SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

SAN GERONIMO ADVOCATES, an unincorporated association; and AMELIA N. BROWN, Petitioners/Plaintiffs v. THE COUNTY OF MARIN; BOARD OF SUPERVISORS OF THE COUNTY OF MARIN, Respondents/Defendants	Case No.: CIV 1704467 DECISION PETITION FOR WRIT OF MANDATE

I. INTRODUCTION

Petitioners, Amelia Brown (an individual who resides in San Geronimo Valley), and San Geronimo Advocates (an organization made up of San Geronimo Valley residents), filed the instant Petition for Writ of Mandate challenging the County of Marin's November 17, 2017 decision to approve the purchase the 157-acre San Geronimo Valley Golf Course, including clubhouse and restaurant (collectively "the property") and to convert its use as a golf course to "restore natural lands and provide open space and park lands . . . ." (Administrative Record, hereafter AR, at p. 20)

The County's stated purposes underlying the decision to purchase the property were: to discontinue the property's use as a golf course within two years; to phase-out diversion of water from

Larsen Creek, (also discontinuing the purchase of water from the MMWD); to convert the property into public open space and parks; and to restore the wildlife migration corridors and fish habitats that run through the property, paying particular attention to increasing stream flow and water quality to San Geronimo Creek and Larsen Creek, which purportedly are critical spawning and rearing habitats for the threatened steelhead trout and the endangered Central Coast Coho salmon. (AR 92, 404, 3851, 3854-55, 3861) Lagunitas Creek, and its tributaries, Larsen and San Geronimo creeks, allegedly contain "the largest and most stable population of the endangered Coho salmon south of Fort Bragg," while "San Geronimo [Creek] also supports threatened steelhead trout and a fall run of Chinook salmon." (AR 3871)

In their Petition for Writ of Mandate (Code Civ. Proc., §§ 1085, 1094.5; Pub. Res. Code § 21168.5) and in their claim for injunctive relief, Petitioners allege: Respondents approved the purchase of the property and committed themselves to a definite course of action to convert the golf course and its clubhouse for park, open space, and habitat restoration activities, before conducting the environmental review required by California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et. seq.); and Respondents approved spending County funds to close the golf course, contrary to the express language in the local San Geronimo Valley Community Plan, which purportedly requires future uses of the property to include its continued use as a golf course.

Petitioners seek a court order directing Respondents to set aside the resolution approving the purchase and sale agreement relating to the subject property, to conduct the environmental review of this project under CEQA, to enjoin any further restoration and reuse activities on the property until completion of the CEQA review, and to direct the County to undertake a community-wide planning process that considers the directives of the San Geronimo Valley Community Plan to preserve and maintain the golf course.

II. FACTUAL AND PROCEDURAL SUMMARY

A. Project History

Since 1965 the property has been operated as the San Geronimo Valley golf course. (AR 3625) The property's 157 acres are comprised of the golf course parcels (135 acres) and the clubhouse parcel (22 acres.) (AR 43-47)

In 2009 the golf course was purchased by the trustees of the Lee Family Trust, a.k.a. the "Lees." (AR 3625) In early 2017 Marin County Parks (MCP) became aware that the Lees desired to sell the property by the end of 2017, and the MCP staff began discussions with the Real Party-In-Interest Trust for Public Land (TPL) to have TPL temporarily purchase the property from the Lees by the end of 2017 in order to keep it out of private hands, and to hold the property open for purchase by the County no later than December 31, 2018. (AR 105 et. seq.)

The Purchase and Sale Agreement (PSA) negotiated by MCP and TPL, ultimately approved by the Board of Supervisors (AR 20-33), provides that TPL would purchase the property from the Lees and thereafter sell it to the County for the same price, not to exceed $8.85 million. The parties agreed that the property ultimately would be used "for park and open space purposes." (AR 22)

In negotiating TPL's purchase of the property from the Lees on terms that would also bind MCP's later purchase, TPL and MCP discussed a two-year or at most three-year phase-out period for the continued operation of the golf course commencing upon the anticipated date of TPL's purchase of the property from the Lees (October or November 2017). (AR 23, 44; AR 110, 124)

The PSA provided that $3.9 million of the purchase price would come from the County's own funds and the remainder would be raised from outside funding sources. (AR 23) The parties contemplated the County would use this interim phase-out period to secure the additional funding, and also to begin "a robust public engagement process" directed to formulating "a vision for the future use of the property through the development of restoration and/or reuse concept plans." (AR 44, 73)

In negotiations and communications between TPL and MCP staff leading up to sale, the parties discussed a conceptual project plan, the likely project phases and rough cost estimates for the restoration, the potential public and non-profit funding sources that would be utilized for the acquisition and restoration, and the recruitment of funding partners from other conservation organizations to further help fund the possible restoration and reuse activities. (AR 126-137)

These communications also show the acquisition and restoration plans were intended to build upon numerous conservation and fish habitat projects that had been completed by the County in the surrounding Lagunitas watershed over the past few years. The County concedes as much in its Press

Release, dated September 25, 2017, stating "Protection of wildlife is a key motivation for the purchase." (AR 245)

The County further intended to secure outside investments based upon this vision. The previous conservation projects to be built upon included: the County's Fish Passage and Creek Restoration program for creeks in the San Geronimo Valley; the Leo Cronin Fish Viewing Area; Salmon Enhancement Plan; and San Geronimo Ridge Acquisition and Lagunitas Creek Floodplain and Riparian Habitat Design. (AR 3625-3626)

All of the above discussions over the acquisition, rough costs, concept planning and possible restoration work were premised on the parties' intent to terminate golf course use after the phase-out period. "MCP would acquire the property with the intention to convert the existing golf course to a public park . . . ." (AR 94, 10/24/17 "Memorandum to File")

MCP's commitment to closing the golf course was announced in the "San Geronimo Golf Course Acquisition FAQs" posted on the County Park Department's website. There MCP disclosed it decided to buy the property in order to preserve the land for "park and public uses," phase-out golf course use, and ultimately use the land for a "turnkey greenbelt park with a ready-made network of multiuse pathways" for access between the towns in the San Geronimo Valley. The County would also restore the fish and native wildlife habitats, and entertain proposals from the public for any future public uses, including continuation of the existing public garden, public event facilities, and playground facilities. (AR 239) This announcement also provided that the acquisition of this property for fish habitat restoration will eliminate the site from further consideration as a wastewater recycling unit, since that proposed use is incompatible with the use of the property "for park purposes, a salmon enhancement plan, and the restoration of the watershed." (AR 241)

The closure and planned restoration would necessarily involve landscape modifications and changes, at least initially. The County in fact has engaged in some budgetary analysis relating to that change, including considering the cost of off-hauling thousands of cubic yards of green waste and the cost of other physical modifications that will be necessary to convert the greens and fairways to a more natural topography. (AR 133-138)

These factors indicate that the closure of the golf course is more than a passive termination of use. (See *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 195 [purchase of farmland to create wetlands for wildlife habitat involved physical reshaping of the land].)

As later explained in the revised "San Geronimo Golf Course Acquisition FAQs" (updated November 9, 2017) and released a few days before the Board of Supervisors voted to approve the PSA, funds secured from public and private outside sources restrict future uses of the property to preservation of open space and wildlife habitats, and restoration of the fish habitats in San Geronimo and Larsen Creeks, and that continued use as a golf course is not compatible with these preservation and restoration activities. (AR 74-75) The FAQ, and response read:

"15. Is it possible to keep a golf course and restore the creek?

> It is unlikely that the layout of the golf course is compatible with effective long-term restoration of the Larsen and San Geronimo creek fisheries and improving water quality in the Lagunitas watershed. Large-scale restoration objectives include returning water used by the golf course back to the watershed, removing culverts from Larsen Creek, repairing the riparian canopy cover, and restoring the floodplain. (AR 75)

The updated FAQs also noted that in the short term, the property would be maintained as a "greenbelt park" with a network of pathways connecting the San Geronimo communities and that any uses for the property "after the acquisition would have to comply with CEQA." (AR 73)

WCB Grant Application

The restrictions on future use of the property were echoed in MCP's grant request in August 2017 to the California Wildlife Conservation Board (WCB) wherein the County sought $3,410,000 in funding under the WCB's "Stream Flow Enhancement Program." (AR 3844-3345) To be eligible for these WCB funds, the proposed projects "must measurably enhance stream flows at a time and location necessary to provide fisheries or ecosystems/habitat benefits or improvements that enhance existing flow conditions and are greater than required applicable environmental mitigation measures or compliance obligations." (AR 3846)

In its WCB grant application, the County articulated that it intended to discontinue the use of the golf course, phase in public park uses, terminate long-time diversion of 20 acre-feet per year

(AFY) of water from Larsen Creek for irrigation, to petition the State Water Resources Control Board to permanently dedicate this 20 AFY "to instream flow annually," and to cease the additional purchases of 151 AFY from MMWD by late 2019. (AR 3846, 3853-3854, 3862) The County articulated that termination of golf course use would benefit water quality in the creeks and the wildlife by avoiding the need to apply chemicals to the landscaping. (AR 3854-3855)

The County envisioned that the property and its existing golf course cart paths would be used for walking and bicycle trails, and for public open space connecting the property to thousands of acres of existing open space parks and public pathways surrounding property, and provide a safe alternative non-motorized transportation routes across Sir Francis Drake and other vehicular roads. (AR 3859, 3865)

Also, the grant application proposed the following renovation or reuse activities: improving creek bank stability, restoring native canopy over the creeks; creating "pool shelters"; "retire[ing] the existing impoundment on Larsen Creek; increasing the connectivity and public access to the site and surrounding protected areas; and repurposing existing structures and cart paths for visitor serving and education purposes." (AR 3854, 3862.)

The WCB application further described the County's restoration plans for the property:

> Under its ownership, MCP [Marin County Parks] would plan, permit, fundraise for and implement a comprehensive restoration program for the property. This process would begin with a 6-9 month process to engage the local communities, broader public, other stakeholders and experts in a discussion of the opportunities and constraints resulting in a Restoration and Reuse Concept Plan. Possible restoration actions include the temporary installation of pumps to move water through the impoundments on Larsen Creek until they can be completely removed, daylighting of Larsen Creek and restoration of the historic floodplain for both Larsen and San Geronimo creeks. MCP will also ensure that the fish passage barrier at Roy's Pools is resolved.

(AR 3855)

All of these proposed public works are inconsistent with continued golf course operations, as expressly acknowledged by MCP staffers.

Although the County has yet to receive the funds from WCB, the County clearly articulated that its plan to purchase the property rested on obtaining these funds under the described conditions and commitments.

Coastal Conservancy Grant Application

In September 2017, the County sought to obtain an additional $750,000.00 in restricted "Proposition 1" conservation funds from the Coastal Conservancy for the acquisition of the property and the protection of riparian habitat and streamflow in San Geronimo and Larsen creeks, as generally described above. (AR 3600 et. seq.) In order to achieve these goals, County expressly noted it was necessary to "wind down management and use of the property as a golf course and phase in public park uses." (AR 3615, *emphasis added*)

In its application to the Coastal Conservancy, the County conceded that the acquisition and planned restoration qualifies as a "project" as defined by CEQA, but maintained the project, as narrowly defined, is categorically exempt from environmental review. (AR 3625) The County stated:

> The proposed project is exempt under CEQA. Marin County Parks will file a CEQA Notice of Exemption with the County of Marin for the acquisition of the San Geronimo Valley golf course property. The Notice of Exemption will be filed under the following categorical exemptions: 15313. Acquisition of Lands for Wildlife Conservation Purposes; 15136. Transfer of Ownership of Land in Order to Create Parks; and 15325. Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources.

(AR 3625, *emphasis added.*)

B. Notice of Intent to Purchase Land

In a report to the Board of Supervisors dated October 10, 2017, from MCP staff, the staff recommended approving a Notice of Intent to purchase the property from TPL "for park and open space purposes." (AR 81) The staff report explained that TPL would purchase the property from the owners for not more than $8,850,000, and hold the property until the County could secure the necessary financing to purchase it for the same price from TPL, sometime in 2018. (AR 81) The staff noted that the County's share of the estimated purchase price would be $3.91 million, with the balance of $4.94 million made up of funds from outside public and private conservation sources. (AR 82) $1.41 million of the County's share would be used to purchase the 22-acre clubhouse parcel, and the remaining County and outside funds would be used for the purchase of the golf course parcels. (AR 63)

The staff report explained that during the period between the Board's approval of the Purchase and Sale Agreement (PSA) with TPL and the anticipated close of escrow by the end of December 2018, "Marin County Parks would begin a public process to formulate a vision for future public uses on the property through the development of a Restoration and Reuse Concept Plan." (AR 82)

As to potential uses, the staff report notes:

> Much of the existing property can become a turnkey greenbelt park with a ready-made network of multiuse pathways that will allow circulation between Woodacre, San Geronimo, Forest Knolls, and Lagunitas with no interaction with motorized traffic on Sir Francis Drake Boulevard or Nicasio Valley Road due to the existing tunnel under Sir Francis Drake and the bridge over Nicasio Valley Rd. In addition, this property provides a valuable opportunity for resident Central Coast Coho and steelhead, as well as other native wildlife. Restoring the site for fish will create many other benefits for people and native wildlife, including enhanced floodplain protection for downstream communities and protection of wildlife migration corridors.

(AR 82)

The staff report added that any future use would be determined following an extensive public comment process and that future use(s) would be subject to CEQA review:

> The County may consider other future public-serving uses that are consistent with the character of the community and compatible with park uses. Any future uses will be fully explored with the community, would need to be approved by the Board of Supervisors prior to implementation, and would be subject to CEQA review.

(AR 82)

Relying on that staff report, at a public hearing before the Board of Supervisors on October 10, 2017, the Board adopted Resolution No. 2017-113 to issue a Notice of Intent to buy the golf course from TPL at a price not to exceed $8.850 million with Board approval no later than November 14, 2017. (AR 79-80) The Resolution also declared that the purchase of the property is categorically exempt from environmental review under CEQA Guidelines, 14 Cal. Code Regs. § 15325 – Transfer of Ownership to Preserve Existing Natural Conditions and Historical Resources because it is being acquired "in order to preserve open space or park purposes." (AR 792)

During the following weeks the Parks' staff conducted further analyses and issued a "Memorandum to File" dated October 24, 2017 stating that "MCP's acquisition of the golf course is a project under CEQA." (AR 94) The memorandum also reflected that additional CEQA Categorical

Exemptions applied to the project: Guidelines § 15316 – Transfer of Land to Create Parks; §15301 – Operation, Repair and Maintenance of Existing Facilities. Finally, the memorandum expressed the conclusion that no unusual circumstance "exception" (§15300.2) to the exemptions existed since "the project merely entails the transfer of ownership of the property." (AR 94-95)

C. Agreement to Purchase/Notice of Exemption

The Board of Supervisors noticed a public hearing for November 14, 2017 to discuss the proposal to approve execution of the PSA. The final terms of the PSA did not change from the parties' earlier negotiations and provides, in part: the acquisition is for "open space protection and parks purposes"; and the purchase price is not to exceed $8.85 million with the County paying $3.9 million from its own funds, and the balance paid by third-party, public, and private funds. (AR 23) The purchase date is November 17, 2017, and the date for the close of escrow would be no later than December 31, 2018. (AR 27)

In its report to the Board dated November 14, 2017 the staff recommended the Board approve the execution of the PSA because this agreement will provide "a valuable opportunity for resident Central Coast Coho Salmon and steelhead, as well as other native wildlife. Restoring the site for fish will create many other benefits for people and native wildlife, including enhanced floodplain protection for downstream communities and protection of wildlife migration corridors." (AR 43)

The staff report further recommended that the County execute a temporary maintenance and management agreement with TPL to allow the County to preserve the property's aesthetic appeal and the integrity of its infrastructure, "as well as to accommodate some level of immediate public access to and use of the property's network of paths." (AR 45)

This report repeated the representations made in the earlier October 10 staff report that future uses would be decided after public input and a full CEQA review:

> Any future public uses will be fully explored with the community, would need to be approved by the Board of Supervisors prior to implementation, and would be subject to further CEQA review. The County may consider other future public serving uses of the clubhouse parcel and other portions of the property that are consistent with the character of the community and compatible with park uses.

(AR 45)

Prior to this meeting, Petitioner association and other opponents to the project objected to the project on grounds that the County's use of restricted conservation funds to acquire the golf course for park/open space and habitat preservation and restoration bound the County to these uses and limited the scope of alternative uses without first conducting CEQA review; the market value of the property is much lower than the purchase price agreed to by the County; and that this decision was made prior to meaningful public discussion of alternatives or of the additional operating costs needed to maintain and manage the expanded park area. (Smith decl. pp. 77-78, 89-90, 99-101, 318)

The critics also challenged the County's claims that the transaction fell within several Categorical Exemptions relieving the County from preparing an EIR under CEQA, asserting: the change of use from golf course to open space and habitat restoration requires an amendment to the San Geronimo Valley Community Plan (which is part of the Countywide Plan) and a rezoning of the property, which triggers a CEQA review; given the unknown scope of the County's future "Restoration and Reuse Concept Plan" County is unable to conclude that no "unusual circumstances" exist that would otherwise take this project outside of the Categorical Exemptions; the potential existence of pesticides and chemicals used for the golf course requires preparation of an EIR before the County may commit to convert the property to public use; the County did not evaluate whether conversion from golf course use to open space will increase the risk of wildfires; and County impermissibly avoided environmental review by "piecemealing" the activities to which the County had committed itself as part of this purchase. (*Id.* at pp. 76-80, 89, 99.)

After receiving extensive public comments, listening to 81 speakers, and agreeing with the staff's recommendation (AR 43-47), on November 14, 2017 the Board of Supervisors unanimously adopted Resolution No. 2017-126 "for the reasons presented in the staff report accompanying this resolution," and authorized the County to execute the PSA with TPL "to provide park land and open space, and to provide for restoration of land to natural conditions; [and] that the proposed action only provides for transfer of title to the Property and any future projects on the property would be subject to review pursuant to CEQA; . . ." (AR 20-21)

The operation and maintenance of the clubhouse by the County would continue temporarily, and the premises would remain open to the public. Under the purchase agreement, TPL was to

continue the golf course use under an interim 2-year lease if a third-party vendor to operate the golf course could be found. (AR 23, ¶ 1.3.) Any possible future uses of the clubhouse facilities, including suggestions to construct of a fire station, or for use as a community center, would be decided after engaging in extensive public discussion and subject to applicable CEQA review. (AR 45)

Also as contained in the staff report, before deciding upon any future uses of the property, the County committed itself to "begin a public process to formulate a vision for the future of the property through the development of a restoration and/or reuse concept plans" by soliciting the public's ideas about the most suitable use of the property, with any future public use subject to CEQA review. (AR 44-45)

The Resolution concludes that the transfer of ownership to the County is categorically exempt from CEQA review under Guidelines § 15301(h) – "Existing Facilities because the project entails transfer of land from a private party to the County of Marin to enable the restoration of the existing golf course," § 15316 – "Transfer Of Ownership Of Land In Order To Create Parks," Guidelines § 15325(c) – acquisition of property "to allow restoration of natural conditions, including plant and animal habitats," and § 15325(f) – acquisition "to preserve open space or lands for park purposes." (AR 20-21)

The County also concluded that no "exceptions" under Guidelines § 15300.2 bar application of the Categorical Exemptions, since no potentially significant impacts to the environment would exist from either the "mere transfer of ownership," or due to "unusual circumstances" from the project, and because "any future projects that affect the environment would have to undergo review pursuant to CEQA." (AR 20-21)

The total purchase price of $8.85 million, including $150,000 for the fixtures and equipment, will be paid for with $1.4 in County General Funds for the purchase of the Club House parcel and other fixtures; $2.5 million Measure 'A' conservation funds[1] for the Golf Course parcels; and $4.94

---

[1] Measure "A" funds are derived from a special sales tax approved by the County's voters for projects restricted to conservation and parks/open space uses, including: stream restoration within county parks and preserves; enhance biodiversity and control populations of invasive, non-native weeds; repair, maintain and replace deteriorating recreational facilities and infrastructure in county parks and on regional pathways; purchase land for purposes of permanently protecting and/or restoring natural areas, streams and native ecosystems . . . . (Ex. A, pp. 14-15.)

million in outside private and public grant money restricted to parks and habitat restoration (including the WCB funds) for purchase of the Golf Course parcels. (AR 46)

The Notice of Exemption from CEQA review that was filed on November 15, 2017 states the property was acquired "to support the future restoration of the site" including the San Geronimo and Larsen creeks which serve as "rearing and spawning habitat for the Central Coast Coho salmon and steelhead trout." (AR 99)

The Notice of Exemption relied on the Categorical Exemptions in Guidelines §§ 15316, 15325, and 15301, *ante*, and explained the reasons for the exemptions are: "The project entails the transfer of land from a private party to the County of Marin to enable the restoration of lands and creation of parklands. Operation and maintenance of the existing golf course club house would continue." (AR 99)

On December 12, 2017, purportedly out of an abundance of caution, the Board of Supervisors passed and adopted Resolution No. 2017-135 noticing and confirming the purchase of the San Geronimo Golf Course. (AR 01) This time the Resolution passed by a vote of 4-1, with Supervisor Judy Arnold reversing her previous support for the purchase. (AR 02)

Later, on March 27, 2018 the Board of Supervisors adopted Resolution No. 2018-27 which authorized the County to execute an agreement with the State Coastal Conservancy to accept a $150,000 grant of Proposition 1 watershed protection and restoration funds (to be matched with up to $150,000 county funds) for use in preparing a conceptual "Reuse And Restoration Plan" for the San Geronimo Golf Course. (Smith Supp. decl. pp. 854, 902-903.)[2] The Board of Supervisors noted that the Reuse and Restoration planning process will include a 6-9 month extensive public engagement effort to develop proposals for future uses of the property that includes restoration and protection of the salmonid population, and as well as future uses of existing facilities like the club house and the community garden, and other existing and proposed amenities; e.g., a fire station, playground or wastewater treatment plant. (Smith Supp. decl. pp. 850-851.)

---

[2] This portion of the record is from Petitioners' earlier motion for a preliminary injunction of which this court takes judicial notice. (Ev. Code § 452(d).)

Also on March 27, 2018, the Board of Supervisors authorized the execution of a contract with a vendor, Touchstone Golf, LLC, for the interim management and operation of the San Geronimo Golf Course until late 2019. (Smith Supp. decl. p. 903.)

III. DISCUSSION

In their First Amended Verified Petition and Complaint for Injunctive Relief Petitioners allege Respondent County abused its discretion by not proceeding in the manner required by law (Pub. Res. Code, § 21168.5; Code Civ. Proc. § 1085) as follows:

> The County gave its activities related to the purchase an impermissibly narrow definition as the "mere acquisition of the property", resulting in the improper "piecemealing" of the project into artificially disconnected, environmentally benign activities;
>
> The County approved the purchase and committed itself to a course of conduct that eliminated alternative uses or mitigation measures *before* conducting an environmental review in violation of CEQA, and impermissibly deferring its activities to future CEQA review;
>
> No Categorical Exemptions exist for the acquisition and planned use of the Golf Course and Club House parcels;
>
> The County improperly relied on Categorical Exemptions without considering evidence of the existence of significant environmental effects due to "unusual circumstances";
>
> The County relied on the Categorical Exemptions without considering the historical value of this golf course which was the last one designed by Arthur Vernon Macan, whom Petitioners refer to as "the preeminent golf course architect in the Pacific Northwest.";
>
> The purchase and discontinuance of the golf course use was achieved without complying with the Countywide Plan, the San Geronimo Valley Community Plan and the zoning for the property; and
>
> The County has a ministerial duty to prepare a Master Plan pursuant to the San Geronimo Valley Community Plan before discontinuing the use of the property as a golf course.

//

//

//

In their joint opposing briefs[3] Respondents counter: the PSA is a merely land acquisition agreement and CEQA law allows the County to enter into such land purchase agreements before conducting a CEQA review so long as any future use is conditioned on CEQA compliance, as was done here. (Guidelines, § 15004(b)(2)(A); this acquisition is only "the first step on a long path to creating a new, public space in the San Geronimo Valley." (Oppo. p. 6); its actions in purchasing the property fall within several Categorical Exemptions; and any CEQA environmental review would have been premature since Respondents have not developed or committed to a specific or concrete "restoration and reuse" plan. (Oppo. p. 5) The contentions are discussed in detail below.

A. CEQA ANALYSIS

Because the law did not require the Board of Supervisors to hold public hearings on October 10 and November 14, 2017 before determining the project was exempt, the court reviews both the CEQA and non-CEQA causes of action under the standard of review for ordinary or "traditional" mandamus pursuant to Code Civ. Proc. § 1085. (*Western States Petroleum Ass'n v Superior Court* (1995) 9 C4th 559, 566-567.)

In determining whether to grant a petition for failure to comply with CEQA under traditional mandamus, the court determines whether the agency abused its discretion, i.e., (1) – the agency has not proceeded in a manner required by law; or (2) – the agency's determination is not supported by substantial evidence. (Public Resources Code, § 21168.5; *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181, 190–191.)

" 'The basic purposes of CEQA are to: [¶] (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities; [¶] (2) Identify ways that environmental damage can be avoided or significantly reduced; [¶] (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible; [¶] (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the

[3] TPL's brief addressed the alleged CEQA claims, and the County's brief addressed the claims the project was inconsistent with the general Countywide Plan, and the local SGVCP.

agency chose if significant environmental effects are involved.' ([Guidelines], § 15002)." (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285–286.)

The California Supreme Court in *Tomlinson, supra,* 54 Cal.4th 281, described the three-step process under CEQA for achieving these goals:

> 1 – The public agency must decide if the proposed development is a "project," i.e., "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment *undertaken, supported, or approved by a public agency*." (§ 21065, italics added.)
>
> 2 – If the proposed activity is a "project", the agency must decide whether it is exempt from compliance with CEQA under either a statutory exemption (§ 21080) or a categorical exemption set forth in the regulations (§ 21084, subd. (a); Cal. Code Regs., tit. 14, § 15300). "A categorically exempt project is not subject to CEQA, and no further environmental review is required. [Citations.]"
>
> If the project is not exempt, the agency must determine whether the project may have a significant effect on the environment. If the agency decides the project will not have such an effect, it must adopt a negative declaration to that effect. (§ 21080, subd. (c); see Cal. Code Regs., tit. 14, § 15070.); and
>
> 3 – If the agency does not issue a negative declaration, "the agency must prepare an environmental impact report of the project. (§§ 21100, subd. (a), 21151, subd. (a).)"

(*Tomlinson v. County of Alameda, supra,* 54 Cal.4th at p. 286.)

1. The Acquisition of San Geronimo Golf Course is a Project

For CEQA to apply, the activity or decision at issue must constitute a "project" under the statute. (Pub. Res. Code, § 21080, subd. (a).) " 'If there was no "project," there was no occasion to prepare either a negative declaration or an EIR.' [Citations.]" (*San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1376.) "Whether a particular activity constitutes a project in the first instance is a question of law." (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637, internal citations omitted.)

The CEQA Guidelines define "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable

indirect physical change in the environment. . . ." (Guidelines, § 15378, subd. (a), *emphasis added*; *Association for a Cleaner Environment v. Yosemite Community College Dist.,* (2004) 116 Cal.App.4th 629, 637; also, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* (2004) 131 Cal.App.4th 1170, 1180.) The types of activities that constitute projects include "'public works construction and related activities, clearing or grading of land [and] improvements to existing public structures . . . .' (Guidelines, § 15378, subd. (a)(1).)" (*County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089, 1100.) A governmental entity cannot segment, or piecemeal a series of approvals into separate projects. (See *Association for a Cleaner Environment, supra,* 116 Cal.App.4th at p. 638.)

A "project" has two essential elements. First, it is a discretionary activity directly undertaken by a public agency, or an activity supported in whole or in part by a public agency, or an activity involving the issuance by a public agency of some form of entitlement, permit, or other authorization. Second, it is an activity that may cause a direct, or reasonably foreseeable indirect, physical environmental change. (Pub. Res. Code, § 21065(a); Guidelines, § 15378(a)(1); *Association for a Cleaner Environment, supra,* 116 Cal.App.4th at p. 637.)

As to the first prong, there can be no serious dispute that the County's purchase of the golf course is an "activity directly undertaken by any public agency." (§ 21065, subd. (a); see e.g., *Association for a Cleaner Environment, supra,* 116 Cal.App.4th at pp. 638-639 [college district's decision to close, cleanup and demolish campus firing range and transfer shooting range operations to city's shooting range, is a "project"].)

In fact, the County concedes its activity is a project as defined by CEQA, but defines its scope as the "mere acquisition of the golf course." (E.g., AR 94 10/24/17 Memorandum to File – "MCP's acquisition of the golf course is a project under CEQA."; AR 3625 Coastal Conservancy application – "The proposed project is exempt under CEQA.")

Moving to the second prong – whether the activities have a "potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment . . . " (Guidelines, § 15378(a)) – the court finds that the record establishes some possibility the project may result in direct or indirect adverse physical impacts. At this preliminary

stage it is sufficient to find the existence of a project if the record shows there is *any* possibility the project may result in direct or indirect adverse physical impacts.

Here, the court finds there is a possibility that the change from the golf course to public use together with the co-terminus improvement of the fish habitats and watershed restoration activities, e.g., directing more water into the creeks, removing fish passage barriers, trimming landscaping to create daylight and replacing invasive, non-native vegetation, would cause direct physical changes in the environment. (AR 3847, 3616, 4225-4308 "2016 Fisheries Restoration Grant Program" application.) Accordingly, the second prong also has been satisfied. Clearly this is a project.

2. The Scope of the Project

Before determining whether the County "correctly determined a project fell within a categorical exemption, the court must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency's factual finding that the project fell within the exemption." (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251; see also *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.) The lead agency has the burden to demonstrate such substantial evidence. (*Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 475; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 114–115.)" (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185.)

The pivotal question here involves whether MCP approved or committed the County to performing other events or activities as a direct or necessary part of the purchase. If so, these activities also are included within the scope of the project. The County asserts that the project amounts only to the acquisition and that no further commitments have been made. In fact, the County seems to rest its opposition to the petition in large part on its assertion that it has not committed to terminating the property's use as a golf course.

Based on the language of the PSA and the totality of the circumstances surrounding the purchase (see *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139), the court finds the

County's definition of the project is too narrow and that it does not give appropriate consideration to the underlying activities the County agreed to perform when it resolved to purchase the property.

In addressing what constitutes a "project" the court must interpret the term broadly "to provide the fullest possible protection of the environment within the reasonable scope of CEQA's statutory language [Citations.] This broad interpretation ensures CEQA's requirements are not avoided by chopping a proposed activity into bite-sized pieces which, when taken individually, may have no significant adverse effect on the environment. [Citation.]" (*POET, LLC, supra,* 12 Cal.App.5th at p. 73, internal citations omitted.) The question whether the governmental activity qualifies as a "project reviewed under CEQA is not restricted to each governmental approval, but looks at the *underlying activity* which may be subject to approval" (*POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 73.)

In keeping with the broad concept of the term "project," the court finds that the proper scope of the project involves more than the "mere acquisition" of the golf course as advocated by the County, and includes those activities which TPL and MCP staff represented will immediately or directly result as a consequence of the purchase: phasing out of the golf course use; halting diversion of Larsen Creek water and increasing stream flow, stopping chemical applications to the landscaping; suspending purchase of 151 AFY from the water district; performing initial stream improvements; opening the golf cart paths to the public; and performing some changes in the golf course landscaping. (See e.g., *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 175, 195 ["project" to acquire farmland for purpose of converting into wildlife habitat included more than the acquisition, and encompassed the specific management plan and the extensive physical changes to the property necessary to make the actual conversion].)

The decision in *Golden Gate Land Holdings LLC v. East Bay Regional Park District* (2013) 215 Cal.App.4th 353 is instructive. While the *Golden Gate Land* holding did not directly address the legal issue considered here, the appellate court described the trial court's findings on this subject in great detail, and ultimately affirmed the trial court's decision without criticism of those findings.

The rationale underlying the trial court's decision is consistent with this court's interpretation of the scope of the project here.

There, *Golden Gate Land Holdings LLC* (*Golden Gate*) owned 140 acres of land on the east shore of San Francisco Bay. Eight acres of Golden Gate's property was to be condemned to help complete portions of the Eastshore State Park and to construct a segment of the San Francisco Bay Trail. The East Bay Regional Park District (the District), which approved the resolution necessary to condemn the property, concluded that the project was exempt from CEQA review, pursuant to §15325 of the Guidelines, applicable to the acquisition of property for the purpose of open space protection and future public access. (*Id.* 215 Cal.App. 4th at p. 361). The District stated, " '[t]his project consists of the acquisition of land in order to protect open space and to secure future public access to [Eastshore Park] and the . . . Bay Trail. Any development of this property and land use changes would be subject to future CEQA review.'" (*Ibid.*)

Golden Gate filed a petition for writ of mandate asserting the District had violated CEQA in that the District erroneously issued a notice of exemption. The scope of the "project" was of primary importance in evaluating the propriety in issuing the notice of exemption. The District contended that the project amounted only to the acquisition of the property, not the ultimate construction of the Bay Trail. Thus, the District contended, the exemption applicable to such acquisition was proper. The District argued that it had not committed itself to a definite course of action to build the Bay Trail, and thus, CEQA review of the construction phase was not yet ripe.

Quoting the trial court, the First District Court of Appeal stated:

> On May 8, 2012, the trial court filed a statement of decision and order granting, in part, Golden Gate's petition for a writ of mandate. The trial court concluded: (1) that the District had approved a "project" including both the proposed acquisition and the proposed trail improvements; [and] (2) that the District's resolution erroneously concluded the project was exempt from CEQA compliance; . . .
>
> The court stated: "[T]he project is 'to acquire the real property' 'to help to complete the [Eastshore Park] and provide the opportunity to construct an important segment of the . . . Bay Trail.' . . . [¶] . . . [¶] . . . For CEQA purposes, the 'project' includes both the proposed acquisition and the proposed improvements, as addressing the two parts sequentially would be improper piecemealing of the project. The proposed improvements are sufficiently definite given that [the District] considered three options for a trail site . . . , selected one, has a design and price estimate for the improvements . . . , and is now initiating the condemnation proceeding. [¶] . . . [¶] . . . Having selected the location of the

> trail, obtained engineering and costs studies for the trail, and initiated a proposed real estate acquisition that worked for that trail plan but not the alternatives, the [District] committed itself to a definite course of action in regard to the CEQA project. As a result, the [District] was required to state a CEQA exemption or describe CEQA compliance in the Resolution." The court concluded that no exemptions applied because "the project properly defined includes the building of the trail, the construction of fences, retaining walls, and drains, the loss of 133 parking spaces, and changes to existing roads."

(*Golden Gate Land Holdings, supra*, 215 Cal.App. 4th at p. 363.)

Similarly, the County here has also committed to a definite course of action beyond the mere acquisition of the property, as discussed in detail above.

As described by the California Supreme Court in *Save Tara, supra*, under certain circumstances the government's commitments relating to a development plan amount to an "approval" of certain project elements that require CEQA review before such approval. The Court stated:

> *Stand Tall, supra,* 235 Cal.App.3d 772, involved an agreement to purchase property, an activity that, as a practical matter in a competitive real estate market, may sometimes need to be initiated before completing CEQA analysis.
>
> The CEQA Guidelines accommodate this need by making an exception to the rule that agencies may not "make a decision to proceed with the use of a site for facilities which would require CEQA review" before conducting such review; the exception provides that "agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." (Cal. Code Regs., tit. 14,, § 15004, subd. (b)(2)(A).) The Guidelines' exception for land purchases is a reasonable interpretation of CEQA, but it should not swallow the general rule (reflected in the same regulation) that a development decision having potentially significant environmental effects must be *preceded,* not *followed,* by CEQA review. (See *Laurel Heights I, supra,* 47 Cal.3d at p. 394 ["A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved"].)

(*Save Tara v. City of West Hollywood*, *supra*,45 Cal.4th 116, 134.)

The administrative record shows that the County's activity in purchasing the golf course in order "to restore natural lands and provide open space," was not limited to the "mere acquisition" of the golf course. As precondition to the purchase of the property from TPL, the County agreed to discontinue the golf course use, provide for the interim use of the cart paths as walking and bicycle

paths, continue operation of the club house and restaurant, and implement an initial habitat restoration and reuse plan that definitively includes certain project plans such as increasing the stream flow within Larsen Creek and terminating the use of the property as a golf course, and replacing the greens and fairways with other vegetation. These activities also were part of the County's commitments to conduct certain restoration and conservation measures as a condition for obtaining funding from outside conservation agencies and organizations. (AR 3614, Coastal Conservancy grant application – "Goal 1 'Protect 135 acres of open space in the San Geronimo Valley for fish and wildlife benefits.' ") It is undisputed that these public park and restoration and reuse activities are incompatible with golf course use.

As summarized above, the administrative record is replete with references to these decisions and commitments made by MCP staff in negotiating the purchase of the property, in the grant applications used to secure funding, and in the announcements of the project to the public. For example, MCP stated in the grant application for Coastal Conservancy funds that it has decided to discontinue golf course use and to rehabilitate the threatened creeks after purchasing the property:

> By late 2019, *the County will wind down maintenance and use of the property as a golf course* and phase in public park uses. [¶]
>
> By late 2019, Marin County *will cease irrigation related to the golf course*, dramatically reducing water consumption on-site thus allowing for the return of water directly to San Geronimo and Larsen Creeks and to the Marin Municipal Water District (MMWD) system. [¶]
>
> Specific Tasks . . . . Water forbearance Marin County reduces water use by phasing out golf course irrigation, *if not already phased out during TPL ownership*.

(AR 3615-3617, emphasis added.)

These agreed upon and reasonably foreseeable activities go beyond the County's claim that it is merely acquiring title to the property. While the County has not defined *all* of the actual restoration and rehabilitation details to be performed, for which final decisions will be made after public comment and a complete CEQA review, the approved project includes not only the acquisition of the property, but also a generalized vision and commitment to restore, rehabilitate,

and reuse the property; and certain restoration details such as closure and physical removal of the golf course terrain, and dedicated increase in stream flow.

In rebuttal, County argues that the grant applications and similar activities, at most, show that it was a "proponent" or "advocate" for use of the property for park purposes and habitat restoration, which it claims is not enough to support a finding that County committed itself to any particular future use of the property beyond its acquisition. (Oppo. p. 11-12) The court disagrees.

In *City of Irvine v. County of Orange* (2013) 221 Cal.App.4th 846, Respondent County of Orange applied for state funds to expand its jail facility. The County applied for $100 million for Phase II funding as authorized by the Assembly Bill appropriating the funds. The Phase II Application expressly acknowledged the expansion was a "project" under CEQA and asserted the County was in the master planning and CEQA review stage for the expansion, including preparation of an EIR. (*Id.* at p. 853.) The Board of Supervisors adopted a resolution approving the Application before completing the CEQA review. The state approved the Application and "conditionally" awarded the funds to the County, before an EIR was circulated for public comment and certified. (*Id.* at p. 853.) The Board of Supervisors later certified the EIR and approved a new master plan for the expansion. (*Id.* at pp. 855-856.)

Plaintiff City argued that the submission of the Phase II Application constituted a project *approval* under CEQA and therefore the County should have prepared and certified CEQA documents *before* authorizing its Phase II Application. (*Id.* at p. 851.) The question for the court was whether its Phase II Application effectively committed the County to a definite course of action regarding the expansion. In its review, the court distinguished between advocating for or proposing a project and committing to the project. (221 Cal.App. 4th at pp. 859-860.) It held:

> Public entities often are required to provide project approvals for their own public projects and also may partner with developers on private projects. (See *Cedar Fair, supra,* 194 Cal.App.4th at p. 1173 ["a local agency may be a vocal and vigorous advocate of a proposed project as well as an approving agency"].) "But 'an agency does not commit itself to a project "simply by being a proponent or advocate of the project...." [Citation.]' [Citation.]" (*Ibid.; Neighbors for Fair Planning, supra,* 217 Cal.App.4th at p 556–557; *Sustainable Transportation, supra,* 179 Cal.App.4th at p. 121.) "Approval [under CEQA] cannot be equated with the agency's mere interest in, or inclination to support, a project, no matter how well defined. 'If having high esteem for a project before preparing an environmental impact report (EIR) nullifies the process, few public projects

> would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed toward it.' [Citation.]" (*Save Tara, supra,* 45 Cal.4th at pp. 136–137; see *Neighbors for Fair Planning,* at p. 557; *Sustainable Transportation,* at p. 121.)
>
> (*City of Irvine, supra,* 221 Cal.App.4th at pp. 859–860.)

Pursuant to this framework, the court viewed the terms of the Phase II Application and the totality of the surrounding circumstances (221 Cal.App. 4th at pp. 860-861), which included the detailed process the state had established for counties to apply for and obtain these state funds, e.g., submission of a thorough description of the project, the budget and construction plans, and the County's operating plans for the new facility. (*Id.* at p. 861.)

The state's statutes and regulations indicated that the County's receipt of a "conditional award" was merely a preliminary indication that the County was "qualified" to move forward in the process, and did not guarantee further funding. (*Id.* at p. 861.)

Based on these circumstances, the court found there was nothing in the language in the Application or in the conditional award that committed the County to the facility expansion "in a manner that effectively precluded the County from considering any project alternatives or mitigation measures that CEQA would otherwise require," and that "[a]t most, it permitted the County to explore the possibility of using state funds to expand the jail facility. (*Id.* at p. 863.)

The court also rejected Plaintiff's argument that because the County had already dedicated substantial resources to the expansion plan it was unlikely the County would decline the $100 million from the state, and the County effectively committed itself to the jail expansion as described in the Phase II Application. (*Id.* at pp. 864-865.) Weighing the *practical* effect of the County's action, the court concluded "the County has not committed itself to the Musick Facility expansion to the degree required to transmute the Application into an approval under CEQA." (*Id.* at p. 865.)

The instant case is inapposite. First, the final government approval of an activity is not a requirement for determining the scope of the project since the court must broadly interpret the scope of the project "to provide the fullest possible protection of the environment within the reasonable scope of CEQA's statutory language [Citations.]" (*POET, LLC, supra,* 12 Cal.App.5th at p. 73, internal citations omitted.) Second, in contrast to the non-binding, preliminary nature of the Phase II

Application in *City of Irvine*, *supra,* there is nothing *preliminary* about the County's agreement to purchase the golf course here, under the promised conditions here. The PSA was approved by the Board of Supervisors on November 14, 2017 and the President of the Board executed the PSA on the same day. (AR 33)

For these same reasons, the other decisions cited by the County are inapposite as they involve either conditional purchase or conditional development agreements which the courts found did not bind the local agency to a definite course of conduct, and for which CEQA review would have been *premature*. (See *Bridges v. Mt. San Jacinto Community College Dist.* (2017) 14 Cal.App.5th 104, 118-119, 122-124 [the college district's execution of two-year option agreement to purchase a potential site of new campus was not a "project" and district did not have to complete EIR *before* executing purchase agreement, where agreement did not commit the district to a definite course of development, the district had not adopted a resolution selecting a site for its future campus, and the purchase agreement conditioned the opening of escrow on the property upon the completion of CEQA review]; *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 570 [preliminary non-binding termsheet approved for development of downtown arena was held not to be a binding contract, but an "agreement to negotiate" and there was no approval of the project to trigger CEQA review]; *Neighbors for Fair Plan* v. *City & County of San Francisco* (2013) 217 Cal.App. 4th 540, 552 [City official's endorsement for demolishing current community center and constructing larger center with affordable housing, including execution of a pre-development loan agreement that expressly did not bind City to commit to the project, did not constitute a "de facto" pre-approval of the project before certifying the EIR]; *City of Santee v. County of San Diego* (2010) 186 Cal.App. 4th 55, 66- 67 [siting agreement in which County identified possible locations for future state inmate reentry facility in exchange for preference of a state award to finance construction of County jail did not commit the County or state either to a particular site or to the expansion of the jail facility]; and *Friends of Sierra Railroad v. Tuolumne Park and Recreation Dist.* (2007) 147 Cal.App. 4th 643, 651-658 [sale by park district of historic railroad right of way to local band of Me-Wuk Indians was not a "project" requiring CEQA review in the absence of a specific, identifiable development plan, even though tribe was likely to develop the property in some way].)

Here, the County's acquisition and planned closure of the golf course, along with the underlying activities, including its promises and commitment to certain features of the restorative plan, when viewed as a whole, satisfy the first "project" element, as well as define the project scope. That is, after interpreting the project broadly as the law requires, the court finds that the above-described activities, must be included as part of the proper definition of the "project" under review. Accordingly, the court rejects the County's contentions that its action involved only the acquisition of land and that it "did not commit to 'eliminating the Golf Course and implementing the restoration and reuse plan' when it agreed to purchase the Property."

Having defined the proper scope of the project, the next step is to decide if Respondent County abused its discretion in finding the project was categorically exempt.

3. The Project Is Not Categorically Exempt

In adopting the Resolution at issue, the Board of Supervisors concluded the project, which it defined as the "transfer of ownership to the County" is exempt under Guidelines § 15301(h) – "Existing Facilities because the project entails transfer of land from a private party to the County of Marin to enable the restoration of the existing golf course," § 15316 – "Transfer Of Ownership Of Land In Order To Create Parks," Guidelines § 15325(c) – acquisition of property "to allow restoration of natural conditions, including plant and animal habitats," and § 15325(f) – acquisition "to preserve open space or lands for park purposes"; and the purchase would not result in potentially significant impacts to the environment; i.e., the "common-sense" exemption, (Guidelines, § 15061(b)(3).)

It is undisputed that CEQA does not apply to projects that are statutorily or categorically exempt. (Guideline, § 15061, subd. (b).) Certain classes of projects are categorically exempt because the Secretary of California's Natural Resources Agency "has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument might be made that they are potentially significant." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104 – 1105; Pub. Resources Code, § 21084, subd. (a); Guidelines, § 15300.)

"Categorical exemptions are strictly construed, 'in order to afford the fullest possible environmental protection.' [Citation.]" (*Save Our Schools v. Barstow Unified School District Board of Education* (2015) 240 Cal.App.4th 128, 140.)

Arguing that it has not yet committed to any specific restoration and reuse plans and it did not commit to closing the golf course when it agreed to purchase the property, County reasserts the Class 16, Class 25 categorical exemptions, and the common sense exemption. (Oppo. p. 16)

In examining the claimed exemptions, the court "must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency's factual finding that the project falls within the exemption. [Citations.] The lead agency has the burden to demonstrate such substantial evidence." (*California Farm Bureau Federation, supra,* 143 Cal.App.4th at p. 185.) "A determination by the agency that a project is categorically exempt constitutes an implied finding that none of the exceptions applies. [Citations.]" (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 689.)

In determining the substantial evidence issue, the agency acts as a trier of fact and this court, "after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to support it. [Citations.]." (*Berkeley Hillside Preservation, supra,* 60 Cal.4th at pp. 1114-1115.)

"Under CEQA, 'substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact' and 'is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.' (Pub. Resources Code, § 21080, subd. (e).)" (*Aptos Residents Association v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1046–1047.)

Once the agency meets this burden, " 'the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in Guidelines section 15300.2.' [Citation.]" (*California Farm Bureau Federation, supra,* 143 Cal.App.4th at p. 186.)

"Where the agency fails to demonstrate the project is within a categorically exempt class, the project may nevertheless be exempt from CEQA if it can be seen with certainty' that [the] project will not have a significant effect on the environment"; i.e., the "common sense" exemption. (Guidelines, § 15061(b)(3).) (*Ibid.*, internal citations omitted.)

a. Class 25 Exemption

The County contends that Guidelines § 15325 subdivisions (a), (c), and (f) apply to the purchase of the golf course parcels. Section 15325 reads in relevant part:

> Class 25 consists of the transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:
>
> (a) Acquisition, sale, or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats. [¶]
>
> (b) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats. [¶] . . .
>
> (f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

County's reliance on this exemption must fail because it ignores the express and implied decisions and activities that constitute the "project," as the court has defined it, *ante*. (See *Association for A Cleaner Environment*, *supra,* 116 Cal.App. 4th at p. 640 ["Respondents' reliance on this exemption fails because it is premised on an underinclusive view of the activities constituting the project."].)

As the decision in *California Farm Bureau, supra*, makes clear, the Class 25 exemption is limited to projects that include "only the acquisition, sales or other transfers of ownership interests for particular purposes. It does not cover anything else." (143 Cal.App. 4th at p. 193.)

Since this court has determined that the restoration and reuse project here, taken as a whole, includes distinctive development features and physical changes to the existing golf course, the Class 25 exemption is inapplicable on its face. As stated in *California Farm Bureau,* the exemption does not cover a project with a management plan or development component requiring significant construction. (*Id.* at p. 193.) The Class 25 exemption does not apply to this project which includes more than mere acquisition.

b. Class 16 Exemption

Guidelines, § 15316 – "Transfer Of Ownership Of Land In Order To Create Parks" provides:

> Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:
>
> (a) The management plan for the park has not been prepared, or
>
> (c) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources. CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource.

County does not make a separate argument for this exemption. Its opposition generally asserts that "it did not commit to implementing any specific restoration and reuse plan; nor did it commit to closing the golf course" and that it is premature conduct a CEQA review. (Oppo. p. 16:19-21.) As thoroughly discussed above, the County has defined the scope of the project too narrowly, and this exemption also fails.

Even if we treated the project to include only the acquisition of the golf course, this argument fails. County has not sustained its burden to present substantial evidence to show that the purchase was for "land [] in a natural condition or contains historical or archaeological resources." (§ 15316.)

It is undisputed that the property is currently improved with a golf course and a clubhouse. Only a small portion of the property that contains San Geronimo Valley and Larsen Creeks may be considered to be in a "natural condition" and County has presented no evidence that the land contains an historic or archaeological resource.

Giving this categorical exemption a strict construction as the law requires, because the vast majority of the property consists of commercial improvements, the property cannot be deemed to be "land [that] is in a natural condition. . . ."

//

//

//

c. Class 1 Exemption

The County applied the Class 1 exemption to the clubhouse portion of the property only.

The court finds substantial evidence to support the County's claim that the interim use of the clubhouse falls within the exemption for "Existing Facilities" in Guidelines § 15301. (Oppo. p. 11.)

That exemption reads in part:

> Class 1 consists of the *operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities*, mechanical beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all inclusive of the types of projects which might fall within Class 1. *The key consideration is whether the project involves negligible or no expansion of an existing use.*

(*Emphasis added.*)

Here, the County's agreed-upon and reasonably foreseeable planned activities relating to the clubhouse portion fall within the Class 1 exemption. The fact the County will ultimately change the use of this facility does not preclude the application of the Class 1 exemption. The County's only stated commitment for this parcel is to *maintain* its current use. The County has not precluded mitigation measures that may apply to future uses. The court finds substantial evidence to support this categorical exemption.

d. Common Sense Exemption

Guidelines, § 15061(b)(3) provides a "catch-all" category that exempts a project from CEQA "[w]here it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, . . ." (*Emphasis added.*)

This purpose of this exemption is further described in *California Farm Bureau*, *supra,* 143 Cal.App.4th at p. 186:

> Where the agency fails to demonstrate the project is within a categorically exempt class, the project may nevertheless be exempt from CEQA *if " 'it can be seen with certainty' that [the] project will not have a significant effect on the environment*. [Citations.]" (*Mountain Lion Foundation, supra,* 16 Cal.4th at p. 113.) The Guidelines cover this concept in section 15061, subdivision (b)(3), called the common-sense exemption, which provides in part: "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The discussion accompanying this Guideline

> explains: "Subsection (b)(3) provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act. [¶] This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. *Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA*." (Remy, CEQA Guide, *supra,* Appendix V, p. 874; *Davidon Homes, supra,* 54 Cal.App.4th at pp. 112–113.)

(*Emphasis added.*)

As the lead agency, the County " 'has the burden of establishing the common sense exemption, i.e., that there is *no* possibility the project may cause significant environmental impacts. "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." ' [Citation.]" (*California Farm Bureau, supra,* 143 Cal.App.4th at pp. 195–196.)

"A ' "[s]ignificant effect on the environment" ' is statutorily defined as 'a substantial, or potentially substantial, adverse change in the environment.' (§ 21068.) " 'Environment' means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.' (§ 21060.5.) Combining these statutory definitions, a 'significant effect on the environment' under CEQA is a substantial or potentially substantial adverse change in the physical conditions existing within the area affected by the project." (*California Farm Bureau, supra,* 143 Cal.App.4th at p. 185; see also § 15002(g) ["A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project."]

The County's opposition does not contain arguments specifically directed to this exemption. The closest analysis is the County's general assertion: "[T]he County's resolution adopting the PSA did not require any actions that could have significant environmental impacts, and any future activities must undergo CEQA review." (Oppo. p. 17:22-23.)

As the court has discussed above, the County did not consider the potential environmental impacts that its planned conversion will have on the environment.

//

//

i. Increased Stream Flow

The planned and committed change in stream flow and the immediate creek rehabilitation activities, undoubtedly result in a change in the environment, whose effects have not been reviewed. While logic might suggest that such change would have positive effects upon the environment, the court is not permitted to so conclude, and to effectively exempt CEQA review based upon such supposition.

As a point of comparison, had the County committed to a project which necessarily diverted water from the creek, and *decreased* stream flow, CEQA review clearly would be required and no reasonable argument to the contrary could be made. The *increase* in stream flow cannot be analyzed by this court any differently. Whether that change will have a significant negative environmental impact would be the subject of expert analysis supplied by the County, not this court's lay impression.

Further, even if the end result of increased stream flow would necessarily benefit the environment, the process in reaching that end result may itself have significant environmental effects. On this subject, the *California Farm Bureau* court stated:

> Here the administrative record reflects the State Agencies consistently took the position the loss of agricultural land was not itself an adverse environmental impact, but the State Agencies do not point us to any evidence in the record showing they considered the potential environmental impacts from the management plan and the construction and maintenance of this new habitat. "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra,* 54 Cal.App.4th at p. 119; see, e.g., *Dunn–Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, disapproved on other grounds in *Western States Petroleum Assn. v. SuperiorCourt, supra,* 9 Cal.4th 559.) There may be environmental costs to an environmentally beneficial project, which must be considered and assessed. The State Agencies have not adequately shown there is "no possibility" this project, considered as a whole (Guidelines, § 15378, subd. (a)), may cause significant environmental impacts. Therefore, we do not need to reach the issue of whether a change in use of land from agriculture to habitat will itself otherwise trigger CEQA.
>
> We conclude, despite the intended beneficial environmental purpose of this project, it is not categorically exempt from CEQA.

(*California Farm Bureau, supra*, 143 Cal.App. 4th at p. 196.)

Here, had the County simply purchased the property with a generalized vision of restoration, *without a commitment to certain project features*, it may have been entitled to the acquisition-related exemption it claimed. However, in light of the above authorities, it is evident that the County did more than purchase property with a generalized vision and preference. Instead, it committed to certain project aspects, including increasing the stream flow by a precise minimal amount and closing the golf course and removing or replacing the golf course landscaping.

ii. Termination Of Use As A Golf Course

Likewise, there is no evidence in the record the County considered whether there was any possibility the termination of golf course use would have a significant environmental impact. This termination includes more than a simple passive change in use. The County has committed itself, at a minimum, to land restoration, vegetation changes, and stream flow changes.

In addition to its contractual commitments, the County has engaged in a budgeting process that details the potential environmental changes of the impending golf course termination. In an email entitled "Note: re restoration cost" Sharon Farrell (Golden Gate National Parks Conservancy) wrote to Max Korten (County of Marin):

> I've been thinking more about the project we discussed and the proposed cost. The more I thought about it, the cost seems lower than I would anticipate. Not knowing how the estimate is constructed, I am wondering if it includes the following (Note: these are back of the envelope estimates based upon not knowing the specifics about the site):
>
> Seed collection, plant propagation. If you assume that 70% of the area will be revegetated (converted from golf course green) on an average of 3-foot centers at a plant cost of $6 . . . it comes out to $2-2.5M
>
> Planting: . . . would be another $750K
>
> . . .
>
> Green waste removal – assuming worst case scenario that you remove and have to haul off the top 6 inches of turf for 70% of the site would mean off-hauling approximately 56K cu. yds. of greenwaste. . .
>
> . . .
>
> Creek channel enhancement (not sure if you need to regrade, dewater, add gravel to bed, remove infrastructure, stabilize banks, etc.) but imagine that cost may be close to $1M
>
> Grading to produce more natural topography -???

Enhancement to path tread. . .

Environmental clean-up if any required due to past use.

(AR 270A-270B)

While this budget analysis was not created by the County, Max Korten (MCP) forwarded the analysis to others in an effort to commence project planning and rough costs. (AR 133-134) The budget analysis not only suggests that the project extends beyond the mere acquisition, it also underscores the conclusion that the project implementation may possibly have significant environmental effects for which mitigation measures are already precluded. Thus, notwithstanding that the end-result is intended to benefit the environment, the evidence in the record cannot support County's conclusion that there is "*no* possibility the project may cause significant environmental impacts."

On this record, County has not presented substantial evidence showing the project qualifies for any of the asserted categorical exemptions or that it can be seen "with certainty" that the project will not have a significant effect on the environment.

Accordingly, the court finds the County has abused its discretion by finding the project exempt from conducting an initial study to determine if the project "may have a significant effect on the environment or revisions to the project would avoid such an effect, . . ." (*California Farm Bureau, supra,* 143 Cal.App.4th at pp. 184-185.)

The petition is granted on the above-described grounds, and the County is directed to set aside its Resolution and agreement to purchase the golf course.

4. The Project Does Not Conflict with Planning and Zoning Laws

Petitioners allege (in CEQA and non-CEQA claims) that the project is impermissible because it conflicts with the Countywide Plan (CWP), the San Geronimo Valley Community Plan (Community Plan), and the zoning for the property. Petitioners claim that the County's acquisition of the property and planned termination of its use as a golf course are inconsistent with the permitted uses of the property, and claim further that the County ignored the legally-mandated procedures for adopting a

different use. These claims are contained in the Second Cause of Action alleging failure to proceed as required by CEQA, and in the Ninth and Tenth Causes of Action alleging non-CEQA prejudicial abuse of discretion. (Code Civ. Proc., § 1085.)

Specifically, Petitioners allege: the use of the property as park and open space is inconsistent with the regulatory language cited above and the Class 25 exemption cannot be utilized to circumvent the clear intent of these regulations (second cause of action); the County's Resolution did not contain any discussion of why the project does not conflict with the use restrictions described in the regulations (ninth cause of action); and County has a mandatory, ministerial duty prepare a Master Plan before changing the golf course use. (tenth cause of action.)

First, the court rejects County's contention that it does not have to comply with its own general plan. "[W]e must presume and expect that the County will comply with its own ordinances, . . ." (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 141.) None of the decisions cited by County support their assertion. (Oppo. p. 6, n.1.) In fact, such a result would overturn the long-established centrality of the general plan in local land use decisions. "Because of its broad scope, long-range perspective, and primacy over subsidiary land use decisions, the general plan has been aptly described as the constitution for all future developments' within the city or county. [Citation.]" (*Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 152, *internal citations omitted.*)

Next, with regard to the assertion that the project is inconsistent with the property's zoning, the court disagrees. Petitioners note that the property has an "RC- Commercial Recreation" land use designation in the Marin Countywide Plan, and is zoned RCR (Resort and Commercial Recreation) in the zoning ordinance. (Marin County Development Code for Commercial/Mixed Use and Industrial Districts, Chapter 22.12.)

The Marin Countywide Plan provides:

> The Recreational Commercial land use category is established for resorts, lodging facilities, restaurants, and privately owned recreational facilities, such as golf courses and recreational boat marinas. Housing for employees for very low and low-income households may also be permitted.

The zoning ordinance, Chapter 22.12.020 H, provides:

> RCR (Resort and Commercial Recreation) District. The RCR zoning district is intended to create and protect resort facilities in pleasing and harmonious surroundings with emphasis on public access to recreational areas within and adjacent to developed areas. The RCR zoning district is consistent with the Recreational Commercial land use category of the Marin Countywide Plan.

An objective review of the language of the RCR zoning designation establishes that the County's intended restoration, rehabilitation, and use of the property as a public park and recreation site is consistent with the plain language of the RCR zoning designation.

The uses allowed under the RCR zoning district include "golf courses and country clubs" as well as "public parks and playgrounds." (Chapter 22.12.030, Table 2-7.) (Smith decl. p. 50.) As such, the County's planned use of the property for a public park and open space does not violate the express language of the zoning ordinance. Also, the approval does not constructively create a zoning amendment inconsistent with the Marin Countywide Plan or the local Community Plan, as alleged in the ninth cause of action ¶ 113 and the tenth cause of action ¶ 119.

Petitioners next argue that the purchase and intended use of the property run afoul of the Community Plan (and thus, General Plan), triggering CEQA review as well as constituting direct abuse of discretion by the board, and must be set aside. The San Geronimo Valley Community Plan is part of the Marin Countywide Plan. The Community Plan declares the San Geronimo Golf Course to be an important recreational resource that should be retained. This section reads:

> The golf course is 157 acres of developed recreational land including clubhouse and restaurant facilities. The course represents an important visual and recreational resource in the Valley. *The golf course use should be retained with no major expansion of the facilities. Future uses should be limited to those which support the primary use as a golf course.*

(Community Plan. p. IV-12; Smith decl. p. 62, emphasis added.)

In relevant part, the Community Plan contains Objective CD-7.0 – "To Maintain Existing Recreational Facilities, and Provide Recreational Opportunities for All Residents in the Valley." (Community Plan, p. IV-23.)

As applied to the golf course, this goal's implementing policy, CD – 7.3, reads:

> Major changes in the use of the San Geronimo Golf Course *should be evaluated by a master plan* which could address traffic and other impacts as well as the rural character of the Valley.

(*Id.* at pp. IV-23-24.; *emphasis added.*)

Petitioners rely on the general rule that the County's general plan is the "constitution for future development" and that any subordinate land use decision that is not consistent with the general plan is "invalid at the time it is passed." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 539-541.) (MPA p. 11.) Petitioners argue that County unlawfully changed (or committed to change) the property's use in violation of the restrictive statutory language and without preparing a Master Plan as required by the Community Plan.

Taken as a whole, the language stating the golf course "should" be retained with no major expansion of the facilities, does not prohibit any and all other recreational uses. Similarly, the language that states future uses "should" be limited to those which support the primary use as a golf course, is not mandatory.

This expression of a preference does not mandate specific golf course use. At most, it reflects a policy of "encouraging" this use, and the County is vested with the discretion to decide if subsequent events have caused that preference to give way to any of the competing land use policies contained in the General or Community Plans. (See *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 697.)

The court finds that the use of the terms "should", instead of "shall" or "must", in the Community Plan "are precisely the sort of amorphous policy terms that give a local agency some discretion. [Citation.]" (*Joshua Tree, supra,* 1 Cal.App.5th at p. 697.)

When the local agency's approval of a project is attacked as being inconsistent with the general plan, courts typically give wide deference to the local agency's decision:

> " '[A] governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion.' [Citations.] 'An abuse of discretion is established only if the [governing body] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. [Citation.] We may neither substitute our view for that of the [governing body], nor reweigh conflicting evidence presented to that body. [Citation.]' [Citation.] This review is highly deferential to the local agency, 'recognizing that "the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad

> discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the [local] officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" [Citation.]' [Citation.]" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816–817.)

(*Id.*, 1 Cal.App.5th at pp. 696-697.)

Overlooked by Petitioners are other express, competing objectives contained in the Community Plan related to Environmental Resources. E.g.:

> OBJECTIVE ER-2.0. TO PROTECT SAN GERONIMO VALLEY CREEK AND ITS MAJOR TRIBUTARIES AS A SCENIC ASSET AND VIABLE WILDLIFE AND AQUATIC HABITAT.
>
> Policy ER-2.1 Protect Creekside Environment. The county should continue to protect the creekside environment by implementation of the Streamside Conservation Policies EQ-2.1 through EQ 2.40 in the Environmental Quality Element of the Countywide Plan. [¶]
>
> Policy ER-2.2 Protection of Significant Creek Features. Significant creek features such as the Inkwells and fish ladder system should be protected and restored.
> Program ER-2.2a Restore Creek Features. Protect and restore significant creek features including the Inkwells, and the fish ladder through development review and make efforts to obtain local funding for restoration. [¶]
>
> Policy ER-2.4 Protect Aquatic Habitat. Landowners should be encouraged to employ sound land management practices which protect habitat necessary for aquatic life including the Coho salmon, steelhead trout and California freshwater shrimp.

The County is entitled to balance these competing policies in making its decision to approve the golf course purchase. Considering all of the evidence in the record, it cannot be said that "no reasonable person could have reached the same conclusion." (*Joshua Tree, supra,* 1 Cal.App.5th at p. 697.)

Next, Petitioners argue that the County failed to formally consider and decide whether the project is consistent with the CWP as allegedly required by Gov. Code § 65402(a), and thereby did not proceed as required by law. Indeed the County did not make a formal finding that the project is consistent with the General Plan. County refers the court to the minutes of the public hearing before the Board of Supervisors held on November 14, 2017, wherein Community Development Agency Director Brian Crawford briefly responded to a resident's question over

whether use of the property for community gardens is consistent with the Community Plan. (AR 954.) This dialogue does not contain an adequate discussion of whether the purchase is consistent with the plans and zoning ordinance. Nevertheless, the court does not reach the question as to whether this failure requires an order setting aside the Resolution, since Petitioner did not raise this issue previously.

Pursuant to Pub. Res. Code § 21177(a), no action may be brought to set aside the approval of a project in violation of CEQA "unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division *or* prior to the close of the public hearing on the project before the issuance of the notice of determination." Likewise, in an action for traditional mandate, Petitioners must have advanced the arguments in the administrative proceedings that they wish to raise in the courts. (See *Clary v. City of Crescent City* (2017) 11 Cal.App.5th 274, 294 [issue not raised at administrative hearing may not be raised in later judicial proceedings].)

Petitioners do not direct this court's attention to any place in the administrative record where this issue was reasonably raised during the public comment periods or through outside communications. Accordingly, it cannot be raised here.

Even if the court were to consider the issue, the County's failure to make a consistency finding is not fatal to the Resolution. On this subject, Petitioners allege in the tenth cause of action that that County had a ministerial duty to comply with all the laws, including the CWP and Community Plan. In their brief, Petitioners argue that County failed to comply with Gov. Code § 65402 (a), which provides that before the County purchases land for park or public purposes, it must submit the plan to the planning agency for review and approval for conformity with the general plan. Section 65402(a) reads in part:

> If a general plan or part thereof has been adopted, no real property shall be acquired by dedication or otherwise for street, square, park or other public purposes, and no real property shall be disposed of, no street shall be vacated or abandoned, and no public building or structure shall be constructed or authorized, if the adopted general plan or part thereof applies thereto, until the location, purpose and extent of such acquisition or disposition, such street vacation or abandonment, or such public building or structure have been submitted to and reported upon by the planning agency as to conformity with said adopted general plan or part thereof. The planning agency shall render its report as to

> conformity with said adopted general plan or part thereof within forty (40) days after the matter was submitted to it, or such longer period of time as may be designated by the legislative body.

The court agrees with the County, that the technical failure alleged here was not prejudicial. The County engaged in public discussions , including a review by the Director of the County's Community Development Agency, on the subject of consistency, ultimately finding the project is consistent with the Countywide Plan policies in play. The court herein agrees that the project is not inconsistent with the Countywide Plan, or Community Plan. The failure to specifically state this finding in the County's Resolution did not result in any prejudice, and cannot itself result in an order setting aside the Resolution.

During oral argument, Petitioner argued that aside from Gov. Code §65402, the County was required to make a formal finding that the project is consistent with the General Plan. This argument was not advanced in Petitioner's Opening Brief or Reply. The court declines to consider it here. Further, the court finds no authority suggesting a consistency finding must be made before proceeding upon a claim of exemption.

To the extent Petitioners claim, that the County violated CEQA because it did not make the consistency finding before concluding the project was exempt, this argument fails. Guidelines, § 15125(d), cited by Petitioners[4] (Opening Brief. p. 14), applies by express language that must be addressed in an environmental impact report (EIR). The statute does not address making such consistency finding prior to finding a project to be categorically exempt. Section 15125(d) provides,

> The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans.

Thus, even if the County failed to comply with Gov. Code §65402(a), such failure does not amount to a CEQA violation.

//

//

---

[4] The parties both cite §15125(b) for this proposition, although it appears they meant §15125(d).

Accordingly, the court finds that the decision to acquire the property for park purposes and open space uses was not inconsistent with the General and Community Plan or the zoning ordinance.

The petition is denied on these grounds.

IV. ORDER

IT IS HEREBY ORDERED, JUDGED AND DECREED THAT:

1. The Petition for Writ of Mandate (Pub. Res. Code § 21168.5) is granted.

2. A peremptory Writ of Mandate shall issue from the court, commanding Respondents County of Marin and Board of Supervisors of the County of Marin to do the following:

   a. Vacate and rescind Resolution 2017-126 finding the project to be exempt, and to take no further action in reliance on said Resolution, including executing, finalizing, or providing funding for the subject PSA; and

   b. Refrain from any future approvals to acquire the property unless made in compliance with all requirements under the California Environmental Quality Act (CEQA), including those requirements discussed in the court's decision.

3. Petitioner is directed to prepare Proposed Judgment/Writ consistent with the above decision and order.

Dated October 29, 2018

PAUL M. HAAKENSON

PAUL M. HAAKENSON
Judge of the Superior Court

MARIN COUNTY SUPERIOR COURT
3501 Civic Center Drive
P.O. Box 4988
San Rafael, CA 94913-4988

SAN GERONIMO ADVOCATES, ET AL. vs. **COUNTY OF MARIN, ET AL.**	CASE NO. CIV 1704467 **PROOF OF SERVICE BY FIRST CLASS MAIL** ***Code of Civil Procedure Sections 1013a and 2015.5***

I am an employee of the Marin County Superior Court. I am over the age of 18 years and not a party to this action. My business address is 3501 Civic Center Drive, Hall of Justice, San Rafael, California.

On 10-30-18, I served the following document(s): **DECISION – PETITION FOR WRIT OF MANDATE** in said action to all interested parties, by placing the envelope for collection and mailing on the date shown thereon, so as to cause it to be mailed on that date following standard court practices. I am readily familiar with the court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

TODD SMITH
RILEY HURD
ASHLING MCANANEY
1101 FIFTH AVE.
#100
SAN RAFAEL, CA 94901

BRIAN CASE
OFFICE OF COUNTY COUNSEL
3501 CIVIC CENTER DRIVE
275
SAN RAFAEL, CA 94903

WINTER KING
396 HAYES STREET
SAN FRANCISCO, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Rafael, California

JAMES M. KIM
Court Executive Officer

By: _____
DEPUTY