LEXSEE

CENTER FOR BIOLOGICAL DIVERSITY et al., Plaintiffs and Appellants, v. THE COUNTY OF SAN BERNARDINO, Defendant and Appellant; HAWARDEN DEVELOPMENT COMPANY, Real Party in Interest and Appellant.

E042316

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO

2008 Cal. App. Unpub. LEXIS 9281

October 27, 2008, Filed

PRIOR HISTORY: [*1]

APPEAL from the Superior Court of San Bernardino County. Super.Ct.No. SCVSS133424. John P. Wade, Judge.

DISPOSITION: Affirmed as modified.

COUNSEL: Chatten-Brown & Carstens, Jan Chatten-Brown, Douglas P. Carstens, Amy Minteer; and Adam Keats for Plaintiffs and Appellants.

Ruth E. Stringer, County Counsel, Mitchell L. Norton and Robin Cochran, Deputy County Counsel, for Defendant and Appellant.

Best Best & Krieger, Michelle Ouellette, Jason M. Ackerman, and Melissa R. Cushman for Real Party in Interest and Appellant.

JUDGES: McKinster, J.; Ramirez, P.J., Miller, J. concurred.

OPINION BY: McKinster

OPINION

This is a joint appeal by Hawarden Development Company (hereafter Hawarden), and the County of San Bernardino (hereafter County), from the trial court's finding on a petition for writ of administrative mandamus filed by various environmental organizations, including the Center for Biological Diversity [1] (hereafter plaintiffs), that substantial evidence does not support County's finding in approving Hawarden's proposed development, Blue Ridge at Lake Arrowhead, that the project is consistent with County's General Plan (General Plan). The specific General Plan provision at issue states, "Complete Cumberland Road from Cedar Glen to State Highway [*2] 18 near Santa's Village as a condition of development of the adjacent area," and is set out in section III-39, entitled "Lake Arrowhead Policies/Actions, Man-made Resources, Transportation/Circulation," of the General Plan, adopted July 1, 1989, and revised April 12, 1993.

1 The other organizations are San Bernardino Valley Audubon Society, Save Our Forest Association, and the Sierra Club.

Hawarden owns 39.8 acres of real property near Lake Arrowhead. In July 2001, Hawarden submitted a proposal to County to develop the property into a subdivision called Blue Ridge at Lake Arrowhead (Blue Ridge) comprised of 57 residential lots. [2] On August 18, 2005, the County Planning Commission (Planning Commission) certified the project environmental impact report (EIR) and approved the project conditioned, among other things, on Hawarden completing 610 feet of Cumberland Road, the part that runs through or adjacent to the Blue Ridge development, and contributing a pro rata share, calculated on a per lot basis, toward the future cost of extending Cumberland Road from the Blue Ridge development to Highway 18.

2 The original project design called for 58 residential lots but in order to improve fire access

[*3] to the project, Hawarden agreed to eliminate one lot and to extend a roadway through the project.

Plaintiffs challenged certification of the EIR and approval of the project, first in an appeal to County's Board of Supervisors, which denied the appeal and approved the project on November 15, 2005, and next in court by filing a petition for writ of mandate in which plaintiffs alleged various challenges on numerous grounds set out in three purported causes of action. The trial court denied the writ petition on all grounds but one--that County's "fire safety plan requires that Cumberland Road be completed prior to development occurring and that the general plan is unambiguous as to this issue." Hawarden and County appeal from the judgment granting the petition and issuing the writ of mandate. Plaintiffs, in turn, cross-appeal, challenging the trial court's denial of the other aspects of their writ petition, including their challenges under the California Environmental Quality Act (CEQA).

We conclude, as explained fully below, that the trial court correctly granted the petition with respect to the Cumberland Road provision. We further conclude that County did not comply with CEQA when it [*4] certified the EIR for the project because the EIR did not identify a specific source of water for the project or address the environmental consequences of obtaining water from the various purported alternative sources mentioned in the EIR. We further conclude that substantial evidence does not support the findings contained in the EIR regarding the impact of the Blue Ridge project on the Southern Rubber Boa, a threatened species found on the project site. Therefore, we will affirm the judgment granting the writ petition with respect to the Cumberland Road issue, and will modify it to include the EIR.

DISCUSSION

1.

APPEAL BY COUNTY AND HAWARDEN

County and Hawarden contend that the trial court erred in granting the writ petition because County's requirement that Hawarden complete 610 feet of Cumberland Road, the part that actually traverses the Blue Ridge project site, and pay a proportionate share toward future extension of Cumberland Road, not only is a reasonable interpretation of the so-called Cumberland Road provision contained in the General Plan, but also is consistent with County's previous interpretations and applications of that provision. The first assertion is not supported by [*5] the law, and the second is not supported by the evidence, as we now explain.

A. Standard of Review

"We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. [Citation.]" (*Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 782*, fn. omitted.)

B. Analysis

Government Code section 65300 requires all cities and counties to adopt a general plan for the physical development of land within their boundaries. Since 1971, "proposed subdivisions and their improvements [have been] required to be consistent with the general plan [citation]." (*DeVita v. County of Napa (1995) 9 Cal.4th 763, 772.*) As this court observed in *Corona-Norco Unified School Dist. v. City of Corona (1993) 17 Cal.App.4th 985* (*Corona-Norco*), "The consistency doctrine has [*6] been described as 'the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law.' [Citation.]" (*Id. at p. 994.*) "'An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' [Citation.] [Fn. omitted.]" (*Corona-Norco, supra, at p. 994*, quoting General Plan Guidelines, p. 212, Governor's Office of Planning and Research, 1990, and noting in fn. 6, "The General Plan Guidelines are advisory only, but they assist in determining compliance with general plan laws.") Conversely, "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. [Citation.]" (*Endangered Habitats League, Inc. v. County of Orange, supra, 131 Cal.App.4th at p. 782.*)

The Cumberland Road provision, as previously noted, is set out in the "Lake Arrowhead Policies/Actions, Man-made Resources, Transportation/Circulation" section of the General Plan. Circulation is one of the seven elements that must be included in a general plan. (*Gov. Code, § 65301*; *DeVita v. County of Napa, supra, 9 Cal.4th at p. 773.*) [*7] Therefore, the Cumberland Road provision is fundamental to the General Plan.

The provision also is mandatory and clear: "Complete Cumberland Road from Cedar Glen to State Highway 18 near Santa's Village as a condition of develop-

ment of the adjacent area." The language is concise, clear, and to the point--in order to develop land adjacent to Cumberland Road, the road must be completed from Cedar Glen to Highway 18 near Santa's Village. County and Hawarden argue that the Cumberland Road provision is "amorphous and ambiguous" because it "does not state with specificity how and when it applies." In their view, "It could have been written to state that 'no development shall occur in the area adjacent to Cumberland Road until Cumberland Road has been completed from Cedar Glen to State Highway 18.'" We see no difference between that articulation and the language actually used in the General Plan. Their contrary view notwithstanding, County and Hawarden have not offered an alternate interpretation of the Cumberland Road provision; they have merely rephrased the provision, without changing its meaning. County and Hawarden also contend that the Cumberland Road provision "does not say 'complete [*8] Cumberland Road from Cedar Glen to State Highway 18 *prior to the approval of any* development of the adjacent area.'" In our view the Cumberland Road provision says exactly that, although in slightly different language. Instead of "prior to the approval of," the Cumberland Road provision says "as a condition of" the development of the adjacent area. In both common and legal parlance, a "condition" is "something established . . . as a requisite to the doing . . . of something else." (Webster's 3d New Internat. Dict. (1993) p. 473; see also Black's Law Dict. (6th ed. 1990) p. 293.)

County's interpretation, which requires Hawarden to build only that section of Cumberland Road [3] that runs through the Blue Ridge project, or to which the project is adjacent, and pay a pro rata share of the future cost of extending the road to Highway 18, is not consistent with the express language of the provision. If, when it drafted the Cumberland Road provision and adopted the General Plan, County had intended to require only incremental construction such that Cumberland Road would be completed in stages, it would have said that. County did not say that, however, and the words it actually used in the Cumberland [*9] Road provision are not subject to more than one interpretation. Although County's view of the Cumberland Road provision might be more equitable because it does not place the entire economic burden of completing Cumberland Road on a single developer, that application is not warranted by the language used in the General Plan. In short, County's application of the Cumberland Road provision is inconsistent with the General Plan.

> 3 The location of Cumberland Road apparently was sited, or its path determined, when County approved an earlier planned development called Cedar Ridge.

In addition to being inconsistent with the express terms of the Cumberland Road provision in the General Plan, County's interpretation is not consistent with prior interpretations of the Cumberland Road provision because County had not previously applied the provision, notwithstanding the contrary assertion of Hawarden and County that for "two decades" County has interpreted the Cumberland Road provision to require extension of Cumberland Road in stages. [4] The administrative record, namely a transcript of the pertinent Planning Commission hearing on August 18, 2005, reveals that 20 years earlier (which would be before [*10] 1989 when County adopted the General Plan) County obtained "an exaction" from the residents of Cedar Ridge "towards the establishing [of] a fund" to complete Cumberland Road, and "[t]hat money still sits in that fund." The basis of that "exaction" is not revealed in the administrative record (or at least is not readily apparent to this court), but what is clear is that the exaction was not, and could not have been, based on the General Plan because the General Plan was not adopted until several years later and therefore was not in effect at the time. [5]

> 4 In the first of three requests for judicial notice, County and Hawarden ask that we take judicial notice of conditions of approval for two projects, Mill Pond Planned Development and Cedar Ridge (exhibits A and B, respectively, to the judicial notice request), which they contend support the assertion that County has consistently interpreted the Cumberland Road provision to require incremental construction and payment of a pro rata share of the cost to complete Cumberland Road to Highway 18. The request for judicial notice is denied because the evidence was not part of the administrative record presented in the trial court and therefore [*11] could not have been considered by the trial court in granting the writ petition. Moreover, even if we granted the judicial notice request, we would conclude that the evidence does not support the position espoused by Hawarden and County. The pertinent Mill Pond condition of approval does not expressly address the General Plan requirement regarding Cumberland Road, and even if it did, the condition clearly indicates that it was adopted on May 29, 2006, which is after County approved the Blue Ridge project. Similarly, the conditions of approval pertinent to Cedar Ridge do not expressly mention the Cumberland Road provision in the General Plan, nor could they refer to that provision because County approved Cedar Ridge in 1984, but did not adopt the General Plan that contains the Cumberland Road provision until 1989.

5 Plaintiffs request that we take judicial notice of nine items, identified as exhibits A through I, which include a letter to a County Planning Division employee (Exhibit A) and email messages between various employees of County's Planning Division (Exhibits B, D, E, F, G, and H) that reveal the history of the fund created with the Cedar Ridge exaction, and also explain how [*12] County decided to use a similar approach in interpreting and applying the Cumberland Road provision in this case. The request for judicial notice is denied with respect to exhibits A, B, D, E, F, G, and H, because those items were not presented to Planning Commission or the County of Board of Supervisors and therefore were not part of the record considered by the trial court in granting the writ petition. For this same reason, i.e., they were not part of the administrative record, we deny plaintiffs' request with respect to exhibits C and I, which pertain to the issue of the project impact on the Southern Rubber Boa, a threatened species found on the site. We also point out that under *Evidence Code sections 452* and *459*, we may take judicial notice of the fact that the communications took place, because those communications are not reasonably subject to dispute, but we may not judicially notice the truth of the facts contained in those communications. (See *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 882.*)

In short, County's interpretation and application of the Cumberland Road provision in this case is not consistent with the General Plan. [*13] For that reason, we will affirm the trial court's order granting the petition for peremptory writ of mandate, even though the trial court also purported to rely on County's fire safety plan as the basis for its ruling. On appeal we affirm the result if it is correct on the law, and disregard the reason for the ruling. (*D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 19* ["'No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.'"].)

2.

THE CROSS-APPEAL BY PLAINTIFFS

In addition to raising the issue regarding the Cumberland Road provision, plaintiffs also alleged in their writ petition that County failed to identify a reliable water source for the Blue Ridge project and thereby violated CEQA as well as the General Plan and County's Development Code. Plaintiffs also alleged another CEQA violation, namely the adequacy [*14] of County's analysis of the project's impact on the Southern Rubber Boa. The trial court denied the writ petition with respect to these two issues. Plaintiffs, as previously noted, challenge the trial court's ruling, and we now address those claims. [6]

6 In their response to the appeal by County and Hawarden, plaintiffs asserted numerous ways in which the Blue Ridge project is inconsistent with the General Plan. However, they do not raise those claims in their cross-appeal.

A. Standard of Review

"In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the courts' inquiry 'shall extend only to whether there was a prejudicial abuse of discretion.' (*Pub. Resources Code, § 21168.5.*) Such an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Citations.]" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 426-427*, fn. omitted (*Vineyard*).) "An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is [*15] the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.]" (*Id. at p. 427.*)

B. Analysis

We first address plaintiffs' claim that County failed to identify a viable source of water for the project, an oversight that violates not only CEQA but also County's Development Code and General Plan. We agree with the CEQA claim and conclude that the EIR is inadequate for reasons we now explain.

(i) CEQA Compliance Regarding Water

Both the draft and final environmental impact reports (DEIR and FEIR, respectively which collectively comprise the EIR) state, in pertinent part, that the Hawarden project is within the Lake Arrowhead Community Services District (LACSD), and LACSD encompasses about 4,900 acres, including the community of Lake Arrowhead, to which it provides water service. The DEIR states that LACSD relies almost entirely on water from Lake Arrowhead to meet its water demands. The exception apparently is "[a] small portion of the LACSD service area known as Deer Lodge Park [that] includes

water supplies that are derived from a small number of wells and a connection [*16] to the State water project through the Crestline-Lake Arrowhead Water Agency (CLAWA). This water is pumped from Silverwood Lake. Annually about 10-15 acre-feet are produced from local wells and 50 acre-feet are purchased from CLAWA." Both the DEIR and FEIR state that LACSD has the legal right, as the result of a quitclaim deed recorded in 1975, to draw a total of 6,541 acre-feet per year from Lake Arrowhead. However, the FEIR states in a footnote that in December 2004, the State Water Resources Control Board challenged LACSD's right to withdraw water from Lake Arrowhead and that challenge had not yet been resolved.

The DEIR and FEIR contain lengthy sections nominally directed at addressing the subject of water supply. Although the mechanism for supplying water to the Blue Ridge project is addressed (the project will connect to existing water lines at Cumberland Drive [*sic*]), neither the DEIR nor the FEIR identify the source of the water for the Blue Ridge project. That issue is only touched on in two sections of the DEIR and FEIR. First, in a section entitled "Impacts on Water Supply and Demand" the DEIR states, "The LACSD report [presumably referring to the 2000 Urban Water Management [*17] Plan] indicates that a safe yield [from Lake Arrowhead] has been established, through previous studies, to be approximately 4,000 acre-feet of water. The district calculates demand at 300 gallons per day per connection. The proposed project (58 units) would therefore require an estimated 17,400 gallons per day after build-out (equivalent to 19.5 acre-feet annually). The LACSD has indicated that there are sufficient water resources in place or required of the developer that will ensure water service until 2020. [Fn. omitted.]" The pertinent paragraph in the FEIR states, "Analysis of water demand and supply projections for the LACSD service area, including Blue Ridge at Lake Arrowhead, demonstrates that projected supplies exceed demand through the year 2020. These projections consider ultimate build-out of the Lake Arrowhead community based on available private land, which is expected to be approximately 10,000 connections. The district calculates demand at 300 gallons per day per connection. The proposed project (58 units) would therefore require an estimated 17,400 gallons per day after build-out (equivalent to 19.5 acre-feet annually). Previously, LACSD has indicated that there [*sic*] [*18] sufficient water resources were [*sic*] in place or required of the developer to ensure water service until 2020. [Fn. omitted.] However, the original Water Service Certifications for Tentative Tract No. 16185 [the Blue Ridge project] have since lapsed, and the applicant is in the process of obtaining new water service certifications for the project, pursuant to the LACSD Rules and Regulations for Water and Wastewater Service (Updated 2004)."

In a letter dated December 16, 2004, the operations manager of LACSD identified numerous inaccuracies in the DEIR discussion of water, and stated, in pertinent part, that it is LACSD's "policy to reduce and eliminate reliance on Lake Arrowhead as the community's sole source of water supply. The proponent [Hawarden] would be required to fund the cost of fully developing and dedicating to the District a source, or sources[,] of water sufficient to supply all of the water demand associated with the proposed project." The LACSD operations manager reiterated that requirement in a later section of his letter: "Substantial portions of Section 4.5 ["Water Supply"] are incorrect and need to be revised. For example, this section includes a discussion of the [*19] legal basis for [LACSD's] right to draw water from Lake Arrowhead to provide domestic water. This discussion should be updated to acknowledge that this water right is presently being challenged before the State Water Resources Control Board. The DEIR discussion concerning groundwater and State Water Project supplies also need [*sic*] to be corrected and revised. [P] *As previously stated, the proponent would be required to fund the cost of developing and dedicating to [LACSD] a source or sources of water sufficient to supply all of the water demand associated with the proposed project.*" [7] (Emphasis added.)

> 7 Hawarden acknowledged in a letter dated August 9, 2005, that the Blue Ridge project would not rely on Lake Arrowhead water and that Hawarden "will be securing and funding an alternative water supply that will fully service our development."

Presumably the above noted letter from LACSD's operations manager explains the changes made to the section entitled "Potable Water Sources" in the DEIR, the other section that addresses the source of water for the Blue Ridge project. The DEIR states in pertinent part that, "[t]he proposed project's water needs will be met by placing a 500,000 gallon, [*20] steel tank reservoir on lot 'B' [of the project] which will be filled by water from Lake Arrowhead." The Potable Water Sources section in the FEIR states, in pertinent part, that the reservoir on lot B "could be filled by water from Lake Arrowhead *or alternative water sources as may be secured by the project and approved by LACSD.* With assurance of water supply from sources other than the Lake, and with implementation of conservation methods, water supply will be available to meet water demand for the Blue Ridge project." [8]

8 This last sentence is ambiguous. The "assurance of water supply from sources other than the Lake" referred to in that sentence could be a reference to the requirement that Hawarden fund a water supply from sources other than Lake Arrowhead. It could also mean that adequate water sources other than Lake Arrowhead have been identified. If the latter, those sources are not identified in the EIR, at least not in a manner that makes their existence obvious to this court.

The FEIR includes the above emphasized language as a purported mitigation measure: "**U-W-2(A) Water Supply Source.** The developer shall fund the cost of fully developing and dedicating to LACSD a source, [*21] or sources[,] of water sufficient to supply all of the water demand associated with the proposed project. Evidence of compliance with this measure to the satisfaction of LACSD shall be provided to County Environmental Health Services prior to recordation of the Final Map[.]"

The CEQA findings adopted by the Planning Commission in the course of certifying the EIR and approving the tentative tract map for the project expressly acknowledge that a specific water source for the Blue Ridge project is not identified in the final EIR. Those findings state, in pertinent part that, "The Project will not divert water from Lake Arrowhead. The proposed Project's water needs will be met by placing a minimum 300,000 gallon, partially buried water reservoir (or greater, up to 500,000, at the option and expense of LACSD) on lot 'B,' which will be filled by an alternative water source(s) as may be secured by the Project and approved by LACSD." [9]

9 The Planning Commission CEQA findings also state that, "Sufficient water supply is anticipated to be available through the year 2020 to meet the entire 19.5 acre-feet per year demand associated with the proposed Project. However, the EIR concludes that without [*22] mitigation, the impact may be potentially significant." It is apparent from the EIR that the water supply in question, i.e., the one deemed to be sufficient through the year 2020, is water from Lake Arrowhead. The mitigation requirement is that the developer fund the cost of fully developing a source of water other than Lake Arrowhead to meet all the project's water needs.

Hawarden and County point out that LACSD has agreed to provide water to the project, as evidenced by three "will serve" letters, [10] and therefore the EIR identifies the project water source. The EIR identifies the water supplier, which is LACSD, but not the source of the water LACSD will supply to the project or the environmental impact of obtaining water from that source. Despite the lengthy discussion of water in the EIR, including the previously noted assurances from Hawarden that the project will not use water from Lake Arrowhead, the question remains--if the project is not getting water from Lake Arrowhead, where will the project get its water, and what is the environmental impact of obtaining water from that source? Both the DEIR and FEIR contain a great deal of information about water, but neither provides [*23] an answer to that question.

10 The most recent "will serve" letter is the subject of County's/Hawarden's supplemental request for judicial notice. We deny that judicial notice request because the letter, Exhibit 1 to the judicial notice request, is dated August 3, 2007, and therefore is not relevant to the issue of whether the FEIR that County approved in 2005 adequately addressed the environmental impact of providing water to the project. Moreover, the letter does not identify the source of water for the project. Exhibit 2, which is a letter dated September 19, 2007 (the correct version of which is contained in County's/Hawarden's notice of errata to request for judicial notice), from County's Land Use Services Department, is irrelevant for the same reason. In fact, that letter reinforces our conclusion that the EIR did not identify the source, or sources, of water for the Blue Ridge project, or the environmental consequences of acquiring water from those sources, because the letter identifies the potential sources of "Non-Lake Arrowhead LACSD water supplies" that could be used to provide water for the project.

In our view, the circumstances in this case are no different than those in [*24] the cases the Supreme Court cited in *Vineyard,* which collectively "articulate certain principles for analytical adequacy under CEQA . . . ." (*Vineyard, supra, 40 Cal.4th at p. 430.*) As pertinent here, those principles are that "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to 'evaluate the pros and cons of supplying the amount of water that the [project] will need.' [Citation.]" (*Id. at pp. 430-431.*) "[T]he future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA. [Citation.] An EIR for a land use project must address the impacts of *likely* future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. [Citation.]" (*Id. at p. 432.*) "Finally, where, despite a full discussion, it is impossible to confi-

dently determine that anticipated future water sources [*25] will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [Citation.] The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize. But when an EIR makes a sincere and reasoned attempt to analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended sources fail to materialize may play a role in the impact analysis." (*Ibid.*)

Although *Vineyard* was decided after this case and involved the development of more than 6,000 acres of land into a master planned community that would include 22,000 residential units as well as 480 acres of office and commercial space (*Vineyard, supra, 40 Cal.4th at pp. 421-422*), it nevertheless stands for the unremarkable principle that an EIR must "adequately address[] the reasonably foreseeable *impacts* of supplying water to [a] project." (*Id. at p. 434.*) In order to fulfill that obligation, when the EIR identifies alternate [*26] likely sources of water for a project, the EIR must also address the reasonably foreseeable likely impacts of supplying water from each alternative source. (*Ibid.*)

In this case, the EIR does include a section entitled "LACSD Water Demand and Supply Report" that sets out water source options that LACSD has considered in view of its need to reduce and eventually eliminate reliance on Lake Arrowhead. Those potential sources and future projects include importing water from the State Water Project, sinking ground water wells, and annexation to San Bernardino Municipal Water District. [11] The EIR does not discuss the likelihood that water will actually be obtained from any of the identified sources. [12] Nor does the EIR address the reasonably foreseeable environmental consequences of supplying water to the project from any of those sources. [13] Because it does not address those issues, the EIR does not comply with the requirements of CEQA (*Vineyard, supra, 40 Cal.4th at p. 435*) and, consequently, County abused its discretion in certifying the EIR.

11 The FEIR notes that LACSD recommended in its report that "each of the projects in Milestone 1 be pursued." Milestone 1 projects are defined as "Groundwater [*27] Development Phase I: Drilling two wells on Lake Arrowhead Country Club (LACC) property to supply the irrigation needs of the golf course and for drinking water supplies." In other words, Milestone 1 involves only one project.

12 County and Hawarden assert that if an actual water source is not found then Hawarden will pay a water resources fee to LACSD. Payment of a water resources fee might constitute adequate compliance with County code requirements, an issue we address below, but it does not satisfy the requirements of CEQA because the FEIR must identify an actual water source in order to address the environmental impact of obtaining water from that source.

13 At the Planning Commission hearing on August 18, 2005, a senior County planner stated that the various sources of water for the project included in the FEIR were taken from LACSD's urban water management plan and the environmental consequences of each of those options were analyzed in preparing that plan. That statement is incorrect. Preparation and adoption of an urban water management plan is governed by *Water Code section 10620 et seq.*, and *Water Code section 10652* expressly exempts that process from CEQA. More importantly, [*28] even if environmental review had been conducted in the course of preparing the urban water management plan, the results of that review were not included in any of the documentation provided to the Planning Commission members, as one of the commission members pointed out at the hearing.

(ii) *County General Plan and Development Code Compliance*

Plaintiffs also claim that failure to identify an actual water source for the Blue Ridge project violates the General Plan and County's Development Code. In particular, plaintiffs claim that failure to identify an actual source of water for the project violates Goal C-29 of the General Plan which states, "County shall encourage and participate with the local responsible water authorities to: [P] . . . [P] **C-29** Approve new development conditioned on the availability of adequate and reliable water supplies and conveyance systems."

As previously discussed, approval of the Blue Ridge project is conditioned on the developer funding an adequate water supply for the project. Unlike CEQA, the General Plan objective does not require that the water supply be identified. Consequently, we conclude that County's approval of the project is consistent with the General [*29] Plan.

Plaintiffs also contend that failure to identify a specific water source for the Blue Ridge project violates section 83.040205, subdivision (a)(2) of County's Development Code, which specifies the format for tentative maps and states, "The tentative maps shall show or be accompanied by the following information: [P] . . . [P]

(B) Source, name of supplier, quality and an estimate of available quantity of water, or, if to be served by an established mutual water company or an established public utility, a letter shall be furnished to indicate that satisfactory arrangements have been made or can be made for water supply."

The CEQA findings adopted by the Planning Commission, as noted above, expressly state that water for the onsite project reservoir will come from "an alternative water source(s) as may be secured by the Project and approved by LACSD. . . . Evidence of the alternative water supply must be provided prior to recordation of the Final Map." Because no other evidence was presented to the Planning Commission that identified the source of the water for the project, the Planning Commission approved the tentative tract map for the Blue Ridge project without requiring compliance [*30] with County Development Code section 83.040205.

(iii) *CEQA Compliance Regarding Southern Rubber Boa*

Plaintiffs' final contention is that the EIR does not accurately assess the project impact on the Southern Rubber Boa (sometimes also referred to as SRB), and therefore the mitigation measures adopted by County are inadequate. In particular, plaintiffs contend that County's conclusion in the EIR that only 0.62 acres of the Blue Ridge project site are habitat occupied by the SRB is not supported by substantial evidence and, in fact, the entire project site (39.8 acres) is occupied by the SRB. Because the EIR does not accurately identify SRB habitat, plaintiffs contend that the mitigation measures specified in the EIR and adopted by County are also inadequate. We agree, for reasons we now explain, that the conclusion regarding the extent of SRB habitat on the project site is not supported by substantial evidence and therefore the evidence does not support the mitigation measures. In reaching this conclusion, we decline to express an opinion on the correct size of the SRB habitat because that is an issue that must be resolved later, with evidence that will be included in a subsequent EIR.

(a.) [*31] **Standard of Review**

Although previously stated, it bears repeating that our review of County's action in certifying the Blue Ridge EIR is limited to determining whether a prejudicial abuse of discretion occurred because either County did not proceed in a manner required by law, or its decisions are not supported by substantial evidence. (*Vineyard, supra, 40 Cal.4th at pp. 426-427.*) "Courts are 'not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document.' [Citation.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1197.*) "The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions." (*Id. at p. 1198.*) "Substantial evidence is defined in the CEQA Guidelines as 'enough relevant information and reasonable inferences from this information [*32] that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' [Citation.] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations.] It does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment. [Citation.]" (*San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 654*, fn. omitted, citing CEQA Guidelines, § 15384, subds. (a) & (b), and *Pub. Resources Code, § 21082.2, subd. (c).*)

(b.) Analysis

The Blue Ridge project site at issue in this appeal is within an area designated in the General Plan Biological Resources Overlay as suitable habitat for the SRB. [14] The EIR states that, "The SRB has a very limited distribution within the San Bernardino and San Jacinto Mountains and typically occurs between 5,000 and 8,000 feet in elevation [citation]. Because of the secretive nature of the species, very little is known about their behavior and biology. [*33] Typically this snake is found under rocks, rotting logs or thick vegetative debris in forested areas containing mixed conifer-oak vegetation on relatively gentle slopes with nearby riparian habitats [citation]." The DEIR states that "[f]or the purposes of this report, gentle slopes are those with 30 percent slope or less." The SRB "has been found to migrate from its winter hibernating grounds on south facing slopes to lower moist canyon bottoms and riparian areas in the springtime and summer [citation]." One expert cited in the EIR reported that SRB travel as much as 300 yards in one season, while another reported that SRB travel as much as 500 meters (546 yards) in a season.

> 14 The SRB is considered a threatened species by the California Department of Fish and Game, and a species of concern by the United States Fish and Wildlife Service.

The EIR also states that habitat suitable to SRB foraging, nesting, and hibernating exists on the project site. Biologists employed by Michael Brandman Associates (MBA), the company County retained to prepare the

Blue Ridge project EIR, determined that approximately 17.6 acres of the site are considered moderately suitable SRB habitat, however, "[i]mpacts [*34] to moderately suitable habitat are not considered significant and thus do not require mitigation. These areas have slopes greater than 30 percent." The project site has 7.4 acres that "contain highly suitable habitat (slopes less than 30 percent); however, only 0.62 acre is considered occupied." The DEIR states that the impact of the project to these areas is considered significant.

The above noted conclusions are purportedly based on focused SRB habitat surveys conducted by Thomas Leslie Corporation (TLC) in the spring of both 2001 and 2002. In the 2001 survey, TLC did not find any SRB on the project site. However, over seven days in April 2002, TLC found five female SRB on the project site, in two locations on what is designated lot 28 of the tentative tract map. [15] In May 2003, County hired MBA to reassess the project impact on SRB habitat and make recommendations for mitigating the identified negative impacts. Thus, the above noted conclusions in the EIR regarding SRB habitat are based on MBA's purported reassessment of the project site.

> 15 Copies of TLC's 2002 survey report are included in both the Appendices to the DEIR and in the Appendix-Additional Materials appended to the FEIR. [*35] That report states, among other things, that SRB surveys were conducted over the entire site. However, a caption on a photograph included in the report suggested that the searches were limited to specific areas associated with the center line of proposed streets and around proposed driveways. In response to County's comments contained in its initial study, TLC clarified that the 2002 SRB study was based on searches conducted "over the entirety" of the project site.

Plaintiffs contend that the conclusions regarding SRB habitat are not supported by substantial evidence, first, because the presence of five female SRB on the project site during the spring 2002 survey supports an inference that males could also be on or near the site, and that, in turn, indicates the presence of a "robust breeding population" that will produce offspring and those offspring will disperse in all directions across the entire project site. These assertions are based on comments to the DEIR submitted by the Sierra Club and the Audubon Society and included in the FEIR, along with MBA's responses. We are not persuaded that the noted assertions are ones of fact that need to be addressed in the EIR. [16] The issue [*36] posed by the noted assertions is whether there is sufficient evidence to support the conclusion in the EIR, previously noted, that 0.62 acres of the project site are actually occupied by SRB and that 7.4 total acres are suitable SRB habitat.

> 16 The FEIR contains responses to the noted comments which include possible explanations for why all five SRB found on the property were female. Because they are not relevant to our resolution of this issue, we will not recount MBA's responses, and instead note that they consist mostly of speculation, which in our view is appropriate given that the comments to which they are appended are also based on speculation and supposition.

With respect to the size of suitable habitat, the EIR includes the evidence, set out above, that experts believe the SRB migrates between 300 yards and 546 yards in a season. The EIR adopted the larger figure to calculate the size of the suitable SRB habitat on the project site. The EIR also states, in the response to the above noted comments to the DEIR by the Sierra Club that, "The County hired MBA, an independent and impartial biological consulting firm, to reassess the extent of SRB habitat and to make recommendations [*37] for mitigating any identified impacts. MBA did a comprehensive search of existing literature, including the review of the USFS's '*Habitat Management Guide for Southern Rubber Boa in the San Bernardino National Forest*' as well as direct communication with several of the leading experts in SRB biology. The results of MBA's reassessment and recommendations were the basis for the analysis and recommended mitigation measures presented in the Draft EIR. It should be noted that Hoyer and Stewart in 2000 conducted a two-year study on SRB movement studying 21 individuals. 'In all but two instances, recaptured SRBs were found within 8 meters (25 feet) of their original recapture [*sic*] sites. The two exceptions were adult males found during the breeding season at a rock outcrop approximately 70-75 meters (250 feet) away.' This study illustrated the fact that SRBs display strong site fidelity and over a course of several years, rarely move more than a few meters from its [*sic*] den. Occupied habitat estimates for the project site were based on movements of up to 500 meters (over 1,600 feet)."

Plaintiffs contend that the EIR misinterprets the results of the Hoyer and Stewart study because the study [*38] involved more than 21 SRB. Although the study did involve more than 21 snakes, that number is irrelevant. [17] The significant fact however is not disputed--of the 104 snakes observed during the two-year study, 21 were what the study termed "recaptures," i.e., snakes that had previously been captured in the course of the study, and 83 were initial captures, i.e., ones that had not been captured before. [18] "Of the 21 recaptures, 10 occurred the year following initial capture, four were in the two con-

secutive years after initial capture, and one was two years after initial capture. . . . In all but two instances, recaptured SRBs were found within 8m of their original capture sites. The two exceptions were adult males found during the breeding season at a rock outcrop approximately 70-75m away. These observations suggest a strong fidelity to home sites." In short and contrary to plaintiffs' claim, the study supports the factual assertion included in the above noted response to comments.

> 17 Contrary to plaintiffs assertion, the study in question involved a total of 104 snakes, not 83, and the data does not support plaintiffs attempt to conduct a relative analysis of the migration habits of [*39] SRB because 83 of the snakes identified in the study had never previously been observed. The authors of the study did not know anything about the migration habits of those 83 snakes and therefore we cannot conclude, as plaintiffs urge that only 19 of 83 displayed site fidelity, "which shows a much wider dispersal and weaker site fidelity."
>
> 18 The Hoyer and Stewart study is included the joint appendix.

Plaintiffs also contend that the methodology used to conduct the SRB surveys does not comply with the pertinent Department of Fish and Game (DFG) draft protocols because the surveys did not include required maps of potential SRB habitat and site vegetation, and were not conducted on the entire site over the course of three years, at intervals of every one or two weeks during the period between March 15 and May 15. This claim, like plaintiffs' previous assertions, is directed at challenging the sufficiency of the evidence to support the conclusion in the EIR regarding the size of the SRB habitat on the project site.

Although the SRB surveys do not comport with the requirements of the DFG draft protocols, they nevertheless include information that the protocols are designed to collect. As previously [*40] noted, TLC conducted surveys in the spring of both 2001 and 2002, but only found SRB on the project site during the 2002 survey. According to the 2002 survey report, dated June 4, 2002, TLC conducted nine focused surveys over the course of seven days, between April 6 and April 28, 2002; "[a]t the direction of the Department [presumably referring to the DFG] surveys were terminated on April 28, 2002, because SRB were discovered onsite." The 2002 report includes descriptions of site topography and vegetation, and also includes the explanation that as a result of phone conversations with Raul Rodriquez [of the DFG] "it was acknowledged that the preparation of [a map showing the location of downed logs and rocky outcrops on the project site] was not necessary. Instead, tables provided by John Hatcher and Jim Bridges, showing the square footage of logs and rocky outcrops [based on field investigations of the project site conducted on April 24, and April 29, 2002] were used to calculate the acreages of potentially suitable SRB habitat. The tables are included in Appendix F. [P] As documented by the forester's research, 0.65 acres of potentially suitable but unoccupied SRB habitat are present [*41] within the boundaries [of the project]: 0.05 acres of rock outcrops and 0.60 acres of logs (the total located in residential and open space lots and road prisms)."

The problem with the EIR in our view is that it does not calculate SRB habitat based on information derived from the TLC 2002 SRB survey results. Instead, the DEIR states, "Suitable foraging, nesting, and hibernating habitat exists on the project site" and then calculates the SRB habitat based on the analysis of MBA biologists who determined, as noted previously, "that approximately 17.6 acres of Sierran mixed coniferous forest habitat occurs onsite that could serve as moderately suitable habitat. Impacts to moderately suitable habitat are not considered significant and thus do not require mitigation" because the "areas have slopes greater than 30 percent. Additionally, 7.4 acres onsite contain highly suitable habitat (slopes less than 30 percent); however, only 0.62 acre is considered occupied. Impacts to these areas are considered significant. This differs from TLC's 2002 analysis . . . , which concluded that only 0.65 acre provided suitable habitat, of which 0.02 acre was occupied. TLC observed five females within this [*42] 0.02-acre area of the project site during focused surveys, and relocated two snakes to an offsite location in April, 2002." [19] The DEIR states that "fallen logs onsite provide suitable habitat for hibernating and denning [a term not previously used in either the DEIR or FEIR and which could mean nesting but might also mean hibernating]. However, suitable SRB habitat extends beyond fallen logs where they were found. Additionally, SRB use a much wider area during foraging and seasonal migration [a phrase not used previously]. It should be noted that SRB was [*sic*] only found on the northwest portion of the property. TLC reported that the southerly and westerly facing slopes appeared drier than the areas where SRB were found. It is unknown why these snakes may be restricted to this portion of the site and if the moisture difference is a contributing factor. [P] Areas of the site that were rated unsuitable habitat include areas with steep slopes (>30 percent grade) and areas with little or no needle or leaf litter. During the follow-up assessment in Nov. 2003, it was determined that the increase in beetle-infested trees had no negative impact on the quality or suitability of SRB habitat [*43] found on the project site."

19 Whether TLC had the required DFG approval to move the snakes, a claim raised by plaintiffs, is irrelevant in our view. The relevant fact for purposes of our review in this appeal is that the two snakes were found on the project site and were counted in TLC's SRB survey.

In its discussion of Sensitive Wildlife Species, the DEIR states, in pertinent part, "that SRB can travel up to 500 meters from their hibernacula site. If it is assumed that each SRB found on site uses approximately 500 square meters for hibernating, foraging and migrating, the five individuals found onsite, would occupy approximately 0.62 acre of habitat." "Additionally, approximately 6.8 acres of suitable but unoccupied habitat occurs within the project site and will be directly or indirectly impacted by the project. Impacts to this species would be considered significant."

The FEIR purports to explain, in the response to comments, that the 0.62 acres of occupied habitat was calculated by using 546 yards (or 500 meters), which is the longest distance of seasonal movement reported in the pertinent literature on SRB, to "create a radius around each identified denning/hibernation site to determine [*44] SRB occupation (or 0.124 acres per snake found onsite)." That, however, cannot be how the 0.62 acres of occupied habitat was calculated. The calculation obviously is the result of attributing 500 square meters, or 0.124 acres, [20] to each of the five SRB located on the project site (5 x 0.124 = 0.620). That figure is not based on any of the facts disclosed in the EIR, and therefore is not supported by the evidence, as we now explain.

20 See http://www.onlineconversion.com

According to the facts, TLC found 5 SRB on the project site, two in one tree stump and three in another tree stump on lot 28. The two tree stumps were 39 feet apart. Using these facts in the formula purportedly applied in the EIR, the territory actually occupied by SRB is determined by using the two tree stumps as the denning/hibernating/nesting sites of the five SRB, and calculating the area of a circle with a radius of 546 yards around each of the two sites. [21] The EIR calculated the area of a square 23 meters by 23 meters, and then allotted that area to each of the five SRB found on the project site. That calculation is incorrect both factually and mathematically. Using the assumed fact that an SRB will travel up to [*45] 546 yards in any direction from a denning/hibernating/nesting site, the area traveled is a circle, not a square, and the facts indicate that there are two denning/hibernating/nesting sites, on the project site, not five. [22] Because the calculation is incorrect, the conclusion contained in the EIR regarding SRB habitat is not supported by substantial evidence.

21 As plaintiffs correctly point out, the area of a circle is calculated using the following formula: Area = [pi] r<2>, with r being the radius of the circle, which in this case is 546 yards. So the correct calculation is Area = 3.14 x 546 x 546.

22 Because the denning/hibernating/nesting sites are located within approximately 40 feet of each other, the area encompassed by the two circles will necessarily overlap.

County and Hawarden point out there is other evidence in the record, namely the previously discussed study by Hoyer and Stewart, that shows SRB do not migrate or forage far from their denning/hibernating/nesting site. However, that was not the evidence MBA used in the EIR to calculate SRB habitat. As previously noted, both the DEIR and FEIR use 546 yards, the greatest migration distance mentioned in the pertinent literature [*46] or by the relevant experts, to calculate the area within the Blue Ridge project site that is actually occupied by SRB. The size of the SRB habitat directly determines or affects the proposed mitigation measures contained in the EIR and adopted by County when it certified that document. Therefore, the erroneous calculation of SRB habitat necessarily is prejudicial because it ""precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."' [Citation.]" (*San Joaquin Raptor Rescue Center v. County of Merced, supra, 149 Cal.App.4th at p. 653.*)

"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.' [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 390.*) "The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.' [Citation.] The [*47] EIR is therefore 'the heart of CEQA.' [Citations.] An EIR is an 'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.' [Citations.] The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' [Citations.] 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. [Citations.]

The EIR process protects not only the environment but also informed self-government." (*Id. at p. 392.*)

We also share plaintiffs view that use of slope steepness to calculate suitable SRB habitat on the project site is at the very least unclear if not also actually unsupported by the evidence, and therefore arbitrary. The analysis is unclear because it does not explain whether potential [*48] SRB denning/hibernating/nesting habitat, i.e., rock outcrops, downed logs, tree stumps, leaf litter, etc., are actually located on any of the slopes that are greater or less than 30 percent. If the calculation is based only on whether the slope is more or less than 30 percent, the calculation that 7.4 acres is the only suitable habitat is not supported by the evidence because there is no evidence in the record to support the conclusion that slopes greater than 30 percent are not "gentle" and therefore not suitable SRB habitat. Conversely, or stated differently, there is no evidence in the record to support the assertion that only slopes less than 30 percent are gentle and therefore are suitable SRB habitat.

On the issue of suitable habitat, as previously noted, a 1985 study by Loe is cited in the EIR as evidence to support the assertion that SRB inhabit "relatively gentle slopes." However, there is no evidence to support the conclusion that the quoted phrase means slopes less than 30 percent. The EIR simply defines gentle slopes as those with 30 percent slope or less, but it does not cite any source or authority to support that definition. Nor is any authority or factual source offered [*49] to support the statement in the EIR, noted above, that, "It is not reasonable to characterize slopes greater than 30 percent as gentle." The assertion, unless supported by a source or other evidence, is nothing more than an arbitrary conclusion that begs the obvious question--why is it not reasonable to characterize slopes greater than 30 percent as gentle? [23]

> 23 In their discussion of the slope issue, County and Hawarden point to photographs of the SRB included in the record and assert that "their body characteristics appear to be more akin to that of a large earthworm . . . than a snake, which explains the SRB's low mobility levels and 'strong fidelity to home sites.'" Other than their color, which appears to be olive, the SRB depicted in the photographs look like snakes, not earthworms, to us. But even if we concurred in the characterization, we do not perceive its relevance to the slope issue nor do we agree that it would account for home site fidelity. Snakes and earthworms both slither on the ground, a mode of movement that seems particularly well suited not only to travel up and down steep slopes but also to inhabiting slopes greater than 30 percent, assuming suitable habitat [*50] exists. Snakes, because they are larger, presumably would travel farther than earthworms which would account for an earthworm's site fidelity, assuming such fidelity exists. However, an earthworm the size of a snake presumably would travel just as far and as fast as the reptile. In short, the fact that SRB look like a large earthworm in a photograph explains nothing about the snakes habits or habitat.

We also do not share the assumption implicit in the EIR that all slopes greater than 30 percent are necessarily the same and differ only in their steepness. Some slopes although steeper than 30 percent, may nevertheless have rock outcropping or slight depressions that would accommodate SRB habitat, while others that are less than 30 percent slopes may be bare and therefore not suitable habitat. In other words, degree of steepness of a slope, standing alone, is insufficient evidence to support a conclusion regarding the size of the SRB habitat on the project site. It is nothing more than speculation and conjecture.

It occurs to us that the deficiencies in the EIR with regard to defining the SRB habitat on the project site could be the result of not following the DFG draft protocols more [*51] closely. Those protocols require among other things "3 years (3 survey seasons) of surveys following an approved protocol." In addition, "surveys shall be conducted every one or two weeks, during the period from March 15 to May 15, lasting 1 to 4 consecutive days (depending on the size of project or site and amount of suitable habitat), and may begin just prior to complete snow melt." Only the 2002 survey TLC conducted comports with the last quoted requirement. Ironically, the EIR ignores the facts contained in that survey in its calculation of SRB habitat on the project site. A more accurate picture of the actual SRB habitat might well have emerged if two additional years, or seasons, of surveys had been conducted in accordance with the draft protocols.

Whatever the explanation, the EIR discussion and conclusion regarding the effect of the Blue Ridge project on SRB habitat are not supported by substantial evidence, and therefore the mitigation measure regarding habitat acquisition specified in the EIR [24] is not supported by substantial evidence. That measure states in pertinent part that, "The project proponent will acquire and convey to a suitable land trust or other open space management [*52] entity acceptable to the County of San Bernardino, offsite lands within the mapped occupied habitat of the SRB [mapped SRB lands according to Loe (1985)]. Lands acquired and conveyed will be at a ratio of approximately 5:1 for occupied SRB habitat and approximately 1:1 for highly suitable but unoccupied SRB habitat land, for a total of 10.5 acres. The final ratio for miti-

gation, however, will be established through consultation with the CDFG through the 2081 permit application process." [25] The basis for the specified ratios is not explained or supported by any evidence in the EIR, and as disclosed by the final sentence of the quoted paragraph is also not the result of consultation with the DFG. For each of the reasons noted, we must conclude that mitigation measures set out in the EIR and approved by County when it adopted that document are not supported by substantial evidence.

> 24 Other purported mitigation measures included in the EIR require the developer to obtain a so-called 2081 permit and comply with DFG directives before undertaking ground disturbing activities such as grading, or capturing and relocating any SRB found on the project site. These measures are not fact dependent [*53] and therefore are not implicated by our conclusion that the finding regarding SRB habitat is not supported by substantial evidence.
>
> 25 2081 is a reference to *Fish and Game Code section 2081* which empowers the DFG to authorize the "taking" of an endangered or threatened species under specified circumstances.

Because we conclude that the evidence does not support the conclusion regarding SRB habitat, and therefore does not support the mitigation measures identified in the EIR, we must also agree with plaintiffs assertion that County failed to adopt feasible mitigation measures. However, we can not address the specifics of plaintiffs claim because those details require an adequate analysis of SRB habitat on the project site. Until such an analysis is conducted, we can do no more than cite the general principle, relied on by plaintiffs, that "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible." (*City of Marina v. Board of Trustees of California State University (2006) 39 Cal.4th 341, 368*, [*54] citing *Pub. Resources Code, § 21081, subd. (b)*.)

CONCLUSION

The Blue Ridge project is inconsistent with the express terms of the Cumberland Road provision set out in the General Plan which requires completion of Cumberland Road from Cedar Glen to State Highway 18 as a condition of development of the adjacent property. By approving the Blue Ridge project tentative tract map and conditional use permit without requiring completion of Cumberland Road, County violated the express requirements of its General Plan. Therefore, we must affirm the trial court's order granting the writ petition and issuing the writ of mandate.

The EIR for the Blue Ridge project does not comport with the requirements of CEQA because the document does not identify a source of water for the project or discuss the environmental impact of obtaining water from each of the various sources purportedly identified in the EIR. In addition, the EIR conclusions regarding the SRB habitat located on the project site are not supported by substantial evidence and therefore the EIR fails to set out adequate mitigation measures, in violation of CEQA. Accordingly, the trial court should also have granted the writ petition with respect [*55] to the CEQA issues.

DISPOSITION

The judgment is affirmed with respect to the appeal by County and Hawarden from the trial court's order granting the petition for writ of mandate. The judgment issuing the writ of mandate is modified to require County to prepare an EIR that complies with CEQA in addressing the issues of water supply for the Blue Ridge project and the impact on the Southern Rubber Boa.

Plaintiffs to recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster

J.

We concur:

/s/ Ramirez

P.J.

/s/ Miller

J.