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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

TAHOE RESIDENTS UNITED FOR SAFE TRANSIT et al., Plaintiffs and Appellants, v. COUNTY OF PLACER et al., Defendants and Respondents; DMB/HIGHLAND GROUP LLC et al., Real Parties in Interest and Respondents.	C075933 (Super. Ct. No. SCV0032463)

At issue in this lawsuit is the vehicular use of an emergency access road as a through street between residential subdivisions by residents in one of the subdivisions and the County's representation that the road would not be opened for non-emergency/non-public transit traffic without a new EIR. Plaintiffs Tahoe Residents United for Safe Transit and Northstar LG, LLC (collectively, plaintiffs), appeal from the

trial court's judgment dismissing their petition for writ of mandate and first cause of action for declaratory judgment, following an order sustaining demurrers from defendants DMB/Highland Group LLC et al. (DMB), Trimont Land Company et al. (Trimont), and the County of Placer (the County) without leave to amend. On appeal, plaintiffs contend: (1) the petition adequately alleged a claim for violation of the California Environmental Quality Act (CEQA); (2) the petition adequately alleged claims for violations of the Planning and Zoning Law, Subdivision Map Act, and Ralph M. Brown Act; (3) none of the petition's claims are time-barred by applicable statutes of limitations; and (4) the trial court abused its discretion by denying leave to amend.

We reverse and remand the matter for further proceedings regarding plaintiffs' CEQA claim, but we affirm in all other respects.

FACTUAL AND PROCEDURAL BACKGROUND

Facts Alleged by Plaintiffs

Martis Camp (previously known as Siller Ranch)[1] is a private gated community in Truckee, California, that includes over 650 lots and spans over 2,000 acres. It has an extensive road network, a golf course, lodges, and other amenities. The Retreat at Northstar (The Retreat) is an adjacent community east of Martis Camp, consisting of 18 lots on approximately 31 acres. The two subdivisions are very different in size, but they share a common boundary. The Retreat is part of the Northstar-at-Tahoe development (Northstar).

[1] Some documents referred to the project by the former name, Siller Ranch. For clarity, we will refer to the project as Martis Camp throughout this opinion.

An emergency vehicle access (EVA) road connects Schaffer Mill Road,[2] a private road that runs through Martis Camp, with Mill Site Road, a public road that runs through The Retreat.[3] Mill Site Road serves as the entrance to The Retreat. It connects with Big Springs Drive, a main collector route in the Northstar development.

As originally planned, a gate was installed on The Retreat's side of the EVA connection at the end of Mill Site Road. Project approvals authorized a single entrance to Martis Camp via the opposite end of Shaffer Mill Road at Route 267. At issue here is the Martis Camp residents' use of the EVA connection as a second entrance to Martis Camp, effectively providing a shortcut to Northstar through The Retreat.

Both Martis Camp and The Retreat are within Martis Valley, a portion of Placer County that encompasses over 44,800 acres between Truckee and Nevada County. The Martis Valley Community Plan (MVCP) is a community plan adopted by the Placer County Board of Supervisors in 2003 to set land use controls within the area. In considering the MVCP, an "in-depth analysis" was performed for two road networks, the second of which "removed the through connections from Schaffer Mill Road to Northstar." Ultimately, based on the input of the community and landowners, the second option was selected. Accordingly, the MVCP stated that, "*the proposed roadway system includes transit and emergency access only between Schaffer Mill Road and Northstar*."

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[2] Schaffer Mill Road was formerly known as Siller Ranch Road. For clarity, we will refer to this road as Schaffer Mill Road, although some documents refer to it by the road's former name.

[3] The parties disagree about whether the two roads abut. Plaintiffs assert in the petition that Mill Site Road does not actually reach the boundary with Martis Camp because a small piece of Trimont's remainder parcel exists at the end of Mill Site Road over which an emergency access easement connects with Martis Camp. Schaffer Mill Road ends several hundred feet west of The Retreat boundary according to the petition. Real Parties contend that the project documents, subdivision maps and survey marks show an abutment of the two roads. We do not attempt to resolve this factual dispute in our review of the trial court's ruling on the demurrer.

DMB, the developer of Martis Camp, first submitted its project application in 2002 and faced considerable objections from the public and environmental community due to concerns over the size, impact, and environmental consequences of building a major gated subdivision in the area. One point of debate was whether the EVA connection between Martis Camp and The Retreat would be available for non-emergency/transit use.

The project description and draft environmental impact report (EIR) for Martis Camp stated that access to the Martis Camp community would be via Schaffer Mill Road off of SR 267,[4] and discussed the EVA connection between Martis Camp and The Retreat only in the context of providing EVA access and possibly public transit.[5] The traffic analysis assumed a single entry and exit from Martis Camp at Schaffer Mill Road to SR 267 for vehicular traffic. The Transportation/Circulation element expressly stated that, Martis Camp "residents wishing to go skiing at Northstar-at-Tahoe would need to *access Northstar via SR 267*." "[T]he EVA connection was *only* discussed in the Draft EIR in the context of providing emergency access." A road connection allowing public or private non-emergency/transit use of the EVA was not included in the developer's

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[4] Specifically, the project description of the EIR stated in pertinent part: "Project Site and Vicinity: Access to the site would be provided from Shaffer Mill Road, which reaches the northeast corner of the property. [¶] Roadway Access: Access to the project site would be via Schaffer Mill Road, a two-lane roadway that extends southwest from SR 267. [¶] Emergency Access: The project would provide a 22-foot wide emergency access road on the eastern boarder of the project site connecting to a planned emergency access road in The Retreat within Northstar . . . . [¶] Transit Access: Although the project proposes that [Shaffer Mill Road] would be private, local public transit service vehicles would be allowed to use the road to provide transit services through the project using the emergency access road to provide a connection to Northstar . . . ."

[5] Per Martis Camp's conditions of approval: "Local public transit is defined as public transit service provided by Placer County through Tahoe Area Regional Transit or through a contract provider. Local transit service does not include private carriers such as charter companies and tour buses."

proposal or the draft EIR. The draft EIR also included discussion of how the Martis Camp project was consistent with the MVCP.

In a comment to the draft EIR, the Northstar Community Service District[6] noted that the emergency access road to Northstar was heavily debated and that the Citizens' Committee voted against the EVA connection being open for non-emergency traffic. The County responded, "The adopted Martis Valley Community Circulation Diagram identifies the connection as a Transit and Emergency Access Corridor and designates the corridor for pedestrian and bicycle access. . . . The applicant has agreed that the extension of Schaffer Mill Road through [Martis Camp] will be designated and used as an emergency access and public transit provider route, even if [Martis Camp] is approved as a private community." The County said nothing about Martis Camp residents using the EVA in response to this comment.

In commenting on the draft EIR, Sierra Watch[7] asserted that a revised analysis was necessary to account for the number of trips "on the emergency access road by transit *and all other vehicles*." (Italics added.) In response, the County addressed the transit concern and then represented, "*[a]ny future decision to open this roadway would require CEQA review and would be a separate project*."

When Sierra Watch also asked in their comment letter, "*how the roadway would be guaranteed to remain open for emergency access/transit use only*," the County did not directly answer the question. Instead it replied, "*The proposed use of this roadway is . . .*

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[6] The Northstar Community Service District is a local government entity that provides fire protection, water and snow removal and other services to the Northstar community.

[7] Sierra Watch is an environmental organization.

consistent with the adopted [MVCP]." Again, the County said nothing about use of the EVA connection by Martis Camp residents.[8]

Additionally, Sierra Watch requested "that the EIR identify impacts associated with the emergency access connection becoming a full access roadway." The County replied, "*[A]s the project would be approved with the transit/emergency access only (consistent with the adopted [MVCP]), the opening of the roadway to the public would be a separate project subject to its own environmental review process. Opening of the roadway would be subject to CEQA and would not change the nature or scope of the [Martis Camp] project*."[9] Again, the County made no mention of EVA connection use by Martis Camp residents.

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[8] The County's response to the Sierra Watch comment reads in pertinent part: "The commentor asks where the trips for the emergency access/transit road are identified and analyzed and *how the roadway would be guaranteed to remain open for emergency access/transit use only*. The occurrence of emergency traffic along the roadway would be considered a special event and not part of a typical peak weekend or weekday traffic volume. The number of transit trips expected on the route has yet to be determined, but Placer County is currently initiating a transit study to identify this number, as required by the [MVCP]. . . . *The proposed use of this roadway is also consistent with the adopted [MVCP]*. Implementation of [the emergency and transit use mitigation measure] would include specifications on the use of this roadway."

[9] Sierra Watch stated, "if a connection between these projects [Martis Camp and Northstar-at-Tahoe] is foreseeable, the DEIR must analyze the potential for the emergency access road to become a full access as opposed to limited to emergency access road, among other impacts of the connection of these resorts." The County responded, "The commentor asks what the potential is for facility sharing between Northstar and [Martis Camp] and requests that the EIR identify impacts associated with the emergency access connection becoming a full access roadway. . . . As part of the approval of the Northstar Village expansion, the project applicants of both projects are coordinating regarding the development of this emergency access road. *Also as the project would be approved with the transit/emergency access only (consistent with the adopted [MVCP]), the opening of the roadway to the public would be a separate project subject to its own environmental review process. Opening of the roadway would be subject to CEQA and would not change the nature or scope of the [Martis Camp] project.*"

When the Town of Truckee voiced concern in its comments to the draft EIR about traffic on SR 267 and suggested the EVA be open for private car access to provide a "full internal connection" to Northstar, the County responded, "*the provision of this public connection would be inconsistent with the adopted [MVCP]*."[10] Once again, use of the EVA connection by Martis Camp residents was not mentioned by the County.

On June 24, 2004, the Placer County Planning Commission approved the Martis Camp project, finding, among other things, that the conditions of approval were consistent with the MVCP. The conditions of approval included a requirement that "[t]he final map and improvement plans" contain "[e]mergency access roads . . . designed and gated to meet District, County, and State standards," including "[a] Knox box system, or equivalent . . . at all gated entrances and emergency access roads to provide access to the fire district." The conditions of approval also referenced other requirements that the Martis Camp project provide "an emergency access connection . . . to adjacent Northstar project to satisfaction of the serving fire districts and the [department of public welfare]" and "[e]asements as required for all emergency access roads to provide for the use of roadway during emergencies." Again, nothing was said about Martis Camp resident use of the EVA connection.

On January 18, 2005, the Placer County Board of Supervisors certified the final EIR and approved Martis Camp's map and conditional use permit.

On February 23, 2005, the County also approved The Retreat, a project developed by Trimont, after conducting a full CEQA analysis, certifying the final EIR, and

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[10] The County's complete response reads, "The commentor requests that the County consider requiring that the connection between Northstar and [Martis Camp] be a public access so that the programming of a four-lane SR 267 could be avoided. *This comment is noted, but it is also noted that the provision of this public connection would be inconsistent with the adopted [MVCP]*. Further, regional traffic on SR 267 will require four-laning of this roadway regardless of the connection between Northstar-at-Tahoe and [Martis Camp]."

approving a map showing the EVA gate at The Retreat's side of the EVA connection. The draft EIR for The Retreat discussed the EVA, which also indicated it was to be used only for public transit and emergency traffic.[11] Like the Martis Camp EIR, the Retreat's EIR did not analyze the impacts of Martis Camp residents using Mill Site Road for ingress and egress to and from Martis Camp, and no such entrance was either proposed or approved.

In the Proposed Project Characteristics element of The Retreat EIR, the County stated, "*the internal project roadway, on the western border of the project site, would connect to the proposed [Martis Camp] project as a planned emergency access and transit corridor*." No mention was made of allowing Martis Camp residents to use the EVA for non-emergency/transit purposes.

In the Transportation and Circulation element of the EIR for The Retreat, the County wrote, "an emergency/transit connection would be provided between the project access road and Schaffer Mill Road. This connection would route transit buses through the project site. This would be a less than significant impact." Again, neither use of the

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[11] The Retreat draft EIR included the following pertinent to the expected traffic on Mill Site Road: "[T]he internal project roadway, on the western border of the project site, *would connect to the proposed [Martis Camp] project as a planned emergency access and transit corridor*" and "[t]he proposed project roadway would eventually serve to connect with properties to the west *as an emergency access/transit corridor, as discussed in the [MVCP]. This would provide a secondary route for emergency access vehicles.*" Regarding traffic levels on Mill Site road in connection with the driveways on that road within the Retreat, the executive summary of the transportation and circulation impacts in the final EIR, stated, "Placer County General Plan Policy 3.A.4 and [MVCP] Policy 5.A.17 state that the number of driveway encroachments along collector roadways should be minimized. Under the [MVCP], the project access drive is designated a collector roadway, thereby requiring that the number of driveways be limited. However, *as the roadway would only be open to transit through traffic, traffic levels along this roadway are expected to remain relatively low* and the safety and delay implications of allowing driveway access along the roadway are considered negligible." (Italics added.)

EVA by Martis Camp residents for non-emergency/transit purposes or the impact of such use was mentioned.

In the Public Services and Utilities element of The Retreat EIR, the County stated, "The proposed main subdivision access road would also serve to connect with properties to the west as an emergency access/transit/pedestrian and bike corridor, as discussed in the [MVCP]." And the County repeated, "[t]he proposed project roadway would eventually serve to connect with properties to the west *as an emergency access/transit corridor, as discussed in the [MVCP]*." Nothing was said about the connection eventually serving to provide access for Martis Camp residents for non-emergency/transit vehicular trips.

The conditions of approval for The Retreat included requirements that "Mill Site Road . . . be constructed at a minimum to the west property line *for a future emergency access / transit access road connection*." The conditions for approval also included conditions requiring the dedication of Mill Site Road for public use. In December of 2008, consistent with The Retreat's conditions of approval, the County accepted Mill Site Road into the County highway system, opening it for public use.

According to the petition, at some point in 2010, the gate on The Retreat's side of the EVA connection separating Schaffer Mill Road from Mill Site Road was removed. At around the same time, DMB installed a new transponder-controlled gate on the Martis Camp side of the EVA connection, on the remainder parcel owned by DMB. The new gate, which included a Knox Box system pursuant to Martis Camp's conditions of approval, had one master key controlled by emergency responders and an additional control system that allowed Martis Camp homeowners to also use the gate. In the fall of 2010, plaintiffs began witnessing private cars from Martis Camp using the gate and EVA connection to go through The Retreat. As a result, according to plaintiffs, traffic on Mill Site Road became 30 times heavier, or more, than the approved usage. Meanwhile, the

gate on The Retreat's side of the EVA connection, which continued to appear in the approved map of The Retreat, had not been restored.

Plaintiffs initially believed the private vehicles using the EVA connection were somehow overriding the Knox Box controls, or taking advantage of a temporary malfunction. Plaintiffs contacted the Martis Camp sales office to ask about a "short cut" access to Northstar, and were assured by unnamed Martis Camp staff that no such access existed, and there was "only a 'fire egress road' between Martis Camp and The Retreat."

DMB's 2011 sales materials for Martis Camp lots stated: "Restricted Access to Northstar Resort: Buyer, by accepting the deed to the Lot acknowledges that the resort owner has not consented to direct access to any portion of the Northstar Resort from all points along the boundary between the Development and the Northstar Resort. Such access [to Northstar from Martis Camp] will only be permitted through an extension of Schaffer Mill Road, public trail connection points, via the ski lift . . . and such other entry points as the [Northstar] resort owners may from time to time specifically designate . . . . Access to the Northstar Resort via Schaffer Mill Road is part of the private road system currently maintained by the Association and access shall be subject to the Association's regulation and control, which may include limitations on access and use from time to time. *Accordingly, Buyer agrees not to access the Northstar Resort property directly from the Development except as expressly permitted by the resort owner, and agrees not to permit any of its guests, invitees, or lessees to do so*."

Sales materials from The Retreat around the same time stated, "*At this time, the roadways within [The Retreat] are not intended to provide vehicular access to other residential developments located in proximity to [The Retreat]*. There is the potential of a fire and emergency access road to be developed from the western edge of [The Retreat] and connecting to and through land owned by others to the west of [Northstar] which . . . may be used for emergency and fire access and egress, intra-resort transit or other such purposes as permitted and required by the County."

In November 2011, The Retreat Association wrote to the County to inquire about the status of the EVA connection.

On December 12, 2011,[12] the County wrote back, acknowledging what it categorized as "ongoing confusion regarding the public status of the roadways within [The Retreat] and the private status of roadways within [Martis Camp]"[13] and to address this confusion, this letter would "articulate the rights and privileges associated with the public use of Mill Site Road, as well as the rights, privileges and restrictions associated with the private roadways within the Martis Camp development."

The December 12, 2011, letter noted that Mill Site Road was a public road, while Schaffer Mill Road was private. It went on to say, "While you are correct in stating that the plans approved for the Martis Camp project reserved for the County ingress and egress rights over Schaffer Mill Road for emergency access and transit service, *the County is not aware of any restrictions that [prohibit] the residents of Martis Camp from utilizing the public roadways (i.e., Mill Site Road) that abut [Martis Camp]*." (Italics added.) The letter further stated, "Your letter contends that the County is sitting idly while 'Martis Camp improperly attempts to change a(n) Emergency Vehicle Access into

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[12] The Retreat Association's November 1, 2011, letter is not included in the record. However, the first paragraph of the County's response of December 12, 2011, references the Retreat's letter and provides context for its response. It reads: "The County has received your letter, dated November 1, 2011, regarding your client's concern that the County is not enforcing certain responsibilities related to the use of public roadways in the vicinity of the Retreat . . . residential subdivision. It is your contention that Martis Camp property owners, staff and personnel, as well as staff and personnel from Northstar, are using Mill Site Road beyond the 'approved scope allowed by the restricted purpose easement described on both the Plat of Martis Camp (formerly known as Siller Ranch) and the Tract for the Retreat at Northstar.' The purpose of this letter is to respond to the issues raised in your letter."

[13] The December 12, 2011, letter was authored by Michael Johnson, the director of the Placer County Community Development Resource Agency.

a thoroughfare for the owners of lots within its subdivision to drive to and from Northstar for which there has been no CEQA study, compliance nor approval.' For the record, while Martis Camp was required to provide Emergency Vehicle Access through its connection with Mill Site Road (which it has in fact provided), *I can find nothing in the record that prohibits Martis Camp residents from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development*." (Italics added.) Thereafter, the letter states, "You do not give any specifics as to how the CEQA analysis prepared for both the Retreat at Northstar and Martis Camp projects are not adequate to address traffic generation associated with the respective projects. . . . The usage of public roadways of which your letter complains arises not from a County action, or the County's approval of an action requiring a permit, but rather from the access rights pertaining to land abutting private roadways. Thus, there is no 'current' project for purposes of CEQA analysis." Later, the letter states, "The design width for Mill Site Road was predicated upon the intended volume of traffic as identified in the environmental analysis for the project, and the daily use of Mill Site Road is not exceeding the capacity of the roadway."

The December 12, 2011, letter concludes with the statement, "I cannot agree with your conclusion that the Martis Camp subdivision is not in conformance with its Conditions of Approval" and asserts that "the County did in fact follow and comply with the requirements of [CEQA]." The letter ends with, "I hope that this letter has responded to your client's concerns regarding the public use of Mill Site Road" and an invitation to pose further questions concerning the information contained in the letter.

On May 1, 2012, plaintiffs sent another letter to the County, requesting immediate action to stop Martis Camp homeowners and invitees from using the EVA connection. Included with the letter was a detailed legal memorandum which included the excerpts from the EIR and the County's response to comments referenced *ante* indicating the EVA was intended for emergency and public transit use *only* and that use for non-emergency/transit traffic would require a separate EIR.

On July 24, 2012, counsel for DMB wrote the County asserting that Martis Camp residents have abutter's rights to use the EVA connection for through traffic. Counsel asked the County to decline taking any action to restrict or prohibit access to Martis Camp from Mill Site Road. On August 17, 2012, DMB wrote the County again, emphasizing the same points and requesting that the County allow Martis Camp residents to use the EVA connection as a second entrance.[14]

Plaintiffs sent another letter to the County dated August 23, 2012, repeating their request of May 1, 2012. The letter included a detailed legal memorandum.

On November 1, 2012, the County responded by letter, indicating that it had "investigated the issues" raised in the May 1, 2012 letter and "related correspondence received from other interested parties."[15] The letter concluded that Martis Camp was not in violation of its conditions of approval and that no code enforcement action was warranted.

The beginning of the November 1, 2012 letter expresses the understanding that the contention at issue was the failure of the County to recognize that the use of "emergency access gate" provided for in the approval of the Martis Camp subdivision was limited to emergency vehicle access and potential future public transit access. To address what the letter characterized as "ongoing confusion regarding the public status of the roadways

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[14] The record does not disclose when plaintiffs became aware of these letters from DMB. The August 17, 2012, letter does not appear to be in the record. Nor did the County reference such a letter as materials it had reviewed in its November 1, 2012, letter discussed, *post*. However, there is a letter dated September 14, 2012, from counsel for DMB in the record and listed among the items the County reviewed. The July 24 and September 14, 2012, letters were addressed to a deputy county counsel and there is no indication on the letters they were copied to the attorney who wrote the May 1, 2012, letter to the County or anyone else associated with plaintiffs.

[15] Like the December 12, 2011 letter, the November 1, 2012, letter was also authored by Michael Johnson, the director of the Placer County Community Development Resource Agency.

within the Retreat [] subdivision and the private status of roadways within the Martis Camp subdivision," the letter stated it would discuss "the rights and privileges associated with the public use of Mill Site Road, as well as the rights, privileges and restrictions associated with the private roadways within the Martis Camp Development."

Regarding plaintiffs' references to the MVCP in the May 1, 2012 letter, the November 1, 2012 letter stated, "[T]he [MVCP] is a policy document to guide development within the Martis Valley area. This policy document is meant to inform decision-makers when reviewing specific development projects. When a development project is approved, . . . those Conditions of Approval (and not the [MVCP]) become the primary guiding document for the implementation of that particular development project." While the County acknowledged that the community plan is relevant "as part of the approval process, with applicable policies within the Community Plan taken into consideration with the approval of the development project," the County concluded the MVCP contained no language prohibiting vehicles from Martis Camp from accessing "public roadways within The Retreat." The letter ignored that the MVCP stated, "the proposed roadway system includes transit and emergency access *only* between Schaffer Mill Road and Northstar," despite plaintiffs having pointed out this statement in their letter of May 1, 2012. (Italics added.)

The November 1, 2012, letter took the position that the conditions of approval for both subdivisions contain "no reference . . . that expressly precludes the use of the roadway connection for uses other than emergency or transit use." Pointing to Condition 26 of the Conditions of Approval for the Retreat, the letter stated that it does not expressly prohibit vehicles from Martis Camp to access the public roadways within the Retreat. Ignoring that Condition 26 specifically stated that the purpose of the construction of Mill Site Road to the west property line of the Retreat was "*for* a future

emergency access / transit road connection,"[16] the letter went on to state "there is no exclusive language that prohibits vehicles from Martis Camp from utilizing the public roadways within The Retreat residential subdivision. (Italics added.) Each project requires the provision of an emergency access and future public transit connection, but staff can find no language that prohibits the public use of public roadways within The Retreat residential development."

Referencing Condition 146 of the Conditions of Approval for Martis Camp, the November 1, 2012, letter disagreed with plaintiffs' assertion that this condition required the installation of a gate limiting the use of the connection for emergency access. The letter stated, "In fact, the subject Condition of Approval (Condition 146, addressing 'Fire Protection' issues) is not requiring that a gate be constructed, but rather if a gate is constructed on any emergency access roads, the emergency access roadway and gate needs to be designated to meet Fire District, County, and State standards (unless exceptions are approved)."[17]

The November 1, 2012, letter asserted that the time for challenging CEQA determinations concerning traffic had long since passed. Further, the letter stated, "The usage of public roadways of which your correspondence complains arises not from a County action, or the County's approval of an action requiring a permit, but rather from

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[16] Condition 26 of the Conditions of Approval for the Retreat provides: "Mill Site Road shall be constructed at a minimum to the west property line *for* a future emergency access / transit access road connection." (Italics added.)

[17] Condition 146 (I) of the Conditions of Approval for Martis Camp provides: "Emergency access roads shall be designed and gated to meet District, County, and State standards unless exceptions are approved." (Italics added.) Condition 146 (L) provides: "A Knox box system, or equivalent, shall be provided at all gated entrances and emergency access roads to provide access to the fire district."

the access rights pertaining to land abutting private roadways. There is no 'current' project for purposes of CEQA analysis."

The letter closed by reiterating, "[t]here is no 'current' project for purposes of CEQA analysis," and further concluding, "Martis Camp . . . is not in violation of any of its Conditions of Approval. As a result, no Code Enforcement action on the part of the County is warranted or required." The last paragraph of the letter stated, "This letter constitutes the *final action* of the [County] in this matter. *No further appeal* may be taken." (Italics added.)

Nowhere in the November 1, 2012, letter did the County address the County's previous responses to public comment that plaintiffs pointed out in their May 1, 2012, letter and that we set forth, *ante*.

The Present Action

On January 29, 2013, plaintiffs filed a petition for writ of mandate and complaint to set aside the County's "decision dated November 1, 2012, to convert a designated [EVA] connection to a thoroughfare between [Martis Camp and The Retreat]." The petition alleged the County abused its discretion by failing to perform an act required by law under the MVCP, Martis Camp conditions of approval, CEQA, final EIR of the Martis Camp project, and the Ralph M. Brown Act. The complaint sought a declaratory judgment that Martis Camp's conditions of approval "expressly limited the EVA connection to emergency vehicle and public transit only." The complaint also alleged violations of Business and Professions Code section 17200 (UCL) as to DMB and Trimont (collectively, "Real Parties"), and sought injunctive relief and restitution. County, DMB, and Trimont all demurred.

Thereafter, plaintiffs amended their petition and complaint. The amended petition added allegations that the County also violated the Planning and Zoning Law, and the Subdivision Map Act. The amended complaint also added a cause of action against Real Parties for nuisance and a corresponding claim for compensatory damages.

All defendants again demurred, arguing that the petition and complaint were barred by CEQA's statute of limitations, and in any case, failed to state a cause of action because the actions it sought to compel were not required by law. DMB also moved to strike plaintiffs' request for restitution or disgorgement because plaintiffs failed to allege that DMB obtained any money from plaintiffs through unfair business practices.

Plaintiffs opposed DMB's motion to strike, arguing DMB increased the value of Martis Camp homes, and diminished the value of homes at The Retreat, by converting the EVA connection into a public access road to Martis Camp. In their opposition to the demurrers, plaintiffs argued they sufficiently pleaded their causes of action, and asserted the challenged "action" that required environmental review was the County's November 1, 2012, letter. Thus, plaintiffs argued, their lawsuit was well within CEQA's statute of limitations.

The court agreed with defendants that plaintiffs' petition failed to state sufficient facts for mandamus relief. "Most fundamentally," the court concluded the County's November 1, 2012, letter was "a letter, nothing more," and did not "equate to a 'project' that triggers CEQA review processes." The court further concluded plaintiffs "insufficiently pleaded that County of Placer approved a change to a prior project requiring further CEQA review." Specifically, the court interpreted the November 1, 2012, letter to "merely show County of Placer made a compliance enforcement determination, not a discretionary determination approving the use of the EVA connection."

As to plaintiffs' claims under the Planning and Zoning Law, the Subdivision Map Act (Gov. Code, § 66410 et seq.), and the Ralph M. Brown Act (Gov. Code, § 54950 et seq.), the court ruled that the allegations were "conclusory in nature, containing no sufficient allegations as to how the laws were implicated and/or violated." Moreover, the court found that plaintiffs' claims, even if adequately alleged, were barred by the applicable statutes of limitations.

The court sustained defendants' demurrers as to plaintiffs' CEQA claim and first cause of action for declaratory relief without leave to amend, noting that the petition had been amended previously, plaintiffs had not met their burden of demonstrating how further amendment might be successful, and the court saw no possible successful amendment in light of the statutes of limitations. The court also sustained the demurrers as to plaintiffs' second cause of action for nuisance, noting "a factual predicate for this cause of action is that DMB 'illegally converted' the 'EVA-only connection' to an additional access to Martis Camp." Since the court interpreted the November 1, 2012, letter as showing no illegal conversion or unauthorized use of the connection, it found that plaintiffs "failed to clearly state sufficient facts to constitute a cause of action for nuisance." The court sustained the demurrers as to this cause of action with leave to amend. As to plaintiffs' third cause of action for violation of the UCL, the court found plaintiffs did not plead "sufficient facts to allege that defendants' actions constitute an unfair business practice" and sustained the demurrers to this cause of action with leave to amend.

Since the court had sustained demurrers to all causes of action against the County, it entered a judgment of dismissal as to the County only. Plaintiffs then voluntarily dismissed their remaining second and third causes of action for nuisance and violation of the UCL against Real Parties. The court thus granted Real Parties' request for a judgment of dismissal as to plaintiffs' petition for writ of mandate and first cause of action.

DISCUSSION

I. Cause of Action for Declaratory Relief

As a preliminary matter, we note that the parties do not discuss plaintiffs' cause of action for declaratory relief in their briefing. Real Parties' briefs mention plaintiffs'

cause of action for declaratory relief, but characterize it as simply accompanying the petition rather than a standalone issue on appeal.[18]

Since plaintiffs did not provide briefing as to their cause of action for declaratory judgment, and the parties essentially agree that the issues in this appeal arise solely from plaintiffs' petition for writ of mandate, we deem plaintiffs' appeal forfeited as to their cause of action for declaratory relief.[19] (See, e.g., *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817 [points "unsupported by 'adequate factual or legal analysis' " on appeal are forfeited]; *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201 [points not presented separately in an appellate brief are forfeited]; *People v. Roscoe* (2008) 169 Cal.App.4th 829, 840 [arguments not raised in the opening brief are forfeited].) We therefore limit our review to the trial court's denial of plaintiffs' petition for writ of mandate.

II. Mootness

A. Additional Background[20]

In February of 2014, less than two months after briefing on this appeal was completed, the Retreat filed a request with the County for the abandonment of Mill Site

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[18] DMB and Trimont each provided briefing on appeal. The County joined in both DMB's and Trimont's briefs.

[19] We note, however, that this forfeiture does not actually affect the outcome of any issues on appeal. As the parties implicitly recognize, review of plaintiffs' petition for writ of mandate already necessitates the "judicial declaration" requested by plaintiffs as to the legal implications of the County's alleged actions.

[20] For purposes of deciding the issue of mootness only, we take judicial notice on our own motion (Evid. Code, §§ 452 and 459), of the staff memorandum to the Board of Supervisors, dated August 4, 2015, and the Board of Supervisor's resolution, dated November 3, 2015. (County of Placer Department of Public Works Staff Memorandum (Aug. 4, 2015) <https://www.placer.ca.gov/DocumentCenter/View/19893/2015232-pdf> [as of February 5, 2020], archived at <https://perma.cc/SS3L-DXMT>; County of Placer Board of Supervisors Resolution 2015-232 (Nov. 3, 2015)

Road and Cross Cut Court.[21] The primary purpose of the request was to preclude use of the EVA connection between The Retreat and Martis Camp by Martis Camp residents. A staff memorandum dated August 4, 2015, noted that over 1,000 transponders had been issued to Martis Camp residents allowing them to enter and exit Mill Site Road via the east gate in Martis Camp. It was anticipated that more would be issued as the remaining Martis Camp lots are sold.

The memorandum described the opposition to the abandonment by Martis Camp residents. "Martis Camp's position is that Mill Site Road provides a convenient and environmental friendly access to Northstar, particularly the commercial and retail establishments at the Village at Northstar. Martis Camp also contends that as owners of real property abutting a public roadway, they have a fundamental property right to access and use Mill Site Road. The Retreat at Northstar contends that Mill Site Road was never contemplated to be utilized by Martis Camp private vehicle traffic and that the additional traffic is not safe, nor conducive to the anticipated tranquility of their subdivision."

In an apparent reversal from the position staff took in the December 12, 2011 and November 1, 2012 letters, staff who authored the August 4, 2015, memorandum concerning the abandonment wrote that the traffic analysis for the Martis Camp EIR "assumed that 100% of the [Martis Camp] project-related traffic travelling to or from Northstar would use State Route 267."

<https://www.placer.ca.gov/DocumentCenter/View/15207/02a-.pdf> [as of February 5, 2020], archived at <https://perma.cc/B7ST-XSWP>.)

As for our review of the demurrer, we focus only on those materials available to the trial court at the time the demurrer was sustained. However, by declining to take judicial notice of the documents related to the abandonment for purpose of the merits of the instant appeal, we do not intend to preclude the trial court from doing so on remand.

[21] Mill Site Road and Cross Cut court are the only roads in The Retreat. Cross Cut Court provides access off Mill Site Road to interior lots in The Retreat.

On November 3, 2015, the Board abandoned Mill Site Road and Cross Cut Court in The Retreat. The Board resolution set forth a number of findings, including: The MVCP and the EIRs for the Retreat and Martis Camp did not assign any private vehicle trips to the EVA connection between Martis Camp and The Retreat and none of these documents assumed that any private vehicles would use the EVA connection; the EIR analysis for Martis Camp "assumed that one hundred percent (100%) of the project-related private vehicle trips traveling to or from Northstar would use State Route 267 via Schaffer Mill Road," "[n]o private vehicle trips within the Martis Valley Roadway network were assigned to Mill Site Road," "the County approved the Martis Camp project on the basis that one hundred percent (100%) of the project-related traffic traveling to and from Northstar would use State Route 267 via Schaffer Mill Road" and "access to Northstar via Mill Site Road from Martis Camp would not be available"; various impacts associated with use of the EVA connection were not analyzed, including impacts on noise and impacts on pedestrian and bicycle use within the Retreat; and the driveway encroachments and permission to construct driveways to the maximum allowable slope in snow country was made in part on the basis that Mill Site Road and Cross Cut Court would serve only the lots within the Retreat. The County also found that it "has a substantial interest in ensuring that the existing road network matches that which was analyzed *and represented to the public*." (Italics added.)

The Board resolution then expressly "overruled" the November 1, 2012 and December 12, 2011, letters from Michael Johnson, Community Development Resource Agency Director, "to the extent that those letters found or implied that the use of the Martis Camp emergency and public transit vehicle access by private vehicles to and from the Martis Camp subdivision was consistent with the Conditions of Approval of that project." The Board resolution further found that "the project condition providing for the emergency vehicle access between Mill Site Road in the Retreat at Northstar subdivision

to Schaffer Mill Road in the Martis Camp subdivision prohibits any private vehicle use for ingress or egress of the Martis Camp subdivision."

B. Analysis

Because of the Board resolution and the findings summarized above, we asked the parties to tell us why the instant appeal is not moot. It appeared that as a result of the abandonment of Mill Site Road, Martis Camp residents could no longer use the EVA connection as a shortcut through The Retreat. The County and Real Parties agreed that the appeal is moot. However, plaintiffs argue the appeal is not moot, because the Martis Camp Community Association has challenged the County's abandonment of Mill Site Road in two lawsuits. In both cases, the trial court denied writs of mandate against the County to rescind the Board resolutions. Appeals from those rulings were filed in this court in August 2018.[22]

Plaintiffs argue they are entitled to pursue the instant appeal because this court could reverse the trial court's decision concerning the abandonment and order the resolutions rescinded. Were that to happen after this appeal is dismissed, plaintiffs would be left without the remedy they seek in the instant lawsuit.

Given the pending litigation involving the Martis Camp Community Association appeals, we cannot say that a reversal in the instant case can have no practical effect. (*Lincoln Place Tenants Assoc. v City of Los Angeles* (2007) 155 Cal.App.4th 425, 454 ["a case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief"].) Where a "matter is of general public interest and is likely to recur in the future" or "present questions . . . capable of repetition, yet evade review," a

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[22] At plaintiffs' request, we take judicial notice of the notices of appeal in *Martis Camp Community Association v. County of Placer et al.*, No. C087759, filed August 2, 2018, and in *Placer County Taxpayers for Safety, etc., et al. v. County of Placer et al*., No. C087778, filed August 14, 2018. Briefing on those matters was completed January 16, 2020.

resolution by the appellate court is appropriate despite questions of mootness. (*Californians for Alternatives to Toxics v. Department of Pesticide Regulation* (2006) 136 Cal.App.4th 1049, 1069, as modified on denial of rehg. (Mar. 17, 2006).) Here, the use of the EVA road is a matter of public interest and the County's abandonment of the road is being challenged in two active cases. It is thus foreseeable that if we dismiss this matter for mootness and the County's abandonment of the road does not survive review, the parties will find themselves in additional litigation. Accordingly, we exercise our discretion to address the merits.[23]

III. Standard of Review

On appeal from a dismissal entered after an order sustaining a demurrer to a petition for writ of mandate, we review the order de novo to determine whether the petition states a cause of action as a matter of law. (*City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 869 (*Morgan Hill*).) "We give the petition a reasonable interpretation, reading it as a whole and viewing its parts in context." (*Ibid.*) We accept as true all properly pleaded material facts, facts that may be implied or inferred from those expressly alleged, and evidentiary facts contained in the exhibits attached to the petition. (*Ibid.*; *Jones v. Omnitrans* (2004) 125 Cal.App.4th 273, 277-278.) We may also consider matters that may be judicially noticed, but do not accept contentions, deductions, or conclusions of fact or law. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 (*Serrano*).) In interpreting statutory law, we are not bound by the trial court's analysis; statutory interpretation is a question of law. (*Morgan Hill*, at p. 870; *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.)

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[23] We have declined plaintiff's suggestion to hold this appeal in abeyance until after the other two lawsuits are resolved and refused to grant additional continuances of the oral argument in this matter.

"[I]f no liability exists as a matter of law, we affirm the trial court's order sustaining the demurrer." (*Morgan Hill, supra,* 118 Cal.App.4th at p. 870.) If the petition states a cause of action *under any possible legal theory,* we order the demurrer overruled. (*Ibid.*)

IV. CEQA

A. The Parties' Contentions

Plaintiffs contend the County's November 1, 2012, letter approved a "project" as defined by CEQA. Alternatively, plaintiffs argue that the letter approved of or resulted in a substantial change to a prior project, warranting subsequent CEQA review.

Real Parties characterize the November 1, 2012, letter as simply reiterating Martis Camp and the Retreat's original conditions of approval. Thus, Real Parties argue, the November 1, 2012, letter was not a "project" for CEQA purposes. Real Parties further deny the letter constituted a "substantial change" in a prior project, since the use of the EVA by Martis Camp residents was purportedly already authorized by the original conditions of approval. Additionally, Real Parties claim Martis Camp residents have abutter's rights to access Mill Site Road from Schaffer Mill Road, and thus any restriction on such access not only lacks basis in the conditions of approval, but also would be unlawful.

Plaintiffs respond that the abutter's rights claim depends on issues of disputed fact which are inappropriate for resolution on demurrer.

B. Analysis

The trial court's ruling on plaintiffs' CEQA claim, and Real Parties' arguments essentially turn on the position that the County's actions, as alleged by plaintiffs, cannot establish a CEQA violation as a matter of law. Thus, we must therefore decide if, as a matter of law, plaintiffs' allegations sufficiently pleaded a claim for any violation of CEQA under the theories advanced by plaintiffs.

1. CEQA Framework

Plaintiffs essentially seek to set aside the County's earlier determination -- as set forth in its November 1, 2012, letter -- that permitting use of the EVA connection by Martis Camp residents did not trigger CEQA requirements. " 'In CEQA cases, as in other mandamus cases, ' "we independently review the administrative record under the same standard of review that governs the trial court.' " [Citations.] We review an agency's determinations and decisions for abuse of discretion. An agency abuses its discretion when it fails to proceed in a manner required by law or there is not substantial evidence to support its determination or decision.' " (*Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429, 434 (*Ventura Foothill Neighbors*).)

While we may not substitute our judgment for that of the public agency, "[w]e can and must . . . scrupulously enforce all legislatively mandated CEQA requirements." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (*Amador*).) When a public agency fails to proceed as required by CEQA, such failure may constitute prejudicial abuse of discretion regardless of whether a different outcome would have resulted if the public agency had complied with CEQA provisions. (*Ibid.*) Here, whether the County proceeded as required by CEQA initially turns on whether it correctly determined that permitting Martis Camp resident use of the EVA connection was an action not subject to CEQA.

2. CEQA "Project"

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (Pub. Resources Code, § 21001[24]; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) "CEQA is to be interpreted to 'afford the fullest possible protection to the environment within the reasonable scope of the statutory

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[24] Undesignated statutory references are to the Public Resources Code.

language.' " (*Ibid.*) Generally, CEQA applies to discretionary projects proposed or approved by public agencies. (§ 21080, subd. (a).) However, "CEQA was not intended to and cannot reasonably be construed to make a project of every activity of a public agency . . . ." (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 663.) Whether a particular public agency activity constitutes a "project" subject to CEQA requirements, is determined by definitions set forth in CEQA and its implementing administrative regulations. (§ 21065; Cal. Code Regs., tit. 14, § 15378.)[25]

Plaintiffs contend the County's November 1, 2012, letter is a "project" within the definition of that term in section 21065, subdivision (c), because it is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," and "involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (§ 21065, subd. (c), italics added.)[26] Specifically, plaintiffs contend the County's refusal to take action against use of the EVA connection from Martis Camp "was tantamount to an issuance of an 'entitlement' " to that use.[27]

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[25] All further citations to title 14, section 15000 et seq. of California Code of Regulations will be referred to as Guidelines.

[26] Section 21065 defines "project" as follows: " 'Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: [¶] (a) An activity directly undertaken by any public agency. [¶] (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. [¶] (c) An activity that involves the *issuance* to a person *of a* lease, permit, license, certificate, or other *entitlement for use* by one or more public agencies." (Italics added.)

[27] Plaintiffs also point out that the County, in addressing public comment to the draft EIR, said that opening the roadway "would be a separate project subject to its own environmental review process." However, plaintiffs do not argue that the County should

Whether a particular public agency activity constitutes a project subject to CEQA is a question of law. (*Creed-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 503.) Accordingly, we apply the de novo standard of review. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1503.) Plaintiffs have pointed to no authority and we know of none supporting their argument that a public agency's failure to take action is a project because the failure to act is tantamount to an entitlement. We agree with the trial court and Real Parties that the November 1, 2012, letter is not a "project" as defined by CEQA.

First, the letter does not represent a discretionary activity. CEQA applies only to discretionary, not ministerial, projects. (§ 21080, subd. (b)(1); *Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 393.) Discretionary projects require the public agency to exercise judgment or deliberate to approve or disapprove a particular activity, as distinguished from situations where the agency merely determines whether an activity conforms to applicable statutes, ordinances, or regulations. (Guidelines, § 15357.) Ministerial projects, on the other hand, are governmental decisions involving little to no personal judgment by the public official, who "merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision." (Guidelines, § 15369: *Leach*, at p. 393.)

Plaintiffs allege in their petition that the November 1, 2012, letter authorized a second subdivision entrance for Martis Camp and approved a new traffic and circulation pattern. Plaintiffs do not allege, however, that this letter was a discretionary activity.

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be bound by this public assurance without regard to analysis under the relevant CEQA provisions concerning activities deemed projects. Consequently, we have no occasion to consider such a theory and express no opinion as to whether the County should or should not be bound by its representation that opening the EVA to the public would be a separate "project." As to whether any activity here is a project, we address only plaintiffs' argument that refusal to stop through traffic by Martis Camp residents amounts to "issuance" of an "entitlement for use" by a public agency.

Indeed, the record suggests otherwise. The letter explicitly describes its purpose as follows: "[T]he County has investigated the issues raised in your correspondence pursuant to Placer County Code Article 17.62 (Code of Compliance and Enforcement) to determine whether or not Martis Camp is in violation of its Conditions of Approval regarding the use of the accessway between the Martis Camp and The Retreat subdivisions. This letter provides the County's response." In other words, the County's public official applied his understanding of the law to his purported understanding of the facts to arrive at the County's response to plaintiffs' concerns; this constitutes a ministerial activity, even if his opinion was wrong.

Similarly, the letter's ultimate conclusion that both Martis Camp and the County were in compliance with all applicable statutes and regulations did not involve any special discretion or personal judgment. As Real Parties put it, the letter purports only to note a prior decision, and reject plaintiffs' characterization of the conditions of approval. In other words, the County did not arrive at its conclusion in the letter by exercising its discretionary authority or personal judgment; rather, the County indicated its conclusion was compelled by the application of the law, and other governing authorities, to the facts presented by plaintiffs and revealed by the County's investigation. The County's conclusion simply disagreed with plaintiffs' position on this matter, but that does not make the conclusion itself discretionary so as to constitute a "project" as defined by CEQA.

Second, we agree with Real Parties that the letter issued no "entitlement for use." Since the County's decision in the November 1, 2012, letter was based on the County's interpretation of preexisting authorities, any supposed "entitlement for use" articulated in the letter would have been pursuant to those authorities, not the letter itself.

Plaintiffs claim the letter "approved DMB's request to convert the EVA connection to a new second entrance to the Martis Camp subdivision." The stated purpose of the letter, however, was to respond to plaintiffs' concerns, not to any request

for approval by Real Parties. Although DMB weighed in on plaintiffs's May 1, 2012, arguments by writing letters to the County in response thereto, the petition does not allege and the record does not contain any indication that the County's November 1, 2012, letter was in response to an application by Real Parties to allow Martis Camp residents to use the EVA issued to Real Parties. Nor was the County's letter issued to Real Parties. The letter only interpreted preexisting authorities, including the conditions of approval, and purportedly clarified "rights and privileges" associated therewith. Such interpretations or clarifications do not constitute new "projects" under CEQA. (*See Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 948.)

Third, it appears to us that our high court's decision in *Friends of College of San Mateo Gardens v. San Mateo Community College District* (2016) 1 Cal.5th 937 (*San Mateo Gardens*), forecloses plaintiffs' "new project" claim where there is a modification to an existing project and the original CEQA documents retain some relevance. Although that case is factually distinguishable, we conclude that our high court's reasoning applies here.

In *San Mateo Gardens*, a community college district proposed a facilities improvement plan. Under the plan, certain buildings would be demolished and others renovated. The district approved the plan, finding that it would have no significant, unmitigated effect on the environment and issuing a mitigated negative declaration. Years later, the district proposed changes to the plan, including the demolition of one building slated for renovation under the original plan and renovating two buildings previously slated for demolition. The district approved the changes after concluding neither a subsequent nor supplemental EIR was required. Instead, it addressed the change through an addendum to the initial study and mitigated negative declaration. (*San Mateo Gardens, supra*, 1 Cal.5th at pp. 943, 946-947.) The Court of Appeal concluded that the proposed change was a new project and our high court reversed. (*Id*. at pp. 943-944.)

Our high court rejected the new project claim, holding that "[w]hen an agency proposes changes to a previously approved project, CEQA does not authorize courts to invalidate the agency's action based solely on their own abstract evaluation of whether the agency's proposal is a new project, rather than a modified version of an old one." (*San Mateo Gardens, supra*, 1 Cal.5th at p. 944.) In arriving at this conclusion, the court reasoned that the "plaintiff's approach would assign to courts the authority—indeed, the obligation—to determine whether an agency's proposal qualifies as a new project, in the absence of any standards to govern the inquiry." (*Id*. at p. 950.) "In the absence of any benchmark for measuring the newness of a given project, the new project test plaintiff urges would inevitably invite arbitrary results. . . . [T]o ask whether an agency proposal constitutes a " 'new project' " in the abstract 'does not provide an objective or useful framework. Drastic changes to a project might be viewed by some as transforming the project to a *new* project, while others may characterize the same drastic changes in a project as resulting in a dramatically *modified* project. Such labeling entails no specific guidelines and simply is not helpful to our analysis.' " (*Id*. at p. 951.)

Our high court went on to write: "What is more, to ask whether proposed agency action constitutes a new project, purely in the abstract, misses the reason why the characterization matters in the first place. The central purpose of CEQA is to ensure that agencies and the public are adequately informed of the environmental effects of proposed agency action. The subsequent review provisions . . . are accordingly designed to ensure that an agency that proposes changes to a previously approved project " 'explore[s] environmental impacts not considered in the original environmental document.' " " (*San Mateo Gardens, supra*, 1 Cal.5th at p. 951.) "If the original environmental document retains some informational value despite the proposed changes, then the agency proceeds to decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects." (*Id*. at

p. 952.) A prior environmental document will in most cases remain relevant when the prior CEQA analysis pertains to a specific development. (*Citizens Coalition Los Angeles v. City of Los Angles* (2018) 26 Cal.App.5th 561, 581.)

San Mateo Gardens is factually distinguishable because the agency acknowledged the change whereas here, the agency denies a change has taken place. Nevertheless, we conclude that our high court's reasoning applies here. The original CEQA documents remain relevant in that they retain informational value as to a specific development; thus if there has been a change covered by CEQA's supplemental or subsequent EIR provisions, then the change must be addressed under those provisions and the question becomes whether the allegations in the petition support a finding that the County abused its discretion by not applying those provisions. We conclude that the County did, indeed, abuse its discretion in this regard.

3. Substantial Change Warranting a Subsequent or Supplemental EIR

a. The Parties' Contentions

Plaintiffs contend that the November 1, 2012, letter approved of or resulted in a substantial change to the original Martis Camp or The Retreat projects, such that additional environmental review was required under CEQA's subsequent or supplemental environmental review provisions. In this regard, the petition alleged: "[T]he conversion of the previously existing EVA- and transit-only connection to a new second subdivision entrance to allow non-emergency roadway access between Martis Camp and The Retreat, and the resulting creation of a thoroughfare through the latter, are substantial changes to the previously approved Martis Camp project and/or The Retreat Project. The County has failed to provide any notice, review, and analysis of the environmental impacts of this substantial change to those projects, in violation of CEQA and its mandate for public involvement and informed decision-making."

Defendants assert that there was no change because nothing in project approvals for Martis Camp and The Retreat restricts Martis Camp residents from using the EVA

connection. In other words, Martis Camp residents had the authority to use the EVA connection all along.

We agree with plaintiffs that the EIRs and conditions of approval for Martis Camp and The Retreat did not contemplate non-emergency/transit usage of the EVA connection by Martis Camp residents. No mention was ever made in any of the CEQA documents about such use of the EVA connection by Martis Camp residents, not even when responding to comments and questions related to the draft EIR. As a result, neither agency decision makers nor the public were informed of this use and the potential environmental impacts of such use were not studied. Based on the allegations in the petition, permitting such use was a substantial change in both the Martis Camp and The Retreat projects.

b. Informational Purpose of EIRs

An EIR is an informational document intended for both public agency decision makers and the public. (See § 21061; *San Mateo Gardens, supra*, 1 Cal.5th at p. 944; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390-391 ["an EIR is 'an informational document' " and " '[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project' "]; *Amador*, *supra*, 76 Cal.App.4th at p. 948 ["the purpose of an EIR is to ensure an informed public and informed decisionmaking"].) An EIR may be viewed as an "environmental 'alarm bell,' whose purpose is to alert the public and its responsible officials to environmental changes." (*City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1017 (*San Jose*); *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365 (*Mira Monte*).)

The failure to prepare a subsequent or supplemental EIR when required deprives the public who relied on the EIR's representations of meaningful participation and deprives decision makers of the information needed to address the environmental effects of the change. (*San Jose, supra*, 192 Cal.App.3d at p. 1017; *Mira Monte, supra*, 165 Cal.App.3d at p. 365.) Thus, in our review, " 'a paramount consideration is the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision." [Citation.] "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.' " (*San Jose,* at p. 1017; *Mira Monte,* at p. 365.)

c. Law Pertaining to Subsequent and Supplemental EIRs and Substantial Change

Once a proper EIR has been prepared, CEQA requires a subsequent or supplemental EIR when: "(1) 'substantial changes' are proposed in the project, requiring 'major revisions' in the EIR; (2) substantial changes arise in the circumstances of the project's undertaking, requiring major revisions in the EIR; or (3) new information appears that was not known or available at the time the EIR was certified." (§ 21166; Guidelines, § 15162; *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 54-55 (*Green Foothills*); *Ventura Foothill Neighbors, supra*, 232 Cal.App.4th at p. 435.) Additionally, before an agency is obligated to produce a subsequent or supplemental EIR, the Guidelines require that the change involve " 'new significant environmental effects or a substantial increase in the severity of previously identified significant effects.' " (Guidelines, § 15162, subd. (a).) Thus, "if the proposed changes meet that standard, then a subsequent or supplemental EIR is required." (*San Mateo Gardens, supra*, 1 Cal.5th at p. 950.) " 'The purpose behind the requirement of a

subsequent or supplemental EIR . . . is to explore environmental impacts not considered in the original environmental document. The event of a change in a project is not an occasion to revisit environmental concerns laid to rest in the original analysis. Only changed circumstances . . . are at issue.' " (*Id.* at p. 949.)

"[T]he responsible public agency may choose to prepare a 'supplement' to an EIR rather than a subsequent EIR if the conditions necessitating a subsequent EIR exist, but '[only] minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.' [Citation.] Such a supplemental EIR 'need contain only the information necessary to make the previous EIR adequate for the project as revised,' 'shall be given the same kind of notice and public review' as is given to a draft EIR, may be circulated by itself without recirculating the previous draft or final EIR, and must be considered in conjunction with the previous EIR." (Guidelines, §§ 15162, subd. (a)(1), 15163; *San Jose, supra*, 192 Cal.App.3d at p. 1016.)[28]

Real Parties argue that the County's November 1, 2012, letter did not represent a change to the Martis Camp or Retreat projects, such that further CEQA documentation was required because the Martis Camp residents were never prohibited from using the EVA. Plaintiffs, on the other hand, contend the letter "resulted in a fundamental change"

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[28] Alternatively, "The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions . . . calling for preparation of a subsequent EIR have occurred." (Guidelines, § 15164, subd. (a); *San Mateo Gardens, supra*, 1 Cal.5th at p. 949; *Ventura Foothill Neighbors, supra*, 232 Cal.App.4th at p. 435.) In other words, an addendum may be prepared where " '[only] *minor technical changes or additions* are necessary to make the EIR under consideration adequate under CEQA.' " (Guidelines, § 15164; *San Jose, supra*, 192 Cal.App.3d at p. 1016, italics added.) An addendum need not be circulated for public review and can simply be attached to the final EIR. (*Ibid*.) However, the change at issue here cannot be characterized as one that is technical and it will result in new significant environmental effects.

because it converted the EVA connection into a second entrance for Martis Camp. We disagree with both parties insofar as they focus on the November 1, 2012, letter as approving or resulting in a substantial change. The substantial change, as alleged by plaintiffs, would be that the County permitted non- emergency/transit usage of the EVA connection by Martis Camp residents, a decision that ostensibly predated the November 1, 2012, letter.[29] The letter would represent only the County's determination that CEQA required no further documentation. (See § 21166, subd. (a); Guidelines, § 15162, subd. (a)(1).) Alternatively, DMB's construction of a new gate and providing Martis Camp residents with access through that gate could be viewed as a substantial change in the circumstances under which the project was undertaken. (See § 21166, subd. (b); Guidelines, § 15162, subd. (a)(2).)

We must therefore decide whether the pleadings support the conclusion that the County incorrectly determined that permitting non-emergency/transit use of the EVA connection by Martis Camp residents, as alleged by plaintiffs, was not a change in the original project. We thus first determine whether and to what extent the original EIRs for Martis Camp and The Retreat contemplated such use of the EVA. In interpreting the scope of the original EIRs, we consider the County's responses to the public comment, the conditions of approval for both projects, the environmental impacts addressed in the EIRs, and the MVCP.

d. The MVCP

Before analyzing the scope of the EIRs relative to the EVA connection, we first discuss the import of the MVCP. As noted, the County's November 1, 2012, letter dismissed the MVCP as a "policy document . . . to inform decision-makers when

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[29] When exactly this change happened is a factual question not clearly answered by the record on appeal, and relevant to the statute of limitations issue. We discuss this matter further, *post*.

reviewing specific development projects." Once a project is approved, the County asserted, the conditions of approval for that project "become the primary guiding document for [its] implementation." The County did acknowledge, however, that the community plan is relevant "as part of the approval process, with applicable policies within the Community Plan taken into consideration with the approval of the development project."

In evaluating consistency with a community plan, the court in *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677 (*Joshua Tree*) observed: " '[S]tate law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan. [Citations.] Instead, a finding of consistency requires only that the proposed project be '*compatible* with the objectives, policies, general land uses, and programs specified in' the applicable plan. [Citation.] The courts have interpreted this provision as requiring that *a project be* ' "in agreement or harmony with" ' the terms of the applicable plan, not in rigid conformity with every detail thereof.' " (*Joshua Tree*, at p. 694.) Additionally, this court's opinion in *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, "stands for the proposition that '[e]vidence that a project is inconsistent *with land use standards adopted to mitigate environmental impacts* can support a fair argument that a project might have a significant adverse effect.' " (*Joshua Tree*, at p. 695, quoting 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (2d ed. 2015) § 6.56, p. 6-60.1.)

As written, the Martis Camp and The Retreat EIRs and conditions of approval were in agreement and harmony with the terms of the MVCP pertaining to the EVA. However, permitting use of the EVA by Martis Camp residents for non-emergency/transit vehicular traffic is not compatible with the MVCP.

Moreover, apart from these land use consistency/compatibility rules, the MVCP is relevant because the conditions of approval were expressly represented to the public and

decision makers as complying with the MVCP. Where, as here, the parties dispute what particular conditions of approval mean, the MVCP provides context for, and assists us in interpreting, the disputed conditions.

Therefore, we do not dismiss the MVCP as irrelevant like the County seemingly did in the November 1, 2012, letter. As we have noted, after an "in-depth analysis" and public comment, the MVCP was written to "remove the through connections from Schaffer Mill Road to Northstar" and provide that "*the proposed roadway system includes transit and emergency access only between Schaffer Mill Road and Northstar*." We next discuss the public comments to the draft EIR and the County's responses thereto.

e. Public Comments and the County's Responses

The County never mentioned the County's responses to public comment in its November 1, 2012, letter. Yet, public comments and agency responses to comments are integral parts of an EIR. (Guidelines, § 15132; *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 609, fn. 3; *Sutter Sensible Planning, Inc. v Board of Supervisors* (1981) 122 Cal.App.3d 813, 820 (*Sutter Sensible Planning*).) "The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful." (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 904.) The requirement further "helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug." (*Sutter Sensible Planning*, at p. 820.) " '*There must be a good faith, reasoned analysis in response*' " to public comment. (*Ibid*.)

The County's November 1, 2012, letter looks at the omission of any reference to use of the EVA by Martis Camp residents differently than do we. The letter repeatedly

asserts that since there was no express language precluding such use, it must be permissible. Real Parties echo this reasoning in their arguments on appeal. This reasoning is untenable.

While preclusion of Martis Camp residents' use is not explicit in the language summarized *ante*, explicit language of preclusion hardly seems necessary when preclusion is so heavily implied, and was apparently understood by both the public and the County. In this regard, the use of the word "only" in the MVCP, and by both public commentors *and* the County is extremely important.

As noted, the MVCP rejected the option that had been considered allowing a through connection from Shaffer Mill Road to Northstar and stated that "*the proposed roadway system includes transit and emergency access only between Schaffer Mill Road and Northstar*." This language was ignored by the County in its November 1, 2012, letter. The use of the word "only" in this sentence indicates that access will not be provided for non-emergency/transit vehicular traffic.

Sierra Watch's comment to the Martis Camp draft EIR asked how the EVA connection "*would be guaranteed to remain open for emergency access/transit use only*." The use of the word "only" here implies that the EIR contemplated, and gave the public notice that the EVA connection would *only* be used for emergency access and public transit. If this was a misunderstanding on the part of Sierra Watch, the County did not correct this misunderstanding in its reply to the comment. Instead of directly refuting or correcting this understanding, the County merely emphasized that the "proposed use of [the EVA connection] is also consistent with the [MVCP]." And as we have noted, the MVCP calls for emergency and transit access "only."

Additionally, in response to Sierra Watch's comment requesting that the EIR identify environmental "impacts associated with the emergency access connection becoming a full access roadway," the County replied, "the project would be approved with the transit/emergency access *only*" consistent with the MVCP. (Italics added.)

Given that no mention was made of Martis Camp residents using the EVA, this exclusive language indicates that the project as approved did not contemplate non-emergency/transit use of the EVA connection by Martis Camp residents or anyone else.

Beyond the use of the word "only," the County's responses to other comments to the draft EIR for Martis Camp implies the EVA was intended solely for emergency and transit use. In responding to the Town of Truckee's suggestion to open the EVA for private car access to provide a "full internal connection" to Northstar, the County rejected the idea as inconsistent with the MVCP. Again, the County did not note that Martis Camp residents would be permitted non-emergency/transit access to Northstar via the EVA.

The EIR for the Retreat, in addressing driveway access for the Retreat residents stated, "as the roadway would *only* be open to transit through traffic, traffic levels along this roadway are expected to remain relatively low and the safety and delay implications of allowing driveway access along the roadway are considered negligible." (See fn. 11, *ante*.) (Italics added.) This response, directly addressing traffic levels on Mill Site Road, clearly implies that Martis Camp residents would not contribute to those traffic levels since the road "would *only* be open to transit through traffic." (Italics added.)

Furthermore, the County's responses to the Sierra Watch comments twice noted that allowing non-emergency/transit use of the EVA would require separate CEQA review (see fns. 8 and 9, *ante*), statements that essentially amount to a concession that such use would be a substantial change from what was contemplated in the CEQA documents. Real Parties focus on one of these two responses, the one that reads: "*as the project would be approved with the transit/emergency access only (consistent with the adopted [MVCP]), the opening of the roadway to the public would be a separate project subject to its own environmental review process. Opening of the roadway would be subject to CEQA and would not change the nature or scope of the [Martis Camp] project.*" (See fn. 9, *ante*) Respondents claim the reference to opening the roadway to

"the public" requiring a separate CEQA analysis did not include "private" traffic by the Martis Camp residents. But again, this ignores the County's use of the word "only." The response clearly says "the project would be approved with the transit/emergency access *only*." Thus, in context, the reference to the "public" is reasonably read to include all non-emergency/transit motorists, including Martis Camp residents.

Real Parties' argument that "public" did not mean private use by Martis Camp residents also ignores the other response in which County indicated separate CEQA review would be required. Sierra Watch asserted that a revised analysis was necessary to account for the number of trips "on the emergency access road by transit *and all other vehicles*." (Italics added.) In response to this comment referencing "all other vehicles" in addition to transit, the County represented, "*[a]ny future decision to open this roadway would require CEQA review and would be a separate project*." Properly read in this context, the County's response is reasonably read as indicating a separate CEQA review would be necessary to account for the number of trips by all other vehicles, including those driven by Martis Camp residents. The response certainly cannot be read to mean "all other vehicles," except those driven by Martis Camp residents. And if this is what was intended, the County could have easily said as much, evaluated the environmental impacts of such traffic and included that evaluation in the EIR.

Additionally, in response to the Northstar Community Service District comment about the debate over the use of the EVA connection, the County represented that DMB agreed that "*the extension of Schaffer Mill Road through [Martis Camp] . . . will be designated and used as an emergency access and public transit provider route, even if [Martis Camp] is approved as a private community*." The County never said that DMB intended to allow the Martis Camp residents to use the EVA connection as a second private entrance to and from their community or that this was even a possibility.

Indeed, in responding to all of these comments, the County could have stated that there was the potential for "private use" by Martis Camp residents if such use was

contemplated. If such use was truly contemplated, the County's responses were extremely misleading to the public and the decision makers. However, since an agency's response to public comment must be made in "good faith" (Cal. Code Regs., tit. 14, § 15088(c); *Sutter Sensible Planning, supra,* 122 Cal.App.3d at p. 820) and "CEQA requires an EIR to reflect a *good faith* effort at full disclosure" (*El Morro Community Ass'n v. California Dept. of Parks and Recreation* (2004) 122 Cal.App.4th 1341, 1349), in the context of this demurrer, we presume that these official duties were performed (Evid. Code, § 664) and the County did not intend to violate these duties by misleading the EIRs' audience. (Italics added.)

f. Environmental Impacts of Martis Camp Resident Traffic

As we see it, the issue here is not that the EIRs did not *explicitly prohibit* non-emergency/transit use by Martis Camp residents; it is that the EIRs did not explicitly discuss such use, and thus, did not consider its environmental impacts. Environmental considerations such as vehicle circulation and traffic, safety and traffic noise resulting from Martis Camp residents use of the EVA and Mill Site Road were not discussed, but they should have been had such use truly been contemplated. That such impacts were not discussed is evidence that EVA was not intended for use by Martis Camp residents.

g. Change in the Project

The MVCP said "*the proposed roadway system includes transit and emergency access only between Schaffer Mill Road and Northstar*." The public specifically requested environmental impact review for potential non-emergency/transit use of the EVA connection, and the County declined to conduct such review on the basis that it was unnecessary due to the connection's limited approved use. Instead the County represented that the EVA would be used *only* for emergency/transit traffic and suggested to the public and decisionmakers a separate EIR would be done for other use.

Based on the foregoing, we conclude that the petition supports a finding that nonemergency Martis Camp resident vehicle access in and out of Martis Camp via the

EVA and Mill Site Road represents a change from the Martis Camp and The Retreat projects.

h. "Substantial" Change

Having concluded that use of the EVA by Martis Camp residents was not contemplated in the CEQA documents and such use is a change, we further conclude that the allegations in the petition support a finding that such use is a "substantial" change in the project or circumstances under which the project is carried out. (§ 21166, subds. (a), (b); Guidelines, § 15162, subd. (a)(1), (2).) Such a finding is supported by the allegations indicating that the County twice explicitly stated that opening of the roadway to non-emergency/transit use would require a separate CEQA analysis. Such statements concede that not only would Martis Camp resident use of the EVA be a change, but it would be a significant change triggering potential environmental impacts substantial enough to warrant separate CEQA review. Furthermore, as noted, " '[e]vidence that a project is inconsistent with *land use standards adopted to mitigate environmental impacts* can support a fair argument that a project might have a significant adverse effect.' " (*Joshua Tree, supra*, 1 Cal.App.5th at p. 695, quoting 1 Kostka & Zischke, *supra*, § 6.56, p. 6-60.1.) Here again, the MVCP is pertinent to the extent that the emergency/transit EVA access only provision was adopted to mitigate environmental impacts associated with future developments in the area.

i. Substantial Change—Conclusion

When substantial changes are made to a project, such as the change here, the agency making the modifications must determine whether the initial environmental document remains sufficient or whether revisions to that document or supplemental review is required. (*Monterey Coastkeeper v. State Water Resources Control Board* (2018) 28 Cal.App.5th 342, 371, citing *San Mateo Gardens, supra*, 1 Cal.5th at pp. 952-953.) This, the County did not do.

Based on the above, the petition supports a finding that further CEQA review and documentation was required. The County's failure to do so was a failure to proceed as required by law, and constituted prejudicial abuse of discretion. (*Amador, supra*, 76 Cal.App.4th at p. 946.) Plaintiffs' petition therefore states a CEQA violation cause of action.

V. Statute of Limitations

A. The Parties' Contention

Real Parties contend that plaintiffs failed to state a cause of action under CEQA because they failed to file the petition within the applicable statute of limitations.

Plaintiffs assert they were not aware of the alleged change to the Martis Camp and The Retreat projects until the County's November 1, 2012, letter. They thus contend the applicable statutes of limitations for each of their claims did not begin to run until November 1, 2012, and do not bar their claims.

Real Parties argue, first, that allowing plaintiffs to delay accrual of the statute of limitations by claiming confusion as to the original conditions of approval would frustrate the policy purpose of strictly enforcing time limitations on CEQA claims. Second, Real Parties contend that even if a "substantial change" to the project triggered the need for further CEQA review, the statute of limitations has run because plaintiffs knew or should have known of the change either: (1) in 2008, when Mill Site Road was opened to the public; (2) in Fall 2010, when plaintiffs witnessed "private" traffic on the EVA connection; or (3) by December 12, 2011, when the County issued its first letter in response to plaintiffs' concerns.

B. Analysis

A statute of limitations generally raises questions of fact. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810 (*Fox*).) It is only where reasonable minds can draw but one conclusion that the question becomes a matter of law. (See *Brown v. Bleiberg* (1982) 32 Cal.3d 426, 436 (*Brown*) [statute of limitations issue in a summary

judgment motion].) " ' "The ultimate question for review is whether the complaint showed *on its face* that the action was barred by a statute of limitations, for only then may a general demurrer be sustained and a judgment of dismissal be entered thereon." ' " (*Van de Kamps Coalition v. Board of Trustees of Los Angeles County Community College District* (2012) 206 Cal.App.4th 1036, 1044 (*Van de Kamps*).)

" 'If the agency makes substantial changes in a project after the filing of the EIR and fails to file a later EIR in violation of section 21166, subdivision (a), an action challenging the agency's noncompliance with CEQA may be filed within 180 days of the time the plaintiff knew or reasonably should have known that the project under way differs substantially from the one described in the EIR.' " (§ 21167, subd. (a); *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 933 (*Concerned Citizens*); *Ventura Foothill Neighbors, supra*, 232 Cal.App.4th at pp. 436-437.) Here, this knowledge is not shown on the face of the petition and exactly when the statute began running is a question of fact that cannot be decided by demurrer.

As Real Parties' arguments reflect, there are several possibilities for when the statute of limitations began to run. Real Parties contend that plaintiffs knew or should have known about the change when the County dedicated Mill Site Road in 2008 because Martis Ranch residents purportedly had abutters rights. But according to the petition, the original gate, which had been installed in 2006, was in place until sometime in 2010 when it was removed. Given this circumstance, reasonable minds could reach more than one conclusion about whether plaintiffs reasonably should have known that the County *permitted* non-emergency/transit use of the EVA connection based on the 2008 dedication. (See *Concerned Citizens, supra*, 42 Cal.3d at p. 939; see also *Fox, supra*, 35 Cal.4th at p. 810.) Moreover, the petition asserts that Mill Site Road and Shaffer Mill Road do not abut, but rather there is a remainder parcel owned by Trimont at the end of Mill Site Road over which the EVA easement connects with Martis Camp several

hundred feet west of The Retreat boundary. Based on this allegation, the petition asserts a fact demonstrating that plaintiffs never believed there was an abutment.

Real Parties argue that plaintiffs knew or should have known of the change in the fall of 2010 because they witnessed "noncompliant" traffic on the EVA connection at that time. However, Real Parties do not contest plaintiffs' allegation that, although they witnessed non-emergency/transit traffic on the EVA connection, they thought such traffic was not supposed to be there. Real Parties claim plaintiffs "chose not to bring suit or raise the issue with the County at that time", but this ignores plaintiffs' allegation that they contacted Martis Camp staff in 2010 to inquire about the EVA connection, and were assured that "there was no private access and only a 'fire egress road' between Martis Camp and The Retreat." Additionally, DMB's 2011 sales materials indicated that buyers could not directly access the Northstar resort from Martis Camp. And Trimont's sales materials for the Retreat also stated there would be no private vehicle traffic between Martis Camp and the Retreat. Moreover, as discussed above, the original EIRs for these projects did not contemplate non-emergency/transit use of the EVA connection, or put the public on notice that such use would be permitted. (See *Concerned Citizens, supra*, 42 Cal.3d at p. 938 ["[T]he public might justifiably but erroneously assume that the project being built is the one discussed in the EIR"].) A petitioner cannot "reasonably know" that a change has been approved when the relevant facts are hidden or misrepresented, intentionally or unintentionally.

It may also be that the statute of limitations began to run when DMB took down the original gate and installed a new transponder-controlled gate on the Martis Camp side of the EVA connection. Such an action would represent a change in the circumstances under which the project was undertaken. (§ 21166, subd. (b); Guidelines, § 15162, subd. (a)(2).) However, it is not clear from the face of the petition when plaintiffs learned this had occurred, when plaintiffs learned it was DMB who took this action, and when it became clear the County was approved of that change.

Based on the record before us, reasonable minds could reach more than one conclusion about whether plaintiffs knew or should have known that the County permitted the change based on the December 12, 2011, letter. That letter can be read as indicating the County was not taking a firm position on whether the Martis Camp residents could use the EVA. It said the County "is not aware of any restrictions that prohibits the residents of Martis Camp from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development" and "I can find nothing in the record that prohibits Martis Camp residents from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development." The letter expressed no final opinion. As plaintiffs alleged in the petition, it appeared the County was unaware that the project approvals limited the use of the EVA connection to emergency and transit traffic and that only a single entrance was approved for Martis Camp. On the other hand, it could be that plaintiffs knew or reasonably knew of the change before the December 12, 2011, letter and such knowledge or constructive knowledge is reflected in the Retreat's November 2011 letter, which is not part of the record before us. In any event, the petition on its face does not show their CEQA action is barred by a statute of limitations.

Lastly, the statute of limitations may have started running upon receipt of the County's November 1, 2012, letter which was explicitly characterized as "the final action" of the County from which "no further appeal" could be taken. Plaintiffs filed their petition on January 29, 2013, 89 days after the November 1, 2012, letter. This was well within the 180-day statute of limitations. (§ 21167, subd. (a); see *Concerned Citizens, supra*, 42 Cal.3d at p. 938.)

The trial court did not consider these factual questions. The trial court concluded the County's November 1, 2012, letter represented a "compliance enforcement determination, not a discretionary determination approving the use of the EVA connection." The County's determination that no enforcement was necessary was, however, predicated upon its determination that non-emergency/transit use of the EVA

connection by Martis Camp residents was permissible without further CEQA review, pursuant to the original EIRs and conditions of approval. As explained *ante*, plaintiffs sufficiently alleged in the petition that this determination was erroneous and constituted prejudicial abuse of discretion. The trial court should therefore have considered whether any of the events alleged in the pleadings triggered the 180-day statute of limitations for challenging a substantial change to the original projects or their circumstances.

Reasonable minds can reach different conclusions as to when plaintiffs knew or should have known about the change in the project or the change in the circumstances under which the project was carried out based on the facts alleged in the petition. The running of the statute must appear " ' "clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action *may* be barred." ' " (*Green Foothills, supra*, 48 Cal.4th at p. 42.) We cannot say that on the petition's face, the CEQA claim was barred by a statute of limitations. (*Ibid.*; *Van de Kamps, supra*, 206 Cal.App.4th at p. 1044.)

VI. The Planning and Zoning Law, and the Subdivision Map Act

A. The Parties' Contentions

Plaintiffs further contend the County's November 1, 2012, letter represented a failure to comply with the Planning and Zoning Law, and the Subdivision Map Act, because the County refused to enforce conditions of approval for the Martis Camp and Retreat projects. Real Parties argue, first, that plaintiffs failed to plead their allegations under this claim with specificity; and second, that plaintiffs have no basis for their underlying premise that Real Parties had a legal duty to prevent use of the EVA connection from Martis Camp.

B. Analysis

We agree with the trial court and Real Parties that plaintiffs failed to adequately allege these claims. Plaintiffs invoked no specific provisions of either the Planning and Zoning Law or the Subdivision Map Act. They provided no analysis on how the

County's actions constituted violations of these laws. They baldly stated that the County violated these acts in general, and summarily conclude that "the November 1 letter is an abuse of discretion and a failure to act in accordance with law, and must be set aside." Plaintiffs' briefs on appeal are similarly conclusory.

As noted *ante*, in reviewing the sufficiency of plaintiffs' pleadings, we do not accept as true contentions, deductions, or conclusions of fact or law. (*Serrano, supra*, 5 Cal.3d at p. 591.) We therefore do not accept as true plaintiffs' unsupported conclusory allegation that the County violated the Planning and Zoning Law and the Subdivision Map Act.

Plaintiffs cite two cases for the general proposition that a petition for writ of mandate is the appropriate method to challenge the County's decision and compel the County to proceed as required by law. (See *Harbach v. El Pueblo de Los Angeles etc. Com.* (1971) 14 Cal.App.3d 828, 834 [a petition for writ of mandate was the proper form of an action to compel a public entity to perform its ministerial duty]; *Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 794-795 [mandate may issue to correct a city's abuse of discretion in unlawfully imposing conditions of approval for a project].) While this proposition indicates that plaintiffs chose the correct *form* of pleading by bringing a petition for writ of mandate, it is irrelevant to plaintiffs' contention on appeal that their pleading was *adequate*.

We thus agree with the trial court that plaintiffs inadequately alleged their claims under the Planning and Zoning Law and the Subdivision Map Act. Since this inadequacy suffices to defeat these claims on demurrer, and in light of the potential factual dispute discussed *ante* as to when the challenged action actually occurred, we do not reach Real Parties' contention that any claims plaintiffs had would be time-barred under both the Planning and Zoning Law and the Subdivision Map Act.

VII. Ralph M. Brown Act

A. The Parties' Contentions

Plaintiffs also claim the County's November 1, 2012, letter violated the Ralph M. Brown Act and other public participation laws because the letter approved changes to the Martis Camp and Retreat projects without public notice and opportunity to comment. Real Parties, in response to this claim, cross-apply their arguments under planning and zoning laws and the Subdivision Map Act.

B. Analysis

Like their claims under the Planning and Zoning Law, and the Subdivision Map Act, plaintiffs' claim that the County violated "public participation and meeting laws" is conclusory. We therefore agree with the trial court that plaintiffs failed to specifically and adequately allege their claim under "the Ralph M. Brown Act, state planning and land use laws, and applicable County ordinances."

Moreover, as Real Parties point out, plaintiffs never alleged, in the trial court or on appeal, that they made "a demand of [a] legislative body to cure or correct the action alleged to have been taken in violation of [the Ralph M. Brown Act]." (Cal. Gov. Code, § 54960.1, subd. (b).)[30] Such a demand is a prerequisite to commencing any action by mandamus pursuant to this statute. (Cal. Gov. Code, § 54960.1, subd. (b).) Plaintiffs' petition thus failed to adequately allege an essential element of a claim under the Ralph M. Brown Act, and thus the trial court properly sustained the demurrer as to this claim.

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[30] Government Code section 54901.1, subdivision (b), provides in pertinent part: "(b) Prior to any action being commenced . . . , the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of [the Ralph M. Brown Act]. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation."

Having determined that plaintiffs alleged a mere conclusory claim and further failed to allege they made a written demand as required under section 54960.1, subdivision (b), we need not reach Real Parties' contention that plaintiffs' written demand was untimely. (Cal. Gov. Code, § 54960.1, subd. (c)(1).)

VIII. Denial of Leave to Amend

A. The Parties' Contentions

Plaintiffs contend the trial court erred in denying leave to amend because it determined sua sponte that plaintiffs' allegations as to its claims under the Planning and Zoning Law, the Subdivision Map Act, and the Ralph M. Brown Act were conclusory. Plaintiffs also argue in essence that the trial court abused its discretion in denying leave to amend because plaintiffs can add more specific allegations to bolster each of its pleaded causes of action.

Real Parties essentially argue in response that: (1) plaintiffs already made one unsuccessful attempt to amend their pleading; (2) plaintiffs have not shown how they could successfully amend their pleading; and (3) plaintiffs cannot successfully amend their pleading because its defects are incurable. In their reply brief, plaintiffs propose to supplement their pleading with a letter sent to the County on December 4, 2014, by the engineer who prepared the Retreat's subdivision map, in which the engineer stated that the EVA road connection was never intended for private vehicle use. Plaintiffs also seek to add photographs purportedly showing an "EVA only" sign on the EVA connection at the time of its construction.

Plaintiffs request that we take judicial notice of these documents, and use them as a basis for granting leave to amend plaintiffs' CEQA claim.

B. Analysis

When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).) If a reasonable possibility exists, the trial court

abused its discretion and we reverse; if not, we affirm. (*Ibid.*) Plaintiffs have the burden of proving such a reasonable possibility. (*Ibid.*) Specifically, plaintiffs must show how they can amend their complaint, and how that amendment will change the legal effect of their pleading. (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.)

1. Opportunity to Amend

Plaintiffs claim that pages 24-25 of their opening brief "set forth additional allegations and facts . . . to further support [their] claims" under the Planning and Zoning Law, Subdivision Map Act, and Ralph M. Brown Act. But those pages suggest no additional allegations in support of granting leave to amend plaintiffs' other claims. On page 26 of their opening brief, plaintiffs state, "TRUST can make further allegations that the County had an affirmative, ministerial duty to enforce the conditions of the approval for the Martis Camp and The Retreat subdivisions, including limiting the use of the EVA connection, and that the November 1 Letter violated that duty, in violation of the Subdivision Map Act and Zoning and Planning Law . . . . TRUST can also further allege facts that the County, in the past, has provided notice of any changes or new projects and did not do so in this case, in violation of open meeting laws."

The allegations plaintiffs now suggest are insufficient to show a reasonable possibility that the defects in their claims under the Planning and Zoning Law, Subdivision Map Act, and Ralph M. Brown Act can be cured by amendment. (See *Blank, supra,* 39 Cal.3d at p. 318.) Plaintiffs must show both how they can amend their pleading, and how that amendment would change the pleading's legal effect. (*Trustees of Capital Wholesale Electric etc. Fund v. Shearson Lehman Brothers, Inc.* (1990) 221 Cal.App.3d 617, 622.) In particular, plaintiffs must "clearly and specifically" make factual allegations that sufficiently state all required elements of their causes of action. (*Maxton v. W. States Metals* (2012) 203 Cal. App. 4th 81, 95.) Plaintiffs' suggested allegations are more elaborate than the ones made in their petition but are still conclusory. Plaintiffs still have not identified specific provisions of law to support their

claims, much less alleged with specificity how the County's actions violate those provisions. As explained *ante*, plaintiffs' bald assertions that the County's actions violated some bodies of law in general are mere legal conclusions, not factual allegations sufficient to overcome demurrer. (*Serrano, supra,* 5 Cal.3d at p. 591.)

2. Request for Judicial Notice

Plaintiffs also attempt to support their CEQA claim by requesting judicial notice of "additional information, not available to it at the time of preparation of the Petition, that would further support its claims of a substantial change in the project." This request is moot in light of our determination that plaintiffs' allegations of non-emergency/transit use of the EVA connection sufficiently alleged a "substantial change" to the original Martis Camp and The Retreat projects, so as to state a CEQA claim sufficient to survive demurrer. We therefore deny plaintiffs' request for judicial notice as moot. In doing so, we express no opinion on the admissibility of this evidence after remand on any issue.

DISPOSITION

The trial court's judgment dismissing the complaint is affirmed. We reverse the trial court's judgment as to the petition for writ of mandate and remand for further proceedings as to the CEQA claim. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

/s/
MURRAY, J.

We concur:

/s/
RAYE, P. J.

/s/
BLEASE, J.