PLACER COUNTY PLANNING SERVICES DIVISION

AUBURN OFFICE
3091 County Center Dr, Auburn, CA 95603
530-745-3000/FAX 530-745-3080
Website : www.placer.ca.gov
E-mail : planning@placer.ca.gov

TAHOE OFFICE
775 North Lake Blvd., Tahoe City, CA 96146
PO Box 1909, Tahoe City, CA 96145
530-581-6280/FAX 530-581-6282

RECEIVED
JUN 29 2012
CDRA

PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

-----OFFICE USE ONLY-----

Last Day to Appeal _____ (5 pm)
Letter _____
Oral Testimony ✓
Zoning CI-UP-DC
Maps: 7-full size and 1 reduced for Planning Commission items

Appeal Fee $ 529
Date Appeal Filed 6/29/12
Receipt # 12-0032551
Received by ED B
Geographic Area _____

-----TO BE COMPLETED BY THE APPLICANT-----

1. Project name Orchard at Penryn
2. Appellant(s) Town of Loomis 916-652-1840 916-652-1847
   Telephone Number Fax Number
   Address 3665 Taylor Road/Box 1330 Loomis CA 95650
   City State Zip Code
3. Assessor's Parcel Number(s): 043-060-052 and 043-060-053
4. Application being appealed (check all those that apply):

____	Administrative Approval (AA-___)	X	Tentative Map (SUB-20070521)
X	Use Permit (CUP/MUP-_____)	____	Variance (VAA-_____)
____	Parcel Map (P-_____)	____	Design Review (DSA-_____)
____	General Plan Amendment (GPA-_____)	____	Rezoning (REA-_____)
____	Specific Plan (SPA-_____)	____	Rafting Permit (RPA-_____)
____	Planning Director Interpretation _____ (date)	X	Env. Review (EIAQ-_____)
____	Minor Boundary Line Adj. (MBR-_____)	X	Other: FEIR Certification

5. Whose decision is being appealed: Planning Commission
   (see reverse)
6. Appeal to be heard by: Board of Supervisors
   (see reverse)
7. Reason for appeal (attach additional sheet if necessary and be specific):
   Please see Attached letter

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) _____ _____

_____ _____

T:\PLN\Application and Brochure Masters\Web Forms\Appeal.docx Rev 120503

ATTACHMENT C

RECEIVED
JUN 29 2012
CDRA

June 29, 2012

Michael Johnson, Planning Director
3091 County Center Drive
Auburn CA 95603

Subject: Notice of Appeal of Planning Commission Decision concerning the Orchard at Penryn

Dear Mr. Johnson:

This letter shall serve as formal submittal of an appeal by the Town of Loomis regarding the Planning Commission's decision on June 28, 2012 approving the Orchard at Penryn Vesting Tentative Subdivision Map and Conditional Use Permit (PSUB 20070521). The appeal includes the decision of the Planning Commission in certification of the FEIR prepared for the project. This appeal is being submitted in compliance with Section 17.60.110 of the Placer County Code.

The Town qualifies to appeal under Section B(2) of 17.60.110 as the Town was present and commented at the meeting through its Town Manager and a Town Council Member and the Town has previously submitted its concerns in letters dated August 25, 2011 and January 25, 2012 (Attached). Said letters and the testimony given at the hearing June 28, 2012 are submitted as part of the appeal.

The Town believes the Planning Commission acted in error and that Placer County failed in its public duty to satisfy the requirements of the California Environmental Quality Act ("CEQA") and land use and planning law with respect to the project and the associated FEIR.

The Town will be preparing and submitting additional explanatory materials in support of this appeal within thirty (30) days of the date of filing the appeal as provided for in C(1) of 17.060.110 of the Placer County Code.

I have also attached the required completed appeal form and check in the amount of $529.00. If you have any questions, don't hesitate to give me a call at 916-652-1840.

Sincerely,

Rick Angelocci
Loomis Town Manager

(916) 652-1840 ~ (916) 652-1847
3665 Taylor Road ~ P.O. Box 1330 ~ Loomis, CA 95650

PLACER COUNTY ZONING ORDINANCE SECTION 17.60.110

RECEIVED
JUN 2 9 2017
CDRA

Rulings made by the below are considered by the Planning Commission:

Planning Director (interpretations)

Zoning Administrator

Design/Site Review Committee

Parcel Review Committee - other than road improvements which should be appealed to the Director of Public Works

Environmental Review Committee

Rulings made by the Planning Commission are appealed directly to the Board of Supervisors.

Rulings made by the Development Review Committee are appealed to the hearing body having original jurisdiction

Note: An appeal must be filed within 10 calendar days of the date of the decision. Appeals filed more than 10 days after the decision shall not be accepted by the Planning Department.

For exact specifications on an appeal, please refer to Section 17.60.110 of the Placer County Code.

TOWN OF LOOMIS

16

RECEIVED
JUN 2 9 2012
CDRA

August 25, 2011

VIA U.S. MAIL AND E-MAIL (MKRACH@PLACER.CA.GOV)

Maywan Krach
Environmental Coordination Services
Community Development Resource Agency
3091 County Center Dr, Suite 190
Auburn, CA 95603

Re: Orchard at Penryn Project Draft Environmental Impact Report ("DEIR")

Dear Ms. Krach:

This comment letter is in response to the notice of availability of the DEIR for the Orchard at Penryn project (the "Project") for public comment and review. As one of the agencies affected by this Project, the Town of Loomis (the "Town" or "Loomis") is particularly interested in the County of Placer ("County") discharging its public duty to satisfy the requirements of the California Environmental Quality Act ("CEQA") and land use and planning law with respect to the Project and the associated proposed DEIR. D-1

For the reasons set forth in this letter, the environmental analysis for the Project is deficient. Accordingly, the Town respectfully requests that County decline to adopt the proposed DEIR and decline to proceed with the Project until a complete and meaningful analysis has been conducted with respect to all of the environmental impacts of the Project as required by CEQA, and that the Project be brought into compliance with all applicable laws. Specifically, the Town requests that County analyze, adopt, and enforce mitigation measures for the traffic impacts that will occur in the intersections of Taylor/King Roads and Taylor/Horseshoe Bar Roads and the school traffic impacts that will occur at Del Oro High School as a result of this Project. The DEIR presently states that cumulative traffic impacts are significant and unavoidable at two intersections within the Town but then evades the payment of in-lieu fees or construction of traffic relieving mitigation measures based on a lack of fee agreement between the Town and County; however, there are a number of feasible mitigation measures that would reduce this impact to a less than significant level and the County must adopt and enforce these or other comparable measures.

978800.2

(916) 652-1840 • (916) 652-1847
5960 Laird Road • P.O. Box 1500 • Loomis, CA 95650

RECEIVED
JUN 2 9 2012
CDRA

A. Traffic/Circulation Impacts Have Not Been Fully Analyzed and Mitigation Measures Which are Feasible Have Not Been Adopted

CEQA Guidelines section 15126.4(a) requires the lead agency to "distinguish between the [mitigation] measures which are proposed by project proponents to be included in the project and the other measures proposed by the lead..agency or other persons which are not included but the Lead Agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project." Mitigation measures must also be "fully enforceable through permit conditions, agreements, or other legally-binding instruments." (CEQA Guidelines § 15126.4(a)(2).) The DEIR does not comply with the CEQA Guidelines for several reasons. D-1 cont.

1. Intersections

The traffic analysis fails to meet CEQA's requirement of a good faith effort to disclose impacts and identify mitigation. The DEIR fails to identify and adopt mitigation measures that will reduce impacts to a less than significant level. The proposed project would add traffic to two intersections in the Town of Loomis. These intersections are projected to operate at LOS D and F in the cumulative condition. (DEIR at p. 14-8.) The DEIR states that there is not sufficient right-of-way to construct the physical improvements that would be necessary to provide an acceptable LOS during PM peak hours for the Taylor/Horseshoe Bar Roads intersection and concludes that the impact is significant and unavoidable. The DEIR does not analyze any other alternate mitigation such as traffic calming measures or how a reduction in Project size would reduce this impact. D-2

For the Taylor/King Roads intersection, the DEIR explains that physical improvements can be made to reduce the impact to a less than significant level but because "there is no existing fee-payment agreement between the Town and Placer County, it is not certain that the fair-share payment will be made." (DEIR at p. 14-8.) D-3

The DEIR incorrectly assumes that if there is no adopted fee agreement between the Town and County, the Project is not required to actually mitigate for its impacts. (*See Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683 ["There is no foundation for the idea that the city can refuse to require mitigation of an impact solely because another agency did not provide information. The seed of the city's confusion, as evidenced in the city staff report to the Planning Commission and City Council, is its belief that the city needs to require mitigation of this category of impacts only if Caltrans proposes a mitigation measure and then proves to the city's satisfaction that the measure is legal. This is not how CEQA works."]) Here, the applicant would be required to pay its proportionate share to mitigate these impacts. Fees can be determined from the traffic impact studies prepared for the Town.

Public Resources Code section 21002 provides, in pertinent part, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." Here, the payment of in-lieu fees would contribute to the reduction of the impact by allowing construction of the improvements to occur. Thus, there is feasible mitigation and the County shall not approve this Project until such payment is required. D-3 cont.

2. **Exit Gate On Taylor Road**

The Project is designed to provide an exit-only gated access point for Taylor Road, which could be dangerous since there are fast moving vehicles traveling in both directions and because the topography of the road, namely the curve, results in impaired visibility. (DEIR at p. 2-2.) This feature should be eliminated from the Project design, with the exception of access for public safety vehicles. There are also low electrical power-lines where the exit gate is located and neighbors immediately north of the Project site have not been allowed to connect to Taylor Road. Given the speed and volume of traffic at this intersection during commute times and school opening and closing hours, traffic would be more appropriately routed through the intersection at Penryn Road and Taylor Road, and a traffic light installed. D-4

If, however, traffic will be allowed to exit onto Taylor Road, a bike lane and sidewalks connecting to at least to Del Oro High School and the intersection of English Colony Way and Taylor Road, should be constructed. This would be consistent with the Penryn Community Plan Implementation strategy 1b, which provides, in pertinent part: "A landscaped corridor should be established along Penryn Road and Taylor Road, including separated pedestrian path and/or sidewalk and an on street bikeway. An equestrian trail should also be provided through this area (not necessarily within the road right-of-way) to connect areas to the north and south." Additionally, Taylor Road should be widened to accommodate an entry lane going northbound and a traffic light installed to regulate left turns from the project onto Taylor Road during commute times and school opening and closing hours. These modifications will reduce traffic impacts and improve safety and circulation. D-5

3. **Del Oro High School**

The DEIR provides that the Project "will generate new trips associated with Del Oro High School as well as new trips using Taylor Road [but] these trips would be expected to exit the project site's Taylor Road driveway to reach the school site to the south." (DEIR at p. 7-13.) The DEIR then states that while "the school likely experiences peak-hour congestion primarily due to the peaking nature of high school traffic, the addition of the proposed project is not anticipated to noticeably affect traffic operations at the school site." (DEIR at p. 7-13.) The DEIR's reliance on a maximum 9 traffic trip count to the school is unsupported by evidence and D-6

seems significantly low, especially in light of the fact that the Project proposes to construct 150 units. Consequently, the DEIR should be revised and recirculated. D-6 cont.

4. Transit Services

One of the Project's objectives is to "provide attainable housing for working families in the Loomis/Penryn area, thereby reducing commutes to nearby employment centers." (DEIR at p. 2-2.) The Project should ensure adequate public transportation access for these employment centers as well as places like shopping centers and parks. Not only will this provide a reduction in greenhouse gas emissions because the new residents will be able to reduce total vehicle miles traveled, but it will relieve traffic congestion. One way to achieve this is by requiring bus service along Penryn Road since the nearest local service in the Taylor Road Shuttle and transit services operate on a two-hour frequency, which limits commuters' options significantly. (DEIR at p. 7-6.) This modification is needed to ensure consistency with the Penryn Community Plan goal 8 which states, "Residential developments should be designed to encourage human interaction, bicycle and pedestrian circulation, and the creation of a neighborhood identity as opposed to isolated, walled-off sub-communities which do not foster these qualities." Unless this modification is made, the Project will be inconsistent with the Penryn Community Plan. D-7

B. Housing

It is not immediately clear whether this Project is intended to meet the County's Regional Housing Needs Allocation ("RHNA") numbers for unincorporated areas. If this is the case, please clarify in the DEIR. D-8 Section 1e of the Penryn Community Plan Implementation strategy states that this area (designated as the "Penryn Parkway") is "intended as a highway-service oriented retail area which also allows for multiple-family residential uses. The types of commercial activity that will meet the local residents' needs as well as visitors include specialty retail, neighborhood groceries, walk-in (no drive-thru) restaurants, plant nurseries, professional offices, business parks to accommodate nonpolluting, low intensity retail service operations, churches, financial institutions, senior independent living centers, multiple- family residential uses, and other relatively low impact uses." Although multiple-family uses are included in this description, the Plan is clear that such uses were to be ancillary to "a compact, commercial core to serve the overall Penryn area." The Implementation strategy preface highlights that a goal of the Community Plan is the "creation of a consistent, high quality character of development without compromising the integrity of the Community's pastoral and scenic character." This Project is inconsistent with that Plan. D-9

C. Public Services and Safety

Safety impacts are inadequately analyzed in the DEIR and the DEIR needs to analyze and mitigate for these impacts. For example, the DEIR explains that "the project description in the NOP characterized the proposed development as residential condominiums. However, the project may also be operated as a rental community. Operation of the project as for-sale condominiums versus as a rental community would not change the required permits and approvals, County standards for project design and Improvement Plans, or environmental analysis." (DEIR at p. 1-2.) D-10

The DEIR next concludes, based on a statement from the Sheriff's Department Community Services Officer that there will be no environmental impacts from the conversion of for-sale units to rental units, because "there typically is no difference in law enforcement demand between "for sale" and "for rent" developments." (DEIR at p. 1-4.) In fact, in a study conducted in 2007 analyzing rental housing and crime concluded that rental properties often have more crime activity than owner-occupied dwellings, resulting in a greater need for law enforcement personnel to respond to crimes and to patrol the area. (*See*, Rephann, Rental Housing and Crime: The Role of Property Ownership and Management (2007), attached as Attachment 1.) This is in part due to the increased turnover of residents. The DEIR should be revised to include this discussion and provide appropriate mitigation measures to reduce impacts to public services and safety.

D. Biological Resources

Mitigation Measure 5.1c states that the project applicant shall implement one or a combination of mitigation measures to compensate for impacts to oak woodland habitat. (DEIR at p. 5-21.) Further, Mitigation Measure 5.1c states that a final determination regarding the amount of oak woodland to be impacted and therefore mitigated will be based on impacts shown on the Improvement Plans. It is unclear whether the impacts will still be mitigated to a less than significant level if less than all of the four options are implemented. For example, please explain the effect of implementing only two of the four options presented under Mitigation Measure 5.1c. D-11

Mitigation Measure 5.3d states that in the event that the Placer County Conservation Program is adopted prior to commencement of ground disturbing activities of the Project, the Project shall be developed in compliance with the County's Natural Communities Conservation Plan/Habitat Conservation Plan and the Programmatic Endangered Species Act Consultation issued by the U.S. and Wildlife Service. (DEIR at p. 5-22.) The DEIR states, "since activities related to the Orchard at Penryn project may commence prior to the approval of the Phase 1 PCCP, mitigation measures in this Draft EIR are designed to be implemented absent the approved conservation plan." (DEIR at p. 5-15.) It is unclear whether the impact can be D-12

mitigated to a less than significant level even if the condition set forth in Mitigation Measure 5.3d is not satisfied and all of the other mitigation measures are adopted. D-12 cont.

The Project should be designed to respect and maintain wildlife corridors and any fencing used should not restrict wildlife movement. Natural contours and flow lines should be preserved and grading minimized to reduce disturbance to soils and removal of trees, similar to the grading for the Stonegate project in Loomis and the provisions adopted into the Loomis Grading Ordinance in 2007. The Project should retain the existing topography, to the greatest extent practical, use natural storm water drainage systems to preserve and enhance existing natural features and preserve and integrate existing natural features (e.g., creeks, native trees, rock outcrops) and topography into project landscaping. This is necessary to ensure consistency with the Penryn Community Plan policy 1, which provides,"Wherever possible, natural features should be retained as buffers between different, potentially incompatible uses as well as serving to preserve the rural character of the area. Where natural features are not available, landscaped buffers should be provided to minimize the adverse effects of higher intensity uses." The Penryn Community Plan policy 10 also applies in that it states,"an important consideration in the design of any land development project should be the conservation of natural drainage channels and swales, and the preservation of existing natural resources." D-13

E. <u>Visual Resources</u>

The DEIR provides that analysis in the Initial Study found that the Project would have <u>no impact</u> with respect to causing a substantial adverse effect on a scenic vista. (DEIR at p. 6-7.) As stated in the DEIR, the Project site is presently located on approximately 15.1 acres of undeveloped land, and there are no existing structures onsite. (DEIR at p. 2-1.) It is expected that approximately 150 multi-family residential units, two-stories tall, with three or six units per building (approximately 30 buildings) will be constructed on the Project site. (DEIR at pp. 3-7, 6-7.) In addition to the residential buildings, the Project is expected to include a one-story recreation center/office building, parking, activity areas, retaining walls and landscaping. (DEIR at p. 6-7.) Considering the dramatic transformation from an undeveloped site into a site with 30 or more buildings, it cannot be said that there is no impact on a scenic vista. The DEIR should be revised to address this issue, including the possibility of a reduced scale of the project with density limitations. This is needed to be consistent with the Penryn Community Plan policy 7, 'Encourage and utilize existing programs for protection and enhancement of scenic corridors, including but not limited to, design review, sign control, scenic setbacks, density limitations, planned unit developments, grading and tree removal standards, open space easements, and land conservation contracts." D-14

Further, the DEIR states that the Project would have a less than significant impact with respect to creating a new source of substantial lighting or glare, after implementation of the mitigation measures identified in the Initial Study. (DEIR at p 6-7.) This is a conclusory D-15

statement, not supported by substantial evidence. With the development of 150 residential units, parking, activity areas, etc., the Project site will be impacted by lighting required for the exterior and interior of buildings as well as for outdoor areas, including parking, streets and activity areas. D-15 cont.

The Project should include connections to open space to trails and wildlife corridors between the Project site and the Village project in the Town. Also, the Project should reduce impacts to visual resources by following the topography of the land and natural features. This is needed to be consistent with the Penryn Community Plan goal 3 to "Preserve, enhance, and protect the scenic resources visible from Scenic routes in the plan area, such as I-80, Auburn-Folsom Road, and other major roadways (i.e. **King**, Horseshoe Bar, Newcastle, English Colony, **Taylor Roads**) to preserve existing vistas of the Sacramento Valley, **Loomis basin foothills**, and the Sierra Nevada Mountain Range, as well as other local views which are important in maintaining the community's rural identity. It should also be redesigned to be consistent with the Penryn Community Plan's goal 4 to "encourage the development of commercial and industrial project designs that contain elements which complement the more rural character of the area such as low building silhouette large setbacks and buffer areas, extensive landscaping, and a pedestrian orientation." Accordingly, the DEIR should be further revised to analyze this issue and provide appropriate mitigation. D-16

F. <u>Noise</u>

The DEIR sets forth the current non-transportation noise levels measured at the Project site. (DEIR at p.9-8.) However, the DEIR fails to address projected non-transportation noise levels once the Project is operational and residents have moved in to the community. D-17

G. <u>Energy Conservation</u>

The DEIR inadequately addresses the goal of conserving energy as set forth in Appendix F of the CEQA Guidelines. The Town acknowledges that there is a brief discussion of "green" building features in Mitigation Measure 14.4a, but this brief statement is not enough to satisfy the substantive requirements of Appendix F. (DEIR at p. 14-11.) The DEIR should be revised to fully analyze and describe energy impact possibilities and potential energy conservation measures as required by Appendix F. D-18

H. <u>Request for Notice and Additional Documentation</u>

By this letter, the Town requests that it be included on any notice list for this Project, and that any and all future notices concerning this Project be sent to the Town via mail at the address set forth below, including, but not limited to, all notices of public hearings related to D-19

TOWN OF LOOMIS

RECEIVED
JUN 29 2012
CDRA

January 25, 2012

VIA U.S. MAIL AND E-MAIL (cdraccs@placer.ca.gov)

Environmental Coordination Services
Community Development Resource Agency
3091 County Center Dr, Suite 190
Auburn, CA 95603

Re: Orchard at Penryn Project Final Environmental Impact Report ("FEIR")

To Whom It May Concern:

This comment letter is in response to the notice of availability of the FEIR for the Orchard at Penryn project (the "Project") for public comment and review. As one of the agencies affected by this Project, the Town of Loomis (the "Town") continues to be ensuring that Placer County ("County") discharges its public duty to satisfy the requirements of the California Environmental Quality Act ("CEQA") and land use and planning law with respect to the Project and the associated proposed FEIR.

The Town previously set forth its comments to the proposed draft environmental impact report (the "DEIR") for the Project in a letter addressed to Maywan Krach, dated August 25, 2011 (*see* Letter D of Chapter 2 of the FEIR). It is the Town's position that the proposed FEIR continues to fail to address the deficiencies in the environmental analysis for the Project contained in the DEIR. Accordingly, the Town hereby restates the comments set forth in its August 25, 2011 letter and incorporates that letter by reference herein on the grounds that they were not appropriately and meaningfully addressed. This letter highlights a few examples of those continued deficiencies.

Because of the inadequacy of the FEIR for the Project, the Town respectfully requests that the County decline to certify the proposed FEIR and not approve the Project until a complete and meaningful analysis has been conducted with respect to all of the environmental impacts of the Project as required by CEQA, and until the Project be brought into compliance with all applicable laws.

990438.1

(916) 652-1849 • (916) 652-1847
3665 Taylor Road • P.O. Box 1330 • Loomis, CA 95650

A. County Failed to Address Town's Comments to DEIR

The County's response failed to adequately address the Town's comments to the DEIR as required by Public Resources Code section 21091(d)(2) and CEQA Guidelines section 15088. (*See*, Letter D of Chapter 2 of the FEIR) In particular, CEQA Guidelines section 15088(c) provides as follows:

> The [lead agency's] written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issued raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

Further, a lead agency's failure to respond to comments raising significant environmental issues prior to approving a project may render the EIR legally inadequate. (*See Rural Land Owners Association v. City Council* (1983) 143 Cal.App.3d 1013.) The County summarily dismissed the Town's concerns, claiming that issues raised were fully raised in the DEIR. This type of response is not only conclusory, but it does not describe, with specific detail, why the Town's proposed revisions or comments were not accepted or considered.

B. Incorrect Standard for Mitigation Measures and FEIR Fails to Adopt Feasible Mitigation Measures

For example, in the third paragraph of comment D-2 at page 2-27 (*see, also*, Section E below), the County states that "Mitigation Measure 14.2a requires that the project applicant make a "good faith effort" at contributing a fair share amount towards modifying the geometry and signal phasing at this intersection" (emphasis added). The standard for mitigation is not a "good faith effort." Rather, CEQA requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other legally-binding instruments." (CEQA Guidelines § 15126.4(a)(2); *see also* Public Resources Code § 21081.6(b).) A mitigation measure must be adopted so that it results in an enforceable requirement. (*See Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730.) For example, enforceable mitigation measures include a requirement for the project applicant to construct improvements or pay fees.

The FEIR continues to fail to identify and adopt mitigation measures that will reduce traffic impacts to a less than significant level, even though feasible mitigation measures

exist. An EIR must describe significant environmental impacts as a result of a proposed project and identifies ways in which such impacts can be mitigated or avoided. (Public Resources Code §§ 21002.1(a), 21061; CEQA Guidelines § 15121.) Further, an EIR must describe feasible mitigation measures, if any, that can minimize or avoid the significant environmental impacts of a proposed project. (Public Resources Code § 21002.1(b); CEQA Guidelines § 15126.4(a).) Here, feasible mitigation measures exist—the improvements can be developed and installed or the project applicant can be required to pay its proportionate share to the Town to mitigate the impacts of the proposed Project.

It is incorrect to conclude in the FEIR that the Project is not required to actually mitigate for its significant impacts, when feasible mitigation measures exist, because there is no existing fee agreement between the Town and the County. (*See Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 725-730.) The County cites to *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1 "regarding a Lead Agency's responsibilities for extra-territorial intersection improvements." (FEIR at p. 2-28.) The *Tracy First* case is distinguishable because the improvements at issue were outside the jurisdiction of the City of Tracy, whereas here, the traffic improvements are outside of the Project but within the jurisdiction of the County as Lead Agency.

For these reasons, the Town requests that "good faith effort" be modified to read, "project applicant *shall* make a fair-share payment to the Town of Loomis towards the cost of implementing these improvements." (FEIR at p. 2-28.) Additionally, the FEIR has not corrected the $728 figure for the applicant's fair share contribution to traffic impacts. The Town requests that this number be corrected. (DEIR at p. 14-8.)

C. Reduction in Project Size as Feasible Mitigation Measure

In its August 25, 2011 letter, the Town explained that the DEIR did not analyze alternate mitigation measures such as a reduction in Project size as a means to reduce traffic impacts. The County dismissed this alternative as a possible mitigation measure because it would not result in the significant environmental impacts being avoided. (FEIR at p. 2-27) While it is true that CEQA requires implementation of mitigation measures or alternatives to proposed projects that can avoid significant impacts, CEQA also demands implementation of feasible mitigation measures that minimize, substantially lessen, or reduce such significant impacts. (Public Resources Code §§ 21002, 21100(b)(3); CEQA Guidelines §§ 15126.4(a)(1), 15370.) Accordingly, even if a mitigation measure cannot completely avoid the significant environmental impacts, a reduced project size can lessen and alleviate traffic and safety impacts resulting from the proposed Project and must be analyzed.

D. Traffic Exit onto Taylor Road Must Be Consistent with Community Plan

CEQA requires that an EIR discuss and analyze any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. (CEQA Guidelines § 15125(d).) Both the DEIR and FEIR fail to discuss the planned gated exit onto Taylor Road and its inconsistency with the Penryn Community Plan, especially strategy 1b, which provides for pedestrian and bicyclist accessibility along Penryn Road and Taylor Road.

Inconsistencies may be evidence that the inconsistent project feature will result in a significant environmental impact. For example, allowing traffic to exit onto Taylor Road, as currently designed for the Project, will create traffic and safety impacts that are inconsistent with the Penryn Community Plan. Regardless if safety impacts are determined to exist, if the Project is not compliant with the Penryn Community Plan, then land use impacts are potentially created. The County should conduct further analysis of such inconsistencies and should further consider the installation of improvements, such as sidewalks and bicycle lanes, in order for the Project to be in compliance with the Penryn Community Plan.

Similarly, the County's comments at D-7 at page 2-30 of the FEIR confuses the issues of greenhouse gas emissions and ensuring adequate public transportation as a means to achieve consistency with the Penryn Community Plan. The Town does not require provision of public transportation as a means to reduce greenhouse gas emissions, but rather, simply states that a benefit of providing accessibility to public transportation is a reduction in greenhouse gas emissions.

The point of the Town's comment number 4 of its August 25, 2011 letter is that the Project should ensure adequate public transportation access, including bus service along Penryn Road, as means of achieving the Project's stated objective of "provid[ing] attainable housing for working families in the Loomis/Penryn area, thereby reducing commutes to nearby employment centers." (DEIR at p. 2-2.) Further, such modification to the Project is required in order to ensure that the Project is consistent with the Penryn Community Plan goal 8. (CEQA Guidelines § 15125(d).) By providing adequate public transportation services, human interaction and a neighborhood identity will be encouraged, as called for by goal 8. Without such public transportation, the Project fails to be in compliance with the Penryn Community Plan, resulting in an inconsistency between the Project and the County's land use plans. The County should conduct further analysis of such inconsistencies and should consider options to mitigate such inconsistencies, such as ensuring bus service along Penryn Road.

E. Mitigation Required for Cumulative Impacts

In the last paragraph of comment D-5 at page 2-29 of the FEIR, the County states that even without the Project, there will be cumulative impacts related to traffic along Taylor Road. The FEIR also explains that the Project itself will create significant impacts along Taylor

Road. As a result, the Project will contribute to the already existing cumulative impacts. CEQA requires that an EIR must include an analysis of reasonable, feasible options for mitigating or avoiding a project's contribution to significant cumulative impacts. (CEQA Guidelines § 15130(b)(5); *see also Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1604.) Therefore, the FEIR must analyze cumulative impacts created by the Project along Taylor Road. Appropriate mitigation measures related to such impacts must also be adopted and enforced.

F. Trip Generation Rate to Del Oro High School Is Not Supported by Substantial Evidence

The County refers to, at the second paragraph of comment D-6 at page 2-30 of the FEIR, the "assumed trip distribution pattern described on page 7-10 of the Draft EIR." The information provided on page 7-10 of the DEIR, including the trip generation rate table at Table 7-5, provides no information specific to trips to the high school. Instead, the FEIR simply states that the maximum number of peak-hour trips attributed to the Project along Taylor Road is nine. (DEIR at p. 7-13.)

The burden, under CEQA, is on the County to demonstrate how the nine trips to the high school were calculated. Such calculation must be supported by substantial evidence. (*See Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 392-393, 409.) The Town reiterates its previous position that the traffic trip count to the high school is unsupported by evidence in the record, and seems particularly low in light of the fact that the Project proposes to construct 150 residential units. (*See*, Memorandum Prepared by Town of Los Gatos Re: School Mitigation From New Housing, attached as Exhibit A, demonstrating that the number of high school *students* in a comparable community would be greater than nine). First, it is noteworthy that where other lead agencies appropriately conduct detailed studies to ensure that new development does not impact schools or other environmental factors, the County simply fabricates a number for this Project. Second, the FEIR considers traffic impacts based on nine trips to the high school. This means that the number of students factored into this calculation was less than nine since for at least the first two years of high school, students are not old enough to have licenses and are driven to school. Each student must be dropped off (one trip), with the driver leaving the school after drop off (one trip). The driver must drive to the school to pick up the student after school (one trip), and once the student is picked up, the student and driver leave (one trip). In other words, there are at least four trips attributable to each student. The FEIR does not factor this and is therefore fatally flawed.

G. Project Fails to Demonstrate an Adequate Water Supply Is Available

The Project has failed to demonstrate that there will be an adequate water supply or that an appropriate water supply assessment was conducted. Impact 12.2 of the DEIR indicates that the Placer Counter Water Agency ("PCWA") has only provided a letter to the

project applicant stating that water can be made available to serve the Project's needs upon execution of a Facilities Agreement and payment of fees. Until the County requires the Project applicant to enter into a Facilities Agreement with PCWA, there is no assurance that there is a sufficient supply of water to serve the Project.

H. Conclusion

For the reasons set forth in this letter and the Town's August 25, 2011 letter, the FEIR is legally deficient and the Project cannot be approved until revised and recirculated. Thank you for the opportunity to comment on the Project and for your consideration of this matter. Consistent with Public Resources Code section 21177, the Town reserves the right to provide further written or oral comment on the Project at any time prior to Project approval. (*Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1117-1121).

The Town looks forward to continuing to work with County to ensure a legally adequate environmental review of this Project prior to its approval and would welcome a meeting with the appropriate officials to address the issues raised in this comment letter.

Respectfully,

Rick Angelocci
Town of Loomis
Town Manager