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OAK FOUNDATION

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

SIERRA CLUB; SIERRA FOOTHILLS)
AUDUBON SOCIETY; and CALIFORNIA)
OAK FOUNDATION;)

Petitioners and Plaintiffs,)

vs.)

PLACER COUNTY; PLACER COUNTY)
BOARD OF SUPERVISORS; U.S. HOME)
CORPORATION; BICKFORD HOLDINGS,)
LLC; USH BICKFORD, LLC; and DOES 1)
through 20;)

Respondents and Defendants.)

U.S. HOME CORPORATION; BICKFORD)
HOLDINGS, LLC; USH BICKFORD, LLC;)
and DOES 21-100;)

Real Parties in Interest.)

CASE NO. SCV12789, consolidated with
CASE NO. SCV12793 for purposes of joint
trial only.

OPENING BRIEF BY AND FOR
PETITIONERS SIERRA CLUB, SIERRA
FOOTHILLS AUDUBON SOCIETY, and
CALIFORNIA OAK FOUNDATION.

Date: May 23, 2003

Time: 8:30 a.m.

Dept. 3

Hon. John J. Golden, Retired.

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1 I. INTRODUCTION

2 On December 18, 2001, Respondent and Defendant PLACER COUNTY BOARD OF
3 SUPERVISORS, on behalf of Respondent and Defendant PLACER COUNTY (“County” or
4 “Board”), certified a final Environmental Impact Report (“FEIR”) and adopted a Specific Plan
5 and Development Agreement for Bickford Ranch, a proposed new community in an
6 unincorporated, rural area of Placer County.¹ The Specific Plan authorizes the development of
7 approximately 1,890 homes and a golf course on approximately 1,954.6 acres located at the
8 southeastern intersection of Sierra College Boulevard and State Route 193.²

9 The Bickford Ranch project will destroy over 1,400 acres of the County’s blue oak
10 woodlands and associated habitats, despite policies in the County’s General Plan expressly
11 requiring the protection of blue oak woodlands and other important habitats.³ The Bickford
12 Ranch project will also directly and indirectly fuel expanding urban sprawl in Western Placer
13 County as it 1) directly converts nearly 2,000 acres of isolated, rural and agricultural land to
14

15
16 ¹ Placer County Resolution No. 2001-340, A Resolution Certifying the Final Environmental
17 Impact Report, Adopting a Statement of Findings, a Mitigation Monitoring Plan and a Statement
18 of Overriding Considerations Regarding the Bickford Ranch Specific Plan, Related Entitlements
19 and Development Agreement (“Findings”) (Dec. 18, 2001), 1 AR 25-93; Placer County
20 Resolution No. 2001-341, A Resolution Adopting the Bickford Ranch Specific Plan and Design
21 Guidelines (Dec. 18, 2001), 1 AR 94-95; Placer County Ordinance No. 5147-B, An Ordinance
22 Adopting the Bickford Ranch Development Agreement (December 18, 2001), 1 AR 108-174.
(Citation to the Administrative Record is designated by “AR,” preceded by the volume number
and followed by the page number in Arabic numerals.) An excerpt of record pages cited in this
Brief has been compiled by Petitioners and submitted to Judge Golden along with this Brief, as
requested by the Court at the August 15, 2002 status conference in this matter. Copies of the
excerpt have not been served on the Parties, as each of them already has a complete copy of the
administrative record.

23 ² See 8 AR 3108, 3126; Placer County Planning Dept., Bickford Ranch Specific Plan (Dec. 18,
24 2001) (“Specific Plan”), at pp 1-1, and 3-3. (Citations to the Bickford Ranch Specific Plan are
25 by actual page number, rather than citation to the Administrative Record, because the final,
December 18, 2001 version of the Specific Plan was accidentally omitted from the
Administrative Record filed with the Court.)

26 ³ See, e.g., Placer County General Plan Update, Countywide General Plan Policy Document
27 (“PCGP”) (Aug. 16, 1994) at p. 110, §§ 6.C.1 (requiring protection of large areas of non-
28 fragmented Blue Oak Woodlands, and other significant natural resource areas in the County).
(Citations to the County’s General Plan are by actual page number, rather than citation to the
Administrative Record, because the County’s General Plan, while incorporated by reference into
the Administrative Record, was not included in the paginated record produced for this
proceeding.)

1 urban uses, and 2) provides oversized sewer and water delivery infrastructure to and from the
2 remote project site, facilitating regional sprawl and urbanization in the future.⁴

3 In 1994, the Board adopted a General Plan Update, setting forth numerous, mandatory
4 goals and policies requiring the protection of Placer County's unique natural resources and
5 landscapes.⁵ The 1994 General Plan's mandatory policies reflect the County's residents' desire
6 to protect Placer County's unique, rural character and natural environments, and to specifically
7 require 1) that approval of new residential projects *must* take into account the County's natural
8 environment, and the relationship of the project to surrounding land uses, and 2) that the County
9 *discourage* isolated residential projects that do not contribute to a sense of community.⁶

10 The County's General Plan is, essentially, a social contract between the Board and the
11 residents of the County, serving not only as a set of aspirational goals and guidelines for the
12 County's future, but also as a substantive restraint on the Board's powers. The General Plan's
13 mandatory, environmental protection policies establish, as a matter of law, the County's
14 residents' expectation that the Board will use its authorities to ensure the protection and
15 preservation of the County's unique natural resources and rural lifestyle, even as the Board
16 allows residential development in the County to move forward.⁷ The County's General Plan is
17 the fundamental, local law that allows the County's residents to *directly* hold their Board of
18 Supervisors accountable for land use decisions that conflict with the General Plan's mandatory,
19 environmental protection requirements.⁸ In short, the General Plan requires the Board to act with
20

21 ⁴ 8 AR 3108, 3126, 3211; 9 AR 3769-3770; Specific Plan, *supra*, at pp. 1-1, 3-3, 9-6.

22 ⁵ Placer County General Plan Update, Countywide General Plan Policy Document ("PCGP")
23 (Aug. 16, 1994). (Citations to the County's General Plan are by actual page number, rather than
24 citation to the Administrative Record, because the County's General Plan, while incorporated by
25 reference into the Administrative Record, was not included in the paginated record produced for
26 this proceeding.)

26 ⁶ PCGP, *supra*, at p. 36, §§ 1.B.5 and 1.B.9.

27 ⁷ See, e.g., Gov. Code, § 65454 (stating that a specific plan may not be adopted or amended
28 where it is inconsistent with the general plan).

⁸ See, e.g., Gov. Code, §§ 65009, subd. (c)(1)(C) (establishing 90-day statute of limitations for
challenge to adoption of specific plan), 65860, subd. (b) (authorizing residents and property

1 the self-restraint necessary to honor the County’s residents’ expectations that their natural
2 environment and quality of life will be protected, even as the Board makes land-use decisions
3 that shape Placer County’s future.

4 In addition to the local restraints on Board action established by the 1994 General Plan,
5 the State of California has also placed substantive restraints on the Board’s ability to approve
6 projects that may have significant, adverse effects on the environment, such as Bickford Ranch.
7 Under the California Environmental Quality Act (“CEQA”), lead agencies – including Placer
8 County – cannot approve discretionary projects unless they have *independently* 1) analyzed the
9 proposed project to determine whether and to what extent it may have significant, adverse effects
10 on the existing environment, 2) analyzed alternatives and mitigation measures for the project that
11 could reduce or avoid the project’s potentially significant effects, and 3) adopted all such
12 alternatives and mitigation measures that are feasible before approving the project.⁹

13 As this Brief will demonstrate, the Board failed to exercise its independent judgment, as
14 required by CEQA. Instead, the Board repeatedly and uncritically relied on the Applicants’ self-
15 interested conclusions as to 1) which mitigation measures and alternatives would be studied in
16 the Environmental Impact Report (“EIR”) for the project, and 2) which mitigation measures and
17 alternatives would be deemed “feasible” of implementation.

18 The Board also failed to account for the General Plan’s mandatory policies protecting oak
19 trees, blue oak woodland, wildlife habitat, and other environmental resources. In approving the
20 project, the Board declared that significant, adverse impacts to these resources are acceptable
21 because Appendix C to the General Plan authorizes residential development in the Bickford
22 Ranch Project area.¹⁰ However, by its own terms, Appendix C states that its authorization of up
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25 owners within a city or county to challenge zoning ordinances for inconsistency with the general
26 plan in superior court)

27 ⁹ Pub. Resources Code, §§ 21002, 21002.1.

28 ¹⁰ See, e.g., 1 AR 83 (claiming that the project’s remaining, cumulative impacts are unmitigable
and unavoidable because the General Plan “contemplates the Development site as an area in
which to provide for planned residential development.”)

1 to 1,950 homes in Bickford Ranch *might not be realized* due to “site constraints, inclusion of
2 buffers, and other factors that may limit available developable land.”¹¹

3 Put simply, the Board failed to exercise the independent judgment and self-restraint
4 demanded by the residents of Placer County through their General Plan. And, the Board failed to
5 exercise the independent judgment and self-restraint demanded by the People of the State of
6 California through CEQA. The Board, when it approved the Bickford Ranch project, 1)
7 uncritically relied on the Applicant’s determination of the scope of environmental review for the
8 project, 2) uncritically accepted the Applicant’s determinations as to which mitigation measures
9 and alternatives would be analyzed in the project EIR, 3) uncritically accepted the Applicant’s
10 determination as to which mitigation measures and alternatives were feasible of implementation,
11 and 4) improperly elevated Appendix C’s general authorization of up to 1,950 homes in Bickford
12 Ranch over the General Plan’s other, mandatory, environmental protection policies.

13 SIERRA CLUB, SIERRA FOOTHILLS AUDUBON SOCIETY, and CALIFORNIA
14 OAK FOUNDATION (“Petitioners”) are national, statewide, and local non-profit organizations
15 dedicated to protecting and preserving the environment for present and future generations.¹²
16 Petitioners object to the Bickford Ranch project because it 1) will unnecessarily destroy and
17 fragment of over 1,400 acres of Blue Oak Woodlands and associated wildlife habitats; 2)
18 promotes urban sprawl, rather than directing new residential development into the County’s
19 existing towns and cities, and 3) frustrates mandatory land use policies that protect the County’s
20 unique and distinct rural communities and surrounding natural environments.¹³

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25 ¹¹ PCGP, *supra*, p. 155, § a.

26 ¹² See Exhibit 1: Declaration of Ed Pandalfino in Support of Petitioner’s Opening Brief, at ¶¶ 2-4,
27 7; Exhibit 2: Declaration of Terry Davis in Support of Petitioner’s Opening Brief, at ¶¶ 2-4;
28 Exhibit 3: Declaration of Janet Cobb in Support of Petitioner’s Opening Brief, at ¶¶ 2-3.

¹³ See Exhibit 1, at ¶ 7; Exhibit 2, at ¶ 7; Exhibit 3, at ¶ 6.

1 **II. SUMMARY OF ARGUMENT**

2 In this litigation, Petitioners challenge the Board’s approval of the Bickford Ranch
3 Specific Plan on a number of California Environmental Quality Act (CEQA) and Planning and
4 Zoning Law grounds.

5 **A. CEQA AND ADMINISTRATIVE LAW VIOLATIONS**

6 Respondents violated CEQA by failing to adequately, and independently, consider the
7 array of significant adverse effects that the Bickford Ranch project will have on West Placer
8 County’s rural environment. Respondents failed to consider in the EIR any development
9 alternative that would protect the project site’s blue oak woodland, despite the facts that 1) the
10 County’s General Plan requires the protection of significant blue oak woodlands in the County,
11 and 2) the project area is one of only two areas in the County where blue oak woodlands are
12 located on parcels of sufficient size to meaningfully protect a functioning blue oak ecosystem.¹⁴

13 In addition, the Board violated the substantive and administrative law requirements,
14 imposed by both CEQA and section 1094.5 of the Code of Civil Procedure, that its decision must
15 be supported by mandatory CEQA findings, and that these findings must be supported by
16 substantial evidence in the record. CEQA requires that, in order to approve a project for which
17 the EIR has identified a significant adverse environmental effect, the lead agency must first find
18 that that there are no feasible alternatives (or mitigation measures) that would substantially
19 reduce that effect.¹⁵ Here, the Board failed to make any finding as to the feasibility of two
20 alternatives proposed by petitioner Audubon Society (i.e., the “Audubon Alternative” and the
21 “Modified Audubon Alternative”) that would substantially reduce impacts to oak woodlands.
22 Therefore, the Board’s findings do not support its decision. Also, even if the Board’s findings
23 are somehow construed to include a finding that the “Modified Audubon Alternative” is
24 infeasible, any such implied finding is not supported by any evidence in the record – indeed, it is
25 contradicted by the Applicant’s own feasibility analysis, which is the only pertinent evidence in

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27 ¹⁴ See discussion at Part V.B, *infra*.

28 ¹⁵ Cal. Code Regs., tit. 14, §§ 15091, subd. (a)(3), 15092, subd. (b)(2); See discussion at Part IV.C.6, *infra*.

1 the record. Finally, the Board abused its discretion by relying on evidence of infeasibility of
2 project alternatives that is not contained in the FEIR, and that was not reasonably available for
3 public review and comment before the Boards final approval of the project.

4 Respondents violated CEQA by assuming that the project will not have any adverse
5 impact on water supplies, even though improvements are required to the Placer County Water
6 Agency's pump stations on the American River before long-term water can actually be delivered
7 to the project, especially where the environmental review for the proposed pump station
8 improvements had not been completed when the Bickford Ranch Specific Plan was approved.¹⁶
9 The Board also improperly deferred the adoption of mitigation measures, when it decided that the
10 post-approval development of a Stormwater Management Plan would mitigate potentially
11 significant impacts to runoff water quality but failed to adopt any standards for the Plan to meet
12 that would ensure impacts to water quality would be less-than-significant.¹⁷ The County also
13 failed to adequately account for the projects potentially significant impacts, when it failed to
14 analyze the growth-inducing impacts of installing an oversized sewer line along Highway 193.¹⁸

15 Finally, the County's findings that mitigation measures and alternatives to avoid the
16 project's potentially significant cumulative impacts on West Placer County's environment is
17 unsupported by substantial evidence, where the County's only bases for rejecting such measures
18 are 1) that cumulative impacts are an inevitable consequence of growth, and 2) the County's
19 General plan contemplates growth within the County.¹⁹

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25 ¹⁶ See discussion at Part V.E.1, *infra*.

26 ¹⁷ See discussion at Part V.F.2, *infra*.

27 ¹⁸ See discussion at Part V.G, *infra*.

28 ¹⁹ See discussion at Part V.H.

1 **B. PLANNING & ZONING LAW VIOLATIONS**

2 The EIR for this project identifies significant or potentially significant impacts on
3 biological resources that are protected by mandatory policies in the County’s General Plan.²⁰
4 The County’s General plan mandates the protection of blue oak woodlands and other habitats
5 with particular value for wildlife, yet the Bickford Ranch project proposes to destroy 960 out of
6 1440 acres of blue oak woodlands and related habitats.²¹ The project will also severely fragment
7 and degrade the remaining oak woodlands and associated habitats on the project site.²²

8 The County’s General Plan mandates that PCWA provide assurance of long-term water
9 before residential development projects are approved, but – to date – PCWA has only been
10 willing to certify that water will be available for Bickford Ranch through 2002.²³ The County’s
11 General Plan requires the County to prevent the degradation of surface water quality and to
12 protect important groundwater recharge areas, but the Bickford Ranch Specific Plan defers the
13 development of a Stormwater Management Plan for residential runoff until after approval of the
14 project, and provides no meaningful water quality standards to ensure that the General Plan’s
15 surface and groundwater protection policies are honored.²⁴ Finally, many of the details of the
16 Bickford Ranch project are fundamentally inconsistent with Appendix C to the County’s General
17 Plan, which establishes the framework for development of Bickford Ranch.²⁵

18 The Bickford Ranch project is a sprawling, urban, residential development of
19 approximately 1,900 homes in the middle of rural Placer County.²⁶ The Bickford Ranch project
20 is not consistent with currently existing, surrounding rural-residential land uses. The project will
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23 ²⁰ 9 AR 3994. See discussion at Part III.C.1, *infra*.

24 ²¹ See discussion at Parts V.C and V.D, *infra*.

25 ²² See discussion at Parts V.C and V.D, *infra*.

26 ²³ See discussion at Part V.E.1, *infra*.

27 ²⁴ See discussion at Part V.F.3, *infra*.

28 ²⁵ See discussion at Part V.I, *infra*.

²⁶ See discussion at note 2, *supra*.

1 demand the establishment of a full array of urban, public services – including water delivery,
2 stormwater drainage, and sewer – that do not presently exist anywhere near the project site.²⁷

3 In approving the Bickford Ranch project, the County blindly relied on the Applicant’s
4 opinions as to which mitigation measures and alternatives were feasible of implementation.²⁸

5 Thus, Respondents failed to honor CEQA’s requirement that the lead agency exercise its
6 independent judgment over the accuracy and adequacy of its EIR.²⁹ The County also failed to
7 recirculate the EIR in order to evaluate project alternatives that were offered by Sierra Club and
8 Audubon.³⁰ These alternatives would substantially reduce the project’s remaining, significant
9 impacts to blue oak woodlands and associated habitats.³¹

10 Petitioners respectfully request that this Court find that Respondents prejudicially abused
11 their discretion by failing to comply with CEQA’s substantive and procedural requirements, and
12 by approving a Bickford Ranch Specific Plan that is inconsistent with the County’s General Plan.
13 Petitioners, therefore, ask this Court to order the Board to set aside its certification of the
14 Bickford Ranch EIR and its approval of the Bickford Ranch Specific Plan.

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24 ²⁷ See discussion at Parts III.C, *infra*.

25 ²⁸ See discussion at Part V.B.2.c and V.B.2.d, *infra*.

26 ²⁹ Pub. Resources Code, § 21082.1, subd. (c)(1); Cal. Code Regs., tit. 14, § 15084, subd. (e). See
27 discussion at Part V.B.2.d, *infra*.

28 ³⁰ See discussion at Part V.B.2.a, *infra*.

³¹ See discussion at Part V.B.2, *infra*.

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III. STATEMENT OF FACTS

A. THE 1994 PLACER COUNTY GENERAL PLAN

On or about August 16, 1994, the Board adopted the Placer County General Plan.³² In the 1994 General Plan, the Board stated several mandatory policies including the following:

4.A.2. The County shall ensure through the development review process that adequate public facilities and services are available to serve new development. The County shall not approve new development where existing facilities are inadequate unless the following conditions are met: [¶] a. The applicant can demonstrate that all necessary public facilities will be installed or adequately financed (through fees or other means)³³
. . . .

4.C.1. The County shall require proponents of new development to demonstrate the availability of a long-term, reliable water supply. The county shall require written certification from the service provider that either existing services are available or needed improvements will be made prior to occupancy.³⁴
. . . .

4.C.12. . . . Where surface water supplies provide domestic water, the amount of growth shall be limited to what can be served by available surface water supplies assuming a 4-year drought period and usage of one acre foot of water per year per household.³⁵
. . . .

6.A.10. The County shall protect groundwater resources from contamination and further overdraft by pursuing the following efforts: [¶] a. Identifying and controlling sources of potential contamination; [¶] b. Protecting important groundwater recharge areas³⁶
. . . .

6.C.1. The County shall identify and protect significant ecological resource areas and other unique wildlife habitats critical to protecting and sustaining wildlife populations. Significant ecological resource areas include the following: [¶]

³² Placer County General Plan Update, Countywide General Plan Policy Document (“PCGP”) (Aug. 16, 1994). (Citations to the County’s General Plan are by actual page number, rather than citation to the Administrative Record, because the County’s General Plan, while incorporated by reference into the Administrative Record, was not included in the paginated record produced for this proceeding.)

³³ PCGP, *supra*, at p. 80.

³⁴ PCGP, *supra*, at p. 83.

³⁵ PCGP, *supra*, at p. 84.

³⁶ PCGP, *supra*, at p. 105.

1 e. Large areas of non-fragmented natural habitat, including Blue Oak Woodlands,
2 Valley Foothill Riparian, vernal pool habitat.³⁷

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4 6.C.2. The County shall require development in areas known to have particular
5 value for wildlife to be carefully planned and, where possible, located so that the
6 reasonable value of the habitat for wildlife is maintained.³⁸

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8 6.D.8. The County shall require that new development preserve natural woodlands
9 to the maximum extent possible.³⁹

10 6.D.9. The County shall require that development on hillsides be limited to
11 maintain valuable natural vegetation, especially forests and open grasslands, and
12 to control erosion.⁴⁰

13 The primary text of the County’s General Plan makes only one reference to “Bickford
14 Ranch.” Under one of several land-use “Goals,” the General Plan briefly states that a 1,950-acre
15 Bickford Ranch Specific Plan area “shall be subject to the development standards outlined in
16 Appendix C” to the General Plan.⁴¹

17 Appendix C to the General Plan authorizes a planned residential development in the
18 Bickford Ranch area with “[a] maximum of 1,950 dwelling units, although this number may not
19 be realized due to site constraints, inclusion of buffers, and other factors that may limit available
20 developable land.”⁴² Appendix C requires any planned residential development in the Bickford
21 Ranch area to meet the following criteria:

- 18 1) significant open space areas must be set aside including, “the slopes of
19 Boulder Ridge, drainage ways, corridors along canals and major
20 roadways.”⁴³
- 21 2) a *maximum* of two (2), mixed-use villages may be developed.⁴⁴

22 ³⁷ PCGP, *supra*, at p. 110.

23 ³⁸ PCGP, *supra*, at p. 110.

24 ³⁹ PCGP, *supra*, at p. 114.

25 ⁴⁰ PCGP, *supra*, at p. 114.

26 ⁴¹ PCGP, *supra*, at p. 36, § 1.C.1.

27 ⁴² PCGP, *supra*, at p. 155 (stating, “Any development considered within this area *shall* be subject
28 to . . . the following development standards.”).

⁴³ PCGP, *supra*, at p. 155, § c.

- 1
- 2 3) Buffer zones – as set forth in the General Plan – must be incorporated for neighboring agricultural/timber areas and sensitive habitats.⁴⁵
- 3 4) planning and design in the Bickford Ranch Specific Plan area “should give particular attention to the Visual and Scenic Resource policies . . . of [the] General Plan.”⁴⁶ The General Plan’s Visual and Scenic Resource policies go on to state: “The County shall require that new development in scenic areas (e.g., river canyons, lake watersheds, scenic highway corridors, ridgelines and steep slopes) is planned and designed in a manner . . . that: [¶] a. Avoids locating structures along ridgelines and steep slopes”⁴⁷
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7 **B. THE BICKFORD RANCH DRAFT SPECIFIC PLAN**

8 On August 17, 1999, Placer County released a draft specific plan for Bickford Ranch.⁴⁸

9 Over the next two years, the County, project proponents, and interested individuals and

10 organizations participated in review of the draft specific plan, resulting in several modifications

11 and refinements to the original draft.

12 On October 12, 2001, Placer County released for public review a revised version of the

13 Specific Plan, which, as amended, was ultimately adopted by the Board as the final Specific

14 Plan.⁴⁹ This final Specific Plan states that it “implements the intent of the General Plan by

15 setting forth regulations, conditions, and programs which will carry out the objectives and

16 policies of the General Plan”⁵⁰ The final Specific Plan explicitly acknowledges that it must

17 be consistent with the County’s General Plan.⁵¹

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20 ⁴⁴ PCGP, *supra*, at p. 155, § f.(1).

21 ⁴⁵ PCGP, *supra*, at p. 155, § d.

22 ⁴⁶ PCGP, *supra*, at p. 155, § f.(1).

23 ⁴⁷ PCGP, *supra*, at p. 42, Policy 1.K.1.a.

24 ⁴⁸ 9 AR 3616.

25 ⁴⁹ Placer County Planning Department, Bickford Ranch Specific Plan (“Specific Plan”) (Oct. 12, 2001) 8 AR 3098. See also 1 AR 94-95 (Placer County Resolution No. 2001-341 adopting the Bickford Ranch Specific Plan and Design Guidelines (Dec. 18, 2001)).

26 ⁵⁰ 8 AR 3109; Specific Plan, *supra*, at p. 1-2.

27 ⁵¹ 8 AR 3109; Specific Plan, *supra*, at p. 1-2.

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1 The Specific Plan proposes to build “a Village Center surrounded by three distinct
2 communities.”⁵² One of the communities, The Ridges, will be built “in areas with slopes that
3 range from zero to thirty percent.”⁵³

4 **C. THE BICKFORD RANCH DEIR**

5 On August 27, 1999, Placer County released the Bickford Ranch Specific Plan Draft
6 Environmental Impact Report (“DEIR”) for public review.⁵⁴ The DEIR states that a May 17,
7 1999 version of the Bickford Ranch Draft Specific Plan is the project being analyzed in the
8 DEIR.⁵⁵ The Land Use Summary for the DEIR shows that its analysis is based on a proposal to
9 build 1,950 dwelling units on 1,954.6 acres.⁵⁶

10 **1. Significance Criteria**

11 The DEIR sets forth criteria for each resource area to determine whether the project
12 impacts are “significant” for purposes of CEQA analysis.⁵⁷ In evaluating land use and other
13 impacts, the DEIR establishes “[c]onsistency with local and regional land use plans and policies”
14 – such as the policies contained in the County’s General Plan – as a criterion for determining the
15 significance of the project’s impacts.⁵⁸

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21 ⁵² 8 AR 3127; Specific Plan, *supra*, at p. 3-5.

22 ⁵³ 8 AR 3130; Specific Plan, *supra*, at p. 3-8.

23 ⁵⁴ County of Placer, Bickford Ranch Specific Plan Draft Environmental Impact Report (Aug. 27,
24 1999); 9 AR 3592.

25 ⁵⁵ 9 AR 3660. Although the DEIR states that a May 17, 1999, version of the Bickford Ranch
26 Specific Plan is being analyzed, the Specific Plan that was actually circulated with the DEIR for
27 public review is dated August 17, 1999. (10 AR 4396).

28 ⁵⁶ 9 AR 3662, at Table 3-1.

⁵⁷ 9 AR 3618.

⁵⁸ 9 AR 3714, 3766, 3991.

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2. Biological Impacts Analysis

The 1,954.6-acre Bickford Ranch project area contains 1,416 acres of Blue Oak Woodlands.⁵⁹ As described in the DEIR:

Blue oak woodland occurs primarily on the slopes below the main ridges Areas of blue oaks with a grassland understory and an open canopy occur on south- and southwest-facing slopes. A denser oak woodland occurs on slopes, with some interior live oak, and has an understory with additional shade-tolerant species, such as dogtail grass and bedstraw. The densest oak woodland includes more interior live oak than blue oak and occurs most extensively on north- and east-facing slopes with deeper soils.⁶⁰
.....

Approximately 11,700 native trees protected by the Placer County Tree Preservation Ordinance (protected trees), which includes native trees measuring over 6 inches in DBH [diameter at breast height], would be removed because of proposed construction. . . . Many of the oaks to be removed onsite are 50-150+ years old and *cannot be replaced* in the short term.”⁶¹

The DEIR admits that the proposed project will have significant adverse effects on the County’s blue oak woodlands, even after implementation of all recommended mitigation measures.⁶² With regard to direct impacts, “[u]p to 960 acres of oak woodland would be lost because of project construction.”⁶³ The DEIR further acknowledges that the remaining 460 acres of oak woodlands habitat on the project site will be degraded by ongoing removal of dead and down wood to reduce fire hazards and to provide emergency and fire access.⁶⁴ The DEIR states that such impacts will remain significant, even after the implementation of a proposed off-site tree mitigation and on-site tree protection programs.⁶⁵

⁵⁹ 9 AR 3967.

⁶⁰ 9 AR 3970.

⁶¹ 9 AR 3993 (emphasis added).

⁶² 9 AR 3994. “The loss of a large acreage of oak woodland habitat and the loss of wildlife habitat value would be a significant impact of the proposed project. This impact would remain significant following implementation of the proposed mitigation measures and would remain significant and unavoidable following implementation of the recommended mitigation measures.” (9 AR 3995.)

⁶³ 9 AR 3994.

⁶⁴ 9 AR 3994-3995.

⁶⁵ 9 AR 3993-3994.

1 According to the DEIR “[t]he majority of the affected oak woodland would be within
2 proposed residential development areas.”⁶⁶ In particular, proposed residential lots along the
3 north and eastern portions of the project site (identified as R-7A, R-8A, R-9A, R-10, R-11, R-12,
4 R-13A, R-13B, R14, R-15A, R-15B, and R-16 in the Specific Plan) will have the most
5 significant impacts on the Bickford Ranch areas’ blue oak woodlands.⁶⁷

6 The DEIR claims that destroying 960 acres of contiguous oak woodland habitat, and
7 fragmenting the remaining 460 acres is consistent with the County’s General Plan because
8 “[d]evelopment of this site as contemplated under the Placer County General Plan anticipated
9 that this type of impact would occur.”⁶⁸ Nothing in Appendix C or the rest of the General Plan
10 states that destruction of the project site’s blue oak woodlands is an “anticipated” part of the
11 development of Bickford Ranch, or otherwise exempts the Bickford Ranch project area from the
12 General Plan’s mandatory policy of protecting the County’s blue oak woodland habitat.⁶⁹

13 3. Project Alternatives Analysis

14 a. None of the Alternatives Analyzed in the DEIR Was Designed to 15 Minimize Potentially Significant Impacts to Oak Woodlands

16 The DEIR analyzes seven project alternatives: a “No Project” alternative, a
17 “Conventional Housing” alternative, a “Rural Residential” alternative, an “Affordable Housing”
18 alternative, and four alternatives with varying vehicular access configurations (three “Clark
19 Tunnel Road” alternatives and a “Sierra College Boulevard” alternative).⁷⁰ The DEIR does not
20 analyze any alternative designed to mitigate potentially significant environmental impacts to
21

22 ⁶⁶ 9 AR 3994.

23 ⁶⁷ Compare Specific Plan, *supra*, at p. 3-6, Figure 3.1 (Bickford Ranch Specific Plan Land Use
24 Map), and Specific Plan, *supra*, at p. 5-2, Figure 5.1 (Master Lotting Plan) with 9 AR 3965, at
25 Figure 13-1 (DEIR Vegetation and Wildlife Habitats map) (showing that the enumerated
26 neighborhoods are sited in the same areas as much of the Bickford Ranch area’s blue oak
27 woodland habitats).

28 ⁶⁸ 9 AR 3995.

⁶⁹ PCGP, *supra*, at p. 110, § 6.C.1. See discussion at notes 37 and 42, *supra*.

⁷⁰ 9 AR 4073.

1 important natural resources identified in the County's General Plan, such as the area's blue oak
2 woodland; other wildlife and habitat values; or water delivery, runoff, and disposal.⁷¹

3 **b. Petitioners' Alternatives Would Allow For Development of Bickford**
4 **Ranch in a Manner Consistent With the County's General Plan**

5 Sierra Club and Audubon proposed three additional project design alternatives not
6 analyzed in the DEIR that would better preserve the blue oak woodlands located on the Bickford
7 Ranch Project site: first, In February 2000, Audubon proposed to Placer County officials an
8 alternative to the proposed Bickford Ranch project eliminating residential lots in the north and
9 eastern portions of the project site to protect sensitive blue oak woodlands and associated habitats
10 in those areas ("Audubon Alternative").⁷²

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14 ⁷¹ 9 AR 4071.

15 ⁷² 3 AR 903-928 (PowerPoint presentation by Audubon and Sierra Club (Nov. 1, 2001) [stating
16 that three alternatives were developed and presented by Audubon and Sierra Club to the County
17 beginning as early as February of 2000]); 5 AR 1930 (Bickford Ranch financial analysis (Dec. 5,
18 2001) [identifying Alternatives 7, 8 and 9 in that analysis as an alternatives presented either
19 jointly by Sierra Club and Audubon, or by Ed Pandolfino of Audubon]); 7 AR 2991 (letter from
20 E. Pandolfino re: Alternate Plan for Bickford Ranch to Supervisor Bill Santucci (Apr. 17, 2000)
21 [noting that committee of Audubon members had already presented an Audubon alternative to
22 the County's planning staff and seeking to present same proposal to Mr. Santucci].); Exhibit 1:
23 Declaration of Ed Pandolfino at ¶¶ 8-16 (declaring, under penalty of perjury, that the alternative
24 proposed in the PowerPoint presentation to the Planning Commission on November 1, 2001 [3
25 AR 903-928], was, in fact, the same alternative that was presented to the Planning Department
26 staff in February of 2000, as referenced in Mr. Pandolfino's April 17, 2000 letter to Supervisor
27 Santucci [7 AR 2991].); Exhibit 4: Declaration of Wesley Dill at ¶¶ 6-12 (same); Exhibit 6:
28 Declaration of Brian Williams at ¶ 7-8 (same). Although Mr. Pandolfino left a map of
Audubon's proposed reduced-density alternative with the Planning Department in February of
2000, the County failed, for some reason, to produce that map in its formal administrative record
for this proceeding. (Exhibit 1 at ¶¶ 13-14; Exhibit 4 at ¶ 10; Exhibit 5: Declaration of Laurie
Richards at ¶ 7.) Mr. Pandolfino and Mr. Dill have also each verified, under oath, that the map
left with the Planning Department in February of 2000 proposed substantially identical
modifications to the proposed project as the map in the PowerPoint presentation to the Planning
Commission on November 1, 2001. (Exhibit 1 at ¶ 16; Exhibit 4 at ¶ 12. See also, map titled "A
viable Oak Woodland Preserve" at 3 AR 915.) The declarations submitted by Petitioners are
admissible to explain Petitioners' standing and capacity to sue and the accuracy of the County's
administrative record. See *Western States Petroleum Assoc. v. Superior Court* (1995) 9 Cal.4th
559, 575, fn. 5. In particular, Petitioners' declarations are admissible to explain 1) the nature of
Mr. Pandolfino's April 17, 2001 letter to the Board of Supervisors, and 2) that the "Audubon
Alternative" (the existence of which is well documented in the administrative record) was
proposed to the County in early 2000. (*Ibid.*)

1 Then, in May 2001, Sierra Club and Audubon submitted a joint letter to the County with
2 a different alternative recommending a compact village design (“SC/AS Alternative”).⁷³ Under
3 the SC/AS Alternative, the project site could be developed to accommodate the full 1,950 homes
4 allowed by Appendix C of the General Plan, while still preserving a substantial portion of the
5 project site’s blue oak woodlands and associated habitats.⁷⁴

6 Finally, after the Planning Commission’s hearings on the proposed project in November
7 of 2001, Audubon stepped forward with a scaled back version of the February 2000 Audubon
8 Alternative (“Modified Audubon Alternative”).⁷⁵

9 The Audubon and Modified Audubon Alternatives are substantially different from the
10 SC/AS Alternative.⁷⁶ The SC/AS Alternative proposes significant changes to the Bickford
11 Ranch Specific Plan, using a compact village design and concepts of “New Urbanism” to allow
12 for development of up to 1,950 units as provided in Appendix C of the Placer County General
13 Plan, while preserving a substantial portion of the project area’s blue oak woodlands.⁷⁷ In
14 contrast, the Audubon Alternative – and the Modified Audubon Alternative, to a lesser degree –
15 simply remove the most environmentally damaging lots, but do not require any significant
16 changes in density for the rest of the Specific Plan area, unless such changes are found feasible.⁷⁸

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20 ⁷³ 21 AR 10339-10349.

21 ⁷⁴ 21 AR 10340-10341, 10349.

22 ⁷⁵ 5 AR 1931 (Bickford Ranch Financial Analysis, Alternative 9 [recommending the relocation
23 of 117 units from the blue oak woodlands in the northern portion of the project site to other areas
24 already designated for development]).

25 ⁷⁶ Compare 5 AR 1945 (the Sierra Club/Audubon compact village proposal, using concepts of
26 “New Urbanisms” to substantially reconfigure the lotting patterns in Bickford Ranch) with 5 AR
27 1946 and 1947 (the Audubon reduced-intensity proposals, calling for removal of lots from the
28 project site’s blue oak woodlands, but otherwise leaving the lotting pattern in substantially the
same configuration as the proposed project).

⁷⁷ 5 AR 1945.

⁷⁸ 5 AR 1946-1947.

1 **4. Sewer Service Analysis**

2 The DEIR states that impacts of delivering sewer service are “less than significant”
3 because sewage will be transported “from the project site to the City of Lincoln via sewer
4 pipelines constructed by the Applicant.”⁷⁹ The Specific Plan explains that a 12-inch sewer line
5 would be sufficient to serve full build out of the Bickford Ranch project, as proposed.⁸⁰ But the
6 Specific Plan goes on to note that “Placer County, the Cities of Lincoln and Auburn, the
7 Newcastle Sanitary District and the South Placer Municipal Sewer District have formed a Joint
8 Powers Authority (JPA) to develop a regional sewer system.”⁸¹

9 The Bickford Ranch Specific Plan proposes to advance the JPA’s scheme of establishing
10 regional sewer service for west Placer County by oversizing the required sewer line between
11 Bickford Ranch and the City of Lincoln “to accommodate regional flows.”⁸² The DEIR also
12 acknowledges that the proposed sewer line connecting the City of Lincoln’s wastewater
13 treatment plant to the Bickford Ranch Project site “may be sized to serve as a regional sewer.”⁸³

14 **5. Water Supply Analysis**

15 The Bickford Ranch Project, at buildout, will require the delivery of 2.24 million gallons
16 of water per day (mgd).⁸⁴ This demand is to be served by the Placer County Water Agency
17 (“PCWA”).⁸⁵ According to the DEIR, at present, “peak usage [without the Bickford Ranch
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20 _____
21 ⁷⁹ 9 AR 3770.

22 ⁸⁰ 8 AR 3211; Specific Plan, *supra*, at p. 9-6.

23 ⁸¹ 8 AR 3211; Specific Plan, *supra*, at p. 9-6.

24 ⁸² 8 AR 3211; Specific Plan, *supra*, at p. 9-6. See also, Placer County Board of Supervisors
25 Hearing Transcript (Dec. 10, 2001), Testimony of George Phillips, at pp. 77-78 (“Board
26 Transcript (Dec. 10, 2001).”) (Citations to the Board of Supervisors’ December 10, 2001, hearing
27 are by actual page number, rather than citation to the Administrative Record, because the
28 transcript of this meeting was not included in the paginated record produced for this proceeding).

⁸³ 9 AR 3770.

⁸⁴ 9 AR 3767.

⁸⁵ 9 AR 3767.

1 project] is approximately 10 mgd during the winter and 25 mgd during the summer,” with an
2 average annual (pre-project) increase of 1 mgd .⁸⁶

3 The DEIR states that the project’s 2.24 mgd demand for water is a less than significant
4 impact.⁸⁷ The DEIR claims that impacts associated with long-term water supply are less than
5 significant because the Placer County Water Agency (PCWA) has an entitlement to 327,000
6 acre-feet/year (292 mgd) of water from the American River and the PG&E supply system from
7 Lake Spaulding in the Sierra Nevada foothills.⁸⁸ The DEIR does not state how much of this
8 “paper water” is presently available through the existing pump station on the American River.

9 **6. Runoff and Groundwater Quality Analysis**

10 The DEIR acknowledges that build-out of Bickford Ranch’s residential areas may have
11 significant adverse impacts on runoff water quality due, in part, “to the presence of residences
12 and commercial uses at the project site.”⁸⁹

13 The DEIR also states that buildout of these areas will also increase the amount of water
14 that runs off of the project site.⁹⁰

15 Of this total increase, 108 acre-feet would flow to the Auburn Ravine watershed
16 and into Sutter County. The balance, 26 acre-feet, would flow into Clover Valley
Creek and subsequently into Dry Creek.⁹¹

17 According to the DEIR, Auburn Ravine Creek and Clover Valley Creek “are groundwater
18 recharge sources, and significant impacts to runoff quality could therefore potentially reduce
19 groundwater quality within the creek recharge zones.”⁹²

22 ⁸⁶ 9 AR 3752.

23 ⁸⁷ 9 AR 3767.

24 ⁸⁸ 9 AR 3752; 3767-3768.

25 ⁸⁹ 9 AR 3950.

26 ⁹⁰ 9 AR 3945.

27 ⁹¹ 9 AR 3945.

28 ⁹² 9 AR 3952.

1 The DEIR recommends the future development of a “stormwater management program”
2 (“SWMP”) for Bickford Ranch’s residential areas to mitigate impacts to runoff water quality.⁹³
3 Development and implementation of the SWMP is essential to the DEIR’s finding that post
4 build-out runoff will have less-than-significant impacts on surface water quality.⁹⁴

5 The DEIR states that the SWMP will be developed under guidelines contained in the
6 Placer County Stormwater Management Manual.⁹⁵ However, the DEIR does not require the
7 SWMP to actually address degraded runoff water quality, only stating that the SWMP “*should . . .*
8 *. address potential chemical impacts to surface waters.*”⁹⁶

9 To combat water-quality impacts associated with runoff from the project’s proposed golf
10 course, the Applicant submitted a Draft Chemical Application Management Plan (“CHAMP”) to
11 the County before the project was approved.⁹⁷ The DEIR states that “[o]verall runoff from [the
12 golf course] would be low relative to other proposed land uses at the project site and would be
13 similar to the current flow.”⁹⁸ The DEIR notes that runoff from the golf course will also drain
14 into Auburn Ravine Creek and Clover Valley Creek, and claims but that implementation of the
15 proposed CHAMP for the golf course will reduce impacts to groundwater beyond significance.⁹⁹

16 Even though the DEIR states that 1) buildout of Bickford Ranch’s residential areas may
17 have significant impacts on runoff water quality, and 2) that commercial and residential runoff
18 volumes from the project site will be greater than runoff from the golf course, the DEIR does not
19 analyze potentially significant impacts to groundwater associated with residential runoff or
20

21 _____
22 ⁹³ 9 AR 3943-3944.

23 ⁹⁴ 9 AR 3950 (stating, “In combination, these four mitigation measures [including the yet-to-be-
24 developed SWMP] will reduce the level of impact to less than significant.”).

25 ⁹⁵ 9 AR 3943.

26 ⁹⁶ 9 AR 3951.

27 ⁹⁷ 9 AR 3950.

28 ⁹⁸ 9 AR 3952.

⁹⁹ 9 AR 3952.

1 propose any mitigation measures to reduce such impacts, simply stating – without citation to any
2 supporting evidence – that “[i]n general, residential development does not pose a high risk of
3 groundwater contamination”¹⁰⁰

4 **D. THE BICKFORD RANCH FEIR**

5 On November 13, 2000, Placer County released for public review the Bickford Ranch
6 Specific Plan Final EIR (“FEIR”).¹⁰¹ The FEIR contains numerous comments on the DEIR
7 submitted by state and local agencies, environmental organizations, and individuals – including
8 comments submitted by members of the Sierra Foothills Audubon Society and Sierra Club.¹⁰²

9 **E. THE COUNTY’S HEARINGS ON AND APPROVAL OF THE BICKFORD RANCH PROJECT**

10 On November 1, 2001, the Placer County Planning Commission held an initial public
11 hearing on the Bickford Ranch project.¹⁰³ The Planning Commission followed with its final
12 hearing on November 8, 2001.¹⁰⁴ On the conclusion of that hearing, the Planning Commission
13 voted to recommend a modified version of an alternative proposed by Petitioner Audubon –
14
15

16 ¹⁰⁰ 9 AR 3951. This statement in the DEIR also appears inconsistent with the DEIR’s
17 acknowledgement that contaminated runoff may have impacts on groundwater quality. (9 AR
18 3952. See discussion at note 92, *supra*.)

19 ¹⁰¹ County of Placer, Bickford Ranch Specific Plan Final Environmental Impact Report (“FEIR”) (Nov. 13, 2000) 17 AR 7331.

20 ¹⁰² See, e.g., 17 AR 8230-8236 (letter from Ed Pandolfino, member, Sierra Foothills Audubon
21 Society); 18 AR 8550-8574 (petition letter from Laurie Richards, member, Sierra Club); 18 AR
22 8686-8708 (letter from Laurie L. Richards and Wesley M. Dill, members, Sierra Club); 18 AR
23 8726-8730 (letter from Wesley Dill, member, Sierra Club); 18 AR 8797-8798 (letter from Laurie
24 L. Richards, member, Sierra Club); 18 AR 8813 (e-mail from Laurie L. Richards, member, Sierra
25 Club); 18 AR 8825-8841 (letter from Wesley Dill, member, Sierra Club).

26 ¹⁰³ Placer County Planning Commission Hearing Transcript (Nov. 1, 2001) (“Planning Com.
27 Transcript (Nov. 1 2001)”) (Citations to the Planning Commission’s November 1, 2001 hearing
28 are by actual page number, rather than citation to the Administrative Record, because the
transcript of this meeting was not included in the paginated record produced for this
proceeding.).

¹⁰⁴ Placer County Planning Commission Hearing Transcript (Nov. 8, 2001) (Planning Com.
Transcript (Nov. 8, 2001)”) (Citations to the Planning Commission’s November 8, 2001 hearing
are by actual page number, rather than citation to the Administrative Record, because the
transcript of this meeting was not included in the paginated record produced for this
proceeding.).

1 calling for the entire elimination of the areas designated as R11-A and R13-A to better protect the
2 project area's blue oak woodlands – for the Board's approval.¹⁰⁵

3 On December 10, 2001, the Board held its initial public hearing on the Bickford Ranch
4 Project.¹⁰⁶ At that meeting, the Applicant's Attorney presented a modified version of the
5 Planning Commission's recommendation, adding portions of R13-A and R11-A back into the
6 project.¹⁰⁷ At the end of that meeting, the Board voted to certify the Bickford Ranch FEIR and to
7 approve the Bickford Ranch Specific Plan and Development Agreement with the Applicant's re-
8 insertion of areas R13-A and R11-A.¹⁰⁸ On a final reading on December 18, 2001, the Board
9 rendered its final vote confirming its approval of the Bickford Ranch project.¹⁰⁹

10 **F. THE APPLICANT'S LAST-MINUTE FINANCIAL ANALYSIS OF ALTERNATIVES**

11 On December 5, 2001, the Applicant sent a letter to the Board of Supervisors with a
12 financial analysis of several proposed alternatives for the project.¹¹⁰

13 The Applicant's financial analysis sets forth assumptions and calculations for nine project
14 alternatives: the first six alternatives presented in the DEIR, the SC/AS Alternative (Alternative
15 7) the Audubon Alternative (Alternative 8) and the Modified Audubon Alternative (Alternative
16
17

18 ¹⁰⁵ Board Transcript (Dec. 10, 2001), *supra*, Testimony of George Phillips, at p. 82.

19 ¹⁰⁶ 1 AR 1.

20 ¹⁰⁷ Board Transcript (Dec. 10, 2001), *supra*, Testimony of George Phillips, at p. 83.

21 ¹⁰⁸ Board Transcript (Dec. 10, 2001), *supra*, at pp. 348-349, 353.

22 ¹⁰⁹ Placer County Board of Supervisors Hearing Transcript (Dec. 18, 2001) at p. 24 ("Board
23 Transcript (Dec. 18, 2001).") (Citations to the Board of Supervisors' December 18, 2001, hearing
24 are by actual page number, rather than citation to the Administrative Record, because the
25 transcript of this meeting was not included in the paginated record produced for this proceeding);
26 1 AR 25-93 (certification of EIR and adoption of statement of overriding considerations); 1 AR
27 94-95 (adoption of Bickford Ranch Specific Plan); 1 AR 108-109 (adoption of Bickford Ranch
28 Development Agreement).

¹¹⁰ 5 AR 1921-1967. The Applicant's analysis was actually received by the Supervisors on
Friday, December 7, 2001, only one working day before the Board initially approved the project
on Monday, December 10, 2001. (6 AR 2464; Board Transcript (Dec. 10, 2001), *supra*,
Testimony of George Phillips, at p. 85; Board Transcript (Dec. 10, 2001), *supra*, Testimony of
Bob Joehnck, at pp. 199.)

1 9).¹¹¹ The Applicant's analysis concludes that every alternative reviewed is financially
2 infeasible, except for 1) the proposed project, 2) Alternative 6 (a high density, affordable housing
3 alternative), and 3) Alternative 9 (the Modified Audubon Alternative).¹¹²

4 The existence of the Applicant's financial analysis was not made known to the public
5 until December 10, 2001, the same day that the Board of Supervisors certified the FEIR and
6 initially approved the Bickford Ranch Specific Plan.¹¹³ At that meeting, at least one of the
7 County Supervisors stated that his decision to approve the project, rather than any alternative
8 recommended by the Planning Commission, or proposed by Sierra Club or Audubon, was
9 heavily influenced by the Applicant's last-minute financial analysis.¹¹⁴

10 On December 14, 2001, Sierra Club wrote to the County protesting that the Applicant's
11 financial analysis had not been adequately presented to the public for review and comment.¹¹⁵ In
12 its letter, Sierra Club requested that the Board delay its final approval of the project so that the
13 public would have adequate time to review and comment on the Applicant's financial analysis.¹¹⁶
14 No extension was granted, and the project was approved on December 18, 2001.¹¹⁷

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19 _____
20 ¹¹¹ 5 AR 1928-1934; Board Transcript (Dec. 10, 2001), *supra*, Testimony of George Phillips, at
21 p. 85. No explanation is given as to why the EIR's Alternative 7 (the Sierra College Boulevard
22 alternative) is not included in the Applicants financial analysis.

23 ¹¹² 5 AR 1937, at Table 2.

24 ¹¹³ 6 AR 2464; Board Transcript (Dec. 10, 2001), *supra*, Testimony of Bob Joehnck, at p. 199.

25 ¹¹⁴ 6 AR 2464; Board Transcript (Dec. 10 2001), *supra*, Testimony of Supervisor Weygandt, at p.
26 337-338.

27 ¹¹⁵ 6 AR 2464.

28 ¹¹⁶ 6 AR 2464.

¹¹⁷ 1 AR 94-95. See discussion at note 1, *supra*.

1 **G. SUMMARY OF CHRONOLOGY OF ADMINISTRATIVE PROCEEDINGS**

- 2 • Aug. 17, 1999 Draft Specific Plan issued.¹¹⁸
- 3 • Aug. 27, 1999 Draft EIR for the Draft Specific Plan issued.¹¹⁹
- 4 • Feb.-Apr., 2000 Audubon submits “Audubon Alternative.”¹²⁰
- 5 • Nov. 13, 2000 Final EIR for the Specific Plan issued.¹²¹
- 6 • May, 2001 Sierra Club and Audubon submit “SC/AS Alternative.”¹²²
- 7 • Oct. 12, 2001 Revised Specific Plan issued.¹²³
- 8 • Nov. 1, 2001 First Hearing by Planning Commission¹²⁴
- 9 • Nov. 8, 2001 Final Hearing by Planning Commission¹²⁵
- 10 • Nov. 21, 2001 Audubon submits “Modified Audubon Alternative.”¹²⁶
- 11 • Dec. 5, 2001 Applicant Submits its Financial Feasibility Analysis to the Board of Supervisors.¹²⁷
- 12 • Dec. 10, 2001 First Hearing by Board of Supervisors¹²⁸
- 13 • Dec. 14, 2001 Sierra Club submits letter to Board of Supervisors re Applicant’s Financial Feasibility Analysis¹²⁹
- 14
- 15 • Dec. 18, 2001 Final Hearing and Project Approval by Board of Supervisors¹³⁰
- 16

17 ¹¹⁸ 9 AR 3616.

18 ¹¹⁹ 9 AR 3592.

19 ¹²⁰ See discussion at note 72, *supra*.

20 ¹²¹ 17 AR 7331.

21 ¹²² 21 AR 10339-10349.

22 ¹²³ 8 AR 3098.

23 ¹²⁴ See discussion at note 103, *supra*.

24 ¹²⁵ 5 AR 1947.

25 ¹²⁶ See discussion at note 104, *supra*.

26 ¹²⁷ 5 AR 1921.

27 ¹²⁸ See discussion at note 82, *supra*.

28 ¹²⁹ 6 AR 2464.

1 IV. STATEMENT OF LAW

2 A. STANDARDS OF REVIEW

3 1. Courts Must Set Aside Agency Certification of an EIR and Approval of a
4 Project Where The Agency Has Prejudicially Abused Its Discretion

5 This case requires the Court to apply three bodies of law: CEQA, the state Planning and
6 Zoning Law and the law of administrative mandamus under section 1094.5 of the Code of Civil
7 Procedure.

8 CEQA applies to projects carried out by or permitted by all public agencies in California
9 over which the agency has discretionary authority.¹³¹ In this case the County determined that an
10 EIR was required to document the County’s compliance with CEQA.¹³²

11 According to the California Supreme Court:

12 An EIR is an "environmental 'alarm bell' whose purpose it is to alert the public
13 and its responsible officials to environmental changes before they have reached
14 ecological points of no return." [] The EIR is also intended "to demonstrate to an
15 apprehensive citizenry that the agency has, in fact, analyzed and considered the
16 ecological implications of its action." [] Because the EIR must be certified or
17 rejected by public officials, it is a document of accountability. If CEQA is
18 scrupulously followed, the public will know the basis on which its responsible
19 officials either approve or reject environmentally significant action, and the
20 public, being duly informed, can respond accordingly to action with which it
21 disagrees. [] The EIR process protects not only the environment but also
22 informed self-government.¹³³

23 The three basic requirements of CEQA that the EIR must achieve are (1) to identify
24 significant environmental effects, including cumulative impacts, of the project; (2) to identify
25 and discuss a reasonable range of alternatives to the proposed project in sufficient detail to allow
26 the government decision maker to make an informed choice among the alternatives; and (3) to

27 ¹³⁰ See discussion at note 109, *supra*.

28 ¹³¹ Pub. Resources Code, § 21080, subd. (a).

¹³² 10 AR 4230.

¹³³ *Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights I*”).

1 implement all feasible mitigation measures or alternatives that would substantially lessen
2 significant adverse impacts.¹³⁴

3 Under both CEQA and principles of administrative law, the agency must make findings
4 on all of these issues. Where the agency holds a hearing and makes a quasi-adjudicative decision,
5 as in this case, then the mandamus petition is governed by section 1094.5 of the Code of Civil
6 Procedure. Under section 1094.5, the agency abuses its discretion if its decision is not supported
7 by the findings; if the findings are not supported by the evidence; or if the agency fails to proceed
8 in the manner required by law. Prejudicial abuse of discretion is a question of law requiring an
9 independent determination by a reviewing court.¹³⁵

10 The California Supreme Court discussed section 1094.5's requirements 1) that agency
11 decisions be supported by findings, and 2) that the agency's findings be supported by the
12 evidence, at length in *Topanga Association for a Scenic Community v. County of Los Angeles*:

13 We further conclude that implicit in section 1094.5 is a requirement that the
14 agency which renders the challenged decision must set forth findings to bridge the
15 analytic gap between the raw evidence and ultimate decision or order. . . . By
16 focusing . . . upon the relationships between evidence and findings and between
17 findings and ultimate action, the Legislature sought to direct the reviewing court's
18 attention to the analytic route the administrative agency traveled from evidence to
19 action. In so doing, we believe that the Legislature must have contemplated that
20 the agency would reveal this route. Reference, in section 1094.5, to the reviewing
21 court's duty to compare the evidence and ultimate decision to "the findings"
22 (italics added) we believe leaves no room for the conclusion that the Legislature
23 would have been content to have a reviewing court speculate as to the
24 administrative agency's basis for decision. . . . Among other functions, a findings
25 requirement serves to conduce the administrative body to draw legally relevant
26 sub-conclusions supportive of its ultimate decision; the intended effect is to
27 facilitate orderly analysis and minimize the likelihood that the agency will
28 randomly leap from evidence to conclusions. [citations omitted] In addition,
findings enable the reviewing court to trace and examine the agency's mode of
analysis. . . . By setting forth a reasonable requirement for findings and clarifying
the standard of judicial review, we believe we promote the achievement of the

134 Pub. Resources Code, §§ 21002; 21002.1; 21081, subd. (a)(3); Cal. Code Regs., tit. 14, §§
15091, 15092. If after doing all this, there are still significant adverse effects that cannot be
feasibly avoided by implementing mitigation measures or alternatives, the agency has a choice to
make: either deny the project or, if it finds that specific economic or social benefits of the
project outweigh the environmental harm, the agency can adopt a "statement of overriding
considerations" to document this finding and approve the project. Pub. Resources Code, §§
21002; 21002.1; 21081, subd. (b); Cal. Code Regs., tit. 14, § 15093.

135 *Laurel Heights I, supra*, 47 Cal.3d at p. 392, fn. 5.

1 intended scheme of land use control. Vigorous and meaningful judicial review
2 facilitates, among other factors, the intended division of decision-making labor.¹³⁶

3 Whether the agency’s findings are supported by the evidence is governed by the
4 substantial evidence standard of review.¹³⁷ In *Laurel Heights I*, The Supreme Court applied to a
5 CEQA case the findings requirement in section 1094.5, as construed in *Topanga Association*.
6 The Supreme Court held that while the Court’s review of the findings to determine if they are
7 supported by substantial evidence involves some deference to the agency’s discretion, the Court
8 still has to “carefully scrutinize the record,” stating:

9 We do not suggest that a reviewing court should refrain from carefully
10 scrutinizing the record. We have observed in a related context that such detailed
11 review is necessary in light of the requirement that in reviewing an administrative
12 agency’s determination the court “must scrutinize the record and determine
13 whether substantial evidence” supports the agency’s decision. [citing to *Topanga
14 Association*] The often technical nature of challenges to EIR’s also requires
15 particular attention to detail by a reviewing court. . . . We do not suggest that a
16 court must uncritically rely on every study or analysis presented by a project
17 proponent in support of its position. A clearly inadequate or unsupported study is
18 entitled to no judicial deference.¹³⁸

19 Finally, the “failure to proceed in the manner required by law” part of the test for abuse of
20 discretion does not involve any judicial deference to the agency.¹³⁹

21 Under CEQA, “[a] prejudicial abuse of discretion occurs if the failure to include relevant
22 information precludes informed decision making and informed public participation, thereby
23 thwarting the statutory goals of the EIR process.”¹⁴⁰ Courts generally “do not judge the wisdom
24 of the agency’s action in approving [a] [p]roject.”¹⁴¹ However, noncompliance with CEQA’s
25 substantive and procedural requirements constitutes abuse of discretion “regardless of whether a
26

27 ¹³⁶ *Topanga Association for a Scenic Community v. County of Los Angeles* (1976) 11 Cal.3d 506,
28 515–517.

¹³⁷ *Laurel Heights I, supra*, 47 Cal.3d at p. 392, fn. 12.

¹³⁸ *Laurel Heights I, supra*, 47 Cal.3d at pp. 408, 409, fn. 12.

¹³⁹ *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52
Cal.App.4th 1383, 1402.

¹⁴⁰ *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237.

¹⁴¹ *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37
Cal.App.4th 154, 168.

1 different outcome would have resulted if the public agency had complied with those
2 provisions.”¹⁴²

3 Noncompliance with substantive requirements of CEQA or noncompliance with
4 information disclosure provisions “which precludes relevant information from
5 being presented to the public agency ... may constitute prejudicial abuse of
6 discretion within the meaning of Sections 21168 and 21168.5, regardless of
7 whether a different outcome would have resulted if the public agency had
8 complied with those provisions.” [citation] In other words, when an agency fails
9 to proceed as required by CEQA, harmless error analysis is inapplicable. The
10 failure to comply with the law subverts the purposes of CEQA if it omits material
11 necessary to informed decisionmaking and informed public participation. Case
12 law is clear that, in such cases, the error is prejudicial.¹⁴³

13 In short, where an agency’s decisions to certify an EIR and approve a project are not
14 supported by substantial evidence, or where an agency fails to strictly comply with CEQA’s
15 procedural and substantive requirements, the agency has prejudicially abused its discretion, and a
16 reviewing court must order the agency to rescind its action.¹⁴⁴

17 **2. The Adoption of a Specific Plan Must Be Set Aside Where the Legislative
18 Body Acts Unlawfully in Adopting the Specific Plan.**

19 The adoption of a specific plan is a legislative act.¹⁴⁵ Judicial review of the adoption of a
20 specific plan, as with legislative acts in general, is governed by section 1085 of the Code of Civil
21 Procedure (traditional mandamus).¹⁴⁶ Under rules of traditional mandamus, a reviewing court
22 may not simply “substitute its judgment for that of the agency, and if reasonable minds may
23 disagree as to the wisdom of the agency’s action, [the agency’s] determination must be
24

25 _____
26 ¹⁴² *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th
27 99, 118.

28 ¹⁴³ *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 citing
Sierra Club v. State Bd. of Forestry, supra, 7 Cal.4th at p. 1236-1237; *Fall River Wild Trout
Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491-493; *Kings County Farm
Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712 (“Kings County”); *East Peninsula
Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155,
174; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021-1023.

¹⁴⁴ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th
713, 718 (“San Joaquin Raptor I”).

¹⁴⁵ *Yost v. Thomas* (1984) 36 Cal.3d 561, 571.

¹⁴⁶ Code Civ. Proc., § 1085; Gov. Code, § 65751.

1 upheld.”¹⁴⁷ However, where a reviewing court finds that the challenged legislative action is 1)
2 arbitrary or capricious, 2) entirely lacking in evidentiary support, 3) contrary to established
3 public policy, 4) unlawful, or 5) procedurally unfair – or where the court finds that the agency
4 failed to follow the procedure and give the notices required by law – then the objectionable
5 legislation must be set aside.¹⁴⁸ “This ‘arbitrary and capricious’ test . . . applies to a specific
6 plan’s conformance to a general plan.”¹⁴⁹

7 **B. PLANNING AND ZONING LAW OVERVIEW**

8 **1. The General Plan is the Constitution for Future Development**

9 “The general plan has been aptly described as the ‘constitution for all future
10 developments’ within the city or county. The propriety of virtually any local decision affecting
11 land use and development depends upon consistency with the applicable general plan and its
12 elements”¹⁵⁰

13 A county’s general plan must minimally address seven mandatory elements: land use,
14 circulation, housing, conservation, open space, noise and safety.¹⁵¹ In addition, at the county’s
15 discretion, a general plan may also incorporate one or more optional elements that relate to the
16 development of the county.¹⁵²

17 “[T]he general plan and elements and parts thereof comprise an integrated, internally
18 consistent and compatible statement of policies for the adopting agency.”¹⁵³ All of the various
19

20 ¹⁴⁷ *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995.

21 ¹⁴⁸ *Klajic, supra*, 90 Cal.App.4th at p. 995.

22 ¹⁴⁹ Daniel J. Curtin, Jr. and Cecily T. Talbert, *Curtin’s California Land Use and Planning Law*
23 (2001, 21st ed.) at p. 32 (hereinafter “Curtin’s Land Use”), *citing Mitchell v. County of Orange*
24 (1985) 165 Cal.App.3d 1185 and *Kawaoka v. City of Arroyo Grande* (9th Cir. 1994) 17 F.3d
1227.

25 ¹⁵⁰ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570 (“*Goleta Valley*
26 *II*”).

27 ¹⁵¹ Gov. Code, § 65302.

28 ¹⁵² Gov. Code, § 65303.

¹⁵³ Gov. Code, § 65300.5; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773.

1 parts of a county’s general plan must be internally, or “horizontally,” consistent with one another,
2 and no element – whether mandatory or optional – may take precedence over any other.¹⁵⁴

3 **2. Specific Plans Must Be Consistent With the General Plan**

4 As has been repeatedly stated by California’s courts, the “consistency doctrine” is the
5 “linchpin of California’s land use and development laws; it is the principle which infuse[s] the
6 concept of planned growth with the force of law.”¹⁵⁵ In addition to requiring internal or
7 “horizontal” consistency in a general plan, the “consistency doctrine” also requires “vertical
8 consistency.”¹⁵⁶ Under the concept of “vertical consistency,” any decision affecting land use and
9 development must be consistent with the applicable general plan.¹⁵⁷

10 An action, program or project is consistent with the general plan if, considering all
11 of its aspects, it will further the objectives and policies of the general plan and not
obstruct their attainment.¹⁵⁸

12 With regard to specific plans, the Government Code expressly provides that “[n]o specific plan
13 may be adopted . . . unless the proposed plan . . . is consistent with the general plan.”¹⁵⁹

14 Where a proposed development project is consistent with most of a general plan’s
15 policies, and with regard to other, *non-mandatory* policies there is conflicting evidence, courts
16 have upheld a county’s determination that the project is consistent with the general plan.¹⁶⁰

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18 ¹⁵⁴ *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 708.

19 ¹⁵⁵ *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of*
20 *Supervisors* (1998) 62 Cal.App.4th 1332, 1336 (“*FUTURE*”), *citing Corona-Norco Unified*
21 *School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

22 ¹⁵⁶ Curtin’s Land Use, *supra*, at pp. 22-24.

23 ¹⁵⁷ *DeVita, supra*, 9 Cal.4th at p. 772; See also Curtin’s Land Use, *supra*, at p. 22.

24 ¹⁵⁸ Governor’s Office of Planning and Research, General Plan Guidelines (1998) at p. 128
25 (hereinafter “OPR Guidelines”) *cited in* Curtin’s Land Use, *supra*, at p. 22. As noted in Curtin’s
26 Land Use, the OPR Guidelines are not mandatory, but they do provide guidance to the courts in
determining compliance with the state’s Planning and Zoning law. (Curtin’s Land Use, *supra*, at
p. 22, fn. 8, *citing Twaine Harte Homeowners Association v. County of Tuolumne* (1998) 138
Cal.App.3d 664.)

27 ¹⁵⁹ Gov. Code, § 65454.

28 ¹⁶⁰ See, e.g., *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704,
717-720 (subdivision map that was consistent with fourteen of seventeen general plan policies

1 However, where a proposed project’s potential impacts are inconsistent with *mandatory* policies
2 in a general plan, the courts have been far less deferential.¹⁶¹ In *Napa Citizens for Honest*
3 *Government v. Napa County*, the Appellate Court explained:

4 The proper question is whether development of the Project Area under the . . .
5 Specific Plan is compatible with and will not frustrate the General Plan’s goals
6 and policies. If the . . . Specific Plan will frustrate the General Plan’s goals and
7 policies, it is inconsistent with the County’s General Plan unless it also includes
8 definite affirmative commitments to mitigate the adverse effect or effects.¹⁶²

9 As indicated in *Napa Citizens*, a reviewing court must invalidate a specific plan as
10 inconsistent with the general plan where 1) the specific plan will frustrate the general plan’s
11 goals and policies, and 2) the specific plan otherwise fails to contain definite, affirmative
12 commitments to mitigate the specific plan’s adverse effects.¹⁶³

11 C. CEQA OVERVIEW

12 1. The EIR Is the Primary Means of Achieving CEQA’s Purposes

13 CEQA is a comprehensive statute designed to provide long-term protection to the
14 environment.¹⁶⁴ In order to achieve this goal, CEQA requires government agencies to actively
15 consider the potentially significant impacts a proposed project may have on the environment:

16 [T]he public agency bears the burden of affirmatively demonstrating that,
17 notwithstanding a project’s impact on the environment, the agency’s approval of
18 the proposed project followed meaningful consideration of alternatives and
19 mitigation measures.¹⁶⁵

20
21
22 held to be vertically consistent with general plan, where the map did not otherwise contravene
23 any express, mandatory general plan policy).

23 ¹⁶¹ See, e.g., *FUTURE*, *supra*, 62 Cal.App.4th at p. 1341-1342 (refusing to follow *Sequoyah*,
24 *supra*, and holding that county’s findings were not supported by substantial evidence where
25 proposed residential subdivision conflicted with county’s general plan policies).

25 ¹⁶² *Napa Citizens for Honest Government v. Napa County* (2001) 91 Cal.App.4th 342, 379, *citing*
26 *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90.

26 ¹⁶³ *Napa Citizens*, *supra*, 91 Cal.App.4th at p. 380.

27 ¹⁶⁴ *Mountain Lion Foundation v. Fish and Game Com.* (1997) 16 Cal.4th 105, 112.

28 ¹⁶⁵ *Mountain Lion Foundation*, *supra*, 16 Cal.4th at p. 134.

1 When a discretionary project may have a significant adverse effect on the environment,
2 an EIR must be prepared and certified prior to approving the project.¹⁶⁶ The California Supreme
3 Court has repeatedly stated that the EIR is the “heart of CEQA”:

4 The [EIR] is the primary means of achieving the Legislature’s considered
5 declaration that it is the policy of this state to take all action necessary to protect,
6 rehabilitate, and enhance the environmental quality of the state. (citations
7 omitted) The [EIR] is . . . the environmental alarm bell whose purpose it is to
8 alert the public and its responsible officials to environmental changes before they
9 have reached ecological points of no return. It is intended, further, to demonstrate
10 to an apprehensive citizenry that the agency has, in fact, analyzed and considered
11 the ecological implications of its actions. Because the EIR must be certified or
12 rejected by public officials, it is a document of accountability. . . .¹⁶⁷

13 CEQA requires that an EIR investigate and identify a project’s potentially significant
14 environmental impacts – including cumulative and growth-inducing impacts – and that the EIR
15 identify mitigation measures that could potentially reduce or avoid those impacts.¹⁶⁸

16 **a. Public Participation Is an Essential Part of the CEQA Process**

17 The CEQA Guidelines expressly acknowledge that public participation “is an essential
18 part of the CEQA process.”¹⁶⁹ “Public review provides the dual purpose of bolstering the
19 public’s confidence in the agency’s decision and providing the agency with information from a
20 variety of experts and sources.”¹⁷⁰

21 Members of the public hold a privileged position in the CEQA process.¹⁷¹ As stated by
22 California’s Supreme Court, “The EIR process protects not only the environment but also
23 informed self-government.”¹⁷²

24 ¹⁶⁶ Pub. Resources Code, §§ 21002.1, subd. (a), 21100, subd. (a), 21151, subd. (a). “A
25 *discretionary project* is one subject to ‘judgment controls’ i.e., where the agency can use its
26 judgment in deciding whether and how to carry out the project.” (*Mountain Lion Foundation,*
27 *supra*, 16 Cal.4th at p. 112 [emphasis in original].)

28 ¹⁶⁷ *Sierra Club v. State Bd. of Forestry, supra*, 7 Cal.4th at p. 1229.

¹⁶⁸ Pub. Resources Code, § 21002.1, subd. (a); Cal. Code Regs., tit. 14, §§ 15126, subd. (d),
15126.4, subd. (a)(1), 15130, subd. (a).

¹⁶⁹ Cal. Code Regs., tit. 14, §§ 15002, subd. (j), 15201.

¹⁷⁰ *Schoen v. California Dept. of Forestry and Fire Protection* (1997) 58 Cal.App.4th 556, 574.

¹⁷¹ *Concerned Citizens of Costa Mesa v. 32nd District Agricultural Assn.* (1986) 42 Cal.3d 929,
935-936.

1 **b. Courts Must Interpret CEQA to Afford the Fullest Possible**
2 **Protection to the Environment Within the Meaning of the Statute**

3 Because CEQA’s EIR process not only protects the environment, but also “informed self
4 government,” the California Supreme Court has declared that it is the duty of all California
5 courts to “scrupulously enforce” CEQA’s mandatory procedures.¹⁷³ Years ago the high court
6 acknowledged “[i]t is . . . too late to argue for a grudging, miserly reading of CEQA.”¹⁷⁴ “CEQA
7 is to be interpreted ‘to afford the fullest possible protection to the environment within the
8 reasonable scope of the statutory language.’”¹⁷⁵

9 **2. Lead Agencies Must Exercise Their Independent Judgment in Preparing and**
10 **Certifying an EIR**

11 When an EIR is required, a “lead agency” has the option of 1) preparing the EIR itself; 2)
12 entering a contract for preparation of the EIR; 3) accepting an EIR prepared by the applicant, a
13 consultant retained by the applicant, or any other person; 4) executing a memorandum of
14 understanding with the applicant for preparation of the EIR by an independent contractor; or 5)
15 using a previously prepared EIR.¹⁷⁶ The CEQA Guidelines expressly allow any person,
16 “including the applicant, may submit information or comments to the lead agency to assist in the
17 preparation of the draft EIR.”¹⁷⁷ Regardless of the source of the EIR, however, CEQA requires

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20 ¹⁷² *Sierra Club v. State Bd. of Forestry, supra*, 7 Cal.4th at p. 1229; *Laurel Heights Improvement*
21 *Assn. of San Francisco, Inc. v. Regents of the University of California* (1993) 6 Cal.4th 1112,
22 1123 (“*Laurel Heights II*”); *Goleta Valley II, supra*, 52 Cal.3d at p. 576; *Laurel Heights I, supra*,
23 47 Cal.3d at p. 392.

24 ¹⁷³ *Goleta Valley II, supra*, 52 Cal.3d at pp. 564-566.

25 ¹⁷⁴ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274.

26 ¹⁷⁵ *Mountain Lion Foundation, supra*, 16 Cal.4th at 112, quoting *Friends of Mammoth v. Board*
27 *of Supervisors* (1972) 8 Cal.3d 247, 259.

28 ¹⁷⁶ Pub. Resources Code, §§ 21100, subd. (a), 21082.1, subd. (a); Cal. Code Regs., tit. 14, §
15084, subds. (a) and (d). A “lead agency” is defined by the CEQA Guidelines as the “public
agency which has the principal responsibility for carrying out or approving a project.” (Cal. Code
Regs., tit. 14, § 15367.) Placer County is the lead agency for the Bickford Ranch project. (9 AR
3616.)

¹⁷⁷ Cal. Code Regs., tit. 14, § 15084, subd. (c).

1 that lead agencies exercise their independent judgment to ensure the adequacy and objectivity of
2 the information presented.¹⁷⁸

3 **3. The Lead Agency Cannot Defer the Development of Mitigation Measures**
4 **Until After the EIR is Certified and the Project is Approved**

5 CEQA requires the adoption of all feasible mitigation measures and alternatives *before* an
6 agency approves a project.¹⁷⁹ In some instances, courts have allowed projects to move forward
7 without specific mitigation measures being specified and formally incorporated into the project
8 where 1) the EIR identifies extensive mitigation measures, 2) performance standards are
9 established that will ensure the avoidance of significant impacts, 3) there is a reasonable
10 expectation that the proposed range of mitigation measures will meet the proposed performance
11 standards, and 4) subsequent approvals requiring CEQA review will be required in any event
12 before the project reaches “an ecological point of no return.”¹⁸⁰ Unless the above standards are
13 met, a CEQA lead agency cannot approve a project on the presumed success of mitigation
14 measures that have not been formulated at the time of project approval.¹⁸¹

15 In addition to requiring the adoption of all feasible mitigation measures, CEQA also
16 requires the lead agency to formulate and adopt a mitigation monitoring or reporting program to
17 ensure that the adopted measures will be carried out.¹⁸² With regard to general and specific plans

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19 ¹⁷⁸ Pub. Resources Code, § 21082.1, subd. (c)(1); Cal. Code Regs., tit. 14, § 15084, subd. (e);
20 *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1455 (explaining that
21 test of EIR’s objectivity is “whether the agency sufficiently exercised independent judgment over
22 the environmental analysis and exposition that constitute the EIR.”). *Cf. People v. County of
Kern* (1976) 62 Cal.App.3d 761, 775 (holding that county failed to exercise its “independent
judgment” in simply adopting resolution drafted by applicant’s attorney, rather than requiring
that EIR be prepared for project).

23 ¹⁷⁹ Pub. Resources Code, §§ 21002, 21002.1, subd. (b), 21081, subd. (a)(1); Cal. Code Regs., tit.
24 14, § 15091, subd. (a)(1).

25 ¹⁸⁰ *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027-1030
(“SOCA”).

26 ¹⁸¹ *Cf. Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396 (error to approve mitigated
27 negative declaration with potentially significant impacts to listed species, where determination
28 that impacts had been reduced beyond significance was based on promise to comply with
undisclosed mitigation measures in biological report that had not yet been conducted).

¹⁸² Cal. Code Regs., tit. 14, § 15097, subd. (a).

1 “the monitoring plan shall apply to the policies and any other portion of the plan that is a
2 mitigation measure or adopted alternative.”¹⁸³ In other words, a mitigation monitoring plan
3 adopted at the time of project approval would necessarily be insufficient if the underlying EIR
4 had failed to adequately identify all of the proposed project’s potentially significant impacts, and
5 therefore had failed to analyze the feasibility of corresponding mitigation measures.

6 **4. An EIR Must Analyze a “Reasonable Range” of Alternatives that Will**
7 **Reduce or Avoid a Project’s Potentially Significant Impacts**

8 CEQA requires that an EIR analyze a reasonable range of alternatives to the proposed
9 project.¹⁸⁴ “An EIR need not consider every conceivable alternative to a project.”¹⁸⁵ However,
10 the EIR must describe a range of alternatives that would “feasibly attain most of the basic
11 objectives of the project but would avoid or substantially lessen . . . the significant effects of the
12 project”¹⁸⁶

13 [T]he discussion of alternatives shall focus on alternatives to the project or its
14 location [that] are capable of avoiding or substantially lessening any significant
15 effects of the project, even if these alternatives would impede to some degree the
16 attainment of the project objectives, or would be more costly.¹⁸⁷

15 **5. An EIR Must Analyze a Project’s Potentially Significant Cumulative and**
16 **Growth-Inducing Impacts**

17 Beyond examining a proposed project’s foreseeable, direct impacts, an EIR must also
18 analyze a project’s potentially significant cumulative and growth-inducing effects.¹⁸⁸ The CEQA
19 Guidelines define “cumulative impacts” to mean “two or more individual effects [that], when
20 considered together, are considerable, or [that] compound or increase other environmental
21

22 _____
23 ¹⁸³ Cal. Code Regs., tit. 14, § 15097, subd. (a).

24 ¹⁸⁴ Pub. Resources Code, § 21100, subd. (b)(2)(B)(4).

25 ¹⁸⁵ Cal. Code Regs., tit. 14, § 15126.6, subd. (a).

26 ¹⁸⁶ Cal. Code Regs., tit. 14, § 15126.6, subd. (a).

27 ¹⁸⁷ Cal. Code Regs., tit. 14, § 15126.6, subd. (b).

28 ¹⁸⁸ Pub. Resources Code, § 21100, subd. (b)(2)(B)(5); Cal. Code Regs., tit. 14, §§ 15126, subd.
(d), 15126.2, subd. (d), 15130.

1 impacts.”¹⁸⁹ “Cumulative impacts can result from individually minor but collectively significant
2 projects taking place over a period of time.”¹⁹⁰

3 Growth inducing impacts are one type of cumulative impact expressly requiring analysis
4 under CEQA.¹⁹¹ In analyzing growth inducing impacts, an EIR must discuss the ways in which
5 the proposed project might directly or indirectly foster economic or population growth.¹⁹²

6 Included in this are projects which would remove obstacles to population growth
7 (a major expansion of a waste water treatment plant might, for example, allow for
more construction in service areas).¹⁹³

8 **6. CEQA Requires a Lead Agency to Make Specific Findings Before Approving**
9 **Any Project that May Have Significant, Adverse Environmental Effects**

10 Before approving a project that may have significant environmental effects, the lead
11 agency must make one or more findings with respect to each significant effect identified in the
12 EIR: 1) that changes have been made to the project which mitigate or avoid the identified effect,
13 2) that the changes required to mitigate or avoid the effect are within the jurisdiction of another
14 agency and that such changes should be adopted by that agency, or 3) that specific economic,
15 legal, social, technological or other considerations make infeasible the mitigation measures or
16 alternatives identified in the EIR.¹⁹⁴ If the agency selects the third option, it must then adopt a
17 statement of overriding considerations – requiring the agency to make *additional* findings that
18 specific overriding economic legal, social, technological, or other benefit of the project outweigh
19 the identified, potentially significant effects on the environment.¹⁹⁵

20 ¹⁸⁹ Cal. Code Regs., tit. 14, § 15355. See also Cal. Code Regs., tit. 14, § 15065, subd. (c)
21 (defining “cumulatively considerable” to mean “that the incremental effects of an individual
22 project are considerable, when viewed in connection with the effects of past projects, the effects
of other current projects, and the effects of probable future projects”).

23 ¹⁹⁰ Cal. Code Regs., tit. 14, § 15355, subd. (b).

24 ¹⁹¹ Pub. Resources Code, § 21100, subd. (b)(2)(B)(5); Cal. Code Regs., tit. 14, §§ 15126, subd.
25 (d), 15126.2, subd. (d).

26 ¹⁹² Cal. Code Regs., tit. 14, § 15126.2, subd. (d).

27 ¹⁹³ Cal. Code Regs., tit. 14, § 15126.2, subd. (d).

28 ¹⁹⁴ Pub. Resources Code, § 21081, subd. (a); Cal. Code Regs., tit. 14, § 15091, subd. (a).

¹⁹⁵ Pub. Resources Code, § 21081, subd. (b); Cal. Code Regs., tit. 14, § 15093, subd. (c).

1 An agency’s finding that specific economic, legal, social, technological or other
2 considerations make mitigation measures or alternatives infeasible must be supported by
3 substantial evidence in the record before the agency.¹⁹⁶ “Substantial evidence” includes “fact,
4 reasonable assumptions predicated upon fact, and expert opinion supported by fact.”¹⁹⁷
5 Conclusory statements are also inadequate to meet CEQA’s requirement that findings be based
6 on substantial evidence.¹⁹⁸

7 **V. DISCUSSION**

8 **A. PETITIONERS HAVE ADEQUATELY EXHAUSTED THEIR ADMINISTRATIVE REMEDIES**

9 In both CEQA and Planning and Zoning law litigation, a petitioner may only litigate
10 claims that were presented to the public agency prior to the close of public hearings on the
11 project.¹⁹⁹ This does not require the petitioner to personally raise every specific objection, but
12 only that *someone* must present the issue to the agency in a timely fashion.²⁰⁰ The petitioner
13 must also object to the agency’s action prior to the close of the public hearing on the project.²⁰¹
14 “Thus, a party can litigate issues that were timely raised by others, but only if that party objected
15 to the project approval on any ground . . . prior to the close of the public hearing on the
16 project.”²⁰²

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19 _____
20 ¹⁹⁶ Pub. Resources Code, § 21081.5; Cal. Code Regs., tit. 14, § 15091, subd. (b).

21 ¹⁹⁷ Pub. Resources Code, § 21080, subd. (e)(1). See also Pub. Resources Code, § 21082.2, subd.
(c); Cal. Code Regs., tit. 14, § 15064, subd. (f)(5).

22 ¹⁹⁸ Cal. Code Regs., tit. 14, § 15091, subd. (c); *Village Laguna of Laguna Beach, Inc. v. Board of*
Supervisors (1982) 134 Cal.App.3d 1022, 1034-1035.

23 ¹⁹⁹ Gov. Code, § 65009, subd. (b)(1); Pub. Resources Code, § 21177, subd. (a).

24 ²⁰⁰ Gov. Code, § 65009, subd. (b)(1); Pub. Resources Code, § 21177, subd. (a); *Friends of*
Mammoth, supra, 8 Cal.3d at pp. 267-268.

25 ²⁰¹ See, e.g., Pub. Resources Code, § 21177, subd. (b); *Galante Vineyards v. Monterey Peninsula*
Water Management Dist. (1997) 60 Cal.App.4th 1109, 1119.

26 ²⁰² *Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252,
27 1263, *citing* Pub. Resources Code, § 21177, subs. (a) and (b), *and Galante Vineyards, supra*, 60
28 Cal.App.4th at pp. 1119, 1121.

1 Each of the issues raised in Petitioner’s Petition, as elaborated in this Brief, was the
2 subject of timely public comments filed by Petitioners and others prior to the County’s final
3 public hearing on the Bickford Ranch project.²⁰³ Each Petitioner organization filed objections to
4 the County’s approval of the Bickford Ranch project prior to the close of the County’s public
5 hearings.²⁰⁴ Having duly objected to the project in a timely fashion, and having no further
6 administrative remedies, Petitioners have challenged the County’s approval of the Bickford
7 Ranch project for failing to comply with CEQA and the state’s Planning and Zoning law.²⁰⁵

8 **B. THE COUNTY PREJUDICIALLY ABUSED ITS DISCRETION BY FAILING TO CONSIDER ANY**
9 **ALTERNATIVE THAT WOULD PRESERVE THE PROJECT SITE’S BLUE OAK WOODLANDS**

10 **1. The EIR Fails to Analyze a Reasonable Range of Project Alternatives That**
11 **Would Preserve the Project Site’s Blue Oak Woodlands**

12 One of the most significant, irreversible impacts of the Bickford Ranch Project will be the
13 destruction of 960 acres of blue oak woodland habitat, and the fragmentation of an additional 460
14 acres of unfragmented oak habitat at the project site.²⁰⁶ The significance of this impact is
15 identified in the EIR and admitted by the County’s mandatory CEQA findings.²⁰⁷ The destruction
16 of well over 11,000 native oak trees and valuable oak woodland habitat is identified as a
17 significant adverse change to the existing, natural landscape, even after the implementation
18 mitigation measures proposed by the EIR.²⁰⁸

19 Furthermore, the loss of these oak trees and habitat violates County policy, including the
20 General Plan’s mandatory policy requiring the protection of “large areas of non-fragmented
21

22 ²⁰³ Citations to comments in the administrative record are provided below with the cause of
23 action to which they specifically relate. See, e.g., discussion at notes 210, 278, 320-321, 345-
346, 355-356, 395, and 422 *infra*.

24 ²⁰⁴ See, e.g., 3 AR 903; 3 AR 955; 5 AR 1673; 5 AR 1787; 5 AR 1886; 6 AR 1990; 6 AR 2463;
25 7 AR 2991; 21 AR 10339; 23 AR 10992-10995; 23 AR 11003; 23 AR 11243.

26 ²⁰⁵ Pub. Resources Code, § 21177, subd. (a).

27 ²⁰⁶ See discussion at notes 63-64, *supra*.

28 ²⁰⁷ 1 AR 66-68; 9 AR 3993-3994.

²⁰⁸ 9 AR 3993-3994

1 natural habitat, including Blue Oak Woodlands”²⁰⁹ No mitigation or alternative was
2 analyzed in the EIR that would allow the project to move forward without violating the General
3 Plan’s mandatory oak woodland protection policy.

4 Many members of the public complained that the County had failed to present an
5 alternative that would reasonably preserve the oak woodlands on the project site.²¹⁰ Still, the
6 County failed to include in the Bickford Ranch EIR any meaningful discussion of a project
7 alternative that would reduce this significant, adverse impact to a less-than-significant level.

8 CEQA requires the lead agency to evaluate alternatives to the project when mitigation
9 measures cannot reduce or avoid the project’s identified, remaining, significant effects.²¹¹

10 The Guidelines require that an EIR “[describe] a reasonable range of alternatives
11 to the project, or to the location of the project, which could feasibly attain the
12 basic objectives of the project and evaluate the comparative merits of the
13 alternatives.” These alternatives must be discussed, “even if these alternatives
14 would impede to some degree the attainment of the project objectives, or would
15 be more costly.”²¹²

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18 ²⁰⁹ PCGP, § 6.C.1. See discussion at note 37, *supra*. The mitigation measures in the EIR include
19 1) implementation of the Applicant’s oak forest conservation and revegetation plan; 2) hiring a
20 biologist for construction monitoring; 3) off-site tree mitigation; and 4) implementation of a tree
21 protection program. (9 AR 3993-3995, 4013-4015). However, the EIR and the County’s
22 findings make clear that the project will still have significant, adverse impacts on oak trees and
23 oak woodland habitats at the project site. (1 AR 66-68; 9 AR 3993-3995.)

24 ²¹⁰ See, e.g., 18 AR 8236 (letter from Ed Pandolfino, requesting analysis of a project alternative
25 preserving the project area’s ridges and open space areas); 18 AR 8250 (letter from Michael R.
26 Posehn, indicating that “major changes” should be made to the project to preserve heritage oak
27 trees at the project site); 18 AR 8264 (letter from Daniela Regele opposing approval of the
28 project, in part, due to significant loss of oak woodlands and associated habitats); 18 AR 8340
(letter from Robert Chesney requesting that provisions be made in the Bickford Ranch Specific
Plan to provide for a natural, undisturbed area along the project area’s ridgetops); 18 AR 8370-
8374 (letter from John Vollmar pointing out numerous inconsistencies between the project, as
proposed, and the County’s policies protecting biological resources, including oak woodlands).

²¹¹ Cal. Code Regs., tit. 14, § 15126, subd. (a); *Citizens for Quality Growth v. City of Mt Shasta*
(1988) 198 Cal.App.3d 433, 443-445.

²¹² *Laurel Heights I, supra*, 47 Cal.3d at 400, quoting Cal. Code Regs., tit. 14, §§ 15126, subds.
(d) and (d)(3).

1 The Supreme Court has described the alternatives and mitigation sections as "the core" of
2 an EIR.²¹³ In *Goleta Valley II, supra*, the high court stressed that "each case must be evaluated
3 on its facts" to determine whether a "reasonable range" of alternatives has been considered:

4 CEQA establishes no categorical legal imperative as to the scope of alternatives to
5 be analyzed in an EIR. Each case must be evaluated on its facts, which in turn
6 must be reviewed in light of the statutory purpose. Informed by that purpose, we
7 here reaffirm the principle that an EIR for any project subject to CEQA review
8 must consider a reasonable range of alternatives to the project, or to the location
of the project, which: (1) offer substantial environmental advantages over the
project proposal; and (2) may be "feasibly accomplished in a successful manner"
considering the economic, environmental, social and technological factors
involved.²¹⁴

9 Under these standards, there can be no question that the County owed a duty to evaluate a
10 feasible development alternative that would avoid the proposed project's impacts on blue oak
11 woodlands and associated habitats. The County prejudicially abused its discretion by failing to
12 proceed in the manner required by law and the Court should order the County to set aside its
13 decisions to certify the Bickford Ranch EIR and approve the project.

14 **a. The EIR Failed to Evaluate Alternatives That Would Avoid**
15 **Significant Project Impacts on Blue Oak Woodlands**

16 The DEIR's criteria for formulating alternatives include 1) aiding the County to meet its
17 obligation to provide for population growth in the County, 2) relieving pressure to develop other
18 agricultural lands in the County, 3) creating a quality recreation and residential development with
19 a distinct identity and sense of place, 4) integrating a high-quality residential community into
20 existing natural places preserving these features "to the extent possible," 5) providing an age-
21 qualified residential community, 6) minimizing impacts to off-site viewsheds, and 7) providing
22 all public facilities necessary to meet the needs of development in the area.²¹⁵ Only one criterion

23 _____
24 ²¹³ *Goleta Valley II, supra*, 52 Cal. 3d at p. 564.

25 ²¹⁴ *Goleta Valley II, supra*, 52 Cal 3d at p. 566, citing Pub. Resources Code, §§ 21002, 21061.1,
26 Cal. Code Regs., tit. 14, § 15364, and *Citizens of Goleta Valley v. Board of Supervisors* (1988)
197 Cal.App.3d 1167 ("*Goleta Valley I*").

27 ²¹⁵ 9 AR 0471. Although the Placer County General Plan mandates that the County protect,
28 identify, and preserve significant ecological resource areas, including Blue Oak Woodlands, and
other unique wildlife habitats, this was inexplicably not included as a criterion for the
development of alternatives to the Bickford Ranch project. PCGP, *supra*, at p. 110, Policy 6.C.1.

1 – minimizing impacts to the project site’s viewsheds – actually meets CEQA’s express
2 requirement that the alternatives considered in an EIR be designed to mitigate or avoid *the*
3 *project’s* potentially significant impacts.²¹⁶ Although the remaining selection criteria address a
4 variety of commendable social and fiscal goals (e.g., providing an age-qualified residential
5 community in the County, relieving development pressure on other agricultural lands, providing
6 adequate public facilities to serve other projects in the Bickford Ranch area), none of them are
7 targeted at developing a “reasonable range” of project alternatives that would mitigate or avoid
8 the proposed Bickford Ranch project’s identified, significant adverse effects on the environment.

9 Based on the above selection criteria, the Bickford Ranch EIR did identify and analyze
10 seven project alternatives.²¹⁷ However, none of those alternatives proposes to site residential
11 development in the Bickford Ranch project area in a manner that will preserve the area’s blue
12 oak woodlands and other unique wildlife habitats.²¹⁸

13 The Master Responses in the FEIR for the project claim that Alternative 4 – the “Rural
14 Residential” alternative – was the alternative designed to analyze reduced oak tree impacts.²¹⁹
15 The proposed lotting plan for Alternative 4, however, contains absolutely no open space, and
16 shows every square inch of the project area – including all of the blue oak woodlands in the north
17 and eastern portions of the project area – subdivided into 10-acre lots.²²⁰ Based on this design,
18 the DEIR concluded that Alternative 4’s *ongoing* impacts to oak trees and other special-status
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22 ²¹⁶ Cal. Code Regs., tit. 14, § 15126.6

23 ²¹⁷ 9 AR 4072-4175. See discussion at Part III.C.2, *supra*.

24 ²¹⁸ As discussed at Part III.C.2, *supra*, the alternatives that were analyzed in the Bickford Ranch
25 EIR included the “No Project” alternative, a “Conventional Housing” alternative, a “Rural
26 Residential” alternative, an “Affordable Housing” alternative, and four alternatives with varying
vehicular access configurations (three “Clark Tunnel Road” alternatives and a “Sierra College
Boulevard” alternative).

27 ²¹⁹ 17 AR 7411; 22 AR 10578.

28 ²²⁰ 9 AR 4106.

1 species are likely to be equally as destructive as the proposed project.²²¹ In short, the DEIR
2 contradicts the County’s Master Responses, by admitting that Alternative 4 *would not* mitigate or
3 avoid the proposed project’s ongoing impacts to blue oak woodlands.²²²

4 Although its discussion of alternatives includes over 100 pages of text and graphs, the
5 DEIR’s alternatives analysis failed to evaluate any alternative that would avoid the project’s
6 identified, significant adverse impacts to blue oak woodlands and related habitats. The County’s
7 omission of an alternative in the EIR that would reduce or avoid the project’s significant, adverse
8 effects on oak woodlands is a prejudicial abuse of discretion.²²³

9 **b. Failure to Evaluate a Reasonable Range of Alternatives in the EIR**
10 **Violates CEQA’s Mandate of Informed Decision Making**

11 CEQA requires that a range of potentially feasible alternatives “be selected and discussed
12 in a manner to foster meaningful public participation and informed decisionmaking.”²²⁴ A lead
13 agency may exclude from discussion in the EIR project alternatives that are “infeasible.”²²⁵
14 CEQA requires, however, that the lead agency “briefly explain the reasons” why potentially
15 feasible alternatives have been rejected from consideration in an EIR.²²⁶ The California
16 Supreme Court has twice confirmed the general rule that where a lead agency excludes
17 environmentally superior alternatives from discussion in the draft EIR, “the reasons underlying
18 the agency’s determination” must also be explained in meaningful detail *in the EIR*.²²⁷

19
20
21 ²²¹ 9 AR 4118 (“This alternative would result in an equivalent level of operation phase impacts
22 on oaks and other protected trees and special-status plant habitat compared to the proposed
project.”).

23 ²²² Compare 17 AR 7411 with 9 AR 4118.

24 ²²³ *Goleta Valley II, supra*, 52 Cal 3d at p. 566. See discussion at note 214, *supra*.

25 ²²⁴ Cal. Code Regs., tit. 14, § 15126.6, subd. (f).

26 ²²⁵ *Goleta Valley II, supra*, 52 Cal 3d at 569.

27 ²²⁶ Cal. Code Regs., tit. 14, § 15126.6, subd. (c).

28 ²²⁷ *Goleta Valley II, supra*, 52 Cal.3d, at p. 569; *Laurel Heights I, supra*, 47 Cal.3d at pp. 403-
405.

1 In a leading decision on this issue, *Laurel Heights Improvement Association of San*
2 *Francisco v. Regents of the University of California* (“*Laurel Heights I*”), the University of
3 California, San Francisco (“UCSF”) proposed to move its School of Pharmacy, including the
4 School’s biomedical research unit, into the Laurel Heights neighborhood of San Francisco.²²⁸
5 UCSF prepared a DEIR for the project identifying a number of potentially significant impacts to
6 the Laurel Height’s neighborhood including noise, traffic congestion, parking and potential
7 exposure to hazardous chemicals.²²⁹ UCSF’s DEIR did not analyze any alternative locations for
8 the project that would substantially reduce or avoid the project’s significant effects.

9 In a subsequent legal challenge to UCSF’s DEIR, the Regents argued that 1) the
10 University had already considered alternatives with less impact in the pre-EIR scoping process
11 and found them all to be infeasible and 2) that “an EIR need not discuss a clearly infeasible
12 project alternative.”²³⁰ As the California Supreme Court noted:

13 The Regents apparently believe that, because they and UCSF were already fully
14 informed as to the alleged infeasibility of alternatives, there was no need to
discuss them in the EIR.²³¹

15 Then, the high court flatly rejected the Regent’s premise:

16 *The Regents miss the critical point that the public must be equally informed.* ¶ . . .
17 . [A]lternatives and the reasons they were rejected . . . must be discussed in the
18 EIR in sufficient detail to enable meaningful participation and criticism by the
19 public. “[Whatever] is required to be considered in an EIR must be in that formal
report; what any official might have known from other writings or oral
20 presentations cannot supply what is lacking in the report.”²³²

21 In confirming the general rule that an agency’s reasons and supporting information for
22 excluding environmentally superior alternatives must be included in the EIR, the high court

23 ²²⁸ *Laurel Heights I, supra*, 47 Cal.3d at p. 388-389.

24 ²²⁹ *Laurel Heights I, supra*, 47 Cal.3d at p. 389.

25 ²³⁰ *Laurel Heights I, supra*, 47 Cal.3d at p. 404.

26 ²³¹ *Laurel Heights I, supra*, 47 Cal.3d at p. 404.

27 ²³² *Laurel Heights I, supra*, 47 Cal.3d at p. 404-405, citing *Santiago County Water District v.*
28 *County of Orange* (1981) 118 Cal.App.3d 818, 831, and *Environmental Defense Fund, Inc. v.*
Coastside County Water Dist. (1972) 27 Cal.App.3d 695, 706.

1 stressed that this result is compelled by CEQA’s fundamental policy of fully involving the public
2 in the decisionmaking process:

3 An EIR’s discussion of alternatives must contain analysis sufficient to allow
4 informed decision making. [citation] . . . ¶We do not impugn the integrity of the
5 Regents, but neither can we countenance a result that would require blind trust by
6 the public, especially in light of CEQA’s fundamental goal that the public be fully
7 informed as to the environmental consequences of action by their public officials.
8 “To facilitate CEQA’s informational role, the EIR must contain facts and analysis,
9 not just the agency’s bare conclusions or opinions.” [citations] An EIR must
10 include detail sufficient to enable those who did not participate in its preparation
11 to understand and to consider meaningfully the issues raised by the proposed
12 project.²³³

13 Here, the Bickford Ranch EIR fails to meet the rule established in *Laurel Heights I*.²³⁴

14 The DEIR found that the project, as proposed, will have significant, unavoidable
15 impacts on the county’s blue oak woodlands.²³⁵ The County, therefore, owed a duty to consider
16 project alternatives that would reduce or avoid impacts to the project area’s blue oak woodlands.
17 Such information and analysis would allow the public (and the County) to 1) rationally compare
18 the environmental consequences of an alternative development pattern to the proposed project
19 and 2) evaluate the alternative’s ability to achieve the project’s basic objectives. Only with such

20 _____
21 ²³³ *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405 (citations omitted).

22 ²³⁴ The recent decision in *San Franciscans Upholding the Downtown Plan v. City and County of*
23 *San Francisco* (2002) 102 Cal.App.4th 656 (“*San Franciscans*”) does not change this result. In
24 that case, the Court of Appeals considered whether a local agency can rely on evidence in the
25 administrative record but not contained in the EIR relating to the infeasibility of project
26 alternatives *that are discussed in the EIR* in making its mandatory CEQA finding that all
27 significant impacts have been avoided where feasible. While petitioners argue below in another
context that *San Franciscans* is distinguishable from this case and inconsistent with *Laurel*
Heights I and *Goleta Valley II*, the Court of Appeal in that case explicitly recognized that its
decision does not apply to facts, such as existed in *Laurel Heights I* and in this case, where a
draft EIR fundamentally fails to present and analyze a “reasonable range” of project alternatives:
“The cases cited and relied upon by appellants are not to the contrary. They concern the *separate*
issue of a public agency's failure to identify a reasonable range of potentially feasible alternatives
because the agency claimed to have already made the foundational determination that there were
no feasible alternatives before drafting the EIR. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 404-
407; *Kings County, supra*, 221 Cal.App.3d at pp. 731, 736.) Neither case dealt with or had
anything to say concerning the issue of whether the ultimate economic feasibility evidence relied
upon by the agency in making its decision *after* certification of the EIR must be contained in the
EIR or may instead be set forth elsewhere in the record.” *San Franciscans, supra*, 102
Cal.App.4th at 692 (emphasis added).

28 ²³⁵ 9 AR 3994 (Loss of 960 acres of oak woodland habitat significant, even after proposed
mitigation).

1 facts and analysis, could the DEIR “enable those who did not participate in its preparation to
2 understand and to consider meaningfully the issues raised by the proposed project.”²³⁶

3 The DEIR does disclose that during the scoping process, the County eliminated from
4 consideration several alternatives that might have achieved the General Plan’s policy goals of
5 protecting the County’s blue oak woodlands and associated, unique wildlife habitat.²³⁷ For
6 example, the DEIR states that a “more intensively mixed-use development including apartments
7 and townhomes with zero lot lines” was rejected from analysis in the DEIR “because it would
8 create an undesirable, more urban environment.”²³⁸ First, the DEIR contains no evidence
9 supporting the County’s characterization of “more urban” environments as “undesirable.” And,
10 even if the DEIR did contain substantial evidence that “more urban” development is “less
11 desirable,” this value judgment does not support a finding that a Project alternative with a “more
12 urban” configuration is *infeasible*.²³⁹

13 In fact, the County did choose to discuss a “more urban,” “Affordable Housing” project
14 alternative – designated Alternative 6 in the DEIR – that called for building 2,145 residential
15 units on the project site (which would have also required an amendment to Appendix C of the
16 General Plan, which allows for only 1,950 units at the project site).²⁴⁰ The County never
17 explains why it included this “more urban” alternative requiring substantial changes to the
18 County’s General Plan, but summarily excluded from the DEIR a “more urban” alternative that
19 would avoid the project’s impacts to blue oak woodlands without requiring any change to the
20 County’s General Plan. In other words, if “more urban” was a reasonable basis for categorically
21 rejecting alternatives as “infeasible” (which it is not), then Alternative 6 should have also been
22 eliminated from consideration on the exact same basis.

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24 _____
25 ²³⁶ *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405.

26 ²³⁷ 9 AR 4072.

27 ²³⁸ 9 AR 4072.

28 ²³⁹ *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405, 425.

²⁴⁰ 9 AR 4148-4161.

1 Similarly, the County also excluded from the DEIR a potential alternative involving
2 clustered development to protect more of the site’s open space “because the residential market no
3 longer demands this type of development.”²⁴¹ Again, however, there is no evidence presented in
4 the DEIR to support 1) the assertion that clustered development is “no longer” in demand, or 2)
5 the conclusion that such reduced demand would make the project *infeasible*.²⁴²

6 The facts of the instant case are directly analogous to the California Supreme Court’s
7 observation about UCSF’s inadequate discussion of alternative sites in the *Laurel Heights I*
8 EIR.²⁴³ To be forced to accept at face value the County’s decision to eliminate the two
9 alternatives at the scoping stage that could have avoided or substantially reduced the project’s
10 impacts on blue oak woodlands would unlawfully require “blind trust” by the public and this
11 Court that these alternatives were, in fact, *infeasible*, as compared to simply impeding the
12 attainment of some project objectives (such as maximizing the number and retail value of lots on
13 the project site) or, perhaps, being more costly.²⁴⁴

14 The County abused its discretion by failing to either 1) fully analyze *in the DEIR* one or
15 more alternatives that would actually mitigate or avoid impacts to blue oak woodlands, or 2) at
16 the least, provide *in the DEIR* substantial evidence and analysis explaining why such alternatives
17 were infeasible and therefore rejected from further consideration.²⁴⁵ Under the standards set
18 forth in *Laurel Heights I* and *Goleta II*, the County failed to proceed in the manner required by
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22 ²⁴¹ 9 AR 4072.

23 ²⁴² Cal. Code Regs., tit. 14, § 15126.6, subd. (b) (“[T]he discussion of alternatives shall focus on
24 alternatives to the project or its location which are capable of avoiding or substantially lessening
25 any significant effects of the project, even if these alternatives would impede to some degree the
attainment of the project objectives or would be more costly.”). See also, discussion at Part
IV.C.4, *supra*.

26 ²⁴³ *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405. See discussion at note 233, *supra*.

27 ²⁴⁴ Cal. Code Regs., tit. 14, § 15126.6, subs. (b) and (c); *Laurel Heights I, supra*, 47 Cal.3d at
pp. 404-405; *Goleta Valley II, supra*, 52 Cal.3d at p. 569.

28 ²⁴⁵ *Laurel Heights I, supra*, 47 Cal.3d at pp 404-405.

1 law and abused its discretion by failing to consider in “meaningful detail” *in the DEIR* an
2 alternative that would preserve the area’s blue oak woodlands and associated wildlife habitats.²⁴⁶

3 **2. The County Violated CEQA When It Made the Mandatory Finding That**
4 **There Are No Feasible Alternatives to the Project**

5 CEQA provides that “public agencies should not approve projects as proposed if there are
6 feasible alternatives or feasible mitigation measures available which would substantially lessen
7 the significant environmental effects of such projects.”²⁴⁷ The CEQA Guidelines implementing
8 the statute require that, in order to approve a project subject to CEQA where an EIR has
9 identified significant environmental effects, the agency must find that each significant impact is
10 “unavoidable” because there are no feasible mitigation measures or alternatives that would
11 reduce the impact to a less than significant level.²⁴⁸

12 Audubon, either alone or with the Sierra Club, proposed three different alternatives to the
13 proposed project that would substantially reduce the significant impacts on blue oak woodlands
14 on the project site.²⁴⁹ In February 2000, Audubon proposed the “Audubon Alternative,” which
15 eliminated residential lots in the north and eastern portions of the project site to protect the
16 majority of the blue oak woodland habitat.²⁵⁰ After the Planning Commission’s hearings on the
17 proposed project in November of 2001, Audubon submitted its “Modified Audubon Alternative”:

18 ²⁴⁶ *Laurel Heights I, supra*, 47 Cal.3d at p. 406.

19 ²⁴⁷ Pub. Resources Code, §§ 21002, 21081.

20 ²⁴⁸ Cal. Code Regs., tit. 14, §§ 15091, subd. (a)(3) (stating “(a) No public agency shall approve or
21 carry out a project for which an EIR has been certified which identifies one or more significant
22 environmental effects of the project unless the public agency makes one or more written findings
23 for each of those significant effects, accompanied by a brief explanation of the rationale for each
24 finding. The possible findings are: ... (3) Specific economic, legal, social, technological, or other
25 considerations, including provision of employment opportunities for highly trained workers,
26 make infeasible the mitigation measures or project alternatives identified in the final EIR”),
15092, subd. (b)(2) (stating, “(b) A public agency shall not decide to approve or carry out a
27 project for which an EIR was prepared unless . . . (2) The agency has: (A) Eliminated or
28 substantially lessened all significant effects on the environment where feasible as shown in
findings under Section 15091, and (B) Determined that any remaining significant effects on the
environment found to be unavoidable under Section 15091 are acceptable due to overriding
concerns as described in Section 15093.”).

²⁴⁹ See discussion at Part III.C.3.b, *supra*.

²⁵⁰ See discussion at note 72, *supra*.

1 a scaled back version of the February 2000 Audubon Alternative, which proposed relocating 117
2 units from the blue oak woodlands in the northern portion of the project site to other areas
3 designated for development.²⁵¹

4 **a. The County Violated CEQA by Basing Its Feasibility Findings on**
5 **Evidence That Is Not Contained In the EIR**

6 The County's findings reject the "SC/AS Alternative" on the specific basis that it "relies
7 upon so-called 'New-Urbanism' design concepts that depends upon [sic] clustering of dwelling
8 units on small lots, multi-family housing and unconventional lot layouts," and because
9 "[a]vailable market data in the record establishes that product [sic] of that type cannot be sold for
10 prices and/or at a rate of sale that would defray the infrastructure and other costs of the
11 Development and provide to the County the benefits it seeks to derive therefrom and under the
12 Development Agreement."²⁵²

13 The County's finding of infeasibility for the SC/AS Alternative makes no reference to any
14 facts contained in the Bickford Ranch EIR. And, the County's finding on project alternatives is
15 silent with regard to the feasibility of the Audubon and Modified Audubon Alternatives.

16 **i. Laurel Heights I: Findings of Infeasibility Must be Supported**
17 **by Substantial Evidence in the Project EIR**

18 The general rule under CEQA is that evidence supporting the lead agency's
19 determinations as to the feasibility of alternatives must be contained *in the EIR*, to ensure that
20 CEQA's public disclosure, review and comment purposes are scrupulously honored.²⁵³ As stated
21 in *Laurel Heights I*:

22 "[W]hatever is required to be considered in an EIR must be in that formal report;
23 *what any official might have known from other writings or oral presentations*
24 *cannot supply what is lacking in the report.*"²⁵⁴

25 ²⁵¹ 5 AR 1931. See discussion at note 75, *supra*.

26 ²⁵² 1 AR 90.

27 ²⁵³ See Discussion at Part V.B, *supra*.

28 ²⁵⁴ *Laurel Heights I, supra*, 47 Cal.3d at p. 404-405, quoting *Santiago, supra*, 118 Cal.App.3d, at
p. 831, and *Environmental Defense Fund, supra*, 27 Cal.App.3d, at p. 706 (emphasis added).

1 In *Laurel Heights I*, the Supreme Court ultimately concluded that UCSF’s EIR was
2 defective because the text of the EIR failed to set forth the factual basis for the Regents rejection
3 of alternatives on grounds of infeasibility.²⁵⁵

4 **ii. *Goleta Valley II: Findings of Infeasibility May Be Supported by***
5 ***Substantial Evidence in the Record “Where Circumstances***
6 ***Warrant.”***

7 Two years later, in *Citizens of Goleta Valley v. Board of Supervisors, supra*, (“*Goleta*
8 *Valley II*”) the high court refined its holding in *Laurel Heights I* and recognized that specific
9 facts may warrant an exception to the general rule, such that an agency’s findings of feasibility
10 may rely on evidence that is located in the administrative record but not in the EIR.²⁵⁶ However,
11 as discussed below, the facts of this case do not warrant application of the *Goleta Valley II*
12 exception.

13 In the first round of the *Goleta Valley* litigation, environmental groups challenged Santa
14 Barbara County’s 1984 certification of an EIR for a proposed oceanfront resort hotel. As in
15 *Laurel Heights I*, the *Goleta Valley I* court invalidated the County’s certification of the original
16 EIR, holding that “omissions from the EIR of consideration of whether there was a feasible
17 alternate site or sites was unreasonable and rendered the EIR inadequate, so as to make the
18 [County’s] actions [in approving the project] . . . a prejudicial abuse of discretion.”²⁵⁷

19 Following the *Goleta Valley I* decision, the County of Santa Barbara prepared a
20 supplemental EIR that analyzed the one available alternative oceanfront site for the project,
21 explaining that the area’s Local Coastal Plan (“LCP”) ruled out all otherwise potentially feasible
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25 ²⁵⁵ *Laurel Heights I, supra*, 47 Cal.3d at p. 404-405.

26 ²⁵⁶ *Goleta Valley II, supra*, 52 Cal.3d at pp. 569-570.

27 ²⁵⁷ *Goleta Valley II, supra*, 52 Cal.3d at p. 560, quoting *Goleta Valley I, supra*, 197 Cal.App.3d
28 at p. 1180.

1 locations.²⁵⁸ In 1988, the County’s Planning Commission certified the supplemental EIR and
2 again approved the resort project.²⁵⁹

3 On appeal of this second approval to the Santa Barbara County Board of Supervisors, the
4 *Goleta Valley II* petitioners expressed their dissatisfaction with the supplemental EIR’s
5 alternative analysis, and demanded that the County prepare a third environmental document to
6 consider seven new alternative locations proposed by petitioners.²⁶⁰ The County declined the
7 petitioners’ demands for yet more environmental analysis, denied their administrative appeal, and
8 approved the project as proposed.²⁶¹

9 In its findings, the Board relied on information contained in its administrative record, but
10 outside the project EIRs, to determine that petitioners’ newly proposed alternate sites were not
11 feasible.²⁶² The petitioners then returned to court, seeking once again to set aside approval of the
12 project for the County’s failure to prepare yet another supplemental EIR on the seven new
13 alternative locations proposed by the petitioners.

14 In *Goleta Valley II*, the Supreme Court started by chastising the petitioners’ calculated,
15 serial introduction of last-minute alternatives for no purpose except obstruction and delay:

16 We cannot, of course, overemphasize our disapproval of the tactic of withholding
17 objections, which could have been raised earlier in the environmental review
18 process, solely for the purpose of obstruction and delay. As one federal court has
19 aptly stated: “[T]he NEPA requirement of studying alternatives may not be turned
20 into a game to be played by persons who—for whatever reasons and with
21 whatever depth of conviction—are chiefly interested in scuttling a particular
22 project.”²⁶³

23 Considering the *Goleta Valley* petitioners’ obstructive behavior, and the County’s good
24 faith preparation of a second EIR to address a “reasonable range” of project alternatives, the high
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26 ²⁵⁸ *Goleta Valley II, supra*, 52 Cal.3d at p. 560-562.

27 ²⁵⁹ *Goleta Valley II, supra*, 52 Cal.3d at p. 561.

28 ²⁶⁰ *Goleta Valley II, supra*, 52 Cal.3d at p. 562.

²⁶¹ *Goleta Valley II, supra*, 52 Cal.3d at p. 562.

²⁶² *Goleta Valley II, supra*, 52 Cal.3d at p. 562.

²⁶³ *Goleta Valley II, supra*, 52 Cal.3d at p. 568.

1 court held that the County could – under these unique circumstances – rely on documents within
2 the administrative record, but outside the project EIRs, to determine that the petitioners’ seven,
3 last-minute alternatives were infeasible:

4 [W]here the circumstances warrant, a reviewing court may consult the
5 administrative record to assess the sufficiency of the range of alternatives
6 discussed in an EIR. The circumstances justify such consultation here. Unlike the
7 EIR in *Laurel Heights I*, *supra*, 47 Cal.3d 376, [the] County’s environmental
8 review of the Hyatt project discussed a full range of alternatives, including an in-
9 depth discussion of one off-site alternative. Moreover, [petitioners] raised the
10 issue well after the comment period had expired. Thus, the Board’s decision to
11 delineate its reasons for rejecting the [petitioners’ newly proposed] sites as
12 feasible alternatives by means of administrative findings, rather than a full-blown
13 supplemental EIR, cannot be deemed *in this case* to have been erroneous.²⁶⁴

14 The *Goleta Valley II* decision repeatedly cites *Laurel Heights I* as primary authority, and
15 nothing in the *Goleta Valley II* decision indicates the Court’s intent to overrule *Laurel Heights I*.
16 Thus, *Laurel Heights I* continues to stand as the general rule – the basis for an agency’s findings
17 that project alternatives are infeasible must be contained in the text of the project EIR – while
18 *Goleta Valley II* represents a limited exception that was applied to a peculiar factual situation.

19 **iii. No Circumstances Exist Justifying the County’s Reliance on
20 Evidence Outside of the EIR to Find That the SC/AS
21 Alternative is Infeasible**

22 Here, the “circumstances” are very different from those in *Goleta Valley II*, and certainly
23 do not “warrant” any exception from the general rule stated in *Laurel Heights I*. In *Goleta Valley*
24 *II* the petitioners waited to demand analysis of their seven, new alternative locations until (1)
25 after certification of the original, defective project EIR and litigation of that issue all the way to
26 the Supreme Court in its *Goleta Valley I* decision; (2) after the close of the public comment
27 period on a supplemental EIR prepared to remedy the failure of the original EIR by analyzing a
28 full range of project alternatives as originally requested by the petitioners; (3) after certification
of that supplemental EIR by the Planning Commission; and (4) just before the County

²⁶⁴ *Goleta Valley II, supra*, 52 Cal.3d at pp. 569-570 (emphasis added).

1 Supervisors heard the appeal of the Commission’s certification of the supplemental EIR. These
2 facts are extreme indeed. It is no wonder the high court finally said, “enough is enough.”²⁶⁵

3 Here, there is no prior litigation of any kind on the Bickford Ranch EIR. Audubon
4 proposed its initial “Audubon Alternative” shortly after the close of the comment period on the
5 DEIR, nearly one full year before the County completed the FEIR, and almost two years before
6 the County finally approved the project. The Sierra Club and Audubon Society proposed their
7 “SC/AS Alternative” to the County in May of 2001, six months before the first Planning
8 Commission hearing on the Project. Audubon’s “Modified Audubon Alternative” was submitted
9 to the Board based on a version of the project that had been approved by the Planning
10 Commission on November 8, 2001, as the Planning Commission’s “preferred alternative” for the
11 project. Unlike the obstructive tactics of the *Goleta Valley II* petitioners, every one of Sierra
12 Club and Audubon’s proposals for Bickford Ranch were designed and offered in good faith,
13 allowing for development of significant portions of the proposed project site (up to the entire
14 1,950 homes potentially allowable under Appendix C), while honoring the County’s General
15 Plan’s policies protecting blue oak woodlands.

16 The facts of this case show nothing less than extreme diligence on the part of Petitioners.
17 Petitioners’ involvement with the County’s administrative proceedings was not a calculated
18 effort to serially abuse CEQA’s process for obstructionist motives. Rather, Sierra Club and
19 Audubon *served* CEQA’s environmental protection and public participation purposes.²⁶⁶

20 The County had *ample* notice of the need for, and opportunity to develop, project
21 alternatives that would meet the General Plan’s oak woodland protection policies. The County
22 simply chose not to do so. Unlike the facts in *Goleta Valley II*, Sierra Club and Audubon
23 provided their first alternative nearly two years before the County approved the project, their
24

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26 ²⁶⁵ *Goleta Valley II, supra*, 52 Cal.3d at p. 568.

27 ²⁶⁶ *Cf. Mountain Lion Coalition v. California Fish and Game Com.* (1988) 214 Cal.App.3d 1043,
28 1050-1051 (criticizing lead agency for withholding information about cumulative impacts, making it “impossible for the public, which had actively asserted a keen and sophisticated interest [in the project], to fully participate in the assessment of [alternatives to the project]”).

1 second nearly six months before approval of the project, and returned with a third proposal based
2 on the Planning Commission’s “preferred alternative” before the Board approved the Project.
3 Therefore, the facts of this case do not warrant application of the *Goleta Valley II* exception.

4 **iv. Recent Appellate Case Law Allowing a Lead Agency to Rely on**
5 **Evidence in the Administrative Record to Make Findings of**
6 **Infeasibility is Distinguishable From This Case**

7 The issue of whether, and to what extent, a lead agency’s decisions must be supported by
8 evidence *in the EIR* has been addressed in several Court of Appeal decisions. The most recent is
9 *San Franciscans Upholding the Downtown Plan v City and County of San Francisco* (hereinafter
10 “*San Franciscans*”).²⁶⁷

11 In *San Franciscans*, the challenged EIR identified and discussed five alternatives for a
12 proposed, “massive redevelopment project . . . planned for the site of the former Emporium store
13 in downtown San Francisco.”²⁶⁸ In preparing the EIR, the developers retained an economic
14 consultant, Sedway Group, to prepare a detailed financial analysis of the feasibility of all of these
15 alternatives, while the City of San Francisco retained its own consultant, Keyser Marston
16 Associates, Inc. (“KMA”), to independently review Sedway’s analyses and conclusions.²⁶⁹
17 Moreover, the chronology provided by the Court of Appeal indicates that these economic
18 feasibility analyses were prepared and available to the public while the City and County were
19 reviewing the draft and final EIRs.²⁷⁰

20 In *San Franciscans*, the Court of Appeal held that the City and County of San Francisco
21 did not abuse its discretion when it based its findings that project alternatives were infeasible on
22 the Sedway and KMA economic analyses, even though these economic studies were not

23 ²⁶⁷ *San Franciscans, supra*, 102 Cal.App 4th 656.

24 ²⁶⁸ *San Franciscans, supra*, 102 Cal.App.4th at p. 666.

25 ²⁶⁹ *San Franciscans, supra*, 102 Cal.App.4th at p. 671 (explaining that City hired an independent
26 consultant to independently review the economic analysis and conclusions reached by the
27 developer’s economic consultant). The feasibility analyses separately prepared by the City and
28 the developer are discussed in some detail in the Court of Appeal’s opinion at 102 Cal. App. 4th
pp. 693-695.

²⁷⁰ *San Franciscans, supra*, 102 Cal.App 4th at p. 670-672.

1 incorporated into the text of the EIR for the project.²⁷¹ On its facts, the Court of Appeal’s ruling
2 can be generally harmonized with the rule in *Laurel Heights I*, and its narrow exception
3 articulated in *Goleta Valley II*, because the economic study prepared by Sedway 1) had been
4 objectively reviewed and verified by the City’s independent consultant KMA, and 2) both
5 Sedway and KMA’s studies were reasonably available for public comment before the City
6 certified the EIR and approved the redevelopment project.

7 Indeed, the rule that evidence of infeasibility must be physically included in the EIR may
8 be perceived as somewhat of a technicality where that evidence is voluminous, detailed and made
9 available for public review at the same time as the EIR, but merely in a separate volume.²⁷² Thus
10 the *San Franciscan’s Upholding the Downtown Plan* decision, when viewed in light of these
11 facts, is arguably consistent with the Court’s statement in *Kings County Farm Bureau v. City of*
12 *Hanford* that information relating to the feasibility of alternatives *must* be made available in the
13 EIR for public review and comment, and must reflect the lead agency’s independent judgment.²⁷³

14 However, the Court of Appeal in *San Franciscans* then went on to broadly suggest that
15 evidence of an alternative’s infeasibility *never* has to be contained in the EIR, as long as it might
16 be supported by evidence found “somewhere” in the record.²⁷⁴ Such generalizations by the
17 Appellate Court are not good law because they are facially inconsistent with the Supreme Court’s
18 decisions in *Laurel Heights I* and *Goleta Valley II*.

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21 ²⁷¹ *San Franciscans, supra*, 102 Cal.App.4th at p. 690.

22 ²⁷² See, e.g., Cal. Code Regs., tit. 14, § 15147 (stating that, although an EIR must contain
23 “summarized technical data, maps, plots plans, diagrams, and similar relevant information
24 sufficient to permit full assessment of significant environmental impacts by reviewing agencies
25 and members of the public,” that “highly technical and specialized analysis and data” should be
26 included as appendices, rather than in the main body of the EIR).

27 ²⁷³ *Kings County, supra*, 221 Cal. App. 3d at pp. 736-737. (“[T]he public and decision-makers,
28 for whom the EIR is prepared, should also have before them the basis for [an agency’s] opinion
so as to enable them to make an independent reasoned judgment.”[citation omitted]).

²⁷⁴ See, e.g., *San Franciscans, supra*, 102 Cal.App.4th at p. 690-691 (“[A]lthough CEQA plainly
provides that a reasonable range of alternatives must be included in the EIR, the statute does not
require the EIR itself to provide any evidence of the feasibility of those alternatives, much less an
economic or cost analysis of the various project alternatives and mitigation measures identified
by the EIR.”).

1 Indeed, the Court of Appeal characterized the *Laurel Heights I* decision (as well as the
2 decision in *Kings County Farm Bureau v. City of Hanford*) as irrelevant to the issue at hand in
3 *San Franciscans*, stating, “Neither case dealt with or had anything to say concerning the issue of
4 whether the ultimate economic feasibility evidence relied upon by the agency in making its
5 decision after certification of the EIR must be contained in the EIR or may instead be set forth
6 elsewhere in the record.”²⁷⁵ This statement fundamentally mischaracterizes both cases, and is
7 clearly incorrect.²⁷⁶ Only by examining the facts of these decisions can it be seen that their
8 holdings do not actually conflict.

9 In addition, *San Franciscans* is distinguishable from the instant case. As noted above, in
10 that case the developer’s economic feasibility evidence, as prepared and submitted by its
11 consultant Sedway, 1) was detailed and available to the public and the City at the same time as
12 the EIR, 2) was corroborated by the City’s independently hired consultant, KMA, and 3) was
13 directed solely at the alternatives that had been fully analyzed in the redevelopment project
14 EIR.²⁷⁷ In the instant cast, however, the developer’s economic feasibility evidence 1) is not
15 detailed, 2) was not available at the same time as the EIR for public review and comment, 3) has
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18 ²⁷⁵ *San Franciscans, supra*, 102 Cal.App.4th at 692, citing *Laurel Heights I, supra*, 47 Cal.3d at
19 pp. 404-407 and *Kings County, supra*, 221 Cal.App.3d at pp. 736-737 (“The cases cited and
20 relied upon by appellants are not to the contrary. They concern the separate issue of a public
21 agency's failure to identify a reasonable range of potentially feasible alternatives because the
22 agency claimed to have already made the foundational determination that there were no feasible
23 alternatives before drafting the EIR.”)

24 ²⁷⁶ See *Laurel Heights I, supra*, 47 Cal.3d. at pp. 404-405 (evidence of feasibility of alternatives
25 must be presented in EIR so that the courts and the public “can fulfill their proper roles in the
26 CEQA process”); *Kings County, supra*, 221 Cal.App.3d, at p. 736 (“An environmentally superior
27 alternative cannot be deemed infeasible absent evidence the additional costs and lost profits are
28 so severe the project would become impractical. . . . ¶The lead agency must *independently*
participate, review, analyze and discuss the alternatives in good faith. ¶ “The EIR must contain
facts and analysis, and not just the bare conclusions of the Agency.” [citations omitted]) The fact
that *Laurel Heights I* involved alternatives that were excluded from discussion in the draft EIR
rather than alternatives that were discussed in the EIR is a distinction without a difference. The
Appellate Court in *San Franciscans* does not explain why it would serve the letter or spirit of
CEQA to require that supporting evidence be contained in an EIR where an alternative is rejected
from consideration altogether, but to allow the exclusion of evidence of infeasibility for
alternatives that *are* discussed in the EIR.

²⁷⁷ See discussion at notes 268-273, *supra*.

1 never been independently corroborated by the County and 4) is directed at three alternatives
2 proposed by petitioners that were never analyzed in the EIR.

3 In sum, the Appellate Court’s overly broad statement in *San Franciscans* that evidence of
4 infeasibility of project alternatives may always and under all circumstances be omitted from the
5 final EIR is *obiter dictum* and should not be relied upon because it is facially inconsistent with
6 the Supreme Court’s rulings in *Laurel Heights I* and *Goleta Valley II*. However, to the extent
7 that the holding in *San Franciscans* is restricted to its facts, it may be harmonized with these
8 Supreme Court decisions and is easily distinguished from the instant case.

9 **b. With Respect To the “Audubon Alternative” and the “Modified**
10 **Audubon Alternative,” the County Failed to Make Any Findings of**
11 **Feasibility**

12 On its own terms, the County’s finding that the “SC/AS Alternative” is infeasible applies
13 to only one of the alternatives proposed by Petitioners. But Audubon, either alone or with the
14 Sierra Club, proposed *three* different alternatives to the proposed project that would substantially
15 reduce the significant impacts on blue oak woodlands on the project site.²⁷⁸

16 In its findings, the Board found that each of the alternatives analyzed in the DEIR were
17 not feasible.²⁷⁹ The Board also found that all “Off Site Alternatives” are infeasible (an
18 interesting conclusion, given the fact that no off-site alternatives were ever proposed or analyzed
19 in the DEIR or elsewhere).²⁸⁰ Finally, the County’s findings conclude that the “SC/AS

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22 ²⁷⁸ See discussion at Part III.C.3.b, *supra*.

23 ²⁷⁹ 1 AR 87-90. It is interesting to note that many of the alternatives from the DEIR were
24 rejected as infeasible, in part, because they were inconsistent with one or more policies in the
25 County’s General Plan. (*See ibid.* [Alternatives 1 and 4 rejected as “infeasible” because of
26 conflicts with General Plan; Alternatives 2 and 3 rejected as “infeasible” because of
27 inconsistency with County policy to provide for regional sewer].) It is unclear why these
28 alternatives would be considered “infeasible” due to their alleged inconsistencies with the
General Plan, yet the project as proposed is not considered “infeasible” although it also conflicts
with the General Plan’s mandatory policies. (See discussion at Parts V.C, V.D, V.E.1, V.F.3,
and V.I, *infra*.)

²⁸⁰ 1 AR 90.

1 Alternative” is infeasible.²⁸¹ However, the County failed to make *any* finding of infeasibility
2 with respect to either the Audubon Alternative or the Modified Audubon Alternative.

3 On its own terms, the County’s finding with respect to the SC/AS Alternative cannot
4 encompass the Audubon or the Modified Audubon Alternatives: the County’s findings reject the
5 “SC/AS Alternative” on the sole and specific basis that it “relies upon so-called ‘New-Urbanism’
6 design concepts that depends upon [sic] clustering of dwelling units on small lots, multi-family
7 housing and unconventional lot layouts.”²⁸² But neither of the Audubon Alternatives have
8 anything to do with “New Urbanism” – they simply remove dwelling units from the northern and
9 eastern portions of the project site, where the blue oak woodlands are located.²⁸³ Of the three
10 alternatives proposed by Audubon and Sierra Club, the “SC/AS Alternative” is the only proposal
11 that was based on “New Urbanism” concepts, including the “clustering” of housing.²⁸⁴

12 Once Audubon proposed two alternatives to the County that would reduce or avoid the
13 Bickford Ranch project’s identified, significant, unmitigated, adverse effects on blue oak
14 woodlands and associated habitats, the County then owed a duty to evaluate these feasible
15 alternatives, and then to either 1) adopt the alternative(s) to reduce or avoid the proposed
16 project’s impacts on blue oak woodlands, or 2) make a finding, based on substantial evidence,
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21 ²⁸¹ 1 AR 90.

22 ²⁸² 1 AR 90.

23 ²⁸³ Compare 5 AR 1945 (the Sierra Club/Audubon compact village proposal, using concepts of
24 “New Urbanisms” to substantially reconfigure the lotting patterns in Bickford Ranch) with 3 AR
25 915 (the “Audubon Alternative” as proposed by Audubon), 5 AR 1930-1931 (written description
26 of Alternative 8 [the Audubon Alternative] and Alternative 9 [the Modified Audubon
27 Alternative] in Applicant’s financial analysis), and 5 AR 1946 and 1947 (maps of the Audubon
28 and Modified Audubon Alternatives, calling for removal of lots from the project site’s blue oak
woodlands, but otherwise leaving the lotting pattern in substantially the same configuration as
the proposed project).

²⁸⁴ See, e.g., 5 AR 1930 (Alternative 7 in Applicant’s financial analysis); 21 AR 10339-10349
(the “SC/AS Alternative” as actually proposed jointly by Sierra Club and Audubon). See also,
discussion at Part III.C.3.b, *supra*.

1 that neither of the Audubon alternatives were feasible of implementation, due to specific
2 economic, legal, social, technological, or other considerations.²⁸⁵ The County did neither.

3 The County’s failure to 1) adopt the Audubon or Modified Audubon Alternatives as
4 feasible alternatives that would reduce the project’s significant, adverse impacts, or, in the
5 alternative, 2) make findings that the Audubon and Modified Audubon Alternatives are
6 infeasible, was prejudicial abuse of discretion. By failing to either adopt or make the requisite
7 findings of infeasibility for the two Audubon alternatives, the County violated CEQA’s mandate
8 that projects be approved only *after* findings are made that alternatives that would reduce or
9 avoid the project’s impacts are infeasible.²⁸⁶

10 **c. Any Supposed Finding By the County That the “Modified Audubon**
11 **Alternative” Is Infeasible Is Not Supported By the Evidence in the**
12 **Record**

12 The County or Applicant may claim that the Board’s finding that the “SC/AS
13 Alternative” was intended to extend not only to the true SC/AS Alternative, but also to the
14 Audubon and Modified Audubon Alternatives. First, such a claim should be rejected on its face,
15 as the California Supreme Court has thoroughly rejected the idea of Courts implying findings by
16 administrative agencies under section 1094.5 of the Code of Civil Procedure.²⁸⁷

17 Second, even if 1) it were possible to construe the County’s findings rejecting “New
18 Urbanism” and clustered housing as applicable to the conventional, non-clustered, Audubon
19 Alternatives, and 2) this Court decides that the exception of *Goleta Valley II* applies – thus,
20 allowing the County to use record evidence not contained in the EIR to support its finding – the
21 evidence that is in the administrative record does not reasonably support a finding that the
22 Modified Audubon Alternative is infeasible.

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26 ²⁸⁵ Pub. Resources Code, § 21081; *Goleta Valley II, supra*, 52 Cal.3d, at p. 569; *Laurel Heights*
27 *I, supra*, 47 Cal.3d at pp. 403-405.

28 ²⁸⁶ *County of Amador, supra*, 76 Cal.App.4th at p. 946. See discussion at Part IV.C.6, *supra*.

²⁸⁷ *Topanga, supra*, 11 Cal.3d at pp. 515-518. See discussion at note 136, *supra*.

1 In reviewing the twenty-eight (28) volume administrative record, Petitioners can find only
2 two documents that might be viewed as containing the purported “market data” that might
3 support the Board’s assertion that the “SC/AS Alternative” is infeasible: 1) a September 10, 2001
4 letter written by the Applicant’s attorney, George Phillips, and 2) the financial analysis prepared
5 by the Applicant and received by the Board one working day before the Board’s initial decision
6 to approve the project on December 10, 2002.²⁸⁸ As the following discussion demonstrates,
7 neither of these documents contain substantial evidence to support a conclusion that *all three* of
8 the alternatives proposed by Sierra Club and Audubon are infeasible.

9 **i. Mr. Phillips’ September 10, 2001 Letter**

10 In a September 10, 2001 letter, Mr. Phillips provides the Applicant’s views on the
11 feasibility of the SC/AS Alternative.²⁸⁹ Mr. Phillips’ repeatedly claims that the SC/AS
12 Alternative’s concept of “New Urbanism” makes this alternative “infeasible” because such a
13 project design presents too great a financial risk to the Applicant.²⁹⁰

14 Mr. Phillips’ letter states many facts about how some “New Urbanism” projects in
15 Tennessee, Oregon and Idaho apparently did not live up to developers’ financial expectations. At
16 most, Mr. Phillips letter provides evidence of slower sales and, perhaps, reduced overall returns
17 for these “New Urbanism” projects. However, as discussed above, a mere reduction in profits
18 (i.e., increased cost), while perhaps adverse to the Applicant’s financial interests, is not an
19 acceptable basis for rejecting alternatives as infeasible under CEQA.²⁹¹

20 And, even if it is determined that Mr. Phillips letter does constitute “substantial evidence”
21 of the infeasibility of the SC/AS Alternative, by its own terms, the “market data” in Mr. Phillips’
22 letter can *only* be applied to projects alternatives using “New Urbanism” design. But neither of
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25 ²⁸⁸ 5 AR 1921-1967; 21 AR 10437-10451.

26 ²⁸⁹ 21 AR 10437-10451.

27 ²⁹⁰ 21 AR 10444-10445.

28 ²⁹¹ Cal. Code Regs., tit. 14, § 15126.6, subd. (b); *Kings County, supra*, 221 Cal.App.3d at p. 736.

1 the Audubon or the Modified Audubon alternatives involve “New Urbanism.”²⁹² In other words,
2 the “evidence” in Mr. Phillips’ letter addresses *only* the SC/AS Alternative, and *is simply not*
3 *relevant* to a determination of the feasibility of the “conventional” development proposals
4 submitted by Audubon.

5 **ii. The Applicant’s Last-Minute Financial Analysis**

6 The other document obliquely referenced in the Board’s finding that the “SC/AS
7 Alternative” is infeasible is a December 5, 2001 financial study prepared by the Applicant.²⁹³
8 The Applicant’s financial analysis purports to examine the economic feasibility of 1) the
9 proposed project, 2) the first six alternatives contained in the DEIR, and 3) the three alternatives
10 proposed by Sierra Club and Audubon Society.²⁹⁴ This financial analysis ultimately concludes
11 that all of the alternative analyzed in the DEIR, except for a high-density “alternative” that would
12 clearly have more impacts on the environment, are economically infeasible; and, that two of the
13 three Sierra Club and Audubon alternatives are economically infeasible.²⁹⁵

14 Even if the County could blindly rely on the Applicant’s financial study – an option
15 expressly foreclosed by *Laurel Heights I* and *Goleta Valley II* – there is a patent factual
16 inconsistency between the conclusions in the Applicant’s financial study and the County’s
17 ultimate findings. The Applicant’s financial study concludes that *only two out of the three* Sierra
18 Club and Audubon alternatives are infeasible.²⁹⁶ But, the Board’s “finding” states that “market
19 data” in the record supports its determination that the “SC/AS Alternative” infeasible.²⁹⁷

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23 ²⁹² See discussion at Part III.C.3.b, *supra*.

24 ²⁹³ 5 AR 1946-1947. See discussion at Part III.F, *supra*.

25 ²⁹⁴ 5 AR 1928-1931. The Applicant’s Financial Analysis does not explain why the DEIR’s
26 seventh alternative, the Sierra College Boulevard Alternative, was excluded from consideration.

27 ²⁹⁵ 5 AR 1933.

28 ²⁹⁶ 5 AR 1938.

²⁹⁷ 1 AR 90.

1 In summary, the Board’s determination that *no* feasible alternatives exist that will reduce
2 or avoid the project’s significant, adverse impacts to blue oak woodlands and associated habitats
3 is not supported by the “market data” in the administrative record, and therefore is prejudicial
4 abuse of discretion. In reviewing the three alternatives proposed by Sierra Club and Audubon 1)
5 the Applicant submitted a financial report indicating that the Modified Audubon Alternative is,
6 in fact, economically feasible, and 2) the Placer County Planning Commission voted in favor of
7 recommending that the Placer County Board of Supervisors adopt a form of the Modified
8 Audubon Alternative as the preferred alternative for the project.²⁹⁸

9 Neither Mr. Phillips’ letter, nor the Applicant’s financial study provide substantial
10 evidence that the Modified Audubon Alternative is “infeasible.” Since the evidence in the record
11 indicates that the Modified Audubon Alternative *is* economically feasible, any “implied” finding
12 by the County that this alternative is infeasible is not supported by the evidence in the record and,
13 therefore, represents an abuse of discretion.

14 **d. The County Failed to Exercise Its Independent Judgment Over the**
15 **“Market Data” Proffered By the Applicant**

16 The County also prejudicially abused its discretion by failing to exercise its *independent*
17 *judgment* in evaluating the validity of the Applicant’s “market data.” “The lead agency must
18 *independently* participate, review, analyze and discuss the alternatives in good faith.”²⁹⁹ In the
19 present case, the County unquestionably owed a duty to exercise its independent judgment over
20 the information upon which it based its findings, whether that information came from the EIR, or
21 directly from the administrative record itself – the County cannot simply rely on unverified, self-
22 serving information submitted by the Applicant after the close of the public comment period.³⁰⁰

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25 ²⁹⁸ 5 AR 1936, Table 1; 5 AR 1938 (excluding the Modified Audubon Alternatives [alternative
26 9] from the list of “infeasible” alternatives); Planning Com. Transcript (Nov. 8, 2001), *supra*, pp.
27 285-292. See discussion at notes 105 and 112, *supra*.

28 ²⁹⁹ *Kings County, supra*, 221 Cal.App.3d at p. 736.

³⁰⁰ Pub. Resources Code, § 21082.1, subd. (c)(1); Cal. Code Regs., tit. 14, § 15084, subd. (e). *Cf.*
Laurel Heights I, supra, 47 Cal.3d at p. 404; *Goleta Valley II, supra*, 52 Cal.3d at p. 569.

1 In his September 10 letter, Mr. Phillips’ repeatedly claims that the SC/AS Alternative’s
2 concepts of “New Urbanism” are infeasible, based on comparisons to “New Urbanism” projects
3 in other parts of the country.³⁰¹ Yet, Mr. Phillips letter *also* admits that in June of 2001 – six
4 months before the Board’s final hearing to certify the EIR and approve the project – several
5 aspects of the “New Urbanism” SC/AS proposal were deemed *feasible* by the *Applicant*, and
6 incorporated into the project by the County at Mr. Phillips’ request.³⁰²

7 We believe that the above modifications have improved the project. We further
8 believe, however, that these modifications comprise the extent to which we can go
toward the Alternative Project.³⁰³

9 The decision on which portions of the SC/AS Alternative are feasible *is not Mr. Phillips’*
10 *to make.*³⁰⁴ The Applicant’s unilateral *inclusion* of certain elements of the SC/AS Alternative
11 into the proposed project indicates that other portions of the SC/AS Alternative may, in fact,
12 have been feasible, and that the SC/AS Alternative should have therefore been analyzed
13 *independently* by *the County* in the EIR before the project was approved – especially where the
14 Board’s final consideration of the EIR and Specific Plan was still six months away.³⁰⁵

15 Nothing in the administrative record indicates that the County ever actually undertook the
16 exercise of validating the methodology or baseline information used in the Applicant’s last-
17 minute financial analysis or in Mr. Phillips’ letter. So much is candidly admitted in the preamble
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21 ³⁰¹ 21 AR 10444-10445.

22 ³⁰² 21 AR 10444-10445. In an earlier letter to the Planning Department dated June 22, 2001 –
23 nearly six months before final approval of the project – Mr. Phillips proposes to the County on
24 the Applicants behalf several changes to the project, admittedly based on the SC/AS Alternative,
including relocating the proposed golf-course driving range and compacting the lots in the
25 northern portion of the project area to increase protections for the project area’s blue oak
woodlands. (21 AR 10358).

26 ³⁰³ 21 AR 10445.

27 ³⁰⁴ Pub. Resources Code, § 21082.1, subd. (c)(1); Cal. Code Regs., tit. 14, § 15084, subd. (e).
See discussion at Part IV.C.2, *supra*.

28 ³⁰⁵ *Laurel Heights I, supra*, 47 Cal.3d at pp. 404-405. See discussion at Part V.B.2.a, *supra*.

1 to the County’s findings, in stating, “Whereas . . . [t]he Applicant considered and rejected the
2 SC/AS proposal . . . on the grounds that the proposal was not economically feasible.”³⁰⁶

3 Put bluntly, by relying on the Applicant to pre-judge which portions of the SC/AS
4 Alternative would be incorporated into the project, and by uncritically relying on the Applicant’s
5 self-serving conclusions about the SC/AS Alternative’s feasibility, the County unlawfully
6 truncated CEQA’s evaluation process. Clearly, some parts of the SC/AS Alternative were
7 feasible, since they were incorporated into the project by the County at Mr. Phillips’ request –
8 and, well in advance of the Board’s final hearings on the project.³⁰⁷ Nevertheless, neither the
9 revised project, nor the SC/AS Alternative was ever independently evaluated for the public and
10 the Board in a revised and recirculated EIR.³⁰⁸ Therefore, the public was denied a meaningful
11 opportunity to review and comment on the revised project, and the Board was deprived of the
12 impartial analysis and public input necessary to make an *independent* decision whether the
13 SC/AS Alternative, was feasible as a whole.³⁰⁹

14 The County’s uncritical and unconditional acceptance of the Applicant’s “findings” also
15 stands in stark contrast to the facts of both *Goleta Valley II* and *San Franciscans*. In *Goleta*
16 *Valley II*, the Santa Barbara County Board of Supervisors commissioned their own financial
17 study to determine, through administrative findings, that certain post-EIR alternatives offered by
18 the petitioners were infeasible.³¹⁰ And, in *San Franciscans*, the City hired an independent
19 consultant, KMS, to independently review the economic analysis and conclusions offered by the
20 developer’s consultant, Sedway.³¹¹ In both case, the agency’s independent review of the
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22 ³⁰⁶ 1 AR 27.

23 ³⁰⁷ 21 AR 10358.

24 ³⁰⁸ Pub. Resources Code, § 21992.1; Cal. Code Regs., tit. 14, § 15088.5; *Laurel Heights II*,
25 *supra*, 6 Cal.4th at pp. 1129-1130.

26 ³⁰⁹ Pub. Resources Code, § 21082.1, subd. (c)(1); Cal. Code Regs., tit. 14, § 15084, subd. (e);
27 *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1129-1130. See discussion at Part IV.C.2, *supra*.

28 ³¹⁰ *Goleta Valley II*, *supra*, 52 Cal.3d at p. 562.

³¹¹ *San Franciscans*, *supra*, 102 Cal.App.4th at p. 671.

1 Applicant's financial analysis demonstrated that the lead agency had in fact exercised its
2 independent judgment in determining the reliability and adequacy of the information upon which
3 its determinations were based.³¹²

4 The Board failed to exercise its independent judgment, and therefore prejudicially abused
5 its discretion, when it 1) simply accepted the Applicant's letter and last-minute financial study at
6 face value, and then 2) rendered a finding that the "SC/AS Alternative" was infeasible. The
7 County also abused its discretion by allowing the proponent to incorporate only the "palatable"
8 portions of the SC/AS Alternative into its proposed project without recirculating the EIR to
9 ensure that either the revised project or the entire SC/AS Alternative had, in fact, been fully
10 evaluated and subjected to public review and comment so that the Supervisors could make an
11 *informed* decision about the feasibility of project alternatives.³¹³

12 **C. THE COUNTY'S APPROVAL OF THE BICKFORD RANCH PROJECT IS INCONSISTENT**
13 **WITH THE COUNTY'S MANDATORY GENERAL PLAN POLICY THAT THE COUNTY'S**
14 **BLUE OAK WOODLANDS BE PROTECTED**

15 The Board, in adopting the Bickford Ranch Specific Plan, found that the projects' impact
16 to oak trees and oak woodland habitat "will remain significant and unavoidable."³¹⁴ The Board
17 then adopted a statement of overriding considerations, allowing the Board to approve the project
18 under CEQA, despite its acknowledged, unmitigated, significant, adverse impacts on blue oak
19 woodlands.³¹⁵ The Board's CEQA findings and statement of overriding considerations, however,
20 do not relieve the Board of its *separate and independent* duty to ensure that approval of the
21 Bickford Ranch project does not frustrate the policies set forth in the County's General Plan.³¹⁶

22 ³¹² Pub. Resources Code, § 21082.1, subd. (c)(1); Cal. Code Regs., tit. 14, § 15084, subd. (e);
23 *Kings County, supra*, 221 Cal.App.3d at p. 736. *Cf. Friends of La Vina, supra*, 232 Cal.App.3d
24 at p. 1456 ("[I]n accordance with consistent practice and judicial application, the independent
25 review, analysis and judgment test . . . applies to the EIR as a whole, including responses to
26 comments.") See discussion at Part IV.C.2, *supra*.

27 ³¹³ *Laurel Heights II, supra*, 6 Cal.4th at p. 1129-1130.

28 ³¹⁴ 1 AR 66-67.

³¹⁵ 1 AR 91.

³¹⁶ Compare Part IV.C.5, *supra* (describing CEQA's process for approving a project after
adopting "findings" and a "statement of overriding considerations" where a project will have

1 **1. The Bickford Ranch Specific Plan Frustrates the General Plan’s Policy**
2 **Requiring the Protection of Blue Oak Woodlands**

3 Placer County General Plan Policy 6.C.1. states a mandatory policy that large areas of
4 non-fragmented blue oak woodlands within the County shall be identified and preserved.³¹⁷

5 General Plan Policy 6.D.8 provides that the County “shall require that new development preserve
6 natural woodlands to the maximum extent possible.”³¹⁸

7 In presentations before the Board, Audubon and Sierra Club and other members of the
8 public made it clear that the Bickford Ranch project site is only one of two significant, remaining
9 areas within the County supporting large areas of non-fragmented blue oak woodland habitat.³¹⁹

10 Petitioners also explained with specificity why the proposed project’s open space proposals were
11 inadequate to preserve these habitats, as required by the County’s General Plan.³²⁰ Many

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15 remaining, significant environmental effects), *with* Part IV.B.2, *supra* (explaining that a specific
16 plan that is inconsistent with a general plan cannot be adopted unless there is a firm and definite
17 commitment to mitigate the specific plan’s adverse effects so that adoption of the specific plan
18 will not otherwise frustrate achievement of the general plan’s goals and policies).

19 ³¹⁷ PCGP, *supra*, at p. 110, § 6.C.1.

20 ³¹⁸ PCGP, *supra*, at p. 114.

21 ³¹⁹ See, e.g., Board Transcript (Dec. 10, 2001), *supra*, Testimony of Ed Pandolfino, at pp. 109-
22 116, 287-289; Board Transcript (Dec. 10, 2001), *supra*, Testimony of Terry Davis, at pp. 116-
23 121; Board Transcript (Dec. 10, 2001), *supra*, Testimony of John Ranlett, at pp. 169-171, 248,
24 282-283.

25 ³²⁰ 3 AR 907 (map of the County’s blue oak woodlands, demonstrating that Bickford Ranch is
26 located in one of two areas in the County containing contiguous, large parcels with significant
27 blue oak woodlands [100+ acres per parcel]); 3 AR 912-913 (explaining that the proposed
28 project’s open space fails to protect an adequate *mix* of environmental values to preserve a
functional blue oak woodland habitat). It should be noted that the administrative record does
contain an additional map from the Placer County Legacy Database of blue oak woodlands that
appears to indicate that blue oak woodlands cover a significant portion of western Placer County.
28 AR 13368. However, as explained in the Sierra Club and Audubon presentation, much of the
present and future value of these parcels as functional habitat has been compromised due to these
parcels relatively small size. (Board Transcript (Dec. 10, 2001), *supra*, Testimony of Ed
Pandolfino, at p. 114, 288-289.) The blue oak woodlands on the Bickford Ranch site are
“significant” precisely because of the fact that they are located on sufficiently large parcels that
they can be managed as a single unit with the necessary *mix* of environmental values to form a
functional blue oak woodland habitat, rather than simply existing as a collection of blue oak trees
on numerous, subdivided lots. *Ibid*; 3 AR 912-913.

1 individuals commented on the DEIR, noting the project’s inconsistencies with the General Plan’s
2 policies regarding biological resources, including oak woodlands.³²¹

3 It is settled law in California that a project cannot be approved where it will clearly
4 conflict with policies in the overlying general plan.³²² Generally, the standard for determining
5 whether a Specific Plan is consistent with its governing General Plan is “whether development of
6 the Project Area under the ... Specific Plan is compatible with and will not frustrate the General
7 Plan's goals and policies.”³²³

8 In *Napa Citizens for Honest Government v. County of Napa*, the Napa County Board of
9 Supervisors adopted a new specific plan for an industrial park.³²⁴ In doing so, the County
10 abandoned mitigation measures that had been incorporated into the industrial park prior specific
11 plan.³²⁵ The *Napa Citizens* court ruled that the absence of traffic impact mitigation measures in
12 the new specific plan would unlawfully frustrate traffic and housing policies set forth in the
13 County’s General Plan.³²⁶

14 The County cannot state a [general plan] policy of reducing traffic congestion,
15 recognize that an increase in traffic will cause unacceptable congestion and at the
16 same time approve a project that will increase traffic congestion without taking
17 affirmative steps to handle that increase. It also cannot state goals of providing
adequate housing to meet the needs of persons living in the area, and at the same
time approve a project that will increase the need for housing without taking
affirmative steps to handle that increase.³²⁷

22 ³²¹ See discussion at note 210, *supra*.

23 ³²² *DeVita, supra*, 9 Cal.4th at p. 772. See discussion at Part IV.A.2, *supra*.

24 ³²³ *Napa Citizens, supra*, 91 Cal.App.4th at p. 379.

25 ³²⁴ *Napa Citizens, supra*, 91 Cal.App.4th at p. 353.

26 ³²⁵ *Napa Citizens, supra*, 91 Cal.App.4th at pp. 353-354.

27 ³²⁶ *Napa Citizens, supra*, 91 Cal.App.4th at p. 380.

28 ³²⁷ *Napa Citizens, supra*, 91 Cal.App.4th at p. 380.

1 Thus, *Napa Citizens* holds that where a specific plan fails to implement a general plan’s goals,
2 that is enough to find inconsistency, even if there is no overt conflict between the documents.³²⁸

3 What holds true for traffic and housing in Napa County applies with equal force to blue
4 oak woodlands in Placer County. The Placer County General Plan states a clear, mandatory
5 policy that the county’s blue oak woodland habitats are to be protected and preserved.³²⁹ The
6 Bickford Ranch EIR and the County’s findings expressly admit that – even after implementing
7 the Applicant’s proposed mitigation measures – the project, as approved, will have significant
8 adverse affects on the County’s blue oak woodland habitats.³³⁰

9 While local agencies are ordinarily granted liberal discretion to apply their general plans
10 to specific projects, agencies have no discretion to approve projects that violate specific,
11 mandatory general plan policies. In *Families Unafraid to Uphold Rural El Dorado County v.*
12 *Board of Supervisors* (hereinafter “*FUTURE*”), the court invalidated the approval of a residential
13 subdivision, where the project would violate a mandatory general plan policy disallowing low
14 density residential development in specified areas.³³¹ The *FUTURE* court rejected the County’s
15 argument that violation of only one general plan policy could be enough to invalidate its approval
16 of the project, precisely because the policy was stated in mandatory language.³³²

17 As in *Napa Citizens* and *FUTURE*, the Bickford Ranch Specific Plan is inconsistent with
18 the County’s General Plan because it frustrates and conflicts mandatory General Plan policies
19 requiring protection of oak woodlands. General Plan Policy 6.D.8 provides that the County
20 “shall require that new development preserve natural woodlands to the maximum extent
21
22

23 ³²⁸ “We also are of the opinion that cases such as *FUTURE v. Board of Supervisors*, do not
24 require an outright conflict between provisions before they can be found to be inconsistent.”
25 *Napa Citizens, supra*, 91 Cal.App.4th at p. 379.

26 ³²⁹ PCGP, *supra*, at p. 110, § 6.C.1.

27 ³³⁰ 1 AR 67; 9 AR 3994. See discussion at Part III.C.2, *supra*.

28 ³³¹ *FUTURE, supra*, 62 Cal.App.4th at p. 1340.

³³² *FUTURE, supra*, 62 Cal.App.4th at pp. 1341-42.

1 possible.”³³³ As discussed above, the Applicant’s own financial analysis confirms that the
2 Modified Audubon Alternative is feasible; therefore, it is “possible,” in the terms of General Plan
3 Policy 6.D.8, for the County to “preserve natural woodlands.”³³⁴

4 To restate the *Napa Citizens* court’s holding in the context of this action, Placer County
5 “cannot state goals of [preserving blue oak woodland habitat], and at the same time approve a
6 project that will [have recognized significant impacts on blue oak woodlands] without taking
7 affirmative steps to [preserve the identified blue oak woodland habitat].”³³⁵ Under *Napa Citizens*
8 and *FUTURE*, the Board prejudicially abused its discretion when it approved the Bickford Ranch
9 Specific Plan, but failed to take the affirmative steps necessary to ensure that approval would not
10 frustrate the mandatory General Plan policy requiring protection of blue oak woodland habitats.

11 **2. The Existence of Appendix C Does Not Excuse the County’s Duty to Comply**
12 **With the General Plan’s Mandatory Blue Oak Woodland Protection Policy**

13 The existence of Appendix C to the County’s General Plan and the General Plan’s three-
14 sentence policy establishing the “Bickford Ranch Specific Plan Area” do not override the
15 General Plan’s mandatory blue oak woodland protection policy. Under the state’s Planning and
16 Zoning Law no element of a General Plan may supersede another – all elements must be
17 construed as having equal weight and as being mutually consistent.³³⁶ Appendix C and the
18 General Plan’s mandatory blue oak woodland protection policy must be read as consistent, co-
19 equal parts of the County’s General Plan.³³⁷

20 The express language of Appendix C acknowledges that its allowance of up to 1,950
21 dwelling units in the Bickford Ranch project area, “*may not be realized*” due to site constraints,

23 ³³³ PCGP, *supra*, at p. 114.

24 ³³⁴ See discussion at note 296, *supra*.

25 ³³⁵ *Napa Citizens*, *supra*, 91 Cal.App.4th at p. 380.

26 ³³⁶ *Sierra Club v. Board of Supervisors*, *supra*, 126 Cal.App.3d at p. 708. See discussion at Part
27 IV.B, *supra*.

28 ³³⁷ *Sierra Club v. Board of Supervisors of Kern County*, *supra*, 126 Cal.App.3d at p. 708. See
discussion at Part IV.B, *supra*.

1 inclusion of buffers, and *other factors that may limit available developable land.*³³⁸ One
2 obvious “other factor” limiting developable land at Bickford Ranch is the General Plan’s
3 mandatory policy that blue oak woodlands be protected.³³⁹

4 This Court must set aside the County’s approval of the Bickford Ranch Specific Plan,
5 notwithstanding the existence of Appendix C, because the project EIR and the County’s findings
6 clearly admit that the approved Specific Plan will destroy the blue oak woodlands on site, thereby
7 frustrating the County’s mandatory blue oak woodlands protection policy.^{340, 341}

8 **D. THE COUNTY’S APPROVAL OF THE BICKFORD RANCH PROJECT IS INCONSISTENT**
9 **WITH THE COUNTY’S MANDATORY GENERAL PLAN POLICY THAT REASONABLE**
10 **WILDLIFE VALUES BE PROTECTED WHERE POSSIBLE**

11 For each of the reasons stated in Part V.C of this brief, the Bickford Ranch Specific Plan
12 is inconsistent with the County’s General Plan because it fails to ensure that the County’s unique
13 wildlife habitats will be preserved. The Placer County General Plan requires that the County
14 identify and preserve unique wildlife habitats critical to protecting and sustaining wildlife
15 populations.³⁴² The Placer County General Plan also states that the County “shall require
16 development in areas known to have particular value for wildlife to be carefully planned and,
17 where possible, located so that the reasonable value of the habitat for wildlife is maintained.”³⁴³

18 The Bickford Ranch project area is habitat for diverse wildlife species – including state
19 and federally listed threatened and endangered species – as documented in Appendix F to the
20 Bickford Ranch Specific Plan DEIR.³⁴⁴ Evidence of the project area’s significant wildlife habitat
21 values and the project’s substantial, negative impacts on those values was also presented in

22 ³³⁸ PCGP. *supra*, at p. 155, § a. (emphasis added).

23 ³³⁹ PCGP, *supra*, at p. 110, § 6.C.1.e.

24 ³⁴⁰ *Napa Citizens, supra*, 91 Cal.App.4th at p. 380.

25 ³⁴¹ 1 AR 67; 9 AR 3994.

26 ³⁴² PCGP, *supra*, at p. 110, § 6.C.1.

27 ³⁴³ PCGP, *supra*, at p. 110, § 6.C.2.

28 ³⁴⁴ 10 AR 4786-4794.

1 numerous comments to the Board prior to its final approval of the project.³⁴⁵ Both Sierra Club
2 and Audubon proposed alternatives to the project that would better preserve the reasonable value
3 of the various wildlife habitat types located on the Bickford Ranch Project site – alternatives that
4 were unreasonably rejected by the Applicant and the County without meeting CEQA’s public-
5 disclosure and independent-analysis requirements.³⁴⁶

6 In the instant case, the County has frustrated the General Plan’s mandatory directive of
7 preserving wildlife habitat values “where possible,” because the County unlawfully, and
8 therefore unreasonably, refused to consider any project alternative that would reasonably protect
9 these values.³⁴⁷ Under *Napa Citizens*, the County prejudicially abused its discretion where it 1)
10 refused to analyze any alternative for the project that will reasonably preserve these habitat
11 values, and then 2) adopted a specific plan that will significantly degrade these values, despite
12 the General Plan’s mandatory policy of protecting wildlife habitat “where possible.”³⁴⁸

13 **E. THE COUNTY HAS FAILED TO ADEQUATELY ADDRESS THE PROVISION OF A LONG-
14 TERM WATER SUPPLY FOR THE PROJECT**

15 **1. The County Failed to Analyze Potentially Significant Environmental Impacts
16 Associated With Long-Term Water Supply**

17 The Bickford Ranch project will use treated water delivered by PCWA for domestic and
18 commercial purposes.³⁴⁹ The DEIR states that the project will require an average of 2.24 million
19 gallons of water per day – a 22 percent increase over PCWA’s present winter peak demand, and
20 nearly a 10 percent increase over present summer peak demand.³⁵⁰ This project’s new, long-term

21 ³⁴⁵ See e.g., 5 AR 1886-1888 (comments from Sierra Club noting project’s inconsistencies with
22 habitat protection policies in General Plan); 18 AR 8432-8456 (letter from John Ranlett
23 commenting on DEIR’s inadequate analysis of impacts to wildlife habitat); 20 AR 9877-9878
(supplemental letter from John Ranlett).

24 ³⁴⁶ See discussion at Part V.B.2, *supra*.

25 ³⁴⁷ See discussion at Parts V.B and V.B.2, *supra*.

26 ³⁴⁸ *Napa Citizens, supra*, 91 Cal.App.4th at p. 380. See discussion at Part III.A and notes 326-
27 327, *supra*.

28 ³⁴⁹ 9 AR 3767. See discussion at Part III.C.5, *supra*.

³⁵⁰ 9 AR 3752. See discussion at note 86, *supra*.

1 water demand also occurs against a service-area-wide backdrop of increases in peak demand
2 averaging 1 mgd per year.³⁵¹

3 The DEIR fails to fully assess the environmental impact associated with meeting the
4 Bickford Ranch project's demand for water. The DEIR and the County's findings declare that
5 impacts associated with long-term water supply are less than significant because the Placer
6 County Water Agency (PCWA) has extensive available surface water "entitlements."³⁵²
7 However, a bare entitlement to "paper water," and having the ability (i.e., infrastructure) to
8 actually deliver that water on a long-term basis, are not the same.

9 At public meetings on the project, a PCWA representative stated that under *existing*
10 conditions, PCWA has the capacity "to serve the Bickford Ranch project today," but that
11 permanent improvements would have to be made to PCWA's American River Pump Stations to
12 ensure PCWA's ability to provide long-term water for the project..³⁵³ PCWA's representative
13 later acknowledged to the Board that long-term water supply for future development in Placer
14 County – including the Bickford Ranch – is contingent on completion of the PCWA's proposed
15 American River water pumping facility by 2004.³⁵⁴

16 Thus, the project will have an impact on the American River and its surrounding
17 environment by 1) requiring the construction of permanent pump stations and supporting
18 infrastructure, and 2) dedicating a new, long-term draw of 2.24 mgd from the American River to
19 serve the Bickford Ranch project. Yet the EIR for this project fails to assess that impact at all.

20 The public questioned how the County could approve the Bickford Ranch project in light
21 of the fact that the County's American River Pump Station project – the project that will allow
22 adequate pumping capacity to provide long term water for Bickford Ranch – has not been
23 approved, and the EIR for the pump station project was only in draft form when the County
24

25 ³⁵¹ 9 AR 3752. See discussion at note 86, *supra*.

26 ³⁵² 1 AR 10; 9 AR 3767-3768. See discussion at Part III.C.5, *supra*.

27 ³⁵³ Planning Com. Transcript (Nov. 8, 2001), *supra*, Testimony of Einar Maisch, pp. 23-24.

28 ³⁵⁴ Board Transcript (Dec. 10, 2001), *supra*, Testimony of Einar Maisch, pp. 57, 61.

1 approved the Bickford Ranch project.³⁵⁵ Indeed, at the Board of Supervisors December 10, 2001
2 meeting, members of the public testified that PCWA’s staff had publicly admitted that without
3 the American River Pump Station project, the County would run out of water by 2004.³⁵⁶

4 In a November 1, 2001 letter to the Board, PCWA is careful to limit its projection of
5 water supply to a one-year window, stating that without completion of the proposed pumping
6 facility, PCWA can only ensure “adequate treatment, transmission and storage capacity *in 2002*
7 to meet the buildout water needs of the Bickford Ranch project.”³⁵⁷ With regard to *long-term*
8 water supply, the PCWA letter expressly states that “if developments are approved which submit
9 applications and connection fees for water service before Bickford Ranch does so, it is possible
10 that the supply available with the then-existing infrastructure may be depleted before the
11 Bickford Ranch project is able to take advantage of it.”³⁵⁸ The PCWA letter expressly concludes
12 that it “should not be construed as a guarantee of [water] service under all circumstances.”³⁵⁹

13 As with the PCWA representative’s testimony before the Board, the PCWA letter makes
14 clear that completion of PCWA’s proposed American River pumping project is the key to
15 ensuring long-term water availability for development in west Placer County, including Bickford
16 Ranch: “Without completion of the permanent American River Pump Station, [PCWA] has an
17 unallocated raw water delivery capacity of 7,400 af [acre-feet]”³⁶⁰ “Completion of this
18 project will increase the Agency’s raw water delivery capacity to 135,900 afa”³⁶¹

19
20
21 ³⁵⁵ 20 AR 10012-10026.

22 ³⁵⁶ Board Transcript (Dec. 10, 2001), *supra*, Testimony of Laurie Richards, pp. 140. See also,
23 Planning Com. Transcript (Nov. 8, 2001), *supra*, Testimony of Chairman Jim Forman, at pp. 24-
24 25 (quoting prior statement made by PCWA that without the American River Pump Station, the
25 County would exhaust its water supply by 2004.).

24 ³⁵⁷ 2 AR 714.

25 ³⁵⁸ 2 AR 714.

26 ³⁵⁹ 2 AR 714.

27 ³⁶⁰ 2 AR 714.

28 ³⁶¹ 2 AR 712.

1 In this litigation, the County and the Applicant have expressly admitted that 1) the
2 proposed American River Pump Station project has not been constructed, 2) that only a DEIR
3 has been circulated for review for the Pump Station project, 3) that no FEIR has been certified for
4 the Pump Station project, 4) that the Pump Station project has not been approved, and 5) that no
5 mitigation measures have been adopted for the Pump Station project.³⁶²

6 Thus the DEIR and the County’s findings that impacts associated with long-term water
7 supply are less than significant because the PCWA has extensive available surface water
8 “entitlements” simply begs the question of what the impacts might be on the American River of
9 1) building the necessary American River Pump Station and supporting infrastructure to serve the
10 Bickford Ranch project, and then 2) removing an additional 2.24 mgd of water from the River on
11 a long-term basis for domestic and commercial uses at the Bickford Ranch project site (especially
12 in light of PCWA’s ongoing, background, peak-demand increases averaging 1 mgd per year).
13 While the impacts associated with the County taking more of the water to which it is entitled
14 would presumably be assessed in the EIR for the proposed pump station, *that EIR was not*
15 *completed at the time the County approved the Bickford Ranch project.* Therefore, the County
16 was required to assess the impact of the Bickford development’s thirst for water in the EIR for
17 this project. Since the County failed to do so, the EIR is defective and the Board’s decision to
18 certify the EIR project is a prejudicial abuse of discretion.³⁶³

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21 ////

24 ³⁶² Answer of Respondents, p. 13, lines 23-28, and p. 14, lines 7-8; Answer of Real Parties, p. 12,
25 lines 26-28 through p. 13, lines 1-2 and lines 9-10.

26 ³⁶³ Pub. Resources Code, § 21094, subs. (a) and (e); *Stanislaus Natural Heritage Project v.*
27 *County of Stanislaus* (1996) 48 Cal.App.4th 182, 199-202 (holding that county prejudicially
28 abused its discretion by approving a specific plan for 5,000 residential units and other water-
using improvements, where no EIR had yet been prepared to analyze the impacts of providing
water for the project.) *Cf. Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002)
95 Cal.App.4th 1373, 1387 (holding that lower-tiered EIR must be invalidated where its analysis
depends on higher-tiered EIR that has been invalidated.)

1 **2. The Project is Inconsistent With Mandatory General Plan Policies Requiring**
2 **Demonstrated Availability of a Long-Term Water Supply**

3 The Placer County General Plan generally prohibits the County from approving new
4 development where existing facilities are inadequate unless the applicant demonstrates that all
5 necessary facilities will be installed or adequately financed.³⁶⁴ With regard to water supply in
6 particular, the General Plan specifically requires that proponents of new development
7 demonstrate the availability of a long-term, reliable water supply for their entire project.³⁶⁵ In
8 addition, before approving any development project the County must “require written
9 certification from the service provider that either existing services are available or needed
10 improvements will be made prior to occupancy.”³⁶⁶

11 According to the Placer County General Plan, the County must require written
12 certification of long-term water availability from the “*service provider*.”³⁶⁷ The Applicant’s
13 promise to obtain “will serve” letters in the future and the Board’s CEQA mitigation measures
14 pacing development to water as it may become available hardly satisfy the General Plan’s
15 express requirement that the service provider, i.e., PCWA, certify *in advance* that either 1) long-
16 term water is available, or 2) that necessary improvements will be in place prior to occupancy.
17 And, as explained, the letter and testimony delivered by PCWA on these points only demonstrate
18 that 1) PCWA refuses to ensure availability of water beyond 2002, and 2) PCWA does not know
19 when improvements to its delivery system will be completed allowing assurances of a long-term
20 water supply for Bickford Ranch.³⁶⁸

21 PCWA’s November 2001 “no-guarantees-after-2002” letter, and its similar statements
22 before the Board in December of 2001, are insufficient to meet the General Plan’s mandatory
23 requirement that PCWA certify a *long-term* water supply. A letter from PCWA promising water

24 ³⁶⁴ PCGP, *supra*, at p. 80, Policy 4.A.2.a.

25 ³⁶⁵ PCGP, *supra*, at p. 83, Policy 4.C.1.

26 ³⁶⁶ PCGP, *supra*, at p. 83, Policy 4.C.1.

27 ³⁶⁷ PCGP, *supra*, at p. 83, Policy 4.C.1 (emphasis added).

28 ³⁶⁸ See discussion at notes 353-361, *supra*.

1 for thirteen-months – so long as nobody else gets in line first – is hardly certification of “long-
2 term” water availability.³⁶⁹ And, PCWA’s equivocation as to whether and when the County’s
3 American River Pump Station project will be completed provides no assurance that necessary
4 improvements to deliver long-term water will be made prior to occupancy of Bickford Ranch.³⁷⁰
5 Likewise, promises by the Applicant to obtain future “will serve” letters, no matter how well
6 intentioned, are simply insufficient to meet the General Plan’s mandatory requirement that the
7 *service provider* certify the availability of long-term water supplies *prior to* occupancy.

8 The Board’s approval of the Bickford Ranch Specific Plan was a prejudicial abuse of
9 discretion where the Board failed to obtain certification from the “service provider,” i.e., PCWA,
10 that either 1) long-term water supply is available for the project using existing facilities, or 2) that
11 the necessary infrastructure and improvements will be built prior to occupancy of Bickford
12 Ranch. The County’s approval of the Bickford Ranch Specific Plan without such certification –
13 especially where PCWA has stated that water could only be guaranteed through 2002 – frustrates
14 the General Plan’s water supply and infrastructure policies.³⁷¹

15 **3. The Project is Inconsistent With The General Plan’s Mandatory Policies**
16 **Limiting Growth Based On Available Surface Water Supplies**

17 The County’s General Plan requires that growth in the County be limited “to what can be
18 served by available surface water supplies assuming a 4-year drought period and usage of one
19 acre foot of water per year per household.”³⁷² Members of Sierra Club commented that approval
20 of the Bickford Ranch project was contingent upon the County ensuring compliance with the
21 General Plan’s one-acre-foot-per-yeer, four-year-drought, water supply policy.³⁷³
22

23 ³⁶⁹ Indeed, by the time of the hearing of this lawsuit in mid-2003, PCWA’s 13-month
24 “guarantee” will have long since expired by its own terms.

25 ³⁷⁰ 2 AR 714.

26 ³⁷¹ PCGP, *supra*, at p. 83, Policy 4.C.1; *Napa Citizens, supra*, 91 Cal.App.4th at p. 380. See
27 discussion at note 357, *supra*.

28 ³⁷² PCGP, *supra*, at p. 84, Policy 4.C.12.

³⁷³ 20 AR 9874.

1 However in testimony before the Planning Commission, a representative of PCWA did
2 not use a formula of one-acre-foot-per-household in determining the project’s water demand:
3 “We have pumping and delivering capacity that is not currently allocated to any project currently
4 today of about 7,000 acre feet, which is enough to serve 10 to 11,000 homes.”³⁷⁴ These numbers
5 only equate to an allocation of 0.64 to 0.7 acre feet of water per household. Similarly, before the
6 Board of Supervisors, PCWA’s representative stated that PCWA has capacity to serve 4,800
7 dwelling units, based on a present availability of 2,900 acre feet of water.³⁷⁵ This represents a
8 ration of only 0.6 acre-feet of water per household.

9 The County’s approval of the Bickford Ranch Specific Plan frustrates the County’s
10 General Plan, because the Board has not complied with the General Plan’s requirement of
11 ensuring that growth in the County is limited to an amount consistent with the allocation of one-
12 acre-foot of water per household per year, assuming a four year drought. In this case, PCWA has
13 only assessed water supply at an amount ranging between 0.7 and 0.6 acre-feet per household per
14 year. Thus, the Board lacks the necessary credible evidence upon which to make a determination
15 that this project’s water demands are consistent with the General Plan minimum water supply
16 policy.

17 **F. THE COUNTY HAS FAILED TO ADEQUATELY ADDRESS POTENTIALLY SIGNIFICANT**
18 **IMPACTS ASSOCIATED WITH POLLUTED RUNOFF FROM THE PROJECT’S RESIDENTIAL**
19 **AREAS**

20 In approving the Bickford Ranch project the County also violated CEQA and the State’s
21 Planning and Zoning laws, by failing to ensure that all necessary, feasible mitigation measures
22 and alternatives were adopted to ensure that contaminated residential stormwater runoff would
23 not have significant adverse impacts on surface water and groundwater quality.

24 /////

25 /////

27 ³⁷⁴ Planning Com. Transcript (Nov. 8, 2001), *supra*, Testimony of Einar Maisch, at p. 24.

28 ³⁷⁵ Board Transcript (Dec. 10, 2001), *supra*, Testimony of Einar Maisch, at p. 40.

1 **1. CEQA Requires the Formulation and Adoption of Feasible Mitigation**
2 **Measures Prior to Project Approval**

3 Under CEQA, an agency may not rely on mitigation measures of unknown efficacy to
4 conclude that a project’s potentially significant impacts will be reduced to a “less-than-
5 significant” level.³⁷⁶ For example, in *Sundstrom v. County of Mendocino*, a county’s approval of
6 a Negative Declaration for a sewage treatment plant was rescinded where it was uncertain
7 whether the “mitigation measures” that had been incorporated into the project – requiring a post-
8 approval hydrological study and compliance with any recommendations in the future report –
9 would *actually* mitigate the project’s potentially significant impacts to soil stability, erosion,
10 sediment transport, and downslope flooding.³⁷⁷ Similarly, in *Kings County, supra*, the Court of
11 Appeal rejected as uncertain a mitigation measure to address groundwater overdraft that called
12 for the City to use fees paid by the Applicant to purchase “replacement” water, where there was
13 no evidence in the record to demonstrate that such water was actually available for purchase.³⁷⁸

14 Courts have found, however, that the precise formulation and combination of mitigation
15 measures may wait until after project approval provided that 1) the EIR identifies extensive,
16 alternative mitigation measures, 2) measurable performance standards are established in the EIR
17 that will ensure the avoidance of significant impacts, and 3) the information presented in the EIR
18 reasonably supports a conclusion that some combination of the range of proposed mitigation
19 measures in the EIR will meet the performance standards.³⁷⁹ For example in *Sacramento Old*
20 *City Association v. City Council of Sacramento (“SOCA”)*, concerned citizens of Sacramento
21 challenged the City’s approval of a new downtown convention center, where the City had failed
22 to specify the precise mix of mitigation measures that would reduce the project’s identified
23 traffic impacts (i.e., parking) to insignificance.³⁸⁰ In *SOCA*, the Appellate Court held that the

24 _____
25 ³⁷⁶ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.

26 ³⁷⁷ *Sundstrom, supra*, 202 Cal.App.3d at p 306-307.

27 ³⁷⁸ *Kings County, supra*, 221 Cal.App.3d at p. 728.

28 ³⁷⁹ See discussion at Part IV.C.3, *supra*.

³⁸⁰ *SOCA, supra*, 229 Cal.App.3d at p. 1018.

1 City had not violated CEQA because 1) the City had extensively described several alternatives
2 for fully mitigating traffic impacts including adoption of a transportation management plan,
3 limiting the size of week-day events, promoting regional rather than local conferences, providing
4 satellite parking and shuttle service, and/or promoting alternative transportation modes for
5 conference attendees, and 2) the City made a commitment, in approving the project, that it would
6 fully mitigate traffic impacts with some combination of these mitigation measures by establishing
7 a performance standard of 90% parking utilization during the weekday afternoon (peak)
8 period.³⁸¹ In other words, the City had committed itself to a quantifiable performance standard –
9 achieving 90% parking utilization on weekday afternoons – and 2) the EIR’s mitigation measures
10 were described with sufficient detail to demonstrate the ability to achieve the stated 90% goal.³⁸²

11 In *Gentry v. City of Murrieta*, the Court of Appeal applied the holdings of *Sundstrom* and
12 *SOCA*, in a challenge to numerous mitigation measures adopted in a negative declaration for a
13 residential development project. The *Gentry* court, following *SOCA*, found that practically all of
14 the challenged mitigation measures were legally adequate under CEQA because 1) measures only
15 requiring reports did not call for further investigation of new or additional mitigation measures to
16 offset impacts, or for the applicant to take any particular actions to comply with
17 recommendations arising from report, and 2) measures requiring the City of Murrieta to direct
18 the applicant’s performance were tied to measurable performance criteria that the City had
19 established.³⁸³

20 However, the *Gentry* court nevertheless rescinded the City of Murrieta’s approval of the
21 negative declaration.³⁸⁴ The City had improperly deferred the development of mitigation
22 measures for the federally listed Stephens’ kangaroo rat by partially relying on a mitigation
23 measure that allowed the City 1) to request the preparation a post-approval, biological study for
24

25 ³⁸¹ *SOCA, supra*, 229 Cal.App.3d at pp.1020-1022, 1026-1030.

26 ³⁸² *SOCA, supra*, 229 Cal.App.3d at pp.1020-1022, 1026-1030.

27 ³⁸³ *Gentry, supra*, 36 Cal.App.4th at pp. 1394-1396.

28 ³⁸⁴ *Gentry, supra*, 36 Cal.App.4th at p. 1396.

1 the Stephen’s kangaroo rat, and 2) to require the applicant to comply with any mitigation
2 measures that might be recommended in the biological report.³⁸⁵

3 **2. The County Deferred the Formulation of Mitigation Measures for**
4 **Residential Stormwater Runoff**

5 The Bickford Ranch DEIR states that the project may have significant, adverse impacts to
6 surface water quality due to contaminated, residential runoff.³⁸⁶ The DEIR acknowledges that
7 the project’s storm water drainage system will use existing stream beds, and that these stream
8 beds are, in fact, important local groundwater recharge areas:³⁸⁷ “The proposed drainage system
9 will utilize existing drainage systems to the extent possible, including the ravines and existing
10 natural channels.”³⁸⁸ “Although groundwater recharge areas are limited in the area of the project
11 site, local stream channels represent one of the most important potential groundwater recharge
12 zones in the vicinity of the project site.”³⁸⁹ The reasonable inference from these facts is that –
13 unless mitigated – impacts from contaminated surface water runoff may also have significant,
14 adverse effects on groundwater quality.³⁹⁰

15 In the DEIR and in its findings, Respondents declare that the project will have less than
16 significant impacts on water quality associated with residential runoff.³⁹¹ The Board bases its

17 ³⁸⁵ *Gentry, supra*, 36 Cal.App.4th at p. 1396.

18 ³⁸⁶ 9 AR 3950. See discussion at Part III.C.6, *supra*.

19 ³⁸⁷ 8 AR 3212; Specific Plan, *supra*, at p. 9-7 (Specific Plan stating that development of
20 Bickford Ranch will introduce impervious surfaces, which may increase local runoff to the
21 Auburn Ravine and Antelope watersheds); 9 AR 3940 (DEIR acknowledging that stream
22 channels in the vicinity are potentially important groundwater recharge zones); 17 AR 7493
(FEIR stating that the characteristics of the Bickford Ranch project site favor high runoff to local
23 stream channels and other low-lying areas where “the majority of local groundwater recharge
24 occurs.”)

25 ³⁸⁸ 9 AR 3954 (discussion under heading titled “4.E.1.”).

26 ³⁸⁹ 9 AR 3940.

27 ³⁹⁰ The DEIR claims, without any supporting evidence, that “in general” residential runoff does
28 not pose a “high risk” of groundwater contamination. (9 AR 3951.) As this conclusory
statement lacks any supporting fact, the DEIR’s conclusions about impacts to groundwater from
residential runoff are not supported by “substantial evidence” (Pub. Resources Code, § 21080,
subd. (e)(1).)

³⁹¹ 1 AR 65; 9 AR 3950.

1 finding – in part – on a recommended mitigation measure in the DEIR requiring the future
2 preparation of and compliance with a “Post-Development Storm Water Management Plan” for
3 residential runoff.³⁹²

4 The only “standard” controlling the content of this proposed, post-hoc plan is that it must
5 be developed under the guidelines set forth in the Placer County Flood Control and Water
6 Conservation District’s Stormwater Management Manual.³⁹³ This proposed “mitigation
7 measure” defers the development, description and analysis of actual residential storm water
8 runoff mitigation measures and monitoring programs (and therefore, by implication, the
9 groundwater resources that depend on that runoff) until after the project is built:

10 The purpose of this mitigation measure is to provide a plan for ensuring that
11 structural BMPs constructed as part of the proposed project are maintained
12 appropriately such that they continue to perform their intended function as long as
13 the project site is occupied. . . . The [Post-Development] Storm Water
14 Management Plan will address site-specific drainage characteristics, storm water
15 conveyance systems, discharge points, *potential sources* of runoff quality impacts,
16 specific structural BMPs that have been constructed as part of the project,
17 recommended operational BMPs, a maintenance program for structural BMPs, *a*
18 *monitoring program* designed to evaluate the need for BMP modifications or
19 additional BMPs, and *identification of specific parties* responsible for
20 implementing each part of the plan.³⁹⁴

21 As highlighted portions of this passage demonstrate, the EIR plainly defers, among other things,
22 1) the identification of potential sources of surface water runoff contamination, 2) the
23 development of a mitigation monitoring program, and 3) the identification of who will be
24 responsible for implementing the post-development stormwater management program.
25

26 ³⁹² 9 AR 3957. In considering stormwater runoff and associated groundwater quality impacts,
27 the County required several mitigation measures including 1) a proposed Golf Course Chemical
28 Application Management Plan (CHAMP); 2) a proposed Lake Management Plan for constructed
lakes and wetlands; and 3) a 100’ setback from raw water canals. (1 AR 65) Petitioners do not
challenge any of these mitigation measures and programs, which were prepared and incorporated
into the Specific Plan before project approval. Petitioners do challenge, however, the mitigation
measure for residential runoff, which calls for post-approval drafting and implementation of a
Post Development Storm Water Management Program for residential runoff water quality
impacts.

³⁹³ 9 AR 3957.

³⁹⁴ 9 AR 3957 (emphasis added).

1 No draft “Post-Development Storm Water Management Plan” for residential runoff was
2 ever prepared or presented for public review prior to the County’s approval of the project.
3 Individuals commented well in advance of project approval, that the County’s Stormwater
4 Management Manual contains no qualitative or quantitative performance standards for runoff
5 water *quality* that would allow the Board to make a rational determination that this future plan
6 will, in fact, reduce residential runoff impacts to water quality to a less-than-significant level.³⁹⁵

7 The Introduction to the County’s Stormwater Management Manual states that “[t]he
8 manual is intentionally an evolutionary document. Its initial focus is on flooding problems.
9 Over time the scope will expand to include more on sedimentation, erosion, *water quality*, and
10 *environmental effects*.”³⁹⁶ The manual as it exists today, however, ends with a chapter on
11 sedimentation and erosion, and has never “evolved” to include the promised chapters on either
12 “water quality” or “environmental effects.”³⁹⁷ The manual contains no information on pollutants
13 other than sedimentation, and no qualitative or quantitative performance standards for dissolved
14 and suspended pollutants, including – but not limited to – lawn and gardening fertilizers,
15 herbicides and pesticides; paints and thinners; oil and gas spills; and other volatile compounds.

16 In fact, the EIR’s deferral of analysis and mitigation for residential runoff water quality
17 was identified as a problem by the County’s EIR consultant.³⁹⁸ The County’s consultant
18 suggested that state-established “best management practices” (BMPs) be incorporated as minimal
19 performance standards for runoff water quality in the FEIR and the Specific Plan.³⁹⁹ The County,
20 inexplicably, chose not to follow this advice, and only included permissive language (rather than
21 mandatory language) that the yet-to-be developed post development stormwater management
22

23 ³⁹⁵ See, e.g., 24 AR 11683. The County’s Stormwater Management Manual is incorporated by
24 reference into the administrative record for the Bickford Ranch project. (See Index of
25 Administrative Record at p. 28.)

26 ³⁹⁶ Stormwater Management Manual, § I.A. at p. I-1 (emphasis added).

27 ³⁹⁷ Stormwater Management Manual, § I.B. at pp. I-1 to I-2.

28 ³⁹⁸ 24 AR 11706, 11711, 11716.

³⁹⁹ See, e.g., 24 AR 11706, 11711.

1 plan “may” include BMPs recommended in the County’s Stormwater Management Manual.⁴⁰⁰
2 Despite the lack of any performance standard or mandatory BMPs for this “Post Development
3 Storm Water Management Plan,” the DEIR and the Board’s findings summarily conclude that the
4 yet-to-be-developed runoff management plan will reduce potentially significant runoff impacts to
5 insignificance.⁴⁰¹

6 Respondents’ approval of the Bickford Ranch project based on the Applicant’s promise to
7 develop a post-development stormwater management plan utterly fails to meet SOCA’s
8 requirements for approving “post-approval” mitigation measures: Nothing in the Board’s
9 findings, the Bickford Ranch EIR, or the County’s Stormwater Management Manual establish
10 any measurable performance standards for future residential runoff water quality against which
11 the success of the proposed post-development stormwater management plan might be measured.
12 As in *Kings County, Sundstrom*, and *Gentry*, the lack of any performance criteria for residential
13 runoff water quality, precludes the Board from finding that its “Post-Development Stormwater
14 Management Plan” will, in fact, reduce potentially significant residential runoff water quality
15 impacts beyond significance.⁴⁰²

16 The Board’s deferral of the adoption of a mitigation monitoring program for the post-
17 development storm water management plan is a separate violation of CEQA. Under CEQA,
18 wherever a public agency makes a finding that changes or alterations have been required in a
19 project that mitigate the project’s impacts, it must also adopt a mitigation reporting or monitoring
20 program to ensure that the adopted measures are, in fact, carried out.⁴⁰³ Respondents have
21
22

23 ⁴⁰⁰ 8 AR 3177-3178; Specific Plan, *supra*, at p. 7-14 (Specific Plan stating that “best
24 management practices” in the yet-to-be developed Post-Development Stormwater Management
25 Plan *may* [rather than *shall*] include various BMPs in the County’s Stormwater Management
26 Manual).

27 ⁴⁰¹ 1 AR 65; 17 AR 7493, 17 AR 7494.

28 ⁴⁰² *Gentry, supra*, 36 Cal.App.4th at p. 1396; *Kings County, supra*, 221 Cal.App.3d at p. 728;
Sundstrom, supra, 202 Cal.App.3d at p 306-307. See discussion at Part V.F.1, *supra*.

⁴⁰³ Pub. Resources Code, § 21081.6, subd. (a)(1); Cal. Code Regs., tit. 14, §§ 15091, subd. (d),
15097, subd. (a).

1 deferred the development of such a mitigation monitoring plan for the post-development storm
2 water management plan until after project approval.⁴⁰⁴ In fact, the DEIR goes so far as to defer
3 assigning responsibility for implementing the yet-to-be-developed mitigation monitoring plan to
4 any agency or other public or private entity.⁴⁰⁵

5 This Court must rescind the Board’s certification of the Bickford Ranch EIR and its
6 approval of the Project for the County’s failure to adequately analyze and mitigate impacts
7 associated with residential runoff water quality before approving the Bickford Ranch project.
8 Under *Amador County, supra*, prejudicial abuse of discretion is established by demonstrating a
9 lead agency’s “[n]oncompliance with substantive requirements of CEQA or noncompliance with
10 information disclosure provisions ‘which precludes relevant information from being presented to
11 the public agency’”⁴⁰⁶

12 In other words, when an agency fails to proceed as required by CEQA, harmless
13 error analysis is inapplicable. The failure to comply with the law subverts the
14 purposes of CEQA if it omits material necessary to informed decisionmaking and
informed public participation.⁴⁰⁷

15 Respondents failed to comply with CEQA’s substantive requirements and its information
16 disclosure provisions where 1) no performance standards for runoff water quality exist in the
17 EIR, the Board’s findings, or the County’s Stormwater Management Manual, and 2) the Board
18 failed to adopt a mitigation monitoring or reporting program to ensure that this supposed
19 “mitigation measure” will actually be carried out, and 3) no agency or other entity is charged with
20 ensuring that the mitigation monitoring plan is actually developed and implemented.⁴⁰⁸
21 Respondents prejudicially abused its discretion in deferring the development of mitigation

23 ⁴⁰⁴ 9 AR 3957. See discussion at note 394, *supra*.

24 ⁴⁰⁵ 9 AR 3957. See discussion at note 394, *supra*.

25 ⁴⁰⁶ *County of Amador, supra*, 76 Cal.App.4th at p. 946 (citations omitted). See discussion at Part
26 IV.A.1, *supra*.

27 ⁴⁰⁷ *County of Amador, supra*, 76 Cal.App.4th at p. 946 (citations omitted).

28 ⁴⁰⁸ Pub. Resources Code, § 21081.6, subd. (a)(1); *Gentry, supra*, 36 Cal.App.4th at p. 1396;
Kings County, supra, 221 Cal.App.3d at p. 728; *Sundstrom, supra*, 202 Cal.App.3d at p 306-307.

1 measures addressing potentially significant impacts associated with contaminated residential
2 stormwater runoff.⁴⁰⁹

3 **3. The County’s Approval of the Bickford Ranch Project Was Inconsistent**
4 **With Mandatory General Plan Groundwater Protection Policies**

5 The Placer County General Plan mandates that the County will protect groundwater from
6 contamination by 1) identifying and controlling sources of potential contamination, and 2)
7 protecting important groundwater recharge areas.⁴¹⁰ The General Plan also requires that the
8 County “shall . . . require the use of feasible and practical best management practices (BMPs) to
9 protect streams from the adverse effects of . . . urban runoff”⁴¹¹

10 As discussed in detail above, California’s Appellate Court, in *Napa Citizens for Honest*
11 *Government v. County of Napa*, specifically held that a county cannot state affirmative policies in
12 its general plan, and then adopt a specific plan that frustrates those policies without taking
13 affirmative steps to address those inconsistent impacts.⁴¹² The County has violated *Napa*
14 *Citizens* with regard to the General Plan’s policies requiring 1) the adoption of BMPs to protect
15 surface water quality and 2) the protection of groundwater recharge areas.

16 The Bickford Ranch DEIR admits that the project’s impacts to storm water runoff quality
17 after buildout (excluding sedimentation) are potentially significant.⁴¹³ But, the DEIR defers 1)
18 the adoption of a Post-Development Stormwater Management Plan, 2) the adoption of water
19 quality standards and operational BMPs under that plan, 3) the development of a mitigation
20 monitoring plan for the Stormwater Management Plan, and 4) the appointment of a responsible
21 agency or entity to carry out that monitoring plan, until *after* the Board approved the project.⁴¹⁴

22
23 _____
24 ⁴⁰⁹ *County of Amador, supra*, 76 Cal.App.4th at p. 946.

25 ⁴¹⁰ PCGP, *supra*, at p. 105, § 6.A.10.

26 ⁴¹¹ PCGP, *supra*, at p. 105, § 6.A.5.

27 ⁴¹² *Napa Citizens, supra*, 91 Cal.App.4th at p. 380. See discussion at notes 324-327, *supra*.

28 ⁴¹³ 9 AR 3950.

⁴¹⁴ See discussion at Part V.F.1, *supra*.

1 As shown above, since these mitigation measures have been improperly deferred, the County
2 fundamentally lacks adequate evidence to conclude that it has fully identified and controlled the
3 project's sources of pollution, and that it has protected the off-site groundwater recharge areas, in
4 the Bickford Ranch Specific Plan.⁴¹⁵

5 Under *Napa Citizens*, Respondents' approval of the Bickford Ranch Specific Plan was a
6 prejudicial abuse of discretion where the County failed to analyze in the EIR – and therefore to
7 include in the Specific Plan – mitigation measures and performance standards to ensure that
8 residential runoff from the project site would not violate the County's General Plan policies
9 requiring 1) the adoption of BMPs to protect natural streams and channels, and 2) the protection
10 of important groundwater recharge areas. The County "cannot state goals of [protecting streams
11 and groundwater recharge areas], and at the same time approve a project that will [have
12 potentially significant impacts on streams and groundwater recharge areas] without taking
13 affirmative steps to [protect streams and groundwater recharge areas]."⁴¹⁶

14 **G. THE COUNTY FAILED TO ANALYZE THE POTENTIALLY SIGNIFICANT, GROWTH-
15 INDUCING IMPACTS OF INSTALLING AN OVERSIZED SEWER LINE**

16 The County prejudicially abused its discretion in failing to analyze the growth-inducing
17 and cumulative impacts of installing an oversized sewer line along Highway 193 in connection
18 with the Bickford Ranch Specific Plan. In 1998, the County expressly requested that the
19 Applicant include an oversized sewer line "through Bickford Ranch to Lincoln" as part of the
20 Bickford Ranch Specific Plan proposal.⁴¹⁷ An internal County memorandum found in the
21 administrative record makes it clear that unless included as a part of the Bickford Ranch project,
22 "there will be no advance construction of a pipeline sized to accommodate a future regional
23 sewer flow."⁴¹⁸ The Development Agreement for the Bickford Ranch project states that the
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25 ⁴¹⁵ See discussion at Part V.F.2, *supra*.

26 ⁴¹⁶ *Napa Citizens*, *supra*, 91 Cal.App.4th at p. 380.

27 ⁴¹⁷ 7 AR 2508.

28 ⁴¹⁸ 27 AR 12905.

1 sewer line along Highway 193 “shall be constructed to accommodate future regional wastewater
2 flows The parties agree that the construction of these off-site transmission facilities
3 constitutes a significant regional and public benefit to south Placer County residents in that the
4 sizing for the transmission facilities is *significantly in excess* of the sizing required to
5 accommodate the development of the Project.”⁴¹⁹

6 In its “Growth-Inducing Impacts” section, the DEIR expressly acknowledges that lack of
7 adequate sewer service presently acts as a constraint on regional growth: “[t]he absence of
8 wastewater collection facilities (i.e., community septic system or sewer) acts as a constraint to
9 large-scale development in the study area.”⁴²⁰ This section of the DEIR also admits that the
10 proposed sewer line from Bickford to the City of Lincoln would be sized to meet the designs of a
11 Joint Powers Authority (JPA) formed by Placer County, the cities of Lincoln and Auburn, South
12 Placer Municipal Utility District and the Newcastle Sanitary District to provide *regional* sewer
13 service.⁴²¹

14 This section of the DEIR, however, does not quantitatively or qualitatively analyze any of
15 the growth-inducing impacts of making such regional sewer service available to areas near and
16 between the Bickford Ranch Project site and the City of Lincoln. Nor does it propose any
17 mitigation measures or alternatives to reduce or avoid such potentially significant growth-
18 inducing impacts.

19 Prior to the close of public hearings on the Bickford Ranch project, comments were made
20 by the public regarding the County’s failure to provide any environmental analysis of placing an
21 oversized sewer line along Highway 193 from the project site to the City of Lincoln.⁴²²

22 CEQA requires that a DEIR examine a project’s potentially significant cumulative and
23 growth-inducing impacts.⁴²³ For example, in *City of Antioch v. City Council of the City of*
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25 ⁴¹⁹ 8 AR 3049-3050 (emphasis added).

26 ⁴²⁰ 9 AR 4178.

27 ⁴²¹ 9 AR 4179.

28 ⁴²² See, e.g., 23 AR 11001; 23 AR 11274.

1 *Pittsburgh*, the Court of Appeal required the preparation of an EIR to determine growth-inducing
2 impacts associated with a proposal to build a road and sewer lines on undeveloped property.⁴²⁴
3 In *City of Antioch*, the respondent agency, the City of Pittsburgh, defended its failure to evaluate
4 the cumulative and growth-inducing environmental consequences of its decision by insisting that
5 any future development would be covered by later environmental review.⁴²⁵ The Court rejected
6 the City’s reasoning: “[c]onstruction of the road way and utilities cannot be considered in
7 isolation from the development it presages.”⁴²⁶

8 Similarly, in *Stanislaus Audubon Society, Inc. v. County of Stanislaus*, the Court of
9 Appeal overturned a negative declaration for a proposed golf course where the negative
10 declaration declared that the project would have no growth-inducing impacts, because substantial
11 evidence in the record supported a fair argument that the project would induce residential
12 growth.⁴²⁷ And, in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (“*San*
13 *Joaquin Raptor I*”), the Court of Appeal held an EIR for a residential/commercial development
14 project invalid for its failure to analyze cumulative impacts associated with a sewer plant
15 expansion required to serve the project, even though the county attempted to remedy the EIR’s
16 inadequacies by submitting separate evidence addressing cumulative impacts.⁴²⁸

17 Based on the above cases, the Bickford Ranch EIR is legally inadequate, because it failed
18 to include or incorporate any discussion of the cumulative and growth inducing impacts
19 associated with installing an oversized sewer line to accommodate regional growth. Under *City*
20 *of Antioch*, the County was required to evaluate regional, growth-inducing impacts before
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23 ⁴²³ See discussion at Part IV.C.5, *supra*.

24 ⁴²⁴ *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337-1338.

25 ⁴²⁵ *City of Antioch, supra*, 187 Cal.App.3d at p. 1331-1332.

26 ⁴²⁶ *City of Antioch, supra*, 187 Cal.App.3d at p. 1335.

27 ⁴²⁷ *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 147.

28 ⁴²⁸ *San Joaquin Raptor I, supra*, 27 Cal.App.4th at p. 731-735.

1 approving a project calling for the installation of over-sized sewer lines.⁴²⁹ *San Joaquin Raptor*
2 *I* confirms that this analysis must appear within the Bickford Ranch project EIR, and not in other
3 documents or information submitted by the County or Applicant.⁴³⁰

4 And, as in *Stanislaus Audubon*, substantial evidence in the Bickford Ranch administrative
5 record demonstrates that the present lack of adequate sewer services is currently a limiting
6 factors on regional growth in west Placer County.⁴³¹ Based on this fact, it is a reasonable
7 inference that building an oversized sewer line between the Bickford Ranch project site and the
8 City of Lincoln will have potentially significant, growth-inducing regional impacts.⁴³²

9 The County’s approval of the Bickford Ranch project must be rescinded, and its
10 certification of the project EIR set aside, because the County failed to adequately consider the
11 project’s cumulative and growth inducing impacts. As stated in *City of Antioch*, construction of
12 the oversized sewer line from Bickford Ranch to the City of Lincoln “cannot be considered in
13 isolation from the development it presages.”⁴³³

14 **H. THE BOARD’S FINDING THAT MITIGATION MEASURES AND ALTERNATIVES TO REDUCE**
15 **THE PROJECT’ CUMULATIVE IMPACTS ARE INFEASIBLE IS NOT SUPPORTED BY**
16 **SUBSTANTIAL EVIDENCE**

17 An EIR must identify a project’s potentially significant effects – including cumulative
18 effects – and propose mitigation measures and alternatives to reduce or avoid those impacts.⁴³⁴
19 CEQA prohibits a lead agency from approving a project that has one or more identified
20 significant effects unless the agency makes a finding that 1) changes have been incorporated or
21 required in the project to mitigate or avoid the identified impact, 2) the changes are within the

22 ⁴²⁹ *City of Antioch, supra*, 187 Cal.App.3d at p. 1337-1338. See discussion at notes 424-426,
23 *supra*.

24 ⁴³⁰ *San Joaquin Raptor I, supra*, 27 Cal.App.4th at p. 734. (“It is the *adequacy of the EIR* with
25 which we are concerned, not the propriety of the board of supervisors’ decision to approve the
26 project” [emphasis added].)

27 ⁴³¹ See discussion at notes 417-421, and 427, *supra*.

28 ⁴³² 9 AR 4178; *Stanislaus Audubon Society, supra*, 33 Cal.App.4th at p. 147.

⁴³³ *City of Antioch, supra*, 187 Cal.App.3d at p. 1335.

⁴³⁴ See discussion at Part IV.C, *supra*.

1 jurisdiction of another agency, and can and should be implemented by that agency or 3) that
2 specific “overriding considerations” make the mitigation measures identified in the EIR
3 infeasible, *and* that the benefits of the project outweigh its remaining environmental impacts.⁴³⁵

4 Only *after* making findings regarding the feasibility of mitigation measures and
5 alternatives may a lead agency then move to the next step of adopting a “statement of overriding
6 consideration” to approve a project with one or more remaining, significant environmental
7 effects.⁴³⁶ The agency’s findings of feasibility must be presented in such a fashion that the
8 public can reasonably understand the chain of logic that leads from the available evidence to the
9 agency’s ultimate conclusions of feasibility – conclusory statements are not adequate to justify a
10 public agency’s finding of infeasibility.⁴³⁷

11 In the instant case, the Bickford Ranch DEIR admits that the project – even after the
12 adoption of all feasible mitigation measures and alternatives for the project’s *direct* impacts –
13 will still have significant, unavoidable *cumulative* impacts on the environment.⁴³⁸ “The proposed
14 project would contribute to cumulative impacts in the areas of land use, traffic congestion, traffic
15 noise, increase in air pollutant emissions, habitat conversion and habitat quality reduction, and
16 visual resources.”⁴³⁹

17 After identifying these numerous impacts, however, the DEIR fails to propose or analyze
18 *any* mitigation measures or alternatives to reduce or avoid the project’s cumulative effects.⁴⁴⁰

20 ⁴³⁵ Pub. Resources Code, § 21081. See discussion at Part IV.C.5, *supra*.

21 ⁴³⁶ See Pub. Resources Code, § 21081; Cal. Code Regs., tit. 14, §§ 15091, subd. (f), 15093, subd.
22 (c). See discussion at notes 194 & 195, *supra*.

23 ⁴³⁷ See discussion at note 198, *supra*.

24 ⁴³⁸ 9 AR 4188.

25 ⁴³⁹ 9 AR 4181.

26 ⁴⁴⁰ *Compare*, e.g., 9 AR 3943-3961 (describing, in detail, the projects direct impacts to hydrology
27 and water quality, and setting forth numerous mitigation measures to reduce or avoid those
28 impacts) *with* 9 AR 4187-4188 (vaguely describing potential for cumulative impacts to
hydrology and water quality, offering no new mitigation measures or alternatives, and summarily
concluding with no analysis that implementation of already required, project-specific mitigation
measures will reduce cumulative impacts to insignificance).

1 Nevertheless, the DEIR implies that alternatives do exist that could feasibly reduce or avoid the
2 project’s cumulative effects.

3 With regard to cumulative impacts to land use, for example, the DEIR notes that
4 “[f]armland proximate to the site may be protected from further encroachment by (1) contracts
5 legally binding the owner, and (2) zoning regulation,” but the DEIR does not analyze either
6 suggestion as a mitigation measure to reduce or avoid the project’s impacts.⁴⁴¹ For sewage, the
7 DEIR states that significant, cumulative impacts to wastewater treatment are “not expected to
8 occur,” so long as the County follows through on its nascent proposal to expand the City of
9 Lincoln’s sewer plant to serve regional capacity – but the DEIR contains no mitigation measure
10 requiring that the County actually carry out this plan.⁴⁴² And, with regard to biological resources,
11 the DEIR simply states that “the cumulative impact of the project on biological resources is
12 considered significant and unavoidable,” making no attempt to even identify or discuss
13 mitigation measures or alternatives that might reduce or avoid such impacts.⁴⁴³

14 The Board’s findings carry over the DEIR’s acknowledgement of numerous, remaining
15 significant cumulative impacts: “Impacts of the Development that are cumulatively significant in
16 the regional context . . . include the following: (i) loss of open space; (ii) increased traffic
17 congestion; (iii) increased traffic noise; (iv) increased ozone precursors and particulate
18 emissions; (v) impacts on biological resources; and (vi) impacts on visual resources.”⁴⁴⁴ The
19 Board’s findings generically declare that mitigation measures for cumulative impacts are
20 “infeasible” because 1) “[c]umulative [i]mpacts are an inevitable consequence of growth” and 2)

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24 ⁴⁴¹ 9 AR 4181.

25 ⁴⁴² 9 AR 4183.

26 ⁴⁴³ 9 AR 4188. (discussing significant cumulative biological effects of Bickford Ranch project
27 when taken in consideration with other development projects in West Placer County, but failing
to identify or analyze any mitigation measures or alternatives to reduce cumulative biological
impacts).

28 ⁴⁴⁴ 1 AR 82

1 the County’s General Plan “contemplates growth and specifically contemplates the [Project] site
2 as an area in which to provide for planned residential development.”⁴⁴⁵

3 The County abused its discretion in finding that mitigation measures or alternatives to
4 address the project’s cumulative impacts are infeasible: the Board’s finding offers no substantial
5 evidence of any “*specific* economic, legal, social, technological or other considerations” that
6 would “make infeasible” the development and adoption of mitigation measures to address the
7 Bickford Ranch project’s remaining, significant cumulative effects.⁴⁴⁶ The Board’s first
8 justification, that cumulative impacts are an “inevitable consequence of growth,” is a conclusory
9 statement that does not constitute “substantial evidence” for purposes of CEQA.⁴⁴⁷

10 In order to properly find that mitigation measures and alternatives are infeasible, the
11 County must first analyze such mitigation measures and alternatives in the project EIR, and then,
12 in its findings, present “fact, a reasonable assumption predicated upon fact, or expert opinion
13 supported by fact,” demonstrating that “specific” economic, legal, social or technological
14 considerations “override” the adoption and implementation of such measures.⁴⁴⁸ But, in this
15 case, the EIR does not even bother to analyze a single mitigation measure or alternative that is
16 designed to reduce or avoid the project’s remaining, potentially significant, cumulative impacts,
17 after incorporation of the EIR’s mitigation measures for direct impacts. Without any effort to
18 identify or analyze such mitigation measures in the EIR, the Agency fundamentally lacks the
19 necessary evidence to conclude that mitigation measures or alternatives to address the project’s
20 cumulative impacts are infeasible of implementation.

21 The Board’s second justification – that development of Bickford Ranch is contemplated
22 by the County’s General Plan – also fails to provide “substantial evidence” that explains why
23

24 ⁴⁴⁵ 1 AR 83.

25 ⁴⁴⁶ Cal. Code Regs., tit. 14, §§ 15091, subds. (a)(3) and (b).

26 ⁴⁴⁷ Pub. Resources Code, § 21080, subd. (e)(2). “For the purposes of [CEQA], substantial
27 evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion
28 supported by fact.” (Pub. Resources Code, 21080, subd. (e)(1).)

⁴⁴⁸ Pub. Resources Code, § 21081, subd. (a)(3).

1 mitigating the Bickford Ranch project’s remaining cumulative impacts is *infeasible*. The fact
2 that a particular development project is contemplated by a general plan is no basis for refusing to
3 analyze the project’s impacts (including *cumulative* impacts) on the existing environment, or
4 proposing and analyzing mitigation measures and alternatives to reduce or avoid those
5 impacts.⁴⁴⁹ “Certainly general plan conformity alone does not effectively “mitigate” significant
6 environmental impacts of a project.”⁴⁵⁰ Again, because the EIR failed to propose or discuss any
7 mitigation measures or alternatives to reduce or avoid the Bickford Ranch project’s
8 acknowledged, remaining, potentially significant impacts, the Board’s finding of infeasibility is
9 unsupported by substantial evidence.

10 Respondents’ certification of the Bickford Ranch EIR and approval of the Bickford
11 Ranch project was prejudicial abuse of discretion. Respondent failed to follow CEQA’s
12 substantive and procedural requirements by adopting a “finding,” with no factual support, that
13 mitigation measures and alternatives to reduce or avoid the project’s cumulative impacts are
14 infeasible.⁴⁵¹

15 **I. THE BICKFORD RANCH SPECIFIC PLAN IS INCONSISTENT WITH THE REQUIREMENTS**
16 **AND LIMITS SET FORTH IN APPENDIX C**

17 As required by the State Planning and Zoning Law, development of the Bickford Ranch
18 area must be carried out in a manner that is consistent with the County’s General Plan.⁴⁵²
19 Appendix C to the County’s General Plan, in turn, sets forth numerous policies and criteria for
20 the development of Bickford Ranch area.⁴⁵³ On December 18, 2002, the Board adopted a

23 ⁴⁴⁹ *City of Antioch, supra*, 187 Cal.App.3d at p. 1332; *Environmental Planning and Information*
24 *Council of Western El Dorado County v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358.

25 ⁴⁵⁰ *City of Antioch, supra*, 187 Cal.App.3d at p. 1332.

26 ⁴⁵¹ *County of Amador, supra*, 76 Cal.App.4th at p. 946. See discussion at Part IV.A.1, *supra*.

27 ⁴⁵² See discussion at Part IV.B.2, *supra* (setting forth Planning and Zoning law’s requirement that
28 development approvals be vertically consistent with general plan).

⁴⁵³ See discussion at Part III.A, *supra*.

1 resolution proclaiming that the Bickford Ranch Specific Plan is consistent with the County's
2 General Plan, including Appendix C.⁴⁵⁴

3 The Board prejudicially abused its discretion when it adopted the resolution. The
4 Bickford Ranch Specific Plan is facially inconsistent with, and therefore frustrates, numerous,
5 mandatory policies set forth in Appendix C to the County's General Plan, and contains no
6 "definite affirmative commitments to mitigate the adverse effect or effects" of those
7 inconsistencies, as the following examples demonstrate:⁴⁵⁵

- 8 • Appendix C states that a maximum of two mixed-use villages may be built
9 in the Bickford Ranch Specific Plan area, but the Specific Plan proposes to
10 build three, non-mixed use, residential subdivisions.⁴⁵⁶
- 11 • Appendix C states that the development under the Bickford Ranch
12 Specific Plan shall *set aside* the slopes of Boulder Ridge, but the Specific
13 Plan calls for the establishment of private, residential lots on the slopes
14 and on top of Boulder Ridge including, but not limited to, the residential
15 subdivision units designated R7A, R8A, R-9A, R-10, R-11B, and R-
16 13A.⁴⁵⁷
- 17 • Appendix C requires that development in Bickford Ranch follow the
18 General Plan's requirements for buffers of 50 to 800 feet between
19 residential uses and agricultural uses, but several of the lots along the
20 northeast edge of the Bickford Ranch project area – including the
21 residential subdivision units designated R-15A, R-15B, and R-16 –
22 directly abut adjoining agricultural lands with no buffers at all.⁴⁵⁸

19 ⁴⁵⁴ 1 AR 95.

20 ⁴⁵⁵ *Napa Citizens, supra*, 91 Cal.App.4th at p. 379. See discussion at Part III.A and notes 326-
21 327, *supra*.

22 ⁴⁵⁶ *Compare* PCGP, *supra*, Appendix C, at p. 155, § f(1) *with* 8 AR 3152; Specific Plan at p. 5-1.

23 ⁴⁵⁷ *Compare* PCGP, *supra*, Appendix C, at p. 155, § c *with* 8 AR 3128, at Figure 3.1 (Specific
24 Plan, *supra*, at p. 3-6, Figure 3.1) (Bickford Ranch Specific Plan Land Use Map), 8 AR 3130
25 (Specific Plan, *supra*, at p. 3-8) (describing "The Ridges" as a community "located north and
26 south of Boulder Ridge in areas with slopes that range from zero to thirty percent," and
describing "Heritage Ridge" as a community "located atop Boulder Ridge."); 8 AR 3153, at
27 Figure 5.1 (Specific Plan, *supra*, at p. 5-2, Figure 5.1) (Master Lotting Plan); and 9 AR 3690, at
28 Figure 3-17 (DEIR Preliminary On-Site Water Plan, surface elevation map depicting numerous
proposed lots located on the slopes and top of Boulder Ridge).

29 ⁴⁵⁸ *Compare* PCGP, *supra*, at pp. 21-22 (establishing criteria for buffer widths), and 155, § d.
30 (incorporating General Plan's buffer requirements into Appendix C) *with* 8 AR 3128, at figure
31 3.1 (Specific Plan, *supra*, at p. 3-6, Figure 3.1) (Bickford Ranch Specific Plan Land Use Map),
32 and 8 AR 3153, at Figure 5.1 (Specific Plan, *supra*, at p. 5-2, Figure 5.1) (Master Lotting Plan).

- 1 • Appendix C requires the golf course in Bickford Ranch – if it is built at all
2 – to be a public golf course,⁴⁵⁹ but the golf course proposed in the Specific
Plan is private, not public.

3 The Bickford Ranch Specific Plan is also inconsistent with Appendix C’s intent that
4 Bickford Ranch be developed as a self-sufficient community, rather than as a bedroom
5 community to nearby towns. Appendix C of the Placer County General Plan states that the
6 Bickford Ranch Specific Plan shall be pedestrian-oriented, and that each village in the Specific
7 Plan area “should contain all public facilities and services necessary for its development.”⁴⁶⁰

8 In approving the Bickford Ranch Specific Plan, the County decided to allow up to ninety-
9 nine (99) of the project’s required 189 affordable housing units to be built off site.⁴⁶¹ The
10 Specific Plan explains that a significant portion of the Bickford Ranch’s affordable housing will
11 be built off site because Bickford Ranch’s location, site amenities and surrounding service
12 amenities – such as on-site access to public transportation, jobs, and shopping – are not adequate
13 to qualify for available affordable-housing tax-credit programs.⁴⁶² The Bickford Ranch Specific
14 Plan can hardly be said to be “pedestrian-oriented” or to “contain all public facilities and services
15 necessary for its development” where the plan admittedly fails to provide adequate access to jobs,
16 shopping and transportation for the most “pedestrian” segment of the County’s population – i.e.,
17 low-income families and individuals.⁴⁶³

18
19 ⁴⁵⁹ Compare PCGP, *supra*, Appendix C, at p. 156, § g (1) with 8 AR 3129, 3135, and Specific
Plan, *supra*, at pp. 3-7 and 4-2.

20 ⁴⁶⁰ PCGP, *supra*, Appendix C, at p. 155, § f.(1).

21 ⁴⁶¹ 1 AR 33; 8 AR 3159; Specific Plan, *supra*, at p. 5-8.

22 ⁴⁶² 8 AR 3159; Specific Plan, *supra*, at p. 5-8.

23 ⁴⁶³ Legal Services of Northern California also submitted a comment letter in opposition to the
24 Bickford Ranch Project, noting that the FEIR for the project expressly admits the Specific Plan’s
25 inconsistency with the General Plan Policy 2.A.11, requiring affordable housing to be built on
26 site, unless impracticable. (5 AR 1753-1754 [“In this case, with a vast project area of nearly
27 2,000 acres and 1,880 residential units proposed, it strains credulity to conclude that it is
28 impractical for the developer to build 188 units of affordable housing on site. Indeed, the FEIR
admits that permitting the developer to meet its affordable housing requirement with off-site
units is inconsistent with General Plan Policy 2.A.11.”]; PCGP, *supra*, at p. 53, § 2.A.11 [“All
new housing projects of 100 or more units that ha[ve] received an increase in allowable density
through . . . a specific plan[] shall be required to provide at least 10 percent of the units to be
affordable to low income households. . . . ¶In cases where the County determines that it is

1 Respondents' approval of a Bickford Ranch Specific Plan with so many patent, vertical
2 inconsistencies with Appendix C is a prejudicial abuse of discretion. If the County and the
3 Applicant want to build Bickford Ranch as a project involving 1) three, 2) non-pedestrian 3) non-
4 mixed use residential subdivisions 4) on the slopes and on top of Boulder Ridge 5) with a private
5 golf course, and 6) with no buffers at its eastern edge between proposed residential lots and
6 neighboring agricultural uses, the Applicant is free to work with the County through a duly
7 noticed public process to propose and adopt corresponding amendments to the County's General
8 Plan, including Appendix C, *prior to or concurrently with* the County's approval of the
9 project.⁴⁶⁴ The County, however, cannot allow the "tail to wag the dog" by adopting a Bickford
10 Ranch Specific Plan that is facially inconsistent with numerous, express requirements set forth in
11 Appendix C, and yet proclaim by legislative fiat that the proposed projects is, nevertheless,
12 consistent with the County's General Plan.

13 VI. CONCLUSION

14 The Bickford Ranch Specific Plan and EIR must be set aside. In approving the Bickford
15 Ranch Specific Plan and EIR, the Board violated the state's Planning and Zoning Laws: the
16 Bickford Ranch Specific Plan is inconsistent both with Appendix C – the portion of the General
17 Plan that authorizes the development of the Bickford Ranch Project area – and with several
18 mandatory Placer County General Plan policies that protect the County's natural resources.

19 Respondents also violated CEQA in certifying the Bickford Ranch Specific Plan EIR and
20 issuing its findings and statement of override for the project's potentially significant effects. The
21 EIR failed to consider a reasonable range of alternatives to reduce or avoid the project's impacts
22 on the County's Blue Oak Woodlands and other unique natural resources. Respondents failed to
23 exercise their independent judgment, and effectively bypassed CEQA's public participation
24

25
26 impractical for the developer to actually construct the units on site, the County may as an
27 alternative allow the dedication of land sufficient to accommodate . . . the units . . . and/or the
28 payment of an in lieu fee."]).

⁴⁶⁴ See, generally, Gov. Code, § 65350 et seq. (procedures for adopting and amending general plans, including detailed requirements for notice of proposed changes and public hearings prior to adoption of amendments).

1 requirements, by 1) accepting at face value a financial feasibility study provided by the project
2 proponent one day before the project was approved, and 2) by withholding that study from public
3 review until the day that the Board voted to approve the project. Respondents failed to analyze
4 and otherwise deferred mitigation for several potentially significant off-site impacts – including
5 impacts to stormwater runoff and groundwater quality – and failed to adequately consider the
6 growth inducing impact of installing a trunk line for providing regional sewer service. Finally,
7 the Board’s finding that mitigation for the project’s cumulative impacts is infeasible is not
8 supported by substantial evidence.

9 For the foregoing reasons, Petitioners respectfully request that the Court set aside
10 Respondents’ certification of the Bickford Ranch EIR, its approval of the Bickford Ranch
11 Specific Plan and Development Agreement, and its findings and statement of overriding
12 considerations in support of those actions.

13 DATE: January ____, 2002

Respectfully submitted,

14
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17
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