HEFNER LAW

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Timothy D. Taron
916.567.7329
ttaron@hsmlaw.com

July 29, 2015

VIA E-MAIL AND OVERNIGHT MAIL

Clerk of the Board of Supervisors
175 Fulweiler Avenue
Auburn, CA 95603

RE: Request to Include Items Included in Record for Agenda Item No. 9 on December 9, 2014 in Record for August 4, 2015 Hearing Regarding the Abandonment of Mill Site Road and Cross Cut Court

Dear Clerk of the Board:

On behalf of the Retreat at Northstar Association, I hereby request that all items included in the record for Agenda Item No. 9 on December 9, 2014 be included in the record for the upcoming hearing regarding the abandonment of Mill Site Road and Cross Cut Court on August 4, 2015, including, but not limited to, the following:

- Full video and audio from the Board of Supervisors' hearing on Agenda Item No. 9 as is available on the Board of Supervisors' website: http://placer.granicus.com/ViewPublisher.php?view_id=6
- All materials included in the record for Agenda Item No. 9, including but not limited to Parts 1-7, as are available on the Board of Supervisors' website: http://www.placer.ca.gov/upload/bos/cob/documents/sumarchv/2014/141209A/09a7.pdf

Should you have any questions regarding this request, please do not hesitate to let me know.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By: Timothy D. Taron

TDT:CER
cc: Robert Sandman

RECEIVED
JUL 30 2015
CLERK OF THE
BOARD OF SUPERVISORS

Melinda Harrell

From: Placer County Board of Supervisors
Sent: Thursday, July 30, 2015 4:46 PM
To: COB Correspondence
Cc: Teri Ivaldi; Sharlet Pyne
Subject: FW: Martis Camp Gate

From: Cosima Nutzel [mailto:cosima@basco.biz]
Sent: Thursday, July 30, 2015 10:20 AM
To: Placer County Board of Supervisors
Cc: RetreatAbandonmentTeam@yahoo.com
Subject: Martis Camp Gate

Supervisor Jim Holmes:

As a Northstar Homeowner since 1978 I am vehemently opposed to replacing the Emergency Access Gate to a Martis Camp Private Road Transponder Access only Gate and allowing 1600 Transponders to owners, guests, contractors and vendors unfettered access to Northstar via the EVA Gate from Martis Camp despite more than a decade of Placer County planning that forbid such use.

Carlos Yrueta
President
Basco Drywall & Painting Co.
829 Estabrook Street
San Leandro, CA 94577
Tel: 510-357-3818 Fax: 510-483-6759

Melinda Harrell

From: Placer County Board of Supervisors
Sent: Thursday, July 30, 2015 4:48 PM
To: COB Correspondence
Cc: Teri Ivaldi; Sharlet Pyne
Subject: BOS Email | Mill Site Road Abandonment
Attachments: 2015 07.30.15 A BOS Email fr Henery DeNero Re Abandonment of Mill Site Road.pdf

From: Nancy Barna [mailto:nancy@npoa.info]
Sent: Thursday, July 30, 2015 1:11 PM
To: Placer County Board of Supervisors
Cc: Henry DeNero; Geoff Stephens; Donielle Summers
Subject: Mill Site Road Abandonment

Dear Clerk,
Attached are individual letters addressed to each Board of Supervisor. Hard copies will be mailed today. Feel free to contact us if you have any questions.

Nancy Barna
Northstar Property Owners Association
2200 North Village Drive
Truckee CA 96161
530/562-0322 phone
530/562-0324 fax
nancy@npoa.info
www.npoa.info

northstar property owners association

July 30, 2015

Jack Duran
Placer County Supervisor District 1
175 Fulweiler Avenue
Auburn, CA 95603

Dear Supervisor Duran,

As Board President of the Northstar Property Owners' Association (NPOA), I speak on behalf of our association's 1,480 property owners. Other Northstar HOAs bring the total number of property owners in the Northstar Community to over 2,500.

The entire Northstar Community is in near-unanimous support of The Request for Abandonment from The Retreat at Northstar Association, which is a member association of NPOA.

We applaud your decision at the December 9, 2014 meeting of the Placer County Board of Supervisors to direct your staff to prepare for final consideration and approval of the Retreat's request.

In addition to overwhelming support from our large community, there are several clear and compelling reasons for you to complete this important task with your final approval of The Retreat Association request:

1. It will affirm your own prior policy decision that the subject connection should be for EVA and public transit only.
2. It will enforce the development plans, EIRs and COAs that The County approved for The Retreat and for Martis Camp; as well as the taxation imposed on the 18 properties in The Retreat as the exclusive users of the roads within it.
3. It will uphold the many verbal and written assurances The County made to members and organizations in the Northstar Community prior to Martis Camp's "penetration" of the EVA gate that the subject connection would be for EVA and public transit purposes only (The word penetration is in quotes because it was the Martis Camp developer's own choice of verbs when asked if he had any interest in being given access privileges to another EVA gate within Northstar).
4. It will send a strong message to all real estate developers (not just DMB) that The County's rules and procedures will not be manipulated or circumvented.

2200 NORTH VILLAGE DRIVE • TRUCKEE, CALIFORNIA 96161 • TELEPHONE (530) 562-0322
FAX (530) 562-0324 • E-mail: npoa@npoa.info • http://www.npoa.info

5. It will restore public trust that our government will enforce its own rules, procedures, assurances and decisions.
6. It will eliminate significant traffic and public safety issues that have arisen by the unintended and unstudied use of the subject connection as a through connection by over 600 properties, through a development that was designed and constructed as an 18 home site cul-de-sac.
7. It is simply the right thing to do, and therefore your responsibility to do so.

We acknowledge that Martis Camp property owners have raised numerous objections to this measure, including claims that they have negotiated in earnest for a reasonable compromise. NPOA will defer to The Retreat Association representatives to set straight the facts surrounding this matter.

And, we acknowledge that Martis Camp property owners may be upset that what they were told was a through connection when they purchased their property was, in fact, not. We also stipulate that it is convenient for them to cut through The Retreat and the Northstar neighborhoods on their way to and from Northstar Village or to Lake Tahoe. We are also sure that the hundreds of contractors who are using the connection to build and service over 600 homes consider the connection to be a convenience. But these desires and conveniences do not take away the clear facts and history that this connection should never have been opened to through traffic in the first place. If Martis Camp owners express frustration and anger, we hope they will direct some of it toward the real estate developer who "penetrated" an EVA gate through manipulation and influence, and then led them to believe it was an amenity for their resort.

We thank you in advance for your good governance and stewardship of our community, and look forward to your approval of The Retreat's Request for Abandonment.

Sincerely,

Henry DeNero
Board President, Northstar Property Owners Association

cc: Clerk of the Board of Supervisors

northstar property owners association

July 30, 2015

Robert Weygandt
Placer County Supervisor District 2
175 Fulweiler Avenue
Auburn, CA 95603

Dear Supervisor Weygandt,

As Board President of the Northstar Property Owners' Association (NPOA), I speak on behalf of our association's 1,480 property owners. Other Northstar HOAs bring the total number of property owners in the Northstar Community to over 2,500.

The entire Northstar Community is in near-unanimous support of The Request for Abandonment from The Retreat at Northstar Association, which is a member association of NPOA.

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We thank you in advance for your good governance and stewardship of our community, and look forward to your approval of The Retreat's Request for Abandonment.

Sincerely,

Henry DeNero
Board President, Northstar Property Owners Association

cc: Clerk of the Board of Supervisors

northstar property owners association

July 30, 2015

Jim Holmes
Placer County Supervisor District 3
175 Fulweiler Avenue
Auburn, CA 95603

Dear Supervisor Holmes,

As Board President of the Northstar Property Owners' Association (NPOA), I speak on behalf of our association's 1,480 property owners. Other Northstar HOAs bring the total number of property owners in the Northstar Community to over 2,500.

The entire Northstar Community is in near-unanimous support of The Request for Abandonment from The Retreat at Northstar Association, which is a member association of NPOA.

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We thank you in advance for your good governance and stewardship of our community, and look forward to your approval of The Retreat's Request for Abandonment.

Sincerely,

Henry DeNero
Board President, Northstar Property Owners Association

cc: Clerk of the Board of Supervisors

northstar property owners association

July 30, 2015

Kirk Uhler, Chair
Placer County Supervisor District 4
175 Fulweiler Avenue
Auburn, CA 95603

Dear Supervisor Uhler,

As Board President of the Northstar Property Owners' Association (NPOA), I speak on behalf of our association's 1,480 property owners. Other Northstar HOAs bring the total number of property owners in the Northstar Community to over 2,500.

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Sincerely,

Henry DeNero
Board President, Northstar Property Owners Association

cc: Clerk of the Board of Supervisors

northstar property owners association

July 30, 2015

Jennifer Montgomery
Placer County Supervisor District 5
175 Fulweiler Avenue
Auburn, CA 95603

Dear Supervisor Montgomery,

As Board President of the Northstar Property Owners' Association (NPOA), I speak on behalf of our association's 1,480 property owners. Other Northstar HOAs bring the total number of property owners in the Northstar Community to over 2,500.

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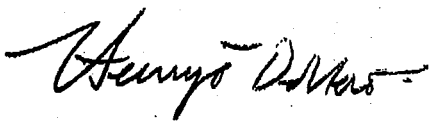
We thank you in advance for your good governance and stewardship of our community, and look forward to your approval of The Retreat's Request for Abandonment.

Sincerely,



Henry DeNero
Board President, Northstar Property Owners Association

cc: Clerk of the Board of Supervisors

Melinda Harrell

From: Placer County Board of Supervisors
Sent: Thursday, July 30, 2015 4:49 PM
To: COB Correspondence
Cc: Teri Ivaldi; Sharlet Pyne
Subject: BOS Email | Retreat Abandonment
Attachments: 2015 07.30.15 A BOS Email fr Nancy P Ives Re Abandonment of Mill Site Road.pdf

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From: Nancy Ives [mailto:nives@northstarcsd.org]
Sent: Thursday, July 30, 2015 12:56 PM
To: Placer County Board of Supervisors
Subject: Retreat Abandonment

Supervisor Jack Duran
Supervisor Robert Weygandt
Supervisor Jim Holmes
Supervisor Kirk Uhler
Supervisor Jennifer Montgomery

At the last hearing on the Retreat Gate Abandonment, I spoke to you as president of Northstar Community Services District and asked you to please consider good governance as it pertains to the Emergency Vehicle Gate Access between Northstar and Martis Camp.

At the last hearing on the Retreat Gate Abandonment, I spoke to you as president of Northstar Community Services District and asked you to please consider good governance as it pertains to the Emergency Vehicle Gate Access between Northstar and Martis Camp.

I'm no longer president of NCSD, but am still on the NCSD Board of Directors, and my husband and I have been Northstar property owners for nearly 30 years and full time residents of Northstar for 22+ years. So now, I'm asking you to consider fairness and logic as well.

As you know, the Placer County Board of Supervisors approved the Martis Valley Community Plan with this gate designated for emergency and public transit vehicles only.

Every planning and road design document consistently assumed that the EVA connection between Martis Camp and Northstar would be emergency and public transit only.

After Martis Camp gained its development approvals from the County, it replaced the "Emergency Vehicle Access Only" sign with a "Private Road-Transponder Access Only" sign and handed out more than 1,600 active transponders to allow their owners, guests, contractors and vendors unfettered access to Northstar via the EVA gate despite more than a decade of Placer County planning that forbid such use.

So, today, rather than taking SR 267 as was always intended, Martis Camp vehicles are short-cutting through Retreat and Big Springs neighborhoods. To access Northstar and Lake Tahoe, they are using steep and narrow streets that were designed for residential use only.

With development and more activity at Northstar, traffic has been increasing on its own.Property owners have addressed the situation, and spent thousands of dollars to construct intercept lots and increase our shuttle system. But, now Martis Camp residents, contractors and vendors have unauthorized use of the EVA gate and are bypassing the Northstar intercept lots and shuttle system.

Given that Martis Camp is presently less than 33% built-out, the amount of Martis Camp traffic will continue to grow significantly. If it continues, any progress our community has made in reducing traffic congestion within Northstar will be reversed.

Contractors and huge, loaded trucks are using our neighborhood streets. In addition to being a serious safety issue, those streets were not designed to handle large and heavy trucks. Retreat roadways were designed and approved to serve only the 18 homes within the Retreat, not the nearly 700 homes planned for Martis Camp.

If Martis Camp's use of the cut-through route continues, free-flow traffic on Northstar Drive will be severely undermined. SR 267, the roundabout and the Intercept lots were planned to handle large volumes of traffic, including that from Martis Camp. However, using a short-cut compromises that plan, which is the very foundation of the Northstar Traffic Management System. It will cause traffic congestion as far reaching as Truckee and Highway 80.

So now, I implore you, please vote YES for Abandonment of Retreat's roadway. Do not let Martis Camp's convenience destroy our progress and quality of life. Thank you.

Nancy P. Ives
I'm no longer president of NCSD, but am still on the NCSD Board of Directors, and my husband and I have been Northstar property owners for nearly 30 years and full time residents of Northstar for 22+ years. So now, I'm asking you to consider fairness and logic as well.

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Nancy P. Ives

Melinda Harrell

From: Placer County Board of Supervisors
Sent: Thursday, July 30, 2015 4:49 PM
To: COB Correspondence
Subject: FW: Martis Camp Parties' Written Submission and Appendix In Opposition to Abandonment of Mill Site Road
Attachments: 15-07-30 HOB letter to Board of Supervisors.pdf; 15-07-30 Opposition Brief.pdf

Thank you
Debbie Hawkins
Administrative Secretary
Placer County Board of Supervisors
175 Fulweiler Avenue
Auburn, CA 95603
(530) 889-4010

From: Hall, Scott [mailto:shall@coblentzlaw.com]
Sent: Thursday, July 30, 2015 4:00 PM
To: Placer County Board of Supervisors
Cc: Robert Sandman; Gerald Carden; O'Brien, Harry; Rustomjee, Naomi
Subject: Martis Camp Parties' Written Submission and Appendix In Opposition to Abandonment of Mill Site Road

Dear Board of Supervisors,

In connection with the scheduled August 4, 2015 hearing to consider the abandonment of Mill Site Road, please see the attached correspondence and brief, sent on behalf of the Martis Camp Community Association and DMB Highlands Group LLC. Hard copies are being delivered to your offices today. The hard copies include an Appendix of materials that is too large to send by email. We are happy to coordinate transfer of the appendix to you electronically, via an FTP site, at your convenience. Please contact me directly to coordinate that transfer.

Thank you,

Scott C. Hall
Coblentz Patch Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
415-772-5798 | Office 415-391-4800
shall@coblentzlaw.com
www.coblentzlaw.com

This transmittal is intended solely for use by its addressee, and may contain confidential or legally privileged information. If you receive this transmittal in error, please email a reply to the sender and delete the transmittal and any attachments.

Coblentz
Patch Duffy
& Bass LLP

One Ferry Building, Suite 200
San Francisco, CA 94111-4213
T 415 391 4800
coblentzlaw.com

Harry O'Brien
D 415.772.5723
hobrien@coblentzlaw.com

July 30, 2015

VIA EMAIL & HAND DELIVERY

Placer County Board of Supervisors
C/O Ann Holman, Clerk of the Board
175 Fulweiler Ave.
Auburn, CA 95603

Re: Martis Camp Parties' Written Submission In Opposition To Abandonment Of Mill Site Road In Advance of the August 4, 2015 Hearing

Dear Board of Supervisors:

This office represents the Martis Camp Community Association ("MCCA") and DMB Highlands Group LLC ("DMB/H") (collectively, "Martis Camp Parties") in opposing the petition and request by The Retreat at Northstar Owner's Association ("the Retreat") to abandon or vacate Mill Site Road ("Request for Abandonment").

The Martis Camp Parties understand that the Board intends to hold a hearing on August 4, 2015 to further consider the Request for Abandonment. At the Board's December 9, 2014 hearing, the Board encouraged the parties to attempt to resolve this issue informally and without the need for official action by the Board. Unfortunately, despite the Martis Camp Parties' significant concessions and proposed terms of settlement – of which the Board is well aware – including substantial limitations on the number of private vehicles traveling on Mill Site Road, as well as payment and contributions to improvements and maintenance of Mill Site Road, the Retreat has made clear that it is not willing to consider a proposal that includes *any* use of Mill Site Road by private automobiles. Because this position is inconsistent with the relevant planning documents and project approvals, and because the Martis Camp Parties continue to believe that the statutory findings to abandon Mill Site Road cannot be made and/or will not withstand judicial review, the Martis Camp Parties hereby submit the attached written brief in opposition to abandonment, with an appendix of referenced exhibits, for the Board's consideration.

The Martis Camp Parties' written brief contains legal arguments and evidence that preclude abandonment based on a finding that Mill Site Road is "unnecessary" to present or prospective public use, as well as arguments as to why the abandonment would be in violation of the California Environmental Quality Act ("CEQA"). We urge the Board to consider all of the arguments and information set forth in the attached brief and appendix. However, for the Board's convenience, a summary of the key points is provided below. Because the Board's final agenda and materials for the August 4 hearing were not available until this morning, we are currently reviewing that information and anticipate providing a supplemental response to any new information that may affect the arguments made in the attached written brief.

SUMMARY OF KEY POINTS IN OPPOSITION TO ABANDONMENT

- Mill Site Road was irrevocably dedicated as a public road as a condition of approval of The Retreat project, and was subsequently constructed, accepted and opened by the County as a public road in December 2008.

- The relevant planning documents and project approvals for the Martis Camp (formerly Siller Ranch) and The Retreat projects do not prohibit or restrict the use of Mill Site Road by Martis Camp residents. This issue has been fully and finally determined by the County and upheld in litigation. This issue is not before the Board.

- The statutory standard to abandon a public road is – understandably – high, so as to avoid a gift of public assets to private parties. The Board must find, based on evidence, that Mill Site Road is "unnecessary" to public use. It cannot make that finding here.

    - Because of the Martis Camp Parties' abutter's rights access to use Mill Site Road where it adjoins the Martis Camp development, the issue of abandonment is in this instance is not a legislative determination; it is a quasi-judicial determination that directly affects the property rights of the Martis Camp Parties.

    - It is not the Martis Camp Parties' burden to prove that Mill Site Road is "necessary." Rather, it is the Retreat's burden to prove that the road, as currently used, is "unnecessary" to public use. This showing is not supported by the evidence demonstrating the regular (or, by the Retreat's own admission, "extensive") use of Mill Site Road as a uniquely convenient route between Martis Camp and Northstar Village, with no equivalent alternative, as well as the continuing access needs of other third parties, including Northstar California, for its ski operations and maintenance.

    - The abandonment of Mill Site Road only benefits private parties – the real estate developers that own lots in The Retreat, as well as three individual lot owners on Mill Site Road. By contrast, the public will be harmed significantly by the abandonment.

        - Martis Camp residents are not the only parties who suffer from the abandonment. The abandonment will result in an increase in over half a million annual vehicle miles traveled, with accompanying increases in harmful emissions, as well as contributing to further traffic congestion on SR 267. Far from there being any "public benefit" to the abandonment, only private interests are served.

- Abandonment pursuant to the proposed EIR Addendum is a violation of CEQA.

- The environmental effects of the abandonment cannot be adequately addressed through the proposed addendum to a 10-year-old EIR. Neither the Martis Camp nor The Retreat project EIRs analyzed the opening of Mill Site Road as a public road, or the impacts of the proposed abandonment, which will increase harmful emissions that both the Retreat and Martis Camp EIRs specifically identified as having a cumulative significant impact. The potential mitigation of environmental impacts by maintaining the current use of Mill Site Road must be analyzed in a new or supplemental EIR before abandonment can occur.

In sum, any decision to abandon Mill Site Road will be set aside by a reviewing court – but only after expenditure of significant sums of money and resources of all involved. The Board should either deny the Request for Abandonment outright (consistent with the County Staff's initial recommendation at the December 9, 2014 hearing), or direct the opposing parties to continue settlement discussions with a focus on reaching an agreeable restriction on private vehicle use of Mill Site Road.

Thank you for your consideration, and please contact us if you have any questions or wish to discuss any of the above in advance of the August 4 hearing.

Very truly yours,

Harry O'Brien /SCH

Harry O'Brien

(Enclosures)

cc: Gerald O. Carden, Esq.

COUNTY OF PLACER
BOARD OF SUPERVISORS

HEARING ON PETITION TO ABANDON
MILL SITE ROAD

August 4, 2015

MARTIS CAMP PARTIES' BRIEF IN OPPOSITION TO ABANDONMENT

INTRODUCTION

Mill Site Road is a public road, approximately 0.3 miles long, that connects the eastern end of the Martis Camp community with Big Springs Drive, another public road, and from there to the Village at Northstar. Mill Site Road was constructed, and irrevocably offered for dedication as a public road, as part of the development of The Retreat-at-Northstar project (the "Retreat"). It was accepted into the County's public roadway system and opened for public use in December, 2008. The roadway has been used by employees of DMB/Highlands Group, LLC, the developer of the Martis Camp community, since 2009, and has been used by Martis Camp residents since 2010.

Just one home and nine unbuilt lots front on Mill Site Road. Of these ten lots, six are owned by Crescent Real Estate, a Texas-based real estate developer (and a former partner of the Retreat developer in other Northstar projects), who acquired these lots from the developer in 2011, well *after* the road was accepted into the County's road network and actively used by Martis Camp residents.[1]

Over the last few years, the single owner-occupant on Mill Site Road, and others associated with Retreat, have tried unsuccessfully to convince the County and the courts that Martis Camp residents should be prohibited from traveling on Mill Site Road, despite the fact that it was irrevocably dedicated, accepted, and opened as a public road. These Retreat owners have argued repeatedly, and to various administrative and legal authorities, that the original project approvals of the Martis Camp and Retreat projects prohibit the use of this public road by

[1] Of the remaining four lots, one was purchased by another real estate developer, JJJ Real Estate, Inc., in October 2010, and then transferred in August 2014, both transactions occurring after Mill Site Road was accepted into the County's road network and after Martis Camp residents' use was regular and noticeable. Only three lots have been sold to individuals.

residents of the adjoining Martis Camp community. This argument has failed in every forum. The Martis Camp approvals do *not* prohibit use of the adjacent public road, and this determination has been finally made by the County Planning Director and upheld in court. It is *not* at issue in the matter now pending before the Board.

Having failed to convince the County or the courts that Martis Camp residents should not be permitted to use a public road adjacent to their community, the Retreat Homeowners' Association ("Retreat HOA") embarked on a new strategy – to seek "abandonment" of this public road. In essence, the Retreat HOA is asking the Board to vote to rescind – long after the fact – the County's acceptance of the irrevocable offer of dedication made by the Retreat developers. The Retreat HOA asks that this road, which the County formally accepted into its public road network in December 2008, now be "privatized" and devoted to its exclusive use.

At the December 9, 2014 workshop hearing, some members of the Board expressed sympathy for the Retreat HOA's concerns, and questioned whether the Board and community had fully understood and intended that Martis Camp residents would be able to use Mill Site Road to access Northstar. At that hearing, County Staff recommended denial of the abandonment request based on their conclusion that "Mill Site Road is necessary for current or prospective public use based on the current and anticipated usage of the roadway." Despite that recommendation, the Board deferred taking any action and encouraged the parties to try to reach an amicable agreement. The Board directed the County Staff to bring the matter back to the Board for further consideration of abandonment should settlement efforts fail.

MCCA takes very seriously the concerns of the Retreat HOA and the Board. Although County Staff and other experts have agreed that the road is safe, and that the intersection operates at an acceptable level of service, Martis Camp has made concrete proposals to address

the concerns of its neighbors, while also allowing Mill Site Road to continue operating as a public road. The Retreat HOA has rejected MCCA's offer to continue settlement discussions, and has insisted that the abandonment of Mill Site Road be scheduled for consideration by the Board.

But there is a fundamental flaw in the Retreat HOA's strategy: Any purported decision by the Board to abandon the road cannot withstand judicial scrutiny. The Martis Camp Parties are not aware of – and the Retreat HOA has failed to identify – a single instance in which the abandonment of a currently and regularly used public road with no equivalent alternative was upheld on judicial review. Simply put, the County staff was correct last December when it advised the Board that it cannot make the required findings. A public road easement is something akin to an asset held by the County in trust for the benefit of the public. The law does not permit the public's interest in the use of public roads to be abandoned for the benefit of adjoining property owners. This would amount to a gift of public assets that will not stand. The brief that follows lays out a detailed analysis of the statutory requirements and case law that makes clear what the Retreat HOA should already know: Privatizing the road to satisfy the Retreat owners' long-held desire to exclude the public – or a certain subset of the public – would be unlawful.

It would be bad enough if the Retreat HOA's flawed strategy affected only the Retreat owners themselves, but everyone loses if this issue cannot be resolved amicably. At best, litigation will divert time and energy of County Staff from other priorities. At worst, the County could be liable for legal fees and damages that exceed the ability of the Retreat HOA to make good on its proposed indemnification of the County. Furthermore, closure of Mill Site Road (if

it could be accomplished) would add half a million vehicle miles per year to County streets and highways and (literally) tons of pollutants to the Mountain Counties Air Basin.

Though it is beyond argument that a property owner has the legal right to use public roads abutting its property, the Retreat HOA passionately argues that the abandonment and all of its resulting environmental and economic harm is justified because Mill Site Road was never "intended" to be used by Martis Camp residents. Clearly, if they had it to do over, the current owners of the Retreat property would prefer that Mill Site Road not be dedicated as a public road. But there's the rub – a "do-over" is not a legally permitted option here. The road was *irrevocably* dedicated and eventually unconditionally accepted by the County into its network of public roads, and the County and the courts have made clear that there is no legal restriction on use of the road by Martis Camp owners. These are facts that cannot be changed. And despite the desires of the Retreat HOA, the law does not allow abandonment of the public's interest in public streets based on what the Retreat owners might or might not have done with the benefit of hindsight. Abandonment of public roads is subject to strict statutory requirements that cannot be met where, as here, the road is currently being used by members of the public and there is no equivalent alternative.

The better course – for the Retreat HOA, for MCCA, and for the County – is to recognize that Mill Site Road is and must remain a public road, and for the parties involved here to work together, as neighbors, to address any legitimate issues this raises for the Retreat. MCCA stands ready and willing to do exactly that, and urges the Board ***not*** to take the clearly unlawful action of voting to abandon this road.

FACTUAL BACKGROUND

A. The Martis Camp And The Retreat Projects

1. Martis Camp

The Martis Camp project (originally "Siller Ranch") was approved in January 2005, following public notice and hearings in accordance with the California Environmental Quality Act ("CEQA"). (*See* Appendix of Materials In Support of the Martis Camp Parties' Opposition to Abandonment ("Appendix" or "Appx."), submitted herewith, **Tab 1** (December 8, 2014 Department of Public Works Memorandum) at page 1.) Martis Camp's eastern boundary adjoins the Retreat's western boundary. Schaffer Mill Road, a private road, is the main entrance to (and the primary roadway running through) Martis Camp, beginning at the intersection of SR 267 and Airport Road, and extending to the common boundary with the Retreat, where it connects with Mill Site Road. (*See* Appx. **Tab 2** (Map of Schaffer Mill Road).)

When the Martis Valley Community Plan ("MVCP") was adopted, in December 2003, Schaffer Mill Road began at SR 267 and ended at the entrance to the Lahontan Community. (*See* Appx. **Tab 3** (MVCP excerpts) at page 69.) As explained in the MVCP, the County planning staff initially considered a public roadway system that would have required a public "through connection between [the then-current terminus of] Schaffer Mill Road and Northstar Drive" (i.e., through Martis Camp to Northstar). (*Id.* at pages 71-72.) However, "based on community and landowner input," a second scenario was adopted, which "removed the through connection from Schaffer Mill Road [at the entrance to Lahontan] to Northstar." (*Id.* at page 72.) As part of this ultimately implemented second scenario, "the proposed roadway system [through Martis Camp] includes transit and emergency access only between Schaffer Mill Road and Northstar." (*Id.*)

In other words, the MVCP circulation plan rejected the general public through-connection along Schaffer Mill Road, through Martis Camp, and into Northstar. Instead – and as

a condition of its approval as a subdivision served internally by private streets – Martis Camp was required to "provide an easement or other mechanism acceptable to the County" to allow its private road to be used as part of an emergency access and public transit vehicle corridor between SR 267 and the public roadways in the Northstar-at-Tahoe development. (*See* Appx. **Tab 4** (Siller Ranch Conditions of Approval) COA No. 33.) Accordingly, Martis Camp's roads remained private, subject to a non-exclusive easement across Martis Camp only for the use of transit and emergency access vehicles (i.e., *as opposed to* a full public road easement providing access across Martis Camp to the general public).[2] Of course, with the recordation of each Final Map for the various phases of Martis Camp, each lot in Martis Camp also obtained an easement to use all of Martis Camp's private roads.

In response to questions regarding the future plans for a general public connection route through Martis Camp and into Northstar, the County responded that "the opening of the roadway to the public (i.e., from SR 267, through Martis Camp, to Northstar) would be a separate project subject to its own environmental review process." (*See* Appx. **Tab 5** at 3.0-222 (Response 4-61).) The roadway referenced in that statement (Siller Ranch Road, now Schaffer Mill Road) remains private, and has not been opened to the general public. Thus, while allowing the public to use Schaffer Mill Road across Martis Camp would involve a new and separate project, there was never any question that members of the public would be able to use Mill Site Road, when and if it was offered for dedication and finally accepted into the County's public roadway system and opened to the public. Indeed, that is the legal effect of a road being a "public" road.

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[2] The County's response to comment letters on the Martis Camp EIR makes the same point: "the extension of Schaffer Mill Road through Siller Ranch (Siller Ranch Road) will be designated and used as an emergency access and public transit provider route, even if Siller Ranch is approved as a private community." (*See* Appx. **Tab 5** (Siller Ranch Final EIR Excerpts) at 3.0-36 (Response G-7).)

When Martis Camp was approved, neither the Retreat nor Mill Site Road had been approved, let alone developed, though the County did hold an emergency vehicle easement across the Retreat property, granted in December 2004 in satisfaction of one of the Conditions of Approval of The Village-at-Northstar expansion project. The Martis Camp approvals did not place any restrictions on Martis Camp residents' use of any public road that might later be developed on the Retreat property.

2. The Retreat-At-Northstar

The Retreat project was approved in February 2005, less than a month after the Martis Camp project was approved. (*See* Appx. **Tab 1** at page 1.) As mentioned previously, the Retreat shares a common boundary with Martis Camp, where Schaffer Mill Road now connects to Mill Site Road in the Retreat.

The planning documents and project approvals for the Retreat establish the intended public status of Mill Site Road and its required connection with Schaffer Mill Road at the Martis Camp boundary. On February 23, 2005, the Board of Supervisors approved the Vesting Tentative Map for the Retreat, which depicts Mill Site Road as extending to and slightly beyond the common property boundary between Northstar and what was then Siller Ranch (now Martis Camp). (*See* Appx. **Tab 6** (Retreat Vesting Tentative Map) at Sheet 2).) The Retreat's Conditions of Approval required that "Mill Site Road shall be constructed at a minimum to the west property line for a future emergency access / transit access road connection" and dedicated as a public highway. (*See* Appx. **Tab 7** (Retreat Conditions of Approval) COA Nos. 26, 37.) The Final Map of the Retreat confirms this point, as the road detail on the map is labeled "Mill Site Road and Emergency Access Easement" on both the portion within the Retreat's lotted area and the portion of the road running across the unsurveyed remainder parcel depicted on the map. (*See* Appx. **Tab 8** (Final Map of The Retreat) at Sheet 4, Detail C.)

Had the Retreat been approved with Mill Site Road as a private road, there would be no entry or exit to or from Martis Camp at the connection with Schaffer Mill Road other than for emergency and transit vehicles. However, as a result of the Retreat's conditions of approval requiring the construction of Mill Site Road to the property line with Martis Camp, and its dedication as a public road, the foundation was laid for Martis Camp residents' "abutter's rights" access to Mill Site Road. Once Mill Site Road was constructed and opened as a public road, Martis Camp residents gained not only the right to use Mill Site Road the same as any member of the general public, but also a separate property right to access Mill Site Road as "abutters" at the point where the road connects to Martis Camp.[3] Those abutter's rights were triggered by the County's final and unconditional acceptance of roadway improvements and the inclusion and acceptance of Mill Site Road into the County's Maintained Mileage System by Resolution of the Board of Supervisors on December 9, 2008. (*See* Appx. **TAB 36**, item 18(e).)[4]

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[3] *People v. Ricciardi* (1943) 23 Cal.2d 390, 397-98; *Bello v. ABA Energy Corp.* (2004) 121 Cal.App.4th 301, 317 ("Indeed, when private property abuts an established [public] street or road, a right-of-way is simply presumed without further inquiry.")

[4] *See Mikels v. Rager* (1991) 232 Cal.App.3d 334, 353-54 (holding that, under Subdivision Map Act, county acceptance of offers of public dedication conditioned on road improvements create no public right or interest until unconditional acceptance of the dedication); *see also People v. Sweetser* (1977) 72 Cal. App. 3d 278, 284 ("[T]he public's right to use a county highway easement conveyed for a public highway purposes does not arise until after the easement has been 'opened' by the county for such purposes."). In other words, the public had no right to use that roadway until the roadway improvements were accepted and the roadway was opened in December 2008.

Should the Board vote to abandon Mill Site Road and allow the Retreat HOA to erect a gate preventing passage into and over Mill Site Road by Martis Camp residents, the resulting extinguishment of abutter's rights access to the road would result in a compensable taking of valuable property rights. *See People By and Through Dept. of Pub. Works v. Renaud* (1961) 198 Cal.App.2d 581, 586 (holding that a property owner abutting upon a public street or highway has a property right in the nature of an easement for ingress and egress to and from his property, "and that right cannot be taken from him without just compensation.") Although the Martis Camp Parties assert that such loss cannot be adequately compensated by money damages, the Martis Camp Parties will, if necessary, pursue compensation by way of an inverse condemnation action. (footnote continued)

3. Emergency Access/Transit Easement

As set forth above, the County desired and intended an emergency access and transit easement between SR 267 and Northstar. The County obtained that easement and access route through the Martis Camp and Retreat project approvals in two ways: (1) by requiring that Martis Camp grant the County an easement over its private road (Schaffer Mill Road); and (2) by requiring that the Retreat build, connect, and dedicate a public road (Mill Site Road) linking up with Martis Camp's private road and emergency and transit easement. While these approvals ensured the County's emergency and public transit access along this route, no prohibition or intent to prohibit Martis Camp residents from using their development's own private road, or from accessing the County's public roads that connect to Martis Camp (namely, SR 267 and Mill Site Road), exists in any of the planning documents or project approvals. As discussed below, this issue has been fully and finally determined.

B. <u>The Retreat's Previous Attempts To Prohibit Martis Camp Traffic</u>

The Retreat HOA's abandonment request is not the first attempt to prohibit Martis Camp traffic on Mill Site Road. Parties affiliated with the Retreat have made several requests to the County to prohibit or restrict such traffic, all of which the County has publicly rejected, having

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The County – and thereby, the taxpayers – would be required to pay a substantial sum as a result of the abandonment.

Moreover, while the Retreat HOA has taken the position in correspondence to the County that the abandonment will not affect any abutter's rights that may exist in Mill Site Road (see Appx. **Tab 9** (email correspondence between the Retreat and County Counsel)), the Retreat HOA's plans to erect a gate – presumably to preclude Martis Camp traffic on Mill Site Road – belies this assertion. (See Appx. **Tab 10** (Retreat plans for gate installation).) Given that Martis Camp traffic is the precise traffic the Retreat HOA intends to prohibit by having Mill Site Road abandoned, the Retreat HOA's abandonment efforts would be pointless if such abutter's rights access to Mill Site Road survived the abandonment. In fact, if the Retreat HOA's arguments on this point are correct then, even if the County abandons Mill Site Road, it should refuse to approve the Retreat's proposal to erect a gate that would unlawfully restrict the surviving abutter's rights access to Mill Site Road by the Martis Camp Parties.

determined that Martis Camp access is proper and permissible under the relevant planning documents and project approvals.

1. The County's December 2011 Letter

On November 1, 2011, legal counsel for The Retreat at Northstar Association wrote to the County, complaining of the non-emergency use of Mill Site Road by Martis Camp residents, and asking the County to prohibit such traffic on Mill Site Road. By letter dated December 12, 2011, the County refused this request, finding that there was no violation of any conditions of approval by the challenged traffic. (*See* Appx. **Tab 11**.) The County expressly confirmed – "[b]ased upon [an] analysis of both the Retreat at Northstar and Martis Camp projects" – the lack of any prohibition in the planning documents on Martis Camp residents using Mill Site Road (*Id.* at 2-3.) The County rejected the assertion that Mill Site Road was limited exclusively to emergency or public transit vehicles only, and concluded that there was nothing in the record "that prohibits Martis Camp residents from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development." (*Id.* at 3.)

2. The County's November 2012 Letter

Displeased by the County's December 2011 rejection of its request, legal counsel for the Retreat at Northstar Association, and homeowner Lev Leytes, continued to submit letters to the County in 2012, demanding the prohibition of Martis Camp traffic on Mill Site Road based on the very same arguments and incorrect construction of project documents that the Retreat HOA now asserts in support of its Petition.

By letter dated November 1, 2012, the County again rejected those arguments. (*See* Appx. **Tab 12**.) The County's 2012 Letter explicitly set forth and analyzed applicable provisions from the Martis Camp and Retreat conditions of approval, discussed at length the relevant project backgrounds, and again concluded, consistent with its previous correspondence,

that Martis Camp traffic on Mill Site Road did not violate any project approvals, and that there was no basis for stopping Martis Camp residents from driving on the County's public roads abutting the Martis Camp development. (*Id.* at 2-7.) The County therefore again declined to take any action prohibiting Martis Camp residents' use of Mill Site Road.

C. Litigation Over Mill Site Road Use

As a result of the County's repeated refusals to prohibit or restrict traffic on Mill Site Road, certain parties affiliated with Retreat homeowner, Lev Leytes, filed a petition on January 29, 2013, amended on April 10, 2013, seeking mandamus relief against the County, and seeking an order requiring the County to prohibit Martis Camp traffic on Mill Site Road. (*See* Appx. **Tab 13** (Amended Petition).) The County joined DMB Highlands Group ("DMB/H") in demurring to the petition, arguing, among other things, that nothing in the planning documents or project approvals prohibited Martis Camp residents from using Mill Site Road, and that Martis Camp residents had lawful access to Mill Site Road pursuant to abutters' rights resulting from the County's knowing act of requiring Mill Site road to be constructed to the Martis Camp boundary and dedicated as a public road. (*See* Appx. **Tab 14** (Excerpts of DMB/H Demurrer and Reply Briefs and County's Joinders therein).) On November 12, 2013, the trial court sustained the demurrers, and the petition was dismissed with prejudice shortly thereafter. (*See* Appx. **Tab 15** (Ruling on Demurrer).) The County and DMB/H thus prevailed in the litigation and affirmed the right of Martis Camp residents to use Mill Site Road in accordance with the relevant planning documents and project approvals.[5]

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[5] Notably, Trimont Land Company and CNL Income Northstar, LLC, the developers of The Retreat, were also real-parties-in-interest and defendants in the Leytes-related litigation and joined in many of DMB/H's arguments *opposing* petitioners'/plaintiffs' attempt to stop Martis Camp traffic on Mill Site Road.

In February 2014, the Leytes-affiliated parties appealed the trial court's decision, and the case is now on appeal. The County has continued to join in DMB/H's arguments in the appellate briefing, including that Martis Camp residents possess lawful access to Mill Site Road. (*See* Appx. **Tab 16** (Excerpts of DMB/H Answering Brief on appeal and County Joinder therein).) Briefing on the appeal is complete, and the parties are awaiting a notice of decision or a date for oral argument.

D. Abandonment Petition And Staff Recommendation

Having failed at every prior attempt to prohibit Martis Camp residents from accessing the public road at issue, the Retreat HOA submitted the current petition and request to abandon Mill Site Road on February 24, 2014. (*See* Appx. **Tab 17**.)[6] Tellingly, while the Retreat HOA's request for abandonment cites to, in passing, the relevant abandonment statute, the request fails to discuss any of the statutory requirements for abandonment of a public road, or how those requirements are met in this instance. (*Id.*) The request merely recites the same purported "original intent" arguments that the County has rejected in public letters and litigation, asserting that Mill Site Road, despite its dedication as a public road, should be used exclusively for emergency access and public transit vehicles (and, of course, for the Retreat's own private use).[7]

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[6] The Retreat HOA also seeks the abandonment of the public right of way over Cross Cut Court – a long cul-de-sac. The Martis Camp Parties do not take any position with respect to the abandonment of the Cross Cut Court right of way. As there is no evidence that Cross Cut Court is regularly used by, or necessary to, the public, Cross Cut Court, unlike Mill Site Road, may be found "unnecessary" to present or prospective public use. Indeed, Condition of Approval 37 for the Retreat allowed Cross Cut Court to be developed as a private street.

[7] The Retreat HOA's arguments regarding the "original intent" of the Martis Camp and Retreat approvals are *entirely* irrelevant to the Board's current consideration of the proposed abandonment of Mill Site Road. However, given the Retreat HOA's single-minded, though misguided, focus on its characterization of the County's supposed intent, the Martis Camp Parties address – and discredit – this original intent argument in the materials attached as Appendix **Tab 18**, submitted herewith.

On December 9, 2014, the Placer County Department of Public Works issued a memorandum (the "DPW Memorandum"), in which the County Staff concluded that the abandonment request should be denied on the basis that the "Staff believes that Mill Site Road is necessary for current or prospective public use based on the current and anticipated usage of the roadway." (*See* Appx. **Tab 1**, at page 4.) The DPW Memorandum also noted that the County would need to reserve certain public utility, public transit, emergency access, and public trail easements if Mill Site Road were to be abandoned, and that the County may also wish to obtain an irrevocable offer of dedication, "should such rights become necessary in the future." (*Id.* at 3-4.) Moreover, the DPW Memorandum states that Northstar California (the ski mountain operator) has requested a grant of certain private easement rights on Mill Site Road, in the event of abandonment, for operations and maintenance. (*Id.* at pages 2, 3.) Finally, the DPW Memorandum noted that, while a denial of the abandonment request would not constitute a project under CEQA requiring further environmental review, further consideration of the abandonment *would* require appropriate environmental review prior to Board action. (*Id.* at 4.)

At a hearing on December 9, 2014, the Board considered the Retreat HOA's abandonment request. Although the County Staff recommended denial of the request based on the conclusion that the required findings could not be made to abandon Mill Site Road, the Board directed the interested parties to try to reach a mutually agreeable solution and, if unsuccessful, directed the County Staff to bring the matter back to the Board for further consideration of abandonment.

APPLICABLE LEGAL STANDARDS

A. Abandonment Standard

California Streets and Highways Code §§ 8320-8325 govern the procedure and legal requirements to vacate or abandon a public road. These statutory provisions require that any

decision to vacate or abandon a public road be preceded by a noticed hearing where evidence from the interested parties is considered. (*Id.* § 8324.)

To abandon a public road, the legislative body must find, based on the evidence, that the road is "unnecessary for present or prospective public use." (*Id.*) Case law addressing abandonment of public roads further requires that any decision to vacate or abandon a public road be in the "public interest." (*Heist v. County of Colusa* (1984) 163 Cal.App.3d 841, 849; *DeLucchi v. County of Colusa*, 2015 WL 177397, *1, *8, Super. Ct. No. CV23826 (Cal. Ct. App. January 14, 2015). Abandonment of a public road for private benefit is improper, and a decision to do so will be declared void on judicial review. *Ratchford v. County of Sonoma* (1972) 22 Cal.App.3d 1056, 1075-76.

B. <u>Judicial Review Of Abandonment Decision</u>

In reviewing a judicial challenge to a public agency's decision to abandon a public road, the proper standard of review depends on the property rights of the parties involved. Although a public agency's decision to abandon a road is often considered to be a "legislative" act, subject to deferential review, this standard does *not* apply where – as here – the party opposing abandonment has a "direct" property interest, such as abutter's rights, in the road to be abandoned. In such cases, the court reviews the entire record and the fact-finding process to determine whether the abandonment decision is supported by substantial evidence. *Ratchford,* 22 Cal.App.3d at 1067, 1069; *Heist*, 163 Cal.App.3d at 847; *DeLucchi,* 2015 WL 177397, at *6. A substantial-evidence standard of review is more demanding than an arbitrary-and-capricious standard of review. By virtue of abutter's rights, the Martis Camp Parties have a direct property interest in the road to be abandoned, and the higher standard of substantial evidence will apply on judicial review of a decision to abandon Mill Site Road.

ARGUMENT

A. The Evidence Does Not Show That Mill Site Road Is Unnecessary For Present Or Prospective Public Use.

The record does not support a finding that Mill Site Road is "unnecessary" to present or prospective public use, and there is nothing the Retreat HOA can do to change the underlying facts on the ground. To be clear: it is *not* the Martis Camp Parties' burden to prove that Mill Site Road is *necessary* to public use. It is the Retreat HOA's legal burden to establish, as a matter of evidence, that the road is "unnecessary" to public use. (Streets and Highways Code § 8324.) It cannot meet this burden. On the contrary, the Martis Camp Parties have demonstrated, conclusively, that the road is used daily by members of the public as a direct, quick and environmentally low-impact route between Martis Camp and Northstar, and, thus, cannot be abandoned.

1. The Abandonment Request Ignores The Applicable Legal Standard And Instead Focuses On Irrelevant Facts And Arguments.

In its February 24, 2014 letter requesting abandonment of Mill Site Road, the Retreat HOA did not argue that Mill Site Road is unnecessary for present or prospective public use. Rather, its entire argument was that the road should be abandoned precisely *because* it is being used by Martis Camp residents. (*See* Appx. **Tab 17**.) Thus, instead of providing evidence – as required by statute – showing that the road is unused by, or unnecessary to, current or future public use, the Retreat HOA requests abandonment on the ground that the road is being used too "extensively" by members of the public. (*See id.*, at page 1.) This is not a proper basis on which to abandon a public road (*see Streets & Highways Code* § 8324), and, in fact, precludes a finding that the road is "unnecessary." The County cannot abandon Mill Site Road merely because the Retreat's residents would, in retrospect, have preferred to have their homes located on a private road. The Retreat project was not approved with private roads, and the absence of private roads

in the development cannot now be fixed retroactively by depriving the public of a road that is currently in use and necessary to direct, quick and environmentally low-impact travel between Martis Camp and Northstar.

Recognizing that its original abandonment request fell short of the mark, on October 8, 2014, the Retreat HOA submitted additional correspondence in purported support of their abandonment request. (*See* Appx. **Tab 19**.) In that correspondence, the Retreat HOA asserted, for the first time, that Mill Site Road is "unnecessary" to public use. But the only evidence it presented in support of that assertion are excerpts of planning documents detailing the Martis Camp and Retreat projects' approval process – prior to the dedication, construction, and opening of Mill Site Road as a public road – which the Retreat HOA claims demonstrate that Mill Site Road is not "necessary" to the Martis Valley transportation network. (*See id.,* at page 13.) In sum, the Retreat HOA's best – or, rather, only – argument for abandonment is that Mill Site Road cannot be "necessary" to public use because the County originally approved Martis Camp without considering Mill Site Road as a public road. (*Id.*) This argument misses the mark and does not support abandonment.

The question at issue for purposes of abandonment is *not* whether Mill Site Road was initially considered as a "necessary" connection between Martis Camp and Northstar at the time the two projects were approved. Nobody is suggesting that the Martis Camp project would not have been approved absent the current use of Mill Site Road. Rather, the question is whether Mill Site Road, having been subsequently dedicated to the public, opened, and now regularly used as an efficient and environmentally beneficial route between Martis Camp and Northstar, can be found to be "*unnecessary*" to public use. There simply is no evidence in the record that would allow the County to make this finding. In fact, as set forth below, the available evidence

supports exactly the opposite conclusion: Mill Site Road is currently used as a necessary and uniquely advantageous public route between Martis Camp and Northstar, and is also necessary to prospective public uses specifically contemplated by the County.

2. The Evidence Demonstrates That Mill Site Road Is Necessary To Present Public Use.

a. A Regularly Used Road With No Equivalent Alternatives Cannot Be "Unnecessary."

Cases upholding the abandonment of public roads as unnecessary to present or prospective public use consistently involve roads or trails that are unused, undeveloped, impassable, not linked or connected to any other public road systems, or that are redundant in light of other roads in the *same* location. *See DeLucchi*, 2015 WL 177397 at *8 (upholding abandonment of undeveloped right-of-ways that did not lead to any public land, did not link up with any county-maintained roads, and/or were unpassable); *Heist*, 163 Cal.App.3d at 844, 848 (upholding abandonment of a portion of a "blind road" without a terminal, not leading anywhere); *Citizens for Improved Sorrento County Access, Inc. v. City of San Diego* (2004) 118 Cal.App.4th 808, 811, 814 (upholding abandonment of road closed for construction for over five years where many alternate routes existed in the same location, making re-opening of road unnecessary and detrimental to environment). In such cases, use of the roads provided no discernible benefit to the public, and abandonment was therefore proper. This is not the case here.

b. Mill Site Road Is Regularly Used By Members Of The Public As A Necessary, Convenient And Environmentally Low-Impact Route.

It is undisputed that Mill Site Road is used on a daily basis by members of the public as a ready, uniquely direct, and quick connection between Martis Camp and Northstar. These facts alone prohibit a finding that it is an "unnecessary" road. Indeed, the "extensive" use of Mill Site

Road is precisely why the Retreat asks for the road to be abandoned. (*See* Appx. **Tab 17**, at page 1.) Over a hundred letters from Martis Camp and Northstar residents have been submitted to the Board, describing how Mill Site Road serves as a quick and convenient route between the two locations, with no comparable alternate routes available. (*See* Appx. **Tab 20** (Sample collection of Martis Camp residents letters).)[8] Among other things, Mill Site Road is used by Martis Camp residents to access Northstar for skiing and ski lessons, shopping, entertainment, and dining, thereby contributing to the lifeblood of the commercial and social life of Northstar. (*Id.*) Additionally, the County's own documents demonstrate that other third parties, including Northstar California, require access to Mill Site Road for ski resort operations. (*See* Appx. **Tab 1** (DPW Memo.) at 2,3; **Tab 22** (PLACER 1573-1580).) Available data regarding trips to and from Martis Camp indicates that the average daily traffic on Mill Site Road is eighty-one trips per day.[9] (*See* Appx. **Tab 23** (Letter from K. Anderson).) Mill Site Road is, therefore, unlike the typical abandoned road, which leads to no specific destination, does not link up with other County road systems, or is otherwise undeveloped, unused, or redundant. *DeLucchi*, 2015 WL 177397 at *8; *Heist*, 163 Cal.App.3d at 844, 848; *Sorrento,* 118 Cal.App.4th at 811, 814.

Should the Board find, as it must in order to abandon Mill Site Road, that the road is "unnecessary" to public use – notwithstanding the extensive evidence to the contrary, including the Retreat's own acknowledgments of regular public use – the Board will be blazing a path into new legal territory and its decision will not withstand judicial review.

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[8] Additionally, over 380 individuals have signed an online petition attesting to the necessity of Mill Site Road. The MCCA has provided those petitions to the County, and a sample petition and list of signatories is attached as Appx. **Tab 21**.

[9] This is far below the ***6,800* trips per day** the County has said that Mill Site Road is capable of handling. (*See* Appx. **Tab 11**, at 2.)

c. The *Sorrento* Case Is Distinguishable Or Inapposite Because Abandonment Of Mill Site Road Would Alter The Status Quo, And Would Leave The Public With No Equivalent Alternative Route.

The Retreat HOA's purported legal support for its abandonment request is apparently limited to the *Sorrento* case, where a court upheld a city's decision to abandon, rather than re-open, a road that had been *closed* for construction for over five years. *Sorrento*, 118 Cal.App.4th at 811. The facts of the *Sorrento* case are significantly different from the facts here, and do not support abandonment of Mill Site Road.

First, because the road proposed to be abandoned in *Sorrento* had then been closed for over five years, the decision to abandon it did not substantially change the status quo of travel routes in the area; rather, it maintained the status quo. Re-opening that road would have caused significant detrimental environmental effects, such that permanent closure of the road had the *least* environmental impact. *Id.* at 811. Indeed, the identified "public benefit" ascribed to the abandonment in *Sorrento* was that closing the road "***would substantially increase environmental protection***." *Id.* at 813. Here, by contrast, Mill Site Road is, and has been, open and in use by members of the public for many years and its closure would significantly and negatively impact the current usage of the County road system, resulting in substantially increased traffic and detrimental environmental impacts, caused by re-routing traffic over longer and more circuitous routes to other County roads. (*See* Section C.2.b, below.)

Second, the decision in *Sorrento* was based on evidence showing that "many alternative roads exist[ed] in the same basic location," such that re-opening the road in question "would not relieve [traffic] congestion or provide a necessary transportation alternative for the public." *Id.* at 812, 815. A review of the road and surrounding area in *Sorrento* makes clear that the abandoned road (a one-mile portion of Sorrento Valley Road) ran parallel and in close proximity

to Interstate 5, as well as to other local roads that served as equivalent alternate routes in the same location. (*See* Appx. **Tab 24** (Maps of Sorrento Valley Road).) Here, however, there is no road parallel to, or right next to, Mill Site Road, nor is there any road that "provides equivalent benefits" in terms of travel between Martis Camp and Northstar. The closing of Mill Site Road will, instead, cause many Martis Camp residents to travel *nearly four times farther* than they would otherwise have to travel to reach Northstar. (*See* Appx. **Tab 23**.) This substantially longer route will not burden Martis Camp residents alone – the additional vehicle miles traveled will add to traffic congestion on other County roads, amplify noise pollution, and increase levels of harmful emissions and air pollution. (*See* Appx. **Tab 25** (Letter from M. Hagemann) at 4-6; *see also* Section C.2.b.) Thus, unlike in *Sorrento*, the abandonment of Mill Site Road will cause significant additional environmental harm while leaving Martis Camp residents without an equivalent alternative route to or from Northstar. *Sorrento* therefore does not provide support for granting the Retreat's request.[10]

Because the available evidence establishes that Mill Site Road is currently used and necessary for travel between Martis Camp and Northstar, the required finding that Mill Site Road is "unnecessary" to present public use cannot be made.

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[10] *Sorrento* was also determined pursuant to the more deferential "arbitrary and capricious" standard of review, whereby the court concluded that it could not say that the City acted arbitrarily or capriciously in making its planning determinations. 118 Cal.App.4th at 815. This lower standard will not apply to a judicial challenge in this case, where the abandonment directly impacts the personal property rights of abutting land owners, and where the reviewing court will require substantial evidence supporting the County's abandonment decision. *Ratchford,* 22 Cal.App.3d at 1067, 1069; *Heist*, 163 Cal.App.3d at 847; *DeLucchi,* 2015 WL 177397, at *6.

3. The Evidence Demonstrates That Mill Site Road Is Necessary For Prospective Public Use.

Assuming, *arguendo*, that the substantial evidence supporting the current use and necessity of Mill Site Road could be ignored, the County still cannot make the required finding that Mill Site Road is unnecessary to *prospective* public use. Indeed, such prospective public use is specifically contemplated by the relevant planning documents and project approvals, and are the subject of the various reservations of easements upon which the abandonment is conditioned.

Ratchford v. County of Sonoma (1972) 22 Cal.App.3d 1056 is particularly relevant here and demonstrates why abandonment of Mill Site Road is improper. In *Ratchford,* the court reversed a resolution abandoning a public road because it found no evidence that the road was unnecessary to public use, *despite* the fact that the road was not currently in public use and there were no plans for future development of the road for public use. *Id.* at 1075. Notably, the court found that the lack of specific future plans for the road did not negate the possibility, contemplated by the relevant planning documents, that such development *might* occur in the future. *Id.* Thus, absent affirmative evidence as to why the particular portion of road at issue was "unnecessary" for prospective public use, the *Ratchford* court declined to allow the abandonment of a public road. *Id.* at 1076.

The reasoning and holding of the *Ratchford* case, alone, warrant denial of the Retreat HOA's abandonment request. The facts militating against abandoning Mill Site Road, however, are significantly stronger than those on which the *Ratchford* court based its reversal of the county's abandonment decision. As set forth below, there is substantial evidence in this case demonstrating various prospective public uses specifically contemplated by the relevant planning documents and project approvals. That the County has attempted to preserve such prospective

public uses through its reservations of easements and conditions of abandonment does not alter the fact that they preclude an evidentiary finding that Mill Site Road is "unnecessary."

4. The County's Required Conditions Of Abandonment Are Further Evidence That The Road Is Necessary To Public Use.

The County Staff initially determined that Mill Site Road could not be abandoned because it is necessary to present and prospective public use (*see* Appx. **Tab 1**, at page 4). That was the correct decision. Now, however, the County Staff have reversed course and is expected to recommend abandonment if certain conditions are met by the Retreat. However, the fact that these conditions to abandonment include (1) an indemnity agreement between the Retreat HOA and the County, (2) an irrevocable offer of dedication of Mill Site Road by the Retreat, and (3) a grant of private easement rights along Mill Site Road to certain third parties, among other things, indicates that the County cannot genuinely find that Mill Site Road is "unnecessary" to public use. Rather, these anticipated conditions precedent are persuasive evidence that Mill Site Road is, in fact, a necessary public road.

a. Indemnity Agreement And Irrevocable Offer Of Dedication.

It is telling that the County is conditioning the abandonment of Mill Site Road on, among other things, the Retreat HOA's provision of an indemnity against any potential liability arising from the abandonment and an irrevocable offer of dedication for Mill Site Road (to enable the restoration of the road to public use should that become necessary). (See Appx. **Tab 26** (Draft Indemnity Agreement); **Tab 27** (Draft Resolution of Abandonment) at 2; **Tab 28** (Conditions of Abandonment).) The imposition of these conditions precedent indicates, at the very least, that the County is less than confident in the grounds for an abandonment and is unwilling to take that action unless the Retreat HOA insures it against the consequences of a wrong decision. However, the County cannot make the necessary finding that the road is "unnecessary" to public

use while simultaneously reserving the right to return the road to public use in the future, if necessary. That the County believes it may need to restore Mill Site Road to public use in the future fatally undermines any conclusion that the road is unnecessary to present or prospective public use.

b. Reservation Of Private Easements.

The evidence also establishes that the road is, in fact, currently *necessary* to parties other than just Martis Camp and Northstar residents. For instance, Northstar California operates ski lift and ski facilities in the area and needs continued access to the road for operation of those facilities. The County intends to **require** that Northstar California be granted private access rights to Mill Site Road as a condition of abandonment. (*See* Appx. **Tab 1**, at 2,3; **Tab 22; Tab 28**.) But such a grant of ongoing private easement rights to a select group of members of the public while, at the same time, concluding that Mill Site Road is "unnecessary" for other members of the public, is improper and prohibited by statute. The road is either necessary or it is not, and, here, all the evidence shows that it is necessary for the public generally. If a road can be abandoned by a public agency's peremptory designation of the road as "unnecessary" in the face of undisputed evidence of present and anticipated use, the statutory requirements for abandonment are meaningless. The legislature did not intend for a public agency to use the abandonment process as a way to pick and choose which members of the public may use a public road.

The available evidence makes clear that what the Retreat HOA *actually* seeks is an unlawful "partial closing" of a public road, whereby the Retreat HOA can decide which members of the public to include or exclude from access to the road. This scheme would, however, run afoul of the law. *See, e.g., City of Lafayette v. County of Contra Costa* (1979) 91 Cal.App.3d 749, 757 (holding that a public road may not be closed to some members of the public but open

to others). Mill Site Road is either genuinely "unnecessary" to any public use, in which case it may be properly abandoned, or it is necessary to continued use by various parties, in which case it cannot be abandoned. But the Retreat HOA may not game the system by first having the road abandoned for general public use, on the basis that it is allegedly "unnecessary," and then allowing use by select members of the public, either through conditions of abandonment or subsequent grant of private easements. Evidence that non-residents of the Retreat require, and intend to obtain, continued access to Mill Site Road, in and of itself, precludes abandonment.

c. Reservation Of Public Easements.

Should the Board decide to abandon Mill Site Road, the County has stated that it will reserve various easements for continued access to, and use of, the road, including for public utilities, as well as for emergency access and public transit purposes. (*See* Appx. **Tab 28** (April 9, 2015 Conditions of Abandonment); **Tab 1** (DPW Memo.), at 2-4.) These reservations are necessary because of the various prospective public uses for Mill Site Road set forth in the relevant planning documents and project approvals, and are further evidence that Mill Site Road is, and will continue to be, necessary to public use.

For instance, it is undisputed that Mill Site Road was expressly contemplated to be, and is, necessary to current and future emergency and public transit use:

- Martis Camp COA 33 (mm 4.4.7b) requires an easement from the entrance at Schaffer Mill Road through the emergency access connection at Northstar (i.e., along Schaffer Mill Road through Martis Camp and onto Mill Site Road). (*See* Appx. **Tab 4**.)
- Retreat COAs 26 and 37 require Mill Site Road to be built to the property line with Martis Camp for future emergency/transit road connection and dedicated to the County as a public highway easement. (*See* Appx. **Tab 7**.)
- The County's November 2012 letter expressly notes the contemplated public use of Mill Site Road as part of the emergency access connection between Martis Camp and Northstar-at-Tahoe, "as an emergency access and as a local transit route when conditions on SR 267 warrant." (*See* Appx. **Tab 12**, at page 6.)

Additionally, the Retreat's own planning documents contemplate future public use of Mill Site Road as a potential transportation route between Northstar and SR 267. The Retreat's Draft EIR contains a section entitled "Impact Discussions," which expressly states that the route between Northstar and Schaffer Mill Road (through Martis Camp) "would provide a secondary route for emergency access vehicles *and the potential avoidance of traffic on SR 267*." Thus, the Retreat's planning documents envisioned prospective public uses for Mill Site Road as an alternate route to SR 267 from Northstar when traffic or other conditions warrant.

Because of these future contemplated uses of Mill Site Road, the County cannot abandon the road as "unnecessary" to prospective public use. *Ratchford,* 22 Cal.App.3d at 1075-76. While it is true that the statute allows for reservation of specifically enumerated, and limited, public and utility easements in the event a road is abandoned (*see* Streets & Highways Code §§ 8324, 8340), courts have noted the obvious contradiction in a public agency's reservation of easements for current or future public use, while simultaneously finding that a road is "unnecessary" to current or future public use, and have overturned abandonment resolutions on such grounds.[11]

B. <u>There Is No Evidence That Abandonment Of Mill Site Road Benefits The Public; The Evidence Is All To The Contrary.</u>

In addition to the statutory requirement that the road be found to be "unnecessary" to public use, courts have imposed a second requirement, independently fatal to the abandonment decision here, namely, that the abandonment must be in the "public interest." *Heist,* 163

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[11] *See* Appx. **Tab 29** (Petition for Review in *Park Access Restoration Committee v. City of Laguna Niguel*, 1998 WL 34282142. *1. *16 (Cal. July 6, 1998) ("Respondents argued it was impossible to ever reserve an easement for any continued "public" use in a street and to simultaneously vacate that street by finding it was wholly "unnecessary" for any current or future public use. ***Both Lower Courts agreed.***") (emphasis added)). Petition for review *denied* on August 19, 1998. (*Id.*)

Cal.App.3d at 849; *DeLucchi,* 2015 WL 177397, at *8. Here, the evidence establishes that abandonment of Mill Site Road benefits the interests of only a handful of individual homeowners in the Retreat, not those of the public.

Not only is there no public benefit to abandoning Mill Site Road, doing so will harm the public interest in many respects. Among other things, abandonment will be substantially harmful to the environment. Martis Camp residents would have to access Northstar by driving many more miles on a longer, more circuitous route, mostly on the already congested SR 267, a development that will increase traffic congestion on that highway, adversely impact road safety, and lead to increased vehicle emissions and other significant environmental harm resulting from increased vehicle usage. (*See* Section C.2.b.) Additionally, the loss of the more direct route between Martis Camp and Northstar may significantly reduce the visits to Northstar by Martis Camp residents, resulting in potentially decreased revenues for local businesses and reduced tax revenues for the County. (*See* Appx. **Tab 20**.) In either case, significant portions of the public will be harmed by the abandonment of Mill Site Road. Moreover, certain members of the public own property in both Martis Camp and Northstar, and could suffer even greater harm by the loss of direct and quick access to their properties.

Here, all benefit resulting from abandonment will go to the real estate developers and three private homeowners in the Retreat, all of whom purchased property on a public road that they now seek to privatize to avoid the inconvenience of traffic on that road. There is no evidence of public benefit. Although some private benefit may properly be realized *incidental* to the public benefit of abandonment, a road may not be abandoned for predominantly private benefit where there is no evidence of public benefit. *Ratchford,* 22 Cal.App.3d at 1075-76. Moreover, a public agency may not merely declare a road abandonment to be in the public

interest without any evidentiary support since it is a "judicial question whether the vacation of a street be for public or for a private benefit." *Id.* at 1075. Mill Site Road was irrevocably dedicated to the public years ago, and its abandonment now for the benefit of real estate developers and a few private homeowners would constitute an improper gift of a public asset.

C. Abandonment Of Mill Site Road Would Be Detrimental To The Environment And Will Require Actual CEQA Review.

Even if a decision to abandon Mill Site Road were statutorily permitted (and it is not), the County's proposed action has unique, negative environmental impacts that require further environmental review under CEQA.

1. The County's EIR Addendum Is Insufficient.

The County Staff report proposes reliance on an addendum to the ten-year-old Retreat EIR (the "Addendum") as the sole environmental analysis of the impacts of its currently proposed roadway abandonment. (*See* Appx. **Tab 30**.) However, the previously certified Retreat EIR never discusses the environmental effects either of opening Mill Site Road for public use, or of abandoning it. The County acknowledges as much in the Addendum, which points to a completely separate Environmental Impact Report (the Martis Camp EIR), to support its determination that privatization of Mill Site Road (and the attendant deleterious environmental effects) had at some point been adequately analyzed.

In fact, neither the Martis Camp EIR nor the subsequently adopted Retreat EIR analyzed the affirmative privatization of Mill Site Road. Just the opposite: the Martis Camp EIR could not analyze the mitigating effects of a publicly dedicated Mill Site Road because neither the project proponent nor the County had control over the development of that road at the time the Martis Camp EIR was adopted. Indeed, at the time the Martis Camp EIR was adopted, the Vesting Tentative Map for the Retreat had not been approved. Even after approval of the Retreat's

Vesting Tentative Map, the County had no power to require the development of the Retreat; it could only ensure that *if* the Retreat were developed, that it be developed in substantial conformity with the Vesting Tentative Map and Conditions of Approval. Thus, only after the Mill Site Road improvements were built, inspected, and accepted by the County and opened as a public highway in December 2008, was there any right to assume that Martis Camp residents could eventually use Mill Site Road to reach Northstar (after the connection between Mill Site Road and Schaffer Mill Road was completed and paved).

In light of all this, the Maris Camp EIR quite properly analyzed the status quo at the time when Mill Site Road did not exist as a public road. (CEQA Guidelines § 15125(a).) The Retreat EIR also contains no analysis or discussion of the potential effects of the proposed abandonment because the Retreat project description made no mention of whether the roads therein would be public or private. Mill Site Road was, however, subsequently dedicated to the public, with attendant environmental benefits. (*See* Section C.2.b.)

The proposed action – the discrete abandonment and privatization of the now-public road – has never been appropriately described or analyzed in any previous environmental document. It follows that an addendum cannot be a legally appropriate approach to compliance with CEQA. Rather, this proposed abandonment is a new action, one that for the reasons set forth below requires separate, independent environmental review. Before it can lawfully consider the abandonment of Mill Site Road, the County must prepare a new or supplemental EIR analyzing the significant environmental effects that will clearly result from the proposed action.

2. Abandonment Of Mill Site Road Is A New CEQA Project That Requires A New EIR.

a. The Previously Certified Retreat EIR Did Not Consider The Opening of Mill Site Road To The Public Or Its Abandonment.

The County attempts to satisfy CEQA through an addendum to the previous Retreat EIR, but the proposed abandonment of Mill Site Road is not a "change" in the Retreat project. The Retreat project concluded in 2008. The proposed abandonment and closure of Mill Site Road is an entirely new project that requires its own environmental review. *See Save Our Neighborhood v. Lishman,* 140 Cal.App.4th 1288 (2006) (holding city violated CEQA by relying on addendum rather than independent environmental review when proposed action was a new project). It was impossible for the Retreat EIR to analyze the effects of abandonment of Mill Site Road because the public use of that road was never identified in the Retreat project description or analyzed under that EIR. Only after the Retreat EIR was certified did the project sponsor offer, and the County accept, the public dedication of Mill Site Road.

The County's Addendum attempts to circumvent this issue by sleight of hand, summarily concluding that the abandonment's impact on traffic will not be significant and referencing, in passing, a wholly separate project and EIR – the Martis Camp EIR. That document, which preceded even the Retreat EIR, analyzed traffic and air quality impacts resulting from travel between Martis Camp and Northstar via SR 267 because Mill Site Road was not available for any public use at the time. The Addendum improperly concludes that because the current abandonment proposal will merely return traffic and air quality impacts to something similar to what was analyzed more than a decade ago in the Martis Camp EIR, its cursory Addendum is adequate under CEQA. (*Id.*) That is simply wrong. The law is clear that the baseline conditions against which the adverse environmental impacts of a proposed action must be assessed are the physical environmental conditions which exist at the time when the notice of preparation of the

environmental document is issued or the environmental assessment is commenced. (CEQA Guidelines §15125(a).)[12] (*See Save Our Penninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121 ("[T]he impacts of the project must be measured against the "real conditions on the ground" . . . [A]n EIR must focus on impacts to the existing environment, not hypothetical situations."). Mill Site Road did not exist as a road in 2005. Thus it was not a part of the baseline conditions studied at that time. Since December 2008, however, Mill Site Road has existed, and continues to exist, as a public roadway used by Martis Camp residents, Northstar Ski operations, and other members of the general public to reach the public trail which crosses it at its western end. Mill Site Road as a fully functioning public roadway defines the baseline physical environmental conditions. Closing that road to the current traffic will significantly and adversely affect environmental conditions in the vicinity in the manner noted above. Thus, those adverse impacts must be quantified and assessed prior to any decision being made on the proposed action. The action requires County action and is, therefore, a "project" for CEQA purposes. The environmental impact must actually be studied and not merely "glossed over."

Moreover, the fact that the Martis Camp EIR previously assigned traffic between Martis Camp and Northstar to SR 267 does not mean that further environmental review and analysis of the abandonment decision are unnecessary. To the contrary, the County's subsequent approval of

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[12] **Section 15125. Environmental Setting.**
(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

the Retreat project – with Mill Site Road as a public road – and the County's acceptance and opening of Mill Site Road allowed an acceptable level of traffic between Martis Camp and Northstar. Mill Site Road therefore acts as an effective mitigation measure to decrease vehicle miles traveled and, in turn, reduces the otherwise unavoidable negative environmental impacts of increased vehicle travel. (*See* Section C.2.b.) Abandonment of Mill Site Road would drastically change the status quo.

Far from a "minor technical change," that might be appropriately addressed in an addendum, the proposed abandonment and closure to Martis Camp traffic is, in fact, a new project, proposing actions and effects that have never – and could never have – been considered, which requires new environmental review. *See Lishman,* 140 Cal.App.4th at 1297-98. In *Lishman,* a city was prevented from relying on an addendum for a new project that had many of the same characteristics as an earlier project approved for the same site. *Id.* The *Lishman* court determined that a threshold question was whether the City's proposal was a change to a particular previous project or a new project altogether. *Id.* at 1301. The court found that where the new project was inadequately described, or not at all, on plans and other documents used in the initial environmental analysis, an addendum was not an available option for the new project's proponents. *Id.* at 1300.

The County here is similarly attempting to rely on previous environmental review that never even contemplated a publicly available Mill Site Road, let alone considered the effects of its abandonment. The Addendum represents an abdication of the County's duty to conduct appropriate environmental review. Mill Site Road cannot be abandoned without preparation of a new EIR that adequately analyzes the current benefits of Mill Site Road's public use, as well as

the negative environmental impacts that will result from prohibiting the environmental benefits conferred on the public by Martis Camp's use of Mill Site Road.

b. Substantial Evidence Supports Requiring An EIR Here.

With narrow exceptions, CEQA requires that a public agency prepare and certify an EIR whenever it proposes to approve or carry out a project that may have a significant effect on the environment. (Pub. Res. Code § 21151(a).) An activity undertaken by a public agency is a "project" under CEQA if it "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (*Id.* § 21065.) An EIR is required whenever substantial evidence supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. Here, there is substantial evidence supporting a fair argument that abandonment will have a significant adverse effect on the environment.

As detailed by civil and traffic engineer Ron Anderson, the distance between the center of the Martis Camp subdivision and the Village at Northstar via Mill Site Road is approximately 2.2 miles, while that same trip via SR 267 is approximately 8.1 miles. (*See* Appx. **Tab 23**.) Given the current average of 81 trips per day over Mill Site Road, the closure of that road to Martis Camp residents would increase vehicle miles traveled ("VMT") over the County's roadway system by 478 miles per day and 174,952 miles per year under current traffic conditions. (*Id.*) This is projected to increase to 1,404 miles per day and 514,569 miles per year at full build-out of Martis Camp.[13] (*Id.*) This substantial increase in VMT would be accompanied by harmful increases in emissions and pollutants, including .343 tons per year of

[13] This projection is based on a projected daily average of 238 trips over Mill Site Road. (See letter.)

Reactive Organic Gases ("ROG"), .175 tons per year of Nitrogen Oxides ("NOx"), and .028 tons per year of Particulate Matter<10 microns in diameter ("PM10") – all of which are emission types for which the Martis Camp and Retreat projects exceeded Placer County emission thresholds, ***and which were concluded to constitute a cumulatively significant air quality impact.*** (*See* Appx. **Tab 25**; **Tab 31** (Retreat Final EIR Impact 4.6.4, at 2.0-23; **Tab 37** (Siller Ranch Final EIR Impact 4.6.5.)[14]

The closure of Mill Site Road to all but private Retreat traffic would therefore have a substantial detrimental impact on the environment, in the form of additional noise generation, airborne pollutants, fuel consumption, greenhouse gas emissions, and traffic congestion, and constitutes a new CEQA "project" requiring preparation of a separate EIR.

3. At A Minimum, The Abandonment Requires A Supplemental EIR.

Even if the abandonment is analyzed as a change in the Retreat project rather than a separate project, the County's EIR Addendum is insufficient. The opening of Mill Site Road to Martis Camp residents and its now proposed abandonment constitute changes in circumstances and/or the consideration of new information not previously known or analyzed, and which, against the background of newly-enacted legislation and proposed CEQA Guidelines regarding vehicle miles traveled, require a supplemental EIR.

a. Standard For Preparation of Supplemental EIR.

After an EIR has been prepared for a project, a public agency must prepare a subsequent or supplemental EIR if there are "substantial changes" in the project or circumstances of the

[14] Notably, allowing Mill Site Road to remain public will decrease ROG emissions by 58%, carbon monoxide by 32% , Nitrogen oxides by 19%, and PM10 by 2% annually from what they would be if Mill Site Road is abandoned. (*See* Appx. **Tab 25**.) Given that ROG, NOx and PM10 levels were specifically noted as constituting a cumulative significant impact (Appx. **Tab 31; Tab 37**), the reduction of these emissions should be a priority for the County.

project, or if "new information" becomes available. (Pub. Res. Code § 21166; CEQA Guidelines § 15162.) New information that is of "substantial importance" and which was not known, and could not have been known, at the time the previous EIR was certified, warrants a new EIR where one of the following applies:

> (a) The project will have one or more significant effects not discussed in the previous EIR;
>
> (b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
>
> (c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
>
> (d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative."

(CEQA Guidelines § 15162(a)(3).)

b. The Current Public Use of Mill Site Road, And The Effects Of Its Abandonment, Could Not Have Been Known, And Were Not Analyzed, When Original EIRs Were Prepared.

Here, the opening of Mill Site Road as a public road abutting the Martis Camp development (with its corresponding reduction of vehicle miles traveled and harmful emissions) and the currently proposed abandonment (and resulting negative environmental effects) are "substantially important" events that were not, and could not, in fact, have been analyzed when the original EIRs were approved. These events, particularly in light of newly enacted CEQA legislation, constitute "new information" that have, or will have, significant effects that were not discussed in the previous EIRs, and/or that present mitigation measures to environmental impact that were not previously considered, and which warrant further environmental review and consideration of feasible alternative mitigation measures.

c. Abandonment Of Mill Site Road Will Have A Significant Effect On Vehicle Miles Traveled Not Discussed In The Previous EIR, Which Can Be Mitigated By Denying Abandonment.

As set forth above, closure of Mill Site Road to the public would increase vehicle miles traveled ("VMT") over the County's roadway system by 1,404 miles per day and 514,569 miles per year at full build-out of Martis Camp. (*See* Appx. **Tab 23**; **Tab 25**.) This substantial increase in VMT would be accompanied by literally tons of carbon monoxide and other harmful emissions each year, in addition to other detrimental effects. (*See* Appx. **Tab 25**.) These significant effects on VMT as a result of the abandonment constitute new information that warrant a supplemental EIR, especially against the backdrop of recent legislation and proposed VMT-focused CEQA Guidelines.

Pursuant to SB 743, adopted by the legislature and signed into law by Governor Brown in 2013, the Governor's Office of Planning and Research has issued a draft amendment to CEQA Guidelines that establishes a new framework for the transportation impact studies under CEQA. Rather than focusing on intersection level of service (LOS), as both the Retreat and Siller Ranch EIRs did, SB 743 and the implementing revision to the CEQA Guidelines require a focus on alternative transportation metrics, especially on VMT. Specifically, the proposed revision to the Guidelines provides, in relevant part, as follows:

> Generally, transportation impacts of a project can be best measured using vehicle miles traveled. A development project that is not exempt and that results in vehicle miles traveled greater than regional average for the land use type (e.g. residential, employment, commercial) may indicate a significant impact.

(CEQA Guidelines, Proposed New Section 15064.3.)[15]

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[15] Available at: http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf.

Although the proposed guidelines are not final, CEQA's new focus on VMT under SB 743 makes the abandonment of Mill Site Road a substantially important event that could not have been known at the time the original EIRs were prepared, and that will cause significant harmful effects not adequately analyzed by the original EIRs, or that will now be viewed as more severe than previously contemplated. (CEQA Guidelines § 15162(a)(3)(A-B).)

In sum, the original Retreat EIR does not address the current use of Mill Site Road by Martis Camp residents as an effective mitigation measure to reduce vehicle miles traveled, which will be lost if the abandonment is approved. Under the evolving criteria, the disproportionately large increase in VMT as a result of abandonment must be considered. A supplemental EIR is therefore required prior to abandonment of Mill Site Road, in order to, among other things, analyze potential mitigation measures not evaluated in the original EIRs, including the current use of Mill Site Road by Martis Camp residents, in light of the new VMT standard. (*Id.* § 15162(a)(3)(D).)[16]

4. Further Environmental Review Is Required Where Abandonment Will Alter the *Status Quo.*

Some abandonment cases have held that further environmental review is unnecessary where road closure would maintain the "status quo." (*See, e.g., DeLucchi*, 2015 WL 177397, at *15-16 (finding that the abandonment of a public right of way that was currently undeveloped and not traveled by the general public would maintain the status quo and not cause environmental changes); *Cf. Sorrento*, 118 Cal.App.4th at 811 (new EIR prepared for potential

[16] Notably, the Addendum to the Siller Ranch (Martis Camp) Final EIR notes that the ability of Martis Camp residents, in 2010/2011, to access Northstar via the ski lift in Martis Camp would result in a reduction in projected traffic volumes along SR 267 and Northstar drive. (*See* **Appx. Tab 32** (Impact 4.4.3).) The ability of Martis Camp residents to access Northstar via Mill Site Road is a further mitigation measure to reduce vehicle miles traveled on County roadways that should not be taken away without adequate review, public comment, and analysis of alternatives.

re-opening of road closed for construction).) The closure of Mill Site Road would, however, significantly change the "status quo." Currently, the road is used by Martis Camp and Northstar residents for travel between the two developments. This use greatly reduces the potentially harmful effects of traffic on the already congested County roadway system. The proposed abandonment would change the status quo in a manner that will have significant adverse environmental impacts and would promote inefficient use of the County's roadway system – a result that is contrary to the objectives of SB 743, the Martis Valley Community Plan, and CEQA. The County cannot, therefore, abandon Mill Site Road without further environmental review.[17]

D. <u>The Board Should Not Take Any Official Action At This Time.</u>

1. Any Board Vote On Abandonment Should Be Stayed Pending Further Consideration Of The Issues And Further Negotiation Between The Interested Parties.

The Martis Camp Parties have gone to great lengths to avoid wasting the County's time and resources in considering an abandonment request, including by continuing to negotiate with the Retreat and offering significant concessions in the future use and maintenance of Mill Site Road by Martis Camp residents.[18] The Martis Camp Parties' good faith attempts to resolve this matter informally, despite their conviction in the strength of their legal position, has not been reciprocated by the Retreat. Moreover, despite the Martis Camp Parties' requests to stay an abandonment hearing pending a reasonable opportunity to further explore an informal resolution

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[17] The denial of the Petition, on the other hand, would maintain the status quo, and would not amount to a CEQA "project" or require further CEQA analysis. (Pub. Res. Code § 21080(b)(5) and CEQA Guidelines § 15270.)

[18] Attached as Appendix **Tab 33** is a copy of the confidential Martis Camp Parties' settlement proposal sent to the Retreat HOA on May 15, 2015.

with the Retreat, the County has noticed and apparently intends to proceed with an abandonment hearing on August 4, 2015.

Accordingly, the Martis Camp Parties have submitted this written brief, along with supporting exhibits, including expert opinions and other evidence, that **preclude** a finding that Mill Site Road is "unnecessary" to public use.[19] The Martis Camp Parties make this submission for the Board's consideration, as well as to invite any response that the Retreat may wish to make on any of the points set forth herein. Because of the substantial expense of litigation that will result from a vote to abandon Mill Site Road, the Martis Camp Parties respectfully request that the Board not rush to vote to abandon Mill Site Road that would be contrary to the weight of the evidence before it. The Board should carefully consider the briefs, arguments, and evidence submitted prior to, and at, the August 4, 2015 hearing, as well as any subsequent submissions or responses that the interested parties may wish to make, and should delay any vote on the abandonment of Mill Site Road until the Board has thoroughly reviewed and considered all of the available evidence and arguments. Failure to do so may constitute arbitrary and capricious conduct on the part of the Board, warranting the overturning of any resolution abandoning Mill Site Road.

2. Should The Board Pass A Resolution Abandoning Mill Site Road, The Recording Of The Abandonment Resolution And/Or Any Action To Close Mill Site Road To Public Use Should Be Stayed Pending Legal Challenges To The Abandonment.

Although the Martis Camp Parties maintain that proceeding with a vote abandoning Mill Site Road is legally impermissible, should the County pass a resolution abandoning Mill Site

[19] This written brief adds to and supplements previous submissions made to County Counsel, in the form of correspondence and related materials, addressing issues and arguments related to abandonment, attached as Appendix **Tabs 34 and 35**.

Road, the Martis Camp Parties respectfully request that the abandonment not be recorded or otherwise made effective – and that no other actions to close the road to use by Martis Camp members be taken – until after resolution of legal challenges to the abandonment. The Martis Camp Parties understand that County Staff recommends this as a condition of abandonment, and the Martis Parties support that condition if the Board were to move forward with abandonment.

Given the arguments and evidence presented by the Martis Camp Parties, the validity of a decision to abandon Mill Site Road is, at best, questionable until after judicial review. If recording of the abandonment resolution or other road closure actions are not stayed pending such challenges, the Martis Camp Parties will be forced to seek a temporary restraining order and preliminary injunction, resulting in significant (and avoidable) litigation costs to the County and all involved parties. Allowing appropriate judicial review to take place prior to closing Mill Site Road to Martis Camp residents will not only reduce litigation costs, but will also avoid the irreversible harm to Martis Camp residents that will result from the road closure, and will accordingly limit the potential liability of the County and the Retreat. Moreover, the balance of hardships clearly weighs in favor of maintaining the status quo (i.e., the current use of Mill Site Road) pending judicial review of any abandonment decision.

E. Should The Board Vote To Abandon Mill Site Road, It Should Reserve An Easement For The Martis Camp Parties' Private Transit, Consistent With Project Approvals.

Should the Board decide to abandon Mill Site Road, the County currently proposes to reserve a "Transit Service Easement" for transit service provided by Placer County. (*See* Appx. **Tab 28**.) This reservation should be modified so that it is not restricted to transit service operated by public agencies, but could also include transit services operated by private parties, such as Northstar or MCCA. The Martis Camp EIR contains explicit discussion of "transit" use of the emergency/transit connection through Martis Camp and into Northstar. (*See* Appx. **Tab 5**,

at 3.0-211 (Response 4-12).) The commentary specifically notes that this connection is "expected to result in beneficial effects to traffic conditions in the project area by providing another point of access for *transit* to the Northstar-at-Tahoe ski resort" even though full public access is not permitted. (*See id.* (emphasis added).) The use of the term "transit" in this context includes private transit, as the planning documents use the term "transit" to refer to both public and private transit, and specifically use the term "public transit" in instances where private transit is excluded. (*See* Appx. **Tab 3**, at page 70 (MVCP excerpts) (describing types of public and private transit under the heading "Transit Systems and Service"); Appx. **Tab 4** (Martis Camp COA 33 (providing for easement through Martis Camp of "public transit service vehicles").) In fact, while Martis Camp was required to provide an easement only to "public transit service vehicles," the Retreat's conditions of approval contain no such limitation – requiring the construction of Mill Site Road for "future emergency access" and "transit access." (*See* Appx. **Tab 4** (Siller Ranch COA 33); Appx. **Tab 7** (Retreat COA 26).) Thus, the planning documents and project approvals make clear that Martis Camp's own private transit vehicles were contemplated, and are permitted, within Martis Camp, over Mill Site Road, and into Northstar, regardless of the public status of Mill Site Road. A reservation preserving this access should therefore be expressly noted in any resolution of abandonment.

CONCLUSION

In light of the evidence before it, the Board cannot meet the statutory requirements for abandoning Mill Site Road. There has been no showing, let alone a sufficient showing, that the road is "unnecessary" to present or prospective public use. All the evidence is to the contrary, in fact: Mill Site Road is a dedicated public road, used on a daily basis by traffic between Martis Camp and Northstar. Additionally, the County has considered prospective public uses for the road in the future. The road therefore cannot be abandoned because it cannot be shown to be

"unnecessary" to public use. That should be the end of the Board's inquiry into whether the road should be abandoned. The Retreat's abandonment request must be denied.

The Retreat does not even attempt to offer evidence to support the statutory standard, knowing full well that the road is currently in use (extensive use, in its view) and necessary to members of the public. Instead, the Retreat attempts to change the terms of the debate – to divert focus from the statutory standard to a fiction of "original intent" – arguing that the road was never intended to be used as it is currently being used. What the County intended in this respect is, however, irrelevant to the determination of whether the road is unnecessary to current or prospective future use. Moreover, it is not true that the County intended a different outcome on this score: the County required, as a condition of approval of the Retreat project, that Mill Site Road be built to the property line with Martis Camp and be dedicated as a public road; that undisputed fact is conclusive on the permitted use of Mill Site Road.

Additionally, the decision to abandon Mill Site Road will cause a significant increase in vehicle miles traveled and resulting air pollution, contrary to newly enacted legislation and CEQA guidelines. Abandoning Mill Site Road without considering the effect of abandonment on vehicle miles traveled and air pollution, and without considering the current use of Mill Site Road as a feasible mitigation measure to reduce otherwise unavoidable harmful environmental effects, is a violation of CEQA. A new or supplemental EIR is therefore required before Mill Site Road can be abandoned.

In sum, a decision to abandon Mill Site Road would certainly be unsupported by the evidence. Under the totality of the circumstances here, it may also constitute an abuse of discretion and/or an arbitrary and capricious act by the Board. In any event, it would be reversed on judicial review.