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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CARMEL VALLEY ASSOCIATION, INC., Plaintiff and Appellant, v. COUNTY OF MONTEREY, et al., Defendants and Respondents; RANCHO CAÑADA VENTURE, LLC et al., Real Parties in Interest and Appellants.	H046187 (Monterey County Super. Ct. No. 17CV000131)

I. INTRODUCTION

This case arises from the proposal of appellants and real parties in interest Rancho Cañada Ventures, LLC and R. Alan Williams (collectively, Rancho Cañada) to develop a residential subdivision in Monterey County (the County) known as the Rancho Cañada Village project. After preparing an environmental impact report (EIR) pursuant to CEQA[1] concerning the proposed project and holding a hearing, the County's Board of Supervisors approved a 130-unit alternative for the project as the environmentally superior alternative. The Board of Supervisors also amended the County's general plan to reduce the minimum percentage of affordable housing in the special treatment area of Rancho Cañada Village to 20 percent and rezoned most of the special treatment area to medium density residential.

[1] California Environmental Quality Act, Public Resources Code section 21000 et seq.

Carmel Valley Association, Inc. (the Association), which describes itself as "the oldest and largest civic association in the Carmel Valley," challenged the County's approval of the Rancho Cañada project by filing a petition for writ of mandamus alleging violations of CEQA's requirements for environmental review and also alleging that the County had violated both a general plan policy regarding the evaluation of new developments and the County's inclusionary housing ordinance, section 18.40 of the Monterey County Code of Ordinances (MCCO).

The trial court granted the petition for writ of mandamus and on July 6, 2018, an amended judgment was entered in favor of the Association. The amended judgment directed that a peremptory writ of mandate issue commanding the County to set aside its approval of the Rancho Cañada Village project and to amend its inclusionary housing ordinance, MCCO section 18.40. Both Rancho Cañada and the County appeal from the July 6, 2018 judgment, and the Association has cross-appealed.

In its appeal, Rancho Cañada contends that the trial court erred in granting the petition for writ of mandamus because (1) the trial court erred in ruling that the project description for the Rancho Cañada Village project did not comply with CEQA; (2) the trial court erred in ruling that the EIR's alternatives analysis did not comply with CEQA; and (3) the trial court erred in ruling that the County's approval of the project's moderate-income inclusionary housing was not supported by substantial evidence.

The County contends in its appeal that the trial court erred in (1) ruling that the County's failure to amend the inclusionary housing ordinance to be consistent with the affordable housing requirements stated in the general plan was arbitrary and capricious; and (2) ordering that a writ issue commanding the County to amend MCCO section 18.40 because it is inconsistent with General Plan Land Use Policy 2.13.

On cross-appeal, the Association contends that the trial court erred in rejecting the Association's contention that the County violated its mandatory duty under General Plan

Policy LU 1.19 to timely establish the Development Evaluation System specified in land use policy 1.19.

For reasons that we will explain, we conclude that Rancho Cañada's contentions on appeal and the County's contentions on appeal all have merit, but the Association's contention on cross-appeal lacks merit. We will therefore reverse the judgment and remand the matter to the trial court with directions to issue a new order denying the petition for writ of mandamus and vacating the peremptory writ of mandate.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *The Proposed Project and Environmental Impact Report*

In 2004, Rancho Cañada's predecessor, the Lombardo Land Group, filed an application with the County for development of a residential subdivision in the Carmel Valley area of unincorporated Monterey County, known as the Rancho Cañada Village project. The application was deemed complete in 2005, and the County began preparation of an EIR.

In 2008, the County circulated the draft EIR (DEIR) analyzing the environmental impacts of the Rancho Cañada Village project for public review. The DEIR summarized the project description as follows: "281 residential units on 40 acres of land, of which 182 would be single-family homes, 64 townhomes, and 35 condominiums/flats. Half (50%) of the residences (140 units) would be deed-restricted Affordable and Workforce units, and the other units would be market rate. [¶] 2.5 acres of neighborhood parks in various locations; and [¶] 39 acres of permanent open space to include a habitat preserve, active recreation areas, and trails." The project site was located at the mouth of the Carmel Valley, with the majority of the site on the premises of the Rancho Cañada West Golf Course.

After receiving numerous public comments on the DEIR, the County intended to prepare a revised DEIR (RDEIR). However, according to the County, in 2009 Rancho Cañada put the project "on hold" while a different EIR was being prepared in connection

with an update of the County's 1982 General Plan. The 2010 General Plan was subsequently approved in October 2010.

Relevant here, the 2010 General Plan included a specific plan for the Carmel Valley, entitled the Carmel Valley Master Plan (CVMP), which imposed a subdivision cap. As amended in 2013, Policy CV-1.6 of the CVMP provided in part that a "[n]ew residential subdivision in Carmel Valley shall be limited to creation of 190 new units as follows: [¶] a. There shall be preference to projects including at least 50% affordable housing units." Policy CV-1.6 also provided that of the 190 allowable housing units, 24 were reserved for the Delfino property.

In 2016, the County circulated an RDEIR for the Rancho Cañada Village project. Similar to the project description in the DEIR, the RDEIR summarized the project as follows: "a 281-unit residential neighborhood and 39 acres of permanent open space and common areas within the 81-plus acre project site. The Proposed Project application consists of a Combined Development Permit for the creation of a new, 281-unit, mixed-use residential neighborhood on approximately 38 acres. . . . Additionally, the development proposal attempts to meet the need for affordable housing in Carmel Valley. Nearly fifty percent of the homes (140 units) are proposed as Affordable or Workforce units." (Fns. omitted.)

The project alternatives identified in the RDEIR included six numbered alternatives, as follows: (1) the no project alternative; (2) the East Golf Course alternative (changing the location of the project); (3) the medium density alternative (186 residential units); (4) the low density alternative (40 residential units); (5) the Rio Road extension emergency access only alternative (changing the site access); and (6) the Stemple property avoidance alternative (reducing the area of development to avoid property not owned by the project applicant).

The RDEIR also discussed an unnumbered alternative, the "130-unit alternative," which was described as follows: "The 130-Unit Alternative is proposed as a Planned

Unit Development (PUD) on approximately 82 acres. This alternative would create and [*sic*] affordable housing and mixed-income community through the allocation of affordable moderate income housing units. Similar to the Proposed Project, the 130-Unit Alternative proposes a compact, pedestrian-friendly development, a variety of housing types, and recreational uses within the residential community. This alternative proposes similar uses as the Proposed Project, but with a lower number of overall units and lower density." The description of the 130-unit alternative also specified that "[t]wenty–five units would be moderate income inclusionary units, and the other units would be market rate."

The RDEIR acknowledged that, unlike the numbered alternatives, "[t]he 130-Unit Alternative is described in Chapter 2, *Project Description*, and analyzed in Chapter 3, *Environmental Analysis*, at a level of detail equal to that for the Proposed Project . . . ." After discussing the environmental impacts and feasibility of all of the alternatives, the RDEIR concluded that "[b]ecause the 130-unit Alternative is the environmentally superior alternative for direct, indirect, and cumulative impacts, it is considered the environmentally superior alternative overall."

B. *The County's Approval of the Rancho Cañada Village Project*

After a draft final EIR was released, the County's Planning Commission received a staff report and held a public hearing in November 2016 regarding the Rancho Cañada Village project. The Planning Commission recommended that the County's Board of Supervisors certify the EIR and approve the Rancho Cañada Village project described in the 130-unit alternative. The final EIR (FEIR) was released in December 2016.

The County's Board of Supervisors held a public hearing on the Rancho Cañada Village project on December 13, 2016. The Board of Supervisors thereafter adopted Resolution No. 16-334 certifying the FEIR, selecting the 130-unit alternative for approval, and approving the Rancho Cañada Village project. Additionally, as set forth in Resolution No. 16-334, the Board of Supervisors amended General Plan Policy CV-1.27

to reduce the minimum percentage of affordable housing in the special treatment area of Rancho Cañada Village to 20 percent, approved a combined development permit, and adopted a mitigation monitoring and reporting plan. By separate ordinance, the Board of Supervisors rezoned the Rancho Cañada Village special treatment area to medium density residential, with a few acres rezoned low density residential.

C. *Writ Proceedings*

The Association filed a petition for writ of mandamus setting aside the County's approval of the Rancho Cañada Village project and sought injunctive relief. The petition named the County and the Board of Supervisors as respondents, and Rancho Cañada, Carmel Development Company, and R. Alan Williams as real parties in interest with ownership interests in the property.

In its writ petition, the Association raised the following claims of CEQA violations: (1) the project description in the EIR was unstable and shifting; (2) Rancho Cañada had effectively abandoned the proposed 281-unit Rancho Cañada Village project in favor of the 130-unit alternative; and (3) the EIR did not analyze a reasonable range of alternatives.

The Association also raised two non-CEQA claims. First, the Association alleged that the County had violated General Plan Land Use Policy [LU] 1.19 by failing to establish the "Development Evaluation System" specified in LU 1.19 by October 2011. Second, the Association alleged that the County's approval of the Rancho Cañada Village project violated the inclusionary housing ordinance, MCCO section 18.40, as well as General Plan Land Use Policy 2.13, which requires a minimum of 25 percent of new housing units to be affordable to a range of low income households.

After a trial, the trial court issued its intended decision rejecting the Association's contention that the County had abused its discretion in failing to develop and promulgate the Development Evaluation System as specified in LU 1.19. However, the court ruled that the County's failure to amend MCCO section 18.40 to be consistent with LU 2.13

within a reasonable time was arbitrary and capricious. The court also ruled that there was not substantial evidence to support the Board's decision to exempt the Rancho Cañada Village project from the requirement of MCCO section 18.40.110.A that a residential project set aside 8 percent of the total units in the development for moderate-income households, 6 percent for low-income households, and an additional 6 percent for very-low-income households.

As to the CEQA claims, the trial court rejected the claim that the project description was unstable and shifting, but ruled that "[t]he Project's history demonstrates that the '[130-unit] Alternative' effectively replaced the Project as the true project under consideration, and that consequently, the existing Project Description is inaccurate." The court also ruled that the EIR's analysis of project alternatives did not satisfy CEQA because "the EIR effectively examined only a single feasible alternative."

An amended judgment was entered on July 6, 2018, which attached the intended decision as the trial court's statement of decision. The amended judgment directed that a peremptory writ of mandate issue "commanding [the County] to: (1) set aside its approval of the [Rancho Cañada Village] Project; (2) amend its Inclusionary Housing Ordinance [MCCO section 18.40] because it is inconsistent with General Plan [LU] 2.13 as stated in the Court's Statement of Decision; and (3) comply with the Court's Statement of Decision, and to follow all applicable law, statutes, and regulations, including but not limited to complying with the [CEQA], the CEQA Guidelines, and planning and zoning laws."

The judgment also granted injunctive relief, which prohibited the County and Rancho Cañada "from implementing the approvals related to the Project as described above, or basing any action or engaging in any activity pursuant to those approvals, unless and until an [EIR] is prepared in accordance with California law, including but not limited to statutes and regulations known as CEQA and the CEQA Guidelines, and the Project complies with planning and zoning laws, including but not limited to

[the County's] Inclusionary Housing Ordinance, and any reconsideration complies with CEQA and planning and zoning laws, and the injunction is lifted if the Peremptory Writ of Mandamus is discharged as to the Project."

III. DISCUSSION

A. *Rancho Cañada's Appeal*

Rancho Cañada raises two CEQA issues on appeal: (1) the trial court erred in ruling that the EIR's project description was inaccurate on the ground that the 130-unit alternative had effectively replaced the original 281-unit Rancho Cañada Village project; and (2) the trial court erred in ruling that the alternatives analysis in the EIR did not satisfy CEQA. Rancho Cañada also contends that the trial court erred in ruling that the County's approval of the project's moderate-income inclusionary housing, which required modification of the requirements of MCCO section 18.40, was not supported by substantial evidence.

We will begin with an overview of the principles that guide our review of the CEQA issues.

1. Overview of CEQA Principles

The California Supreme Court has provided an overview of CEQA principles: " 'The foremost principle under CEQA is that the Legislature intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." ' [Citations.] 'With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. [Citations.]' [Citation; see Guidelines, § 15002, subd. (f).)[2] The basic purpose of an EIR is to 'provide public agencies and the public in general with detailed information about the

[2] "The regulations that guide the application of CEQA are set forth in title 14 of the California Code of Regulations and are often referred to as the CEQA Guidelines. [Citation.]" (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1561, fn. 5; hereafter CEQA Guidelines or Guidelines.)

effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.' (Pub. Resources Code, § 21061; see Guidelines, § 15003, subds. (b)-(e).) 'Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.' [Citation.] The EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511-512, fn. omitted (*Sierra Club*).)

Thus, "[a]s this court has observed, 'the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. [Citation.]' [Citation.]" (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 687.)

2. Standard of Review

"In a CEQA case, the appellate court's review 'is the same as the trial court's: [It] reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo.' [Citation.]" (*Protecting Our Water and Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 495 (*Protecting Our Water*).)

Accordingly, "[t]he reviewing court independently determines whether the record 'demonstrates any legal error' by the agency and deferentially considers whether the record 'contains substantial evidence to support [the agency's] factual determinations.' [Citation.]" (*Protecting Our Water*, *supra*, 10 Cal.5th at p. 495.) " 'Substantial evidence challenges are resolved much as substantial evidence claims in any other setting: a reviewing court will resolve reasonable doubts in favor of the administrative decision, and will not set aside an agency's determination on the ground that the opposite

conclusion would have been equally or more reasonable. [Citations.]' " (*Sierra Club*, *supra*, 6 Cal.5th at p. 515.) "If the agency's determination 'involves pure questions of law, we review those questions de novo.' [Citation.]" (*Protecting Our Water*, *supra*, at p. 495.)

" 'Where an EIR is challenged as being legally inadequate, a court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise.' [Citation.]" (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 987 (*California Native Plant Society*).)

3. Project Description

Our review of the project description issue begins with an overview of CEQA's requirements. In general, "[a] 'project' under CEQA is 'the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' (CEQA Guidelines, § 15378, subd. (a).)" (*Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 219, fn. omitted (*Rodeo Citizens*).) The requirements for an adequate project description in an EIR are stated in the CEQA Guidelines. (Guidelines, § 15124.)[3]

[3] Guidelines, section 15124 provides: "The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. [¶] (a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map. [¶] (b) A statement of the objectives sought by the proposed project. 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 and may discuss the project benefits. [¶] (c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities. [¶] (d) A statement briefly describing the intended uses of the EIR. [¶] (1) This statement shall include, to the extent that the information is known to the lead agency, [¶] (A) A list of the agencies that are expected to use the EIR in their decision-

Under the Guidelines, "[w]ith respect to an EIR's project description, only four items are mandatory: (1) a detailed map with the precise location and boundaries of the proposed project, (2) a statement of project objectives, (3) a general description of the project's technical, economic, and environmental characteristics, and (4) a statement briefly describing the intended uses of the EIR and listing the agencies involved with and the approvals required for implementation. (Guidelines, § 15124.) Aside from these four items, the Guidelines advise that the project description should not 'supply extensive detail beyond that needed for evaluation and review of the [project's] environmental impact.' (Guidelines, § 15124.)" (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 269-270.)

Additionally, appellate courts have determined that CEQA requires an " 'accurate, stable and finite project description, [which] is the *sine qua non* of an informative and legally sufficient EIR.' [Citation.]" (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 332 (*South of Market*).) "A project description that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading. [Citation.]" (*Ibid*.) "Whether an EIR correctly describes a project is a question of law, subject to de novo review. [Citation.]" (*Rodeo Citizens, supra*, 22 Cal.App.5th at p. 219.)

Rancho Cañada argues the project description was adequate under CEQA because the EIR accurately described the 281-unit Rancho Cañada Village project, which was not rendered infeasible by the 190-unit subdivision cap for the Carmel Valley since a general

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making, and [¶] (B) A list of permits and other approvals required to implement the project. [¶] (C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements. [¶] (2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project."

plan amendment to increase the cap was possible. Rancho Cañada also argues that the project description remained accurate and stable throughout the environmental review process, and the 130-unit alternative was ultimately selected as the environmentally superior alternative. Further, Rancho Cañada contends that the Association has forfeited its contention that the 281-unit project was essentially abandoned because it was infeasible absent Rancho Cañada's control of the Stemple property, since the Association did not raise that issue below.

The Association responds that the evidence shows that the trial court correctly determined that the project description was inadequate under CEQA because the 281-unit Rancho Cañada project had been essentially abandoned as infeasible and the "true project under consideration" was the 130-unit alternative. Further, according to the Association, the inaccurate project description conflated the 281-unit project and the 130-unit unnumbered alternative, which created confusion and a barrier to informed public participation.

In performing our independent review regarding the adequacy of the project description under CEQA, we find the decision in *South of Market supra* to be instructive. The *South of Market* court explained that " '[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.' [Citation.] . . . 'The action approved need not be a blanket approval of the entire project initially described in the EIR. If that were the case, the informational value of the document would be sacrificed. Decisionmakers should have the flexibility to implement that portion of a project which satisfies their environmental concerns.' [Citation.] We do not conclude the project description is inadequate because the ultimate approval adopted characteristics of one of the proposed alternatives; that in fact, is one of the key purposes of the CEQA process." (*South of Market supra*, 33 Cal.App.5th. at pp. 335-336, fn. omitted.)

Accordingly, in *South of Market* the appellate court rejected the project opponent's contention that the project description was inadequate under CEQA because "the DEIR presented 'multiple possible Projects rather than a finite description of a single project[.]' " (*South of Market, supra*, 33 Cal.App.5th at p. 332.) The court concluded to the contrary that "the EIR in this case described one project—a mixed-use development involving the retention of two historic buildings, the demolition of all other buildings on the site, and the construction of four new buildings and active ground floor space—with two options for different allocations of residential and office units." (*Id.* at pp. 333-334; see also *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 292 [addition of eight housing units is the type of change expected during the CEQA process and did not render project description defective]; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1055 (*Treasure Island*) [project description adequate where the basic characteristics of the project "remained accurate, stable, and finite throughout the EIR process"].

In contrast, the project description was found to be inadequate in *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185 because "[m]assive fruits blossomed from the tiny seed of the initial project description" to "a vastly wider proposal," which "frustrated CEQA's public information aims." (*Id.* at pp. 199-200.) In *Washoe Meadows v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, the appellate court determined that "the five dramatically different projects [described] in the DEIR did not constitute a stable project description under CEQA." (*Id.* at p. 290.) More recently, a project description was deemed inadequate because the DEIR did not describe a building development project, but instead presented "different conceptual scenarios" for development of the site. (*Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 18.)

In the present case, our review of the EIR (RDEIR and FEIR) shows that the basic characteristics of the project—a residential subdivision of approximately 40 acres including affordable housing and mixed uses, located on an approximately 80-acre portion of a former golf course in the Carmel Valley—remained accurate and stable throughout the EIR process. (See *Treasure Island, supra,* 227 Cal.App.4th at p. 1055.) The two primary changes in the 130-unit alternative (which is clearly identified as an alternative in the EIR) from the project as originally proposed are the reduction in residential units from 281 to 130, and the reduction in the percentage of affordable residential units from 50 percent to approximately 20 percent. Changing a project to reduce or avoid environmental impacts, such as by reducing the number of residential units, is "one of the key purposes of the CEQA process." (*South of Market, supra*, 33 Cal.App.5th at p. 336.)

We are not convinced by the Association's argument that the project description was inadequate under CEQA on the ground, as the trial court found, that the 281-unit original project had been essentially replaced by the 130-unit alternative as the true project. The Association has provided no authority for the proposition that a project description is inaccurate, and thus inadequate under CEQA, where the proposed project becomes potentially infeasible during the environmental review process and an environmentally superior project alternative is selected for approval.

Therefore, based on our independent review of the EIR, we determine that the project description was adequate because the basic characteristics of the project "remained accurate, stable, and finite throughout the EIR process." (See *Treasure Island, supra,* 227 Cal.App.4th at p. 1055.) Having reached our conclusion on the merits, we need not address Rancho Cañada's argument that the Association has forfeited its contention that the original 281-unit project was essentially abandoned because it was infeasible absent Rancho Cañada's control of the Stemple property.

4. Alternatives Analysis

We will begin our evaluation of the adequacy of the EIR's alternatives analysis with an overview of CEQA's requirements. The California Supreme Court has instructed that "[t]he EIR must set forth not only environmental impacts and mitigation measures to be reviewed and considered by state and local agencies, but also project alternatives [citations]—including a '*no project*' *alternative*. ([Guidelines,] § 15126.6.) As we have said, 'the mitigation and alternatives discussion forms the core of the EIR.' [Citation].)" (*Friends of the Eel River v. North Coast Railroad Authority* (2018) 3 Cal.5th 677, 713.)

Our Supreme Court has also stated the specific requirements for the alternatives analysis in an EIR: "The CEQA Guidelines state that an EIR must '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 . . . .' ([Guidelines,] § 15126.6, subd. (a).) An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible. [Citations.]" (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143 (*Bay-Delta*).)

Moreover, as stated in the Guidelines, "[t]here is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (Guidelines, § 15126.6, subd. (a).) "The rule of reason 'requires the EIR to set forth only those alternatives necessary to permit a reasoned choice' and to 'examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.' ([Guidelines], § 15126.6, subd. (f).)" (*Bay-Delta*, *supra*, 43 Cal.4th at p. 1163.)

In the present case, the project alternatives stated in the RDEIR, in addition to the 130-unit alternative, included six numbered alternatives, as follows: (1) the no project alternative; (2) the East Golf Course alternative (changing the location of the project); (3) the medium density alternative (186 residential units); (4) the low density alternative (40 residential units); (5) the Rio Road extension emergency access only alternative

(changing the site access); and (6) the Stemple property avoidance alternative (reducing the area of development to avoid property not owned by the project applicant).

Rancho Cañada contends that the trial court erred in ruling that the alternatives analysis in the EIR was inadequate because the alternatives were compared to the 281-unit project and also in ruling that only one of the alternatives was "practically" feasible. Rancho Cañada asserts that the EIR included a reasonable range of potentially feasible alternatives.

The Association disagrees, maintaining that the trial court correctly determined that the alternatives analysis was inadequate under CEQA because the alternatives were compared to the 281-unit project, which was not the actual project. Additionally, the Association contends that the EIR did not include a reasonable range of feasible alternatives, since only the no-project alternative and alternative 4 (low density) did not exceed the subdivision cap on the Carmel Valley imposed under CVMP Policy CV-1.6.

As we have discussed, we find no merit in the Association's contention that the 130-unit alternative project was effectively the true project analyzed in the EIR. Accordingly, we also find no merit in the Association's contention that the alternatives analysis is inadequate under CEQA because the alternatives were compared to the 281-unit project.

Having reviewed the alternatives analysis in the RDEIR, we further determine that the Association has failed to demonstrate that the alternatives analysis is inadequate because it does not " 'include those that could feasibly accomplish most of *the basic objectives of the project* and could avoid or substantially lessen one or more of the significant effects.' (Guidelines, § 15126.6, subd. (c).)" (*California Native Plant Society*, *supra*, 177 Cal.App.4th at p. 991.) The Association argues only that, with the exception of the no-project alternative and alternative 4, the other alternatives are not feasible because they would violate the subdivision cap imposed on residential development in the Carmel Valley by CVMP Policy CV-1.6.

Even assuming, without deciding, that these alternatives are potentially infeasible due to the necessity of a general plan amendment of CVMP CV-1.6 to increase the subdivision cap, we find the Association's infeasibility argument unpersuasive. As this court has stated: "While the lead agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives." (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087.)

We therefore determine that Association has not met its burden to show that the alternatives analysis is inadequate under CEQA. (See *California Native Plant Society supra*, 177 Cal.App.4th at p. 987.)

5. Approval of Moderate-Income Inclusionary Housing

a. Background

In Resolution No. 16-334, the Board of Supervisors stated the following finding regarding affordable housing in approving the 130-unit alternative project. "The [130-unit] Alternative complies with the Inclusionary Housing Ordinance requirement to provide a minimum of 20% onsite affordable housing units. [MCCO section 18.40] Unusual circumstances exist making it appropriate to modify the requirements of the Inclusionary [Housing] Ordinance [section 18.40.110A][4] so that 20% Moderate income housing, as proposed by the Alternative, is allowed in-lieu of the 8% Moderate-income, 6% Low-income and 6% Very Low income."

The Board of Supervisors stated the evidence in support of its affordable housing finding, as follows: "The Alternative project proposes to construct 25 rental units

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[4] MCCO section 18.40.110.A provides in part: "Rental Inclusionary Units. For rental inclusionary units, eight percent of the total units in the residential development shall be set aside for moderate income households, six percent of the total units in the development shall be set aside for low income households and an additional six percent of the total units in the development shall be set aside for very low income households."

affordable to moderate-income households only (no on-site units for low or very low income levels are proposed). . . . *The applicant has stated that due to the significant reduction in units proposed between the Project and the* [*130-unit*] *Alternative it is not financially feasible to comply with the Inclusionary* [*Housing*] *Ordinance's requirements, particularly related to providing low and very low income units.*

[¶] Section 18.40.050.B.2[5] of [MCCO] allows the Board of Supervisors to modify the requirements of the Inclusionary Housing ordinance upon a finding that 'as a result of unusual or unforeseen circumstances, it would not be appropriate to apply, or would be appropriate to modify, the requirements' of Chapter 18.40." (Italics added.)

Resolution No. 16-334 also stated, in the Board's project approval findings, that the 130-unit alternative was consistent with the general plan because, among other things, "[t]he Alternative includes a General Plan text Amendment to Policy CV-1.27 modifying the percentage of affordable/workforce housing required from 50% to 20% affordable ensuring consistency with the General Plan."

The trial court ruled that there was not substantial evidence to support the Board's decision to exempt the Rancho Cañada Village project from the requirement of MCCO section 18.40.110.A that a residential development set aside 8 percent of the total units in the development for moderate-income households, 6 percent for low-income households, and an additional 6 percent for very low-income households. The court found that the letters that Rancho Cañada had submitted from Monterey County Bank and 1st Capital Bank were insufficiently detailed to constitute substantial evidence that it was not

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[5] MCCO section 18.40.050.B.2 provides in part: "Residential developments which meet one of the following criteria shall not be required to comply with this Chapter: [¶] . . . [¶] Development as to which the applicant demonstrates during consideration of a first approval . . . that as a result of *unusual or unforeseen circumstances*, it would not be appropriate to apply, or would be appropriate to modify, the requirements of this Chapter, provided that the Appropriate Authority who makes the determination to approve or disapprove an exemption or modification makes written findings, based on substantial evidence, supporting that determination." (Italics added.)

financially feasible for Rancho Cañada to develop the 130-unit project with the inclusion of housing affordable to low-income and very low-income households.

b. Analysis

Our analysis is governed by the applicable standard of review. "Code of Civil Procedure section 1094.5,[6] the state's administrative mandamus provision, provides the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. [Citation.] Pursuant to [section] 1094.5, subdivision (b), '[t]he inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.' " (*Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 418 (*Young*).)

Where, as here, the administrative decision does not involve a fundamental right, we review the administrative decision and not the trial court's decision. (*Young*, *supra*, 10 Cal.App.5th at pp. 418-419.) "[We] consider whether the administrative agency committed a prejudicial abuse of discretion by examining whether the findings support the agency's decision and whether substantial evidence supports the findings in light of the whole record." (*Id.*, at p. 419 fn. omitted.)

"Under the substantial evidence test, our review begins and ends with a determination of whether there is substantial evidence, contradicted or uncontradicted, to support the findings. [Citation.] We do not reweigh the evidence and are bound to indulge all presumptions and resolve all conflicts in favor of the administrative decision. [Citation.]" (*Martis Camp Community Assn. v. County of Placer* (2020) 53 Cal.App.5th 569, 595 (*Martis Camp*).) Evidence is substantial where it is of ponderable legal

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6 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

significance, reasonable in nature, credible, and of solid value. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) "Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651 (*Roddenberry*).) "The burden is on the petitioner to show there is no substantial evidence whatsoever to support the findings[.] [Citation.]" (*Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1212 (*Saad*).)

Rancho Cañada argues that the letters from Monterey County Bank and 1st Capital Bank constitute substantial evidence because the letters expressly state that the banks cannot provide financing for the 130-unit Rancho Cañada Village project due to inadequate revenue from the low-income and very low-income housing required under MCCO section 18.40.110.A. Additionally, Rancho Cañada argues that there is additional evidence in the record to support the Board's finding of unusual or unforeseen circumstances sufficient to exempt the Rancho Cañada Village project from the low-income and very low-income housing requirements, consisting of Supervisor Phillips's statements at the Board hearing regarding the need for moderate income housing; the County planning staff's testimony supporting the project's 20 percent moderate income housing units; and the Housing Element of the general plan and other County planning documents indicating that strict compliance with section 18.40.110.A may not be financially feasible.

The Association responds that the Board's exemption of the Rancho Cañada project from the requirements of MCCO section 18.40.110.A that "six percent of the total units in the development shall be set aside for low income households and an additional six percent of the total units in the development shall be set aside for very low income households" constitutes an improper zoning variance subject to the independent standard of review. The Association also argues that the trial court correctly ruled that the letters from Monterey County Bank and 1st Capital Bank were insufficiently detailed to show

that unforeseen circumstances rendered the project financially infeasible, asserting that the Board did not bridge the analytical gap between the bank letters and the Board's decision to exempt the project from MCCO section 18.40.110.A. The Association also asserts that Supervisor Phillips's statements regarding the need for moderate income housing were merely his opinion and do not constitute substantial evidence.

We conclude that the applicable standard of review is substantial evidence, whether the Board's decision to exempt the Rancho Cañada project from the requirements of MCCO section 18.40.110.A for low-income and very low-income housing is construed as a zoning variance or as an affordable housing exemption under MCCO 18.40.050.B.2. Our Supreme Court has stated that "a reviewing court, before sustaining the grant of a variance, must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision." (*Topanga Assn. for a Scenic Community. v. County of Los Angeles* (1974) 11 Cal.3d 506, 514 (*Topanga*).) Further, "implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Id*. at p. 515.)

Having reviewed the letters from Monterey County Bank and 1st Capital Bank, we determine that the letters constitute substantial evidence in support of the Board's finding that unusual or unforeseen circumstances, consisting of the financial infeasibility of the 130-unit alternative due to the requirements of MCCO section 18.40.110.A for low-income and very low-income housing in residential developments, allowed modification of the requirements as authorized under section 18.40.050.B.2.

The December 7, 2016 letter from the president of Monterey County Bank states that the letter is in response to the project applicant's "request for the availability of bank financing for the Rancho Cañada Village project at the reduced density of 130-units,

which considers either (1) a higher level of inclusionary housing beyond the 20% moderate level units previously considered for the 130 units, or (2) a change in the allocation of the inclusionary units to include 6% low, 6% very low income, and 8% moderate income rental housing."

The Monterey County Bank letter concludes that "[u]fortunately, the loss in revenue generated by an increase in the percentage or allocation of inclusionary housing renders your project economically infeasible to enable us to offer you bank·financing. These requested changes to the inclusionary housing would result in insufficient cash flow and profit necessary to support bank financing. Monterey County Bank has carefully considered the sales revenues anticipated for the market rate lots, development costs, and interest, with your objective that the market rate lots would be targeted to sell at an average price of $400,000. [¶] We are sorry that Monterey County Bank would not be able to provide financing with these changes to the inclusionary housing."

The letter from 1st Capital Bank, dated December 12, 2016, from the director of client relations to the project applicant, states in its entirety: "Unfortunately, bank financing from 1st Capital Bank will be problematic for the Rancho Canada Village development at a density of 130-units. In discussions we have considered the inclusion of 6% low and 6% very low levels of affordability for the inclusionary homes in rendering this determination. [¶] The capital investments for this project and projected project revenues would not qualify bank financing [*sic*] in this case, however, as we discussed, if inclusionary housing were to include 20% affordability at the moderate income level, Rancho Canada Venture LLC may be considered to qualify for loan financing."

We read the bank letters as straightforward denials of bank financing for the 130-unit alternative project if the project must comply with the requirements of MCCO section 18.40.110.A that "six percent of the total units in the development shall be set aside for low income households and an additional six percent of the total units in the

development shall be set aside for very low income households." From these letters the Board could reasonably infer that compliance with MCCO section 18.40.110.A would, as the project applicant asserted, cause the 130-unit alternative project to be financially infeasible due to the lack of bank financing. (See *Roddenberry*, *supra*, 44 Cal.App.4th at p. 651.) The bank letters therefore constitute substantial evidence in support of the Board's finding of financial infeasibility.

We also observe that "[a]n agency's findings under . . . section 1094.5 '*do not need to be extensive or detailed*.' [Citation.] 'In addition, findings are to be liberally construed to support rather than defeat the decision under review.' [Citation.]" (*Young, supra*, 10 Cal.App. 5th at p. 421.) Accordingly, we find that the Board's decision to exempt the 130-unit alternative project from the affordable housing requirements of MCCO section 18.40.110.A was sufficient to bridge the analytical gap between the evidence of the bank letters and the Board's finding under MCCO section 18.40.050.B.2 that unusual or unforeseen circumstances, consisting of financial infeasibility, allowed the exemption. (See *Topanga*, *supra*, 11 Cal.3d at p. 515; *Martis Camp*, *supra*, 53 Cal.App.5th p. 595.)

For these reasons, we conclude that the Association has failed to meet its burden to show that the Board's decision to exempt the Rancho Cañada Village project from the requirements of MCCO section 18.40.110.A was not supported by substantial evidence. (See *Saad*, *supra*, 24 Cal.App.4th at p. 1212.)

B. *The County's Appeal*

On appeal, the County contends that the trial court erred in (1) ruling that the County's failure to amend the Inclusionary Housing Ordinance, MCCO section 18.40.070.A to be consistent with the affordable housing requirements stated in General Plan Policy LU 2.13 was arbitrary and capricious; and (2) ordering that a writ issue commanding the County to amend MCCO section 18.40 because it is inconsistent with General Plan Policy LU 2.13.

1. Background

MCCO section 18.40.070.A, which was adopted in 2003, provides in part: "To satisfy its inclusionary requirement on-site, a residential development must construct inclusionary units in an amount equal to or greater than *twenty* (*20*) *percent* of the total number of units approved for the residential development[.]"[7] (Italics added.)

The 2010 Monterey County General Plan includes Policy LU 2.13, which provides in part: "The County shall assure consistent application of an Affordable Housing Ordinance that requires *25*% of new housing units be affordable to very low, low, moderate, and workforce income households."[8] (Italics added.) Policy LU 2.13 adds an additional 5 percent affordable housing for "workforce income households." At the time of trial in 2018, MCCO section 18.40.070.A had not been amended to be consistent with the 25 percent affordable housing requirement of Policy LU 2.13.

The trial court ruled that the County had failed to amend MCCO section 18.40.070.A to be consistent with Policy LU 2.13 within a reasonable time, as required by Government Code section 65860, subdivision (c)[9]. Noting that over seven years had passed since the 2010 General Plan was approved and the inconsistency had

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[7] As stated in MCCO section 18.40.020.H, the objective of the inclusionary housing ordinance is to "meet the housing needs of all types of very low, low, and moderate income groups in a manner that is economically feasible and consistent with their needs."

[8] General Plan Policy LU 2.13 provides: "The County shall assure consistent application of an Affordable Housing Ordinance that requires 25% of new housing units be affordable to very low, low, moderate, and workforce income households. The Affordable Housing Ordinance shall include the following minimum requirements: [¶] a) 6% of the units affordable to very low-income households [¶] b) 6% of the units affordable to low-income households [¶] c) 8% of the units affordable to moderate-income households [¶] d) 5% of the units affordable Workforce I income households"

[9] Government Code section 65860, subdivision (c) provides: "In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended."

arisen, the trial court ruled that "the County's delay of over seven years in implementing a simple amendment to its Inclusionary Housing Ordinance was arbitrary and capricious."

2. Availability of Writ Relief

We begin with an overview of the writ relief available under section 1085. "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station." (§ 1085, subd. (a).) The availability of mandate relief depends on the nature of the duty at issue. (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 779 (*Alejo*).)

Mandate "may be employed to compel the performance of a duty which is purely ministerial in character." (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 247.) However, where the duty in question is " 'quasi-legislative duty entitled to a considerable degree of deference,' " mandamus may not be used to compel an official to exercise discretion in a particular manner but will lie to correct an abuse of discretion. (*Alejo*, *supra*, 212 Cal.App.4th at pp. 779-780.) "A decision is an abuse of discretion only if it is 'arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.' [Citation.]" (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 235.)

3. Standard of Review

Our standard of review is de novo. "In a mandamus proceeding, the ultimate question, whether the agency's action was arbitrary or capricious, is a question of law. [Citations.] Trial and appellate courts therefore perform the same function and the trial court's statement of decision has no conclusive effect upon us." (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 233.) Thus, where administrative proceedings are quasi-legislative in nature, "courts exercise limited review out of deference to separation of powers between the Legislature and the judiciary, and to the

presumed expertise of the agency within the scope of its authority." (*Western Oil & Gas Assn. v. Air Resources Board* (1984) 37 Cal.3d 502, 509.)

" '[U]nless otherwise provided by law, "the petitioner always bears the burden of proof in a mandate proceeding brought under . . . section 1085." [Citation.] Thus, it is petitioner's burden to establish that [the agency's] decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.' [Citation.]" (*American Coatings Assn. v. South Coast Air Quality Management Dist*. (2012) 54 Cal.4th 446, 460 (*American Coatings*).)

4. Analysis

The County contends that the delay in amending MCCO section 18.40.070.A to be consistent with General Plan Policy LU 2.13 was not arbitrary and capricious or without evidentiary support for several reasons, including the County's comprehensive approach to affordable housing policies and new case law regarding the validity of affordable housing ordinances.

According to the County, it exercised its discretion to take a comprehensive approach to updating the county ordinances in light of the County's four general plan policies[10] relating to affordable housing, rather than simply amending MCCO section 18.40.070.A to add a 5 percent workforce affordability requirement. Moreover, the County asserts that it was actively engaged in affordable housing updates after the adoption of the 2010 General Plan, including a state mandated update of the Housing Element of the General Plan and the work of the Housing Advisory Committee in recommending revisions to MCCO section 18.40 and other ordinances in relation to the general plan's affordable housing policies.

[10] The four land use policies identified by the Housing Advisory Committee in a January 27, 2016 staff report as pertaining to affordable housing include LU 1.9, LU 2.11, LU 2.12, and LU 2.13.

The County also contends that it exercised its discretion to not simply amend MCCO section 18.40.070.A due to the uncertainty caused by new case law regarding a local government's authority to require affordable housing in new developments. In particular, the County was concerned that two decisions might impact the validity of MCCO section 18.40, including *Palmer/Sixth St. Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, 1409 [city's affordable housing ordinance preempted by Costa-Hawkins Rental Housing Act] and *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal. 4th 435, 442 [city's inclusionary housing ordinance deemed constitutional].)

The Association disagrees, arguing that the trial court correctly ruled that the County's seven-year delay in amending MCCO section 18.40.110.A to be consistent with General Plan Policy LU 2.13 constitutes an abuse of discretion, since the County had a mandatory duty to amend MCCO section 18.40.110.A within a reasonable time pursuant to Government Code section 65860, subdivision (c). The Association maintains that "[n]othing prevented the County from simply amending the mandatory percentages of affordable housing while separately considering other changes the County wants to make in its discretion." The Association also asserts that the County has waived its contention that new case law contributed to the delay, since the County did not make that argument below, and, in any event, the record shows that the County's claimed legal uncertainty lacks credibility.

The County replies, correctly, that it argued below that new case law caused legal uncertainty regarding affordable housing requirements for new developments, and reiterates its contention that decisions regarding affordable housing policies fall within the County's discretion.

As a threshold matter, we independently determine whether the County had a mandatory duty, within the meaning of section 1085, subdivision (a), to amend MCCO section 18.40.110.A to be consistent with Policy LU 2.13. " 'In most cases, the appellate

court must determine whether the agency had a ministerial duty capable of direct enforcement or a quasi-legislative duty entitled to a considerable degree of deference. This question is generally subject to de novo review on appeal because it is one of statutory interpretation, a question of law for the court.' [Citation.]" (*Alejo*, *supra*, 212 Cal.App.4th at pp 779–780.)

The California Supreme Court has stated: "[W]hatever the legal controversy . . . . the enactment or amendment of a zoning ordinance is a legislative act." (*Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 517 (*Arnel*); see also *The Park at Cross Creek, LLC v. City of Malibu* (2017) 12 Cal.App.5th 1196, 1204.) An ordinance that concerns affordable or inclusionary housing is a zoning ordinance. (See *California Building Industry Assn.*, *supra*, 61 Cal.4th at p. 474; see also *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1208-1209 [review under section 1085 of contention that city was required to rezone property within a "reasonably prompt time."] Therefore, the County did not have a mandatory duty to amend MCCO section 18.40.110.A to be consistent with Policy LU 2.13, since MCCO section 18.40 is a zoning ordinance concerning affordable or inclusionary housing and its amendment is a legislative act. (See *Arnel*, *supra*, at p. 517.)

We therefore also independently review whether the Association has met its burden to show that the County's decision to take a comprehensive approach to its affordable housing policies, rather than to simply amend MCCO section 18.40.110.A to be consistent with Policy LU. 2.13, " 'was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.' [Citation.]" (*American Coatings*, *supra*, 54 Cal.4th at p. 460.)

In performing our review, we are guided by the California Supreme Court's decision in *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068 (*Bushey*), regarding the application of Government Code section 65860, subdivision (c.) "[S]ection 65860, subdivision (c) governs in circumstances where the zoning ordinance 'becomes

inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan.' In such circumstances, 'the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.' [Citation.] This provision only applies to 'zoning ordinances which were valid when enacted,' that is, were enacted before the general plan amendment and were consistent with the prior general plan. [Citation.] The purpose of subdivision (c) 'is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan.' [Citation.]" (*Bushey*, *supra*, at p. 1080.)

Our Supreme Court in *Bushey* also addressed the "reasonable time" provision of Government Code section 65860, subdivision (c): "Section 65860, subdivision (c) contemplates some temporary inconsistency between the zoning ordinance and the general plan for a 'reasonable time' when the general plan is modified." (*Bushey*, *supra*, 5 Cal.5th at p. 1076.) "The statute does not provide a benchmark for what is a 'reasonable time' to amend the zoning ordinance, . . ." (*Id*. at p. 1086.) What constitutes a "reasonable time" for purposes of Government Code section 65860, subdivision (c) may vary based on the particular circumstances of each case. (*Bushey*, *supra*, at p. 1087.)

In the present case, as the County has argued, the circumstances surrounding the potential amendment of the Inclusionary Housing Ordinance, section 18.40.110.A to be consistent with the 25 percent affordable housing requirement of Policy LU 2.13 included the County's decision to take a comprehensive approach to its affordable housing policies. This comprehensive approach involved a state mandated update of the Housing Element of the General Plan, as well as the work of the Housing Advisory Committee in recommending revisions to MCCO section 18.40 and other ordinances in relation to the general plan's four affordable housing policies. The County was also concerned about the validity of its affordable housing policies and MCCO section 18.40 in light of new case law. Based on these circumstances, we determine that although the County did not

amend MCCO section 18.40.110.A to be consistent with Policy LU 2.13 during the seven years after the 2010 General Plan was adopted and the inconsistency arose, the Association has not shown that the County's decision to delay amendment was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (See *American Coatings*, *supra*, 54 Cal.4th at p. 460.)

C. *The Association's Cross-Appeal*

The Association's cross-appeal concerns the time limit provided by General Plan Policy LU 1.19 for establishment of a Development Evaluation System.[11]

Policy LU 1.19 provides in part: "Community Areas, Rural Centers and Affordable Housing Overlay districts are the top priority for development in the unincorporated areas of the County. Outside of those areas, a Development Evaluation

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[11] Policy LU 1.19 provides: "Community Areas, Rural Centers and Affordable Housing Overlay districts are the top priority for development in the unincorporated areas of the County. Outside of those areas, a Development Evaluation System shall be established to provide a systematic, consistent, predictable, and quantitative method for decision-makers to evaluate developments of five or more lots or units and developments of equivalent or greater traffic, water, or wastewater intensity. The system shall be a pass-fail system and shall include a mechanism to quantitatively evaluate development in light of the policies of the General Plan and the implementing regulations, resources and infrastructure, and the overall quality of the development. Evaluation criteria shall include but are not limited to: [¶] a. Site Suitability [¶] b. Infrastructure [¶] c. Resource Management [¶] d. Proximity to a City, Community Area, or Rural Center [¶] e. Mix/Balance of uses including Affordable Housing consistent with the County Affordable/Workforce Housing Incentive Program adopted pursuant to the Monterey County Housing Element [¶] f. Environmental Impacts and Potential Mitigation [¶] g. Proximity to multiple modes of transportation [¶] h. Jobs-Housing balance within the community and between the community and surrounding areas [¶] i. Minimum passing score [¶] Residential development shall incorporate the following minimum requirements for developments in Rural Centers prior to the preparation of an Infrastructure and Financing Study, or outside of a Community Area or Rural Center:
1) 35% affordable/Workforce housing (25% inclusionary; 10% Workforce) for projects of five or more units to be considered. [¶] 2) If the project is designed with at least 15% farmworker inclusionary housing, the minimum requirement may be reduced to 30% total. [¶] This Development Evaluation System shall be established within 12 months of adopting this General Plan."

System shall be established to provide a systematic, consistent, predictable, and quantitative method for decision-makers to evaluate developments of five or more lots or units and developments of equivalent or greater traffic, water, or wastewater intensity. The system shall be a pass-fail system and shall include a mechanism to quantitatively evaluate development in light of the policies of the General Plan and the implementing regulations, resources and infrastructure, and the overall quality of the development. . . . [¶] . . . This Development Evaluation System shall be established within 12 months of adopting this General Plan."

The County's 2010 General Plan was adopted on October 26, 2010. It is undisputed that the Development Evaluation System had not been formally established at the time of the proceedings below.

In its petition for a writ of mandamus, the Association claimed that the County violated its mandatory duty under General Plan Policy LU 1.19 to establish the Development Evaluation System specified in Policy LU 1.19 by October 2011. The trial court disagreed, ruling that the County had significant discretion to develop the Development Evaluation System and to allocate resources for its development. The court therefore concluded that the Association was not entitled to a writ of mandate, ruling that "the County's decision as to the timing of its implementation of the DES is legislative in character, and may be overridden only if it is 'arbitrary, capricious or entirely lacking in evidentiary support.' "

On cross-appeal, the Association contends that the trial court erred because Policy LU 1.19 expressly created a mandatory duty on the part of the County to establish the Development Evaluation System. Further, the Association claims that if the County is not compelled by a writ of mandate to establish the Development Evaluation System, the County will continue to approve projects, such as the Rancho Cañada Village project, without the quantitative pass/fail scoring system provided in the Development Evaluation System.

The County responds that the 12-month time deadline provided in Policy LU 1.19 for establishment of the Development Evaluation System is directory, not mandatory, and thus the timeline for establishing the Development Evaluation System is within the County's discretion. The County also asserts that the trial court properly found that the County had applied the Development Evaluation System criteria, as set forth in Policy LU 1.19, to the Rancho Cañada Village project.

We independently determine, as a threshold matter, whether the County had a mandatory duty within the meaning of section 1085, subdivision (a), to establish the Development Evaluation System as provided by Policy LU 1.19 within 12 months after adoption of the 2010 General Plan. (*Alejo*, *supra*, 212 Cal.App.4th at pp. 779-780.) As we will discuss, we agree with the County that the 12-month deadline set forth in Policy LU 1.19 is directory, not mandatory.

The California Supreme Court has instructed that "requirements relating to the time within which an act must be done are directory rather than mandatory or jurisdictional, unless a contrary intent is clearly expressed. [Citations.]" (*Edwards v. Steele* (1979) 25 Cal.3d 406, 410; see *also California Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133, 1145.) Moreover, "statutory time limits applicable to government action are usually deemed to be directory in the absence of a penalty or consequence for noncompliance." (*State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (2016) 248 Cal.App.4th 349, 364.)

Based on the record before us, including the entire text of Policy LU 1.19, we find that the County did not clearly express an intent that the 12-month deadline set forth in Policy LU 1.19 was mandatory. We also observe that Policy LU 1.19 does not include any penalty or consequence for failure to comply with the 12-month deadline. Accordingly, the 12-month deadline set forth in Policy LU 1.19 for establishment of the Development Evaluation System is directory, and consequently the timeline for establishing the Development Evaluation System is within the County's discretion.

In the absence of a showing by the Association that the County's failure to timely establish the Development Evaluation System " 'was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair,' " (*American Coatings*, *supra*, 54 Cal.4th at page 460), we determine that the trial court correctly ruled that the County did not have a mandatory duty under General Plan Policy LU 1.19 to establish the Development Evaluation System by October 2011.

IV. DISPOSITION

The July 6, 2018 judgment is reversed. The matter is remanded to the superior court with directions to (1) vacate its original order granting the petition for writ of mandamus; (2) enter a new order denying the petition for writ of mandamus; and (3) vacate the peremptory writ of mandamus. Costs on appeal are awarded to the County and Rancho Cañada.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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GROVER, J.

Carmel Valley Association, lnc., v. County of Monterey
H046187