

**FILED**  
Superior Court of California  
County of Placer

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Jake Chatters  
Executive Officer & Clerk  
By: M. Taylor, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

CONCERNED CITIZENS FOR  
COMMUNITY AND PUBLIC LANDS,

Petitioner,

vs.

COUNTY OF PLACER;

Respondent;

DOES 1 to 10

Real Party in Interest.

Case No.: S-CV-0043035

RULING ON PETITION FOR WRIT OF  
MANDATE

1           Petitioner Concerned Citizens for Community and Public Lands'  
2 petition for writ of mandate came on regularly for hearing on November 6,  
3 2020. Amy Minter, Esq. and Sunjana Supekar, Esq. appeared on behalf of  
4 petitioner. Clayton Cook, Esq. and Eric Brumfield, Esq. appeared on behalf  
5 of respondent County of Placer ("the County"). The court has considered  
6 the record, the moving and opposing papers filed by the parties, and the  
7 oral arguments of counsel. The court rules on the matters submitted, as  
8 set forth below.

9                           Motion to Augment and Request for Judicial Notice

10          Petitioner's motion to augment administrative record is granted.

11          The County's request for judicial notice is granted.

12                           Factual and Procedural Background

13          Petitioner challenges the County's approval of the Placer County  
14 Government Center Master Plan Update Project ("the Project") for the 200-  
15 acre DeWitt Center in North Auburn. The Project seeks to establish a long-  
16 term vision and facilities planning guide for capital improvement projects  
17 on the Placer County Government Center ("PCGC") campus, with a 20-year  
18 planning horizon. (Administrative Record ("AR") 211.) The Project  
19 includes various land use and development changes to develop County  
20 facility buildings, residential, and private commercial uses. (AR 223.)

21          In total, 66 acres of the Project site are located within the DeWitt  
22 General Hospital Historic District ("the Historic District"). (AR 218.) The  
23 DeWitt General Hospital complex was listed on the National Register of  
24 Historic Places as a Historic District in 2015. (AR 8928.) The Historic  
25 District has historical significance due to its creation in 1943 as an Army  
26 hospital during World War II, its subsequent conversion to a state mental  
27 hospital where acclaimed artist Martín Ramírez produced more than 450  
28 drawings and collages, and its unique design as a pavilion plan hospital.

1 (AR 8928, 8947, 8965-8967.) The Historic District consists of 50  
2 contributing buildings and structures, including a theater, chapel,  
3 gymnasium, and swimming pool. (AR 8931-8932.) The Project  
4 contemplates eventual demolition of 35 out of the 50 contributing  
5 resources to the Historic District, including the auditorium, theater, patient  
6 wards, gymnasium, and swimming pool. (AR 405-406, 413, 18486.)

7 On September 6, 2017, the County issued a Notice of Preparation of  
8 Draft Environmental Impact Report for the Project. (AR 976-984.) On  
9 November 19, 2018, the County released the Draft Environmental Impact  
10 Report ("DEIR") which included a program EIR for the Master Plan Update  
11 and a project EIR for a multi-family residential project and the Health and  
12 Human Services Building. (AR 211, 4758-4759.) The Planning Commission  
13 held a public hearing on the DEIR on December 13, 2018. (AR 5910,  
14 5912.) The County released the Final Environmental Impact Report  
15 ("FEIR") on February 25, 2019. (AR 4707.) The Planning Commission held  
16 a public hearing on the FEIR on March 14, 2019. (AR 5866-5867.) After  
17 considering public comment, the Planning Commission voted to recommend  
18 certification of the EIR and approval of the Project to the Placer County  
19 Board of Supervisors. (AR 5903-5908.) The Board held public hearings on  
20 the Project on April 9 and April 23, 2019. (AR 5857, 5801.) The Board  
21 approved a modification to the development standards, sunseting on July  
22 1, 2021, to require a public hearing prior to demolition of the theater. (AR  
23 5801.) After close of public comment, the Board certified the FEIR, and  
24 voted to approve the Project. (AR 5801.) On April 24, 2019, the County  
25 filed a Notice of Determination. (AR 1-2.)

26 Petitioner filed the present action on May 22, 2019, alleging violations  
27 of the California Environmental Quality Act ("CEQA") and the Surplus Land  
28 Act ("SLA").

## Discussion

### CEQA Violations

#### Standard of Review

An EIR is presumed to be adequate under CEQA. (Public Resources Code section 21167.3.) Based on this presumption, petitioner has the burden of proving the EIR is inadequate. (*Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 836; *Cal. Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 613-614.) The court's inquiry when reviewing an agency's compliance with CEQA is to determine whether there was a prejudicial abuse of discretion. (Public Resources Code section 21168.5; *see also Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511.) In conducting this review, the court looks to whether the agency has not proceeded in a manner required by law or whether there is a determination that is not supported by substantial evidence. (Public Resources Code sections 21168, 21168.5; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426-427.)

Where the error is one of improper procedure, a showing that the agency's failure to follow the law is prejudicial or presumptively prejudicial requires the determination to be set aside. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at 435.) "Courts must 'scrupulously enforce all legislatively mandated CEQA requirements.'" (*Cal. Native Plant Society v. City of Rancho Cordova, supra*, 177 Cal.App.4th at 984.) An EIR will only be found legally inadequate and subject to independent review for procedural error where it omits information required by CEQA and necessary for an informed discussion. (*Id.* at 986.) "[T]he omission of required information constitutes a failure to proceed in the manner required by law where it

1 precludes informed decision-making by the agency or informed  
2 participation by the public. [Citation..]" (*Id.* at 987.)

3 An agency's substantive factual conclusions are given greater  
4 deference and such conclusions are reviewed for substantial evidence.  
5 (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at 512.) "Substantial  
6 evidence" is "evidence of ponderable legal significance, reasonable in  
7 nature, credible, and of solid value, evidence that a reasonable mind might  
8 accept as adequate to support a conclusion." (*American Canyon*  
9 *Community United for Responsible Growth v. City of American Canyon*  
10 (2006) 145 Cal.App.4th 1062, 1070.) With these principles, in mind, the  
11 court turns to the contentions argued by petitioner in its moving papers.

12 Infeasibility Findings With Respect to Alternatives 2 and 3

13 The EIR selected two alternatives for analysis, in addition to the No  
14 Project Alternative. (AR 927-932.) Alternative 2 [Greater Historic District  
15 Retention through Increased Residential Intensity Alternative] sought to  
16 reduce impacts to the Historic District by increasing the intensity of  
17 proposed residential land uses. The increased intensity would be achieved  
18 by increasing building heights and introducing three parking structures.  
19 (AR 929-930.) Alternative 2 would retain 28 out of 50 contributing  
20 structures to the Historic District. (AR 947.)

21 Alternative 3 [Greater Historic District Retention through Increased  
22 Non-Residential Intensity] sought to reduce impacts to the Historic District  
23 by increasing the intensity of new non-residential uses. The increased  
24 intensity would be achieved by increasing building heights and introducing  
25 two parking structures. (AR 931.) Alternative 3 would retain 29 out of 50  
26 contributing structures to the Historic District, but would result in 166 less  
27 dwelling units than the proposed project. (*Id.*) Alternative 3 would also  
28 require relocation of the Health and Human Services building. (AR 96.)

1 The EIR notes that Alternatives 2 and 3 would substantially reduce  
2 the Project's adverse impacts on the Historic District. (AR 947, 954.)  
3 However, the EIR concludes that Alternatives 2 and 3 would still result in  
4 significant and unavoidable impacts to cultural resources, since both  
5 Alternatives would result in the demolition of contributors to the Historic  
6 District. (AR 959.)

7 Under Public Resources Code section 21081(a)(3), a public agency  
8 must make a finding that less impactful alternatives to the Project are  
9 infeasible in order to reject such alternatives. When the alternative would  
10 eliminate or substantially lessen an impact that remains significant under  
11 the project, the public agency must make findings "describ[ing] the specific  
12 reasons for rejecting" those alternatives. (CEQA Guidelines, section  
13 15091(c).) Petitioner asserts that the County failed to make findings  
14 describing the specific reasons for rejection of Alternatives 2 and 3. "[T]he  
15 omission of required information constitutes a failure to proceed in the  
16 manner required by law where it precludes informed decision-making by  
17 the agency or informed participation by the public." (*Cal. Native Plant*  
18 *Society v. City of Rancho Cordova, supra*, 177 Cal.App.4th 957, 987.) Such  
19 a procedural violation is reviewed *de novo*. (*Id.*)

20 When alternatives are rejected, the "EIR must explain why each  
21 suggested alternative either does not satisfy the goals of the proposed  
22 project, does not offer substantial environmental advantages[,], or cannot  
23 be accomplished." (*Save Round Valley Alliance v. County of Inyo* (2007)  
24 157 Cal.App.4th 1437, 1458 (internal citation omitted); CEQA Guidelines,  
25 section 15091(c).) In determining the nature and scope of alternatives to  
26 be examined in the EIR, the agency is guided by the doctrine of feasibility.  
27 (*Id.* at 1457.) "Feasible" in this context means "capable of being  
28 accomplished in a successful manner within a reasonable period of time,

1 taking into account economic, environmental, social, and technological  
2 factors.” (*Id.*, citing Public Resources Code section 21061.1.) Appropriate  
3 factors to be considered with respect to alternatives are site suitability,  
4 economic viability, availability of infrastructure, general plan consistency,  
5 other plans or regulatory limitations, jurisdictional boundaries (projects  
6 with a regionally significant impact should consider the regional context),  
7 and access to, acquisition and/or control of the alternatives site. (*Id.*;  
8 CEQA Guidelines, section 15126.6(f)(1).) Feasibility includes “desirability”  
9 to the extent that an agency’s determination of infeasibility represents a  
10 reasonable balancing of competing economic, environmental, social, and  
11 technological factors supported by substantial evidence. (*City of Del Mar v.*  
12 *City of San Diego* (1982) 133 Cal.App.3d 410, 417.)

13 With respect to Alternative 2, the DEIR states:

14 Development of this alternative included consideration of  
15 increasing residential uses on the western portions of the project  
16 site ... and increasing the density of the residential uses  
17 proposed for the southwest corner of the project site. These  
18 concepts were rejected from further consideration because of  
19 their potential to increase environmental impacts, including  
20 creating land use conflicts between the residential and  
21 government office land uses, increased visual impacts and  
22 change in visual character, and additional loss of biological  
23 resources in the southwest corner of the site.

24 (AR 0931.)

25 The DEIR further states:

26 Due to the long period of their vacancy, these buildings have not  
27 been maintained for use and would require a substantial degree  
28 of rehabilitation to be usable. Due to the nature of 75 year-old

unreinforced brick wall and wood-framed roof structure that is associated with the original semi-permanent construction type of the DeWitt General Hospital, most of the buildings within the historic district would require extensive structural and building-wide systems upgrades, hazardous materials abatement, and ADA improvements to meet new functional and programmatic needs, requirements of the California Building Code, in accordance with the Secretary of the Interior Standards for Historic Buildings. Modifications would be required for each of the structures to provide for the health, safety and welfare of the building occupants. The specific extent of the modifications necessary for each structure would be based on the proposed use and the existing conditions of the building.

(AR 928.) The DEIR adds that Alternative 2 would require modification of proposed Development Standards in order to increase the maximum allowable building height to permit five-story buildings. (AR 931.) In response to comments, the FEIR also states:

Alternative 2 was developed to increase the intensity of residential land uses within the project site such that the County's project objectives could be attained while reducing the amount of demolition that would occur within the DeWitt General Hospital Historic District...Alternative 2 was not chosen as the environmentally preferred alternative because land use impacts would be increased compared to the proposed project, although they would remain less than significant, and because Alternative 2 would not avoid any of the project's significant and unavoidable impacts...[T]he increased land use impact was identified as a result of the increased residential building height



1 (up to five stories) and introduction of structured parking in the  
2 southeastern portion of the project site. These factors could lead  
3 to, among other things, land use conflicts with the neighboring  
4 single-family residential subdivision.

5 (AR 3649-3650.)

6 With respect to Alternative 3, the DEIR notes that it would decrease  
7 the number of dwelling units within the Project site, reducing the degree to  
8 which the Project supports the County's attainment of General Plan housing  
9 goals. (AR 952-953, 307-309, 932-933.) In response to comments, the  
10 FEIR states:

11 Relocating the Health and Human Services building to avoid  
12 demolishing structures within the historic district would require  
13 substantial changes to the overall conceptual land use plan. Due  
14 to the extent of changes in the proposed project that would  
15 result, this is not considered a feasible mitigation measure.

16 (AR 3639-3640.)

17 The FEIR also notes the following regarding relocation of the Health  
18 and Human Services building:

19 Relocating the proposed Health and Human Services building  
20 would require substantial changes to the overall PCGC Master  
21 Plan Update conceptual land use plan, and therefore require  
22 revisions to the Project Description. This is not considered a  
23 reasonable mitigation measure. Adaptive reuse of the existing  
24 buildings to house the Health and Human Services department is  
25 not a feasible mitigation measure because the existing buildings  
26 provide substantially less room than is needed for this  
27 department and the buildings are not configured to provide the  
28 internal spaces that are critical to the department's functions.

1 Construction of additional buildings next to the existing buildings  
2 to provide sufficient space would consume land that is needed  
3 for parking for the Health and Human Services department.  
4 There is no feasible mitigation measure that would avoid  
5 demolition of the existing buildings, thus there is no feasible  
6 mitigation measure that would reduce the impact due to  
7 demolition.

8 (AR 3760.)

9 The EIR explains the basis for the County's rejection of Alternatives 2  
10 and 3, including information supporting the conclusion that the alternatives  
11 would not satisfy the goals of the Project, would not be capable of being  
12 accomplished in a successful manner within a reasonable period of time,  
13 and would not be desirable based on a balancing of competing factors. The  
14 court finds that the County made the required findings of infeasibility in  
15 connection with its rejection of Alternatives 2 and 3.

16 Rejection of Alternatives 2 and 3

17 A public agency may not approve a project with significant adverse  
18 environmental impacts "if there are feasible alternatives or feasible  
19 mitigation measures available which would substantially lessen the  
20 significant environmental effects of such projects". (Public Resources Code  
21 section 21002.) The finding that "[t]here is no feasible way to lessen or  
22 avoid the significant effect" of a project must be supported by substantial  
23 evidence. (CEQA Guidelines, sections 15043.) Petitioner contends that the  
24 EIR's rejection of Alternatives 2 and 3 as infeasible is not supported by  
25 substantial evidence.

26 Substantial evidence means "enough relevant information and  
27 reasonable inferences from this information that a fair argument can be  
28 made to support a conclusion, even though other conclusions may also be

1 reached." (*San Franciscans Upholding the Downtown Plan v. City & County*  
2 *of San Francisco* (2002) 102 Cal.App.4th 656, 675, citing CEQA Guidelines,  
3 section 15384(a).) Infeasibility findings are entitled to great deference  
4 when free of errors of law. (*Cal. Native Plant Society v. City of Santa Cruz*,  
5 *supra*, 177 Cal.App.4th at 997.) "The parties seeking mandamus bear the  
6 burden of proving otherwise, and the reviewing court must resolve  
7 reasonable doubts in favor of the administrative findings and  
8 determination.'" (*Id.*, quoting *Sierra Club v. County of Napa* (2004) 121  
9 Cal.App.4th 1491, 1497.)

10 Although Alternatives 2 and 3 would retain more contributing  
11 structures to the Historic District, they would still result in significant and  
12 unavoidable impacts to cultural resources due to demolition of buildings  
13 with historical significance. (AR 406.) The EIR notes that "most of the  
14 buildings within the historic district would require extensive structural and  
15 building-wide systems upgrades, hazardous materials abatement, and ADA  
16 improvements" in order to be usable if retained. (AR 928.) One estimate  
17 obtained in 2014 found the cost to bring the DeWitt Theater up to code and  
18 use, not including design fees, plan check and permit fees, hazardous  
19 materials abatement, or comprehensive renovation costs, totaled  
20 \$591,000. (AR 19122-19123.) With respect to Alternative 2, the EIR  
21 noted that increasing residential building height and introducing structure  
22 parking in the southeastern portion of the project site could lead to land  
23 use conflicts with the neighboring single-family residential subdivision,  
24 including changes to visual character. (AR 3649-3650.) Alternative 2  
25 would also require modifications to the proposed Development Standards  
26 to increase the maximum allowable building height to permit 5-story  
27 buildings. (AR 931.)  
28

1 With respect to Alternative 3, the EIR noted the loss of 166 dwelling  
2 units would impact the County's ability to meet General Plan housing goals  
3 and policies. (AR 307-309.) Alternative 3 also called for the Health and  
4 Human Services building to be shifted west in order to avoid demolishing  
5 certain structures. (AR 96.) The EIR notes that the relocation would  
6 require substantial changes to the PCGC Master Plan Update conceptual  
7 land use plan, and would therefore require revisions to the Project  
8 Description. (AR 3760.)

9 The County's findings are entitled to great deference, even if, as  
10 argued by petitioner, other conclusions might also be reached. The court  
11 finds that there is substantial evidence in the record to support the  
12 County's rejection of Alternatives 2 and 3.

#### 13 Preservation of the DeWitt Theater

14 Petitioner separately argues that the County violated EIR by failing to  
15 adopt an alternative that would provide for preservation of the DeWitt  
16 Theater, or a mitigation measure that would give the theater a reprieve from  
17 demolition. Alternative 2, but not Alternative 3, contemplated preservation  
18 of the DeWitt Theater. As previously discussed, the court finds that  
19 substantial evidence supports the County's rejection of Alternative 2. To the  
20 extent petitioner asserts that the County should have considered additional  
21 alternatives which preserved the DeWitt Theater, it fails to establish error.  
22 As stated in *California Native Plant Society v. City of Santa Cruz, supra*, 177  
23 Cal.App.4th 957, 988:

24 To be legally sufficient, the consideration of project alternatives  
25 in an EIR must permit informed agency decision-making and  
26 informed public participation. (*Laurel Heights, supra*, 47 Cal.3d  
27 at pp. 404-405, 253 Cal.Rptr. 426, 764 P.2d 278; Guidelines, §  
28 15126.6, subds. (a), (f).) What CEQA requires is "enough of a

1 variation to allow informed decision-making." (*Mann v.*  
2 *Community Redevelopment Agency* (1991) 233 Cal.App.3d  
3 1143, 1151, 285 Cal.Rptr. 9.) We judge the range of project  
4 alternatives in the EIR against "a rule of reason." (*Laurel*  
5 *Heights* at p. 407, 253 Cal.Rptr. 426, 764 P.2d 278.) The  
6 selection will be upheld, unless the challenger demonstrates  
7 "that the alternatives are manifestly unreasonable and that they  
8 do not contribute to a reasonable range of alternatives."  
9 (*Federation of Hillside and Canyon Associations v. City of Los*  
10 *Angeles* (2000) 83 Cal.App.4th 1252, 1265, 100 Cal.Rptr.2d 301  
11 (*Federation I*).

12 Petitioner does not establish that the range of alternatives considered in  
13 the EIR was manifestly unreasonable, and otherwise fails to establish error.

#### 14 Statement of Overriding Considerations

15 Pursuant to CEQA Guidelines, section 15093(b), when a lead agency  
16 approves a project that would result in significant, unavoidable impacts, it  
17 must "state in writing the specific reasons to support its action" in a  
18 statement of overriding considerations. CEQA requires substantial evidence  
19 in the record to support the claimed benefits to justify proceeding despite  
20 adverse impacts. (Public Resources Code section 21081; CEQA Guidelines,  
21 section 15093(b), (c).)

22 The County identified eight benefits of the Project which would  
23 override the significant impacts. (AR 98-101.) Petitioner argues that EIR  
24 does not contain substantial evidence to support seven of the identified  
25 benefits.

#### 26 Claimed Benefit 1

27 Claimed Benefit 1 is that the Project will provide a strategic  
28 framework to redevelop the site and create opportunities for increased

1 economic activity and multifamily housing. (AR 98.) The EIR cites to the  
2 Market Analysis prepared for the Project, which states:

3 The PCGC site offers a unique opportunity to provide a myriad of  
4 services and amenities to the North Auburn area and beyond.

5 Although the PCGC MPU focuses on creating a campus for  
6 government uses, the additions of public open space, community  
7 amenities, and proposed mix of nongovernmental land uses  
8 present the chance to create a town center that is currently  
9 missing the North Auburn area.

10 (Id.) The Market Analysis further notes:

11 ...the creation of a 'town center' concept on the site would offer  
12 the site a competitive place-based advantage over other sites  
13 along the Highway 49 corridor, which may benefit from direct  
14 access and visibility from the Highway, but whose more  
15 traditional strip mall development my lack in character and  
16 ambiance.

17 (AR 7184.) The Market Analysis suggests that a saturated market and less  
18 than ideal site conditions may require a unique use of the space for retail to  
19 be potentially feasible. But the Market Analysis also notes that "new and  
20 exciting typologies such as a food hall concept, retail that is interconnected  
21 with mixed uses and open space, and other programmatic strategies can be  
22 employed to create a new retail experience in North Auburn." (AR 7187.)

23 The Market Analysis explains that one way to mitigate concerns about  
24 the lack of strong growth in retail rents in the North Auburn area is to  
25 develop a flexible retail/office product. (AR 7187-7188.) The lack of new  
26 supply and low vacancy rates could signal the need for more office space in  
27 the area. (AR 7188.) The presence of Placer County governmental  
28 functions onsite could translate into a consistent customer base of County

1 employees and visitors, who currently lack access to walkable retail and  
2 food and beverage options. (AR 7187.) In additional “several market  
3 fundamentals point to strong potential for residential development,  
4 including very low vacancy rates and a consistent growth trend in asking  
5 rent.” (AR 7178.)

6 Petitioner fails to establish that the EIR’s reference to the Market  
7 Analysis is misleading. The EIR contains substantial evidence to support  
8 Claimed Benefit 1. The fact that a different conclusion could be drawn is  
9 not determinative. (*North Coast Rivers Alliance v. Marin Municipal Water*  
10 *District Board of Directors* (2013) 216 Cal.App.4th 614, 637.)

11 Claimed Benefit 2

12 Claimed Benefit 2 is that under the Project, the County can maximize  
13 the value of the PCGC property through land leases and other agreements  
14 that accommodate private development. (AR 98.) In support of this  
15 Claimed Benefit, the Statement of Overriding Considerations points to the  
16 Market Analysis finding that development of new office space at the  
17 property site would be viable, particularly in the context of the town-center  
18 concept. (Id.) The Market Analysis finds that declining retail vacancy  
19 rates, the presence of County government functions onsite, and the  
20 development of new residential units, could provide a consistent customer  
21 base to new retail. (Id.)

22 Petitioner fails to establish that the EIR’s reference to the Market  
23 Analysis is misleading. The Market Analysis notes that office vacancy rates  
24 had varied over the years, declining to 4.5% in 2016, that no new office  
25 space had been added in the area since 2012, and that office space had  
26 grown only 9.75% since 2000. (AR 98.) Substantial evidence in the record  
27 supports the contention that land lease and accommodation of private  
28 development as contemplated by the Project would have the benefit of

1 maximizing the value of the PCGC property.

2 Claimed Benefit 3

3 Claimed Benefit 3 is that the Project will provide increased  
4 opportunities for multi-family housing in the North Auburn area. (AR 99.)

5 The Statement of Overriding Considerations states:

6 The Market Analysis found that "Introducing residential land uses  
7 on the project site would offer new and dynamic programming  
8 while maintaining consistency with the existing fabric of the  
9 greater community" (EPS 2018). This study notes that the  
10 multifamily residential vacancy rate in Auburn has been under  
11 3% for the five quarters preceding preparation of the analysis  
12 and under 5% for 14 quarters; and that the average rental price  
13 for these properties had increased consistently since 2010. The  
14 Market Analysis also found that a market-rate residential  
15 development at a density of 20 dwelling units per acre would be  
16 marginally feasible and that an increased density from 30-35  
17 units per acre would make the project more attractive to  
18 potential developers while retaining densities similar to those  
19 found in the surrounding residential neighborhoods.

20 (AR 99.)

21 Substantial evidence in the record supports Claimed Benefit 3. The  
22 Project expressly includes development of multi-family housing. It is  
23 irrelevant that Alternative 2 may have achieved a higher residential density  
24 than the Project, given that Alternative 2 was rejected as infeasible.

25 Claimed Benefit 5

26 Claimed Benefit 5 is that the Project will provide an improved  
27 environment for County staff and public visiting the location. (AR 99-100.)

28 The Statement of Overriding Considerations notes that the current layout



1 and design of existing buildings does not accommodate modern technology  
2 and workspace needs. (Id.) The EIR states that existing buildings housing  
3 the Health and Human Services department provide substantially less room  
4 than is needed and are not configured to provide internal spaces critical to  
5 the department's functions, making adaptive reuse of the buildings for this  
6 purpose infeasible. (AR 3760.) The Market Analysis also notes that  
7 redevelopment of other portions of the PCGC property with a mixed-use  
8 community would activate the overall property, shifting the area from a  
9 single-use employment center toward a more dynamic setting that reflects  
10 "the preferences of today's labor force for work environments" (EPS 2018).  
11 (AR 99-100.)

12 The court finds that substantial evidence in the record supports  
13 Claimed Benefit 5.

14 Claimed Benefit 6

15 Claimed Benefit 6 is that the Project will provide critical  
16 environmental benefits by prioritizing sustainable design, energy efficiency,  
17 and water conservation. (AR 100.) The Statement of Overriding  
18 Considerations cites to the PCGC Master Plan Update Appendix H, which  
19 finds that replacement of existing reinforced masonry walled buildings with  
20 new construction will reduce energy needs of the County facilities.  
21 Appendix H notes that replacement of outdated water-using fixtures with  
22 highly efficient fixtures, replacement of high-water demand landscaping  
23 with rainwater capture/reuse from roofs, green-infrastructure storm water  
24 management techniques, and opportunities for gray water reuse and  
25 ecological water recycling, would provide opportunities for increased water  
26 efficiency. (AR 7208, 7240.) The Design Guidelines also encourage new  
27 construction to include roof-top, carport and ground-mounted solar  
28 generation as well as energy efficient building design. (AR 100.)

1 The court finds that substantial evidence in the record supports  
2 Claimed Benefit 6. It is irrelevant that Alternative 2 or 3 might permit  
3 similar upgrades, given that these Alternatives were rejected as infeasible.

4 Claimed Benefit 7

5 Claimed Benefit 7 is the upgrading of infrastructure and utilities. The  
6 Project sets forth a plan to upgrade, replace, or install new water supply,  
7 sanitary sewer conveyance and storm drainage systems to ensure adequate  
8 service, reduce infrastructure inefficiencies, and improve storm water  
9 quality. (AR 100-101.) The Wet Utilities Report (Appendix J) notes that  
10 much of the underground utility infrastructure within the Plan Area is old, in  
11 some places still using the original 1940 piping, and that lack of current  
12 storm water improvements leads to adverse water quality effects and  
13 localized flooding. The Project would allow for completion of infrastructure  
14 improvements to ensure appropriate utility service standards were met,  
15 and to improve storm water management. (AR 100-101.) The court finds  
16 that substantial evidence in the record supports Claimed Benefit 7.

17 Claimed Benefit 8

18 Claimed Benefit 8 is that the Project will provide healthy, safe,  
19 productive, and comfortable indoor and outdoor environments for County  
20 employees, private commercial and office employees, residents, and  
21 visitors to the site. The Statement of Overriding Considerations notes that  
22 the Project focuses on building and site design at the pedestrian scale, and  
23 provides for walkways, paths, open green space, and a cohesive campus-  
24 wide landscape design, creating a high-quality, aesthetically pleasing civic  
25 character with active public spaces. The Project encourages pedestrian and  
26 bike transportation by locating complimentary land uses within easy  
27 walking and biking distances, creating a fully-connected bike and  
28 pedestrian facility network throughout the campus, creating logical

1 destination points, and providing high quality infrastructure and aesthetics.  
2 (AR 101.) The Project also includes upgrading of facilities to accommodate  
3 modern technology and workspace needs. (AR 100.) The court finds that  
4 substantial evidence in the record supports Claimed Benefit 8.

#### 5 Analysis of the No Project Alternative

6 CEQA requires analysis of a "no project" alternative in order "to allow  
7 decisionmakers to compare the impacts of approving the proposed project  
8 with the impacts of not approving the proposed project." (CEQA  
9 Guidelines, section 15126.6(e)(1).) The "no project" analysis must discuss  
10 existing conditions, but must also assess "what would be reasonably  
11 expected to occur in the foreseeable future if the project were not  
12 approved, based on current plans and consistent with available  
13 infrastructure and community services." (CEQA Guidelines, section  
14 15126.6(e)(2).) "When the project is the revision of an existing land use  
15 or regulatory plan, policy or ongoing operation, the 'no project' alternative  
16 will be the continuation of the existing plan, policy or operation into the  
17 future." (CEQA Guidelines, section 15126.6(e)(3)(A).)

18 For the purpose of the "no project" alternative, the County considered  
19 existing conditions to be that "the project site would remain in its current  
20 condition. No building demolition, grading or new construction would  
21 occur. The site would remain vacant." (AR 939.) The County did assume  
22 that modifications to building interiors would occur to allow for more  
23 efficient office and government service operations. (AR 929, 939.)  
24 Petitioner argues that the County violated CEQA by not assuming a future  
25 circumstance where currently vacant buildings were re-leased to prior or  
26 new tenants, the Auburn Area Recreation and Park District ("ARD") took  
27 over operation of recreational uses, and some development occurred, as  
28 permitted under the Auburn/Bowman Community Plan.

1       Petitioner fails to demonstrate error. The “no project” alternative  
2 discussion is a “factually based forecast of the environmental impacts of  
3 *preserving the status quo.*” (*Center for Biological Diversity v. Dept. of Fish*  
4 *& Wildlife* (2015) 234 Cal.App.4th 214, 253 (emphasis in original).) The  
5 County is under no obligation to re-enter leases for the vacant buildings,  
6 even if some prior tenants were interested in moving back to the DeWitt  
7 Center. As noted by petitioner, the building vacancies were not the result  
8 of the Project. (AR 3633, 3679, 5602.) While petitioner points to a 2015  
9 letter from ARD requesting “the opportunity to discuss options,  
10 partnerships and other ideas that may increase the recreational  
11 opportunities at the Dewitt Center,” that letter by itself does not create a  
12 reasonable assumption that ARD would be operating recreational uses at  
13 the DeWitt Theater, Senior Center, and Athletic Club in the foreseeable  
14 future. Nor does petitioner point to evidence in the record of an identified  
15 willing operator for the DeWitt Theater. Finally, the County is not required  
16 to speculate about future, unplanned development that would potentially be  
17 permitted under the Auburn/Bowman Community Plan, and petitioner  
18 points to no evidence in the record of any development reasonably  
19 expected to occur if the Project was not approved. The County’s analysis of  
20 the “no project” alternative complies with CEQA.

#### 21       Analysis of Recreational Impacts

22       The Project includes eventual demolition of a community gymnasium  
23 and swimming pool, which are not currently in use. Petitioner asserts that  
24 the EIR is deficient because it does not disclose recreational impacts caused  
25 by the Project.

26       The EIR must disclose impacts to the existing environment. (*San*  
27 *Franciscans for Livable Neighborhoods v. City & County of San Francisco*  
28 (2018) 26 Cal.App.5th 596, 614.) Generally, the lead agency should

1 describe physical environmental conditions as they exist at the time the  
2 notice of preparation is published. (*Id.*) The agency has discretion to  
3 decide how the existing physical conditions without the project can most  
4 realistically be measured, so long as there is substantial evidence to  
5 support the decision. (*Id.* at 615.)

6 At the time the Notice of Preparation for the Project was published,  
7 both the gymnasium and the pool had been out of operation for over a  
8 year. (AR 4733, 18310-18311, 18326-18327, 19386.) Neither facility was  
9 taken out of commission because of the Project, and the County was under  
10 no obligation to renew leases or seek new lease opportunities prior to  
11 issuing the Notice of Preparation. The court finds that the County acted  
12 within its discretion by determining that the baseline physical conditions to  
13 measure impacts included existing physical conditions, in which neither the  
14 gymnasium nor the swimming pool were in operation. Against this  
15 baseline, the conclusion that the Project would not significantly impact  
16 recreational opportunities is supported by substantial evidence.

17 Petitioner also argues that the EIR improperly defers mitigation for  
18 impacts caused by the addition of new residents to the Plan Area. (AR  
19 861.) The Placer County General Plan outlines a parkland standard  
20 requiring five acres of active parkland and five acres of passive parkland for  
21 every 1000 county residents. (AR 860.) The EIR notes that development  
22 of passive open space and trails, including a three-acre Community Green,  
23 would meet 46% of the passive parkland need for anticipated future  
24 residents. (*Id.*) Otherwise, future residential land uses would be  
25 constructed as part of individual development projects. Individual  
26 construction projects could potentially include development of small on-site  
27 active and passive recreation facilities. (*Id.*) Where recreation needs could  
28 not be met on-site, future residential projects would require dedication of

1 land and/or payment of in-lieu park fees by applicants to provide for  
2 maintenance of existing park facilities and the opportunity to develop new  
3 park facilities. (Id. at 860-861.) Petitioner fails to establish error.

#### 4 Mitigation for Impacts to Cultural Resources

5 As noted, the Project includes demolition of 35 out of 50 contributing  
6 resources to the Historic District. (AR 393-394, 413.) Where a project has  
7 significant environmental impacts, the public agency is required to analyze  
8 all feasible mitigation measures. (*Sierra Club v. County of Fresno, supra*, 6  
9 Cal.5th at 523-525.) Petitioner argues that the County failed to analyze  
10 and adopt feasible mitigation for the Project's impacts to cultural resources.

11 With respect to the significant impacts caused by demolition of  
12 historic buildings, the EIR notes that the County completed archival  
13 photograph recordation of the entire project site (Mesa Technical 2004),  
14 meeting the requirements of the Historic American Building Survey Level II.  
15 (AR 406.) The photographic recordation also meets Historic American  
16 Building Survey material standards regarding reproducibility, durability, and  
17 size, and the work was performed by individuals who met the Secretary of  
18 the Interior's professional qualifications for architectural historians and  
19 photographers. (Id.)

20 The EIR must describe feasible measures to minimize significant  
21 impacts. (CEQA Guidelines, section 15126.4(a)(1).) If no mitigation  
22 measures are feasible, the EIR must say so. (CEQA Guidelines, section  
23 15091(a)(3).) If the EIR concludes that significant impacts cannot be  
24 feasibly mitigated, it must adopt a statement of overriding considerations  
25 before approving the project. (Public Resources Code section 21081(b);  
26 CEQA Guidelines, section 15093.) The EIR's findings must be supported by  
27 substantial evidence. (Public Resources Code section 21081.5.) The  
28 question is not whether there is substantial evidence to support the

1 rejection of other mitigation measures, but whether the finding that there  
2 are no feasible mitigation measures is supported by substantial evidence.  
3 (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296,  
4 323.)

5 A significant adverse effect would result from any change to the  
6 Historic District's integrity of location, design, setting, materials,  
7 workmanship, or feeling. (CEQA Guidelines, section 15064.5(b)(1); AR  
8 406.) Thus demolition of any part of the Historic District would result in  
9 significant adverse impacts to historical resources. Even Alternatives 2 and  
10 3, which petitioner contends were improperly rejected by the County as  
11 infeasible, would result in significant and unavoidable impacts to cultural  
12 resources because both Alternatives called for demolition of historic  
13 buildings. The EIR concluded that the Project would result in significant  
14 and unavoidable impacts to cultural resources. The County adopted a  
15 statement of overriding considerations before approving the Project. The  
16 EIR's conclusion that the significant impacts to cultural resources cannot be  
17 feasibly mitigated is supported by substantial evidence. Petitioner fails to  
18 establish error.

19 Disclosure of Inconsistencies with the General Plan and  
20 Auburn/Bowman Community Plan

21 CEQA requires that an EIR address "any inconsistencies between the  
22 proposed project and applicable general plans." (CEQA Guidelines, section  
23 15125(d).) Petitioner argues that the EIR violated CEQA by failing to  
24 disclose inconsistencies with the Placer County General Plan and the  
25 Auburn/Bowman Community Plan.

26 The Placer County General Plan and the Auburn/Bowman Community  
27 Plan set forth multiple goals and policies which support preservation of  
28 important historical and cultural sites. (AR 403-405, 11399.) The EIR

acknowledges that both the Placer County General Plan and the Auburn/Bowman Community Plan encourage preservation of historic resources. (AR 290-291.) The EIR expressly identifies the Placer County General Plan and Auburn/Bowman Community Plan goals and policies supporting preservation of significant historical, cultural and/or archaeological sites and surrounding environment. (AR 403-405.)

The EIR concludes:

The project is consistent with the County's policies regarding historic resources because all of the existing structures within the site have already been identified and documented, the proposed PCGC Master Plan Update would implement the Development Vision enumerated in the Community Plan, and the proposed project includes retention of 15 of the contributing features within the historic district.

(AR 291.)

"[N]o project is entirely consistent with a general plan "[b]ecause policies in a general plan reflect a range of competing interests."" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.) Thus, the law "does not require perfect conformity between a proposed project and the applicable general plan." (*Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 157.) "[C]ourts accord great deference to a local governmental agency's determination of consistency with its own general plan, recognizing that 'the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity.'" (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco, supra*, 102 Cal.App.4th at 677-678 (internal citation omitted).) "A reviewing court's role 'is simply to decide



1 whether the city officials considered the applicable policies and the extent  
2 to which the proposed project conforms with those policies.” (*Id.* at 678.)

3 The EIR describes land use policies in the Placer County General Plan  
4 and Auburn/Bowman Community Plan related to preservation of historical  
5 and cultural resources. The EIR explains the reasoning behind the County’s  
6 conclusion that the Project is consistent with existing land use policies,  
7 including policies related to the preservation of historical and cultural  
8 resources, and the County’s determination in this regard is entitled to great  
9 deference. The record demonstrates that the County considered the  
10 applicable policies, and determined that preservation of a portion of the  
11 Historic District, in combination with other actions such as photographic  
12 recordation and the establishment of a museum, aligned with those  
13 policies. Petitioner fails to demonstrate a violation of CEQA.

#### 14 Violation of the Surplus Land Act (SLA)

15 Under Government Code section 54220, the Legislature has declared  
16 that due to a shortage of sites available for low to moderate income housing,  
17 “surplus government land, prior to disposition, should be made available for  
18 that purpose.” Government Code section 54222 states that “[a]ny local  
19 agency disposing of surplus land shall send, prior to disposing of that  
20 property, a written offer to sell or lease the property” to certain identified  
21 entities including public entities supporting affordable housing, parks and  
22 recreation departments or authorities, and the State Resources Agency.

23 Petitioner contends that the County violated the SLA by failing to  
24 offer surplus land for sale or lease for affordable housing or public  
25 recreation. However, petitioner fails to establish that the County has  
26 offered any surplus land that is the subject of the current petition for sale  
27 or lease. Circulation of a Request for Qualifications, and meeting with  
28 potential private developers in relation to the Request for Qualifications, fall

1 well short of an actual sale or lease of land. In a response to comments,  
2 the County noted:

3       The County will consider whether the Surplus Land Act is  
4       applicable to individual projects undertaken in implementation of  
5       the proposed Master Plan Update at the time that each project is  
6       proposed. This consideration will reflect the nature and specific  
7       terms of potential future land-related transactions, if any,  
8       including considering the applicability of AB 1943 (Chappie 1978)  
9       to such transactions.

10 (AR 3626.)

11       The County has neither disposed of surplus land, nor taken any steps  
12       which would prevent it from complying with the SLA in the future, prior to  
13       the disposition of land. Petitioner fails to establish a violation of the SLA.

14                               Conclusion

15       The petition for writ of mandate is denied.

16       IT IS SO ORDERED.

17  
18 Dated: 12-1-20

19                                 
20                               Honorable Charles D. Wachob  
21                               Judge of the Superior Court  
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**SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))

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**Case No.: S-CV-0043035**

**Case Name: Concerned Citizens for Community & Public Lands vs. County of Placer**

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this action.

I mailed copies of the documents(s) indicated below:

**Ruling on Petition for Writ of Mandate**

True copies of the documents were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

Steven Vettel  
235 Montgomery St, 17<sup>th</sup> Fl  
San Francisco, CA 94104

Clayton Cook  
175 Fulweiler Ave.  
Auburn, CA 95603

Amy Minter  
2200 Pacific Coast Hwy, Ste 318  
Hermosa Beach, CA 90254

I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, these documents are delivered to

- ☒ the US Postal Service
- ☐ UPS
- ☐ FedEx
- ☐ Interoffice mail
- ☐ Other

on December 1, 2020 in Placer County, California.

JAKE CHATTERS  
Clerk of the Superior Court

Dated: December 1, 2020

by:   
M. Taylor, Deputy Clerk