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H-Y-H CORPORATION

FILED
SEP 14 2007
LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
LISA DALTA DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

H-Y-H CORPORATION, a Delaware corporation,

Petitioner and Plaintiff,

v.

COUNTY OF MONTEREY,

Respondent and Defendant.

Case No. M85082

OBJECTIONS TO STATEMENT OF DECISION

BY FAX

Pursuant to California Rule of Court 3.1590, Petitioner H-Y-H Corporation hereby objects to the Statement of Decision filed on September 5, 2007, on the grounds hereafter set forth.

A. **Petitioner H-Y-H requests that the following factual corrections be made to the Statement of Decision:**

1. In the full sentence of the last full paragraph on page 4, the Court refers to the County or the voters "denying H-Y-H's application." To the extent that the Court is making a factual finding that the Specific Plan was adopted in response to H-Y-H's application, that conclusion is erroneous.

None of the three Specific Plans prepared by County were prepared or adopted in response to applications from H-Y-H Corporation. The first Specific Plan was prepared by the County in response to the mandates of state law and the Compromise and Settlement Agreement in Case No. M43439, *Anne Marie Tresch, et al. v. County of Monterey, et al.* The second and third Specific Plans, adopted in December 2004 and November 2005, respectively, were adopted in direct response to Judge Silver's Writ of Mandate and Judgment in Case No. M46616, finding that the County, having elected to tier its planning for the Rancho San Juan Area, precluding all development until that planning was concluded and preventing any private party from submitting a specific plan for Rancho San Juan, the County was mandated by state law to complete that process. *See* General Plan excerpt, attached hereto as **Exhibit A**, which provides that:

> No development which requires a discretionary permit may be accepted in the shaded area until a specific plan for the Ranch San Juan Area of Development Concentration (ADC) is adopted (GSAP Policy 26.1.4.1 (GS)).

The H-Y-H property is in the shaded area. Contrary to the implication of the intended decision, Judge Silver's judgment did not address the effect of County or voter action on an H-Y-H application for development, since no application was pending and the question was not posed by H-Y-H Corporation's Petition for Writ of Mandate. H-Y-H's 1989 application for development had been tabled by the County and the County refused to further process it until the County had adopted a specific plan for Rancho San Juan. In 2001, Judge Silver determined that the County's then fourteen-year delay in adopting such a Rancho San Juan Specific Plan was unreasonable and refused the County's bid to further defer the specific plan process until after the County had completed it's then current General Plan Update process, a process estimated by then County Chief Executive Officer Sally Reed not to exceed six months.

2. In the next to the last full paragraph on page 5, the Court states, "In actuality, petitioner withdrew a much larger project that was the subject of the first vote prior to the date of that referendum." If the term "Petitioner" refers to H-Y-H Corporation, then it is mistaken. H-Y-H Corporation's entitlements for the Butterfly Village project (H-Y-H property), granted by Monterey County Resolution No. 04-425, were never withdrawn by H-Y-H. Nor did the County ever rescind

Resolution No. 04-425. What H-Y-H did do was to withdraw its prior legal objection to the County rescission of the General Plan Amendments sought by the first referendum petition.

The County of Monterey effectively rescinded the 2004 General Plan Amendments by replacing them with different General Plan Amendments in Resolution No. 05-305. In so doing, the County Board of Supervisors provided to petitioners LandWatch and Rancho San Juan Opposition Coalition the relief sought by the referendum petition circulated by those parties. The referendum petitioners sought either rescission of the General Plan Amendments by the Board of Supervisors in the first instance, or putting them to a vote in the alternative. The Board of Supervisors initially determined that it could not grant the referendum petition to rescind the General Plan Amendments when that petition first qualified for the ballot. County Counsel advised the Supervisors that to do so could have violated the Stipulated Settlement Agreement between the County and H-Y-H, would have undone the efforts that County had undertaken to comply with the 2001 Court Order, and that the County lacked H-Y-H's consent to do so. When H-Y-H withdrew its objection to rescission of the General Plan Amendments in July 2005, the Board of Supervisors subsequently complied with the referendum petition request to repeal the GPA's with Resolution No. 05-305. Accordingly, the first referendum petition had legal effect equal to that of the second referendum petition which resulted in rescission by voters on the ballot, as opposed to rescission by the Board of Supervisors in response to the petition.

B. Petitioner H-Y-H requests that the following findings and conclusions be added to the Statement of Decision and, to the extent that there are contrary statements, that the Decision be modified accordingly:

1. The meaning to be given to the terms of the February 27, 2001 Judgment ("2001 Judgment") must be considered in the context of the March 1, 2001 Statement of Decision, which is attached hereto as **Exhibit B,** and the July 25, 2001 Order Clarifying Peremptory Writ of Mandate, which is attached hereto as **Exhibit C**.

2. The County has not specifically found that the General Plan is inadequate and/or taken appropriate action under Government Code section 65858.

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3. The Rancho San Juan Area is designated as an Area of Development Concentration ("ADC") in the Monterey County General Plan adopted in 1982 and the Greater Salinas Area Plan ("GSAP") adopted in 1986. That designation contemplates residential, industrial, commercial, public facility, and open space use in accordance with the criteria set forth in the GSAP. Those plans have not been declared invalid by the County or any court, nor superseded by any subsequent plans.

4. The Report of the Mediator to Presiding Judge dated September 10, 2002, incorporated the Stipulation between the County of Monterey and Petitioner H-Y-H that sets forth the conceptual plan that is to form the basis of the Specific Plan to be adopted by the Board of Supervisors. That plan, prepared for the County by the County's consultant, was found by the Mediator to "appear[] compatible with the proposed update of the County General Plan, as well as the existing General Plan and Greater Salinas Area Plan." Report of Mediator at 2.

5. The adoption of Resolution No. 05-305 by the Board of Supervisors on November 7, 2005, amended the County General Plan to approve a revised Specific Plan for Butterfly Village, amended the GSAP and amended the Rancho San Juan Area ADC Development Guidelines and Principles ("ADC Guidelines"). The adoption of that resolution was intended to satisfy the County's obligations under the 2001 Judgment, the 2002 Report of Mediator, and the 2002 Stipulation.

6. The Referendum (Measure D) revokes all approvals adopted by the County Board of Supervisors pursuant to Resolution No. 05-305 and does not replace those approvals with a specific plan.

7. The failure of the County of Monterey—either through actions of the Board of Supervisors or by the People, through referendum or initiative—to adopt a valid specific plan for the Rancho San Juan Area ADC in the six and one half years following this Court's 2001 Judgment is unreasonable. This Court already determined that the County's previous fourteen-year delay in adopting a plan to be unreasonable. The County's continuing failure since the date of that Judgment now leaves that area without a specific plan since 1986, and has the continuing effect of preventing any development in the Rancho San Juan ADC since that date. It is a violation of the mandates of state law and the 2001 Judgment, which require adoption of a specific plan in accordance with law within a reasonable period of time "forthwith."

8. Although the 2001 Judgment and 2002 Stipulation recognized that the Board of Supervisors was "free to exercise its discretion, in accordance with law," in the adoption of a specific plan and zoning for the Rancho San Juan ADC, exercise of that discretion must be consistent with applicable law, which in turn requires:

(a) The adoption of a specific plan;

(b) That the specific plan be consistent with the General Plan and the GSAP designation of the area as an ADC; and

(c) That the adoption be timely in the context of the 2001 Judgment following the judicially declared unreasonable fourteen-year delay.

9. The right of the people through referendum is coextensive with, but no greater than, the power of the Board of Supervisors. *See Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*, 86 Cal. App. 4th 534, 549 (2001); *DeVita v. County of Napa*, 9 Cal. 4th 763, 775 (1995); *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. App. 3d 531, 540 (1990).

10. The Statement of Decision on page 5 concludes that the adoption of Measure D, "although presenting a further delay for Petitioner, it is not a direct and conclusive challenge to the Court's Judgment" (referring to the 2001 Judgment). This is error. The 2001 Judgment required that a specific plan, consistent with the General Plan and GSAP be adopted "forthwith" and within a reasonable period of time. The result dictated by the Statement of Decision leaves the area without a specific plan, which is in direct conflict with the 2001 Judgment. By vacating the County's compliance with the mandates of the State Planning and Zoning Law as embodied in the 2001 Judgment, Measure D violates the Separation of Powers Doctrine.

11. The Statement of Decision is in further error by concluding that the fact that the voters turned down the Specific Plan does not foreclose development of some other specific plan that comports with the 2001 Judgment. *See* Statement of Decision at 5. The 2001 Judgment required that a specific plan be adopted "forthwith" and "within a reasonable period of time." That has not occurred. Moreover, to leave the Rancho San Juan Area without a specific plan in place also violates the 2001 Judgment, because it held that the County is required to adopt a specific plan in accordance

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with law. To be in accordance with law, that specific plan must be consistent with the 1982 General Plan and the GSAP designation of the area as an ADC.

12. Petitioner H-Y-H objects to the Statement of Decision's treatment of the decision in *City of Half Moon Bay v. Superior Court*, 106 Cal. App. 4th 795 (2003). *See* Statement of Decision at 4-5. The Court seems to take the position that since the 2001 Judgment did not require the County to adopt a particular specific plan nor did it prohibit the County or voters from denying H-Y-H's application, revocation of all of the entitlements adopted by the County pursuant to Resolution No. 05-305 does not violate the Separation of Powers Doctrine because it does not constitute a repudiation of the 2001 Judgment. This is error. It overlooks the fact that the County was required to adopt a Specific Plan consistent with the General Plan and GSAP ADC designation within a reasonable period of time—which will not occur should Measure D be upheld. The six-and-one-half-year process since the 2001 Judgment, let alone whatever additional time it may take the County to finally adopt another specific plan, cannot be "reasonable" in light of this Court's 2001 finding that the then fourteen-year delay in accomplishing the same requirement was unreasonable. The rescission of a specific plan already adopted by the County pursuant to the Court's 2001 Judgment is a direct contravention of that order since there will be no specific plan in place, as required. Although the County, through its voters via initiative or its elected officials via legislative action, could have substituted another specific plan as the Board of Supervisors did in 2005, it could not simply rescind the action already taken to comply with the 2001 Judgment.

13. The Referendum (Measure D) purports to invalidate the General Plan Amendments contained in Resolution No. 05-305, thereby invalidating the Specific Plan that was determined by the County to be consistent with the General Plan and the GSAP. That leaves the Rancho San Juan Area without a specific plan, but still designated as an ADC on the General Plan and the GSAP. This results in a vertical inconsistency between the area and the General Plan since there will be no specific plan. This will be the same defect that existed in 2001, when this Court issued its Judgment requiring adoption of a specific plan forthwith in compliance with the law.

14. Petitioner H-Y-H objects to the Court's conclusions (Statement of Decision at 6-7) with respect to the application and interpretation of *Chandis Securities Co. v. City of Dana Point*, 52

Cal. App. 4th 457 (1996). In *Chandis*, the referenced plan had been proposed by the developer (not the city) and rejected only two years after the General Plan had been adopted. This is not akin to the 21 years that have passed since the 1986 adoption of the GSAP here. Moreover, the *Chandis* court noted that a time delay of more than two years may well be unreasonable. More specifically, the *Chandis* court was not dealing with a situation where the legislative body was under the compulsion of a court decree to adopt a specific plan "forthwith." Nor was the status quo condition in *Chandis* an illegal inconsistency between the General Plan designation and the zoning designation as has been the case in the Rancho San Juan Area these past 21 years, and will continue to be until the County complies with the 2001 Judgment.

15. Petitioner H-Y-H objects to the Statement of Decision's finding that Measure D does not create any inconsistency with the Planning and Zoning Law. The Planning and Zoning Law requires that zoning be consistent with the general plan. The zoning for the Rancho San Juan Area has not been consistent with the General Plan designations for the Rancho San Juan Area since 1986. The County corrected that condition with the rezoning of the area in 2005, but Measure D suspended that action, returning the County to a condition of non-compliance with State Planning and Zoning Law.

Petitioner H-Y-H respectfully requests that the Court issue a modified Statement of Decision and judgment that contains the additional specific findings set forth above, which corrects those portions of the Statement of Decision objected to and includes the additional legal conclusions proposed by Petitioners.[1]

Dated: September 14, 2007

MORRISON & FOERSTER LLP

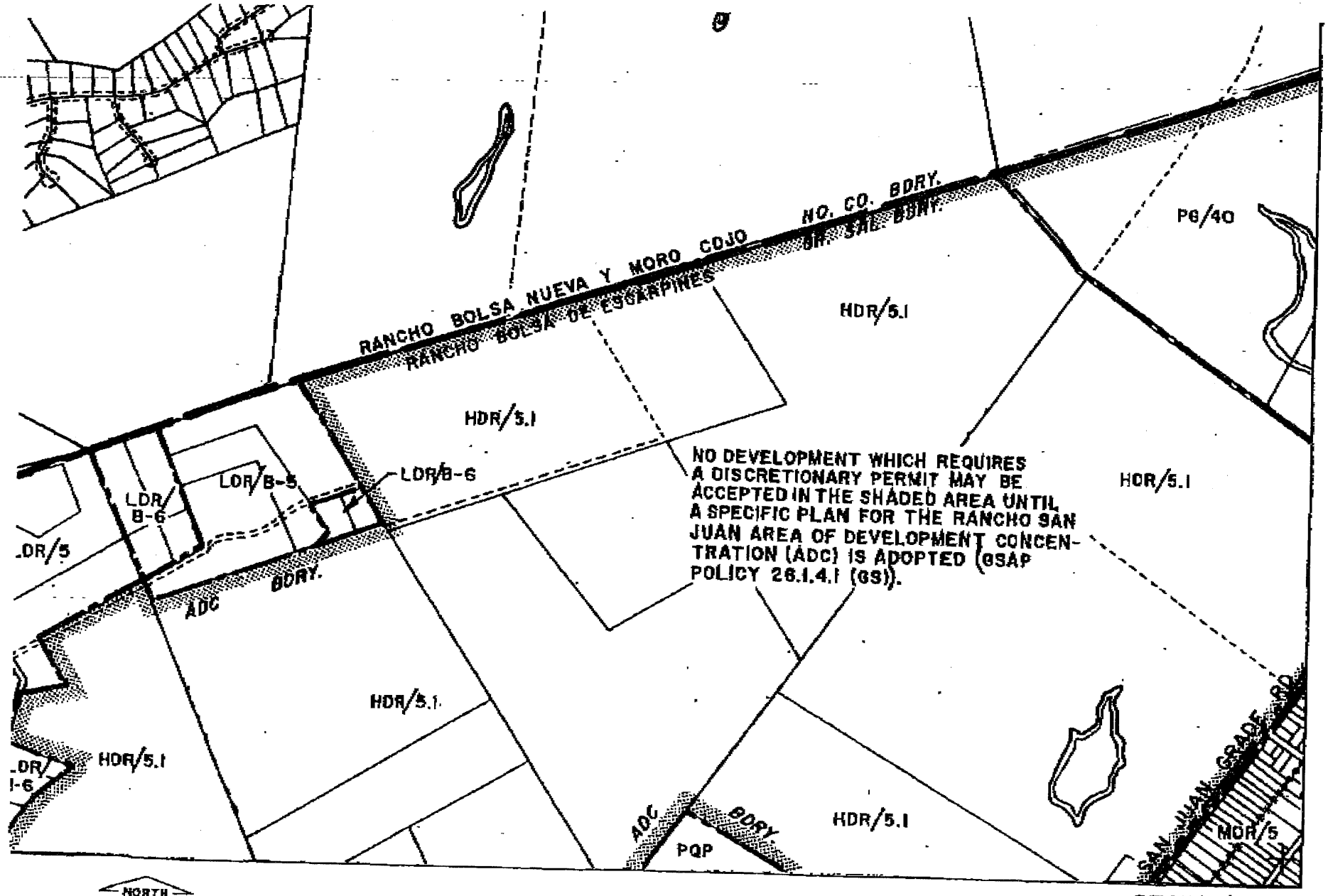
By: _____
Edgar B. Washburn

Attorneys for Petitioner and Plaintiff
H-Y-H CORPORATION

[1] In making these objections to the factual findings in the Statement of Decision, Petitioner in no way waives any objection to the legal findings or conclusions in the Statement of Decision nor its ability to raise any legal argument presented in its Opening and Reply Memoranda on appeal.

Exhibit A

Exhibit A



SECTION 4D

MONTEREY COUNTY PLANNING AND BUILDING INSPECTION DEPARTMENT

_AN OF THE COUNTY OF MONTEREY

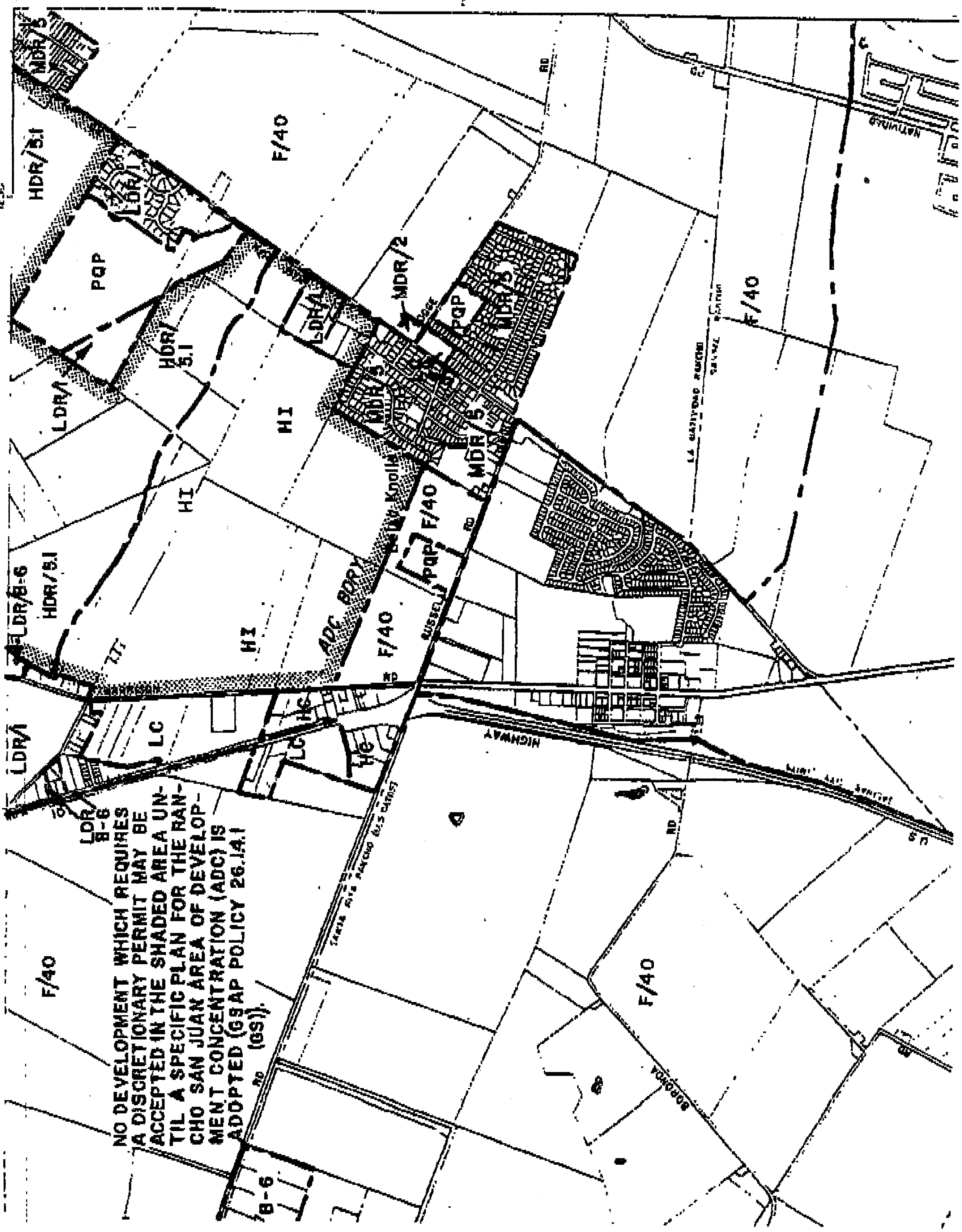


Exhibit B

Exhibit B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

H-Y-H CORPORATION, a Delaware corporation,

Petitioner and Plaintiff,

vs.

COUNTY OF MONTEREY and DOES I through XX, INCLUSIVE,

Respondents and Defendants.

Case No. M 46616

STATEMENT OF DECISION

The above-entitled cause came on regularly for trial on July 26, 2000 in the above entitled-court, The Honorable Richard M. Silver, Judge, presiding without a jury and was tried on that date. Both parties were present through their respective attorneys.

By stipulation this matter was bifurcated and the trial herein was conducted only as to the first through fourth causes of action for writs of mandate, and the fifth, sixth, and thirteenth causes of action for declaratory relief and estoppel.

Oral and documentary evidence was introduced on behalf of the respective parties and the

cause was argued and submitted for decision. The Court, having considered the evidence and heard the arguments of counsel and being fully advised, makes the following statement of decision in support of a Peremptory Writ of Mandamus compelling COUNTY to continue to process the EIR and Specific Plan for the Rancho San Juan Area of Development Concentration forthwith, consistent with statutory requirements for public notice and to diligently complete the certification of the EIR and adoption of the Specific Plan within a reasonable time period in accordance with the law.

1. A principal controverted issue at trial was whether respondent could postpone further processing of the EIR and Specific Plan for the Rancho San Juan Area of Development Concentration until after an update of the General Plan. The Court has determined that respondent must continue to process the Rancho San Juan EIR and Specific Plan forthwith, consistent with statutory requirements for public notice and must diligently complete the certification of the EIR and adoption of the Specific Plan within a reasonable time period in accordance with the law.

a. The Court based its decision on the following facts:

Petitioners are the owners of land in the Rancho San Juan area of North Monterey COUNTY. In 1982 COUNTY adopted the Monterey COUNTY General Plan. This plan designated the Rancho San Juan area as an "Area of Development Concentration" (ADC) study area and deferred planning in that area to the Greater Salinas Area Plan (GSAP). During the preparation of the GSAP alternative ADC areas were considered. An EIR was prepared for the GSAP. The EIR was certified and GSAP adopted by the COUNTY in 1986. The Rancho San Juan area was designated as an ADC and the GSAP provided that no discretionary development could take place until a specific plan for this area was adopted. In summary, the General Plan deferred the planning of this area to the GSAP; the GSAP deferred it to a Specific Plan; and discretionary development was thereby precluded until adoption of the Specific Plan.

Shortly after adoption of the GSAP Petitioners were advised that COUNTY lacked funds to prepare the Specific Plan and that current COUNTY policy then prohibited permitting Petitioners to fund or prepare the Plan themselves. In January 1987 COUNTY did prepare and circulate Requests for Proposals (RFP) for the Plan and sought funds from the State for a "Feasibility Study,"

an initial step in the Plan process. In 1989, with little progress in preparation of the Plan, Petitioners submitted various documents as part of an application for development called North Monterey Heights, which included a request for General Plan amendment to eliminate the requirement for a Specific Plan for this limited development. In 1990 COUNTY decided to defer this application until the Specific Plan was completed and adopted a Resolution designating certain lands as "Areas of Benefit" to impose predevelopment fees to recover costs for the "Feasibility Study." In addition they also approved an agreement for preparation of the "Feasibility Study."

The "Feasibility Study" was completed and accepted by COUNTY in September 1991. It made recommendations including reductions in density below the GSAP and reduced water consumption. In September 1992 COUNTY adopted an Ordinance amending the zoning in the GSAP to conform to the General Plan. Rancho San Juan, including Petitioners' property, was zoned light industrial and high density residential.

Third parties who alleged that it violated CEQA challenged the zoning ordinance. In order to settle that lawsuit, COUNTY asked Petitioners to pay COUNTY lawyer fees and agree to a rescission of the ordinance as it applied to the ADC, pending timely completion of the Specific Plan consistent with the "Feasibility Study" and its reduced density and other recommendations. Petitioners agreed. In 1993, as part of their discussions, COUNTY also changed their policy and adopted appropriate ordinances to allow private parties to reimburse costs of environmental studies and plan processing.

Finally, in 1994, COUNTY adopted the agreement for preparation and processing of the EIR and Specific Plan. At the same time COUNTY contracted with "The Planning Center" to act as consultants to prepare the EIR and Plan. The agreement established a schedule for completion and adoption of the EIR and Plan that provided for completion of public hearings by December 1994. Further, Petitioners agreed to accept the reduced densities suggested in the Feasibility Study.

Contemplated within the above agreements reached with Petitioners for both the payments of money and the reduction in density was that COUNTY would proceed to complete the EIR and Specific Plan in a timely manner. In this connection, the "Agreement for Preparation, Processing,

and Reimbursement for Specific Plan and Environmental Impact Report" COUNTY specifically agreed to "prepare and process a legally sufficient Specific Plan and EIR for the ADC as promptly as possible."

Since this time Petitioners have paid over $500,000.00 pursuant to the ordinance and agreement. A portion of these funds went to the COUNTY.

Neither the EIR nor Plan was completed by the scheduled date in 1994. It was not until December 1998 that a Draft Plan and EIR were finally circulated for public review. The comment period closed in March 1999 with over 400 comments. Shortly thereafter COUNTY informed Petitioners that it was intending to commence a General Plan update and recommended postponing further processing of the Specific Plan and EIR until that was completed. Petitioners did not agree. In May 1999 the Chief of Planning Services recommended suspension of the processing of the Plan and EIR until the General Plan update was completed. Petitioners again objected. Notwithstanding Petitioners' position, COUNTY has not proceeded with the processing of the Specific Plan and EIR. The purported time for completion of the General Plan Update is indefinite and could take multiple years.

b. The legal basis for the Court's decision is as follows:

Contrary to the argument of COUNTY, Petitioners do not seek any adjudication as to the contents or substance of the Plan or the EIR nor to compel COUNTY to "legislate" in a particular manner. Nor do they claim any vested right to development. They only seek that COUNTY complete the processing, certification, and adoption of both the EIR and the Plan. This is important in that COUNTY has specifically precluded any discretionary development until the adoption of the Specific Plan. Nothing herein shall compel any particular result nor prevent COUNTY from specifically finding that the General Plan is inadequate and/or taking appropriate action under Government Code section 65858.

The general plan is the "constitution" or "charter" for all land use within a COUNTY. City of Sausalito v. County of Marin 12 Cal.App.3d 550 (1970). The preparation of a General Plan is mandatory. Government Code Section 65300. No development may proceed unless and until there

is a legally adequate General Plan and all other Plans and development must be consistent with the General Plan. It is appropriate in the General Plan itself to specifically require and defer to the preparation of Specific Plans for specialized or discreet areas. In this context Government Code Section 65450 provides that:

> "After the legislative body has adopted a General Plan, the planning may, or if so directed the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan."

Therefore, when the legislative body defers a specific area for preparation of a specific plan, precludes all development until that is prepared, and directs the preparation of that plan, the adoption of that specific plan becomes a part of the legislative bodies' mandatory duty to prepare a legally adequate general plan. In the instant case the General Plan did defer to the preparation of the Greater Salinas Area Plan, which, in turn, deferred to the development of a specific plan for the area in question. As a consequence COUNTY has mandatory duty to adopt a specific plan.

No statute or appellate case establishes a date certain by which the adoption of a Plan or certification of an EIR must be completed. Obviously the times for completion of these tasks will vary according to the particular circumstances and nature of the project. This issue presented herein is whether COUNTY's action in suspending processing and adoption of the Specific Plan and EIR for an indefinite time while they consider whether the General Plan will be updated, given the specific factual context of this case, is arbitrary, capricious, lacking in evidentiary support, or contrary to procedures required by law.

COUNTY in part argues that the Court is without jurisdiction to compel completion of the Plan and EIR because the "timing" is in itself a legislative act. If this were the case COUNTY could, at will, indefinitely delay the adoption of a mandatory plan without consequence and a landowner could be precluded from bringing a "takings" action because no final decision on the permissible scope of development had been reached. Although there is authority that a public entity may be liable for a "temporary takings" where they delay a project beyond the "normal and/or reasonable time to accomplish processing," it could well be argued that no such takings could or should take

place until Petitioners take some action to compel action. Where there is a mandatory duty to act and COUNTY has failed to so act, the Court does have jurisdiction to determine whether that decision is an abuse of discretion.

The delay here is not "short term." It has been over 14 years. Only a very small part of that delay was attributable to Petitioners. COUNTY's excuse has generally been lack of money and/or staff. Although these factors may certainly be considered, they do not end the inquiry where there is a mandatory duty to act. No other plan or project has been delayed for this extended period of time. Further, for a substantial period of time Petitioners have been funding the process pursuant to the agreement with COUNTY. The lack of funds or staff does not justify the present action by COUNTY and the extraordinary length of time already passed must be considered in determining the legitimacy of further delays. This length of time becomes even more critical where all development is precluded until the action is completed, no definite time for completion of the General Plan update is contemplated, and the projected time period is in the range of multiple of years not months.

Another important factor is that COUNTY specifically contractually obligated itself to complete the Plan and EIR by a date certain and extracted money from Petitioners in exchange therefore.

Finally, COUNTY asserts that it is permissible to extend the delay to update the General Plan. Although the update of a General Plan is an important and at times necessary action the issue here is whether it legally justifies suspension of the preparation of this Specific Plan given the findings above. There is no evidence that the completion of this Plan or EIR will substantially interfere with the General Plan update process. This action does not seek to compel any particular substantive finding or requirement within the EIR or Plan. In fact, should the EIR identify specific environmental issues they will be required to be addressed in the EIR and considered in the Plan. Although COUNTY's supplemental brief "infers" that the General Plan may be "outdated" there has been no specific finding of such. If the General Plan is inadequate then all development must be precluded. The COUNTY has not refused to process any other project because the General Plan was

"outdated" nor have they taken any action pursuant to Government Code Section 65858.

Given the specific factual content of this case the Court finds that the decision of COUNTY to suspend further processing of the Plan and EIR for an indefinite period is contrary to law. (Government Code Sections 65103(b), 65300, and 65450; Public Resources Code Sections 21082.2(d) and 21091(d).)

2. A principal controverted issue at trial was whether COUNTY was compelled to adopt zoning for Petitioner's property within a reasonable time. The Court has determined that COUNTY shall adopt zoning for Petitioner's property forthwith, consistent with statutory requirements for public notice, completing said process within a reasonable time period in accordance with the law. (Government Code §65860.)

a. The Court based its decision on the following facts:

In September 1992 COUNTY adopted an Ordinance amending the zoning in the GSAP to conform to the General Plan. Rancho San Juan, including Petitioners' property, was zoned light industrial and high-density residential.

Third parties who alleged that the rezoning violated CEQA challenged the zoning ordinance. In order to settle that lawsuit, COUNTY asked Petitioner to pay COUNTY lawyer fees, agree to a rescission of the Ordinance as it applied to the ADC, pending timely completion of the Specific Plan consistent with the "Feasibility Study" and its reduced density and other recommendations. Petitioners agreed. In 1993, as part of their discussions, COUNTY also changed their policy and adopted appropriate ordinances to allow private parties to reimburse costs of environmental studies and plan processing.

3. The Court has found the issue of declaratory relief concerning COUNTY's duty to prepare, process and adopt the Specific Plan, certify the EIR, and adopt a zoning ordinance within the ADC moot based on the facts and legal reasons stated herein above.

4. A principal controverted issue at trial was whether COUNTY was estopped from denying that Petitioners have a right to have COUNTY expeditiously complete the preparation, processing, and adoption of a legally adequate Specific Plan and EIR. The Court has determined this issue is

moot based on the facts and legal reasons stated hereinabove.

5. For the reasons articulated by Petitioner, the Court finds that Petitioner is not barred from proceeding herein for failure to exhaust administrative remedies.

6. The Court has found that Ordinance No. 04037 was validly enacted.

a. The Court based its decision on the reasons articulated by COUNTY, specifically including COUNTY's determination that Ordinance No. 04037 is consistent with the General Plan, the Greater Salinas Area Plan (including Policy 26.1.4.1) and the Growth Management Policy, and does not obstruct their attainment.

7. Judgment should be entered:

a. Ordering a peremptory writ of mandamus to issue from this Court, directing Respondent to continue to process the EIR, Specific Plan and zoning for the Rancho San Juan Area of Development Concentration forthwith, consistent with statutory requirements for public notice; and to diligently complete the certification of said EIR, and the adoption of said Specific Plan and zoning within a reasonable time period in accordance with the law; and

b. The Court has not made an award of attorneys' fees or costs in this proceeding, but will consider that upon submission of an appropriate motion or cost bill.

Let judgment be entered accordingly.

DATED: 3-1-07

Judge

RICHARD M. SILVER

Exhibit C

Exhibit C

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FILED
JUL 25 2001
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CLERK OF THE SUPERIOR COURT
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

H-Y-H CORPORATION, a Delaware corporation,

Petitioner and Plaintiff,

vs.

COUNTY OF MONTEREY and DOES I through XX, INCLUSIVE,

Respondents and Defendants.

Case No. M 46616

[redacted]D
ORDER CLARIFYING PEREMPTORY WRIT OF MANDATE

On February 26, 2001, this Court issued a Peremptory Writ of Mandate to COUNTY OF MONTEREY, Respondent ("County"), commanding County to "immediately on receipt of this writ to continue to process the EIR and Specific Plan for the Rancho San Juan Area of Development Concentration forthwith, consistent with statutory requirements for public notice, and to diligently complete the certification of said EIR, the adoption of said Specific Plan and zoning for the ADC within a reasonable time period in accordance with the law."

Respondent County filed its First Return to the Peremptory Writ of Mandate on May 3, 2001. Petitioner H-Y-H CORPORATION filed a Motion to Enforce Judgment Issuing Peremptory Writ

and Objections to the First Return to the Peremptory Writ of Mandate on May 24, 2001.

Having reviewed Respondent's First Return to the Peremptory Writ of Mandate, Petitioner's Motion to Enforce Judgment Issuing Peremptory Writ and Objections to the First Return and Respondent's Reply thereto, and having heard the arguments of counsel for Petitioner and Respondent on June 22, 2001, the Court further clarifies the intention of the Court in issuing the Peremptory Writ of Mandate as follows:

1. County shall immediately resume processing of the existing Rancho San Juan ADC draft Specific Plan and draft EIR at the same point where County ~~illegally~~ stopped processing said documents in May of 1999.

2. The Court perceives no conflict of interest which would prevent the consultant now under contract to the County, The Planning Center, from completing the Rancho San Juan ADC Specific Plan and EIR. There is no reason to believe that this consultant in any way favored the Petitioner. The County has the discretion to hire a new consultant if it wishes to do so, but hiring a new consultant shall not be good cause for any delays whatsoever.

3. If County hires a new consultant, then all costs and expenses thereof shall be at the sole expense of County and the process shall be completed in the same time period as the previous consultant could have done so. ~~County has acknowledged that hiring a new consultant will necessarily cost considerably more money. County Counsel has represented that County is prepared to pay the extra money to this consultant so that it can hire and assign people in sufficient people hours that they can get up to date on all of this matter immediately, synthesize the 400 comments already received into a final EIR as required by law and be prepared to finish the Specific Plan as quickly as the previous consultant was. County shall obtain this contractual commitment from any newly hired consultant.~~

4. County shall file a Second Return to the Peremptory Writ to include a time schedule for the completion of the Rancho San Juan ADC Specific Plan and EIR process demonstrating no extension of time as a result of a change of consultant. ~~If County elects to resubmit the Proposed Calendar attached to the June 12, 2001 Declaration of Ms. Celia Perez Martinez, County shall~~

~~specifically show cause why this time schedule is consistent with this Court's clarification that County shall resume processing where it left off and that there can be no extension of time due to a change of consultant.~~

Dated: 9/23, 2001

THE HONORABLE RICHARD M. SILVER,
Judge of the Superior Court

APPROVED AS TO FORM AND CONTENT

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PROOF OF SERVICE

H-Y-H Corporation v. County of Monterey – Case No. M85082

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on September 14, 2007, I served a copy of:

OBJECTION TO STATEMENT OF DECISION

☒ **BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

Efren N. Iglesia, Esq. Senior Deputy County Counsel County of Monterey 230 Church Street, Building One Salinas, CA 93901 Phone: (831) 755-5045 Fax: (831) 755-5283 *Counsel for Respondent County of Monterey*	☐ Fax ☒ U.S. Mail ☐ Overnight ☐ Personal
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on September 14, 2007.

Catherine L. Berté
(typed)

Catherine L. Berté
(signature)

sf-2338447

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H-Y-H CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

H-Y-H CORPORATION, a Delaware corporation, Petitioner and Plaintiff, v. COUNTY OF MONTEREY, Respondent and Defendant.	Case No. M85082 **SUPPLEMENTAL PROOF OF SERVICE RE OBJECTIONS TO STATEMENT OF DECISION**
LANDWATCH MONTEREY COUNTY and RANCHO SAN JUAN OPPOSITION COALITION, Intervenors.	

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

On September 20, 2007, I served a copy of Petitioner and Plaintiff's OBJECTION TO STATEMENT OF DECISION (filed September 17, 2007) on:

Mark R. Wolfe, Esq.
John H. Farrow, Esq.
M.R. Wolfe and Associates, P.C.
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San Francisco, CA 94108
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Fax: (415) 369-9400
Counsel for Intervenors Landwatch Monterey County and Ranch San Juan Opposition Coalition

☒ **BY FACSIMILE [Code Civ. Proc sec. 1013(e)]** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone number 415.268.7522 to the fax number(s) set forth below, or as stated on the attached service list. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Morrison & Foerster LLP for transmission.

☒ **BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on September 20, 2007.

Catherine L. Berté

CATHERINE L. BERTÉ

I. CCP 632

A. In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision **explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial** upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall **specify those controverted issues as to which the party is requesting a statement of decision**. After a party has requested the statement, any party may make proposals as to the content of the statement of decision.

The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.

II. Court has discretion to amend findings and conclusions until judgment entered

A. Even after a court has issued a written decision, the court retains the power to change its findings of fact or conclusions of law until judgment is entered. Bay World Trading, Ltd. v. Nebraska Beef, Inc. (App. 1 Dist. 2002) 123 Cal.Rptr.2d 632, 101 Cal.App.4th 135. Trial ⇨400(1)

B. A judge who has heard the evidence in a case may, at any time before entry of judgment, amend or change his findings of fact. Engleman v. Green (Super. 1954) 125 Cal.App.2d Supp. 882, 125 Cal.App.2d 882, 270 P.2d 127. Trial ⇨400(1)

C. Where findings are required, court's decision is rendered when findings are filed with the clerk, and until then, court may amend findings and enter judgment different from that first announced. Magarian v. Moser (App. 4 Dist. 1935) 5 Cal.App.2d 208, 42 P.2d 385. Judgment ⇨215

D. Where, at time that trial judge revised his findings, no judgment had been entered, and finding ultimately made rested on evidence in record, subsequent findings could not be challenged on ground that trial judge had no power to make them. Solis v. Contra Costa County (App. 1 Dist. 1967) 60 Cal.Rptr. 99, 251 Cal.App.2d 844. Trial ⇨401

III. A court need not make findings on matters that are not at issue

A. 243. Sufficiency of findings and conclusions--In general

1. Findings which were signed by trial court and fairly disclosed court's determination of material issues of fact as required by this section were sufficient; ***it was not necessary for court to couch its findings in any greater detail or to state findings in terms requested by defendants, interwoven with inferences contrary to inferences drawn by trial court.*** Security Pacific Nat. Bank v. Chess (App. 2 Dist. 1976) 129 Cal.Rptr. 852, 58 Cal.App.3d 555. Trial ⚯395(1); Trial ⚯395(7)

a) ID AT 567-568: Defendants contend that the trial court improperly denied their request for special findings. The record shows that defendants submitted *568 to the trial court a 40-page document entitled 'objections to proposed findings of fact and conclusions of law; proposed counterfindings of fact and corrected conclusions of law; and request for special findings.' That document, in gross, is a reargument of the evidence as seen from the viewpoint of the defendants. The 'proposed counterfindings' and the requested 'special findings' are stated in evidentiary detail, interwoven with inferences which are contrary to the inferences drawn by the trial court. The findings signed by the trial court do fairly disclose the court's determination of the material issues of fact, as is required by Code of Civil Procedure section 632. It was not necessary for the court to couch its findings in any greater detail.

2. In rendering statement of decision, trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on material issue which would fairly disclose trial court's determination would reversible error result. In re Marriage of Balcof (App. 4 Dist. 2006) 47 Cal.Rptr.3d 183, 141 Cal.App.4th 1509, rehearing denied, review denied. Appeal And Error ⚯1071.6; Trial ⚯391

a) ID AT 1531: As stated in *Hellman v. La Cumbre Golf & Country Club, supra,* 6 Cal.App.4th at page 1230, 8 Cal.Rptr.2d 293: "In rendering a statement of decision under Code of Civil Procedure section 632, a trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on a material issue which would fairly disclose the trial court's determination would reversible error result. [Citations.] Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party's favor which would have the effect of countervailing or destroying other findings. [Citation.] A failure to find on an immaterial issue is not error. [Citations.] The trial court need not discuss each question listed in a party's request; all that is required is an explanation of the factual and legal basis of the court's decision regarding the principal controverted issues at trial as are listed in the request.

[Citation.]"

3. Trial court is not required to make express finding of fact on every factual matter controverted at trial, where statement of decision sufficiently disposes of all basic issues in case. Bauer v. Bauer (App. 1 Dist. 1996) 54 Cal.Rptr.2d 377, 46 Cal.App.4th 1106, as modified. Trial ⚷388(1)

a) ID: Finally, there is no merit to Wayne and Kenneth's contention that we must reverse the judgment because the trial court failed to make their requested factual and legal findings. The trial court's statement of **385 decision addressed the substance of all of the matters raised by Wayne and Kenneth's request for specific findings. The trial court is not required to make an express finding of fact on every factual matter controverted at trial, where the statement of decision sufficiently disposes of all the basic issues in the case. (Code Civ.Proc., §§ 632, 634; *Coleman Engineering Co. v. North American Aviation, Inc.* (1966) 65 Cal.2d 396, 410, 55 Cal.Rptr. 1, 420 P.2d 713; *McClung v. Saito* (1970) 4 Cal.App.3d 143, 152, 84 Cal.Rptr. 44.)

4. A trial court's findings should be confined to the ultimate issues involved. U. S. Credit Bureau v. Sanders (App. 2 Dist. 1951) 103 Cal.App.2d 806, 230 P.2d 849. Trial ⚷395(1)

a) Although the issues of fact were quite simple, the court made 49 findings, at least 40 of which were unnecessary. There were findings on all the allegations of the pleadings that were not controverted, as well as those that were, and upon any number of evidentiary matters. A great deal of labor on the part of counsel and the court would be avoided if findings were confined to the ultimate issues, as they should be.

B. 273. ---- Issues not raised by pleadings, failure to find

1. In action by vendor to quiet title to a lot where no issue was raised in the trial court as to who was entitled to improvements placed on the lot, failure of trial court to make a finding thereon was not error. Holden v. Johnson (App. 1950) 95 Cal.App.2d 872, 214 P.2d 18. Trial ⚷397(3)

Appellants could not claim error in failure to make a finding upon a point where such point was not an issue and no finding on the subject was requested. Maguire v. Lees (App. 1946) 74 Cal.App.2d 697, 169 P.2d 411. Appeal And Error ⚷219(2); Trial ⚷397(3)

Court properly refused to make additional findings not responsive to allegations of pleading. Robb v. Cardoza (App. 1 Dist. 1932) 127 Cal.App. 588, 16 P.2d 325. Trial ⚷397(3)

Findings are properly silent on defense of settlement not pleaded.

Weaver v. Atlantian Const. Co. (App. 1 Dist. 1927) 84 Cal.App. 154, 258 P. 111. Trial ⚷397(3)

Express finding is not required on ultimate fact, not made issue. U.S. Fidelity & Guaranty Co. v. Industrial Acc. Commission of Cal. (App. 2 Dist. 1927) 84 Cal.App. 226, 257 P. 895. Trial ⚷397(3)

Findings which would have been outside the issues were properly not made. Emigh v. Wood (App. 1 Dist. 1927) 81 Cal.App. 347, 253 P. 947. Trial ⚷397(3)

In action by wife to recover loan to former husband, where latter counterclaimed on basis of alleged contract for $5,000 per year for services as her attorney, failure of trial court to find reasonable value of husband's services to wife was not error, in absence of any allegation of promise of wife to pay reasonable compensation. Troy v. Troy (App. 1 Dist. 1925) 72 Cal.App. 757, 238 P. 143. Trial ⚷397(3)

Refusal to make finding concerning effect of telephone conversation between parties to action was not improper, where it was not an issue made by pleadings, but was merely evidence offered at trial. Powers v. Barton (App. 1 Dist. 1925) 70 Cal.App. 778, 234 P. 435. Trial ⚷397(3)

In action against administrator for services rendered decedent, where answer did not allege that any rent or rental value was due or unpaid from plaintiffs as an offset thereto, no issue was raised on that question requiring a finding. Warder v. Hutchison (App. 3 Dist. 1924) 69 Cal.App. 291, 231 P. 563. Trial ⚷397(3)

In an action by a seller against a buyer to recover payment for pipe, where the issue of fraud of the seller was not presented by the pleadings, there was no duty on the trial court to make a finding in connection therewith. Frazier v. Southern Counties Gas Co. (App. 2 Dist. 1924) 66 Cal.App. 609, 226 P. 833. Trial ⚷397(3)

Where defendant did not set up prescriptive title, but alleged merely ownership and possession for 10 years, and the court found against her allegation of ownership, its failure to find specifically upon the question of prescriptive title claimed by her was not error, the finding being as specific as the allegations of the answer. Jeffers v. Hulen (App. 3 Dist. 1921) 52 Cal.App. 590, 199 P. 350. Trial ⚷397(3)

Findings are properly not made, where no issues were framed by the pleadings to which such findings would be relevant and no evidence relevant thereto was introduced or offered by either of the parties. Chambers v. Farnham (App. 1918) 39 Cal.App. 17, 179 P. 423. Trial ⚷397(3); Trial ⚷397(4)

Where there was no issue relative to estoppel raised by the pleadings, a finding relative thereto was unnecessary. Mentry v. Broadway Bank & Trust Co. (App. 1912) 20 Cal.App. 388, 129 P. 470. Trial ⚷397(3)

The court was not bound to make findings upon the matter alleged in the answer, where it raised no issue. Reeder v. Wells Fargo & Co. (App. 1910) 14 Cal.App. 790, 113 P. 342. Trial ⇨397(3)

A defendant cannot complain that the court made no finding upon an equitable point involved in the cause, when, by his own neglect to meet such point in his answer, no issue thereon has been raised. Anderson v. Black (1886) 70 Cal. 226, 11 P. 700. Trial ⇨397(3)

C. 275. ---- **Immaterial issues, failure to find, findings and conclusions**

1. ***Trial court need not find, and it is not error to fail to find, on immaterial matters or issues***. Wells v. Zenz (1972) 256 P. 484, 83 Cal.App. 137; Chester R. Pyle Co. v. Fossler (1927) 252 P. 599, 200 Cal. 204; Luitwieler v. Luitwieler (1925) 234 P. 329, 71 Cal.App. 50; Vaughan v. Roberts (1941) 113 P.2d 884, 45 Cal.App.2d 246; Southern Pac. R. Co. v. Dufour (1892) 30 P. 783, 95 Cal. 615, 19 L.R.A. 92; Louvall v. Gridley (1886) 11 P. 777, 70 Cal. 507.

2. Court properly refused to make additional findings which were immaterial. Clark v. Western Feeding Co. (1936) 52 P.2d 991, 10 Cal.App.2d 727; Robb v. Cardoza (1932) 16 P.2d 325, 127 Cal.App. 588.

3. Where the findings are sufficient as to all material issues, a judgment will not be reversed or new trial granted for failure to make findings on certain immaterial issues. Banducci v. Banducci (1944) 147 P.2d 73, 63 Cal.App.2d 600; Garvey v. La Shells (1907) 91 P. 498, 151 Cal. 526.

4. Where public contract bidder's complaint merely requested declaratory relief that Gov.C. § 4205 which prohibits further bidding on public construction project by bidder who has claimed mistake in his bid did not apply to bar his rebid estoppel was not material issue; therefore, trial court did not err in failing to determine whether school district was estopped from asserting provisions of statute on grounds that it misled bidder into withdrawing its bid. Colombo Const. Co., Inc. v. Panama Union School Dist. (App. 5 Dist. 1982) 186 Cal.Rptr. 463, 136 Cal.App.3d 868. Trial ⇨397(5)

5. Where findings are made upon issues which determine cause and uphold judgment, other issues become immaterial and failure to find thereon does not constitute prejudicial error. Domach v. Spencer (App. 3 Dist. 1980) 161 Cal.Rptr. 459, 101 Cal.App.3d 308. Appeal And Error ⇨1071.6

6. Where, in suit by second partners claiming one half of timber rights on land which had been distributed to first partners pursuant to dissolution of partnership, trial court found that distribution of partnership assets had been negotiated and that it behooved second partners to enter into agreement to give first partners such land if distribution agreement was to

be reached absent court proceedings, whether it was intent of parties to divide and distribute partnership assets as equally as possible was immaterial to suit, and thus trial court's failure to make findings of fact on issue of intent, as requested by second partners, was not improper. McAdams v. McElroy (App. 1 Dist. 1976) 133 Cal.Rptr. 637, 62 Cal.App.3d 985. Trial ⚷397(5)

7. Where cause is at issue on defendant's denial of allegations of common count, trial court's finding in language of such count ordinarily concludes whole controversy, and specific findings are unnecessary. Parker v. Shell Oil Co. (1946) 29 Cal.2d 503, 175 P.2d 838. Trial ⚷ 397(5)

8. Where there is in the record evidence to support a recovery on either of two theories, the findings on the inconsistent theory may be disregarded as "surplusage". Niles v. Louis H. Rapoport & Sons (App. 2 Dist. 1942) 53 Cal.App.2d 644, 128 P.2d 50. Trial ⚷397(5); Trial ⚷398

9. Where facts as to which the trial court failed to make findings were not addressed to material issues, there was no necessity for findings thereon. Kort v. City of Los Angeles (App. 2 Dist. 1942) 52 Cal.App.2d 804, 127 P.2d 66. Trial ⚷397(5)

10. In action for injuries sustained when plaintiff fell down a flight of stairs, the trial court did not err in failing to find specifically on the doctrine of assumption of risk, a defense pleaded in defendants' answers, where the court did find that plaintiff was contributorily negligent, since the so-called doctrine of "assumption of risk" is merely one phase of the doctrine of "contributory negligence". Lee v. Dawson (App. 1 Dist. 1941) 44 Cal.App.2d 362, 112 P.2d 683. Trial ⚷397(5)

11. In action for accounting and division of property, tried before court sitting without jury, trial court was required only to make findings upon ultimate facts and did not err in refusing to make findings on immaterial issues. McAllen v. Souza (App. 1 Dist. 1937) 24 Cal.App.2d 247, 74 P.2d 853. Trial ⚷395(5)

12. Findings that contract was executed and that it was usurious render it unnecessary to find on various clauses not determinative of rights of parties. Wood v. Angeles Mesa Land Co. (App. 3 Dist. 1932) 120 Cal.App. 313, 7 P.2d 748. Trial ⚷397(5)

13. Finding that plaintiff had no interest in proceeds of oil and gas sought to be recovered rendered findings on laches and limitations unnecessary. Merrill v. Gordon & Harrison (1929) 208 Cal. 1, 279 P. 996. Trial ⚷397(5)

14. Court's failure to find on affirmative defenses was not error, where finding was unnecessary. Webb v. M.J. Brandenstein & Co. (App. 2 Dist. 1928) 89 Cal.App. 499, 264 P. 1102. Trial ⚷397(5)

15. Finding is rendered immaterial, where logical conclusions from other findings determine issue. Shelley v. Board of Trade of San Francisco (App. 1 Dist. 1927) 87 Cal.App. 344, 262 P. 403. Trial ⚷397(5)

16. Omitted finding on issue as to assignment of claim for recovery of money paid was immaterial, where court found assignee had no claim and that no overpayment had been made. Shelley v. Board of Trade of San Francisco (App. 1 Dist. 1927) 87 Cal.App. 344, 262 P. 403. Trial ⚷ 397(5)

17. Where court's finding that former injury caused new disability determined case, failure to make express finding concerning new disability was immaterial. Associated Industries Ins. Corp. v. Industrial Acc. Commission of California (App. 1 Dist. 1927) 85 Cal.App. 184, 259 P. 110. Trial ⚷397(5)

18. Where an answer contains two separate defenses, viz., a denial of the allegations of the complaint, and a justification of the acts complained of, a finding for the plaintiff on the first defense renders a failure to find on the second immaterial. Paden v. Goldbaum (1894) 4 Cal.Unrep. 767, 37 P. 759. Trial ⚷397(5)

19. Where the complaint alleged both actual and constructive fraud, and the court makes a finding of constructive fraud, failure to make any finding as to actual fraud is immaterial since such finding, if made in favor of either party, could in no way affect the verdict. Brison v. Brison (1891) 90 Cal. 323, 27 P. 186. Trial ⚷397(5)

D. 262. ---- Issues not raised by pleading or evidence, conformity of findings

1. Findings outside issues made by pleadings are nugatory. Whittier v. Auth (1929) 279 P. 491, 99 Cal.App. 759; Dalton v. Gardner (1928) 261 P. 524, 78 Cal.App. 1; Simmons v. Simmons (1913) 137 P. 20, 166 Cal. 438.

2. It is not necessary for the court to make a specific finding on a matter not in issue. Pinheiro v. Bettencourt (1911) 118 P. 941, 17 Cal.App. 111; Ward v. Sherman (1909) 100 P. 864, 155 Cal. 287.

3. There need be no finding on issues not raised by pleadings. Glassell v. Glassell (1905) 82 P. 42, 147 Cal. 510; Burton v. Mullenary (1905) 81 P. 544, 147 Cal. 259.

4. In action against executrix for work done for testator, where answer did not deny allegation that plaintiff had not been paid, finding that plaintiff had been paid was error, in view of rule that matters not put in issue by pleadings should not be found upon. Lucy v. Lucy (App. 1 Dist. 1937) 22 Cal.App.2d 629, 71 P.2d 949. Trial ⚷396(2)

5.

6. In action by vendor to quiet title to a lot where no issue was raised in the trial court as to who was entitled to improvements placed on the lot, failure of trial court to make a finding thereon was not error. Holden v. Johnson (App. 1950) 95 Cal.App.2d 872, 214 P.2d 18. Trial ⚷397(3)

7. Appellants could not claim error in failure to make a finding upon a point where such point was not an issue and no finding on the subject was requested. Maguire v. Lees (App. 1946) 74 Cal.App.2d 697, 169 P.2d 411. Appeal And Error ⚷219(2); Trial ⚷397(3)

8. Court properly refused to make additional findings not responsive to allegations of pleading. Robb v. Cardoza (App. 1 Dist. 1932) 127 Cal.App. 588, 16 P.2d 325. Trial ⚷397(3)

9. Findings are properly silent on defense of settlement not pleaded. Weaver v. Atlantian Const. Co. (App. 1 Dist. 1927) 84 Cal.App. 154, 258 P. 111. Trial ⚷397(3)

10. Express finding is not required on ultimate fact, not made issue. U.S. Fidelity & Guaranty Co. v. Industrial Acc. Commission of Cal. (App. 2 Dist. 1927) 84 Cal.App. 226, 257 P. 895. Trial ⚷397(3)

11. Findings which would have been outside the issues were properly not made. Emigh v. Wood (App. 1 Dist. 1927) 81 Cal.App. 347, 253 P. 947. Trial ⚷397(3)

12. In action by wife to recover loan to former husband, where latter counterclaimed on basis of alleged contract for $5,000 per year for services as her attorney, failure of trial court to find reasonable value of husband's services to wife was not error, in absence of any allegation of promise of wife to pay reasonable compensation. Troy v. Troy (App. 1 Dist. 1925) 72 Cal.App. 757, 238 P. 143. Trial ⚷397(3)

13. Refusal to make finding concerning effect of telephone conversation between parties to action was not improper, where it was not an issue made by pleadings, but was merely evidence offered at trial. Powers v. Barton (App. 1 Dist. 1925) 70 Cal.App. 778, 234 P. 435. Trial ⚷397(3)

14. In action against administrator for services rendered decedent, where answer did not allege that any rent or rental value was due or unpaid from plaintiffs as an offset thereto, no issue was raised on that question requiring a finding. Warder v. Hutchison (App. 3 Dist. 1924) 69 Cal.App. 291, 231 P. 563. Trial ⚷397(3)

15. In an action by a seller against a buyer to recover payment for pipe, where the issue of fraud of the seller was not presented by the pleadings, there was no duty on the trial court to make a finding in connection therewith. Frazier v. Southern Counties Gas Co. (App. 2 Dist. 1924) 66 Cal.App. 609, 226 P. 833. Trial ⚷397(3)

16. Where defendant did not set up prescriptive title, but alleged merely ownership and possession for 10 years, and the court found against her allegation of ownership, its failure to find specifically upon the question of prescriptive title claimed by her was not error, the finding being as specific as the allegations of the answer. Jeffers v. Hulen (App. 3 Dist. 1921) 52 Cal.App. 590, 199 P. 350. Trial ⚷397(3)

17. Findings are properly not made, where no issues were framed by the pleadings to which such findings would be relevant and no evidence relevant thereto was introduced or offered by either of the parties. Chambers v. Farnham (App. 1918) 39 Cal.App. 17, 179 P. 423. Trial ⚷397(3); Trial ⚷397(4)

18. Where there was no issue relative to estoppel raised by the pleadings, a finding relative thereto was unnecessary. Mentry v. Broadway Bank & Trust Co. (App. 1912) 20 Cal.App. 388, 129 P. 470. Trial ⚷397(3)

19. The court was not bound to make findings upon the matter alleged in the answer, where it raised no issue. Reeder v. Wells Fargo & Co. (App. 1910) 14 Cal.App. 790, 113 P. 342. Trial ⚷397(3)

20. A defendant cannot complain that the court made no finding upon an equitable point involved in the cause, when, by his own neglect to meet such point in his answer, no issue thereon has been raised. Anderson v. Black (1886) 70 Cal. 226, 11 P. 700. Trial ⚷397(3)

E. 260. Immaterial findings and conclusions

1. *Requested findings as to specific location of rear-end collision and as to other evidentiary facts were properly refused as not constituting findings on material issues of fact*, in view of findings that collision occurred when preceding automobile was stopped at sign and that following driver was guilty of negligence which was sole proximate cause of preceding driver's injuries. Lewetzow v. Sapiro (App. 1 Dist. 1961) 11 Cal.Rptr. 126, 188 Cal.App.2d 841. Trial ⚷395(9)

2. Court's finding in relation to immaterial matter will not control parties in any subsequent proceeding. In re Lowe's Estate (1918) 178 Cal. 111, 172 P. 583. Judgment ⚷728

3. An immaterial finding was not an adjudication against those in whose favor is an order based on material findings. In re Funkenstein's Estate (1915) 170 Cal. 594, 150 P. 987. Judgment ⚷724

4. Findings which are immaterial and unnecessary to support the judgment may be disregarded. Rogers v. Schlotterback (1914) 167 Cal. 35, 138 P. 728. Trial ⚷395(9

5.

IV. A court need not make further findings upon the probative facts which are necessary to sustain the final fact found by the court

A. Court must find on all material issues of fact raised by pleadings and evidence, and where court has made findings upon material facts in issue it need not make further findings upon probative facts which are necessary to sustain final fact found. Crocker Citizens Nat. Bank v. Knapp (App. 2 Dist. 1967) 60 Cal.Rptr. 66, 251 Cal.App.2d 875. Trial ⇨391; Trial ⇨ 395(5)

1. A court must find on all material issues of fact raised by the pleadings and evidence. Where the court has made findings upon the material facts in issue, it need not make further findings upon the probative facts which are necessary to sustain the final fact found by the court. (Hicks v. Hicks (1962) 211 Cal.App.2d 144, 149, 27 Cal.Rptr. 307; Ayer v. Robinson (1958) 163 Cal.App.2d 424, 428, 329 P.2d 546; Fischer v. Ostby (1954) 127 Cal.App.2d 528, 531, 274 P.2d 221.)

[8] The findings of the court that Taub was acting in his own interest and not as agent for Packer and that there was no satisfaction of the debt but rather a purchase of the judgment by Taub, included the finding that Packer did he not pay the judgment and that no return was made upon the levied bank account. As to the funds of the Greenbaums held by the Bank and subsequently returned, it is obvious that when the Bank sold the judgment to Taub, the Bank had no further interest in the judgment and thus no further right to hold the *883 Greenbaums' money. As to Kaufman, defendants have never alleged that he was an agent of Packer's, and in fact the evidence clearly shows he was not. Failure to make these specific findings is not error, as the findings which were made amply justify the order.

V.

VI. Conclusions on findings outside the pleadings are unwarranted

A. Conclusions of law, based upon findings of fact outside the issues raised by the pleadings, cannot be sustained, and will not support a judgment. Fiske v. Casey (1894) 4 Cal.Unrep. 558, 36 P. 668. Trial ⇨ 396(2)

VII. The Court needs only make findings as to facts, not issues of law – thus proposed findings #1, 8-15, and possibly 7, which are proposed findings regarding issues of law, cannot be required of this court.

A. Statement of decision is required of trial court only as to issues of fact decided by trial court, not as to issues of law. Southern Cal. Gas Co. v. City of Vernon (App. 2 Dist. 1995) 48 Cal.Rptr.2d 661, 41 Cal.App.4th 209, modified on denial of rehearing, review denied. Trial ⇨387(1)

1. FROM SOCAL GAS AT 220-221: "It is axiomatic that a statement of decision is required only as to issues of fact decided by the trial court ([Code Civ.Proc.,] § 632: 'upon trial of a *221 question of fact by the court'), not as to issues of law." (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1291-1292, 258 Cal.Rptr. 795.)

B. The principle of a case is found by taking account of the facts treated by the judge as material, and his decision as based on such facts, and the principle is not found in the reasons given in the opinion or in the law therein set forth. Achen v. Pepsi-Cola Bottling Co. of Los Angeles (App. 1951) 105 Cal.App.2d 113, 233 P.2d 74. Courts ⇦107

1. FROM ACHEN: Notwithstanding what we have so far said we are told that our Supreme Court in Universal Sales Corp. v. California, etc., Mfg. Co., 20 Cal.2d 751, 128 P.2d 665, announced not *one* but *nine* separate *holdings*, which are quoted to us in detail. The truth of the matter is that the court did not announce a solitary one of the nine as its holding, i. e., the *ratio decidendi* of the case. In any case, 'The principle of the case is found by taking account (a) of the facts treated by the judge as material, and (b) his decision as based on them.' Goodhart, Determining the Ratio Decidendi of a Case, 40 Yale L.J. 161. The principle of a case is not found in the reasons given in the opinion or in the law therein set forth. In short, the *ratio decidendi* of the Universal case is simply that the contract was ambiguous on its face and hence that parol evidence was admissible for the purpose of arriving at the meaning and sense of the contract.

In Nelson v. Abraham, 29 Cal.2d 745, 177 P.2d 931, cited by appellants, the court held that the parties had entered into a joint venture agreement by the terms of which the plaintiff was entitled to receive a stated salary and a stated portion of the net profits of the San Francisco operation, i. e., a branch ice business. It further held that under the facts of the case that upon a sale of the business by the defendant the plaintiff was entitled to his percentage of the net profit arising from the sale. The lower court, having held otherwise, was reversed. The case is not in point. The numerous quotations made of language from the opinion are arguments used by the court in arriving at its decision and are in no sense words of precedent. In the Nelson case a fiduciary relation was shown which is not here involved. Likewise Hollywood Motion Picture Equipment Co. v. Furer, 16 Cal.2d 184, 105 P.2d 299, is not in point The quotations from that opinion, so often quoted, in appellants' briefs are but argumentative observations and no part of the *ratio decidendi* of the case.

The nine so-called 'holdings' in the Universal case are *125 either but recitals by the court of rules governing the admissibility of evidence, where the court finds, the terms of the contract uncertain or ambiguous, or else arguments or observations used by the court in reaching its decision. As was said by Chief Justice Marshall 130 years ago in Cohens v. Commonwealth of Virginia, 6 Wheat. 264, at page 290, 5 L.Ed. 257:

VIII. Objection to findings and Waiver

A. 301. Objections to findings

A party does not waive objections to legal errors appearing on the face of the trial court's statement of decision by failing to respond to it. Fladeboe v. American Isuzu Motors Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 225, 150 Cal.App.4th 42, as modified, rehearing denied. Appeal And Error ⚭219(2)

Where findings made by trial court, in action against realty broker and his salesman for damages for their alleged negligent handling of transaction for concurrent disposition of plaintiff's appartment units and acquisition of another parcel of realty, were uncertain and unintelligible in material respects and contrary to uncontradicted evidence, plaintiffs did not waive their right to object to such defective findings on appeal by failing to point them out in trial court. Stiefel v. McKee (App. 2 Dist. 1969) 81 Cal.Rptr. 565, 1 Cal.App.3d 263. Appeal And Error ⚭231(1)

Failure of appellants to object to findings of the trial court after they were served was not a waiver of any objection they might otherwise have. San Jose Abstract & Title Ins. Co. v. Elliott (App. 1 Dist. 1952) 108 Cal.App.2d 793, 240 P.2d 41. Trial ⚭405(1)

Where appellant in motion for new trial directed probate court's attention to this section, § 633 (repealed), § 634, and Prob.C. § 1230, requiring findings, there was no waiver of findings. In re Pendell's Estate (1932) 216 Cal. 384, 14 P.2d 506. Trial ⚭405(2)

B. 302. ---- Waiver of objections to findings and conclusions

Appellants waived any complaints about adequacy of trial court's statement of decision, where they stated that court's tentative ruling and memorandum adequately described court's rulings and that further documentation was unnecessary. Brydon v. East Bay Mun. Utility Dist. (App. 1 Dist. 1994) 29 Cal.Rptr.2d 128, 24 Cal.App.4th 178, review denied. Appeal And Error ⚭883

Trial counsel waived right to written statement of decision by agreeing to procedure under which reporter's transcript would constitute statement of decision. Whittington v. McKinney (App. 4 Dist. 1991) 285 Cal.Rptr. 586, 234 Cal.App.3d 123, review denied. Trial ⚭387(1)

Plaintiff's failure to object to proposed statement of decision which had been prepared for court by counsel for defendants nor to offer any proposals as to content of statement, did not preclude her, on appeal, from attacking court's failure to find on a principal controverted issue when she had made timely request to do so. McCurter v. Older (App. 2 Dist. 1985) 219 Cal.Rptr. 104, 173 Cal.App.3d 582. Appeal And Error ⚷219(2)

Where trial court at June 27 hearing on city's petition for writ of mandate compelling Highway Commission and Department of Transportation to grant allocation to city from the grade separation fund was advised that after June 30 there would be no funds available and on June 30 trial court filed proposed findings of fact and conclusions of law and filed by entered judgment and issued peremptory writ of mandate and on August 25 signed, nunc pro tunc as of June 30, findings of fact and conclusions of law, respondents waived right to any procedural formalities which would delay entry of binding judgment on June 30, or in the alternative, invited any error of the court on that account and, in any event, any error in court's action was cured by the subsequent proceedings. City of San Marcos v. California Highway Commission, Dept. of Transp. (App. 1 Dist. 1976) 131 Cal.Rptr. 804, 60 Cal.App.3d 383. Mandamus ⚷178; Mandamus ⚷187.9(3); Mandamus ⚷187.9(7)

Where defendant made no point in trial court respecting alleged insufficiency of findings, or need of a particular special finding, objection was waived. Kalmus v. Cedars of Lebanon Hospital (App. 1955) 132 Cal.App.2d 243, 281 P.2d 872. Appeal And Error ⚷219(2)

IX. Court need not make findings contrary to its own findings

232. ---- Ruling on request for findings and conclusions

A. The trial court, having adopted one party's theory of evidence, properly refused to make adverse party's proposed fact findings directly contrary to court's findings in accordance with such theory. In re Miller's Estate (App. 1 Dist. 1951) 104 Cal.App.2d 1, 230 P.2d 667. Trial ⚷392(4)

In action to enjoin use of corporate name, findings offered by defendants directly opposed to findings which had already been prepared were properly rejected where there was no conflict in the evidence and there was nothing on which the proposed new findings could rest. Law v. Crist (App. 1 Dist. 1940) 41 Cal.App.2d 862, 107 P.2d 953. Trial ⚷392(4)

X. Additional findings are not necessary now, because CCP 909 allows a subsequent appeals court to make additional or contrary findings of fact:

1. In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the reviewing court may make factual determinations contrary to or in addition to those made by the trial court. The factual determinations may be based on the evidence adduced before the trial court either with or without the taking of evidence by the reviewing court. The reviewing court may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. This section shall be liberally construed to the end among others that, where feasible, causes may be finally disposed of by a single appeal and without further proceedings in the trial court except where in the interests of justice a new trial is required on some or all of the issues.

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Attorneys for Respondent and Defendant,
COUNTY OF MONTEREY

Exempt from filing fee
(Gov't Code § 6103)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

H-Y-H CORPORATION, a Delaware corporation,

Petitioner and Plaintiff,

vs.

COUNTY OF MONTEREY,

Respondent and Defendant;

LANDWATCH MONTEREY COUNTY, and RANCHO SAN JUAN OPPOSITION COALITION,

Respondents and Defendants in Intervention.

Case No. M85082

[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE

Action Filed: June 14, 2007

Honorable Robert A. O'Farrell

The above-entitled action came on regularly for hearing before Department 14 of the above-named court at 9:00 a.m. on August 9, 2007, the Honorable Robert A. O'Farrell, Judge of the Superior Court, presiding without a jury. All sides were represented by counsel.

After consideration of the pleadings and records on file in this proceeding, the briefs filed by counsel, and the oral arguments of counsel, the cause having been submitted for decision, the Court being fully advised, and the Court having issued its Statement of Decision on September 5, 2007, denying Petitioner's Petition for a Writ of Mandate,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Petition for Writ of Mandate is denied;

2. Respondent County of Monterey and Respondents in Intervention LandWatch Monterey County and Rancho San Juan Opposition Coalition shall have judgment against Petitioner H-Y-H Corporation.

Dated: September __, 2007

By: _____
ROBERT A O'FARRELL
JUDGE OF THE SUPERIOR COURT

Approved as to Form:

Dated: September ___, 2007

MORRISON & FOERSTER LLP

By: _____
EDGAR B. WASHBURN

Attorneys for Petitioner
H-Y-H CORPORATION

Dated: September ___, 2007

M. R. WOLFE & ASSOCIATES

By: _____
MARK R. WOLFE

Attorneys for Real Parties in Interest in Intervention
LANDWATCH MONTEREY COUNTY and RANCHO SAN JUAN OPPOSITION COALITION

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

H-Y-H CORPORATION,

Petitioner,

vs.

COUNTY OF MONTEREY,

Respondent.

COUNTY OF MONTEREY,

Cross-complainant,

vs.

LANDWATCH MONTEREY COUNTY, RANCHO SAN JUAN OPPOSITION COALITION,

Cross-defendants.

H-Y-H CORPORATION,

Real Parties in Interest.

Case No. M46616 P. Conder

Order

Respondent's motion for Judgment on the Pleadings was heard by this court on August 9, 2007. The matter was argued and taken under submission. The court now rules as follows:

The requests for judicial notice are granted. Respondent's motion is denied because Measure D does not violate the separation of powers doctrine. The Court incorporates the reasoning expressed in the Intended Decision in Case #M85082.

Dated: September 5, 2007

R O'Farrell

HON. ROBERT A. O'FARRELL
Judge of the Superior Court

CERTIFICATE OF MAILING

C.C.P. SEC. 1013A

I do hereby certify that I am not a party to the within stated cause and that on SEP 0 5 2007 I deposited true and correct copies of the following documents: ORDER AFTER SUBMISSION in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses, as hereinafter set forth:

Mark Blum
499 Van Buren Street
P.O. Box 3350
Monterey, CA 93942-3350

Edger Washburn
Morrison & Foerster
425 Market St.
San Francisco, CA 94105-2482

Efren Iglesia
County of Monterey
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Catherine Engberg
Shute, Mihaly & Weinberger
396 Hayes St.
San Francisco, CA 94102

Mark Wolfe
49 Geary St. Suite 200
San Francisco, CA 94108

Dated: SEP 0 5 2007

LISA M. GALDOS, Clerk of the
Monterey County Superior Court

By P. Conder
P. Conder , Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

H-Y-H CORPORATION,

Petitioner,

vs.

COUNTY OF MONTEREY,

Respondent.

LANDWATCH MONTEREY COUNTY, and RANCHO SAN JUAN OPPOSITION COALITION,

Real Parties in Interest In Intervention.

Case No. M85082

Intended Decision

This matter came on for court trial on August 9, 2007. All sides were represented through their respective attorneys. The matter was argued and taken under submission. This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein.

Background

H-Y-H Corporation (HYH) filed suit against respondent County of Monterey (County) in November 1999. (Monterey Superior Court M46616.) HYH was frustrated with the pace of HYH's application for development, and in part, sought a writ of mandate "requiring the County, within a reasonable time, to expeditiously complete preparation, processing and adoption of its Specific Plan and EIR [Environmental Impact Report] and to adopt effective and constitutional zoning for the Rancho San Juan ADC [Area of Development Concentration] consistent with the GSAP [Greater Salinas Area Plan]." (M46616, HYH Petition 7:19-23.)

In February 2001, this Court ordered the County to "continue to process the EIR, Specific Plan and zoning for the Rancho San Juan Area of Development Concentration forthwith, consistent with statutory requirements for public notice, and to diligently complete the certification of said EIR, the adoption of said Specific Plan, and zoning for the ADC within a reasonable time period in accordance with the law. Nothing in this writ shall limit or control the discretion legally vested in respondent, shall compel any particular result, nor prevent respondent from specifically finding that the General Plan is inadequate and/or taking appropriate action under Government Code Section 65858." (M46616, Judgment Granting Peremptory Writ of Mandate 2:1-7.)

HYH and County entered into a Stipulation in September 2002 that provided in pertinent part: 1) "That the County will continue to expeditiously process the Specific Plan and EIR for the Rancho San Juan Area of Development Concentration ('Specific Plan')," (M46616, Stipulation Following Report of Mediator To Presiding Judge 2:11-12 (Stipulation)); 2) "That the Specific Plan to be ultimately considered is subject to the County Board of Supervisors' legislative discretion as to amendment and ultimate approval or disapproval, and that the discretion of the County Board of Supervisors is in no way affected by this stipulation[;]" (Stipulation 2:23-25); and 3) "That HYH shall dismiss this case, with prejudice … in the event that: (a) the Specific Plan, other legislative actions and the development applications are ultimately and timely approved …; and (d) such approval has become final and not subject to judicial challenge, initiative or referendum …." (Stipulation 8:17-26.)

In November 2005, the Monterey County Board of Supervisors (Board) adopted Resolution No. 05-305 for a Revised Rancho San Juan Specific Plan with corresponding

General Plan amendments. LandWatch and Rancho San Juan Opposition Coalition (collectively LandWatch) gathered sufficient voter signatures to challenge the Board's approval by referendum at the June 6, 2006 election. The Board removed the referendum from the June 2006 election pending decisions of the Federal Court. Following a decision by the U.S. District Court, the referendum (Measure D), was submitted to the voters at the June 5, 2007 election. (HYH Request for Judicial Notice, Exhibit Y.)

The voters adopted Measure D on June 5, 2007, thereby repealing Board Resolution No. 05-305. (HYH Request for Judicial Notice, Exhibit Z.)

Requests for Judicial Notice

HYH's and County's requests for Judicial Notice are granted.

Discussion

HYH seeks to set aside the June 5, 2007 adoption of Measure D which rejected the County's plan for development of the Rancho San Juan area.. HYH advances three arguments challenging the voters' adoption of Measure D. Firstly, HYH argues that Measure D contravenes this Court's February 2001 Judgment. Secondly, Measure D creates an inconsistency between the County's General and Specific Plans which is a violation of the State Planning and Zoning Law. Thirdly, HYH argues that the February 2001 Judgment changed the County's adoption of a general plan amendment from a legislative to a ministerial (administrative) act and the repeal of those amendments are not proper by referendum.

A. Court's February 2001 Judgment and Measure D

The legal issue presented here concerns the intersection of a Court Judgment and the People's right of referendum.

Article II, section 11, subdivision (a) of the California Constitution provides: "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide."

The thrust of HYH's argument, in which the County concurs, is that the electorate's power of referendum is co-extensive with the Board's legislative power, and as the Board is bound by the Judgment, so is the electorate. (*City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795 (*City of Half Moon Bay*); *Mandal v. Myers* (1981) 29 Cal.3d 531 (*Mandal*); *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775.)

LandWatch argues that the right of Referendum is reserved for the voters and that courts generally preserve this right. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695.) LandWatch cites *Chandris Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475 (*Chandris*), for the proposition that the electorate can reject a proposed specific plan via the power of referendum. Otherwise, the power of referendum would be rendered meaningless. (*Chandris,* at pp. 481-482.)

LandWatch argues that *City of Half Moon Bay* and *Mandal* do not support HYH's position that the separation of powers doctrine requires the legislative branch, whether acting through the Board or the voters, to respect this Court's Judgment. Rather, Measure D does not contravene this Court's Judgment because the Judgment did not direct the County to adopt a particular Specific Plan or prohibit the County or the voters from denying HYH's application.

In *Mandel* the California Supreme Court discussed at length the separation of powers doctrine in regards to a Legislative Analyst's recommendation that the Legislature not pay attorney fees ordered from a judgment. The Court found that this was

an attempt by the Legislature to readjudicate the fee matter, a violation of the doctrine, and affirmed the power of a lower court to order expenditure of funds to pay the fees after the Legislature had appropriated general funds.

In *City of Half Moon Bay*, the California Coastal Commission, as a party to a writ proceeding, was bound by the ruling and could not readjudicate the merits by appealing the ruling to itself.

Here, the electorates' use of the reserved power of referendum was not a readjudication of the Judgment.

The fact that the voters turned down this Specific Plan does not foreclose the development of some other Specific Plan that comports with the 2001 Judgment. Petitioner expressed concerns that LandWatch and the Rancho San Juan Opposition Coalition will mount another referendum challenge to any future plan that involves development, and such challenge would be tantamount to negation of the court Judgment.

But that concern has not materialized. Special interest organizations do not vote. People vote. Petitioner claims that two referendums have now been held, and both have turned down efforts to develop the property. In actuality, Petitioner withdrew a much larger project that was the subject of the first vote prior to the date of that referendum. The action was well publicized, and consequently, the referendum was rendered meaningless, and the proportion of yes to no votes is not determinative of how people will vote in the future. The adoption of measure D, although presenting a further delay for Petitioner, is not a direct and conclusive challenge to the Court's Judgment.

This Court's Judgment simply ordered the County to "continue to process the EIR, Specific Plan and zoning … and to diligently complete the certification of said EIR,

the adoption of said Specific Plan, and zoning for the ADC within a reasonable time period in accordance with the law." The Judgment also provided that "Nothing in this writ shall limit or control the discretion legally vested in [County], shall compel any particular result, nor prevent [County] from specifically finding that the General Plan is inadequate and/or taking appropriate action under Government Code Section 65858."

Measure D does not violate the separation of powers doctrine.

B. State Planning and Zoning law issue

HYH argues that if LandWatch's interpretation that Measure D invalidates the Revised Specific Plan and its zoning, a vertical inconsistency with the General Plan is created. Measure D is invalid as a matter of law because the General Plan calls for a specific plan for the property and Measure D perpetuates the pre-existing inconsistency that was remedied by the rezoning that accompanied the Specific Plan. (Government Code §65860; *Devita, supra,* 9 Cal.4th p 772-773; *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1213 (*deBottari*).)

LandWatch argues that 1) the repeal of a specific plan simply reinstates the status quo (*Chandis, supra,* 52 Cal.App.4th at 485); 2) that Measure D set aside general plan amendments, not the Specific Plan or zoning amendments; and 3) *deBottari* and the other cases cited by HYH are inapt because those cases dealt with referenda of zoning amendments which provided for inconsistency with a general plan.

This Court is not persuaded by HYH's arguments.

The cases cited by HYH, *deBottari* (referendum and zoning), *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868 (referendum and zoning), and *Lesher Communications, Inc v. City of Walnut Creek* (1990) 52 Cal.3d 531

(initiative and zoning), do not support HYH's argument that the rejection of the General Plan amendments by the Monterey County electorate resulted in an inconsistency under the Planning and Zoning law. These cases dealt with zoning laws that were inconsistent with a general plan under Government Code §65860(a).) (*Chandis, supra*, 52 Cal.App4th at 484-485.)

Additionally, although *Chandis* deals with a referendum of a specific plan, the return to the status quo in that case does suggest that Measure D maintained the status quo here and no inconsistency with the Planning and Zoning Law is created. Resolution No. 05-305, Amendments to the Monterey General Plan and the Greater Salinas Area Plan, never went into effect because of the Referendum. (Election Code §9241.) (Exhibit U, HYH Request for Judicial Notice.)

The Court finds that Measure D does not create any inconsistency with the Planning and Zoning law.

C. Legislative or administrative act issue

"[A] fundamental principle of referendum law is that a referendum may be used to review only legislative acts and not executive or administrative acts of a local government. (*Devita, supra*, 9 Cal.4th at p. 775.)

When a local government's discretion is "largely preempted" by statutory mandate, its action is administrative and not subject to referendum. (*Devita, supra*, 9 Cal.4th at p. 776.)

HYH argues that Measure D interferes with an administrative duty and is outside the power of referendum because the 2001 Judgment changed the adoption of the general

plan amendments from a legislative to a ministerial act. (*Southwest Diversified, Inc. v. City of Brisbane* (1991) 229 Cal.App.3d 1548 (*Southwest Diversified*).)

LandWatch states that the general plan amendments are legislative in nature. The 2001 Judgment and Stipulation retained the County's discretion over the General Plan amendments. *Southwest Diversified* differs in that it involved a referendum challenging a zoning decision whereby the City of Brisbane adopted a zoning ordinance that by its terms provided a boundary adjustment that rendered a subsequent act of adjusting the boundaries administrative.

Here, the County was directed by the Court to continue to process an EIR, Specific Plan and zoning within a reasonable time. The County clearly exercised its discretion in formulating the requisite development for the Rancho San Juan Area of Development Concentration. The Court did not preempt the County's discretion and the County's actions were clearly legislative in nature and subject to referendum. (*Worthington v. City Council of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1140-1141.)

Disposition

Petitioner's writ of mandate is denied as set forth above.

The court directs the attorney for the County to prepare an appropriate judgment consistent with this ruling, present it to all counsel for approval as to form, and return it to this court for signature.

Dated: September 5, 2007

HON. ROBERT A. O'FARRELL
Judge of the Superior Court

CERTIFICATE OF MAILING

C.C.P. SEC. 1013A

I do hereby certify that I am not a party to the within stated cause and that on

SEP 0 5 2007 I deposited true and correct copies of the following documents:

ORDER AFTER SUBMISSION in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses, as hereinafter set forth:

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San Francisco, CA 94108

Dated: SEP 0 5 2007

LISA M. GALDOS, Clerk of the
Monterey County Superior Court

By P. Conder
P. Conder , Deputy