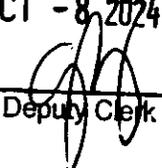


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7 Attorney for Petitioners

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

OCT - 8 2024

BY   
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SONOMA

10 Sonoma County Advocates  
11 for a Liveable Environment,  
12 a California unincorporated  
13 association; and Sonoma County  
14 Tomorrow, a California non-profit  
organization;

15 Petitioners;

16 v.

17 County of Sonoma;

18 Respondent;

19 \_\_\_\_\_/  
20  
21 California Department of  
22 General Services and Does 1 to 10;

23 Real Parties in Interest.  
24 \_\_\_\_\_/  
25  
26  
27  
28

Case No. SCV-272539

*proposed*  
**Judgment Granting Peremptory  
Writ of Mandamus**

**CEQA CASE**

Assigned for All Purposes  
Honorable Bradford J. DeMeo

1 The merits of the mandamus petition filed by petitioners Sonoma County  
2 Advocates for a Liveable Environment and Sonoma County Tomorrow (collectively,  
3 "SCALE/SCT"), were heard in Department 15 on April 26, 2024, the Honorable  
4 Bradford J. DeMeo presiding. Attorney Susan Brandt-Hawley of Brandt-Hawley Law  
5 Group appeared for SCALE/SCT; attorneys Ginetta L. Giovinco of Richards, Watson  
6 & Gerson and Deputy County Counsel Sita Kuteira appeared for respondent County  
7 of Sonoma ("County"); and Deputy Attorney General Andrew Contreiras appeared for  
8 the real party in interest California Department of General Services ("DGS").  
9

10  
11 After considering the certified administrative record of proceedings and the  
12 parties' pleadings, the court on April 25, 2024 issued a tentative ruling granting the  
13 mandamus petition. At the merits hearing on April 26, 2024, the court then considered  
14 counsel's oral arguments. At the close of the hearing, the court affirmed its tentative  
15 ruling. The basis for the ruling is attached as Exhibit A and incorporated by reference.  
16

17 **NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:**

18 1. The mandamus petition is **GRANTED** for the reasons and to the extent set  
19 forth in Exhibit A and judgment is entered in favor of SCALE/SCT.  
20

21 2. The Clerk of the Sonoma County Superior Court shall issue a Peremptory  
22 Writ of Mandamus ("Writ") in the form attached as Exhibit B.

23 3. The court retains jurisdiction to discharge the Writ following its  
24 determination that the County has complied with each mandate of the <sup>WRIT</sup> Judgment. 

25 4. The court reserves jurisdiction over a claim for an award of private  
26 attorney general fees and costs to SCALE/SCT pursuant to Code of Civil Procedure  
27 section 1021.5. SCALE/SCT shall file any motion for said fees and costs within 60 days  
28

1 of the filing of the Notice of Entry of this Judgment.

2 5. Statutory costs shall be awarded to SCALE/SCT subject to a timely-filed  
3 memorandum of costs and any timely-filed motion to tax costs.

4 6. The court will retain jurisdiction pending its determination that the  
5 County has complied with the Judgment and Writ.  
6

7 **IT IS SO ORDERED.**

8  
9  
10 Date: 10/8/2024

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13 Hon. Bradford DeMeo  
14 Judge of the Superior Court  
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# EXHIBIT A

1 **Facts**

2 SCALE/SCT challenge the County’s approval of a specific plan (the “Plan”) for  
3 the site (the “Site”) of the former Sonoma Developmental Center (“SDC”) and adoption  
4 of an Environmental Impact Report (“EIR”) for the Plan. They claim that the approval  
5 of Plan and EIR violates the California Environmental Quality Act (“CEQA”).  
6

7 **The Site**

8  
9 The current management, disposition, and development of the Site are governed  
10 by Government Code (“Govt. Code”) section 14670.10.5, which the California  
11 Legislature enacted in 2019. The Site, located at 15000 Arnold Dr., Eldridge, California,  
12 consists of a developed campus of about 180 acres (the “Core Campus”) with about 755  
13 acres of agriculture, recreation, and natural areas, a total of roughly 1.5 square  
14 miles. Administrative Record (“AR”) 1; Govt. Code section 14670.10.5. It is located in  
15 the Sonoma Valley adjacent to the Sonoma Valley Regional Park and Jack London State  
16 Historic Park. AR 1; Govt. Code section 14670.10.5.  
17

18  
19 The SDC was a nationally significant institution providing services to persons  
20 with disabilities for about 120 years until its closure in 2018, at which time the  
21 remaining residents, who then still numbered “over 400,” were relocated to smaller,  
22 community-based care facilities. AR 17 (County’s April 5, 2019, Summary Report on  
23 the Plan); Govt. Code section 14670.10.5. The SDC contains “about 140 buildings  
24 within the core campus comprising over 1.3 million square feet of administrative office  
25 buildings, congregate care buildings, and private residences built between the 1800s  
26  
27  
28

1 and 1990s.” AR 19. At its peak in 1960, according to the Plan, the SDC was home to  
2 3,700 residents. AR 73.

3 Govt. Code section 14670.10.5(a) sets forth the intentions and policies of the State  
4 of California (the “State”) with respect to the site. It states, in pertinent part,  
5

6 The Legislature finds and declares all of the following:

7 ...

8 (3) In the October 2015 Plan for the Closure of the Sonoma Developmental  
9 Center, the State Department of Developmental Services recognized the unique natural  
10 and historic resources of the property and acknowledged that it was not the intent of  
11 the state to follow the traditional state surplus property process.

12 ...

13 (6) California is experiencing an acute affordable housing crisis. The cost of land  
14 significantly limits the development of affordable housing. It is the intent of the  
15 Legislature that priority be given to affordable housing in the disposition of the  
16 Sonoma Developmental Center state real property.

17 (7) DGS recognizes the exceptional open-space, natural resources, and wildlife  
18 habitat characteristics of the Sonoma Developmental Center.

19 ...

20 (9) It is the intent of the Legislature that the lands outside the core developed  
21 campus and its related infrastructure be preserved as public parkland and open space.

## 22 **The Parties**

23 SCALE is an unincorporated association formed in January 2023 after approval  
24 of the Plan with the asserted mission of ensuring that the transformation of the Site will  
25 reflect the visions of stakeholders and balance human needs with the Site’s  
26  
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1 environmental values. Its members include individuals and associations local to the  
2 Site area who objected to the Plan during the approval process.

3 SCT, founded in 1977, is a nonprofit organization with the stated intent of  
4 supporting economic and environmental sustainability in Sonoma County as a whole.

5  
6 Respondent County of Sonoma is both the lead agency and project applicant for  
7 the Plan. AR 1-2; Govt. Code section 14670.10.5. It conducted the Plan review  
8 pursuant to CEQA and it approved the Plan and the EIR, including related  
9 amendments to its own General Plan (the "General Plan").  
10

11 Real Party in Interest California Department of General Services is the lead  
12 agency currently authorized by the California Legislature to manage the SDC and the  
13 Site. AR 6, 11, 18, 522, 523.

14 Govt. Code section 14670.10.5 (hereinafter, simply "Section 14670.10.5")  
15 authorizes DGS to maintain and manage the Site while authorizing the County to  
16 manage the planning process for its development and conversion to other uses.  
17 It authorizes the County and DGS to enter into an agreement to implement the land-  
18 use planning process and disposition of the Site.  
19  
20

## 21 **The Plan**

22 The County prepared the EIR by agreement with DGS. AR 1, 17-18, 16711;  
23 Govt. Code section 14670.10.5. The Draft EIR ("DEIR") for the Plan was circulated for  
24 public review and comment after community meetings and outreach efforts. After the  
25 publication of the Final EIR ("FEIR") and Responses to Comments (the "Responses"),  
26 the Plan and EIR were presented to the County Landmarks Commission in September  
27  
28

1 2022 and the Planning Commission in September, October, and November 2022. AR  
2 13558-13561, 13684-14578.

3 The Planning Commission recommended that the County's Board of Supervisors  
4 certify the EIR and approve the Plan with modifications. AR 12843-12844. The Board  
5 of Supervisors approved the revised Plan and certified the EIR at a public hearing in  
6 December 2022. AR 1, 17-18, 14578-14908, 16711. It issued the Notice of Determination  
7 ("NOD") on December 19, 2022. AR 1.

8  
9 The Plan envisions redevelopment of the Site with up to 1,000 units of varied  
10 housing types in a mixture of low- and medium-density sites and 410,000 square feet  
11 of non-residential use, including a hotel, along with park space, some land dedicated  
12 as a "buffer" zone, and preserved open space. AR 1, 16779.

13  
14 The County determined that the Plan will have a significant environmental  
15 impact but nonetheless did not make mitigation measures a condition of the  
16 approval. AR 1. Accordingly, it approved the Plan based on a Statement of  
17 Overriding Considerations. AR 1.

### 18 **Overview of the Arguments**

19  
20 SCALE/SCT have filed both an Opening Brief ("Opening") and a Reply Brief  
21 ("Reply"). They argue that the Plan lacks sufficient, enforceable mitigation measures  
22 and is not "self-mitigating" as the County claims; the EIR lacks an adequate project  
23 description (the "Description"); the EIR failed to study potentially feasible mitigation  
24 measures; the EIR's analysis of environmental impacts is defective with respect to  
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1 wildlife corridors and biology, transportation and traffic, and wildfire impacts; the  
2 Responses are deficient; and findings to reject a feasible alternative are unsupported.

3         The County provides the primary opposition to the petition in its opposition  
4 brief ("Respondent Oppo"). It argues that the Plan complies with all requirements to  
5 be self-mitigating because it includes standards and policies which avoid or lessen  
6 impacts to less than significant; a mitigation monitoring and reporting program  
7 ("MMRP") is only required for mitigation measures which avoid or lessen the impacts;  
8 an EIR only need discuss mitigation measures if there are significant impacts; the  
9 Description is complete and accurate in compliance with CEQA; the EIR explains why  
10 there are no feasible mitigation measures; the EIR fully analyzes all potential impacts;  
11 and substantial evidence supports the findings on alternatives.

12         DGS has filed a short opposition brief ("DGS Oppo") stating that it supports the  
13 County's position. It otherwise focuses on the statute specifically governing the Site,  
14 Section 14670.10.5. DGS contends that Section 14670.10.5, specifically in subdivisions  
15 (c)(2)-(4) and (e)(2) provides a "foundational blueprint" for the Plan; sets forth "three  
16 overarching components" consisting of the legislative findings about the Site and the  
17 legislative intent at (a); the land-use goals and priorities at (c)(3)-(4); and the land-use  
18 planning and disposition processes at (c)(1)-(2), (d), (e), and (g).

19         DGS claims that the statute lacks any requirement to preserve the old SDC  
20 buildings as historic resources, an intentional decision given that it states that the  
21 Legislature intends to conserve the natural resources and the Eldridge Cemetery.  
22 It argues that "most" of the buildings are falling into disuse and in a state of disrepair,  
23 raising concerns of safety and cost, citing AR 43-44, 2054, 8807, 4874-4875. Preserving  
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1 these buildings or converting them to residential or other uses would, it argues, be  
2 contrary to the Legislature's express goals and the efforts of the County.

### 3 **Request for Judicial Notice**

4  
5 SCALE/SCT have filed a request for judicial notice. There is no objection or  
6 opposition to this request. SCALE/SCT request judicial notice of the County's  
7 6th Public Review Draft Appendices of the Sonoma County Housing Element,  
8 presented at the November 30, 2022, meeting of the Sonoma Valley Citizens Advisory  
9 Commission, North Sonoma Valley Municipal Advisory Council, and Springs  
10 Municipal Advisory Council, and the agenda of the meeting. SCALE/SCT assert that  
11 the documents are relevant to knowledge, prior to approval of the Plan, of the pending  
12 Hanna Boys Center Mixed-Use Project at 810 W. Agua Caliente Road (the "Hanna  
13 Project"). The court may judicially notice these documents, the contents, and the  
14 purported legal effect but may not judicially notice the truth of factual assertions made  
15 therein. With this limitation, the court grants the request.  
16  
17

18 The court notes that although, in general, judicial review on a petition for writ  
19 of mandate such as this is limited to the administrative record, the request fits into  
20 exceptions to that general rule. As explained in *Barthelemy v. Chino Basin Mun. Water*  
21 *Dist.* (1995) 38 Cal.App.4th 1609, at 1621, relying on *Western States Petroleum Assn. v.*  
22 *Superior Court* (1995) 9 Cal.4th 559, "extra-record evidence may be admissible to show  
23 'agency misconduct.'" See also *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83  
24 Cal.App.4th 74, 118. The Supreme Court stated in *Western States*, at 576-578, that  
25 exceptions include (1) evidence to show that an administrative agency has not  
26  
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1 considered "all relevant factors" in making its decision; (2) evidence to show the  
2 evidence the agency considered did not support its decision; and (3) evidence that  
3 could not be produced at the administrative level "in the exercise of reasonable  
4 diligence. The court also noted that it is, by contrast, improper to judicially notice  
5 evidence which is not in the record *and* which was not before the agency at the time of  
6 its decision. *Western States*, 574, fn.4. Moreover, although *Western States* involved  
7 traditional mandamus, the basic approach articulated in it applies to administrative  
8 mandamus as well. *Cadiz Land Co.*, 120.

9  
10  
11 In this instance, SCALE/SCT seek judicial notice of information which was  
12 before the County when it made the decision and specifically it is intended to  
13 demonstrate exactly that fact: that although the County failed to discuss it in the  
14 proceedings on this Plan, this information was before the County.

## 15 16 CEQA

17 An EIR is required for a project which substantial evidence indicates may have a  
18 significant effect on the environment. Guidelines for the Implementation of CEQA  
19 ("Guidelines"), 14 California Code of Regulations ("CCR") section 15063(b)  
20 (hereinafter, the court shall cite to Guidelines simply by stating "Guideline" and the  
21 section number); Public Resources Code ("PRC") sections 21100, 21151. EIRs are, in  
22 the words of the California Supreme Court, "the heart of CEQA." *Laurel Heights*  
23 *Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392  
24 (*Laurel Heights I*).

1           “An EIR must identify the ‘significant environmental effects’ of a proposed  
2 project. [Citations.]” *Mira Mar Mobile Community v. City of Oceanside* (2001) 119  
3 Cal.App.4th 477, 492-493.

4           The ultimate mandate of CEQA is “to provide public agencies and the public in  
5 general with detailed information about the effect [of] a proposed project” and to  
6 minimize those effects and choose possible alternatives. PRC 21061. The public and  
7 public participation hold a “privileged position” in the CEQA process based on  
8 fundamental “notions of democratic decision-making.” *Concerned Citizens of Costa*  
9 *Mesa, Inc. v. 32<sup>nd</sup> District Agricultural Association* (1986) 42 Cal.3d 929, 936. As stated  
10 in *Laurel Heights I, supra*, 47 Cal.3d 376, at 392, “[t]he EIR process protects not only the  
11 environment but also informed self-government.”

12           The burden of investigation rests with the government and not the  
13 public. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1378-1379. The court  
14 in *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, at 1202,  
15 finding that a city failed to consider an issue, ruled that the city could not rely on  
16 information to make good the gap in its analysis where the record did not show that  
17 the information had ever been available to the public. Similarly, as the court explained  
18 in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, at 311, an “agency  
19 should not be allowed to hide behind its own failure to gather relevant data.... CEQA  
20 places the burden of environmental investigation on government rather than the  
21 public.” See also *Gentry, supra* (quoting *Sundstrom*).

## The Standard of Review

1  
2 PRC section 21168 governs CEQA actions under CCP section 1094.5, challenging  
3 administrative decisions, those “made as a result of a proceeding in which by law a  
4 hearing is required to be given, evidence is required to be taken and discretion in the  
5 determination of facts is vested in a public agency.” CCP section 1094.5. *Friends of the*  
6 *Old Trees v. Dept. of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1389.  
7

8 The reviewing court must determine if the County abused its discretion by  
9  
10 1) failing to proceed in the manner required by law, or 2) because its decision is not  
11 supported by substantial evidence. PRC 21168; *Laurel Heights I, supra* 47 Cal.3d 392,  
12 fn.5. These two standards vary greatly and apply to different issues, so “a reviewing  
13 court must adjust its scrutiny to the nature of the alleged defect, depending on whether  
14 the claim is predominantly one of improper procedure or a dispute over the  
15 facts.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007)  
16 40 Cal.4th 412, 435 (“*Vineyard Area Citizens*”). The Court explained at 435:  
17

18 [A]n agency may abuse its discretion under CEQA either by failing to proceed in  
19 the manner CEQA provides or by reaching factual conclusions unsupported by  
20 substantial evidence. (§21168.5.) Judicial review of these two types of error  
21 differs significantly: while we determine de novo whether the agency has  
22 employed the correct procedures, “scrupulously enforc[ing] all legislatively  
23 mandated CEQA requirements” [Citation], we accord greater deference to the  
24 agency's substantive factual conclusions.

25 Accordingly, while courts must give deference as to substantive factual  
26 decisions, they demand strict compliance with “legislatively mandated CEQA  
27 requirements.” *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564  
28

1 (Goleta II). A respondent is entitled to no deference where the law has been misapplied,  
2 or the decision was based on "an erroneous legal standard." *East Peninsula Educ.*  
3 *Council, Inc. v. East Peninsula Unif. Sch. Dist.* (1989) 210 Cal.App.3d 155, 165.

4 The substantial-evidence test does not apply, therefore, to a claim that an EIR  
5 failed to include mandatory information or elements. *Vineyard Area Citizens*, 435,  
6 citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. Failure to  
7 include required information is a failure to proceed in the manner required by law and  
8 demands strict scrutiny. *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215,  
9 1236; *Vineyard Area Citizens*, 435. Courts must determine such a question de novo. *Id.*

10  
11  
12 As clearly explained in *Kings County Farm Bureau v. City of Hanford* (1990) 221  
13 Cal.App.3d 692, at 712, claims involving a complete lack of information in an EIR may  
14 involve a failure to proceed in the manner required by law. Further, "error is  
15 prejudicial 'if the failure to include relevant information precludes informed  
16 decisionmaking and informed public participation, thereby thwarting the statutory  
17 goals of the EIR process.'" In *Madera Oversight Coalition v. County of Madera* (2011) 199  
18 Cal.App.4th 48, at 101-102, the court again determined that where the petitioner's  
19 assertion is that information has been omitted from an EIR, "independent review will  
20 apply if the information... is required by CEQA and necessary for an informed  
21 discussion." In contrast, if the asserted error concerns the amount or type of  
22 information that is not required by CEQA and necessary for an informed discussion,  
23 then the substantial evidence standard applies. In *Save Round Valley Alliance v. County*  
24 *of Inyo* (2007) 157 Cal.App.4th 1437, at 1465, the court ruled that where an EIR included  
25 "only the barest of facts regarding the BLM parcel, vague and unsupported conclusions  
26  
27  
28

1 about aesthetics, views, and economic objectives, and no independent analysis  
2 whatsoever of relevant considerations," the agency "failed to proceed in the manner  
3 required by law."

4  
5 More recently, the Supreme Court addressed this issue in *Sierra Club v. County of*  
6 *Fresno* (2018) 6 Cal.5th 502. At 516, it determined that even where an EIR addresses an  
7 issue, there may be a mixed standard of review, stating that to the extent that the EIR  
8 fails to present any *meaningful* information or discussion sufficient to allow one to  
9 understand the issues and reasoning, the failure is procedural and subject to  
10 independent review. On the other hand, the court added, where the issue is a factual  
11 question of whether the evidence supports the conclusion, then the more deferential  
12 standard applies. In the court's words,  
13

14 The ultimate inquiry, as case law and the CEQA guidelines make clear, is  
15 whether the EIR includes enough detail "to enable those who did not participate  
16 in its preparation to understand and to consider meaningfully the issues raised  
17 by the proposed project." [Citations.] The inquiry presents a mixed question of  
18 law and fact. As such, it is generally subject to independent review. However,  
19 underlying factual determinations—including, for example, an agency's decision  
20 as to which methodologies to employ for analyzing an environmental effect—  
21 may warrant deference. [Citations.] Thus, to the extent a mixed question requires  
22 a determination whether statutory criteria were satisfied, de novo review is  
23 appropriate; but to the extent factual questions predominate, a more deferential  
24 standard is warranted. Real party in interest draws a distinction for standard of  
25 review purposes between claims that a required discussion has been omitted  
26 altogether and claims that a required discussion is insufficient, with the former  
27 subject to de novo review and the latter subject to substantial evidence review.  
28 But such a distinction is neither consistent with our precedent [Citation] nor

1 logically defensible. Whether or not the alleged inadequacy is the complete  
2 omission of a required discussion or a patently inadequate one-paragraph  
3 discussion devoid of analysis, the reviewing court must decide whether the EIR  
4 serves its purpose as an informational document.

5 The court noted that Guideline 15151 expressly states "An EIR should be  
6 prepared with a sufficient degree of analysis to provide decisionmakers with  
7 information which enables them to make a decision which intelligently takes account  
8 of environmental consequences."  
9

10 Agency actions are also presumed to comply with applicable law unless the  
11 petitioner presents proof to the contrary. Evid. Code section 664. The petitioner in a  
12 CEQA action has the burden of proving that an EIR is insufficient.  
13

14 As a fundamental benchmark that generally applies to all issues in CEQA, the  
15 court in considering an issue should look to see if "the public could discern... the  
16 'analytic route the... agency traveled from evidence to action.'" See *Al Larson Boat Shop*  
17 *Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 749; see also *Topanga Assn.*  
18 *for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.  
19

### 20 **Prejudicial Error**

21 Under CEQA, a court may issue a writ for an abuse of discretion, if the error  
22 was *prejudicial*. PRC section 21005; *Chaparral Greens v. City of Chula Vista* (1996) 50  
23 Cal.App.4th 1134, 1143. When substantial evidence does not support a decision, but  
24 there is no prejudicial abuse of discretion, the court must defer to the agency's  
25 substantive conclusions and uphold the determination. *Chaparral Greens, supra*;  
26  
27  
28

1 see PRC 21168, 21168.5, *Laurel Heights I*, supra 47 Cal.3d 392, fn.5. An "error is  
2 prejudicial 'if the failure to include relevant information precludes informed  
3 decisionmaking and informed public participation, thereby thwarting the statutory  
4 goals of the EIR process.'" *San Joaquin Raptor/Wildlife Rescue Center v. County of*  
5 *Stanislaus* (1994) 27 Cal.App.4th 713, 721-722, quoting *Kings County Farm Bureau* at 712.

### 7 **EIR Adequacy**

8  
9 Although "'an EIR need not include all information available on a subject' ... [it  
10 must contain] sufficient information and analysis to enable the public to discern the  
11 analytical route the agency traveled from evidence to action." *Association of Irrigated*  
12 *Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397 ("AIR"); *North Coast*  
13 *Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (App. 1 Dist. 2013) 216  
14 Cal.App.4th 614, 639-640 (quoting AIR). "CEQA simply requires that the public and  
15 public agencies be presented with adequate information to ensure that 'decisions be  
16 informed, and therefore balanced.' " *Al Larson Boat Shop, Inc. v. Board of Harbor*  
17 *Commissioners* (1993) 18 Cal.App.4th 729, 748.

18  
19  
20 The court must focus upon the EIR's "sufficiency as an informative  
21 document." *Laurel Heights I*, supra, 47 Cal.3d 393. The evidence must be sufficient to  
22 allow one to make an intelligent, informed decision, i.e., sufficient to make clear the  
23 analytic route of the agency. *Concerned Citizens of Costa Mesa, Inc. v. 32<sup>nd</sup> District*  
24 *Agricultural Association* (1986) 42 Cal.3d 929, 936; *Topanga Assn. for a Scenic Community*  
25 *v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.  
26  
27  
28

1 The court must focus not upon the “correctness” of an EIR’s environmental  
2 conclusions, but only upon its “sufficiency as an informative document.” *Laurel*  
3 *Heights I, supra*, 393. The court must resolve reasonable doubts in favor of the findings  
4 and decision. *Id.* The findings of an administrative agency are presumed to be  
5 supported by substantial evidence.  
6

### 7 **The Definition of “Substantial Evidence”**

8 Substantial evidence to support an agency’s CEQA findings is defined in CEQA  
9 to include facts, reasonable assumptions predicated upon facts, and expert opinion  
10 supported by facts. PRC §21082.2(c); see also Guidelines 15064(g)(5),  
11 15384. Substantial evidence is not simple “uncorroborated opinion or rumor” but  
12 “enough relevant information and reasonable inferences” to allow a “fair argument”  
13 supporting a conclusion, in light of the whole record before the lead agency. 14 CCR  
14 section 15384(a); PRC §21082.2. It does not include argument, speculation,  
15 unsubstantiated opinion or narrative, clearly incorrect evidence, or social or economic  
16 impacts not related to an environmental impact. Guideline 15384.  
17  
18  
19

### 20 **Program EIRs**

21 The Plan is an overall land-use document governing subsequent development of  
22 the Site via smaller projects consistent with, or “tiered” from, the Plan. The parties do  
23 not directly discuss this, and it is not specifically at issue in this litigation, but the court  
24 notes that this provides part of the context of the project and the analysis.  
25

26 The EIR for it is a “program” EIR in accord with Guideline 15168. The language  
27 of Guideline 15168 is instructive regarding both the purposes, and policies behind, a  
28

1 program EIR and how it is to be used. It states that a "program EIR is an EIR which  
2 may be prepared on a series of actions that can be characterized as one large project  
3 and are related" in a logical fashion on one of the manners it describes. It further states  
4 that a program EIR can:

- 6 (1) Provide an occasion for a more exhaustive consideration of effects and  
7 alternatives than would be practical in an EIR on an individual action,
- 8 (2) Ensure consideration of cumulative impacts that might be slighted in a case-  
9 by-case analysis,
- 10 (3) Avoid duplicative reconsideration of basic policy considerations,
- 11 (4) Allow the lead agency to consider broad policy alternatives and program  
12 wide mitigation measures at an early time when the agency has greater flexibility  
13 to deal with basic problems or cumulative impacts,

14 ...

15 (c) Use With Later Activities. Later activities in the program must be examined in  
16 the light of the program EIR to determine whether an additional environmental  
17 document must be prepared.

18 (1) If a later activity would have effects that were not examined in the program  
19 EIR, a new initial study would need to be prepared leading to either an EIR or a  
20 negative declaration. That later analysis may tier from the program EIR as  
21 provided in Section 15152.

22 (2) If the agency finds that pursuant to Section 15162, no subsequent EIR would  
23 be required, the agency can approve the activity as being within the scope of the  
24 project covered by the program EIR....

25 ...

26 (3) An agency shall incorporate feasible mitigation measures and alternatives  
27 developed in the program EIR into later activities in the program.

28 ...

(5) A program EIR will be most helpful in dealing with later activities if it  
provides a description of planned activities that would implement the program

1 and deals with the effects of the program as specifically and comprehensively as  
2 possible. With a good and detailed project description and analysis of the  
3 program, many later activities could be found to be within the scope of the  
4 project described in the program EIR, and no further environmental documents  
5 would be required.

6 Guidelines 15152 and 15385 describe "tiering" projects and environmental  
7 review from broader plans and program EIRs. Guideline 15385 states, "'Tiering" refers  
8 to the coverage of general matters in broader EIRs (such as on general plans or policy  
9 statements) with subsequent narrower EIRs or ultimately site-specific EIRs  
10 incorporating by reference the general discussions and concentrating solely on the  
11 issues specific to the EIR subsequently prepared.' It states that tiering is appropriate  
12 when the sequence of EIRs involves, among others, a progression from a general or site  
13 plan to a site-specific EIR.  
14  
15

16 Guideline 15152 mirrors and expands on this language. Among other things, it  
17 states, at subdivision (b) and with emphasis added, "*Tiering does not excuse the lead*  
18 *agency from adequately analyzing reasonably foreseeable significant environmental effects of*  
19 *the project and does not justify deferring such analysis to a later tier EIR or negative*  
20 *declaration. However, the level of detail contained in a first tier EIR need not be greater*  
21 *than that of the program, plan, policy, or ordinance being analyzed."* Subdivision (c)  
22 adds, however, that some site-specific detail may not be feasible to address in the plan  
23 EIR and may be deferred.  
24  
25

26 A plan with a program EIR therefore provides an overall framework for  
27 subsequent development consistent with the requirements and measures incorporated  
28

1 into the plan and the program EIR, partly to streamline later development but also to  
2 provide both a broader environmental review and policy development in the plan and  
3 its program EIR, as well as more specific analysis for the individual projects tiering  
4 from it. The Supreme Court explained in *In re Bay Delta* (2008) 43 Cal.4th 1143, 1169-70:  
5

6 An advantage of using a program EIR is that it can “[a]llow the lead agency to  
7 consider broad policy alternatives and program wide mitigation measures at an  
8 early time when the agency has greater flexibility to deal with basic problems or  
9 cumulative impacts.” [Citation.] Accordingly, a program EIR is distinct from a  
10 project EIR, which is prepared for a specific project and must examine in detail  
11 site-specific considerations. [Citation.] Program EIRs are commonly used in  
12 conjunction with the process of tiering. [Citation.]

13 ...

14 This court has explained that “[t]iering is properly used to defer analysis of  
15 environmental impacts and mitigation measures to later phases when the  
16 impacts or mitigation measures are not determined by the first-tier approval  
17 decision but are specific to the later phases.” [Citation.]

### 18 **Approving a Project Pursuant to a** 19 **Statement of Overriding Considerations**

20 As noted, the County approved this Plan and its EIR with a statement of  
21 overriding considerations. Again, SCALE/SCT do not challenge the statement in this  
22 action, so it is not at issue, but the authority is relevant for the context of this analysis.  
23

24 When a lead agency approves a project which will produce unavoidable  
25 significant impacts, the agency must produce a statement of overriding considerations  
26 that must state the specific reasons supporting its action based on the EIR and other  
27 information in the record. PRC 21081; Guidelines 15091, 15093(b). The statement must  
28

1 be supported by substantial evidence. Guideline 15093(b). This is to reflect the  
2 "ultimate balancing of competing objectives." Guideline 15021(d).

3 Pursuant to PRC 21081, an agency may approve a project identified as having  
4 one or more significant impacts if it satisfies two requirements. Subdivision (a) sets  
5 forth the first requirement, which is that either (1) mitigation measures which reduce  
6 the impacts to less than significant have been required or are incorporated in the  
7 project, or (2) another agency with authority to impose mitigation measures has done  
8 so or can and should do so, or (3) the agency has found that mitigation measures are  
9 infeasible and the significant impacts unavoidable. The second requirement, in  
10 subdivision (b), is that where the agency has found unavoidable significant impacts  
11 and no feasible mitigation measures pursuant to (a)(3), the agency must adopt a  
12 statement of overriding considerations. On the requirement of the statement of  
13 overriding considerations, 21081(b) states that the agency may approve a project  
14 identified as having unavoidable significant impacts as long as the "agency finds that  
15 specific overriding economic, legal, social, technological, or other benefits of the project  
16 outweigh the significant effects...."

17  
18  
19  
20  
21 Guideline 15091, also governing approval of a project where the agency has  
22 identified one or more significant environmental impacts, reiterates this. It mirrors the  
23 language of PRC 21081 with some additional explanation and detail, adding that  
24 making a statement of overriding considerations pursuant to Guideline 15093 "does  
25 not substitute for the findings required by this section."

26  
27 The finding of overriding considerations focuses on broader reasons for  
28 approving the project, such as jobs, housing, or revenue. See *Sierra Club v. Contra Costa*

1 County (1992) 10 Cal.App.4th 1212, 1222-1224. *City of Poway v. City of San Diego* (1984)  
2 155 Cal.App.3d 1037 upheld a statement of overriding considerations, for example, that  
3 justified approval based on a finding that the project would satisfy housing and  
4 employment needs and be consistent with the area's growth-management policies.  
5

## 6 **Project Description**

7 SCALE/SCT contend that there is no clear and stable project description. They  
8 note that it is inconsistent or vague as to the number of housing units which may be  
9 allowed but studies a specific number as the maximum without evidence to show that  
10 this is in fact the ultimate amount of housing to be built. They also claim that the  
11 description is unclear to its phasing. The County opposes this argument.  
12

13 An EIR must contain an accurate and consistent project description. Guideline  
14 15124. As stated in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, at 193,  
15 "[a]n accurate, stable and finite project description is the *sine qua non* of an informative  
16 and legally sufficient EIR." The clear and logical reason is that a clear, consistent  
17 description "is necessary for an intelligent evaluation of the potential environmental  
18 effects of a proposed activity." *McQueen v. Board of Directors of the Mid-Peninsula*  
19 *Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 (discussing a notice of  
20 exemption). Only this way can those involved, particularly outsiders, assess the  
21 impacts, benefits, mitigation, and alternatives. *County of Inyo, supra*, 192-193.  
22  
23

24 On the other hand, the CEQA process should normally lead to changes in the  
25 project to reduce environmental impacts and the like. *Kings County Farm Bureau v. City*  
26 *of Hanford* (1990) 221 Cal.App.3d 692, 736-737; *County of Inyo, supra*. After all, the  
27  
28

1 "CEQA reporting process is not designed to freeze the ultimate proposal in the precise  
2 mold of the initial project; indeed, new and unforeseen insights may emerge... evoking  
3 revision of the original proposal." *Kings County Farm Bureau*, 736-737 (quoting *County*  
4 *of Inyo, supra*).

5  
6 SCALE/SCT argue that the Plan description is unclear and inconsistent because  
7 it fails to clarify or fully analyze the number of housing units and lacks clarity  
8 regarding the phasing.

9  
10 With regard to housing buildout, SCALE/SCT point out that the Plan provides a  
11 range of housing units within each district, up to a total of 1,000 housing units  
12 "anticipated," but also states that is "is not anticipated" each district would be built to  
13 the maximum range allowed, citing AR 4845-4846. They contend that there is no basis  
14 in the record for assuming that maximum buildout would not occur, leaving a gap in  
15 the information and an underestimation of the impacts. Thus, they assert, the EIR  
16 needed to analyze either a maximum buildout number which exceeds 1,000, or include  
17 a housing cap.  
18

19  
20 SCALE/SCT are persuasive on this point. They are correct that the EIR must  
21 analyze the impacts of the full possible buildout allowed under the Plan and cannot  
22 limit analysis to a lesser development on the unsupported assumption that full  
23 development will not occur. Although SCALE/SCT's own citations to the record are  
24 not complete, they cite to AR 4845-4846, a brief discussion in the FEIR of Table 4-2 of  
25 the Plan and the units of housing. The cited section notes the additions to the table,  
26 stating that it provides a range of housing for each district, allowing for "flexibility"  
27 and stating that it "is not anticipated that development would be built to the  
28

1 maximum" for each district and that the total number of housing units is "anticipated"  
2 to be 1,000. However, Table 4-2 of the plan, in setting forth the minimum and  
3 maximum allowed units, gives maximums for each district which actually total 1,210  
4 units, an increase of more than 20% over the "anticipated" total. AR 133.

5  
6 On its face, this lacks a set project description. The Plan and the EIR consistently  
7 state that the analysis is based on the stated limit of 1,000 units, the number  
8 consistently set forth as the total number of housing units. See, e.g., AR 1 (the NOD,  
9 stating that the "Plan proposes redevelopment of up to 1,000 units of various housing  
10 types"), 1161 (statement in the EIR, regarding impacts, that the Plan "would result in  
11 the development of 1,000 residential units"), 1168 (the same), 1221 (EIR table on  
12 alternatives, listing the Plan's housing buildout as 1,000 for comparison against  
13 alternatives), 4889 and 4929 (comments discussing 1,000 housing units), 16787 (Plan  
14 Table 4-3 showing "projected" buildout of 1,000 housing units).

15  
16  
17 Thus, it is clear that the analysis of impacts is based on the assumption that the  
18 Plan would result in up to 1,000 housing units. However, in reality, the Plan, as  
19 demonstrated at Table 4-2, essentially states that the housing total is flexible and not  
20 set, and at the very least may result in up to 1,210 units, based on the numbers in the  
21 table. The Project thus fails to contain a clear and established description with respect  
22 to the number of housing units allowed. This results in an analysis of impacts based on  
23 an assumed buildout which is on the face of the record significantly less than the  
24 potential allowed buildout. Nor is the difference small, the total number allowed  
25 evidently being more than 20%, or 1/5, greater than the number assumed for the  
26 analysis. There is no basis for the assumption of 1,000 units, while on the face of the  
27  
28

1 record, basing the analysis of the Plan on the unsupported lower number demonstrates  
2 that the analysis must lack substantial evidence.

3         The County counters that buildout projections were based on assumptions about  
4 “what might be feasible based on a number of factors,” and that “it is difficult to  
5 project the exact amount and location of future development that may result,” so the  
6 “buildout projection... is not intended as a development prediction or cap that would  
7 restrict development in any of the five subareas. Rather, the Proposed Plan allows for  
8 flexibility in the quantity and profile of future development within and between  
9 subareas, as long as it conforms to the policies and standards, including permitted  
10 densities and FARs [floor area ratios], in the Specific Plan.” AR 597; Respondent  
11 Oppo 18-19.

12         Table 4-2 and its explanation illustrate the lack of a set project description. The  
13 County essentially makes SCALE/SCT’s point for them. They expressly cite to  
14 portions of the EIR stating, and directly claim, that the Plan and EIR impose no specific  
15 cap on housing units, include only a range of possible buildout numbers, and have no  
16 cap or limit. This makes it even more clear that there is no clear and set project  
17 description. Further, the analysis of the Plan is based on an unsupported assumption  
18 about what “may” occur, even though what actually could occur under the Plan may  
19 be a far greater housing number which is not disclosed anywhere in the record.  
20

21         As for the issue of phasing, SCALE/SCT assert that the Plan and EIR fail to  
22 describe the duration of work, demolition, or construction, all relevant to air quality,  
23 transportation, greenhouse gas emissions (“GHGs”), noise, and utilities. They note that  
24 the Plan identifies five-year construction phases but that these lack quantitative  
25  
26  
27  
28

1 information to allow meaningful analysis. However, SCALE/SCT cite to nothing in the  
2 record regarding this issue and provide no further analysis or discussion. The County  
3 asserts that this information is improper and beyond the confines of the Plan and  
4 would require speculation. The County has a valid point, but whether it is correct or  
5 not, ultimately SCALE/SCT have provided nothing to support this brief, unexplained,  
6 and unsupported contention.  
7

### 8 **Conclusion: Project Description**

9  
10 The court GRANTS the petition as to the lack of a clear and established project  
11 description regarding the number of housing units. The court DENIES the petition on  
12 issue of a lack of a proper description as to phasing.  
13

### 14 **Mitigation Measures**

15 SCALE/SCT challenge the analysis of mitigation measures on several points.  
16 They claim that the Plan is not "self-mitigating" as the County claims, it lacks clear  
17 performance standards for its purported mitigation measures, it lacks a mitigation  
18 monitoring and reporting program ("MMRP"), and there is no support for the findings  
19 that mitigation measures are infeasible for two areas of admitted significant impacts.  
20

21 As stated above, a lead agency may approve a project with a statement of  
22 overriding considerations even if it finds that the project will result in significant  
23 environmental impacts if it finds those impacts to be unavoidable and mitigation  
24 measures to be infeasible.  
25

26 PRC section 21002 states that "it is the policy of the state that public agencies  
27 should not approve projects as proposed if there are feasible alternatives or feasible  
28

1 mitigation measures available which would substantially lessen the significant  
2 environmental effects....” Agencies must therefore adopt feasible mitigation measures,  
3 or environmentally superior alternatives, to substantially lessen or avoid otherwise  
4 significant effects. PRC sections 21002, 21081(a), 21081.6; Guidelines 15002(a)(3),  
5 15021(a)(2), 15091(a)(1). The EIR therefore must set forth mitigations measures that can  
6 be adopted. PRC section 21100(b)(3); Guideline 15126(e), 15126.4.

8 The Supreme Court has made clear that considering mitigation measures and  
9 alternatives is one of the most important functions of an EIR. *Wildlife Alive v. Chickering*  
10 (1976) 18 Cal.3d 190, 197. In fact, “[t]he core of the EIR is the mitigation and  
11 alternatives sections.” *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553,  
12 564, 566 (*Goleta II*). CEQA is thus recognized as not merely a “procedural” statute but  
13 one that contains a “substantive mandate” that agencies not approve projects if feasible  
14 alternatives or mitigation measures can substantially reduce those impacts. *Mountain*  
15 *Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 134.

18 The court in *Citizens for Ceres v. Sup.Ct.* (2013) 217 Cal.App.4<sup>th</sup> 889, at 898, stated  
19 that when approving a project based on a statement of overriding considerations  
20 despite significant impacts, “[a]n agency must require feasible mitigation measures for  
21 all significant impacts and consider seriously and without bias whether the project  
22 should be rejected if mitigation is infeasible or approved in light of overriding  
23 considerations.”

26 As noted above, PRC section 21081 and Guideline 15091 set forth the  
27 requirements where an agency has determined that a project may have one or more  
28 significant impacts, and this includes requiring or incorporating feasible mitigation

1 measures. In other words, as set forth in PRC section 21081(a)(1), “[c]hanges or  
2 alterations have been required in, or incorporated into, the project which mitigate or  
3 avoid the significant effects on the environment....”

4  
5 Where mitigation measures are either imposed or incorporated in the project  
6 pursuant to PRC section 21081(a)(1), and Guideline 15091(a)(1), PRC section 21081.6  
7 and Guideline 15091 mandate that the mitigations be enforceable and implemented,  
8 imposing certain requirements to ensure that they are in fact enforced and  
9 implemented. In such circumstances, section 21081.6(a)(1) requires the agency to  
10 “adopt a reporting or monitoring program for the changes made to the project or  
11 conditions of project approval, adopted in order to mitigate or avoid significant effects  
12 on the environment. The reporting or monitoring program shall be designed to ensure  
13 compliance during project implementation.” This provision sets forth the requirement  
14 for a mitigation monitoring and reporting program (“MMRP”) to help effect mitigation  
15 measures. The mitigation measures may be set forth in the EIR or other environmental  
16 documents, or, in the case of an agency adopting a plan or other public project, they  
17 may be incorporated directly into the plan or project. PRC section 21081.6(b). PRC  
18 section 21081.6(b) states, in full and with emphasis added, that a public agency

19  
20  
21  
22 ... shall provide that measures to mitigate or avoid significant effects on the  
23 environment *are fully enforceable* through permit conditions, agreements, or other  
24 measures. Conditions of project approval may be set forth in referenced  
25 documents which address required mitigation measures or, in the case of the  
26 adoption of a plan, policy, regulation, or other public project, by incorporating  
27 the mitigation measures into the plan, policy, regulation, or project design.  
28

1           Guideline 15091 likewise mandates that the agency “adopt a program for  
2 reporting on or monitoring” the mitigations and that they be “fully enforceable.”  
3 These mitigation measures must be capable of avoiding the effects altogether by  
4 avoiding all or part of an action, limiting the effects by limiting the degree or  
5 magnitude of the action, “rectifying” the effect “by repairing, rehabilitating, or  
6 restoring the impacted environment,” or reducing or eliminating the effect over time  
7 by preservation and maintenance operations. Guideline 15370.  
8

9           Guideline 15097 sets forth standards for mitigation monitoring or reporting  
10 which, it states, apply when an agency has approved a project pursuant to Guideline  
11 15091(a)(1), i.e., when an agency has approved a project subject to mitigation measures  
12 which have been imposed on, or incorporated in, the project. It reiterates that the  
13 agency “shall” adopt an MMRP. Subdivision (b) clarifies that, “Where the project at  
14 issue is the adoption of a general plan, specific plan, community plan or other plan-  
15 level document (zoning, ordinance, regulation, policy), *the monitoring plan shall apply to*  
16 *policies and any other portion of the plan that is a mitigation measure or adopted alternative.*  
17 The monitoring plan may consist of policies included in plan-level  
18 documents.” Subdivision (c) discusses “reporting” and “monitoring,” stating,  
19  
20

21           The public agency may choose whether its program will monitor mitigation,  
22 report on mitigation, or both. “Reporting” generally consists of a written  
23 compliance review that is presented to the decision making body or authorized  
24 staff person. A report may be required at various stages during project  
25 implementation or upon completion of the mitigation measure. “Monitoring” is  
26 generally an ongoing or periodic process of project oversight. There is often no  
27  
28

1 clear distinction between monitoring and reporting and the program best suited  
2 to ensuring compliance ... will usually involve elements of both.

3 The EIR itself requires no mitigation measures for any of the potential  
4 impacts. See, e.g., AR 535-559, 771, 773, 774, 777. The EIR's Table ES-2, "Summary of  
5 Impacts" at AR 535-559, lists each impact with its corresponding mitigation measures,  
6 significance before mitigation, and significant after mitigation. For almost all impact  
7 categories, it states, as to mitigations, "None required," because there are ostensibly no  
8 impacts or the impacts are less than significant, so the significance after mitigation is  
9 "Not applicable." However, for impacts 3.5-2 regarding historic resources (AR 541),  
10 and 3.14-2 regarding conflict with CEQA as to Vehicle Miles Traveled ("VMT") on the  
11 issue of transportation, as well as resulting cumulative impacts on transportation (AR  
12 555-556), the EIR states that these effects are "significant and unavoidable" while the  
13 transportation cumulative impacts are "cumulatively considerable." Nonetheless, for  
14 mitigation measures as to these impacts, it still states, "None required," and for  
15 significance after mitigation, "Not applicable." Regarding historic resources, it claims  
16 that no mitigation is required because, with emphasis added,  
17  
18  
19  
20

21 The Proposed Plan includes policies and actions that *encourage* the preservation  
22 of *much* of the historic character of the SDC campus. This includes retention,  
23 rehabilitation, and adaptive reuse of buildings, structures, and landscape  
24 features in the Core Campus area that contribute to the SSHHD, as well as the  
25 retention of contributing resources that are located in the hog and poultry area  
26 east of the Core Campus and the SDC water and sewage system to the west and  
27 north. New construction still has the potential to *disconnect the remaining*  
28 *contributing resources* in the Core Campus from those in Community Separator  
and Regional Parks lands to the east and west, *consequently disrupting the feeling*

1 *and character within the historic district.* While proposed policies would help  
2 reduce these impacts to the maximum extent practicable, there are no mitigation  
3 measures available to avoid impacts to the historic district entirely

4 With respect to transportation and VMT, it claims that

5 Policies in the Proposed Plan are designed to reduce VMT in the Planning Area  
6 through required TDM reductions, establishment of a TMA to oversee VMT  
7 reduction strategies and programs, multi-modal transportation improvements,  
8 and parking-related demand management strategies. While these VMT  
9 reduction measures can be expected to reduce VMT, their effectiveness cannot  
10 be guaranteed, and they may be insufficient to reduce residential VMT per  
11 capita in the Planning Area below the applicable significance threshold or fully  
12 offset the effects of induced VMT. There are no other feasible mitigation  
13 measures available.

14 Although the EIR includes no mitigation measures, as the County argues, the  
15 Plan itself does contain some mitigation measures in the form of goals, policies, and  
16 conditions of approval for implementing projects, regarding factors such as biological  
17 resources and wildlife corridors intended to mitigate development impacts. The  
18 County cites to AR 228-247, 271-333, and 347-362. AR 228-247 are conditions of  
19 approval. The other pages are in the Plan's discussions of the various issues and  
20 impacts, where the Plan sets forth its goals and policies. Some are specific and concrete  
21 such as 2-7, prohibiting lights in wildlife corridors (AR 275), 3-7, requiring two new  
22 intersections on Arnold Drive and 3-9, imposing a 25-mph speed limit (both at AR  
23 285). Most are vague and open-ended, such as 3-22 (AR 286); many of the parking  
24 policies at AR 287-288; many of goals and policies for land use at 296-297, such as all  
25 three goals, and policies 4-3, 4-4, 4-5; the goals and policies for historic resources at 299-

1 301. In general, the vast majority of these goals and policies are vague, open-ended,  
2 and devoid of any clear mandatory requirements or performance standards, as CEQA  
3 requires for mitigation measures. Guideline 15126.4 (discussing the requirement of  
4 concrete performance standards for mitigation).  
5

6 The Plan sets forth hopeful intentions and vague statements that the goal of the  
7 Plan is to “promote” or “encourage” the stated measures or methods, and that items  
8 “should” be considered or studied, implemented if vaguely “feasible,” and the like  
9 with no performance standards or clear criteria. The County’s citations do not  
10 demonstrate that the Plan as a whole incorporates clear, mandatory mitigations  
11 measures with clear performance standards. There are some instances of clear  
12 measures with evident performance standards, as noted, but nothing more.  
13

14 The first Master Response (“MR”) at MR1, on the adequacy of the Plan as self-  
15 mitigating, states that it “aims to be self-mitigating” by including “policies and  
16 programs... as part of the project designed to avoid or mitigate... impacts,” citing PRC  
17 21081.6(b) and Guideline 15097(b). AR 4854. It claims that policies in the Plan were  
18 “designed to avoid or mitigate ... impacts that would otherwise occur” and that the  
19 policies are “fully enforceable” and require “[c]ompliance with established regulatory  
20 requirements and standards...” *Ibid.* MR3, addressing the level of detail necessary for  
21 a program EIR, admits that program EIRs must “shall incorporate feasible mitigation  
22 measures and alternatives.”  
23  
24

25 SCALE/SCT persuasively claim that the discussion of mitigations is defective  
26 because it is not self-mitigating and fails to include any MMRP to help enforce the  
27 mitigations in compliance with Guideline 15097(c)(3); the Plan policies are not effective  
28

1 as mitigation measures because they lack clear, performance-based mitigations  
2 sufficient to avoid or lessen impacts; and the EIR acknowledges that the Plan will have  
3 some significant impacts yet fails to consider potentially feasible mitigation  
4 measures. Opening 15-16.

5  
6 As noted above, the purported mitigation measures in the Plan, its goals and  
7 policies, are on the whole facially toothless, vague, and limited to hopeful  
8 intentions. The sheer number makes it impossible to list them all, but as explained  
9 above, most do nothing more than set forth hopeful intentions and vague statements  
10 that the goal of the Plan is to "promote" or "encourage" the stated measures or  
11 methods, and that items "should" be considered or studied, implemented if vaguely  
12 "feasible," with no definition of what any of this means, no performance standards,  
13 and no clear criteria. The County's citations to what it claims are sufficient mitigation  
14 policies or measures do not demonstrate that the Plan as a whole incorporates clear,  
15 mandatory mitigations measures with clear performance standards.  
16  
17

18 Similarly, SCALE/SCT point out that there is no evidence of any MMRP in the  
19 Plan or the EIR.

20  
21 The County counters, in a somewhat unclear and seemingly contradictory  
22 statement, that it need not include an MMRP because an MMRP is only required  
23 for mitigation measures and that it need not adopt mitigations because they are  
24 only required where a project may have a significant impact. To quote the  
25 County, it asserts, with original emphasis, that SCALE/SCT claims tha...a  
26 specific plan only can be self-mitigating if it incorporates mitigation measures  
27 and has an MMRP, is not supported by law. (POB 15-16.) The regulation that  
28 SCALE cites only discusses when a program includes both a monitoring  
element **and** a reporting element, as opposed to just a monitoring **or** just a

1 reporting program. (14 CCR § 15097(c)(3).) The law is clear: mitigation measures  
2 only need to be discussed for impacts that will have a significant effect, and an  
3 MMRP is required only when an agency finds that the significant effects will be  
4 mitigated by specific measures. (PRC §§ 21100, 21081.6(a); 14 CCR §  
5 15126.4(a)(1).) Here, two impacts were determined to be significant and  
6 unavoidable, but the County found that there is no feasible mitigation or  
7 alternative that would reduce or eliminate these impacts. (AR 45-49, 815-816,  
8 1132- 1136, 11469, 12396.) SCALE does not and cannot point to anything in the  
9 record suggesting that feasible mitigation exists, yet SCALE still demands that an  
10 MMRP is required.

11 The County's argument is confusing. Respondent Oppo 12-17. It claims that  
12 the Plan is "self-mitigating," by which it means that instead of imposing additional  
13 mitigations in the EIR, the Plan itself incorporated the noted mitigations and policies  
14 sufficient to mitigate impacts to less than significant, and it cites to statements in the  
15 Plain claiming that it is a "model" of ecological and "sustainable development." See,  
16 AR 76-80. It contends that SCALE/SCT' argument that the EIR fails to include  
17 mitigation measures "falls flat" because such a discussion "is required only for  
18 significant environmental effects." Respondent Oppo 11:6-7. At the same time, it  
19 admits that the EIR expressly finds that some environmental impacts *are* still significant  
20 and are not mitigated to less than significant, even though no measures were adopted  
21 to lessen or avoid those impacts.  
22  
23

24 The County thus makes conflicting arguments. It asserts that the Plan itself  
25 contains mitigation measures which reduce impacts on most issues to less than  
26 significant, but it claims that no MMRP is required because an MMRP is only required  
27 for mitigation measures which reduce or avoid significant impacts. It admits the Plan  
28

1 does not mitigate all significant impacts and that the EIR includes no additional  
2 mitigation, yet argues that the EIR need not include such a discussion because an EIR  
3 only need discuss and include mitigation measures if impacts are significant.

4  
5 Although the County's arguments are somewhat murky, it appears to claim that  
6 no MMRP is necessary because the measures which will avoid or reduce environmental  
7 impacts are already included in the Plan and are not being imposed as mitigations in  
8 the EIR. This argument is unpersuasive.

9  
10 As noted above, the EIR, and the County in its opposition brief, expressly rely  
11 on the provision in PRC section 21081.6(b) allowing an agency to include in a plan  
12 "conditions of approval... which address mitigation measures," instead of imposing  
13 them in the EIR. But this does not mean that they are therefore not "mitigation  
14 measures" subject to the requirement of an MMRP.

15  
16 In addition to lacking any authority in support, the County's argument on this  
17 point simply makes no sense. The above provision on which it relies is subdivision (b)  
18 of PRC section 21081.6 which, at subdivision (a), sets forth the requirement for an  
19 MMRP, while Guideline 15097 has substantially the same language. They allow a plan  
20 such as this to incorporate mitigations without the need to analyze those in the EIR,  
21 but they indicate that an MMRP plan is still required. Guideline 15097(b), in fact,  
22 makes this clear, stating, with emphasis added, "Where the project at issue is the  
23 adoption of a general plan, *specific plan*, community plan or other plan-level document  
24 (zoning, ordinance, regulation, policy), *the monitoring plan shall apply to policies and any*  
25 *other portion of the plan that is a mitigation measure or adopted alternative.* The monitoring  
26 plan may consist of policies included in plan-level documents." Moreover, logically, an  
27  
28

1 MMRP is just as necessary for implementing measures designed to prevent or lessen  
2 impacts set forth in the Plan itself, as it is for measures set forth in an EIR.

3 The County also makes the brief statement that "SCALE, in citing to Guideline  
4 15097(c)(3), only discusses when a program includes **both** a monitoring element and a  
5 reporting element, as opposed to just a monitoring **or** just a reporting program. (14  
6 CCR § 15097(c)(3)." Respondent Oppo 14:19-21, emphasis in original. It stresses the  
7 emphasized words but provides no further discussion or explanation as to import. Its  
8 apparent analysis, to whatever unexplained purpose it intends, is incorrect.

9  
10  
11 Guideline 15097(c)(3) simply discusses when reporting and monitoring are  
12 appropriate, stating, "Reporting and monitoring are suited to all but the most simple  
13 projects. Monitoring ensures that project compliance is checked on a regular basis  
14 during and, if necessary, after implementation. Reporting ensures that the approving  
15 agency is informed of compliance with mitigation requirements." The rest of the  
16 Guideline indicates that an MMRP may include either monitoring or reporting, or both,  
17 depending on what is required and the needs of the circumstances, as well as the  
18 application and analysis. There is no indication in the authority that SCALE/SCT  
19 somehow are improperly relying on something which only applies when an MMRP  
20 includes both, as opposed to one or the other. It is even less clear how such a  
21 distinction might have any bearing here. The point SCALE/SCT make is that there is  
22 no MMRP and one is required.

23  
24  
25 The County also argues that no mitigation measures are needed when a project  
26 will comply with applicable regulatory standards, relying on *Tracy First v. City of Tracy*  
27 (2009) 177 Cal.App.4th 912, at 916, 930-934. It claims that the SDC EIR at 605-1209  
28

1 identified laws and regulations that apply to Plan goals or conditions or other  
2 elements. The County's reliance on *Tracy First* is misplaced. There, the project was  
3 construction of a grocery store, and complied with specific, controlling state building  
4 standards. The court ruled that no mitigation was required to address possible impacts  
5 of the issues to which those standards applied because the standards were already  
6 enacted to provide specific performance criteria for such issues with the purpose that  
7 any project complying with them need not do further review on those issues.  
8

9         Here, by contrast, neither the Plan nor the EIR appears to contain such specific  
10 compliance with regulatory standards, except for some few instances. The Plan is a  
11 complex governing land-use plan setting forth broad goals and policies with general,  
12 vague, and broad references to local and state laws and regulations. It is very different  
13 from the development of a specific grocery store or other building, and the policies and  
14 goals it sets forth are fundamentally different from simply requiring construction to  
15 comply with specific state building standards.  
16  
17

18         The portion of the EIR to which the County cites, AR 605-1209, contains the  
19 entire environmental analysis of impacts. It includes some references here and there to  
20 some legislation and other regulations which apply to the issues or policies in the  
21 Plan. Some standards appear to be concrete, controlling standards such as provisions  
22 of the Fish and Game Code prohibiting the destruction of bird nests (AR 726) and  
23 portions of the Sonoma County Code ("SCC") regarding riparian setbacks and removal  
24 of landmark trees. (AR 729-30). However, these are limited instances. Otherwise, the  
25 cited provisions merely provide the overall framework or basic goals, and the County  
26 cites to nothing showing any analysis or adoption of specific standards similar to those  
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28

1 in *Tracy First*. In fact, the County just cites to the entire 600-plus page section on  
2 environmental analysis without citing to any specific examples which may support or  
3 explain what it means. Nothing indicates that the entire Plan, or even more than a  
4 small portion of it, is subject to controlling, established standards, statutes, and  
5 regulations such as addressed in *Tracy First*.  
6

7       Regarding the two impacts found to be significant, SCALE/SCT are persuasive  
8 that absolutely nothing supports the findings that no mitigation measures are  
9 feasible. The record appears to contain only unsupported, conclusory statements that  
10 there are no feasible mitigation measures, nothing more.  
11

12       The County tries to counter this by citing to AR 45-49, 815-816, 1132-1136, 11469,  
13 and 12396 as supporting the infeasibility findings and explaining why there are no  
14 feasible mitigations to avoid or lessen these impacts. See Respondent Oppo 13. AR 45-  
15 49 are the CEQA findings of fact on significant impacts. Regarding historic resources,  
16 the findings admit that the Plan will cause a "substantial adverse change to the  
17 significance of a historic district as defined as physical demolition, destruction,  
18 relocation, or alteration of the historic district or its immediate surroundings such that  
19 the significance of the historic district would be materially impaired pursuant to §  
20 15064.5." The findings then conclude with the general statement that "Specific  
21 economic, legal, social, technological, or other considerations, including provision of  
22 employment opportunities for highly trained workers, make infeasible any mitigation  
23 measures or project alternatives." The supporting explanation states solely:  
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1 The Proposed Plan includes policies and actions that encourage the preservation  
2 of the historic character of the Core Campus. This includes retention,  
3 rehabilitation, and adaptive reuse of buildings, structures, and landscape  
4 features in the Core Campus area that contribute to the SSHHD (policies 4-20  
5 through 4-31), as well as considering the preservation of contributing resources  
6 that are located in the hog and poultry area east of the Core Campus and the  
7 SDC water and sewage system to the west and north (Goals 2-I and 2-J and  
8 policy 4-32). The proposed policies and Standard Conditions of Approval (LU-1,  
9 LU-2, LU-3, LU-4, LU-5, and LU-6) would help reduce these impacts to the  
10 maximum extent practicable, therefore, there are no mitigation measures  
11 available to avoid impacts entirely or further reduce the level of impact.  
12 Furthermore, as discussed in Chapter 4 of the EIR and above in the alternatives  
13 section, the Historic Preservation Project Alternative is not feasible. It would be  
14 less superior in some environmental features.... Additionally, the Historic  
15 Preservation Project Alternative would not support key project objectives related  
16 to increased housing supply, varied housing opportunities, community vibrancy,  
17 and long-term fiscal stability to the same degree as the Proposed Plan.

18 The County cites to AR 815-816, the portion of the EIR discussing impacts to  
19 cultural and historic resources. This section repeats both that the Plan will cause a  
20 significant impact as to the historic district and the explanation found at AR 45-46  
21 above. It adds detail about the number of contributing resources which "are planned  
22 to remain," height limits on new buildings in the area with historic resources  
23 anticipated to remain, but otherwise just refers to the Standard Conditions of Approval  
24 noted above and their effect with the same basic language. It again concludes that  
25 "there are no mitigation measures available to avoid impacts entirely. As such, this  
26 impact would remain significant and unavoidable." Despite this, the section starts by  
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28

1 stating that no mitigation is required. The County's last cite for historic resources, AR  
2 12396, is part of a staff report. It repeats some of the above language, adding nothing.

3 With respect to transportation and VMT, the findings state that the Plan will  
4 violate CEQA Guideline 15064.3(b) as to VMT and that the "effectiveness" of the Plan's  
5 strategies to address VMT "cannot be accurately estimated since performance would  
6 vary according to the specific attributes of individual development projects and the  
7 synergies existing among them, which will evolve over time," and that the Plan's  
8 requirements "cannot be guaranteed, and will need to be monitored over time, with  
9 ongoing adjustments...." It concludes with the same finding used for historic  
10 resources; to wit, that the cited factors make mitigations or alternatives infeasible.

13 The explanation refers back to the Plan's policies intended to reduce VMT, the  
14 ones which it just said cannot be guaranteed and which will require monitoring, and  
15 then describes these. It states that their effectiveness cannot be guaranteed, then simply  
16 adds that all alternatives would result in significant impacts regarding VMT and that  
17 therefore there are no other feasible mitigation measures. AR 1132-1136 is part of the  
18 same section as AR 815-816, but for transportation and VMT. This section again states  
19 that no mitigation is required but that the Plan will violate CEQA Guideline 15064.3(b)  
20 as to VMT. It provides traffic assessment information and data, and notes that the  
21 performance metrics of the Plan might reduce VMTs but efficacy is uncertain. It  
22 provides no discussion of possible mitigation measures and does not explain why any  
23 are infeasible. The last citation, AR 11469, is part of a staff report discussing  
24 alternatives and gives some data on the Plan's VMT, which repeats part of the  
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1 statement that the Plan will violate CEQA Guideline 15064.3(b) as to VMT and will still  
2 exceed the threshold of significance. It adds nothing more on this issue.

3           The above discussion and citations, specifically including the County's own  
4 cited portions of the record, make it clear that there is no evidence or analysis  
5 supporting findings that there are no feasible mitigation measures. They consist solely  
6 of repeated conclusory statements that there are no feasible measures, without  
7 providing even a suggestion of evidence or attempt to provide any analysis.  
8

9           The County argues that no member of the public suggested any mitigations for  
10 the remaining significant impacts, but this argument is unpersuasive. As noted above,  
11 CEQA places the burden of investigation on the agency, and the agency must provide  
12 substantial evidence and the "analytical route the agency traveled from evidence to  
13 action." *North Coast Rivers, supra*, 216 Cal.App.4th 639-640 (quoting *AIR, supra*). The  
14 record simply shows that the County concluded that there are no feasible  
15 alternatives. Nothing shows that it even bothered to consider or investigate any.  
16 Indeed, neither the Plan nor the EIR, at any page to which the County cites, provides  
17 any such discussion, evidence, possible mitigations, or evidence.  
18

19           Under such circumstances, the public need not provide possible mitigations for  
20 the agency to consider in order to raise this issue or for the court to find a violation of  
21 CEQA. The County's utter lack of discussion violates CEQA. Nothing demonstrates  
22 that it made any effort whatsoever to identify, much less consider, some possible  
23 mitigations while there is neither evidence nor analysis explaining how it came to the  
24 conclusion that there are no feasible mitigation measures.  
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1           Moreover, as with the County's arguments on this issue in this litigation, the EIR  
2 is, on its face, muddled about these points. It claims that the Plan creates unavoidable  
3 significant impacts on these two issues, yet then explains that no mitigations are  
4 necessary because the Plan inherently involved standards and policies which will avoid  
5 such impacts. This is a contradiction.  
6

7           The County also contends that although no MMRP is needed, Plan Policy 4-13  
8 at AR 297 requires staff to

9           review all development to ensure consistency with the Specific Plan and all of  
10 the policies, conditions, and other requirements in the Specific Plan. To assist in  
11 this effort, the County shall prepare a checklist to be used for all proposed  
12 projects at the SDC site to ensure consistency with Plan policies and  
13 Supplemental Standard Conditions of Approval, as detailed in Appendix A.  
14 Require all development at SDC to comply with additional standard conditions  
15 of project approval, as detailed in Appendix A. These conditions should be  
16 updated by County staff over time to reflect changing conditions, new  
17 information, and compliance with changing local and State laws and guidelines.  
18

19           The section on implementation and financing, at 7.2, AR 334-335, reiterates this  
20 policy with some additional language giving examples of where consistency checks  
21 might be employed, but largely repeats the basic statements of the prior section.

22           Nothing in the pages which the County cites indicates that this is a meaningful  
23 or enforceable MMRP or method of ensuring compliance with the policies of the  
24 Plan. It is vague as to any standards or details, how or when any review of proposed  
25 development will occur, what the checklist will involve or how it will be implemented,  
26 or the like. It mandates that review take place and that it involve a checklist, but  
27  
28

1 contains absolutely no detail or concrete information about this review or the  
2 checklist. This itself is effectively meaningless and is facially insufficient to comply with  
3 CEQA mandates, which requires mitigations measures to have concrete, enforceable  
4 performance standards. *See, e.g.*, Guideline 15126.4 (discussing the requirement of  
5 concrete performance standards for mitigation). Finally, as discussed above, the  
6 majority of the policies or mitigations which it would address are themselves vague  
7 and lack any performance standards.  
8

9  
10 For its part, DGS argues that Section 14670.10.5 lacks any requirement to  
11 preserve the old SDC buildings as historic resources, an intentional decision given that  
12 it states that the Legislature intends to conserve the natural resources and the Eldridge  
13 Cemetery. It also contends that “most” of the buildings are falling into disuse and in a  
14 state of disrepair, raising concerns of safety and cost, citing AR 43-44, 2054, 8807, 4874-  
15 4875. Preserving these buildings or converting them to residential or other uses would,  
16 it argues without any citations to the record or supporting evidence, be contrary to the  
17 Legislature’s express goals and the efforts of the County  
18

19 to “reduce uncertainty, increase land values, expedite marketing, and maximize  
20 interested third-party potential purchasers” (§ 14670.10.5, subd. (c)(2)) for future  
21 development that must include critically needed affordable housing (*id.* at subd.  
22 (c)(4)). It would also conflict with the statute’s twin land use goals of housing  
23 and open space conservation if future development were constrained by the  
24 footprint and layout of the old SDC buildings. The buildings are specially  
25 clustered and designed for their prior SDC uses. Due to these constraints, a  
26 requirement to preserve them would significantly reduce the number of housing  
27 units and project feasibility — or, more likely, expand the development footprint  
28 into the open space acreage otherwise being conserved.

1 DGS cites to nothing supporting the conclusions as to mitigations. AR 43-44 is  
2 the section on CEQA findings of fact regarding alternatives. It dismisses a reduced  
3 project alternative on the ground that it will be "less economically viable" and thus fail  
4 to meet the objective of long-term fiscal sustainability due to reduced development. It  
5 contains no other explanation, facts, or analysis. It dismisses the historic preservation  
6 alternative on the ground that "complete preservation and restoration of all existing  
7 buildings is not financially feasible.  
8

9 AR 2054 is simply a summary of regulated, or harmful, materials in the listed  
10 buildings on the Site. AR 8807 is more meaningful, setting forth the approach to  
11 analysis of alternatives and feasibility challenges, with some explanation as to the  
12 actual costs of rehabilitating existing buildings. AR 4874-4875 sets forth the Master  
13 Response 8 ("MR8") to the historic preservation alternative, explaining the "very large  
14 feasibility gap (about \$140 million), claims that this renders the alternative's "viability  
15 questionable, cites a few examples of costs and problems with the Main Building, and  
16 claims that Section 14670.10.5 gives no priority to preservation while the Plan as  
17 adopted promotes the goals of that statute and the County.  
18  
19

20 None of this information, while part of what could be a sufficient explanation  
21 supporting the rejection of the preservation alternative, supports the conclusion that  
22 there is no viable mitigation which may address the admittedly significant impacts of  
23 the Plan as to historic resources.  
24  
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1 and enhances the... Wildlife Corridor for safe wildlife movement throughout the site"  
2 (AR 525) and "opportunity" of "reestablishing riparian corridors." AR 577.

3 The Plan includes various policies addressing the wildlife corridor, including  
4 preserving open space, prohibiting lights in the corridors, orienting building away  
5 from the corridors, and using thickly planted vegetation as a buffer. AR 614, 621. The  
6 conclusion in the EIR is that the Plan "would not interfere substantially with ...  
7 established native resident or migratory wildlife corridors, or impede the use of native  
8 wildlife nursery sites" and that the Plan's impact is "Less Than Significant w/o  
9 Mitigation. No Mitigation." AR 539.

10 At the same time, the Department of Fish and Wildlife ("DFW") and others  
11 advised the County to evaluate these issues, explaining with detail the importance of  
12 the wildlife corridors and the possible impacts of the Plan. AR 1330, 19032-  
13 19042. SCALE/SCT list numerous other examples in the Opening Brief at 21.

14  
15  
16  
17 The EIR's primary discussion of the effects on biological resources is at AR 723-  
18 778. This section describes the regulatory setting with applicable laws and  
19 regulations. AR 723-731. It then describes in detail the environmental setting,  
20 including the habitat types, forest types, woodland types, grassland, shrubland,  
21 riparian forests, wetlands and vernal pools, existing buildings, streams and water,  
22 existing special-status species with a detailed catalogue, sensitive habitats, and wildlife  
23 corridors. AR 731-755. Following this, it presents the impacts analysis, first setting  
24 forth the impact criteria according to which the Plan would have a significant impact,  
25 as well as the methodology and assumptions. AR 755-757. It describes the policies and  
26 implementing actions. AR 757-760. It then has a section on the specific potential  
27  
28

1 impacts during construction and during operation, setting forth the conditions of  
2 approval for specific implementing projects and applicable Plan policies. AR 760-778.

3 SCALE/SCT are persuasive on this issue. The EIR does, as the County asserts,  
4 include what appears to be a meaningful, detailed description of the environmental  
5 setting, species, and corridors. It also sets forth the applicable policies or efforts to  
6 mitigate impacts. **However, the section is ultimately deficient.**

8 As discussed in the section on mitigation measures above, the Plan relies  
9 primarily on its own policies as mitigation measures to avoid significant impacts, yet  
10 most of these, as already discussed, are toothless, vague, and lacking in performance  
11 standards or an MMRP to ensure implementation. Some of these measures appear  
12 adequately enforceable if a plan were in force to ensure enforcement, but the analysis  
13 rests on them as a whole and as a whole they are deficient. As a result, there is no  
14 basis to rely on them for a conclusion that they mitigate potential significant impacts.  
15

17 **Moreover, the EIR expressly notes that construction activities or development**  
18 **may occur in ways contrary to the intended goals, resulting in significant impacts.** See,  
19 e.g., AR 761, 775. This appears to reflect the vague, wishful, and open-ended nature of  
20 many of the policies as mitigation measures, as discussed above. The EIR does not,  
21 however, address these potential problems or give any indication that there is any  
22 method for preventing them. Finally, despite the detailed description of the  
23 environmental setting and biological resources, as well as the listing of policies or  
24 conditions, there is no actual analysis or explanation which links this information to the  
25 conclusions. The EIR simply sets forth the information and, despite the unclear, vague  
26 nature of many of the policies and the acknowledged possibility that development may  
27  
28

1 in fact deviate from the intentions and cause significant impacts, simply concludes that  
2 there will be no significant impacts and that further mitigation is not required.

3 In short, there is no required "analytical route the agency traveled from  
4 evidence to action." *AIR, supra*, 107 Cal.App.4th 1397. Based on the information  
5 presented, there is no clear support for the conclusion, underscoring this failing.  
6

7 The court GRANTS the petition on this point.

### 8 **Transportation/Traffic**

9  
10 SCALE/SCT note, as already mentioned, that the EIR admits that the strategies  
11 or policies for addressing traffic, specifically VMT, are of unknown efficacy, and the  
12 plan will thus result in significant, unavoidable impacts with respect to traffic and  
13 transportation. AR 555-556, 662. SCALE/SCT also argue that the analysis is further  
14 deficient because it fails to take into account cumulative traffic impacts in light of the  
15 "Hanna Project," a proposal to develop 600 homes and 10,000 square feet of  
16 commercial space on the site of the nearby former Hanna Boys Center (the "Hanna  
17 Center"). While the EIR already considered the cumulative impacts of the Project to be  
18 considerable, the discussion was limited to the effects of the Plan alone on VMT.  
19

20  
21 CEQA requires consideration of a project's cumulative impacts. PRC section  
22 21083(b)(2); Guideline 15130; *Whitman v. Bd of Supervisors* (1979) 88 Cal.App.3d 397,  
23 408. This is because the "full environmental impact... cannot be gauged in a  
24 vacuum." *Whitman, supra*.  
25

26 Guideline 15355 defines "cumulative impact" as "two or more individual effects  
27 which, when considered together, are considerable or which compound or increase  
28

1 other...impacts." Subdivision (b) adds that "[t]he cumulative impact from several  
2 projects is the change in the environment which results from the incremental impact of  
3 the project when added to other closely related past, present, and reasonably foreseeable  
4 probable future projects. Cumulative impacts can result from individually minor but  
5 collectively significant projects taking place over a period of time." Emphasis added.  
6

7 According to Guideline 15130, an EIR must consider a project's cumulative  
8 impacts "when the project's incremental effect is cumulatively considerable, as defined  
9 in section 15065(a)(3)." One way to satisfy this is to provide a list of past, present, and  
10 future projects that contribute to the problem. Guideline 15130(b)(1)(A).  
11

12 Guideline 15065(a) states that "an agency shall find that a project may have a  
13 significant impact where its possible environmental effects "are individually limited  
14 but cumulatively considerable." Emphasis added. Guideline 15064(h)(1) adds that  
15 "'[c]umulatively considerable' means that the incremental effects of an individual  
16 project are significant when viewed in connection with the effects of past projects, the  
17 effects of other current projects, and the effects of probable future projects." See *EPIC v.*  
18 *Johnson* (1985) 170 Cal.App.3d 604, 625. Emphasis added.  
19

20  
21 Guideline 15130(b) sets forth the "elements... necessary" to discussing  
22 cumulative impacts. Subdivision (b)(1) states that an EIR must use one of two methods  
23 for identifying other projects and their impacts. It must include *either*

24 (A) A list of past, present, and probable future projects producing related or  
25 cumulative impacts, including, if necessary, those projects outside the control of  
26 the agency, or

27 (B) A summary of projections contained in an adopted local, regional or  
28 statewide plan, or related planning document, that describes or evaluates

1 conditions contributing to the cumulative effect. Such plans may include: a  
2 general plan, regional transportation plan, or plans for the reduction of  
3 greenhouse gas emissions. A summary of projections may also be contained in  
4 an adopted or certified prior environmental document for such a plan. Such  
5 projections may be supplemented with additional information such as a regional  
6 modeling program. Any such document shall be referenced and made available  
7 to the public at a location specified by the lead agency.

8 Subdivision (b)(2) states that when an EIR uses a list under (b)(1), "factors to  
9 consider when determining whether to include a related project should include the  
10 nature of each environmental resource being examined, the location of the project and  
11 its type." According to (b)(3), lead agencies "should define the geographic scope of the  
12 area affected by the cumulative effect and provide a reasonable explanation for the  
13 geographic limitation used." Subdivision (b)(4) and (5) state that the EIR should also  
14 include a "summary of the expected environmental effects" of the other projects  
15 specifically referring to "where that information is available," and a "reasonable  
16 analysis of the cumulative impacts" of the relevant projects and reasonable, feasible  
17 mitigation options.

20 Again, just as discussed above with respect to growth-inducing impacts,  
21 analysis of cumulative impacts need not and should not involve speculation.

22 See *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108

23 Cal.App.4th 859; Guideline 15130 (EIRs must consider "past, present, and probable  
24 future projects" or a summary of projections and analysis of cumulative impacts in  
25 another document that discussed the project area).

1 Thus, the key is whether the potential future projects are reasonably foreseeable  
2 at the time the EIR is prepared. *City of Antioch v. City Council of the City of*  
3 *Pittsburg* (1986) 187 Cal.App.3d 1325, 1337. The “primary consideration” under this  
4 standard is “whether it was reasonable and practical to include the projects and  
5 whether, without their inclusion, the severity and significance of the cumulative  
6 impacts were reflected adequately.” *Kings County Farm Bureau v. City of Hanford* (1990)  
7 221 Cal.App.3d 692, 723, citing *San Franciscans for Reasonable Growth v. City and County*  
8 *of San Francisco* (1984) 151 Cal.App.3d 61, at 74-77.  
9

10  
11 SCALE/SCT note that the Hanna Project was brought to the attention of the  
12 County’s staff but it is not discussed in the EIR. SCALE/SCT cite to evidence in the  
13 record indicating that the County was aware of the Hanna Project. At the February  
14 2022 Scoping meeting for the Plan with the County’s staff, members of the public  
15 mentioned the Hanna Project and complained that the County was looking at each  
16 project on its own without looking at them in the context of other projects, which is  
17 exactly the issue which CEQA’s requirements for cumulative impacts are intended to  
18 address. AR 13365, AR 13377. A member of the Plan Advisory Team (“PAT”) for this  
19 Plan, Nick Dalton, was a staffmember of the Hanna Center. AR 17433, 17437, 17439,  
20 17444, 17466, 18388. At another meeting, others again mentioned the Hanna Project  
21 and potential impacts regarding traffic of the two combined. AR 13539, 13544-  
22 13545. The Hanna Project is also mentioned in other portions of the record, including  
23 statements regarding the need to consider cumulative impacts on traffic. See, e.g., AR  
24 5525, 5990, 13365, 13377-78, 22620, 24809, 24820, 258809, 24845.  
25  
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1 The County acknowledges the need to consider cumulative impacts and also  
2 admits that the EIR for the Plan does not discuss the Hanna Project, but contends that it  
3 did not need to do so. Respondent Oppo 25-26. It argues that the Hanna Project was  
4 not “sufficiently developed” so that including it would involve sheer speculation.  
5

6 SCALE/SCT respond that the Hanna Project was sufficiently concrete and  
7 known, with the County’s own Housing Element of November 2022, prior to the  
8 approval of this Plan and certification of the EIR. The County’s Housing Element not  
9 only lists it as a planned project but gives the specific address, the anticipated date of  
10 completion in 2028, and the number of housing units, specifying that it is expected to  
11 include 150 low-income units and 508 above moderate-income units. See RJN.  
12

13 The court finds that the EIR should have considered the cumulative impacts  
14 related to the Hanna Project. While SCALE/SCT raised the issue in the context of  
15 transportation impacts, they noted its broader application to other environmental  
16 impacts of the Plan. (Opening 26, n.3.) The court GRANTS the petition on this basis.  
17

18 SCALE/SCT also make an argument regarding GHGs and electric vehicles. This  
19 argument is exceedingly brief, added at the end of the discussion on traffic regarding  
20 the cumulative impacts of the Hanna Project, and lacks clear explanation, evidence  
21 from the record, or analysis. SCALE/SCT’s brief discussion of this issue is unclear and  
22 fails to meet their burden of showing a potential violation of CEQA on this point. The  
23 court DENIES the petition as to the GHG issue.  
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## WILDFIRE IMPACTS

SCALE/SCT contend that the EIR discussion of wildfire-related impacts is deficient because the conclusion that there will be no significant impacts is based on defective proposed policies which are not enforceable, the discussion lacks a sufficient description of the baseline, the EIR relies at AR 1193 on an evacuation analysis prepared by Kittelson & Associates ("Kittelson"), not included in the EIR or Appendices or ever made available on the Plan website, the EIR fails to discuss the impacts of a potential fire spreading from the west, and the EIR fails to consider cumulative impacts with the Hanna Project.

As SCALE/SCT point out, the EIR specifically sets forth three wildfire criteria from the CEQA Guidelines and dismisses them with the conclusion that the Plan will not cause the identified problems. The CEQA Guidelines' Appendix G include an Environmental Checklist Form which sets forth various environmental issues to address. The Guidelines include a section addressing specific issues affecting a project's potential exacerbation of wildfire risks, among them those which the EIR notes at AR 558-559. Appendix G addresses, in pertinent part, wildfire impacts:

**Section XX. WILDFIRE** -- If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

- a) Substantially impair an adopted emergency response plan or emergency evacuation plan?
- b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

1 c) Require the installation or maintenance of associated infrastructure (such as  
2 roads, fuel breaks, emergency water sources, power lines or other utilities) that  
3 may exacerbate fire risk or that may result in temporary or ongoing impacts to  
4 the environment?

5 An agency must prepare, cause to be prepared, or certify completion of, an EIR  
6 when a project "may have a significant effect on the environment." See, e.g., PRC  
7 sections 21068, 21100(a), 21151(a); Guideline 15382. As a result, CEQA requires review  
8 of a project's impacts on the environment. CEQA is generally not concerned with the  
9 environment's impacts on a project. *California Building Industry Assn. v. Bay Area Air*  
10 *Quality Management Dist.* (2015) 62 Cal.4<sup>th</sup> 369, at 386 (CBIA). This standard does not  
11 appear to be in dispute, but the court notes it as providing the framework for analyzing  
12 the study of wildfire impacts.  
13  
14

15 Preliminarily, after pointing out that the EIR notes the three Guideline criteria  
16 regarding wildfires, SCALE/SCT ultimately discuss only the effects of the Plan on  
17 evacuation in the event of wildfire. To some extent, that could implicate all three  
18 criteria, but it is the one issue which SCALE/SCT do discuss, and they provide no  
19 argument or evidence as to whether the Plan will otherwise exacerbate wildfire threats  
20 due to conditions cited above or require infrastructure exacerbating such risks.  
21

22 SCALE/SCT claim that the Kittelson report, providing the evacuation analysis  
23 on which the EIR is based, is remains missing from the record, despite requests made by  
24 the Sonoma Land Trust and others to review it. See AR 49230, 47959, 48273,  
25 48275, 48292, 48432-48437, 54092. The County claims that the Kittelson report's analysis  
26 is contained in the EIR, at AR 1199-1205. At AR 1193 and 1199-1200, the EIR describes  
27  
28

1 methodology and assumptions to address wildfire impacts, explaining that the  
2 evacuation analysis was taken from the report by Kittelson. The EIR specifically  
3 discusses evacuation based on the Kittelson report, at 1199-1205, which describes in  
4 detail the analysis, its methodology, its estimates, scenarios which it considered,  
5 assumptions in the analysis, calculations, and conclusions. The FEIR at AR 4859 states  
6 that analysis and estimates used for the evacuation scenario are at Impact 3.16-1,  
7 starting at page 512 of the EIR, or AR 1198.  
8

9  
10 The failure to include the Kittelson report in the record does not necessarily  
11 violate CEQA. If the EIR, or other documents in the record, include a sufficiently  
12 detailed description of the information and analysis from that report, the failure to  
13 include the report is immaterial. SCALE/SCT cite to no authority that a report itself  
14 must be included in the record as long as the necessary information from that report is  
15 in the record. CEQA mandates that the record contain substantial evidence and the  
16 analytic route which the agency took from evidence to findings. Including information  
17 from a report in an EIR may satisfy that standard even without providing the report.  
18

19 That said, absent the report itself, there may be a violation of CEQA where  
20 agency conclusions are based on the report's analysis and the information and analysis  
21 from that report are not adequately provided elsewhere in the record. Apparently  
22 recognizing that the Kittelson report does not itself need to be in the record as long as  
23 the record includes the relevant information and analysis from that report,  
24 SCALE/SCT also raise this very point. They contend that "The EIR fails to provide *or*  
25 *adequately summarize* the evacuation analysis prepared by Kittelson & Associates. (AR  
26 49230-31.)" Opening Brief 30:3-4; emphasis added.  
27  
28

1 The County correctly points out that information from the Kittelson report is set  
2 forth in the EIR, including a description of the methodology and assumptions on which  
3 its analysis was based. SCALE/SCT themselves essentially admit that when they attack  
4 the validity of the Kittelson modeling. Opening 29:1-25. Nonetheless, they contend  
5 that assumptions for the evacuation model were not sufficiently disclosed, and, despite  
6 the detailed information provided, SCALE/SCT appear to be correct.  
7

8 The court notes that the EIR does clearly include much information from, and  
9 detail about, the analysis from the Kittelson report. It describes the bases and  
10 assumptions of the evacuation analysis, i.e., the Kittelson report, at 1199, stating, in  
11 pertinent part,  
12

13 The analysis used the... regional travel model maintained by the Sonoma County  
14 Transportation Authority. The travel model includes tabulations of housing and  
15 employment in each part of Sonoma County.... The travel model estimates traffic  
16 generated by land uses and tracks traffic volumes relative to road capacities to  
17 calculate the associated levels of congestion and congested speeds. The travel  
18 model represents a typical weekday peak hour, so additional assumptions were  
19 used to override the typical weekday traffic in the Planning Area and add the  
20 potential evacuation traffic.

21 The EIR then explains that two fire scenarios were considered and sets them forth in  
22 detail, explaining why they were selected as most likely, and details assumptions about  
23 when residents would leave and the number leaving at each stage. It also sets forth  
24 assumptions about a fire occurring at night, stating,  
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26  
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28

1 If a fire occurs during the night, most residents would be home, but most  
2 employees would not be at their workplace. If a fire occurs during the workday,  
3 most employees would be at their workplace, but many residents would not be  
4 at their homes. The evacuation analysis conservatively assumes that 75 percent of  
5 residents and 75 percent of employees would need to evacuate during a fire  
6 event. Each household is assumed to use two vehicles and each employee is  
7 assumed to use one vehicle.

8 The EIR lists the four portions of the planning area used for the study, explains  
9 why the study used them, identifies the assumed destinations for those fleeing, adds  
10 further details about assumptions for traffic volumes, details the measured travel times  
11 under the scenarios, and the conclusion about the Plan's impacts on travel times. Aside  
12 from a little additional information on methodology provided at a hearing on August  
13 24, 2022 (AR 13501-13503), more discussion of the methodology and the analysis was  
14 set forth in the Responses to Comments in the FEIR at AR 4859-4863. The EIR explains  
15 that "the analysis used estimates of traffic generated by land uses and tracks traffic  
16 volumes relative to road capacities to calculate the associated levels of congestion and  
17 congested speeds. The analysis also includes tabulations of housing and employment  
18 in each part of Sonoma County, compiled by transportation analysis zones  
19 (TAZs)." AR 4859. The EIR explains, at AR 1202-1203,

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21  
22  
23 Evacuation traffic without the Proposed Plan would increase travel times to most  
24 destinations, particularly towards the City of Napa. Evacuation traffic added by  
25 the Proposed Plan would increase travel times to areas beyond the evacuation  
26 areas by up to 1.2 minutes and by up to five percent, although the average  
27 increase will be 0.2 minutes (less than 15 seconds) and one percent. The  
28 Proposed Plan would reduce some travel times from the Madrone/Proposed

1 Plan area due to the planned additional connection to SR 12. The estimated  
2 changes in travel times caused by the Proposed Plan would not require changes  
3 in current evacuation routes or plans.

4 The FEIR response to comments adds, at 4861,

5 The Draft EIR evacuation analysis is adequate; it incorporates evacuation  
6 patterns from recent wildfires through coordination with local officials as well as  
7 the most recent CAL FIRE Fire Hazard Severity Zone maps. Evacuation traffic  
8 with the Proposed Plan would increase travel times to most destinations,  
9 particularly towards the City of Napa. Evacuation traffic added by the Proposed  
10 Plan would increase travel times to areas beyond the evacuation areas by up to  
11 1.2 minutes and by up to five percent, although the average increase will be 0.2  
12 minutes (less than 15 seconds) and one percent. The Proposed Plan would reduce  
13 some travel times from the Madrone/Proposed Plan area due to the planned  
14 additional connection to SR 12. The proposed project multimodal connection to  
15 SR 12 would provide an additional route for project traffic to evacuate the project  
16 site. This would reduce potential project traffic impacts on Arnold Drive which is  
17 generally a lower capacity road than State Highway 12 due to local driveway  
18 access. The two access routes would provide options and flexibility in evacuation  
19 routing in the event that one of the roads is blocked due to fire or traffic  
20 incidents. The estimated changes in travel times caused by the Proposed Plan  
21 would not require changes in current evacuation routes or plans. Thus,  
22 implementation of the Proposed Plan would not impair an emergency response  
23 or emergency evacuation plan and impacts would be less than significant.

24 However, the information on the methodology is not complete and is lacking in  
25 at least one obvious, fundamental component: the specific methodology and  
26 information used to reach the actual numbers for the travel-time results. The EIR  
27 provides no information or explanation as to the basis for the travel times provided, or  
28

1 how the analysis calculated the travel times for evacuation scenarios. As noted above,  
2 the EIR provides much detail on the assumptions about how many people would flee  
3 at given times, on the volume of traffic, and the like, but there is absolutely no  
4 explanation for how the analysis reaches the numbers. Absent this, there is no  
5 analytical route or even complete evidence. From the cited portions of the record, it is  
6 not possible for the court, the public, or, most importantly, the County's own  
7 decisionmakers to understand how the travel-time numbers were reached. The EIR  
8 therefore fails as an informative document.

9  
10  
11 The court GRANTS the petition on this point.

12 SCALE/SCT then argue that the analysis is deficient because, again, the  
13 evacuation analysis is based on policies as mitigation measures which lack  
14 performance standards or any MMRP to ensure compliance as is possible. The specific  
15 goals and policies of the Plan regarding wildfires are set forth in the EIR wildfire  
16 section at 1194-1197. This is unpersuasive. First, the analysis regarding evacuation is  
17 based on few, if any, of the goals and policies set forth, which largely involve  
18 protecting the development under the Plan, *i.e.*, the effects of the environment on the  
19 project. Most of these do not go to issues of evacuation, which SCALE/SCT  
20 discuss. SCALE/SCT also make no argument or showing as to the other wildfire  
21 criteria identified above. Accordingly, the analysis regarding evacuations, the one  
22 wildfire criterion which SCALE/SCT discuss, is not based on defective mitigations or  
23 policies. It is instead based on the evacuation analyses.

24  
25  
26  
27 SCALE/SCT take issue with the results of the analyses as to the increased  
28 evacuation time, arguing that it "defies logic that evacuation of more than 2,000 cars

1 (and potentially 3,000 or more depending on the number of Plan housing units and  
2 jobs) during a wildfire would increase travel time during an evacuation by fewer than  
3 15 seconds, as the EIR represents. (AR 1203.)” Opening Brief 29:28-30:3.

4 SCALE/SCT again have a valid point that nothing demonstrates how the travel-  
5 time numbers were reached, as discussed above. The court first notes that SCALE/SCT  
6 do not, in the courts view, explain their argument here very clearly, and they muddle  
7 the analysis by attacking the possible correctness of the figures, stating that it “defies  
8 logic” that the additional cars would only increase evacuation travel time by up to 15  
9 seconds. The court reiterates that when applying the substantial evidence standard, it  
10 must focus not upon the “correctness” of a report’s environmental conclusions, but  
11 only upon its “sufficiency as an informative document.”). *Laurel Heights I, supra*, 47  
12 Cal.3d 393. The court must resolve reasonable doubts in favor of the findings and  
13 decision. *Id.* The findings of an administrative agency are presumed to be  
14 supported by substantial evidence. The court is therefore not second-guessing travel-  
15 time results, as SCALE/SCT apparently are doing, but it does find, as SCALE/SCT also  
16 claim, that there is no explanation for the final methodology by which the analysis  
17 actually reached the travel-time results.

18 The court GRANTS the petition on this point.

19 SCALE/SCT also argue that the EIR fails to describe the baseline conditions as  
20 to evacuation, but they provide no discussion or analysis; they do not explain how it  
21 fails to do so or cite to any portion of the record which they contend shows  
22 this. Opening Brief 29:26-28. They refer to past experiences and cite accounts in the  
23 record from prior fires at Opening Brief 29:27-28, 30:5-8. However, they fail to explain  
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1 how or why the baseline description is inadequate, or with regard to what aspect of the  
2 baseline. The EIR also clearly describes baseline conditions regarding evacuation travel  
3 time, expressly giving this information at AR 1204-1205 in the chart of travel times for  
4 the area with and without evacuation and for evacuation with and without the  
5 Plan. By definition, this sets forth the baseline travel conditions by which the Plan's  
6 impacts on evacuation must be judged. The EIR also presents baseline information on  
7 evacuation in the assumptions used for the modelling, stating that the modeling is  
8 based on the behavior and evacuation conditions in recent prior fires. AR  
9 1202. Moreover, an examination of the rest of the EIR reveals that the EIR describes the  
10 environmental setting, conditions, roads, and traffic in other sections. All of this  
11 information, although set forth in different sections of the Plan and EIR, necessarily  
12 form part of the baseline conditions in which this issue is studied, and SCALE/SCT  
13 make no effort to explain how that information is lacking.  
14  
15  
16

17 Finally, SCALE/SCT contend that the analysis failed to study a scenario  
18 involving a fire approaching the area from the west. The County admits that there is no  
19 such analysis but counters that there is no requirement that it consider all possible fire  
20 scenarios and that it was not considered because it was felt to be unlikely. See AR 1199.  
21

22 The EIR states, as the County notes, that it considered only two scenarios, fire  
23 from the northeast and southeast, because they were considered "as representative of  
24 the most likely potential fires to impact Sonoma Valley given the valley's previous fire  
25 history and considering such variables including but not limited to wind speeds,  
26 direction, humidity, topography, and rate of advancement." AR 4859-4860. It claims  
27 that they were identified in collaboration with the Sonoma Valley Fire District and  
28

1 other officials, and that they represent a worst-case scenario. AR 4860. It dismisses the  
2 need to analyze a fire from the west with the statement, "Historically, a fire  
3 approaching from the west may be less likely, and therefore did not warrant further  
4 specific analysis." AR 1202.

5  
6 The County has valid points, but ultimately the EIR analysis is not sufficient.  
7 The County is correct that there is no requirement to analyze all possible scenarios, or  
8 any given number of scenarios. It could potentially be correct that there may be no  
9 need to consider a fire from the west if indeed it is sufficiently unlikely or a lesser  
10 concern than scenarios studied so that including it would add nothing meaningful.

11  
12 The problem for the County is that there is absolutely no evidence or analysis in  
13 the cited portions of the record supporting its position or for the EIR's refusal to  
14 consider a fire from the west. There is absolutely no evidence or discussion of any sort  
15 which could support the conclusion that it is unlikely or not as bad a scenario as the  
16 two studied, nor any other explanation for not considering it. In fact, the EIR simply  
17 dismisses studying such a scenario solely because it "*may be less likely.*" AR 1202,  
18 emphasis added. It not only provides no evidence or analysis which could possibly  
19 support such a conclusion, but it dismisses it with an expressly vague and  
20 noncommittal statement that it only "may" be "less" likely than the others. It does not  
21 even make the claim that it "is" less likely, or that it is in fact "unlikely," only the  
22 undefined term "less" likely.  
23  
24

25  
26 Nothing is provided to justify avoiding EIR analysis of wildfire scenario solely  
27 because it might not be as likely as the ones considered, especially when there is no  
28

1 evidence to support that contention or demonstrate any other reason why it should be  
2 ignored. Once again, the EIR fails as an informative document in this regard.

3 The court **GRANTS** the petition with respect to specific issues in the analysis of  
4 wildfire impacts noted above, but otherwise **DENIES** the petition on the other points.  
5

### 6 **Responses to Comments**

7 Petitioners next argue that the responses to comments in the FEIR are defective.  
8 The County counters that the EIR provides a sufficient response to all comments, that  
9 the level of detail required may simply correspond to the level of detail in the  
10 comment, and SCALE/SCT have “cherry-picked” a few to support their argument.  
11

12 CEQA requires the County to respond to public comments received during the  
13 statutory public-comment period. PRC 21080.5; 21091(d)(2)(A); Guideline 15088;  
14 see *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003)  
15 106 Cal.App.4<sup>th</sup> 715, 722, 732. PRC 21091(d)(2)(A) states, “With respect to the  
16 consideration of comments received on a draft environmental impact report, the lead  
17 agency shall evaluate comments on environmental issues that are received from  
18 persons who have reviewed the draft and shall prepare a written response pursuant to  
19 subparagraph (B).” Similarly, Guideline 15088(a) states, “The lead agency shall  
20 evaluate comments on environmental issues received from persons who reviewed the  
21 draft EIR and shall prepare a written response. The lead agency shall respond to  
22 comments raising significant environmental issues received during the noticed  
23 comment period and any extensions and may respond to late comments.” Guideline  
24 15088(c) specifies what responses must contain, stating, with emphasis added  
25  
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1 The written response shall describe the disposition of significant environmental  
2 issues raised (e.g., revisions to the proposed project to mitigate anticipated  
3 impacts or objections). In particular, the major environmental issues raised when  
4 the lead agency's position is at variance with recommendations and objections  
5 raised in the comments must be addressed in detail giving reasons why specific  
6 comments and suggestions were not accepted. *There must be good faith, reasoned*  
7 *analysis in response. Conclusory statements unsupported by factual information will not*  
8 *suffice.* The level of detail contained in the response, however, *may correspond to*  
9 *the level of detail provided in the comment* (i.e., responses to general comments may  
10 be general). A general response may be appropriate when a comment does not  
11 contain or specifically refer to readily available information, or does not explain  
12 the relevance of evidence submitted with the comment.

13 The court in *Laurel Heights Improvement Assn. v. Regents of University of*  
14 *California* (1993) 6 Cal.4th 1112, at 1124 (*Laurel Heights II*) reiterated that

15 In the course of preparing a final EIR, the lead agency must evaluate and  
16 respond to comments relating to significant environmental issues. [Citations.]  
17 In particular, the lead agency must explain in detail its reasons for rejecting  
18 suggestions and proceeding with the project despite its environmental  
19 effects. [Citation.] There must be good faith, reasoned analysis in response [to  
20 the comments received]. Conclusory statements unsupported by factual  
21 information will not suffice." [Citation.] Thus, it is plain that the final EIR will  
22 almost always contain information not included in the draft EIR.

23 See *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th  
24 603, at 615 (quoting and relying on *Laurel Heights II*). In *The Flanders Foundation*, the  
25 court found a CEQA violation when the FEIR included no response to a comment that  
26 mitigation possibilities were not sufficiently analyzed because the EIR failed to  
27 consider reducing the size of the parcel at issue or adding a conservation easement.  
28

1 SCALE/SCT claim that numerous comments “received non-existent or  
2 inadequate responses” and they cite a “small representative sample” on the basis that  
3 there are too many to address. Opening Brief 31. They cite the responses to several  
4 comments in Comment Letter B11 from the Sonoma Land Trust (“SLT”), B11-26, B11-  
5 29, B11-30, B11-35, and B11-39 at AR 5029-5040 and Comment Letter C191 at AR 6194-  
6 6211 from one Vicki Hill. Opening Brief 31-32.  
7

8 In the comments at issue from letter B11, the SLT asserted that the EIR lacked  
9 baseline information on specific points; failed to analyze or mitigate for noise impacts  
10 regarding wildlife and again provided detailed, specific points with explanations and  
11 citations to the EIR; missing information on stream impacts and bridge maintenance,  
12 again with specific points and citations; and argues that certain mitigation measures  
13 were improperly deferred, again giving detailed explanations. The responses to these  
14 comments are at AR 6497-6518.  
15  
16

17 The comments from Hill which SCALE/SCT address are more numerous. They  
18 raised issues regarding lack of evidence regarding the project’s scale and its apparent  
19 conflict with goals, phasing mitigation, lack of mandatory measures in the proposed  
20 policies and inability to ensure compliance, and other similar issues, all with specific  
21 points. The responses to these are at AR 7256-7292.  
22

23 As SCALE/SCT argue, these responses are inadequate. They contain boilerplate  
24 stock responses consisting of unsupported conclusions. The responses to B11 add no  
25 information and brush off the comments with basic conclusions and statements that  
26 the issues were properly analyzed, with no explanation, or with an explanation that  
27 does not actually answer the issue raised. Some of the responses do not even respond  
28

1 to points raised in the comments at all, or simply by referring to a master response  
2 which does not address the comment, such as C191-7, C191-8, and C191-26 (AR 7256-  
3 7257, 7269). The response to C191-48 simply says that the comment, addressing the  
4 adequacy of a specific policy in the Plan, is on the Plan and not on the EIR, so does not  
5 even bother answering it.  
6

7         The County argues that the master responses solve any deficiencies in the  
8 individual responses, but nothing supports this. As noted above, some individual  
9 responses cite to the master responses which purportedly address the specific  
10 comment, but for the ones which SCALE/SCT raise above, the cited master responses  
11 do not actually address the issues. For others, the individual responses give no  
12 indication that a master response applies at all, so the record indicates that none do  
13 apply to those responses. Even if they did, nothing explains which ones apply or why  
14 and the County provides no explanation or indicate which master responses might  
15 respond to the comments at issue. It simply says that the master responses cover the  
16 issues raised in comments with no further explanation or citation to the record to  
17 support a finding that any master responses resolve the defects as to these comments.  
18  
19

20         Perhaps, as the County argues, other responses are sufficient, and SCALE/SCT  
21 do not in fact challenge other specific ones, but that does not change the fact that the  
22 FEIR is defective as to those comments which SCALE/SCT do raise. Absent any other  
23 demonstration as to other comments, the court cannot find that all of the responses are  
24 defective, but it can find that the cited responses above are defective, as are responses  
25 that contend a comment addresses the Plan and not the EIR or which rely on master  
26 responses that do not answer the specific comment.  
27  
28

1 The court GRANTS the petition on this point, as limited above.

## 2 **Alternatives**

3  
4 Finally, SCALE/SCT claim that the EIR is defective because it rejected the  
5 Historic Preservation Alternative (the "Preservation Alternative") based on findings  
6 which lack support. They do not challenge the range of alternatives considered, but  
7 only the sufficiency of the analysis finding the Preservation Alternative infeasible.

8  
9 In contrast with other issues, both the County and DGS address this issue. In  
10 fact, this appears to be the focus of DGS's entire, if short, brief, as noted above. The  
11 court discussed DGS's argument above regarding mitigation measures because the  
12 analysis could arguably apply there and because DGS does not make fully clear what  
13 issues it may be addressing. That said, DGS's argument appears to be particularly  
14 directed to the issue of the alternatives analysis.

15  
16 As noted above, the agency may not approve a project that will result in  
17 significant impacts *unless it first finds that mitigation measures or alternatives are*  
18 *infeasible*. PRC section 21081; Guidelines 15091, 15093. The EIR must discuss both  
19 mitigation measures and alternatives and it is well-established that an agency may not  
20 avoid a discussion of alternatives on the basis that mitigation measures reduce any  
21 impacts to less than significant. See *Laurel Heights I, supra*, 400. When the agency  
22 determines that alternatives are infeasible, it "shall describe the specific reasons for  
23 rejecting identified ... project alternatives." Guideline 15091(a), (c). Again, "[t]he core  
24 of the EIR is the mitigation and alternatives sections." *Citizens of Goleta Valley v. Bd. of*  
25 *Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*).

1 An EIR must describe a range of reasonable alternatives to the proposed project  
2 or its location that would feasibly achieve most of the project's objectives, while  
3 reducing or avoiding any of its significant effects. Guideline 15126.6(a), (d). The  
4 discussion must evaluate the relative merits of each alternative. Guideline  
5 15126.6(a). At the same time, one need not analyze or adopt alternatives that are not  
6 feasible. Guideline 15126.6(c), (f); *Goleta II, supra*, 52 Cal.3d 564, 566. "Feasible" means  
7 able to be "accomplished in a successful manner within a reasonable period... taking  
8 into account economic, environmental, social, and technological factors." PRC section  
9 21061.1. Guideline 15091(a)(3) adds that the agency must consider "specific" economic,  
10 legal, social, technological, employment, and other considerations.  
11  
12

13 If the agency considers an alternative to be infeasible, the analysis "must explain  
14 in meaningful detail the reasons and facts supporting that conclusion." *Marin Municipal*  
15 *Water Dist. v. KG Land Corp. California* (1991) 235 Cal.App.3d 1652, 1664. On the other  
16 hand, as usual, the requirement is one of reasonableness and a "crystal ball" inquiry is  
17 not necessary. *Residents Ad Hoc Stadium Committee v. Bd. of Trustees* (3d Dist.1979) 89  
18 Cal.App.3d 272, 286. The key, as with most aspects of an EIR, is that the agency must  
19 provide enough information about the analytical path that it took to allow the court to  
20 "intelligently examine the validity of the administrative action." *Topanga Assn. for a*  
21 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.  
22  
23

24 Thus, no "ironclad rule" other than the "rule of reason" governs the  
25 decision. Guideline 15126.6(a). This requires the EIR to set forth the alternatives  
26 necessary to permit a reasoned choice and in a manner that will allow "meaningful  
27 evaluation." Guideline 15126.6(a), (d), (f); *Goleta II*; see also *Laurel Heights I, supra*; see  
28

1 also *San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155  
2 Cal.App.3d 738, 750-751 (the detail must allow a reasonable choice “so far as  
3 environmental aspects are concerned.”). Alternatives that would eliminate or reduce  
4 significant environmental impacts *must* be considered even if they would cost more or  
5 “to some degree” impede attainment of project objectives. Guideline 15126.6(b).  
6

7 Finally, the alternatives must be discussed in the EIR itself, provided for public  
8 review, and subjected to analysis. See *Friends of the Old Trees, supra*, 52 Cal.App.4th at  
9 1403-1405. The court in *Friends of the Old Trees* stated that the agency could not cure  
10 defects by providing analysis in its official response, since the alternatives must be  
11 adequately addressed in the EIR itself and subject to public comment. *Id.*, 1404,  
12 fn.11. See also *Citizens to Preserve the Ojai, supra*, 176 Cal.App.3d at 430 (information in  
13 response cannot cure EIR deficiencies).  
14

15 Ultimately, determining if alternatives are suitable involves a three-part test  
16 governed by the “rule of reason” as set forth in Guideline 15126.6. See *Citizens of Goleta*  
17 *Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*); *Save San Francisco*  
18 *Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10  
19 Cal.App.4th 908, 919. The analysis must consider alternatives that 1) may “attain most  
20 of the basic objectives of the project,” 2) reduce or avoid the project’s impacts, and 3)  
21 are “potentially feasible.” Guideline 15126.6(a), (f).  
22

23 “Thus, for example, a lead agency may reject an alternative as infeasible because  
24 it cannot meet project objectives, as long as the finding is supported by substantial  
25 evidence in the record.” *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208  
26 Cal.App.4th 899, 949.  
27  
28

1           However, evidence simply showing increased costs is not sufficient to support a  
2 finding that the alternative is not feasible; the evidence must be sufficient to show that  
3 the additional cost actually makes it impractical. *Citizens of Goleta Valley v. Board of*  
4 *Supervisors (Goleta I)*, (1988) 197 Cal.App.3d 1167, 11780-1181, 1189. In *Goleta I*, the EIR  
5 considered a smaller hotel to be an economically infeasible alternative to the proposed  
6 hotel at issue. Because the EIR lacked *evidence* that the smaller hotel was economically  
7 infeasible, the court considered it an error to deny the writ of mandate. The court  
8 found that although the EIR contained estimated figures of costs, the record did not  
9 reveal any *evidence* or analysis of the alternative in terms of comparative costs,  
10 comparative profits or losses, or comparative economic benefit to the project  
11 proponent, residents, or the community at large. *Id.*, 1180. Thus, no *meaningful*  
12 conclusions regarding the feasibility could have been reached. *Id.* The court concluded  
13 that the fact that an alternative may be simply less profitable or more expensive *is not*  
14 *sufficient* to show that the alternative is financially infeasible; the record requires  
15 evidence that the additional costs or lost profitability are severe enough to render the  
16 project impractical. *Id.*, 1181. The court also held that it was unreasonable, and error,  
17 for the EIR not to consider another location for the hotel, in spite of the fact that the  
18 project proponent did not own any other locations. *Id.*, 1189.

19           Preliminarily, the EIR notes that the Site is in the designated Sonoma State Home  
20 Historic District (“SSHHD”), eligible for inclusion in the National Register of Historic  
21 Places (“NRHP”) and the California Register of Historic Resources (“CRHR”) and as a  
22 designated California Landmark. AR 781, 799, 1082. It includes two individual  
23 resources listed on the National Register of Historic Places, the Main Building and  
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1 Sonoma House. AR 781, 799, 1082. It contains 75 identified contributing historic  
2 resources. AR 799-800.

3 The impact analysis on historic and cultural resources is found in the EIR at AR  
4 802-820. As noted above, the EIR concludes that the Plan will result in unavoidable,  
5 significant impacts to historic resources through the destruction of historic buildings  
6 and other features, and construction, all fundamentally destroying the cohesiveness of  
7 the historic site and elements which remain, thereby threatening its status as a historic  
8 district. AR 541, 815.

9  
10  
11 The County in its brief sites to its own findings on alternatives at AR 43-44. This  
12 shows that it rejected the Preservation Alternative based on a finding that it was not  
13 financially feasible. AR 43-44. The finding states, in full,

14 As described in Chapter 4 of the Draft EIR, because complete preservation and  
15 restoration of all existing buildings in the Planning Area is not financially  
16 feasible this alternative will be less economically viable and would therefore not  
17 meet project objectives such as the objective to "Ensure Long-Term Fiscal  
18 Sustainability." This alternative would not support key project objectives related  
19 to increased housing supply and varied housing opportunities (e.g., "Support  
20 Housing Development and Provide a Variety of Housing Types"), community  
21 vibrancy (e.g., "Promote a Vibrant, Mixed-Use Community"), and long-term  
22 fiscal stability to the same degree as the Proposed Plan (e.g., "Ensure Long-Term  
23 Fiscal Sustainability"). Thus, this alternative would not meet sufficient project  
24 objectives and would not achieve the underlying project purpose. The Board of  
25 Supervisors therefore rejects the Historic Preservation Alternative as undesirable  
26 and infeasible and declines to adopt this alternative pursuant to the standards in  
27 CEQA and the CEQA Guidelines.  
28

1 The finding thus relies solely on the analysis in the alternatives section of the  
2 EIR. It adds no other analysis and refers to no other information or discussion  
3 regarding this alternative.

4 The EIR's alternatives analysis is contained in Chapter 4, AR 1211, et seq., and  
5 summarized in ES.3 at AR 530-534. The summary of the Preservation Alternative is at  
6 AR 532, the full description is at 1219-1220, and the impacts analysis is at 1248-  
7 1257. There is a brief summary at Table 4.1-1 on AR 1221 and a summary of its impacts  
8 in Table 4.5-1, setting forth impacts of alternatives, at AR 1259-1264.

9 The EIR identifies the Preservation Alternative as the environmentally superior  
10 alternative. AR 534, 1257-1264. It will have similar impacts to the reduced- or no-  
11 project alternatives but will avoid the significant impacts on historic resources. AR 534,  
12 1257-1264. This alternative would still include housing and commercial development  
13 but would involve a reduction in the development while preserving more of the  
14 existing buildings and overall cohesion. It would allow a reduced housing and  
15 commercial development with about 450 housing units to the Plan's envisioned total of  
16 1,000, about 1,080 residents to the Plan's vision of 2,400, and about 600 jobs to the Plan's  
17 anticipated 940. AR 1219-1221. As explained at AR 1219-1220, it would

18 focus on adaptively reusing existing buildings to the maximum extent and  
19 limiting development to within the current built footprint of the SDC facility  
20 (Core Campus) as with the other alternatives while incorporating existing  
21 sustainable features of the Proposed Plan (e.g., microgrid). Further, because the  
22 historic character of the existing buildings within the Sonoma State Home  
23 Historic District would be retained as much as possible, intensity and density of  
24 future development would be more constrained than with the Proposed Plan.  
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1 The reduced construction would also generate reduced construction-related  
2 impacts such as pollution and noise. AR 1220. There would be a roughly similar mix  
3 of land uses, but with lower density. *Ibid.* The description claims that the need to  
4 generate housing units in light of the expense of adapting some of the existing historic  
5 buildings to housing would most likely result in some new housing construction,  
6 which would "prioritize market rate housing units over affordable housing units in  
7 order to generate adequate financial returns, undermining the State mandate and  
8 project objectives to promote affordable housing." AR 1220.  
9

10  
11 The analysis states that this alternative would result in fewer housing units and  
12 jobs and "previous analysis has demonstrated that because existing buildings were not  
13 designed for residential uses, construction related to adapting these buildings to the  
14 desired uses will still be needed. Furthermore, complete preservation and restoration of  
15 all existing buildings in the Planning Area is not financially feasible, and thereby  
16 contrary to the economic objectives codified in State law (Government Code Section  
17 14670.10.5)." AR 1220. Footnote 141 references a report indicating that rehabilitation  
18 and adaptive reuse of buildings is "generally more expensive than new  
19 construction."  
20 AR 1220.  
21

22 There is no data, analysis, fiscal comparisons, or other data, in either the finding  
23 on the Preservation Alternative or the EIR alternatives section which is sufficient to  
24 show that it is infeasible, and the discussion includes assumptions or assertions which  
25 on their face appear arbitrary, groundless, and even in conflict with the evidence in the  
26 record. These discussions fail to show even the amount of increased cost, much less  
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1 anything drawing an actual comparison between the alternative and the Plan. They  
2 contain unsupported assumptions about what only *may* be and even these are vague.

3         The EIR dismisses this alternative as failing to support the goal of providing  
4 affordable housing, stating that new construction would *most likely* focus on market-  
5 rate housing. But evidence does not support this conclusion. First, the EIR provides no  
6 evidence or analysis supporting the assumption that new construction would focus on  
7 market-rate housing, and fails to take into account that, even if this were true, some of  
8 the existing buildings may potentially be converted to affordable housing. It *claims* that  
9 this is more expensive, or some buildings may not be well suited to housing uses, but it  
10 provides no evidence or analysis to support this claim. It *claims* that “existing buildings  
11 were not designed for residential uses,” but provides no evidence to support even this  
12 assumption, while the information in the record is clearly to the contrary.

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14  
15         The County’s own Plan and its April 5, 2019, Summary Report on the Plan (the  
16 “April 2019 Summary”) contradict this contention on their faces. As noted, the  
17 County’s April 2019 Summary states that when the SDC closed in 2018, it still had  
18 “over 400 residents.” AR 17; see also Govt. Code 14670.10.5 (stating that residents were  
19 relocated upon closure). The April 2019 Summary also states that the Site contains  
20 “about 140 buildings within the core campus comprising over 1.3 million square feet of  
21 administrative office buildings, *congregate care buildings, and private residences* built  
22 between the 1800s and 1990s.” AR 19, emphasis added. The Plan states that the SDC  
23 “served an estimated 3,700 *residents* at its peak... in 1960.” AR 73, emphasis  
24 added. The record is thus clear that the County’s claim that existing buildings are not  
25 suited to residential purposes is at best not entirely correct and is utterly inaccurate.  
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1           There is *no* evidence in any portion of the record to which a party has cited  
2 which indicates how many private residences or other buildings used for residential  
3 purposes survive, how practicable it is to adapt them to new residential purposes, or  
4 the like. The court further notes that this means that the existing buildings were  
5 evidently sufficient to house 3,700 people, more than thrice the number which the EIR  
6 claims the Preservation Alternative could accommodate with new housing  
7 construction. It is possible, perhaps likely, that some number of these existing  
8 buildings could not be converted actually or feasibly into proper residential uses now,  
9 or that they could not themselves house the number which they used to house when  
10 functioning as the SDC. That possibility, however, is immaterial given the lack of  
11 analysis or evidence supporting any such finding.  
12

13  
14           The record, including the Plan, EIR, and other documents, indicates on its face  
15 an obvious potential for the Preservation Alternative to house far more people, and at  
16 less cost or construction, than the EIR's analysis assumes, and no evidence or analysis  
17 addresses this issue. Not only does the record as cited contain no evidence to support  
18 the infeasibility finding, but what evidence it does contain *actually contradicts* the  
19 statements in the County's infeasibility finding.  
20

21  
22           The analysis of the alternative also claims that "complete preservation and  
23 restoration of all existing buildings" is not feasible. This statement also has no  
24 support. There is neither evidence nor explanation, including as to why "complete"  
25 preservation of "all" buildings, even if infeasible, is necessary to achieve the  
26 Preservation Alternative's fundamental points and avoid a significant impact on  
27 historic resources. Therefore, finding the alternative to be infeasible is based not only  
28

1 on unsupported conclusions about infeasibility, but on an unsupported conclusion  
2 about what is needed for the alternative or what the alternative would actually entail.

3 The discussion in the EIR, and the County's findings on the alternatives are thus  
4 bereft of substantial evidence or an analytic route to support infeasibility.  
5

6 The County and DGS in their opposition papers cite to some additional portions  
7 of the record. These are outside the EIR alternatives discussions or the County's  
8 findings, and they are portions of the record which the EIR analysis and findings on  
9 alternatives do not mention.  
10

11 The County and DGS both cite to Master Response 8 ("MR8"), a response to  
12 comments on the Preservation Alternative, at AR 4874. This states,

13 The Historic Preservation Alternative has a very large financial feasibility gap  
14 (about \$140 million)—more than \$400,000 per market rate housing unit (more  
15 than four times that of the Project)—that renders its viability questionable. Many  
16 existing buildings are deteriorating (for example, the iconic Main Building is no  
17 longer structurally safe to enter because of extensive water damage), and delays  
18 in implementation could result in loss of resources and additional restoration  
19 costs. The State and Sonoma County entered an agreement in 2019 where the  
20 State of California allocated \$40 million for three years of maintenance of the  
21 shuttered campus. The State has not allocated any additional funds for the  
22 maintenance.

23 Aside from noting that historic "preservation per se is not a priority objective  
24 established by" Section 14670.10.5, MR8 provides only general observations or  
25 conclusions such as the statement that the Preservation Alternative provides less than  
26 half of the overall units, and less affordable housing, than the Plan. AR 4875. This  
27 statement is no different from the unsupported conclusion in the alternatives analysis  
28

1 and also lacks any supporting evidence or explanation. It is devoid of any other  
2 information or analysis on feasibility.

3         The court notes that MR8 does cite *one, and only one*, specific example of the costs  
4 for a building which needs significant rehabilitation: the Main Building. It briefly  
5 presents this as its sole example demonstrating the supposed infeasibility of preserving  
6 the Site's buildings. Ironically, this building *is to be kept and rehabilitated* under all  
7 scenarios, including the Plan itself as adopted and other options discussed more  
8 below. See AR 373, 525-526, 584-586, 591, 8791. The Plan and EIR repeatedly and  
9 expressly state that the Plan *will preserve and reuse both the Main Building and the Sonoma*  
10 *House complex*. AR 525-526, 584-586, 591. Preserving and rehabilitating these is, in fact,  
11 expressly identified as both one of the Plan's specific "Objectives" and one of the Plan's  
12 "Guiding Principles." AR 525-526, 585-586. The EIR states that the Main Building is  
13 also itself a National Historic Landmark. AR 572. The EIR explains that the Main  
14 Building and Sonoma House will be "repurposed for contemporary uses." AR 584. The  
15 resolution by which the County approved the Plan also states that these buildings will  
16 be preserved. AR 373. An analysis of different development options, discussed more  
17 below, also expressly proposes preserving and reusing the Main building under all the  
18 options discussed. AR 8791, 15933-16066.

19         Accordingly, the *only* example of the alleged infeasibility of preservation and  
20 rehabilitation is of one of the few buildings which will be kept, and which the County  
21 thus has found feasible to preserve. Given that this building will be rehabilitated, and  
22 that the County found it feasible to do so, evidence of its expense cannot be substantial  
23 evidence, or evidence at all, of the infeasibility of the Preservation Alternative.  
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1           Otherwise, MR8 states, again without evidence, that many existing buildings are  
2 deteriorating. This conclusion is unsupported by evidence or explanation, is highly  
3 generalized and vaguely descriptive, repeating the same assertions discussed above.  
4

5           The only statement of any specific import in MR8 is that the Preservation  
6 Alternative has a “feasibility gap” of about \$140 million and therefore “more than  
7 \$400,000 per market rate housing unit (more than four times that of the Project)—that  
8 renders its viability questionable. Again, this statement is devoid of evidence or  
9 analysis; an assumption with no basis. Moreover, there is no explanation for what this  
10 statement means or how it makes the alternative infeasible.  
11

12           The County and DGS also argue that Section 14670.10.5 lacks any requirement to  
13 preserve the old SDC buildings as historic resources. This was an intentional decision,  
14 DGS asserts, given that the Legislature intends to conserve the natural resources and  
15 the Eldridge Cemetery. While this may be a factor for the County to consider, it does  
16 not explain how or why the Preservation Alternative is not feasible.  
17

18           AR 2054, which DGS cites, is part of the EIR Appendix G on Soil Analysis. As  
19 noted in the mitigations section above, this is a summary of regulated, or harmful,  
20 materials in the Site’s listed buildings. It states what such materials are present without  
21 providing information on costs or how this affects the feasibility of the Preservation  
22 Alternative. This evidently is because this section is limited to soil analysis and  
23 provides no discussion on preservation or rehabilitation of buildings, much less any  
24 information on the Preservation Alternative. The court further notes that the  
25 discussion in this section is limited to contamination. On the face of the record,  
26 amelioration of any soil contamination would evidently be required for the Plan as well  
27  
28

1 as for the Preservation Alternative, since this is a problem with the Site as a whole, and  
2 not the buildings to be preserved. Nothing indicates the contrary.

3 The County and DGS also cite to the Financial Feasibility Analysis (the "FFA")  
4 in a November 2021 Alternatives Report. The County cites the copy at AR 15933-16066,  
5 and specifically to 16013, while DGS cites the copy at AR 8807, which is the same as  
6 AR 16013. This report contains a little information which is somewhat more  
7 meaningful, setting forth the approach to analysis of the alternatives discussed in that  
8 report, with general feasibility challenges and at least some explanation as to the  
9 actual costs of rehabilitating existing buildings.  
10  
11

12 Prepared by a consulting firm of planners, it discusses three alternatives.  
13 Preliminarily, it is important to note that *these* alternatives, A, B, and C, do not  
14 correspond specifically to the Plan or any of the "alternatives" discussed in the EIR;  
15 they are evidently different proposals the consultants prepared for the Plan and not for  
16 the EIR analysis. AR 8727-8854. Alternative A seems most closely to resemble the  
17 Preservation Alternative since it is described as including the most rehabilitation and  
18 preservation of existing buildings and other elements. AR 8756-8766, 8791.  
19

20 The key information on which DGS apparently relies is the statement that  
21 rehabilitating the Main Building "is estimated to range from \$17 million to \$32  
22 million." The only other figures given on this page are statements that under  
23 Alternatives A and B, the "residual value to purchase the property" would be about \$2  
24 million to \$2.3 million while under C it would be about \$24 million," apparently an  
25 estimate of the cost warranted to purchase the property as it is. No party cites this  
26  
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28

1 statement, and it does not appear to apply to this analysis. Otherwise, 8807 contains a  
2 general discussion of costs and challenges associated with development.

3           Although no party cites it, the court notes that the following page, at AR 8808,  
4 sets forth additional information regarding the A, B, and C alternatives. The  
5 information only vaguely corresponds to the Preservation Alternative and the  
6 approved Plan. While the import of this information is thus not clearly applicable, the  
7 court finds it appropriate to note. Amongst other numbers, this shows the most  
8 preservation-focused option, A, has a “net residential value” of \$84,123,000, while the  
9 least preservation-oriented, C, has a value of \$105,827,000. Nothing indicates that these  
10 figures are meaningful to this analysis, but, if they are, they appear to indicate that the  
11 Preservation Alternative is potentially feasible, and nothing in the record is contrary.  
12

13  
14           It is significant that the discussion in the FFA on which the County and DGS rely  
15 simply repeats a variation of the key fact in MR8 at 4874-4875: both focus on the costs of  
16 rehabilitating the historic Main Building as the only specific example of costs. Yet not  
17 only is this a sole specific example, but, as discussed, it is one of the existing buildings  
18 *which would be kept and rehabilitated* under all scenarios, including all alternatives in the  
19 FFA and the adopted Plan itself. See AR 373, 525-526, 584-586, 591, 8791.  
20

21  
22           As for the entirety of DGS’s arguments, it contends that “most” of the buildings  
23 are falling into disuse and in a state of disrepair, raising concerns of safety and cost,  
24 citing AR 43-44, 2054, 8807, 4874-4875, discussed above. DGS argues without citation to  
25 the record or supporting evidence that preserving these buildings or converting them  
26 to residential or other uses would be contrary to the Legislature’s express goals and the  
27 efforts of the County to  
28

1 reduce uncertainty, increase land values, expedite marketing, and maximize  
2 interested third-party potential purchasers" (§ 14670.10.5, subd. (c)(2)) for future  
3 development that must include critically needed affordable housing (id. at subd.  
4 (c)(4)). It would also conflict with the statute's twin land use goals of housing  
5 and open space conservation if future development were constrained by the  
6 footprint and layout of the old SDC buildings. The buildings are specially  
7 clustered and designed for their prior SDC uses. Due to these constraints, a  
8 requirement to preserve them would significantly reduce the number of housing  
9 units and project feasibility — or, more likely, expand the development footprint  
10 into the open space acreage otherwise being conserved.

11 DGS cites to no substantial evidence supporting the conclusions. The citations to  
12 the record which it presents are all discussed above.

### 13 **Conclusion: Alternatives**

14 The EIR and the entirety of the cited portions of the record are wholly devoid of  
15 anything resembling either substantial evidence or the analytical route which could  
16 support the finding that the Preservation Alternative is infeasible.  
17

18 The court GRANTS the petition on this issue of alternatives analysis.

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**EXHIBIT B**

1 Susan Brandt-Hawley / SBN 75907  
2 BRANDT-HAWLEY LAW GROUP  
3 P.O. Box 1659  
4 Glen Ellen, CA 95442  
5 707.938.3900  
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7 Attorney for Petitioners

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SONOMA

10 Sonoma County Advocates  
11 for a Liveable Environment, a  
12 California unincorporated  
13 association; and Sonoma County  
14 Tomorrow, a California non-profit  
organization;

15 Petitioners;

16 v.

17 County of Sonoma;

18 Respondent;

19 \_\_\_\_\_ /  
20  
21 California Department of  
22 General Services, et al;

23 Real Parties in Interest.  
24 \_\_\_\_\_ /  
25  
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Case No. SCV-272539

**Peremptory Writ of Mandamus**

**CEQA CASE**

Assigned for All Purposes  
Honorable Bradford DeMeo

1 **To the County of Sonoma and to**  
2 **the California Department of General Services:**

3 Judgment having been entered in this action ordering that a Peremptory Writ of  
4 Mandamus issue from this court:

5 **1. THE COUNTY OF SONOMA AND CALIFORNIA DEPARTMENT OF**  
6 **GENERAL SERVICES ARE COMMANDED** upon service of this Writ:

7  
8 a.) As to the County, not to approve any entitlements that rely on the SDC  
9 EIR or the SDC Specific Plan ("SDC Approvals") or to allow physical actions at the  
10 Sonoma Developmental Center that rely on the SDC Approvals;

11  
12 b.) As to DGS, not to allow physical actions at the Sonoma Developmental  
13 Center that rely on the SDC Approvals.

14 **2. THE COUNTY OF SONOMA IS FURTHER COMMANDED**, based on  
15 violations of CEQA, to void its certification of the SDC EIR and to set aside all of its  
16 SDC Approvals within 90 days of service of this Writ; to wit:

17  
18 a.) Resolution 22-0555 (AR 26-57), certifying the EIR for the SDC Specific  
19 Plan Project, adopting findings pursuant to CEQA, and adopting a Statement of  
20 Overriding Consideration.

21  
22 b.) Resolution 22-0556 (AR 58-501), approving a General Plan amendment  
23 and adopting the SDC Specific Plan for the SDC Specific Plan Project in Sonoma Valley.

24  
25 c.) Ordinance 6400 (AR 502-511), amending portions of the Sonoma  
26 County Zoning Code related to the SDC Specific Plan by adopting SDC Specific Plan  
27 zoning and applying it to the SDC property, and establishing allowed land uses and  
28 development standards pursuant to the SDC Specific Plan.

1           **3. THE COUNTY OF SONOMA IS FURTHER COMMANDED** to file a  
2 Preliminary Return to Writ within 105 days of service of this Writ describing actions  
3 taken by that date to comply with the Writ.  
4

5           **4. THE COUNTY OF SONOMA IS FURTHER COMMANDED**, before  
6 approval of a revised SDC Specific Plan, to prepare and certify a revised SDC EIR  
7 adequately addressing each issue listed in the Judgment as a basis for the court's grant  
8 of the petition.  
9

10           **5. THE COUNTY OF SONOMA IS FURTHER COMMANDED** to provide  
11 SCALE/SCT at least 45 days to provide objections to a proposed Final Return to Writ.  
12 During that time, the County shall meet and confer with SCALE/SCT to attempt to  
13 resolve issues, if any, as to the adequacy of that Return to satisfy the Judgment. The  
14 County will not seek an order to discharge the Final Writ until after SCALE /SCT's  
15 45-day review and the required meet and confer.  
16

17           The court will retain jurisdiction to discharge the Writ following its  
18 determination that the County has complied with each mandate of the Judgment.  
19

20  
21           Nothing in this Writ shall limit the discretion legally vested in the County or the  
22 California Department of General Services.

23 Date: \_\_\_\_\_, Clerk  
24

25  
26 by: \_\_\_\_\_, Deputy Clerk  
27  
28

3 **PROOF OF SERVICE**

4 I am a citizen of the United States and a resident of the County of Sonoma. I am  
5 over the age of eighteen years and not a party to this action. My business address is  
6 P.O. Box 1659, Glen Ellen, CA 95442.

7 On September 25, 2024, I served one true copy of:

8 **Proposed Judgment Granting Petition for Peremptory Writ of Mandamus**

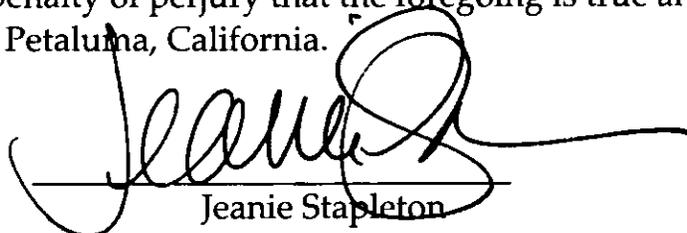
- 9  By placing a true copy enclosed in a sealed envelope with prepaid postage,  
10 in the United States mail in Petaluma, California, to the persons listed below.  
11  By electronic service via OneLegal on counsel as listed below.  
12  By emailing a copy to counsel as listed below.

13 **Sita Kuteira** **sita.kuteira@sonoma-county.org**  
14 Deputy County Counsel  
County of Sonoma

15 **Ginetta L. Giovinco** **ggiovinco@rwglaw.com**  
16 **David M. Snow** **dsnow@rwglaw.com**  
17 Richards, Watson & Gershon  
18 *Attorneys for Respondent, County of Sonoma*

19 **Andrew R. Contreiras** **andrew.contreiras@doj.ca.gov**  
20 Office of the Attorney General  
21 *Attorneys for Real Party in Interest, California Department of General Services*

22 I declare under penalty of perjury that the foregoing is true and is executed on  
23 September 25, 2024, at Petaluma, California.

24   
25  
26 Jeanie Stapleton  
27  
28