

1 SUSANA ALCALA WOOD, City Attorney (SBN 156366)  
2 **LESLIE Z. WALKER, Senior Deputy City Attorney (SBN 249310)**  
3 CITY OF SACRAMENTO  
4 915 I Street, Room 4010  
5 Sacramento, CA 95814-2608  
6 Telephone: (916) 808-5346  
7 Facsimile: (916) 808-7455

8 Attorneys for the CITY OF SACRAMENTO

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

SACRAMENTO RAIL PRESERVATION  
ACTION GROUP; ARTHUR AND  
SANDRA BAUER; PAUL HELMAN;  
GREGG LUKENBILL; and DANIEL  
PAIGE,

Petitioners,

vs.

CITY OF SACRAMENTO; CALIFORNIA  
DEPARTMENT OF TRANSPORTATION;  
and DOES 1 through 10, inclusive,

Respondents.

Case No.: 34-2019-80003130

**RESPONDENT CITY OF  
SACRAMENTO'S OPPOSITION  
BRIEF**

Judge: Hon. James P. Arguelles  
Dept.: 17

Action Filed: April 26, 2019

Hearing Date: August 14, 2020 9:00  
a.m.

**FILED/ENDORSED**

**MAY 19 2020**

By: K. Fay  
Deputy Clerk

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SACRAMENTO COUNTY

## TABLE OF CONTENTS

	<u>Page</u>
I. <u>INTRODUCTION</u> .....	7
II. <u>STATEMENT OF FACTS</u> .....	7
A. <u>THE TRAIL</u> .....	7
B. <u>THE RAILWAY CORRIDOR</u> .....	8
C. <u>ENVIRONMENTAL REVIEW AND OUTREACH</u> .....	9
III. <u>LAW AND ARGUMENT</u> .....	11
A. <u>CEQA STATUTORY BACKGROUND AND STANDARD OF REVIEW</u> .....	11
B. <u>THE FINAL EIR ACCURATELY DESCRIBES THE TRAIL'S         ENVIRONMENTAL SETTING.</u> .....	13
1. <u>The Final EIR Accurately Identifies the WGBL.</u> .....	13
2. <u>The Final EIR Accurately Identifies the Functionality of the             WGBL.</u> .....	14
3. <u>The Final EIR Accurately Characterizes the WGBL as             Abandoned.</u> .....	15
4. <u>The Trail is Consistent with the OSSHP.</u> .....	15
C. <u>THE FINAL EIR FULLY DISCLOSES THE TRAIL'S POTENTIAL         ENVIRONMENTAL IMPACTS.</u> .....	16
1. <u>The Final EIR Adequately Discloses and Discusses the Potential             Impacts to Historical Resources.</u> .....	16
a. <u>The City Identifies the WGBL as a Historical Resource.</u> ....	17
b. <u>Substantial Evidence Supports the Final EIR's Conclusion                 that the Impact on the Historic Resource is Less than                 Significant.</u> .....	18
c. <u>The Trail Does Not Fall Within One of the Examples of                 Adverse Effect Set Forth in 36 CFR 800.5(a)(2).</u> .....	20

## TABLE OF CONTENTS

	<u>Page</u>
d. The Trail is Consistent with the Secretary of Interior Standards.....	23
i. Standard of Review Applicable to Compliance with the Secretary of Interior Standards. ....	23
ii. Secretary of Interior Standards One and Two. ....	24
2. <u>The Final EIR Adequately Discloses the Trail's Potential Recreational Impacts.</u> .....	26
3. <u>The Final EIR Adequately Discloses the Trail's Potential Aesthetic Impacts.</u> .....	28
4. <u>The Final EIR Adequately Discloses and Analyzed Potential Air Quality Impacts.</u> .....	29
5. <u>The Final EIR Adequately Discloses the Trail's Consistency with Applicable Land Use Plans.</u> .....	31
a. The Final EIR Complies with CEQA's Requirements to Discuss Any Inconsistencies Between the Proposed Trail and Applicable Plans. ....	31
b. The City Accurately Discloses the Property Rights Related to the Trail.....	33
c. The Trail is Consistent with the City of Sacramento General Plan. ....	34
6. <u>The Final EIR Adequately Discloses the Trail's Use of Decomposed Granite.</u> .....	34
7. <u>The City Adequately Studied Trail Alternatives.</u> .....	35
IV. <u>CONCLUSION</u> .....	37

## TABLE OF AUTHORITIES

### Page

#### Cases

<i>Architectural Heritage Association v. County of Monterey</i> (2004) 122 Cal.App.4th 1095 .....	11, 26
<i>Association of Irrigated Residents v. County of Madera</i> (2003) 107 Cal.App.4th 1383 .....	31
<i>California Native Plant Society v. City of Santa Cruz</i> (2009) 177 Cal.App.4th 957 .....	14, 36
<i>California Native Plant Society v. Rancho Cordova</i> (2009) 172 Cal.App.4th 603 .....	12, 14, 30
<i>Center for Biological Diversity v. California Department of Conservation, etc.</i> (2019) 36 Cal.App.5th 210 .....	11, 12, 22
<i>Chico Advocates for a Responsible Economy v. City of Chico</i> (2019) 40 Cal.App.5th 839 .....	12, 18
<i>Citizens for a Sustainable Treasure Island v. City &amp; County of San Francisco</i> (2014) 227 Cal.App.4th 1036 .....	18, 19, 23, 24, 25
<i>Citizens for Positive Growth &amp; Preservation v. City of Sacramento</i> (2019) 43 Cal.App.5th 609 .....	12, 13, 14, 15, 21, 23, 24, 29
<i>City of Long Beach v. Los Angeles Unified Sch. Dist.</i> (2009) 176 Cal.App.4th 889 .....	31, 32
<i>Eureka Citizens for Responsible Government v. City of Eureka</i> (2007) 147 Cal.App.4th 357 .....	17, 18, 19,, 23, 24, 28, 29
<i>Greenebaum v. City of Los Angeles</i> (1984) 153 Cal.App.3d 391 .....	33
<i>Jensen v. City of Santa Rosa</i> (2018) 23 Cal.App.5th 877 .....	37
<i>Joshua Tree Downtown Business Alliance v. County of San Bernardino</i> (2016) 1 Cal.App.5th 677 .....	36
<i>Laurel Heights Improvement Association v. Regents of University of California</i> (1988) 47 Cal.3d 376 .....	19
<i>Laurel Heights Improvement Association v. Regents of University of California</i> (1993) 6 Cal.4th 1112 .....	11

1	<i>Laurel Hills Homeowners Assn. v. City Council</i>	
2	(1978) 83 Cal.App.3d 515 .....	36
3	<i>League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland</i>	
4	(1997) 52 Cal.App.4th 896 .....	26
5	<i>North Coast Rivers Alliance v. Marin Municipal Water District Board Of Directors</i>	
6	(2013) 216 Cal.App.4th 614 .....	26
7	<i>Placerville Historic Preservation League v. Judicial Council</i>	
8	(2017) 16 Cal.App.5th 187 .....	28
9	<i>Protect Niles v. City of Fremont</i>	
10	(2018) 25 Cal.App.5th 1129 .....	18
11	<i>Save Our Heritage Organisation v. City of San Diego</i>	
12	(2015) 237 Cal.App.4th 163 .....	34
13	<i>Save Tara v. City of West Hollywood</i>	
14	(2008) 45 Cal.4th 116 .....	33
15	<i>Sierra Club v. City of Orange</i>	
16	(2008) 163 Cal.App.4th 523 .....	12, 22, 31
17	<i>Sierra Club v. County of Fresno</i>	
18	(2018) 6 Cal.5th 502 .....	12, 23, 24
19	<i>South of Market Community Action Network v. City &amp; County of San Francisco</i>	
20	(2019) 33 Cal.App.5th 321 .....	13, 17, 35, 36, 37
21	<i>Town of Atherton v. California High-Speed Rail Authority</i>	
22	(2014) 228 Cal.App.4th 314 .....	31
23	<b><u>Statutes</u></b>	
24	Pub. Resources Code, § 5002.2 .....	8
25	Pub. Resources Code, § 21000 et seq. ....	7
26	Pub. Resources Code, § 21168.5 .....	12
27	Pub. Resources Code, § 21177, subd. (a) .....	30
28	<b><u>Regulations</u></b>	
	Cal. Code Regs., tit. 14, § 15000 et seq.[CEQA Guidelines] .....	9
	CEQA Guidelines, Appendix G, XVI .....	27
	CEQA Guidelines, § 15006, subd. (g) .....	33

1	CEQA Guidelines, § 15006, subd. (i).....	33
2	CEQA Guidelines, § 15064, subd. (d)(3).....	23
3	CEQA Guidelines, § 15064.5, subd. (a) .....	17
4	CEQA Guidelines, § 15064.5, subd. (b) .....	18
5	CEQA Guidelines, § 15064.5, subd. (b)(2)(A).....	18, 19
6	CEQA Guidelines, § 15064.5, subd. (b)(3) .....	18, 19
7	CEQA Guidelines, § 15064.5, subd. (d)(3).....	28
8	CEQA Guidelines, § 15082 .....	10
9	CEQA Guidelines, § 15092 .....	32
10	CEQA Guidelines, § 15125 .....	32
11	CEQA Guidelines, § 15125, subd. (a) .....	13, 15, 16
12	CEQA Guidelines, § 15125, subd. (d).....	15, 16, 31
13	CEQA Guidelines, § 15126.6 .....	35
14	CEQA Guidelines, § 15128 .....	29
15	CEQA Guidelines, § 15384 .....	19
16	CEQA Guidelines, § 15384, subd. (b).....	13, 30
17	<b><u>Federal Statutes and Regulations</u></b>	
18	16 U.S.C. 470 et seq.....	8
19	42 U.S.C. § 4321 et seq. ....	8
20	36 C.F.R. § 68.2, subd. (b). ....	23, 24, 25
21	36 C.F.R. § 800.5.....	19
22	36 C.F.R. § 800.5(a)(1).....	18, 19, 20
23	36 CFR 800.5(a)(2) .....	20
24	<b><u>Other Authorities</u></b>	
25	City of Sacramento Code section 12.56.040 .....	28
26		
27		
28		

1 I. INTRODUCTION

2 The City of Sacramento ("City") certified the Final Environmental Impact Report  
3 ("Final EIR") and approved construction of the 4.8-mile Del Rio Trail ("Trail") on March 26,  
4 2019. Based on their hope that an excursion train will someday travel through the entirety of  
5 the project area, Petitioners attempt to defeat the Trail by disagreeing with the methodology  
6 and conclusions in the Final EIR. However, Petitioners' vision is inconsistent with the  
7 community needs and any applicable land use plans. The City's analysis and conclusions are  
8 supported by substantial evidence. Disagreement with the City's project, the reasoned  
9 conclusions in the Final EIR, and contents of the applicable land use plan, does not  
10 undermine the Final EIR. Therefore, the petition should be denied.

11 II. STATEMENT OF FACTS

12 A. THE TRAIL

13 The Trail is a transportation and recreation project to repurpose a 4.8 mile  
14 segment of an abandoned railroad corridor into an off-street, multi-use trail. (AR 01669<sup>1</sup>.)  
15 Implementing the City's Bikeway Master Plan, the Trail will provide continuous off-street  
16 pedestrian and bicycle access from the Sacramento River Parkway north of Sutterville Road  
17 south to Meadowview/Pocket Road. (AR 01669.) The Trail will create an ADA-compliant,  
18 non-vehicular path of travel to schools, retail, jobs, and recreational amenities including the  
19 Sacramento River Parkway. (AR 01671, 01705, 10826.)

20 The Trail will be a 12-foot wide paved main path of travel with unpaved shoulders  
21 that are between two and five feet wide. (AR 01705-01708.) The Trail will primarily be  
22 constructed adjacent to existing railroad tracks, except where the Trail crosses the track,  
23 where narrow right-of-way requires the unpaved shoulder to be located within the track, and  
24 where the track must be removed or encased for safety reasons. (AR 01705-01708.) The Trail  
25 will not interfere with the existing excursion train operations between Old Sacramento and  
26 Baths. (AR 01705, 02397.) The Trail is federally funded through an Active Transportation  
27 grant, and therefore, must comply not only with California Environmental Quality Act  
28

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<sup>1</sup> "AR 01669" refers to Administrative Record page 01669.



1 ("CEQA," Pub. Resources Code, § 21000 et seq.), but also with the National Environmental  
2 Policy Act ("NEPA," 42 U.S.C. § 4321 et seq.) and the National Historic Preservation Act  
3 ("NHPA," 16 U.S.C. 470 et seq.) (AR 01672, 01821.) The City's NEPA compliance is not  
4 challenged here.

5 **B. THE RAILWAY CORRIDOR**

6 The railroad corridor within which the 4.8-mile Trail is located is a part of a larger  
7 railroad corridor known as the Walnut Grove Branch Line ("WGBL"). (AR 01851, 10923.)  
8 The WGBL extends from Old Sacramento to the Delta town of Walnut Grove. (AR 10923.)  
9 Although continuous operable track exists where the excursion train currently operates from  
10 Old Sacramento to Baths, breaks in the existing tracks prevent operation of the excursion line  
11 south of the Sacramento Zoo. (AR 01855, 021791.) The Trail will not interfere with the  
12 existing excursion train operation because in that portion of the corridor, the right-of-way is  
13 wide enough to accommodate the train, trail, and unpaved shoulder. (AR 01705, 02397 [City  
14 has determined the trail will not interfere with the excursion train.]])

15 The WGBL was historically owned by Southern Pacific Railroad ("SPRR") which  
16 ceased railroad service operations in 1978. (AR 01826, 02439.) The parcels within the Trail  
17 area are now owned by various entities including: the City, Regional Transit, and the State of  
18 California. (AR 01942-0195.) A portion of the corridor was conveyed by SPRR to Regional  
19 Transit in 1984.<sup>2</sup> (AR 27836-27848.) Those parcels will be eventually transferred to the City as  
20 part of the Trail project. (AR 16555, 29023.)

21 The use and development of State-owned property is governed by the 2014 Old  
22 Sacramento State Historic Park General Plan and EIR ("OSSHP"), a legally mandated  
23 planning document required before the State approves any major development. (Pub.  
24 Resources Code, § 5002.2; AR 21580-22059 [OSSHP]; 21624-21625 [The OSSHP "provides a  
25 comprehensive framework to guide the future growth of the [Old Sacramento State Historic  
26 Park]"].) The OSSHP does not contemplate any excursion train movement or operation

27  
28 <sup>2</sup> While Petitioners allege the 1984 Grant Deed demonstrates that Union Pacific retains a right of way for the entire WGBL corridor, the City's title report searches did not conclude Union Pacific or SPRR retained any rights beyond those described in the EIR. (AR 01942-01943; 15844.)

1 between the Sacramento Zoo and the Pocket/Meadowview Road. (AR 21834.)

2 The OSSHP identifies the existing excursion train from Old Sacramento to Baths.  
3 (AR 21610.) It then identifies two separate possible extensions: The first extension, Train Line  
4 #1 would utilize the existing excursion train route, from Old Sacramento . . . to the site of the  
5 former Riverside Baths . . . and extend . . . to the Sacramento Zoo.” (AR 21789.) “No new  
6 tracks would be needed for the operation of this route.” (AR 21791.) The second extension,  
7 Train Line #2 would have trains “originating at the Pocket/Meadowview neighborhood” and  
8 continuing to “the town of Hood on the Sacramento River.” (AR 21791.)

9 The OSSHP does not plan for a connection between the two lines. The movement  
10 of trains between Land Park and Pocket/Meadowview was specifically excluded from the  
11 OSSHP. (AR 21834 [“[T]he [OSSHP] no longer includes proposed train movements south of  
12 the zoo to service operations of [Train Line #2]. . .”].) The OSSHP makes clear that “Train  
13 Line #2 would require installation and upgrades to tracks for the excursion train operation.”  
14 (AR 21791.) The Trail is proposed to co-exist with Train Line #1 and then extend south into  
15 the area north of Train Line #2. The Trail is therefore consistent with the OSSHP. (AR 04363  
16 [California State Railroad Museum Foundation President noting, “there is no proposal for an  
17 excursion train through [the Trail] corridor.”])

### 18 C. ENVIRONMENTAL REVIEW AND OUTREACH

19 The City began the environmental review for the Trail in 2017, when it  
20 determined, based on technical studies, that the Trail would have no unmitigated significant  
21 impacts on the environment and therefore could be approved based on a mitigated negative  
22 declaration (“MND”), rather than an environmental impact report. (Cal. Code Regs., tit. 14,  
23 “CEQA Guidelines,” § 15070, AR 02798.) After meetings and correspondence with the  
24 California State Railroad Museum Foundation (“Foundation”), the City modified the Trail to  
25 retain a greater portion of the existing rail line, and also determined that it should prepare a  
26 full environmental impact report (“EIR”), rather than a MND, based on the likely litigation  
27 threat. (AR 01712-01713.) Prior to issuing the Notice of Preparation for the Trail EIR, the  
28 City also met with the South Land Park Neighborhood Association, the Land Park

1 Community Association, and contrary to Petitioners' contentions, Preservation Sacramento.  
2 (AR 01711-01713; see OB 13:25-26.)

3 The City issued a Notice of Preparation in compliance with CEQA Guidelines  
4 section 15082 for the Trail on June 8, 2018 and received over 150 comments, including  
5 comments from Preservation Sacramento and the Foundation. (AR 01710, 02097-02296.)  
6 The City released a draft environmental impact report ("Draft EIR") on November 1, 2018  
7 and circulated it for an initial public review and comment period of 59 days. (AR 01669.)  
8 While the initial review and comment period already exceeded the statutory minimum, the  
9 City granted, at Petitioners' request, an extension of time to submit comments. (AR 23761.)

10 The project analyzed in the Draft EIR included the construction of a Class I multi-  
11 use trail, with adjacent unpaved shoulders and when feasible, a five to six-foot wide unpaved  
12 walking trail. (AR 00096.) The Draft EIR analysis considered the project's impacts on  
13 aesthetics, air quality, cultural resources, land use, recreation, and other resources not  
14 challenged in this litigation and concluded that all impacts could be mitigated to a level of less  
15 than significant. (AR 00144-00174, 00237-00282, 00336-00339, 00376-00378.) The City  
16 received 102 comment letters on the Draft EIR, including comments from the Foundation,  
17 Preservation Sacramento, and the State of California Department of Parks and Recreation  
18 ("State Parks"). (AR 02356-02763, 02375-02404 [Foundation], 02405 [Preservation  
19 Sacramento], 02412 [State Parks].)

20 In response to the comments received, the City revised the project description in  
21 the Final EIR to eliminate the separate walking path and to place the shoulder within the  
22 railroad tracks in a few locations south of 35th Avenue when the width of the corridor could  
23 not accommodate a full shoulder elsewhere. (AR 01705-01709, 02019.) The Final EIR also  
24 responded to the comments received and made other revisions to the Draft EIR that did not  
25 constitute significant new information altering the conclusions of the Draft EIR. (AR 01669,  
26 02356-02764.) The City certified the Final EIR and approved the Trail on March 26, 2019.  
27 (AR 00001.) On April 26, 2019, Petitioners filed this lawsuit challenging the City's CEQA  
28 compliance.

### III. LAW AND ARGUMENT

#### A. CEQA STATUTORY BACKGROUND AND STANDARD OF REVIEW

"CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment." (*Center for Biological Diversity v. California Department of Conservation, etc.* (2019) 36 Cal.App.5th 210, 225 ("Center for Biological Diversity").) "To further these goals, CEQA requires that agencies follow a three-step process when planning an activity that could fall within its scope." (*Ibid.*)

First, the public agency must determine whether a proposed activity is a project subject to CEQA. (*Ibid.*) Second, the agency must decide whether the project is exempt from the CEQA review and if not, the agency "must then decide whether the project may have a significant environmental effect." (*Ibid.*) "CEQA excuses the preparation of an EIR and allows the use of a negative declaration when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment." (*Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1101 as modified on denial of reh'g (Sept. 30, 2004) ("Architectural Heritage Association").) "Third, if the agency finds the project may have a significant effect on the environment, it must prepare an EIR before approving the project." (*Center for Biological Diversity, supra*, 36 Cal.App.5th at p. 225.) The purpose of an EIR is to both protect the environment and promote an informed self-government. (*Ibid.*)

An agency's certification of an EIR is reviewed for abuse of discretion. (*Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 1112, 1131; *Center for Biological Diversity, supra*, 36 Cal.App.5th at p. 229.) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Ibid.*, Pub. Resources

1 Code, § 21168.5.) “Judicial review of these two types of error differs significantly: While we  
2 determine de novo whether the agency has employed the correct procedures, scrupulously  
3 enforcing all legislatively mandated CEQA requirements [the Court] accord[s] greater  
4 deference to the agency’s substantive factual conclusions.” (*Sierra Club v. County of Fresno*  
5 (2018) 6 Cal.5th 502, 512, internal markings omitted.)

6 On factual conclusions, the Court does not “weigh conflicting evidence and  
7 determine who has the better argument.” (*Citizens for Positive Growth & Preservation v. City of*  
8 *Sacramento* (2019) 43 Cal.App.5th 609, 623 (“*Citizens for Positive Growth*”).) An agency’s  
9 approval of an EIR may not be set aside “on the ground that an opposite conclusion would  
10 have been equally or more reasonable.” (*Ibid.*) “Challenges to the scope of an EIR’s analysis  
11 of a topic, the methodology used for studying an impact, and the reliability or accuracy of the  
12 data upon which the EIR relied, present questions of fact, and so we must uphold the EIR if  
13 there is any substantial evidence to support the agency’s reasons for proceeding in the manner  
14 that it did.” (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th  
15 839, 850.)

16 “[I]n reviewing an EIR’s discussion” the Court does “not require technical  
17 perfection or scientific certainty.” (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 515.)  
18 “The courts have looked not for an exhaustive analysis but for adequacy, completeness and a  
19 good-faith effort at full disclosure.” (*Ibid.*, internal markings and citations omitted.)

20 “Where an EIR is challenged as being legally inadequate, a court presumes a  
21 public agency’s decision to certify the EIR is correct” and the party challenging the EIR has  
22 the burden “of establishing otherwise.” (*Center for Biological Diversity, supra*, 36 Cal.App.5th at  
23 p. 229; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.) “[A]n appellant  
24 challenging an EIR for insufficient evidence must lay out the evidence favorable to the other  
25 side and show why it is lacking.” (*Citizens for Positive Growth, supra*, 43 Cal.App.5th at p. 635.)  
26 A party cannot “carry that burden by simply pointing to portions of the administrative record  
27 that favored its position.” (*California Native Plant Society v. Rancho Cordova* (2009) 172  
28 Cal.App.4th 603, 626 (“*CNPS v. City of Ranch Cordova*”).)

1 **B. THE FINAL EIR ACCURATELY DESCRIBES THE TRAIL'S**  
2 **ENVIRONMENTAL SETTING.**

3 The Final EIR accurately describes the environmental setting for the Trail,  
4 including a description of existing historical and recreational resources. (AR 01826, 01970.)  
5 Petitioners allege the environmental setting is inadequate because it describes only a portion  
6 of the WGBL, omits a discussion of the current use of the WGBL, and fails to identify State  
7 Parks intention to continue to use the southern portion of the rail corridor. (OB 17:23-20:16.)  
8 The record belies these assertions.

9 **1. The Final EIR Accurately Identifies the WGBL.**

10 "An EIR must include a description of the physical environmental conditions in  
11 the vicinity of the project." (CEQA Guidelines, § 15125, subd. (a).) The description must "be  
12 no longer than is necessary to provide an understanding of the significant effects of the  
13 proposed project and its alternatives." (*Ibid.*) "An agency's selection of the geographic area  
14 impacted by a proposed development . . . falls within the lead agency's discretion, based on  
15 its expertise." (*South of Market Community Action Network v. City & County of San Francisco*  
16 (2019) 33 Cal.App.5th 321, 338 ("*South of Market*").)

17 The City determined the environmental setting based on the expertise of an  
18 architectural historian and in consultation with the California Department of Transportation  
19 ("Caltrans"). (AR 01821, 02343-02344.) Caltrans has been delegated the authority to approve  
20 the project's compliance with the NHPA, including identifying the project's area of potential  
21 impact. (AR 01821.) The City, in consultation with these experts, determined that because  
22 physical changes would only occur to the 4.8-mile segment of the WGBL where the Trail  
23 would be constructed, that was the appropriate area of study. (AR 01851-01852.) The opinion  
24 of these experts constitutes substantial evidence in support of the City's selection of the  
25 environmental setting. (CEQA Guidelines, § 15384, subd. (b) ["Substantial evidence shall  
26 include facts, reasonable assumptions predicated upon facts, and expert opinion supported by  
27 facts."]; *Citizens for Positive Growth, supra*, 43 Cal.App.5th at p. 629.)

28 / / /

1 While the City selected an environmental setting that was limited to an area that  
2 would be directly impacted, the Final EIR did not hide the fact that the “[t]he segment of the  
3 Walnut Grove Branch line present within the PAL is an approximately 4.8-mile portion of the  
4 larger resource.” (AR 01852.) The public and decisionmakers were fully informed about the  
5 project’s setting. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th  
6 957, 978 (“*CNPS v. Santa Cruz*”).”)

7 **2. The Final EIR Accurately Identifies the Functionality of the WGBL.**

8 The Final EIR describes the “importance of functional elements [of the WGBL]  
9 such as tracks, ties and ballast,” yet Petitioners allege the document is deficient for its failure  
10 to discuss those elements. (OB 18:19-25; AR 01853.) Petitioners’ failure to summarize this  
11 evidence alone renders the allegations of deficiency invalid. (*Citizens for Positive Growth, supra*,  
12 43 Cal.App.5th at p. 635; *CNPS v. Rancho Cordova, supra*, 172 Cal.App.4th 603, 626.) The  
13 Final EIR identifies the relative importance of each of those features and the seven aspects of  
14 integrity relevant to the resources’ qualification for the National Register. (AR 01853-01856.)  
15 Importantly, the Final EIR recognizes that “some short sections of the track within the  
16 segment have been partially dismantled or altered.” (AR 01855.) To the extent the  
17 functionality of the line is important, it is certainly relevant that it is not functional south of  
18 the Sacramento Zoo. (AR 01855, 04363.)

19 Petitioners fault the Final EIR for failing to consider the WGBL’s prior use and  
20 function as part of its historical significance. (OB 18:19, 20:7-8.) However, even the original  
21 1992 U.S. Army Corps of Engineers report nominating the WGBL for inclusion in the  
22 National Register (“1992 Nomination”) did not identify the continued use of the trackage as a  
23 feature contributing to its significance. (AR 11068.) The nomination specifically states: “[I]n  
24 1934 the railroad terminated all passenger service and reduced the number of freight trains  
25 operating on the line per day, thus ending the period of significance.” (AR 11068.) The  
26 nomination also confirms that the WGBL was abandoned by Southern Pacific in 1978. (AR  
27 11072.) Petitioners’ attack on the Final EIR’s description of the functionality of the line is not  
28 supported by the record.

1           **3. The Final EIR Accurately Characterizes the WGBL as Abandoned.**

2           Petitioners allege the setting is inaccurate because it falsely characterizes the  
3 railroad corridor as abandoned. (OB 19:5-7.) While Petitioners may disagree, the City's  
4 conclusion that the railroad corridor is abandoned is supported by substantial evidence. As  
5 explained in the Final EIR, "[i]n 1977, the Interstate Commerce Commission granted  
6 Southern Pacific Transportation Company, through Certificate and Order AB-12 Sub No. 40,  
7 the authority to abandon a 13.86 mile stretch of the railroad from Sacramento to Hood, which  
8 includes the Del Rio Trail project area." (AR 02439.) The Final EIR further explains that  
9 Southern Pacific communicated to the Interstate Commerce Commission on June 5, 1979,  
10 that the line had been abandoned. (AR 02439.) Based on this substantial evidence, the City  
11 concluded the corridor had been abandoned as a railroad alignment.

12           The Final EIR in no way masks the fact that portions of the Trail area are owned  
13 by the City, Regional Transit, and the State of California, and that property rights may need  
14 to be acquired from those other parties. (AR 01708, 01942-01943.) Petitioners again fail to  
15 cite to this portion of the record and instead cite only to its own letters and the opinion of  
16 Petitioners that the railroad has not been abandoned. (*Citizens for Positive Growth, supra*, 43  
17 Cal.App.5th 609, 635.) In fact, as stated above, the 1992 Nomination makes clear that the rail  
18 line was abandoned in the 1970's and passenger service was terminated in the 1930's with  
19 only limited freight service thereafter. (AR 11077.) Therefore, the Final EIR's description of  
20 the project setting is supported by substantial evidence.

21           **4. The Trail is Consistent with the OSSHP.**

22           Petitioners further allege that the environmental setting related to recreational  
23 activities is inadequate because it fails to disclose State Park's alleged intention to extend the  
24 excursion train continuously through the Trail area into the Delta town of Hood. (OB 19:21-  
25 22.) CEQA requires the EIR's setting discussion include not only a description of the  
26 "physical conditions in the vicinity of the Trail," but also "any inconsistencies between the  
27 proposed project and applicable general plans, specific plans, and regional plans." (CEQA  
28 Guidelines, §§ 15125, subd. (a) & (d).) The City considered whether the Trail was consistent



1 with the OSSHP and concluded, based on substantial evidence, that it was.

2 The OSSHP identifies two possible extensions, one to the Sacramento Zoo (Train  
3 Line # 1), and one from Meadowview to Hood (Train Line #2). (AR 21789, 21791.) The  
4 Trail can co-exist with both: Line # 1 would be adjacent to the Trail, and Line # 2 is entirely  
5 south of the Trail area. Any connection from Line # 1 to Line # 2 was specifically removed  
6 from the OSSHP prior to the approval of the Final EIR. (AR 21834.) Therefore, the City's  
7 conclusion that the Trail is consistent with the State's plans, as identified in the OSSHP is  
8 supported by substantial evidence. (AR 02397.)

9 Petitioners suggest, without support, that the City also was required to consider  
10 the aspirations of current and former officials working for State Parks. (OB 10:22-11:14,  
11 19:21-20:3.) Petitioners rely on citations to unofficial transcripts, including statements taken  
12 entirely out of context. For example, the citation to Denny Anspach's comment on page 11,  
13 omits the portion of the comment where Mr. Anspach states, "I strongly support the current  
14 general plan as presented by park staff . . ." (AR 28895.) The plan "presented by park staff"  
15 and therefore approved by Mr. Anspach's comment excluded the "four-mile section of the rail  
16 Right of Way through South Land Park." (AR 28875-28876.)

17 Any aspirations accurately identified by the Petitioners were specifically not  
18 reduced to the OSSHP. (AR 21834.) They therefore do not represent either the physical  
19 conditions in the vicinity of the Trail, or an applicable planning document. (CEQA  
20 Guidelines, § 15125, subd. (a) & (d).) The City therefore had no obligation to include those  
21 aspirations in the Final EIR. Notably, the City received a comment letter from State Parks  
22 and the agency took no objection to the Trail. (AR 02412.)

23 **C. THE FINAL EIR FULLY DISCLOSES THE TRAIL'S POTENTIAL**  
24 **ENVIRONMENTAL IMPACTS.**

25 **1. The Final EIR Adequately Discloses and Discusses the Potential Impacts to**  
26 **Historical Resources.**

27 The City fully analyzed the Trail's impacts to historical resources in both the Final  
28 EIR and the Finding of No Adverse Effect with Standard Conditions ("FNAE-SC") prepared  
for compliance with the NHPA. (AR 01821-01868; 10902-11175.) Petitioners challenge the

1 historical resources analysis in the Final EIR on two grounds. First, Petitioners disagree with  
2 the City's application of the federal standards for adverse impacts to historical resources. (OB  
3 22-23.) Second, Petitioners disagree with the City's conclusions that the Trail will comply  
4 with the Secretary of Interior's Standards for Rehabilitation. (OB 24-25.) These challenges  
5 amount to a disagreement with the City's choice of methodology and the factual conclusions  
6 and therefore are reviewed for substantial evidence. (*South of Market, supra*, 33 Cal.App.5th at  
7 pp. 330, 337.)

8           **a.       The City Identifies the WGBL as a Historical Resource.**

9           CEQA identifies a historical resource as one "listed in, or eligible for listing in the  
10 California register of historical resources; a resource included in a local register of historical  
11 resources (unless the preponderance of evidence demonstrates that it is not historically or  
12 culturally significant); [or] any object, building, structure, site, area, place, record, or  
13 manuscript which a lead agency determines to be historically significant, if the lead agency's  
14 determination is supported by substantial evidence. (Guidelines, § 15064.5, subd. (a)." (*Eureka*  
15 *Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 374 ("Eureka  
16 *Citizens*")).) In analyzing the Trail's impacts to historical resources, the City first identifies the  
17 WGBL as a historical resource for the purposes of CEQA. (AR 01851 ["[T]he segment . . . is  
18 a . . . historical resource for the purposes of complying with the CEQA."]) The Final EIR  
19 describes the six elements contributing to the significance of the resource. The most  
20 significant contributing factors are the location, track alignment, and the intermittent elevated  
21 embankment. Less significant, but still important are the standard gauge rails, the wood ties,  
22 and the gravel ballast. And less significant is the agricultural setting. (AR 01853.) The Final  
23 EIR analyzes the existing integrity of the WGBL in the Trail area and concludes that  
24 notwithstanding some modifications to the line, including removal of some short sections of  
25 track and movement of the line, the line retains sufficient integrity to convey its historic  
26 significance. (AR 01853-01856.)

27       / / /

28       / / /

1                   **b. Substantial Evidence Supports the Final EIR's Conclusion that the**  
2                   **Impact on the Historic Resource is Less than Significant.**

3                   CEQA requires an EIR consider whether a project would cause a substantial  
4                   adverse change in the significance of a historical resource. (CEQA Guidelines, § 15064.5,  
5                   subd. (b).) A substantial adverse change occurs when a project “[d]emolishes or materially  
6                   alters in an adverse manner those physical characteristics of an historical resource that convey  
7                   its historical significance and that justify its inclusion in, or eligibility for, inclusion in the  
8                   California Register of Historical Resources.” (CEQA Guidelines, § 15064.5, subd. (b)(2)(A).)  
9                   A significant impact to a historical resource is “a change to the physical condition of the  
10                  resource.” (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1144, citing *Eureka*  
11                  *Citizens for Responsible Government*, *supra*, 147 Cal.App.4th 357, 374–375.) As noted by  
12                  Petitioners, “[g]enerally, a project that follows the [Secretary's Standards] shall be considered  
13                  as mitigated to a level of less than a significant impact on the historical resource.” (*Citizens for*  
14                  *a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036,  
15                  1066 (“*Treasure Island*”); CEQA Guidelines, § 15064.5, sub. (b)(3).) The NHPA outlines the  
16                  framework under which an agency considers whether a project will have an “adverse effect”  
17                  on a historic property. This occurs when “an undertaking may alter, directly or indirectly, any  
18                  of the characteristics of a historic property that qualify the property for inclusion in the  
19                  National Register in a manner that would diminish the integrity of the property's location,  
20                  design, setting, materials, workmanship, feeling, or association.” (36 C.F.R. § 800.5(a)(1).)

21                  The Final EIR expressly considers whether the Trail would cause a substantial  
22                  adverse change in the significance of a historical resource and concludes, based on substantial  
23                  evidence, that the impact would be less than significant with mitigation. (AR 01856-01864.)  
24                  The City has discretion to determine what methodology to use in evaluating environmental  
25                  impacts. (*Chico Advocates for a Responsible Economy v. City of Chico*, *supra*, 40 Cal.App.5th 839,  
26                  850.) Because the Trail is receiving federal funding, the City elected to use federal standards to  
27                  determine whether the Trail would have a significant impact on the WGBL. (AR 01856-  
28                  01857.) In other words, the City made the CEQA determination as to whether the Trail

1 would “[d]emolish [ ] or materially alter[ ] in an adverse manner those physical characteristics  
2 of [the WGBL]” by evaluating whether the Trail would satisfy the federal criteria for “adverse  
3 effect.” (CEQA Guidelines, § 15064.5, subd. (b)(2)(A), 36 C.F.R. § 800.5(a)(1); AR 01856-  
4 01857.)

5 As discussed above, the Final EIR states that the most significant factors  
6 contributing to the WGBL’s historical significance are the location and track alignment and  
7 the intermittent elevated embankment. Less significant, but still important are the standard  
8 gauge rails, the wood ties, and the gravel ballast. (AR 01853.) The City’s experts, an  
9 Environmental Planner/Archeologist Ph.D. and a Cultural Resources analyst, in consultation  
10 with Caltrans’ Cultural Resources Officer, considered the Trail’s impacts on the resource and  
11 determined it would be less than significant because the elevated embankment would be  
12 retained in most locations, and only two percent of the rail tracks in the Trail area would be  
13 removed. (AR 01858, 02065, 2343-2344.) Therefore, the alteration of the “characteristics of  
14 the historic property that qualify it for inclusion in the National Register” would not  
15 “diminish the integrity of the property’s location, design, setting, materials, workmanship,  
16 feeling, or association.” (36 C.F.R. § 800.5; AR 01856.) The Final EIR additionally  
17 concludes that the Trail will have a less than significant impact on historical resources  
18 because it will comply with the Secretary of Interior Standards for Rehabilitation. (CEQA  
19 Guidelines, § 15064.5, subd. (b)(3); *Treasure Island, supra*, 227 Cal.App.4th 1036, 1066; AR  
20 01858-1861.) These conclusions are supported by substantial evidence in the form of “expert  
21 opinion supported by facts.” (CEQA Guidelines, § 15384 [“Substantial evidence shall include  
22 . . . expert opinion supported by facts.”])

23 Petitioners requests this Court critique the environmental study performed by  
24 City, an exercise specifically proscribed by the case law. (*Eureka Citizens, supra*, 147  
25 Cal.App.4th 357, 372 [“[O]ur Supreme Court has cautioned reviewing courts against  
26 performing our own scientific critiques of environmental studies, a task for which we have  
27 neither resources nor scientific expertise.”]; *Laurel Heights Improvement Association v. Regents of*  
28 *University of California* (1988) 47 Cal.3d 376, 393.) The City’s conclusions are supported by

1 substantial evidence.

2 **c. The Trail Does Not Fall Within One of the Examples of Adverse Effect**  
3 **Set Forth in 36 CFR 800.5(a)(2).**

4 Petitioners further invite this Court to substitute its judgment for that of the City's  
5 experts by alleging that the Trail falls within one or more of the categories of examples of  
6 adverse effects identified in subsection (a)(2) of 36 CFR 800.5. As discussed above, subsection  
7 (a)(1) of 36 CFR 800.5 identifies the criteria for "adverse effect" for the purposes of the  
8 NHPA: an activity that "may alter, directly or indirectly, any of the characteristics of a  
9 historic property that qualify the property for inclusion in the National Register in a manner  
10 that would diminish the integrity of the property's location, design, setting, materials,  
11 workmanship, feeling, or association." Subsection (a)(2) identifies examples of adverse effects  
12 on historic properties, including:

- 13 (i) Physical destruction of or damage to all or part of the property;
- 14 (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance,  
15 stabilization, hazardous material remediation, and provision of handicapped  
16 access, that is not consistent with the Secretary's standards for the treatment of  
17 historic properties (36 CFR part 68) and applicable guidelines;
- 18 (iii) Removal of the property from its historic location;
- 19 (iv) Change of the character of the property's use or of physical features within the  
20 property's setting that contribute to its historic significance;
- 21 (v) Introduction of visual, atmospheric or audible elements that diminish the integrity  
22 of the property's significant historic features;
- 23 (vi) Neglect of a property which causes its deterioration . . .
- 24 (vii) Transfer, lease, or sale of property out of Federal ownership or control . . .

25 According to Petitioners, even though the City determined, based on substantial evidence  
26 described in section III.C.1.b. above, that the Trail will not have an adverse effect on historic  
27 resources as defined in 36 CFR 800.5(a)(1), the Trail actually will have an adverse effect  
28 because, according to Petitioners, the Trail falls within the examples identified in (i), (iii), and  
(iv) above. (OB 21:23-23:2.)

First, Petitioners' interpretation ignores that a project falling within one of the  
examples in 36 CFR 800.5 subsection (a)(2) must still meet the criteria in subsection (a)(1).  
Petitioners' reading of the examples (i), (iii), and (iv) would suggest that no physical  
modification may ever be made to a resource – an interpretation belied by example (ii)

1 “[a]lteration of a property . . . that is not consistent with the Secretary’s standards for  
2 treatment of historic properties [ ] and applicable guidelines.” If any modification to a  
3 property would be considered an adverse effect, example (ii) would be unnecessary, as would  
4 the Secretary of Interior Standards. (See discussion below.)

5 Second, Petitioners’ attempt to undermine the City’s factual determinations  
6 ignores the duty of Petitioners to cite all evidence in favor of the agency’s decision. (*Citizens for*  
7 *Positive Growth, supra*, 43 Cal.App.5th 609, 635.) Instead, the argument selectively cites to only  
8 portions of the record, ignoring the context and more detailed description in the Final EIR  
9 explaining why these impacts are less than significant. (OB 22:8-13.) For example, Petitioners  
10 cite the portion of the FNAE-SC explaining that portions of WGBL tracks will be removed or  
11 relocated. (OB 22:9-11.) Petitioners’ argument however ignores the more detailed description  
12 in the Attachment E to the FNAE-SC and the project description in the Final EIR itself  
13 identifying the very small portion of track to be removed and the relocation of some pieces of  
14 track into areas where track has already been removed. (AR 01705-01706; 11158-11161.)

15 Third, as described below, the evidence in the record does not support a finding of  
16 adverse effect. The Final EIR concludes, based upon the analysis of experts in the relevant  
17 fields, removal of the rail does not impact that WGBL’s integrity or the ability to convey  
18 historical significance because the Trail will remove only a small amount of rail in the project  
19 area. In addition, where rail is being removed, the City is relocating much of those materials  
20 to locations within the Trail area where rail is already missing, thereby enhancing the  
21 resource. (AR 01858.) “Where it exists, the majority of the track will be retained, including  
22 its metal rails, wood ties, and gravel ballast.” (AR 01857.) “There are 609 feet of track that  
23 will be removed plus 239 feet of track that will be salvaged and reused in the APE, and 24,672  
24 feet of track that will be undisturbed within the APE, converted to a walking trail, or activated  
25 through the use of reversible treatments such as landscaping.” (AR 10908.)

26 Petitioners allege that the because “sections of the track will be converted to a  
27 walking trail by infilling the area between the metal rails” the Trail will have an adverse effect.  
28 (OB 22:9-10.) Sections of the track will not be filled for the purposes of a walking trail but will

1 be filled in a few locations where the constriction of the right-of-way requires locating the  
2 shoulder within the tracks. (AR 01705-01707, 02297-02298.) As explained in the Final EIR,  
3 "there is no evidence to suggest that adding the surface between the ties would cause any  
4 accelerated degrading of the existing ballast or timber. Furthermore, both the ballast and ties  
5 are common railroad features that could be replaced in-kind without impacting the property's  
6 integrity if they were to deteriorate beyond repair. It is not likely, however, that such  
7 deterioration would be caused solely by the proposed, compatible, traversable surface." (AR  
8 02398.) Furthermore, Preservation Sacramento noted that: "Use of decomposed granite,  
9 rather than concrete, appears to be a suitable treatment to convert right of way to walking  
10 paths without unduly compromising or concealing the historical resource, or creating the  
11 impression of active rails." (AR 02405.)

12           Petitioners cite the lowering of the embankment as evidence the Trail will have a  
13 significant impact on the historical resource since the intermittent elevated embankment is  
14 one of the defining characteristics. (OB 22:10-11.) The historical resources consultant  
15 determined that lowering approximately 123 feet of embankment, in comparison to the  
16 approximately three miles of embankment within the Trail area, would not amount to a  
17 significant impact on the resource. (AR 01858.) This modification is not the only, or the first  
18 modification that has been made to the embankment. For example, original wood  
19 overcrossings at Sutterville Road, 35th Avenue, and 43rd Avenue were replaced or lowered to  
20 grade in the 1960s. (AR 01854.) Yet, even with these changes, the combination of the  
21 "alignment, sections of elevated embankment, and the preponderance of steel rails and wood  
22 ties are sufficient to convey the resource's historic function and aesthetic." (AR 01854.) The  
23 City concluded that a modification to a small portion of the embankment in order to make it  
24 ADA complaint would not interfere with the historic integrity of the corridor. (AR 01858)

25           Petitioners have failed to carry their burden to demonstrate that substantial  
26 evidence does not support the Final EIR's conclusions that the Trail's impacts to historical  
27 resources will be less than significant. (*Center for Biological Diversity, supra*, 36 Cal.App.5th at p.  
28 229; *Sierra Club v. City of Orange, supra*, 163 Cal.App.4th 523, 530.)

1           **d.     The Trail is Consistent with the Secretary of Interior Standards.**

2           Petitioners admit that compliance with the Secretary of Interior Standards reduces  
3 an impact to less than significant. (OB 21:19-22.) Petitioners however disagree with the City's  
4 use of, and conclusions with respect to, those standards. This difference of opinion does not  
5 demonstrate legal error. (*Citizens for Positive Growth & Preservation, supra*, 43 Cal.App.5th at p.  
6 623; *Eureka Citizens for Responsible Government, supra*, 147 Cal.App.4th at p. 372.)

7           A project that complies with the Secretary of Interior Standards “[g]enerally . . .  
8 shall be considered as mitigated to a level of less than a significant impact on the historical  
9 resource.” (CEQA Guidelines, §15065.4, subd. (b)(3).) The City applied the Secretary of  
10 Interior’s ten Standards for Rehabilitation to the Trail. (AR 01858-01861.) Rehabilitation is  
11 defined as “the act or process of making possible an efficient compatible use for a property  
12 through repair, alterations and additions while preserving those portions or features that  
13 convey its historical, cultural or architectural values.” (36 C.F.R. § 68.2, subd. (b).) Without  
14 presenting any evidence in support of the contention, Petitioners suggest the City should have  
15 applied the standards for preservation, defined as “the act or process of applying measures  
16 necessary to sustain the existing form, integrity and materials of an historic property,”  
17 reflecting their preference for preserving rather than restoring and repurposing the Trail area.  
18 (36 C.F.R. § 68.2, subd. (b).)

19                   **i.     Standard of Review Applicable to Compliance with the Secretary**  
20                   **of Interior Standards.**

21           Petitioners argue that the City’s conclusions that the Trail complies with the  
22 Secretary of Interior Standards conclusively must be subject to independent review, citing to  
23 both *Treasure Island, supra*, 227 Cal.App.4th at p. 1066 and *Sierra Club v. County of Fresno, supra*,  
24 6 Cal.5th at p. 516. (OB 24:16-20.) Neither case stands for such a proposition. In *Treasure*  
25 *Island*, petitioners claimed the EIR at issue was inadequate because it did not analyze the  
26 proposed reuse of two historic buildings. (*Treasure Island, supra*, 227 Cal.App.4th at p. 1065.)  
27 Instead, the EIR required that when the reuse was designed, it was to comply with the  
28 Secretary of Interior Standards for Rehabilitation. (*Ibid.*) The court explained “the Secretary’s



1 Standards are the benchmark that CEQA uses to establish whether a project will have a  
2 significant adverse impact to a historic property.” (*Treasure Island, supra*, 227 Cal. App.4th at  
3 p. 1066.) The court found that because “the EIR clearly prohibits making any physical  
4 alterations to [the] buildings . . . that do not comply with the Secretary’s Standards” the  
5 analysis was adequate. (*Ibid.*) Nothing in the case states that the court must independently  
6 review an agency’s determination that a project complies with the Secretary of Interior  
7 Standards, and in fact, the case allows the agency to rely on its commitment to comply with  
8 the standards. (*Ibid.*) The case generally applies the substantial evidence standard to  
9 petitioners’ challenges to the sufficiency of the information in the EIR at issue. (*Id* at p. 1046.)

10 Nor does *Sierra Club v. County of Fresno, supra*, suggest that the court must apply the  
11 more stringent de novo standard of review in all cases where an agency makes a  
12 determination with respect to the satisfaction of statutory criteria, regardless of whether  
13 factual issues predominate. In that case, the court explained resolving the question of whether  
14 the “the EIR includes enough detail ‘to enable those who did not participate in its preparation  
15 to understand and to consider meaningfully the issues raised by the proposed project’ . . .  
16 presents a mixed question of law and fact.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th  
17 502, 516.) “[T]o the extent a mixed question requires a determination whether statutory  
18 criteria were satisfied, de novo review is appropriate; but to the extent factual questions  
19 predominate, a more deferential standard is warranted.” (*Ibid.*) In this case, Petitioners  
20 dispute the Final EIR’s factual conclusions with respect to two of the Secretary of Interior’s  
21 ten standards. Substantial evidence is therefore the appropriate standard and disagreement  
22 with the City’s factual conclusions is not sufficient to undermine the Final EIR. (*Citizens for*  
23 *Positive Growth & Preservation, supra*, 43 Cal.App.5th 609, 623; *Eureka Citizens, supra*, 147  
24 Cal.App.4th 357, 372.)

25 **ii. Secretary of Interior Standards One and Two.**

26 The first Secretary of Interior Standard requires the “property will be used as it  
27 was historically or be given a new use that requires minimal change to its distinctive  
28 materials, features, spaces and spatial relationships.” (36 C.F.R. § 68.3, subd. (b)(1).) The City

1 concluded, based on expert analysis, that the Trail would only require minimal changes to the  
2 property's most significant defining characteristics and therefore the Trail was consistent with  
3 this first standard. (AR 01858.) The EIR concluded the "property's most significant defining  
4 characteristics" are its "location, horizontal track alignment, and intermittent elevated  
5 embankment." (AR 01858.) "The location and horizontal track alignment will not be altered  
6 by the Project" and "[t]he elevated embankment will be retained in all but one location." (AR  
7 01858.) Changes to the other defining characteristics would be minimal because track removal  
8 is limited to two percent, is only proposed where necessary for safety reasons, and would be  
9 in some circumstances be salvaged to fill existing gaps in the tracks. (AR 01858.)

10         Although the corridor has not been used for its historic purpose in more than forty  
11 years, Petitioners disagree with the City's conclusion that the Trail is consistent with the first  
12 Secretary of Interior Standard because the Trail would "change WGBL's historical use and  
13 preclude plans to continue those same historical uses." (OB 25:4-5.) The standard does not  
14 prohibit any change to the historic property; the standard specifically permits "minimal  
15 changes." Further, the historical use was abandoned in the 1970s, so it was Southern Pacific,  
16 not the Trail that interrupted the historic use. (AR 11071.)

17         The second standard requires the "historic character of a property will be retained  
18 and preserved. The removal of distinctive materials or alteration of features, spaces and  
19 spatial relationships that characterize a property will be avoided." (36 C.F.R. § 68.3, subd.  
20 (b)(2).) The City concluded that because track removal is avoided where possible, and track  
21 that will be encased in concrete will still be visible, the Trail complies with the second  
22 standard. (AR 01858.)

23         To ensure the Trail continues to comply with the Secretary of Interior's Standards,  
24 the Trail is required to comply with an "Action Plan" which includes a requirement to  
25 "ensure the work complies with the Rehabilitation Standards" at each stage of the project  
26 implementation. (AR 00074.) This is consistent with the mitigation measure found adequate  
27 in *Treasure Island, supra*. In addition, Caltrans, who is delegated authority to conclude that a  
28 Trail will have no significant effect under the NHPA, also concluded that with the

1 implementation of an Action Plan, the Trail would have less than significant impacts to  
2 historical resources. (AR 01864; 02343.)

3       Petitioners attempt to support their conclusion that the Trail will result in  
4 significant impacts to the WGBL with citation to *Architectural Heritage Association, supra*, 122  
5 Cal.App.4th 1095, 1118 and *League for Protection of Oakland's Architectural and Historic Resources*  
6 *v. City of Oakland* (1997) 52 Cal.App.4th 896, 909 ("*League for Protection*"). However, both  
7 cases deal with projects which would have significant impacts on historical resources by  
8 entirely destroying them. In both cases, the projects were approved based on mitigated  
9 negative declarations notwithstanding substantial evidence of a fair argument that the  
10 proposed mitigation was inadequate and the projects would have significant impacts on the  
11 historical resources. (*Architectural Heritage Association, supra*, at p. 1118; *League for Protection,*  
12 *supra*, at p. 909.) In the case at hand, the historical resource will not be destroyed, and an  
13 environmental impact report was prepared. Given CEQA's low bar for the preparation of an  
14 EIR, the cases' conclusions with respect to mitigation measures are inapplicable here. (See  
15 *Architectural Heritage Association, supra*, at p. 1110 [describing the "low threshold for the initial  
16 preparation of an EIR, which reflects a preference for resolving doubts in favor of  
17 environmental review."] "Those decisions are irrelevant to the current task of reviewing the  
18 conclusions in an EIR" that the Trail would result in insignificant impacts to historical  
19 resources. (*North Coast Rivers Alliance v. Marin Municipal Water District Board Of Directors* (2013)  
20 216 Cal.App.4th 614, 626 "*North Coast Rivers*".)

21       The City has demonstrated, based on substantial evidence, that the Trail will have  
22 a less than significant impact on the WGBL and comply with the Secretary of Interior  
23 Standards.

24       **2. The Final EIR Adequately Discloses the Trail's Potential Recreational**  
25       **Impacts.**

26       Petitioners allege that the EIR is defective because it fails to analyze the  
27 recreational impact of interfering with the possible construction and operation of an excursion  
28 train from Sacramento to Hood. (OB 27:9-18.) The record demonstrates that the Trail will not

1 have any adverse recreational impacts and that the Trail will have no impact on the existing  
2 or planned operations of the excursion train. (AR 01971-01975, 02397.) In fact, the Trail  
3 provides a recreational amenity by including both a walking and a bicycle trail. (AR 01671.)

4 A project may have a potentially significant recreational impact if the project  
5 would "increase the use of existing neighborhood and regional parks and other recreational  
6 facilities such that substantial physical deterioration of the facility would occur or be  
7 accelerated" or if the project "include[s] recreational facilities or require[s] the construction of  
8 expansion of recreational facilities which might have an adverse physical effect on the  
9 environment." (CEQA Guidelines, Appendix G, XVI.) The Final EIR analyzed these two  
10 potential impacts, and also considered whether the Trail would "result in substantial  
11 interference with park recreation" or "result in permanent displacement of existing  
12 recreational facilities or substantial permanent decrease in access to existing recreational  
13 facilities or substantial permanent decrease in access to existing recreational facilities or  
14 opportunities." (AR 01971-01975.) The Final EIR concluded, based on an inventory of  
15 nearby parks and the 2035 General Plan, the Trail would not have a significant impact on  
16 recreational resources. (AR 01971-01975.)

17 The Trail will have no impact on existing recreational opportunities and the  
18 existing steam excursion train from Old Sacramento to Baths can continue to operate  
19 concurrently with the use of the Del Rio Trail. (AR 1705.) Petitioners fault the City for failing  
20 to analyze the Trail's impact on a hypothetical future railroad line that is not currently  
21 planned, funded, or represented in the State's current planning documents. As discussed  
22 above, the extension of the excursion line from Old Sacramento continuously through the  
23 project area to Hood has been removed from the OSSHP, the State's current planning  
24 document. (AR 21971, 21834.) It could not be accomplished today because of the current  
25 state of disrepair of the tracks, a factor also considered in the Final EIR. (AR 01855, 03540,  
26 04363, 18918.) Yet, because the environmental consequences of the extension of the steam  
27 train operation through the project area were considered at some point in the past, Petitioners  
28 allege the City had an obligation to study the Trail's impact on this hypothetical excursion

1 line. (27:15-28:12.) CEQA does not impose an obligation to analyze impacts that are  
2 speculative and not reasonably foreseeable. (CEQA Guidelines, § 15064, subd. (d)(3);  
3 *Placerville Historic Preservation League v. Judicial Council* (2017) 16 Cal.App.5th 187, 197.) Here,  
4 the possibility of the continuous track alignment discussed at length in Petitioners' brief is so  
5 remote and speculative it did not require further analysis by the City in the Final EIR.

6 **3. The Final EIR Adequately Discloses the Trail's Potential Aesthetic Impacts.**

7 The City analyzed the Trail's aesthetic impacts based on the analysis conducted by  
8 the City's experts, concluded that the aesthetic impacts were less than significant with  
9 mitigation. (AR 01722-01735.) Petitioners allege the Final EIR is inadequate for its failure to  
10 consider the aesthetic impacts of tree removal as well as the aesthetic impacts of track  
11 removal. (OB 28:25-29:18.) The City's conclusions were based on substantial evidence and  
12 nothing more is required. (*Eureka Citizens, supra*, 147 Cal.App.4th at pp. 375–76 ["a lead  
13 agency has the discretion to determine whether to classify an [aesthetic] impact described in  
14 an EIR as 'significant,' depending on the nature of the area affected."])

15 The Final EIR fully discloses the Trail's aesthetic impacts from tree removal. (AR  
16 01732-01734.) The Final EIR states that, based on preliminary engineering plans, up to 161  
17 trees within the City's right of away and 59 trees within State Parks' right of way may need to  
18 be removed. (AR 01733.) This is necessary in part, in order to maximize track retention, and  
19 was a decision based, again in part, upon the concerns of Petitioners. (AR 01997 [in response  
20 to concerns from the Foundation, "the City revised the Project alignment which increased the  
21 number of trees removed but significantly reduced the amount of proposed track removal."])  
22 The Final EIR explains that in removing the trees, the City will comply with the City Code  
23 section 12.56.040 requiring the establishment of a replacement plan prior to removal of  
24 protected trees. (AR 01733.) The City further commits to replanting a minimum of 700 trees  
25 as part of the Trail. (AR 01735, 02461.) The EIR therefore concludes, based on substantial  
26 evidence, that the Trail's potential to degrade the existing visual character or quality of the  
27 site and its surroundings is less than significant with the imposition of this mitigation. (AR  
28 01734; *Eureka Citizens, supra*, 147 Cal.App.4th at pp. 375–76.)

1           Petitioners fail to reference any portion of the Final EIR's discussion related to  
2 tree impact analysis or mitigation and therefore fail to carry their burden to summarize the  
3 analysis in the Final EIR supporting the City's decision and to demonstrate the deficiencies in  
4 the analysis contained within the Final EIR. (*Citizens for Positive Growth & Preservation, supra*,  
5 43 Cal.App.5th 609, 635.)

6           The Final EIR also analyzes the aesthetic impacts with respect to modification of  
7 the railroad track and concludes the impact would "not be a significant change to the overall  
8 aesthetics of the corridor when comparing the existing condition with the proposed future  
9 condition." (AR 02441.) In making this conclusion, the City considered that "minor segments  
10 of tracks which would be removed for safety reasons" and "the visual changes that would  
11 occur by putting the decomposed granite walking path between the rails in certain parts of the  
12 project." (AR 02441; see also 02525; 10292 [Visual Impact Assessment].) The City therefore  
13 supported its conclusions with substantial evidence. (CEQA Guidelines, § 15128; *Eureka*  
14 *Citizens for Responsible Government, supra*, 147 Cal.App.4th 357 at p. 376 ["Where the agency  
15 determines that a project impact is insignificant, an EIR need only contain a brief statement  
16 addressing the reasons for that conclusion."])

17           Petitioners have not shown that substantial evidence does not support the City's  
18 conclusions that the aesthetic impacts are less than significant with mitigation.

19           **4. The Final EIR Adequately Discloses Potential Air Quality Impacts.**

20           Petitioners allege the City failed to adequately analyze the Trail project's  
21 construction impacts. (OB 29:19-30:16.) The City quantified emissions of ROGs, CO, NOx,  
22 and PM10 that would result from the Trail project and concluded that air quality emissions  
23 from the Trail were well below applicable emission standards. (AR 01750, 02446.) Petitioners  
24 allege that the City failed to disclose the emissions resulting from the following Trail  
25 components: 1.) "removal of WGBL features"; 2.) the materials and vehicle trips required to  
26 construct embankments; 3.) construction of a new bridge and berm; and 4.) placement of  
27 decomposed granite ("DG") in the Trail area. (OB 29:20-30:16.) As a preliminary matter,  
28

1 Petitioners failed to exhaust their administrative remedies on the claim that the City failed to  
2 analyze the air quality impacts of the “removal of WGBL features.” Petitioners are therefore  
3 barred from raising the issue now. (Pub. Resources Code, § 21177, subd. (a); *CNPS v. Rancho*  
4 *Cordova, supra*, 172 Cal.App.4th at p. 616.)

5 Petitioners support their allegation that air quality analysis is inadequate by  
6 pointing to the categories of construction emissions in Table 5 of the Final EIR which they  
7 posited failed to consider dirt and asphalt removal, DG transport and fill, and bridge and  
8 berm construction. (OB 30: 6-7.) However, Table 5 identifies the Trail construction phases,  
9 identified in four parts: Grubbing/Land Clearing; Grading/Excavation;  
10 Drainage/Utilities/sub-Grade/Paving. (AR 01750.) These categories are not presented as the  
11 exclusive project construction activities, but rather construction phases, as indicated by the  
12 column title. (AR 01750.) As explained in the text immediately preceding the table, the City’s  
13 “phases” expressly included the types of construction activities referenced by Petitioners as  
14 emissions from earth-moving activities, commutes, and the hauling of construction materials.  
15 (AR 01749.)

16 Petitioners also argue that Appendix D to the Draft EIR is inaccurate due to its  
17 failure to include emissions resulting from the transport of materials such as DG for fill to and  
18 from the project construction sites. (OB 30:10-12.) This concern echoes Petitioners’ comments  
19 on the Draft EIR and is resolved in Appendix E of the Final EIR. As explained in the Final  
20 EIR, “Road Construction Emissions model has been updated to include all import/export  
21 material.” (AR 02446.) Approximately 5,410 CY of dirt and asphalt would be excavated from  
22 the Trail site, and 35,500 CY of dirt would be brought in. Appendix E shows 672.35 CY/day  
23 of import and 102.5 CY/day of export on construction days. (AR 02446.) Appendix E shows  
24 the vehicle miles traveled associated with hauling these materials – 1,020 miles per day for  
25 soil hauling and 180 miles per day for asphalt hauling. (AR 02303.)

26 The City’s analysis was performed by professional environmental consultants.  
27 (AR 02065; CEQA Guidelines, § 15384, subd. (b).) Petitioners attempt to undermine the  
28 analysis conducted by the City’s expert as well as the results of the model relied upon by that

1 expert, without themselves submitting any expert opinion. Even if they had, the City properly  
2 relied on the analysis of its experts. "When the evidence on an issue conflicts, the  
3 decisionmaker is 'permitted to give more weight to some of the evidence and to favor the  
4 opinions and estimates of some of the experts over the others.'" (*Association of Irrigated*  
5 *Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397.) "The issue is not whether  
6 the studies are irrefutable or whether they could have been better. The relevant issue is only  
7 whether the studies are sufficiently credible to be considered as part of the total evidence that  
8 supports the' agency's decision." (*Town of Atherton v. California High-Speed Rail Authority* (2014)  
9 228 Cal.App.4th 314, 349.) Petitioners have not borne their burden to demonstrate the Final  
10 EIR's air quality impact analysis is inadequate or unsupported. (*Ibid.*)

11 **5. The Final EIR Adequately Discloses the Trail's Consistency with Applicable**  
12 **Land Use Plans.**

13 Petitioners allege the Final EIR is inadequate for its failure to analyze the  
14 following alleged land use impacts: 1.) State Parks plans to utilize the WGBL and the Trail's  
15 consistency with "land use plans that contemplate use of the WGBL;" 2.) the Trail's  
16 consistent with every City of Sacramento General Plan Policy; and 3.) ownership  
17 information. (OB 30:19-32:26.) Each contention misstates both the City's obligations under  
18 CEQA and the evidence in the record.

19 **a. The Final EIR Complies with CEQA's Requirements to Discuss Any**  
20 **Inconsistencies Between the Proposed Trail and Applicable Plans.**

21 CEQA requires an EIR "discuss any inconsistencies between the proposed project  
22 and applicable general plans, specific plans, and regional plans." (CEQA Guidelines, § 15125,  
23 subd. (d).) "A plan is 'applicable' when it has been adopted and the project is subject to it."  
24 (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 544, internal markings omitted.)  
25 "Because EIRs are required only to evaluate 'any inconsistencies' with plans, no analysis  
26 should be required if the project is consistent with the relevant plans." (*City of Long Beach v.*  
27 *Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 919.)

28 / / /



1 The Final EIR discusses the City of Sacramento's General Plan, the City of  
2 Sacramento's Bicycle Master Plan, and the Old Sacramento State Historic Park General Plan  
3 and concludes the Trail is not inconsistent with any of them. (AR 01927, 01929.) The City  
4 therefore complied with CEQA Guidelines section 15125. (*See City of Long Beach v. Los Angeles*  
5 *Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 919.) The City consulted with responsible  
6 agencies including the Regional Water Quality Control Board, Caltrans and State Parks, in  
7 preparing the EIR, complying with the consultation requirements. (AR 01697.) Notably, State  
8 Parks comment letter on the Trail did not oppose the Trail and notes the shared goals of the  
9 City and the State Parks in developing a safe and efficient transportation and recreation  
10 corridor. (AR 02412, 04235, 04267.)

11 Petitioners seek to expand the City's obligations to consider State Park's plans, not  
12 reflected in its current planning documents, to use the WGBL. (OB 30:20.) However, as  
13 discussed in sections II.B. and III.B.4 *supra*, the use of the Trail area for anything related to an  
14 excursion train operation was specifically removed from the OSSHP.

15 Petitioners also seek to expand the definition of applicable plans to include the  
16 California State Railroad Museum's strategic plan ("CRSM Strategic plan") and a previously  
17 certified EIR for a potential project in the area ("1991 Excursion Train EIR"). (OB 32:11.)  
18 The CSRM Strategic plan "guide[s] focused activity for the Museum, its Foundation and its  
19 operating railroad." (AR 22343.) It contains no land use plans, policies, or regulations and  
20 there is no evidence that the City's Trail is "subject" to it. The 1991 Excursion Train EIR may  
21 have studied the possibility of extending an excursion train along the Walnut Grove Branch  
22 line, but the certification of an EIR is not the equivalent of a project approval. (AR 020794;  
23 CEQA Guidelines, § 15092 ["After considering the final EIR . . . the Lead Agency may  
24 decide whether or how to approve or carry out the project."]) Petitioners have presented no  
25 evidence of an approved excursion train project through the Trail project area.

26 Finally, Petitioners seek to expand the consultation requirements of CEQA to  
27 suggest the Final EIR must have analyzed not only applicable land use plans, but also any  
28 stated intentions of any individual members of community organizations. CEQA encourages

1 lead agencies to consult with “state and local responsible agencies before and during  
2 preparation of an environmental impact report so that the document will meet the needs of all  
3 the agencies which will use it” and “[i]ntegrat[e] CEQA requirements with other  
4 environmental review and consulting requirements.” (CEQA Guidelines, § 15006, subd. (g) &  
5 (i).) The City consulted with Regional Transit, Caltrans, State Parks, the Railroad Museum  
6 Foundation in preparing the Final EIR. (AR 02108, 02343, 04261, 04267.) Nothing more is  
7 required.

8 **b. The City Accurately Discloses the Property Rights Related to the Trail.**

9 Petitioners dispute the characterization of the rail line through the Trail area as  
10 abandoned, claiming that Union Pacific retains right of way for the WGBL corridor. (OB  
11 31:10-23.) The analysis of a Trail’s environmental impacts does not require ownership of the  
12 property at issue. In fact, often the environmental review often must predate a lead agency’s  
13 acquisition of property, since the acquisition is a discretionary act. (*Save Tara v. City of West*  
14 *Hollywood* (2008) 45 Cal.4th 116, 132, as modified (Dec. 10, 2008).) Petitioners’ allegation  
15 that the corridor has not been abandoned amounts to a difference of opinion, but the facts do  
16 not support the Petitioner’s viewpoint. The EIR explains that the “Interstate Commerce  
17 Commission granted Southern Pacific Transportation Company, through Certificate and  
18 Order AB-12 Sub. No. 40, the authority to abandon a 13.86 mile stretch of railroad from  
19 Sacramento to Hood, inclusive of the segment within the Del Rio Trail project area. On June  
20 5, 1979, in a letter to the Interstate Commerce Commission, Southern Pacific Transportation  
21 Company provided written communication that the abandonment of the line as authorized by  
22 the Commission was completed.” (AR 01511, see also AR 11077, 18123.) The City’s  
23 Surveyor considered the information shown by Petitioners and concluded that Union Pacific  
24 does not retain any rights to the Trail property at issue. (AR 15959.) This is expert opinion  
25 supported by fact, constituting substantial evidence in support of the City’s conclusion.  
26 (*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413 [planning department  
27 officers qualify as experts in planning because that is their business].)

28 / / /

1           Petitioners further allege the City misled the public in setting forth the land  
2 ownership. The EIR depicts preliminary property ownership information acquired from  
3 Parcel Quest, the Geographic Information System data available from the County of  
4 Sacramento. (AR 01945-01973.) It also sets forth the “[assessor parcel numbers] and owners  
5 they may require full or partial acquisitions,” making it clear that the City is required to  
6 obtain some property interests in order to construct the Trail. (AR 01943-01943.)

7           **c.     The Trail is Consistent with the City of Sacramento General Plan.**

8           Petitioners allege the Final EIR is inadequate because it fails to analyze the Trail’s  
9 consistency with two General Plan policies. (32: 18-26.) The Final EIR incorporates by  
10 reference the City of Sacramento’s 2035 General Plan and specifically discusses more than  
11 100 General Plan goals and policies applicable to the Trail. (AR 01722, 01739, 01740, 01758-  
12 01759, 01825, 01870-01871, 01882, 01890-01891, 01907-01908, 01926-01927, 01931-01933,  
13 01940-01941, 01966, 01969-01970, 01977-01979.) The City properly exercised its discretion to  
14 conclude that the Trail is consistent with the General Plan because it will remove about two  
15 percent of the rail and will not diminish the historical character of the resource. (AR 01857-  
16 01864; 02439; *Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163,  
17 185-186 [Courts “accord great deference to a local governmental agency’s determination of  
18 consistency with its own general plan” and agency “has broad discretion to construe its  
19 policies in light of the plan’s purpose.”]) None of the cases cited by Petitioners hold that an  
20 EIR is inadequate for its failure to analyze every general plan policy.

21           **6.     The Final EIR Adequately Discloses the Trail’s Use of Decomposed Granite.**

22           Petitioners allege the City misleads the public as to the use of decomposed granite  
23 (“DG”) in the final Trail design, alleging only that Appendix D shows which portions would  
24 be filled. (OB 33:18-22.) In reality, the very first paragraph of the project description in the  
25 Final EIR directs the reader to Appendix D, which provides an oversized exhibit to show  
26 exactly where the tracks will be filled with DG. (AR 01705, 02297.) The Final EIR project  
27 description itself states that South of 35th, South of 43rd Avenue, and near the Southwest  
28 corner of Florin Road/Freeport Boulevard, the shoulder would be located between the rails.

1 (AR 01707.) The Trail as originally designed had anticipated a "Class I multi-use trail . . . and  
2 when feasible, an adjacent 5 to 6-foot wide unpaved walking trail." (AR 00096, Draft EIR,  
3 Trail description.) In response to public comments opposing the placement of DG between  
4 the rails for the creation of a walking path, the City again revised the Trail design to remove  
5 the separate walking path to minimize the number of locations where the DG would be  
6 placed. At no point did the City represent that the trail would no longer have the shoulders  
7 identified in both the Draft and Final EIR. (AR 00096, 01705.)

8 **7. The City Adequately Studied Trail Alternatives.**

9 The Draft EIR studied three project alternatives: The Reduced Tree Alternative,  
10 the No Walking Path Alternative, and the No Trail Alternative. (AR 00401-00423.) After  
11 hearing comments from rail advocates that the no walking path alternative was preferable to  
12 the originally proposed project, the Final EIR proposed the No Walking Path Alternative as  
13 the proposed project and converted the originally proposed Multi-Use Trail With a Separate  
14 Walking Path into the third alternative. (AR 02019.) Petitioners allege the alternatives  
15 discussion was inadequate because it failed to describe each alternative's impacts on the  
16 WGBL and according to Petitioners, information submitted by them demonstrates the alleged  
17 feasibility of alternative alignments and rubber flanges. (OB 35:27-36:4.)

18 CEQA requires the lead agency to select a reasonable range of project alternatives  
19 that could feasibly attain most of the project's basic objectives and could avoid or lessen one  
20 or more of its significant impacts. (CEQA Guidelines, § 15126.6.) "Courts will defer to an  
21 agency's selection of alternatives unless the petitioners (1) demonstrate that the chosen  
22 alternatives are manifestly unreasonable and ... do not contribute to a reasonable range of  
23 alternatives, and (2) submit evidence showing the rejected alternative was both feasible and  
24 adequate, because it was capable of attaining most of the basic objectives of the project, taking  
25 into account site suitability, economic viability, availability of infrastructure, general plan  
26 consistency, and other relevant factors." (*South of Market, supra*, 33 Cal.App.5th at p. 345,  
27 internal markings and citations omitted.) "CEQA does not require that an agency consider  
28 specific alternatives that are proposed by members of the public or other outside agencies."

1 (*Ibid.*) “[P]otentially feasible alternatives ‘are suggestions which may or may not be adopted  
2 by the decisionmakers’.” (*CNPS v. Santa Cruz* (2009) 177 Cal.App.4th 957, 999.)

3 Here, with the imposition of mitigation measures, the Final EIR found that all  
4 Trail’s environmental impacts have been reduced to a level of less than significant. (AR  
5 00090.) Under these circumstances, the City had no obligation to identify an environmentally  
6 superior alternative or adopt an alternative that reduced the Trail’s impacts. (*Laurel Hills*  
7 *Homeowners Assn. v. City Council* (1978) 83 Cal.App.3d 515, 521 [“[I]f the feasible mitigation  
8 measures substantially lessen or avoid generally the significant adverse environmental effects  
9 of a project, the project may be approved without resort to an evaluation of the feasibility of  
10 various Trail alternatives contained in the environmental impact report.”])

11 Petitioners allege the City should have considered an alternative that reduced the  
12 Trail’s impacts to historical resources. (OB 35:16-18.) Yet, the City had modified the Trail  
13 over the course of development in response to community input and the impact to the  
14 resource is less than significant. The City was not required to consider additional alternatives  
15 that would further reduce these impacts. (*Ibid.* [“[T]he fundamental purpose of CEQA is to  
16 prevent avoidable damage to the environment from projects. . . .If this end can be  
17 accomplished essentially by the imposition of feasible mitigation measures alone, there is no  
18 need to resort to a consideration of the feasibility of environmentally superior project  
19 alternatives identified in the environmental impact report.”])

20 The photographs taken by and cited by Petitioners as evidence that placing the  
21 shoulder within the rails was unnecessary does not demonstrate “that the chosen alternatives  
22 are manifestly unreasonable” and does not constitute “evidence showing the rejected  
23 alternative was both feasible and adequate.” (*South of Market, supra*, 33 Cal.App.5th 321, 345,  
24 internal markings and citations omitted.) The Petitioners’ photographs of the right-of-way  
25 cannot substitute for the professional surveying that was performed in conjunction with the  
26 Trail design to determine whether adequate right of way existed. (*Joshua Tree Downtown*  
27 *Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690–91 [“interpretation  
28 of technical or scientific information requires an expert evaluation. Testimony by members of

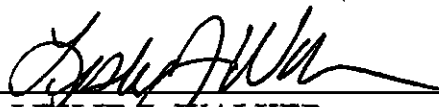
1 the public on such issues does not qualify as substantial evidence," internal markings  
2 omitted.] Similarly, lay claims that flanges, rather than concrete encasing, were feasible and  
3 preferable, cannot substitute for the opinion of the City's engineering staff, surveyor and  
4 consultants as to the safety of the encasements. (*Jensen v. City of Santa Rosa* (2018) 23  
5 Cal.App.5th 877, 894 ["opinions rendered by nonexperts . . . do not amount to substantial  
6 evidence."]) Petitioners' lay testimony is insufficient to demonstrate the rejected alternative  
7 was both feasible and adequate . . . taking into account site suitability, economic viability,  
8 availability of infrastructure, general plan consistency, and other relevant factors." (*South of*  
9 *Market, supra*, 33 Cal.App.5th 321, 345.)

#### 10 IV. CONCLUSION

11 Petitioners' vision for the Trail area is inconsistent with any applicable planning  
12 documents or land use interests and is inconsistent with the Trail designed by the City, in  
13 collaboration with Caltrans and State Parks. The City's Final EIR is supported by substantial  
14 evidence, reflects the input of various stakeholder groups and responds to the concerns of the  
15 community. Petitioners have failed to prove otherwise. The City therefore requests this Court  
16 deny the petition for writ of mandate.

17 DATED: May 19, 2020

SUSANA ALCALA WOOD,  
City Attorney

19  
20 By:   
21 LESLIE Z. WALKER  
Senior Deputy City Attorney

22 Attorneys for the CITY OF SACRAMENTO  
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**PROOF OF SERVICE**

CASE NAME: Sacramento Rail Preservation Action Group v. City of Sacramento  
COURT: Sacramento Superior Court  
CASE NUMBER: 34-2019-80003130

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to this action; my business address is 915 I Street, Room 4010, Sacramento, CA 95814-2604. On the date executed below, I served the following document(s):

**RESPONDENT CITY OF SACRAMENTO'S OPPOSITION BRIEF**

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept electronic service. I caused the documents to be sent to the persons at the electronic service addresses listed below.

Osha R. Meserve  
Soluri Meserve  
[osha@semlawyers.com](mailto:osha@semlawyers.com)

I declare under penalty of perjury that the foregoing is true and correct, and that the declaration was executed on May 19, 2020, at Sacramento, California.

  
SUZANNE M. MACDONALD

RECEIVED  
CIVIL DROP BOX

MAY 19 PM 3:21

QSSBC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

IN RE: [illegible]