, Thomas, Moose & Manley, LLP

Sacramento Area Council of Governments: Basis for Comment on Development Proposals

The Sacramento Area Council of Governments (SACOG) is comprised of six counties and 22 cities in the region, including the City of Sacramento. SACOG's primary responsibility is developing and implementing the Metropolitan Transportation Plan (MTP), a document that establishes transportation spending priorities throughout the region. The MTP must be based on the most likely land use pattern to be built over the 25-year planning period, and it must conform with federal and state air quality regulations.

The MTP must effectively address two, linked, challenges. Current land use patterns, transportation funding levels, and transportation investment priorities are projected to lead to an increase in vehicle miles traveled that exceeds population growth, an increase in congestion levels of 50%, and increases in mobile source emissions, particularly carbon dioxide and particulates¹. To attempt to solve these challenges two and one-half years ago the SACOG Board initiated the Blueprint project, an extensive study of the linkages between transportation, land use and air quality. The study has examined a number of growth alternatives at the neighborhood, county and regional scales and reached several important conclusions, including:

- The region will experience strong growth for the next 50 years, approximately doubling the number of jobs, people and houses;
- The structure of the population will change significantly, with two-thirds of the growth in households 55 years and older, and only 21 percent of the growth in households with school aged children;
- Older households have different housing needs and preferences than younger households – over two-thirds of today's householders over 55 express housing preferences for what might be termed non-traditional products in this marketplace – homes on small lots and attached housing;
- The rapid increase in housing prices in the region in the past few years has priced many people out of the home-buying market, emphasizing the need for alternative products such as small lot single family and attached housing that can be priced in a range that more people can afford;
- There is a strong connection between land use patterns, travel behavior and air quality;
- Specific land use patterns that lead to increased walking, biking and transit use and shorten the length of automobile trips include higher density housing and employment, locating jobs and housing near each other, and providing strong connectivity in the design of street and bicycle/pedestrian systems.

¹ SACOG Metropolitan Transportation Plan, 2002

SPECIAL MEETING
SYNOPSIS
DESIGN REVIEW AND PRESERVATION BOARD
April 6, 2005
1231 I Street, 1st Floor, Room 102
5:30 PM

DISPOSITION OF AGENDA ITEMS:	
CONTINUED ITEMS	5
CONSENT ITEMS	2, 5
HEARING ITEMS	1, 3, 4,
MISCELLANEOUS ITEMS	6, 7, 8, 9, 10, 11

** NOTE: THE AGENDA ORDER IS SUBJECT TO CHANGE TO ENSURE PARTICIPATION IN A SCHEDULED ITEM, PLEASE BE IN ATTENDANCE AT 5:30 PM*

AGENDA	FILE NO.	STAFF / RECOMMENDATION
OLD BUSINESS		
1. 901 U Street New duplex South Side Historic District	PB04-063 Hearing	Ellen Schmidt (916) 808-5962 Recommend Approval <i>Continued pending receipt of accurate drawings</i>
NEW BUSINESS		
2. 3939 Broadway All Nations Church Building Addition Oak Park Design Review District	DR03-327 Consent	Luis R. Sanchez, AIA (916) 808-5957 Kit Hui (916) 808-8289 Recommend Approval <i>Approved on consent</i>
3. 2200 5 th Street Review and Comment of a proposed townhouse project consisting of 10 three-story single family detached residences. Central City Design Review District	DR04-328 Hearing	Luis R. Sanchez, AIA (916) 808-5957 Arwen Wacht (916) 808-1964 Review and Comment <i>Review and Comment given Staff Report corrected noting that historic resources on site are not proposed for demolition.</i>



ATTACHMENT G

DEPARTMENT OF
GENERAL SERVICES

CITY OF SACRAMENTO
CALIFORNIA

2812 Meadowview Road
Sacramento, CA 95832

Phone: 916-808-4800
Fax: 916-808-4999

SOLID WASTE DIVISION

April 6, 2005

MEMORANDUM

TO: Kimberly Kaufmann-Brisby, Associate Planner
FROM: Michael Root, Program Analyst
SUBJECT: THE ISLANDS AT RIVERLAKE (P05-004)

Solid Waste Division staff has reviewed the Application and Project Questionnaire for the above project. Staff is available to assist the developer in developing an efficient and environmentally sound integrated waste management plan. Please see our comments compiled below:

Solid Waste staff has reviewed the proposed project. The Solid Waste Division would be able to provide solid waste services to this development without adverse impact. Service only occurs on public streets unless waivers are in place to grant access and private drives meet City standards. Single-family comply with the City of Sacramento Zoning Ordinance as specified in Title 17, Chapter 17.72 – Recycling and Solid Waste Disposal Regulations by participating in the City of Sacramento's solid waste and recycling programs. However, Solid Waste staff recommends that thought be given to the storage of trash, recycling, and green waste containers, unless maintenance personnel remove green waste generated onsite from the site. This will prevent waste containers being left out in public view. Solid Waste staff is available to discuss container sizes and collection locations.

Solid Waste staff recommends that this project be conditioned to divert construction waste. The project proponent should plan to target cardboard, wood waste, scrap metal, brick, concrete, asphalt, and dry wall for recovery. The developer should submit the following information to the Solid Waste Division:

- Method of recovery
- Hauler information
- Disposal facility
- Diversion percentage
- Weigh tickets documenting disposal and diversion

Solid Waste Division staff requests that you pass these comments on to the project developer. If you or the project developer has any questions, please feel free to contact Michael Root at 808-4935. Please transmit a copy of the final conditions of approval to the Solid Waste Division.

From: Angie Shook
To: Kaufmann-Brisby, Kimberly
Date: 7/22/05 2:28PM
Subject: P05-004, The Islands at Riverlake

Kimberly,

My conditions for the above mentioned project are attached. Please feel free to contact me with any questions.

Thanks,

Angie Shook
Fire Department
Prevention/ Plan Review
Dept Code 2528
Phone: (916) 433-1611
Fax: (916) 433-1677

		
FIRE DEPARTMENT <i>"An All-Risk Organization"</i> JULIUS J. CHERRY FIRE CHIEF	CITY OF SACRAMENTO CALIFORNIA	5770 FREEPORT BL. SUITE 200 SACRAMENTO, CA 95822-3516 PH 916-433-1300 FAX 916-433-1677

TRANSMITTAL

DATE: July 22, 2005

ATTN: Kimberly Kaufman-Brisby, 808-5590

FROM: Angie Shook, 433-1611
Fire Department

SUBJECT: P05-004, The Islands at Riverlake

The following Fire comments apply to the **Tentative Map** of the above referenced project:

1. Roads used for Fire Department access shall have an unobstructed width of not less than 20' and unobstructed vertical clearance of 13'6" or more. All emergency vehicle access (EVA) roads shall be a minimum of 20' in width.
2. All proposed traffic circles/fountains along the private drive shall be designed and constructed with a mountable curb to facilitate the maneuvering of emergency vehicles to the satisfaction of the departments of Public Works and Fire.
3. All proposed traffic circles/fountains along the private drive shall be designed and constructed with a mountable curb to facilitate the maneuvering of emergency vehicles to the satisfaction of the departments of Public Works and Fire.
4. Provide the required fire hydrants in accordance with CFC 903.4.2 and Appendix III-B, Section 5.
5. All emergency vehicle access roads will meet fire department surface requirements. If grass pavers are to be used, the installation must be inspected and certified by a factory representative to ensure proper specifications are met.

6. Roads used for Fire Department access that are less than 28 feet in width shall be marked "No Parking Fire Lane" on both sides; roads less than 36 feet in width shall be marked on one side.

The following Fire comments apply to the **Special Permit** of the above referenced project:

7. All emergency vehicle access (EVA) roads shall be secured by "post and cable" with 20' clear width between the posts. The cable shall be secured by an approved Knox padlock. Plans shall be submitted for review and approval prior to the installation of gates, barriers, and access control devices which are to be constructed on or within fire department apparatus access roadways. Gate width shall be as follows: single gate 20' clear width, dual gate 16' each side.
8. Timing and Installation. When fire protection, including fire apparatus access roads and water supplies for fire protection, is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction.
9. Provide a water flow test. (Make arrangements at the North Permit Center's walk-in counter: 2101 Arena Blvd., Suite 200, Sacramento, CA 95834)

Tina Thomas

From: Katherine Eastham [katherine_eastham@dot.ca.gov]
Sent: Friday, January 20, 2006 3:00 PM
To: Samar Hajeer
Cc: Jesse Gothan; Alyssa M Begley
Subject: Re: Island at River Lakes

Samar,
Caltrans initially had concerns regarding the draft EIR as the Traffic study was not included in the circulation and in fact was not completed until after the final date for comments. The review of the traffic study revealed that the mainline future AADT may be less than what Caltrans staff anticipates; however, this would lead to the project having less impact to the cumulative mainline than stated in the traffic study.

Caltrans has no further comment on the project at this time. Please contact Alyssa Begley at (916) 274-0635 if you need any additional information.

Beginning January 23, my new contact information will be eastham@pbworld.com, or via the main office number at (415) 243-4600. Please keep in touch and let me know if I can be of any further assistance.
-Katie

Katie Eastham, Chief
Office of Transportation Planning - Southwest and East
Caltrans - District 3
P.O. Box 942874, MS-15
Sacramento CA 94274-0001

Desk: (916) 274-0614
Cell: (916) 947-6995
Fax: (916) 274-0648

"Samar Hajeer"
<SHajeer@cityofsacramento.org>
<jGothan@cityofsacramento.org>
To: <eastham@dot.ca.gov>
cc: "Jesse Gothan"
Subject: Island at River Lakes
01/12/2006 02:25 PM

Hi Katie:

Going back to this project, you know that we prepared a traffic study for this project which is included in the FEIR and this traffic study did not show any significant impacts on the free way system analyzed within the study area. I did not receive any comments from the Caltrans on this project after the FEIR and my understanding at the Planning Commission hearing that you are satisfied with this traffic study. Please let me know if you have any comments on the traffic study presented in the FEIR.

We also, received a letter of appeal from the Pocket Protectors and in the packet they included a letter from Rachel Howlett, Brandt-Hawley Law Group, addressed to you and dated November 15, 2005. Howlett in her letter

indicated that she understood the you have several concerns on the traffic study. I will fax you this letter if you would like and I would like to hear from you regarding this issue and if you have any concerns on the study we need to discuss it and make sure you all your concerns are addressed.

I know it may no be a good timing for you, but given the sensitivity of this project which is already continued to be heard at City Council on 1/31/06, we may need to discuss it a gain and make sure that all your concerns are addressed and you are satisfied with our analysis.

Thanks

Samar Hajeer, Senior Engineer
Development Engineering and Finance
Development Services
Office: (916) 808-7808
Fax: (916) 808-7185
shajeer@cityofsacramento.org



OFFICE OF THE
CITY ATTORNEY

SAMUEL L. JACKSON
CITY ATTORNEY

ASSISTANT CITY ATTORNEYS
RICHARD E. ARCHIBALD
SANDRA G. TALBOTT

SUPERVISING DEPUTY CITY ATTORNEYS
GUSTAVO L. MARTINEZ
ROBERT D. TOKUNAGA
BRETT M. WITTER
SUSANA ALCALA WOOD

CITY OF SACRAMENTO
CALIFORNIA

940 NINTH STREET, TENTH FLOOR
SACRAMENTO, CA 95814-2736
PH 916-808-5346
FAX 916-808-7455

DEPUTY CITY ATTORNEYS
DENNIS L. BECK, JR.
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MICHAEL T. SPARKS
IAN WANG
JAMES F. WILSON
DAVID S. WOMACK

June 10, 2005

Gary Hartwick
The Pocket Protectors
1128 Rio Cidade Way
Sacramento, California 95831

Re: Environmental Impact Report for Islands at Riverlake

Dear Mr. Hartwick:

Your letter to Council Member Robbie Waters, dated June 6, asserts that the city must hold a "scoping" meeting before preparing an Environmental Impact Report (EIR) for the Islands at Riverlake project. We disagree. The CEQA Guidelines require such a meeting *only* for projects of statewide, regional, or area-wide significance. Because the Islands at Riverlake does not meet the Guidelines' criteria for "statewide, regional, or area-wide significance," the city has determined that a scoping meeting need not be held. (See Cal. Code Regs., tit. 14, §§ 15082(c)(1), 15206.) I understand, incidentally, that Lezley Buford of the city's Development Services Department has previously explained this orally to several members of The Pocket Protectors.

Your letter also intimates that the EIR must consider The Pocket Protectors' alternative project. (See also your March 31, 2005, letter to Lezley Buford, attached to the June 6 letter.) This, too, is not true. Under the CEQA Guidelines, it is the city alone that determines which project alternatives the EIR should analyze. No "ironclad rule" governs this determination, moreover. Instead, guided by the "rule of reason," the city must select "a range of reasonable alternatives to the project" that would "feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project"—all with the goal of "foster[ing] meaningful public participation and informed decision making." (See Cal. Code Regs., tit. 14, § 15126.6.) Consistent with the Guidelines' requirements, the EIR will analyze a meaningful range of alternatives, including the alternative The Pocket Protectors presented to the city council during the May 2003 hearing.

Gary Hartwick
Re: Islands at Riverlake EIR
June 10, 2005
Page 2 of 2

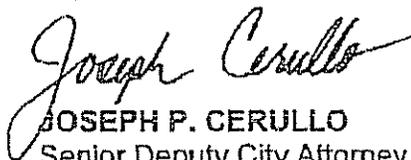
Finally, your letter contends that the city should not have begun work on the EIR until after it received "the final Court Order from the decision rendered by the Court of Appeals." (See in addition your April 8, 2005, letter to Lezley Buford and Kimberly Kaufmann-Brisby, attached to the June 6 letter.) We know of nothing in the law that supports this contention.

• • •

Please be assured that the city intends to comply fully with the court's order and with CEQA. Far from being "excluded from" or "shut out of" the EIR process, all members of the community will have ample opportunity to comment on the EIR when the draft is released.

Sincerely,

SAMUEL L. JACKSON
City Attorney


JOSEPH P. CERULLO
Senior Deputy City Attorney

cc: Mayor Heather Fargo
Council Member Robbie Waters
Ray Kerridge, Assistant City Manager
Gary Stonehouse, Planning Director
Lezley Buford, Principal Planner

ATTACHMENT J

Susan Brandt-Hawley
November 17, 2005
Page 2

for CEQA compliance. Because Sycamore was not under contract to the City, however, Sycamore was not acting as the City's agent in this process, but rather, as Regis's agent. This process is expressly sanctioned under CEQA, and it was followed here. (Pub. Resources Code, § 21082.1; CEQA Guidelines, § 15084; *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452-1457.) Therefore, in light of these facts, to the extent that your request seeks documents and communications exchanged between Sycamore, Regis and RTMM, these are privileged communications between attorneys, our client, and our client's agents that are not subject to disclosure under the Code of Civil Procedure, the Public Records Act, or CEQA.

As you are aware, the attorney-client and work product privileges are designed to protect confidential communications and documents from disclosure. The work product privilege is held by the attorney and does not require production of such documents unless a court determines that denial of production would unfairly prejudice the party seeking discovery. (Cal. Code Civ. Proc., § 2018, subd. (b).) Under this privilege, "any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." (*Ibid*) Documents exchanged between RTMM, Sycamore and Regis during the drafting of the administrative draft DEIR and FEIR prior to releasing them for the City's review are clearly protected under this doctrine. These communications are not subject to public review. These communications qualify as preliminary "impressions, conclusions, opinions, or legal research or theories" and thus are "not discoverable under any circumstances." Such communications are protected through a long history of case law to ensure that attorneys may give unfettered advice to their clients.

Similarly, these confidential communications between lawyer, client, and client's agent are also protected by the attorney-client privilege. The attorney-client privilege is defined as:

information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons **other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted**, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Cal. Evid. Code, § 952 (emphasis added).)

Susan Brandt-Hawley
November 17, 2005
Page 3

Under this definition the communications exchanged between RTMM, Regis and Sycamore at issue here clearly are protected by the attorney-client privilege. To interpret the phrase "all internal agency communications" to extend to private communications between a client and his agents and lawyers prior to any disclosure of later drafts of those documents to the City would obliterate the long-recognized attorney-client privilege. These particular materials were never made available to the City and as such, are not discoverable.

Even if Sycamore could be construed as an "agent" of the City, Government Code Section 6254, subdivision (a), further provides that agencies need not disclose "[p]reliminary drafts, notes, or interagency or intra-agency memoranda." If the Legislature did not intend for public agencies to have to disclose these internal communications pursuant to the Public Records Act, there certainly is no precedent or legislative imperative for private applicants to disclose their own communications with their agents and attorneys. These communications occurred between necessary parties to ensure that the documents prepared would comply with CEQA and the Court of Appeal's ruling. Here, all of the parties to these communications reasonably expected that these communications were to remain confidential.

Nothing in the actions taken by Regis, Sycamore, or RTMM demonstrates any intent to waive the applicable privileges for the documents you seek. "Waiver of the attorney client privilege, as well as other recognized privileges, occurs when any holder of the privilege has disclosed a *significant* part of the communication or has consented to such disclosure made by anyone." (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591.) In particular, "work product protection is not waived except by a disclosure wholly inconsistent with the purpose of the privilege." (*Oxy Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 891.) Determinations of waiver of privilege require an item-by-item review. (See *Travelers Ins. Companies v. Superior Court* (1983) 143 Cal.App.3d 436.) In this case, waiver of these privileges was specific to the City-reviewed contract, administrative draft DEIR and administrative draft FEIR, copies of which we have already provided pursuant to your earlier request. Waiver does not extend to any preparatory communications between Regis, Sycamore or our office that preceded the release of any administrative draft documents to the City. These communications remain privileged because there were no significant disclosures that would have abrogated the privilege and neither will we or Regis consent to such disclosure.

California case law does not support abrogating attorney-client privilege, in fact it does quite the opposite. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the

Susan Brandt-Hawley
November 17, 2005
Page 4

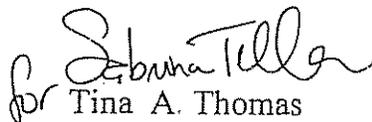
California Supreme Court recognized the Public Records Act's goal of increasing the public's right to freedom of information. In so doing, however, the Court also emphasized that the Evidence Code still protects written communication between counsel and their clients as privileged. Here, your request under the Public Records Act simply cannot be construed to extend to private communications between Regis, Regis's agent, Sycamore, and RTMM. Third parties are not privy to such communications as such disclosure would violate attorney-client privilege. We will not now undermine "full and frank communication between attorneys and their clients" which has such "a strong basis in public policy and the administration of justice." (*Id.* at p. 380.)

Even CEQA recognizes similar limitations on the public disclosure of such documents. The phrase "all internal agency communications" (Pub. Resources Code, § 21167.6 (e)) is limited by subdivision (e)(1) of that section, which states that even the respondent agency is required to include in the record only those documents, or portions thereof, "that have been released for public review." (Pub. Resources Code, § 21167.6 (e)(10).) The communications in question were never released, and never intended to be released, for public review. The words "have been released" support our contention that the City does not have to release internal administrative draft documents, much less the preliminary communications exchanged between Sycamore, Regis and RTMM in the preparation of the administrative draft DEIR and FEIR. These communications contain confidential attorney advice and opinions provided to Regis, including and through Sycamore, Regis's agent in this matter, and if disclosed would seriously compromise the attorney-client privilege.

We have made every reasonable effort to cooperate with your requests for documents up to this point but we cannot acquiesce to this latest request. If we did, we would violate the attorney-client and work product privileges that long-standing jurisprudence and legislative intent have established to ensure that attorneys are able to zealously represent their clients.

By copying this letter and its attachments to the City Clerk, we are also hereby requesting that this letter be included in the official administrative record of proceedings for this project.

Sincerely,


for Tina A. Thomas

Susan Brandt-Hawley

November 17, 2005

Page 5

cc: Lezley Buford, City Environmental Planning Services
Joseph P. Cerullo, Deputy City Attorney
Shirley Concolino, Sacramento City Clerk
Sabina Gilbert, Deputy City Attorney
Bill Heartman, Regis Homes of Northern California, Inc.
Kimberly Kaufmann-Brisby, Associate City Planner
Jeff Little, Sycamore Environmental Consultants, Inc.

51123013 004 wpd

ATTACHMENT K

LEXSEE 232 CAL. APP. 3D 1446

FRIENDS OF LA VINA et al., Plaintiffs and Respondents, v. COUNTY OF LOS ANGELES, Defendant and Appellant; CANTWELL-ANDERSON, INC., et al., Real Parties in Interest and Appellants

No. B053286

Court of Appeal of California, Second Appellate District, Division Two

232 Cal. App. 3d 1446; 284 Cal. Rptr. 171; 1991 Cal. App. LEXIS 895; 91 Cal. Daily Op. Service 6221; 91 Daily Journal DAR 9519

August 5, 1991

SUBSEQUENT HISTORY: [***1]

Respondents' petition for review by the Supreme Court was denied October 24, 1991.

PRIOR HISTORY: Superior Court of Los Angeles County, No. C 750488, John Zebrowski, Judge.

DISPOSITION:

The judgment is reversed. The appeals from the order denying the post-judgment motion are dismissed as moot. The parties shall bear their own costs.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant county and the real parties in interest (applicants), appealed from an order of the Superior Court of Los Angeles County (California), which granted a writ of mandate requiring that defendant's approval of applicants' project be set aside and work suspended, pending preparation of a proper environmental report in compliance with the California Environmental Quality Act, *Cal. Pub. Res. Code* § § 21000-21177.

OVERVIEW: The real parties in interest (applicants) submitted an application to defendant county for approval of a specific rezoning plan to permit resident and private school development of certain acreage. Defendant, through its department of regional planning, directed applicants to engage a private consultant to prepare an environmental impact report (EIR). The application was thereafter conditionally approved. Plaintiff residents filed suit for a writ of mandate and declaratory relief that the approval be set aside; the trial court granted the writ, holding that the California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code* §

21082.1, did not permit applicants' consultant to draft the EIR. The court reversed the judgment below, holding that the trial court's interpretation was erroneous as a legal matter, because it conflicted with CEQA, its applicable Guidelines, and all relevant case law. The court held that those controlling sources allowed an agency to comply with CEQA by adopting EIR materials that were drafted by any applicant's consultant, so long as the agency independently reviewed, evaluated, and exercised judgment over that documentation and the issues it raised.

OUTCOME: Writ of mandate requiring defendant county's approval of the project of the real parties in interest (applicants) be set aside, and suspending work until preparation of a proper environmental impact report (EIR) in compliance with the California Environmental Quality Act was done, was reversed, because it was proper for applicants' consultant to have drafted the EIR, so long as defendant reviewed, evaluated, and exercised judgment over it.

LexisNexis(R) Headnotes

Environmental Law > Environmental Quality Review Governments > Local Governments > Administrative Boards

[HN1] An agency may comply with the California Environmental Quality Act, *Cal. Pub. Res. Code* § § 21000-21177, by adopting environmental impact report materials drafted by an applicant's consultant, so long as the agency independently reviews, evaluates, and exercises judgment over that documentation and the issues it raises and addresses.

232 Cal. App. 3d 1446, *; 284 Cal. Rptr. 171, **;
1991 Cal. App. LEXIS 895, ***; 91 Cal. Daily Op. Service 6221

***Environmental Law > Environmental Quality Review
Governments > Local Governments > Administrative
Boards***

[HN2] The California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code* § 21082.1, itself refutes the notion that an environmental impact report (EIR) must be the product of an agency's own authorship, to the exclusion of the applicant or its consultant. In the same breath as it requires agency "preparation" of the EIR, the statute specifically authorizes the agency not only to consider outside comments and information but to include them in the EIR.

***Environmental Law > Environmental Quality Review
Governments > Local Governments > Administrative
Boards***

[HN3] In the same breath as it requires agency "preparation" of an environmental impact report (EIR), the California Environmental Quality Act, *Cal. Pub. Res. Code* § 21082.1, specifically authorizes the agency not only to consider outside comments and information but to include them in the EIR.

Environmental Law > Environmental Quality Review

[HN4] See the California Environmental Quality Act, *Cal. Pub. Res. Code* § 21082.1.

***Environmental Law > Environmental Quality Review
Governments > Local Governments > Administrative
Boards***

[HN5] The Guidelines, *Cal. Code Regs. tit. 14, § 15000-15387*, as authoritative prescriptions of practice and procedure for the California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code* §§ 21000-21177, validate documentary reliance on an applicant's consultant for preparation of an environmental impact report (EIR). *Cal. Code Regs. tit. 14, § 15084*, repeats the agency preparation requirement of *Cal. Code Regs. tit. 14, § 21082.1*, of CEQA, with respect to draft EIRs. *Cal. Code Regs. tit. 14, § 15084(d)(3)*, proceeds to set forth five permissible methods of such agency preparation, such as accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

***Environmental Law > Environmental Quality Review
Administrative Law > Agency Rulemaking > State Pro-
ceedings
Governments > Local Governments > Administrative
Boards***

[HN6] Before using a draft environmental impact report (EIR) prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR under *Cal. Code Regs. tit. 14, § 15084(e)*.

***Environmental Law > Environmental Quality Review
Governments > Local Governments > Administrative
Boards***

[HN7] The preparation method prescribed in the Guidelines, *Cal. Code Regs. tit. 14, §§ 15000-15387*, to the California Environmental Quality Act, *Cal. Pub. Res. Code* §§ 21000-21177, allows for an agency to enlist the initial drafting and analytical skills of an applicant's consultant as to an environmental impact report (EIR), subject to the requirement that the agency apply independent review and judgment to the work product before adopting and utilizing it. This methodology appears to be common in California. More important, a consistent series of appellate decisions have endorsed local agencies' resort to applicants' consultants in the preparation of both draft and final EIRs, subject to the qualification of independent agency involvement and judgment, as against charges of unlawful delegation.

***Environmental Law > Environmental Quality Review
Governments > Local Governments > Administrative
Boards***

Governments > Legislation > Interpretation

[HN8] The "preparation" requirements of the California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code* § 21082.1, 21151, and its Guidelines, *Cal. Code Regs. tit. 14, §§ 15000-15387*, turn not on some artificial litmus test of who wrote the words, but rather upon whether the agency sufficiently exercised independent judgment over the environmental analysis and exposition that constitute an environmental impact report (EIR). Like *Cal. Pub. Res. Code* § 21082.1 and the Guidelines, cases recognize that preparation of an EIR is not a solitary, ruminative process but an inquisitive, cooperative one, in which the applicant and its experts naturally can and will be heavily involved, perhaps to the point of initially drafting the text.

Environmental Law > Environmental Quality Review

[HN9] In accordance with consistent practice and judicial application, the independent review, analysis and judgment test, not the proposed physical draftsmanship

test, applies to an environmental impact report as a whole, including responses to comments.

Constitutional Law > Separation of Powers

[HN10] Except where the law clearly provides rules for identification and rectification of what might be termed conflicts of interest, that is a legislative not a judicial function.

Environmental Law > Environmental Quality Review Evidence > Procedural Considerations > Preliminary Questions

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

[HN11] The California Environmental Quality Act (CEQA), *Cal. Pub. Res. Code* § 21000-21177, separately defines the scope of judicial review of agency actions subject to administrative mandamus under *Cal. Civ. Proc. Code* § 1094.5, and those reviewable by traditional mandamus under *Cal. Civ. Proc. Code* § 1085. The substantive standard of review is essentially the same under either section, i.e., whether substantial evidence supports the agency's determination. However, the range of admissible evidence subject to review differs between the two types of proceedings. Whereas in administrative mandamus the evidence is generally confined to the administrative record (*Cal. Civ. Proc. Code* § 1094.5(e)), in cases subject to traditional mandamus under CEQA, § 21168.5, additional relevant evidence may be introduced for consideration.

Civil Procedure > Remedies > Extraordinary Writs Constitutional Law > Separation of Powers Governments > Local Governments > Ordinances & Regulations

[HN12] A county's actions of approval of a specific plan and attendant rezoning and general plan amendment are legislative not adjudicative, and they therefore are subject to traditional, not administrative, mandamus.

Environmental Law > Environmental Quality Review Governments > Local Governments > Administrative Boards

Governments > Legislation > Interpretation

[HN13] There is a fundamental imperative that the California Environmental Quality Act, *Cal. Pub. Res. Code* § 21000-21177, be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. Implicit in the requirement that the agency exercise independent review, analysis, and judgment when using

environmental impact report (EIR) materials submitted by an applicant's consultant, is a heavy demand for independence, objectivity, and thoroughness. Moreover, this standard pursues the prescription that an EIR be a document of accountability.

SUMMARY: CALIFORNIA OFFICIAL REPORTS SUMMARY

A contractor applied to a county for approval of a development project. After determining that an environmental impact report (EIR) was required, the county, following its established procedure, directed the contractor to engage a private consultant to prepare the EIR documentation. The county released the initial draft of a draft EIR by the consultant for comment by other agencies, and distributed the agencies' comments and the county's responses, also drafted by the consultant. The draft EIR and addendum were released to the public for comment. The county's responses to public comments, drafted by the consultant, was issued. Public hearings were held, and the development application was approved by the board of supervisors. An ad hoc organization of residents opposed to the project filed an action for writ of mandate and declaratory relief, alleging that the county improperly delegated preparation of the EIR to the contractor. Immediately before the hearing, the county filed the declarations of a county employee and an employee of the contractor attesting to county review of all of the contractor's work on the EIR. The trial granted the writ, holding that the California Environmental Quality Act (CEQA) did not permit an applicant's consultant to draft the EIR and an agency could treat an applicant's consultant's draft EIR only as an item of information for the agency's own preparation of the EIR. (Superior Court of Los Angeles County, No. C. 750488, John Zebrowski, Judge.)

The Court of Appeal reversed. The court held that an agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, so long as the agency independently reviews, evaluates, and exercises judgment over the documentation and the issues it raises and addresses. The court held that it would be procedurally inappropriate for the court itself to evaluate whether the county had properly prepared the EIR, since the county's approval of the specific plan, attendant rezoning, and general plan amendment, were legislative and not adjudicative, subject to traditional, not administrative, mandamus, and additional relevant evidence could be introduced for consideration. The court held that the declarations by the county employee and the contractor's employee were not inadmissible and the residents organization had to be allowed to respond to those declarations. (Opinion by Fukuto, J., with Nott, J.,

concurring. Separate dissenting opinion by Gates, Acting P. J.)

HEADNOTES: CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a) (1b) Pollution and Conservation Laws § 1.2--California Environmental Quality Act--Adoption of Environmental Impact Report Materials Drafted by Applicant's Consultant. --The trial court erroneously granted a writ of mandate setting aside county approval of a development project, on grounds that the California Environmental Quality Act (CEQA) did not permit an applicant's consultant to draft an environmental impact report (EIR). An agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, so long as the agency independently reviews, evaluates, and exercises judgment over the documentation and the issues it raises and addresses. *Pub. Res. Code, § 21082.1*, requiring an EIR to be prepared directly by or under contract to a public agency, specifically authorizes the agency not only to consider outside comments and information but to include them in the EIR. The guidelines, authoritative interpretive prescriptions of CEQA practice and procedure, allow an agency to enlist the initial drafting and analytical skills of an applicant's consultant, subject to the agency's independent review and judgment before adopting and utilizing it.

(2) Pollution and Conservation Laws § 1--California Environmental Quality Act--Guidelines--Judicial Deference. --At a minimum, the courts should afford great weight to the regulatory guidelines of the California Environmental Quality Act, except when a provision is clearly unauthorized or erroneous under the act.

(3) Pollution and Conservation Laws § 1.2--California Environmental Quality Act--Applicant Drafting of Responses to Comments. --A consultant to an applicant for approval of a development project requiring an environmental impact report (EIR) may draft written responses to comments to a draft EIR, which principally convert the draft EIR into the final EIR. The guidelines' general terms prescribe no bar and case law requires only that the public agency exercise independent review, analysis, and judgment in adopting and utilizing the written responses.

(4) Pollution and Conservation Laws § 1.2--California Environmental Quality Act--Conflicts of Interest--Applicant's Consultant's Drafting of Environmental Impact Report. --In granting a writ of man-

date directing a county to set aside its approval of a development project based on drafting of the environmental impact report by the applicant's consultant, the trial court erroneously relied on general principles of conflict of interest as applicable to applicants and their consultants. The issue was compliance with the California Environmental Quality Act (CEQA). To the extent policing of specific conflicts of interest might accurately be perceived as a legislative provision or purpose of CEQA, it could be pursued, but not otherwise. Except where the law clearly provides rules for identification and rectification of what might be termed conflicts of interest, that is a legislative not a judicial function.

(5a) (5b) Pollution and Conservation Laws § 1.2--California Environmental Quality Act--Appellate Court's Evaluation of County's Preparation of Environmental Impact Report--Reversal After Trial Court's Grant of Writ of Mandamus. --After reversing the trial court's granting of a writ of mandamus directing a county to set aside its approval of a development project on the grounds that the environmental impact report (EIR) was drafted by the applicant's consultant, appellate court evaluation of the county's preparation of the report would be procedurally inappropriate. The county's approval of a specific development plan and attendant rezoning and general plan amendment were legislative, not adjudicative, and thus was subject to traditional, not administrative, mandamus. Declarations by a county employee and an employee of the applicant, filed just before the trial court's hearing and describing county review and revision of the applicant's EIR documentation, were not inadmissible; on remedy the ad hoc resident organization challenging the development project should be allowed to respond to the declarations by eliciting and introducing further evidence.

(6) Pollution and Conservation Laws § 1--California Environmental Quality Act--Judicial Review of Agency Actions--Administrative Mandamus and Traditional Mandamus. --The California Environmental Quality Act separately defines the scope of judicial review of agency actions subject to administrative mandamus under *Code Civ. Proc., § 1094.5*, and those reviewable by traditional mandamus under *Code Civ. Proc., § 1085*. The substantive standard of review is essentially the same under either section, namely, whether substantial evidence supports the agency's determination. However, the range of admissible evidence subject to review differs between the two. In administrative mandamus the evidence is generally confined to the administrative record. In cases subject to traditional mandamus, additional relevant evidence may be introduced for consideration.

(7) Pollution and Conservation Laws § 1.2—California Environmental Quality Act—Environmental Impact Reports; Negative Declarations—Requirements—Use of Environmental Impact Report Materials Submitted by Applicant's Consultant. —The traditional interpretation of the preparation requirement of the environmental impact report (EIR) under the California Environmental Quality Act (CEQA) follows the fundamental imperative that CEQA be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. Implicit in the requirement that the agency exercise independent review, analysis, and judgment when using EIR materials submitted by an applicant's consultant is a heavy demand for independence, objectivity, and thoroughness. Moreover, this standard pursues the prescription that an EIR be a document of accountability.

[See 4 **Witkin**, Summary of Cal. Law (9th ed. 1987) Real Property, § 58.]

COUNSEL:

De Witt W. Clinton, County Counsel, Charles J. Moore and Richard D. Weiss, Deputy County Counsel, Hill, Farrer & Burrill, Darlene Fischer Phillips and Dean E. Dennis for Defendant and Appellant.

Hamilton & Samuels, Paul Hamilton and Karen J. Lee for Real Parties in Interest and Appellants.

James K. Hahn, City Attorney (Los Angeles), Patricia V. Tubert and Curt Holguin, Deputy City Attorneys, Louise H. Renne, City Attorney (San Francisco), Judith Boyajian and Melba Yee, Deputy City Attorneys, Nossaman, Guthner, Knox & Elliott, Alvin S. Kaufer, Winfield D. Wilson, Kenneth B. Bley and Cox, Castle & Nicholson and Kenneth B. Bley as Amici Curiae on behalf of Defendant and Appellant and Real Parties in Interest and Appellants.

Proskauer, Rose, Goetz & Mendelsohn, Robert V. Kuenzel, Elizabeth F. Skolar, Nicholas P. Connor and Deborah S. Bucksbaum, for Plaintiffs and Respondents and [***2] as Amici Curiae on behalf of Plaintiffs and Respondents.

Hall & Phillips, Carlyle W. Hall, Jr., Ann Carlson, Carl H. Moor, Georganne Thomsen and Robyn Prud'homme-Bauer as Amici Curiae on behalf of Plaintiffs and Respondents.

JUDGES:

Opinion by Fukuto, J., with Nott, J., concurring. Separate dissenting opinion by Gates, Acting P. J.

OPINIONBY:

FUKUTO

OPINION:

[*1450] [**172] Defendant County of Los Angeles (County), and real parties in interest Cantwell-Anderson, Inc., and its joint venturer Southwest Diversified, Inc. (applicants), appeal from a judgment granting a writ of mandate requiring that County's approval of applicants' project be set aside and work suspended pending preparation of a proper environmental impact report (EIR) in compliance with the California Environmental Quality Act (CEQA). n1 The rationale of the judgment was that CEQA does not permit a public agency, charged by sections 21082.1 and 21151 with preparing an EIR, to generate it by requiring the applicant's consultant to draft the analytical documentation. Because we find the trial court's construction of CEQA's "preparation" requirement at odds with the statute, the Guidelines, and prior judicial applications, we shall reverse the judgment [***3] and remand the case for redetermination. Appellants' further appeals from a postjudgment order denying reconsideration will be dismissed as moot. n2

n1 Public Resources Code, division 13, sections 21000-21177, hereafter cited by section number alone. CEQA's regulatory guidelines, promulgated by the Resources Agency under sections 21083 and 21087 and codified at title 14, chapter 3, sections 15000-15387 of the California Code of Regulations, are referred to and cited as Guidelines.

n2 Although the judgment did not dispose of a conjoined cause of action for declaratory relief, we have jurisdiction over the appeals under the qualification to the one-judgment rule discussed in *Highland Development Co. v. City of Los Angeles* (1985) 170 Cal App.3d 169, 179 [215 Cal Rptr 881].

[**173] Facts

In 1986 Cantwell-Anderson applied to the County for approval of a specific plan, rezoning, and general (community) plan amendment, to permit residential and private school development of 220 largely open [***4] acres in Altadena. Determining that an EIR would be required, the County's department of regional planning (Department), following established County procedure, directed Cantwell-Anderson to engage a private consultant to prepare the EIR documentation (the contractor).

The contractor submitted an initial draft of the draft EIR required by Guidelines sections 15084-15087 in June 1987, and the County released the [*1451] draft EIR for comment by other agencies in November. In March 1988, the Department distributed a volume containing these comments and the County's responses to them, which the contractor had initially drafted. The draft EIR and addendum then were released to the public for comment, and in March 1989 the County issued a second volume of responses, to these comments, required by Guidelines section 15088. The contractor also drafted these responses.

Between July 1988 and May 1989, the County's regional planning commission held five public hearings on the application, eliciting some of the public comments just referred to. The planning commission then voted to recommend approval to the board of supervisors, but modified the proposal, by reducing the number of residences [***5] from 360 to 274 and replacing the private school site with a park use.

The board of supervisors (Board) considered the application on three occasions, in September, November, and December 1989. The Board simultaneously considered the final EIR, consisting of the draft EIR, the responses to comments, and a final volume which included proposed findings about the environmental issues raised in the review process, closely tracking the contractor's drafts. In response to public complaints about the EIR's contents during the hearings, the Board required various County departments to respond. These responses, prepared without contractor involvement, generally endorsed the EIR. The Board approved the application by a four-to-zero vote, adopting the planning commission's reduction of residential density but reserving ultimate disposition of the school site for later consideration.

Plaintiffs, an ad hoc organization of residents who had consistently opposed the project and challenged the EIR, then commenced the present action, for writ of mandate and declaratory relief. Plaintiffs challenged the validity of the project approval and EIR on numerous grounds, including that the County had [***6] improperly delegated preparation of the EIR to the contractor. In support of this contention, plaintiffs relied on the administrative record and on declarations that the County's files contained little County-generated documentation concerning the project.

After several rounds of briefing, the County filed declarations by Kerwin Chih, formerly the senior planning assistant in the Department responsible for processing the EIR, and Eric Ruby, the contractor's environmental services director. They described the draft EIR's development by Department review and direction of revisions, whereby the document underwent three more

drafts after initial submission by the contractor. Ruby attested to further County review of the draft responses to comments and final EIR. [*1452] Plaintiffs objected to admission of these declarations, but the court did not expressly rule on those objections.

Instead, the court granted a writ of mandate, holding that CEQA -- principally section 21082.1 -- did not permit an applicant's consultant to draft the EIR. The court concluded its lengthy opinion elaborating this determination: "This ruling is based upon the CEQA statute and guidelines, the corresponding [***7] case law, and general principles of conflict of interest."

Applicants moved to amend the judgment and writ and to reconsider the remedy. They asked either that the ruling be made prospective and inapplicable to their project, or that the County be required to expedite preparation of the new EIR. The court denied the motion but clarified its [**174] decision, stating that an agency could treat an applicant's consultant's draft EIR only as an item of information for the agency's own preparation of the EIR. County and applicants have appealed from both the judgment and the order denying reconsideration.

n3

n3 We grant the parties' requests for judicial notice on which ruling was deferred, except for plaintiffs' requests to notice evidence and other materials from an unrelated lawsuit against the County. (See *Evid. Code*, § 350; *Cota v. County of Los Angeles* (1980) 105 Cal. App. 3d 282, 293-294 [164 Cal. Rptr. 323].)

Discussion

(1a) The decision below purported to expound and apply the legal truism [***8] that under CEQA an EIR must be "prepared directly by, or under contract to, a public agency," not by a private applicant or its agent. (§ 21081.2; accord, § § 21100 [state agencies], 21151 [local agencies].) According to the court, this requirement means that an EIR must be written and composed by the agency, so that an EIR whose constituent documents are drafted for the agency by the applicant's consultant is necessarily invalid, without regard to how much agency input, direction, evaluation, and independent judgment went into it. Although the merits of this approach as a matter of policy may be debatable, the court's interpretation was erroneous as a legal matter, because it conflicts with CEQA, the Guidelines, and all relevant case law. Those controlling sources consistently teach that [HN1] an agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, so long as the agency independently reviews, evaluates, and exer-

cises judgment over that documentation and the issues it raises and addresses.

[HN2] Section 21082.1, the section most heavily relied on by the trial court and plaintiffs, itself refutes the notion that an EIR must be the product of the [*1453] [***9] agency's own authorship, to the exclusion of the applicant or its consultant. n4 [HN3] In the same breath as it requires agency "preparation" of the EIR, the statute specifically authorizes the agency not only to consider outside comments and information but to include them in the EIR. (Accord, Guidelines, § § 15084, subds. (c), (d)(3) [draft EIR], 15132, subd. (b) [final EIR].) Moreover, the history of the bill that enacted section 21082.1 reflects that after the "preparation" language alone was proposed, the Assembly deleted it, and then reinstated and approved it only with the addition of the further language authorizing outside input. (Assem. Amend. to Assem. Bill No. 2679 (1975-1976 Reg. Sess.) § 9.6, Apr. 29, June 10, Aug. 6, and Aug. 16, 1976.) Thus, the primary "preparation" statute authorizes and virtually requires that the EIR be "prepared" using outside submissions, not merely agency draftsmanship.

n4 [HN4] Section 21082.1 provides in full: "Any environmental impact report or negative declaration prepared pursuant to the requirement of [CEQA] shall be prepared directly by, or under contract to, a public agency. [para.] This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report or negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration."

At oral argument, plaintiffs stressed that the section uses the word "directly" in referring to one form of permissible preparation. That word does not enlighten the issue: "direct" agency preparation simply distinguishes itself from the alternative of subcontracting the function.

[***10]

(2) (See fn. 5.) (1b) [HN5] The Guidelines, constituting authoritative interpretive prescriptions of CEQA practice and procedure, also validate documentary reliance on an applicant's consultant. n5 Guidelines section 15084 commences [**175] by repeating the agency preparation requirement of section 21082.1, with respect to draft EIRs. The section proceeds, in subsection (d), to set forth five permissible methods of such agency prepara-

tion. One of these is, "Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person." (Guidelines, § 15084, subd. (d)(3); cf. Guidelines, § 15084, subd. (c).) The regulation goes on to add, however, "[HN6] Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR." (Guidelines, § 15084 subd. (e).) In short, this [*1454] Guideline affirmatively defines and endorses "preparation" of a draft EIR by precisely the method the County and applicants contend was followed in this [***11] case.

n5 The Guidelines purport to require compliance by all public agencies. (Guidelines, § § 15000, 15020.) Although yet to decide "whether the Guidelines are regulatory mandates or only aids to interpreting CEQA," the Supreme Court has declared that "[a]t a minimum, however, courts 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 [253 Cal. Rptr. 426, 764 P.2d 278] [hereafter *Laurel Heights*].) None of the parties has challenged any of the Guidelines cited herein as being thus erroneous.

[HN7] The preparation method prescribed in the foregoing Guidelines allows for an agency to enlist the initial drafting and analytical skills of an applicant's consultant, subject to the requirement that the agency apply independent review and judgment to the work product before adopting and utilizing it. This methodology [***12] appears to be common in California (see 1 Cal. Environmental Law and Land Use Practice (1991 rev.) § 22.03[3], p. 22-23); several substantial municipal amici in this case have attested to using it routinely. More important, a consistent series of appellate decisions have endorsed local agencies' resort to applicants' consultants in the preparation of both draft and final EIRs, subject to the qualification of independent agency involvement and judgment, as against charges of unlawful delegation.

In *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors* (1974) 38 Cal. App. 3d 272 [113 Cal. Rptr. 338], decided under section 21151 before enactment of section 21082.1, the applicant's consultant prepared a draft EIR; after review by a county department and committee, which evoked two disagreements, the draft

was incorporated into the final EIR together with the local bodies' reports. Citing the statute and the precursors of Guidelines section 15084, the court held that independent evaluation and modified adoption of the applicant's draft constituted "compliance with the statutory requirement that the EIR be prepared by the public agency." (38 Cal App.3d at pp 287-288) [***13]

This interpretation of the preparation requirement was reiterated in *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App 3d 893 [165 Cal.Rptr. 401], which also rejected a claim that preparation of the EIR had been unlawfully delegated to the applicant's consultant. The court articulated the test as follows: "The EIR is not fatally undermined by the direct participation of the developer and his experts in the underlying environmental and other studies. As the public agency must, of necessity, work closely with the permit applicant, CEQA does not prohibit the applicant from providing the data, information and reports required for the preparation of the EIR. CEQA merely requires that the agency independently perform its reviewing, analytical and judgment functions and to participate actively and significantly in the preparation and drafting process." (*Id.* at p. 908.)

Finally, in *City of Poway v. City of San Diego* (1984) 155 Cal.App 3d 1037 [202 Cal.Rptr. 366], the court stated the rule to be that "[w]hile [the agency] may [***14] require [the applicant] to submit an EIR, the document may not be [*1455] adopted by [the agency] as its own without independent evaluation or analysis and must reflect [the agency's] independent judgment." (*Id.* at p. 1042.) Under this test, the court approved an EIR which the agency had received from an applicant's consultant and had adopted after changing one word and adding eight pages of introduction.

The foregoing cases consistently confirm that [HN8] the "preparation" requirements of CEQA (§ § 21082.1, 21151) and the Guidelines turn not on some artificial litmus test of who wrote the words, but rather upon whether the agency sufficiently exercised independent judgment over the environmental [**176] analysis and exposition that constitute the EIR. Like section 21082.1 and the Guidelines, the cases recognize that preparation of an EIR is not a solitary, ruminative process but an inquisitive, cooperative one, in which the applicant and its experts naturally can and will be heavily involved, perhaps to the point of initially drafting the text. The trial court's erection of a barrier to such involvement appears to be directly opposed to the statute as heretofore [***15] construed. n6

n6 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App 3d 296 [248 Cal.Rptr. 352],

heavily urged by plaintiffs and the trial court as supporting the latter's ruling, does not. In that case the agency adopted not an EIR but a negative declaration of significant environmental effects (§ 21080, subd. (c)). It then appended to the project approval requirements for further environmental assessments, including studies to be conducted by the applicant and approved by an inferior agency. The court disapproved the agency's reversal of CEQA's prescribed sequence of environmental evaluation and project approval, as well as the combined delegation of study and approval to the applicant and a lower agency. In the latter connection, the court quoted section 21082.1's preparation requirement, and Guidelines section 15084, subdivision (e)'s requirement of independent agency judgment when adopting a draft EIR from an applicant's submission (202 Cal.App 3d at p. 307.) *Sundstrom* thus merely restates some of the statutory and regulatory authority with which our analysis began.

[***16]

(3) Plaintiffs and amicus curiae Sierra Club nonetheless contend that contractor drafting of the responses to comments, which principally convert the draft EIR into the final EIR, cannot be tolerated if CEQA's promise and prescription of agency EIR preparation are to be followed. In this connection plaintiffs rely upon Guidelines sections 15088, subdivision (a) and 15089, subdivision (a), which set forth the duty of the lead agency to respond to comments and prepare the final EIR, as well as *People v. County of Kern* (1974) 39 Cal.App 3d 830 [115 Cal.Rptr. 67] and *People v. County of Kern* (1976) 62 Cal.App 3d 761 [133 Cal.Rptr. 389] (*Kern II*), which disapproved an EIR, first for failure to include any responses to comments at all and then because, on remand, the agency provided substantively inadequate responses, adopted wholesale from a resolution written by the applicant's lawyer.

We are not unsympathetic to the policy concerns that an agency be required wholeheartedly, thoughtfully, and actively to prepare responses to [*1456] comments on its draft EIR. But those concerns simply do not engender legal interdiction [***17] of an applicant's consultant's drafting the written responses. Plaintiffs' authorities do not dictate such a rule: the Guidelines' general terms prescribe no bar, and the *Kern II* case, which has elsewhere been viewed as presenting an exceptional factual situation (e.g., *City of Poway v. City of San Diego*, *supra*, 155 Cal.App 3d at p. 1042), itself used the independent judgment rule discussed above as a mainstay of its analysis. (*Kern II*, *supra*, 62 Cal.App 3d at p. 775.) In short, [HN9] in accordance with consistent prac-

232 Cal. App. 3d 1446, *; 284 Cal. Rptr. 171, **;
1991 Cal. App. LEXIS 895, ***; 91 Cal. Daily Op. Service 6221

tice and judicial application, the independent review, analysis and judgment test, not the proposed physical draftsmanship test, applies to the EIR as a whole, including responses to comments. n7

n7 Citing federal authorities, plaintiffs also urge that an agency's use of consultant-supplied materials must include "independent verification" of their contents. But the federal regulation upon which plaintiffs rely (40 C.F.R. § 1506(a)) closely resembles Guidelines section 15084 subd. (e)'s restatement of the independent review, analysis, and judgment rule. We see no basis for decreeing a different requirement.

[***18]

(4) The trial court's ruling derived in large measure from what the court termed "general principles of conflict of interest," as applicable to applicants and their consultants. In so ruling, the court assumed an unwarranted role. The issue in this case is compliance with CEQA. To the extent policing of specific conflicts of interest might accurately be perceived as a legislative provision or purpose of CEQA, it could be pursued. But not otherwise. [HN10] Except where the law clearly provides rules for identification and rectification of what might be termed conflicts of interest, that is a legislative not a judicial function. (Cf. *Woodland Hills Residents Assn., Inc. v. City Council* (1980) 26 Cal.3d 938, 944-946 [164 Cal.Rptr. 255, 609 P.2d 1029]; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1364-1366 [263 Cal.Rptr. 214].)

(5a) Because the trial court erred at the threshold in identifying the standard under which to evaluate the County's preparation of the EIR, that issue must be reconsidered under the proper standard, discussed above. Although the parties invite [***19] us to make that evaluation here and now, we believe that would be procedurally inappropriate, for the following reasons.

(6) [HN11] CEQA separately defines the scope of judicial review of agency actions subject to administrative mandamus under *Code of Civil Procedure section 1094.5* (§ 21168) and those reviewable by traditional mandamus under *Code of Civil Procedure section 1085* (§ 21168.5). The substantive standard of review "is essentially the same under either section, i.e., whether substantial evidence supports the agency's determination." (*Laurel Heights, supra*, 47 Cal.3d at p. 392, fn. 5.) However, the range of admissible evidence subject to review differs between the two types of proceedings. Whereas in [*1457] administrative mandamus the evidence is generally confined to the administrative record (see *Code*

Civ. Proc., § 1094.5, subd. (e)), in cases subject to traditional mandamus under section 21168.5 additional relevant evidence may be introduced for consideration. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79, fn. 6 [118 Cal.Rptr. 34, 529 P.2d 66]; *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 40 [271 Cal.Rptr. 393]; [***20] 1 Cal. Environmental Law and Land Use Practice, *supra*, § 23.04[3], pp. 23-15 -- 23-16.)

(5b) This difference has direct, practical consequences for the present case. [HN12] The County's actions under review -- approval of a specific plan and attendant rezoning and general plan amendment -- were legislative not adjudicative, and they therefore are subject to traditional not administrative mandamus. (*Yost v. Thomas* (1984) 36 Cal.3d 561, 570 [205 Cal.Rptr. 801, 685 P.2d 1152]; *Sierra Club v. Gilroy City Council, supra*, 222 Cal.App.3d at p. 39.) Accordingly, the County's declarations by Messrs. Chih and Ruby, describing County review and revision of the contractor's EIR documentation, were not inadmissible, as plaintiffs contended, by virtue of *Code of Civil Procedure section 1094.5*, subdivision (e). Nor were those declarations subject to exclusion because appellants had previously objected to plaintiffs' discovery requests for production of comparable evidence. (See *Code Civ. Proc.*, § 2031, subd. 1.)

However, proper resolution of the case demands that plaintiffs be allowed to respond to these declarations, [***21] which were filed just before the hearing below. In this connection, the County's own discovery objection that relevant evidence was limited to the administrative record also was fallacious; and having introduced its declarations about how the EIR was prepared, the County may not claim that further objective evidence of that process is irrelevant. On remand, subject to the trial court's discretion and to appropriate rebuttal, plaintiffs should be allowed to elicit and introduce such further evidence as will inform the decision whether the County complied with the EIR preparation requirement. Moreover, remand is also required to permit resolution, if necessary, of the remaining claims in plaintiffs' petition.

(7) We observe in conclusion that the traditional interpretation of CEQA's EIR preparation requirement, which we adhere to while disapproving the new test the trial court adopted, itself follows [HN13] the fundamental imperative that CEQA "be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761, 502 P.2d 1049].) [***22] Implicit in the requirement that the agency exercise independent review, analysis, and judgment [*1458] when using EIR materials submitted by

an applicant's consultant is a heavy demand for independence, objectivity, and thoroughness. Moreover, this standard pursues the prescription that an EIR be "a document of accountability." (*Laurel Heights, supra*, 47 Cal.3d at p. 392.) [**178] That the parties have vigorously debated here the comparative benefits and detriments of this phase of CEQA as interpreted to date only confirms that its revision or improvement is not for the courts. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 564 [276 Cal Rptr. 410, 801 P.2d 1161].) n8

n8 We exceptionally acknowledge the lucidness of the briefs in this case.

The judgment is reversed. The appeals from the order denying the post-judgment motion are dismissed as moot. The parties shall bear their own costs.

DISSENTBY:

GATES

DISSENT:

GATES, [***23] Acting P. J.

I respectfully dissent.

One person may never adequately represent conflicting interests. Whether expressed in classic or colloquial form, few verities have been more oft reproven over the centuries. n1 Consequently, our Legislature has proclaimed in clear, unambiguous language that:

"Any environmental impact report or negative declaration pursuant to the requirement of this division shall be prepared directly by, or under contract to, a public agency." (*Pub. Resources Code*, § 21082.1.)

n1 "No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other." (Matthew 6:24.) "Tell me whose food you eat and I will tell you whose song you sing." (Folk aphorism.)

It is not contended, nor could it be, that this commandment was honored here. In this instance the applicant's agent not only prepared the initial draft environmental impact report (EIR), he was permitted to make all required responses to any concerns expressed in order that [***24] the final EIR, which he also composed, would satisfy his principal's desires. When any person's

future income is dependent solely upon his ability to achieve success for those who retain his services, no matter how capable or honorable may be his intentions, his conflicting interests are so patent that the statutory proscription forbidding public agencies from casting him in such a role would hardly seem necessary.

[*1459] No derivative public benefit from this practice has been suggested. There are no resultant cost savings and, of course, any and all input from the applicant's agent in aid of his client's position is already expressly authorized by the second paragraph of *Public Resource Code section 21082.1*.

I gravely fear that by reversing this judgment and thereby allowing Los Angeles County n2 and certain other public agencies throughout the state to continue to operate in this forbidden fashion, we will produce an effect that extends far beyond this particular project. Each year our state and local ballots are increasingly filled with initiatives and referendums manifesting the public's dissatisfaction with the conduct of its governmental officials. One may only speculate [***25] how much more their disillusionment and understandable cynicism will be increased upon learning that those authorities who control the very environment in which we live and raise our families need not even retain neutral experts to supply the information necessary to enlighten the affected citizenry or to assist the officials in preparing the materials prerequisite to any well-considered decision.

n2 Ironically, the county's own environmental document reporting procedures and guidelines mirror the state's dictate in this regard by explicitly declaring in section 602, subdivision D, that "A Draft EIR shall be prepared by or under contract to the lead county agency" (Italics added.) Although provision is also made for the lead County agency to require the applicant to provide necessary data to assist it in its work, even in the form of a draft EIR, no such proviso is made for the final EIR. That is, subsection I states: "After evaluating the comments from those who reviewed the Draft EIR, a Final EIR shall be prepared by the lead County agency. The responses shall describe the disposition of significant environmental issues raised and shall be based on factual information ." (Italics added.)

[***26]

[**179] However, I certainly have no wish to delay this particular applicant's project if, as my minority position would indicate, my views are erroneous. Therefore, I shall not attempt to compose an extended legal analysis

but will merely adopt by way of an appendix, the trial court's statement of decision which I find both correct and persuasive.

[*1460] Appendix

"Writ of Mandate Granted"

"Pursuant to *PRC 21168.9* ('Public agency' not in compliance with article [CEQA]; court's powers and duties), a writ of mandate is granted directing respondent to set aside its decision of December 26, 1989, approving Zone Change Case No. 87-044, Compound Plan No. 002-89 and Specific Plan No. 2, and its certification of the Environmental Impact Report in connection therewith; and further directing respondent to suspend all activity which could result in any change or alteration to the physical environment until such time as respondent has complied with the requirements of CEQA in accordance with the specifications stated below in compliance with *PRC 21168.9(b)*.

"1. It is clear that the purpose of CEQA is to protect the environment. *See, e.g. PRC 21000 21001*. The EIR has often been described [***27] as the 'heart' of CEQA; *see, e.g., County of Inyo v. Yorty*, 32 CA3 795, 810 (1973), *Laurel Heights Improvement Assn. v. Regents*, 47 C3 376, 392 (1988), or as an 'environmental "alarm bell" whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return'; *see, e.g., Laurel Heights* at 392. *See also PRC 21002.1* (purpose of EIR to identify significant environmental effects of project, alternatives to project). All the appellate law which teaches that CEQA is intended to 'afford the fullest possible protection to the environment within the reasonable scope of the statutory language', *Friends of Mammoth*, 8 C3 247, 259 (1972), is not reviewed here, but yet provides the starting point for analysis of the requirements of the statute.

"2. The first paragraph of *PRC 21082.1*, codified in the 'General' chapter of CEQA, reads as follows:

"Any environmental impact report or negative declaration prepared pursuant to the requirement of this division *shall* be prepared directly by, or under contract to, a public agency.' (emphasis added).

"The 'division' is Division 13 of the PRC, which is [***28] CEQA.) *PRC 21082.1* goes on to provide in its second paragraph that 'any person' may submit information or comments to 'the public agency responsible for preparing an environmental impact report or negative declaration' and that such information or comments may be 'in any format.' Presumably in response to this 'any format' provision, the Guidelines allow a developer or his consultant to prepare a *draft* EIR, as discussed below. There is nothing in the second paragraph of *PRC*

21082.1, however, which creates a permissible third alternative method for preparation of a final EIR in addition to 1) by the public agency itself, or 2) by an entity which has contracted to perform this service *for the public agency*. These provisions are mandatory ('shall').

"3. The first paragraph of *PRC 21100*, codified in the 'State Agencies, Boards and Commissions' chapter of CEQA, reads in pertinent part as follows:

"All state agencies, boards, and commissions *shall* prepare, or cause to be prepared *by contract* . . . an environmental impact report on any project they propose to . . . approve which may have a significant effect on the environment.' (emphasis added).

"These provisions are mandatory [***29] ('shall'). They have no direct application here, since here the lead agency is a local agency (see below). It is noteworthy, however, that the CEQA language is throughout consistent in this regard.

"4. The first paragraph of *PRC 21251*, codified in the 'Local Agencies' [**180] chapter of CEQA, reads in pertinent part as follows:

"All local agencies *shall* prepare, or cause to be prepared *by contract* . . . an environmental impact report on any project they propose to . . . approve which may have a significant effect on the environment.' (emphasis added).

"These provisions are mandatory ('shall'). These provisions apply to respondent as a local agency.

"5. CEQA is rather clear that a public agency charged with the responsibility of preparing an EIR may do so in only one of two permissible ways: the EIR may be prepared by the public agency itself, or the EIR may be prepared under contract to the public agency. While [*1461] 'any person' may submit information or comments, there is no provision for delegating the responsibility for EIR preparation to the agent of the very private applicant seeking approval of a project. This is not surprising. As discussed further below, it would [***30] be quite anomalous for CEQA, a statute designed to protect the environment, to delegate the very proponent of a proposed project the duty to generate the very 'alarm bell' that might result in rejection of the proposal.

"6. The Guidelines are of course subordinate to the these statutory provisions, but they are not necessarily inconsistent. It is noteworthy that while Guideline 15084(d)(3) does purport to allow a *draft* EIR to be prepared by the applicant or the applicant's consultant (because, presumably, this is information in 'any format'), Guideline 15089 clearly states: 'The lead agency shall prepare a final EIR before approving the project.' There is no provision in Guideline 15089 ('Preparation of Final

EIR') allowing the *final EIR* to be prepared by the applicant or the applicant's agent. Guideline 15088 states that the 'lead agency shall' evaluate and respond to comments and revise or add to the draft EIR to produce a final EIR. Even the Guidelines, which both sides acknowledge to be subordinate to the statute, do not provide for the applicant to prepare the final environmental critique of his own project, this 'alarm bell' required for the purpose of alerting 'the [***31] public and its responsible officials to environmental changes before they have reached ecological points of no return.' *Laurel Heights* at 392. It would be quite remarkable for CEQA to ask the private applicant (or, more remarkable still, the private applicant's paid consultant) to find environmental reasons why the applicant's own project should be rejected.

"7. Except for *City of Poway v. City of San Diego*, 155 CA3 1037 (1984), discussed below, no one who has written on CEQA seems to have contemplated the prospect that a developer's own evaluation of his own project might constitute compliance with CEQA. In *Laurel Heights*, for example, Justice Eagleson wrote:

"Under CEQA, the public is notified that a draft EIR is being prepared (§ § 21092 and 21092.1), and the draft EIR is evaluated in light of comments received. (Guidelines, § § 15087 and 15088.) *The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency's responses to significant environmental points raised in the review process.* (Guidelines, § § 15090 and 15132, subds. (b)-(d))' (emphasis added).

"Most other materials written on CEQA are also written from the express or [***32] implied perspective that it is the statutory duty of the public agency to prepare the final EIR. *See, e.g.*, CEB Advanced Real Property Series, 'Mandate Proceedings Under the California Environmental Quality Act' (October/November 1987) ('CEQA requires preparation of an environmental impact report (EIR) by a state or local agency . . .'); 'California Environmental Law Handbook' (4th Ed.) (Government Institutes, Inc.) ('The lead agency has the responsibility for preparing the EIR, but preparation costs are typically funded by the applicant'); 'Primer on Environmental Law in California' (California Department of Justice, Feb 1988) (CEQA applies to private agencies, not private entities, but private entities such as developers are often required by public agencies to pay for [**181] the cost of EIR preparation); Goldman, 'Legal Adequacy of Environmental Discussions in Environmental Impact Reports,' 3 *Journal of Environmental Law* 1 (1982) ('CEQA requires every public agency to prepare and consider an EIR before its approval or disapproval of a project that may significantly affect the environment').

"8. *City of Poway* does not constitute contrary authority. There is no doubt that in [***33] *City of Poway* the EIR was prepared by the developer's consultant. 155 CA3 1037, 1040. There is also no doubt that this was *not* one of the reasons asserted for the invalidity of the project's approval. 155 CA3 1037, 1041. Plaintiff in *City of Poway* attacked the EIR approval on three grounds. None of those grounds was that the EIR had impermissibly been prepared by the developer's representative rather than the public agency. Obviously, an appellate ruling is not authority for a proposition which it did not consider.

"9. The stark and irreconcilable conflict of interest which exists if the developer's paid consultant prepares the EIR is manifest. Moreover, if a consultant in the business of conducting environmental studies knows that its continuing source of employment will be [*1462] developers desirous of obtaining approval of their projects, is there need to inquire where the consultant's interests lie? Clearly those interests will not lie in achieving unbiased, objective environmental analysis, or in revealing environmental dangers in the proposed development, but instead in achieving approval of the principal's project. It would require a level of conscious [***34] integrity and subconscious mental discipline rarely found to result in production of an objective EIR in such a circumstance. A report prepared in such a circumstance is more comparable to an advocate's brief than an impartial observer's opinion. If, on the other hand, a consultant is under contract to, and consequently owes allegiance to, and has a hope of future employment from, a public agency, it is expectable that the consultant will be more motivated to provide the public agency with comprehensive, unbiased environmental analysis. This is the apparent purpose of CEQA's requirement that, if the public agency does not prepare the EIR itself, the preparation be done under contract to the public agency. The statute is clear on this point; there is no contrary authority.

"10. If authority beyond the plain words of the statute is needed, the most nearly on point is *Sundstrom v. County of Mendocino*, 202 CA3 296, 307 (1988). The court in *Sundstrom* ruled that it was an impermissible delegation of the responsibility to assess environmental impact for the County of Mendocino to direct an applicant to conduct studies himself to determine whether unacceptable environmental impacts [***35] were involved. 'Under CEQA, the EIR or negative declaration must be prepared "directly by, or under contract to" the lead agency. (*Pub. Resources Code, § 21082.1*)' ruled *Sundstrom* at 307. True, the County of Mendocino's attempted delegation in *Sundstrom* occurred at an early evaluation stage before an EIR was ordered, and did not involve a developer's preparation of his own EIR. How-

ever, respondent here indicates no rationale for more strenuous environmental protection during attempts to determine whether an EIR is necessary and more relaxed standards in later stages after determination that an EIR must be prepared because significant environmental impacts are likely. If anything, the rule might be the reverse. (See, e.g. the Guidelines allowance of a developer-prepared *draft* EIR, but not *final* EIR).

"11. If there is any doubt regarding whether a public agency may lawfully direct a developer to prepare his own EIR, it is dispelled by *Friends of Mammoth v. Board of Supervisors*, 8 C3 247, 259 (1972). In *Friends of Mammoth*, the Supreme Court ruled that CEQA is to be interpreted to achieve the maximum environmental protection that can be achieved within [***36] the reasonable scope of the statutory language. Here it is not merely well within the scope of the statutory language that the public agency, and not the applicant for the public agency's approval, bears the responsibility of conducting the environmental study; it [**182] is plainly stated in mandatory language. Clearly, a study conducted by a public agency charged with protection of the public interest and not in a position of conflict of interest is more

likely to achieve the purposes of CEQA than a study conducted by paid consultant of the applicant. The point need not be belabored, but needs to be clearly in mind since it demonstrates the rationale for the wording of the statute. *Friends of Mammoth* and all the similar cases following *Friends of Mammoth* are further reason to find that respondent may not comply with CEQA by directing the applicant to conduct his own environmental study and to prepare his own EIR.

"12. This ruling is based upon the CEQA statute and guidelines, the corresponding case law, and general principles of conflict of interest. This ruling is not based upon any conclusion regarding the competence, integrity or motivations of the particular consultants [***37] hired by real party in interest in this particular case. The court is simply ruling that the hiring of a consultant by the applicant to conduct an environmental study and to prepare an EIR was not a permissible means of complying with CEQA.

"13. Counsel to confer on a return date.

"14. Petitioner to prepare judgment and order."

REMY, THOMAS, MOOSE and MANLEY, LLP
ATTORNEYS AT LAW

MICHAEL H REMY
1944 - 2003

TINA A. THOMAS
JAMES G. MOOSE
WHITMAN F. MANLEY
ANDREA K. LEISY

BRIAN J. PLANT
JOSEPH J. BRECHER
OF COUNSEL

455 CAPITOL MALL, SUITE 210
SACRAMENTO, CALIFORNIA 95814

Telephone: (916) 443-2745
Facsimile: (916) 443-9017
E-mail: info@rtmmlaw.com
<http://www.rtmmlaw.com>

JENNIFER S. HOLMAN
TIFFANY K. WRIGHT
ASHLE T. CROCKER
SABRINA V. TELLER
MICHELE A. TONG
MEGHAN M. HABERSACK
ANGELA M. WHATLEY
AMY R. HIGUERA
HOWARD F. WILKINS III
CARRIE A. ELLIS
CATRINA L. FOBIAN
MEGAN M. QUINN

January 9, 2006

Eileen M. Teichert
City Attorney
City of Sacramento
915 "I" Street, Suite 4010
Sacramento, CA 95814

Re: Legislative and Regulatory History of Public Resource Code § 21082.1 and CEQA Guidelines, § 15084; Applicant Participation in the Preparation of an Environmental Impact Report

This office represents Regis Homes with regard to the application for development of the Islands at Riverlake project. After a thorough review of statutory authority, the legislative history of the pertinent statutes, regulatory history, applicable case law, and accepted practice we conclude that there is no prohibition against an applicant's participation in the preparation of an EIR, as long as the FEIR certified by the City reflects the "independent judgment" of the City. Clearly, the record before the City reflects that the City, in fact, exercised its independent judgment.

In a July 11, 2005, email from Joseph Cerullo to Susan Brandt-Hawley, Cerullo claimed that as part of the City's practice, neither the applicant nor the applicant's attorney works on the city's responses with the caveat that comments specific to project details or purposes may require the City to solicit the applicant's assistance in drafting a response. The statement regarding the City's practice is not entirely true, however, and was corrected in a July 15, 2005, letter from Mr. Cerullo to Ms. Brandt-Hawley. In the July 15, 2005, letter Mr. Cerullo emphasized that what was important was not who writes the EIR or responses to comments, but that the final EIR reflects the City's independent judgment and analysis. Mr. Cerullo then went on to state that in light of anticipated litigation, he anticipated city staff would be working with Regis's attorneys on the city's responses to some or all of the comments received.

We fully expect that this project, if approved by the City Council, will once again be litigated by the Pocket Protectors. Moreover, given recent Public Records Act requests and inquiries from the Pocket Protector's attorney, we fully expect the Pocket Protectors to argue that the City failed to exercise its independent judgment in preparing the EIR and the FEIR. We ask that you carefully review the attached information with regard to these potential claims.

I. Analysis

A. Applicable Case Law

1. *Friends of La Vina v. County of Los Angeles*

Case law provides a comprehensive overview of the appropriate level of participation an applicant or an applicant's consultant is permitted to engage in with respect to the lead agency's preparation of an EIR for the applicant's proposed project. The lead case in this area is *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446. In *Friends of La Vina*, a citizens' group sought a peremptory writ of mandate to set aside a county's approval of a general plan amendment, specific plan, and rezoning allowing development of 220 acres of "largely open" land in Altadena. The group claimed the county violated CEQA by allowing the developer to directly hire a consultant to prepare the initial version of the draft EIR. The superior court granted the writ, holding that the respondent county's practice of accepting such submissions created an inevitable conflict of interest for consultants, who would be tempted to reach conclusions favorable to the developers who hired them. The Court of Appeal reversed, however, upholding the county's approach, provided that the agency independently reviews such documents and adopts them as its own before releasing them to the public.

The litigation focused on Public Resources Code section 21082.1 prior to its 1991 amendment, which states in pertinent part that an EIR "shall be prepared directly by, or under contract to, a public agency." This language, which is still in effect today, guided the lower court to interpret it to mean that "an EIR must be written and composed by the agency, so that an EIR whose constituent documents are drafted for the agency by the applicant's consultant is necessarily invalid, without regard to how much agency input, direction, evaluation, and independent judgment went into it." This interpretation was rejected by the Court of Appeal as a misinterpretation of Section 21082.1.

Although section 21082.1 provides that an EIR must be prepared by the lead agency or under contract to it, the statute also allows agencies to accept submissions from “any person,” which can be submitted in “any format.” Such submissions “shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.” The court also cited CEQA Guidelines section 15084, subdivision (d), which expressly allows agencies to “[a]ccept[] a draft prepared by the applicant, a consultant retained by the applicant, or any other person.” The court emphasized, though, that the same provision requires the agency to subject such a draft to its “own review and analysis.” The court added that any document released to the public must “reflect the independent judgment” of the agency, and that the agency is “responsible for the adequacy and objectivity of the draft EIR.” The court held that this standard of “independent review,” which has been cited in previous published CEQA cases, is consistent with the statutory language. The 1991 amendments to section 21082.1 now require agencies to “[i]ndependently review and analyze any report or declaration” required by CEQA, to “[c]irculate documents which reflect [their] independent judgment,” and to find, in approving a negative declaration or certifying a final EIR, that the document in question “reflects the independent judgment of the lead agency.” The “independent review” standard championed by the Court of Appeal is consistent with the statutory language and CEQA case law. (*See Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 908 (holding an EIR is not fatally undermined by the direct participation of the developer and his or her experts in the underlying environmental and other studies, so long as the agency independently performs its reviewing, analytical, and judgment functions); *Concerned Citizens of Palm Desert, Inc. v. Riverside County Board of Supervisors* (1974) 38 Cal.App.3d 272, 287-288 (after independent evaluation and analysis, the findings of a draft EIR prepared by an applicant were adopted by the county in compliance with statutory requirements); *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, 1042 (a petitioner must overcome a presumption that a respondent agency has “performed its duty independently to exercise its judgment on the draft EIR”).

Friends of La Vina clearly laid out the appropriate level of involvement by an applicant in the process of drafting an EIR. The Court of Appeal determined, that provided the lead agency subjects the EIR to its independent review and judgment prior to certification, an applicant is allowed to draft the EIR.

Friends of La Vina also specifically addressed the issue of an applicant’s consultant drafting responses to comments. In *Friends of La Vina*, the applicant’s consultant submitted the Draft EIR to the City, drafted the responses to public agencies’ comments, drafted the

responses to the public's comments, and drafted the proposed findings. The Final EIR submitted for certification "closely track[ed] the contractor's drafts." (*Friends of La Vina, supra*, 232 Cal.App.3d at 1451.) In support of the consultant's preparation of these documents, the court cited Public Resources Code section 21082.1 and CEQA Guidelines section 15084, both of which state that it is the agency's duty to prepare the EIR with input from the applicant, the applicant's consultant, or others, as long as the certified document represents the independent review and judgment of the lead agency, in this case, the County of Los Angeles.

The petitioners in *Friends of La Vina* "contend[ed] that contractor drafting of the responses to comments, which principally convert the draft EIR into the final EIR, cannot be tolerated if CEQA's promise and prescription of agency EIR preparation are to be followed." (*Friends of La Vina, supra*, 232 Cal.App.3d at 1455.) The court expressed sympathy with the petitioner's policy concerns, but stated

those concerns simply do not engender legal interdiction of an applicant's consultant's drafting the written responses. Plaintiffs' authorities do not dictate such a rule: the Guidelines' general terms prescribe no bar, and the *Kern II* case, . . . itself used the independent judgment rule discussed above as a mainstay of its analysis. In short, in accordance with consistent practice and judicial application, *the independent review, analysis and judgment test, not the proposed physical draftsmanship test, applies to the EIR as a whole, including responses to comments.*

(*Friends of La Vina, supra*, 232 Cal.App.3d at 1456 (internal citations omitted) (emphasis added).)

As in *Friends of La Vina*, the applicant's consultants' participation in the preparation of the EIR and the FEIR for the Riverlake project was within the scope of applicable case law; standard practice, regulatory history, and statutory authority. Here, the applicant's consultant prepared the draft EIR and the draft responses to comments, both components of the Final EIR. The final product, and indeed the previous drafts, however, were all subject to the independent review and judgment of the City of Sacramento. The City staff's own records of communications illustrate the back and forth exchange between the staff and consultants, including questions regarding the City regulations and policies and its process for environmental review. These communications demonstrate the integrity of the process adhered to by the parties in this case, and answer the question of whether the City exercised its independent review and judgment. It is clear from the record that it was the City of Sacramento, not the consultants, who had the final say over the contents of all

documents produced under the City's name, and as such, the City subjected the EIR to its own independent review and analysis.

2. *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215.

Most recently, the case of *Sunset Drive Corp. v. City of Redlands* addressed the issue of an applicant and/or the applicant's consultants' participation in the EIR process. *Sunset Drive Corp. v. City of Redlands* looked to established precedent to make the case that an applicant or its consultants are permitted to take part in the various preparatory stages absent the final certification of the EIR. The court in *Sunset Drive Corp. v. City of Redlands* instructs that an applicant or the applicant's consultants are permitted to take part in the preparation of an EIR, "so long as the agency applies its "independent review and judgment to the work product before adopting and utilizing it." (*Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 220, citing *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1454; accord, CEQA Guidelines, § 15084, subd. (e)). Among the stages that the court cites as steps in the process in which an applicant or an applicant's consultant may take part are, "the preparation of a draft EIR; the circulation of that draft for comment; [and] the preparation of a final EIR which responds to those comments. . . ." (*Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 220, citing *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123-1124.) Thus, the Pocket Protector's challenge to Regis's consultants preparation of the draft EIR and draft responses to comments is not supported by case law. This case is evidence of the fact that the courts continue to express support for applicant-prepared EIRs.

B. Statutory Authority

The holdings of the case law discussed above stem from statutory authority regarding participation by an applicant or the applicant's consultant in an agency's preparation of an EIR. Section 21082.1 of the Public Resources Code and its legislative history inform us that applicants are granted considerable latitude to assist a City in preparing an EIR. We discovered in our extensive legislative history research that there is no prohibition on an applicant's participation in the process, so long as the City exercises its independent review of the EIR prior to certification of the FEIR.

1. Public Resources Code Section 21082.1

Public Resources Code section 21082.1 is one of the two key statutes pertaining to applicant participation in the preparation of an EIR. Public Resources Code section 21082.1

provides in pertinent part:

- (a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared by, or under contract to, a public agency.
- (b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.
- (c) The lead agency shall do all of the following:
 - (1) Independently review and analyze any report or declaration required by this division.
 - (2) Circulate draft documents that reflect its independent judgment.
 - (3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.
 - (4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in a [sic] electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:
 - (A) A state agency is any of the following:
 - (i) The lead agency.
 - (ii) A responsible agency.
 - (iii) A trustee agency.
 - (B) A state agency otherwise has jurisdiction by law with respect to the project.
 - (C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined

pursuant to the guidelines certified and adopted
pursuant to Section 21083.

(Public Resources Code § 21082.1.)

As explicitly stated in Section 21082.1, the onus is on the lead agency to prepare the environmental impact report; however, the agency is not prohibited from accepting information from any party and incorporating it in whole, or in part into the EIR. As a practice, lead agencies regularly allow an applicant or the applicant's consultant to prepare the EIR for their proposed project. The City is permitted to do so provided it ensures that the final product is independently reviewed and analyzed as required under Section 21082.1 (c) (1).

In 1991, Senator Byron Sher proposed Assembly Bill 1642. As introduced, AB 1642 would have prohibited applicant-prepared EIRs. The provision prohibiting applicant prepared EIRs was ultimately and explicitly deleted by the legislature. Instead, the independent review and judgment requirement was implemented. The Concurrence in Senate Amendments drafted for AB 1642, as amended August 26, 1991, provided that existing law required a lead agency to prepare an EIR for projects that may significantly affect the environment, and that EIRs may be prepared by "the lead agency, by contract with the lead agency, or by the applicant." The amendments brought about by AB 1642 did not prevent applicant-prepared EIRs, but rather, required the agency to exercise independent review and judgment prior to adopting an EIR.

Further, in the enrolled bill report filed by the Water Resources Department, the agency states that AB 1642 is a declaration of existing law regarding applicant-prepared EIRs, following the court's holding in *Friends of La Vina*, discussed above. The bill allows the applicant to submit the EIR, but requires the document that goes out for public review to reflect the independent review and judgment of the agency.

Legislative efforts over the past thirty years to prevent applicants from participating in the preparation of EIRs have failed. As highlighted in *Friends of La Vina*, when the "preparation language alone was proposed, the Assembly deleted it, and then reinstated and approved it only with the addition of the further language authorizing outside input." (*Friends of La Vina, supra*, at 1453 citing Assem. Amend. To Assem. Bill No. 2679 (1975-1976 Reg. Sess.) § 9.6, Apr. 29, June 10, Aug. 6, and Aug. 16, 1976.) The majority of agencies responsible for the preparation of EIRs do not have the time, money, or resources necessary to be wholly responsible for drafting EIRs for all proposed projects with potentially significant environmental impacts. As such, both section 21082.1 and, as

discussed below, CEQA Guidelines section 15084, were drafted so as not to prohibit applicant participation in the preparation of EIRs. Rather, the legislature and Resources Agency explicitly encourage their input, allowing the City to incorporate such input to the extent feasible, so long as it is governed by the City's own independent review and judgment.

2. Title 14, California Code of Regulations, Section 15084 (c)-(e) ("CEQA Guidelines")

According to the Supreme Court "[a]t a minimum . . . courts 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.) Therefore, the section should be construed as appropriately instructive in its relation to the scope of applicant participation in the preparation of EIRs.

CEQA Guidelines section 15084 (c)-(e) provides:

- (c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

- (d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.
 - (1) Preparing the draft EIR directly with its own staff.
 - (2) Contracting with another entity, public or private, to prepare the draft EIR.
 - (3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.
 - (4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.
 - (5) Using a previously prepared EIR.

- (e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

(CEQA Guidelines § 15084 (c)-(e).)

“The preparation method prescribed in the foregoing Guidelines allows for an agency to enlist the initial drafting and analytical skills of an applicants' consultant, subject to the requirement that the agency apply independent review and judgment to the work product before adopting and utilizing it.” (*Friends of La Vina, supra*, 232 Cal.App.3d at 1454; *see also Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893 (“CEQA does not prohibit the applicant from providing data, information and reports required for preparation of the EIR. CEQA merely requires that the agency independently perform its reviewing, analytical and judgment functions. . . .”), *City of Poway v. City of San Diego, supra*, 155 Cal.App.3d 1037 (approving an EIR prepared by the applicant's consultant and certified by the agency after changing only one word).)

As with Public Resources Code section 21082.1, efforts to strike the language in section 15084, subdivision (d)(3), which allows for the City to accept an applicant-prepared EIR have not met with success. The Guidelines, as they currently appear, including the language contained in Section 15084 (d) (3) were the result of revisions drafted in 1982. The revisions received both positive and negative feedback targeted at the applicant-prepared EIR language. The Resources Agency refused to strike the language pertaining to applicant-prepared EIRs, stating that, “CEQA expressly allows a lead agency to receive and use information from any person at all in preparing a draft EIR.” (Summary of and Response to Comments, State CEQA Guidelines, Public Utilities Commission (July 1982).) The Resources Agency went on to state that the required agency independent review and analysis would be sufficient to protect against abuse of this provision. (*Id.*)

Section 15084 and its legislative history are particularly instructive for questions regarding the appropriate level of applicant participation in the EIR process. Here, the applicant prepared the draft EIR and draft responses to comments, and the City independently reviewed and applied its judgment to the work product before adopting and publishing it as the Final EIR. This method is precisely what is defined and endorsed in Guidelines section 15084 (c)-(e). The parties followed the letter of the law, and the City was not only within its rights, but is explicitly permitted to allow the applicant's consultant

Ms. Eileen Teichert
January 9, 2006
Page 10

to submit work product, which City staff reviewed and adopted as the Final EIR.

III. Conclusion

Based upon our research, it is clear that the City is not prohibited, but rather, is explicitly permitted to accept information or documents in any form from the applicant and/or the applicant's consultant to assist in preparation of both EIRs and the FEIR. This allows the applicant's consultant to prepare proposed draft EIRs and other components of the FEIR, subject to the City's independent judgment and review, including but not limited to, the drafting of the EIR and the responses to comments. To find otherwise would, in the words of the Court of Appeal, be "erroneous as a legal matter, because [such an interpretation] conflicts with CEQA, the Guidelines, and all relevant case law." (*Friends of La Vina, supra*, 232 Cal.App.3d at 1452.)

Thank you for your time and assistance in this matter. I hope that we have provided you with the necessary information regarding the state of the law as it regards applicant-prepared EIRS for the Islands at Riverlake project. Please contact me if we can be of any further assistance.

Sincerely yours,



Tina A. Thomas

cc: Mayor Heather Fargo
Sacramento City Council Members
Sacramento City Clerk
Sabina Gilbert
Susan Brandt Hawley (via email)



OFFICE OF THE
CITY ATTORNEY

SAMUEL L. JACKSON
CITY ATTORNEY

ASSISTANT CITY ATTORNEYS
RICHARD E. ARCHIBALD
SANDRA G. TALBOTT

SUPERVISING DEPUTY CITY ATTORNEYS
GUSTAVO L. MARTINEZ
ROBERT D. YOKUNAGA
BRETT M. WITTER
SUSANA ALCALA WOOD

CITY OF SACRAMENTO
CALIFORNIA

980 NINTH STREET, TENTH FLOOR
SACRAMENTO, CA 95814-2736
PH 916-808-5346
FAX 916-808-7455

DEPUTY CITY ATTORNEYS
DENNIS I. BECK, JR.
MICHAEL J. BENNER
SHERI M. BUZARD
ANGELA M. CASAGRANDA
JOSEPH P. CERULLO
LAWRENCE J. DURAN
PAUL A. GALE
SABINA D. GILBERT
GERALD C. HICKS
STEVEN Y. ITAGAKI
STEVEN T. JOHNS
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MATTHEW D. RUYAK
JANETH D. SAN PEDRO
MICHAEL T. SPARKS
LAN WANG
JAMES F. WILSON
DAVID S. WOMACK

July 15, 2005

By fax to (707) 576-0175
and by U.S. Mail

Susan Brandt-Hawley
Brandt-Hawley Law Group
Chauvet House P.O. Box 1659
Glen Ellen, California 95442

Re: Islands at Riverlake

Dear Ms. Brandt-Hawley:

Your response to my e-mail of July 11 goes far beyond what I explained, and it echoes a position you have asserted in most if not all of our conversations and correspondence. Apparently you believe that the city must exclude Regis Homes and its attorneys and consultants from the CEQA process. But this assuredly is not the city's standard practice. More to the point, it is not the law. CEQA Guideline 15084 provides that "[a]ny person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR." What is more, California's appellate courts have long held, in case after case, that lead agencies may work closely with applicants and their representatives—not just when preparing draft and final EIRs but also when responding to comments on draft EIRs. See, for example, *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446. There the court held that "an agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, so long as the agency independently review, evaluates, and exercises judgment over that documentation and the issues it raises and addresses. . . ."

(At page 1452.) In explaining this holding, the court observed at page 1454 that the CEQA Guidelines allow—

an agency to enlist the initial drafting and analytical skills of an applicant's consultant, subject to the requirement that the agency apply independent review and judgment to the work product before adopting and utilizing it. This methodology appears to be common in California [citation] More important, a consistent series of appellate decisions have endorsed local agencies' resort to applicants' consultants in the preparation of both draft and final EIRs, subject to the qualification of independent agency involvement and judgment, as against charges of unlawful delegation.

The court went on to note, at page 1455, that "preparation of an EIR is not a solitary, ruminative process but an inquisitive, cooperative one, in which the applicant and its experts naturally can and will be heavily involved, perhaps to the point of initially drafting the text." And, in confirming the propriety of an applicant's assisting the lead agency in responding to comments on a draft EIR, the court had this to say: "In short, in accordance with consistent practice and judicial application, the independent review, analysis[,] and judgment test, not the proposed physical draftsmanship test, applies to the EIR as a whole, including responses to comments." (At page 1456.)

In other words, then, whether the lead agency or a developer's consultant writes the draft EIR or suggests responses to comments on the draft is not important. What is important is that "the final EIR reflect[] the lead agency's independent judgment and analysis." (CEQA Guidelines 15090(a)(3).)

These principles still control today, as you doubtless know from your recent participation in *San Franciscans Upholding the Downtown Plan, v. City and County of San Francisco* (2002) 102 Cal.App.4th 656. Here's what the court said on page 684 in rejecting your clients' challenge to an EIR:

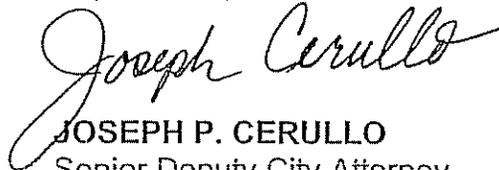
Appellants . . . contend that [an expert's] report cannot constitute substantial evidence because, rather than providing objective analysis, [the expert] instead was a paid consultant hired by Real Parties to produce a biased, self-serving study aimed at a predetermined result. This assertion is meritless. The courts have specifically rejected similar assertions that decisions of public agencies are tainted by input from economic analysts and experts retained by the interested parties. [Citations]. In this case, [the city's own expert] and the city architect both provided an independent review and corroboration of [the analysis by Real Parties' expert]. Together, their reports constituted substantial evidence in support of the City's ultimate decision

Susan Brandt-Hawley
Re: Islands at Riverlake
July 15, 2005
Page 3 of 3

Turning now to the Islands at Riverlake, let me clarify the city's position. As I explained previously, on most projects neither the applicant nor the applicant's attorney prepares or works on the city's responses to comments on the draft EIR. But when litigation is threatened, the city has worked with the applicant's attorney in responding to comments. Because litigation is obviously threatened here, therefore, I anticipate that city staff will be working with Regis's attorneys, with Remy, Thomas, Moose & Manley, on the city's responses to some or all of the comments received. Be assured, however, that the final comments themselves—as well as the final EIR—will reflect the city's independent judgment and analysis.

Sincerely,

SAMUEL L. JACKSON
City Attorney



JOSEPH P. CERULLO
Senior Deputy City Attorney

cc: Lezley Buford
Manager Environmental Planning Services
Kimberly Kaufmann-Brisby
Associate Planner
Tina A. Thomas
Remy, Thomas, Moose and Manley LLP



ATTACHMENT N

FAX TRANSMITTAL

CITY OF SACRAMENTO
DEPARTMENT OF PLANNING AND BUILDING
1231 I Street
Sacramento, CA. 95814
(916) 264-5381
Fax (916) 264-5328

To: *Jeff Little/Andrew Bagn* Date: *11/18/03*
Fax #: *916-427-2175* Pages: *5*
From: *Ellie Buford* Phone: *264-5933*
Subject: *SOW*

COMMENTS:

Please call if any questions -

Ellie

Need to check where this is

- The City of Sacramento will provide the project file for the Riverlake Park Homes Project (P93-089), which was approved in 1993. The Riverlake Park Homes Project will be analyzed as a project alternative.
- The City of Sacramento will provide its traffic survey data. *- what data?*
- The City of Sacramento will prepare the Notice of Preparation, Notice of Completion, Notice of Determination, subsequent staff reports, presentations, recommendations, and findings for the Planning Commission and City Council.
- Client will review documents (ADEIR, DEIR, and FEIR) *following* prior to each submittal to the City.
- This scope assumes two rounds of City review will be required to complete the DEIR for public review.
- This scope assumes one round of City review will be needed to complete the FEIR.
- Meetings and public hearings will be attended on a time-and-materials basis.

No

only need me review

III. SERVICES

Task 1. Administrative Draft Environmental Impact Report

Sycamore Environmental will prepare an ADEIR using the City's EIR format. The ADEIR will be prepared in accordance with the CEQA Guidelines. We will address the issues identified in the Pocket Protectors' opening brief in the ADEIR, as well as any directed by the judge. The general approach to the analysis will include defining the standards of significance, determining the significance of potential impacts, and identifying mitigation measures to reduce the significance of the impact. Pursuant to the CEQA Guidelines, the ADEIR will address cumulative impacts, growth inducing impacts, and irreversible environmental effects. Due to the project's controversy, an analysis of four project alternatives will be provided under this scope.

Scope

- Request an EIR template from the City of Sacramento Planning and Building Department.
- Review available documents and information.
 - City of Sacramento General Plan Update Draft EIR (SGPU EIR certified January 1988)
 - Pocket Area Community Plan (PACP certified 1979; updated 1989)
 - South Pocket Specific Plan (SPSP certified March 1976)
 - The Sacramento City Code (SCC)
 - Staff reports for the Islands at Riverlake project and the Riverlake Park Homes Project (P93-089).
 - Initial Study and Mitigated Negative Declaration for the Islands at Riverlake (P01-133), City of Sacramento (Sycamore Environmental June 2002)
 - Islands at Riverlake (P01-133) Response to Comments, City of Sacramento (Sycamore Environmental August 2002)
- Consult as needed with the Client, Client's legal and design teams, and City planning staff to obtain data and to coordinate on questions.

sample

- The following topics will be addressed:
 - Consistency with City Land Use Policies and Regulations
 - Aesthetic Impacts
 - Traffic and Parking Impacts
 - Biological Resources Impacts
- Determine potential project impacts, cumulative impacts, growth inducing impacts, and significant environmental effects.
- Determine significance of impacts.
- Identify mitigation measures to reduce the significance of impacts.
- Identify project alternatives. We assume that the project design team will provide design for the project alternatives in sufficient detail to complete an impact analysis. Each alternative will be compared with all the other alternatives in a Project Impact Summary Table. The ADEIR will address the following alternatives discussed with Ms. Teller:
 - No Project;
 - Proposed Project;
 - Pocket Protectors Project;
 - R-1 Zone Project, if facially feasible; and
 - Riverlake Park Homes Project (project approved in 1993).
- Prepare Screencheck draft ADEIR and submit to the Client for review.
- Incorporate Client's comments and submit ADEIR to the City.

Task 2. Draft Environmental Impact Report

~~The CEQA allows an applicant to provide an environmental application to a lead agency in a format consistent with that of an EIR. Ultimately, the lead agency is responsible for approving the circulation of a DEIR and FEIR.~~ Sycamore Environmental will incorporate the City's comments and prepare a DEIR for the City to circulate. A time and cost estimate will be provided for this task following receipt of the City's comments.

Scope

- Incorporate City's comments on the ADEIR and submit City review draft DEIR to ~~the Client for review.~~ *the City*
- ~~Incorporate Client's comments and~~ submit City review draft DEIR to the City.
- Incorporate City's comments on the DEIR ~~and submit it to the Client for review.~~
- ~~Incorporate Client's comments and~~ submit the DEIR to the City for public circulation.

Task 3. Final Environmental Impact Report

Sycamore Environmental will prepare an FEIR for City of Sacramento's certification. The FEIR will consist of three parts 1) response to public comments, 2) errata, and 3) mitigation monitoring plan (MMP). A time and cost estimate will be provided for this task following receipt of public comments.

Scope

- City will provide comments received during public review of the DEIR.
- Prepare a response to comments on the environmental impacts analysis (CEQA does not require responses to comments on the merits of the project).
- Prepare errata section, if necessary.
- Prepare an MMP in the City's format. Components of the MMP will describe the mitigation measures and the party responsible for ensuring and/or verifying compliance.
- Submit ~~City review~~ draft FEIR to ~~Client~~ ^{City} for review.
- Incorporate ~~Client's~~ comments and submit City review draft FEIR to City.
- Incorporate ~~City's~~ comments on the FEIR and submit it to the ~~Client~~ ^{City} for review.
- Incorporate ~~Client's~~ comments on the FEIR and submit it to the City for certification.

Task 4. Consultation and Coordination

- Sycamore Environmental will respond to questions from Remy, Thomas. In addition to telephone conferences, responses may include written responses transmitted via email, fax, and mail.
- Sycamore Environmental will attend meetings and hearings at the Client's request.

IV. DELIVERABLES

Task 1. Administrative Draft Environmental Impact Report (draft and final)

- ^{One} Two unbound copies of the Screencheck draft ADEIR will be submitted to Client. *the City*
- ^{Two} Two bound copies of the ~~City review~~ ADEIR will be submitted to Client and three bound copies will be submitted to the City. ~~(Additional copies will be provided on a time and materials basis with Client's authorization.)~~ *the City*

Task 2. Draft Environmental Impact Report (draft and final).

- ^{One} Two unbound copies of the Screencheck draft DEIR will be submitted to Client. *the City*
- Two bound copies of the public review DEIR will be submitted to Client. ~~The City will determine the number of copies it will need for public review.~~ *the City*

Task 3. Final Environmental Impact Report (draft and final).

- ^{One} Two unbound copies of the Screencheck draft FEIR will be submitted to Client. *the City*
- Two bound copies of the FEIR will be submitted to Client. The City will determine the number of copies it will need to certify the EIR and adopt the project.

V. SCHEDULE

Proposed schedule: The respondents' brief is due 24 November 2003. The California Superior Court hearing is set for 19 December 2003. Sycamore Environmental will commence preparation of the ADEIR upon receipt of written authorization. We anticipate completing the draft document for Client's review by 22 December 2003. Note: this expedited timeline is contingent on the receipt of design exhibits for the project alternatives from the Client's design team.

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