



FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By Deane Langmuir
Deputy

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

PANORAMIC HILL ASSOCIATION,

Petitioner/Plaintiff,

v.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA,

Respondent/Defendant.

CITY OF BERKELEY,

Petitioner/Plaintiff,

v.

UNIVERSITY OF CALIFORNIA,
BERKELEY, et al.,

Respondents/Defendants.

Case No. RG06-301644

Consolidated with RG06-302934,
RG06-302967

ORDER GRANTING IN PART AND
DENYING IN PART PETITIONS FOR
WRIT OF MANDATE

CALIFORNIA OAK FOUNDATION,
et al.

Petitioner/Plaintiff,

v.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, et
al.

Respondents/Defendants.

The Petitions of Panoramic Hill Association (“Panoramic”); City of Berkeley (“City”); and California Oak Foundation, Save the Oaks at the Stadium, McGee-Spaulding-Hardy Historic Interest Group, Dona Spring, Doug A. Buckwald, Sarah Shumer, Henry Norr, Lindsay Vurek, Patricia Edwards, Anna Marie Taylor, Stan Sprague, and Carrie Sprague (collectively, “Oaks”) for Writ of Mandate, which proceedings have been consolidated, were heard on September 19, 20, 21, and 25, 2007; October 2, 3, and 11, 2007; and March 20, 2008, in Department 512 of this court, Judge Barbara J. Miller presiding.

Throughout the proceedings, Michael R. Lozeau has appeared on behalf of Panoramic. Harriet A. Steiner has appeared on behalf of the City. Stephan C. Volker has appeared on behalf of Oaks. Charles R. Olson and John M. Sanger have appeared on behalf of Respondents The Regents of the University of California; University of California, Berkeley; and Edward J. Denton (collectively, “Respondents” or “University”).

Having fully considered the parties' briefs and argument, the court GRANTS IN PART and DENIES IN PART the Petitions for writs of mandate, as set forth below.

I. INTRODUCTION

The court finds that, with certain exceptions, the Respondents' certification of the Environmental Impact Report and accompanying findings and Statement of Overriding Consideration for the Southeast Campus Integrated Projects ("Integrated Projects") and approval of the first phase of the Integrated Projects, the California Memorial Stadium's ("CMS" or "Stadium") Student Athlete High Performance Center ("SAHPC"), complies with the Alquist-Priolo Earthquake Fault Zoning Act ("Alquist-Priolo"), Public Resources Code¹ section 2621 et seq.; and the California Environmental Quality Act ("CEQA"), section 21000 et seq.

The Regents are subject to Alquist-Priolo's requirements. As a whole, the SAHPC project does not violate Alquist-Priolo because it will not be constructed on an active fault, and the SAHPC overall is not an "addition" or "alteration" to CMS within the meaning of Alquist-Priolo. However, as set forth herein, certain elements of the SAHPC project do constitute alterations to CMS. In order to comply with Alquist-Priolo, Respondents must determine the value of these alterations and of the existing CMS structure.

¹ Unless otherwise noted, all statutory references are to the Public Resources Code.

The Court also finds that the University complied with CEQA's procedural and substantive requirements for the Integrated Projects in nearly all respects. However, as set forth herein, the Court concludes that the record does not support the University's unavailability findings relating to earthquake related risks and additional noise and traffic impacts that will be caused by the addition of capacity events at the CMS.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. SUMMARY OF THE PROJECTS AT ISSUE

The Integrated Projects are comprised of the following related projects: (1) the California Memorial Stadium Seismic Corrections and Program Improvements, the first phase of which is the SAHPC; (2) the Maxwell Family Field Parking Structure and Sports Field; (3) the Law and Business Connection Building; (4) the Southeast Campus and Piedmont Avenue Landscape Improvements; (5) the School of Law Program Improvements; (6) the Haas School of Business Program Improvements; and (7) the Renovation and Restoration of five houses at 2222 to 2240 Piedmont Avenue. (Administrative Record ("AR" 2) 606-607; see AR 1:190, 4:630.) The EIR for the Integrated Projects tiers from a programmatic EIR certified by the University in January 2005 for the Berkeley campus's 2020 Long Range Development Plan ("2020 LRDP"). (*Id.*)

² All citations to "AR" refer to the Administrative Record filed and lodged with the Court.

The Integrated Projects include proposed upgrades to the Stadium (the "Stadium Project"). (AR 4:670-82.) The Stadium was built in 1923. (AR 1:13.) The Hayward Fault runs through the Stadium from end zone to end zone. (AR 7:1504, 30:7323, 30:7324.) The University has rated the Stadium "seismically poor," which is a rating applicable to structures expected to sustain significant structural and non-structural damage and/or result in falling hazards in a major seismic disturbance, representing appreciable life hazards. (AR 7:1609.)

The Stadium Project itself is divided into three phases. (AR 4:671-73.) The first phase is called "Student Athlete High Performance Center with West Plaza and Half of Grand Stair," and involves the construction of the 158,000 square-foot SAHPC. (AR 4:671.) The second phase is called "Stadium West with Press Box, North and South Plazas and Stadium Retrofit, Field Lighting and Sound System," and includes the construction of a new press box above the western rim of the Stadium, seismic upgrades to the west side of the Stadium and the installation of permanent lighting. (AR 4:672-73.) The third phase of the project is called "Stadium East, New Concourse and East Seating Structure with Lighting Incorporated," and includes seating expansion above the eastern rim of the Stadium and seismic upgrades to the eastern side of the Stadium. (AR 4:673.) The University has proposed schedules for implementation of Phases II and III; however, whether and when these phases will be built is dependent on a number of factors. (See AR 7:1608 ["Ultimately, the cost of the seismic retrofit and program improvements to CMS will be dependent on: (1) the fundraising efforts of the

University, and (2) the scope of the seismic retrofit and program improvements that can be developed without exceeding 50% of the value of CMS”].)

The Maxwell Family Field Parking Structure would be located underground near the Stadium. The parking structure would consolidate parking in one underground location beneath an existing playing field, located between Gayley Road and Stadium Road Way. (AR 4:632, 640.) The parking structure would provide underground spaces for the approximately 546 surface parking spaces and 65 existing attendant spaces that would be lost upon implementation of the Integrated Projects, and would also provide additional spaces to meet the parking demand. (AR 4:682.) The existing Maxwell Sports Field would be replaced on the roof level of the garage.

The University circulated its Draft EIR for the Integrated Projects from May 8, 2006, through July 7, 2006. (AR 4:605.) The Final EIR was completed on October 31, 2006. (See AR 7:1481.) On November 14, 2006, Respondent Regents’ Committee on Grounds and Buildings (“CGB”) considered an agenda item recommending that The Regents approve the budget for the Integrated Projects, certify the EIR, make findings on the proposed projects, adopt a mitigation and monitoring plan, and approve the SAHPC portion of the Stadium Project. (AR 1:10, 25.) The same day, the full Board of Regents heard public comments on the proposed Integrated Projects and SAHPC. (AR 2:76-77, 2:90-91.) Also on November 14, 2006, the Committee adopted a recommendation that the Regents approve the \$111,948 million budget for the SAHPC, but deferred

consideration of the EIR and SAHPC until the week of December 4, 2006. (AR 2:78-88 [minutes], 2:87-120 [transcript].) On November 16, 2006, the Board of the Regents sitting as a whole adopted that recommendation. (AR 2:128-129, 2:131-142 [minutes].) On December 5, 2006, following a public hearing, the University's CGB certified the EIR, adopted findings of fact, and approved the first phase of the Stadium Project, including construction of the SAHPC. (AR 3:509-521 [minutes], 3:522-540 [transcript].)

A Notice of Determination stating that The Regents had approved the SAHPC was filed with the State Clearinghouse on December 7, 2006. (AR 1:1-2.)

B. PROCEDURAL HISTORY OF THIS COURT PROCEEDING

Petitioners' filed three separate lawsuits on December 11 and December 19, 2006. Petitioners' lawsuits challenge Respondents' Environmental Impact Report ("EIR") for the Integrated Projects proposed for the University's Berkeley campus, which EIR approved the Integrated Projects' first phase, the SAHPC at the California Memorial Stadium ("CMS" or "Stadium"). Each of the three lawsuits challenges the University's certification of the EIR prepared pursuant to CEQA, and related findings and compliance with Alquist-Priolo, alleging that the University's decisions violate these statutes as a matter of law, are not supported by substantial evidence, and are an abuse of discretion.³

³ In addition to requesting a writ of mandate, Petitioners also allege an entitlement to declaratory relief and injunctive relief. These latter requests are based on the alleged violations of CEQA and Alquist-Priolo, and are disposed of
(Continued...)

On December 21, 2006, the court approved the parties' stipulated temporary restraining order, staying implementation of the Integrated Projects.

On January 9, 2007, the three proceedings were consolidated.

On January 26, 2007, the court granted Panoramic and City's motions for a preliminary injunction. On February 9, 2007, after hearing further argument from the parties regarding the appropriate scope of the preliminary injunction, the court entered its final Order Granting Motions for Preliminary Injunction, enjoining Respondents from taking any further action to implement the Integrated Projects "if such action would result in change or alteration to the physical environment within the Project boundaries, except that Respondents may conduct additional seismic and geophysical testing consistent with the terms of the parties' stipulated temporary restraining order."

On May 25, 2007, the Administrative Record, consisting of 198 volumes and 40,055 pages, was lodged with the court.

In July and August 2007, the parties filed their opening, opposition, and reply briefs.

These consolidated proceedings were heard on the merits in September and October 2007.

On December 10, 2007, the court issued an Order Re: Additional Evidence

(...Continued)
in this Order.

Relating to Claims Arising Under the Alquist-Priolo Earthquake Fault Zoning Act.

The court observed that the parties' positions regarding a non-expert's ability to interpret the design documents had evolved over the course of the proceedings, from asserting that the design documents could be interpreted by a non-expert to expressing doubts as to whether a non-expert was qualified to interpret the design documents. The court concluded that expert opinion was appropriate to assess the evidence regarding Respondents' compliance with Alquist-Priolo, and directed the parties to submit expert declarations.

The parties filed expert declarations on February 22 and March 3, 2008.

On March 20, 2008, the court heard argument regarding the expert declarations. At the conclusion of that hearing, the court took this matter under consideration.

III. THE ALQUIST-PRIOLO EARTHQUAKE FAULT ZONING ACT

Alquist-Priolo is designed to "assist cities, counties and state agencies in the exercise of their responsibility to prohibit the location of ... structures for human occupancy across the trace of active faults" (§ 2621.5.)

The Court is not persuaded by the University's argument that it is exempt from Alquist-Priolo's requirements.⁴ However, the Court concludes that the

⁴ Respondents' opposition brief, filed August 20, 2007, included footnote 41 (at page 119), which stated: "Although the actual language of the statute and the legislative history regarding its enactment pose a serious question as to whether Alquist-Priolo was meant to apply to any state agencies, including those with the

(Continued...)

University, in most respects, properly determined that the SAHPC project complies with Alquist-Priolo. Alquist-Priolo does apply to the Project to the extent that it alters the existing CMS structure, as specifically discussed below. In order to fully comply with Alquist-Priolo, the University must determine CMS's value and the cost of the alterations that fall within the scope of Alquist-Priolo.⁵

A. APPLICATION OF ALQUIST-PRIOLO TO THE UNIVERSITY

1. Alquist-Priolo Applies to the University by its Terms

In addition to the University's adopted policy and the foregoing grounds for estoppel, the Court's careful reading of Alquist-Priolo leads it to conclude that the statute does apply to state agencies.

a. Statutory Language

"Our role in construing a statute is to ascertain the Legislature's intent so as

(...Continued)

constitutional stature of The Regents, The Regents, evidencing the same concerns with public safety as the Legislature, has voluntarily chosen to comply with Alquist-Priolo...." After the court requested further briefing on the issue, Respondents specifically argued that Alquist-Priolo does not apply to The Regents. (See Respondents' briefs filed October 2 and October 9, 2007.)

⁵ Petitioners contend that the University has also violated Alquist-Priolo by failing to undertake a public hearing process and make findings with respect to the University's compliance with Alquist-Priolo. This argument is not supported by the statute. Alquist-Priolo does not require that geological reports be published and circulated for public review, that hearings on such reports occur, or that the proponent of a proposed development make findings regarding its compliance. (See §§ 3603(d), 3603(e), and 3603(f).) Rather, as discussed herein, Alquist-Priolo simply bars certain categories of construction projects. To establish a violation of Alquist-Priolo, Petitioners must show that the SAHPC project falls within one of those categories.

to effectuate the purpose of the law. [Citation.] In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citation.]” (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.)

“If possible, significance should be given to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.” (*Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 676.) If statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation. (*County of Sacramento v. State Water Resources Control Board* (2007) 153 Cal.App.4th 1579, 1588.) “[T]he rule of statutory construction that the ‘expression of certain items in a statute necessarily involves exclusion of other things not expressed’ . . . is subordinate to the primary rule that the intent of a statute prevails over its letter.” (*In re David S.* (2005) 133 Cal.App.4th 1160, 1166.) “We do not examine th[e statutory] language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment.” (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582.)

By its very terms, Alquist-Priolo declares the Legislature’s unambiguous intent that the statute “is intended to provide policies and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit the

location of developments and structures for human occupancy across the trace of active faults.” (§ 2621.5 [emphasis added].) That expressed intent has been part of the statute from its inception. Other sections of the statute call for comments on earthquake zone maps and proposed policies and criteria by “affected cities, counties, and state agencies.” (See §§ 2622(b), 2262(c).) Section 2621.5(b) provides for a broad application of the statute: “This chapter is applicable to *any* project, as defined in section 2621.6, which is located within a delineated earthquake fault zone, upon issuance of the official earthquake fault zones maps to affected local jurisdictions, except as provided in section 2621.7.” (§ 2621.5(b) [emphasis added].) “Project” is also broadly defined, in pertinent part, as “structures for human occupancy.” This broad definition does not expressly or by implication exclude state agencies. (§ 2621.5(a)(2).)

Similarly, section 2621.7(b)-(c) broadly applies to any structure:

This chapter, except Section 2621.9 [concerning disclosure of property location], shall not apply to any of the following:

...

(b) Any development or structure in existence prior to May 4, 1975, except for an alteration or addition to a structure that exceeds the value limit specified in subdivision (c).

(c) An alteration or addition to any structure if the value of the alteration or addition does not exceed 50 percent of the value of the structure.

(§ 2621.7(b)-(c).)

Thus, by this language, the Legislature made clear that it enacted Alquist-

Priolo to regulate state agencies as well as cities and counties, and recognized state agencies' responsibility to prohibit construction of structures on active faults.

"When the Legislature has expressly declared its intent, we must accept the declaration." (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 716.) Looking to the statute's language as a whole, one finds only complementary provisions consistent with this intent, and no language contradicting that intent. Any interpretation engrafting an exemption for structures owned by state agencies would contradict the Legislature's plainly expressed intent.

Contrary to Respondents' argument, Alquist-Priolo does not restrict the term "state agencies" to just the State Geologist and the State Mining and Geology Board ("Mining Board"). That interpretation would be inconsistent with the expressed intent of the Act, as discussed above. Such an interpretation also would render key provisions of the Act nonsensical. It would reduce sections 2622 and 2623 to directing the meaningless act of requiring the State Geologist and Mining Board to submit their own proposals to themselves and provide comments to themselves. (§ 2622(b), § 2622(b), § 2622(c), § 2623(a).) Interpretations that lead to absurd results such as these are to be avoided. (See *Granberry v. Islay Inv.* (1984) 161 Cal.App.3d 382, 388.)

In effect, the University argues that, because the statute also sets forth certain express requirements and exemptions applicable only to cities and counties, the Court should ignore the express statement of applicability of other

provisions of the Act (set forth at section 2621.5) to state agencies, and add the terms “city and county” to all of those sections of the statute where the Legislature chose to leave out that qualification. The Court rejects the University’s invitation to rewrite the statute, as applicable canons of statutory construction forbid the Court from doing so. “In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” (Code Civ. Pro. § 1858.) “When the Legislature has used a term or phrase in one part of a statute but excluded it from another, courts do not imply the missing term or phrase in the part of that statute from which the Legislature has excluded it.” (*People v. Gardeley* (1996) 14 Cal.4th 605, 621-22.) And, “[w]hen the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning.” (*People ex rel. Lockyer, supra*, 37 Cal.4th at 716.) Each of these maxims precludes the Court from reading a wholesale exemption for state agencies into the statute based on the presence of certain provisions that specifically address cities and counties.

b. Regulations Under Alquist-Priolo

The regulations that have been enacted by the Mining Board pursuant to Alquist-Priolo are consistent with the language of the statute and likewise refute

the University's interpretation. The regulations state:

It is the purpose of this subchapter to set forth the policies and criteria of the State Mining and Geology Board, hereinafter referred to as the "Board," governing the exercise of city, county, and state agency responsibilities to prohibit the location or developments and structures for human occupancy across the trace of active faults in accordance with the provisions of Public Resources Code Section 2621 et seq. (Alquist-Priolo Earthquake Fault Zoning Act).

(Cal. Code Regs., tit. 14, § 3600.) The Mining Board's regulation prohibiting the placement of structures on active faults is not limited to cities and counties, although the regulation does emphasize that they are bound by the prohibition as well:

The following specific criteria shall apply within earthquake fault zones and shall be used by affected lead agencies in complying with the provisions of the act.

(a) No structure for human occupancy, identified as a project under Section 2621.6 of the Act, shall be permitted to be placed across the trace of an active fault. Furthermore, as the area within fifty (50) feet of such active faults shall be presumed to be underlain by active branches of that fault unless proven otherwise by an appropriate geologic investigation and report prepared as specified in Section 3603(d) of this subchapter, no such structures shall be permitted in this area.

(Cal. Code Regs., tit. 14, § 3603.)

Similarly, the California Geological Survey's Special Publication 42, "Fault-Rupture Hazard Zones in California," states that Alquist-Priolo's prohibition on siting structures on active faults applies to state agencies. (AR 36980.)

The University contends that the second line of the initial sentence of

section 3603(a), admonishing lead agencies to use the Mining Board's criteria, should be read to preclude its application to state agencies because the term "lead agencies" is defined by the Mining Board as "the city or county with the authority to approve projects." (Cal. Code Regs., tit. 14, § 3601.) The Court disagrees.

Use of the term "lead agencies" does not qualify or restrict the first half of section 3603(a)'s introductory sentence, which broadly applies the section's prohibition to any earthquake fault zone: "The following specific criteria shall apply within earthquake fault zones" (Cal. Code Regs., tit. 14, § 3603(a).) The ordinary definition of "and" is "as well as" or "in addition to." (*Bianco v. Industrial Acc. Comm'n* (1944) 12 Cal.2d 584, 587.)

The University's interpretation in effect would add a word to the regulation, so that it would read: "...and shall *only* be used by affected lead agencies...." The regulation does not state or imply any exclusive application to lead agencies. Moreover, any such interpretation would be contrary to the manifest intent stated in the very first provision of Alquist-Priolo (and its implementing regulations) to set forth policies and criteria governing the exercise of city, county, and state agency responsibilities to prohibit the location or developments and structures for human occupancy across the trace of active faults.

c. Legislative History

Assuming the court need consider any legislative history despite the statute's clear statement of intent, that history reiterates the Legislature's overarching intention to provide criteria and guidance to state agencies so that they

would implement their responsibility to prohibit structures on active faults. (See Petitioners' Supplemental Reply Brief on Issues Relating to the Alquist-Priolo Earthquake Fault Zoning Act, filed October 9, 2007, pp. 8-12.)

2. The University's Policies Require Compliance with Alquist-Priolo

There is no dispute that the University has adopted a policy requiring Alquist-Priolo compliance. The University's CEQA Handbook, Section 3.3.11 provides that "Proposed development must comply with the Alquist-Priolo Earthquake Fault Zoning Act (formerly Special Studies Zone Act), which requires site-specific evaluation and restricts the construction of buildings on or near active fault traces." (Panoramic's Req. for Jud. Notice, Exh. C at Section 3.3.11, of which the Court takes judicial notice.) Agencies are bound by their own rules and regulations. (*Talmo v. Civil Service Comm.* (1991) 231 Cal.App.3d 210, 218; *Bonn v. California State University, Chico* (1979) 88 Cal.App.3d 985, 990.) The University's EIR, as well as its counsel's arguments, have consistently reiterated the University's policy that it is bound to comply with Alquist-Priolo.

Thus, for all the foregoing reasons, the University is not exempt from Alquist-Priolo's requirements.

B. COMPLIANCE WITH ALQUIST-PRIOLO

The court concludes that, in most respects, the University properly determined that the SAHPC project generally complies with Alquist-Priolo. The proposed SAHPC is not on an active fault or branch of a fault, and is not an

addition or overall an alteration to CMS. However, as discussed below, certain elements of the SAHPC project do constitute alterations to the existing CMS structure within the meaning of Alquist-Priolo.

As noted above, Alquist-Priolo is designed to prohibit the location of structures for human occupancy across the trace of active faults. (§ 2621.5.) As mandated by Alquist-Priolo, the State Geologist has delineated Earthquake Fault Zones which are approximately one quarter mile or less in width in the vicinity of known active faults.⁶ (Cal. Code Regs., tit. 14, § 3601(d); see also § 2622(a).) Within these zones, Alquist-Priolo imposes building restrictions that apply to “structures for human occupancy.” (§ 2621.6(2).) The State Mining and Geology Board has promulgated regulations to carry out Alquist-Priolo’s mandate. (Cal. Code Regs., tit. 14, § 3600.) In particular, the regulations provide: “No structure for human occupancy ... shall be permitted to be placed across the trace of an active fault. Furthermore, as the area within fifty (50) feet of such active faults shall be presumed to be underlain by active branches of that fault unless proven otherwise by an appropriate geologic investigation and report ... no such structures

⁶ “An ‘active fault’ is a fault that has had surface displacement within Holocene time (about the last 11,000 years), hence constituting a potential hazard to structures that might be located across it.” (14 C.C.R. 3601(a); see also *Better Alternatives*, 212 Cal.App.3d at 667.) The parties do not dispute that the site of the proposed SAHPC is in an Earthquake Fault Zone.

shall be permitted in this area.”⁷ (Cal. Code Regs., tit. 14, § 3603, subd. (a); *Better Alternatives for Neighborhoods v. Heyman* (“*Better Alternatives*”) (1989) 212 Cal.App.3d 663, 670-71.)

Alquist-Priolo building restrictions do not apply to “[a]ny development or structure in existence prior to May 4, 1975, *except for an alteration or addition to a structure* that exceeds the value limit specified in subdivision (c).” (§ 2621.7(b) [emphasis added].) Subdivision (c) of section 2521.7 limits the “value” of alterations or additions constructed pursuant to section 2621.7(b) to “50 percent of the value of the [existing] structure.” (§ 25217(c).)

Thus, Alquist-Priolo restricts the University’s ability to build within an Earthquake Fault Zone in the following three ways: (1) the University may not build across the trace of an active fault; (2) the University may not build within 50 feet of an active fault unless it demonstrates that its project will not be built over an active branch of a fault; and (3) the University may not construct an addition to or an alteration of an existing structure on a fault, if the cost of the addition or alteration will exceed 50% of the value of the existing structure.

1. Standard of Review

Petitioners’ claims that the SAHPC project violates Alquist-Priolo are

⁷ “A ‘fault trace’ is that line formed by the intersection of a fault and the earth’s surface, and is the representation of a fault as depicted on a map, including maps of earthquake fault zones.” (14 C.C.R. 3601(b).)

presented by way of a petition for a writ of mandate.⁸ Judicial review of an agency's determination of compliance with Alquist-Priolo is "limited to determining whether substantial evidence supports the administrative body's findings."⁹ (*Better Alternatives*, 212 Cal.App.3d at 672.) Substantial evidence means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion, that is, whether a fair and reasonable mind would accept it as probative of the issue" (*Gubser v. Dep't of Employment* (1969) 271 Cal.App.2d 240, 245), and "evidence of ponderable legal significance, ... reasonable in nature, credible and of solid value." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.) "Inferences may constitute substantial evidence, but they must be the product of logic and reason." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

Under the substantial evidence test, "[t]he court may not reweigh the evidence and must view the evidence in the light most favorable to the District's [or agency's] actions and indulge all reasonable inferences in support thereof." (*Taylor Bus Service v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331,

⁸ Although not specified in Petitioners' pleadings, the Court deems their Alquist-Priolo claims as for traditional mandamus pursuant to Code of Civil Procedure section 1085. (*Better Alternatives*, 212 Cal.App.3d at 672 fn 6.)

⁹ Arguably, the *Better Alternatives* court should have applied a more lenient standard that would typically be applied in a traditional mandamus proceeding: arbitrary and capricious, or wholly lacking in evidentiary support. This point is immaterial since, as discussed below, substantial evidence supports that the SAHPC project does not violate Alquist-Priolo.

1340.) “The burden is on the appellant [or petitioner] to show there is no substantial evidence whatsoever to support the findings of the District [or agency].” (*Id.* at 1341).) Substantial evidence is evaluated in light of the whole record. (See *Citizens For A Megaplex Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 110.)

2. Will the SAHPC Be Built Across an Active Fault Trace or a Branch of an Active Fault?

Substantial evidence supports that the proposed SAHPC will not lie across the trace of an active fault, or across a branch thereof.¹⁰ (AR 30:7277-7417 [2006 Geomatrix Report]; 181:37136 [WLA peer review letter].)

In concluding that the SAHPC complies with Alquist-Priolo, the University was entitled to rely solely on the 2006 Geomatrix Report and the WLA peer review letter. In this case, however, the University also relied on knowledge concerning the location or absence of active faults in the vicinity of the Integrated Projects that it acquired from numerous studies and geological investigations conducted over many decades. (AR 182:37385-37399, 193:39052-9, 39060-73, 196:39555-89, 39591-657.) As Respondents point out, prior geological studies in the vicinity of the Integrated Projects dating back to 1908 (based upon trenching, soil borings, and review of geomorphic evidence) have led to: (1) increasingly

¹⁰ As noted above, whether the SAHPC lies across a branch of an active fault is relevant only if the SAHPC is within 50 feet of an active fault. The parties do not dispute that the SAHPC is within 50 feet of an active fault.

accurate and refined mapping of the East and West Traces of the Hayward fault, including numerous references in the Geomatrix 2006 Report and older reports (AR 181:37137, 37157-71, 182:37385-7, 183:37401-37405, 184:37408-37558, 185:37619-29, 187:37899-921, 37922-51, 379640-73); (2) a conclusion of inactivity of the Louderback Trace at issue in *Better Alternatives*, 212 Cal.App.3d at 672-3 (AR 179:37493 6, 37626); and (3) a better understanding and mapping of the areas of potential substantial deformation in the event of a major seismic event on the Hayward fault. (AR 184:37558, 185:37630, 37631.) The results of these prior studies and their relevance to the Integrated Projects are described in the Draft EIR (AR 4:817, 826, 828-9) and the Final EIR (AR 7:1606).

Geomatrix, which itself has conducted numerous geological investigations in the vicinity of the Integrated Projects over the past twenty years (AR 17:4255 60, 187:37922 51, 189:38064-120), developed and implemented a scope of geological testing to determine whether the proposed SAHPC site is underlain by any active fault. (AR 181:37026 85.) The Geomatrix 2006 Report, published in October 2006, concludes that there is no evidence of Holocene (active) faulting beneath the footprint of the proposed Student Athlete High Performance Center. (AR 28:7313.) WLA, as peer reviewer, concurred in this conclusion. (AR 181:37136.) WLA also concurred in Geomatrix's conclusion that two "inferred" faults shown in Geomatrix's 2001 "Draft Fault Rupture Hazard Evaluation, CMS" in fact were either nonexistent (northern) or the West Trace of the Hayward fault (southern). (AR 30:7312-13.) Both the Geomatrix 2006 Report and the WLA

peer review letter constitute substantial evidence to support The Regents' approval of the SAHPC as compliant with Alquist-Priolo. "Expert opinion constitutes substantial evidence ... if it is based on relevant, probative facts, as opposed to mere guesswork, surmise, or conjecture." (*In re Cipro Cases I and II* (2004) 121 Cal.App.4th 402, 412.)

As a result, The Regents' approval of the Student Athlete High Performance Center on December 5, 2006, was based on substantial evidence in the record indicating the University's compliance with this requirement of Alquist-Priolo. The Geomatrix 2006 Report was summarized in the Final EIR (AR 7:1606-8), and it was presented to The Regents in briefings at the meetings on November 14, 2006, and December 5, 2006. (AR 2:29, 113, 270, 278; 3:467; 3:534.)

Petitioners ask the court to conclude that such evidence is outweighed by the December 4, 2006 letters from the California Geological Survey ("CGS") letter and the United States Geological Survey ("USGS"). As the *Better Alternatives* court noted, Alquist-Priolo does not provide CGS or USGS any authority to approve or disapprove geological investigations, nor to approve or disapprove specific projects which might be built on or near faults. (212 Cal.App.3d at 671.) The letters indicate that "the majority of the footprint of the proposed Student Athlete High Performance Center exposed by these trenches does not contain Holocene faults." (AR 198:40017-20, 40021-24.) The letters also indicate that, while CGS/USGS are not advocating for the presence of an

active fault at the northeast corner of the Student Athlete High Performance Center, the presence of deep fill at the northeast and southeast corners of the proposed building footprint, where soil borings rather than trenching was used to conduct the geological investigation, suggests the need to conduct some further investigation to establish more data points to address CGS's/USGS's questions.¹¹ (AR 198:40020, 40024.) In essence, the letters simply indicate that interpretations of the data other than Geomatrix's, WLA's and the SRC's were possible. (AR 198:40018, 40022.)

Under the substantial evidence test, the court may not weigh the evidence. The prior geological studies, the EIR, the Geomatrix 2006 Report, and the WLA peer review provide substantial evidence of compliance with Alquist-Priolo's requirement that the structure not be located on an active fault. Petitioners ask the Court to disregard this evidence because CGS/USGS suggested some additional testing in two small areas of the proposed SAHPC footprint, which the University could consider. The *Better Alternatives* court ruled that (1) the conclusions of the principal and reviewing geologists constituted substantial evidence; and (2) the fact that other geologic experts, including the Department of Mining and Geology

¹¹ Although not relied on by the Court for the purposes of this proceeding, Geomatrix did conduct additional investigations in 2007, in response to the CGS and USGS letters. (Addendum to Final Report, May 11, 2007.) The results of the additional investigations substantiated the conclusions of the Geomatrix's 2006 report. This supplemental report was not included in the administrative record because it was not available until May 2007, after the approval of the December 2006 approval of the EIR.

(now the CGS), disagreed with the University's experts or found the geologic evidence inconclusive "does not render the opinions of the University's experts insubstantial." (*Id.* at 672.) The *Better Alternatives* court also held that the University was not required to "prove" that an earthquake fault was inactive. (*Id.* at 671.) Importantly, the *Better Alternatives* court held that the opinion of public agencies, such as CGS and USGS, was entitled "to no more weight than that of any other expert." (*Better Alternatives*, 212 Cal.App.3d at 673.) As a result, the court concludes that substantial evidence in the record supports Respondents' determination that the SAHPC complies with Alquist-Priolo's requirement that it not be built on an active fault or active branch thereof.

3. Is the SAHPC an Addition to CMS?

Petitioners contend the SAHPC is subject to Alquist-Priolo because it is an addition to CMS. There is no dispute that the CMS lies across the Hayward Fault, an active fault for the purposes of Alquist-Priolo. (See, e.g., AR 7:1504, 30:7323, 30:7324.)

a. Definitions

The question of whether the SAHPC is an addition (or, as discussed below, an alteration) to CMS involves the interpretation of the statutory terms "addition," "alteration," and "structure," as well as such related terms as "floor area." Neither Alquist-Priolo nor its accompanying regulations define these terms. The court is not aware of prior judicial interpretation of those terms in the context the Act.

As noted above, the court's role in interpreting a statute is to ascertain the

Legislature's intent so as to effectuate the purpose of the law (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000), examining the language in the context of the statutory framework as a whole. (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582.) "Even unambiguous statutes must be construed to avoid absurd results which do not advance the legislative purpose." (*Upland Police Officers Ass'n v. City of Upland* (2003) 111 Cal.App.4th 1294, 1304.)

An additional rule of statutory construction is of particular relevance in interpreting "addition" and related terms in Alquist-Priolo: "It is an accepted principle of statutory construction that words employed in a statute dealing with legal or commercial matters are presumed to be used in their established legal or technical meanings unless otherwise clearly indicated by the statute. [Citations.]" (*Texas Commerce Bank v. Garamendi* (1992) 11 Cal.App.4th 460, 475.)

Here, as Alquist-Priolo deals with the building construction trade and earthquake safety, it is appropriate to interpret the terms of the statute in accordance with their established technical definitions. Many terms used in Alquist-Priolo are not commonplace. Alquist-Priolo assumes a working knowledge of the meanings of words found in building codes and zoning regulations which address development and construction of various types of structures, such as "single-family wood-frame or steel-frame dwellings" and "occupancy load," as well as the terms referred to above. The statute's purpose "to assist cities and counties in their planning, zoning and building regulation

functions.” (§ 2622(a).) It is reasonable that implementing jurisdictions would ascribe to the statutory terms the meanings that come from the laws and codes governing those functions. The language of Alquist-Priolo is difficult to understand in isolation from its context: geology, building regulation, and structural engineering.

Moreover, statutory terms such as “addition” are ambiguous if interpreted exclusively based on dictionary definitions. The Oxford American Dictionary defines “addition” as “the action or process of adding something to something else....” This definition does not lead to a clear answer as to whether the SAHPC is an addition to CMS. Petitioners’ argument that the SAHPC is an addition because it is adjacent to CMS, and because the two structures will have complementary functions, is not wholly unreasonable. Nor is the University’s argument that SAHPC is not an addition to CMS because the two structures are entirely separate, with no structural connections.

For all these reasons, the Court considers not only standard dictionary definitions, but also definitions found in the building code¹² to assist in interpreting “addition” and related terms.

As noted above, the Oxford American Dictionary defines “addition” as “the

¹² To the extent available, the definitions set forth below are those which existed at the time the Legislature enacted Alquist-Priolo. The building code is periodically revised, but it appears that the substance of these definitions has remained consistent.

action or process of adding something to something else: the hotel has been extended with the addition of more rooms.” (New Oxford American Dictionary (2d ed. 2005), p. 18.)

“The 1970 Uniform Building Code, in effect when Alquist-Priolo was enacted, did not define ‘addition.’” (Declaration of Marcy Wong, filed February 22, 2008, para. 15.) The 1976 UBC defines addition as “an extension or increase in floor area or height of a building or structure.” (Wong Decl., ex. C; see also Cal. Code Regs., tit. 24, § 202 [current California Building Code; same definition].)

“Floor area” is defined by CBC section 207 as “the area included within the surrounding exterior walls of a building or portion thereof.... The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.” The CBC does not provide a definition of “floor area” as it applies to a structure, rather than a building. The parties do not dispute that “[a] structure need not be enclosed by walls and a roof, whereas a building generally is.” (University’s Opposition Brief, filed August 27, 2007, p. 131; Panoramic’s Reply Brief, filed August 31, 2007, p. 8.)

“Structure” was defined in the Uniform Building Code, 1970 edition, as “that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.” (Wong Decl., ex. B; see also Cal. Code Regs., tit. 24, § 220-S [same

definition in current CBC].) As noted above, a “structure” is subject to Alquist-Priolo only if it (a) is on an active fault; or (b) is within 50 feet of an active fault and has not been shown by appropriate investigation and report not to be underlain by active branches. (Cal. Code Regs., tit. 14, §3603(a).)

b. Substantial Evidence

Substantial evidence supports that the SAHPC is not an addition to CMS. The principal structural engineer for the SAHPC project is David A. Friedman. He stated that his mission, from the start of the project, was to design the SAHPC as a separate structure from CMS, and that the plan has been developed accordingly.

“As the principal structural engineer for the SAHPC, I am certain that the SAHPC and CMS are not joined together and have no shared structural elements of any kind – no shared beams, footings, wall elements, columns, etc. There is no direct contact or structural connection between the two buildings.” (Friedman Decl., para. 15.) “There is absolutely no structural connection between any part of the SAHPC and CMS.... The intent and result of the structural design is to have the adjacent buildings physically separate and dynamically separate, meaning that their seismic motions remain independent.” (Friedman Decl., para. 13.) “The existing CMS structure and the proposed SAHPC are situated in such a way that each can, during an earthquake, move vertically and horizontally without touching or impacting the movement of the other.” (Friedman Decl., para. 9.) “There is no area where the buildings are situated directly over or under one another.”

(Friedman Decl., para. 10.) Where the two structures are vertically aligned, there are separated by sufficient horizontal distance to guarantee that the two buildings will not touch each other during an earthquake. (Friedman Decl., paras. 10-11.) “From a structural and earthquake engineering perspective, the SAHPC is physically and dynamically separate from CMS and is in complete accordance with the prescriptive requirements of Alquist-Priolo.” (Friedman Decl., para. 21; see also Diesko Decl, *passim*.)

Jeffrey A. Maddox, P.E., advisor to the SAHPC project on building code compliance, further opined:

[T]here are five topics besides structural independence that are relevant to such a determination [of whether the SAHPC is an addition to CMS under the CBC]. They are (1) construction type, (2) egress, (3) fire separation, (4) two utility services (electrical and water for fire suppression), and (5) occupancy type. Based on these factors, the SAHPC qualifies as a separate building under the CBC.

(Maddox Decl., paras. 7, 9-14)

These expert assessments constitute substantial evidence that the SAHPC will not be an “addition” to CMS within the above-referenced definitions: The SAHPC does not “add to” CMS. Rather, as a distinct structure from CMS, the SAHPC will not increase the height or floor area of the CMS structure.

c. Petitioners’ Contentions

Petitioners contend SAHPC constitutes an addition to CMS within the meaning of Alquist-Priolo because the two structures are adjacent, have complementary functions, and may appear to the lay observer to be one structure.

These contentions, and the supporting declarations of Petitioners' experts, do not nullify the substantial evidence supporting that the SAHPC is not an addition to CMS.

The text of Alquist-Priolo does not suggest that the Legislature intended to bar construction of a new building project whose footprint is free of active faults simply because it is adjacent to an existing structure that was built on active faults. Interpreting Alquist-Priolo in this fashion based on the Legislature's use of the word "addition" would greatly extend Alquist-Priolo's reach, with no clear limitation and no clear benefit to earthquake safety. The court notes the opinion of the project's Architect, Joseph J. Diesko:

Separate buildings are very often built adjacent to each other. The geometry of a site is often reflected in a building's form. In this case, the limited availability of land combined with the objectives to preserve as many trees as possible and to preserve views of CMS's historic façade caused us to design the SAHPC to sit close to CMS' west wall. This squeezed the building in a north/south direction resulting in the shape that appears to hug the existing stadium in order to provide the space required while minimizing impact on the site's trees and on the visibility of the historic stadium from the west. The subsequent geometry is undeniably related to CMS. This is a common situation, not unlike that where a building "hugs" a property line, whatever its contour. It does not make the SAHPC an addition to CMS.

(Supplemental Diesko Decl., paras. 9.)

Similarly, the fact that SAHPC's functions interact with CMS's does not render it an addition to CMS within the meaning of Alquist-Priolo. Such an interpretation of "addition" would have absurd results, allowing construction in non-fault zones only if there is no (or perhaps sufficiently little) functional

interaction between users of a proposed new building and users of an existing adjacent building in a fault zone. Again, the court notes Diesko's opinion:

"Functional integration" of the SAHPC and CMS does not make the SAHPC an addition or alteration to CMS, because functional relationships between two buildings simply do not require or imply that the buildings are conjoined as one building. In fact, it is common to find separate buildings close to each other that are also functionally related to each other. Educational campuses, medical campuses and hospital complexes typically have buildings that are functionally related, but separate. Such buildings are often connected by underground tunnels, plazas, and even covered walkways -- but the buildings remain separate.

(Supplemental Diesko Decl., para. 12.)

The University's conclusion that SAHPC is not an addition to CMS is consistent with the Legislature's intent in enacting Alquist-Priolo to promote public safety against earthquakes. In particular, in light of the lack of structural connections between SAHPC and CMS, and the fact that the construction of SAHPC will not extend the functional lifespan of CMS or increase the number of persons using that facility (see, e.g., AR 4:671 ["the SAHPC would provide a new permanent home for programs that currently use the CMS daily"]), the record supports that the construction of SAHPC will not be detrimental to earthquake safety. "[T]he complete structural separation between CMS and the SAHPC guarantees that the SAHPC will not be subject to the hazard of earthquake fault rupture and, in so doing, also guarantees that the SAHPC honors the central purpose of Alquist-Priolo." (Friedman Decl., para. 24.)

The Court also is not persuaded by Petitioners' suggestion that the

proposed SAHPC and the CMS should be considered as one continuous structure, i.e., because they are “any piece of work artificially built up or composed of parts joined together in some definite manner.” (Cal. Code Regs., tit. 24, § 220-S.) As noted above, substantial evidence supports that the SAHPC and CMS will not be joined together in the manners most relevant to the context of building construction and earthquake safety. (See Friedman Decl. and Maddox Decl., *supra*.)

4. Is the SAHPC an Alteration to CMS?

“Alteration” is defined by the New Oxford American Dictionary (“OAD”) as “the action or process of altering or being altered.” (New Oxford American Dictionary (2d ed. 2005), p. 46). “Alter” in turn is defined as “change or cause to change in character or composition, typically in a comparatively small but significant way.” (*Id.*) The term “alter or alteration” is defined in the CBC as “any change, addition or modification in construction or occupancy or structural repair or change in primary function to an existing structure other than repair or addition.” (Cal. Code Regs., tit. 24, § 202.)

For the reasons discussed above, substantial evidence supports that the SAHPC as a whole does not constitute an alteration to the existing CMS structure. Rather, the SAHPC is a distinct structure, the CMS’s occupancy and primary function will remain substantially the same, or its occupancy may actually be reduced. (See AR 4:671.)

However, several parts of the SAHPC project do constitute alterations to

CMS. These alterations include (1) a grade beam to be installed along the base of the Stadium's west wall (AR 13820-24; Rptr's Tr., Oct. 3, 2007, at 103:17-22 [statement by Respondents' counsel that grade beam constitutes an alteration]; Friedman Decl., para. 22 [same]); (2) alterations to existing staircases (AR 59:13650-51; Denton Decl., para. 36); and (3) alterations consisting of "Ground floor slab penetrations" that are required to install the SAHPC's telecommunication system (AR 32:7801; Wong Decl., para. 26).

5. Valuation and Future Compliance with Alquist-Priolo

In order to comply with Alquist-Priolo with respect to these limited alterations, the University must determine their value, and the value of the existing Stadium structure.

At the time of its decision to approve the SAHPC, the University had not determined the value of the Stadium, nor had it selected a methodology for determining its value. (See AR 1608, 534, 10409.) Because the University did not determine the value of the Stadium's structure at the time, it did not apply Alquist-Priolo's cost limitations to the proposed Stadium improvement project.

Alquist-Priolo does not define "value." As with other undefined terms in the statute, the court must "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*People v. Coronado* (1995) 12 Cal.4th 145, 151.) Valuation methods "differ with the nature of the business or practice and with the

purpose for which the evaluation is conducted.” (*People ex rel. Dep’t. of Transportation v. Muller* (1984) 36 Cal.3d 263, 271, n. 7.)

Here, Alquist-Priolo is intended to promote seismic safety. The purpose of determining the Stadium’s value is to determine whether it is appropriate for an alteration or addition to be made to an existing structure atop an active fault. The court cautions that an interpretation of “value” that solely uses replacement cost and does not reflect the current value of an existing structure, including its existing wear and tear and obsolete features, may be contrary to the purpose of Alquist-Priolo. Few alterations or additions would ever be prohibited under an interpretation based on replacement cost, as a new addition or alteration to an existing building would rarely, if ever, be valued at more than 50% of the value of replacing the existing building. In contrast, the valuation measure found in Evidence Code section 820 (the cost of replacing the existing improvements less whatever depreciation or obsolescence the improvements have suffered) may be more likely to serve the purposes of Alquist-Priolo. However, in the absence of a complete record addressing what valuation method(s) might best serve these purposes, the court declines to prescribe any particular method at this time.

6. The University is Not Required to Determine the Cost of All Three Phases of the Stadium Project at this Time.

Petitioners contend that Alquist-Priolo requires the University to calculate the cost of all three phases of the Stadium Project now, because a project proponent should not be permitted to break up a large addition or alteration to an

existing structure into a series of smaller components in order to avoid Alquist-Priolo's 50% value restriction over time. Although the University must determine the cost of the SAHPC project's alterations to CMS and compare those costs to CMS's existing value stadium before construction of the Stadium can begin, it need not calculate the cost to construct later phases which have not been approved. Petitioners are free to challenge any subsequent approval by the University on the basis of non-compliance with Alquist-Priolo.

IV. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. STANDARD OF REVIEW

The standard of review in an action alleging a violation of CEQA is whether there has been a prejudicial abuse of discretion. (See § 21168.5; *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392; *County of Inyo v. Los Angeles* (1977) 71 Cal.App.3d 185, 189. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (§ 21168.5; see also, e.g., *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259; *Chapparal Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143; *Laurel Heights, supra*, 47 Cal.3d at 409.) Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 CCR § 15384(a); *Laurel Heights, supra*, 47 Cal.3d at 393.) It includes facts, reasonable

assumptions predicated on facts, and expert opinion supported by facts; however, it does not include argument, speculation, or unsubstantiated opinion or narrative. (§§ 21080(e), 21082.2(c).)

In reviewing an EIR pursuant to the substantial evidence test, the court must decide whether there is any substantial evidence in the record to support an EIR's analysis of an issue. (See *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261; *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383.) "The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*County of Inyo, supra*, 71 Cal.App.3d at 189.)

B. DELEGATION

The Oaks Petitioners and Panoramic allege that The Regents violated CEQA by delegating to its Committee on Grounds and Buildings ("CGB") the responsibility to review, consider and certify the Final EIR for the Integrated Projects and to approve the SAHPC. Petitioners argue that: (1) Guidelines section 15025(b)(1)-(2) prohibits a lead agency from delegating to another body the review and consideration of an EIR prior to project approval, and the making of findings pursuant to Guidelines sections 15091 and 15093; (2) only the full board of The Regents is authorized to approve projects the cost of which exceeds \$20 million; (3) the Draft EIR indicates that the full board of The Regents would review the Final EIR; and (4) Guidelines section 15090(a) requires that a lead agency – and not a decision-making body within the lead agency – certify an EIR.

Respondents argue that: (1) CEQA allows a lead agency to delegate to a decision-making body the authority to review, consider, and certify an EIR, and to make findings pursuant to Guidelines section 15091 and 15093; (2) the full board of The Regents has explicitly conferred to the CGB the authority to approve projects with a cost in excess of \$10 million and associated CEQA environmental documents, making it the decision-making body for such projects; and (3) to the extent the EIR made representations that the full Board would consider the EIR and project, the failure of the full Board to do so did not constitute a prejudicial abuse of discretion and Petitioners have demonstrated no harm.

As Respondents demonstrate, the term “The Regents” does not refer only to the full Board of Regents of the University of California. As provided in The Regents’ Bylaws (“Bylaws”), section 14.6, quoting Section 92020 of the California Education Code, “‘Regents of the University of California’ means the Board of Regents of the University of California *and its standing and special committees or subcommittees*, other than groups of not more than three regents appointed to advise and assist the President in contract negotiations [emphasis added].” (See also Respondents’ Request for Judicial Notice, Exhibit 3, Bylaws 14.6; and see Cal. Ed.Code, § 92020.)

For the reasons set forth below, the Court finds that the delegation in this case does not violate CEQA.

1. Delegation is Permissible Under CEQA

Section 21067 defines a “lead agency” as “the public agency which has the

principal responsibility for carrying out or approving a project which may have a significant effect on the environment.”¹³ (See also Guidelines § 15367.)

Guidelines section 15356 defines “decision-making body” as “any person or group of people within a public agency permitted by law to approve or disapprove the project at issue.” The decision-making body is responsible for “reviewing and considering a final EIR,” and making the findings required by Guidelines sections 15091 and 15093. (Guidelines § 15025(b).) The decision-making body cannot delegate these duties. (*Id.*) “If a nonelected decision-making body of a local lead agency certifies an environmental impact report... that certification... may be appealed to the agency’s elected decision-making body, if any.” (§ 21151(c); see also Guidelines § 15090(b).)

The above-quoted provisions indicate that CEQA does not prohibit all delegations of authority to review and certify EIRs. CEQA allows a lead agency to delegate to a decision-making body within the lead agency the authority to review and consider EIRs, to make CEQA findings, to adopt mitigation measures, and to approve projects. (See Guidelines §§ 15025(b); 15356.) Petitioners allege that Guidelines section 15090(a) should be read as allowing only a lead agency – and not a decision-making body – to certify an EIR. The Court disagrees. As expressed by the Office of Planning and Research (“OPR”) in the notes following

¹³ “‘Public agency’ includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.” (§ 21063.)

Section 15090:

The section omits any mention of delegating the certification functions. Instead, the responsibility for certification rests with the Lead Agency. This approach allows Lead Agencies to determine for themselves how they will assign responsibility for completing the certification.

Accordingly, The Regents, as lead agency, is vested with the authority to delegate this responsibility to its CGB. The CGB had the authority to certify the EIR and to approve the SAHPC. Guidelines section 15022 provides that “each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents.” Section 15022 lists 13 items that an agency’s procedures must address, including “[a]ssigning responsibility for determining the adequacy of an EIR,” and “[r]eviewing and considering environmental documents by the person or decision-making body who will approve or disapprove a project.” (Guidelines § 15022(a)(8)–(9).)

The University’s Policies and its UC CEQA Handbook demonstrate that the University has established such procedures. Section 5 of The Regents’ “Policy on Approval of Design, Long Range Development Plans, and the Administration of the California Environmental Quality Act” (approved July 16, 1993; amended and renamed January 16, 2003 (the “UC CEQA Policy”)) incorporates from Guidelines sections 15356 and 15025(b) the basic rule that “certification or adoption of environmental documents is undertaken at the level of the associated

project approval.”

Section 1 of the UC CEQA Policy identifies the CGB as the decision-making body for design approval of certain projects the total cost of which exceeds ten million dollars:

The Regents designates the following categories of projects as requiring design approval by the Committee on Grounds and Buildings:

- a. Building projects with a total project cost in excess of \$10,000,000, except when such projects consist of the following:
 - (i) alterations or remodeling where the exterior of the building is not materially changed; (ii) buildings or facilities located on agricultural, engineering, or other field stations; or (iii) agriculture-related buildings or facilities located in areas of a campus devoted to agricultural functions.
- b. Capital Improvement projects of any construction cost when, in the judgment of the President, a project merits review and approval by The Regents because of budgetary matters, fundraising activities, environmental impacts, community concerns, or other reasons.

As used by the University in its UC CEQA Policy, “design approval” is synonymous with overall project approval. As used by the University in its UC CEQA Policy, the term “design approval” is not, as Petitioners suggest, a design review of the sort that a locality might exercise, focusing mainly on aesthetics. Rather, it is, as explained below, synonymous with overall project approval.

Specifically, CEQA requires that a public agency comply with CEQA before taking a discretionary action on a project which represents the decision to carry out or approve the project. (See § 21002; Guidelines §§ 15002, 15004.) However, “nowhere in CEQA and its implementing Guidelines is a precise time

specified at which an EIR must be prepared during the project planning process.” (*Mount Sutro Defense Committee et al. v. The Regents of the University of California* (“*Mount Sutro*”) (1978) 77 Cal.App.3d 20, 35.) Instead, “choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” (Guidelines § 15004(b); see also *Mount Sutro, supra*, at 35, 39.) Thus, as the lead agency, the University has discretion to determine the best time to prepare an EIR. (See *Mount Sutro, supra*, at 40 [“We further conclude that in order to achieve the salutary objectives of CEQA the determination of the earliest feasible time to introduce and coordinate environmental considerations into the planning process is to be made initially by the agency itself, which decision must be respected in the absence of manifest abuse”].)

Guidelines section 15004(a) requires a lead agency to consider a final EIR before “granting any approval of a project.” Guidelines section 15352 defines “approval” as “the decision by a public agency which commits the agency to a definite course of action in regard to a project... [t]he exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances.” The UC CEQA Handbook states that for University projects “design approval” constitutes “approval” within the meaning of

Guidelines section 15352. (See Section 2.3.15 of the UC CEQA Handbook [“Design approval has been determined to be the irrevocable commitment to proceed with a project”]; see also UC CEQA Handbook, Section 2.3.14.)

As a result, the CGB is authorized to approve projects the total cost of which exceeds \$10 million, and that do not fall under any of the exceptions set forth in Section 1(a) of the UC CEQA Policy. It is undisputed that the projects covered by this grant of authority include the SAHPC individually as well as the Integrated Projects collectively. For example, the approved budget for the SAHPC is approximately \$112 million. (AR 2:10.) Therefore, the CGB is authorized to certify the EIR and to approve the SAHPC. None of the exceptions to this delegation specified in Section 1 of the UC CEQA Policy applies because the SAHPC does not: (i) involve interior alterations or remodeling to an existing building; (ii) is not located on agricultural or field station land; and (iii) does not involve an agricultural building.

2. Petitioners’ Case Law and Arguments

Petitioners cite four cases to support their delegation argument. The first, *Robert D. Kleist v. City of Glendale et al.* (“*Kleist*”) (1976) 56 Cal.App.3d 770, stands for the principle that the body “which takes action having an effect upon the environment” – *i.e.*, project approval – must also consider the environmental effects of the project and review and certify the EIR prior to project approval. (*Id.* at 779.) In *Kleist*, the Glendale City Council approved a zoning change based on the City’s Environmental and Planning Board’s certification of the EIR. (*Id.* at

775-776.) The Court of Appeal ruled that the city council, and not the board, was the decision-making body within the lead agency because the city's procedures dictated that only the council had the power to approve the zoning change. (*Id.* at 778-779.) CEQA requires that "the decision-making body or administrative official having final approval authority over a project involving a substantial effect upon the environment review and consider an EIR before taking action to approve or disapprove the project." (*Id.* at 778.) In accordance with this requirement, in this case the University's Committee on Grounds and Building, pursuant to the delegation from the full Board of Regents (see above), had ultimate authority to approve the SAHPC, and therefore appropriately reviewed and certified the EIR.

Robert T. Sundstrom v. County of Mendocino ("Sundstrom") (1988)

202 Cal.App.3d 296, applied the rule stated in *Kleist*, and invalidated a negative declaration for several procedural and substantive defects, including an improper deferral of the assessment of environmental impacts. (*Id.* at 305-07.) In *Sundstrom*, the county board of supervisors, which was the decision-making body, required as a condition of its negative declaration that: (1) the project applicant have studies prepared by a civil engineer that evaluate various hydrological effects of the proposed project; and (2) these studies be subject to the review and approval of the planning commission staff. (*Id.* at 306-307.) The *Sundstrom* court ruled that this delegation violated the rule stated in *Kleist*. (*Id.* at 307.) Like *Kleist*, *Sundstrom* does not apply to this case.

The third case cited by Petitioners, *Planning & Conservation League v.*

Department of Water Resources (“*Planning League*”) (2000) 83 Cal.App.4th 892, does not address delegation. Instead, the issue in *Planning League* is whether the correct agency was selected to be the lead agency where two distinct, unrelated agencies were considered. (*Id.* at 888-89.)

The fourth case Petitioners cite, *Vedanta Society of Southern California v. California Quarter, Ltd. et al.* (“*Vedanta*”) (2000) 84 Cal.App.4th 517, involved an appeal pursuant to section 21151(c) to the elected county board of supervisors to reverse the certification of an EIR by an unelected county planning commission. (*Id.* at 522.) Thereafter the Board declared that the deadlocked tie vote of the Board would, by default, uphold the planning commission’s certification of the EIR. (*Id.* at 522.) The *Vedanta* court held that the certification of an EIR by an unelected county planning commission could not be upheld on an administrative appeal by a tie vote of the elected county board of supervisors. The appeal must be decided by majority vote. (*Id.* at 529.) Thus, *Vedanta* does not address the propriety of delegation under CEQA. To the extent that it discusses delegation at all, it stands for the same principle as *Kleist*: that entity with decision-making authority over the project must review and consider an EIR. (*See Vedanta*, 84 Cal.App.4th at 526-28.)

Panoramic’s invocation of *Vedanta*’s “political heat” argument fails here because: (1) as discussed above, *Vedanta* and *Kleist* applied facts and law contrary to this case; and (2) delegation of SAHPC approval and EIR certification decisions to the CGB does not insulate the CGB or the full Board of The Regents

from the political heat of certifying the EIR or approving the SAHPC. Unlike the delegates in *Vedanta* and *Kleist*, every Regent member of the CGB is just as politically accountable as any member of the full Board of The Regents because every Regent member of the CGB is also a member of the full Board. (AR 2:6 [CGB is comprised of eight Regents plus three *ex officio* members, and three non-voting advisory members].)

Oaks argues that The Regents' delegation to the CGB is improper. "The Regents' own Bylaws forbid the [CGB] from approving projects costing more than \$20 million." (Oaks' July 27, 2007 Opening Brief ["OB"] at p. 17.) To support its argument, Oaks cites an excerpt from The Regents' Standing Order 100.4(q) ("100.4(q)") titled "Duties of the President." The entirety of 100.4(q) states:

The President is authorized to approve amendments to the Capital Improvement Program for projects not to exceed \$10 million. The President is also authorized to approve amendments to the Capital Improvements Program for projects exceeding \$10 million up to and including \$20 million, provided that concurrence is obtained from the Chairman of the Board and the Chairman of the Committee on Grounds and Buildings and also provided that all actions taken in excess of \$10 million up to and including \$20 million under this authority be reported at the next following meeting of the Board. However, the following shall be approved by the Board: (1) projects with a total cost in excess of \$20 million, (2) for projects in excess of \$20 million, any modification in project cost over standard cost-rise augmentation in excess of 25%, or (3) capital improvement projects of any construction cost when, in the judgment of the President, a project merits review and approval by The Regents because of special circumstances related to budget matters, external financing, fundraising activities, project design, environmental impacts, community concerns, or substantial program modifications.

Oaks focuses on one sentence of 100.4(q) to conclude that only the full Board of The Regents, not the CGB, is authorized to approve projects costing more than \$20 million. (See 100.4(q) [(“However, the following shall be approved by the Board: (1) projects with a total cost in excess of \$20 million...”)].) The Court does not agree with this interpretation of 100.4(q) for three reasons.

First, this interpretation conflicts directly with Section 1 of the UC CEQA Policy, which expressly grants to the CGB the authority to approve the design of certain projects that cost more than \$10 million. There is no express limitation on project cost contained in this delegation.

Second, 100.4(q) deals exclusively with a grant of authority from The Regents to the President. Section 100.4(q) is a subsection of Standing Order 100.4, which is entitled “Duties of the President,” and which is wholly devoted to describing the President’s duties. (See Respondents’ Request for Judicial Notice, Exhibit 8, Standing Order 100.4.) Accordingly, the sentence Oaks focuses on is a limitation on the Board’s grant of authority to the President. A reservation to “the Board” means that authority continues to be held by “the Board of Regents of the University of California *and its standing and special committees or subcommittees.*” (See Respondents’ Request for Judicial Notice, Exhibit 3, Bylaws 14.6 [emphasis added].) Thus, 100.4(q) can be read as a reservation of authority directly to the CGB. Alternatively, 100.4(q) can be read as a reservation of authority to the full Board of Regents, which would not limit the Board’s ability to delegate this reserved authority to another person or committee such as the

CGB. Accordingly, nothing in Standing Order 100.4(q) or Section 1 of the UC CEQA Policy prohibits the delegation from the full Board to the CGB nor requires the full Board to approve the design of projects the cost of which exceeds twenty million dollars.

Third, 100.4(q) addresses the topic of budget approvals – not design approvals of projects. Accordingly, the sentence on which Oaks focuses must be read to require that the Board approve the *budgets* of projects with a total cost in excess of \$20 million. This does not conflict with Section 1 of the UC CEQA Policy.¹⁴ It is also consistent with subsection (z) of The Regents’ Standing Order 100.4 (“100.4(z)”), which states:

The President is authorized to approve building plans and to solicit bids in connection with approved projects, except that the President shall not approve the design of such projects as the Board has specifically designated as requiring design approval by the Committee on Grounds and Buildings.

Standing Order 100.4(z) is consistent with Section 1 of the UC CEQA Policy. The University complied with these requirements when the full Board approved the budget for the SAHPC in November 2006. (AR 2:1, 128-29.)

3. The Regents’ Delegation to CGB Does Not Conflict with the Integrated Projects EIR

Panoramic argues that The Regents’ delegation to the CGB conflicts with the EIR itself. (Panoramic’s opposition brief, filed July 23, 2007, at p. 21.)

¹⁴ Consistent with this requirement, the budget for the SAHPC was in fact approved by the full Board in November, 2006. (AR 2:116-20, 128-9.)

Panoramic cites Section 3.8 of the Draft EIR, which states in part:

As the decision-making body of the University, the Board of Regents of the University of California would review the various Integrated Projects pursuant to CEQA and Regental Policies. The final EIR will be reviewed by the Board of Regents in conjunction with The Regents' consideration of design approval of phase 1 of the CMS (the SAHPC).

(AR 4:699.)

Panoramic's argument is similar to Oaks' 100.4(q) argument: that "Board of Regents" and "The Regents" can only mean the full Board of The Regents, and not the CGB. However, as discussed, the full Board of Regents has, in Section 1 of the UC CEQA Policy, authorized the CGB to determine whether to approve the design of the SAHPC and to review and consider the EIR. Admittedly, the language in the above-quoted section of the Draft EIR could have been more precise. However, it is not incorrect; it merely uses the phrases "Board of Regents" and "The Regents" generically without specifying the full "Board of Regents." (See Respondents' Request for Judicial Notice, Exhibit 3, Bylaws 14.6.)

C. PREMATURE APPROVAL

Oaks and Panoramic contend that the University violated CEQA by approving the budget for the SAHPC before the December 2006 certification of the EIR.

As discussed above, (1) the lead agency under CEQA has discretion to determine the precise time in the planning process for CEQA compliance (see

Guidelines section 15004(b); *Mount Sutro*, 77 Cal.App.3d at 39); and (2) for its projects, UC has determined that “design approval” constitutes project “approval” within the meaning of Section 21002 and Guidelines section 15352.

UC approved the budget for the SAHPC before it certified the EIR or approved the design of the SAHPC. (AR 2:1, 128-29.) The Court finds nothing in the record or in the applicable law (including the University’s internal rules and procedures) to suggest that this determination is unreasonable. To approve a budget for a project does not commit the University actually to spend the money, in part because University procedures prohibit spending money for construction (as opposed to preliminary funding for planning and feasibility purposes, which is allowed) of a capital project before the project’s CEQA document and design have been approved. (See, e.g., Respondents’ Request for Judicial Notice, Exhibit 10 [excerpts from UCOP Facilities Manual]; AR 104:15463 [indicating that CEQA compliance is a necessary prerequisite to bidding and construction of a project].)

The Court does not accept Panoramic’s suggestion that the principle contained in Guidelines section 15352(b) establishing what “approval” means for private projects should be applied to public projects, because Guidelines section 15352(a) specifically defines “approval” in the context of decisions made by public agencies. Guidelines section 15352(a) provides that “the exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances.” This is what the University did.

Petitioners argue that University violated Section 21102 by determining

that “design approval” is CEQA project approval. Preliminarily, the court notes that the Petitioners raised this particular argument with respect to Section 21102 for the first time in their Reply Briefs, and therefore the argument should not be considered. (See *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587 at 595, footnote 4.) Regardless, Petitioners’ argument fails for two other reasons. First, Section 21102 prohibits the approval of the expenditure of funds before certification of an EIR. In this case although The Regents approved the budget for the SAHPC prior to certification of the EIR pursuant to the University’s policies, The Regents, in so doing, did not approve or authorize the expenditure of those funds. Second, the controlling case on this issue, *Mount Sutro*, discussed the applicability of Section 21102 and found no inconsistency between The Regents’ approach to budgetary and project approvals and Section 21102.

D. RECIRCULATION

Petitioners argue that the University violated CEQA by failing to recirculate the EIR with: (1) the Geomatrix 2006 Report; (2) an explanation of why the University determined that it could quantify the risk posed by surface fault rupture; and (3) a discussion of the CGS/USGS letters. The University contends that none of these three items triggers the requirement for recirculation of the EIR. For the reasons set forth below, the Court finds that Respondents’ decision not to recirculate the EIR did not violate CEQA, and is supported by substantial evidence in the record.

Section 21092.1 specifies when recirculation of an EIR for public comment is required:

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

Guidelines section 15088.5(a) elaborates on section 21092.1:

[T]he term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that: (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the level of impact to a level of insignificance. (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it. (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

"Recirculation is not required where the new information added to the EIR merely clarifies, amplifies or makes insignificant modifications to an adequate EIR." (Guidelines § 15088.5(b).)

In Laurel Heights Improvement Association of San Francisco v. The

Regents of the University of California (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, the court defined “significant new information” and established the limiting language that was added to Guidelines section 15088.5 quoted above. In *Laurel Heights II*, the final EIR contained information that was not present in the draft EIR, including, among other information, three new noise studies, two new studies relating to potential discharges of toxic air contaminants, and the identification of a new impact that “night lighting glare” could result from the use of laboratories in evening and early morning. (*Id.*, 6 Cal.4th at 1122.) Despite public requests to recirculate the draft EIR, the University did not do so (*id.*), and the court upheld the University’s decision. (*Id.* at 1129.)

The *Laurel Heights II* court acknowledged that public participation is an essential part of the CEQA process (*id.* at 1123), and that the primary reason for soliciting comments from the public is to allow the lead agency to identify the potential adverse effects of a project, as well as alternatives and mitigation measures that would substantially reduce those effects. (*Id.* at 1129.) However, the court also concluded: (1) that the Legislature did not intend to promote endless rounds of revision and recirculation of EIRs; and (2) that “[r]ecirculation was intended to be an exception, rather than the general rule.” (*Id.* at 1132, quoting *Goleta*, 52 Cal.3d at 576 [“rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement”].) The court also held that the substantial evidence test governs judicial review of an agency’s decision

regarding recirculation; courts must resolve reasonable doubts regarding an agency's determination that new information was not "significant" in favor of the administrative finding and decision. (*Laurel Heights II*, 6 Cal.4th at 1133, 1135.)

The Regents certified the EIR and concluded that the Final EIR did not contain significant new information that required recirculation and additional public comment. (See AR 4:1717-18 [Response to Comment 5A-6]; AR 3:450.) The court finds that evidence in the record substantially supports the University's determination that neither the Geomatrix 2006 Report, the CGS/USGS letters, nor the University's determination that it can quantify the risk of surface fault rupture constitutes "significant new information" under CEQA. This information clarifies information in the Draft EIR. (AR 7:1605-08; see also Guidelines § 15088.5(b).)

The Geomatrix 2006 Report concludes that there is no evidence of active faulting within the footprint of the SAHPC. (AR 30:7313.) It does not identify any new, or substantially more severe, significant impact of the Integrated Projects than the Draft EIR does; it amplifies the Draft EIR's discussion of geology and seismicity impacts, because it confirms the Draft EIR's statement that "active faults are not known to be located within the footprint [of the SAHPC]." (AR 4:836.)

References by Petitioners to new information contained in the Geomatrix 2006 Report regarding "inferred faults" also does not constitute significant new information requiring recirculation. First, CEQA's requirements regarding the discussion of seismic impacts in EIRs focus on "known" earthquake faults. (See

Guidelines, Appendix G.) There is unrebutted evidence in the record that whether or not “inferred faults” exist is “uncertain.” (AR 29:7091, 7214.) Thus, they are not “known” earthquake faults. As a result, CEQA does not require the University to address them in any EIR, and the Court finds no legal basis for ruling that information not required to be disclosed in an EIR meets the test for recirculation set forth in *Laurel Heights II* and Guidelines section 15088.5.

Second, the Draft EIR indicated that the SAHPC would not be located on a known active fault, but that it did fall within the delineated Earthquake Fault Zone such that Geomatrix had recommended additional investigation, including research for additional historic (pre-development) information on the location and changes to Strawberry Creek and on the Shutter Ridge located in the vicinity of the west wall of CMS. (AR 5:826-27.) Geomatrix’s proposed scope of work indicated that one of the purposes of its geological study under Alquist-Priolo would be to develop further information regarding the inferred faults shown in its 2001 Report. (AR 181:37030.) The Geomatrix 2006 Report concluded that the previously “inferred” northern fault does not exist (AR 30:7313) and that the previously “inferred” southern fault was in fact the West Trace of the Hayward fault. (AR 30:7312.) So, even if the University was legally required to disclose “inferred faults,” there is substantial evidence in the record that, in this case, such disclosure is not required under Guidelines section 15088.5 or *Laurel Heights II*.

Substantial evidence in the record also supports the University’s determination that the release of the Geomatrix 2006 Report after publication of

the Draft EIR did not deprive the public of a meaningful opportunity to comment on the Integrated Projects' seismic impacts. The Draft EIR describes eight specific hazards related to seismicity and assesses the degree to which each hazard might affect the Integrated Projects area. (AR 4:820-4.) The Draft EIR concludes that, even though "active faults are not known to be located within the footprint [of the SAHPC]" (AR 4:836), the danger posed by possible earthquake fault rupture is "significant and unavoidable." (AR 4:836-837, 7:1502.) Proof of opportunity to comment on seismic impacts is undeniable; the University received letters, petitions and public comment addressing seismic impacts, many of which discussed the issue that is at the heart of the Geomatrix 2006 Report – the danger posed by surface fault rupture. (See, e.g., AR 8:1820, 1838-39, 1846-48, 1875, 9:1893-2015, 10:2207-10, 2252, 2256, 2257, 2259.) Because the Geomatrix 2006 Report essentially "reveals comforting news," "public comment on this study would not further the purposes of CEQA." (See *Laurel Heights II*, 6 Cal.4th at 1138 [holding that The Regents' determination that a health risk study regarding cumulative toxic air contaminant releases did not constitute "significant new information" requiring recirculation because it did not reveal a "new adverse environmental impact"].)

Petitioners' assertion that members of the public might have commissioned their own geological studies had the University afforded the public a formal opportunity to review and comment upon the Geomatrix 2006 Report does not constitute substantial evidence. Even if it did, it would not rebut the existence of

the substantial evidence in support of the University's determination not to recirculate the EIR. The Court's inquiry is limited to the question whether substantial evidence exists in the record to support the University's decision.

The plain language of the University's determination that it can quantify the risk of surface fault rupture demonstrates that it does not: (1) identify any new significant impact of the Integrated Projects that the Draft EIR did not identify, or (2) indicate a substantial increase in the severity of the Integrated Projects' seismic impacts. (AR 4:836-37, 7:1502.) The City argues that the Final EIR's disclosure of that determination deprives the public of a meaningful opportunity to comment on the Integrated Projects' seismic impacts. However, the Final EIR characterizes the magnitude of the surface fault rupture hazard in the same way that the Draft EIR does: "significant and unavoidable." (AR 4:8360-37, 7:1502.) The University's determination that it can quantify the risk of surface fault rupture amplifies information contained in the Draft EIR.

Similarly, the identical December 4, 2006 letters written by CGS and USGS (AR 198:40017-20, 40021-24) do not constitute significant new information. They do not provide evidence of a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible project alternative or mitigation measure, or otherwise indicate that their absence from the EIR deprived the public of a meaningful opportunity to comment on a substantial impact or mitigation measure. (See Guidelines §15088.5(a).) Generally, the letters concurred with the conclusions of the Geomatrix 2006

Report and suggested that some additional investigation may be warranted in the northeast and southeast corners of the proposed SAHPC building footprint to address their concerns: “We concur with Geomatrix’s conclusion that trenches T-1, T-2, and T-4 provide no evidence for Holocene faulting, and thus demonstrate that the majority of the footprint of the proposed SAHPC exposed by these trenches does not contain Holocene faults.” (AR 198:40017, 40021.) The Court finds that the letters did not provide any evidence of a new significant, or substantially more severe, geology and seismicity impact than those disclosed in the Draft and Final EIRs, because the EIR had fully analyzed the potential for such impacts and concluded that the Integrated Projects could result in two significant unavoidable impacts as a result of their proximity to the Hayward fault. (AR 4:836-37 [GEO IPE-5 & 6]; see also *Laurel Heights II*, 6 Cal.4th at 1132.) In addition, although the CGS/USGS letter was issued the day before The Regents’ December 5, 2006 hearing on the EIR, and long after the close of the public comment period on the Draft EIR, it was made available to The Regents and discussed in closed and open session. (AR 2:54, 57, 58 [indicating before The Regents’ November 2006 meeting that letters are forthcoming]; AR 3:520-21, 534 [Vice Chancellor Denton discussing CGS/USGS letters with CGB and indicating request for additional testing and borings]; AR 3:537 [discussion by University’s outside counsel].) Even if one were inclined to conclude that these letters contradict the Geomatrix 2006 Report (and this Court is not so inclined), it would not change the fact that the record contains substantial evidence in support of the

University's decision not to recirculate the EIR. As a result, the Court concludes that the decision does not violate CEQA.

E. OMITTED IMPACTS

1. Biology

Petitioners allege that the University has violated CEQA by failing to analyze the significant biological impacts resulting from removal of the coast live oaks west of CMS. Oaks also alleges that the 3:1 replacement program for loss of Specimen Trees does not adequately mitigate the impact of removing such Specimen Trees. Respondents argue in response that the analysis of biological impacts of the Integrated Projects was properly scoped out of the EIR pursuant to Section 21094, because the EIR is tiered from the 2020 LRDP EIR, which analyzes the biological impacts of all 2020 LRDP projects, including the Integrated Projects.

For the reasons set forth below, this Court finds that the record contains evidence that substantially supports the University's determination that the 2020 LRDP EIR adequately analyzed biological impacts of all 2020 LRDP projects, including the Integrated Projects, and that, as a result, the EIR did not need to contain any additional analysis of these impacts.

There is no dispute that the EIR is tiered from the 2020 LRDP EIR. Section 21094 and Guidelines section 15168(c) govern the environmental review of later projects that implement the program set forth in a broader, or program level EIR. Section 21094(c) requires the preparation of an initial study to "analyze

whether the later project may cause significant effects on the environment that were not examined in the prior [program level] environmental impact report.” An EIR for the later project “need not examine those effects which the lead agency determines were either (1) mitigated or avoided as a result of changes or alterations required in, or incorporated into, the project analyzed in the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.” (§ 21094(a).)

The 2020 LRDP EIR contains a 37-page analysis of the biological impacts of all development contemplated by the 2020 LRDP. (See AR 104:15540-15576.) Much of its discussion relates to the Hill Campus and Campus Park areas of the campus, because these areas contain the campus’ sensitive biological resources. The 2020 LRDP EIR explains that this is because the other areas of the campus do not contain sensitive biological resources:

The remaining land use zones addressed as part of the LRDP [*i.e.* all such zones other than Hill Campus and Campus Park] occur in urbanized areas with little or no remaining natural vegetation and limited wildlife habitat values. No sensitive natural communities, special status species, wetlands or important wildlife movement corridors occur in these zones. Given the absence of any sensitive biological or wetland resources, no additional discussion or analysis is provided for the other land use zones in this section of the EIR.

(AR 104:15557-8.)

The 2020 LRDP EIR also specifically analyzed the impacts of tree

removal; it indicates that implementation of 2020 LRDP projects would require removal of vegetation “which could include specimen trees and other unique vegetation.” (AR 104:15564.) Although, at least as a general matter, The Regents are constitutionally exempt from local regulation, the 2020 LRDP EIR notes that the City has a Coast Live Oak Tree Removal Ordinance (“Tree Ordinance”) that requires approval of the city council and mitigation for the removal of any coast live oak tree with a circumference of 18 inches or more, and any multi stemmed coast live oak with an aggregate circumference of 26 inches or more. (AR 48:12065, 104:15543.) The 2020 LRDP EIR notes that development under the 2020 LRDP would require the removal of native coast live oak trees, which would be in conflict with the City’s Tree Ordinance. (AR 104:15569.) The 2020 LRDP EIR adopts the Campus Specimen Tree Program to fully mitigate potential biological impacts from future construction activities. (AR 104:15569.) The Campus Specimen Tree Program provides that the Campus Landscape Architect makes the determination of specimen status. (AR 104:15561.) If a specimen tree will be affected by 2020 LRDP development activities, it must be successfully transplanted or replaced with three trees in the closest available sizes. (AR 104:15561.)

The University adopted feasible mitigation measures to avoid or lessen this impact. 2020 LRDP Continuing Best Practice BIO-1-a mitigates the environmental impact of removing specimen trees. (AR 104:15565.) It requires the continuing implementation of the Campus Specimen Tree Program “to reduce

adverse effects to specimen trees and flora,” by requiring three-to-one replacement of specimen trees and flora removed for all 2020 LRDP projects, as directed by the Campus Landscape Architect in the closest available sizes. (AR 104:15565.) 2020 LRDP Continuing Best Practice BIO-1-b notes that “Coast live oak and other native plantings would continue to be used in future landscaping, serving to partially replace any trees lost as a result of projects implemented under the 2020 LRDP.” (*Id.*) The 2020 LRDP EIR concludes that such mitigation would ensure that the impact from loss of specimen trees, including coast live oaks, is less than significant. (AR 104:15564.)

Other evidence in the record corroborates the conclusions of the 2020 LRDP EIR regarding the urban character of and the lack of sensitive biological resources in the area of Memorial Oak Grove. “[The] area consists of planting beds separated by seven 15-foot-wide asphalt pedestrian pathways sloping toward and connecting to the eastern sidewalk along Piedmont Avenue. The pathways that lead from Gates 2, 3 and 5 have two sets of 15-foot-wide concrete stairs with galvanized steel handrails at the top and bottom of the paths...” (AR 21:5410.) Photographs of the area confirm this. (See AR 4:726 [Photo 12 of Figure 4.1 6 showing the existing 15 foot wide concrete stairs and railings], 30:7329 [photo of trees and surrounding area].) East of the area is the 70,000 seat CMS. West of the area is a heavily traveled city roadway. (AR 5:926.) South of the area is a 37-car parking lot, and north of the area is a 181-car parking lot. (AR 5:928-29.)

The 2020 LRDP EIR’s analysis of biological impacts, together with the

above-cited and other record evidence constitute “enough relevant information and reasonable inferences from this information so that a fair argument can be made to support” the University’s determination in its Initial Study (AR 5:1058-60) that the EIR does not need to contain any additional analysis of the biological impacts stemming from removal of trees at Memorial Oak Grove. (Guidelines section 15384(a); see also AR 5:1033, 6:1086 [showing that the Initial Study was incorporated into the EIR].) Therefore, substantial evidence in the record supports the University’s determination.¹⁵

For purposes of this claim, it does not matter that the 2020 LRDP EIR does not specifically analyze the biological impact of the proposed tree removal at Memorial Oak Grove, because the record contains substantial evidence that the area in which Memorial Oak Grove exists does not contain sensitive biological resources. (AR 104:15544-58.)

Petitioners’ argue that the EIR cannot properly tier its biological impacts analysis from the 2020 LRDP EIR, because the SAHPC is inconsistent with the 2020 LRDP. However, substantial evidence in the record demonstrates that the

¹⁵ The court has reviewed the citations to comments provided by Petitioners. None of the comments received during the public scoping period provided substantial evidence that the Integrated Projects may cause biological resource impacts that were not addressed in the 2020 LRDP EIR, nor did any suggest that the 2020 LRDP EIR’s analysis of impacts to biological resources or its conclusions regarding mitigation measures might be altered by further study. (AR 13:3090-3105.) The same is true of comments to the Draft EIR. (See AR 8:1823-1824, 9:2107, 9:2023, 9:2136, 8:1767, 8:1821, 10:2190, 9:2046, 9:2048, 9:2086, 7:1644.)

SAHPC is, pursuant to Guidelines section 15168(c)(5), “within the scope of” the 2020 LRDP. In fact, because: (1) the 2020 LRDP contemplates 400,000gsf of new development in the Adjacent Blocks South Area (AR 104:15415; see generally AR 104:15400-415); and (2) the Memorial Oak Grove site is one of only three University-owned vacant parcels in the Adjacent Blocks South Area (AR 103:15390; 104:15400, 15414).

Petitioners contend that the University’s tree replacement program only addresses the biological effects of specimen tree removal – and not all impacts to biological resources. They also contend that tree removal at Memorial Oak Grove is “clearly a substantial environmental impact.” (Oaks Reply at p. 15.) Neither contention disproves the existence of substantial evidence in the record supporting the University’s determination that building the SAHPC on its proposed site will create no significant impacts to biological resources.

The fact that the University conducted more biological impact analysis on the site of its Tien Center project than it did on the SAHPC site is of no consequence in this case. The Court is satisfied that substantial evidence supports the University’s determination regarding biological impacts of the SAHPC. The fact that the University, for another project, may have performed more extensive analysis of biological impacts than legally required does not change this fact.

The Court does not mean to suggest that the trees in Memorial Oak Grove are of little or no value. To the contrary, there is ample evidence in the record attesting to Memorial Oak Grove’s value as a cultural resource. However, when

considering Petitioners' challenge that the EIR improperly omitted an analysis of the *biological* impacts of removing trees to build the SAHPC, the only issue before the Court is whether substantial evidence exists in the record to support the University's determination that the biological impact of removing these trees was mitigated or avoided as a result of changes or alterations required in, or incorporated into, the 2020 LRDP. Because the Court has concluded that the record contains this evidence, Petitioners' claims fail.

2. Archaeology

Oaks argues that the EIR inadequately addresses the Integrated Projects' impacts on archaeological resources. The crux of the argument is that the University's alleged failure to disclose the 1923 discovery of certain Native American burial sites in the vicinity of CMS violates Section 21083.2. Oaks also contends that the University failed to "address the potential archaeological impacts of the [SAHPC]." (Oaks' opposition brief, at p. 27.)

The Court finds no error. The 2020 LRDP EIR and the EIR both address the possibility that the Integrated Projects, of which the SAHPC is a part, might impact archaeological resources. The 2020 LRDP EIR notes that two prehistoric archaeological resources have been identified within the Campus Park planning area, and refers to a human burial site that was encountered during the construction of CMS. (AR 104:15625.) The 2020 LRDP EIR also adopted mitigation measures and continuing best practices to ensure that the impact of 2020 LRDP projects on significant prehistoric and historic archaeological

resources would be less than significant. (AR 104:15631.)

In addition, for the Integrated Projects, the University conducted an archival review of reports at the Northwest Information Center. As the Draft EIR explains:

This search has indicated a high likelihood of locating prehistoric archaeological sites within the project boundaries, given the location of previously recorded sites and the proximity of the Integrated Projects Area to the historic course of Strawberry Creek. Prehistoric settlements in the East Bay were often situated along or near the banks of creeks or other fresh water sources.

(AR 4:779.)

The Draft EIR acknowledges that nearly all subsurface disturbances within the project area could potentially impact subsurface archaeological resources.

(AR 4:810.) The Draft EIR states that “any element of the Integrated Projects requiring soil disturbance ... warrants [2020] LRDP EIR Mitigation Measure CUL-4-a, which requires preconstruction testing in archaeologically sensitive areas.” (*Id.*) The Draft EIR also says that 2020 LRDP EIR Continuing Best Practice CUL-4-c must be implemented during construction excavation. (AR 4:810-811 [“CUL-4-c requires contractors to be briefed on signs of potential archaeological sites and – if an archaeological site is discovered – cease work until impacts to the sites can be mitigated.”].)

In the event resources are determined to be present at a project site, the University is required to implement Continuing Best Practice CUL-4-a, which provides:

UC Berkeley shall retain a qualified archaeologist to conduct a subsurface investigation of the project site, to ascertain the extent of the deposit of any buried archaeological materials relative to the project's area of potential effects. The archaeologist would prepare a site record and file it with the California Historical Resource Information System.

If the resource extends into the project's area of potential effects, the resource would be evaluated by a qualified archaeologist. UC Berkeley as lead agency would consider this evaluation in determining whether the resource qualifies as a historical resource or a unique archaeological resource under the criteria of CEQA Guidelines section 15064.5. If the resource does not qualify, or if no resource is present within the project area of potential effects, this would be noted in the environmental document and no further mitigation is required unless there is a discovery during construction (see below).

If a resource within the project area of potential effect is determined to qualify as an historical resource or a unique archaeological resource in accordance with CEQA, UC Berkeley shall consult with a qualified archaeologist to mitigate the effect through data recovery if appropriate to the resource, *or to consider means of avoiding or reducing ground disturbance within the site boundaries, including minor modifications of building footprint, landscape modification, the placement of protective fill, the establishment of a preservation easement, or other means that would permit avoidance or substantial preservation in place of the resource....*

(AR 5:790-79 [emphasis added].)

Finally, the Draft EIR indicates that if any human burials are found, 2020 LRDP EIR Mitigation Measure CUL-4-b would be implemented and impacts would be reduced to less than significant levels. (AR 4:811.) The Regents adopted the above mitigation measures and continuing best practices as conditions to its approval of the SAHPC, thereby ensuring the enforceability of these measures. (AR 3:508.)

Petitioner Oaks alleges that the Memorial Oak Grove is a Native American burial ground and therefore is an “unique” archaeological resource, pursuant to Public Resource Code Section 21083.2 and CEQA Guidelines Section 15064.5. The only evidence cited by Petitioner Oaks of any Native American burial is a comment to the Draft 2020 LRDP EIR from a “Richard Schwartz, Historian” informing the University of a record of the 1923 discovery of remains (AR 111:17479), and the University’s response that it was aware of this record. (AR 111:174800.) Mr. Schwartz’s comment is not evidence that the Integrated Projects may have any effect on burial sites.

There is also no evidence in the record that any alleged burial sites, or any other archaeological resources in the Integrated Project area, are unique archaeological resources. However, the LRDP and the EIR contain a sufficient analysis of archaeological resources and potential impacts and establish a mitigation measures that provide for appropriate protection for any type of resource that might be discovered during implementation of the Integrated Projects. The Court concludes that the University did not violate CEQA by failing to discuss these burial sites or any other specific archaeological resources in the EIR.

F. PROJECT DESCRIPTION

Petitioners argue that the EIR’s Project Description is legally inadequate for three reasons: (1) it fails to describe certain components of the Integrated Projects in sufficient detail; (2) it is unstable with respect to the relationship between the

SAHPC and CMS; and (3) the EIR does not contain the Alquist-Priolo geological study for the SAHPC site and therefore fails adequately to describe the Integrated Projects' environmental setting.

Petitioners contend that the University violated CEQA by combining all seven of the Integrated Projects into one project-level EIR for purposes of CEQA review.

Guidelines section 15378 defines "project" broadly as "the whole of an action, which has the potential for resulting in either a direct or indirect physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (See also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716.) CEQA prohibits segmenting or chopping up a larger project into many smaller pieces in order to minimize its apparent environmental effects. (See *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 13 Cal.3d 263, 283 [referring to Guidelines section 15165 and ruling that CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences"]; see also *Laurel Heights I, supra*, 47 Cal.3d at 396; *Orinda Association v. Board of Supervisors of Contra Costa County* (1986) 182 Cal.App.3d 1145, 1171; *Kings County Farm Bureau, supra*, 221 Cal.App.3d at 716.)

In this case, the Court finds that substantial evidence in the record

demonstrates that the University's decision to treat the Integrated Projects as one project for purposes of CEQA review complies with Guidelines 15378 and 15165. All seven projects are linked to each other by virtue of geographic proximity (AR 4:636, 638, 642), common objectives (AR 4:630 33), common funding challenges (AR 42:10452, 53:13455), and joint planning (AR 7:1464 76, AR 14:3405, AR 42:10451).

Substantial evidence also shows that the seven Integrated Projects are linked programmatically. The University has determined that the Student SAHPC, which is Phase 1 of the CMS Project, is necessary to relocate the current daily users out of the CMS and to allow for the possibility of Phases 2 and 3. (AR 4:671.) Both the CMS Project and the Law and Business Connection Building involve the removal of surface parking spaces, and the spaces lost due to both projects are replaced in the Maxwell Family Field Parking Structure. (AR 4:682.) The EIR notes that the Southeast Campus and Piedmont Avenue Landscape Improvements are integral to these projects because:

Circulation, landscape, and site issues are critical to the successful urban design of the projects – neither the Stadium nor the Academic Commons [now the Law and Business Connection Building (see AR 53:13450)] can be planned, designed, or budgeted as an isolated project.

(AR 53:13455; see generally AR 53:13453-13455.) The renovation and restoration of the five houses at 2222-2240 Piedmont Avenue are linked by historic values, seismic safety and accessibility objectives to the other projects (AR 4:633, 690-01), and are sited in the middle of the overall project area (AR

4:636). Lastly, the School of Law Program Improvements and the Haas School of Business Program Improvements are linked to the other Integrated Projects because they share programmatic goals with the Law and Business Connection Building and are adjacent to and provide improved access and transparency between the buildings. (AR 4:633.) These and other linkages among the seven Integrated Projects are also explained in Thematic Response 2, which is part of the Final EIR. (AR 7:1603-05.) Substantial evidence in the record demonstrates that the University treated all seven Integrated Projects as one project for CEQA review in a good faith effort to ensure that it would identify and analyze all possible environmental impacts, including cumulative impacts, of all the work the University proposes to undertake in the Southeast Campus.

1. The EIR's Description of the Integrated Projects is Sufficiently Detailed

Guidelines section 15124 establishes the four elements that a project description must contain: (1) "the precise location and boundaries of the proposed project"; (2) "a statement of objectives sought by the proposed project"; (3) "a general description of the project's technical, economic, and environmental characteristics"; and (4) "a statement briefly describing the intended uses of the EIR." While the EIR's project description must contain these four items, it "should not supply extensive detail beyond that needed for evaluation and review of the [project's] environmental impact." (Guidelines § 15124.)

Here, the EIR's project description satisfies the requirements of Guidelines

section 15124. It describes each of the Integrated Projects in sufficient detail to satisfy the requirements for project-level review under CEQA. First, the location and boundaries of the proposed projects are clearly delineated on local and regional maps (AR 4:635-6, 638, 642), and the boundaries for each project site are delineated. (AR 4:639-41, 633-34.) Second, as discussed herein, the objectives of the Integrated Projects are stated with sufficient clarity. (AR 4:630 3, 697.) Third, sections 3.4 and 3.5 of the Draft EIR provide the site and circulation plans for the Integrated Projects, a general description of each of the seven projects, and where available, design drawings, illustrating their environmental and technical characteristics. (AR 4:644-90.) Finally, Chapter 3 of the Draft EIR contains a statement of the intended uses of the EIR and lists the relevant agencies and approvals that are necessary for implementation of the Integrated Projects. (AR 4:696-99.)

Petitioners make numerous claims to support their argument that the EIR's project description is insufficiently detailed. The Court finds that none of these claims negates the substantial evidence in the record of the project description's compliance with Guidelines section 15124. As the court reads the EIR: (1) the project description clearly describes both the shape and location of the SAHPC (see AR 4:636, 638, 645, 648, 658, 694); (2) the EIR analyzes storm water runoff and stresses that the Integrated Projects will result in a net decrease in impervious surfaces (AR 4:860-862, 7:1502); (3) drawings (plans and sections) of the Maxwell Family Field Parking Structure are in the EIR (see AR 4:682, 684, 743-

44); (4) the EIR imposes no new expansion of or new restrictions on “non-capacity” events at the CMS, but describes how future capacity use would be measured (AR 7:1611-12); (5) the EIR describes the proposed press box in sufficient detail to assess its environmental impacts (AR 4:676-8, 747); (6) the EIR explains in detail the number and types of trees that will be removed to allow construction of the SAHPC (AR 4:647-50, 6:1289, and generally 6:1276-1405, 7:1623 24); and (7) the EIR analyzes impacts of new plumbed facilities upon existing sewer systems (AR 5:983 84). Many of Petitioners’ other claims are irrelevant, because they do not result in environmental impacts. These include: (1) adding concourses to the CMS; (2) adding concessions to the CMS; (3) specifying which sports teams or which students will use the SAHPC; and (4) explaining the details of the High Performance Initiative.

The City’s assertion that the EIR lacks sufficient detail regarding Phase 2 and Phase 3 of the CMS Project is unavailing in light of the fact that the Draft EIR finds six significant unavoidable impacts related to Phase 2 and Phase 3 of the CMS Project. (See AR 4:766-67, see generally, AR 7:1528-45 [Summary of Impacts and Mitigation Measures].) The standard in Guidelines section 15124 for sufficiency of detail in an EIR’s project description is simply that such detail be sufficient for evaluation and review of a project’s environmental impacts. The EIR meets that standard.

The fact that the level of detail in the EIR’s project description may be higher for some of the Integrated Projects than for others does not render the EIR

inadequate. First, as explained above, the EIR's description of each of the Integrated Projects satisfies the requirements of Guidelines section 15124. Second, the projects described in greatest detail are those that are most likely to be completed in the early phases of the Integrated Projects' implementation, such as the SAHPC. (AR 7:1604.) Third, if later projects or the circumstances under which the Integrated Projects will be implemented change substantially, the University will be required to conduct additional environmental review prior to approval, pursuant to section 21166, and the EIR discloses this. (See AR 7:1604.)

The City argues that the EIR's project description is invalid under *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, because the timing of construction of the Integrated Projects – particularly Phases 2 and 3 of the CMS Project – is uncertain. In *City of Santee*, the EIR was invalidated because: (1) the draft EIR did not state the expected duration of a city's use of a temporary men's detention facility (*id.* at 1450-51); and (2) the EIR did not discuss whether additional environmental effects might result from the use of the temporary facility beyond the seven year time frame "belated[ly]" provided in a response to a comment on the draft EIR. (*Id.*) The instant case is different; it proposes permanent projects, establishes a schedule for construction or implementation of the projects and bases its environmental analysis on consistent assumptions and timeframes, unlike *City of Santee*. The Court fails to see the analogy between this case and *City of Santee*.

2. The EIR's Description of the Integrated Projects is Stable

“An accurate, stable and finite project description is considered the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)

Petitioners argue that the EIR violates the rule of *Inyo*, because the Draft EIR describes the SAHPC as an “addition” to CMS, but that the Final EIR describes the SAHPC as a separate building. The Court disagrees and finds that the project description for the Integrated Projects has remained, in all important respects, constant throughout the entire environmental review process. (See AR 3:552-55 [Notice of Publication], AR 4:670-91 [Draft EIR], and AR 7:1485-92 [Final EIR].) This contrasts starkly with the facts of *Inyo*, 71 Cal.App.3d at 190-91. Considering a challenge to an EIR, the subject of which was, among other things, an increase in the groundwater pumping rate from certain Owens Valley lands, the *Inyo* court ruled that the lead agency did not proceed “in a manner required by law” (*id.* at 200) when it certified an EIR whose “project concept expands and contracts from place to place within the EIR.” (*Id.* at 190.) In *Inyo*, the changes in the project description throughout the EIR were dramatic; the magnitude of these inconsistencies rendered the EIR invalid. (*Id.* [“As compared with the initially defined project, that is pumping for unanticipated Owens Valley needs, the ‘recommended project’ represents a vastly enlarged concept”]); *id.* at 199 [“The small scale groundwater project described at the outset was dwarfed by the ‘recommended project’ ultimately endorsed by the Final EIR and approved by

the Board of Commissioners”].)

The fact that the Draft EIR refers in a few instances to the SAHPC as an “addition” does not constitute a violation of the rule of *Inyo*. First, the Court finds that, in these instances, the EIR refers generally to the SAHPC as an addition to the CMS vicinity and cultural setting – not as an addition to the CMS. (AR 4:671, 672, 4:800-02, 8:1735.) Second, to the extent that these references might be interpreted differently, absolute perfection is not required in an EIR. (See *Dusek v. Anaheim Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1039.) Moreover, the physical impacts of constructing the SAHPC would seem to be the same whether the SAHPC is a separate building or an addition to the CMS – so under CEQA, it does not matter whether the SAHPC is described as an addition to the CMS or a separate building.

3. The EIR Adequately Describes the Integrated Projects’ Setting

Petitioners argue that the EIR does not adequately describe the Integrated Projects’ environmental setting because (1) the EIR did not contain the Geomatrix 2006 Report; and (2) the University did not conduct geological studies for the proposed Maxwell Family Field Parking Structure site before certifying the EIR.

As discussed above, the purpose of the project description is to facilitate identification and analysis of environmental impacts. Appendix G to the Guidelines contains an Environmental Checklist form which, pursuant to Guidelines section 15063(d)(3) and (f), establishes standards of significance for

the EIR process and may be used to complete an Initial Study to determine whether a proposed project could have a significant impact on the environment. The Environmental Checklist contains a set of questions under the heading "Geology and Soils." (Guidelines, Appendix G, section VI.) The only question that references earthquake faults is as follows:

Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving:
(i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (ii) Strong seismic ground shaking? (iii) Seismic related ground failure, including liquefaction? (iv) Landslides?

(Guidelines, Appendix G, section VI.)

Thus, the standard for determining whether a project creates a seismic impact refers to known earthquake faults that are drawn on an Alquist-Priolo Earthquake Fault Zoning Map or otherwise based on other substantial evidence of a known earthquake fault. (*Id.*) The standard does not require analysis of whether a proposed building site might contain active earthquake faults that are as-yet unmapped on the official Alquist-Priolo Earthquake Zoning Map. As a result, it is not necessary to have an Alquist-Priolo geological study to assess seismic impacts under CEQA. It therefore would make little sense to interpret CEQA to require that the EIR contain an Alquist-Priolo geological study. Moreover, courts do not have the authority to interpret CEQA or the Guidelines "in a manner which imposes procedural or substantive requirements beyond those explicitly stated in [CEQA or the Guidelines]." (§ 21083.1.)

There is only one known fault that is delineated on the Alquist-Priolo Earthquake Fault Zoning Map in the vicinity of the Integrated Projects: the Hayward fault. (See AR 4:818, 4:819, AR 104:15640 [2020 LRDP EIR showing campus map with Earthquake Fault Zone overlay], and AR 104:15640 [indicating that Earthquake Fault Zone for the Hayward fault is the only zone within the 2020 LRDP area].) As a result, it cannot be said that the EIR's description of the Integrated Projects' environmental setting fails to provide sufficient information to allow a legally adequate analysis of the Integrated Projects' seismic impacts.

Better Alternatives does not hold that either CEQA or Alquist-Priolo requires publication of an Alquist-Priolo geological study in an EIR. In *Better Alternatives*, the University published its Alquist-Priolo geological studies in its Draft EIR and responded to comments on those studies. (*Id.* at 667-68.) However, neither the holding nor the ruling of *Better Alternatives* depends on this fact.

Petitioners' argument that the geological study for the unapproved Maxwell Family Field Parking Structure site also needed to be in the EIR fails for the same reason that their argument regarding geological study of the SAHPC site fails. As explained above, CEQA does not require either (1) that an Alquist-Priolo geological study be published in any EIR; or (2) that an Alquist-Priolo geological study be completed before an EIR is certified. See, e.g., CGS's Special Publication 117, "Guidelines for Evaluating and Mitigating Seismic Hazards in California" (March 13, 1997):

Nothing in these guidelines is intended to negate, supersede, or duplicate any requirements of [CEQA] or other state laws and regulations. At the discretion of the lead agency, some or all of the investigations required by the Seismic Hazards Mapping Act may occur either before, concurrent with, or after the CEQA process or other processes that require site investigations.

(Respondents' Request for Judicial Notice, Exhibit 2.)

G. IMPACT ANALYSIS

1. Geology

Petitioner City argues that the EIR does not contain a legally adequate analysis of geology and seismic impacts. In fact, the City claims that the University gives "virtually no attention and no serious analysis to this significant life safety impact." (City of Berkeley's Opening Brief at p. 33.) For the reasons set forth below, the Court finds that the EIR contains a legally adequate analysis of the Integrated Projects' geological and seismic impacts.

The Draft EIR contains a 25-page chapter devoted exclusively to the discussion of geology, seismicity and soils. (AR 4:815-839.) The chapter begins with a discussion of the existing geology, both of the San Francisco Bay Area and of the University campus and its immediate surroundings. (AR 4:815-817.) It next describes the region's seismicity, mapping the eight major earthquake faults in the region, assessing the relative earthquake risk each fault poses, and showing on a map how the Hayward fault runs directly under CMS. (AR 4:817-819.) Next, there is a description of five different seismicity hazards (ground shaking, surface fault rupture, liquefaction, earthquake induced landslides, and earthquake

induced flooding) as well as three other hazards (landsliding, surface fault creep hazard, and expansive soils hazard) and the degree to which each hazard might affect the Integrated Projects area. (AR 4:820-24.) Following this, there is a description of the regulatory and policy framework affecting seismic issues. (AR 4:825-32.) This section describes state laws (California Building Code, Alquist-Priolo, the Seismic Hazards Mapping Act), University policies (University Policy on Seismic Safety, Seismic Action Plan for Facilities Enhancement and Renewal (“SAFER”) Program, Seismic Design Review, and the Disaster Resistant University Initiative), and the City’s policies (Berkeley General Plan and the Berkeley General Plan EIR). (*Id.*)

Following this discussion, the chapter presents the Standards of Significance the University used to assess seismic impacts. (AR 4:830.) These Standards of Significance come directly from Appendix G, section VI of the Guidelines. The chapter then proceeds to discuss impacts and mitigation measures. (AR 4:832-7.) This section incorporates several continuing best practices from the 2020 LRDP EIR. (AR 4:833-4) It then lists and discusses three categories of impacts: (1) effects found not to be significant, (2) less than significant impacts, and (3) significant impacts and mitigation measures. (AR 4:833-37.)

The EIR identifies two significant seismic impacts. These are the “exposure of people or structures to potential adverse effects, including the risk of loss, injury or death resulting from” rupture of a known earthquake fault, and

strong seismic ground shaking. (AR 4:836-837.) In identifying seismic impacts, the University properly focused on the Hayward fault, because it was then (and is now) the only “known” active earthquake fault in the vicinity of the Integrated Projects site. (See Guidelines, Appendix G, section VI.) The EIR explains that the impact stemming from potential fault rupture applies only to CMS, because it is the only component of the Integrated Projects that sits directly over a known earthquake fault. (AR 4:836 [“The Hayward Fault runs directly through the eastern portion of the UC Berkeley campus, and directly beneath the CMS.... The SAHPC and Maxwell Family Field and parking structure lie within the [Alquist-Priolo Earthquake Fault Hazard Zone], but active faults are not known to be located within the footprint of these structures”).

The analysis then addresses the CMS’s seismic safety directly:

The current ability of CMS to withstand fault displacement is considered poor. One of the goals of the Integrated Projects is to improve the structural condition of the CMS to withstand fault displacement without collapse of the structure. This would be a benefit of the proposed project. However, it is likely that, even with such improvements, the CMS would suffer structural damage that would require repair after the earthquake event; further, the proposed increase in capacity events at the CMS could increase exposure of people to risk. The CMS improvements would be designed to minimize the potential for structural collapse, thereby protecting against injury or loss of life.

The degree of risk due to fault rupture cannot be quantitatively expressed with the current information. Such risk will be strongly influenced by the structural design details yet to be developed; however, the risk cannot be completely mitigated by any design. Therefore, while the mitigations suggested below would reduce risks, the impact is considered significant and unavoidable.

(AR 4:836.) The analysis of the impact from strong seismic ground shaking is as follows:

The project is located in a seismically active region. Ground shaking potentially damages buildings, infrastructure and other structures, and exposes people to risks associated with falling objects and potential structural collapse. In recognition of the prevailing earthquake hazard near UC Berkeley, the University of California has implemented a process for the design and retrofit of new and existing facilities that applies the best available engineering procedures to maximize safety and resiliency. The current ability of CMS to withstand strong seismic ground shaking is considered poor. One of the goals of the Integrated Projects is to improve the structural condition of the CMS to withstand strong seismic ground shaking without collapse of the structure.

The structural design of buildings within the Integrated Projects would comply with UC seismic policy governing design and construction in seismically active areas, and requiring the use of the most stringent codes whether federal, state or local. The degree of risk due to strong shaking cannot be quantitatively expressed with the current information. Such risk will be strongly influenced by the structural design details yet to be developed; however, the risk cannot be completely mitigated by any design. Therefore, while the mitigations suggested below would reduce risks, this impact is considered significant and unavoidable.

(AR 4:837.)

Consistent with Guidelines section 15126.4, the EIR proposes a mitigation measure to address these impacts: to delay scheduling additional events at CMS until the CMS seismic improvements are complete. (AR 4:836-7.) The Regents adopted this mitigation, which makes it enforceable. (AR 3:508; see also Guidelines § 15126.4(a)(2).) The EIR acknowledges that this mitigation measure will only partially mitigate the impacts from fault rupture and ground shaking.

(AR 4:8360.) As a result, the EIR concludes that both impacts are significant and

unavoidable. (AR 4:836-837, 7:1502.)

The EIR's analysis of seismic impacts satisfies the University's CEQA obligation for investigation and disclosure of seismic impacts. Substantial evidence in the record demonstrates that the EIR provides full public disclosure of the seismic impacts of the Integrated Projects and fully informs the public decision-maker about the seismic impacts the Integrated Projects might pose. (AR 4:815-39.)

The EIR assumes that active faults do not underlie the footprints of any proposed new buildings, based on the available information from studies to date. If subsequent investigations were to prove otherwise, those buildings would have to be relocated and/or redesigned, with whatever additional CEQA review as might be necessary. It would make little sense to analyze seismic impacts of such new buildings based on an assumption that an active fault underlies their footprints if Alquist-Priolo and University policies would prohibit their construction.

The City makes five specific arguments regarding the EIR's analysis of seismic impacts. The City's first argument is that compliance with Alquist-Priolo and identification of fault locations must be part of CEQA analysis. (See City's Opening Brief, filed July 23, 2007, p. 33.)

The City's second argument is that the EIR does not analyze the feasibility of the CMS retrofit and that "there is no commitment to actually commencing any portion of the seismic improvements." However, substantial evidence in the record shows that the University has studied the seismic condition of CMS for

many years, and that it is confident that the seismic improvements it proposes are feasible. (See *e.g.*, AR 98:14580; 99:14725 [CMS Master Plan Programming and Feasibility Study]; AR 101:14853-80 [Studios Architecture/Forrell Elsesser Structural Engineers CMS Concept Study]; AR 36:8972 [Swinerton Builders cost estimate for supporting west wall of CMS while a new structure is constructed behind it].)

Substantial record evidence also shows that the University's commitment to retrofit the CMS to the extent legally, financially, and practically feasible is one of the primary motivations for pursuing the Integrated Projects. (See, *e.g.*, AR 52:13182-83, 13230-32, 134460-47 various SRC Meeting Notes from 2005-2006), 13457-92 [Executive Campus Planning Committee Concept Approval Item re: CMS, Seismic Safety Corrections]; see also AR 76:14033 [Phase 2 and 3 schematic design drawings]). The Integrated Projects propose a construction schedule from Winter 2008/2009 to Summer 2010 for Phase 2 of the CMS Project and from Winter 2009/2010 to Fall 2012 for Phase 3. (AR 4:693 [Table 3-6: Preliminary Construction Phasing for California Memorial Stadium.] The EIR simply indicates that the construction schedule depends upon fundraising. (AR 4:692.)

The City's third argument is that the EIR does not analyze pre-retrofit impacts of CMS to the SAHPC. Specifically, the City accuses the University of failing to study the possibility that, after the Student Athlete High Performance Center is built but before the CMS seismic improvements are complete, the west

wall of CMS might collapse onto the Student Athlete High Performance Center. First, the EIR discusses this risk. (AR 15:3617.) Second, there is no evidence that this risk will be any greater after the Student Athlete High Performance Center is built than it is now. The number of people expected to walk through the plaza on game days is substantially the same as the number who currently pass through the existing pathways. As stated in the Draft EIR, "impacts associated with unstable soils are considered less than significant provided that recommendations in the geotechnical investigation report are implemented." (AR 4:835.) As indicated by Vice Chancellor Denton at The Regents' December 2006 meeting, "from all of our trenches...we determined that the soil under the west wall of the stadium is actually quite stable.... It is very doubtful there would be any collapse of the west wall of the stadium." (AR 3:538.)

The City's fourth argument is "seismic impacts cannot be dismissed as 'existing conditions.'" (City's Opening Brief, filed July 23, 2007, p. 36.) This is not what the EIR does. The EIR conservatively discusses all seismic impacts. (AR 4:834-37.) CMS's poor seismic rating is an existing condition, which construction of the SAHPC will not exacerbate. (AR 8:1735.)

The City's fifth argument is that the EIR does not analyze whether faulting will prohibit construction of the Maxwell Family Field Parking Structure at its proposed location. (City's Opening Brief, filed July 23, 2007, p. 36.) This is no different from the argument about the SAHPC. The EIR assumes that that no active faults underlie the parking structure's footprint, and describes how the

University will comply with Alquist-Priolo for the Maxwell Family Field site.
(AR 4:836.)

2. Emergency Access

The City argues that the University has ignored emergency access impacts because the existing emergency access conditions are problematic. The crux of the City's argument is that the EIR does not "analyze how [the Integrated Projects] would affect or exacerbate existing conditions," as is required by Guidelines section 15126.2. The EIR's analysis of emergency access impacts is sufficient.

The Draft EIR contains a 17-page chapter containing analysis of the emergency access impacts of the Integrated Projects (AR 5:900-16), and the Final EIR devotes at least seven additional pages to this topic. (AR 7:1609-15 [containing thematic responses relating to CMS events and to emergency response].) For several reasons the EIR concludes that the Integrated Projects will cause less than significant impacts for emergency access – even though an increase in the number of capacity events at the CMS is planned. (AR 5:906-916.) Among the reasons for this conclusion are that the Integrated Projects will dramatically improve the seismic performance of CMS (AR 4:836, 5:914), reduce CMS's seating capacity from approximately 72,000 to 60,675 people (AR 5:914, 7:1610), provide access for persons with disabilities (AR 4:659, 5:914, 7:1649), and improve vehicular circulation in the vicinity of CMS by (1) moving concession stands and portable bathroom facilities from Stadium Rim Way into CMS to create a perimeter loop that can accommodate emergency vehicles (AR

4:661-663); and (2) deeding land to the City to improve safety conditions at Canyon Road. (AR 5:914, 7:1614.) The University agreed to pay the City \$1,200,000 annually, adjusted by 3% each year, to mitigate impacts from University development under the 2020 LRDP. (AR 180:36960.) This amount includes annual payments of \$600,000 for fire and emergency services and \$200,000 for sewer improvements. (AR 180:36961.)

Substantial record evidence also demonstrates that poor vehicular access to the Panoramic Hill neighborhood is an existing condition that the Integrated Projects will not exacerbate. (AR 5:908-13.) Respondents treated emergency access issues as existing conditions. For example, existing access conditions for Panoramic Hill are very restricted. (See AR 30:7427, AR 48:12076 [“There is only one road into the neighborhood, Panoramic Way, and it is narrow and switches back and forth like good hiking trails cut for steep terrain.... Though the road was never properly graded, it was eventually paved, and though discussions to create a second access road took place, Panoramic Way has retained its original form and remains the only access road to the Panoramic Hill Neighborhood”].) The area has a special zoning designation, ES-R, Environmental Safety-Residential, reserved for areas of the City with substandard vehicular access in proximity to known fire and earthquake hazards. (AR 4:908.) The steep narrow streets lined with cars parked along both sides make it nearly inaccessible to emergency vehicles. (AR 30:7430.)

Substantial evidence in the record supports the University’s analysis and

determinations regarding emergency access impacts.

H. CULTURAL RESOURCES

Oaks alleges that the University failed to follow 2020 LRDP Continuing Best Practice CUL-2-a to mitigate impacts to cultural resources caused by the as yet unapproved Phases 2 and 3 of the CMS Project and that the University “abandoned” 2020 LRDP Mitigation Measure CUL-4-a, as it applies to the Student Athlete High Performance Center. (Oaks Brief at 37-38.)

An EIR must describe feasible measures that could minimize the significant adverse impacts of a proposed project. (See Guidelines § 15126.4(a).)

“Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” (Guidelines § 15126.4(a)(2).)

The Integrated Projects include a Mitigation Monitoring and Reporting Program (AR 7:1546-1598) that incorporates applicable 2020 LRDP EIR mitigation measures, and complies with the Guidelines.

The EIR states that, “where applicable, the Integrated Projects would incorporate” ten mitigation measures and continuing best practices from the 2020 LRDP that are designed to mitigate potential impacts to cultural resources. (See AR 4:789-92.) Two of these are 2020 LRDP Continuing Best Practice CUL-2-a, and 2020 LRDP Mitigation Measure CUL-3. (AR 4:789-90.) Oaks contends that the University failed to follow Continuing Best Practice CUL-2-a, which states:

If a project could cause a substantial adverse change in features that convey the significance of a primary or secondary resource, an Historic Structures Assessment (HSA) would be prepared.

Recommendations of the HSA made in accordance with the Secretary of the Interior's Standards would be implemented, in consultation with UC Berkeley Design Review Committee and the State Historic Preservation Office, such that the integrity of the significant resource is preserved and protected. Copies of all reports would be filed in the University Archives/Bancroft Library.

(AR 4:790.)

2020 LRDP Mitigation Measure CUL-3, which controls if compliance with 2020

LRDP Continuing Best Practice CUL-2-a is not feasible, states:

If, in furtherance of the educational mission of the University, a project would require the demolition of a primary or secondary resource, or the alteration of such a resource in a manner not in conformance with the Secretary of the Interior's Standards, the resource would be recorded to archival standards prior to its demolition or alteration.

(AR 4:790.)

These measures are not contradictory. The plain language of 2020 LRDP Mitigation Measure CUL-3 demonstrates that it is an alternative or supplement to 2020 LRDP Continuing Best Practice CUL-2-a. If the University determines that furtherance of its educational mission outweighs an unavoidable harm that implementation of the Integrated Projects poses to a cultural resource, the University may record the cultural resource to archival standards and proceed to implement its project. This determination would be set forth in a Statement of Overriding Considerations, as required by Guidelines section 15093.

The University applied Continuing Best Practice CUL-2 a to the CMS Project, and concluded that the CMS Project largely satisfies the overall goal of Continuing Best Practice CUL-2-a. (AR 45:11263-66.) To the extent that impacts

to historical resources at CMS remained potentially significant, then the University determined, based upon substantial evidence in the record, that the CMS Project should move forward, subject to compliance with 2020 LRDP Mitigation Measure CUL-3. (AR 3:459-462.)

To implement Continuing Best Practice CUL-2-a, the University prepared a Historic Structure Report (“HSR”) for the CMS (AR 36:8774), its landscape (AR 21:5371), the portion of Piedmont Avenue in the vicinity of the Integrated Projects (AR 24:5860), each of the Piedmont Avenue houses (AR 24:6010, AR 25:6192, AR 25:6384, AR 26:6556, AR 27:6744), each of the College Avenue houses that might be replaced by the Law and Business Connection building (AR 20:5021 and AR 23:5690), and Calvin Laboratory (AR 22:5534).

To implement the recommendations of the 1999 CMS HSR, the University consulted with the UC Design Review Committee (“DRC”) and with the State Historic Preservation Office (“SHPO”). Over the course of eleven months, the DRC discussed the CMS Project six times. (AR 52:13233-48; 53:13448.) For example, minutes from the DRC’s October 2005 meeting show that: (1) in reviewing the SAHPC, the DRC was concerned to “mitigate the visual impact of the building from the west” (AR 52:13246); and (2) in reviewing designs for the Phase 2 press box, the DRC “remains more supportive of a light, low, horizontally oriented structure than a larger, more bulky, two-story structure.” (*Id.*) The minutes from the DRC’s December 2005 meeting explain how the massing of the Student Athlete High Performance Center enhances the historical character of

CMS:

Moving the Student Athlete High Performance Center outside the Stadium wall allows for enhancement of the classical quality of the space by removing the various eras of window inserts in the Stadium arches. This improves the building, and returns it much closer to the original design concept.

(AR 52:13243.) The chair of the DRC and the Dean of the University's College of Environmental Design noted during the DRC's January 2006 meeting, "that the design is evolving in a direction which is unprecedented for an athletic stadium and quite unlike the large, boxy, vertical additions that are frequently seen at older stadiums." (AR 52:13238.) At its January 2006 meeting, the DRC recommended that the University "[c]onsider grouping lights on the east rim into more vertical assemblies, perhaps with each column of lights on a single pole, rather than a bank of lights supported by two poles" in order to emphasize the verticality of lighting elements, akin to flagpoles. (AR 52:13239.) The University incorporated these and other DRC recommendations into the design of the CMS Project.

The University also consulted with the SHPO at its meetings in February and November 2006. (AR 45:11263, 47:11715.) The SHPO thanked the University for its "regular consultation" with SHPO staff regarding the Integrated Projects. (AR 13:3045.) At the SHPO's final review of the CMS Project, on November 8, 2006, three SHPO officials commended the University's design for the CMS Project. One SHPO official called the CMS Project "a breath of fresh air" and asked if the SHPO could share the design with others as an example of how to approach a historic stadium. (AR 45:11266.) Another SHPO official said

the way the SAHPC is incorporated into the landscape is “very successful.” (*Id.*) Yet another SHPO official noted that the “design is additive, and is not taking anything away from the historic buildings.” (*Id.*)

Despite the fact that the University’s design for the CMS Project is largely consistent with the recommendations of the 1999 CMS HSA, the University determined that some elements of the design are inconsistent with it. (See, *e.g.*, AR 4:804-05.) Accordingly, the EIR found that some aspects of the Integrated Projects would significantly impact some features that contribute to the historic significance of CMS. Consistent with 2020 LRDP Mitigation Measure CUL-3, these features will be recorded to archival standards prior to alteration. (See AR 3:459-62 [findings implementing Mitigation Measures CUL-IPE-7-a, CUL-IPE-8, CUL-IPE-9, CUL-IP-10 b, CUL-IPW-12].)

Oaks argues that the University “shirked its duty” to enforce or that it “altered” 2020 LRDP Mitigation Measure CUL-4-a. The Court disagrees for two reasons. Mitigation Measure CUL-4-a states:

UC Berkeley will create an internal document: a UC Berkeley Campus Archaeological Resources Sensitivity Map. The map will identify only the general locations of known and potential archaeological resources within the 2020 LRDP planning area. For the Hill Campus, the map will indicate the areas along drainages as being areas of high potential for the presence of archaeological resources. If any project would affect a resource, then either the project will be sited to avoid the location or, in consultation with a qualified archaeologist, UC Berkeley will determine the level of archaeological investigation that is appropriate for the project site and activity, prior to any construction or demolition activities.

(AR 4:790.)

First, the Campus Archaeological Resources Sensitivity Map is an internal document for campus use, consistent with various laws regulating the disclosure of archaeological resources, so Oaks' claim that the University did not publish the document is without merit. (See Government Code § 6254.10 [Public Records Act provision providing that "Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports..."]; see also AR 111:17480.) Second, by its own terms, this mitigation measure requires the University to consult with an archaeologist and to determine an "appropriate" level of archaeological investigation "prior to any construction or demolition activities." (AR 4:790.) The University has not yet begun construction or demolition, so Oaks' claim that the University violated the mitigation measure is premature.

I. OBJECTIVES AND ALTERNATIVES ANALYSIS

Oaks and Panoramic argue that the project objectives in the EIR violate CEQA, because they relate to all the Integrated Projects as a whole. Oaks and Panoramic contend that the EIR should set forth a separate set of project objectives for each of the seven Integrated Projects. Petitioners also allege that the EIR's alternatives analysis is legally inadequate in two ways. First, Petitioners contend that the University's selection of alternatives to the proposed project is flawed. Second, Petitioners argue that the EIR's analysis of the five identified alternatives is flawed.

Guidelines section 15124(b) provides that a project description and EIR

must contain a "statement of the objectives sought by the proposed project." A clearly written statement of objectives helps the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. (*Id.*) The statement of objectives "should include the underlying purpose of the project." (*Id.*)

Guidelines section 15126.6 addresses the selection of alternatives for analysis in an EIR:

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The Lead Agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Goleta*, 52 Cal.3d 553; and *Laurel Heights I*, 47 Cal.3d 376.)

(Guidelines § 15126.6(a).)

Factors to consider when addressing the feasibility of alternatives include: "site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries... and whether the project proponent can reasonably acquire, control or otherwise have access to the alternative site." (Guidelines § 15126.6(f)(1).)

An EIR must discuss alternatives that could avoid or substantially lessen 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 Guidelines § 15126.6(b).)

The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the Lead Agency but were rejected as infeasible during the scoping process and briefly explain reasons underlying the Lead Agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:

- (i) failure to meet most of the basic project objectives;
- (ii) infeasibility; or (iii) inability to avoid significant environmental impacts.

(Guidelines § 15126.6(c).)

The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.... If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternatives shall be discussed, but in less detail than the significant effects of the project as proposed.

(Guidelines § 15126.6(d).)

An EIR must contain an analysis of a "No Project" alternative. (See Guidelines § 15126.6(e)(1).)

The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published..., as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(Guidelines § 15126.6(e)(2).)

When resolving Petitioners' claims regarding objectives and alternatives, the court applies the substantial evidence test. (Sections 21168 and 21168.5; see also *Western States Petroleum*, 9 Cal.4th at 573.) Because the establishment of project objectives is linked to the selection and analysis of project alternatives, both topics are addressed in this section. For the reasons set forth below, the court concludes that: (1) the EIR contains legally adequate project objectives; (2) the EIR identifies a range of reasonable alternatives to the Integrated Projects; and (3) the EIR analyzes these alternatives in a legally adequate manner.

Pursuant to CEQA, the Integrated Projects Draft EIR contains a section, at Chapter 3.1, called "Objectives of the Integrated Projects." (AR 4:630-31.) The objectives are:

- I. Provide seismically safe facilities for students, staff and visitors.
- II. Plan the Integrated Projects to promote and inspire relationships vital to the health of the University: between athletics and academics, among academic units, and between the University and the public, including community and neighbors, alumni, prospective students and donors.
- III. Enhance remarkable historic places, and create extraordinary new spaces, in the southeast campus.
- IV. Facilitate access to, between, and through the Integrated Projects for vehicles, transit, bicycles, pedestrians, the disabled, and emergency services and vehicles.
- V. Increase the functionality of existing spaces and facilities in the Southeast Campus.
- VI. Consolidate parking, reducing the prevalence of surface parking in the landscape of the southeast campus.

VII. Implement policies of the 2020 LRDP, among others:

a) Seismic safety policies of the 2020 LRDP: Eliminate poor and very poor seismic ratings in campus buildings through renovation or replacement.

b) Collaborative and interactive program policies of the 2020 LRDP: Build a campus that fosters intellectual synergy and collaborative endeavors both within and across disciplines. Create places of interaction at key nodes of activity. Prioritize campus park spaces for programs that directly engage students in instruction and research. Prioritize space on the adjacent blocks for other research, cultural and service programs that require campus park proximity.

c) Parking policies of the 2020 LRDP: Increase the supply of parking to accommodate existing unmet demand and future campus growth. Minimize private vehicle traffic in the Campus Park. Locate new campus parking at the edge or outside the Campus Park. Replace and consolidate existing university parking displaced by new projects.

d) Stewardship policies of the 2020 LRDP: Plan every new project as a model of resource conservation and environmental stewardship. Maintain and enhance the image of the campus, and preserve our historic legacy of landscape and architecture. Preserve and maintain significant views, natural areas, and open spaces in the Campus Park.

e) Access policies of the 2020 LRDP: Ensure the Campus Park provides full access to users at all levels of mobility.

(AR 4:630-1.)

Because the EIR is tiered from the 2020 LRDP EIR, it provides that “[t]he Integrated Projects have been designed to meet a series of objectives as outlined in the 2020 LRDP.” (AR 4:697.)

An EIR’s statement of project objectives helps a lead agency to develop a reasonable range of alternatives to evaluate in the EIR (Guidelines section

15124(b)), and an EIR must analyze alternatives to the project as a whole. (See, *Big Rock Mesas Property Owners Association v. Board of Supervisors of the County of Los Angeles* (“*Big Rock*”) (1977) 73 Cal.App.3d 218, 227 [“The pertinent statute and EIR Guidelines require that an EIR describe alternatives to the proposed project. We interpret such requirement as applicable only to the project as a whole, not to the various facets thereof, such as grading and access roads”]; see also *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 235.) *Big Rock* applies to this case. The access road in *Big Rock* is no less integral to the housing project in that case as, for example, the Southeast Campus and Piedmont Avenue Landscape Improvements are to the Integrated Projects.

It follows from Guidelines section 15124(b) and *Big Rock* that project objectives can help a lead agency to develop and evaluate alternatives to the project as a whole only if the objectives themselves also apply to the project as a whole. Requiring separate project objectives for each component of a project would confuse the identification and evaluation of project alternatives, which is central to CEQA environmental review. (*Laurel Heights I*, 47 Cal.3d at 400.)

As explained above, the University did not violate CEQA by treating the Integrated Projects as one “project” for CEQA review. Accordingly, the University’s decision to publish in its EIR one statement of objectives for the Integrated Projects complies with CEQA. While not required under CEQA, it should be noted that the EIR does, in fact, explain the objectives that each of the seven Integrated Projects serves. (AR 4:632-33.)

Panoramic argues that the EIR's statement of objectives violates Guidelines section 15124(b) because it is too vague. Oaks argues that the statement of objectives is at once too vague and too narrow. The statement of objectives satisfies the requirements of Guidelines section 15124(b). It is clear from the EIR that the University's purpose in executing the Integrated Projects is to improve the Southeast Campus in several ways. The EIR's statement of objectives clearly states the underlying purposes of these improvements.

The Oaks Petitioners and Panoramic also argue that the project objectives are rigged to enable the University to reject each alternative easily. To support the argument, The Oaks Petitioners claim, for example, that the EIR "gives no context for the conclusion that [deficiencies in the quality and quantity of athletic training facilities] exist." The argument misconstrues CEQA. CEQA does not require an EIR to explain why a project proponent has chosen to pursue its objectives.¹⁶ The only requirement that CEQA imposes upon an EIR's statement of objectives is that the statement be clear and include the project's underlying purpose. (See Guidelines § 15124(b).) As explained above, the statement of objectives set forth in the EIR fulfills this requirement.

1. The EIR Identifies a Reasonable Range of Alternatives to the Integrated Projects

The EIR analyzes five alternatives to the Integrated Projects: (1) No

¹⁶ Nonetheless, the record contains an abundance of evidence that the University's athletic training facilities are substandard. (AR 14:3437, 3460-61, 41:10138.)

Projects Alternative; (2) Projects With No New Parking Alternative; (3) Reduced Size Alternative; (4) Dispersed Program – Berkeley Alternative; and (5) Dispersed Program – Albany Alternative. (See AR 5:988.) The EIR describes each of the five alternative projects as well as the University's rationale for selecting them. (See AR 5:988-1012.) It discusses each alternative's impacts in each of ten substantive areas: (1) aesthetics; (2) biological resources; (3) cultural resources; (4) geology; seismicity, and soils; (5) hydrology and water quality; (6) land use; (7) noise; (8) public services-emergency access; (9) transportation and traffic; and (10) utilities and service systems. (*Id.*) The EIR also analyzes each alternative's ability to meet the project objectives of the Integrated Projects. (*Id.*)

CEQA Guidelines section 15126.6(e) specifically requires an analysis of the No Project Alternative.

The Projects With No New Parking Alternative is identical to the proposed Integrated Projects, except that it does not include the construction of a new parking facility under the Maxwell Family Field. (See AR 5:992.)

The Reduced Size Alternative involves a reduction in the size of the SAHPC, the Law and Business Connection, and the Maxwell Family Field Parking Structure, as well as potential reductions in the size of the press box and seating structure proposed for CMS. (AR 5:994-97.)

The Dispersed Program – Berkeley Alternative involves the relocation of three of the Integrated Projects to other locations in the City or on University property. (AR 5:997-1006.) The three projects are the houses at 2241 and 2243

College Avenue, the SAHPC, and the Maxwell Family Field Parking Structure (whose parking capacity would be created at one or more other sites). (AR 5:997-98.)

The Dispersed Program – Albany Alternative involves the relocation of the SAHPC and the construction of a new stadium at the Golden Gate Fields site, on the border between Berkeley and Albany. (AR 5:1006.)

CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose. An EIR for any project subject to CEQA review 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 (Pub. Resources Code §21002); and (2) may be ‘feasibly accomplished in a successful manner’ considering the economic, environmental, social and technological factors involved. (§21061.1; Guidelines §15364; *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167.)

There is no need to consider alternatives that would change the basic nature of a project. (See *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach* (“Larson”) (1993) 18 Cal.App.4th 729, 745 [“What is reasonably feasible must be decided in light of the nature of the project and as of the time the FEIR is adopted.”].) The fundamental purpose of an EIR’s alternatives analysis is to facilitate identification and discussion of ways to achieve

a project's objectives with as little adverse environmental impact as possible. A lead agency's selection of alternatives should be guided by the proposed project's significant adverse environmental impacts.

In this case, the EIR identifies 14 significant and unavoidable, or potentially significant and unavoidable, impacts.¹⁷ Other significant impacts are mitigated to a level where they are less than significant. (AR 7:1528-1545.) These 14 impacts fall into six categories: aesthetics, cultural resources, geology/seismicity, noise, traffic, and utilities. Putting aside the No Projects Alternative, the Court finds that one or more of the other four alternatives analyzed in the EIR addresses 13 of these 14 impacts – and five of the six categories of impacts.¹⁸ (AR 5:992-1011.) Substantial evidence in the record demonstrates that the alternatives analyzed in the EIR could feasibly attain most of the basic objectives of the Integrated Projects. As a result, the Court finds that the range of alternatives in the EIR meets the standards set forth in *Goleta* and in Guidelines section 15126.6. (See *Goleta*, 52 Cal.3d at 566.)

Petitioners make five arguments to support their claims that the range of

¹⁷ These 14 impacts are identified in the EIR as: (1) AES-IPE-4; (2) AES-IPE-5; (3) CUL-IPE-7; (4) CUL-IPE-8; (5) CUL-IPE-9; (6) CUL-IPW-10; (7) CUL-IP-12; (8) GEO-IP-5; (9) GEO-IP-6; (10) NOI-IPE-5; (11) NOI-IP-6; (12) TRA-IP-3; (13) TRA-IP-4; and (14) USS-IPE-1.2. (See generally, AR 7:1528-45.)

¹⁸ None of the alternatives analyzed in the EIR addresses impact USS-IPE-1.2, which is the temporary, construction-related impact of the Integrated Projects on wastewater collection systems. (AR 7:1545.)

alternatives analyzed in the EIR does not satisfy CEQA's requirements.

First, they argue that the Integrated Projects' combined statement of objectives allows the University to reject otherwise feasible alternatives to the Integrated Projects on the grounds that they fail to meet overall Integrated Projects objectives that may or may not be related to the seven individual projects. However, as discussed above, the University did not violate CEQA by preparing a single statement of objectives for the Integrated Projects. CEQA requires a lead agency to identify and analyze alternatives to the project as a whole. (See Guidelines §§ 15126.6, 15378; see also *Big Rock*, 73 Cal.App.3d at 227.)

Second, Petitioners argue that the University should have analyzed more alternatives that involve relocating CMS. Guidelines section 15126.6(a) makes analysis of alternative locations optional. (See *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704, 712-714 [holding that EIR's alternatives analysis containing no off-site alternatives was legally adequate]; see also *Goleta*, 52 Cal.3d at 566 ["... any project subject to CEQA review must consider a reasonable range of alternatives to the project, or to the location of the project"].) Evidence in the record demonstrates that the CMS is a valuable historic resource that is rooted deeply in the life of the University and that relocating it is, for the University, essentially unthinkable. (AR 46:11419-20.) Substantial evidence demonstrates that rehabilitation of CMS is part of the basic nature of the Integrated Projects. (AR 4:632, 670-74.) CEQA does not require an EIR to consider an alternative that would change the basic nature of a project.

(See *Larson*, 18 Cal.App.4th at 745.)

Third, Petitioners argue that the University purposefully selected alternatives that were easily rejected because of the significant impacts they created. As explained above, the University identified and analyzed a range of reasonable alternatives to the Integrated Projects. The fact that the University ultimately rejected these alternatives in favor of the proposed Integrated Projects does not render the selection of these alternatives legally invalid. If this were the case, then a project subject to CEQA might never be approved. (*Cf. Residents Ad Hoc Stadium Committee v. Board of Trustees of the California State University and Colleges* (“*Ad Hoc Stadium*”) (1979) 89 Cal.App.3d 274, 284-85 [an agency’s “institutional bias” in favor of a project “cannot be a bar to compliance”].)

Fourth, Panoramic and the City argue that a host of alternatives that the EIR does not consider proves that the University failed to identify a reasonable range of alternatives. For example, Panoramic argued in its brief, and at oral argument, that “it was entirely unreasonable” for the University not to consider an alternative with a smaller SAHPC that would fit entirely within the footprint of CMS. (See Panoramic OB at 34-39.) The crux of the argument is that the University has not explained why it needs to build the SAHPC in its proposed location, at its proposed size, and as Phase 1 of the CMS Project, especially given the fact that in earlier iterations of the design for the CMS Project, the SAHPC fit entirely within the existing CMS walls and was smaller than the proposed SAHPC.

However, the record contains substantial evidence supporting the University's decision to build the SAHPC as currently proposed. Moreover, the record also contains substantial evidence that the University undertook a lengthy process to design the CMS Project. The Record indicates that many years of planning for seismic corrections to CMS alone preceded planning for the current CMS Project. (AR 35:8559, 8631.) The campus has examined possible projects for the CMS that combined seismic strengthening and program improvements. (AR 36:8902, 39:9467.) Numerous concept designs and variants to develop seismically-safe program space were analyzed, including looking at excavating beneath the eastern seats in the CMS (AR 32:7870), building a new structure at Witter Rugby Field (*id.*), removing the west wall of the CMS and replacing it with an eight-story glass enclosed structure (*id.*), or building a separate structure to the west of the CMS. (AR 98:14626.) A number of the analyzed schemes included a new building extending west of the existing CMS footprint. (AR 32:7876, 7897, 36:8944, 37:9175, 38:9379, 39:9493.)

In late 2004 and early 2005, the Chancellor appointed a committee to address the CMS seismic corrections and the creation of state-of-the-art strength and conditioning facilities, more sports medicine services, and expanded locker and meeting areas for football and other Cal sports teams (AR 37:9170), and to consider the space needs of the Haas School of Business and the School of Law, with an integrated academic and athletic facilities project in the Southeast campus. (AR 38:9335, 42:10451.) Over the next year the campus and its architectural and

structural engineering consultants explored multiple planning concepts for the CMS. (See, e.g., AR 32:7867 [November 2004 study]; AR 101:14853 [February 2005 concept study].) The design team studied the possibility of performing the seismic corrections to the CMS in a first phase, but concluded that the removal of the CMS occupants was a necessary prerequisite before implementing the proposed seismic corrections. (AR 53:13322.) One design goal for the SAHPC was to provide space to relocate the current occupants from the CMS (AR 98:14646); the campus sought to accomplish this without the additional expense of temporary facilities. (AR 99:14708.) Ultimately, the committee and design team concluded that the current design of the SAHPC, placed largely below ground in order to preserve views of the west wall of the CMS while also creating a large plaza to the west of the CMS to improve circulation and emergency access, presented the best design solution. (AR 98:14626.)

In part because substantial evidence in the record supports the University's determination that the proposed CMS Project represents the best way to achieve the University's numerous CMS-related goals, the Court cannot conclude that the University's failure to analyze in the EIR one or more of the alternatives cited by Petitioners renders unreasonable the University's selection of alternatives to analyze in the EIR. (AR 3:533-34; see also AR 8:1728 [The location of the SAHPC "also satisfies a primary campus goal of moving the students and staff that occupy the existing structure outside of it, thus allowing future work on the existing seismically poor facility to occur"; the SAHPC "increases the

connectivity of the Stadium and its surroundings to the campus, improves accessibility to the Stadium, provides necessary adjacencies between the athletic programs and playing fields, creates a necessary open space to handle the large game day crowds and satisfies the athletic program for the multiple sports programs that use this facility as a training base”]; AR 99:14646.)

Panoramic also argues that the University should have analyzed an alternative that assumed the SAHPC to be an addition or alteration to CMS. (See Panoramic’s Opening Brief, filed July 23, 2007, p. 39.) Even if the SAHPC were deemed legally to be an addition or alteration under Alquist-Priolo, its design would not change, so its environmental impacts also would not change. Analyzing this alternative was not required.

Fifth, Panoramic argues that the University’s decision to withdraw two alternatives from consideration because they are infeasible is not supported by substantial evidence.¹⁹ (Panoramic’s Opening Brief, filed July 23, 2007, p. 37 [referring to the West Grandstand Facility Alternative and the West Grandstand/East Rim Facilities Alternative, described in the Draft EIR at AR 5:1012].) The feasibility analysis approved in March 2005 explains that the University found these two alternatives to be infeasible, because: (1) construction

¹⁹ A third alternative for the SAHPC that was withdrawn from consideration, the CMS Expansion Alternative, called for the construction of a new eight story building at the west side of the CMS. Petitioners have not challenged the withdrawal of this alternative. (See AR 5:1012.)

staging will require football games to be held elsewhere for one to two years (see AR 99:14708); and (2) the three alternatives do not meet all the programmatic goals of the CMS Project. (AR 98:14621 [explaining that there is not enough space within the CMS to satisfy all the programmatic requirements of the CMS Project]); AR 99:14645 [showing the feasibility analysis recommended solution places the SAHPC entirely outside the CMS, with a shape and volume essentially the same as shown in the EIR].) These reasons satisfy the standard for “infeasibility.” (See *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509; *Marin Municipal, supra*, 235 Cal.App.3d at 1666.)

2. ANALYSIS OF INDIVIDUAL ALTERNATIVES

The EIR identifies five alternatives to the Integrated Projects as a whole, analyzes each alternative’s impacts in each of ten substantive areas, and analyzes each alternative’s ability to meet the project objectives of the Integrated Projects. The EIR’s alternatives analysis appears not only in verbal form, but also in graphical form in the chart that summarizes the impact-by-impact analysis of each of the five alternatives. (AR 5:989.) The Final EIR contains additional analysis of the alternatives, including a thematic response about the substitutability of alternatives, and provides additional matrices comparing the alternatives on a project-by-project basis. (AR 7:1615-1623.)

A rule of reason governs an EIR’s analysis of project alternatives. (See Guidelines § 15126.6(a); *Ad Hoc Stadium, supra*, 89 Cal.App.3d at 286 [“The discussion of alternatives need not be exhaustive, and the requirement as to the

discussion of alternatives is subject to a construction of reasonableness”]; see also *Foundation for San Francisco’s Architectural Heritage v. City and County of San Francisco* (“*SF Architectural*”) (1980) 106 Cal.App.3d 893, 910.)

The analysis of alternatives need not be as detailed as the analysis of the proposed project. (See Guidelines § 15126.6(d).) A good faith effort on the part of the lead agency is required; perfection is not:

Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives, so far as environmental aspects are concerned. It is only required that the officials and agencies make an objective, good-faith effort to comply.

(*Ad Hoc Stadium*, 89 Cal.App.3d at 287-88; see also *SF Architectural*, 106 Cal.App.3d at 910.)

In this case, the University’s analysis of alternatives to the Integrated Projects is legally adequate. The University’s good faith compliance is evident throughout the EIR’s analysis of alternatives. (AR 5:988-1011; 7:1615-1623; *cf. Save SF Bay*, 10 Cal.App.4th at 935.) The EIR’s discussion of project alternatives is straightforward and clear. In plain English, it indicates the ways that each alternative is superior to – and inferior to – the proposed Integrated Projects. (*Id.*)

a. “No Project” Alternative

In compliance with Guidelines section 15126.6(e), the EIR describes and analyzes a No Project Alternative. (AR 5:989-91.) Consistent with Section 15126.6(e), the No Project Alternative assumes that “none of the proposed

components of the Integrated Projects would take place,” and that existing rules governing campus planning and expansion would remain as they currently exist. (AR 5:989-90.) Like the EIR’s analysis of each of the other project alternatives, the analysis of the No Project Alternative systematically analyzes the No Project Alternative’s impacts in each of ten substantive areas, and analyzes the No Project Alternative’s ability to meet the project objectives of the Integrated Projects. (AR 5:989-91.) This analysis is legally adequate.

Oaks suggests that the No Project Alternative is deficient because it does not account for improvements to CMS that would occur under existing programs to improve seismic safety. As established in the record at AR 52:13187, the greatest challenge to the campus seismic retrofit program is funding. Intercollegiate athletics is an auxiliary enterprise (AR 20:4971); auxiliary enterprises must be self-supporting. (AR 37:9284.) Thus, neither the timeline nor the scope of seismic projects for athletic facilities can be assured, and Oaks’ argument fails because its premise is incorrect.

b. Reduced Size Alternative

Panoramic argues that the EIR’s analysis of the Reduced Size Alternative is a “study in elusiveness,” mainly because the EIR does not specify the exact size or scope of possible reductions in the size of the SAHPC, the press box, and the east seating structure, or the possible reduction in CMS’ seating capacity below approximately 60,000 seats. (See AR 5:994-97 [continuing the EIR’s analysis of this alternative].) Panoramic argues this lack of precision means that the analysis

is not supported by substantial evidence. However, it is fairly obvious that a reduced-size SAHPC built “at the same proposed site” (AR 5:994) would still significantly impact the historically significant landscape west of the CMS, and would also require the removal of many trees. There is evidence that this alternative: (1) might impede CMS program improvements and seismic retrofitting (see AR 5:997, “Program that could not be accommodated in the smaller SAHPC might remain in the CMS, where they could impede the progress of program improvements and seismic retrofitting”); (2) limit the ability of the University to attract prospective students and donors (*id.*), and (3) result in a press box that is less attractive than the current design (*id.*). This is sufficient.

c. Dispersed Program – Berkeley

Panoramic’s criticisms of the EIR’s analysis of the Dispersed Program – Berkeley Alternative (“Berkeley Alternative”) are also misplaced. Locating the SAHPC at 2223 Fulton creates no significant biological impacts. (AR 5:1001.) The University determined that this would be the case with the proposed location for the SAHPC. Contrary to Panoramic’s contention, the EIR does not say that locating the SAHPC at 2223 Fulton would create the same cultural resource impacts as the proposed SAHPC design. The EIR says that “overall, the [Berkeley] alternative would have the same cultural resource impacts as the proposed project” (AR 5:1002), and suggests that the alternative SAHPC location creates greater cultural resource impacts than the proposed design. (*Id.*) Locating the SAHPC at 2223 Fulton does relinquish an opportunity to create an

“extraordinary new space” in the Southeast Campus. (AR 98:14623; see also AR 98:14615 [“A goal of the master plan design is to provide adequate circulation at the stadium perimeter, resulting in a widened promenade with direct access to stadium entries”], AR 4:632 [“Additional goals of the CMS proposal are to ... provide adequate game day event facilities. The CMS proposal also seeks to provide a strong connection for the project to its site and surrounding campus facilities”].) In addition, the University’s conclusion that setback rules governing 2223 Fulton would compromise the SAHPC’s ability to meet program objectives is supported by substantial evidence in the record. As noted in the Draft EIR, the maximum depth of the parcel is 150 feet and the minimum depth is seventy-five feet. (AR 5:1004.) With the sixty-foot setback and ninety-five-foot maximum height imposed by the 2020 LRDP, it is reasonable to conclude that a building at 2223 Fulton would not meet program objectives. (See AR 98:14613 [limited width and height in training spaces and support spaces on different levels are problematic].)

d. Dispersed Program – Albany

Panoramic criticizes the EIR’s analysis of the Dispersed Program-Albany Alternative (the “Albany Alternative”) because it conceives the SAHPC and the new stadium as separate buildings. This is irrelevant to the University’s primary reasons for finding this alternative infeasible: (1) the University’s stadium “would not be proximate to the UC Berkeley campus” (AR 5:1011); and (2) the Albany Alternative would result in the demolition of the CMS, a treasured campus and

historic resource. (See AR 5:1006.) Panoramic and the City both take issue with the Albany Alternative's demolition of the CMS. Yet, demolition is not unreasonable in this scenario because (1) efficient use of the University's limited land resources is one of the objectives of the 2020 LRDP (AR 104:15404); (2) the University does not need two 60,000 seat stadiums; and (3) the CMS must be demolished if it is not seismically upgraded, because an unused, unmaintained, seismically poor structure is an unacceptable safety and financial liability. The EIR describes the Albany Alternative in sufficient detail "to allow meaningful evaluation, analysis, and comparison" with the Integrated Projects. (Guidelines § 15126.6(d); AR 5:1006-11 [describing other features of the Albany site making it more or less desirable to the proposed project].)

3. FINDINGS

Petitioners Oaks and Panoramic argue that several of The Regents' findings are not supported by substantial evidence in the record. Specifically, Oaks argues that: (1) the findings are legally inadequate because they do not mention tree removal; and (2) findings related to cumulative impacts to cultural resources are not supported by substantial evidence. Panoramic alleges that substantial evidence does not support the finding related to the impact of new lighting at CMS on historic resources or the finding that several impacts are unavoidable. (See Panoramic's Opening Brief, filed July 23, 2007, pp. 48-49.) Both Oaks and Panoramic argue that the findings related to project alternatives are not supported by substantial evidence. Finally, Oaks argues that the Statement of Overriding

Considerations is not supported by substantial evidence because the Statement of Overriding Considerations is based on legally inadequate findings related to impacts on biological, cultural and archaeological resources, and the Statement of Overriding Considerations is incoherent and vague.

Guidelines section 15091(a) provides that:

No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(See also § 21081(a).) A lead agency's findings must be supported by substantial evidence in the record. (See § 21081.5; see also Guidelines § 15091(b).)

Guidelines section 15093 governs statements of overriding considerations:

CEQA requires the decision making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental

effects, the adverse environmental effects may be considered "acceptable."

(Guidelines § 15093(a); see also § 21081(b).) When a lead agency approves a project that has significant and unavoidable environmental effects, the agency must "state in writing the specific reasons to support its action based on the final EIR and/or other information in the record." (Guidelines § 15093(b).) A statement of overriding considerations must be supported by substantial evidence in the record. (Guidelines § 15093(b).)

In determining whether administrative findings are legally sufficient, a reviewing court must resolve reasonable doubts in favor of the findings and the decision. (See *Topanga Assn. for a Scenic Community v. County of Los Angeles* ("Topanga") (1974) 11 Cal.3d 506, 514. Administrative findings need not be stated with the formality required in judicial proceedings. (See *Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 872, citing *Meeker & Co. v. Lehigh Valley R. Co.* (1915) 236 U.S. 412.) The court may not substitute its views for that of the lead agency or reweigh conflicting evidence presented to that body. (See *Sequoiah Hills, supra*, 23 Cal.App.4th at 717, citing *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal.App.3d 95, 106.) Administrative findings are accorded a strong presumption of regularity. An abuse of discretion must be shown to overcome that presumption. (See *Sequoiah Hills*, at 717, citing Code Civ. Proc. § 1094.5; and *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 651, fn. 2.)

The court finds that The Regents adopted a thorough set of Findings that are supported by substantial evidence in the record. (AR 3:447-508.) In addition, as required by CEQA and the Guidelines, The Regents adopted a Statement of Overriding Considerations before it certified the EIR and approved the SAHPC. (AR 3:521 [December 2006 meeting minutes]; AR 3:540 [The Regents' December 2006 meeting transcript]; see also AR 3:508.) The Court concludes that The Regents The Statement of Overriding Considerations both appropriately identifies the impacts which remain significant and unavoidable, and explains why the Integrated Projects should proceed despite those impacts. (AR 3:503-6.)

a. Removal of Trees

Oaks argues that the findings are legally inadequate because they do not "mention" the removal of trees "that give the area west of the Stadium its unique, rustic character." (Oaks' Opening Brief, filed July 24, 2007, p. 41.) The impact, Oaks contends, "is per se significant and must be fully disclosed in the Findings." (*Id.*) As previously discussed, the EIR contains a legally adequate analysis of the biological resource impacts related to removal of trees from the area west of the CMS. The University determined in its Initial Study (1) that the 2020 LRDP EIR adequately analyzed the biological impacts that could result from tree removal associated with construction and development under the 2020 LRDP; and (2) that such impacts would be insignificant after implementation of mitigation measures and continuing best practices adopted as part of the 2020 LRDP. (AR 3:565-67; see also Initial Study, AR 3:585-86 [continuing best practices and mitigation

measures incorporated into the Integrated Projects for biological resources].) CEQA does not require the University to make a new finding addressing the biological impact of this tree removal in the Findings, because that impact is less than significant. (See Guidelines § 15091(a).) The Findings adopts the 2020 LRDP's mitigation measures and continuing best practices. (AR 3:508.) They also incorporate by reference The Regents' Findings from the 2020 LRDP EIR certification, which include the 2020 LRDP EIR's conclusions regarding biological impacts. (AR 3:448; 102:15014-18.)

b. Cumulative Impacts to Cultural Resources

Oaks contends that the Findings' analysis of cumulative impacts to cultural resources is flawed because the Findings identifies a possible significant impact, but does not (1) formally list it as a significant impact, (2) propose mitigation for it, or (3) determine that other considerations outweigh it. This argument relates to a relatively small element of the Integrated Projects: the potential removal of the two houses at 2241 and 2243 College Avenue. This potential removal is addressed as a potentially significant project impact in both the EIR (AR 4:807-08) and the Findings (AR 3:461). The Regents adopted two mitigation measures to address this impact. (*Id.*)

The identified impact might become a potential cumulative impact when considered together with the potential removal of the house at 2526 Durant Avenue, which is not owned by the University. (AR 4:812, 104:15592-98.) The City will ultimately determine whether 2526 Durant Avenue is removed and

whether there will be a significant cumulative impact or whether it will be avoided. The findings explicitly address this potential cumulative impact. (AR 3:463.) Arguably imperfect, this satisfies CEQA's concerns with public disclosure and informed decision-making and is not an abuse of discretion.

c. CMS Lighting

Currently, CMS has no permanent lighting. For nighttime events, the University uses temporary lights, which are inefficient operationally, financially and environmentally. (AR 7:1651, 37:9231 32; see also AR 43:10759, 10788, 10793, 10800-01 [describing the existing temporary condition].) The "temporary lights are brought in by truck and operated by diesel generator, and are more likely to result in unwanted air quality, noise and glare impacts than permanent lights would be." (AR 7:1651.) To improve the situation, the University plans to install a permanent lighting system that has two parts: (1) a series of lights integrated into the roof profile of the press box on the west side of the CMS and arranged horizontally; and (2) four state of the art lighting stanchions on the east side of the CMS. (AR 4:650-53.) This is part of Phase 2 of the CMS Project. (AR 4:672-73.) The profile of the new lighting stanchions would reduce the width of the objects visible above the bowl of the CMS. (AR 4:650.) On the east side, the proposed lighting stanchions would extend approximately 120-130 feet above the playing field and approximately 58 feet above the existing east rim (AR 4:650; 7:1494) approximately the same height as the existing flag poles. (AR 4:650.) The permanent lights on the CMS's east side would be 70 feet lower than the

height of the temporary lighting system. (AR 4:650; 16:4007.) On the west side of the CMS, the temporary lights extend approximately 120-130 feet above the playing field; the permanent lighting would be mounted above the press box and thus would only extend approximately 100 feet above the playing field. (AR 4:650.)

The EIR discusses the impact that the four stanchions might have upon the historical character of the CMS, and concludes that the impact would not be significant:

The four monumental lighting stanchions on the east side of the CMS would clearly not be original, but their simple form and regular spacing would not detract substantially from the important prevailing design character of the CMS, and are typical of the modifications and alterations to structures of this age which have remained in active use. These lighting masts would be repetitive, like the character defining original pairs of flagpoles, but would not interfere critically in the rhythm of those elements because they would be far fewer in number and would be limited to the east side. As discrete, functional additions, they would not interfere importantly with the ability of the original structure to convey its historical significance.

(AR 4:799.)

Panoramic argues that substantial evidence does not support the finding that these permanent lights would have no substantial adverse effect on the historical significance of the CMS. To begin, Panoramic's argument should be viewed first as an argument that substantial evidence does not support the EIR's conclusion that the new lights do not create a significant effect, because the University is not required to make findings for effects that are not significant. (See Guidelines §

15091(a).) Panoramic contends that the lights' effect would be significant because the four stanchions would rise above the east rim of the CMS, in alleged violation of: (1) the 1998 Historic Structures Assessment ("1998 HSA") prepared for the CMS; and (2) the Design Guidelines adopted for the Integrated Projects.

(Panoramic's Opening Brief, filed July 23, 2007, p. 48.)

However, neither the 1998 HSA nor the Design Guidelines establishes the standard for determining whether an impact is significant. The criteria for determining whether an impact is significant are set out at AR 4:789 and reflect CEQA Guidelines Appendix G. (The relevant standard here asks whether a project "cause[s] a substantial adverse change in the significance of a historical resource as defined in section 15064.5?") The University's determination that the lights do not significantly impact the historic significance of the CMS is supported by substantial evidence in the record, which includes the narrative description of the lighting from the EIR quoted above. The University consulted with an historic preservation expert in preparation of the EIR for the Integrated Projects. (AR 5:1020 [identifying Frederick Knapp, AIA, as Historic Resources consultant]; see also AR 47:11907 [Mr. Knapp's resume].)

The Court can not conclude that the EIR's finding is deficient because there is in express statement of concurrence in the record from the University's historic preservation consultant. This is particularly so given that the SHPO's comments to the Draft EIR raised no objection to the proposed lighting. (AR 8:1779 [SHPO comment letter].) Panoramic's claim that the SHPO's comment letter expresses an

an objection to the lighting is not well taken. (See Panoramic's Opening Brief, filed July 23, 2007, p. 48, line 22; AR 8:1779.) If anything, in the context of the other comments that are made in the letter, the SHPO's omission of any mention of the proposed lighting supports the University's finding.

Panoramic argues that substantial evidence does not support several of The Regents' findings that impacts of the CMS Project are unavoidable. Panoramic refers specifically to (1) the impact of the SAHPC on the historical significance of the CMS and the wooded area to the west of the CMS; (2) the impact of Phases 2 and 3 of the CMS Project "on the Stadium's cultural resources"; and (3) the seismic, noise, and traffic impacts caused by increasing the number of capacity events at the CMS. The court disagrees with Panoramic regarding items (1) and (2), above. The crux of Panoramic's argument is that the record does not explain why the University could not reduce the size of the CMS Project to avoid certain impacts. However, the EIR analyzes a project alternative, the Reduced Size Alternative, which incorporates two of Panoramic's three suggested changes: reducing CMS's seating capacity to a level below 60,000, and reducing the size of the SAHPC. (AR 5:994 97.) The EIR explains that this alternative would "cause the project to fall short of completely realizing the project objectives." (AR 5:997.)

However, the Court agrees that the record lacks support for findings and conclusions in the EIR that doubling the number of capacity events at the CMS will cause significant environmental effects that are *unavoidable*. (AR 2:209,

2:219-220, 2:231-32; 5:897) The EIR assumes that additional capacity events may occur because an updated and retrofit CMS will be make the facility more attractive as an event venue. (AR 7:1611-1622 [Thematic Response 5].) However, the EIR does not explain why the University must double the number of capacity events currently held at the Stadium nor is there any link between any proposed increase in the number of capacity events to any project objective. (AR 42:10441-42, 2407-2410.) Since the University has not explained why maintaining the existing number of events is infeasible or unreasonable in light of the objectives of this project, it cannot point to any evidence that would support a finding or that the earthquake related risks, additional noise and traffic impacts associated with the additional events are unavoidable.

d. Project Alternatives

As previously discussed in this Order, the University's analysis of project alternatives is legally adequate. In its Findings, The Regents:

certifies that it has independently reviewed and considered the information on alternatives provided in the Final EIR and the administrative record, and finds that all the alternatives are infeasible or undesirable in comparison to the Integrated Projects.

(AR 3:498.)

The Findings then discuss each of the five project alternatives analyzed in the EIR, and explains why The Regents rejects each one. (AR 3:497-503) This complies with the requirement of section 21081(a)(3) and Guidelines section 15091(a)(3) to find that "specific economic, legal, technical, or other

considerations, including the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the EIR.” (Emphasis added.) It also complies with the requirement of Guidelines section 15091(a) to provide a “brief explanation of the rationale for each finding.”

Panoramic argues that “the specific findings for each of the five alternatives” are not supported by substantial evidence, and that the Findings “do[es] not explain how any one of [the alternatives] is infeasible, instead citing general inconsistencies with various Integrated Projects objectives.” (Oaks’ Opening Brief, filed July 24 2007, p. 47.) The first argument fails because, as discussed above, substantial evidence in the record supports the University’s analysis of project alternatives. The specific findings at issue here refer to that analysis and to the evidence in the EIR and the administrative record that supports it. (AR 3:498.) As a result, these findings are also supported by substantial evidence in the record. The second argument fails because failure to satisfy project objectives is a valid “other consideration” under section 21081(a)(3) and Guidelines section 15091(a)(3).

Panoramic’s citation to *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (“*Vineyard Area Citizens*”) (2007) 40 Cal.4th 412, 445, to challenge the Findings is inapt because the facts of this case and *Vineyard Area Citizens* are not comparable. To the extent that Panoramic may be trying to argue that The Regents’ Findings regarding project alternatives fails to “bridge[s]

the analytic gap between the raw evidence and ultimate decision” (*Topanga*, 11 Cal.3d at 515), the Court disagrees. In this case, as in *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 497, the environmental findings refer to the EIRs and all accompanying reports and studies, and indicate that the lead agency relied on all these documents in reaching its decision. (AR 3:448.) Like this case, *Mira Mar* involved a challenge to an EIR tiered from an earlier EIR. (*Id.* at 487-88.) As in *Mira Mar*, “incorporation by reference of the earlier EIRs and associated documents [is] sufficient to provide the required link [between the facts contained in the record and the ultimate decision].” (*Id.* at 497.)

Oaks argues that The Regents’ Findings, as it relates to project alternatives, is legally inadequate because the Findings “cannot give the public any reassurance that alternatives to the Integrated Projects were considered in any meaningful way.” (Oaks’ Opening Brief, filed July 24 2007, p. 41.) Oaks focuses on the following passage from a section of the Findings entitled “Substitutability of Alternatives”:

The Regents finds that in addition to the alternatives considered in the Draft EIR, Thematic Response 8 in Section 11.1 of the Final EIR addressed the request of some commentators that alternative components be analyzed and compared individually. Some commentators suggested that the groupings were intentionally formulated in a way as to render the alternative as a whole infeasible or environmentally undesirable, but the alternatives were in fact developed in a cumulative manner to be parallel to the Integrated Projects, thereby facilitating comparison between the Integrated Projects and the alternatives. CEQA requires analysis of alternatives that could attain most of the project objectives, and for an alternative

to meet these objectives, it must include most of the components of the Integrated Projects. The analysis itself in the Draft EIR was performed on a project by project basis by analyzing each component of each alternative for its environmental impact and comparing it to its corresponding component in the proposed Integrated Projects. Moreover, the groupings of alternatives in the Draft EIR do not limit the ability of The Regents to select individual projects from among them. The consideration of alternatives allows for a “mix and match” approach, in which components from different alternatives may be substituted for one another.

(AR 3:503.)

The Oaks Petitioners contend that the discussion of alternatives in the Findings “wholly undercuts” the fact, described above, that the EIR’s analysis of alternatives allows The Regents, if it so chooses, to use a “mix and match” approach when it considers alternatives. (Oaks’ Opening Brief, filed July 24 2007, p. 41.) The Court finds this contention unpersuasive. The fact that The Regents did not choose to make findings that discuss project alternatives using a “mix and match” approach does not mean that The Regents was not able to make such findings. To the contrary, The Regents specifically finds that, “the groupings of alternatives in the Draft EIR do not limit the ability of The Regents to select individual projects from among them.” (AR 3:503.) The court concludes that The Regents was able to use a “mix and match” approach.

4. Statement of Overriding Considerations

Oaks argues that The Regents’ Statement of Overriding Considerations is invalid for three reasons: (1) it fails to mention the destruction of specimen trees west of the CMS; (2) it relies on allegedly inadequate findings related to

archaeological impacts; and (3) it is incoherent and vague.

The Oaks Petitioners' arguments regarding impacts to biological and archaeological resources simply refer to arguments they make elsewhere in their brief. (Oaks' Opening Brief, filed July 24 2007, p. 39.) The arguments regarding biological resources and archaeological resources fail for the reasons set forth elsewhere in this Order.

The Oaks Petitioners' argument that the Statement of Overriding Considerations is vague is a replay of its argument that the project objectives in the EIR are invalid because they are vague. The discussion of project objectives elsewhere in this Order demonstrates that the EIR's statement of project objectives is clear and legally valid.

Contrary to the Oaks Petitioners' contention, the Statement of Overriding Considerations does not acknowledge that the Integrated Projects might expose people to earthquake risks "due to new construction astride a known earthquake fault." (Oaks' Opening Brief, filed July 24 2007, p. 39, citing AR 3:504.) The page that the Oaks Petitioners cite contains descriptions of two seismic impacts – one from fault rupture and one from ground shaking. (AR 3:504.) Neither description contemplates or mentions constructing a new building astride a known earthquake fault, which would be impermissible under both the University's Policy on Seismic Safety and Alquist-Priolo. (AR 3:504.) There is only one component of the Integrated Projects that will be executed "astride a known earthquake fault": the seismic corrections to the CMS. (AR 4:819.) Seismic

corrections to the CMS are consistent with the goal to “provide seismically safe facilities for students, staff and visitors.”

The Oaks Petitioners argue that the Statement of Overriding Considerations’ finding that cultural impacts caused by the CMS Project would be significant and unavoidable is inconsistent with the Integrated Projects’ goal to “enhance remarkable historic places.” (Oaks’ Opening Brief, filed July 24 2007, p. 40.) As explained elsewhere in this Order, the University considered historic preservation as it developed its design for the Integrated Projects. Rehabilitation and preservation of the CMS is a central goal of the Integrated Projects. The University’s design solution was praised by the SHPO. (See, e.g., AR 45:11266 [SHPO official calls the design a “breath of fresh air” and asks to use the design as an example to show others how to approach a historic stadium].) The Integrated Projects will cause certain adverse effects to the historic character of the CMS. But substantial evidence supports the University’s conclusion that these adverse effects are outweighed by to the benefits of preserving the building’s façades and rehabilitating its structure.

V. OBJECTIONS TO EVIDENCE

A. PETITIONERS’ OBJECTIONS

Petitioners have asserted four categories of objections to statements contained in the Diesko, Dento, Friedman, Yuen, and Milano Declarations submitted by the University in response to the Court’s December 10, 2007 Order Re: Additional Evidence Relating to Claims Arising Under the Alquist-Priolo

Earthquake Fault Zoning Act. These evidentiary objections are ruled on as follows:

Objection No. 1 is SUSTAINED IN PART, on relevance grounds, as to statements in the Diesko, Denton and Friedman Declarations that refer to changes in the design of the SAHPC after December 5, 2006. The Court has chosen to receive "extra record" evidence from the parties to aid in the determination of whether the University's December 5, 2006 decision to approve construction of the SAHPC complied with Alquist-Priolo. Evidence that the University may have changed the design of the SAHPC since December 5, 2006 is not relevant to the claims that are before the Court.

Petitioners' remaining evidentiary objections are OVERRULED.

B. RESPONDENTS' OBJECTIONS

Respondents' objections to statements contained in the Wong, Orth, Barzegar, and Osteraas Declarations are OVERRULED.

VI. CONCLUSION

The Petitions for Writ of Mandate are GRANTED IN PART and DENIED IN PART, as set forth above, and a Writ of Mandate shall issue.

On or before June 24, 2008, Petitioners shall submit a proposed form of writ of mandate and proposed judgment for the Court's approval. No later than June 27, 2008, Respondents may submit objections, if any, to Petitioners' proposed form of writ of mandate and proposed judgment, and may submit their own proposed form of writ of mandate and proposed judgment. The Court shall

retain jurisdiction over those proceedings, by way of return to peremptory writ,
until it has determined that Respondents have complied with CEQA and Alquist-
Priolo.

IT IS SO ORDERED.

June 18, 2008
Date

Barbara J. Miller
Barbara J. Miller, Judge
Alameda County Superior Court