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Re: Homewood Mountain Resort Ski Area Master Plan, Community Enhancement Program Project, Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Landry and Ms. Krach,

Thank you for this opportunity to comment on the Homewood Mountain Resort Ski Area Master Plan, Community Enhancement Program Project, Draft Environmental Impact Report/Environmental Impact Statement ("DEIS"). These comments are submitted on behalf of Friends of the West Shore ("FOWS"). FOWS is a community organization based in Homewood, California and consisting of residents and supporters of communities on the western shores of Lake Tahoe. FOWS has dedicated itself to efforts to preserving and enhancing the West Shore's watersheds, wildlife, historic and cultural features and landscapes, and the rural quality of life treasured by residents of Lake Tahoe. FOWS promotes sustainable communities and policies that enhance the natural resources and beauty of the West Shore, including promoting strict

compliance with the Lake Tahoe Regional Compact and ordinances and policies designed to protect the Lake's crystalline waters and its world-renowned landscapes and scenery.

I. INTRODUCTION

FOWS supports a revitalized Homewood Mountain Resort that is economically viable for JMA Ventures. However, as currently proposed, FOWS believes that the proposed project is simply too large for the existing site and would transform the existing rural character of Homewood rather than be compatible with the existing character. FOWS has had an opportunity to meet on a number of occasions with Art Chapman and David Tirman, the President and Executive Vice-President of JMA Ventures who are spearheading the project. We appreciate their time and patience in clarifying some of the details of the proposed project. Although FOWS cannot agree with the scale of the current proposed project, we hope that the exchanges to date will allow FOWS and other members of the Lake Tahoe community to continue our dialogue to see if there is a more modest proposal that would restore the Homewood Ski Area to a profitable venture.

Despite the following comments, FOWS remains convinced that an appropriately-sized, viable project can achieve a consensus within the Homewood and West Shore community. FOWS has no objection to the current redirection strategy embodied in the existing Plan Area Statements for Homewood. As the Regional Plan states,

The redirection of development designation is designed primarily to improve environmental quality and community character by changing the direction of development or density through relocation of facilities, rehabilitation or restoration of existing structures and uses, and **limited new development**.

RP, P. II-4 (emphasis added). Similarly, restoration and rehabilitation are the highest priorities in areas slated for redirection: "restoration and rehabilitation shall be a high priority for improving environmental quality and community character of areas designated for redirection but not included in a redevelopment plan." RP, P. II-11. *See id.* ("[t]he Regional Plan calls for improvement of environmental quality and community character in redirection areas by the private sector through restoration and rehabilitation"). Unfortunately, FOWS believes that Homewood's proposed project goes well beyond "limited new development" in Homewood and, because of its ambitious size, does not capitalize on "improving environmental quality character and community character" that many of its components would achieve at a much smaller project-scale. While FOWS remains ready to work on the development of such an alternative, it is not currently presented in the DEIS. As a result, given the comment deadlines and Homewood's determination to move ahead despite the lack of community consensus, FOWS has no option but to file the following concerns and objections to the proposed project and the DEIS. We have prepared these comments with the assistance of environmental scientists Dr. Eldon Gath, CEG 1292, E.G., of Earth Consultants International, Matt Hagemann,

P.G., C.Hg., of SWAPE, and Tom Brohard, P.E., of Tom Brohard and Associates to assist FOWS in the preparation of these comments. Their comments are attached hereto as Exhibits A, B and C, and are incorporated herein in their entirety. We request that the agencies review and respond to each of those expert comments separately. True and correct copies of the documents referenced in these comments, excluding case, statute, and regulatory citations as well as the agencies' current planning documents, are submitted along with this comment letter.¹

II. LEGAL STANDARD

A. The California Environmental Quality Act

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). *See, e.g.*, Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the

¹ We also hereby incorporate comments submitted by the League to Save Lake Tahoe, The Tahoe Area Sierra Club and letters and other written comments from interested stakeholders.

project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub.Res.Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B).

B. The Compact’s Environmental Impact Statement Requirement.

TRPA must also prepare an environmental impact statement ("EIS") for projects, similar to the reporting required by the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA") and CEQA. Compact art. VII(a)(2). *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 739 F. Supp. 2d 1260, 1266 (E.D. Cal. 2010). “A project cannot be approved unless either ‘changes or alterations’ have reduced ‘the significant adverse environmental effects to a less than significant level’ or the agency determines that mitigation is ‘infeasible.’ Compact, Art. VII(d)(1) and (2); *League v. TRPA*, 739 F.Supp.2d at 1266. The EIS must identify the effects of the action. *Id.* at 1274. “A ‘practical requirement’ of this type of review is identification of ‘baseline conditions . . . against which to compare predictions of the effects of the proposed action.’” *Id.* (citing *Am. Rivers v. Fed. Energy Reg. Comm'n*, 201 F.3d 1186, 1195 n.15 (9th Cir. 1999)). The Compact’s EIS requirement is informed by TRPA’s duty to improve the environment to achieve the higher environmental thresholds:

Like CEQA and NEPA, the Compact serves to inform the public and to protect the environment in a general sense. The Compact goes further, however, by commanding TRPA to improve environmental quality, in some instances dramatically, by setting and attaining environmental thresholds.

League v. TRPA, 739 F.Supp.2d at 1276.

Where mitigations are feasible, “the Compact require[s] ‘written findings’ that ‘changes or alterations’ will ‘avoid or reduce’ environmental harm to insignificance, and these findings ‘must be supported by substantial evidence.’” *League v. TRPA*, 739 F.Supp.2d at 1281 (citing Compact art. VII(d)(1)). “This obligation requires, at a minimum, a ‘reasonably complete’ discussion of mitigation measures including ‘analytical data’ regarding whether the available measures would achieve the required result.” *League v. TRPA*, 739 F.Supp.2d at 1281 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989), *Sierra Club v. Bosworth*, 510 F.3d 1016, 1029 (9th Cir. 2007)). “A necessary aspect of a ‘reasonably complete’ discussion is an assessment of the efficacy of the mitigation measures considered.” *League v. TRPA*, 739 F.Supp.2d at 1282 (citing *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir. 1998)). “A perfunctory description or mere listing of mitigation measures, without supporting analytical data, is inadequate.” *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001).

TRPA action is arbitrary and capricious where the agency has “entirely failed to consider an important aspect of the problem.” *League v. TRPA*, 739 F.Supp.2d at 1289. “[A]n aspect of

the problem may be "important" for purposes of this rule even where it is not 'significant.'" *Id.* (citing *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, 723 F. Supp.2d 1247, 1269 (E.D. Cal. 2010). "Some issues are important enough to demand a statement from the agency as to whether or not they are significant." *Id.*

The proposed project would appear to consist of two components. The first is a proposed ski area master plan. Confusingly, this document does not appear on either agency's web site and FOWS's inquiries indicate that there is no draft master plan. The second project reviewed by the DEIS is the actual development project proposed by Homewood and which is the main focus of the DEIS.

III. TRPA HAS NO AUTHORITY TO APPROVE THE HOMEWOOD PROJECTS BECAUSE THE AGENCY IS OPERATING WITH AN OUTDATED AND INADEQUATE REGIONAL PLAN

Achieving the goals of the Compact depend in large part on TRPA's vigorous implementation of an effective Regional Plan. The Compact mandates that TRPA's Regional Plan for the Lake Tahoe region must achieve and maintain each and every environmental threshold carrying capacity established for the Region. To the extent the Regional Plan has proven ineffective at assuring compliance with any threshold, especially by its own target compliance deadlines or has become outdated because it has failed to be updated to reflect current science or monitoring relating to the thresholds, then TRPA has no foundation upon which to make project level decisions and make the Compact's requisite findings necessary to approve any projects.

The Compact emphasizes the importance of two of TRPA powers, one being the power "to adopt and enforce a regional plan and implementing ordinances which **will achieve and maintain ... [environmental threshold carrying] capacities** while providing opportunities for orderly growth and development consistent with such capacities." Compact, Art. I(b) (emphasis added). As of one year after TRPA's adoption of the environmental threshold carrying capacities for the Lake Tahoe region, TRPA had to adopt a Regional Plan "that, at a minimum, the plan and all its elements, as implemented through agency ordinances, rules and regulations, achieves and maintains the adopted environmental threshold carrying capacities." *Id.*, Art. V(c). Both TRPA's Advisory Planning Commission as well as the Governing Board have an ongoing duty to "**continuously review and maintain** the regional plan." *Id.* (emphasis added). See *Comm. for Reasonable Regulation of Lake Tahoe v. Tahoe Reg'l Planning Agency*, 311 F.Supp.2d 972, 985 (D. Nev. 2004) ("TRPA is under an affirmative duty to maintain and review the regional plan"). The Compact highlights the critical importance of achieving both air and water quality standards for the Lake Tahoe Region, requiring that "[t]he regional plan **shall provide for attaining and maintaining Federal, State, or local air and water quality standards**, whichever are strictest, in the respective portions of the region for which the standards are applicable. *Id.*, §V(d).

The 1980 Compact permits TRPA to approve a project only if a detailed environmental impact statement indicates that it complies with the regional plan and any ordinances, rules, and regulations that implement the plan. Article VII; Article VI(b). To ensure this compliance, the Compact requires TRPA to “adopt ordinances prescribing specific written findings that the agency must make prior to approving any project in the region.” Article V(g). The Compact instructs TRPA that these findings must “relate to environmental protection and ... insure that the project under review will not adversely affect implementation of the regional plan and will not cause the adopted environmental threshold carrying capacities of the region to be exceeded.” *Id. People ex. rel. State of California v. Tahoe Regional Planning Agency* (9th Cir. 1985) 766 F.2d 1308, 1311 (“*California I*”). Article VI(b) of the Compact provides that “no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to a subdivision (a) to effectuate that plan.”

Where TRPA has failed to adopt an adequate Regional Plan, it may not approve a project in reliance on that plan. *California I*, 766 F.2d 1308; *see also Guardians of Turlock's Integrity v. Turlock City Council* (1983) 149 Cal.App.3d 584 (interpreting analogous provisions in state law regarding consistency with a general plan and finding “[A] proposed project cannot be consistent with an invalid general plan.”). Without an adequate regional plan, TRPA cannot determine whether a given project should or should not be approved, it cannot make the requisite findings of consistency, and it cannot determine how implementation of the project will or will not interfere with achievement of the thresholds. *See California I*, 766 F.2d 1308; *Neighborhood Action Group*, 156 Cal.App.3d at 1185 (“If the general plan fails to provide required criteria relevant to the use sought by the permit, there is no valid measure by which the permit may be evaluated”).

As detailed below, the Regional Plan is outdated and inadequate under the standards set forth by the Compact. Therefore, until the Regional Plan is updated and brought into compliance with the requirements of the Compact, TRPA may not approve the proposed project.

A. TRPA Is Violating Its Duty Under The Compact To Ensure That The Regional Plan Provides For Attaining And Maintaining Federal, State, Or Local Air And Water Quality Standards, Whichever Are Strictest.

As TRPA’s most recent thresholds evaluation and the Region’s ongoing noncompliance with the threshold carrying capacities demonstrates, the current Regional Plan is not ensuring either attainment or maintenance of air and water quality standards. Despite the Regional Plan’s adoption over 25 years ago, the Basin remains in violation of air thresholds and standards for carbon monoxide, ozone, PM-10 and nitrate emission from vehicles (as measured by VMT). Likewise, that two and a half decades of implementation of the Regional Plan finds the Region still in violation of the Lake’s deep water transparency standard, the phytoplankton threshold and the BMP implementation threshold have not been met, nor is the region even close to

achieving these thresholds any time soon. Because the Regional Plan has failed to achieve these standards, has missed its own target deadlines and, in several instances, does not include any currently viable plan to achieve the standards, TRPA, through its Regional plan, is violating its duty to assure achievement with the most stringent air and water standards.

1. The Regional Plan has failed and will continue to fail to achieve critical air standards in the Lake Tahoe Region.

The Regional Plan's cavalier approach to a number of thresholds intended to achieve air pollution standards has resulted in the continuation of poor air quality in the region rather than achievement and maintenance of thresholds.

Ozone

The Regional Plan takes an optimistic position on ozone pollution. The Plan does recognize that, even in 1986, the region was in violation of the TRPA 1-hour ozone standard. RP, p. II-27. Based on the information available in 1986, the Plan states that "[t]he trend in ozone concentrations as measured at the Lake Tahoe Boulevard site on the South Shore indicates that ozone concentrations are relatively stable." RP, p. II-28. The Plan then relies on assuming that the trend in ozone pollution was decreasing levels: "It is assumed that this trend will continue, and may decline as ozone precursor control measures are implemented upwind of the Region." *Id.* Likewise, the Plan forecasts that "[i]mplementation of transportation and air quality control measures in the Tahoe Region should contribute to a decline in ozone concentrations, although the portion of the decline attributed to local sources would be minimal." *Id.*

Despite those optimistic forecasts, the region is in chronic nonattainment of TRPA's 1-hour ozone standard. As TRPA's most recent thresholds evaluation, published in September 2007, explains, "The Basin has exceeded TRPA's standard for ozone for every threshold report to date. 2006 Threshold Evaluation Report (Sept. 2007), p. 2-9. "Between 2001 and 2004, the Basin recorded over 29 separate violations of TRPA's 1-hour Ozone standard at two separate AQ stations." *Id.* The Threshold Evaluation concludes that "because the Basin is out of attainment with TRPA's ozone standards and preliminary data suggest new state standards have been exceeded in the summer of 2006, it is important that improvement strategies are implemented as quickly as possible." *Id.* See also DEIS/DEIR, p. 12-18 ("The TRPA is in nonattainment for this threshold"). The California Air Resources Board recently changed the status of the Lake Tahoe Air Basin from "Unclassified" to "Nonattainment" for ozone. See <http://www.arb.ca.gov/regact/2010/area10/areafrodc.pdf>.

In addition to that ongoing air quality problem, the Regional Plan has overseen a drastic reduction in ozone monitoring stations. Despite the data showing violations of the standard, most of the monitoring stations have been eliminated, leaving only two stations as of 2006. Threshold Evaluation, p. 2-9. As the Threshold Evaluation states, the loss of reduction in

monitoring stations hampers TRPA's ability to assess additional improvements necessary to assure compliance with the standard. *Id.* The report cites the main flaws in the existing system, explaining that "the primary need for this indicator would be to establish and maintain permanent monitoring sites within the Basin." *Id.* The report also links the ozone problem to automobile exhaust, stating that "because ozone precursor emissions come primarily from automobiles, it is imperative that transportation programs be developed that specifically improve the overall emissions contribution from transportation activities in the Basin." *Id.* The date for attainment proposed by the Threshold Evaluation is 2015, assuming those changes were implemented. *Id.*

Although the Regional Plan amendment process is underway, no amendments to the Plan have been adopted since the release of the Threshold Evaluation report. No additional ozone monitoring stations have been established in the Basin. No additional transportation programs have been added to the Regional Plan. Given the Regional Plan's express assumption that ozone would begin to improve upon the adoption of the Plan back in 1987, nothing in the Plan as currently formulated assures attainment and maintenance of the TRPA 1-hour ozone standard. Because the Regional Plan is inadequate to meet the ozone standard, TRPA cannot approve the Homewood Project and its proposed increases in ferry, bus, and private vehicle use in the Region.

Vehicle Miles Of Travel

In 1982, TRPA established an environmental threshold carrying capacity for vehicle miles of travel as a critical component to protect the Region and Lake from poor visibility and nitrate deposition. Regional Plan, p. III-1. The environmental threshold requires a ten percent reduction in VMT from the 1981 base year. *See id.* According to the Threshold Evaluation, "[t]he 1981 VMT estimate has been determined to be 1,648,466 VMT, making the attainment level for this indicator (10% Reduction) 1,483,619 VMT for a peak summer day." Threshold Evaluation, p. 2-3. The Regional Plan explains that "[t]he Tahoe Regional Planning Compact (Compact) states that the goal of transportation planning shall be to reduce to the extent feasible air pollution which is caused by motor vehicles." Regional Plan, p. II-26. "The purpose of the integrated Regional Transportation Plan-Air Quality Plan is to attain and maintain the Environmental Threshold Carrying Capacities (thresholds) established by TRPA in 1982, and all applicable federal, state, and local standards established for transportation and air quality." *Id.* "Commercial and residential development contribute indirect impacts to air quality by increasing the number of vehicle trips in the Region." Regional Plan, p. VII-18. **"The cumulative impact of such trips is significant."** *Id.* (emphasis added).

The Threshold Evaluation calculated the status of compliance with the VMT Environmental Threshold. TRPA extrapolated a VMT calculation based on annual traffic counts made at 27 traffic count stations around the Region. Based on that proxy calculation, the Threshold Evaluation estimates that as of 2004, VMT had reduced 4.5 percent from 1981 levels

(1,648,466 VMT) to an estimated 1.58 million VMT. The Threshold Evaluation estimated it would take until 2025 for the Region to meet the VMT Threshold. According to the EIS, TRPA has since updated the Evaluation. "Using actual traffic counts to update previous estimates, VMT has been estimated to have decreased by 6.5% from 1981 levels" (Mobility 2030)." EIS, p. 11-21 (citing TRPA's Transportation Plan Update – "Mobility 2030").²

The Regional Plan has failed to achieve the VMT reductions called for by the Environmental Threshold since its adoption 25-years ago. The Threshold Evaluation now estimates that it will take another decade or more before the threshold is achieved. Threshold Evaluation, p. 2-13 ("Reach compliance with the current VMT threshold by 2025"). As proposed, the Homewood Project will add about 8431 VMT every day during the summer. Currently, the Regional Plan does not include any viable or up-to-date guidance showing how the VMT Environmental Threshold will be achieved. No project proposing to degrade the region's ability to comply with the VMT Threshold should be allowed to go forward in the absence of an up-to-date and legally valid Regional Plan that assures achievement and maintenance of the VMT Threshold.

2. The Regional Plan has failed and will continue to fail to achieve critical pelagic water quality standards in Lake Tahoe

The Regional Plan is even less equipped to address the ongoing water quality Environmental Thresholds relating to Lake Tahoe's clarity. The Environmental Thresholds include several standards intended to protect the world-renowned clarity of Lake Tahoe. Two of those standards are of note here. The first establishes a deep water transparency standard as the mean Secchi disk transparency from December through March of 33.4 meters. Regional Plan, p. II-39. See Resolution 82-11. The second standard discussed here is an annual mean phytoplankton primary productivity of 52 gmC/m²/yr. *Id.* The failure to achieve these two standards is well documented. See Final Lake Tahoe Total Maximum Daily Load Report ("TMDL Report") (Nov. 2010); Threshold Evaluation, p. 3-12 ("Status of Indicators Non-Attainment Annual mean Phytoplankton primary productivity (PPr) threshold is in non- attainment as of 2006 based on PPr of 205.5 gmC/m²/yr for 2006; this is nearly four times the standard of 52 gmC/m²/yr (Table 3-6 in Water Quality Appendix)").

The Regional Plan focuses achievement of the transparency standard on reducing nutrients to the Lake and algal production. However, the recently completed Total Maximum

² Contrary to the Evaluation Report and its own traffic analysis, the DEIS also asserts that the region already is in compliance with the VMT Threshold. "Based on the recent decrease in traffic volumes over the past seven years, the TRPA is in attainment for this threshold. (see RTP for current monitoring, modeling and attainment status)." DEIS, p. 12-19. In addition to contradicting the DEIS's discussion of the VMT Threshold in the Traffic analysis, the vague citation accompanying this assertion was not provided in the available references and was impossible to track down or otherwise corroborate.

Daily Load prepared for Lake Tahoe to address the ongoing violation of the deep water transparency standard recognizes that the most important factor causing the transparency violation is the discharge of very small sediment fines to the Lake. See TMDL Report, p. ES-1 (Nov. 2010). As the TMDL Report explains:

The ongoing decline in Lake Tahoe's deep water transparency is a result of light scatter from fine sediment particles (primarily particles less than 16 micrometers in diameter) and light absorption by phytoplankton. The addition of nitrogen and phosphorus to Lake Tahoe contributes to phytoplankton growth. Fine sediment particles are the most dominant pollutant contributing to the impairment of the lake's deep water transparency, accounting for roughly two thirds of the lake's impairment.

TMDL Report, p. ES-1. The Regional Plan, on the other hand, states that "Lake Tahoe's primary water quality problem is an imbalance in the lake's nutrient budget. . . ." Regional Plan, p. II-44. The Regional Plan blames most of the clarity degradation seen in the Lake on algal production:

The most important water quality trend in Lake Tahoe involves algal productivity and clarity of the pelagic (open water) zone. Over the fifteen-year period of record, algal productivity in this zone has increased 100 percent, and clarity has decreased 15 percent. Increased algal productivity, caused by an imbalance in Lake Tahoe's nutrient budget, is one of the primary reasons for the decrease in clarity.

Id., p. II-41. Indeed, the Regional Plan makes no mention of fine sediments whatsoever in its discussions of the deep water transparency standard. As the recent TMDL Report emphasizes, the management plans identified by the Regional Plan will never achieve the transparency standard. Only by refocusing the plan toward drastically reducing fine sediments, as well as controlling nutrients and algal growth, will the Lake have a chance of achieving the transparency standard. As written, the Regional Plan is inadequate to assure achievement and maintenance of the transparency standard.

IV. TRPA May Not Approve the Project Because the Proposed Amendments to the Regional Plan, Plan Area Statements, and Code of Ordinances Do Not Achieve and Maintain the Thresholds.

A. The Proposed Project Cannot Be Approved Without Numerous Amendments to the Regional Plan and the Code of Ordinances.

Before it may approve the Project, TRPA must make a series of findings regarding the project's consistency with the Regional Plan, its environmental impacts, and its impact on the environmental threshold carrying capacities ("Thresholds"). See DEIS at p. 1-9-1-10. Even if one assumes that the current Regional Plan is adequate, the Proposed Project is inconsistent with it on its face, and therefore requires a number of amendments to the Regional Plan (through amendments to the Plan Area Statements) and the Code of Ordinances, including:

- Amendment to Special Policy 9 in PAS 157, which provides that new or additional commercial uses shall be permitted only pursuant to an adopted community plan.
- Amendment to Plan Area Statement 158, which provides that the area should remain residential with a density of one single family dwelling per parcel, to allow multi-family units (6-19).
- Amendment to Plan Area Statement 157, which currently does not allow for transfer of development rights, to move the North Basin into Plan Area 159 and to allow transfer of TAUs.
- Amendments to the Code of Ordinances to allow for exceptions to the building height limitation.
- An exception to the Ordinance's prohibition on intercepting ground water.

As detailed below, these proposed amendments do not meet the standards specified in the Compact, TRPA codes, and relevant case law and therefore may not be approved.

B. TRPA Cannot Demonstrate that the Amendments to the PAS and Code of Ordinances Will Achieve and Maintain the Thresholds.

As set forth in a recent decision by the Eastern District of California, TRPA may not amend its code of ordinance unless it can find that "the Regional Plan..., *as implemented through the Code ... as amended*, achieves and maintains the thresholds." *League to Save Lake Tahoe v. Tahoe Regional Planning Agency* (E.D. Cal. 2010) 739 F.Supp.2d 1260, 1269 (quoting Code of Ordinances §6.5 [emphasis added by court].) The court further found:

Where a threshold is not in attainment, a finding that the problem is not getting worse does not satisfy this provision. Nor is it sufficient to find that, metaphorically, the ball is moving forward. By requiring that the Regional Plan be implemented so as to "achieve," rather than merely "approach," the thresholds, the Compact and Ordinances require a finding that TRPA will make it to the goal. TRPA is correct that Code section 6.5 looks to the entire package of the regional plan, ordinances, *etc.*, rather than to effects specifically attributable to the proposed amendment. Thus, it does not matter whether the proposal at issue will make the scoring shot, or even whether it will be involved in the play. The key is the finding that, one way or another, the thresholds will be achieved. TRPA must ensure that "at a minimum, the [Regional Plan] and all its elements, as implemented through agency ordinances, rules and regulations, achieves and maintains" the thresholds. Compact art. V(c); *see also* Code § 6.5.

Id.

Before it may approve the proposed Master Plan or the amendments to the Plan Area Statements and the Code of Ordinances necessary for the proposed project, therefore, TRPA

must find that the amendments will achieve and maintain the thresholds. It is not enough to show that potentially significant impacts associated with the proposed Project will be mitigated.

The evidence before TRPA does not support a finding that the amendments to the Code of Ordinances and Plan Area Statements along with the other elements of the Regional Plan and Codes will achieve and maintain the thresholds. First, as discussed above, the Basin is out of attainment with regard to many of the thresholds even though the Regional Plan has been in effect for 25 years. Not only has the Regional Plan proved ineffective at achieving – let alone maintaining – the thresholds, it is now badly out of date.

Nor can TRPA demonstrate that the proposed amendments to the Regional Plan and Code of Ordinances will remedy this problem. For example, with respect to the scenic thresholds, the project area is not in attainment. See DEIS, pp. 10-6, 10-8. Although the project proponent claims that the new development will enhance the scenic quality of the area, there is no evidence to support the conclusion that amending the Code of Ordinances to allow for exceptions to TRPA's existing height restrictions will achieve the scenic thresholds. Moreover, when assessing consistency with goals and policies regarding scenic thresholds, the DEIR/DEIS makes the determination that the proposed Project is consistent based on the fact that it will improve conditions over an already degraded baseline. DEIS, p. 4-14. However, the relevant standard requires that the scenic quality ratings established by the thresholds shall be "maintained or improved." *Id.* Therefore, the relevant question is not whether the project is better than the existing conditions, but whether it actually complies with scenic quality guidelines.

C. TRPA Cannot Demonstrate that the Proposed Master Plan Along With The Current Regional Plan and Code of Ordinances Will Achieve and Maintain the Thresholds.

Approval of the proposed Master Plan also is conditioned on TRPA's ability to demonstrate that the Regional Plan as amended by the Master Plan will achieve and maintain all of the Environmental Thresholds. *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 739 F.Supp.2d at 1269; Code, § 6.4. "To approve any amendment to the Regional Plan, TRPA must find, in addition to the findings required pursuant to Subparagraphs 6.3.A(2) and 6.3.A(3) and Subsection 6.3.B, and in accordance with Sections 6.1 and 6.2, that the Regional Plan, as amended, achieves and maintains the thresholds." Code, § 6.4. The Master Plan touches on almost every threshold adopted for the Region. Because the Regional Plan and the accompanying Code of Ordinances are already deficient in addressing the existing violations of the VMT threshold, pelagic lake thresholds and the ozone threshold, as described above, it is simply impossible for TRPA to find that the Master Plan, especially in light of the additional burdens it will place on at least those three thresholds, as well as the Regional Plan and Code will achieve and maintain those three thresholds.

V. TRPA CANNOT APPROVE THE PROJECT BECAUSE IT IS INCONSISTENT WITH THE REGIONAL PLAN AND CODE OF ORDINANCES.

“No project may be approved unless it is found to comply with the Regional Plan and with any ordinances, rules, and regulations enacted to effectuate the regional plan.” Regional Plan, p. VII-2. See Code, § 6.3.A. The Homewood Project, as proposed, is inconsistent with numerous provisions of the Regional Plan and the Code of Ordinances.

A. There Is No Demonstrated Need For The Project

The Regional Plan does not provide for unlimited development of outdoor recreational uses nor does it provide for development based on the owner’s return on investment or income. Instead, the Regional Plan provides that “expansion of recreational facilities and opportunities should be in response to demand.” Regional Plan, p. V-5. “The appropriate type of outdoor recreational development should depend on demonstrated need.” *Id.* “The rate of development should be responsive to demand.” *Id.* This requirement also is reflected in TRPA’s 1990 Ski Area Master Plan Guidelines. Ski Area Master Plan Guidelines, p. 3 (Nov. 29, 1990). As the DEIS frankly acknowledges, the proposed project is in the vein of build-it and they will come rather than a response to unmet demand. In attempting to explain why anything smaller in scale than the preferred alternative is not acceptable to JMA Ventures, the EIS acknowledges that the driving goal of the owner is to draw on average about 700 skiers per day to mid-week, non-Holiday periods during the ski season. DEIS, p. 3-11. Currently, about 300 skiers per day on average will ski Homewood mid-week during non-Holiday weeks. *Id.* Given that the current maximum skier use at Homewood is 4,000 skiers, there does not appear to be any “demand” for a project of this magnitude from the skiing public. See Plan Area Statement 157, p.3. As a result, the proposed project is inconsistent with this Regional Plan policy. There is strong demand from the public to keep the ski resort open and upgrade the facilities with a reasonably sized facility. FOWS acknowledges that the developer needs to find a profitable way to do that reasonable upgrade.

B. There Is No Best Management Practice Retrofit Plan For The Entire Project Area.

A key element of the Regional Plan is to require retrofitting of properties with best management practices. “All persons who own land and all public agencies which manage public lands in the Lake Tahoe region shall put best management practices (BMPs) in place; maintain their BMPs; protect vegetation on their land from unnecessary damage; and restore the disturbed soils on their land.” Regional Plan, p. II-41. See WQMP, p. 108. “Outdoor recreational uses are subject to the BMP requirements of the Regional Plan.” WQMP, p. 151. Where, as here, the project proposes to expand structures, a plan for BMPs over the entire project area must be presented as part of the project approval process:

Projects which expand structures or land coverage shall require application of BMPs to those areas affected by the project, and the balance of the project area shall be treated as a rehabilitation. Rehabilitation projects shall require the preparation of a plan and a schedule for retrofit of BMPs to the entire project area.

WQMP, p. 151. Regional Plan, p. II-43 (“Projects which expand structures or land coverage shall require application of BMPs to the project area”... “Rehabilitation projects, other than minor utility projects, shall require the preparation of a plan and schedule for application of BMPs to the entire parcel”). “The amount of retrofit work required at the time of project approval shall be based on the cost and nature of the project (Goals and Policies, p. 11-42).” WQMP, p. 151. Regional Plan, p. II-43. A review of the EIS and other available documents shows no plan or schedule for identifying disturbed areas throughout the entire Project area, identified in the EIS as the entire Master Plan area, and implementation of BMPs. This is inconsistent with the Regional Plan.

C. The Project Fails to Articulate a Plan To Achieve Its Stated Goal of Eliminating Parking on Highway 89.

FOWS is very concerned that the proposed Project fails to address all of its parking needs. See Report of Tom Brohard and Associates, pp. 6-8 (April 18, 2011). Although the DEIS states that Homewood is committed to eliminating parking on Highway 89, the DEIS and parking analysis does not put forth a plan that will achieve that stated goal. See DEIS, p. 11-61. The Regional Plan includes a number of express limitations and prohibitions relating to parking. The Regional Plan does not allow any non-residential project for which there is insufficient parking: “Parking for non-residential uses shall be the minimum/maximum required to meet the demand for parking generated by the use, except as may be offset by reducing parking demand through parking management and trip reduction programs.” Regional Plan, p. III-3. The Regional Plan requires “[a]ccess, parking, and circulation to be logical, safe, and meet the requirements of the transportation element.” *Id.*, p. II-48. Parking along Route 89 and other scenic corridors is either prohibited or restricted. *Id.*, pp. V-6-7. Lastly, the Regional Plan acknowledges that “[s]ince automobile access to and parking at ski area base facilities has been the source of many problems, new facilities should be planned to avoid these problems.” Regional Plan, p. V-7. Accordingly, “[e]nlargement or construction of new facilities to provide shelter, sanitation, food service, and first aid would be permitted to serve skiers on the mountain, but enlarged parking lots would not be permitted.” *Id.*

As the Brohard and Associates’ analysis confirms, the Project as proposed does not address where a substantial number of vehicles will park at the facility on capacity days. Brohard Report, pp. 7-8. Contrary to the Regional Plan, the Project does not provide for the maximum demand of parking it will generate. Contrary to the Regional Plan and the DEIS’s stated intent, the project will have to continue its heavy reliance on Route 89 for parking – a

scenic roadway currently in non-attainment of the scenic threshold as it passes through Homewood. See http://www.trpa.org/documents/about_trpa/scenic/Roadwayunits.pdf. See also DEIS, p. 10-5 (“Inadequate parking, signage, and overhead utility lines are common problems in the commercial areas near HMR”).

D. The Proposed Building Heights Will Be Inconsistent With Surrounding Uses.

The Regional Plan’s height policies require height limits that “ensure that buildings do not project above the forest canopy, ridge lines, or otherwise detract from the viewshed.” Regional Plan, p. II-48. Likewise, the Plan requires that “[t]he scale of structures should be consistent with surrounding uses.” *Id.* As proposed, the Project is requesting additional height beyond what is currently allowed by the Code. The mechanism for that change is the Code amendment allowing Homewood to use a different method of measuring height than everyone else in the Region. The proposed hotel and associated buildings will be visible from a large swath of Lake Tahoe. That building as well as the numerous other buildings proposed for the North and South bases will dwarf the surrounding homes and cabins.

A number of residential homes, several owned by FOWS members, are located immediately adjacent to Homewood’s North and South bases. See DEIS, p. 10-2 (“The community of Homewood in the Project vicinity is primarily residential with single-family homes interspersed among large pine and fir trees”). For example, several homes are located on Sacramento Street across the street from the Fawn Street parcel. Although the residents would prefer a restored meadow to a graveled field (or a parking lot in the winter time), the existing lot is at least partially blocked by vegetation and trees around its edges and does not loom over the existing residences or cast shadows over Sacramento Street. Looking over to the North base asphalt parking area, again, although not a meadow, the flat parking area does not loom over the existing houses, instead allowing an open view to numerous trees. There is no sense of an “urban” or even suburban environment experienced by the Sacramento Street residents or other residents walking along Sans Souci terrace or Sacramento Street. As proposed, the Homewood project would take those open areas and turn them into a densely developed areas dominated by large, buildings that will loom over the neighboring houses. It will transform what is currently a rustic, mountain cabin experience to an urban or suburban experience immediately outside these cabins’ doors. See J. Gearhart Photo, Northwest Corner of Fawn and Sacramento (July 9, 2009) (enclosed); DEIS, p. 10-22.

None of the simulated photos provide Homewood residents with views or perspectives that allow them to fully understand the scale and visual effects of the project. Nor do the simulations provided allow TRPA or the County to evaluate whether the scale of the project is consistent with the existing homes and cabins. All of the simulations are from the perspective of someone traveling or walking on or near Route 89. No perspectives of what the residents on Sacramento Street will view from their existing homes and cabins is provided. The one view from Fawn Street toward the corner of Sacramento Street slices off all of the bulk of the parking

structure, deleting any sense of the scope of the Fawn Street structures. The Fawn Street picture also is misleading as it fails to show in any meaningful way the garage entrance that is depicted there in other site maps included in the EIS. See DEIS, p. 14-56 (depicting entrance to garage on Fawn Street). No simulations are provided depicting what current residents would view looking north from their Sacramento residences or while walking toward the resort on Sacramento Street or Sans Souci Way. What is now an open view looking through the ski area all the way to the trees on the far side of the resort will be a pile of large buildings. The DEIS should be supplemented to provide a full array of views from the existing residential community.

The failure to take into account impacts on current residences and uses within the Homewood neighborhood is perhaps best illustrated by the complete absence of any photos or simulations for the large development proposed at the existing South Base. There is no evidence provided that would substantiate a conclusion by TRPA or the County that the scale of development proposed at the South base is consistent with the surrounding uses. Because existing cabins are located immediately adjacent to the existing parking lots at the South Base, the absence of any simulations for this location precludes the agencies from evaluating visual impacts in that portion of the development or its compliance with the Regional Plan and visual thresholds.

In order to evaluate the project's compliance with the Regional Plan's requirement that "[t]he scale of structures should be consistent with surrounding uses," TRPA and the County must first require Homewood to install story poles that will allow residents and the agencies to better experience the true scale of the buildings being proposed in relation to the existing residences and open viewsapes. The static simulations included in the EIS isolate components of the project but leave out key elements that would inform a person standing in the same spot as the camera of the true scale of the project. Thus, for example, the Fawn Street simulation does not show the full height of the garage behind the housing elements, all of which would be plainly visible and affecting the visual impact on a person. Beginning in October 2009, FOWS and its members have requested the need for story poles in order to evaluate the mass and scale of the proposed Homewood project. As of March 2010, the reaction of Michael Johnson, the Director of Placer County's Community Development/Resource Agency, was "Great idea!! ... Please know that I will work with staff to have the Homewood project utilize the pole study process so that staff and decision-makers can have a better idea as to the actual bulk and mass of the proposed project." See E-mail from Michael Johnson to FOWS and Allen Breuch, Placer County (March 25, 2010). That effort has, thus far, been frustrated. As the snows recede over the next few months, FOWS believes TRPA and the County must require story poles at both the North and South Bases in order to apply the Regional Plan's mandate that any development be consistent with its surroundings.

E. The Proposed Project Does Not Meet The Regional Plan's Water Supply Assurance Requirement.

The Regional Plan provides “no additional development requiring water should be allowed in any area unless it can be demonstrated that there is adequate water supply within an existing water right.” Regional Plan, p. VI-2. As discussed below and in the report prepared by Matt Hagemann, P.G., C.Hg., of SWAPE, the DEIS and accompany “water supply assessment” do not identify sufficient water supplies for the project that have been secured or even promised to Homewood. The DEIS instead, like many of the identified impacts, puts off a true water supply assessment until after the project is approved. The Regional Plan is clear that a development cannot be approved until TRPA has sufficient information to know where water from the project will be coming from and that it is available as an “existing right.”

F. The Proposed Project Does Not Meet the Regional Plan's Community Noise Level Requirements.

The applicable Plan Area Statements for the Homewood base areas and surrounding community establish a “Maximum Community Noise Equivalent Level” or CNEL of 55 CNEL for the residential areas as well as the Highway 89 corridor. A CNEL is essentially the average noise level for an area. See Regional Plan, p. II-21. The Regional Plan calls for decreasing noise levels in transportation corridors by reducing the number of trips and other mitigation measures. *Id.*, p. II-23 (“Transmission of Noise From the Transportation Corridors Shall Be Reduced”). The project, as proposed, does not achieve the CNEL level established for Homewood nor does it reduce noise from the Highway 89 corridor. The DEIS states quite the opposite, albeit at a date far in the future: compared even to noise levels expected in 2030, the project will contribute to CNEL levels a full 10 decibels over the PAS and Regional Plan limits. DEIS, p. 13-29. Currently, the Homewood community is generally in compliance with the CNEL limits, with the exception of those days when Homewood is making snow. DEIS, pp. 13-7 – 13-8. Although the DEIS fails to provide a direct analysis of the project's noise impacts on current levels, rather than projected levels 20 years from now, the evidence presented demonstrates that, at a minimum, the proposed project will not reduce noise levels and will significantly contribute to expected violations of the noise limits in the Homewood area.

G. The Proposed Project Does Not Offset All Of Its Direct and Indirect Water Quality Impacts.

Although water pollution from buildings in the Project's developed areas is well thought through, nothing in the project's water quality mitigations will address the pollution to Lake Tahoe resulting from increasing traffic on route 89 and adjacent roadways by thousands of vehicle trips. As explained in the accompanying comments by SWAPE's Matt Hagemann, the Project's proposed funding of CalTrans's installation of a Contech Stormfilter system is untested for the volumes of storm water such a system will encounter in a highway setting nor is it

designed to effectively remove the smallest fine particles which are the main contributors to Lake Tahoe's deep water clarity degradation.

The Regional Plan requires that "new residential, commercial, and public projects shall completely offset their water quality impacts...." Regional Plan, p. VII-17. The Plan identifies two options for fully mitigating. The first is by "[i]mplementing off-site erosion and runoff control projects as a condition of project approval and subject to Agency concurrence as to effectiveness." This is the path proposed by the Project. As discussed by SWAPE, there is no evidence that the proposed Caltrans project will be effective at offsetting the Project's total pollution loading, especially from vehicles, including both cars and buses, and the proposed ferry. The DEIS does not make any effort to calculate the water pollution resulting from these sources or whether Caltrans' project can completely offset that pollution.

The second option is to pay water quality mitigation funds based on a formula provided in the Code. Although provided by the Code, the current administration of the fund does not provide TRPA a basis to conclude that the payment will completely offset water quality impacts of the Homewood project. The existing fee schedule does not require a payment sufficient to fund one or more projects that would be capable of completely offsetting pollution from the Project's additional vehicle and ferry pollution. Nor does the program allow the Board, a developer, or the public to trace the contributed funds to specific projects to determine whether the funds implemented a project that completely offsets the project's water pollution.

H. TRPA May Not Approve a Project-Specific Amendment to the Code of Ordinances.

As part of the proposed amendments, TRPA would amend section 22.4 of the Code of Ordinances to add a new section 22.4.G. This amendment would allow for an exception to the requirement in the Code that the height of a building be measured from the lowest exterior point. DEIS, App. F ("The maximum height specified in Table A may be increased to a maximum height of 50 feet for projects located in special areas within the Homewood Ski Area Master Plan designated for additional height. In these special areas, the maximum height may be measured from average natural grade, which is the average grade between the lowest point and highest points of natural grade along an exterior wall of the building"). *Compare* Code, § 22.2.A-B. As a result, "[t]he height amendment, if approved, will allow building heights up to 77 ft. as currently measured using TRPA Code Chapter 22..." DEIS, p. 10-29. The Compact expressly precludes such sweetheart deals for specific projects.

Article VI of the Compact sets forth TRPA's powers. Those powers include adopting all necessary ordinances, rules and regulations to effectuate the adopted regional plan. Article VI(a). However, the Compact restricts such ordinances, rules and regulations to those applying throughout the region. "Except as otherwise provided in this compact, every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the region." *Id.* This point is reiterated again at the end of that Compact section: "Whenever possible without

diminishing the effectiveness of the regional plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, . . .” *Id.* See *also* Regional Plan, p. VII-2. Because this amendment neither applies throughout the region nor establishes a standard applicable throughout the region, it is inconsistent with the Compact, and may not be approved.

I. TRPA Has Not Complied With the Requirements of the Code of Ordinances for the Adoption of a Ski Area Master Plan.

Section 16.7 of the Code of Ordinances sets for the process for developing and approving a master plan. This process includes 4 major steps: 1) initiation of the master plan; 2) development and approval of the master plan work program; 3) preparation of the plan itself; and 4) adoption of the master plan and certification of the environmental document by the TRPA Governing Board. See *also* Ski Area Master Plan Guidelines, p. 11.

Here, TRPA has not even ensured compliance with the first step in the process. Specifically, section 16.7.A requires the “formation of a steering committee representing community interests” as well as a “designee of the Executive Director, a representative of the local government in whose jurisdiction the specific or master plan area is located . . .” The steering committee is then required to develop a work program for preparation of the master plan. Code § 16.7.B. The master plan team identified by Homewood includes only four employees of Homewood Ski Resort and JMA Ventures, its parent company. <http://www.skihomewood.com/masterplan/team>. The Regional Plan acknowledges one purpose of developing a master plan is, in part, to inform the community of the ski area’s intentions and to involve the public in the master planning process. Yet, in the case of the Homewood Ski Area Master Plan, TRPA has failed even to ensure compliance with the first step in the process – one that is specifically designed to facilitate the participation of a range of interests in development of the plan. Nor has TRPA approved an alternative process or set forth any findings supporting any deviation from the requirements of sections 16.7.A or 16.7.B.

The Master Plan fails to comply with 14.6.C(1)’s requirement to inventory and provide baseline data regarding all coverage in the master plan area. Generally, the Code prohibits development of a master plan in the absence of a community plan for those areas with designated community plan boundaries. Code, § 16.5.B (“No master or specific plan for an area within a community plan boundary shall be adopted unless the community plan is adopted, or the community plan is not expected to be adopted within three years”). Where, as here, a master plan is being proposed in the absence of a community plan, the Code’s master planning requirements incorporate certain substantive provisions of the community planning procedures. Code, § 16.5.B (where a community plan is not expected within three years, a specific or master plan may be approved, provided the specific or master plan complies with those provisions of subparagraphs 14.6.C(1) through (5), inclusive, as applicable to the

area impacted by the specific or master plan”). Section 14.6.C sets forth includes the preparation of specific baseline information necessary to a community planning process. Prior to completing and presenting a master plan to the public, the planning team is required to:

[c]omplete the assessment of environmental opportunities and limitations. This includes the establishment of baseline information about ***the location, amount, and condition*** of all threshold-related elements applicable to the community plan. This also shall include, at a minimum: (a) Stream environment zones. (b) Fish habitat. (c) ***Coverage (hard, soft, and potential)***.

Code, § 14.6.C(2) (emphasis added). *See also* Ski Area Master Plan Guidelines, p. 21. No baseline information of the location, amount or condition of coverage throughout the Project area has been conducted. Although Homewood has prepared several tables and narrative that cumulatively report on claimed coverage totals for each of the parcels within the Project area, it is not possible to tell where the claimed coverage actually exists on those parcels or verify whether it is hard or soft coverage. Although a persistent effort by the public has been undertaken to understand the road network and coverage at the ski resort, even then it is not possible to tell what portion of the various coverage square footages are attributed by Homewood to what features and whether it is hard or soft coverage. It turns out, the absence of this detailed information is critical to evaluating the Project’s compliance with the Regional Plan’s coverage requirements and Homewood’s assertions that the Project will reduce total land coverage by 13 percent or greater from existing coverage. DEIS, p. 15-61. Contrary to those claims and as is discussed further below, the total coverage figures provided by Homewood and in the EIS are inaccurate, including numerous areas that do not meet the definition of coverage under the Code because they did not exist at all as February 10, 1972 or were much thinner or smaller on that date than at the present time. As explained below, review of relevant maps, aerial photographs and road restoration reports shows that almost all, or a very large percentage, of the “coverage” Homewood claims to have restored is not coverage at all.

Notably absent from the public notice and the TRPA web site is an actual ***draft master plan***. The Code requires that the planning team, with oversight from the steering committee, “submit draft master plan and draft environmental documents to TRPA for circulation and public and agency review.” Code, § 16.7.C(6). The DEIS is not accompanied by any draft Master Plan, including each of the required components spelled out in the Guidelines and Code. Code, § 16.8.; Ski Area Master Plan Guidelines, pp. 21-29. The proposed plan is required to include a vicinity map, a detailed physical plan of existing facilities, a detailed physical plan of proposed facilities, an operations plan, a fertilizer and vegetation management plans, snowmaking operations plans, a mitigation plan including a water quality protection program, a construction methods plan, a monitoring plan including methods and responsibilities, a needs assessment, a site analysis including environmental needs and opportunities, an analysis describing the plan’s consistency with TRPA regional documents, PAOT calculations, and a ski area cumulative

watershed effects analysis. *Id.* Although many of these components can be located at various places in the DEIS, the DEIS is not itself the master plan. Without a draft plan to review, neither the public, TRPA or the County, have the specific master plan project in front of them for review as is required by the Code and guidelines.

J. TRPA Cannot Make the Findings Necessary to Change the Boundaries of and Add Uses to the Plan Area Statements.

The proposed Project requires a number of amendments to Plan Area Statements 157, 158, and 159 to allow for the mix of uses and locations proposed. Pursuant to section 13.7.D.2 of the Code of Ordinances, TRPA must show that these amendments will enable it to make progress toward achieving one or more environmental thresholds without degradation to the other thresholds. DEIS, p. 6-20. The DEIS's claim here that the amendments will enable TRPA to make progress towards the environmental thresholds is entirely circular. There is nothing about the boundaries themselves which prevent attainment of the thresholds. Rather, the amendments are designed to facilitate the proposed Project, which just happens to incorporate some asserted environmental benefits.

Even if TRPA could make the findings necessary to support expansion of the urban plan boundary, it cannot make the findings necessary to justify the new land uses in the plan areas. Most significantly, to allow multi-family uses, TRPA must show that the project to which the use pertains is appropriate in nature, scale, density, intensity and type, that it will not adversely impact the surrounding community, and that it will not change the character of the surrounding community. DEIS, pp. 6-26 – 6-28. In purporting to support these findings, the DEIS relies heavily on the alleged benefits provided by the project during the winter ski season, but largely ignores the intensification of use during the summer months. The area around the ski resort is largely residential and does not experience high levels of use during the summer months. The proposed project, however, would not only increase the intensity and density of development, but would also increase visitation and use during the summer. This will not only adversely impact the surrounding community, but will also change the character of the existing community. For example, the addition of an outdoor amphitheatre and concerts during the summer is a significant expanded use that poses conflicts with the surrounding residential uses.

Finally, to support the addition of multi-family residential development, TRPA must show that the area is suitable for transit oriented development. DEIS, p. 6-28. Although the DEIS claims that the project qualifies as a transit oriented development, it is a tourist facility designed to attract visitors on a daily basis – most of whom will arrive by car. The proposed development is not a neighborhood, but a *transient* occupancy development that does not in any way meet the criteria of a transit-oriented development. For example, the proximity to grocery, drug, and retail stores is largely irrelevant to a tourist development, as is the proximity to public facilities such as schools, government buildings, or post offices.

**K. TRPA CANNOT SUPPORT THE FINDINGS UNDER CODE SECTION 18.1.B
NECESSARY TO APPROVE A SPECIAL PROJECT**

TRPA cannot make the findings necessary to approve the proposed project as a “Special Project” pursuant to Code § 18.1.B. As the DEIS recognizes, three findings are necessary for TRPA to deem a project a special project. DEIS, pp. 6-26. The three necessary findings include:

1. The project, to which the use pertains, is of such a nature, scale, density, intensity and type to be an appropriate use for the parcel on which, and surrounding area in which, it will be located.
2. The project, to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect the land, water and air resources of both the applicant’s property and that of surrounding property owners
3. The project, to which the use pertains, will not change the character of the neighborhood, detrimentally affect or alter the purpose of the applicable planning area statement, community plan and specific or master plan, as the case may be.

Code, § 18.1.B. As described above, the proposed project does not come close to achieving the first criterion. The nature, scale, density, intensity and, in many cases, type of development being proposed is not appropriate for the spread out, rustic nature of Homewood. People who have owned homes in Homewood for many decades visit to enjoy a rustic, Tahoe experience. They do not visit to live adjacent to a suburban subdevelopment and large-scale resort. As noted above, the proposed garage and other large buildings will loom over the existing Homewood neighborhood. Traffic noise, concerts, and a drastic increase in visitors during the summer will entirely transform Homewood from a quiet, rural summer retreat into a suburban town center experience.

For similar reasons, the rustic ski facilities currently at Homewood actually add to the charm and rusticity of Homewood which a large number of residents enjoy. The drastic changes proposed by the project will diminish a large number of residents’ enjoyment of their neighborhood and Homewood in general. FOWS has circulated several petitions and surveys which have been signed by hundreds of Homewood and West Shore residents attesting to their concern. The large increases in traffic also threaten current resident’s health and safety as they stroll through Homewood or attempt to cross Route 89. A significant percentage of Homewood residents are elderly, many having owned cabins there since the 1960s. Additional car exhaust and noise from cars driving through the neighborhood looking for parking spaces will detract from the health, safety and enjoyment of current residents.

As to the third criteria, the proposal to rely on a ski area master plan rather than a community plan to decide the future of Homewood changes the entire tenor of the current plan area statements and relevant regional Plan and Code requirements. A true community-based planning process would have come up with an entirely different project size and configuration for Homewood and would have had the opportunity to fit changes to the ski area into other changes throughout Homewood. Instead, the proposed project is a ski area-centric vision of Homewood, treating the existing residents as ancillary components of the ski area, rather than treating the ski area as one component of the community. The large development proposed by Homewood obviously will change the character of the existing neighborhood and preclude the community-based planning envisioned by the current plans.

L. TRPA Should Require The Preparation of a Community Plan for the Homewood Community as Currently Required by the Plan Area Statement.

For decades, the Plan Area Statement for Homewood has required the preparation of a community plan. “A coordinated Homewood Community Plan should include ... Plan Area [157] as well as Plan Area 159.” <http://www.trpa.org/documents/docdwnlds/PAS/157.pdf>. Likewise, the Statements make clear that, in the case of expanding ski facilities, the ski area operator would not, by themselves, control or dictate the feasibility and demand for any such plan. “All affected parties should coordinate planning to assess the feasibility and demand for expanded ski facilities.” *Id.* Likewise, “[a]ny new or additional commercial uses shall be permitted only pursuant to an adopted Community Plan.” *Id.* TRPA and the County have failed to honor these long-standing planning requirements, instead of facilitating Homewood’s complete usurpation of the process.

Instead of engaging Homewood residents and other affected west shore communities in a true dialogue to determine the need and scope of any upgrade plans to Homewood, JMA Ventures chose to develop its own plan. JMA Ventures did ask residents what facilities they wanted at the resort and, based on that input, did make some limited adjustments to the project. Simply presenting that slightly adjusted plan to the public at however many workshops is not a community planning process nor is it a substantive effort to coordinate with the affected communities. Code, Ch. 14. JMA Ventures has presented Homewood residents and the entire West Shore with a take it or leave it proposal. As FOWS and others have indicated in the past, they are open to a reasonably sized upgrade to the ski area. JMA Ventures’ insistence that its ambitious project’s feasibility turns entirely on how many additional ski tickets it sells mid-week is overly simplistic and leaves out numerous profit-making components of the project. It is unfathomable to most members of surrounding communities that the company will not turn a profit on the sales and rental of numerous condominiums, hotel rooms and commercial spaces, the renting of meeting spaces, a restaurant, music events and other activities that they propose. The notion that JMA is planning a project that somehow ignores any income during the summer is implausible.

JMA Ventures and the agencies had ample time to engage in a thorough community planning process. Had JMA Ventures allowed the public into the ski facility expansion process as true participants, they would not be confronting the serious concerns and opposition now being raised by many members of the community and would be proposing a project that truly compliments the existing rural uses of Homewood and surrounding areas. FOWS requests that the Board reject Homewood's effort to push its unilaterally designed project onto the West Shore community and require the company and TRPA to engage in a true community planning process before proceeding with any expansion.

M. TRPA Cannot Show that Its Proposed Use of TAUs is Consistent with the Code of Ordinances.

For the purpose of "regulating the rate and timing of growth within the region," the TRPA Code includes the concept of TAUs, which are a type of transferrable development right. Code, § 33. The TRPA Code defines a TAU as follows:

Tourist Accommodation Unit: **One bedroom**, or a group of two or more rooms with **a bedroom**, with or without cooking facilities, primarily designed to be rented by the day or week and occupied on a temporary basis.

Code, § 2.2 (emphasis added). For each new tourist bedroom constructed, the developer must establish that one pre-existing unit has been permanently removed (with a small number of additional allocations allowed). The number of TAUs in the basin is "fixed" as those existing in 1987 when the TRPA's Regional Plan was adopted, with the exception of a small number of bonus TAUs which can be used only under limited conditions. Code, § 35.3. The existing "grandfathered" TAU's may be relocated or transferred to other jurisdictions around the lake with permission from the sending jurisdiction and receiving jurisdiction, reconstructed, or banked on site for future use. *Id.* Limited additional TAUs also are available where specified within a community plan and a small number (200) also are available for special projects retiring TAUs from sensitive lands. Regional Plan, pp. 11-5 (providing for up to 400 additional TAUs in the Region "as specified within a community plan"), VII-13, and VII-14 (no bonus TAUs "shall be allowed for projects outside adopted CPs [community plans]").

The TRPA Code makes clear that a TAU represents "one bedroom." Code, § 2.2. The Code recognizes that some units may have "two or more rooms," "with or without cooking facilities," but specifies that in such cases the TAU represents only "a bedroom." *Id.* Thus, under the plain language of the Code, one TAU is required for each new bedroom constructed, regardless of whether other rooms such as kitchens, living rooms, game rooms, etc. are included in the new or old unit.

TRPA previously reserved some bonus TAUs from the “special Project” pool of bonus TAUs. DEIS, p. 6-10. Currently, TRPA has reserved, though not approved, the transfer of 12 multi-residential bonus units and 50 tourist accommodation bonus units by the TRPA Board via Resolution 2008-11. *Id.*

Homewood proposes to transfer TAUs from two facilities on the north shore of Lake Tahoe. “The Project Applicant currently has 152 Tourist Accommodation Units (TAUs) available for the Project associated with the North Shore Lodge/Sierra Tahoe (13) and the Tahoe Inn (139). EIS, p. 6-36. “The average size of the TAUs demolished within the sending parcels is approximately 325 square feet (approximately 13 by 25 feet).” DEIS, p. 6-36. It is FOWS’s understanding that the units from these two facilities are or were single bedroom units. DEIS, p. 6-36. The TAUs are proposed to be used in Homewood for 75 hotel units, 40 condo-hotel units and 20 fractional units. 20 of the condo-hotel units will be “lock-offs”, so an additional 20 TAUs are needed for those units. Based on the size of the proposed hotel rooms (450 square feet), it appears those may be single bedroom units, however, the condo-hotel, and fractional units will include many two-, three- or four- bedroom units, though exactly what the breakdown may be is not disclosed in the DEIS. See Homewood Conceptual Plans (March 31, 2008) (oversized); DEIS, p. 3-18; DEIS, p. 6-36. The 20 non-lock-off hotel-condo units are all two-bedroom units. DEIS, p. 3-18. The rest of the proposed units would use one TAU from the single bedroom units from the North Shore for one, two or three or four bedroom units in Homewood. See DEIS, p. 6-36 (“[t]he TAUs proposed for construction at the HMR Project area under Alternatives 1, 3 and 6 will, for the most part, be larger than the TAUs removed from the sending sites”). As a result, the TAUs being transferred for the North Shore are insufficient to accommodate the proposed TAUs for the Homewood Project.

In addition, the Project proposes to transfer TAUs from a distant, hydrologic unit on the Lake. The Tahoe Inn is located between Kings Beach and Stateline on the California/Nevada border, about 17 miles from Homewood. North Shore Lodge/Sierra Tahoe also was located in Kings Beach. First, where a TAU is removed and replaced in the same hydrologic unit, it makes sense that the net impact to the Lake should balance out. This is particularly true where the previous TAU was on more sensitive lands and those are restored. By bringing in TAUs and their impacts from another hydrologic region, it is not clear that the impacts and benefits maintain a balanced trade-off. The impacts that will result from additional vehicle miles and trips and additional visitors in the Homewood region will not be mitigated by restoration of an undisclosed amount of Category 3 lands (though apparently only under a portion of the old hotels) 17 miles away near the Nevada border. See DEIS, p. 6-39 (only “a portion of the Tahoe Inn units were located within sensitive low capability Class 3 lands”). Also, by adding additional TAUs, especially bonus TAUs that did not exist anywhere previously, it is not clear from the DEIS what the overall number of TAUs that the West Shore can accommodate and whether the Homewood Project creates a surplus of TAUs for which there is no demand or which cumulatively overwhelm the sub-region’s capacity. The Kings Beach/Stateline area is much

more developed than the Homewood area and the slight reduction in TAUs relative to that area is simply not comparable to the relatively large increase in TAUs resulting to Homewood.

VI. THE DEVELOPMENT PROJECT'S COVERAGE CALCULATIONS ARE AN ABUSE OF DISCRETION BECAUSE THE EXISTING COVERAGE CLAIMED BY HOMEWOOD IS NOT COVERAGE AS DEFINED BY TRPA'S CODE OF ORDINANCES.

Homewood and the DEIS do not follow the Code's coverage requirements. First, evidence collected by Homewood itself shows that the roads claimed as coverage, many of them covered with grass and bushes, still allowed substantial infiltration and did not qualify as coverage. Second, about one-fifth of the southwest "toe" of the North base parking lot did not exist as of February 10, 1972 and does not qualify as coverage under the Code. Third, a substantial percentage of the roads claimed as coverage did not exist as of February 10, 1972 and, thus, are not land coverage. Fourth, many of the roads for which a full 10-foot width of coverage presumably is claimed were merely paths or trails as of February 10, 1972. Fifth, the Fawn Street parcel has no coverage, the entire purpose of the gravel BMP being to allow for one hundred percent infiltration into the ground. Lastly, staff's informal and extra-Code coverage "verifications" do not change or rebut any of these facts and are not substantial evidence of coverage for any of the above features.

The TRPA Code defines land coverage as:

1) A man-made structure, improvement or covering, either created before February 10, 1972 or created after February 10, 1972 pursuant to either TRPA Ordinance No. 4 [regarding permits], as amended, or other TRPA approval, that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Such structures, improvements and coverings include but are not limited to roofs, decks, surfaces that are paved with asphalt, concrete or stone, roads, streets, sidewalks, driveways, parking lots, tennis courts, patios; and 2) lands so used before February 10, 1972, for such uses as for the parking of cars and heavy and repeated pedestrian traffic that the soil is compacted so as to prevent substantial infiltration. A structure, improvement or covering shall not be considered as land coverage if it permits at least 75 percent of normal precipitation directly to reach the ground and permits growth of vegetation on the approved species list.

Common terms related to land coverage are:

1) Hard Coverage--man-made structures as defined above.

2) Soft Coverage--compacted areas without structures as defined above.

Code, § 2.2. Of particular importance to the TVP Project are the time frames by which land coverage is determined. Legal land coverage for the site may only include the coverage that existed on the ground as of February 10, 1972, or, subsequent to that date, if created pursuant

to a TRPA approval. In addition, where coverage is claimed based on compacted soils, the ordinance requires evidence of both compaction as well as limited water infiltration.

The DEIS asserts that the Project area includes approximately 1,761,337 square feet of land coverage verified by TRPA staff, not including the existing right-of-way on Ski Bowl Way. See DEIS, p. 14-19. Table 14-4 breaks out the claimed land coverage by land capability category. Appendix U provides copies of staff's verification letters which provide square-footages for parcel's with overlapping parcel numbers or no corresponding parcels, and without any maps indicating what features which the verification was addressing. The map of parcels within the Project area provided in the DEIS does not indicate the parcel numbers with which one could compare the parcel numbers used in the verification letters included in Appendix U, instead renumbering the parcels 1 through 20. See DEIS, p. 3-7. In the end, the DEIS makes it impossible for a reader to determine where or what the coverage claimed in the DEIS actually can be found. No map showing each of the claimed areas of coverage and its corresponding square footage is provided. Nor does the DEIS indicate any effort by Homewood or TRPA to determine whether the claimed coverage areas existed on February 10, 1972 or whether it was approved to be constructed by TRPA since that date. As a result, the DEIS does not provide the public or the TRPA Governing Board the information necessary to verify the DEIS's land coverage figures. For this reason alone, the DEIS must be supplemented in order for the Governing Board to be in a position to make the necessary land coverage determinations required by the proposed Project.

Homewood claims existing coverage at both the North and South bases. FOWS' research indicates that the South Base buildings and some of its parking areas existed as of February 10, 1972 and other paved parking at the South Base was created pursuant to a TRPA permit issued in the mid-1980s. However, as for the North Base, only a small portion of the parking area mostly to the south of the lodge existed in February, 1972. Hagemann, pp. 8-9. The existing "toe" of the parking area across the street from the Fawn Street parcel was not developed or used as parking as of February 10, 1972. And detailed maps of the site drawn at the time and corroborated by aerial photographs demonstrate that most of the existing paved area north of the lodge also did not exist on that date. *Id.* Lastly, none of the Fawn Street parcel qualifies as coverage to this day.

There is no clear map or table that depicts the square footage of each feature in the North and South bases comprising the coverage in those areas. There is a map depicting the coverage but no square footage figures are provided to say how the EIS and the staff verifications arrive at the figure of 288,277 square feet of hard coverage for the base areas. See EIS, p. 14-52; p. 14-56 – 14-57 (Figures 14-6 and 14-7). One can discern from Appendix U the square footage of the Fawn Street parcel as 57,760 square feet.

The DEIS states that there is an additional 1,473,060 square feet of coverage within the Project area, most of which is comprised of old unpaved roads, some abandoned and some in use. There is no way for a reader to tell how that figure was arrived at for the vast majority of the roads. Although one can see the locations of the various roads currently existing at the site

in the maps provided in the DEIS, one cannot determine the amount of square footage attributable to each road segment. Nor can one see how much coverage was assigned to whatever miscellaneous structures are included in this figure.

There is some additional information regarding those roads for which restoration credit is sought by Homewood. The DEIS states that, since 2006, Homewood has treated and removed approximately 19,000 linear feet of dirt access roads ranging from 7 to 18 feet in width . . . from within the Project area". DEIS, p. 14-20. The total square footage of restored coverage claimed by Homewood is 239,561 square feet. DEIS, p. 3-28. This figure does not include the 126,324 square feet of banked coverage attributed to Lombard Street. The location of these roads is depicted in Figure 14-4 of the DEIS. The DEIS provides some details including square footage of some of these restoration projects but not all of them. See DEIS, p. 15-16 – 15-17. Based on FOWS's document requests, it is clear that no coverage associated with roads at Homewood was ever implemented as a result of a TRPA approval. The coverage numbers presented in the EIS are seriously flawed. Over the last several years, FOWS has systematically obtained maps, documents and aerial photographs of the Homewood site and conducted a careful analysis to determine which roads and other features at the site were present as of February 10, 1972; which features were reduced in size circa February 1972 as compared to the present; whether any features were the result of a TRPA approval after that date; and whether any of the features prevented substantial infiltration. The evidence shows that Homewood and the DEIS misstate the coverage existing in the Project area.

A. The Existing Coverage Does Not Include A Substantial Portion Of The North Base Paved Parking Lot That Did Not Exist As Of February 10, 1972 And Was Never Permitted By TRPA.

A careful review of a detailed map prepared in late 1971 and used by the then owner of Homewood after February 1972 and contemporaneous aerial photographs demonstrates that only a portion of the North Base parking area existed at the time. Hagemann, pp. 8-9 & Figure 2.

Most of the existing paved parking area north of the lodge did not exist at the time. In that portion of the property, some parking occurred adjacent to the lodge and Route 89 as well as adjacent to the maintenance area. But the aerial photos show that a number of trees still existed in the area, the area was not paved, and, most importantly, the map drawn by the owner at the time shows that no parking area was located there, the road from the hill running straight through to Route 89 rather than into the parking area as is observed in later photos and maps.

A portion of the existing parked area did exist south of the lodge, albeit as an unpaved lot. However, the current toe of the lot that extends to the west along Fawn Street was not as prominent. Aerial photos from 1973 show that the entire toe was not then used for parking and was not covered by any asphalt.

Hence, the only evidence available shows that the North Base parking lot only included approximately 29 percent of the current square footage as of February 1972. Hagemann, p. 9.

B. The Existing Coverage Does Not Include the Fawn Street Overflow Parking Area Which Was Neither Covered Nor Used For Parking As Of February 10, 1972.

The Fawn Street parcel's surface meets none of the criteria required to be deemed land coverage under the Code or Regional Plan. The Fawn Street parcel's near surface soil layers consist of sandy gravel that is designed to substantially infiltrate water. See Letter from Robert Erlich, Lahontan Regional Board, to Jeff Yurosek, Homewood Mountain Resort (Aug. 6, 2003) (Fawn Street runoff "expected to infiltrate into underlying soils"); TRPA Permit, Interim BMP Retrofit Project (Oct. 21, 2002) (parcel designed to infiltrate water). As the hearing officer concluded at the land capability challenge held on August 6, 2009, the surface of the ground at Fawn Street included the gravel/sand layer covering the first several feet of that parcel. Memorandum from Heather Gustafson to TRPA Hearings Officer re: Homewood Village Resorts Land Capability Challenge, p. 12 (July 2, 2009) ("depth of fill material should not be subtracted from the groundwater depth"). Accordingly, the hearing officer, as recommended by Homewood and its consultants, measured the distance to groundwater from the surface of the ground, including the gravel/silt layers at the top.³ Thus, there is no covering of the ground surface on Fawn Street, as ruled by the hearing officer. Although perhaps man-made, it is not covering the surface – it *is* the surface of the ground. As a result, it does not "prevent[] normal precipitation from directly reaching the surface of the land," as it must to be deemed coverage.⁴ Moreover, the Fawn Street ground surface is designed to substantially infiltrate water.

C. Numerous Dirt Roads Claimed By Homewood As Restored Soft Coverage Are Not Coverage Because They Did Not Exist As Of February 10, 1972.

At least two of the largest road segments claimed by Homewood for coverage restoration credit plainly did not exist as of February 10, 1972. These include the Rainbow Ridge Road and Homeward Bound 0. These two road segments are about 4000 linear feet long. Neither road segment existed as of February 1972. Hagemann, p. 7-8. See DEIS, p. 15-17. In

³ As Homewood's attorneys at the LCC hearing stated, "ground surface" can only mean the surface of the land at issue as it currently exists. There is no reasonable construction of this provision in which "ground surface" can be construed to mean "ground surface except for fill." Letter from Remy, Thomas, Moose & Manly to TRPA Hearing Officer, p. 6 (June 8, 2009)

⁴ If TRPA were now to change course and, inconsistent with its land capability ruling, deem the ground surface to lie underneath the gravel layer, the agency would also have to revisit the results of the land capability challenge. If the gravel layer does not count as ground then the true surface of the ground would be at or just above the seasonal high ground water mark and TRPA would have to redesignate the entire Fawn Street parcel as a stream environment zone.

addition, it appears from the aerial photos and maps that Homeward Bound 1 also did not exist as of February 1972 or there is at least no evidence that it existed at that time. Although the DEIS does not provide any square footage for Rainbow Ridge Road, the IERS Report indicates that the treatment area covered 48,300 square feet. Oct. 2008 IERS Report, p. 22. The DEIS mentions work on the 38,788 square foot area of Homeward Bound 0 was conducted in 2009. Also according to the DEIS, Homeward Bound 1 is a relatively small segment including 3,624 square feet of claimed coverage. Thus, 37% of the square footage claimed by Homewood as restored coverage was not coverage in the first place. They were unauthorized roads and disturbed areas which needed to be restored but Homewood cannot use them as credit toward excessive coverage elsewhere in its project area.

D. With The Exception Of The Portion Of Lombard Street Banked By TRPA, None Of The Dirt Roads Claimed By Homewood As Restored Soft Coverage Qualify As Coverage Under The Code Because The Evidence Shows That The Roads Were Not Compacted So As To Prevent Substantial Infiltration.

As noted above, Homewood's consultant conducted infiltration monitoring prior to treating several of the old roads. Those infiltration measurements showed that old roads on Homewood Mountain allow substantial infiltration and, thus, do not qualify as coverage under the code. They do qualify as disturbed areas and need to be restored under the Regional Plan. But, unless Homewood or TRPA has gathered evidence that the infiltration rates on other old roads slated for restoration has been reduced by compaction to an insubstantial level, then the roads do not exist as coverage and cannot be used as coverage credit.

The following summarizes the remaining restoration projects as gleaned from the DEIS and reports prepared by Homewood's consultant. FOWS recently requested any additional road reports that TRPA may have obtained but TRPA staff informed us as recently as about one month ago, that no other such documents are in the agency's files.

Homewood's consultant – IERS – measured infiltration rates on two roads prior to conducting any treatment work. One was Road 31. The October 2008 IERS Report reports on 6,180 square feet of restoration work on this road. Oct. 2008 IERS Report, p. 9; DEIS, p. 15-16. IERS measured actual infiltration rates for this road both before the treatment and afterwards. "Before and after treatment, approximately 56% of applied water was infiltrated." Oct. 2008 IERS Report, p. 32. Interestingly, although the infiltration rate was high both before and stayed at the same high level after treatment, the measured depths of penetrometer readings at the site increased three-fold after treatment. *Id.*, pp. 32, 35. Thus, contrary to IERS' assertion that penetrometer depths can be used as an index of infiltration capacity, the field data indicates no correlation between penetrometer readings and infiltration rates. See Hagemann, pp. 9-10.

The infiltration rate also was measured for the upper and lower portions of Wedding Road prior to any restoration work. Although listed as two road segments in the DEIS, the IERS

Report discusses this area as a single road that is 20,840 square feet in size.⁵ The infiltration rate for this area was measured at **75 percent** of applied water prior to any treatment. Oct. 2008 IERS Report, p. 34. Thus, in both instances where IERS conducted actual infiltration measurements, the data confirms that the untreated roads allowed substantial infiltration at rates comparable to undeveloped, noncovered ground. See Hagemann, pp. 9-10.

Given the consistencies in soil types on the side of Homewood Mountain and infrequent or no use of the roads subject to restoration on the Mountain, the infiltration evidence gathered at Road 31 and Wedding Road is evidence that the other roads restored by Homewood had similar substantial infiltration rates. Hagemann, p. 10. As is noted below, there are no documents provided by the agencies to FOWS that included any data or evidence refuting that expectation.

The remaining roads for which Homewood claim coverage credit include the following

Road 37: Even as described by the DEIS, this stretch of old road does not sound like coverage. The entire area was covered with "mature vegetation." DEIS, p. 15-16. Shrubs were growing in the area, the treatment leaving shrub's roots in place. Oct. 2008 IERS Report, pp. 14-15. The presence of mature vegetation is not indicative of compacted coverage that prevents the growth of native vegetation. Given the similarities between this road and Road 31 as indicated by IERS's comparison of the two roads, it is reasonable to expect similar infiltration rates of almost 60 percent for this area. See Oct. 2008 IERS Report, p. 35, Figure 39; Hagemann, pp. 9-10. The treatment for this area covered 15,561 square feet. DEIS, p. 15-16.

Creek Road is another old road. No information about infiltration rates on this old road are provided by IERS or in the DEIS. See Oct. 2008 IERS Report, pp. 17-19. As a result, TRPA does not have any evidence to conclude that insubstantial infiltration occurs on this road. The treatment area is 11,400 square feet in size.

Homewood Canyon Creek Road: The DEIS mentions this road segment in passing and claims that it encompassed 20,840 square feet. DEIS, p. 15-16. Based on FOWS' requests in 2009 and 2010, there were no reports in the agency's files to back up either the size of this road segment, its condition or infiltration rates. The DEIS confirms the absence of evidence in the agency's files describing these areas. See DEIS, p. 15-17 ("Monitoring results are not published for 2008 and 2009 sediment source control and road restoration projects").

⁵ We assume the additional Tier 1 treatment conducted in 2009 on 1,920 square feet of Lower Wedding Road is included in the above total square footage. It is not clear whether the DEIS double counts that square footage.

Smooth Cruise Ditch: This segment includes 32,150 square feet. Based on FOWS' requests in 2009 and 2010, there were no reports in the agency's files to back up either the size of this road segment, its condition or infiltration rates.

Spur Road: This stretch includes 8,400 square feet. Again, nothing in the agency's files is available to confirm this number or any other information regarding the condition or infiltration rates at Spur Road.

Road 33: The DEIS mentions work on this 18,907 square foot area was conducted in 2009. Nothing in the agency's files is available to confirm this number or any other information regarding the condition or infiltration rates at Spur Road.

Lower Ellis Road: The DEIS mentions work on this 13,500 square foot area was conducted in 2009. Nothing in the agency's files is available to confirm this number or any other information regarding the condition or infiltration rates at Spur Road.

Lower Lombard: The DEIS also mentions work done on Lower Lombard, a 3,500 square foot road near the North Base. DEIS, p. 15-19. The DEIS states that "[t]he soil at Lower Lombard infiltrated approximately 85 percent of the water applied" and that "[t]his data suggests that restoration treatments applied at Lower Lombard were successful in controlling sediment at the source." *Id.*, p. 15-20. However, no pretreatment infiltration measurements were taken. Homewood's consultant does, however, compare the results at Lower Lombard with those seen at Road 31, apparently concluding that those two areas were comparable. As mentioned above, Road 31 pretreatment infiltration rate was the same as the post-treatment infiltration rate. If that is the case at Lower Lombard, then the pretreatment infiltration was around 85 percent, a substantial rate of infiltration.

E. Staff's Field Verifications Do Not Transform Non-Coverage Into Coverage

It is clear from the DEIS that Homewood relies exclusively on TRPA staff coverage verifications from 2006 and earlier. EIR, p. 14-47 ("Appendix U contains the TRPA Land Coverage Verification letters on which the calculation of existing land coverage are based...."). TRPA staff's various field verifications have no binding legal effect. First, verifications, by definition, do not approve any land coverage that would move the February 1972 land coverage baseline date forward. Second, nothing in the TRPA ordinances authorizes staff to make binding final decisions on land verification on behalf of the TRPA Governing Board. Third, if the verification procedure employed by staff were legally binding, it would amount to a regulation that has not been adopted by the TRPA Governing Board as required by the Compact and Ordinances.

a. A staff field verification is not a TRPA approval to create land coverage.

Under TRPA's definition of "land coverage," the only coverage recognized is that coverage in existence as of February 10, 1972 or coverage "created after February 10, 1972 pursuant to either TRPA Ordinance No. 4, as amended [permitted coverage], or other TRPA approval." Code, § 2.2. To the extent TRPA or Homewood may argue that the TRPA field verifications included in Appendix U amount to "approvals" by TRPA pursuant to which coverage was created at the site, that notion is without merit. The verifications do not purport to authorize any creation of any land coverage at all. Indeed, they could not. On their face, the covering verifications only addressed *existing* land coverage. Appendix U. Hence, those letters could not themselves also be an approval to *create* new land coverage that would serve to restrict "land coverage" as defined in Section 2.2.

b. The TRPA Code does not endow staff with any authority to make binding land coverage decisions.

Staff-level field verifications are not binding TRPA approvals because such actions are not authorized by the TRPA Code or the Regional Plan. A careful review of the entire TRPA Code demonstrates that TRPA staff has no authority to make binding land coverage determinations based on an informal site inspection by its staff or other persons. The only field verification authorized by TRPA's ordinances is a verification of a parcel's land capability mapping pursuant to the Bailey's land capability classifications. Code, § 20.3.A. That process includes review by a team of experts, generation of a technical report, and, if changes are proposed, notice to the public and final action by the TRPA Hearing Officer or Governing Board. *Id.* The process may result in changes to a parcel's land capability classification and mapping, but it does not involve any determination about existing land coverage. *Id.* The land capability verification process does not authorize TRPA staff to make binding determinations about the presence or absence of land coverage.

The only land coverage field verification contemplated by the Ordinances or the Regional Plan is in the context of the land coverage banking program described in the Regional Plan. As the verifications make clear, the banking process is separate and distinct from staff's coverage verification letters. Accordingly, the verification letters have no binding effect on TRPA and the agency is free to determine whether the roads at Homewood Mountain are land coverage and to apply the Code and Regional Plan definition.

c. TRPA's treatment of land coverage field verifications by its staff as binding final decisions would be an illegal regulation that is *ultra vires* because it was not adopted by the TRPA Governing Board.

To the extent TRPA or Homewood claim that the staff level verifications of coverage are a long-standing practice that create binding decisions authorized pursuant to staff level policy

directives, such a policy is an ordinance, rule or regulation which cannot be adopted and implemented solely by the Executive Director or other TRPA staff. Under Section VI(a) of the Compact, only TRPA's governing board "shall adopt all necessary ordinances, rules, and regulations to effectuate the adopted regional plan." Compact, § VI(a). The Governing Board's adoption of ordinances and rules is conditioned on its adherence to public notice and hearing requirements, mandated findings of consistency with the Regional Plan and Tahoe Basin's environmental thresholds and publication. See Code, § 6.5; TRPA Rules of Procedure, Art. IV. Because TRPA's governing board has never adopted an ordinance or other rule establishing a staff-level land coverage verification process, including appropriate procedural safeguards, any informal policy of staff with binding effect is *ultra vires*.

There can be no reasonable dispute that the TRPA staff's practice of considering land coverage verification applications and treating the resulting staff-level determination as binding on the landowners, TRPA, and others is a "regulation" as that term is defined in law. The Compact states that "[e]xcept as otherwise provided in this compact, every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the region." TRPA Compact, Art. VI(a). Although TRPA has not adopted a definition of the terms ordinance, rule or regulation, their common meaning has been long-established by both state and federal courts. In California, an agency action constitutes a regulation if it satisfies a two-part test. First, the agency action must apply generally rather than in a specific case. Second, the rule must "implement, interpret, or make specific the law enforced or administered" by the agency. *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal.4th 557, 571 (1996). Similarly, under federal law, "[a] rule is an "agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). Whether an agency labels an action a policy or interpretation does not affect its status as a rule or regulation. See *Tidewater Marine*, at 576; *U.S. Department of Labor v. Kast Metals Corp.*, 744 F.2d 1145, 1149 (5th Cir. 1984) (federal EPA "cannot outflank . . . the APA's rulemaking framework by definitional fiat"); see also *Croplife America v. EPA*, 329 F.3d 876, 883 (D.C. Cir. 2003) ("[t]he agency's characterization of its own action is not controlling if it self-servingly disclaims any intention to create a rule with the 'force of law,' but the record indicates otherwise"). As the D.C. Circuit Court has pointedly explained, "'rules is rules,' no matter their gloss." *National Association of Homebuilders v. U.S. Army Corps of Engineers*, 417 F.3d 1272, 1285 (D.C. Cir. 2005), quoting *Granholm ex rel. Michigan v. FERC*, 180 F.3d 278, 282 (D.C. Cir. 1999).

To the extent it is claimed that the staff level land coverage verification procedure results in a final TRPA decision as to the presence of land coverage on any given parcel that is binding on TRPA and others, that procedure is a regulation or ordinance that is *ultra vires* unless adopted by the TRPA Governing Board. The staff verification process is applied generally throughout the Tahoe Region. It also is an attempt to implement the Compact and Regional Plan, albeit in an illegal manner. Because the TRPA Governing Board action did not adopt the staff verification procedure as a rule, regulation or ordinance, it is an illegal regulation with no

effect, never mind a binding affect. TRPA's Executive Director and other staff have no authority to create from whole cloth such a procedure for making binding land coverage decisions, without public notice, public hearing, or Board approval. The Governing Board is free to review coverage claimed by Homewood unconstrained by staff's summary conclusions, especially where, as here, those conclusions that certain roads at Homewood qualify as "land coverage" are not supported by evidence and are incorrect.

VII. THE DEIR/DEIS IS INADEQUATE UNDER CEQA AND THE TRPA COMPACT

When evaluating the adequacy of TRPA's environmental review, courts routinely look to the substantive mandates of the California Environmental Quality Act ("CEQA"). *People v. City of South Lake Tahoe* (E.D. Cal. 1978) 466 F.Supp. 527, 537 ("City of South Lake Tahoe II"); *League to Save Lake Tahoe*, 739 F.Supp. 2d at 1274, 1278. Moreover, the Compact itself imposes "extensive substantive requirements" not just for disclosure of environmental impacts but "to improve environmental quality, in some cases dramatically . . ." *League to Save Lake Tahoe*, 739 F.Supp.2d at 1278, 1276.

As detailed below, the DEIS fails to comply with many of CEQA's and the Compact's substantive standards for the disclosure, analysis, and mitigation of the proposed project and alternatives to that project. The environmental impact report is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of University of California*, 47 Cal. 3d 376, 392 (1988) (citations omitted). It is "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' Because the EIR must be certified or rejected by public officials, it is a document of accountability." *Id.* (citations omitted). The DEIS serves a similar role under the TRPA Compact, except, unlike under CEQA where the maintaining the *status quo* may be sufficient, under the Compact, TRPA must improve the quality of the environment so as to achieve the applicable environmental thresholds.

The DEIS, however, ignores or downplays many potentially significant environmental impacts associated with the proposed Project and it fails to analyze a reasonable range of feasible alternatives that would reduce the Project's impacts below a level of significance. Therefore, FOWS requests that the DEIS be revised and recirculated for public review and comment for the reasons set forth below.

A. The DEIR/DEIS Fails to Accurately Describe the Project.

In order for an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *San*

Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal. App. 4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. *San Joaquin Raptor*, 27 Cal. App. 4th at 729-30. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. In this case, the DEIS does not come close to meeting these clearly established legal standards and thus fails to provide sufficient information to enable informed decision making by TRPA and the County. As discussed below, numerous components of the Project remain entirely unspecified and therefore are not adequately addressed by the DEIS.

1. Land Coverage

Although the DEIS claims that existing land coverage from the top of the mountain will be retired and banked for later use, it does not identify the total amount of land coverage or the division between soft and hard coverage that will be required for the proposed Project (or the alternatives). A description of the amount and type of land coverage is essential to determining compliance with TRPA regulations and to evaluating the impacts of the project.

2. Amphitheater

The Project includes an outdoor amphitheater for concerts and other performances in the summer months. Here too, the DEIS lacks any detail about this Project component, such as size, hours of operation, number of events proposed per year, seating capacity or design parameters. Although the amphitheater will clearly be a significant source of noise, traffic along with traffic-related pollution, and scenic impacts relating to night lighting, the DEIS defers any meaningful analysis of noise impacts associated with the amphitheater to a future time.

3. Summer Operations

The proposed Project will substantially increase the use of the resort in the summer, but the DEIS does not identify the additional number of people that will be drawn to the area in the summer. The DEIS also fails to identify how this increase in use will affect the PAOT allocation for summer time use, which is currently designated as 0.

4. Emergency Access Road for Proposed Townhouses

Although required by Placer County, the DEIS fails to describe the location, noise or traffic implications of a second access road to the 16 townhouses proposed by the proposed Project.

5. Road Linking Base to Mid-Mountain Road

The map of the proposed project omits the roadway between the base areas and the proposed Mid-Mountain Lodge. DEIS, p. 3-22. It appears that existing roads will be used. DEIS, p. 3-28 (“Other existing on-mountain roads will be retained, as these roads will be used for mountain operations during summer”). The closest roads that would be used to service the lodge appear to be Homeward 0 and Homeward 1. *See, e.g.* p. 3-38. Additional fill is slated for Homeward 1. *Id.* This is problematic as available aeriels and maps indicate that Homeward 1 was probably not a road as of February 10, 1972 and may be illegal coverage already. *See* Hagemann, p. 7-9. In addition, given the proposed new facilities mid-mountain, the location of an Office of Emergency Service’s office, the relocation of equipment, it appears likely that the intensity of uses of existing roads between the mid-mountain site and the base facilities will increase substantially, especially during the summer. *See* DEIS, p. 3-28 (diesel fuel trucks to use access road). That intensified use may require improvements to those access roads and result in possible impacts, including additional dust emissions from vehicles use of unpaved roads, visual impacts from vehicles and dust and water quality impacts from expanded use of dirt roads.

6. Road Usage Related To Transport of Fill

The proposed project anticipates utilizing the large amount of fill generated from the project’s construction at numerous locations scattered throughout the Project area. DEIS, p. 3-37 – 3-38. “Up to 100,000 cubic yards of excavated materials could be generated during buildout of the Proposed Project (Alternative 1).” *Id.*, p. 3-36.

Likewise, there is no effort in the DEIS to quantify or describe the number of dump trucks necessary to transport 100,000 cubic yards of dirt from the site to locations outside the Basin and the resulting impacts on traffic, air pollution, water pollution and visual quality.

7. Energy Generation Components

The Mid-Mountain Lodge proposal includes space for alternative energy generation components. The DEIS mentions that “[p]lans include exploration of renewable energy sources such as micro-hydro, solar, geothermal, biomass, and wind energy for serving the Project area.” DEIS, p. 3-26. The DEIS identifies “micro-hydro development” on Madden Creek and Quail Lake as the “most promising possibility for energy generation.” *Id.* These plans should be described in further detail and, depending on the level of planning, possible impacts and mitigating affects of these project components should be evaluated in the DEIS.

8. Gondola and New Lift.

“An eight-passenger gondola will bring guests up to the Mid- Mountain area.” DEIS, p. 3-30. The project description mentions but does not adequately describe the new gondola and

lift proposed as part of the project. As for the proposed gondola, the project description leaves out any details regarding the number of towers or how many gondola compartments will be in use. The size of the gondolas obviously increases dramatically over the existing three-person chairs on the Madden Lift. Nor is the new beginner lift slated for mid-mountain described or depicted in the project description. DEIS, p. 3-32. See, e.g. id., p. 3-26, 3-22. As a result, it is not possible for a reader to evaluate the DEIS' assertion that the new lifts will have no impacts. See, e.g. DEIS, p. 10-59 – 10-60. These conclusions are not borne out by the simulations prepared for the scenic section. The winter simulation of views from the Lake shows that the proposed gondola is much more visible than the current chair lift. See DEIS, p. 10-17. Because it will be in motion year-round, it also will be more prominent than a static feature. The DEIS must include a clear description of this project component, as well as the other new chair, in order for the agencies and public to properly evaluate their potential visual and other impacts.

B. The DEIS's Analysis of Significant Impacts Resulting From Inconsistencies With the Current Regional Plan, Code of Ordinances, and Plan Area Statements is Circular and Relies Upon an Illegal Baseline

The DEIS goes through a long list of inconsistencies between the current land use plans and code of ordinances applicable to the Homewood site. DEIS, pp. 6-15 – 6-30. Under the current plans and Code requirements, the project as proposed could not be built. Indeed, without those changes, no residential condominiums at the South base would be possible, the height of the entire project would have to be lower, no residences could be built at the Fawn Street parcel, no timeshares would be allowed within the project, the amphitheatre could not be constructed and the proposed multi-family townhouses could not be built, amongst perhaps other components of the project as well. Despite the lengthy description of inconsistencies with the current plans and ordinance, the DEIS nevertheless concludes that the inconsistencies are not significant impacts and no mitigation is required. DEIS, p. 6-30. The only reason for this finding is the project's proposed amendment of each plan and Code section that stands in the way of the project as proposed:

The consistency analysis in Chapter 4 reveals inconsistencies between the Proposed Project (Alternative 1), Alternative 3, Alternative 6 and the TRPA Regional Plan, TRPA Plan Area Statements, the West Shore Area General Plan, and the Placer County General Plan. ***Implementation of proposed amendments results in consistencies with policies related to transfer of development rights, plan area boundaries, height and allowable uses that would otherwise result in an inconsistency.*** Implementation of proposed mitigation measures eliminates the other inconsistencies with policies related to noise, habitat, SEZ function, operational air quality, groundwater, fertilizer use, transportation and circulation, erosion control, species protection, scenic improvements development fees, and affordable housing.

DEIS, p. 6-30. Simply amending away inconsistencies does not mitigate the impacts to the current levels of development authorized by the existing plans. By treating the amended versions of the plans and code as the currently effective version from which to gauge any impacts, the DEIS applies the wrong baseline to its analysis of impacts to current plans and codes. As proposed, the amendments will allow a project that greatly exceeds the current plan and code limits. These inconsistencies are significant environmental impacts and not capable of being mitigated except through an alternative that complies with all currently applicable plans and code requirements.

Every CEQA document must start from a “baseline” assumption. The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *Communities for a Better Environment v. So Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321. Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency’s environmental review under CEQA:

“...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.”

See, Save Our Peninsula Committee v. County of Monterey (2001) 87 Cal.App.4th 99, 124-125 (“*Save Our Peninsula*”). As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. *Save Our Peninsula*, 87 Cal.App.4th 99, 121-123. As the court has explained, using such a skewed baseline “mislead(s) the public” and “draws a red herring across the path of public input.” *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711.

It is well-settled that inconsistencies with currently applicable plans and code requirements are significant environmental impacts under CEQA. *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177. When concluding that the amendments do not have any impact on the current plans and codes because they amend the code, the DEIS treats the proposed future amendments as if they already are enacted. DEIS, p. 6-30.⁶ That is not the baseline, is completely circular, and does not address the drastic expansion of

⁶ As TRPA itself emphasizes, “the environmental effects of any proposed increases in height or density beyond the current Code provisions are not guaranteed. They must be analyzed and debated as part of the environmental impact statement (EIS) that will be prepared for those projects before TRPA indicates any approval of changes to the current Code standards.” TRPA, Frequently Asked Questions on the Community Enhancement Program, p. 2.

development allowed by the changes either through consideration of a drastically reduced alternative or a supportable statement of overriding considerations. An alternative depicting a version of upgrading the ski area consistent with the current land use restrictions would be the appropriate manner to assess the impacts of the proposed land use amendments.

C. The DEIS's Traffic Analysis Is Flawed and Not Supported by Substantial Evidence.

FOWS has retained Tom Brohard, P.E., to review the DEIS's traffic analysis. Mr. Brohard points out a number of significant errors in the traffic analysis.

The traffic analysis underestimates the traffic impacts of the project by relying on traffic counts taken during the less intensive visitor period of late August and early September. Brohard Report, p. 2. It is common knowledge in Tahoe that the peak visitor period during the summer is associated with the first two weeks of August.

Mr. Brohard also notes the DEIS's omission of any detailed discussion of impacts to pedestrians, cyclists, and traffic resulting from increasing traffic in Homewood as well as increasing the number of people crossing Highway 89 to access Lake Tahoe, the proposed ferry, a restaurant and other amenities on the west side of the highway. Brohard Report, p. 3. This is despite the DEIS's acknowledgement that "[t]he proposed project ...has potential to impede emergency responses on a temporary basis during construction, and permanently if adequate emergency vehicle access is not providing to and throughout the Project area." DEIS, p. 17-14. Mr. Brohard points out the omission of an adequate emergency evacuation plan to address the increased number of visitors trying to flee in their cars in the event of a major fire or other emergency. Brohard Report, p. 3. This should also include a plan, in case of traffic congestion, for emergency vehicles to get through to provide emergency medical care to those who need it. Will additional funds be required for the fire department to maintain fire and emergency services for the potential additional demand created by this project? Additionally, the DEIS notes that "construction vehicles and equipment may block and/or slow through traffic in the surrounding area especially along SR 89. This could temporarily interfere with the ability of PCSD and NTFPD to provide emergency services..." DEIS, p. 17-14. The project must include an adequate plan to address this issue.

Mr. Brohard points out several significant errors in the trip rate calculations employed in the DEIS. These include, for example, using daily trips and midday peak numbers for "hotels" and "condominiums" rather than the numbers assigned to "resort hotels." Brohard Report, pp. 3-4. TRPA assigns "hotels" with trip rates of 8.92 daily trips and 0.70 PM peak hour trips and condominiums with even lower numbers. The Homewood project, at least at the North base, is a proposed resort hotel. TRPA assigns "resort hotels" much higher rates of 13.43 Saturday daily trips and 1.23 Saturday midday peak hour trips. The DEIS needed to employ the resort hotel numbers consistent with TRPA's criteria. By avoiding those higher trip rates, the DEIS

underestimates by 75 percent the expected vehicle trips from this largest portion of the proposed project. *Id.*

The DEIS traffic analysis also is flawed by focusing the analysis in on a day where not all of the anticipated guests have arrived. The DEIS reviews daily and PM peak hour trips based on trips on Fridays. DEIS, p. 11-4 – 11-6. The DEIS then assumes that, on those days, only half of the guests have arrived. *Id.* Obviously, picking a day where half of the guests are not yet there does not provide a reasonable evaluation of likely impacts of traffic. The main impacts almost certainly would occur on Saturdays when the units are full of people and all of the amenities and stores are open. Brohard Report, p. 4. Applying the correct resort hotel trip rates and a day when the resort is fully occupied generates another approximately 1700 vehicle trips not accounted for in the DEIS. *See id.* “Adding these trips that are 75 percent higher than forecast in the Draft EIR/EIS to the increased Saturday midday peak hour baseline volumes during the first two weeks of August will likely create additional significant traffic impacts that must be identified, evaluated, analyzed, and mitigated.” *Id.*

Mr. Brohard points out several flaws in the DEIS’s analysis of impacts to levels of service at several locations. As he notes, “[n]o data, analysis, or calculations are provided by the Draft EIR/EIS to affirm that the LOS E condition will last only four hours or less” at two nearby intersections.” Brohard Report, pp. 4-5. The Draft EIR/EIS must analyze LOS conditions during other hours to support its conclusion of no significant impact at SR89/Fawn Street, SR89/Ski Bowl Way and SR89/Pine Street. *Id.*

Mr. Brohard also explains that the SR89/Fawn Street traffic mitigation measure is incomplete. DEIS, p. 11-98. At that intersection, the LOS for traffic on Fawn Street deteriorates from LOS D to LOS F, a significant traffic impact. However, the mitigations proposed in the DEIS to add a 100 foot long left turn pocket on Fawn Street is 65 feet too short to address the expected traffic levels. Brohard Report, p. 5; DEIS, p. 11-104. In addition, the width of Fawn Street would have to be 36 feet – not 27 feet – to accommodate the three proposed 12-foot wide travel lanes. Brohard Report, p. 5. Lastly, again citing the increase in visitors wishing to cross Highway 89, Mr. Brohard notes that many cars likely would be travelling at 40 MPH in that 35 MPH zone, necessitating an analysis in the DEIS of the need for traffic lights to assure the safety of pedestrians, cyclists and other drivers.

The trip estimates used in the DEIS also are underestimated based on an unrealistically low estimate of summer occupancy rates at the resort. Tahoe has more visitors in summer than in winter. The DEIS nevertheless predicts only a 35% midweek occupancy for the summer season (while assuming 100% occupancy on weekends and 50% occupancy Mondays and Thursdays). This mid-week percentage seems arbitrarily low especially when tourists are likely to visit Tahoe for summer vacations of a week or more.

The DEIS fails to describe or analyze the number of vehicle trips from out of the Tahoe Basin that the project will induce. Nothing in the DEIS discusses whether the estimated trip

lengths used for the project factor in these longer trips to and from the proposed resort. Given that skiing involves numerous visitors from outside of the Basin, the VMT figures need to be adjusted to address all of those miles right up to the rim of the Basin.

For all of these reasons, the DEIS's traffic analysis must be redone, supplemented and recirculated for public review and comment.

D. The DEIS's Analysis Of The Projects' Parking Impacts is Inadequate and Fails to Disclose and Mitigate All of the Potential Parking Impacts Associated with the Project.

A current source of tension from time to time during the winter months are the occasional bold skiers who opt to park in residents' driveways, perhaps hoping they are not currently there or not inclined to complain. Numerous members of FOWS have experienced incidents where a car load of skiers have opted to park in neighborhood driveways. In some instances, they have even refused to leave at the request of the homeowner. Although Homewood staff has assisted in resolving some of these incidents in the past, the fact that residents must take time from their stay in Homewood to protect their family's privacy and serve as traffic cops nevertheless occurred. These incidents occur frequently on high volume weekends as well as after fresh snow events and when the wind is strong at Alpine and Squaw Valley.

The source of these incidents is, of course, the lack of parking that currently exists for the Homewood Ski Area. Every weekend, a long line of cars parked on the shoulder of Highway 89 runs both north and south from the ski area, posing risks of accidents for drivers and skiers. Unfortunately, Homewood's proposed project does not solve the current traffic problems and instead proposes to expand some of those issues to the summer months. The following summarizes Tom Brohard's critique of the parking analysis.

On numerous key points, the parking analysis conflicts with key components of the project described in the DEIS's project description. These include inconsistencies in how the parking analysis addresses the proposed lock-off units, the location of the commercial square feet proposed for the North Base (the parking study continues to assume the commercial square footage will be in the Mid-Mountain Lodge), and differences in the number of North and South base parking spaces. Brohard Report, p. 6. The parking analysis, of course, should analyze the proposed project.

Mr. Brohard conducted a careful analysis of the parking analysis for both the proposed winter and summer operations. His analysis points out numerous internal inconsistencies in the report as well as inconsistencies with the DEIS's project description. Brohard Report, pp. 6-8. During the winter, some of the concerns raised including inconsistencies with the parking study's demand numbers and the DEIS's trip analysis, no employees for the proposed 10,590

square foot fitness center, inconsistency in the internal retail trip numbers for the project, unjustified high estimates of how many employees will use public transportation, deferring any plan for addressing where employees will park when they are displaced by skiers on peak ski days, and, based on the actual number of parking spaces proposed by the preferred project (729), that the “North base would be short 21 parking spaces rather than having a surplus of 20 spaces shown in Table 2.” *Id.* During the summer, Mr. Brohard cites unanalyzed questions regarding boat trailer parking and the fate of upwards of 253 vehicles (actually 294 vehicles based on the proposed project’s 729 spaces) that will need to be parked elsewhere during concerts at the new proposed amphitheatre. No plan is provided or analyzed for those events in the DEIS. As a result, the DEIS does not adequately address parking impacts from the project. All of the omissions and inconsistencies cited by Mr. Brohard must be evaluated and recirculated to the public for further comment.

E. The DEIR’s Analysis of Water Quality Is Inadequate

1. The DEIS fails to adequately address the impacts to groundwater that will result from the location of the proposed storm water infiltration galleries.

The Project includes stormwater infiltration galleries as part of the treatment train for stormwater flowing off of the site. The TRPA Code requires that the bottom of infiltration facilities be a minimum of 1 foot above the seasonal high water table. Code, § 25.5.A. Additionally, “any stormwater infiltrating areas that may have less than two (2) feet of separation to the seasonal high water table, the stormwater being infiltrated must meet TRPA Code of Ordinances Chapter 81 in regard to surface water discharge standards and/or be redesigned to provide the required two (2) feet separation.” See DEIS, p. 15-97. The DEIS acknowledges that one of the infiltration galleries in the North base – infiltration gallery North-1 -- will not meet the Code’s two foot separation standard. That gallery is located at the north side of the proposed Project area. The DEIS estimates that the separation of the bottom of infiltration gallery North-1 to the seasonal high water table is estimated to be 1.5 feet during non-discharge and 0.8 feet during discharge. DEIS, p. 15-97.

The DEIS fails to recognize other areas of the North Base for which vertical separation of the proposed galleries to the high water mark will not be attained. Infiltration gallery North-6 is proposed to be located at the northeast corner of the existing Fawn Street parking area. That area currently is covered with gravel that is mounded in this corner, helping to form part of the “berm” for this area. See Photograph of Northeast Corner of Fawn and Sacramento (Aug. 8, 2008). Take away the gravel in this corner, and groundwater would reach the surface. See Shlemon, Roy J., Roy J. Shlemon and Associates, Inc., “Critique of Soil and Groundwater Reports, Proposed Land Capability Challenge, Homewood Mountain Resort, Placer County, California” (November 2008) (hereinafter “Shlemon Report”), p. 4. Homewood’s consultant measured groundwater levels at this corner as well as the thickness of the gravel layer at this

location. Monitoring station GP-9 is located at the northeast corner of the Fawn Street Parcel. Kleinfelder 2008 Report, Plate 2. GP-9 records a 2.75-ft thickness of artificial fill. Kleinfelder 2007 Report, Plate 21; See Shlemon Report, p. 4. “The underlying sediments are apparently mottled (“redox threshold”), likewise pointing to local, high-water levels.” Shlemon Report, p. 4. “Based on the almost 3-ft thick fill, it is . . . reasonable to assume that the GP-9 water levels also seasonally reached the surface.” *Id.* The Fawn Street parcel is very wet during the rainy season. Indeed, FOWS’ wetlands consultants’ review explained that, but for the addition of the gravel layer at the Fawn Street parcel, the entire site would experience standing water and qualified as a stream environment zone. Toms, Christina & Stuart Siegel, Wetlands & Waters Resources, “Technical Memorandum Homewood Mountain Resort: Comments on Proposed Land Capability Challenge and Man-Modified Determination” (December 2008) (hereinafter “Wetlands Report”). Given these facts, it appears highly unlikely that the infiltration gallery North-6 will be able to be constructed with two feet of separation from the seasonal high groundwater level in this area.

Similarly, an infiltration gallery is proposed to be located immediately across Fawn Street on the southern edge of the existing paved parking area for the North base. Although paved over, the soil and groundwater well located in the area of this gallery also showed a very high seasonal groundwater table. GP-8 is located in a paved parking lot immediately north of Fawn Street. Kleinfelder 2008 Report, Plate 2. The Kleinfelder Report recorded a water level of ~8.5 ft and a seasonal high groundwater level of 4.3 feet. Kleinfelder 2008 Report, Table 1; Shlemon Report, p. 4. However, the soil log for GP-8 indicates that 4.2 feet of fill lies on top of GP-8. Kleinfelder 2007 Report, Plate 20. Thus, the natural groundwater level at GP-8, prior to emplacement of the fill, was nearly at the original ground surface. Shlemon Report, p. 4. The DEIS should explain how proposed infiltration gallery North-4 will maintain separation levels given the levels of artificial fill currently at that site.

2. The DEIS improperly defers determining mitigation of the infiltration galleries’ impact on groundwater until the future. Rely on future mitigation of groundwater impacts.

Even where the DEIS identifies a less than two-foot separation between a North Base infiltration gallery and seasonal high ground water, the DEIS fails to provide any mitigation for that impact. Mitigation (HYDRO-2a) is proposed in the DEIR for infiltration gallery North-1. That mitigation describes a process to gain future TRPA approval. The DEIS does not describe how the infiltration gallery will comply with the separation requirement or the discharge limits, leaving the reader in the dark as to the viability and effectiveness of any possible measures.

That deferred mitigation does not meet the Regional Plan’s requirement that the project’s water quality impacts be fully mitigated. Regional Plan, p. VII-17 (““new residential, commercial, and public projects shall completely offset their water quality impacts....”). Nor is it consistent with the Compact’s requirement that TRPA prepare a detailed EIS that includes

“[m]itigation measures which must be implemented to assure meeting standards of the region. . . .” Compact, Article VII(a)(2)(D). Nor does that deferred mitigation comply with CEQA. CEQA disallows deferring the formulation of mitigation measures to post-approval studies. CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when it possesses “‘meaningful information’ reasonably justifying an expectation of compliance.” *Sundstrom* at 308; see also *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only “for kinds of impacts for which mitigation is known to be feasible”). A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available). This approach helps “insure the integrity of the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug.” *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

Moreover, by deferring the development of specific mitigation measures, the Applicant has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the *Sundstrom* court:

An EIR “[is] subject to review by the public and interested agencies. This requirement of “public and agency review” has been called “the strongest assurance of the adequacy of the EIR.” The final EIR must respond with specificity to the “significant environmental points raised in the review and consultation process.” . . . Here, the hydrological studies envisioned by the use permit would be exempt from this process of public and governmental scrutiny.

Sundstrom, 202 Cal.App.3d at 308.

Putting off the identification of mitigation measures also is inadequate under the Compact. TRPA must include “at a minimum, a ‘reasonably complete’ discussion of mitigation measures including ‘analytical data’ regarding whether the available measures would achieve the required result.” *League v. TRPA*, 739 F.Supp.2d at 1281. “A necessary aspect of a ‘reasonably complete’ discussion is an assessment of the efficacy of the mitigation measures considered.” *Id.*, 739 F.Supp.2d at 1282. “A perfunctory description or mere listing of mitigation measures, without supporting analytical data, is inadequate.” *Id.* Deferral of how Homewood proposes to address the proximity of its proposed infiltration gallery at the North Base and the effectiveness of any such mitigations is improper under the Compact and CEQA. The mitigation measure must be described in the DEIS.

3. The DEIS general description of possible treatment chambers for re-routed groundwater will not assure compliance with TRPA numeric standards.

Given the shallow groundwater found in many parts of the North Base and the extensive excavating that the construction of the project will require, the Project will intercept large volumes of groundwater that flow through the site. The TRPA Code generally prohibits excavations greater than five feet or when there exists a reasonable possibility of interference or interception of a water table unless conditions can be met, including preparation of a report that demonstrates that no interference or interception of groundwater will occur as a result of the excavation, that no damage occurs to mature trees and that topography is maintained. Code, § 64.7.B. If groundwater interception will occur, an excavation can be made per the TRPA Code if measures are included in the project to maintain groundwater flows to avoid adverse impacts to vegetation and to prevent any groundwater or subsurface flow from leaving the Project area as surface flow. *Id.*

The project as proposed goes much deeper than five feet, extending by the DEIS' reckoning up to 32 feet below the ground surface and 17 feet below the seasonal high groundwater levels in Fawn Street parcel. The first concern is that these estimates appear to underestimate the degree of interference or interception the proposed excavations and construction will have on the groundwater in these areas. As Mr. Hagemann points out, the groundwater levels used to describe the groundwater interception in the North base area are inconsistent with the data reported in another part of the DEIR. Hagemann, pp. 5-7. He calculates that the groundwater interception analysis underestimates the level of groundwater intercepted by over 10 feet. "If the information on p. 14-17 [of the DEIS] is correct, the excavation in the North Base parking lot will extend a maximum of 27.7 feet below the seasonally high groundwater elevation, not 17 feet as stated on p. 14-74." Hagemann, p. 6. The same is true of the South Base discussion. "In the South Base area, the DEIR states that seasonally high groundwater was measured at depths as shallow as 0.97 feet below ground surface (p. 14-17); therefore, the maximum depth of excavation may be as great as 20.03 feet below high water levels." *Id.* "Because the estimates of the maximum depth of water table interception do not consider the highest water table conditions, calculations of the flow rates that would be intercepted by proposed retaining walls for the underground parking structures at the North Base and the South Base need to be recalculated and additional mitigation needs to be identified." *Id.*

Even if the calculations can be corrected or explained, no mitigation is provided explaining how Homewood is going to handle and treat intercepted groundwater. The DEIS identifies the project's interception of groundwater as a significant impact. DEIS, p. 14-75. However, the DEIS only vaguely alludes to standard mitigation measures and says a best management plan will be submitted to TRPA as part of the post-approval project applications. DEIS, p. 15-98. This failure to explain the mitigation necessary to reroute and possibly treat

groundwater to levels that comply with TRPA's water quality standards is improper deferred mitigation.

F. THE DEIS'S ANALYSIS OF IMPACTS TO THE WATER SUPPLY IS DEFICIENT AND IMPROPERLY DEFERS MITIGATION

As described in the DEIS, Homewood cannot yet demonstrate that it has secured an adequate water supply for the project within an existing water right. The Regional Plan provides that "no additional development requiring water should be allowed in any area unless it can be demonstrated that there is adequate water supply within an existing water right." Regional Plan, p. VI-2. Although California's Water Supply Assessment statute (SB 610) does not apply to the Project, the Regional Plan establishes a comparable standard. Coupled with CEQA's prohibition on deferring mitigation, Homewood and the DEIS must identify adequate water supply for the proposed project at full-buildout and that they have secured an entitlement or commitment to that water.

As noted above, CEQA does not allow project proponents to defer the formulation of mitigation measures to post-approval studies. CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom*, 202 Cal.App.3d at 308-309. Given the Regional Board's direction that a project demonstrate it has secured an adequate water supply within an existing water right, the requirement is the same under the Compact's EIS process. Regional Plan, p. VI-2.

As written, the Project's water supply assessment describes a number of uncertain water sources possibly available from Tahoe City Public Utility District and the Madden Creek Water Company. DEIS, Appendix AA; Hagemann, pp. 3-4. The "hypothetical scenarios" laid out in the assessment is not a **demonstration** of an adequate water supply within an existing water right. Hagemann, pp. 3-4. The DEIS acknowledges as much, providing as mitigation to revisit the water supply assessment in order to prepare an assessment that would comply with the SB 610 requirements. DEIS, Appendix AA. The problem with this reasoning is that the **Regional Plan** requires the identification and commitment of available water, similar to what SB 610 requires. By putting off the preparation of the SB 610-equivalent water supply assessment, the DEIS improperly defers mitigation and is inconsistent with the Regional Plan.

In addition, the Assessment acknowledges that, during the summer, the Tahoe City PUD is required to pump and treat Lake Tahoe water in order to meet the summer demands. DEIS, Appendix AA, p. 6. The DEIS also states that "[t]he McKinney-Quail Water Service Area ... provides 125.5 million gallons (385 acre-feet) per year to 453 service connections, with 95.5 – 60.3 million gallons (293-185 acre-feet) from groundwater from the Crystal Way Well, and 65.2 millions gallons (200 acre-feet) from Lake Tahoe (Nichols Consulting Engineers 2010)." DEIS, p. 16-1. The difficulty the Crystal Way Well has had in keeping up with existing demand must be disclosed and fully analyzed in the Homewood Project DEIS. From August 2004 through March 2010, Tahoe City PUD pumped 161 million gallons of drinking water from Lake Tahoe for its McKinney-Quail Water Service Area, including Homewood, because of insufficient flows in its

groundwater well servicing that area. See <http://www.tahoecitypud.com/download/boardbooks/mar10-sw/3-mckinney.pdf>.

The treatment of Lake Tahoe water for the McKinney-Quail Water Service Area continues to be through a temporary treatment facility. In order to assure that continued, future supply, the Tahoe City PUD must construct a new treatment plant. DEIS, p. 16-1. The DEIS's cumulative impact analysis identifies the proposed new treatment plant and even links it to the Homewood project: "McKinney-Quail Water Service Area Water Treatment Plant Replacement ... Replace existing temporary water treatment plant with new plant sized for the District's domestic water needs and the Homewood Mountain Resort South Base area water needs." DEIS, p. 20-13. Currently, the McKinney-Quail Service Area has 453 connections. DEIS, p. 16-1. The construction of the proposed project at the South Base will add another 99 possible connections. See DEIS, p. 3-19. The approval of the Homewood project would require the Tahoe City PUD to expand the size of the treatment plant currently contemplated. The environmental impacts of that increased plant and who bears the cost should be addressed in the DEIS. Any required new water and sewage infrastructure must be equitably charged to the appropriate users.

G. The DEIR's Analysis of Noise Is Inadequate.

The DEIS's discussion of noise makes numerous mistakes and sidesteps a number of critical significant impacts. Homewood residents come to Tahoe to enjoy peace and quiet. The existing Homewood neighborhoods near the ski area are extremely quiet, especially during the summer. The proposed project proposes to pierce that existing calm with heavy construction noises over a nine-year period and increased operating noises indefinitely into the future, forever altering the peaceful, rustic character of Homewood.

1. The DEIS fails to address or mitigate noise impacts from construction during the daytime.

Construction of the project will blast the existing community with extremely loud noise levels. As the DEIS acknowledges, "construction noise could reach up to 85 dBA at the nearest residences, and if pile drivers are used noise could reach up to 93 dBA." DEIS, p. 13-24. However, rather than address those extreme noise levels, the DEIS makes believe that construction noise will not exist at the project's construction sites because construction noise is exempt from the County's noise limitations. See DEIS, pp. 13-22 ("Construction noise in Placer County is exempt from 6:00 AM to 8:00 PM. Construction noise outside of these hours would be significant if it exceeds 55 dBA from 8:00 PM to 10:00 PM or 45 dBA from 10:00 PM to 6:00 AM"); 13-24. As a result, the DEIS does not establish any mitigation measures for the extremely loud construction noises proposed by the project for the next nine-years from April through October. See p. 13-26 (the proposed noise control plan to employ noise-reducing practices during the evening hours from 8 pm to 6:00 a.m. (weekdays) or 8:00 a.m. (weekends); the same is true for purported vibration mitigations).

Homewood's and the agency's effort to hide behind the County's construction noise exemption does not satisfy CEQA's standard of review. As the Court held in *Oro Fino Gold Mining Corp. v. County of El Dorado*, 225 Cal.App.3d 872 (1990), "conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects." *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332. The same is especially true where a project shirks any review of obvious impacts based on an exception in a county's ordinances. County's ordinances cannot be deemed to legislate away significant environmental impacts. In *Oro Fino*, the Court held noise impacts from the project's proposed drilling were significant and had to be addressed in an EIR based on numerous complaints filed by nearby residents, despite the company's claim that its acoustical analysis showed noise levels would be below the applicable county noise standards. *Oro Fino*, 225 Cal.App.3d at 882. Similarly, TRPA's review is arbitrary and capricious where the agency has "entirely failed to consider an important aspect of the problem." *League v. TRPA*, 739 F. Supp. 2d at 1289. Here, the DEIS admits the significance of the noise impacts from the construction of the project. However, it fails to make any effort to fully disclose those impacts or explain how or whether they could be mitigated.

2. The DEIS fails to address the true locations of sensitive receptors.

The DEIS exaggerates the distance of the project's construction sites to the numerous residences located immediately adjacent to the construction areas. As a result, the DEIS understates the significant noise impacts that will result to these "sensitive receptors."

In the North Base portion of the proposed project, the DEIS states that "[t]he nearest residences to the North Base area are located along Sacramento Avenue south of the existing gravel parking lot, as close as 100 feet from the Project area." DEIS, p. 13-22. Contrary to that statement, numerous homes along Sacramento Street are closer than 100 feet to either the proposed garage or buildings proposed for the North Base. For example, based on the map provided on TRPA's web site, the house at the corner of Fawn and Sacramento is within 50 feet from the depicted "skier services' building. http://www.trpa.org/documents/CEP/Homewood/HMR_MP_Maps_and_Alternative_Maps.pdf. The house two doors south of that corner house is within 50 feet of the proposed garage and housing across Sacramento Street. *Id.* The edges of those properties are much closer than 50 feet. *Id.* Nor are these houses located on the south side of the Fawn Street parcel, as the DEIS suggests. DEIS, p. 13-22. Instead, they are on the west side of that parcel and the northwest corner of Sacramento and Fawn Streets. The corner residence (owned by FOWS member Ted Peterson and his family) is directly across the street from the construction site for the parking garage and housing, immediately downhill from the proposed townhouse sites and across the street from buildings proposed at the North Base. The house and its neighbors will be literally surrounded by Homewood's proposed construction over the years. The project also calls for reconstructing portions of Fawn and Sacramento Street, so construction activity will occur right up to the property line of that and

adjacent residences. See DEIS, p. 3-28. Because they are closer than reported in the DEIS, noise levels at this and other residences will be even higher than the excessive levels identified in the DEIS. DEIS, p. 13-22 (“noise at these locations could reach 85 dBA, 80 dBA, and 77 dBA, respectively”); see *id.*, p. 13-21 (Table 13-17). Likewise, by claiming sensitive residence’s are greater than 50 feet from the construction activities, the DEIS improperly downplays the impact of vibrations from construction activities. DEIS, p. 13-22 (“[v]ibration from non-impact construction activity is typically below the threshold of perception when the activity is more than 50 feet from the receptor”).

Like the North base site, numerous homes along Tahoe Ski Bowl Way will have road construction immediately adjacent to their homes. The DEIS claims that “the nearest residences to the South Base area are located along Tahoe Ski Bowl Way and Lagoon Road east of the existing parking lots and maintenance facility, as close as 100 feet to the Project area.” DEIS, p. 13-22. Based on the previous site and grading plan prepared for the proposed project, the closest house on Tahoe Ski Bowl Way is within 30 feet of the road construction, about 70 to 80 feet from the closest building footprint and somewhat closer to one of the depicted storm water impoundments. See South Lodge Drainage and Grading Plan (April 10, 2008 (oversized); http://www.trpa.org/documents/CEP/Homewood/HMR_MP_Maps_and_Alternative_Maps.pdf).⁷ Likewise, the closest home on Lagoon Road is within about 50 feet of the nearest proposed building site. *Id.* One home on El Capitan Road, the continuation of Tahoe Ski Bowl Way toward Route 89, is within 20 feet of one of the proposed storm water infiltration basins at the South Base. *Id.* Measured from the edges of these residence’s properties they are even closer to the construction, literally adjoining the proposed road construction and several properties are within about 30 feet of buildings proposed for construction at the South Base. *Id.* Again, noise levels at the Tahoe Ski Bowl Way residences will be significantly higher than suggested because the homes are significantly closer to the proposed construction that reported in the DEIS. See DEIS, p. 13-21 (Table 13-17). Likewise, by placing these homes greater than 50 feet from construction activities, the DEIS again misrepresents the true impact of vibrations from construction activities. DEIS, p. 13-22.

The DEIS relies on an even further distance to residences in its discussion of blasting and air blasting impacts, assuming in the discussion that the nearest residences to the north and south base construction sites are now 150 feet away. DEIS, p. 13-22. The DEIS’s lack of consistency regarding the distance to neighboring homes is testament to the careless analysis of the close proximity of existing Homewood residents to the proposed construction. In order to properly describe the project’s environmental setting and analyze its construction and other noise impacts, the DEIS needs to reevaluate the actual distance of nearby residents and recalculate the anticipated worst case noise levels.

⁷ The layout of the grading map appears substantially similar to the map provided on the Homewood web site.

3. The DEIS fails to consider the relative noise increases upon completion of project or significant component and only compares noise levels to projected noise levels 30 years out.

The DEIS applies an improper baseline when addressing the project's traffic-related noise impacts. Rather than compare the project's resulting traffic noise impacts to current ambient noise levels, the DEIS jumps forward to the year 2030 and compares the project's noise levels relative to those projected, higher noise levels many decades from now. DEIS, p. 13-29 (Table 13-21). Under CEQA, the proper baseline from which to gauge ambient noise impacts are the current noise levels in the community. The existing ambient noise levels measured by Homewood appear to readily illustrate that existing noise levels are about 10- to 20- decibels lower than the levels projected for the year 2030. See DEIS, p. 13-7 – 13-8 (Tables 13-6 and 13-7).

4. The DEIS fails to discuss amplification and echoing of noise from project's proximity to mountain.

As noted above, the DEIS does not adequately describe the amphitheater component of the project including the number of events, how many people might attend the events, the capacity of the amphitheater, the volume of music or other performances to be held at the facility, etc. That vague treatment of what might be the loudest aspect of the project proposal continues in the DEIS's noise analysis. The extent of analysis included in the DEIS amounts to: "[t]he amphitheatre will project amplified sound towards the mountain, and sound energy will primarily dissipate in that direction." DEIS, p. 13-35. The DEIS does acknowledge that "[s]ound from the amphitheatre is anticipated to result in significant impacts at new HMR proposed residential townhomes located along the north end of Tahoe Ski Bowl Way." DEIS, p. 13-35. It also, somewhat grudgingly, acknowledges that, "[d]epending on the type of music acts and the degree of amplification there is potential for significant noise impacts to occur at existing residences as well." *Id.*

The DEIS should have sufficient detail about this aspect of the proposal in order for a reasonable analysis of impacts to be conducted. One cannot even find a map that clearly depicts where in the proposed development the amphitheatre will be located. Hence, it is impossible to evaluate whether the DEIS properly estimates the distances to various residences. Currently, neighbors have filed numerous complaints about noise levels resulting from the smaller scale music festivals held at Homewood each summer. Homewood residents report considerable echoing of noise from the surrounding mountainsides. No citations or discussion are provided in the DEIS describing the basis of its assertion that music heading toward the sides of the mountain will simply dissipate.

Perhaps the most serious shortcoming of this portion of the DEIS is its failure to describe, evaluate and adopt actual noise mitigation measures. Like many of the impacts it

recognizes, the DEIS defers mitigation to a future time, stating that Homewood will develop a plan in the future to be reviewed by the agencies. CEQA does not allow an agency to base a finding that impacts will be reduced to less than significant levels based on some uncertain, undisclosed future mitigation. *Sundstrom*, 202 Cal.App.3d at 308-309. The DEIS relies on Homewood to design an amphitheatre that will meet the noise limits set forth in the PASs. DEIS, p. 13-36. Only in the future will an “acoustical engineer ... identify feasible mitigation measures for reducing noise-related impacts to nearby residences.” *Id.* The DEIS lists off some possible mitigations but no effort to describe any mitigations or design elements that will be included in the amphitheatre are set forth or analyzed for effectiveness or feasibility. *Id.* Nothing in the DEIS explains whether the very high noise levels that could occur at an amplified concert facility can ever be fully mitigated, especially in the context of the currently quiet residential setting that characterizes Homewood. This mix of wishful thinking and exchange of an actual amphitheatre project and analysis with “trust us” does not comport with CEQA’s requirements to fully analyze a project’s environmental impacts and mitigation measures necessary to avoid or minimize those impacts.

5. The DEIS fails to analyze noise impacts of additional snowmaking machines and other operational noises

The DEIS also chooses to defer mitigation on yet another noisy component of the proposed project – the expansion of snowmaking operations on the mountain. Every alternative proposes to add snowmaking guns on the north and south sides of the resort. DEIS, p. 13-35. Again, Homewood opts not to describe how many guns they believe are necessary, how much noise they will make, or where they may be positioned. *Id.* In other words, they fail to describe, yet again, a critical – and noisy – component of the project. The DEIS does acknowledge that even the existing “noise from snowmaking currently exceeds [the noise] standards at the residential uses near the South Base area and residential uses near the North Base area (e.g., the eastern Project boundary). Therefore, any increase in noise from snowmaking in these locations is considered significant.” DEIS, p. 13-36. That vague acknowledgement does not replace a thorough description of the proposed snowmaking expansion and analysis of the resulting noise impacts. Only with a full analysis can any mitigation measures and their effectiveness be determined by Homewood and the agencies and reviewed and commented on by the public.

Acknowledging the absence of information in the DEIS, Homewood nevertheless forges ahead, claiming it has mitigated this significant impact by preparing a noise control plan in the future. DEIS, p. 13-36 (“HMR will prepare a noise control plan to design, construct/install, and operate new snowmaking equipment so that the increase in noise associated with snowmaking conditions, (see Table 13-7) is reduced to meet the appropriate PAS limit”). Again, deferred mitigation is improper under CEQA. By not explaining what the level of operations and what, if anything could reduce resulting noise impacts to less than significant levels, Homewood has

entirely failed to disclose either its project or its impact when it comes to the snowmaking component.

Another undescribed component of the project with a conclusory noise analysis are the additional HVAC systems, cooling towers/evaporative condensers, loading docks, lift stations, emergency generators, and outdoor public address systems that an expanded resort will include. Nevertheless, the DEIS simplistically asserts, without any comparison of current levels of these features compared to future levels under the proposed project, that “these noise sources are a part of the existing noise environment with HMR operations and are not anticipated to increase under the Proposed Project (Alternative 1) and Alternatives 3, 5, and 6.” DEIS, p. 13-35. This assertion does not seem credible. The types of equipment listed must surely increase. The few buildings currently at the ski area may have just a few of these types of facilities. The DEIS does not quantify the proposed increase and provides no substantial evidence that the current noise levels from the limited amount such equipment currently in place will be the same post-project.

6. The DEIS also defers mitigation for the project’s increases in traffic noise.

Another example of deferred mitigation included in the DEIS is for increases in noise levels expected from the project’s increased traffic levels. Like most of the noise impacts mentioned in the DEIS, Homewood and the agency’s again turn to undisclosed, future mitigation measures. DEIS, p. 13-30 (“The Project Applicant shall design and implement measures to reduce noise from traffic . . . HMR will prepare a noise control plan that will identify feasible measures that can be employed to reduce traffic noise by 1.2 dB”). No mitigations are actually presented or discussed.

The DEIS does list off some mitigations that might be considered. *Id.* However, those few examples only raise more doubts about whether or not any future mitigations may mitigate any traffic noise at Homewood. None of the listed future mitigations that could be considered would appear to be likely candidates for addressing the additional traffic noise from the project. Barriers and shielding would seem likely to conflict with visual thresholds and further degrade the community setting. Speed limits through Homewood already are reduced and would further exacerbate queuing problems and traffic. Low cost loans for insulating homes or acoustical treatments may help with noise inside the homes but, this being Tahoe, people spend a fair amount of their day outside on their property or walking in the vicinity. This potential mitigation would do nothing to address noise impacts to those uses. These doubts only underscore the need for Homewood to propose a complete project, including in this case its concrete proposals for eliminating traffic noise impacts. Neither the agencies nor the public are in a position, after reading this DEIS section, what mitigations will be implemented or whether they may prove effective. As a result, like all of the other examples of deferred

mitigation included in the DEIS, there is no substantial evidence upon which the agency's to base a finding of no significant impact or to make a statement of overriding considerations.

H. The DEIS's Discussion of Earthquake Risk Misrepresents The Risks Associated With the Faults Running Through The Project Site.

The DEIS employs various devices to improperly downplay the potential threat posed by the two unnamed faults running through the project area. The DEIS identifies the two faults as Unnamed Fault 1 and Unnamed Fault 2. When overlaid on the development sites proposed for the base of the mountain, Unnamed Fault 2 runs through or right on the edge of several of the townhouse sites and right through the excavated hillside above the proposed North and South base developments. See Gath Report, p. 4-5. As depicted several of the proposed townhouses as well as one of the South Base buildings actually sit astride the Unnamed Fault 2. See Gath Report, p. 4-7; DEIS, p. 14-39 ("The structures proposed in the North Base area appear to be sited approximately 300 feet east of the mapped Unnamed Fault 2, and the four westernmost structures proposed in the South Base area appear to be located within the mapped fault trace of Unnamed Fault 2") (note that the DEIS does not appear to consider the proposed townhouses located between the two base areas).⁸

The Regional Plan requires TRPA and projects within the Basin to minimize risks posed by earthquakes. Regional Plan, p. II-25. The Plan states that "[l]and uses within the Tahoe Basin should be cognizant of natural hazards so as to help prevent damage to property and to protect public health." *Id.* The Regional Plan emphasizes the need to carefully identify the location of earthquake and other hazards. "Natural hazard areas or situations can be identified and precautionary measures taken to minimize impacts." *Id.* Unfortunately, Homewood and the agencies, thus far, have not made any serious attempt to identify the scope of threat posed by Unnamed Faults 1 and 2, instead labeling them with question marks and emphasizing their absence in now outdated geologic maps (indeed maps whose author has himself identified the faults in more recent studies).

FOWS retained Dr. Eldon Gath, P.E., E.G., of Earth Consultants International to review the DEIS's geology discussion, including in particular the discussion of the two Unnamed faults. As explained by Dr. Gath in his accompanying comments, the DEIS understates the risk posed by the unnamed faults and the likelihood that they are active faults. As a result, the DEIS' discussion of risks posed by earthquakes is not supported by substantial evidence and the conclusion that the unnamed faults are "questionable as to presence and location" and that "the hazard from surface rupture on this unnamed fault [Unnamed Fault 2] is considered low ... and the level of impact is less than significant" are not based on substantial evidence.

⁸ A few pages later, the DEIS has Unnamed Fault 2 located "approximately 200 feet west of the North Base lodge." DEIS, p. 14-41. That distance from the proposed lodge would have the fault running right through the townhouses.

The DEIS and the accompanying reports prepared by Holdredge and Kull state that “[t]he Unnamed Fault 2 is discontinuous and questionable as to presence and location based on review of Fault Activity Map of California and Adjacent Areas (Jennings 1994) and Geologic Map of the Chico Quadrangle, California (Saucedo and Wagner 1992).” DEIS, p. 14-41. Based on those two older maps, the DEIS asserts that “the hazard from surface rupture on this fault is low.” *Id.* Both of those referenced maps are outdated. The DEIS also claims that “[t]he mapped Unnamed Fault 2 is one mile long and is not capable of producing large earthquakes.” This assertion is not supported by the maps themselves which indicate a close relationship between the two unnamed faults running through the project area and the known active West Tahoe fault, with which Unnamed fault 1 likely links a few miles south of the project. Despite the reliance on older, incomplete maps, the DEIS states that “building setback distances from Unnamed Fault 2 are not warranted and no further study is necessary”). According to Dr. Gath’s review of the older maps and more recent maps and data, further investigations are indeed warranted, including a series of trenching investigations, given the actual length of these faults and their obvious relationship to known active faults in Lake Tahoe.

As Dr. Gath points out in his comments, Unnamed Fault 1 is not one mile long but rather appears to extend upwards of 15 miles. At least another 5.5 miles of the fault has actually been mapped north of the project site (as far as the Tahoe basin map goes) and its geomorphology would suggest it runs at least another 4.5 miles beyond that distance for a total of 10 miles. And, based on the existing maps, Dr. Gath states the only reasonable interpretation of the fault running south is that it extends five miles southeast where it links up with the known active West Tahoe Fault. In laymen’s terms, Unnamed Fault 1 is robust and, reviewed more thoroughly in context of other known active faults in Lake Tahoe and the geomorphology of the Lake, poses a much greater risk than suggested by the DEIS. See Gath Report, p. 4 (“Unnamed Fault 1 is the west bounding fault system for the Tahoe Basin graben. It has a total length of at least 15 miles, it controls the location of Quail Lake, it ties directly into the known active fault through the lake (West Tahoe fault)”). Unnamed Fault 2 likely is associated with Unnamed Fault 1 and “appears to form the margin for lake levels of Lake Tahoe, indicating that it may be an active structural feature controlling the shoreline location.” Gath Report, pp. 4-5.

Dr. Gath identifies the level of investigation warranted for assessing the threat posed by potentially active Unnamed Faults 1 and 2. Trenching must be conducted to determine the recentness of the faults’ activity. Because none of these common investigations have been conducted by Homewood, the County and TRPA cannot claim to have properly evaluated whether the proposed project will unnecessarily expose people or structures to adverse geological hazards including loss, injury or death from a fault rupture at the project site.

These comments are not the first time the likely risk of the unnamed faults has been pointed out to Homewood and TRPA. In November 2008, as part of Homewood’s land capability challenge, FOWS retained Dr. Roy Shlemon to review Homewood soil characterizations. Dr. Shlemon also was concerned with the proximity of the project to the

unnamed faults he noted in the area at the time. Roy J. Shlemon, Ph.D, "Critique Of Soil And Groundwater Reports, Proposed Land Capability Challenge, Homewood Mountain Resort, Placer County, California," p. 3 (November 2008). As Dr. Shlemon noted:

The Kleinfelder (2007b) report provides reconnaissance and preliminary interpretations about potential geologic hazards at the Homewood site. In this regard, Kleinfelder points out that active faults (as currently defined by the California Geological Survey) occur near the site and, accordingly, additional investigations (presumably lineament analyses and paleoseismic trenching) are required to assess potential on-site surface rupture. Moreover, based on literature review, Kleinfelder specifically indicates that a yet-unstudied, Quaternary-age fault extends across the upper portion of the proposed South Base development. Whether this fault is active or not, similarly necessitates further investigation.

Shlemon Report, p. 3.

Given the number of people proposed to be brought to the area of Unnamed Faults 1 and 2 and the construction of several buildings, retaining walls and a gondola across the potentially active fault, the DEIS must contain an accurate and thorough evaluation of the risks posed by these faults. Currently, the DEIS' discussion is riddled with errors and appears to affirmatively down-play the potential fault risks. Both the Regional Plan and good judgment require nothing less than a thorough investigation by Homewood attempting to determine whether or not the identified faults are active or not. This cannot be done by looking at soil borings for wells located to measure groundwater depths. The only way to reach a defensible conclusion that the faults are inactive is for Homewood to perform a thorough fault rupture hazard subsurface investigation including appropriately located and spaced trenches and borings.

I. The DEIS Fails to Identify the Risk of Tsunamis Within the Project Area.

Given the fact that an active earthquake fault runs through the length of Lake Tahoe, it should not be surprising that a risk of tsunami occurring exists in Lake Tahoe. Widely reported in the popular press several years ago, Dr. Gath references the various studies that have reported on the Lake's tsunami risk. Gath Report, p. 8. See http://articles.sfgate.com/2005-04-28/bay-area/17369027_1_past-quakes-lake-tahoe-major-quake; <http://www.youtube.com/watch?v=D8Py3XgRMkk>. Dr. Gath reports that "[a]t the Homewood project site, [the studies] model a 3.5 to 6.0 meter [about 11 to 20 feet] wave height runup." Gath Report, p. 8. As Dr. Gath concludes "[t]he 3.5-6.0 meter tsunami event is the expected result of a rupture of the basin's faults across the lake bottom, and the possibility of this event must be disclosed and potential mitigation measures discussed." *Id.*, p. 9.

J. The DEIS's Discussion of Impacts to Scenic Vista and TRPA's Scenic Threshold is Inadequate.

The DEIS range of viewpoints used to analyze impacts to Lake Tahoe's scenic vistas is too limited to draw accurate conclusions about the proposed project's impacts. The Regional Plan requires a thorough review of representative viewpoints. See Regional Plan, p. IV-21 ("all proposed development shall examine impacts to the identified landscape views from roadways, bike paths, public recreation areas, and Lake Tahoe"). The visual simulations prepared by Homewood show four views from Lake Tahoe while the remaining two views are limited to car-oriented views from Highway 89 or Fawn Street near the intersection with the highway. See DEIS, pp. 10-21 – 10-22.

Only one of the simulations is taken during winter, and that is the only one that shows any clear representation of the proposed gondolas. The first and second simulated views from the Lake do not show any gondola on the hillside. The third view shows a slight change to the ski lift towers but no gondolas are included in the simulation.

In addition, the simulations do not appear to include several viewpoints from which the mid-mountain lodge would be expected to be seen. This includes observations by members of FOWS kayaking off of Homewood who report being able to see the saddle where the lodge is proposed to be located from locations in the Lake much closer than one mile away. Several other FOWS members have stated that they can see the saddle from Sugar Pine Point State Park. The agencies and Homewood should investigate whether additional Lake views, Sugar Pine State Park views and other public recreation areas will be affected by the lodge as well as the proposed gondola.

K. The DEIS's Alternatives Analysis is Inadequate.

Every EIR must describe a range of alternatives to a proposed project, and to its location, that would feasibly attain the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(c). A proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(a); see *Citizens of Goleta Valley*, 52 Cal.3d at 564-65. A "feasible" alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. Pub. Res. Code § 21061.1; 14 Cal. Code Regs. § 15364. As stated in *Laurel Heights I*, "[w]ithout meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d at 404. TRPA's detailed statement also must consider alternatives. Compact, Article VII(a)(2)(C). The DEIS must

“[s]tudy, develop and describe appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources.” Compact, Article VII(a)(3). The DEIS’s discussion of alternatives in the present case fails to live up to these standards.

In particular, the DEIS fails to analyze an adequate range of alternatives that would reduce the environmental impacts of the proposed Project. Most notably, the DEIR/DEIS rejected from consideration any development alternative that calls for fewer than 282 units. DEIR/DEIS at 3-11. Even the one alternative that does call for reduced density (Alternative 6) is dismissed as infeasible based solely on Homewood’s financial analysis because it does not include the 336 units that the proposed Project calls for. *Id.* The DEIS then goes onto reject any smaller versions of the proposal, including, for example, a version that would not require any amendments to the Regional Plan, Code or existing Plan Area Statements. *Id.*

An agency may not curtail its consideration of alternatives based on “the project proponent’s assertions about an alternative; rather the agency ‘must *independently* participate, review, analyze and discuss the alternatives in good faith.” *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1460 (quoting *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 736 [emphasis added by court].) Furthermore, where an agency’s determination regarding the feasibility of a project alternative is based on financial feasibility, “the fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the *additional* costs or lost profitability are sufficiently severe to render it impractical to proceed with the project.” *Uphold Our Architectural Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599 (quoting *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 [emphasis added by court].) Here, the DEIS contains no evidence – other than the bare assertions of the project proponent – demonstrating that only a project consisting of at least 336 residential and tourist accommodation units is feasible.

Although the DEIS discusses a financial analysis prepared by Homewood, the DEIS does not cite to any particular document. Upon the release of the DEIS, FOWS made several objections based on the unavailability to the public of documents referenced in the DEIS. In response, Placer County and TRPA posted the referenced documents on-line or otherwise made them available at the County’s offices. One document that was neither posted on-line or available at the County’s office was any financial analysis for the Homewood project. Under CEQA, all documents referenced in the DEIS must be available for public review for the entire review period. CEQA Guidelines § 15087(c)(5); Placer County Code, § 18.20.050(c). If the document exists, the County and TRPA should make it available to the public and extend the comment period by 45 days to allow the public the minimum time required to review and comment that critical component of the DEIS’s alternatives analysis. If no such document exists, then the alternatives analysis and its rejection of reduced size projects is entirely without evidentiary support.

Assuming the financial analysis exists and the DEIS reports accurately on its contents, the financial analysis as described in the DEIS does not provide an adequate demonstration of infeasibility of any of the smaller development alternatives. The analysis keys solely into the number of expected ticket sales as the sole profit-making component of the entire development. The DEIS states that the roughly 60 “[n]on-holiday mid-week days have historically averaged around 300 skier visits per day.” DEIS, p. 3-11. The DEIS reasons that in order for Homewood to turn its current operating losses into profits, it must sell an additional 400 lift tickets per day during the 60 non-holiday, mid-week ski days in an average ski season. DEIS, p. 3-11. The DEIS then assumes an occupancy rate of 55 percent and an average of 2.25 skiers per unit and generates about 400 skiers per day over and above the current skiers who frequent Homewood. *Id.*

The obvious problem with the financial analysis ignores all of the other income streams that the project will generate for Homewood. Although ski ticket sales obviously are important to the project, obviously the project will generate income in numerous other ways. Homewood intends to sell townhouses, condominiums and fractional units, all of which will produce income from the sales themselves as well as from association fees presumably to be paid to Homewood for upkeep and maintenance. The hotel will be generating income from year-round room rentals, a restaurant, meeting rooms, and various fees for services provided by the hotel. The DEIS readily acknowledges that the hotel is expected to be fully booked during the winter weekends and holidays, generating much more revenue than lift ticket sales. DEIS p. 11-27 (100% occupancy on peak summer weekends); DEIS p. 11-37 (100% occupancy on peak winter weekends). The proposed ferry will charge fees and will dock across the street from the project next to JMA’s recently bought restaurant. *See* DEIS p. 3-40. And even the price of the lift tickets themselves will presumably be higher upon completion of the project. There are presumably other income streams from the project as well but, suffice it to say, that the project’s financial feasibility cannot be determined solely by increases in ticket sales for 60 days of the year.

The flaws in the DEIS’ financial analysis are similar to the flaws discussed in *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322. In that case, the court held that the county’s approval of an 80 unit hotel project over a smaller 64 unit alternative was not supported by substantial evidence. The EIR discussed numerous adverse environmental effects that would be caused by the 80 unit project and recommended that the developer be allowed to construct a smaller 64 unit hotel so long as certain mitigation measures were completed, including relocation of some of the proposed buildings. In evaluating whether substantial evidence supported the county’s rejection of the smaller alternative as economically infeasible, the court found that “there is no estimate of income or expenditures, and thus no evidence that a reduction of the motel from 80 to 64 units, or relocation of some units, would make the project unprofitable.” Thus, the court identified three criteria that should be evaluated in a comparative analysis to determine whether a project alternative or mitigation measure would be economically feasible: (1) estimated income; (2) estimated expenditures; and (3) estimated

profitability between the proposed project and alternative, with and without recommended mitigation measures. *See also, County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (agency must consider small alternative to casino project). None of the information identified by the *Burger* court is identified in the DEIS or any analysis. The DEIS's financial analysis falls well short of the criteria established in *Burger*.

With the exception of Alternative 4, which is rejected out of hand as inconsistent with the project objectives, the alternatives that are analyzed vary only in their details. Because the DEIS assumes a certain level of development is necessary to meet the project objectives, it analyzes only a narrow range of alternatives only one of which – Alternative 6 – comes even close to being environmentally acceptable. Although Alternative 6 is clearly environmentally superior to the proposed Project, it too includes a hotel that exceeds the height standards of the current code and requires a number of amendments to the Code of Ordinances and Plan Area Statements. Similarly, Alternative 3, which would include a hotel that complies with existing height requirements, fails to confer any real benefits because it includes substantial development in other areas.

The DEIS's treatment of Alternative 4 appears inconsistent with the Regional Plan. Alternative 4 is included in the DEIS as a threat to close the ski area and build residential estates instead on the lower part of Homewood Mountain. Given the Regional Plan's definitions, such an alternative would plainly violate the Regional Plan and does not appear legally feasible. Currently, the hillside parcels on which the Alternative 4 residences would be located are all zoned recreational. As the Regional Plan states: "Residential areas are **urban areas** having potential to provide housing for the residents of the Region." Goals and Policies, p. II-3 (emphasis added). Likewise, lands zoned for residential use include: (1) Areas **now developed** for residential purposes; (2) areas of **moderate-to-good land capability**; (3) **areas within urban boundaries and serviced by utilities**; and (4) areas of **centralized location in close proximity to commercial services and public facilities**. Regional Plan, p. II-3. Lastly, this alternative would appear to run afoul of the Regional Plan's prohibition on any new divisions of land within the region which would create new development potential inconsistent with the goals and policies of this plan. Regional Plan, p. II-9. None of the parcels on the mountainside above Homewood would ever be appropriate for residential zoning.

Even assuming the range of alternatives is sufficient, agencies must select the environmentally preferable alternative unless it is infeasible. *Citizens of Goleta Valley*, 197 Cal.App.3d at 1180-81. The DEIS identifies Alternative 6 as the environmentally superior alternative. Although the DEIS's alternatives discussion deems Alternative 6 financially infeasible (DEIS, p. 3-11), the DEIS contradicts this statement in another section. DEIS, p. 6-27 ("Based on HMR calculations (see Section 3.4 of this EIR/EIS), the proposed development levels included in Alternative 6 are the minimum size, scale, density and intensity of use necessary to support an economically viable resort"). As discussed above, the DEIS's economic analysis is without substantial evidence. Alternative 6 is feasible and, hence, must be selected by the

agencies, assuming no other superior alternatives with even less impacts also are required to be reviewed in the DEIS.

As a result of its constrained alternatives analysis, the DEIR/DEIS fails to provide a clear picture of the costs and benefits of the proposed Project and alternatives to it. To comply with its obligations for an adequate analysis of project alternatives, TRPA must recirculate the DEIS with a more robust analysis of alternatives, including in particular, a reduced project alternative that avoids some of the most significant issues associated with the proposed Project, including excessive height and significant amendments to the Regional Plan. In addition, TRPA must provide independently verified evidence of the feasibility of various levels of development at the project site before it may dismiss an alternative on the basis of economic feasibility. Only then will the public and agency decision-makers be able to adequately evaluate the environmental impacts of the proposed Project and to weigh the benefits of alternatives to it.

L. The DEIS Improperly Dismisses the Significance of Inconsistencies Between the Proposed Project and TRPA and County Land Use Regulations.

1. The DEIS Fails to Adequately Analyze Inconsistencies between Existing Land Uses and the Proposed Project.

The DEIS also fails to adequately acknowledge potential inconsistencies between existing land uses and uses proposed by the Project. First, the DEIR/DEIS relies on an inappropriate baseline of PAOT capacity – rather than actual use – to find that the upgrades and future use of the resort will not be significant and will not conflict with surrounding residential uses. See DEIS at 6-35. Because the existing use of the resort is lower than the actual capacity, the DEIS should use existing use as the baseline. *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 322. Moreover, the proposed Project involves greatly expanded use in the summer, including the addition of miniature golf, a swimming pool, an outdoor amphitheater, and biking, but fails to address the impacts of such expanded use on the surrounding community. It appears that the proposed Project will increase use throughout the year, yet the DEIS fails to take into account shifts in the timing of use and ignores this actual increase in use over existing levels.

2. The DEIS Fails to Evaluate The Full Regional Impacts of its Proposed Amendment to the Code of Ordinances TAU Provisions Allowing Additional TAUs in Ski Area Master Plans.

The proposed amendments to Chapters 33 and 35 of the Code of Ordinances as well as the Regional Plan's Goals and Policies will apply to any ski area master plan in the Basin. The proposed amendment to Chapter 33 would open up the 200 TAU bonus units originally designed to promote the development of community plans and allow ski area master plans to apply for those TAUs as well. DEIS, pp. 3-45; 3-60. The Chapter 35 and Regional Plan amendments would allow the 400 bonus TAUs available to be transferred into areas with

adopted community plans to also be transferred to ski area master plans. *Id.*, at 3-45 – 3-46; DEIS, p. 6-10 (“HMR is proposing an amendment to Code Chapters 33 and 35 to allow for use and distribution of additional tourist accommodation units in Ski Area Master Plans as well as Community Plans”).

These amendments would allow TAUs to be transferred to any of the five ski areas located within the Lake Tahoe basin. The DEIS does not describe the implications of these amendments, any scenarios for how they may unfold in the other Lake Tahoe ski areas, or any of the environmental implications that may result if additional TAUs are allowed to be built in ski areas rather than the community plans currently envisioned by the Regional Plan and Code. As we know from the current process, a ski area master plan is not a community plan – a ski area plan being more intent on getting around community opposition than developing a plan that the community believes is desirable or necessary to meet existing demands.

3. The DEIS Does Not Adequately Analyze the Impacts of Transferring TAUs from the North Shore Community Plan.

The proposed Project (as well as Alternatives 3 and 6) requires the transfer of TAUs for tourist accommodations and proposes to acquire these units from the North Shore Community Plan (“NSCP”). Although the DEIR/DEIS acknowledges that the NSCP currently envisions the use of retired TAUs within that planning area, it does not analyze the impacts on the NSCP of transferring these units out of the area. Instead, the DEIR/DEIS simply defers the analysis to some future date. See DEIS at 6-40 (Mitigation LU-2a). These impacts should be analyzed before approval of any project that requires the transfer of TAUs from the NSCP.

M. The DEIS’s Proposed Statement of Overriding Considerations Is Not Based on Substantial Evidence.

The DEIS includes a statement of overriding considerations to address a number of significant impacts which it concludes are unavoidable. The proposed statement finds that Alternative 1 will have significant and unavoidable impacts on circulation and traffic by excessive queuing that will occur during the summer. DEIS, p. 20-20. The DEIS also finds that the proposed project will have significant and unavoidable impacts relating to greenhouse gas emissions and global climate change. DEIS, p. 20-21. The proposed statement is not supported by substantial evidence because it fails to identify a number of significant unavoidable impacts of the proposed project (Alternative 1) and is not supported by substantial evidence regarding the feasibility of alternatives that would avoid the project’s unavoidable impacts.

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1. The DEIS Fails to Identify All of the Proposed Project's Significant and Unavoidable Impacts.

First, the DEIS's discussion of significant and unavoidable impacts leaves out a number of impacts which are unavoidable if Alternative 1 is selected by the agencies. These include the following omitted impacts:

i. Under land use impacts, LU-1, whether "the Project [is] consistent with the land use plan or zoning plan, or land use goals, policies, and provisions of the TRPA Regional Plan, including the Goals and Policies, Code of Ordinances, Plan Area Statements, or Ski Area Master Plan Guidelines, and the Placer County General Plan and West Shore Area General Plan?" DEIS, p. 20-19. The project proposes to amend the Regional Plan, the Code of Ordinances, and the applicable Plan Area Statements. The proposed project is, by definition, inconsistent with the current versions of those plans and policies. Because the DEIS does not propose an alternative that does not require changes to these fundamental land use documents, that significant impact of plan inconsistency has to be addressed by the County's statement of overriding considerations.

ii. Under land use impacts, LU-2, the County and TRPA cannot conclude that Alternative 1 will "be consistent with adjacent land uses...." As discussed above, the scale of the project and its proximity to existing rural residential and vacation cabins is not proportionate to those existing uses. Given Alternative 1's proposal to change the Plan Area Statements to allow the proposed timeshares and multi-residential units and the sheer size of the project abutting existing homes, the agencies have no substantial evidence to conclude that Alternative 1 is consistent with adjacent land uses. An alternative that was designed consistent with the existing Code of ordinance requirements, the Regional Plan and the Plan Area Statements, depending on its layout and design, would be consistent with the adjacent residential uses in Homewood.

iii. Under scenic resources impacts, Scenic-2, Alternative 1's mass, the proposed gondola and, from the Lake, the mid-mountain lodge will "be visible from or cause an adverse effect on foreground or middle ground views from a high volume travel way, recreation use area, or other public use area, including Lake Tahoe...." DEIS, p. 20-19. This suburbanization of Homewood will adversely affect views from boaters on Lake Tahoe as well as people driving past on Route 89. Rather than a more modestly-sized group of buildings associated with the ski area, visitors will see a very large, and very high development that will dominate their experience of the Homewood area. Given the size of Alternative 1, FOWS believes this impact must be acknowledged as significant and unavoidable in order to pursue that alternative. Again, a proposal that did not require amendments to the applicable plans likely would reduce this impact to levels that could be mitigated.

iv. As discussed above, noise levels from construction activities will be at levels that will adversely affect Homewood residents. The DEIS does not address these impacts at all

despite the fact that where a project is proposed to be constructed adjacent to existing homes, fully mitigating the noise of construction would be impossible. Given the relative peace and quiet enjoyed by current residents of Homewood, the noise impact associated with the many years of construction necessary to implement Alternative 1 is even more pronounced. Likewise, traffic noise through Homewood's side streets associated with vehicles attempting to locate parking and the project's proposed amphitheater and amplified music events coupled with echoes bouncing off of Homewood mountain would both result in unavoidable noise impacts from that version of the project.

v. Alternative 1's impacts to groundwater from its infiltration galleries and deep excavations and foundations at the North Base, based on the completion of an adequate review of those impacts and possible mitigation measures, may prove to be unavoidable. A smaller project likely would allow optional placement of treatment galleries to avoid pollution of groundwater. Likewise, additional configuration of parking options requiring less excavation and allowing shallower foundations would be facilitated by consideration of a smaller project.

The agencies should cure the deficiencies in the DEIS' analyses of the above impacts and squarely confront the unmitigated impacts the proposed project will have on the Homewood area and its existing residents and visitors.

2. The DEIS Fails to Identify the Specific Considerations That It Believes Make Infeasible Mitigation Measures or Alternatives to the Proposed Project.

It is not clear what considerations are taken into account in support of the DEIS's proposed statement of overriding considerations. In terms of traffic queuing, the DEIS indicates that the proposed project as well as alternatives 3, 5 and 6 will unavoidably contribute to excessive traffic at road and pedestrian crossing intersections near the Fanny Bridge. DEIS, p. 11-70 – 11-71. According to the Ski Area Master Plan Guidelines, that alone is reason to deny the proposed expansion of the Homewood ski facilities. Ski Area Master Plan Guidelines, p. ___ (“[o]ppportunity may be expanded to respond to public need if physical resources are available and **traffic mitigation measures can be implemented**”) (emphasis added). No such impact is identified for Alternative 4. No reduced size alternative for the ski area project is considered that would avoid this impact. As discussed above, the only rationale provided for eliminating any reduced size alternatives that would eliminate this unavoidable impact is the financial “analysis” offered by Homewood. As discussed above, that analysis does not appear to exist and, based on the summary included in the DEIS, does not provide substantial evidence that smaller-sized alternatives are economically infeasible.

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VIII. THE PROPOSED HOMEWOOD PROJECT IS INCONSISTENT WITH TRPA'S COMMUNITY ENHANCEMENT PROGRAM GUIDELINES.

In addition to all of the above concerns, the proposed Homewood project is inconsistent with the criteria established by TRPA for the Community Enhancement Program. See Tahoe Regional Planning Agency Community Enhancement Program ("CEP Guidelines") (August 2007). As a result, TRPA should not include additional bonus TAUs and commercial floor area for the project.

A. TRPA Should Reject Any Proposed Modifications Of The Existing Ordinances.

The CEP criteria and its implementing documents emphasize again and again that "[t]he CEP is not a code avoidance program." CEP Guidelines, p. 3. However, that is exactly what Homewood appears to be using the CEP program to achieve – substantial amendments to the Homewood PASs, the Regional Plan and the Code of ordinances. Codes are there for the benefit of the public to maintain standards that protect the community from loss of character and to allow sensible and compatible development that fits in with the community. Avoidance of these codes defeats the intended purpose and spirit of the CEP program. Indeed, some of the TAU amendments would apply to all ski area master plans throughout the Basin. If the CEP is not about code avoidance, then TRPA should require Homewood to prepare a master plan and alternatives that are consistent with the current ordinances. At a minimum, such a plan would provide TRPA and the public the necessary baseline to determine whether any limited amendments to the existing planning documents are appropriate. In any event, development should occur within the residential, commercial and tourist accommodation designated boundaries of Homewood.

B. The Proposed Project Does Not Produce "Net Gain" Results.

The CEP attempts to achieve "net environmental gain" results that "benefit the built and natural environments." CEP, p. 3. As discussed above, the project does what appears to be the antithesis of achieving "net gain" results. The current proposed project does not accelerate the achievement of thresholds and does not provide consistency with the local social and economic goals. Many residents of the surrounding community have reservations and concerns regarding the current proposed project due to its mass, size, and scale.

Furthermore, the CEP states that "[n]et gain does not mean that there is equal weight placed on one or the other, but that there are positive outcomes rather than one element benefiting at the expense of the other." CEP, p. 3. If there is a net gain, then the project needs to measure and provide an estimate of the immediate and long-term "net gain." Negative environmental impacts are not being minimized on site and in-lieu mitigation fees are being used as an offset. The use of these fees does not improve the site and the ecological values of the actual site should not be compromised. In particular, as a result of increased VMTs, air and water pollution will increase, Homewood will be paying an air quality mitigation fee to offset

pollution impacts. However, these pollutant impacts cannot be mitigated by paying fees. The only way to truly mitigate pollution from traffic is to reduce the number of units and vehicles.

C. The Proposed Project Does Not Propose to Enhance the Existing Community Character in an Urban Center.

The CEP envisions enhancing existing communities' character in urban centers. CEP, pp. 4, 10. As described above, rather than enhance the existing unique and rustic character of Homewood, Homewood's proposed project would drastically change the character to a dense, resort-type development. Nor does Homewood qualify as an "urban center" lying as it does on the southern fringe of the urban area extending south from Tahoe City, amidst several forested areas and state parks. The scale and massing of 349 units, plus all associated facilities, with an estimate of 1,400 people at peak times, in the center of Homewood, next to a two-lane highway, will change Homewood's small village atmosphere. DEIS, p. 2-2. In addition, the project would set a precedent for future West Shore development.

Furthermore, the CEP states that "[t]here will be standards in place to protect the community character." CEP, p. 7. As discussed above, currently, there is no Community Plan for Homewood or other West Shore communities. Without a community plan for residents to rely on, standards for community character must be developed as required by the CEP. Community character needs to be defined by the community before the project is allowed to proceed. After several community meetings in 2009 with residents of the West Shore, FOWS developed a Community Vision on what the residents desire for their communities. This Vision was presented to TRPA and the Governing Board in December 2009. See FOWS Community Vision (attached).

For example, standards are needed to protect community character involving the

- Increase in noise, increased lighting throughout the night and other disturbance factors that will disrupt the quiet and rural atmosphere of Homewood. This is noted in the CEP, which states "Ensure compatible land uses that minimize noise." CEP, p. 13, Sec. I.
- Negative impact to mountain and country views from existing homes, especially along Tahoe Ski Bowl Way, Sacramento and Silver Streets. CEP p. 12, Sec. C.
- Vehicle traffic and ingress/egress of the roads in Homewood connecting with SR89.
- The CEP states that "green building design addresses potential effects of shade on adjacent properties and buildings". This needs to be reviewed and information provided to the public, especially for the homes bordering the North and South Bases. CEP, p. 14, Sec. B.

In considering Community Character, it is important to consider that there are many "firsts" in this project. It will be the largest development on the West Shore, will have the tallest

buildings and the first large parking garage on the West Shore. Because of these “firsts,” the project will have a detrimental impact on and change the existing neighborhood forever.

D. Homewood is Not a Transportation Hub.

The CEP requires projects to facilitate the creation of transportation hubs and to “[c]reate consolidated commercial and mixed-use development in the urban core.” CEP, p. 4. Because of its location toward the middle of the Lake’s west shore, Homewood is simply not located where it can effectively serve as a transportation hub, a key component of the CEP. Nor can Homewood be fairly characterized as an “urban core.” The DEIS acknowledges as much, stating that “Homewood lacks a dense commercial core area” DEIS, p. 10-2. Likewise, “[v]ehicle, pedestrian, and bicycle traffic is relatively low compared to more densely developed and heavily used tourist areas on the north and south shores of Lake Tahoe.” DEIS, p. 10-2. This is not because of any shortcomings in Homewood’s development. These are the direct result of the community’s relative isolation and lack of convenient access.

E. There Is No Way That a Ski Area Can Be Characterized as a Transit-Oriented Development.

A qualifying CEP project must “[m]aximize density to achieve transit oriented development.” CEP, p. 4. *See id.* (requiring projects to “[b]e located in urban core areas and promote pedestrian friendly/ transit oriented development”). As much as the Tahoe ski areas may be trying to incorporate some non-private vehicle options into their transportation models, the simple fact remains that the vast majority of people arrive at ski areas in private automobiles. Ski area and transit-oriented development remain oxymorons. That fact combined with Homewood’s relative isolation makes it doubly difficult to conceive of a large ski area development at Homewood as transit-oriented. Nor does a goal of maximizing density in this lightly developed area comport with Homewood’s existing character.

F. Homewood’s Proposed Project Does Not Reduce the Dependence on the Automobile.

A CEP project is supposed to reduce dependence on the automobile. CEP, p. 4. Rather than reduce people’s dependence on the automobile along Tahoe’s west shore, Homewood’s project would encourage more people to drive in that area in the summer as well as in the middle of the week during the winter. Currently, the ski area does not entice any drivers in the summer and is visited by about 300 skiers per mid-week day during the winter. DEIS, p. 3-11. The proposed resort and accompanying parking will encourage thousands of more drivers to get in their cars and visit Homewood and the surrounding area and sites. Given the low demand for mid-week skiers, there is no incentive for those additional skiers to use any public transportation option, except a lack of parking if individuals arrive late. Likewise, during the

summer, the presence of a resort with ample parking for its visitors will largely discourage people from leaving their cars in favor of public transportation options.

Also, the CEP requires that “project implements transportation management plans and related measures to encourage alternative transportation and reduced parking demand.” CEP, p. 11. There are no assurances that proposed shuttles and water taxis will make a significant difference on automobile usage, especially during the summer. These are not proven alternatives and may be unrealistic in the summer. Visitors and residents are still dependent on their cars to sightsee, visit other recreational areas and restaurants and do errands, particularly in summer. Also, increased development and activities at the project area will draw more day-use visitors and automobiles from other areas of the Basin.

G. The Proposed Caltrans Project Will Not Further Compliance With an Environmental Threshold or Environmental Benefit.

The CEP is supposed to “[p]romote projects that result in the construction of threshold-related environmental improvements.” CEP, p. 4. Specifically, the program looks to “[p]rovide area-wide (not parcel by parcel) urban water quality improvements that leverage private investment for environment gain, link to existing or future systems, and are maintained in the long term.” *Id.* Likewise, the CEP guidelines require a project to “[i]mplement or substantially contribute toward the implementation of an Environmental Improvement Program (EIP) project (based on priority projects and contribution to the EIP) as a part of the overall project.” *Id.*, p. 6. However, the EIP project “must address a Threshold standard found not to be in attainment per the 2001 Threshold Evaluation, and provide substantial environmental benefits or mitigation in excess of TRPA’s project mitigation requirements.” *Id.* As is discussed above and in the accompanying comments of Matt Hagemann, the Caltrans project proposed to be funded by Homewood will not substantially implement the Lake’s deep water transparency TMDL and would not be related to achieving that threshold. The proposed Contech system is not designed to remove the very small fines primarily causing the deep water clarity violations and its effectiveness has not been tested under highway flow conditions and is likely to be considerably reduced.

H. The Project Does Not Respond to the Existing Neighborhood Context With Appropriate Building Volumes.

The CEP requires that a qualifying project “[r]espond to site location and typical neighborhood contextual situations through site design, arrangement of building volumes, and the natural surroundings.” CEP, p. 5. As described above, the large three and four-story structures proposed by the project will loom over the existing neighborhood. This is especially true of residents on Fawn Street and adjacent to Ski Bowl Way and Lagoon Road. Homewood attempts to squeeze as many units and parking as possible out of the developable portions of its base areas without sufficient consideration of the context or the disproportionate density and massing that will result in the Homewood base areas.

The CEP criteria states that “proposed uses are compatible with adjacent existing and/or planned land uses.” CEP, p. 10. The project should include more of a transition area or buffer zone between the existing single family homes adjacent to the project area and the multi-residential and large scale commercial buildings and activity of the resort. A property perimeter view-shed should be established to help separate the adjacent community homes.

I. The Project Needs to Enhance Visual Quality of Views.

The CEP criteria require qualifying projects to “[e]nhance visual quality of and views from scenic roadway units, shoreline units, and resource areas. Increase/enhance viewsheds from these areas to Lake Tahoe.” CEP, p. 12, 4. C. The project, including the Mid-Mountain facility, should not impact the views to the lake and should not be seen from the lake. This should be verified by the TRPA through actual observance from various view points on the Lake.

J. Given the Project’s Reliance on Inaccurate Coverage Determinations, the Project Has Not Shown That Overall Coverage in the Project Area Will Be Reduced.

The CEP project must “[p]rovide a reduction in overall land coverage.” CEP, p. 4.G. As discussed above and in the comments of Matt Hagemann, Homewood has not demonstrated that any of the unpaved roads on the mountainside qualify as existing land coverage given Homewood’s measurements of substantial infiltration on untreated roads. This CEP requirement combined with the complete absence in February 1972 of large swaths of roads and North base parking areas means that Homewood has not confirmed any reduction in coverage by its proposed project. Re-development should occur only on the current building sites or asphalted areas. Development on raw, vacant land should not be permitted. It thwarts the purpose and spirit of the CEP guidelines. Even if the land is disturbed, it should be restored to its natural state rather than expand development.

K. Homewood Proposes Increased Noise Rather Than Ensuring Compatible Land Uses That Minimize Noise.

The CEP requires qualifying projects to “[e]nsure compatible land uses that minimize noise.” CEP, p. 4. Homewood has proposed a musical amphitheatre in a neighborhood that, during the summer, is very quiet and peaceful. Need we say more. Combining that component with large numbers of cars circulating through the area as parking fills up in the winter, the large increase in visitors and related activities, and the potential for echoing (frequently experienced by Homewood residents) will maximize noise for the community rather than minimum noise. Indeed, even by comparing the project’s traffic noise levels to a future noisier environment in the year 2030, rather than current noise levels, the project will increase noise levels in the area. That is because many of the elements of the proposed housing and resort are incompatible with Homewood rustic, residential land uses.

L. The TAU Transfers Proposed by Homewood Do Not Maximize Density or Result in Substantial Environmental Benefits.

The CEP seeks to “[p]romote transfer of development that results in substantial environmental benefits.” CEP, p 4. Specifically, the guidelines emphasize “[m]aximiz[ing] density to achieve transit oriented development by transferring existing units of use from outside the urban core.” *Id.* As noted above, a ski area facility expansion located at the outer edge of an urban area is not a rationale candidate to achieve a transit-oriented development. Homewood’s proposed transfer of TAUs from an existing community plan area located between Kings Beach and Stateline does the opposite. Moving TAUs out of a more logical “urban core” to an area effectively well outside the urban core associated with Tahoe City will not contribute to maximizing density in true urban cores around the Lake or assure substantial environmental benefits from that TAU transfer.

M. The Project Does Not Provide A Variety of Housing.

The CEP states that projects need to “Provide a variety of sustainably designed housing, lodging and commercial choices to meet the needs of locals and visitors.” CEP, p. 10. The proposed project housing and lodging appear to be high-end accommodations. A mix of housing options are needed to demonstrate that the project meets all levels of the local and tourist population.

N. The Project Does Not Provide an Employee/Workforce Housing and Transportation Plan.

The CEP, p. 10.F.e., states that housing “includes development of workforce housing as a substantial component of the proposed project (e.g. at least 20% of the number of residential units based on CA Redevelopment legislation).” An employee/workforce housing plan and commuting impacts have not yet been developed or provided. See DEIS, p. 7-9. It is anticipated that there will be an increase of about 200 employees during peak activity. In addition to the 13 affordable employee housing units proposed for the site, what is the plan for the other employees? Details are needed on the location, number of units, type of housing, travel distances and transportation options, including a trip reduction program.

O. The Project Does Not Have Clear Public Benefits With Strong Public Support.

The CEP requires a qualifying project to “[h]ave clear public benefits with strong public support.” CEP, pp. 5, 15. Based on all of the above discussions, TRPA cannot conclude that the project, as sized, results in clear public benefits to the Lake. Moreover, the size of the project has raised serious concerns by numerous residents of the West Shore, including the members of FOWS. FOWS has hundreds of petitions and surveys, primarily from West Shore residents, expressing their concerns about the project’s size, scale and proposed structures. As discussed in the introduction to this letter, FOWS believes a scaled back version of the project that is

consistent with the existing plan area statements as well as the Code requirements, retaining many of the restoration and design components, would be able to achieve this CEP guideline.

P. Homewood Has Not Demonstrated Any Market Demand for the Proposed Project.

Reflecting the Regional Plan's and ski area master planning requirement that there be a demonstrated need for expanding existing ski facilities, the CEP requires that a project "[d]emonstrate market demand/support, economic feasibility and financial benefits (*i.e.* additional net new public tax revenue) to the applicable local jurisdictions." CEP, p. 5. We do know what Homewood is demanding and feels it needs for ticket sales (though nothing else) to obtain a fair return on its money but there are no other references in the DEIS or other agency documents demonstrating any pressing market demand/support for the proposed project, especially at the size and density proposed by Homewood. Likewise, FOWS is unaware of any available economic feasibility analysis prepared by Homewood that would inform the agencies or the public about the feasibility of reducing the size to a point that complies with the existing land use plans and the existing Code of ordinances. Nor has FOWS seen or been made aware of any analysis of any net benefits to the local governmental jurisdictions that might accrue from the project. As a result, FOWS does not believe that TRPA is in a position to review and make any finding on this CEP criterion.

IX. CONCLUSION.

FOWS does not believe the County and TRPA can approve the project as currently proposed. TRPA cannot make the findings required by the Compact, the Regional Plan and the Code of Ordinances. Nor does the DEIS provide the environmental analysis required by CEQA and the Compact. FOWS requests that the County and TRPA substantially revise the DEIS to address all of the above concerns and recirculate the DEIS for public review and comment. The recirculated DEIS needs to include several additional reduced-size project alternatives that comply with the existing Code of Ordinances and land use plans. Prior to proceeding with the project or any alternative, FOWS requests that TRPA and the County instruct Homewood to work with the community to prepare a Community Plan, as currently required by the Plan Area Statements, in order to formulate an alternative worthy of being labeled a community enhancement project. In furtherance of that goal, FOWS is prepared to engage in discussions with JMA Ventures and other interested parties, including the League to Save Lake Tahoe and the Tahoe Area Sierra Club, to discuss possible alternatives to the proposed project. Again,

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April 21, 2011
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FOWS supports a revitalized Homewood Mountain Resort but the proposed project needs to be meaningfully downsized. Thank you for considering these comments and concerns.

Sincerely,


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Susan Gearhart
President and Board Member, FOWS


Judi Tornese
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