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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

QUARTZ HILL CARES, Plaintiff and Appellant, v. CITY OF LANCASTER et al., Defendants and Respondents; WAL-MART STORES, INC., Intervener and Respondent.	B227957 (Los Angeles County Super. Ct. No. BS122336)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Reversed.

Leibold McClendon & Mann, John G. McClendon; Briggs Law Corporation and Cory J. Briggs for Plaintiff and Appellant.

Stradling Yocca Carlson & Rauth and Allison E. Burns for Defendants and Respondents.

Manatt, Phelps & Phillips, Jack S. Yeh and Keli N. Osaki for Intervener and Respondent.

INTRODUCTION

Quartz Hill Cares petitioned for writ of administrative mandate seeking to overturn the approval under the Planning and Zoning Law (Gov. Code, § 65000 et seq.) and the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq. & Cal. Code Regs., tit. 14, § 15000 et seq. (Guidelines)) by the City of Lancaster and the City Council of the City of Lancaster (the City) of a project to develop 395,000 square feet of commercial retail and restaurant facilities (the project) on 40 acres of residentially-zoned property. The trial court denied the writ petition and Quartz Hill Cares appeals. For the reasons explained below, we reverse the judgment because the City erred in certifying the Final Environmental Impact Report (FEIR).

FACTUAL AND PROCEDURAL BACKGROUND

1. *the project*

The project involves the construction of approximately 395,000 square feet of retail space, to be anchored by a Wal-Mart Supercenter. The site for the project consists of a 40.15-acre parcel owned by Wal-Mart Stores, Inc.[1] Situated about 4.5 miles west of the Antelope Valley Freeway, the project site is located on the northwest corner of 60th Street West and Avenue L in the City, and bounded by an undeveloped lot to the west and undeveloped land followed by residential development to the north.

Wal-Mart assembled nine residentially-zoned lots for the project and so it needed to amend the City's general plan to construct a commercial center. On October 16, 2006, Wal-Mart filed an application with the City for an amendment to the City's general plan to redesignate the property from residential (R-7000 and R-10000) to commercial.

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[1] Lancaster West 60th, LLC, real party in interest, was named as a respondent in the trial court. However, the parties stipulated that Wal-Mart could intervene in the action on the ground that it is the owner of the parcel of land where the project would be built and Lancaster West 60th, LLC was merely its agent in seeking the project approvals. Lancaster West 60th, LLC was dismissed from the action. For clarity, we refer to the real party in interest as Wal-Mart.

2. *environmental review*

The City noticed the preparation of an environmental impact report (EIR) for the project on June 4, 2007. The project's draft EIR (DEIR), available for public review in early 2009, noted that the area surrounding the project site consisted primarily of residential uses and undeveloped land, and that Quartz Hill High School lies approximately 100 feet to the south. The DEIR pointed to the imbalance of jobs to housing in the City. The City's population was 119,416 in 2000, and there were 38,289 households, with employment for 52,119. The Southern California Association of Government (SCAG) forecasted that, in the following 10 years, there would be a population increase of 40.7 percent, a housing increase of 34.3 percent, but only a 14.5 percent increase in employment. Meanwhile, the project was expected to generate approximately 927 new jobs compared to current conditions on the site.

Recognizing that the project would cause the loss of 197 housing units, the DEIR concluded that the project would not significantly displace housing or people. The DEIR explained, although the project would generate 927 jobs, it was not expected to generate a demand for 927 housing units. Many of the new employees were expected to be drawn from the local labor force. The DEIR's "Related Projects listing" included 78 new housing developments that would add 11,130 houses in the area. Thus, the DEIR concluded, the project would not result in a direct demand for new housing in the area beyond that which was already anticipated, and hence the impact of the project on housing would be less than significant.

One area of controversy, the DEIR noted, was that redesignating and rezoning the property from residential to commercial "would be incompatible with the existing residential zone of the site and surrounding residential and school uses, and that [the] quality of life and property value[s] would be decreased with such a zone change. . . . Residents were concerned [about] access between the adjacent residential neighborhoods and the proposed commercial area." However, after analysis, the DEIR concluded that the development of the project and related projects was not anticipated to

substantially conflict with the intent of the City's general plan concerning future development, or with other land use regulations.

The Planning Commission released the FEIR and conducted a public hearing on it on July 7, 2009. On July 8, 2009, the Planning Commission voted, among other things, to recommend to the City Council that it certify the FEIR and adopt all environmental findings, the statement of overriding considerations, and mitigation measures, and amend the general plan to redesignate and rezone the property from residential to commercial.

The following day, the City's planning director notified Wal-Mart of its decision, and that the City Council would review the recommendation at the same time it considered FEIR and the general plan amendment on July 21, 2009.

At the City Council's public hearing, Quartz Hill Cares submitted a lengthy letter objecting to approval of the project. The City's attorney and Wal-Mart's counsel submitted memoranda specifically responding to issues raised by Quartz Hill Cares.

At the close of the hearing, the City Council adopted: (1) Resolution No. 09-73 certifying the FEIR, adopting the necessary environmental findings, a statement of overriding considerations, the mitigation monitoring program, and approving amendment 06-04 to the adopted general plan that redesignated the property from UR (urban residential) to C (commercial); (2) Resolution No. 09-74 approving the conditional use permit (CUP); and (3) Resolution No. 09-75 approving the tentative parcel map.

3. *the proceedings below*

Quartz Hill Cares brought a petition for writ of mandate challenging the City's approval of the applications submitted by Wal-Mart to develop the project. Quartz Hill Cares alleged that the City's approval of the project violated specific provisions of California's Planning and Zoning Law and CEQA. The trial court denied the petition for writ of mandate and sustained the objections of Wal-Mart and the City (together respondents) to Quartz Hill Cares' request for judicial notice. Quartz Hill Cares filed its timely appeal.

CONTENTIONS

Quartz Hill Cares makes numerous assignments of error challenging the trial court's rulings under the Planning and Zoning Law and under CEQA. Quartz Hill Cares also raises procedural challenges.

DISCUSSION

I. The Planning and Zoning Law

(Gov. Code, § 65000 et seq.)

a. *procedural issues.*

1. *standard of review*

Quartz Hill Cares' Planning and Zoning Law contentions challenge the City Council's decision to adopt Resolution No. 09-73 amending the general plan to redesignate the project's site from residential (UR) to commercial (C).

The amendment of an element of a general plan is considered a legislative act, reviewable under Code of Civil Procedure section 1085. (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1289; see also *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 774, 782.) Our review is limited to an inquiry into whether the action was arbitrary, capricious, or entirely lacking in evidentiary support. (*Citizens for Improved Sorrento Access, Inc. v. City of San Diego* (2004) 118 Cal.App.4th 808, 814.)

2. *judicial notice*

Quartz Hill Cares contends that the trial court erred in sustaining respondents' objections to Quartz Hill Cares' request for judicial notice. It also moved this court to take judicial notice of the same documents.

Respondents objected in the trial court and here to the request for judicial notice on two grounds. They argue that the documents were submitted in support of arguments that could have been, but were not, raised in Quartz Hill Cares' opening brief, and so were matters improperly raised for the first time in the reply. They also object to the four documents in the request on the grounds they were not part of the administrative record, and could not be considered by the court in ruling on a petition alleging the City did not

proceed in a manner required by law. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576 (*Western States*).) The trial court denied the request for judicial notice stating that the documents were "extra record evidence" that could not be considered. (*Western States,* at p. 578.)

Western States held "that extra-record evidence is generally not admissible in traditional mandamus actions challenging quasi-legislative administrative decisions on the ground that the agency 'has not proceeded in a manner required by law' " (*Western States, supra,* 9 Cal.4th at p. 576.) That is, in proceedings under Code of Civil Procedure section 1085, where the issue is whether the City's action is "entirely lacking in evidentiary support," or the City "failed to follow the procedure" required by law, extra-record evidence is not admissible. (See *Western States*, at p. 576.)

We address the documents in Quartz Hill Cares' request for judicial notice seriatim. First, Quartz Hill Cares asks us to judicially notice the California General Plan Guidelines 2003, prepared by the Governor's Office of Planning and Research pursuant to Government Code section 65040. This document is judicially noticeable. (Evid. Code, § 452, subd. (c).) Respondents incorrectly argued that this document was extra-record. This is a legal guide to planners on the preparation of a general plan and so it need not be part of the administrative record.

Next, Quartz Hill Cares requests we take judicial notice of the May 18, 2010 official Housing Element Compliance Report, issued by the Department of Housing and Community Development (HCD) pursuant to Health and Safety Code section 50459, subdivision (c). This is not noticeable. This letter was sent nearly a year *after* the City approved the project here. Thus, it is inadmissible extra-record evidence. (*Western States, supra,* 9 Cal.4th at p. 576.) Quartz Hill Cares argues that this letter is admissible under the exception identified in *Western States*, namely " 'only for background information . . . or for the limited purposes of ascertaining whether the agency considered all the relevant factors or fully explicated its course of conduct or grounds of decision.' " (*Id.* at p. 579.) Where this letter was not generated until after the City approved the

FEIR, it could not make up part of the "background information" that the City could have considered.

Third, Quartz Hill Cares asks us to take judicial notice of HCD's June 9, 2005, memorandum entitled " 'Amendment of State Housing Element Law — AB 2348.' " Insofar as the memorandum contains the actual amendment to the statute enacted by the Legislature, it is judicially noticeable (Evid. Code, § 452, subd. (c)).

Finally, Quartz Hill Cares requests we take judicial notice of HCD's April 2, 2009 memorandum entitled "Official State Income Limits for 2009" pursuant to California Code of Regulations, title 25, section 6932. For the reasons given above, it is noticeable. (Evid. Code, § 452, subd. (c).)

Having concluded that three of the four documents listed above are appropriately noticeable, we nonetheless conclude they do not alter the result in this case.[2]

3. *The City Council erred in giving notice of its public hearing, but the error was not prejudicial.*

Quartz Hill Cares contends that the City failed to follow the procedures and give notices required by Government Code sections 65855 and 65856 because the City Council published the notice of its July 2009 public hearing *before* the City Council received the Planning Commission's recommendation, and its notice *failed to include* the Planning Commission's recommendation in the general explanation of the matter to be considered. Respondents counter that the notice adequately detailed the matters to be considered as required by the Government Code. Respondents are wrong.

Government Code section 65856 reads in relevant part, "(a) *Upon receipt of the recommendation of the planning commission*, the legislative body shall hold a public

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[2] We deny Quartz Hill Cares' June 7, 2011 request to take judicial notice of the May 18, 2010 Official Housing Element Report. We grant Quartz Hill Cares' request to take judicial notice of exhibit Nos. 1 through 4 attached to its June 7, 2011 motion for judicial notice. (Evid. Code, § 452, subd. (c).) However, we deny the request to take judicial notice of exhibit Nos. 5 and 6. They are non-legislative documents that were generated after the events in this appeal and so constitute extra-record evidence that cannot be considered. (*Western States, supra,* 9 Cal.4th at p. 578.)

hearing. . . . [¶] (b) Notice of the hearing shall be given pursuant to Section 65090." (Italics added.) Section 65090 provides for publication and provides that "the notice shall be posted *at least 10 days prior to the hearing*" and that the notice shall include the information specified in section 65094. (Gov. Code, § 65090, subds. (a) & (b), italics added.) Section 65094 requires, among other things, that the notice shall include "a general explanation of the matter to be considered . . . ."

"[A] 'general explanation of the matter to be considered' " includes the Planning Commission's recommendation. (*Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 888 (*Sierra County*).) "[N]otice of [the City Council's] hearing *cannot be given until the planning commission has made a recommendation* on the matter under consideration." (*Ibid.*, italics added.) Consequently, the "10-day notice [under sections 65090 and 65094 must] be given only after the planning commission's recommendation has been received" by the City Council. (*Id.* at p. 893.) Only in this way may "the state's policy and Legislature's intent that the public be involved in the planning process and are 'afforded the opportunity to respond to clearly defined alternative objectives, policies, and actions' " be achieved. (*Ibid.* & see also p. 891, citing Gov. Code, § 65033 [declaring the Legislature's recognition of "the importance of public participation at every level of the planning process"].)

Here, on July 8, 2009 the Planning Commission recommended the City Council certify the FEIR and approve the general plan amendment and the adopted zoning plan, the parcel map, and the CUP. While the Planning Commission notified Wal-Mart of its action the following day, there is nothing in the record indicating that the Planning Commission's "packet containing its recommendation to approve the . . . zoning ordinance amendment and its changes to the . . . project was transmitted to the [City Council]." (*Sierra County, supra,* 158 Cal.App.4th at pp. 882-883.) Indeed, there is nothing in the record to indicate that anything was forwarded to the City Council.

Furthermore, on July 11, 2009, the City published notice that it would hold a hearing on July 21, 2009. The notice described the project and identified its location. The notice did not indicate the Planning Commission's recommendation.

Clearly, the City's notice violates Government Code sections 65856, 65090, 65094, and *Sierra County*. The City issued its July 11, 2009 notice without having received the Planning Commission's "written recommendation to [the City Council] that include[d] 'the reasons for the recommendation,' " and the notice did not include the Planning Commission's "recommendation as part of the 'general explanation of the matter to be considered.' " (*Sierra County*, *supra*, 158 Cal.App.4th at pp. 891, 893.)

We disagree with respondents and the trial court that *Sierra County* is distinguished on the basis that it was a declaratory relief action and not an attempt to invalidate the particular land use approval itself. That is a distinction without a difference. The appellate court in *Sierra County* was asked to determine a question of law, namely whether notice of the City Council's hearing may be given before receipt of the Planning Commission's recommendation under Government Code sections 65856, 65090, and 65094. It is irrelevant that *Sierra County* reached its conclusion in a declaratory relief action. The holding in *Sierra County* is a statutory interpretation that applies statewide, regardless of the procedural posture of the case.

Nonetheless, under the Planning and Zoning Law we may not invalidate the City Council's action because of improper notice unless we find that the error was prejudicial, that Quartz Hill Cares "suffered substantial injury from that error *and* that a different result would have been probable" absent the error. (Gov. Code, § 65010, subd. (b), italics added.)[3] Quartz Hill Cares was present at the Planning Commission hearing and

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[3] Government Code section 65010, subdivision (b) states: "No action, inaction, or recommendation by any public agency or its legislative body or any of its administrative agencies or officials on any matter subject to this title shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure subject to this title, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown."

some of its members and its attorney submitted written objections or made oral presentations. Counsel for Quartz Hill Cares also presented two letters to the City Council addressing issues that his organization and others raised before the Planning Commission. Thus, as the complaining party, Quartz Hill Cares had actual notice of the Planning Commission's recommendation and so no prejudice resulted. (See *Benson v. California Coastal Com.* (2006) 139 Cal.App.4th 348, 353 [notice not inadequate where appellant was present at proceedings below and knew what issues were in contention].)[4]

Quartz Hill Cares does not actually argue it was prejudiced as defined by Government Code section 65010, subdivision (b). Rather, it quotes from *Sounhein v. City of San Dimas* (1992) 11 Cal.App.4th 1255. *Sounhein* is irrelevant. There, the City of San Dimas enacted a zoning ordinance *without giving any notice or holding any public hearing* as required by the Planning and Zoning Law. (Gov. Code, § 65854 et seq.; *Sounhein v. City of San Dimas*, at pp. 1259-1260.) Here, both the Planning Commission and the City Council gave notice to the general public and held hearings at which numerous people from the area affected by the project spoke and submitted objections in writing. The fundamental prejudicial error in *Sounhein* is not present in this case and application of its reasoning here would vitiate the purpose behind Government Code section 65010, subdivision (b), namely to require a showing of prejudice.

In short, although the notice was deficient for failure to mention the Planning Commission's recommendations (Gov. Code, §§ 65856, 65090 & 65094), Quartz Hill Cares did not suffer prejudice as a result. (Gov. Code, § 65010, subd. (b).)[5]

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[4] We reject the argument raised by Quartz Hill Cares' in its reply brief that all of the people who were misled by the defective notice and did not appear at the City Council's hearing were prejudiced by the defective notice. Quartz Hill Cares is a citizens' group formed for the purpose of challenging the City's approval of the project and so it represented "all [of] those citizens" who might have wanted to challenge the approval. The presence and active participation of Quartz Hill Cares' attorney resulted in actual notice.

[5] Respondents contend that Quartz Hill Cares' Planning and Zoning Law challenges to the City's approval of the project are untimely. The action was timely filed. (Gov. Code, § 65009, subd. (d).)

b. *substantive issues*

1. *Quartz Hill Cares did not carry its burden to show that the general plan's housing element was not in substantial compliance with Article 10.6.*

Declaring "the early attainment of decent housing and a suitable living environment for every Californian . . . is a priority of the highest order" (Gov. Code, § 65580, subd. (a)), the Legislature enacted Article 10.6 (Article 10.6) (Gov. Code, §§ 65580-65589.8) to the Planning and Zoning Law detailing the requirements for the mandatory housing element of general plans. The intent in enacting Article 10.6 was, among other things, "[t]o assure . . . cities [will] recognize their responsibilities in contributing to the attainment of the state housing goal" (Gov. Code, § 65581, subd. (a)) and "will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal." (Gov. Code, § 65581, subd. (b); *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 295.)

As part of Article 10.6, the Legislature mandated that the housing element of general plans contain specific components and that cities include specific analyses, goals, policies and the like in the housing element. (Gov. Code, § 65583.) The Legislature also directed cities to consider the guidelines adopted by the HCD (Gov. Code, § 65585, subd. (a)) and to submit both the proposed as well as the adopted housing element to HCD (Gov. Code, § 65585, subds. (b), (g)).

Quartz Hill Cares contends that the City could not find the project to be consistent with the City's general plan because the general plan's housing element was not in substantial compliance with the requirements of state law. It cites the rule that the issuance of a zoning ordinance is ultra vires if the City's general plan does not conform to statutory mandates relevant to the uses sought by the ordinance. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1179 (*Neighborhood Action Group*).) That rule applies here, Quartz Hill Cares argues. It reasons that because the City's general plan is not in compliance with the Housing Element Law (Gov. Code, § 65580 et seq.), the City Council's approval of Resolution No. 09-73 — rezoning the

property from residential to commercial — was ultra vires as the uses at issue in the rezoning are relevant to the housing element of the general plan.

In *Neighborhood Action Group*, a citizens' group sued Calaveras County and a construction company challenging the issuance of a CUP. (*Neighborhood Action Group, supra*, 156 Cal.App.3d at pp. 1180-1181.) The complaint alleged the CUP was invalid because the noise and safety element of the county's general plan did not comply with state statutes. (*Id.* at p. 1181.) The appellate court held that the "the issuance of a conditional use permit is ultra vires if the general plan of the issuing entity (see Gov. Code, § 65300 et seq.) does not conform to mandatory statutory criteria which are relevant to the uses sought by the permit." (*Neighborhood Action Group,* at p. 1179.)

A housing element is inadequate if it does not "substantially compl[y]" with the requirements of the Housing Element Law. (Gov. Code, § 65587, subd. (b).) Thus, as Quartz Hill Cares acknowledges, the determination whether the City Council's approval of Resolution No. 09-73 was ultra vires requires the predicate assessment that the City's general plan does not substantially comply with the Housing Element Law. (*Neighborhood Action Group, supra*, 156 Cal.App.3d at p. 1179.)

Quartz Hill Cares and respondents each argue the other carries the burden to show whether the general plan substantially complies with the Housing Element Law. Bearing in mind that this case is not an attempt to invalidate the general plan, but only to challenge the amendment to a zoning ordinance, Quartz Hill Cares, as the party arguing the City's conduct was ultra vires, carried the burden in the first instance to show the existence of a defect in the general plan that bears on criteria applicable to the zoning amendment redesignating the project's site. "The burden is on the challenger to demonstrate that the housing element, and by extension the general plan, is inadequate." (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1191 (*Fonseca*); cf. *Neighborhood Action Group, supra,* 156 Cal.App.3d at p. 1188 ["to tender an issue reaching the validity of the general plan, *the complaint* must allege facts showing the permitted use implicates a defective policy or standard in the general plan"].)

In support of its position, Quartz Hill Cares submitted HCD's July 1, 2008 and November 19, 2008 letters addressing the City's housing element adopted in May and August 2008.[6] The recommendations of the HCD are merely advisory. (Gov. Code, § 65585, subd. (a) [HCD's guidelines "shall be advisory" to cities and counties "in the preparation of its housing element"]; *Fonseca, supra,* 148 Cal.App.4th at p. 1193.) Also, "[u]nder section 65589.3, the housing element (or its amendment) enjoys a rebuttable presumption of validity if [the HCD] makes a finding that it substantially complies with the requirements of [A]rticle 10.6. (§ 65589.3.) *The statute does not provide for the converse, i.e., there is no presumption of invalidity on the basis of the Department's finding of noncompliance.*" (*Fonseca*, at p. 1184, italics added.) While these letters describe revisions necessary for the City to comply with the Housing Element Law, they do not establish that the City's general plan housing element lacks substantial compliance with Article 10.6. As these HCD letters are Quartz Hill Cares' only evidence of the general plan's noncompliance, it has not carried its burden to show that the City's general plan is out of compliance with Article 10.6.

Quartz Hill Cares' argument is unavailing that *Fonseca* is distinguished because it involved a housing element adopted before the 2002 amendments to Article 10.6. *Fonseca* was decided in 2007 after the amendments that *are relevant to this case* and the opinion in *Fonseca* reflects those statutory changes. (See, e.g., *Fonseca, supra,* 148 Cal.App.4th at p. 1184, describing Gov. Code, § 65585.)[7]

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[6] Quartz Hill Cares filed a motion in this court to take judicial notice of, among other things, a letter from HCD to the City dated August 12, 2010 addressing the revised housing element of June 2010. We deny the request to take judicial notice of this letter. (Evid. Code, § 452, subd. (c).) Not only is this letter dated August 2010, a year *after* the City Council adopted the resolutions at issue here, but it is extra-record evidence that is not admissible in traditional mandamus actions challenging quasi-legislative administrative decisions. (*Western States, supra,* 9 Cal.4th at p. 576.) In any event, as explained above, the HCD letters do not prove that the City's general plan housing element was not in compliance with Article 10.6 as such letters are advisory only.

[7] We granted Quartz Hill Cares' request filed on June 7, 2011 that we take judicial notice of a copy of Chapter 1441 of the Statutes of 1990 (Sen. Bill No. 2274) along with

Next, Quartz Hill Cares quotes from statements made by the City's attorney to the City Council in a July 22, 2009 memorandum that the " 'changes in other elements of the General Plan' update adopted just one week prior to the [City] Council's hearing on the Project" in 2009 "will necessitate an update of the Housing Element to insure [*sic*] internal consistency. . . . [T]he Planning Commission has approved and recommended to the City Council for approval a revised Housing Element that satisfies HCD's concerns." Quartz Hill Cares argues that this statement constitutes an admission that the general plan is internally inconsistent with respect to the housing element.

We review the City Council's decision for consistency with its own general plan under a deferential standard. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1192.) As the City Council has broad discretion, our " 'role "is simply to decide whether the [City] officials considered the applicable policies and the extent to which the proposed project conforms with those policies." ' [Citations.] If the [City's] decision is not arbitrary, capricious, unsupported, or procedurally unfair, it is upheld. [Citation.]" (*Ibid.*)

The above-quoted statement by the City's attorney does not demonstrate that the housing element was in violation of Article 10.6 in 2009. To the contrary, the statement suggests that the general plan's housing element *was in compliance* with state law until the week prior to the City Council's July 22, 2009 hearing, and that the Planning Commission had already approved revisions to the housing element, which it determined satisfied HCD's concerns, so as to *ensure* consistency. In short, the City considered the applicable policies and took action to assure that the amendments conformed to the policies.

Other than to repeat the City's attorney's statement, Quartz Hill Cares points to no actual inconsistency between the housing element and other elements of the general plan.

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other statutes enacted in 2006. (See fn. 2, *ante*.) Those enactments do not alter the result, Quartz Hill Cares' argument to the contrary in its reply brief notwithstanding. As explained, *Fonseca* reflects the statutory changes contained in this amendment. (See, e.g., *Fonseca, supra,* 148 Cal.App.4th at p. 1184, describing Gov. Code, § 65585.)

"It is not enough to simply point to asserted conflicts between two [general plan] elements . . . ; instead, it is necessary to explain how the land-use policies established [by the ordinance at issue] will be affected by such inconsistencies." (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 299, disapproved of on another point by *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11.) Without more, we cannot conclude that the City acted arbitrarily or capriciously, or that its conclusion about consistency was unsupported by the administrative record.

To summarize, Quartz Hill Cares has failed to carry its burden to demonstrate that the general plan's housing element was not in substantial compliance with Article 10.6, and so it has not demonstrated the prerequisite to its contention that approval of the zoning amendment to the general plan was ultra vires. (*Neighborhood Action Group, supra,* 156 Cal.App.3d at p. 1179.)

2. *Quartz Hill Cares has not demonstrated that the City reduced residential density with the result the City was not required to make the two findings listed in Government Code section 65863, subdivision (b) (the No-Net-Loss-In-Zoning-Density Law).*

Quartz Hill Cares contends that the City Council violated Government Code section 65863, subdivision (b) because the record contains no evidence that the City made the two requisite " 'written findings supported by substantial evidence' " to justify reducing the residential density of the project's parcel. (Gov. Code, § 65863, subd. (b)(1) & (2).)

Government Code section 65863, subdivision (b) states: "(b) *No city . . . shall . . . reduce . . . the residential density* for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1) and (2) of subdivision (g), *unless the city . . . makes written findings* supported by substantial evidence of both of the following: [¶] (1) The reduction is consistent with the adopted general plan, including the housing element. [¶] (2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 [as determined by HCD]." (Italics added.)

The City is only required to make the two findings under Government Code section 65863, subdivision (b) *if* its action "reduce[s] . . . the residential density" or "allow[s] development of any parcel at, a lower residential density[.]" Quartz Hill Cares' contention here assumes that the City's approval of the project reduced the residential density for the project's parcel, or allowed development at a lower residential density, such as would trigger the findings requirement. (Gov. Code, § 65863, subd. (b).) But, the record shows, to the contrary, that the applicable residential density was not reduced. The administrative record reveals the City's Regional Housing Needs Allocation (RHNA)[8] was 12,799, of which 5,133 are low- or moderate-income. As zoned in August 2008, the number of residential units that could be built on residentially designated land was 48,887 of which 3,520 units could be built in multifamily residential areas. Thus, the City had nearly four times the amount of residentially-zoned land to meet its need.

On appeal, Quartz Hill Cares cites nothing in the administrative record to indicate otherwise, i.e., to show that the City's actions actually reduced housing density citywide. In its reply brief, Quartz Hill Cares states "Density Was Reduced From 197 Residential Units to Zero." Presumably this statement is based on the change of the zoning designation of the project's site from residential to commercial, where previously the City allocated 197 housing units to that property. But, without the 197 units, the City continues to provide for more than three times the required amount of housing.

Quartz Hill Cares also cites to the November 19, 2008 HCD letter to the City indicating that there is a "shortfall of sites to accommodate the current estimated remaining need of 308 units for lower-income households." However, not only is the

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[8] The RHNA was enacted to address California's shortage of affordable housing. The Legislature created the RHNA to determine regional housing needs and allocate the burden of meeting those needs to local governments. To achieve California's housing objectives, the Government Code requires each local jurisdiction to assess its housing needs and its sites to accommodate the regional housing burden allocated to it (9 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 25:6, pp. 25-29), so that every local jurisdiction shares in the obligation to accommodate the state-wide housing need. (Gov. Code, §§ 65584 & 65863, subd. (a).)

HCD's analysis merely advisory as explained above, but the City has determined that it zoned for enough housing to meet its RHNA. Under the general plan, residential units "will be built in commercial zones under the City's recently adopted . . . codes. These codes allow mixed use developments with commercial uses on the ground floor and residential units above. The density of such developments . . . to date have resulted in a substantial number of residential units satisfying the City's RHNA." In any event, until the City approved Resolution No. 09-73 redesignating the property from urban residential to commercial, the project site was zoned single-family and "HCD recognizes only *multifamily* sites for the purpose of demonstrating an ability to satisfy the City's RHNA." (Italics added.) Rezoning the project's property here would not affect the City's lower income housing. There is evidentiary support for the conclusion that density was not affected by this project. (*Citizens for Improved Sorrento Access, Inc. v. City of San Diego, supra,* 118 Cal.App.4th at p. 814.) In the absence of a reduction in residential density, therefore, the City did not act arbitrarily or capriciously by failing to make the two findings under Government Code section 65863, subdivision (b).

3. *Quartz Hill Cares has not demonstrated that rezoning the project site reduced residential zoning citywide (the Least Cost Zoning Law, Gov. Code, § 65913, subd. (a)).*

The Least Cost Zoning law provides, "In exercising its authority to zone for land uses and in revising its housing element pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, a city, county, or city and county shall designate and zone sufficient vacant land for residential use with appropriate standards, in relation to zoning for nonresidential use, and in relation to growth projections of the general plan to meet housing needs for all income categories as identified in the housing element of the general plan." (Gov. Code, § 65913.1, subd. (a).)[9] "Appropriate standards" are

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[9] "Section 65913 is a statement of legislative findings and declarations pertaining to the existence of a 'severe shortage of affordable housing, especially for persons and families of low and moderate income,' and to the need to encourage new housing by various specified means including law changes designed to assure that local governments 'zone sufficient land at densities high enough for production of affordable housing,' and 'make a diligent effort through the administration of land use and development controls

"densities and requirements with respect to minimum floor areas, building setbacks, rear and side yards, parking, the percentage of a lot that may be occupied by a structure . . . imposed on residential lots pursuant to the zoning authority which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health and safety, and the need to facilitate the development of housing affordable to persons and families of low or moderate income . . . ." (Gov. Code, § 65913.1, subd. (a)(1).)

Quartz Hill Cares argues that by rezoning the project site's 40 acres from residential to commercial, the City Council "*compounded* the City's existing deficit of 'sufficient vacant land for residential use' " in violation of Government Code section 65913.1, subdivision (a). We disagree.

Under Government Code section 65913.1, the City must set out appropriate standards to encourage development of low-cost housing. The administrative record here contains a letter from the City attorney to the City Council, in response to this same contention, explaining that the original zoning for the project's site would have allowed for one single family residence on 7,000 or 10,000 square-foot lots, i.e., single family homes on large lots in a neighborhood that has a higher than average housing cost for the region. There is no indication that the City intended the project's site to be used for the development of affordable housing. Thus, the original zoning for the project's site *would not have allowed for the development of housing at the lowest possible cost.* (Gov. Code, § 65913.1, subd. (a)(1).) HCD does not recognize this kind of high-end zoning as suitable for affordable housing. It recognizes only *multifamily* sites for the purpose of demonstrating an ability to satisfy the City's low or moderate income RHNA, not the single family sites of 7,000 or 10,00 square feet such as the one at issue here. Therefore, the redesignation of the project's site from residential to commercial in Resolution

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and the provision of regulatory concessions and incentives to significantly reduce housing development costs and thereby facilitate the development of affordable housing. . . .' " (*Hernandez v. City of Encinitas* (1994) 28 Cal.App.4th 1048, 1072, fn. 6.)

No. 09-73 is irrelevant to developing affordable housing. And, because the FEIR determined that the City has the ability to meet its housing needs nearly four times over, the rezoning of the project's site does not affect the City's ability to meet its housing needs for all income categories.

Finally, the City adopted an update to its general plan on July 14, 2009, just a week before approving the project here. As part of that update, the City changed the density limits for multifamily residential areas to respond to HCD guidelines for sites suitable for accommodating lower and moderate income households. This change, along with other land use changes, the City's attorney explained, resulted in 5,510 units being designated in multifamily residential areas, thus exceeding the City's RHNA. Quartz Hill Cares has not demonstrated that the City's approval of Resolution No. 09-73, redesignating the property from single-family, large-lot residential to commercial, reduced the residential density Citywide.

II. CEQA

(Pub. Resources Code, § 21000 et seq.)[10]

" 'The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.' [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I*).) Accordingly, our task in reviewing an EIR is limited. (*Ibid.*) We "ensure that the public and responsible officials are adequately informed ' "of the environmental consequences of their decisions *before* they are made.' [Citation.]" (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1356.)

" ' "The EIR must contain facts and analysis, not just the bare conclusions of the agency." [Citation.] "An EIR must include detail sufficient to enable those who did not

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[10] Hereinafter, all statutory references are to the Public Resources Code, unless otherwise noted. All further references to the CEQA regulations are to the State CEQA Guidelines, unless otherwise noted.

participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." ' [Citations.] 'CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive.' [Citation.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197 (*Bakersfield*), citing § 21005, subd. (b).) "The question whether an EIR is sufficient as an informative document depends on [the City's] compliance with CEQA's requirements for the contents of an EIR: whether the EIR reflects a reasonable, good faith effort to disclose and evaluate environmental impacts and to identify and describe mitigation measures and alternatives; and whether the final EIR includes reasonable responses to comments on the draft EIR raising significant environmental issues. [Citations.]" (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2011) § 11:37, p. 567.) "Analysis of environmental effects need not be exhaustive, but will be judged in light of what was reasonably feasible." (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-1391 (*Irritated Residents*).)

" 'Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown.' [Citations.]" (*Bakersfield, supra*, at pp. 1197–1198, citing, *Irritated Residents, supra*, at p. 1391 & § 21005, subd. (b) [there is no presumption that error is prejudicial].) Indeed, " 'Under CEQA, an EIR is presumed adequate (Pub. Resources Code, § 21167.3), and the plaintiff in a CEQA action has the burden of proving otherwise.' [Citation.]" (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.)

" 'Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decisionmaking and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. [Citations.]' [Citations.]

"We apply the substantial evidence test to conclusions, findings, and determinations, and 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. [Citation.] . . . .

"As our Supreme Court succinctly put it, 'an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation], we accord greater deference to the agency's substantive factual conclusions.' [Citation.]" (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898-899 (*Long Beach*).) Stated differently, "the omission of required information constitutes a failure to proceed in the manner required by law where it precludes informed decisionmaking by the agency or informed participation by the public. [Citation.] We review such procedural violations de novo. [Citation.] By contrast, we review an agency's substantive factual or policy determinations for substantial evidence. [Citations.]" (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 987.)

a. *vacant land*

Citing Evidence Code section 669.5, Quartz Hill Cares contends that the City's approval of the FEIR and adoption of Resolution No. 09-73 — rezoning the project site from residential to commercial — is presumed to have had an impact of the supply of residential units and so the FEIR is defective for failing to address the impact of the project on the supply of residential units available in the City. Respondents counter that the statutory presumption is not applicable here.

Evidence Code section 669.5 reads in relevant part: "(a) Any ordinance enacted by the governing body of a city . . . which . . . changes the *standards* of residential development on vacant land *so that the governing body's zoning is rendered in violation*

of Section 65913.1 of the Government Code [the Least Cost Zoning Law[11]] is presumed to have an impact on the supply of residential units available in an area which includes territory outside the jurisdiction of the city, county, or city and county. [¶] (b) With respect to any action which challenges the validity of an ordinance specified in subdivision (a) the city . . . enacting the ordinance shall bear the burden of proof that the ordinance is necessary for the protection of the public health, safety, or welfare of the population of the city, county, or city and county." (Italics added.)

"A prerequisite to application of this statute [Evidence Code section 669.5] is that it must involve an ordinance which renders the governing body's zoning in violation of section 65913.1 [the Least Cost Zoning Law]. (Evid. Code, § 669.5(a)(2) and (b).) Unless a violation of section 65913.1 is established, the presumption of 'impact on the supply of residential units available in an area' and the burden-shifting provisions of the statute do not come into play." (*Hernandez v. City of Encinitas*, *supra*, 28 Cal.App.4th at p. 1075.)

As noted, the Least Cost Zoning Law (Gov. Code, § 65913.1) requires the City, in revising its housing element pursuant to Article 10.6 to "designate and zone sufficient *vacant land* for residential use . . . ." (*Id.*, subd. (a), italics added.) As explained above, Quartz Hill Cares did not demonstrate that, as a result of Resolution No. 09-73, the City's zoning "is rendered in violation of [the Least Cost Zoning Law]." Neither the HCD's July 2008 nor its November 2008 letters addressing the versions of the City's general plan's housing element indicate that the City has insufficient *vacant* land. The July 2008 letter suggested that the City "*clarify* . . . current zoning designations of vacant parcels, and anticipated affordability *if other than above-moderate*." (Italics added.) Where the letter asked the City merely to "clarify" its vacant lot designations, the HCD did not state there was insufficient vacant land. And as noted, before Resolution No. 09-73, the project's site *was zoned for above-moderate housing*. In short, there is nothing in the

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[11] See section I.b.3. of this opinion *ante* involving the discussion of the Least Cost Zoning Law.

record to suggest that as the result of adoption of Resolution No. 09-73 rezoning the project site from residential to commercial, the City lacks sufficient *vacant* land for residential, low- or moderate- income use in relation to growth projections in the general plan to meet housing needs. (Gov. Code, § 65913.1, subd. (a).) The presumption of Evidence Code section 669.5, namely that the rezoning had "an impact on the supply of residential units available," never arose. (Evid. Code, § 669.5, subd. (a).) Where substantial evidence supports the City's determination (*Bakersfield, supra*, 124 Cal.App.4th at p. 1197), the FEIR is not rendered defective for its failure to address the presumption in, or to make the findings required by, Evidence Code section 669.5.

b. *project alternatives*

1. *Certification of the FEIR must be reversed because the City failed to provide sufficient evidence to support its conclusion that the Reduced Commercial Density Alternative was "not economically viable."*

"The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison." (Guidelines, § 15126.6, subd. (d).) An EIR's "discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness. The statute does not demand what is not realistically possible, given the limitation of time, energy and funds." (*Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 910; see also *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1351; cf. § 21002.)

Quartz Hill Cares contends that the City violated CEQA by improperly rejecting the environmentally superior alternative identified in the FEIR as the Reduced Commercial Density Alternative. Quartz Hill Cares bases its argument on Guidelines section 15126.6, subdivision (b), which directs that "the discussion of alternatives shall focus on alternatives . . . which are capable of avoiding or substantially lessening any significant effects of the project, *even if these alternatives would impede to some degree*

the attainment of the project objectives, or would be more costly." (Italics added.) Guidelines section 15126.6, subdivision (b) is not relevant here, as its wording describes which alternatives *should be considered*, not which alternatives should be *chosen*. We do not " '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, supra,* 124 Cal.App.4th at p. 1197.)

Turning to the Reduced Commercial Density Alternative, it involves the same shopping center as the proposed project, but without the big box anchor tenant, constituting a 30 percent reduction of the project's size. The City stated in its findings of fact in adopting Resolution No. 09-73 that the Reduced Commercial Density Alternative "would lessen most of the environmental impacts associated with the proposed project" and "would also satisfy many of the project objectives, but not to the extent that the proposed project would satisfy them." The City then found that "the lack of the big box anchor tenant would effectively preclude development of its commercial center, since the secondary commercial uses remaining in the proposed project are not likely to develop without the customer draw created by the anchor tenant. *Therefore, the City finds that the Reduced Commercial Density Alternative is not economically viable and would not be likely to proceed.*" (Italics added.)

We agree with Quartz Hill Cares' argument, citing *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167 (*Goleta Valley*), that the evidence of economic infeasibility was not specific and concrete such as would justify the FEIR's conclusion to reject the alternative as "not economically viable."

In *Goleta Valley,* the FEIR's analysis of an alternative to the project to construct a beachfront resort hotel failed to contain substantial evidence to support the finding the alternative was economically infeasible. (*Goleta Valley, supra,* 197 Cal.App.3d at pp. 1180-1181.) Without comparative data and analysis, *Goleta Valley* explained, no meaningful conclusions could be drawn. (*Ibid.*) The *Goleta Valley* court stated: "CEQA defines 'feasible' as 'capable of being accomplished in a successful manner within a

reasonable period of time, taking into account economic, environmental, social, and technological factors.' (Pub. Resources Code, § 21061.1.) The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. *What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.* The scant figures contained in the administrative record are not sufficient to support such a conclusion." (*Id.* at p. 1181, italics added.)

The finding of economic non-viability must be supported by the record. (§§ 21081.5 & 21081, subd. (a)(3); *Goleta Valley, supra*, 197 Cal.App.3d at p. 1181; *Sierra Club. v. County of Napa* (2004) 121 Cal.App.4th 1490, 1508.) To be an informative document, an EIR must reveal the "analytic route" used to reach its conclusions. (*Laurel Heights, supra*, 47 Cal.3d at p. 404.) There is nothing in the administrative record, and respondents point to no evidence, to support the City's finding in the FEIR that the Reduced Commercial Density Alternative was "not economically viable." The FEIR contains a 25-page discussion of the alternatives, and determines which alternative is environmentally superior. It also contains a two-page table comparing the alternatives to the proposed project. However, the document lacks any "comparative data and analysis" (*Goleta Valley, supra*, at pp. 1180-1181) between the project — with the big-box retailer — on the one hand, and the scaled-down version in the Reduced Commercial Density Alternative on the other hand. There is no evidence of profitability or feasibility of the Reduced Commercial Density Alternative from which to make any comparisons to determine whether the alternative would be less profitable or infeasible. (*Id.* at p. 1181.) Nor is there any factual justification for the bare conclusion that "secondary commercial uses remaining in the proposed project are not likely to develop without the customer draw created by the anchor tenant." The lack of facts and

data renders the discussion of the Reduced Commercial Density Alternative useless as an informative document.[12]

Respondents argue that "the inability to meet a project's stated objectives is a valid basis for rejecting an environmentally superior alternative." Concededly, "[t]he EIR was not required . . . to analyze the effects of an alternative that would not feasibly attain *most of the basic objectives* of the project. (Guidelines, § 15126.6, subds. (a) & (f).)" (*Sierra Club v. County of Napa, supra,* 121 Cal.App.4th at p. 1509, italics added.) But, the City here found the Reduced Commercial Density Alternative "*would also satisfy many of the project objectives.*" (Italics added.) Only *one objective* would not be satisfied, namely, "[t]o provide development that is financially viable." The City is not excused from providing any evidence whatsoever of the lack of economic viability on this ground.

Respondents contend that the "EIR is not required to contain an economic infeasibility analysis." They misread the cases they cite for this argument. There was evidence to support the agency's economic feasibility determination in each of the cases upon which respondents rely for this proposition. In *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, the EIR discussed economic feasibility indirectly by incorporating the project sponsor's comments based on its market surveys.

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[12] At oral argument, respondents were asked to point to evidence in the record to support the FEIR's conclusion that the Reduced Commercial Density Alternative would not be financially viable. Respondents merely cited to the *findings* contained in Resolution No. 09-73 and to the alternative's discussion in the FEIR. However, the findings do not constitute evidence, let alone data or facts, and we conclude that the alternative's discussion failed to cite facts. Respondents also insisted that where the standard of review is deferential, we should accept the City Council's findings. We repeat, however, that the findings do not constitute the evidence to support those findings. In short, respondents have cited us to nothing in the entire administrative record to indicate any substantiality for the finding that the Reduced Commercial Density Alternative would not be financially feasible.

(*Id.* at p. 715.)[13] The EIR in *City of Freemont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780, summarized cost information in series of tables breaking down costs associated with each route alternative and design element into its individual components, and described how the alternative was in excess of current funding resources. (*Id.* at p. 1787.) The court in *California Native Plant Society v. City of Santa Cruz, supra,* 177 Cal.App.4th 957, rejected the argument that the record lacked evidence of economic infeasibility and held "substantial evidence supports the City's infeasibility findings." (*Id.* at p. 1003.) Finally, the Sierra Club "essentially concede[d] that the Board's decision, at least, was supported by evidence presented to it[.]" (*Sierra Club v. County of Napa, supra,* 121 Cal.App.4th at pp. 1503, 1508.) The *Sierra Club* court explained: "It is of no matter that the evidence of economic infeasibility here was far less detailed than the evidence in [another case]. The question is simply whether the agency's finding was supported by substantial evidence." (*Id.* at p. 1508.)

Having found that the Reduced Commercial Density Alternative merited analysis and inclusion in its alternatives discussion, the City was obligated to include substantial evidence, somewhere in the record, supporting its subsequent conclusion that the alternative was not economically viable. (*Goleta Valley, supra,* 197 Cal.App.3d at pp. 1180-1181.)

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[13] In *Sequoyah Hills Homeowners Assn. v. City of Oakland, supra,* 23 Cal.App.4th 704, the appellant argued that the EIR did not address the issue of economic feasibility of the project's alternatives. The appellate court stated, "While economic information about a given project may be included in an EIR, it is not required. (Guidelines, § 15131.) Although the ultimate decisionmaker is required to consider *economic* and social *factors* in making its feasibility findings, *the agency may receive such information in whatever form it desires.* [Citation.] If the decisionmaker is correct in finding that a given alternative is infeasible, the EIR will not be deemed inadequate simply because it failed to include an analysis of that alternative. [Citation.]" (*Id.* at p. 715, fn. 3.) However, the alternative at issue was rejected because it was not *legally* feasible and so the agency there was not required to analyse economic feasibility.

While we conclude that the EIR lacks evidence to support its conclusion that the Reduced Commercial Density Alternative was not economically viable, we do not suggest that the City should have selected this alternative over the project itself. Courts do not " 'pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' [Citation.]" (*Laurel Heights I., supra*, 47 Cal.3d at p. 392.) We simply conclude that the FEIR is insufficient as an informative document because its finding that the Reduced Commercial Density Alternative was not economically viable lacks the requisite evidentiary support. Because its conclusion is unsupported by substantial evidence, therefore, the City prejudicially abused its discretion by failing to proceed in a manner required by CEQA.

2. *Quartz Hill Cares did not demonstrate that the City failed to consider a reasonable range of alternatives.*

Quartz Hill Cares contends that the FEIR did not consider a reasonable range of alternatives to the project. Specifically, Quartz Hill Cares argues that the FEIR should have studied, as an alternative to the project, the development of the big-box anchors as innovative green buildings because such alternative would accommodate the basic objectives of the project. Wal-Mart had "announced the roll-out of a 'solar power pilot project' with the goal of such installations generating 'up to 30% of the power for each store on which it is installed.' " This solar powered pilot project is "an innovative and sustainable green building consistent with [Wal-Mart's] newly-established and environmentally-friendly 'sustainable future' strategy." Quartz Hill Cares brought this alternative to the City's attention and quoted from Wal-Mart's announcement in March 2008 of the introduction in Las Vegas, Nevada of "its most energy efficient U.S. store — the HE.5 prototype — that will use up to 45 percent less energy than the baseline Supercenter." In addition to omitting consideration of this green alternative, Quartz Hill Cares argues, the FEIR's alternatives analysis is rendered deficient because of the lack of findings explaining why this green alternative was infeasible or should have been rejected.

"An EIR need not consider every conceivable alternative to a project. (Guidelines, § 15126.6, subd. (a).) The Guidelines require that the EIR 'describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (*Long Beach, supra,* 176 Cal.App.4th at p. 920; Guidelines, § 15126.6, subd. (a) & (c).)

"To be legally sufficient, the consideration of project alternatives in an EIR must permit informed agency decisionmaking and informed public participation. [Citations.] What CEQA requires is 'enough of a variation to allow informed decisionmaking.' [Citation.] We judge the range of project alternatives in the EIR against 'a rule of reason.' [Citation.]" (*California Native Plant Society v. City of Santa Cruz, supra,* 177 Cal.App.4th at p. 988, citing Guidelines, § 15126.6, subds. (a) & (f).)

The rule of reason requires the FEIR to discuss only those alternatives that are necessary to permit a reasoned choice. (Guidelines, § 15126.6, subd. (f).) Only those alternatives "that would avoid or substantially lessen any of the significant effects of the project" on the environment need be considered. "Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project." (*Ibid.*) "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Guidelines, § 15364.)

"The [City's] discretion to choose alternatives for study will be upheld as long as there is a reasonable basis for the choices it has made." (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra,* § 15:11, p. 743.) "The selection will be upheld, unless the challenger demonstrates 'that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives.' [Citation.]" (*California Native Plant Society v. City of Santa Cruz, supra,* 177 Cal.App.4th at p. 988.)

"An EIR is not required to consider alternatives which are infeasible." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 546; accord, *Sequoyah Hills Homeowners Assn. v. City of Oakland, supra*, 23 Cal.App.4th at p. 715.) The administrative record contains substantial evidence that the so-called green alternative could not feasibly be accomplished at this site and so the City was not required to include it as an alternative for study. (Guidelines, §§ 15126.6, subd. (f) & 15364.)

The solar power program is a pilot project. Also, the administrative record contains a description of the economic and technical barriers to incorporating a solar component in this project. James McClendon, a member of Wal-Mart's team of energy experts that focuses on developing energy efficient features for Wal-Mart stores, responded to Quartz Hill Cares' written comments to the City concerning the green alternative. McClendon listed such obstacles as, inter alia: (1) the severely restricted roof area based on clearance values and set-back requirements; (2) the reduction in skylight areas to accommodate solar panel capacity increases energy demand and reduces energy reduction value for daylight harvesting; (3) material and production costs combined with decreasing supply of incentives at the state level; (4) lack of storage capacity to fully utilize generating potential; and (5) the net efficiency of technology. Despite the lack of solar power panels, McClendon explained, the store "will, however, include many features that reduce the store's energy demand, such as daylighting, energy efficiency HVAC units, recycled construction material, a central energy management system, light sensors, a dehumidifying system, retrofit lighting, LED sign illumination," all of which "reflects Wal-Mart's holistic approach to reducing emissions." In short, the record contains evidence that these economic, environmental, and technological barriers render the green alternative infeasible because it is incapable of being accomplished in a successful manner within a reasonable period of time, and so this alternative could not attain most of the basic objectives of the project. (Guidelines, §§ 15126.6, subd. (f), 15364.) As the green alternative was infeasible, the FEIR reasonably did not include it for study in the EIR. (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 15:11, p. 743.)

Quartz Hill Cares argues that the City should have considered the green alternative because Quartz Hill Cares had brought to the City's attention the fact that a trial court in San Bernardino County had granted a writ petition and directed the Town of Yucca Valley to revise the "EIR's discussion of alternatives on grounds of failure to include the feasible and environmentally superior 'green' Wal-Mart Supercenter alternative[.]" Respondent's do not address this assertion. However, apart from the fact that a superior court ruling is not controlling on the Court of Appeal, there is nothing in the record to indicate what was included in the FEIR in Yucca Valley, such as whether the town considered the green alternative to be feasible, and the like. Hence we have no basis for considering that ruling.

DISPOSITION

The judgment is reversed in accordance with the views expressed in this opinion. Each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.