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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 CIVIL DIVISION
13

14
15 **URBAN HABITAT PROGRAM; and**
SANDRA DE GREGORIO,
16
17 Petitioners and Plaintiffs,
18
19 **PEOPLE OF THE STATE OF**
CALIFORNIA, ex rel. EDMUND G.
BROWN JR., ATTORNEY GENERAL, et
al.,
20
21 Plaintiff-Intervenor,
22
23 v.
24
25 **CITY OF PLEASANTON, a Municipal**
Corporation; THE CITY COUNCIL OF
PLEASANTON; and DOES 1-10,
26
27
28 Respondents and
Defendants.

Case No. RG 06 293831

INTERVENOR'S REPLY
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR WRIT OF MANDATE

Date: December 18, 2009
Time: 9:00 A.M.
Dept: 31
Judge: The Honorable Frank Roesch

Trial Date: TBA

Action Filed: October 17, 2006

ASSIGNED FOR ALL PURPOSES TO
JUDGE FRANK ROESCH

1 **INTRODUCTION**

2 This case is about the City of Pleasanton’s (“City”) longstanding failure to meet its
3 obligations under State Housing laws. During the briefing on this motion, the City modified its
4 Growth Management Ordinance to allow for exceptions where needed to meet State housing
5 requirements. This is a welcome-- if long overdue-- move toward compliance. The City,
6 however, has not rezoned sites to make them to be immediately available for development, as
7 required by State law and as it committed to do in its Housing Element five years ago, nor has it
8 repealed or amended its rigid Housing Cap.

9 The Cap remains firmly in place, presenting an absolute bar to the City meeting its current
10 and future Regional Housing Needs Allocations (RHNA) under State law. Notably, while the
11 City fiddles with the precise number of units it has remaining under the Cap, it never once
12 disputes -- and cannot dispute -- that it is mathematically impossible for it to accommodate its
13 current RHNA of 3,277 units. Because of this fundamental and irreconcilable conflict with State
14 Housing law, the Housing Cap is preempted by State law.

15 The City also fails to demonstrate how its inflexible ban reasonably accommodates
16 competing regional and state interests, and for this and other reasons, fails to carry its burden of
17 showing that the Housing Cap is rationally related to regional welfare. It thus violates the Due
18 Process Clause of the California Constitution. Likewise, there is a clear inconsistency between the
19 Land Use and Housing Elements in the City’s General Plan that violates Government Code
20 section 65300.5.¹ The City does not even attempt to explain how these contradictory elements
21 can be reconciled, and its objections for why this claim should not proceed are without merit.

22 **ARGUMENT**

23 **I. STATE HOUSING LAW PREEMPTS THE CITY’S HOUSING CAP**

24 The City seeks to distract the Court’s attention from the direct conflict between its Housing
25 Cap and State Housing laws with a series of diversionary arguments. None of these is persuasive.

26
27 _____
28 ¹ All statutory sections, unless otherwise noted, are to the Government Code.

1 **A. The City Concedes that it is Mathematically Impossible to Comply with the**
2 **Housing Cap and Meet its Regional Housing Needs Allocation.**

3 The City contends that the Housing Cap and Growth Management Program are not
4 preempted because they did not prevent the City from complying with its various obligations in
5 the third planning period (1999-2007), including rezoning sites to meet its RHNA at all income
6 levels as required by §§65583(c)(1) and 65913.1. (Opp. to Int. at 4-6.) But this mischaracterizes
7 the nature of Intervenor’s and Petitioners’ claims. One aspect of the allegations is that the City
8 has breached its obligation to rezone sites; as Petitioners explain in their Reply Brief, the City
9 remains in violation of §§65583(c)(1) and 65913.1. (Pet. Reply at 5-8.)

10 The central focus of Intervenor’s allegations, and the basis of this motion, however, is that
11 regardless of whether the City has completed the required rezonings, its Housing Cap and Growth
12 Management Program are preempted because their numerical limits make it impossible for the
13 City to meet its RHNA in its current (2007-2014) and future planning periods. As the Court of
14 Appeal explained, an actionable preemption challenge to a growth control ordinance lies “on the
15 ground that it conflict[s] with a local entity’s obligation to meet its share of regional housing
16 needs.” (*Urban Habitat Program v City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1580.)
17 Intervenor agrees that in light of the City’s very recent revision to the Growth Management
18 Ordinance allowing its annual limits to be increased when necessary for the City to meet its
19 regional housing needs goals, *that ordinance* no longer presents an absolute conflict with State
20 Housing laws. But this is *not* true for the Housing Cap, which is unchanged and has no
21 exceptions. The City’s housing needs allocation for the current planning period is 3,277 units.
22 According to the City’s prior judicial admission, it has only 2,755 units remaining under the Cap,
23 leading to a gap of 522 units. (Resp. Brief at p. 13, Petitioner’s Request for Judicial Notice
24 (“PRJN”) Ex. H.) The City is bound by this admission. (*Castillo v. Barrera* (2007) 146 Cal.
25 App.4th 1317, 1324-26.) Moreover, since the City has a shortfall of 871 units from its prior
26 planning period (as determined by the California Department of Housing and Community
27 Development (“HCD”) in 2006, see Int. Open. Mem. at 4), it must accommodate this “carryover”
28

1 RHNA obligation on top of its current RHNA share.²

2 The City concedes that it is mathematically impossible for it to meet its RHNA during the
3 current planning period. It claims that the number of remaining units under the Cap actually is
4 2,951 rather than 2,755 units, a gap of 326 units (Opp. to Int. at 5), contradicting the number it
5 previously represented in court as well as the methodology it previously has used on numerous
6 occasions. (See Pet. & Int. Obj. to Evid. at p. 2, Obj. #1; Declaration of Christopher Mooney ¶¶ 3-
7 11.) But that debate is not significant; regardless of which number is used, the City admits that
8 the number falls short of the City’s RHNA. The City also does not dispute that its obligation to
9 meet its RHNA is mandatory.

10 Thus, by the City’s own reckoning and the undisputed facts, there is a direct conflict
11 between the Housing Cap and the City’s mandatory obligation to accommodate its RHNA. As a
12 result, the Housing Cap is invalid under State law. (*Sherwin-Williams Co. v. City of Los Angeles*
13 (1993) 4 Cal.4th 893, 897-898.)

14 Moreover, the Cap substantially undermines the carefully drawn scheme in State Housing
15 laws designed to ensure that localities fully accommodate their RHNA, including requirements to
16 identify adequate sites to meet the locality’s share of regional housing need (§65583); inventory
17 land sufficient to provide for a jurisdiction’s share of regional housing need for all income levels
18 (§§65583 subd.(a)(3); 65583.2 subd.(a)); remove governmental constraints to the development of
19 housing for all income levels (§65583 subd. (c)(3)), and zone land to meet the housing needs for
20 all income categories (§§65583 subd. (c)(1); 65583.2 subd. (h); 65913.1). These requirements are
21 meaningless if a locality can enforce a cap preventing the RHNA from ever being met. The Cap
22 also is impossible to reconcile with the legislative intent that localities “should *undertake all*

23
24 ² See §65584.09 (b) (the requirement to identify sites for the unaccommodated need in the
25 prior planning period “shall be in addition to any zoning or rezoning required to accommodate the
26 jurisdiction’s share of the regional housing need pursuant to Section 65584 for the new planning
27 period”); see also Declaration of Cathy Creswell ¶ 21. The total resulting gap for this planning
28 period is thus 1,393 units (522 + 871). The City’s objections to the HCD letter referenced in our
opening brief, which was written by Deputy Director Cathy Creswell (Resp. Obj. to Int. Evid. at
2), are not well taken. Ms. Creswell wrote the letter as an agency official, not as an expert
offering an opinion. The City’s hearsay objection is irrelevant because the letter is an official act
of a state agency, as the City admits.

1 *necessary actions* to encourage, promote, and facilitate the development of housing to
2 *accommodate the entire regional housing need.*” (§65584 subd.(a)(2)(emphasis added).)

3 This case thus is directly analogous to *Building Ind. Assn. of San Diego, Inc. v. City of*
4 *Oceanside* (1994) 27 Cal.App.4th 744, 770 (“*Oceanside*”), where the court found a conflict
5 between the city’s growth management ordinance that it concluded would likely preclude the city
6 from meeting its RHNA obligations for low income housing, and State Housing laws, which
7 “clearly show an important state policy to promote the construction of low income housing and to
8 remove impediments to the same.” As in *Oceanside*, the Housing Cap is “an impediment” to the
9 City complying with State Housing laws, and “cannot survive such a conflict.” (*Ibid.*)

10 The City seeks to distinguish *Oceanside* on the grounds that the parties here have not
11 presented specific evidence that the Housing Cap has had a negative impact on development or
12 “will at any time soon.” (Opp. to Int. at 8-9). But the factual circumstances in *Oceanside* were
13 not so extreme as they are here; there the city’s growth control ordinance contained significant
14 exceptions and also allowed the limit to be modified by the city council. As a result, the court
15 could not decide whether the city’s RHNA would be met without first analyzing how many units
16 were being permitted as a result of the ordinance’s exceptions. (*Oceanside, supra*, 27
17 Cal.App.4th at 752-754, 769-770.) Here, there is no such uncertainty and no need for factual
18 inquiry for the Court to reach the same determination. There are no exceptions to the Housing
19 Cap, and the City concedes that it cannot accommodate its RHNA.³

20 The City’s only attempt to defend the Housing Cap on its merits is to argue that the Cap
21 should not be held invalid because a future city council might decide to accommodate the City’s
22 RHNA numbers when it amends the City’s Housing Element. (Opp. to Int. at 7-8.) The Court
23 should reject the City’s plea for an indefinite grace period. An ordinance that is invalid is not
24 made lawful by the theoretical possibility that in the future a city might chose to amend it to bring
25 it into compliance with State law. Indeed, that is the logic of the Supreme Court’s holding in
26 *Leshner Commun., Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, where the Court found

27 ³ For this reason the cases cited by the City (Opp. to Int. at 10) holding that a court will
28 not presume future actions inconsistent with State law are inapposite.

1 Walnut Creek’s growth control initiative inconsistent with the city’s general plan. The Court
2 rejected Walnut Creek’s argument that it should not invalidate the ordinance but instead provide
3 the City with a reasonable opportunity to amend it. (*Id.* at 544-546; see *Oceanside, supra*, 27 Cal.
4 App.4th at 771 [city’s ordinance “must be considered invalid” because of conflict with State
5 law].) It is also worth noting that the Housing Cap is not even in the Housing Element, but rather
6 in the Land Use Element--which the City just readopted, leaving the Housing Cap unchanged.

7 **B. The City’s Estimate About When the Cap Will Be Exhausted is**
8 **Completely Speculative and Legally Irrelevant.**

9 The City also contends that the Cap is not invalid because it will not be exhausted or
10 present a barrier to development until 2021, relying for its conclusion on the Declaration of Janice
11 Stern (Opp. to Int. at 9). But this claim, and Ms. Stern’s estimate, are sheer speculation.
12 Notably, the estimate is directly at odds with the conclusion of the expert agency charged with
13 forecasting housing demand in the region—the Association of Bay Area Governments (ABAG)—
14 which has determined that Pleasanton must accommodate 3,277 new units between 2007 and
15 2014 in order to meet the likely demand for housing. (2008 Final RHNA, PRJN Ex. E.) Ms.
16 Stern, moreover, is a city planner, not an economist, and is unqualified to prognosticate about
17 what market trends will be for the next decade and what the demand will be for housing permits
18 in Pleasanton. (See Pet. & Int. Obj. to Evid. at p. 3, Obj. #2.)

19 The City also purports to demonstrate that the Cap and its other restrictive policies have had
20 no adverse effect on development. (Opp. to Int. at 8-9.) In fact, the opposite is true.⁴ From 2000
21 to September, 2009, nearby cities of similar population permitted two to three times more housing
22 than Pleasanton. (Declaration of Cathy Creswell ¶¶ 7-16 [while Pleasanton has permitted an
23 annual average of 195 housing units since 2000, Dublin has permitted an annual average of 650
24 units, and Livermore has permitted 378].) Moreover, the testimony of two Pleasanton
25 homebuilders is that the Housing Cap presents a significant barrier to development and deters

26 ⁴ Even the numbers the City cites just as easily support the opposite conclusion. During
27 the 1990’s, the average number of permits granted by the City was 455; in the current decade,
28 excluding the past two years of the housing downturn, the number was 252. (Stern Decl.
Appendix L.)

1 developers and homebuilders from even proposing projects in the city. (Declarations of Hamid
2 Taeb ¶¶ 3-6; James Ghielmetti ¶¶ 3-5.)⁵ The homebuilders testify that the Cap drives up the costs
3 of land and makes development more expensive, limits the number of higher density (and
4 affordable) projects that can be built, causes serious delays and uncertainties that increase costs,
5 and discourages developer interest in proposing housing projects. (*Ibid.*) The City in effect is
6 relying on its history of constrained development to assert that future development, also
7 constrained by the Housing Cap, will not be affected by the Cap .

8 More importantly, however, the Court need not and should not speculate about the precise
9 moment when the Housing Cap will bar new housing units from being developed in the City.
10 This question misses the point because the City does not dispute that it is incapable of meeting its
11 mandated housing allocation so long as the Cap remains in place. There are no exceptions or
12 qualifications, and thus the conflict with State law is irreconcilable.⁶

13 **II. THE HOUSING CAP VIOLATES DUE PROCESS**

14 As noted in our opening brief (Int. Open. Mem. at 12-13), the City has the burden under
15 Evidence Code section 669.5(b) of proving that its Housing Cap is necessary to protect the public
16 health, safety or welfare, and in particular of demonstrating that it meets the three part test of *Assn.*
17 *Home Builders of the Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 608-609
18 (“*Livermore*”). The arguments advanced by the City to justify the Housing Cap do not meet this
19 burden.

20 With respect to the first part of the test, the City does not dispute that the Housing Cap, and
21 its effects, are unlimited in duration. (*Id.* at 608). It argues, however, that the Cap has had no
22 impact on the welfare of the region and that any future impact will be de minimis. (Opp. to Int. at

23
24 ⁵ See also Hamid Decl. ¶ 3 (implementation of the Cap “has had and continues to have
25 chilling effect on development in the city”); Ghielmetti Decl. ¶ 4 (Cap “negatively influences
development decisions in the city and will continue to do so in the future”).

26 ⁶ Compare *Shea Homes Ltd. Partnership v. County of Alameda* (2003) 110 Cal.App.4th
27 1246, 1265-1266 (upholding ordinance which specified that “none of its provisions shall be
28 applied so as to preclude the County’s compliance with state law housing obligations,” and
providing mechanisms to authorize housing outside urban growth boundary established by
ordinance if needed to meet state housing requirements).

1 11-13.) In doing so, the City proceeds from the faulty premise -- without supporting authority --
2 that the only relevant impacts for the Court to consider are those stemming from the City's
3 inability to meet its current RHNA. The Court, however, is entitled to consider the potential full
4 impacts of the Housing Cap on regional welfare, which are those resulting from the difference
5 between development with the Cap and that which would occur under market conditions
6 unconstrained by a Cap. Given that the City already has a significant deficit of housing compared
7 to jobs, which will only increase as the City continues to be a magnet for jobs and as growth
8 occurs in the region (see Int. Open. Mem at 13-14), the development constrained by the Cap will
9 be significantly greater than simply the shortfall between the Cap and the City's current RHNA.
10 The City also completely ignores the fact that it will receive a new RHNA for the housing
11 planning period that begins in 2014, likely consisting of several thousand additional units, that it
12 will not be able to accommodate under the Cap. Even if the City's premise were correct, however,
13 it has underestimated the shortfall caused by the Cap by using an incorrect number of units
14 remaining under the Cap (see *supra* at 2) and by failing to account for the shortfall of 871 units
15 that it must make up for in the current planning period (see *supra* at 2 & n.2).

16 The City also glosses over the presumption in Evidence Code section 669.5(a) that local
17 housing caps will have an impact on the supply of housing in the region. By its own estimation,
18 the immediate Tri-Valley area in which Pleasanton is located is experiencing a shortage of
19 housing, especially affordable housing. (See Int. Open Mem. at 13-14.) A shortfall of even
20 several hundred units in this very tightly constrained local market cannot be dismissed as de
21 minimis. As the testimony of the local homebuilders makes clear, the Cap has significantly
22 constrained housing development in Pleasanton, including affordable housing, and is likely to
23 continue to do so in the future. (See Taeb Decl. ¶¶ 3-6; Ghielmetti Decl. ¶¶ 3-5.)

24 The City also attacks the common sense notion that the jobs/housing imbalance exacerbated
25 by the Housing Cap will lead to more traffic, air pollution, and greenhouse gas (GHG) emissions
26 in the region. (Opp. to Int. Mem. at 11-12.) But the City's own reports testify to the adverse
27 environmental and other impacts caused by the lack of housing for people who work in
28 Pleasanton. (Int. Open Mem. at 13-14; Pet. Open. Mem. at 11.) The Bay Area Air Quality

1 Management District (“BAAQMD”) has expressed its concern with the City’s jobs/housing
2 imbalance and the very high increase in Vehicle Miles Traveled (VMT) predicted for Pleasanton
3 over the next 15 years, noting that this could interfere with the region’s ability to meet air quality
4 standards and undermine efforts to meet the State’s greenhouse gas law, AB 32. (See Letter from
5 Jean Roggenkamp to Janice Stern, July 21, 2009, Intervenor’s Supplemental Request for Judicial
6 Notice (“ISRJN”) Ex.1.) The City also offers the testimony of Shari Libicki that the Housing Cap
7 will increase GHG emissions annually by only 3,600 additional metric tons and argues that this
8 number is regionally insignificant. (Opp. to Int. at 13.) Because this analysis starts with an
9 underestimate of the shortfall caused by the Cap (as noted above), it substantially underestimates
10 what the actual emission increases will be. Even if it were accurate, however, the City has not
11 shown that this increase will not adversely affect regional welfare, given that it may hinder
12 achieving the mandate of AB 32 that statewide GHG emissions be reduced to 1990 levels by
13 2020, a reduction of 15% from current levels. (California Air Resources Board, Climate Change
14 Scoping Plan (Dec. 2008) at ES-1, ISRJN Ex. 2.) In short, it is clear that the impact of the
15 Housing Cap cannot be dismissed as de minimis.

16 With respect to the second part of the *Livermore* test, the City fails to show that its
17 parochial interest in limiting residential development, while aggressively promoting commercial
18 growth, outweighs competing regional and statewide interests (*Livermore, supra*, 18 Cal.3d 582
19 at 608-609).⁷ The important competing, larger interests here include the need to address the long-
20 standing regional and State crisis in housing supply, and State policies to reduce VMT and GHG
21 emissions. (See Int. Open. Mem. at 3, 5-10.) As noted in our opening brief, the California Air
22 Resources Board has urged all local governments to reduce their GHG emissions by 15%
23 between now and 2020 to meet the requirements of AB 32, a goal that will be impeded by the
24 Housing Cap. (Int. Open. Mem. at 3.)

25 ⁷ The City contends that the Housing Cap was adopted after the City determined that
26 29,000 units was the number the City's infrastructure could support as well as what the
27 environmental impacts would be if then-undeveloped properties were developed at average
28 densities. (Opp. to Int. at 14.) But the materials cited in the Declaration of Jerry Iserson (¶21) to
support this -- Policy 14, Program 14.1 and Table II-4 of the 1996 General Plan -- do not contain
such an analysis for the Housing Cap. See Pet. & Int. Obj. to Evid. at pp. 7-8, Obj. #3.

1 Turning to the final *Livermore* factor, the City makes no argument that the Housing Cap
2 represents a “reasonable accommodation of the competing interests” involved. (*Livermore, supra*,
3 18 Cal.3d 582 at 609.) Unlike the ordinance in *Livermore*, the Housing Cap is not tied to the
4 achievement of certain environmental and infrastructure standards, nor does it increase as housing
5 demand and employment rise, new state environmental policies are enacted, or other regional
6 circumstances change. None of the cases cited by the City involve the type of absolute and
7 inflexible ceiling imposed here. The City could still achieve its stated goals of orderly
8 development by controlling growth in a manner that is flexible and increases in line with regional
9 housing needs. Because it does not, the Cap conserves the narrow interests of Pleasanton
10 residents and is not rationally related to the general regional public welfare. (*Arnel Develop. Co.*
11 *v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337-340.) As the Supreme Court has stated,
12 “[N]o California locality is immune from the legal and practical necessity to expand housing due
13 to increasing population pressures.” (*Muzzy Ranch Co. v. Solano County Airport Land Use*
14 *Com'n* (2007) 41 Cal.4th 372, 383.) Yet that is what Pleasanton is attempting to do here.

15 **III. THE CITY’S GENERAL PLAN IS INTERNALLY INCONSISTENT**

16 As noted in our opening brief, the City’s Land Use and Housing Elements are internally
17 contradictory, since they provide for both continuation of the Housing Cap and include policies
18 and programs requiring the City to meet its regional housing needs. (Int. Open. Mem. at 15.)
19 Notably, the City never even attempts to explain how these contradictory elements are consistent.
20 Rather, it presents a pastiche of arguments for why the claim should not go forward (Opp. at 14-
21 15), none of which has any merit.

22 First, the City argues that the inconsistency claim is time-barred because the Housing
23 Element was adopted in 2003. But Intervenor is not challenging the validity of the Housing
24 Element or its past approval, but rather the present, ongoing inconsistency of that element with
25 the Land Use Element that was just adopted by the City. (See *Concerned Citizens of Calaveras*
26 *County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97 [“When a court rules a facially
27 inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the court is not
28 evaluating the merits of the plan; rather, the court is simply directing the local agency to state

1 with reasonable clarity what its plan is”].) Second, the City contends that the inconsistencies are
2 not actionable because “programs” in a General Plan do not have to be consistent, but that is
3 simply wrong. As the Governor’s Office of Planning and Research explains in its General Plan
4 Guidelines, “Each element’s data, analyses, goals, policies, and *implementation programs* must
5 be consistent with and complement one another. (ISRJN Exh 3 at p.13 (emphasis added).)⁸ The
6 City also argues that it has never “enforced” the Cap, but even if that were true, it does not
7 diminish the facial inconsistency between the elements, which is the relevant test. (*See Concerned*
8 *Citizens of Calaveras County, supra* at 97 [“A document that, on its face, displays substantial
9 contradictions and inconsistencies cannot serve as an effective plan because those subject to the
10 plan cannot tell what it says should happen or not happen”].) Finally, the City suggests that the
11 Court must defer to the city council’s finding that the elements of the General Plan are not
12 inconsistent.⁹ While a city’s General Plan enactments enjoy a presumption of validity, a court
13 nonetheless will find a General Plan inconsistent “if a reasonable person could not conclude that
14 the plan is internally consistent or correlative.” (*Federation of Hillside & Canyon Ass’ns. v. City*
15 *of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195.) In this case, no reasonable person could
16 reconcile the inconsistent elements of the plan.

17 CONCLUSION AND REMEDY

18 For the foregoing reasons, Intervenor respectfully requests that the Court issue a writ of
19 mandate as requested. Intervenor joins Petitioner’s reply arguments for why the relief sought is
20 appropriate. (Pet. Reply at 9-10.)

21 ⁸ While the General Plan Guidelines are advisory, they provide helpful assistance to the
22 Court in determining whether the City is in compliance with state general plan law. (*Twain Harte*
23 *Homeowners Ass'n v. County of Tuolumne* (1982) 138 Cal.App 3d 664, 702.) The cases cited by
24 the City do not support its argument. Rather, they distinguish between “policies” within elements
25 which must be consistent, as opposed to maps, data and statistics, or objectives, which need not.
(*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 300 [disapproved on other grounds in
Morehart v. County of Santa Barbara (1994) 7 Cal.4th 725, 743, n.11]; *Cadiz Land Co. v. Rail*
Cycle (2000) 83 Cal.App.4th 74, 115.)

26 ⁹ To support this argument the City cites two inapposite cases dealing with agency
27 approvals of specific projects, *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.
28 App.4th 807, 816 and *Sequoia Hills Homeowners v. City of Oakland* (1993) 23 Cal.App.4th 704,
720.

