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Via E-Mail and FedEx

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Re: Martis Valley West Parcel Specific Plan and Draft Environmental
Impact Report

Dear Ms. Wydra:

On behalf of Sierra Watch and Mountain Area Preservation (“MAP”), we have reviewed the Draft Environmental Impact Report (“DEIR”) prepared for the Martis Valley West Parcel Project (“MVWP” or “Project”). Sierra Watch is a California-based non-profit organization formed to assist Sierra-based groups with education and information so that they can participate effectively in local planning processes. MAP is a Truckee-based environmental advocacy non-profit organization formed in 1987 to preserve the Truckee region’s community character and natural environment for present and future generations. Both groups are committed to working constructively with the County and other affected jurisdictions, as well as the applicants, to ensure that development in eastern Placer County does not impair the regional environment or the rural character of the Sierra Nevada.

We respectfully submit these comments to help ensure that agency decision-makers fully comply with the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.* While our clients applaud the Project proponents’ and the County’s efforts to date to preserve the parcel to the East of SR 267 (“East Parcel”), they remain deeply concerned about the far-ranging environmental impacts the Project would have on the Martis Valley, Lake Tahoe, and beyond.

After carefully reviewing the DEIR for the Project, we have concluded that it fails in numerous respects to comply with the requirements of CEQA. As described below, the DEIR violates this law because it fails to: (1) adequately describe the Project, (2) properly assess the Project's cumulative impacts, (3) analyze the significant environmental impacts of the Project or propose adequate mitigation measures to address those impacts, and (4) undertake a legally sufficient study of alternatives to the Project.

“The Environmental Impact Report (“EIR”) is ‘the heart of CEQA.’” *Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights I*”) (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).

Where, as here, the environmental review document fails to fully and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of the statute. *See* Pub. Res. Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”). As a result of the DEIR's numerous and serious inadequacies, there can be no meaningful public review of the Project. Placer County must revise and recirculate the DEIR in order to permit an adequate understanding of the environmental issues at stake.

I. The Project Description Is Incomplete, Unstable, and Inaccurate.

CEQA's most fundamental requirement is that an EIR contain an accurate, complete, and stable project description. *See County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185; *see also* CEQA Guidelines § 15124. Without a complete project description, an agency and the public cannot be assured that all of a project's environmental impacts have been revealed and mitigated.

The DEIR is flawed from the outset because it rests on an incomplete and inaccurate description of the Project. The DEIR improperly segments development on the Tahoe Basin portion of the property. Moreover, the DEIR fails to adequately describe the Project components for the portion of development that is outside of the Basin. These

problems with the project description undermine the analysis in the DEIR. Consequently, a revised DEIR must be prepared and circulated for public comment.

A. The Project Description Improperly Segments Proposed Development in the Tahoe Basin Portion of the MVWP.

CEQA requires an agency to analyze the environmental impacts of the complete project, defined as the “whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” CEQA Guidelines § 15378(a). Further, “project” means the whole of the “activity which is being approved” and not “each separate government approval.” Guidelines § 15378(c).

Equally important, CEQA requires an agency, in conducting environmental review, to take an expansive view of the project so as to “maximize protection of the environment.” *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223 (citation omitted) (“*Tuolumne*”). An agency may not narrow the project description in such a way that minimizes the project’s impacts and prevents full disclosure and public review. Courts have routinely found inadequate EIRs that narrow the project description or analyze a smaller project than the one actually proposed. *See e.g., Rural Land Owners Ass’n v. City Council of Lodi* (1983) 143 Cal.App.3d 1013 (finding inadequate an EIR for a general plan amendment that failed to describe or analyze the full amount of development that would follow annexation of land to the City).

Instead of analyzing the environmental impacts of the full amount of development planned for the MVWP, the DEIR limits the Project and analysis to only that portion of development planned outside of the Tahoe Basin. In the original Project application, the MVWP included development on 112.8 acres in the Tahoe Basin, and required approval of both Placer County and the Tahoe Regional Planning Agency (“TRPA”). *See* DEIR Appendix A, Notice of Preparation (March 28, 2014) at 1. According to the Executive Summary of the DEIR, “controversy” subsequently arose over the plans to develop in the Tahoe Basin. DEIR at 2-7. “Therefore, the Specific Plan was revised so that the current MVWPSP proposal does not propose any Area Plan or development within the Tahoe Basin and the West Parcel is located outside of TRPA jurisdiction.” *Id.* The DEIR even goes so far as to delete any description or mapping of the Tahoe Basin portion of the West Parcel, even though the property is still under the same ownership as the remainder of the West Parcel. *See, e.g.,* DEIR Exhibit 3-2. Critically, the Project proponents have not abandoned their intentions to develop this portion of the property.

Indeed, the Project proponents have a pending proposal to develop this area with the “Brockway Campground.” The proposal includes development of 550 “campsites,” which include traditional tent-camping sites, camper sites, and eco-shelters. *See* Exhibit 1 (Placer County Community Development Resource Agency Memorandum dated October 20, 2015 Re: Update—Tahoe Area Projects). In addition to the campsites, the Project proposes recreational amenities including a registration building, lodge, swimming pool, restrooms, a pavilion, and on-site parking. *Id.*; *see also* Exhibit 2 (TRPA application for Brockway Campground).

By “chopping” up the project into two pieces to avoid controversy, the DEIR does exactly what CEQA proscribes. *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 279, 283-84. This unlawful segmentation is akin to the approach found invalid long ago in the landmark *Laurel Heights* decision. *Laurel Heights I*, 47 Cal.3d 376. In that case, the University of California San Francisco (“UCSF”) had purchased a 354,000-square foot building, but prepared an EIR only for the initial occupation of 100,000 square feet by the School of Pharmacy. *Id.* at 393. UCSF argued that its future plans to occupy the remainder of the building, not available for ten years, were speculative. *Id.* at 394. Further, like the County here, UCSF reasoned that, because these plans required further approvals that would be evaluated in their own right, the agency could evaluate the impacts of the potential expansion at a later time. *Id.*

The Supreme Court rejected this argument, finding that: (1) UCSF officials’ statements regarding the likely future use of the additional area for offices and a biomedical research facility rendered the future expansion “reasonably foreseeable”; and (2) “an increase in the amount of space used from . . . 100,000 square feet to 354,000 square feet” made the future action “significant in that it will likely change the scope or nature of the proposed initial project and its environmental effects.” *Id.* at 398. Under these circumstances, deferring environmental review to a later point, when “bureaucratic and financial momentum” would make it difficult to deny the expansion, violated CEQA. *Id.* at 395-96.

Here, the Brockway Campground development is far more defined than the future expansion in *Laurel Heights*, which had not been precisely planned and was several years away from being approved. *Id.* at 396-97. The Project proponents have already developed a detailed application and submitted it to TRPA and the County. *See* Exhibits 1 and 2. Because that application is currently undergoing review, there is no question that the proposed Brockway Campground project is “reasonably foreseeable” under *Laurel Heights*. Furthermore, there is no question that further development in the sensitive Tahoe Basin would change the scope of the Project and its environmental

effects. Indeed, the County essentially concedes that the controversy surrounding such impacts is what led the County and the Project proponents to exclude development on the Tahoe Basin parcel from the Project review.

The Project proponents argue they would implement the Project with or without the Brockway development, but that is beside the point. The two endeavors are undoubtedly connected—they are located on the same property (immediately adjacent to one another) and proposed by the same Project proponents. The developments would presumably use and impact many of the same resources, such as water, sewer, and roadway systems. *See, e.g.*, DEIR Appendix N at 1 (Water Supply Assessment prepared for entire West Parcel, including Tahoe Basin portion).

There is good reason why CEQA requires two developments simultaneously proposed for the same property by the same proponents to be viewed together in a single EIR. Unlawful piecemealing of a project masks the project's true effects by chopping them into pieces. The combined impacts from the Project and Brockway Campground, when viewed together, would no doubt be greater than the sum of the two parts. Moreover, reviewing the two sets of development plans together, early in the planning process, allows the County to assess more comprehensive mitigation and alternatives to the larger project's significant impacts. These opportunities may be unavailable later, if the project's footprint is already set in place. For example, the County could consider a circulation system that functions for both the Project and the Campground, which could be much better designed when viewing the two endeavors together. Further, the County could consider minimizing or sharing common Project features, such as recreational amenities.

Moreover, if the Martis West Project moves forward without consideration of the entirety of the impacts from the Campground, by the time the Campground is considered for approval there may be too much "bureaucratic and financial momentum" to allow proper consideration of changes to the whole Project design (such as reducing the overall development footprint), much less to consider the alternative of leaving the entire site undeveloped. *Laurel Heights*, 47 Cal.3d at 395; *see also Fullerton Joint Union High School Dist. v. State Board of Education* (1982) 32 Cal.3d 779 (determining that an EIR needed to be prepared before creating a new high school district in order to examine the alternative of maintaining the status quo). Indeed, if the County approves the MVWP first, it could unlawfully pave the way for the Brockway Campground without prior environmental review of that proposal. For example, by approving a Water Supply Assessment and roadway infrastructure that could serve both endeavors, the County is approving a first step in development toward the Campground.

In order to comply with CEQA's mandates for information disclosure and informed decision-making, the County must recirculate the DEIR to evaluate the environmental impacts from the whole of the project. This would include all development planned for the Martis Valley West Parcel, not just the development planned for outside the Tahoe Basin. Moreover, because the Tahoe Basin portion is subject to TRPA's jurisdiction, the revised document may be circulated as a combined DEIR and draft environmental impact statement ("DEIS") as initially planned.

B. The Project Description Is Unstable and Lacks Essential Information.

In addition to improperly segmenting the Tahoe Basin portion from the Project, the DEIR is also unstable in its description of that portion of the property and what is included within the Project. The DEIR describes the West Parcel as including 1,052 acres. DEIR at 3-1. The first Notice of Preparation for the Project described the West Parcel as 1,192 acres, which included the Tahoe Basin portion. DEIR, Appendix A. That's a difference of 140 acres. However, the Tahoe Basin portion of the West Parcel is only 112.8 acres. *Id.* Thus, even under the DEIR's truncated approach, there are 27.2 acres that the DEIR fails to include or explain.

The DEIR's Project Description is also vague and incomplete as to which approvals would occur as part of the Project, and which approvals would occur subsequent to the Project. This distinction is important because subsequent approvals must undergo a "conformity review process to determine consistency with the adopted MVWPSP, CEQA, and other regulatory documents and guidelines." DEIR at 3-7, 3-9. "If a later activity would have effects that were not examined in the program EIR, a project-specific CEQA document must be prepared." *Id.* at 1-2. For example, the Revised NOP lists approval of a development agreement as a "Requested Action" for the "Project Approvals." DEIR Appendix A, Revised NOP at 17. Yet, the Project Description's only mention of a development agreement is in a chart that appears to list both Project approvals and subsequent approvals. DEIR at 3-35 (Table 3-7). The DEIR should be explicit as to which of the items included in Table 3-7 would be included as part of the Project, and which would be subsequent approvals subject to conformity review.

Further, for items that are included as part of the Project, the DEIR must provide a detailed description. For example, if a development agreement would be approved as part of the Project, the DEIR must either describe the agreement in detail or provide a draft of the agreement. Such agreements could easily alter the nature of the Project and therefore must be fully disclosed. While the DEIR is prepared as a Program EIR because

the Specific Plan is meant to be a “framework” and flexible to allow it to be “responsive to changing circumstances and market conditions” (DEIR at 3-7), development agreements can be quite the opposite. The purpose of a development agreement is to provide “certainty in the approval of development projects.” Gov’t Code § 65864. Development agreements lock in vested rights to a certain development plan and can restrict future discretionary actions. *See, e.g.*, Gov’t Code § 65865.2. Thus, approval of a development agreement would trigger a much more detailed level of review than a Program EIR. The County should not enter into a development agreement lightly, and CEQA requires that the agency disclose such an agreement’s contents in the DEIR before approval. The County should therefore recirculate the DEIR with a clear description of all Project components and entitlements, including their contents and timing.

This also applies to the preservation components of the Project. The DEIR touts the preservation of the East Parcel as a fundamental element of the Project. Sierra Watch and MAP also laud this goal. However, the DEIR and Specific Plan lack detailed assurances as to how this preservation goal will be accomplished. The Specific Plan (Open Space Policy 2) states that by 2020 the area will either be acquired by a conservation entity or subject to a limited conservation easement (“LCE”). The document does not describe what conservation mechanisms will be in place prior to 2020. And even after 2020, the document lacks any detail as to what would be included in the LCE to assure long-term protections. While the policy states the provisions for conservation will be included in a development agreement, as discussed there is no such agreement provided in the DEIR, nor is there information as to whether such an agreement is included in the proposed Project. Further, even if a solid LCE is in place, without a proper funding mechanism to ensure resources to meet conservation goals, the LCE may be difficult to maintain and enforce. To maintain the Project’s promises to conserve the East Parcel, the County must provide more detail and assurances.

The defects with the Project Description not only require recirculation of that section, but also infect the remainder of the document. Because the true scope of the Project was not properly identified, the DEIR’s analysis in each of the impact categories (hydrology, air quality, biological resources, visual resources, utilities, etc.), as well as mitigation and alternatives to lessen or avoid those impacts, are also necessarily deficient. The County must therefore revise and recirculate the entire DEIR.

II. The DEIR’s Approach to Assessing Cumulative Impacts Is Flawed.

As the DEIR acknowledges, CEQA requires the lead agency to analyze and mitigate a Project’s potentially significant cumulative impacts. CEQA defines

cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines § 15355; *see also Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 120. An effect is “cumulatively considerable” when the “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” CEQA Guidelines § 15065(a)(3). A proper cumulative impact analysis is “absolutely critical,” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1217), as it is a mechanism for controlling “the piecemeal approval of several projects that, taken together, could overwhelm the natural environment,” (*Las Virgenes Homeowners Fed’n, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306).

Where the DEIR has failed to analyze or mitigate the Project’s cumulative impacts for a given environmental impact, that failure is discussed in conjunction with each issue area addressed below. However, the DEIR’s cumulative impact analysis is flawed in several additional respects. First, as explained above, cumulative impacts from the Project and the proposed Brockway Campground, which is located on the same property as the Project, are of utmost concern. If not analyzed as part of the Project (as they should be), at a bare minimum the DEIR must include analysis of these impacts in a proper cumulative analysis. While the DEIR includes the Brockway Campground in its “Cumulative Projects List,” it does not come close to adequately disclosing the very foreseeable cumulative impacts from this proposal and the proposed Project. Aside from a generic one sentence description (DEIR at 4-5), the DEIR provides virtually no other information specific to the proposed Brockway development.

Given its proximity to the Project, the DEIR must disclose more details about the Brockway Campground and its anticipated environmental impacts, so that the DEIR may conduct a proper cumulative impact analysis. For example, will the Project and campground share the same roadways and access? What will be the total number of trips cumulatively generated by both projects? What will be the total visual impacts, including impacts from light sources, when the two projects are built side by side? What will be the cumulative construction impacts if both projects have overlapping construction schedules (and will they have such schedules)? Will there be enough water from the on-site wells to serve both projects together? Once the DEIR discloses these and other relevant cumulative impacts, it must analyze feasible measures to reduce or avoid those impacts. In short, given the incredibly close proximity of these proposed projects, the DEIR fails as an informational document if it merely lumps the Brockway Campground

in with other cumulative projects in the region. The document must be recirculated to examine the interplay between these two projects.

Second, the analysis includes a “list” of cumulative projects, but that list fails to include all of the relevant probable future projects. For example, the list fails to include several projects in the area that the County has acknowledged are moving forward at this time. Exhibit 1 (Placer County Community Development/Resource Agency Memorandum dated October 20, 2015 Re: Update—Tahoe Area Projects). These include the Alpine Meadow/Squaw Valley Base-to-Base Gondola, Palisades at Squaw Valley, Tahoe City Lodge, and the Sun and Sand Project. When evaluated in conjunction with each of these projects, the Project could result in foreseeable cumulative impacts, such as traffic, air pollution, greenhouse gas emissions, and visual impacts to name a few. The DEIR’s current silence as to these probable, and clearly related, future projects, is unacceptable. The DEIR must be revised and recirculated to include an analysis of these cumulative projects.

III. The DEIR Fails to Adequately Analyze or Mitigate the Project’s Significant Environmental Impacts

A. The DEIR Does Not Adequately Analyze or Mitigate the Project’s Impacts on Biological Resources.

1. The DEIR Improperly Relies on Conservation of the East Parcel to “Offset” the Project’s Impacts.

The DEIR relies on the fact that the East Parcel will not be developed to conclude that certain of the Project’s impacts would be less than significant. *See, e.g.*, DEIR at 7-45, 7-54 (California spotted owl and northern goshawk); 7-58 (Sierra marten and snowshoe hare). However, particular elements of the Project’s design cannot serve as de facto mitigation for its impacts, allowing the DEIR to avoid disclosing the Project’s impacts as significant.

Determining whether or not a project may result in a significant adverse environmental impact is a key aspect of CEQA. CEQA Guidelines § 15064(a). In evaluating the significance of a project’s impacts, an EIR may not “compress[] the analysis of impacts and mitigation measures into a single issue.” *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656. The DEIR here did just that, and in so doing, it failed to recognize that some of the Project’s impacts on biological resources

would be significant. Without a significance finding, the DEIR cannot adequately identify mitigation for the impact.

As was the case in *Lotus*, the DEIR's failure here to evaluate the significance of the Project's impacts separately from what is effectively its proposed mitigation (the East Parcel's "offsetting" the loss of habitat on the West Parcel), the EIR "fails to make the necessary evaluation and findings concerning the mitigation measures that are proposed." *See id.* More specifically, by conflating impacts and mitigation, the DEIR fails to consider whether there may be other more effective mitigation options, thereby omitting information that is necessary for the informed decision-making and public participation that CEQA requires. *See id.* at 658; *see also San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79 (EIR inadequate if it fails to identify feasible mitigation measures). Further, a finding of significance triggers the requirement that the Project include *enforceable* mitigation, as well as a monitoring program, which is lacking with the DEIR's reliance on a portion of the Project as de facto mitigation. *See Lotus*, 223 Cal.App.4th at 656-57.

This error is particularly troublesome in the DEIR's analysis of impacts to the northern goshawk and the California spotted owl. The West Parcel is directly adjacent to the spotted owl Home Range Core Area ("HRCA") and near a designated spotted owl Protective Activity Center ("PAC"). DEIR at 7-12, Exh. 7-2a. Also, both the spotted owl and goshawk are present in the Project's development area, relying on 204 acres of the West Parcel for foraging habitat. *Id.* at 7-54. Of those 204 acres of habitat, the Project would result in permanent loss or disturbance of 169 acres—83% of the spotted owl and goshawk habitat within the West Parcel. *Id.* at 7-54.

Despite the loss or disturbance of the vast majority of the spotted owl and goshawk habitat on the West Parcel, the DEIR concludes that impacts on those species would be less than significant. DEIR at 7-54. The DEIR reaches this perplexing conclusion based in part on the assumption that "the loss of up to 169 acres of suitable foraging habitat on the West Parcel would be offset by the redesignation and long-term conservation of 198.2 acres of suitable foraging habitat presently zoned for development." *Id.* at 7-54. The glaring problem here is that there would be a net loss of suitable habitat due to the Project. The relevant baseline by which to measure environmental impacts is normally the existing physical conditions on the Project site. CEQA Guidelines § 15125(a). The DEIR may not rely on hypothetically allowable development under the MVCP to determine that, by comparison, the total new development will have no environmental impacts. *See Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 320-22. Moreover, whether the

East Parcel is developed or not, the Project would still impact a large tract of suitable habitat that is near an existing spotted owl PAC and HRCA. At most, preservation of the East Parcel could serve as mitigation for the impacts on the West Parcel—and if the DEIR relies on the East Parcel to act as mitigation, it must be analyzed as such.

Accordingly, the DEIR must be revised to disclose the Project's impacts on the California spotted owl and the northern goshawk as significant, and to propose feasible, enforceable mitigation measures to reduce these impacts to a less than significant level.

2. The DEIR Should Analyze Impacts on the Pileated Woodpecker.

The DEIR inexplicably omits any analysis of the Project's potential impacts to the pileated woodpecker, which is known to inhabit the Project Area, around Northstar. *See* Exhibit 3 at 12 (Conservation Biology Institute, Assessment of Conservation Values: Martis Valley Opportunity East and West Parcels, prepared for Trust for Public Land and Sierra Pacific Industries (Sept. 2012)). This fact was made known to Sierra Pacific Industries (the owner of the East and West Parcels) in a 2012 report in which the Conservation Biology Institute recommended that the Project's CEQA analysis include assessment of whether the Project would impact suitable habitat for the pileated woodpecker, due the species' nesting in the area. *See id.*

In its discussion of its significance criteria, the DEIR states that the Project would have a potentially significant impact on biological resources if it would “interfere substantially with the movement of any native resident or migratory wildlife species or with established native resident or migratory wildlife corridors, *or impede the use of native wildlife nesting or breeding sites.*” DEIR at 7-39 (emphasis added). This significance criteria is in addition to criteria related to special-status species, and it applies to any native wildlife whose nesting or breeding sites may be impacted by the Project. However, when considering the Project's potential impacts on wildlife, the DEIR discusses only special-status species and fails to disclose whether the Project would “impede the use of native wildlife nesting or breeding sites.” *See* DEIR at 7-39.

Because the pileated woodpecker is known to nest in the area, the DEIR must disclose whether the bird breeds or nests within the Project Area. If so, the DEIR must determine whether the Project would “impede the use of” the woodpecker's “nesting or breeding sites.” *See* DEIR at 7-39.

3. The DEIR Improperly Defers Evaluation of the Project's Impacts on Special-Status Plants.

The DEIR is also lacking because it fails to disclose whether special-status plant species are present on the Project site. The DEIR acknowledges that special-status plant species have a high potential to occur on the Project site. DEIR at 7-49. But the DEIR goes on to admit that “[n]o protocol-level surveys for special-status plant species have been conducted to confirm the presence or absence of special-status species on the project site.” *Id.* Because the Project could impact special-status plant species if they are present, the DEIR declares this impact potentially significant and provides for mitigation that would include conducting surveys for the plants before construction. *Id.* at 7-49 – 7-50.

However, this after-the-fact environmental review does not meet CEQA's requirements. An EIR may not simply label an impact significant without disclosing the impact's true extent or severity. *See, e.g., Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1370-71 (holding EIR inadequate where agency declared health effects significant and unavoidable without determining extent of harm). Further, deferring analysis of the Project's impacts until after Project approval renders the DEIR useless as an informational document and undercuts CEQA's core purpose of alerting decision-makers and the public to environmental impacts while mitigation measures can still be imposed and alternatives considered. *See Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 301, 306-07; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 684-85. Such deferred analysis is allowed only if there is an articulated reason for the deferral, and the DEIR provided no such explanation here. *See San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 669-71 (deferred analysis allowed only if there is a reason or basis for the deferral). The County must complete the required surveys for special-status plants and recirculate the DEIR with that information so that the public and decision-makers may understand, prior to considering Project approval, the true extent of the Project's impacts on these important biological resources.

4. The DEIR's Mitigation Measures Do Not Adequately Mitigate for the Project's Biological Impacts.

The DEIR's evaluation of impacts to biological resources is lacking because it relies on inadequate mitigation measures. The primary goal of an EIR is to identify a project's significant environmental impacts and find ways to avoid or minimize them through the adoption of mitigation measures or project alternatives. Pub. Res. Code §§

21002.1(a), 21061. The lead agency must adopt all feasible mitigation measures that can substantially lessen the project's significant impacts, and it must ensure that these measures are "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 359, 368-69. The requirement for enforceability ensures "that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted); CEQA Guidelines § 15126.4(a)(2). Here, the DEIR fails to satisfy these requirements.

(a) The DEIR Identifies No Mitigation for the Significant Impacts on Birds that Will Occur During Operation of the Project.

The DEIR discloses that the Project's construction and operation would have a potentially significant impact on the olive-sided flycatcher and long-eared owl. DEIR at 7-57. However, the DEIR identifies mitigation only for the impacts to these birds from construction of the Project. The DEIR nowhere discusses feasible mitigation measures to reduce impacts to the birds during *operation* of the Project. All three of the mitigation measures proposed to reduce impacts to animal species, including to the olive-sided flycatcher and long-eared owl, provide for measures to be taken only before and during construction—there is no mention of mitigation for the Project's operational impacts. See DEIR at 7-60 – 7-61. This violates CEQA, which requires an EIR to prescribe mitigation for *all* of a project's significant impacts. CEQA Guidelines § 15126.4.

(b) The DEIR Improperly Defers Mitigation and Relies on Mitigation Measures that Are Vague or Unenforceable.

To ensure that an EIR fulfills its purpose to inform the public and decision-makers about a project's impacts and possible ways to mitigate those impacts, mitigation measures must be evaluated in the EIR itself and cannot be deferred until a later date. CEQA Guidelines § 15126.4(a)(1)(B). Environmental review "is inadequate if '[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review.'" *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1124 ("*Laurel Heights II*"). Further, "reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans

have been overturned on judicial review as constituting improper deferral of environmental assessment.” *Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

Thus, only in certain, narrow circumstances may mitigation be deferred. To do so, (1) there must be practical considerations that preclude development of the mitigation measures at the time of project approval, (2) the EIR must contain criteria to govern the future actions implementing the mitigation, and (3) the agency must have assurances that the future mitigation will be both “feasible and efficacious.” *Id.* at 94-95. If an EIR does not satisfy all of these factors, it may not put off describing adequate mitigation.

An EIR is also inadequate if its proposed mitigation measures are so undefined that it is impossible to evaluate the measures’ effectiveness. *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 79. Here, some of the DEIR’s mitigation measures for impacts to biological resources are excessively vague, unenforceable, unnecessarily deferred, and lacking performance criteria.

For example, Mitigation Measure 7-3 improperly defers identifying mitigation for the Project’s impacts of special-status plants. The DEIR states that if special-status plants are found on-site, “the project applicant shall consult with CDFW . . . to determine the appropriate mitigation measures.” DEIR at 7-50. The DEIR then gives a few examples of possible mitigation measures and defers development of a mitigation and monitoring plan to some point in the future, too. *Id.* However, the DEIR fails to meet the three criteria required for mitigation to be deferred. *See Communities for a Better Environment*, 184 Cal.App.4th at 94-95.

Mitigation Measure 7-5a is likewise too vague with regard to avoiding impacts to special-status birds during construction. The measure provides that if a nest is found before construction “modifications to the project design to avoid removal of occupied habitat shall be evaluated and implemented, to the extent feasible.” DEIR at 7-60. If such modifications are not feasible or in conflict with Project objectives, “appropriate buffers around nests and limiting operating periods will be established.” *Id.* The measure does not ensure that the impact will be mitigated because it fails to set specific criteria, such as describing what, exactly, is an “appropriate buffer.”

5. The DEIR Fails to Adequately Identify the Project's Cumulative Biological Impacts.

As discussed previously, a cumulative impacts analysis is essential to adequately analyzing a Project's cumulative contribution to environmental impacts in an area. Here, the DEIR's evaluation of cumulative impacts on special-status plant species concludes that the Project will not contribute significantly to cumulative impacts to those species in the region because of the Project's proposed mitigation (Mitigation Measure 7-3). DEIR at 7-63. However, as explained above, this measure is legally inadequate and thus does not support the DEIR's claim that the measure would prevent the Project's contribution to cumulative impacts on the region's sensitive plants. This problem—reliance on inadequate mitigation to avoid cumulative impacts—also undercuts the DEIR's conclusion that the Project's cumulative impacts on special-status wildlife and their habitat will be less than significant (DEIR at 7-63 – 7-64), which relies on implementation of Mitigation Measure 7-5a, the inadequacy of which is discussed above.

B. The DEIR Fails to Adequately Analyze or Mitigate the Project's Significant Visual Effects, Including Impacts on Night Skies.

The Project would replace 662-acres of mixed conifer forest, woodlands and meadows with commercial development up to 60 feet in height and condominium developments up to 75 feet in height. DEIR at 9-9, 9-32. Given this intensification of uses on pristine lands in the Sierra Nevada, one would expect that the DEIR would have provided a thorough analysis of the Project's impacts on scenic vistas and night skies. Unfortunately, the DEIR's analysis does not meet CEQA's clear standards.

1. The DEIR's Analysis of Impacts to Scenic Resources Is Legally Deficient.

(a) The DEIR Is Unable to Adequately Evaluate the Project's Visual Impacts Because the Project Is Essentially Unplanned.

The DEIR's purported analysis of the Project's aesthetic impacts is crippled in large part because Project is essentially unplanned. Neither the DEIR nor the Specific Plan attempt to show, either in text or visual images, exactly what the Project would look like once it is fully developed. The DEIR states that a conceptual site plan has been prepared that illustrates *one scenario* of how the Specific Plan could be implemented. DEIR at 3-13 (emphasis added). However, as the DEIR explains, "the Specific Plan is

intended to be flexible so that the Project could ultimately differ from the conceptual plan.” *Id.* Regardless, this conceptual plan is all but meaningless for a visual impacts analysis as it does nothing more than show, in general, where single-family, multi-family and commercial uses would be developed. Merely showing where these land uses may be developed is not sufficient, however; the document should provide information about what the community will look like. Indeed, we question how the DEIR preparers were even able to evaluate the Project’s visual impacts since they too only had access to a highly conceptual land use plan. *Id.* at 9-29.

A detailed site plan is critically important since the Project site is visible from stunning locations such as Martis Valley, Lake Tahoe, and the greater Tahoe Basin. *See* DEIR at 9-9 and 9-32. The DEIR explains that views of the proposed development may potentially be blocked by ridges, peaks, and other topographic features. *Id.* at 9-9. But given the fact that the Project design would come largely after Project approval, there is simply no assurance that the Project would not be visible from these important viewpoints. The Specific Plan confirms this fact when it states that the visual quality of the area will be protected by locating the “majority” of the development in areas that are not visible from outside the plan area. Specific Plan at 78. It goes on to state that “any development that is located within view sheds will be sited and designed to ‘minimize visibility’ from outside the plan area.” *Id.* Given these vague and ambiguous statements, coupled with the importance of the visual scenery at stake, details relating to the Project’s site plan must be defined now, rather than after the Project is approved and a development agreement is signed. Without this information, the public and decision-makers are left in the dark as to whether this residential subdivision would ruin the visual integrity of this scenic setting.

(b) The DEIR’s Visual Profile Study Does Not Show the Severity and Extent of the Project’s Visual Impacts.

The DEIR begins its analysis of the Project’s visual impacts by explaining that the degree to which scenic resources are considered adverse is highly subjective. “One person may conclude that any change in a pleasing visual setting is adverse. Others may find the same changes to be acceptable or even an improvement.” *Id.* As regards development of open space lands, especially in the Sierra Nevada, common sense and California courts would disagree with this optimistic assertion. As explained by the court in *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1606, it is “self-evident” that replacing open space with a subdivision will have an adverse effect upon “views and the beauty of the setting.”

Recognizing that the Project's structures could be seen from scenic locations, the DEIR includes photographic simulations at five key observation points ("KOPs"). According to the DEIR, the simulations illustrate a "reasonable representation of the location, scale, and appearance of the developed MVWSP" as seen from the five viewpoints. DEIR at 9-30. Yet, with the exception of the simulation taken from SR 267, the simulations show no development whatsoever. Indeed, the DEIR would have us believe this Project would be all but invisible. As explained below, it seems likely the Project would have significant visual impacts from numerous scenic viewpoints.

(i) Tahoe Rim Trail

The Tahoe Rim Trail is located immediately south and east of the Project site. *See* DEIR Exhibit 3-3. DEIR Exhibits 3-6 and 3-7 show single-family, multi-family, and neighborhood commercial uses potentially being developed all along the southern and southeastern boundary of the site, very near the Tahoe Rim Trail. While the DEIR asserts that the development area would be "largely screened" from this trail (at 9-32), the document includes no photographic simulation from any location along the Trail. The Project's multi-family condominiums could be as tall as 75 feet; at this height, certain of the buildings could be taller than surrounding trees. This is a primary hiking and mountain biking trail segment, prized for its bucolic setting. The EIR must be revised to include visual simulations from multiple locations along this segment of the Tahoe Rim Trail.

(ii) Tahoe Basin

Certain of the proposed commercial uses would potentially be located on the knoll close to the Project's boundary with the Tahoe Basin. The DEIR asserts that the Project would not be visible from the two viewpoints within the Tahoe Basin. Both of these viewpoints are located off of the Lake Tahoe shoreline. Yet, there are other locations off of the lake but within the Basin where the Project's tall structures could be visible. The DEIR must analyze the potential visual impacts from the entire shoreline. Moreover, in order to ensure that the Project is not visible from any location within the Tahoe Basin, the DEIR should include a mitigation measure that would establish a sufficient development setback, e.g., 150 feet, from the boundary of the Tahoe Basin. A second mitigation measure should restrict the height of any structure to no greater than the height of existing trees.

(iii) Northstar/Ritz Carlton

The DEIR asserts that the Project components would be “largely screened” by existing vegetation and topography and would appear as dark/earth toned-colored structures nestled in the distant trees from the Northstar viewpoint. DEIR at 9-32. Yet, we can find no indication that the visual simulation from this viewpoint shows the effect of the extensive tree removal, vegetation removal, and grading that would be required to enable the proposed development. Clearly, this extensive earthwork would constitute a significant visual impact. The revised DEIR should disclose this significant impact and require as a mitigation measure that all trees removed as a result of construction of the Project be replanted on a minimum of one-to-one basis, and that the replacement trees are mature, i.e., not seedlings.

(iv) Martis Peak

The DEIR does not address views from the nearby Martis Peak. Martis Peak is a major viewpoint for trail users and other visitors. Although it may be some distance from the Project, it provides an overview of the Martis Valley. As such, the DEIR errs because it fails to evaluate the change in scenic quality from this viewpoint. The revised EIR should provide photographic simulations from this location.

(v) SR 267

SR 267 is a Placer County-designated scenic route. It is also designated as a scenic route in the Martis Valley Community Plan. DEIR at 9-29, 9-39, 9-41. The DEIR states that views from SR 267 in the vicinity of Brockway Summit are considered moderately high to high. *Id.* at 9-25. The Project calls for a 150-foot development setback from the edge of the road, which would partially address the Project’s visual impacts on SR 267. Yet, because the height of the commercial buildings could exceed the height of the nearby trees, structures could still be visible from this scenic route. Consequently, the revised DEIR should disclose this impact, and consider mitigating it by prohibiting any structures near SR 267 from exceeding the height of the existing trees.

2. The DEIR’s Analysis of Nighttime Views Is Legally Deficient.

Perhaps one of the DEIR’s most egregious deficiencies relates to the document’s analysis of impacts to nighttime views. Dark skies are a very valuable commodity and worthy of preservation. Maintaining dark skies is of critical importance in the mountains because it is one of the dwindling numbers of locations where one is able to gaze at stars

because cities and suburban locations are fraught with light pollution. The proposed Squaw Valley Specific Plan, Master Lighting Plan explains the importance of darkness: “In the Sierra Nevadas, the experience of natural darkness at night and seeing the stars above is possible on cloudless evenings due to the clear mountain air and the lack of light pollution. Preservation of this resource not only benefits visitors and residents alike but also the region’s wildlife.” See Exhibit 4 (Squaw Valley Specific Plan, Master Lighting Plan) at B-88.

Unfortunately, the DEIR trivializes the Project’s contribution to light pollution and its impact on views of the night sky. The Project would introduce new light sources throughout approximately 662 acres that have no existing light sources. DEIR at 9-45, 9-48, 9-54. These new light sources would be clearly visible from surrounding areas, yet the DEIR ultimately concludes that the Project would not adversely affect nighttime views. *Id.* This conclusion defies common sense, as the amount of lighting generated by a massive subdivision would certainly cause additional lighting of the dark sky.¹ Indeed, the photographic simulations taken from Lake Tahoe (DEIR Exhibit 9-33) and Martis Valley (DEIR Exhibit 9-34) confirm this fact as they clearly show that the Project would lighten the night sky considerably. And, as discussed below, there is no indication that the DEIR’s simulations are accurate as the document does not disclose the methodology used to model the Project’s light sources.

According to the Dark Sky Coalition, in order to accurately evaluate light and glare impacts, one must take into account three aspects of lighting: (a) amount of light; (b) shielding of fixtures; and (c) spectrum of light sources. See Exhibit 5 (Dark Skies Coalition, Dark Matters!, Outdoor Lighting Codes, Dark Sky Coalition). Here, the DEIR fails to provide any indication that these lighting aspects were used to develop the photographic simulations. These light aspects are discussed further below.

(a) Amount

According to the Dark Sky Coalition, reasonable limitations on a project’s total lighting (lumen) amount can reduce the frequency and degree of careless and/or

¹ There is no indication that the photographic simulations take into account the effect that snow has on lighting. Snow is quite reflective compared to bare ground. Consequently, the Project’s increase in light and glare would be particularly severe during those months when there is snow on the ground. The revised DEIR should include simulations under “with” and “without” snow conditions.

competitive over-lighting. *See* Exhibit 5. Here, the DEIR does not identify the amount of lighting that the Project would generate or provide any indication of the amount of lighting that was used to prepare the photographic simulations. The revised DEIR must provide this information.

Regardless, however, based on the existing photographic simulations, the Project would significantly impact views of the night sky. *See* DEIR Exhibits 9-33 and 9-34. According to the Dark Sky Coalition, lumen caps of 50,000 – 100,000 lumens per acre have been shown to reduce average lighting amounts (and thus all light pollution impacts) by 25% to 70% compared to average un-capped commercial lighting practice. Consequently, the revised DEIR should include a mitigation measure that commits the Project to place a cap of lighting of no more than 50,000 – 100,000 lumens per acre.

(b) Shielding

Research shows that full shielding of lighting sources can reduce sky glow by 50% to over 90% when compared to a typical mix of partially shielded and unshielded lighting. *See* Exhibit 5. As shielding dramatically reduces glare and light trespass as well, it is and should be the highest priority in lighting plans and codes. Although the Project's Design Standards would purportedly require that exterior lighting fixtures be shielded, the DEIR fails to provide the required assurance that *all* exterior lighting would be shielded. *See* DEIR at 9-46. In fact, a review of these Design Standards indicates only that the shielding of outdoor lighting fixtures "should be considered." Specific Plan at B19. The revised DEIR should include a mitigation measure that prohibits any exterior lighting that is not shielded. Full shielding should be defined as emitting no light rays from the fixture at angles above the horizontal plane, i.e., lights should be aimed straight down but under no circumstances at an angle higher than 45 degrees above straight down.

(c) Spectrum

Using yellow light sources, e.g., high-pressure sodium and PC-amber LED, or low-pressure sodium and AlInGaP "narrow-band" amber LED for the majority of lighting uses can reduce sky glow by 70% to almost 90% when compared to white sources such as metal halide, fluorescent, and LED. *See* Exhibit 5. The DEIR never even mentions the concept of spectrum in its analysis of impacts on dark sky. It does not disclose the amount of white light sources that would be used by the Project or indicate the spectrum of lighting that was used to prepare the photographic simulations. Regardless, however, based on the existing photographic simulations, the Project would

significantly impact views of the night sky. Consequently, the revised DEIR should include a measure that requires the use of high-pressure sodium and PC-amber LED, or low-pressure sodium and AlInGaP “narrow-band” amber LED. If the EIR rejects this spectrum of lighting as infeasible, it must support its findings with substantial evidence.

To ensure that the Project’s impacts on the night sky are sufficiently mitigated, the County should also require the Project proponents to prepare and adopt a lighting plan for the Project. As the attached “Pattern Outdoor Lighting Code” demonstrates, it is clearly possible to mitigate a Project’s light and glare impacts while preserving safety, security, and the nighttime use and enjoyment of a property. *See* Exhibit 6 (International Dark-Sky Association, Pattern Outdoor Lighting Code (July 2010)). The International Dark-Sky Association, Pattern Outdoor Lighting Code identifies an array of measures (including those already discussed) to curtail the degradation of the nighttime visual environment. *Id.* The implementation of a comprehensive lighting plan would go a long way toward preserving the dark skies of the Project area.

In addition, the DEIR errs in its approach to cumulative light and glare impacts. As regards nighttime views from the Lake Tahoe Basin, the DEIR lacks any basis to conclude that the Project’s incremental lighting effect would not substantially contribute to cumulative light and glare impacts. DEIR at 9-54. Light sources from every major project in the area—including the MVWP—would necessarily contribute to diminished nighttime views. To conclude, as the DEIR does, that the Project’s light sources would not be cumulatively considerable, the document must identify facts and analyses to support this conclusion. CEQA Guidelines § 15130 (a)(3). As regards impacts from Martis Valley, the DEIR correctly concludes that the Project’s contribution would be cumulatively considerable. DEIR at 9-54. Yet, the DEIR relies on the same deficient Design Standards to purportedly reduce these light pollution impacts. *Id.* In order to ensure that lighting from cumulative development would not contribute to further light pollution, the County should require the adoption of the mitigation measures discussed previously.

For the reasons set forth above, the DEIR’s failure to properly assess the Project-specific and cumulative impacts to visual resources, and to identify enforceable mitigation for them, is fatal. The revised DEIR must include a comprehensive evaluation of impacts and this analysis must be supported with substantial evidence as required by CEQA. The revised DEIR must also include additional mitigation measures to ensure that the scenic beauty and night skies of the Sierra Nevada are protected.

C. The DEIR Fails to Adequately Analyze or Mitigate the Project's Transportation Impacts.

The DEIR's analysis of transportation impacts is deeply flawed and therefore deprives the public and decision-makers of the actual and specific consequences of the Project. The document substantially underestimates the Project's trip generation and therefore understates the Project's impacts on area roadways. It ignores certain impacts altogether, such as how traffic from the Project would affect I-80. It downplays other critical impacts including how traffic from the Project and cumulative development would affect the safety of those traveling along SR 267. It fails to adequately describe or analyze existing public transit service or analyze the Project's effects on this service. It also fails to consider feasible mitigation for the myriad Project-specific and cumulative significant transportation impacts, instead asserting such impacts are significant and unavoidable. The report prepared by Neal Liddicoat at MRO Engineers ("MRO Report"), attached as Exhibit 7 and incorporated herein by reference, provides detailed comments on the shortcomings in the DEIR's transportation impacts analysis. A summary of the most egregious violations is set forth below.

1. The DEIR Errs Because It Does Not Accurately Reflect Winter Trip Generation and Does Not Identify Summer Trip Generation.

The DEIR states that the traffic study focused on the Project's highest possible traffic impacts. DEIR at 10-20. The document explains that a Friday afternoon in August represents the peak travel period during summer, while peak traffic occurs in the winter on Sunday afternoons. *Id.* at 10-4. Although the DEIR identifies the Project's trip generation on Sundays (*see* Table 10-11), it does not disclose the amount of traffic that would be generated by the Project on Friday afternoons. This omission is critical since, according to Tahoe Regional Planning Agency, July and August are the busiest months in Tahoe. *See* Exhibit 8 (TRPA, 2012 Transportation Monitoring Report), Figure 14, at p. 16. Although the DEIR analyzes summer traffic conditions, it is not possible to verify the accuracy of the analysis without knowing the number of trips that would be generated by the Project during the summer.

In addition, the DEIR relies on the Institute of Transportation Engineers ("ITE") Trip Generation Manual to determine the Project's winter trip generation. Yet, as the MRO Report explains, the ITE Manual's definition of "typical" conditions would not reflect the increased level of traffic demand associated with the unique winter conditions in the area, e.g., recreational activities such as skiing, sledding, and snowshoeing.

Because of the substantial seasonal variation, it is essential that the estimates of Project-generated traffic accurately reflect conditions during winter and summer conditions. In short, the revised DEIR should separately identify trip generation for summer and winter conditions.

2. The DEIR Understates the Project's Transportation Impacts Because it Underestimates the Project's Overall Trip Generation.

The DEIR's approach to estimating the amount of traffic that would be generated by the Project suffers from numerous flaws. First, the DEIR underestimates trip generation from the Project's commercial/retail land uses because it assumes that all of these retail uses would be developed in a single location on the Project site. Yet, the DEIR acknowledges that these commercial uses are intended to be distributed throughout the Project site, i.e., the Project would include several smaller commercial/retail facilities. DEIR at 3-17. This distinction is important. As the MRO Report explains, the distribution and configuration of commercial/retail uses makes a substantial difference in terms of how much traffic is generated by those uses. If the retail uses are developed in three equal-sized components, for example, the daily trip generation is 47 percent higher than if all retail uses are built in a single location.

Second, the DEIR errs in its calculation of the number of trips that would stay "internal" to the Project site. It is critically important that internal and external trips are accurately accounted for since an overestimation of internal trips will result in an underestimation of external trips. It is external trips that would be added to the study area intersections and road segments and would, therefore, result in the Project's impact on the nearby transportation system. Here, the analysis assumes that 80 percent of the commercial trips would be internal and 20 percent external, i.e., only 20 percent of trips to the Project's retail uses would travel on roadways outside the Project site. DEIR at 10-21. As an initial matter, this internal trip percentage would appear to be entirely arbitrary as we can find no documentation or evidence in the DEIR to support these percentages.

Moreover, as the MRO Report explains, the 80 percent capture rate appears to substantially overstate the number of trips that would stay internal to the Project. In fact, the DEIR's approach to calculating internal trips is clearly erroneous because it determines that the number of internal trips associated with the commercial/retail land use far exceeds the number of internal trips generated by the full-time residential units. *See Exhibit 7 at 5.* Having the number of internal trips associated with the commercial land use far exceeding the number of trips associated with the residential land use is

illogical and incorrect. These numbers must match, as they are essentially the same trip, i.e., a trip origin at a residence with a destination at a commercial site, or vice versa. Because the number of internal trips generated by the commercial space is grossly over-estimated, the number of external trips is substantially under-estimated.

MRO Engineers revised the DEIR's calculations so that they accurately reflect the Project's internal capture rate. Of particular interest in the traffic impact analysis, of course, are the external trips, i.e., those that would be added to the study area's intersections and road segments. Set forth below is a summary of the corrected trip generation figures.

- Weekday Daily Conditions – The DEIR under-estimated external Project travel by 2,602 trips (i.e., 65 percent);
- Weekday PM Peak-Hour Conditions – The DEIR under-estimated external Project travel by 223 trips (i.e., 68 percent);
- Sunday Daily Conditions – The DEIR under-estimated external Project travel by 590 trips (i.e., 20 percent); and,
- Sunday Peak-Hour Conditions – The DEIR under-estimated external Project travel by 414 trips (i.e., 22 percent). *See Exhibit 7 at 11.*

Not surprisingly, with this increase in external Project travel, the Project's transportation impacts on area roadways and intersections are far more severe than disclosed in the DEIR. This is an egregious flaw in the DEIR requiring revision and recirculation.

3. The DEIR Fails to Disclose That the Project Would Significantly Impact the Intersection of SR 267/Project Access Roadway.

The DEIR states that the Project would result in an acceptable level of service ("LOS") D in the winter and LOS C in the summer at the intersection of SR 267/Project Access Roadway. *See DEIR at 10-27, Table 10-12.* Review of the intersection LOS calculation sheets in DEIR Appendix I, however, reveals that the summer p.m. peak-hour delay value and LOS for this intersection would actually operate at an unacceptable LOS F. *See Exhibit 7 at 17.* Put another way, on average, a driver desiring to turn left into the Project site from northbound SR 267 would wait 3 minutes and 45 seconds for an adequate gap in oncoming traffic before being able to enter the site. *Id.* This is an

unreported significant impact, which must be disclosed and mitigated. This is a substantial flaw in the DEIR, which requires revision and recirculation.

Of course, this situation will be even worse when the trip generation estimates are corrected, as described above. That is, the number of external trips will increase, which would further increase the Project-generated traffic at this intersection.

4. The DEIR Fails to Adequately Mitigate the Project's Significant Transportation Impacts.

The Project would result in significant impacts to several intersections and roadway segments in the Project study area, which would be even more severe had the DEIR accurately analyzed the Project's trip generation. *See* DEIR at 10-27 – 10-31. The DEIR identifies a few mitigation measures such as optimization of signal timing or the payment of fees, but, by the EIR's own admission, these measures would not reduce the Project's significant traffic impacts to levels that are less than significant. *Id.* Yet, rather than identify other feasible mitigation measures, the DEIR simply concludes that these impacts are significant and unavoidable. This approach is contrary to the primary goal of an EIR, which is to identify a project's significant environmental impacts and find ways to avoid or minimize them through the adoption of mitigation measures or project alternatives. Pub. Res. Code §§ 21002.1(a), 21061.

There are ample opportunities to mitigate the Project's transportation impacts. For example, the applicant could implement identical or equivalent trip reduction measures identified in the Village at Squaw Valley Specific Plan DEIR. For that Project, the DEIR included several feasible measures developed by the Placer County Air Pollution Control District, the California Air Pollution Control Officers Association, and the California Attorney General's Office. *See* Exhibit 9 (Village at Squaw Valley General Plan EIR) at 10-17, 10-18. These measures were also taken from the Lake Tahoe Sustainability Collaborative's Sustainability Action Plan. *Id.* While the measures were developed to reduce that project's air pollutant emissions, they would also reduce the vehicular travel associated with land use development projects. The following measures, while slightly modified to reflect the nature of the Project, are all clearly feasible:

- Provide free or discounted transportation service between the Project and the Amtrak station in Truckee to all Project residents. This may be implemented in coordination with a local taxi service, the North Tahoe-Truckee Free Ski Shuttle, or other public or private shuttle service.

- Provide a transit fare subsidy or free annual transit passes for Project residents.
- Implement a shuttle service to key destinations in the region (e.g., ski resorts, North/West Shore of Lake Tahoe, casinos, Truckee) to serve guests who want to tour regional offerings.
- Require that the developer actively recruit transit riders. This should include distributing transit information utilizing the best technologies and promotional tactics. This transit information should be provided annually to each residence in the development and posted bi-annually on bulletin boards in gathering areas such as restaurants, stores, bars and fitness facilities.
- Provide a covered bicycle parking area near entrance of all commercial establishments

Adoption of these measures would go a long way toward reducing the Project's significant traffic impacts. Again, because these measures have been determined to be feasible, the County must require the applicant to adopt and implement enough of these measures to ensure that the Project's impacts would be mitigated to a less than significant level.

Alternatively, as discussed below in section IV (Alternatives), the County could adopt a reduced Project alternative, e.g., one that is sized in a manner that does not result in significant traffic impacts. The DEIR should also consider a mitigation measure that would incorporate a new access point for the Project. Instead of a new access/intersection at SR 267, this measure would include a Project entrance road off of Highlands View Drive, by obtaining a roadway access easement from Northstar Resort/CNL to connect to the Project site. Such a measure would help reduce the traffic impacts on SR 267 discussed above. Finally, the County could also consider adopting an alternative that places the new residential development directly adjacent to an established community. Traffic impacts are intimately tied to land use patterns. The Project's substantial increase in traffic is caused by its remote location since residents of the new community have no real option for travel other than the automobile. Moreover, by developing adjacent to an established community, there would be no need to support the community with 35,000 square feet of commercial retail uses. The County must recirculate the DEIR to consider the above reference mitigation measures and any other

potentially feasible measures that may lessen or avoid the Project's significant transportation impacts.

5. The DEIR Fails to Analyze Regional Traffic Impacts Including Impacts to I-80 and Its Ramps.

The California Supreme Court has emphasized that “an EIR may not ignore the regional impacts of a project approval, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575. An EIR must analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721-23. This principle stems directly from the requirement that an EIR analyze all significant or potentially significant environmental impacts. Pub. Res. Code §§ 21061, 21068. An EIR cannot analyze all such environmental impacts if its study area does not include the geographical area within which these impacts would occur. Here, the DEIR fails to analyze the Project's regional traffic impacts including impacts on I-80, in clear violation of CEQA.

If approved, the proposed Project would cause extensive new traffic to travel on I-80, as this freeway provides primary regional access to the study area. DEIR at 10-3. According to the DEIR, 35 percent of the summer Project traffic would use I-80, with 23 percent to and from the west, i.e., to/from Sacramento and the San Francisco Bay Area and 12 percent to/from the east. DEIR at 10-22. In the winter, 39 percent of the Project traffic would use I-80, with 25 percent to/from the west and 14 percent to/from the east. *Id.*² Inasmuch as I-80 would play a significant role in accommodating the Project's traffic, the DEIR is obligated to evaluate how traffic from the Project, together with traffic from cumulative development, would impact I-80.

Furthermore, although the DEIR claims to have analyzed the I-80 eastbound and westbound on- and off-ramp at SR 267 (at 10-3), this is not the case. Instead, only the ramp merge and diverge areas were addressed. *See* DEIR at 10-7, 10-9, 10-45. These are the locations where the on- and off-ramps join or depart from I-80 itself. The DEIR fails to analyze the Project's impacts on the ramps themselves.

² Moreover, as the MRO Report explains, the DEIR actually appears to substantially underestimate the amount of traffic that would travel to the Project site from the San Francisco Bay Area. *See* Exhibit 7 at 17, 18.

By not analyzing the Project's regional impacts, including impacts on I-80 and its ramps, the DEIR leaves the public and decision-makers in the dark as to the Project's regional traffic impacts. The revised EIR must evaluate the effect that traffic from the Project and cumulative development would have on the freeway and its ramps.

6. The DEIR Fails to Adequately Evaluate or Mitigate the Project's Public Transportation Impacts.

Given the Project's significant traffic impacts, public transit could play an important role in meeting some portion of the Project's transportation needs. Yet, the DEIR does not adequately analyze or mitigate for the Project's impact on public transit.

Initially, the DEIR errs because it does not provide sufficient information about existing Tahoe Area Regional Transit ("TART") service. For example, the document states that during the winter ski season, bus service often runs at capacity in the morning for trips from Crystal Bay to Truckee, and in the afternoon for trips from Truckee to Crystal Bay. DEIR at 10-10. TART has observed that most of the winter ridership serves Northstar Ski Resort. *Id.* The phrase "at capacity" is vague and therefore meaningless. What does it mean to be at capacity? Are there multiple buses that run along this line? If so, how many? Are they all "at capacity?" Are the buses standing room only? What is the duration of the capacity shortage—the entire peak period? Is there unmet demand along this line? Does Northstar offer transit shuttle service in addition to the TART service? These details are needed in order to evaluate how ridership from the proposed Project would impact transit operations and whether there might be effective solutions.

Nor does the DEIR provide any substantive analysis of the Project's impact on public transit. Instead, the document simply asserts, "the proposed project is anticipated to cause existing capacity to be exceeded because the site is located south of Northstar, and additional transit ridership from the project would be added to the peak direction." DEIR at 10-33. Such vague statements do not satisfy CEQA's core requirements. Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights II*, 6 Cal.4th at 1123. To accomplish this purpose, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley*, 52 Cal.3d at 568. The revised DEIR must quantify the expected increase in demand for the various buses serving the region.

The DEIR likewise contains no analysis of the Project's impacts on regional transit facilities within the Tahoe Basin, such as the Tahoe City Transit Center. Because the Project would impact these regional transit facilities and because the facilities are located within an area of statewide and regional significance, the County is required to consult with the Tahoe Metropolitan Planning Organization. Pub. Res. Code § 21092.4(a). The DEIR contains no indication that the County initiated this consultation. The DEIR cannot simply ignore these regional impacts.

Notwithstanding the DEIR's failure to analyze the Project's impacts on transit, it concludes such impacts are potentially significant and identifies two mitigation measures. DEIR at 10-33. The DEIR concludes, absent any evidentiary support, that these measures would reduce the Project's impacts to less than significant levels. The first mitigation measure calls for establishing a new Zone of Benefit ("ZOB") or annexing into a pre-existing ZOB. *Id.* The DEIR fails to describe these benefit zones or identify the level of assessments that would be necessary to establish such an entity. Nor does the DEIR ever explain how the establishment of a ZOB would actually reduce the Project's impacts on transit.

The second measure – joining and maintaining membership in the Truckee-North Tahoe Transportation Management Association ("TNT/TMA") – suffers from the same flaws as the first measure. Here, the DEIR explains that the purpose of the TNT/TMA is to improve the general traffic and transportation conditions in the Truckee/Tahoe area by requiring projects to contribute their fair-share annually to transit services. *Id.* The document does not, however, identify the amount of money the proposed Project would have to contribute. Nor does it identify, let alone discuss, exactly how the TNT/TMA would ensure that the Project's impacts on public transit would be mitigated.

Fee-based mitigation programs for transportation impacts based on fair share contributions by individual projects have been found to be adequate mitigation measures under CEQA. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140. To be adequate, however, these mitigation fees must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing. *Id.* at 140-41; *see also Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-89 (explaining that fee-based traffic mitigation measures have to be specific and part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation of the transportation impacts at issue). Here, the DEIR's proposed mitigation simply assumes that the payment will occur, that it will cause the necessary improvements in public transit, and that it will adequately mitigate

the impacts, without providing a reasonably enforceable plan to achieve those results. CEQA requires more.

7. The DEIR Fails to Adequately Identify or Analyze the Project's Potential to Increase Hazards or Risk to Public Safety.

The DEIR concludes that the Project will result in no significant safety-related impacts. DEIR at 10-36. Yet, the document's analysis of public safety impacts focuses exclusively on chain controls during winter conditions. It ignores the serious threat to public safety that would result from adding traffic to SR 267, which is already highly congested. *See* DEIR Table 10-13.

As discussed previously, the intersection of the Project Access Roadway and SR 267 would operate under gridlock conditions, i.e., LOS F during summer and winter peak hours. DEIR at 10-41. The DEIR acknowledges that the installation of a traffic signal or a roundabout would reduce the Project's impact at this location to a less than significant level. *Id.* at 10-42. It further explains that Caltrans does not support such a project because of the steep grade on SR 267 at this location and the resulting potential of rear-end collisions, especially in snowy conditions. *Id.* This raises the obvious question: If it is not safe to install a traffic signal or a roundabout, how can it possibly be safe to allow Project traffic to enter the highway from a stop sign, with through traffic on SR 267 moving at free-flow speeds of 55 – 60 miles per hour? Whereas the DEIR expresses concern regarding potential rear-end collisions, vehicles turning onto SR 267 from a stop will be subject to broadside collisions, which are generally more severe than rear-end collisions. This is clearly a significant impact related to "a substantial increase in hazards due to design features," which is not acknowledged in the DEIR. *Id.* at 10-36. The DEIR must be revised to evaluate this serious impact and identify feasible mitigation, such as utilization of an alternate access route to the Project.

8. The DEIR Omits an Analysis of the Project's Construction-related Transportation Impacts.

The DEIR states that Project construction would generate a substantial amount of vehicular trips—construction-related employees alone would make 424 trips each day.³

³ According to the MRO Report, the DEIR appears to substantially underestimate the amount of construction-related traffic that would be generated by the Project. For example, the document assumes an elevated vehicle occupancy (1.3 persons per vehicle) when available literature would suggest the vehicle occupancy rate would actually be

Id. All of these employees would arrive during the a.m. peak hour and 75% would depart during the p.m. peak hour. *Id.* Despite this substantial number of construction worker vehicles that would be traveling on highly-congested SR 267, the DEIR does not actually analyze how this construction-related traffic would affect nearby roads and intersections. Instead, it asserts that any impacts would be temporary. CEQA requires analysis of temporary impacts. CEQA Guidelines § 15126.2(a) (agency must analyze both short- and long-term impacts). Construction of the Project would likely result in lane closures, rerouting of traffic, delivery of materials, hauling of excavated material, and construction employees commuting to and from the job site. These activities would impact nearby SR 267 and nearby intersections, yet the document fails to identify the specific locations where these delays would occur or to estimate their duration.

The DEIR looks to a future traffic construction mitigation plan to conclude that the Project's construction-related impacts would be mitigated to less than significant levels. *Id.* But this deferral of mitigation also violates CEQA. *See* CEQA Guidelines § 15126.4(a)(1)(B) ("Formulation of mitigation measures should not be deferred until some future time."); *Communities for a Better Env't*, 184 Cal.App.4th at 93. The DEIR identifies certain items that would be included in the traffic plan, yet the items are vague, unenforceable and seemingly incapable of lessening the Project's significant impacts. For example, the construction plan would include guidance on the number and size of construction trucks and would identify the location of staging areas and employee parking. DEIR at 10-35. There is no indication that these measures would do anything to reduce the Project's significant construction-related traffic impacts. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. CEQA Guidelines § 15126.4(a)(2). The DEIR thus provides no substantive mitigation for the Project's significant construction-related traffic impacts. The revised DEIR should analyze and mitigate the Project's construction-related traffic impacts.

9. The DEIR Fails to Adequately Analyze or Mitigate the Project's Cumulative Transportation Impacts.

An adequate analysis of a project's cumulative traffic impacts must necessarily begin with a thorough and accurate analysis of the Project's impacts. As discussed previously, the Project-specific traffic analysis suffers from serious flaws. Because the

much closer to 1.15 persons per vehicle. The DEIR also assumes that only *one* truck haul load per day would be needed to construct over 100 residential units and 34,500 square feet of retail/commercial uses. *See* Exhibit 7 at 23, 24.

DEIR substantially underestimates the magnitude of the project-specific impacts, it also underestimates the Project's cumulative impacts. The County must first revise the Project-specific analysis before it can reevaluate cumulative transportation impacts.

The DEIR also fails to adequately evaluate the Project's cumulative safety-related impacts. As with the Project-specific analysis, the DEIR focuses exclusively on chain controls and concludes, incorrectly, that any impacts would be less than significant. DEIR at 10-46. The closest the DEIR comes to acknowledging the effects of other projects is the following sentence: "Future nearby projects could result in additional cars entering and existing SR 267..." *Id.* The DEIR makes no attempt to evaluate the safety of motorists (or bicyclists) or emergency vehicles traveling along, or trying to access SR 267.

The DEIR also errs in its approach to mitigation for the Project's cumulative impacts. For impacts to intersections along SR 267, the DEIR asserts the applicant would pay traffic impact fees to improve roads within the County. DEIR at 10-41, 10-42. For all of the intersections except the Project Access Road intersection, the DEIR asserts the payment of fees would reduce impacts to a less than significant level. *Id.* For the reasons discussed previously, there is no evidence that the payment of fees would reduce these impacts. Consequently, the DEIR fails to meet CEQA's basic requirements.

D. Errors in the Transportation Analysis Result in Flaws in the DEIR's Analysis of Air Quality and Greenhouse Gas Emissions.

Certain of the analyses in the DEIR's air quality and greenhouse gas emissions/climate change chapters are based upon information developed for the transportation and circulation analysis. For example, the air quality and greenhouse gas analyses state that emissions were estimated using vehicle trips and vehicle miles traveled ("VMT"). *See, e.g.,* DEIR at 11-12, 11-18, 12-10. Yet, a careful review of the DEIR does not reveal the amount of VMT that would be generated by the Project. Nor does the DEIR provide any documentation of the assumptions and procedures employed in developing any VMT estimates. Moreover, for the reasons discussed previously, the Project's VMT estimate (whatever it is) is inaccurate because the DEIR underestimates the Project's trip generation, particularly with respect to internal trips at the proposed Project. Correcting those errors will result in higher VMT values. The revised DEIR must identify VMT. The process used to derive VMT must be explained so that the public and decision-makers are able to judge the validity of this critical parameter.

E. The DEIR Fails to Adequately Evaluate the Project's Contribution to Climate Change.

The DEIR's analysis of greenhouse gas ("GHG") emissions attributable to the Project is deficient. The document's conclusion that the Project—which consists of a large new residential subdivision and more than 30,000 square feet of commercial development in an undeveloped area—would meet the State's GHG reduction goals in 2020 is completely lacking in substantial evidence. The document provides no data or information to substantiate that a new development with estimated emissions of 35,865 metric tons of carbon dioxide ("CO₂") each year is doing its fair share to meet GHG reduction targets. Moreover, the DEIR relies on an inappropriate way to measure the significance of the Project's impacts, underestimates the Project's GHG emissions, ignores that the Project conflicts with various relevant GHG-reduction policies, and uses other flawed analyses. Because the DEIR concludes that the Project would not have a significant climate-related impact in 2020, it fails to adopt feasible mitigation for the crucial first phase of development. The DEIR's proposed mitigation for after 2020 is likewise deficient. Because the Project's impact would be significant, the DEIR must identify and include adequate mitigation measures to reduce or avoid the Project's contribution to global warming.

1. The DEIR's Significance Threshold for Measuring GHG Emissions Is Flawed.

Determining whether or not a project may result in a significant adverse environmental effect is a key aspect of CEQA. CEQA Guidelines § 15064(a) (determination of significant effects "plays a critical role in the CEQA process"). Under CEQA, agencies use thresholds of significance as a tool for judging the significance of a Project's impacts. CEQA Guidelines §§ 15064.4, 15064.7. The Supreme Court has recently weighed in on appropriate thresholds for GHG emissions. In *Center for Biological Diversity v. California Department of Fish and Wildlife* ("CBD"), the Court affirmed reliance on compliance with AB 32's reduction goals as a valid threshold of significance when used "as a comparative tool for evaluating efficiency and conservation efforts." 2015 WL 7708312, at *10 (Nov. 30, 2015).

Here, the DEIR does not rely strictly on compliance with AB 32 as a threshold. Rather, the DEIR claims it is relying on a so-called two-tiered threshold standard set by the Placer County Air Pollution Control District ("PCAPCD") to reach its finding of no significance for 2020. *See* DEIR at 12-9, 12-14, 12-15. However, that GHG threshold, which was developed in collaboration with the Sacramento Metropolitan Air Quality

Management District (“SMAQMD”) and is set forth in SMAQMD’s CEQA Guide, says nothing about a two-tiered standard. Rather, it recommends a bright line operational threshold of significance of 1,100 metric tons of CO₂ per year, which the Project far exceeds with its anticipated emissions of 35,865 metric tons of CO₂ per year. Exhibit 10 at 6-10 (SMAQMD CEQA Guide (Nov. 2014)); DEIR at 12-13.

Regardless of other assessments in the DEIR, the DEIR must consider the exceedance of the 1,100 metric tons of CO₂ per year as evidence of a significant impact. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met”). For example, in a November 2013 EIR prepared for the Northstar Mountain Master Plan, the County found that the project at issue there—which would generate only a fraction of the annual CO₂ emissions of the present Project—would result in a significant impact on global climate change and required mitigation. Exhibit 11 at 16-20 – 16-21 (Northstar Mountain Master Plan DEIR, Chapter 16). The problem of climate change has not been solved in the last year and a half. Therefore, there is no logical rationale why the current Project would not similarly have significant GHG emissions in 2020 requiring mitigation. The County may not hide behind a self-serving threshold to avoid this significant impact.

The DEIR claims PCAPCD (citing a “personal communication”) recommends a second layer of the threshold to determine whether a project complies with the Air Resources Board Scoping Plan implementing AB 32’s goals for 2020. DEIR at 12-9. However, the DEIR provides no evidence to support this assertion, nor to explain why the Project would comply with the Scoping Plan by achieving a 21.7 percent reduction from a “no action taken” (“NAT”) or “business as usual” (“BAU”) scenario. *Id.* As the Supreme Court explains in *CBD*, the Scoping Plan’s statewide goal (which, as set forth below, is not necessarily applicable to new residential projects) is for a 29 percent reduction from BAU by 2020. *CBD*, 2015 WL 7708312, at *4. Therefore, even if direct application of the Scoping Plan’s state-wide efficiency goal were applicable here, which it is not, the Project would exceed the threshold, because it only provides a 23.2 percent reduction over BAU. DEIR at 12-4.

2. Even If the County Could Use Its “Business As Usual” Approach, the DEIR Fails to Provide Substantial Evidence for Its Application of that Approach.

Even if the 21.7 percent below BAU were a legitimate means for determining significance, which it is not, there is no evidence supporting the DEIR’s assumption that new development that is 21.7 percent below BAU will help achieve California’s emission reduction objectives. The DEIR’s significance determination mistakenly presumes, without any support, that emission reduction expectations are the same for existing and new sources of emissions to meet AB 32 targets. The Supreme Court has rejected this presumption. *CBD*, 2015 WL 7708312, at *10-13. Indeed, the Scoping Plan is silent as to the obligation of new development to mitigate GHG emissions under CEQA. Contrary to the DEIR’s naked assumptions, as opportunities for reducing emissions from the built environment are more limited and present greater challenges, expectations for minimizing emissions from new development, through energy efficiency, renewables, increased density, mixed use and siting close to transit, should be greater than that of existing development, where emission reduction opportunities may be more constrained. *Id.* at *11.

As recognized by the California Air Pollution Control Officers Association (“CAPCOA”) in its CEQA and Climate Change White Paper, “greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources.” Exhibit 12 (CAPCOA, CEQA & Climate Change) at 33.⁴ Similarly, as one of its reasons for finding that a proposed 29 percent below BAU threshold of significance “will not withstand legal scrutiny,” the Attorney General noted that “it seems that new development must be more GHG efficient than this average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit.” Exhibit 13 (Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA, November 4, 2009) at 3. Moreover, the densities in the Project area may be different than statewide density averages, thereby skewing the analysis. *CBD*, 2015 WL 7708312, at *12.

⁴ As explained on its website, CAPCOA “is a non-profit association of the air pollution control officers from all 35 local air quality agencies throughout California. CAPCOA was formed in 1976 to promote clean air and to provide a forum for sharing of knowledge, experience, and information among the air quality regulatory agencies around the State.”

Accordingly, there is no scientific or factual basis supporting the DEIR's unsubstantiated opinion that new development that is 21.7 percent below a hypothetical BAU baseline will not interfere with California's near-term emission reduction objectives. *See* Pub. Res. Code § 21082.2(c) (“[a]rgument, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly inaccurate or erroneous” does not constitute substantial evidence); *see also* *CBD*, 2015 WL 7708312, at *12; *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”). By simply assuming that AB 32 emission reduction targets would be achieved because Project emissions are purportedly 23.2 percent below a hypothetical “business as usual,” the EIR's significance criteria does not reflect “careful judgment . . . based to the extent possible on scientific and factual data.” CEQA Guidelines § 15064(b).

While it is important to assess the Project's consistency with the goals of AB 32, to reduce statewide GHG emissions to 1990 levels by 2020 through maximum economically and technologically feasible measures without limiting economic growth (*see* Health & Saf. Code §§ 38501, 38550), the statewide BAU approach is inappropriate for a proposed new development project. *See* CEQA Guidelines § 15064.4(b)(3)). As explained by the Supreme Court, the DEIR must provide an appropriate efficiency goal for new development, backed by substantial evidence. Alternatively, the DEIR could either use the bright line GHG emissions threshold provided by PCAPCD of 1,100 metric tons of CO₂ per year as discussed above, or compare the Project's projected emissions in 2020 with those in the Project area in 1990. *See* Exhibit 14 at 4.8-25 (SANDAG EIR taking this approach). If the projected emissions would exceed those in the Project area in 1990, this should be considered a significant impact. *See id.*

3. The DEIR's Analysis of Post-2020 GHG Emissions is Deficient.

Rather than conduct a thorough analysis, the DEIR dubs the Project's GHG impacts after 2020 as “potentially significant” and largely defers analysis to a later date. This approach is unacceptable. In addition to properly analyzing consistency with the reduction goals set under AB 32 as described above, the DEIR must analyze the Project's consistency with the following plans and policies for GHG reduction:

- The Metropolitan Transportation Plan/Sustainable Communities Strategy;
- Executive Order S-3-05; and
- Executive Order B-30-15.

(a) The Metropolitan Transportation Plan/Sustainable Communities Strategy

SACOG's MTP/SCS is an applicable plan for GHG reduction, and thus the DEIR must analyze the Project's consistency with this plan. The MTP/SCS was adopted to comply with the requirements of SB 375 and covers the Project area. SB 375 sets regional reduction targets for 2020 and 2035, both of which are relevant to full build-out of the Project. Furthermore, SMAQMD's CEQA Guide specifically identifies the MTP/SCS as an applicable plan that should be analyzed in a CEQA analysis for a project. Exhibit 10 at 6-10.

The DEIR recognizes the existence of the MTP/SCS and its target of 9 percent per capita reduction in vehicle emissions by 2020 and 16 percent per capita reduction by 2035, as compared to 2012 emissions. DEIR at 12-15. However, the DEIR claims "this target cannot be directly translated into an overall threshold, given it is geared toward GHG emissions from transportation only." *Id.* This is no reason not to address the Project's consistency with the MTP/SCS. To begin, the DEIR could conservatively assume that the per capita reduction targets should apply to the Project as a whole, and determine whether the Project would meet these goals in 2020 and 2035. It is clear that the Project would not. Further, even if the DEIR focused on transportation-related GHG emissions, the analysis would be useful, as the DEIR estimates that vehicle trips account for 10,598 metric tons of the Project's annual CO₂ emissions, or almost 30 percent of the Project's total GHG emissions. This total is greatly underestimated (see discussion *supra* and *infra*), but even so demonstrates the value in analyzing the necessary reduction in transportation emissions. Thus, the DEIR can and should analyze the Project's consistency with the thresholds set in the MTP/SCS.

(b) Executive Orders S-3-05 and B-30-15

Executive Order ("EO") S-3-05 also sets forth state policy related to GHG reductions, including that it is the policy of the state to reduce GHG emissions to 80 percent below 1990 levels by 2050. EO B-30-15, signed by the Governor in 2015, establishes a new interim target to reduce GHG emissions by 40 percent below 1990 levels by 2030. The DEIR acknowledges these orders, but never analyzes the Project's consistency with them.

The DEIR claims it would be speculative to analyze consistency with long-term goals. DEIR at 12-15 – 12-16. Yet, other agencies have been readily able to utilize the Executive Orders as thresholds of significance for long-term projects. For example,

likely in response to a Court of Appeal decision on the subject, the San Diego Association of Governments (“SANDAG”) utilized the following threshold of significance in the EIR for its most recent Regional Transportation Plan/Sustainable Communities Strategy: “GHG-4: Be inconsistent with the State’s ability to achieve the Executive Order B-30-15 and S-3-05 goals of reducing California’s GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.” Exhibit 14 at 4.8-33; *see Cleveland National Forest Foundation v. SANDAG* (Nov. 24, 2014) 180 Cal.Rptr.3d 548 (Review Granted, 343 P.3d 903).

The SANDAG RTP/SCS EIR evaluated the project’s impacts by calculating a 40 percent and 80 percent reduction from the region’s 1990 emissions and utilizing that as a target reference point for the RTP. It then compared the region’s expected GHG emissions in the years 2035 and 2050 to the emissions that would be necessary to meet the EO trajectories. It included charts showing that the Plan will not come close to meeting the EO goals. It concluded: “Because the total emissions in the San Diego region of 25.5 MMT CO₂e in 2035 would exceed the regional 2035 GHG reduction reference point of 14.5 MMT CO₂e (which is based on EO-B-30-15 and EO-S-3-05), the proposed Plan’s 2035 GHG emissions would be inconsistent with state’s ability to achieve the Executive Orders’ GHG reduction goals. Therefore, this impact (GHG-4) in the year 2035 is significant.” Exhibit 14 at 4.8-34. It has a similar conclusion for the year 2050 goal. This analysis is easily adaptable to the proposed Project’s emissions.

The DEIR’s failure to compare the Project’s emissions—which would continue for decades if not in perpetuity—against long-term GHG emission reduction policies such as those in EO S-3-05 and B-30-15 is unlawful. While the DEIR recognizes it will likely be unable to meet future targets, it should not defer analysis and mitigation until a later date. The County has access to state-wide reduction goals, which reflect the levels that climate scientists have concluded are needed to provide a 50-50 chance of limiting global average temperature rise to 2°C above pre-industrial levels. The DEIR should reveal the severity of the impacts of adopting a long-term development plan that contravenes these reduction goals. In other words, the public should understand just how far the Project would set the area off course from state-wide reduction goals.

4. The DEIR Underestimates the Project’s GHG Emissions.

As described in the comments on the DEIR’s transportation analysis (*see supra* section III.C), as well as in the MRO Report, the DEIR does not accurately analyze the Project’s transportation impacts. Because the GHG analysis relies on this information, it is similarly flawed. For example, the GHG analysis states that emissions were estimated

using vehicle trips and vehicle miles traveled (“VMT”). *See, e.g.*, DEIR at 12-10. However, as explained, the DEIR greatly underestimates the Project’s trip generation, particularly with respect to internal trips at the proposed Project. Compounding the problem, a careful review of the DEIR does not reveal the amount of VMT that would be generated by the Project. Nor does the DEIR provide any documentation of the assumptions and procedures employed in developing any VMT estimates. In any event, the Project’s VMT estimate (whatever it is) is inaccurate due to the underestimates of the Project’s trip generation. Correcting those errors will result in higher VMT values. Because the DEIR underestimates vehicular trips and VMT, it also underestimates the Project’s transportation-related GHG emissions.

Finally, we can find no indication that the GHG emissions inventory includes emissions from air travel. Inasmuch as the applicant intends to ensure that the Project is a second home destination community that will take advantage of recreational opportunities, it is likely that some percentage of visitors would arrive via air. The EIR must account for the emissions associated with this air travel.

The County must revise its GHG analysis to include an accurate and thorough accounting of the Project’s GHG emissions.

5. The DEIR Fails to Analyze All Feasible Mitigation.

Because the DEIR concludes that the Project’s GHG-related impacts will be less than significant in 2020, the DEIR does not recommend any immediate mitigation measures related to GHG impacts. Further, the DEIR punts on the issue of mitigation after 2020, finding it will only be necessary if a “comparison between No Action Taken and the subdivision as proposed scenarios” reveals that the Project does not achieve or exceed reduction targets. DEIR at 12-16. However, if the DEIR had properly utilized and applied GHG thresholds as discussed above, it would demonstrate that the Project’s actual GHG emissions would cause a significant impact throughout the life of the Project, which should be mitigated in conjunction with Project approval. *See* Exhibit 10 at 6-10 (SMAQMD’s CEQA Guide stating, “[f]or projects that exceed the District’s threshold of significance, lead agencies shall implement all feasible mitigation to reduce GHG emissions.”). An agency may not defer mitigation except under specific circumstances not present here. CEQA Guidelines § 15126.4(a)(1)(B). Even if the DEIR could defer mitigation (which it cannot), the standard for future mitigation is not supportable because it uses the same flawed BAU approach as described above.

The County can and should adopt all feasible mitigation for the Project's known and significant GHG impacts at the time of Project approval (if the Project is approved). The DEIR sets forth several mitigation measures, including making GHG policies in the Specific Plan mandatory rather than "encouraged" or otherwise optional. *See* DEIR at 12-17. The DEIR provides no rationale why this mitigation could not be adopted if/when the Project is approved, and there is none.

In addition, numerous agencies and organizations have documented other types of mitigation that are appropriate and feasible for residential and commercial development projects. The County should adopt all feasible mitigation to reduce the Project's true GHG impacts. As just a few examples, the EIR should evaluate the following additional measures for the Project:

- Use low or zero-emission vehicles, including construction vehicles.
- Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.
- Create local "light vehicle" networks, such as neighborhood electric vehicle ("NEV") systems.
- Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles (e.g., electric vehicle charging facilities and conveniently located alternative fueling stations).
- Provide zero emission shuttle service to public transit and Project buildings/amenities.
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Provide information on energy management services for large energy users.
- Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.
- Limit the hours of operation of outdoor lighting.
- Provide education on energy efficiency.

- Reduce the use of pavement and impermeable surfaces.

There are additional guidance documents that provide a full suite of GHG mitigation measures. The County must review and consider all of the measures listed in these documents in a recirculated EIR, and it must adopt all feasible measures in order to reduce the Project's impacts to a level below significance, or as much as feasible:

- Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: <http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.
- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.
- Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

These documents, in addition to lists of mitigation measures and design features maintained by other organizations cover a wide range of topics, including (1) land use, urban design, transportation measures; (2) shade and sequestration, including using trees to shade buildings; (3) energy conservation; (4) water conservation; and (5) carbon offset credits. The County must consider all of these types of mitigation measures for the Project's significant GHG impacts.

Finally, when the County revises and recirculates the DEIR's GHG impacts analysis, the revised document must also include a full comparison of the Project's GHG-related impacts to the same impacts of the alternatives. See *infra* section IV. When it does so, the County may be inclined to adopt an alternative with far less GHG emissions. This could have numerous benefits, including maintaining the character and values of this bucolic mountain community, reduced VMT (and concomitant reductions in not only GHG emissions, but also other air pollutant emissions), preservation of wildlife habitat, and less traffic on local and regional roads.

F. The DEIR Fails to Adequately Analyze or Mitigate Hazards Relating to Wildfire and Emergency Evacuation and Response.

As the past several years have demonstrated, wildfires dramatically alter the environment in California, pose a tremendous risk of injury and death, and cause billions of dollars of damage to buildings and infrastructure. The threat of wildfire is increasing. Mega-fires like the 2013 Rim Fire are becoming more common in the western United States, and the Sierra Nevada in particular is at risk.⁵ Decades of fire suppression, a changing climate, and a shortage of forest restoration efforts have led to extremely unhealthy conditions in many of our forests. Combine those conditions with a record drought and you have frightening conditions for increased likelihood of disaster in the Sierra. In 2014, the King Fire burned nearly 100,000 acres and stopped just 8 miles short of the crest of the Sierra Nevada.⁶

The environmental destruction wrought by wildfires is exacerbated by development in the Wildland-Urban Interface ("WUI"), which unwisely places people and structures directly in the line of fire. More and more people are living in the WUI, which poses the most danger for wildfire conditions because of the complex mix of fuels (vegetation), topography (hills), accessibility (roads), structures (homes), and human activity. The proposed Project is located within the WUI.

Martis Valley is considered a "fire environment" because of the climate, steep topography, and high level of available fuel. DEIR at 18-2. Development on the Project site would be located within a Very High Fire Hazard Severity Zone ("FHSZ"). FHSZs

⁵ <http://www.sierranevada.ca.gov/press-room/sierra-wildfire-wire/introduction>, accessed July 1, 2015.

⁶ <http://www.moonshineink.com/news/tahoe-feels-effects-king-fire>, accessed July 10, 2015.

are based on an evaluation of fuels, fire history, terrain, housing density, and occurrence of severe fire weather and are intended to identify areas where urban fires could result in catastrophic losses. *Id.*

Access to the Project site is via a single road (SR 267), which connects I-80 on the north to SR 28 on the south. Inadequate access, e.g., long roads with a single access point, significantly contributes to the inability to effectively evacuate residents during a disaster and provide necessary emergency access for fire, ambulance, or law enforcement personnel. The mixture of all of these factors creates the perfect situation for a serious threat to the safety of both the public and firefighters as well as the area's natural lands.

Because of this extreme risk, one would expect that the DEIR would thoroughly describe the history of wildfires in the region, examine the potential for the proposed Project to exacerbate these hazardous conditions, and identify comprehensive measures to reduce this risk. Unfortunately, the DEIR does not undertake these necessary tasks.

1. The DEIR Fails to Adequately Describe the Existing Wildfire Conditions in the Region.

CEQA requires an EIR to include a description of the physical conditions in the vicinity of the project from both a local and a regional perspective. Here, the DEIR omits the critical information required to understand the severity and extent of the wildfire risk that would occur upon implementation of the proposed Project.

At a minimum, the DEIR should have addressed the following questions pertaining to the region's recent wildfire history:

- How many major wildland fires have occurred in the region within the last decade? How many structures were lost? How many acres of land were consumed? What was the financial cost of these fires?
- Was there adequate fire response for these wildland fire events? Were additional fire fighters recruited from across or outside the State? What was the standard response time for wildland events? Was there sufficient water to fight the wildland fires?
- What percentage of the lands in the region, i.e., conifer forests that historically experienced frequent but low-intensity surface fires, are now

predisposed to high-intensity, high-severity crown fires (because of the greater infrequency of fires due to greater fire suppression efforts)?

These are just a few of the questions that require answers so that the public and decision-makers are able to evaluate the severity of the risk associated with the proposed Project's intensification of land uses within a location that experiences very high fire hazard risks.

2. The DEIR Fails to Provide An Adequate Analysis of the Project's Potential to Interfere With An Emergency Evacuation Plan.

As discussed previously, access to the Project site would be via a main entrance road from SR 267. DEIR at 18-19. SR 267 is identified as a major evacuation route in the Placer Operational Area East Side Emergency Evacuation Plan. *Id.* The vast majority of SR 267 would operate at deficient levels of service ("LOS"), i.e., LOS E as a result of the Project. *Id.* at 10-30. Under cumulative conditions, every stretch of SR 267 would operate at gridlock conditions, i.e., LOS F. *Id.* at 10-44. Many of the intersections along SR 267 would also operate at LOS F, under Project-specific and cumulative conditions. *Id.* at 10-27, 10-39.

Notwithstanding these severely constrained conditions, the DEIR concludes that neither construction nor operation of the Project would obstruct an evacuation route or interfere with an emergency response of an evacuation plan. DEIR at 18-19. The DEIR thus concludes that any such impacts would be less than significant. *Id.* The DEIR lists several reasons why the impacts would be less than significant. Each of these reasons is unavailing. First, the DEIR asserts that the volume of traffic caused by the Project would be lower than traffic volumes assumed in the Martis Valley Community Plan thereby suggesting that any impacts would be nominal. Comparing the proposed Project's impacts to those that would occur under the existing Community Plan is considered a "plan-to-plan" analysis, an approach CEQA specifically prohibits. *Communities for a Better Environment*, 48 Cal.4th at 321.

Second, the DEIR asserts that the Project would not cut off or otherwise modify any existing evacuation routes. DEIR at 18-20. The DEIR provides no facts to support this statement. Moreover, there is ample evidence in the DEIR that contradicts this assertion. As discussed previously, SR 267 would operate under gridlock conditions, i.e., LOS F during summer and winter peak hours. *Id.* at 10-41. This traffic would occur along SR 267, the single means of ingress for emergency vehicles and egress for the

Project's residents. Despite this fact, the DEIR fails to include even a superficial evaluation of the effects of this extreme traffic congestion and the ability of residents to evacuate. Nor does the DEIR disclose the effect on emergency response times during periods of gridlock on SR 267.

Third, the DEIR asserts that evacuation would be possible via the emergency vehicle access ("EVA") road, which would connect to SR 267 at Brockway Summit. DEIR at 17-17. Yet this EVA would be completely ineffective as it would send motorists to an intersection that is projected to operate at LOS F during the summer under "cumulative plus project conditions." *Id.* at 10-39. Directing residents to this location during a wildfire is simply absurd.

Fourth, the DEIR suggests that compliance with a general plan policy (Policy PSU-25), which calls for the applicant to prepare a Fire Protection Plan (DEIR at 18-20), would reduce any impacts to a less than significant level. While the preparation of a fire plan may help to minimize the potential risks associated with inadequate emergency access, it would not eliminate the threat to public safety that would result from allowing development on lands known to be prone to extreme wildfire risk. Moreover, CEQA allows a lead agency to defer mitigation only when: (1) an EIR contains criteria, or performance standards, to govern future actions implementing the mitigation; (2) practical considerations preclude development of the measures at the time of initial project approval; and (3) the agency has assurances that the future mitigation will be both "feasible and efficacious." *Communities for a Better Env't*, 184 Cal.App.4th at 94-95 ("CBE"); *San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 669-71; CEQA Guidelines § 15126.4(a)(1)(B). Here, the DEIR meets none of these requirements.

Finally, the DEIR looks to a "preliminary evacuation plan" included in the Specific Plan. DEIR at 18-19. Yet this evacuation plan is nothing more than a map showing roads, which are identified as "fire & life safety access routes." *See* Specific Plan Appendix D Evacuation Route. This one-page map does nothing to ensure that the Project would not interfere with emergency access. In fact, it confirms that all emergency access routes lead to SR 267.

Consequently, in violation of CEQA, the DEIR lacks the evidentiary basis to conclude that risks relating to wildfire would be less than significant. *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 79. The CEQA Guidelines state that "mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." CEQA Guidelines § 15126.4(a)(2).

In sum, the Project would clearly exacerbate existing wildfire hazards in the region. The DEIR must be recirculated to adequately disclose and mitigate this significant impact.

G. The DEIR's Analysis of the Project's Impacts on Public Services Is Flawed.

As part of its CEQA analysis, an EIR looks at whether the proposed project would require expansion of emergency services that would require construction leading to environmental impacts. CEQA Guidelines, Appx. G, part XIV. Here, the DEIR's analysis of the Project's potential impacts on emergency services like fire, emergency medical, and police services, severely underestimates the Project's potential demand on these services. First, the DEIR bases its analysis of impacts to fire and emergency medical services on the assumption that there would be an "average permanent population of 500 people for the proposed project." DEIR at 17-17. Based on this assumed population of 500 and relying on a rate of 41 emergency incidents per year per 1,000 people, the DEIR estimates that the Project would increase emergency calls to the Northstar Fire Department by about 20 calls per year. *Id.* The DEIR concludes that an increase of 20 calls per year would not "cause service level concerns." *Id.*

The DEIR's analysis errs because it does not take into account the Project's wildfire risks, described above. Further, the DEIR is flawed because it assumes many of the Project's proposed 760 homes will be sitting perpetually empty. In reality, as the DEIR repeatedly recognizes, the Project would house around 1,900 residents when the Project's dwellings are fully occupied. *See, e.g.*, DEIR at 17-16. Indeed, on weekends and during holidays, visitors are likely to fill dwellings to capacity in popular areas like Tahoe. Accordingly, it is essential that the EIR consider whether the area's emergency services would be able to adequately serve both existing demands and the Project's demands *when demand is highest*—not just during slow periods when only the Project's year-round occupants would be in residence. Further, because the Project's population would likely fluctuate significantly—between weekdays and weekends, holidays and non-holidays—an estimate of average number of calls annually is unhelpful for this situation.

To accurately assess the Project's potential impacts, the DEIR must revise its analysis to determine whether the existing emergency services in the area can support the average number of daily calls from the Project when the population, including transient residents and visitors, is at its highest. Emergency services are not something that can be put off to a later date when staffing becomes available.

Second, the DEIR fails to provide a sufficient basis for its analysis of impacts on police services. The DEIR reports that the Placer County Sheriff stated that if the Project would result in 1,900 permanent residents, the Sheriff's office would need to add another officer to its staff. DEIR at 17-20. However, the DEIR goes on to explain that the Sheriff stated "if only a portion of the buildout population are full-time residents this would result in minor effects on law enforcement services." *Id.* The DEIR relies on these statements to jump to the conclusion that with 380 permanent residents and 1,520 seasonal or transient residents, the projected increase of law enforcement demands would not require an extra officer. *Id.*

The DEIR provides no reasoning in support of this conclusion. To support its conclusions, the DEIR must estimate how frequently the population of the development would be at different levels. The DEIR must then explain what sort of demands the Project would have on police services at different levels of occupancy. It must also identify at what point higher occupancy rates would trigger a need for more police services. The DEIR must provide substantial evidence, such as supporting data, to back its assertions and assumption. Merely dismissing a certain amount of the population as "transient" does not obviate the need for the EIR to disclose the impacts of bringing that population to the area—even if only temporarily.

The DEIR must be revised to disclose the Project's potential impacts on fire, emergency medical, and police services at times—like on weekends and holidays—when the Project would be filled near or at capacity. It should also explain how frequent these periods of heightened demand would be. Only with this information will the County be able to determine if the Project may require expansion of emergency services in the area, with any attendant environmental impacts.

H. The DEIR's Assessment of the Sewer System's Capacity Conflicts with the County's Earlier Analysis.

The DEIR's conclusions regarding the Project's contribution to cumulative impacts on the area's sewer infrastructure are based on information that is inconsistent with the County's earlier conclusions on the same issue. Specifically, the DEIR states that the Truckee River Interceptor ("TRI")—a key component of the sewer system that connects feeder sewer lines to the water treatment plant—"is designed to address buildout of its service area which includes cumulative projects located within the Town of Truckee and Placer County." DEIR at 16-31. The cumulative projects that the DEIR reports that the TRI is supposed to be able to handle include the Village at Squaw Valley Project. *Id.*

However, this conclusion is inconsistent with the evaluation of the TRI's capacity set forth by the County in the recent Village at Squaw Valley Specific Plan DEIR. In that document, the County admits that the ability of the TRI to accommodate the Village at Squaw Valley's peak flows is uncertain, and that project could overwhelm the TRI. Exhibit 9 at 14-36 (Placer County, Village at Squaw Valley Specific Plan EIR (May 2015)). This uncertainty conflicts with the MVWP DEIR's statement here that the TRI can definitely accommodate all planned projects, including the Village at Squaw Valley. In light of this inconsistency, the DEIR must either be revised to disclose the uncertainty regarding the TRI's capacity, or explain why the County's conclusions about the TRI's capacity have changed over the last six months.

I. The DEIR's Description of the Environmental Setting for Water Supply Does Not Take Into Account the Ongoing Drought and Climate Change.

The DEIR's description of the water supply for the Project does not present an accurate picture of existing and future conditions in the Martis Valley and surrounding region. Specifically, the DEIR makes scant mention of current drought conditions in California or the likely effects of global climate change on water resources. The ongoing drought since 2012 caused 2014 to be one of the driest water years in California history, and 2015 has shaped up to be even drier. *See* Exhibit 15 (P. Martineau, California Water Year 2014 Among Driest Years on Record (Sep. 30, 2014)); *see also* U.S. Geological Survey, The California Drought: Annual Runoff Estimate for California, <http://ca.water.usgs.gov/data/drought/runoff.html> (showing 2015 runoff estimate as lower than 2014) (last visited Dec. 10, 2015).

This ongoing mega drought in California was partially induced by climate change and is likely to extend into the future. *See* Exhibit 16 (T.R. Ault, et al., Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data (Oct. 15, 2014)) at 7545. A recent study of droughts in California concluded that anthropogenic climate change will continue to cause the co-occurrence of warm and dry periods in the State, which in turn will exacerbate water shortages and groundwater overdraft. *See* Exhibit 17 (N.S. Diffenbaugh, et al., Anthropogenic Warming Has Increased Drought Risk in California (Mar. 31, 2015)) at 3935. Indeed, scientists have determined that climate change has likely intensified the current California drought by 15 to 20 percent, and droughts are almost certain to keep getting worse. *See* Exhibit 18 (A. Park Williams, et al., Contribution of Anthropogenic Warming to California Drought During 2012-2014 (Aug. 31, 2015)) at 8; *see also* Exhibit 19 (Justin Gillis, California

Drought Is Made Worse by Global Warming, Scientists Say, *N.Y. Times* (Aug. 20, 2015)).

The DEIR itself acknowledges that droughts and climate change will have an effect on snowpack in the Sierra Nevada, and snowpack is a major source of groundwater recharge in the Martis Valley. The DEIR admits that snowpack in the Sierra Nevada is expected to decrease by up to 40 percent of its historic average by 2050. DEIR at 12-2. Yet—despite overwhelming scientific evidence of the on-going drought crisis and its likelihood of continuing and getting worse—the DEIR barely mentions the current drought. Indeed, the studies upon which the DEIR relies are generally from before 2013—before the State was in an historic drought situation. For example, the DEIR’s information on the supplies in the Martis Valley Groundwater Basin is from a 2011 study—before the drought. *See* DEIR at 16-4. And the Martis Valley Groundwater Management Plan, on which the DEIR and its Water Supply Assessment (“WSA”) rely, is based on data from 2011 and earlier—again, before the major drought the State is experiencing now. *See* DEIR at 16-5; *see also* Martis Valley Groundwater Management Plan, at 2-4, 2-5, 2-7, 2-25 (April 2013), *available at* <https://www.pcwa.net/files/docs/enviro/MartisValleyGMPFinal07.22.2013.pdf>.

The DEIR’s omission of critical information about California’s drought crisis could skew its conclusions. Also, it is impossible for the public and decision-makers to make informed decisions about the proposed Project without adequate information about the drought and this environmental context in mind. Even if in the past there has been plenty of groundwater in the area, as the DEIR claims, the drought raises serious questions, such as how much groundwater is in the area now? How long will the groundwater last? Will there be adequate snow-pack in the coming years or decades to provide sufficient groundwater recharge to supply this new development? It is perplexing that when even the DEIR itself recognizes that “[p]eriods of drought can have substantial adverse impacts on waters supplies,” the DEIR and the WSA nonetheless make no effort to describe what the region’s water supplies will look like if the mega drought in California continues.

Another problem with the DEIR’s analysis of the Project’s water supply impacts is that the WSA’s estimate of how much groundwater will be available from the wells expected to serve the Project is the same for all three scenarios the WSA is required to analyze—in a normal year, in a single dry year, and after multiple dry years. The WSA and DEIR claim that groundwater supplies would not suffer much impact from a single dry year or even from four dry years because of the large storage volume in the area, and thus would remain ever-constant. DEIR Appendix N at 6 (citing a 2011 study); *see also*

DEIR at 16-4 (citing same). However, neither the DEIR nor the WSA cites support for the unlikely conclusion that groundwater supplies would be wholly unaffected by four drought-plagued years—let alone if the supplies would remain unchanged in the face of the decade-long mega drought that scientists predict is likely in California. *See* DEIR Appendix N at 6; DEIR at 16-4.

The DEIR must be revised to give an accurate description of the water supply available to the Project, taking into account the ongoing historic drought.

J. The DEIR Does Not Adequately Analyze the Project's Impacts on Hydrology and Water Quality.

1. The DEIR Must Consider Drought and Climate Change.

The discussion above explains in detail the inadequacy of the DEIR's analysis of the Project's impacts on water supply due to its failure to take into account existing severe drought conditions and climate change. The same problems underlie the DEIR's analysis of the Project's impacts on hydrology and water quality, which do not describe the Project's environment in light of these conditions. For example, in its discussion of the area's groundwater resources, the DEIR states that "[f]rom 1990 through 2012, average [Martis Valley] basin groundwater levels have remained relatively constant." DEIR at 15-6. However, the DEIR says nothing about post-2012 groundwater levels, thus leaving the public and decision-makers without an idea of the status of the area's groundwater resources since the current extreme drought.

The DEIR also relies on the information provided by the WSA to conclude that the Project would have a less than significant impact on groundwater supplies and groundwater recharge. *See* DEIR 15-21 – 15-25. As explained above, the WSA's assessment of the Martis Valley Groundwater Basin relied on out-of-date information that did not account for the ongoing historic drought and climate change. The DEIR must revise its analysis to include consideration of these important factors.

2. The DEIR's Mitigation for the Project's Impacts on Water Quality and Hydrology is Inadequate.

The DEIR is also lacking because certain of the mitigation measures identified to lessen the Project's impacts on water quality and hydrology have potential environmental impacts of their own. However, the DEIR does not discuss the potential environmental

impacts of these measures, which CEQA requires. *See* CEQA Guidelines § 15126.4(a)(1)(D).

For example, Mitigation Measure 15-2a requires that the Applicant, to mitigate for impacts to water quality during operation, “provide for the establishment of vegetation, where specified, by means of proper irrigation.” DEIR at 15-20. However, the DEIR does not discuss where this vegetation might be located, any impacts from the planting of it, or the possible impacts of maintaining irrigation for it. Similarly, Mitigation Measure 15-5b provides that runoff retention and detention facilities will be installed to manage surface runoff, but the DEIR fails to disclose the possible environmental impacts associated with constructing those facilities. *See id.* at 15-27.

K. The DEIR’s Analysis of the Project’s Population, Employment, and Housing Impacts is Inadequate.

CEQA requires that an EIR analyze a project’s impact on population growth and the environmental impacts of any such growth. A complete analysis of population growth requires two distinct, logical steps. First, an EIR must accurately estimate the population growth that a project would cause, both directly and indirectly. Specifically, in this case, the DEIR must estimate the population growth accommodated by new housing and the number of employees that the Project would require, including whether those employees are likely to be new to the region. CEQA Guidelines, Appx. G § XII(a) (directing analysis of whether project would induce substantial population growth). An EIR also must consider the growth that a project will *indirectly* cause, whether through stimulating the local economy so that new employment opportunities draw new population or by providing infrastructure that allows new residential construction. CEQA Guidelines § 15126.2(d).

The second step in analyzing the impacts of population growth is to consider the environmental impacts of serving that estimated new population. Thus, the EIR must not only evaluate whether a project would “[i]nduce substantial population growth,” but also whether such growth would require construction of new housing. CEQA Guidelines, Appx. G § XII(a), (c). If new construction will occur, then the EIR must analyze the environmental impacts of that construction. *See, e.g., Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373. The EIR must also consider whether the new population would place demands on public services, such as fire protection, law enforcement services, or schools. CEQA Guidelines, Appx. G § XIII(a). The EIR then must consider the environmental impacts

of providing such facilities if they are necessary. *See Napa Citizens*, 91 Cal.App.4th at 373.

Here, the DEIR failed to estimate and analyze the impacts of indirect population growth that would be caused by the Project. While the DEIR identifies the Project's direct population impacts—the growth from people moving into the housing provided by the Project—it does not discuss that the Project will also *indirectly induce* additional people to move to the area, which could result in additional potentially significant environmental impacts. *See* DEIR at 6-10 – 6-11. The DEIR merely states that the Project would not create any infrastructure to accommodate any further growth. *Id.* But it fails to discuss how the Project could spur the local economy or place more demand on services, thereby indirectly causing population growth.

For example, in this case, the population increase—even a seasonal one—would almost certainly require new and expanded services and would inject new money into the local economy. A larger population would increase demand on both emergency services (discussed in section III.G) and commercial services like restaurants, grocery stores, and medical care. This increased demand could induce businesses to expand and new businesses may crop up to serve the larger population. This would require new employees and could draw new residents to the area, who would need housing. The DEIR completely omits any discussion of these ways in which the Project could indirectly induce population growth in the region or the environmental impacts of such growth, and it must be revised to do so.⁷

IV. The DEIR's Analysis of Project Alternatives Is Inadequate.

Under CEQA, a proper analysis of alternatives is essential to comply with the Act'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(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. As stated in *Laurel Heights I*, “[w]ithout meaningful analysis of alternatives in the DEIR, 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

⁷ The other section of the DEIR in which this sort of indirect growth could have been analyzed is section 20.3, “Growth-Inducing Impacts.” However, the same omissions were made there.

fully informed as to the consequences of action by their public officials.” 47 Cal.3d at 404.

Critically, an EIR must consider a “reasonable range” of alternatives “that will foster informed decision-making and public participation.” CEQA Guidelines § 15126.6(a); *Laurel Heights I*, 47 Cal.3d at 404 (“An EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision-making.”). The discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. CEQA Guidelines § 15126.6(b). The DEIR for the Project fails to heed these basic mandates.

As described throughout this letter, the DEIR fails to adequately describe the Project and fails to reveal numerous significant environmental impacts. Thus, the DEIR must be recirculated to analyze the entire Project’s full environmental impacts and any alternatives that could feasibly avoid or minimize those impacts. However, even for those significant impacts that the DEIR acknowledges, the document’s analysis of alternatives is deficient. The DEIR identifies the Project’s primary significant and unavoidable impacts as those on visual resources, transportation and circulation, and GHG emissions. Yet, except for the “no project” alternative, which “would not meet any of the project objectives” (DEIR at 19-10), none of the examined alternatives would reduce any of these impacts to a less than significant level. Moreover, one of the proffered alternatives (Alternative 2) would concededly *increase* most of these impacts, and would also not meet many of the Project objectives. DEIR at 19-19, 19-20. An alternative that would increase the Project’s environmental impacts does not contribute to a “reasonable range” of alternatives. *See* Pub. Res. Code § 21100(b)(4); Guidelines § 15126.6(a) & (b).

As for the other two alternatives, only one (Alternative 3—Reduced Density Alternative) would clearly lessen Project impacts, although again, not to a less than significant level. Although the DEIR claims that Alternative 4 (Reduced Footprint, Hotel) would also lessen many of the Project’s impacts, the DEIR provides no substantial evidence to support that claim. Specifically, the DEIR fails to provide any of the assumptions, much less information or data to support those assumptions, which guided the DEIR’s assessment of impacts for the hotel. A hotel functions differently than residential units, and could result in additional impacts. For example, the DEIR does not provide any information as to the height of the 100-room hotel, and thus offers no basis to support its conclusion that the hotel would not result in any additional visual impacts.

Similarly, the DEIR provides no daily occupancy assumptions for the hotel, which are assuredly far higher than the 20 percent occupancy rates the DEIR assumes for second homes. Without substantiated occupancy figures, resultant impact analyses, such as traffic and population/employment/ housing, are fundamentally flawed.

While there is no “magic number” for how many alternatives an EIR should examine to present a “reasonable range,” at a minimum CEQA requires an agency to examine at least one potentially feasible alternative to try to avoid or substantially lessen significant environmental impacts that are central to the Project. *See Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089-90 (EIR was deficient for failing to include reduced development alternative that would avoid or substantially lessen the project’s primary growth-related significant impacts); *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1285, 1305 (invalidating EIR that failed to discuss any feasible alternative addressing the project’s primary water supply impact). Further, for a large development project in a sensitive region such as this one, the agency should evaluate more than one such alternative in order to help inform the decision-makers and the public of the potential short and long-term consequences of this Project. This is especially true for this Project, where a large number of the Project objectives center around preservation of natural resources and open space. *See* DEIR at 19-2, 19-3.

While we applaud the DEIR for identifying one feasible Project alternative that could lessen environmental impacts to a certain extent, the DEIR should be recirculated to examine at least one potentially feasible Project alternative that could reduce one or more significant environmental impacts to a level of insignificance. One such alternative is one that contains the following modifications to the proposed Project:

- In addition to preservation of the property on the East side of SR 267, this alternative would also provide a conservation easement over the Tahoe Basin portion of the property on the West side. The conservation easement would provide that the only activities allowed on the Basin land would be conservation and passive recreation.
- This alternative would reduce the number of residential units to a number that would result in no new significant traffic impacts. If such a reduction would render the Project patently infeasible, then the number should be reduced to the lowest level possible that is still potentially feasible in order to reduce the traffic impacts as much as possible.

- This alternative would incorporate a new access point for the Project. Instead of a new access/intersection at SR 267 (as currently proposed), this alternative would include a Project entrance road off of Highlands View Drive, by obtaining a roadway access easement from Northstar Resort/CNL to connect to the Project site.

This alternative would both meet Project objectives and substantially reduce the Project's significant environmental impacts. For example, conservation of the Tahoe Basin portion of the West side would meet the Project's numerous conservation and open space goals. *See* DEIR at 19-2 to 19-3. It would also help reduce cumulative impacts such as the Project's significant visual, GHG and traffic impacts. A further reduction in housing units would also meet the Project's conservation objectives and the objective to "[i]mplement a land use plan that is responsive to community concerns, such as visual character [and] traffic management." *Id.* at 19-3. Such a reduction would aim to reduce traffic impacts to a less than significant level, and would also help lessen the Project's significant GHG and visual impacts. Finally, using an alternate access point to the Project site would meet the Project objective of helping to reduce traffic in the area, and would eliminate the significant impacts caused by the new planned intersection on SR 267.

The DEIR presents no evidence that an alternative such as this that would minimize the Project's significant environmental impacts would be infeasible. While it is up to the Board of Supervisors to determine the ultimate feasibility of any specific alternative, the DEIR must either examine a potentially feasible alternative that could avoid or substantially lessen the Project's significant impacts, or provide evidence that such an alternative is infeasible. *See Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884-85. Such a feasibility analysis is necessary to allow the public and decision-makers to have an open and informed discussion about viable alternatives to the proposed Project.

V. The DEIR Must Be Recirculated.

Under California law, the present DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the draft EIR is so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." CEQA Guidelines § 15088.5.

Stacy Wydra
December 18, 2015
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Here, both circumstances apply. Decision-makers and the public cannot possibly assess the Project's impacts, or even its feasibility, through the present DEIR, which is riddled with errors. Among other fundamental deficiencies, the DEIR improperly truncates the Project, repeatedly understates the Project's significant environmental impacts, and assumes that unformulated or clearly useless mitigation measures will effectively reduce these impacts. In order to resolve these issues, the County must prepare a revised DEIR that would necessarily include substantial new information.

Very truly yours,

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Michael Schwartz, Fire Chief, North Tahoe Fire Protection District
Mary Bennington, Executive Director, Tahoe Rim Trail Association

Exhibits (see disc):

1	Placer County Community Development Resource Agency Memorandum dated October 20, 2015 Re: Update—Tahoe Area Projects
2	TRPA Application for Brockway Campground
3	Conservation Biology Institute, Assessment of Conservation Values: Martis Valley Opportunity East and West Parcels, prepared for Trust for Public Land and Sierra Pacific Industries (Sept. 2012)
4	Squaw Valley Specific Plan, Master Lighting Plan (Excerpts)

5	Dark Skies Coalition, Dark Matters!, Outdoor Lighting Codes, Dark Sky Coalition
6	International Dark-Sky Association, Pattern Outdoor Lighting Code, July 2010
7	MRO Engineers Report of Transportation and Analysis
8	TRPA, 2012 Transportation Monitoring Report
9	Placer County, Village at Squaw Valley Specific Plan EIR (May 2015) (Excerpts)
10	Sacramento Metropolitan Air Quality Management District CEQA Guide (November 2014) (Excerpts)
11	Northstar Mountain Master Plan EIR, Chapter 16
12	California Air Pollution Control Officers Association, CEQA & Climate Change
13	Rechtschaffen, C., Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA, November 4, 2009
14	San Diego Association of Governments Regional Plan Program EIR (Excerpts)
15	P. Martineau, California Water Year 2014 Among Driest Years on Record (September 30, 2014)
16	T.R. Ault, et al., Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data (October 15, 2014)
17	N.S. Diffenbaugh, et al., Anthropogenic Warming Has Increased Drought Risk in California (March 31, 2015)
18	A. Park Williams, et al., Contribution of Anthropogenic Warming to California Drought During 2012-2014 (August 31, 2015)
19	Justin Gillis, California Drought Is Made Worse by Global Warming, Scientists Say, <i>N.Y. Times</i> (August 20, 2015)