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Unfortunately, the DEIR does not provide any information on existing TART operations between Truckee and Squaw Valley. These are important statistics to identify. If transit service between Truckee and Squaw Valley is at or over capacity, the Project could mitigate certain of its significant traffic impacts with increased transit. In addition, because the Project results in a substantial increase in traffic during the summer, the DEIR is deficient in not describing existing transit service in the summer.

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In its analysis of impacts to transit, the DEIR concludes that because the Project would cause an increase in demand for public transit during winter operations, which exceeds what is currently provided, this impact would be significant. DEIR at 9-65. The DEIR fails, however, to adequately analyze this impact. It never identifies the transit lines that would be impacted or provide any indication of the extent of the deficient transit service, i.e., how serious would the overcrowding be? In order to effectively address this impact, the EIR must compare transit demand from the proposed Project to transit capacity for all applicable transit lines. The DEIR cannot limit its transit analysis to winter conditions; it must evaluate the Project’s impact to transit service during the summer as well.

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

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Moreover, the DEIR’s assertion that its proposed mitigation measure will reduce the transit impacts to a less than significant level is unsupported by evidence. The DEIR calls for the applicant to contribute a fair share to TART or create a Community Services Area (“CSA”). DEIR at 9-66. The DEIR suggests that when ridership approaches capacity, the applicant would make the contribution or create the CSA. *Id.* Transit service between Tahoe City and Squaw Valley is already close to capacity (DEIR at 9-24); as such, there is no logical reason why the applicant should not be required to provide this mitigation now. However, even if the applicant were to provide fair share funding for TART, the DEIR still has no basis to conclude that the impacts would be reduced to a less than significant level.

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Courts have found fee-based mitigation programs for traffic impacts based on fair share infrastructure contributions by individual projects to be adequate mitigation

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measures under CEQA. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140. To be adequate, however, these mitigation fees must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing. *Id.* at 140-41; *see also Anderson First Coal. v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-89 (explaining that fee-based traffic mitigation measures have to be specific and part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation of the traffic impacts at issue). Here, the DEIR’s proposed mitigation simply assumes that the payment would occur, that it would cause an improvement in transit service operations, and that it would adequately mitigate the impacts, without providing a reasonably enforceable plan to achieve those results. The EIR should be revised to provide specific and enforceable mitigation for the Project’s public transit impacts.

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(h) The DEIR Omits an Analysis of the Project’s Construction-related Transportation Impacts.

The DEIR states that Project construction would generate a substantial amount of truck and employee trips, which would use SR 89 and Squaw Valley Road to access the Village area. DEIR at 9-66. Despite this fact, the DEIR claims that it would be “speculative” to perform a quantitative analysis of the Project’s construction-related transportation impacts. *Id.* We disagree; ample information exists about the Project itself and construction of the Project to warrant an analysis. The DEIR preparers could have identified a typical phase of construction (see the air quality section of this letter for an example of a typical construction project) and evaluated how the activities and operations would affect the local road network. Moreover, since construction of the Project would overlap with the Project’s operations, and because certain of the Project’s operations are expected to result in LOS F, i.e., gridlock, on area roadways, the traffic from construction and operation must be evaluated together. The revised EIR should provide this analysis.

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(i) The DEIR Fails to Adopt Feasible Mitigation Measures For the Project’s Significant Transportation Impacts.

The DEIR presents a number of mitigation measures intended to reduce certain of the Project’s significant transportation impacts. Yet, as the MRO Report explains, there is little, if any, assurance that these measures would be effective. For example, Mitigation Measure 9-1a calls for development of a “predictive model” to identify days when various traffic management procedures would be needed. DEIR at 9-56. Specifically, the model is intended to identify days when Squaw Valley Road would exceed a traffic volume of 13,500 VPD. But the DEIR itself expresses doubt as to the

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feasibility of this measure when it states that “peak attendance days can be difficult to forecast.” *Id.* at 9-8. In addition, the measure states that it would only apply on “ski days.” Given the substantial traffic that would be generated by the Project in the summer, this mitigation measure would do nothing to address the Project’s significant traffic impacts during the summer. As the MRO Report confirms, there is little assurance that this measure would be effective in addressing the Project’s impacts.

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Nor would the measure calling for restricting northbound Far East Road to right-turns be effective. DEIR at 9-58. The DEIR asserts that this this traffic configuration may already be in existence. *Id.* If it already exists, it is not Project-related mitigation. The DEIR should identify feasible mitigation measures that are not already being implemented to offset this significant impact.

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Notwithstanding the DEIR’s proposed mitigation measures, the DEIR determines that at least four transportation impacts would be significant and unavoidable: (1) Impacts to Placer County intersections; (2) Impacts to Caltrans intersections; (3) Impacts caused by vehicular queuing at Caltrans intersections; and (4) Impacts to Caltrans highways. DEIR at 2-4. In certain instances – such as impacts to segments of SR 89 and SR 28 – the DEIR concludes there are *no available mechanisms* to provide an acceptable LOS on these highway segments. *Id.* at 9-63 (emphasis added).

This approach is contrary to the primary goal of an EIR which is to identify a project’s significant environmental impacts and find ways to avoid or minimize them through the adoption of mitigation measures or project alternatives. Pub. Res. Code §§ 21002.1(a), 21061. Here, there are ample opportunities to mitigate the Project’s transportation impacts. For example, the applicant could implement the trip reduction measures identified on DEIR page 10-18; these measures, while not mandatory, were identified to reduce the Project’s air quality impacts.⁵ There is no doubt the following list of measures are feasible since they were developed by the Placer County Air Pollution Control District, the California Air Pollution Control Officers Association, and the California Attorney General’s Office (DEIR at 10-17):

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⁵ The DEIR explains that these measures are not mandatory to reduce the Project’s air quality impacts to a less than significant level. Rather the applicant would be able to select certain of these measures and demonstrate that the Project would not result in criteria air pollutant emissions in excess of 82 pounds per day. DEIR at 10-17.

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- Provide free or discounted transportation service between the Village and the Amtrak station in Truckee to all overnight visitors who arrive by train. This may be implemented in coordination with a local taxi service, the North Tahoe-Truckee Free Ski Shuttle, or other public or private shuttle service.
- Offer discounted overnight accommodations, meals, activities, or other incentives to visitors who arrive by train to the Amtrak station in Truckee and/or to groups who arrive by bus or some other emissions-efficient vehicle type.
- Offer free, shared, or discount rental bicycles to all visitors staying in the hotel or resort residential units.
- Provide shuttle service to other key destinations in the region (e.g., North/West Shore of Lake Tahoe, casinos, Truckee) to serve guests who want to tour regional offerings.
- Provide a covered bicycle parking area near entrance of all commercial establishments.
- Provide parking for and subsidize a car-sharing service for resort employees and/or patrons.
- Provide “end-of-trip” facilities for employees who bike to their work sites from outside of Squaw Valley, including showers, secure weather-protected bicycle lockers, storage lockers for other gear, and changing spaces. This measure is consistent with measure TRT-5 in guidance published by the California Air Pollution Control Officers Association (CAPCOA 2010:234-236).
- Provide free transit passes or reimburse the transit costs of employees who commute from outside Olympic Valley using Tahoe Area Regional Transit or another transit service. This measure is consistent with measure TRT-4 in CAPCOA’s guidance (CAPCOA 2010:230-233).
- Provide adequate secure weather-protected bicycle lockers or storage area for employees living at the East Parcel. The number of lockers or size of

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the storage area shall be adequate to meet the demand of employee residents.

- Provide virtual and/or real bulletin boards in common areas of employee housing units and other areas where employees congregate to foster the development of carpools and other ride sharing opportunities.

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

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5. The DEIR Fails to Adequately Analyze the Project’s Air Quality Impacts.

(a) The DEIR’s Analysis of the Project’s Construction-related Health Risks is Legally Inadequate.

The DEIR lacks evidentiary support for its conclusion that emissions from construction of the Project would not result in significant health effects. The DEIR provides a cursory discussion of health risks but then concludes, absent the necessary analysis, that the Project would not expose nearby sensitive receptors to toxic air contaminant (“TAC”) emissions.

Construction of the Project would occur over an estimated 25-year build-out period with no more than 20 percent of the Project being constructed in one year. DEIR at 3-33. Based on this schedule, the following development could occur in any one year:

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- 300 bedrooms
- 60,000 square feet of commercial uses
- 18,000 square feet of demolition (of commercial uses)
- 18,000 square feet of the Mountain Adventure Camp
- An unspecified amount of square footage associated with the development of a parking structure.

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DEIR at 2-3.

Typical construction activities for this type of project include demolition of existing structures, grubbing/clearing of on-site areas, excavation and relocation of soil on the site, backfilling and compaction of soils, construction of utilities (i.e., potable water conveyance, wastewater conveyance, storm water drainage facilities, underground electrical, and propane facilities), and construction of proposed buildings. *Id.* at 3-38. Construction would require operation of all-terrain vehicles, fork lifts, cranes, pick-up and fuel trucks, compressors, loaders, backhoes, excavators, dozers, scrapers, pavement compactors, welders, concrete pumps and concrete trucks, and off-road haul trucks. *Id.*

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Given the environment, demolition, site preparation, grading, and paving activities would typically occur during the six-month period between May 1 to October 15. *Id.* Construction would likely take place Monday through Friday during normal daytime working hours; however, it may be necessary to conduct some activities during weekend and night time hours. *Id.*

This is a substantial amount of development and, according to the DEIR, more than has occurred in any single year on record in Olympic Valley. *Id.* Inasmuch as the Project is surrounded by numerous sensitive receptors, including single family residences and a boarding and day school (*Id.* at 10-5 and 4-2), there is simply no excuse for not studying the effect that construction-related air pollution would have on the adjacent community.

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Other agencies recognize the need to conduct quantitative health-risk assessments for construction projects that are smaller than the proposed Project and where sensitive receptors are located much farther away than they would be here for the proposed Project. For example, the City of San Jose conducted a quantitative health risk assessment (“HRA”) for a 190-unit residential project in the city. *See* Construction Health Risk Assessment prepared by Illingworth & Rodkin, December 2013, prepared for the 505 Lincoln Avenue Residential Project in the City of San Jose, attached as Exhibit 17. Illingworth & Rodkin explain the need for the HRA as follows:

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Since project construction activities would include demolition, excavation, grading, and building construction that would last longer than 6 months and would be located within 330 feet of residences, a more refined- level study of community risk assessment was conducted. Because the gross analysis indicated that impacts were possible, a refined

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analysis was conducted to evaluate whether impact would be significant, and if so, identify the project features or mitigation measures that would be necessary to avoid significant impacts in terms of community risk impacts to nearby sensitive receptors (e.g., adjacent residences).

Here, as previously mentioned, during one six-month period, the Project could construct structures to support 300 bedrooms and about 96,000 square feet of commercial and recreational uses and an unspecified number of parking structures.

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The HRA prepared for the San Jose project determined that the incremental child cancer risk at the maximally exposed individual (“MEI”) from project construction would be 8.8 in one million. While this child cancer risk is below the significance threshold of 10 in one million, the Squaw Valley Project is larger and would be constructed considerably closer to sensitive receptors than the San Jose project. Consequently, there is sufficient evidence that the proposed Project has the potential to result in a significant risk of cancer, especially for children.

Because the DEIR fails to analyze the Project’s construction-related health effects, it fails to disclose the environmental consequences of this Project to the potentially affected community.. In this regard the DEIR fails to fulfill CEQA’s paramount goal: to inform the public of the actual and specific environmental consequences of the proposed Project. *Citizens of Goleta Valley*, 52 Cal.3d at 564. The EIR must be revised to include this analysis.

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(b) The DEIR Fails to Analyze the Project’s Cumulative Health Risks.

The DEIR acknowledges that the construction of the nearby PlumpJack redevelopment project could involve substantial earth moving and PM₁₀ emissions in close proximity to construction that would take place under the Specific Plan and that the project could be constructed at the same time as the Squaw Valley Project. DEIR at 18-32. Rather than prepare a HRA that includes emissions from the proposed Project together with the PlumpJack project, the DEIR inappropriately asserts that the Squaw Valley Project’s construction would generate very little PM₁₀ emissions, and even if the projects occurred simultaneously, the contribution from the Squaw Valley Project would be minimal and would not make a substantial contribution to the cumulative PM₁₀ emissions. *Id.*

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As discussed above, the DEIR errs by not conducting a project-specific HRA. In addition, as the City of San Jose HRA makes clear, there are pollutants other than PM₁₀ that affect public health. Diesel particulate matter and PM_{2.5} emissions must also be taken into account when analyzing a project’s health risk. The revised EIR must include a project-specific HRA and a second cumulative HRA that takes into account emissions from construction of the PlumpJack project.

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6. The DEIR Fails to Adequately Evaluate the Project’s Contribution to Climate Change.

The DEIR’s analysis of greenhouse gas (“GHG”) emissions attributable to the Project is likewise deficient. The document’s conclusion that the Project—which consists of construction of a massive four season resort of 900 units and nearly 300,000 square feet of commercial development with estimated emissions of 45,403 metric tons of carbon dioxide (“CO₂”) each year—would not have significant GHG-related impacts in 2020 is astonishing. By any rational measure, the Project would have a significant impact related to climate change, even in its initial phases. The DEIR concludes otherwise only because it relies on an inappropriate way to measure the significance of the Project’s impacts, underestimates the Project’s GHG emissions, ignores that the Project conflicts with various relevant GHG-reduction policies, and uses other flawed analyses. Because the DEIR concludes that the Project would not have a significant climate-related impact in 2020, it fails to adopt feasible mitigation for the crucial first phase of development. The DEIR’s proposed mitigation for after 2020 is likewise deficient. Because the Project’s impact would be significant, the DEIR must identify and include adequate mitigation measures to reduce or avoid the Project’s contribution to global warming.

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(a) The DEIR’s Significance Threshold for Measuring GHG Emissions Is Flawed, and the County Misapplies the Threshold in Any Event.

(i) The DEIR’s Use of a “Business As Usual” or “No Action Taken” Approach to Determine Significance of GHG Impacts Is Inappropriate.

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Determining whether or not a project may result in a significant adverse environmental effect is a key aspect of CEQA. CEQA Guidelines § 15064(a) (determination of significant effects “plays a critical role in the CEQA process”). Under CEQA, agencies use thresholds of significance as a tool for judging the significance of a

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Project’s impacts. CEQA Guidelines §§ 15064.4, 15064.7. The first major problem with the DEIR’s climate change analysis is that it uses as its sole approach to measuring the significance of the Project’s climate change impacts a method that has been soundly rejected as inappropriate by the California Supreme Court, Attorney General, and numerous others. Specifically, the DEIR does not measure the significance of the Project’s GHG emissions by comparing them to existing conditions, as CEQA generally requires. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439. Rather, it compares the Project’s emissions to the emissions that would be emitted under a hypothetical future scenario in which the Project existed, but where no regulations were in place to reduce GHG emissions. In essence, it compares the Project’s emissions to a future, hypothetical “business as usual” (“BAU”) or “no action taken” (“NAT”) baseline to find that climate change impacts would not be significant. DEIR at 16-14, 16-17.

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This method of analysis is contrary to CEQA’s requirements. In evaluating project impacts, courts have repeatedly held that agencies should normally analyze a project’s impacts by comparing them to actual existing conditions, not hypothetical conditions that may minimize the project’s apparent impacts and allow the agency to avoid analysis and mitigation. *See, e.g., Woodward Park Homeowners Ass’n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 691 (“hypothetical office park was a legally incorrect baseline [against which to measure significance] which resulted in a misleading report of the project’s impacts.”); *Env’t’l Planning & Info. Council* 131 Cal. App.3d at 350 (EIR for area plan invalid because impacts were compared to existing general plan rather than to existing environment).

The California Supreme Court recently reaffirmed this longstanding principle in *Neighbors for Smart Rail*, 57 Cal.4th at 457, where it held that, “while an agency preparing an EIR does have discretion to omit an analysis of the project’s significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value.” The DEIR preparers have not even attempted to show how it would be misleading or without informational value to compare the Project’s GHG emissions against existing on-site emissions in order to determine the significance of those emissions. Accordingly, the DEIR’s failure to compare Project GHG emissions to actual, existing conditions, and its use of a hypothetical, future baseline against which to measure Project impacts, violates CEQA.

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The California Office of the State Attorney General has also criticized the use of a BAU approach to measure GHG impacts. As the Attorney General recently clarified, evaluating GHG impacts based on purported reductions from “business as usual” “will not withstand legal scrutiny and may result in significant lost opportunities for . . . local governments to require mitigation of greenhouse gas (GHG) emissions.” Exhibit 18 (Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA (Nov. 4, 2009)). Likewise, the California Resources Agency has updated the CEQA Guidelines by adopting recommendations on how agencies may analyze the significance of a project’s GHG emissions. One of the factors for determining the significance of Project GHG impacts in the Guidelines is whether the project “may increase or reduce greenhouse gas emissions compared to the *existing environmental setting*.” Guideline § 15064.4(b)(1) (emphasis added). As set forth in the Final Statement of Reasons for Regulatory Action on the Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97:

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This section’s reference to the ‘existing environmental setting’ reflects existing law requiring that impacts be compared to the environment as it currently exists. This clarification is necessary to avoid a comparison of the project against a ‘business as usual’ scenario as defined by ARB in the Scoping Plan. Such an approach would confuse ‘business as usual’ projections used in ARB’s Scoping Plan with CEQA’s separate requirement of analyzing project effects in comparison to the environmental baseline.

Exhibit 19 at pp. 24-25 (Final Statement of Reasons) (also available at http://ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf).

It is deeply misleading to measure the significance of Project impacts by comparing the Project to a hypothetical “what if” scenario rather than to existing conditions. For example, the DEIR sets out a hypothetical BAU scenario in which the Project is built but no statewide regulations and laws regarding GHG emission reductions have gone into effect. DEIR at 16-17. Then, the DEIR calculates the Project’s emissions by giving the Project credit for reducing emissions based on the Project’s compliance with preexisting requirements of law such as the low carbon fuel standard, renewable electricity standard, building efficiency standards and other measures. *Id.* at 16-14, 16-17. The DEIR then compares the BAU or NAT scenario to the Project’s impacts and,

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