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July 16, 2015

Via Federal Express

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

Re: Village at Squaw Valley Specific Plan Draft Environmental Impact Report

Dear Ms. Krach:

This firm represents Sierra Watch on matters relating to the proposed Village at Squaw Valley Specific Plan ("Project"). On behalf of our clients, we respectfully submit these comments to help ensure that agency decision-makers fully comply with the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.* Our clients are deeply concerned about the far-ranging environmental impacts the Project would have on Squaw Valley, Lake Tahoe, and beyond.

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

"The Environmental Impact Report ("EIR") is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights I*") (citations omitted). It "is an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and

considered the ecological implications of its action.' Because the EIR must be certified or rejected by public officials, it is a document of accountability." *Id.* (citations omitted).

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

This letter, along with the report prepared by Dr. Tom Myers addressing the Project's impacts on water supply and water quality (Exhibit 1), the reports prepared by the Conservation Biology Institute addressing the Project's impacts on wetlands and riparian habitats and the Sierra Nevada yellow-legged frog (Exhibits 2 and 3), and the report prepared by MRO Engineers (Exhibit 4) addressing the Project's transportation impacts, constitute our client's comments on the DEIR. We respectfully refer the County to these consultant reports, both here and throughout these comments.

Finally, it is also important to point out that the Project demonstrates a disturbing disregard for the Placer County General Plan and the Squaw Valley General Plan's and Land Use Ordinance's ("SVGPLUO") provisions designed to protect the fundamental values of Eastern Placer County, Squaw Valley and the Lake Tahoe region. Squaw Valley is an environmentally sensitive area that is just outside of California's most treasured resource, the Lake Tahoe Basin. Although the applicant proposes to amend the General Plan, these amendments would likely only serve to undermine the integrity of the County's planning efforts which were designed to protect the natural resources of Squaw Valley and to prevent serious damage to the neighboring Lake Tahoe Basin. Thus, because the Project conflicts with fundamental General Plan provisions so as to result in significant environmental impacts, and because the County has failed to adequately identify these conflicts in the EIR, approval of the Project would violate not just CEQA, but also the California Planning and Zoning Law, Gov't Code § 65000 *et seq.*

I. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

A. The DEIR Provides an Incomplete Description of the Project and the Project Setting.

CEQA's most fundamental requirement is that an EIR contain an accurate and complete project description. *See County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185; *see also* CEQA Guidelines § 15124. Moreover, CEQA defines a "project" as "the whole of an action." CEQA Guidelines § 15378. As explained in *McQueen v. Board of Directors of the Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, "'[p]roject' is given a broad interpretation in order to maximize protection of the environment." *Id.* at 1143. As the Supreme Court has explained, this rule ensures "that environmental considerations do not become submerged by chopping a large project into many little ones—each with a potential impact on the environment—which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 283-84. Without a complete project description, an agency and the public cannot be assured that all of a project's environmental impacts have been revealed and mitigated.

An essential defect of this DEIR is its thoroughgoing failure to accurately describe the Project. The County may claim the EIR need not specifically describe Project components at this stage because the Project involves a long-range plan, but this is insufficient. The Project involves the adoption of a Specific Plan and sets forth a detailed development proposal. CEQA considers such an approval to be far enough along in the process to merit a thorough environmental review. In fact, CEQA includes an explicit exemption regarding specific plans, which provides that if later approvals are consistent with a specific plan, they need not undergo further CEQA review. CEQA Guidelines § 15182. Thus, this is very likely to be the only environmental review conducted for this Project. The County must therefore describe all Project components in as accurate and detailed a manner as possible.

Further, CEQA and the CEQA Guidelines mandate that an EIR include a description of "the physical environmental conditions in the vicinity of the project . . . from both a local and a regional perspective . . . Knowledge of the regional setting is critical to the assessment of environmental impacts." CEQA Guidelines § 15125(a) and (c). This requirement derives from the principle that without an adequate description of the project's local and regional context, the EIR—and thus the decision-makers and the

public who rely on the EIR—cannot accurately assess the potentially significant impacts of the proposed Project.

1. The DEIR Lacks a Complete Description of Project Components.

Any reasonably complete description of the Project would give the public and decision-makers a sense of what this resort would look like, how it would work, and how it would fit into life in the Tahoe region. The purported project description does none of this. It is effectively no description at all; it is merely a suggestion of the applicant's general conceptual scheme for the resort. There is certainly no grand vision for how this Project would be developed. This failure echoes throughout the document: because the Project is incompletely described, none of its impacts can be fully analyzed. As fully described below, the Project is so thinly described that it appears to be essentially unplanned, and certainly is not ready for the approvals that the applicant is requesting.

Huge parts of the Project—the Mountain Adventure Camp, for example—are not described at all. The DEIR omits other critical details including, but not limited to, a complete description of the General Plan and Specific Plan amendments needed for the Project, construction activities, creek restoration and other mitigation, recreational amenities, needed public services, and employee housing to be built in conjunction with the Project. The DEIR likewise fails to reveal specifics about assumptions being made about various Project components, such as occupancy levels and consumption rates. The following are a few specific examples of how the lack of information regarding a project component can affect the environmental analysis:

Squaw Creek Restoration. The restoration of Squaw Creek, including habitat restoration, is a part of the Project and an objective of the Project. DEIR at 3-1. The DEIR states that "natural resources in Olympic Valley would be protected and enhanced, including habitat restoration within Squaw Creek to enhance the creek's natural functions." *Id.*; *see also* DEIR at 3-7.

Despite this fact, the DEIR explains restoration actions have not yet been finalized or implemented. *See* DEIR at 6-15 ("While extensive planning and coordination efforts have been undertaken, restoration actions have not yet been finalized or implemented."). The DEIR also includes other language indicating that uncertainty regarding this Project component results in attendant uncertainty regarding impacts and mitigation:

- "Lowered groundwater elevations could also affect planting and restoration success during any creek restoration undertaken in the project area. While planned creek restoration should help sustain soil moisture and potentially higher groundwater levels (Balance Hydrologics 2014a, 2014b), no data is available to compare post-restoration groundwater levels." *Id.* at 6-44.

- "While the groundwater model includes topographic elevations after proposed creek restoration occurs, it does not include hydrologic benefits to groundwater or water availability to vegetation. Therefore, benefits of restoration to water levels were not modeled, and the extent to which this may occur as a result of the proposed project cannot be confirmed at this time." *Id.*at 6-42.

- "While additional seasonal wetland habitat (including riparian) is anticipated to increase by 3.2 acres within the restoration area (Balance Hydrologics 2014a, 2014b), the amount and distribution of riparian habitat included in the restoration plan has not been specifically defined (Balance Hydrologics 2014a))." *Id.* at 6-55.

- "If riparian habitat is enhanced by creek restoration, this increase in habitat would potentially provide yellow warbler more nesting habitat. If some riparian habitat is lost, nesting yellow warbler habitat could be lost as well." *Id.* at 55, 56.

- "The extent to which the increased functionality of the creek would offset the potential groundwater impacts to riparian vegetation along the Squaw Creek western and upper east channel or whether the additional acreage would fully mitigate for the potential impacts, is unknown." *Id.* at 6-55.

Transit Center and Services: The Project includes a transit center that would be constructed within the Village Area. *Id.* at 3-22. This transit center is intended to provide a convenient transit hub for both public and private transit services traveling within, to, and from the Village Area. *Id.* The Project would also include low-emission vehicle shuttle service within the Village, as warranted, to provide mobility for visitors, guests, and employees. The DEIR even implies that vehicular trip generation associated with the Project would be less than expected when it states that "the project provides easy access to ski facilities and other amenities by transit, through provision of new transit services as well as a new transit center." *Id.* at 10-12.

The DEIR, however, includes no detail about the transit center. For example, it does not disclose the size of the transit center or the nature of the public and private transit services that would be provided. Nor does it disclose information about the low-emission shuttle service that would be provided. The DEIR must provide this information to complete an adequate analysis of transportation impacts. In particular, it is important to disclose the applicant's transit mode share goal for the proposed Project and the projected ridership on the public and private transit.

In addition, Policy CP-4 of the Specific Plan states the Project would "encourage use of regional transit services (including services from commercial airports) and participate as appropriate in expansion of regional transit services through financial support, such as subsidies and/or funding programs." The DEIR never describes how regional transit services would be encouraged. It does not identify the subsidies or funding programs that would be provided to support transit. Nor does it provide any information on anticipated transit service from commercial airports.

Water Supply. The DEIR acknowledges that the Project would need a new water supply and would entail the construction of new wells, but states the applicant has not yet resolved whether the water would be provided by the Squaw Valley Public Services District ("SVPSD") or by a new water company created by the applicant. The DEIR claims the number of new wells and the final well configuration cannot be determined until this decision has been made. However, there are two versions of the Specific Plan, both dated April 2015; one version shows the option of creating a new water company. The other version shows the option of creating a water company has been removed. *See* Village at Squaw Valley Specific Plan excerpts, attached as Exhibit 5. Thus, the project description is currently unstable and deficient on this topic, and must be revised to reflect the current situation.

As set forth more fully below (*see* Section I.B.1 (water supply)), knowing the number and location of the wells is necessary for an adequate analysis and mitigation of water supply impacts. For example, the number of wells effects the rate of pumping and hence the drawdown from a given location. Similarly, the location of the wells (i.e., proximity to Squaw Creek) can impact the amount of water drawn from the Creek. The DEIR can and must provide details as to the number, location, and pumping regimen for the Project so that the public may be duly informed about the resulting environmental impacts.

Employee Housing. The DEIR does not adequately describe the Project's plans for meeting the County General Plan's employee housing requirements. The County's

General Plan requires that new developments provide housing for at least 50 percent of the full-time equivalent ("FTE") employees generated by the Project. In describing how the Project will meet this standard, the DEIR provides a detailed explanation of the employee housing planned on-site, which would house up to 300 of the 386 employees for which the Project must provide housing, including specific information regarding location, layout, and size. Notably, the planned employee housing is made up of mostly four-person dorm bedrooms and some studio apartments. *See* DEIR Appx. D at 3-4. The Project does not provide for any housing to accommodate employees with families.

In its description of the Project's planned employee housing, the DEIR fails to provide any useful information about the nature of the remaining employee housing the Project must provide. The DEIR merely states that the Project "would employ other methods" to provide the rest of the required housing. DEIR at 3-13. The DEIR then describes these "other methods" by simply recounting all of the options allowed by the County for satisfying the employee housing requirement when housing is not provided on the project site. *Id.* These options are: providing off-site housing (including housing outside of Squaw Valley), dedicating land needed for housing, or paying an in-lieu fee to the County. *Id.* The DEIR does not explain which option or options the applicant plans to use or even hint at the most likely course the Project would take. Nor does it describe if the housing would accommodate employees with families, who would otherwise need to draw on the area's existing housing resources. The need for this housing is not speculative. The applicant knows exactly how much employee housing it must provide and what the options it has for providing it. The DEIR must explain this aspect of the Project, including detail regarding the location of the housing—which could even be outside of Squaw Valley—information that is necessary to determining the Project's impacts.

Fire Station. The Project requires construction of a new fire substation to accommodate the Project's increased demand on emergency services. The DEIR provides barely any description of this aspect of the Project, omitting critical details about the fire substation, including its specific location, design, size, or footprint. *See* DEIR at 3-27. When discussing the station's location, the DEIR states that it might be built within the Project's boundaries, or an old fire station might be renovated, or it might be built off of the Project site—essentially saying that the fire substation could be built anywhere in the area. *Id.* This information is insufficient to allow decision-makers and the public to consider the possible environmental impacts of the Project. Indeed, with no concrete description of the location or nature of the fire substation, the DEIR fails to consider the

impacts of the new fire substation at all, as discussed below (Section I.B.14 (public services)).

Wastewater Retention Facilities. The description of the wastewater retention facilities that may need to be built with the Project is likewise inadequate. The DEIR admits that if the Project's peak wastewater flows would overload an existing interceptor, the Project would need to include facilities to hold the Project's wastewater for release during lower flow times. The project description mentions that this would require construction of "enlarged pipes, vaults, or tanks," but goes into no further detail. DEIR at 3-25. Further, it fails to identify where these facilities would be constructed, which is necessary for an accurate analysis of the facilities' environmental impact. The DEIR merely states that the detention facilities would be "located in the plan area." CEQA requires more detail for a description of a potentially significant component of the Project, even if it is not guaranteed to be built.

The DEIR's failure to describe these Project components renders it legally inadequate. The EIR must be revised to provide these necessary details so that the public and decision-makers can adequately assess the Project's impacts.

2. The DEIR Improperly Segments Linked Projects.

Next, the DEIR fails to reveal other projects that are anticipated in connection with the proposed Project. Longstanding CEQA law holds that where two projects are linked, they must be analyzed together. *See Bozung*, 13 Cal.3d at 279, 282; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231 (construction of a Lowe's home improvement center must be analyzed in same EIR as adjacent City roadway improvements). Here, the County is aware of at least two planned actions that are clearly related to the Project. Yet, the DEIR is completely silent as to these projects. First, the Project applicant has recently announced its plans to connect Squaw Valley and Alpine Meadows via a gondola. *See* Squaw Valley – Alpine Meadows Base to Base Gondola, attached as Exhibit 6; *see also*, "Gondola would create 1 of largest US ski areas near Tahoe," attached as Exhibit 7. Connecting the two resorts would create a sort of "super resort" that attracts even more visitors (and hence more traffic, air pollution, water, and public utility use, etc.) than currently planned with just the Project. *Id.* Further, the proposed gondola traverses federally designated Granite Chief Wilderness, creating potentially significant biological and visual impacts. *Id.* The County must revise and recirculate the DEIR with a consideration of this proposed connection, and its attendant environmental impacts.

Second, as discussed below (*see* Section I.B.1 (water supply)), the Squaw Valley Public Services District ("SVPSD") has been planning a water project to provide additional water to Squaw Valley. SVPSD's proposed "Project 60" in the Draft Tahoe Sierra Integrated Regional Water Management Plan would fund the construction of a 2,000,000 gallon water storage tank to serve as a pipeline terminal to facilitate export of water from Martis Valley to Squaw Valley. *See* Tahoe Sierra IRWM, attached as Exhibit 8. Even though SVPSD has sought grant funding and is publically pursuing this option, the DEIR makes no mention of this. Project 60 would undoubtedly result in additional potentially significant environmental impacts not evaluated in the DEIR. These include, but are not limited to, growth-inducing impacts, biological and hydrological impacts from streamflow disruptions to Martis Creek and other surface waters receiving discharge from the Martis Valley aquifer and the construction of an eight-mile pipeline next to and across the Truckee River. The DEIR must examine this proposal, and these and other potentially significant environmental impacts that may result from it.

3. The DEIR Fails to Adequately Describe the Tahoe Regional Setting.

In addition, the DEIR fails to adequately portray the Project setting, including the regional context. Namely, the DEIR fails to recognize the importance of the Project's location to the neighboring Lake Tahoe Basin. The Basin is an area of "statewide, regional, or areawide significance," that requires special attention in a CEQA analysis. CEQA Guidelines § 15206(b)(4)(A). Here, the Project would undoubtedly impact the Basin, including by bringing in significant traffic, air and light pollution, and noise that would be experienced by visitors for miles around. Increased traffic would also increase the amount of pollutants, such as oil, grease, and toxic chemicals that run off into the Truckee River and Lake Tahoe. The DEIR may not escape this important regional context simply by claiming that the Project is located outside of the Basin. Rather, the DEIR must recognize the areas of overlap and analyze and mitigate any impacts to the Basin. The County must also "consult with transportation planning agencies and public agencies [in the Basin] that have transportation facilities within their jurisdictions that could be affected by the project." CEQA Guidelines § 21092.4(a).

4. The DEIR Employs an Improper Occupancy Rate for Its Analysis.

Finally, the DEIR fails to provide critical information about occupancy of the proposed Project. The Project's occupancy necessarily informs numerous impact analyses, including for example, water demand, energy consumption, biological

resources, and population and housing. The DEIR's hydrology and public services sections appear to use an occupancy rate of 55% based on surveys conducted during the recession period of 2009 to 2011. *See* Exhibit 1 (Myers Report). The DEIR also uses the 55% occupancy rate for the population and housing analysis, without explanation. The Land Use and Forestry analysis makes reference to the applicant's Economic Impact and Urban Decay Analysis ("Economic Analysis"), which states that the average occupancy for hotels and motels in 2014 was 51%. Economic Analysis at 34. Yet, the area is no longer in full recession and the Economic Analysis makes clear that the occupancy rate varies significantly from day to day, "the average occupancy rates range from a low of 41% on Sunday for a calendar year 2014 to a high of 89% for a Saturday in August." *Id.* More importantly here, a primary objective of the Project is to turn Squaw Valley into a year-round world class resort destination. Thus, unless the applicant is prepared to agree to a condition to limit occupancy to 55% (or whatever figure is used in the various analyses), the DEIR must assume full occupancy at all times of the year for its impact analyses. To do otherwise would run the risk that the Project–if it is highly successful as would be the applicant's goal–would result in many more environmental impacts than the DEIR reveals.

If the County believes a lower than full occupancy is more realistic, the DEIR should analyze *both* full occupancy and the lower predicted level. However, the DEIR should clearly identify the occupancy rate that was assumed for *each* impact analysis. Moreover, inasmuch as this occupancy rate would be expected to vary daily (mid-week may be very different than weekends) as well as seasonally, the DEIR must clearly identify all of these occupancy rates. The DEIR must provide *clear evidence* that each impact analysis relied on accurate occupancy rates, and again must also provide an analysis for full occupancy to present the maximum environmental impacts allowed under the Plan. In the absence of this information, neither decision-makers nor the public are able to determine the accuracy of the EIR's impact analyses. The DEIR's current approach of "downsizing" environmental impacts by relying on low occupancy rates is unacceptable.

In sum, the total failure of the project description makes the rest of the DEIR inadequate as well. Because the concrete details of the Project are unknown, its environmental impacts cannot be accurately analyzed, nor can effective mitigation be identified. The fog of uncertainty surrounding the Project and its impacts leads inevitably to deferred analysis and mitigation; over and over again the DEIR states essentially that impacts will be determined as they happen and mitigation will be worked out then.

B. The DEIR's Analysis of and Mitigation for the Impacts of the Proposed Project Are Inadequate.

The discussion of a proposed project's environmental impacts is at the core of an EIR. *See* CEQA Guidelines §15126.2(a) ("[a]n EIR *shall* identify and focus on the significant environmental effects of the proposed project") (emphasis added). As explained below, the DEIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Ass'n v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 ("*Laurel Heights II*"). To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational mandate.

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines §15126.4. Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . ." Pub. Res. Code § 21002.

Although it is clear that the proposed Project has the potential to cause extraordinarily environmentally degradation, neither the public nor decision-makers have any way of knowing the magnitude of this harm. As we explain below, the DEIR simply fails to provide decision-makers and the public with detailed, accurate information about the Project's significant environmental impacts and to analyze mitigation measures that would reduce or avoid such impacts.

1. The DEIR's Analysis of the Project's Impacts on Water Supply Resources Is Inadequate.

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412 imposes four primary obligations on the water supply analysis in EIRs for long-range plans:

- The EIR must identify and analyze water supply for the project. "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project." 40 Cal.4th at 431. This analysis must include consideration of the environmental impacts of tapping that supply.

- The EIR must consider the water demands of the entire project, through all phases of development. "An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project." *Id.*

- "[T]he future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decision-making under CEQA." *Id.* at 432. The EIR's determination concerning the likelihood of the availability of these supplies must be supported by substantial evidence.

- "Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." *Id.*

The DEIR fails to meet the minimum standards set forth in *Vineyard*. First, the DEIR fails to adequately describe the environmental and regulatory context in which to consider the Project's water supply impacts. Instead, it takes a myopic view of water supply, ultimately skewing the analysis. Second, as detailed in the attached Technical Report from Sierra Watch's hydrologic consultant, Dr. Tom Myers, the DEIR's groundwater analysis has several fatal flaws. *See* Exhibit 1. These flaws result in a gross overestimation of the amount of groundwater that is available to the Project as well as a gross underestimation of the Project's water demand. *Id.* It is only in reliance on these errors that the DEIR concludes the Project's water supply impacts will be less than significant. *Id.* The overwhelming evidence demonstrates that "it is impossible to confidently determine that anticipated future water sources will be available." *Vineyard*, 40 Cal.4th at 432. Thus, when the DEIR is recirculated to correct the water supply analysis, it must also discuss "possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." *Id.*

(a) The DEIR's Description of the Environmental Setting for Water Supply Is Inadequate.

As discussed previously, the environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." Guidelines § 15125(a). This requirement is crucial to a valid EIR: "Knowledge of the regional setting is critical to the assessment of environmental impacts. . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered *in the full environmental context*." Guidelines § 15125(c) (emphasis added). In other words, it is impossible for an EIR to fulfill its informational purpose when it is only revealing part of the picture for a potential environmental impact.

This requirement is particularly important in the water supply context, given the interconnectedness of water systems. Thus, the Court of Appeal in *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 875 readily invalidated an EIR that narrowly focused on the direct water source for a proposed project and failed to acknowledge a potential curtailment in a connected river system. The DEIR here suffers from the same flaw as it fails to provide the full environmental context from which to evaluate the Project's water supply impacts. The DEIR must be recirculated to correct, at a minimum, the following crucial omissions from the environmental setting.

To begin, the DEIR inexplicably makes scant mention of current drought conditions in California. Ongoing drought since 2012 rendered 2014 one of the driest water years in California history. *See* Exhibit 9 (Martineau, P. California Water Year 2014 Among Driest Years on Record). Studies have shown that Southwestern United States, which includes California, is either in or will very likely soon enter a megadrought over the length of 10 years due to climate change. *See* Exhibit 10 (Ault, T.R., et al. Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data); *see also* Exhibit 11 (Rice, Doyle. California's 100-year Drought: Megadroughts a Threat to Civilization). Additionally, there is an 80% chance that the Southwest will experience an unprecedented megadrought that would last more than three decades, between 2050 and 2099. *See* Exhibit 12 (Cook, B.I., et al. Unprecedented 21st-Century Drought Risk in the American Southwest and Central Plains). In the meantime, this region will experience additional droughts leading up to that looming megadrought. *Id.*

A recent study of droughts in California concluded that anthropogenic climate change has and will continue to cause the co-occurrence of warm and dry periods in California, which in turn will exacerbate water shortages, groundwater overdraft, and species extinction. *See* Exhibit 13 (Diffenbaugh, N.S., et al. Anthropogenic Warming Has Increased Drought Risk in California, 2015, Proceedings of the National Academy of the United States of America). Recognizing the current and projected impacts of climate change on reducing California's snowpack, Governor Brown declared a drought state of emergency in California in January 2014, which called for a 20% reduction in statewide water use. *See* Exhibit 14 (Office of Governor Edmund G. Brown Jr., A Proclamation of a State of Emergency). Both the Placer County Water Agency and Squaw Valley Public Service District have instituted measures to reduce water consumption by up to 30%.[1] Additional deep cuts and curtailments are being made all over the State. *See, e.g.*, Exhibit 15 (Ca.Gov California Drought).

The DEIR recognizes that the Olympic Valley Groundwater Basin ("OVGB" or Basin) only recharges its groundwater through rain and snow melt, which greatly decreases in drought years. Further, in its section on greenhouse gas emissions, the DEIR recognizes that climate change could result in up to 40 percent less snow pack in the Sierras by 2050. DEIR at 16-2. Yet—despite overwhelming scientific evidence of the on-going drought crisis, as well as action at both the state and county levels to address water shortages and reevaluate water use planning in the face of a new reduced-water reality—the DEIR's analysis of water supply impacts barely mentions the current drought. Indeed, the studies upon which the DEIR relies utilize a study period of 1993 to 2011, which is prior to the current drought and includes nothing like it. This omission directly skews the results of the DEIR. It is impossible for the public and decision-makers to make an informed decision about the proposed Project without adequate information about the drought and this environmental context in mind. Even if in the past there has been plenty of water in the aquifer, as the DEIR claims, the drought raises serious questions, such as how much water is in the aquifer now? How long will the groundwater last? Are there other uses to which the groundwater should be put, rather than approving new high rises, a massive indoor aquatic park,[2] and commercial

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[1] The DEIR mentions a recent Executive Order calling for water cut-backs as well as local conservation programs, but it does so only to claim there may be a "demand reduction." DEIR at 14-34.

[2] The Mountain Adventure Camp alone requires 32,170 gallons of water per day. *See* Village at Squaw Valley Water Supply Assessment, 17 June 2014, Table 1 at pdf p. 84.

development? Will there be adequate snowpack in the coming years or decades to justify and supply this new development? Furthermore, as the timing and form of snowpack change to earlier snowmelt and more rainfall rather than snow, why should new development receive priority for water, rather than existing uses and users that are having to suffer drastic cutbacks in Placer County and all over the State?

While the DEIR mentions that Squaw Creek is part of the Truckee River watershed and also acknowledges that the OVGB draws directly from Squaw Creek, the DEIR's information regarding the larger water supply context stops there. The DEIR takes a very narrow view that essentially claims that any water needs or issues that may arise outside the Basin are irrelevant to the DEIR's analysis. Similarly, the DEIR presents as a given, without information or analysis, that the Project would have access to Basin groundwater so long as the pumping standards set forth in the DEIR are met.

This myopic view is ill-advised. The DEIR must acknowledge that additional drawdown from Squaw Creek ultimately means less water for downstream users. Moreover, given the current scarcity of water in the State described above, there is a very real possibility that the State Water Resources Control Board could issue curtailments of diversions from Squaw Creek, as it has done in other watersheds. Likewise, the Department of Fish and Wildlife may impose additional conditions on significant water diversions from Squaw Creek that could further limit water supply availability. *See Siskiyou County Farm Bureau v. Department of Fish and Wildlife* (2015) 237 Cal.App.4th 411. Because the pumping of water from the Basin results in a diversion from Squaw Creek, the DEIR must provide information on possible curtailments in order to adequately "set the stage" for the Project's potential water supply impacts. *Friends of the Eel River*, 108 Cal.App.4th at 875. As discussed below, the Project would result in the drawdown of Squaw Creek, an important local and regional resources, but the DEIR ignores the impacts on stream flows and downstream users.

Further, the DEIR fails to reveal that the groundwater in the Basin is flowing in a subterranean stream. A subterranean stream flowing in a known or definite channel, as opposed to percolating groundwater, is defined by the presence of four physical criteria enumerated by the State Water Resources Control Board in *In re Garrapata Water Co.*, State Water Res. Control Bd. Dec. No. 1639 (June 17, 1999) and affirmed by *North Gualala Water Co. v. State Water Res. Control Board* 43 Cal.Rptr.3d 821, (Cal. Ct. App. 2006). The criteria are:

- A subsurface channel must be present;

- The channel must have a relatively impermeable bed and banks;
- The course of the channel must be known or capable of being determined by reasonable inference; and
- Groundwater must be flowing in the channel.

As Dr. Myers' explains, the OVGB meets all four of these criteria. Exhibit 1 at 9. This is relevant because, as with above ground streams, water rights to subterranean streams are within the purview of the State Water Resources Control Board. Should the Board assume jurisdiction over the water within the OVGB, the applicant would need to "get in line" for a water rights permit and is not guaranteed access to the (underestimated) 234 acre-feet of water per year necessary for the Project.

The failure to recognize the appropriate regulatory context and the interaction with the Truckee River system leads to direct flaws in the DEIR's analysis. Most critically, the DEIR fails to properly acknowledge the uncertainties regarding the availability of water. The DEIR also ignores some Project impacts that would be relevant if the DEIR acknowledged the proper environmental context. For example, the DEIR overlooks the impacts of adding 4.24 acres of impervious surface on the East Parcel, claiming it is "not in a recharge zone of importance to the OVGB." DEIR at 13-53. However, the loss of pervious surface in this area could "decrease baseflow in the Truckee River during the time of year that groundwater discharge to the river is most important." Exhibit 1 at 13.

Furthermore, the DEIR incorrectly dismisses the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Pub.L. No. 101-618, Title II [Nov. 16, 1990]) (the Settlement Act) and Truckee River Operating Agreement, both of which are likely to come into effect later this year, as potential barriers to well development in Olympic Valley. DEIR at 14-12, 14-13. The DEIR's analysis is predicated on the incorrect assertion that new wells in Olympic Valley draw from groundwater outside of the State Board's jurisdiction rather than from a subterranean stream and the surface waters of Squaw Creek. As a result, any water developed in Squaw Valley may be counted against California's 10,000 acre feet per year allotment of surface water from the Truckee River Watershed and, as California approaches this limit, be subject to curtailments.

Finally, the DEIR fails to provide an adequate description of current baseline conditions in the OVGB. Rather, the DEIR describes baseline in terms of an operational standard of "saturated thickness" at existing wells. However, as set forth in Dr. Myers' Report, such an operational standard for certain well points is irrelevant to the overall

status and health of the whole groundwater basin. Exhibit 1 at p. 13. Much of the information in the DEIR regarding the status of the Basin flows from varying simulations based on data from these well points, even though the DEIR acknowledges that this narrow focus could lead to an underestimation of water supply. *See, e.g.*, DEIR at 13-73 ("The model may underestimate extreme lows.").

The baseline should instead be described by a hydrograph of water levels throughout the Basin at the time of the Notice of Preparation, with a total of the amount of water in the Basin versus the capacity, as well as a description of current recharge/discharge. *See Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 91-93 (EIR failed to provide adequate environmental setting for groundwater basin because it lacked information about the amount of water in the basin at baseline conditions). This is especially important given that new wells would be in different areas than current wells (and therefore subject to different baseline conditions), and the final location of the new wells has not yet been confirmed. As noted by Dr. Myers, "[t]he Olympic Valley aquifer is small compared to the demand imposed on it." Exhibit 1 at 1. The DEIR must provide an accurate portrayal of the entire groundwater Basin, rather than just pumping ability at a few select locations.

The failure of the DEIR to provide adequate information on the environmental setting, including information on the drought, the full regional regulatory and environmental context regarding water diversions, and a complete picture of the current health of the groundwater Basin undermines the integrity of the water supply analysis. This flaw alone requires recirculation of the EIR.

(b) The DEIR's Groundwater Analysis Is Fatally Flawed.

Dr. Myers reviewed and evaluated the groundwater analyses utilized in the June 2014 Village at Squaw Valley Water Supply Assessment ("WSA") and relied upon in the DEIR and found several flaws that invalidate the DEIR's water supply analysis. *See* Exhibit 1. Of critical concern, the groundwater model is flawed and allows both the WSA and DEIR to overstate groundwater availability and understate the Project's impacts on water supply and other environmental resources. The WSA also underestimates the Project's water demand which causes the DEIR to further underestimate the Project's environmental impacts. The most egregious flaws in the DEIR's analysis of groundwater impacts are discussed below.

(i) The DEIR Overestimates Groundwater Availability.

The hydrogeologic analyses and groundwater model used to prepare the WSA and the DEIR are based on flawed data and methodology. Consequently, both documents overstate groundwater availability in several respects. First, the model uses a grossly inaccurate precipitation figure, which figure is repeated in the WSA and DEIR. The DEIR states that mountain precipitation is estimated at 263 inches per year in snow-melt equivalent. DEIR at 13-7. The standard conversion is 1 inch of snowmelt translates to 10 inches of snow (1:10). *See* Exhibit 1 at 9. Thus, the DEIR claims that, even assuming conservatively that only half of the mountain precipitation falls as snow, average mountain snowfall is 110 feet! The WSA claims this figure is derived from data at the Snotel site. However, Dr. Myers examined the actual data, which is about a third of that listed in the DEIR. "The annual average [as reported at the Snotel site] for 1993-2001 is 80.6 in/y and since 1981 is 71 inches." *Id.* at 9. This fatal flaw – overestimating annual precipitation by a factor of 3.7 to 1 – clearly calls into question the accuracy of the entire water supply analysis.

The groundwater model uses the incorrect 263 inches per year precipitation figure to calculate recharge to the Basin, which results in a gross overestimation of water available in the Basin. For example, recharge used in the groundwater model increased from about 680 acre feet per year in previous studies to about 3,800 acre-feet per year in the current version of the model. Exhibit 1 at 2, 34. Utilizing over five times the amount of recharge in the model clearly leads to skewed results. As stated by Dr. Myers, because the precipitation drives the recharge estimate for the Project, this error means that *every impact due to groundwater production has been underestimated. Id.* at 9 (emphasis added).

This error also leads the model to minimize the impacts from pumping additional wells because aquifer transmissivity and conductivity—essentially how easily water moves within and through the basin—was calibrated in order to accommodate the artificially inflated precipitation totals. The result is that localized pumping impacts from individual wells are underestimated, minimizing drawdown, associated environmental impacts, and the potential for the water table to fall below operational well constraints. Exhibit 1 at 33.

Second, the model fails to analyze water supply under likely continued drought conditions or climate change scenarios. As discussed previously, the model relies on studies from the 1993 to 2011 period, which contains nothing like the current extended

dry period or likely warming trends and changes in precipitation patterns anticipated under global climate change. As explained in Dr. Myers' Report, such changes can "lengthen the dry, or no-recharge period of a year. As the snow shifts to rain and snowmelt occurs earlier, there will likely be longer periods during the summer during which there is no runoff recharging the aquifer, which will increase the seasonal period during which drawdown can affect the aquifer." Exhibit 1 at 35.

The DEIR attempts to minimize the potential impacts from climate change by stating that "in current conditions only a small portion of the snowmelt is captured as groundwater recharge." DEIR at 14-35. This is incorrect. As explained above, when snowmelt precipitation estimates were improperly inflated, the model resulted in over a five time increase in recharge, demonstrating that the model very much relies on snowmelt for recharge. Further, the DEIR's statement is contradicted elsewhere in the DEIR, where the document acknowledges that in years with below average precipitation "water levels in late summer and fall are dependent on the amount of snowmelt that flows through Squaw Creek during the spring and summer." *Id.* at p. 14-7.

Moreover, drought and climate change will likely not only impact snowpack but, also, alter precipitation patterns, decrease overall precipitation levels, and increase evaporation rates. These factors threaten to combine to reduce the amount of water that percolates into the groundwater aquifer. The DEIR completely glosses over this fact, and baldly claims drought events "are expected to be limited." DEIR at pp. 14-7, 14-35. The DEIR cites no evidence, nor is there any, that the drought events will "be limited", irresponsibly relying not on science but, instead, offering a hope. Rather, drought is expected to be the norm rather than the exception in California.

Indeed, recognizing the severity of the drought, the SVPSD plans to amend the WSA to "reassess the sufficiency of the Project's supply of water." *See* SVPSD Newsletter, Summer 2015, attached as Exhibit 16. We can find no logical explanation for the County's decision to circulate this DEIR before the WSA is amended to take into account accurate water supply data. The DEIR may not simply rely on a best case scenario; rather it must disclose accurate facts. CEQA Guidelines § 15151. The document must provide a sufficient degree of analysis to inform the public about the proposed Project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. *Id.* Consistent with this requirement, the information regarding the Project's impacts must be "painstakingly ferreted out." *Envt'l Planning & Info. Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357 (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment). This approach provides further evidence of the DEIR's

strategy to withhold information and to encourage decision-makers to accept the decision that the applicant wants. Extensive revision of the DEIR, adding accurate information about the drought and climate change, is only the first step toward remedying this indifference toward the Project's impact on groundwater resources.

Third, the groundwater model averages pumping over 9 new wells, even though only 6 new wells are planned to be built for the Project. By spreading pumping out over more wells than would actually exist, the drawdowns appear less than they would actually be at any given well. The DEIR acknowledges this potential underestimation (at 14-34) but does not quantify it or otherwise analyze how it may affect the DEIR's significance determination regarding water supply impacts. Instead, the DEIR relies on a presumed "margin of safety." *Id.* In reality, the DEIR offers no evidence of what the effects of increased pumping at fewer locations would be. This could make a significant difference, especially in locations near the Creek.

Fourth, as discussed above, the model reflects only operational data at various well points. As the DEIR acknowledges, this method could result in an overestimation of water availability because the water level at well locations is impacted by well operations and presents skewed results. *See, e.g.*, DEIR at 13-73 ("The model may underestimate extreme lows."), 14-7 ("During periods of increased pumping from the municipal well field, the flow pattern is modified by drawdown cones surrounding the wells."). But again, the DEIR does not quantify this overestimation or otherwise analyze how it could impact the significance conclusion. The mere recognition of a potentially skewed result is not enough. The EIR must rely on accurate information for its analysis – either by using a method in the first instance that does not over or under-estimate results, or by quantifying any biases in the method and then analyzing how that bias effects results. CEQA Guidelines § 15064(b) (significance determinations must reflect "careful judgment . . . based to the extent possible on scientific and factual data."); *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17 ("[C]onclusory statements do not fit the CEQA bill."). Further, CEQA requires interpretation of its requirements to maximize protection of the environment. Thus, the EIR should always err on the conservative side when presenting data and information.

(ii) The DEIR Underestimates the Project's Water Demand.

The DEIR also severely underestimates water demand from the Project, primarily by relying on occupancy and per capita rates that are too low. As an initial matter, the DEIR is not at all forthcoming about the way it calculates demand for the Project. The

public should not have to dig through detailed and multiple technical appendices to ascertain how Project demand was calculated. The DEIR should provide its demand assumptions and estimates in a clear manner.

Demand estimates and assumptions are demonstrably low. *See* Exhibit 1 at 2, 13. As Dr. Myers explains, "[t]he demand was based on an annual average occupancy rate of 55.2% [which] was determined based on the recession period 2009 through 2011 when occupancy would have been lower than average." *Id.* at 1 at 2,3. Further, the occupancy rates do not reflect the Project objectives, which are to transform Squaw Valley from its current intermittent seasonal uses to, as the applicant claims, a "world-class" four season resort destination. An additional flaw is that demand rates for commercial square footage (0.24 gpd/sf) appear to be based solely on area and not occupancy or use. Exhibit 1 at 16. Dr. Myers estimates occupancy rates, and, therefore, demand on water supplies, could be underestimated by as much as 80 percent. Exhibit 1 at 2, 16.

Further, the model used a flawed approach to the distribution of demand, noting that "[m]ore demand especially in late summer would cause even more drawdown lengthening dry periods and the length of dry stream." Exhibit 1 at 2. Rather than simply examine one possible demand scenario, the DEIR should acknowledge that uncertainty exists concerning the distribution of future demand and analyze a realistic range of demand distributions.

The myriad errors in the DEIR's groundwater analysis are not trivial defects. The document does not serve to inform the public and decision-makers as to whether sufficient water is available to meet the Project's needs. In fact, it is nearly useless to the people it is intended to enlighten. The County must correct the above mentioned errors, along with the additional flaws regarding the groundwater model's estimation of groundwater availability set forth in Dr. Myers' Report, and recirculate the DEIR.

(iii) The DEIR Underestimates Drawdown from Squaw Creek from Pumping Operations.

In addition to the errors listed above that would result in an underestimation of impacts to Squaw Creek, the DEIR also underestimates the amount of water that would be drawn down from Squaw Creek as a result of pumping operations. For example, the DEIR's assertion that "current groundwater pumping does not substantially alter stream flow" (at 13-18), does not take into account cumulative pumping conditions. The statement assumes an eight-hour pumping cycle that starts fresh each time. This is not how drawdown occurs; rather, water flows towards a well-site even after pumping ceases

as the depleted area near the well is refilled either with surface waters or adjacent areas of the aquifer. These impacts may be substantial as pumping tests have demonstrated that "after 51 hours of pumping (test #1, see Hydrometrics 2013a), 17% of the amount being pumped was being drawn from Squaw Creek" a rate that would be expected to continue for some time even after pumping stops. Exhibit 1 at 10. Thus, far more water would be drawn from the Creek than the DEIR reveals.

Dr. Myers also determined that the DEIR "does not consider the cumulative effects of overlapping drawdown cones. In other words, the drawdown from one well will affect nearby wells so that the drawdown at any point is a summation of drawdown from each well. It is possible that the saturation could fall below 65% due to these overlaps." Exhibit 1 at 15. The DEIR must be revised and recirculated to correct these errors and to reflect the accurate potential drawdown of Squaw Creek.

(c) The DEIR's Water Supply Mitigation Is Inadequate.

The DEIR claims that if the wellfields were built as discussed in the WSA, there would not be any significant water supply impacts. The DEIR further states that if wellfields were ultimately built in a different configuration, the impact would remain less than significant if Mitigation Measure 13-4 were imposed. This approach to mitigation is flawed for several reasons. For one, it is unclear when and whether Mitigation Measure 13-4 applies. The WSA states that the Project would only require construction of 6 new wells but, as explained, the model simulates pumping over 9 new wells. It is unclear from the DEIR whether Measure 13-4 would apply if only 6 new wells are constructed as planned. Further, it is unclear whether parts B and C of Measure 13-4 apply to all new wells, or only wells that do not meet the WSA configuration.

Additionally, Measure 13-4 improperly defers mitigation until a later date. CEQA generally prohibits deferral of mitigation, except in narrow circumstances. To do so, (1) there must be practical considerations that preclude development of the measures at the time of project approval, (2) the EIR must contain criteria to govern the future actions implementing the mitigation, and (3) the agency has assurances that the future mitigation will be both "feasible and efficacious." *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17. This standard is not met here.

First, the DEIR never explains why it cannot at this point identify an optimal wellfield configuration that would be utilized by the Project and operated to a consistent set of standards. Rather, the DEIR appears to anticipate and accept that the wellfield configuration will change and breeds further uncertainty by modeling more wells than

would be necessary for the Project. The DEIR's project description claims that more wells may be necessary if the applicant were to create an entirely new water company. As discussed previously, it is entirely unclear whether the Project includes the creation of a new water company. This critical detail must be resolved now, prior to Project approval. Following clarification on that issue, the DEIR must be revised to show Project water levels under various wellfield configuration scenarios.

Second, while Mitigation Measure 13-4 does establish some criteria, others are not defined. For example, the Measure states the SVPSD will implement a "Pumping Management Plan" and the Project would be consistent with that Plan. The Measure sets forth the types of items to be covered in the Plan (e.g., standard operating procedures, new well siting criteria), but does not provide any details or actual standards. *See Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182 (holding an agency may not avoid analyzing water shortages by relying on future analyses). The Measure also states the applicant will enter into a development agreement with the SVPSD but fails to provide the agreement or contents thereof. For the criteria that are defined, the Measure quickly removes any certainty by including a provision that allows the SVPSD and the County to change the criteria so long as the new criteria "maintain adequate water supply and would not result in degradation of water quality and/or loss of riparian vegetation and/or aquatic habitat substantially greater than" described in the DEIR. DEIR at 13-64. However, the DEIR entirely fails to define the terms "adequate" or "substantially greater" relying instead on the discretion in the SVPSD and the County, making analysis of subsequent impacts impossible.

Third, the Measure would fail to reduce water supply impacts. As with the DEIR's flawed analysis of water supply impacts in the first instance, the mitigation uses as one of its criteria the same operational threshold of 65% average saturated thickness. As explained, this measure does not relate to overall health of aquifer. Once the DEIR corrects this issue, mitigation should be proposed to reduce any true significant environmental impacts to the aquifer and Squaw Creek. For example, Dr. Myers proposes mitigation that involves designing a pumping regimen that allows pumping from different well locations (e.g., closer to or farther from Squaw Creek) based on the effects that pumping would have on the Creek at the specified time. *See* Exhibit 1 at 2.

The DEIR's mitigation measures must be completely revamped so that they are concrete, detailed, and enforceable and their potential effectiveness must be fully described.

(d) The DEIR Fails to Acknowledge the Uncertainty of Water Supplies for the Project and Fails to Examine the Environmental Impacts from Obtaining Water from Additional Sources.

As set forth above, the groundwater model relied upon by the DEIR is fundamentally flawed and does not constitute substantial evidence to support the DEIR's determination that there is sufficient water supply for the Project. Once the identified errors have been corrected, the analysis will likely demonstrate far less water available than previously identified. However, even with the gross overestimates currently contained in the DEIR, it is apparent that groundwater elevations in the OVGB are highly variable, with large seasonal and yearly fluctuations, and that the Project could exacerbate these fluctuations. *See, e.g.*, DEIR at 13-13 (groundwater levels fluctuate 10 to 15 feet seasonally, and recover to within 10 feet in only half of the years), 13-67, 13-73 (noting Project would have a "measurable effect on groundwater elevations along Squaw Creek" and "the duration and spatial extent of drying would likely increase), 14-7 ("there is a large magnitude of seasonal aquifer fluctuations").

Although the DEIR acknowledges this variability, it fails to acknowledge that water supply for the Project could be uncertain in the future. Rather, the DEIR inappropriately claims that "even in years with below average precipitation groundwater levels rose to near maximum elevations," and that most recharge is "rejected" because the aquifer is full. DEIR at pp. 13-13, 13-17; *see* Exhibit 1 at 9. In fact, DEIR Exhibit 13-19 demonstrates that the aquifer is full only at very limited times. *See also* Exhibit 1 at 9, 10. Thus, even the information presented in the DEIR does not support a conclusion that, even with the installation of new wells, the Project would not have significant water supply impacts. Indeed, prior SVPSD studies have shown that groundwater development increases the drawdown and pulls more water from Squaw Creek which indicates the water company has always faced a lack of certainty regarding groundwater supplies in the OVGB. 2007b, West-Yost 2003.

Further, the DEIR's conclusion that installation of new wells would not have environmental impacts is based on incorrect data and the flawed use of an operational baseline that does not take into account overall Basin health as discussed above. As stated in *Vineyard*, "[t]he ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project." *Vineyard*, 40 Cal. 4th at 434. The DEIR must be recirculated with an adequate discussion of the true environmental impacts of installing new wells and increasing pumping throughout the Basin. This analysis must

include not only the hydrological impacts to whole Basin, but also any foreseeable effects from well construction activities, including impacts to air quality, traffic, and public safety.

The DEIR's failure to properly acknowledge the uncertainty in the Project's water supply is a serious defect. The revised EIR must identify potential additional sources of water and analyze any potential environmental impacts from utilizing such sources. As discussed previously, the SVPSD has already determined, even under existing demand, local water supplies are insufficient and is pursuing water exports from the Martis Valley watershed. SVPSD's proposed "Project 60" in the Draft Tahoe Sierra Integrated Regional Water Management Plan would fund the construction of a 2,000,000 gallon water storage tank to serve as a pipeline terminal to facilitate export of water from Martis Valley to Squaw Valley. *See* Exhibit 8. Inasmuch as the SVPSD has sought grant funding and is publically pursuing this project, the revised EIR must examine this proposal and any potentially significant environmental impacts that may result from it. *Vineyard,* 40 Cal.4th at 835. Such analysis must include, but is not limited to, the environmental impacts of running an eight-mile pipeline along and across the Truckee River and potential streamflow impacts to Martis Creek and other surface waters receiving discharge from the Martis Valley aquifer.

(e) The DEIR Fails to Adequately Analyze the Project's Cumulative Impacts to Water Supply.

A legally adequate cumulative impacts analysis views a particular project over time and must consider the impact of the project combined with other projects causing related impacts, including past, present, and probable future projects. CEQA Guidelines § 15130(b)(1). The DEIR concludes that cumulative water supply impacts would be less than significant because, even with future projected growth, pumping would not exceed the DEIR's threshold for saturated thickness. The cumulative impact analysis suffers from the same flaws as mentioned above regarding the model data and information as well as a threshold that does not adequately measure impacts to the basin. Furthermore, the cumulative impact analysis is deficient because it does not consider anticipated projects that would be relying on water from the Truckee River or Squaw Creek. As explained above, given the interconnectedness of the water system, diversions from Squaw Creek, including those required by the Project, could ultimately be regulated along with diversions from the Truckee River as taking water from the system becomes a zero sum game.

The DEIR must be revised and recirculated to correct the errors above and to adequately analyze and mitigate the Project's direct and cumulative impacts to water supply.

2. The DEIR Fails to Adequately Analyze and Mitigate the Project's Impact on Biological Resources.

(a) The DEIR's Description of the Environmental Setting for Biological Impacts is Inadequate.

The DEIR fails to fully and accurately describe the Project site's existing biological resources which undermines the legitimacy of its impact analysis. Of critical importance, surveys for a number of sensitive habitats and plant and animal species are entirely absent from the DEIR. The DEIR concedes that it lacks the surveys necessary to complete its wetland delineation because "[t]he Salix constraints maps did not cover the entirety of the project site." DEIR at 6-25. It also admits that no wetland delineation has been conducted for the wet meadow along the sewer line corridor, even though this area is potentially a jurisdictional water of the United States.[3] *Id.* at 6-13.

The DEIR's biological resources analysis is riddled with this sort of lack of crucial information about the Project's environmental setting. For example, when analyzing the Project's impact on sensitive habitats, the DEIR discloses that it "lack[s] . . . specific information on bank and habitat elevation" but does not explain the reason this information could not have been provided. DEIR at 6-40. Nor does the DEIR provide any explanation for the document's lack of data on "specific riparian plant locations [and] specific meadow elevations beyond the creek bed." *Id.* at 6-42.

As explained previously, CEQA allows deferred analysis and mitigation only if there is a reason or basis for the deferral and the measures contain specific performance standards that will be met. *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal. App. 4th 645, 669-71. Here, the DEIR admits that "assessments will need to be completed for the unsurveyed locations prior to construction as described in the impact and mitigation discussion." *Id.* The DEIR also discloses that "[n]ot all utility corridors outside of the Specific Plan area boundary have been surveyed for sensitive habitats (e.g.,

[3] "Waters of the United States" are water features and bodies that the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers have the authority to regulate under the Clean Water Act, 33 U.S.C. 1251 *et. seq. See* 80 Fed.Reg. 37054 (June 29, 2015), to be codified at 40 C.F.R. § 230.3 (defining "Waters of the United States").

wetlands)" and that "[t]hese areas will require surveys prior to any ground disturbances." *Id.* at 6-38. But the DEIR contains no rationale for why it is necessary to defer these surveys and is thus legally inadequate.

The fact that the DEIR's mitigation measures require surveys for sensitive habitats and species and delineations of waters of the United States before construction does not save the DEIR's analysis; it is too little too late. *See, e.g.*, DEIR at 6-46. "A study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.

There are also inaccuracies in the DEIR's descriptions of the Project's setting. For example, the descriptions of sensitive habitats on pages 6-10 through 6-14 are inaccurate because they fail to explain the habitats' relationship with, and dependency on, groundwater and runoff. As explained in Dr. Myers's Report (Exhibit 1), the description of each sensitive habitat should include information on how vegetation gets its water, such as whether the vegetation relies on snowmelt and rainfall or depends in part on groundwater. Exhibit 1 at 5 – 7. Further, the DEIR should identify the groundwater requirements for each sensitive plant species. *Id.* This level of detail is especially necessary for an accurate discussion of this Project's environmental setting and identification of its impacts because the Project would impact groundwater and stream flows, which could in turn impact vegetation in sensitive habitats. Of course, these impacts can be measured only if plant species' groundwater requirements are disclosed.

The DEIR also fails to accurately quantify riparian habitat that may be impacted by the Project. Sierra Watch retained the Conservation Biology Institute ("CBI") to evaluate the DEIR's biological resources analysis, and in that report ("CBI Biological Resources Report," attached as Exhibit 2), CBI observed that it is unclear if the DEIR included certain identified dense willow habitat and willow and alder habitat along the Truckee River in its riparian habitat calculations. Exhibit 2 at 3.

Yet another problem is that the DEIR inexplicably separates certain types of sensitive habitat among different categories, which could lead to inaccurate estimates of the Project's impact on these habitats. For example, the DEIR puts some alderleaf coffeeberry scrub habitat in its own category but includes other alderleaf coffeeberry scrub habitat under seep habitat. *See* DEIR at 6-10. The DEIR also splits its classification of willow scrub and willow alder scrub. *Id.*at 6-13 – 6-14. The DEIR must

categorize all of this habitat together or explain its rationale for splitting habitats across multiple categories.

There are also discrepancies between Tables 6-1 and 6-4, which identify sensitive habitat acreages. The DEIR states that the difference in the numbers presented in these tables is "solely a result of rounding." *See* DEIR at 6-27. But the discrepancy is simply too large to attribute to rounding alone. Table 6-1's listed acreages for different sensitive habitats totals 12.54 acres. *Id.* at 6-9. But Table 6-4 concludes there are 8.233 acres of the same habitat. *Id.* at 6-26 – 6-27. The DEIR must resolve this significant discrepancy.

Finally, like the DEIR's water supply section, the biological resources chapter fails to discuss California's severe drought conditions. This information is critical to determining the Project's impacts on biological resources from groundwater drawdown. The DEIR's failure to acknowledge the severe drought is particularly deceptive; the Project's impacts must be evaluated in light of these ecologically stressful conditions. The revised EIR should provide this detailed analysis.

(b) The DEIR's Analysis of Impacts to Biological Resources is Legally Inadequate.

(i) The DEIR's Evaluation Of The Impacts On Sensitive Habitats Is Fatally Flawed.

The DEIR's analysis of the Project's impacts on sensitive habitats (Impact 6-1) lacks sufficient information and contains numerous inaccuracies. First, as discussed above, the DEIR cannot adequately evaluate the Project's environmental impacts if its description of the environmental setting is incomplete. But here, the DEIR acknowledges that it lacks information regarding wetland surveys; stream bank, habitat, and meadow elevations; and specific locations of riparian plants. The document even baldly admits that its analysis of operational impacts to sensitive habitats is "limited to the creek bed of Squaw Creek and areas where the creek bed is located less than one foot from the bank." DEIR at 6-42. This means that the DEIR fails to analyze the impacts on *any sensitive habitat more than one foot away from Squaw Creek*. *See* DEIR at 6-44 ("[T]he data used in this analysis [of impact on riparian vegetation] does not take into account riparian vegetation that may be several feet above the creek bed."). This plainly violates CEQA's mandate that an EIR evaluate all of a project's environmental impacts.

Second, as discussed above and in Dr. Myers' and the CBI Reports, the groundwater modeling upon which the DEIR's conclusions is based does not take into

account current drought or future climate change impacts. Due to the relationship between groundwater levels and the vigor of these sensitive habitats, groundwater modelling that accurately reflects current and likely future conditions is essential to an accurate analysis of the Project's impacts. *See* Exhibit 1 at 3, 12; Exhibit 2 at 5, 8.

Third, the DEIR's analysis of the Project's operational impacts on riparian vegetation is inadequate. The DEIR concludes that "groundwater withdrawals . . ., if managed as currently modelled, are unlikely to result in mortality to established perennial riparian vegetation within the western channel or upper meadow reach." DEIR at 6-43 – 6-44. However, the DEIR lacks evidence or explanations supporting this conclusion.

In an attempt to defend its conclusion, the DEIR incorrectly states that there is a dearth of available literature on the impacts of groundwater decline on riparian species that exist on-site. *See* DEIR at 6-42. In fact, as explained in the CBI Report, there are multiple studies that have assessed impacts from groundwater changes on black cottonwoods, which occur on-site. Exhibit 2 at 5. Because these studies are available, the DEIR should have considered both the short- and long-term direct and indirect impacts to riparian vegetation from groundwater drawdown.

Further, the DEIR's chosen threshold for determining riparian vegetation mortality is when groundwater drops to depths greater than 10 feet from the surface. But, according to CBI, cottonwood mortality has been reported when groundwater is even closer to the surface. Exhibit 2 at 5. Thus, the DEIR's threshold underestimates the Project's riparian mortality impacts. This problem is magnified by the fact that the groundwater modeling's failure to consider drought and climate change impacts underestimate the amount of drawdown to begin with. *See* Exhibit 2 at 5-6.

The DEIR also fails to acknowledge water requirements for seed germination, instead focusing only on seedlings' groundwater needs. Specifically, the DEIR states that seedlings of trees like cottonwoods and willows can survive when water tables are within 3.3 feet of the surface. DEIR at 6-43. However, for a seed to germinate and survive, the soil surface must be moist for up to a month after seed deposition. Exhibit 2 at 6. Also, the DEIR overstates black cottonwood trees' ability to reproduce through suckering, discounting the importance of seed germination in species health. *Id.* Finally, the DEIR lacks evidence supporting its conclusion that a 10-20% increase in years with dry conditions that are unsuitable for seedling germination and survival would not affect riparian health and persistence.

Fourth, in its discussion of impacts on meadow vegetation, the DEIR admits that the Project's groundwater withdrawals will result in more years where the groundwater level would drop below the threshold for meadow functionality. DEIR at 6-44. However, the DEIR does not identify how many years this would occur, nor whether they are likely to be sporadic or in succession. Nonetheless, the DEIR concludes, without explanation, that the impacts to meadow vegetation "would not be substantial since any reduction in meadow vegetation or vegetation productivity during dry years would be minimal and temporary." *Id.* The DEIR cannot simply state this conclusion without any evidence to support it. *See Citizens of Goleta Valley*, 52 Cal.3d at 568 (an EIR must contain facts and analysis, not just bare conclusions). At a minimum, the DEIR should specify the duration that groundwater levels would be expected to drop below the threshold for meadow functionality and provide a map depicting these locations. *See id.*

The DEIR also errs in its analysis of impacts to meadow habitat because it incorrectly assumes that "meadows are composed of annual plants that have adapted to variable water conditions." DEIR at 6-44. This statement is contrary to the fact that the majority of plants in wet and dry meadows on the Project site are *perennial* plants. According to CBI, annual and perennial species may be impacted differently. Exhibit 2 at 8-9. And even those species that are adapted to natural fluctuations in climatic conditions that affect the plants' growth in some years may be impacted by a permanent change in conditions that results in more frequent years of lower groundwater levels. Exhibit 2 at 9. Nor does the DEIR provide *any* evidentiary support for its conclusion that groundwater drawdown during the growing season will have no direct or indirect effects on meadow vegetation.

Fifth, the DEIR also lacks any evidence for its conclusion that the proposed restoration of Squaw Creek would offset effects of groundwater drawdown. The DEIR even admits that is has no evidence, stating that there has been "no combined hydrologic and vegetation modeling . . . to support this expectation." DEIR at 6-45. The DEIR cannot base its impacts analysis on bare conclusions without facts and analysis to support those conclusions. *Citizens of Goleta Valley*, 52 Cal.3d at 568. Instead, the DEIR preparers should have evaluated the restoration's likely effects by (1) conducting accurate groundwater modeling that incorporates drought conditions and climate change simulations, (2) conducting hydrologic monitoring that incorporates plant species distribution models, and (3) considering wetland species-specific data from literature or reference sites. Exhibit 2 at 10.

In sum, the DEIR's analysis of the Project's impacts on sensitive habitats does not come close to meeting CEQA's standards because it lacks the required evidentiary basis for its conclusions. The EIR must be revised to remedy this failure.

(ii) The DEIR's Analysis Of Impacts On The Endangered Sierra Nevada Yellow-Legged Frog And Its Habitat Is Inadequate.

The Project site is within known habitat of the Sierra Nevada yellow-legged frog, which is listed as endangered under the federal Endangered Species Act. In fact, the DEIR discloses that the Project's construction may kill or injure individual frogs and result in the loss of its habitat. DEIR 6-51. However, the DEIR fails to adequately analyze this impact because it does not quantify the amount of habitat that would be lost. *See id.* And indeed, the habitat that has the potential to be lost due to the Project falls within proposed critical habitat for the frog. *See* Exhibit 3 at 2. The DEIR must quantify the amount of proposed critical habitat that the Project would impact.

The DEIR further asserts that the Project's operation will have no significant impact on the frog. This is wrong. The DEIR can only reach this conclusion because it completely fails to analyze any of the Project's indirect impacts, including habitat loss and fragmentation, groundwater drawdown, and changes in water quality. Exhibit 3 at 2. Indeed, reduction of ecosystem connectivity could have a significant impact on this endangered species' genetic diversity and long-term survival. *Id.* Instead, all the DEIR considers with regard to operational impacts on the frog's habitat is the groundwater drawdown's impact on creek pool volume (and, as has been shown in this letter, the modelling on which all of the DEIR's groundwater-related impacts rely is fatally flawed, so even this shred of analysis is entirely deficient). DEIR at 6-52.

In an attempt to support its conclusion that the Project's operation will have a less than significant impact on the frog and its habitat, the DEIR claims that "restoration of Squaw Creek would likely increase the quality of potential dispersal habitat for the [frog]." DEIR at 6-52. However, throughout the DEIR, it is recognized that the creek restoration project may or may not offset loss of riparian habitat. In short, the DEIR preparers have no idea if the creek restoration is even going to work. *See, e.g.*, DEIR at 6-55, 6-67. The DEIR cannot claim otherwise here, where it suits its purposes.

The revised EIR must thoroughly analyze and mitigate the Project's impacts on the Sierra Nevada yellow-legged frog, including its loss of habitat.

(iii) The DEIR Fails To Adequately Analyze A Number Of Other Impacts On Biological Resources.

The DEIR lacks evidentiary support for its conclusion that impacts on Sierra Nevada mountain beaver (at 6-58), Sierra Nevada snowshoe hare (at 6-60), and mule deer (at 6-65) would be less than significant. The DEIR asserts that the species' habitat is not likely to be affected by groundwater drawdown and that creek restoration might enhance their habitat. As discussed previously, the DEIR and the WSA analyses are flawed and likely underestimate the Project's impacts on groundwater levels, and there is no evidence that the creek restoration will actually succeed. Consequently, there is a strong likelihood that the Project's impacts on these species would be significant.

The DEIR also fails to adequately evaluate impacts to special-status plants because, as the DEIR readily admits, "[r]are plant surveys were not yet completed for the western portion of the Village Core Area and the proposed sewer line corridor." DEIR at 6-66. "Thus," the DEIR continues, "conclusions cannot be drawn with regard to presences of rare plants in unsurveyed areas." *Id.* The DEIR provides no explanation of why these surveys have not been completed. This omission violates CEQA. *See, e.g.*, *San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 669-71 (deferred analysis allowed only if there is a reason or basis for the deferral).

Next, the DEIR's assessment of the impacts of additional trail construction is completely inadequate—in fact, it does not exist at all. The DEIR does not identify the likely locations of any of the trails. *See* DEIR at 6-75. It is our understanding that some, if not many, of these trails would be on Forest Service land and could impact the Granite Chief Wilderness Area. Yet, the whole of the DEIR's "analysis" of the impacts is the vague statement that "[t]rail construction and operation could result in the same environmental effects described above." *Id.* Then, as purported mitigation, the DEIR directs that "[a] qualified biologist shall survey trail routes . . . to determine the biological resources present and the impacts" on those resources, and then "the biologist shall identify mitigation measures" applicable to the trail routes. *Id.* Even if the trail locations are not yet set in stone, the DEIR must disclose as much information about likely trail location and impacts as is possible or explain why it cannot. The so-called "analysis" in the DEIR here completely flouts CEQA's requirement that an EIR analyze a project's impacts and prescribe adequate mitigation. The DEIR cannot defer its assessment of important environmental impacts until after the Project is approved. *See Sundstrom*, 202 Cal.App.3d at 306-07. To do so wholly undermines the DEIR's purpose as an informational document.

The DEIR also fails to adequately discuss the impacts of water quality degradation during construction. The DEIR states that if best management practices ("BMPs") are followed, impacts to water quality during construction would be minimized. DEIR at 6-75. But if construction activities stray at all from the BMPs, impacts could be significant, including impacts from increased sedimentation and spills of hazardous materials. DEIR at 6-75, 76. These impacts are potentially significant, especially in a sensitive environment like Squaw Creek. To conclude that the Project's impacts on Squaw Creek are less than significant, the DEIR must describe the BMPs and provide evidence of their effectiveness. *See* Exhibit 1 at 8.

Impact 6-13 regarding long-term impacts on fish and aquatic species from groundwater extraction acknowledges—importantly—that if the Project's wellfield is not configured and operated as planned in the WSA, the Project would have potentially significant, long-term impacts on groundwater supply, including longer and more frequent drying periods in Squaw Creek. DEIR at 6-79. This, in turn, could have a grave effect on the area's sensitive habitats and the species that rely on those habitats. As discussed previously, the wellfield actually will *not* be configured and operated as modelled for the WSA because the modeling assumes more wells in existence than the WSA expects would actually be required. Exhibit 1 at 8-9, 16. To accurately predict impacts relating to groundwater extraction—and to the species that rely on groundwater—the DEIR must analyze the impacts of groundwater drawdown based on the number of wells actually anticipated to be built.

Finally, as discussed above in Section I.B.1. and in Dr. Myers' Report, the DEIR grossly overestimates the groundwater availability in the Project area and underestimates the water demands of the Project. This problem alone renders the DEIR's analysis of the Project's impacts on biological resources from changes in water availability and quality inaccurate. Due to these serious deficiencies in the DEIR's discussion of the Project's impacts, the DEIR must be revised and recirculated.

(c) The DEIR Fails to Provide Adequate Mitigation for the Project's Significant Impacts to Biological Resources.

CEQA requires that a lead agency adopt all feasible mitigation measures that can substantially lessen the project's significant impacts, and it must ensure that these measures are "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21002; Guidelines § 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 359, 368-69. The requirement for enforceability ensures "that feasible mitigation measures will

actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." *Federation of Hillside and Canyon Ass'ns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted); Guidelines § 15126.4(a)(2). Here, the DEIR fails to satisfy these clear requirements.

(i) The DEIR Identifies No Mitigation For The Project's Significant Impacts On Sierra Nevada Yellow-Legged Frog Habitat.

As discussed previously, the DEIR fails to provide any mitigation for the Project's significant impacts on the endangered Sierra Nevada yellow-legged frog's habitat. The mitigation measure for this impact, Measure 6-2, concerns *only* avoiding frog injury or mortality. *See* DEIR at 6-53 – 6-54. It does not provide any mitigation for habitat loss. This violates CEQA, which requires an EIR to prescribe mitigation for *all* of a project's significant impacts. CEQA Guidelines §15126.4.

(ii) The DEIR Improperly Defers Mitigation And Relies On Mitigation Measures That Are Vague Or Unenforceable.

Many of the DEIR's mitigation measures that are intended to address the Project's impacts on biological resources are excessively vague, unenforceable, unnecessarily deferred, and lacking performance criteria. For example, Mitigation Measure 6-1a states that "[t]his project plans to construct all or a portion of replacement wetlands onsite." DEIR at 6-47. But the DEIR does not describe what habitat would be replaced, what mitigation wetlands would look like, whether the proposed Project hydrology would support wetland replacement, whether supplemental irrigation would be required, and what demands supplemental irrigation might have on groundwater. *See* Exhibit 2 at 10-11. Without these critical details, the DEIR lacks the evidence to support its conclusion that impacts to wetlands would be mitigated to a less than significant level.

Measure 6-1a further requires the Project applicant to prepare a Mitigation and Monitoring Implementation Program ("MMIP") for various mitigation measures, but fails to provide specific criteria and standards by which the effectiveness of the mitigation would be measured. *See* DEIR at 6-47. Without such detail, this measure is unenforceable. Mitigation Measures 6-8 (DEIR at 6-68 – 6-69) and 6-12 (DEIR at 6-77) likewise fail to provide the required level of detail for future development of an MMIP.

Mitigation Measure 6-3 is too vague with regard to avoiding loss of yellow warbler and olive-sided flycatcher nests during construction. The measure provides that if a nest is found before construction, "modifications to the project design to avoid removal of occupied habitat while still achieving project objectives shall be evaluated, and implemented to the extent feasible." DEIR at 6-56. If such modifications are not feasible or in conflict with project objectives, "appropriate buffers . . . and limiting operating periods will be established." DEIR at 6-57. The measure does not ensure that the impact would be mitigated because it fails to set specific criteria, such as describing what, exactly, an "appropriate buffer" is. Measure 6-3 also relies on Mitigation Measures 6-1a, 6-1c, and 13-4, which are significantly flawed as discussed in this letter.

Measures 6-4 and 6-5 do not adequately mitigate for construction impacts on the Sierra Nevada mountain beaver and snowshoe hare because the measures provide only that "buffers *may* be established" if a burrow or reproductive site in a construction area is occupied. DEIR at 6-58, 6-60 (emphasis added). Allowing optional or discretionary mitigation does not ensure that the mitigation is enforceable and the that impact will be avoided. *See Woodward Park Homeowners Ass'n., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730. These mitigation measures must be revised to require the Project applicant to take actions that would protect these species.

(iii) The DEIR Contains Other Significant Mitigation Deficiencies.

Multiple other mitigation measures that are intended to protect the area's biological resources from the Project's impacts fall short of this goal. Mitigation Measure 6-1c suffers from several problems. First, this measure relies in part on Measure 13-4, which, as discussed in Section I.B.1, provides only vague and deferred mitigation for the Project's impacts. Next, Measure 6-1c requires that the Project applicant "record baseline locations of riparian and meadow vegetation" before construction. DEIR at 6-49. As previously discussed, such baseline surveys must be conducted before and discussed in the DEIR—mitigation is not the place for first assessment of a Project's environmental setting. Also, Measure 6-1c requires monitoring of vegetation for only five years. *Id.* at 6-49. As explained in Dr. Myers' and the CBI Reports, a five-year monitoring period is far too short where long-term, gradual groundwater drawdowns could cause vegetation impacts to manifest slowly. *See* Exhibit 1 at 7-8; Exhibit 2 at 11. Monitoring must continue until the Project has been fully built out. Exhibit 1 at 8.

Measure 6-1c also calls for the Project to compensate for riparian vegetation die-off caused by the Project's groundwater impacts, including by irrigating the vegetation.

DEIR at 6-49. This is an absurd way to deal with overuse of groundwater causing drawdown: by withdrawing more groundwater. And, in any case, mitigation measures like this one would likely have their own environmental impacts, yet these impacts have not been analyzed in the DEIR. *See* Guidelines § 15126.4(a)(1)(D).

Further, Measure 6-1c improperly gives the applicant the option to forego conducting actual mitigation if it conducts groundwater modelling to predict conditions for sensitive habitats. DEIR at 6-50. If this modelling indicates there would not be significant effects on the vegetation, no monitoring would be necessary. DEIR at 6-50. First, as discussed above, CEQA requires that the evaluation of the impacts on this riparian vegetation be conducted in the EIR, prior to approval of the Project. Allowing this analysis to occur after the EIR is certified and the project is approved subverts CEQA's purposes, causing the EIR to fail as an informational document. *See Sundstrom*, 202 Cal.App.3d at 306-07. Further, modelling is not a substitute for monitoring—monitoring is necessary to confirm that the modelling is accurate and to inform management changes based on what is happening on the ground. *See* Exhibit 1 at 8.

Mitigation Measure 6-6 is deficient because it calls for removing bat roosting sites as the only option if the roosting sites are in the way of construction. DEIR at 6-63. This approach is absurd. The EIR must identify feasible mitigation measures that would allow the bats' roosting habitat to remain intact. As California courts clearly explain, an EIR is inadequate if it fails to suggest feasible mitigation measures that would lessen the Project's impacts. Pub. Res. Code § 21002; Guidelines § 15126.4; *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 79. Finally, Mitigation Measure 6-13 is inadequate because it requires implementation of Measures 13-4 and 6-1c to be effective, but, as discussed, neither of these measures adequately achieve the mitigation they purport to.

(d) The DEIR Lacks the Evidentiary Support that Restoration of Squaw Creek Would Mitigate the Project's Significant Impacts.

As discussed previously, the DEIR relies heavily on its claim that the restoration of Squaw Creek would mitigate the Project's significant impacts and generally improve the environment. *See, e.g.*, DEIR at 6-79. However, Dr. Myers' Report notes that the "suggested biologic impacts may be overstated." Exhibit 1 at 9. For example, the DEIR notes that the restoration would allow areas of deep pools at low flow to increase, but this could be countered by greater groundwater drawdown from the Project's water demands, Exhibit 1 at 9. Also, the fact that the restoration would enhance spawning habitat for

trout species, DEIR at 6-80, could actually cause greater harm to the endangered Sierra Nevada yellow-legged frog, upon which trout prey. *See* Exhibit 3 at 2. Furthermore, the DEIR repeatedly notes that there is a chance that the "creek restoration may not provide the anticipated benefits." *See, e.g.*, DEIR at 13-76. With its benefits far from assured, the DEIR cannot rely on the proposed restoration of Squaw Creek to mitigate the Project's significant impacts.

In sum, the DEIR errs because it provides only vague and unenforceable mitigation measures and provides no evidence that the measures would, in fact, mitigate the impacts as they are supposed to. The revised EIR must provide feasible, effective mitigation measures for the Project's myriad significant impacts to biological resources.

(e) The DEIR Does Not Adequately Analyze the Project's Cumulative Impacts on Biological Resources.

A cumulative impacts analysis is essential to adequately analyzing a Project's contribution to environmental impacts in an area. Such an analysis is especially important in areas like the Project area, which contains Sierra Nevada meadows that are some of the most altered, impacted, and at-risk landscapes in the area. Exhibit 2 at 13. The DEIR's analysis of cumulative biological resources impacts mentions historic losses to meadows in the region, but it fails to adequately discuss existing or future impacts to meadow habitat on-site. DEIR at 18-10.

The DEIR concludes that the Project would not contribute significantly to cumulative impacts on those habitats in the region because of the Project's proposed mitigation (Mitigation Measures 6-1a – 6-1d). However, as explained above, these measures are inadequate, and thus do not support the DEIR's claim that they prevent the Project's contribution to cumulative degradation of sensitive habitats. This problem—reliance on inadequate mitigation to avoid cumulative impacts—also undercuts the DEIR's conclusion that the Project's cumulative impacts on special-status wildlife (DEIR at 18-10 – 18-11), special-status plants (DEIR at 18-11 – 18-12), and fish and aquatic habitat (DEIR at 18-12 – 18-13) would be less than significant.

In its analysis of cumulative impacts to fish and aquatic species, the DEIR concludes that because "[m]itigation has been recommended to reduce these impacts to a less-than-significant level[,] . . . the project would make a less-than-significant contribution to the overall significant cumulative effect on fish and aquatic habitat in Olympic Valley." DEIR at 18-13. That one of the Project's impacts would be mitigated

to a less-than-significant level does not mean that the Project would necessarily not contribute to a cumulatively significant impact on that resource.

The whole point of a cumulative impacts analysis is to ensure that the DEIR discloses the contribution of a single project's impacts that alone may be insignificant to larger, cumulative environmental impacts. *See* Guidelines § 15355(b) ("Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."). As the courts have recognized, "One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.

The DEIR errs further in its analysis of cumulative impacts to fish and aquatic species because it considers only impacts on Squaw Creek. *See* DEIR at 18-12 – 18-13. The DEIR completely fails to consider any contribution of the Project to impacts on the Truckee River. Specifically, as discussed below in section I.B.3, the Project would impact water quality in Squaw Creek, which flows into the Truckee River, and could therefore contribute to cumulative degradation of the Truckee River's water quality and affect the aquatic species that inhabit Truckee River. The DEIR must analyze this potential impact.

Finally, the DEIR also identifies a number of probable future projects in the region, but it does not evaluate the combined effects of these projects. *See* DEIR at 18-3 – 18-5, Table 18-2. At a bare minimum, the DEIR must consider the cumulative impacts to sensitive habitats for those projects that are approved, under construction, or finalized and then analyze the combined impact of the effects of those projects.

The EIR must be revised to correct the numerous flaws in the DEIR's analysis of cumulative impacts to biological resources. If these impacts are determined to be significant, the EIR must identify feasible mitigation measures or alternatives capable of reducing or eliminating these impacts.

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

(a) The DEIR's Description of the Environmental Setting for Hydrology and Water Quality is Insufficient.

The discussion in Section I.B.1, above, explains in detail the inadequacy of the DEIR's description of the environmental setting for water supply. This includes failure to take into account existing severe drought conditions, failing to consider climate change, erroneous assumptions relating to the amount of precipitation in Squaw Valley, and reliance on inaccurate modelling—all of which render the DEIR's analysis of water-related impacts inaccurate. *See* Exhibit 1 at 9-10. The same faults underlie the DEIR's analysis of the Project's impacts on hydrology and water quality.

In addition to these flaws, the DEIR relies on sediment discharge equations that grossly underestimate the total suspended sediment ("TSS") in Squaw Creek. Dr. Myers's Report explains why the equations are faulty and underestimate TSS from the Project site under both existing and with-Project conditions. *See* Exhibit 1 at 11. The underestimation of TSS load results in the DEIR underestimating the Project's impacts and could also cause the development of a flawed design for the streambed channel through the site. *Id* at 11-12. Specifically, failing to consider the correct sediment load could result in more sediment settling in the channel than it is designed for, thereby decreasing the stream's conveyance capacity. *Id.*

(b) The DEIR's Analysis of the Project's Impacts on Hydrology and Water Quality is Flawed.

The DEIR acknowledges that the Project's impacts on surface and groundwater quality during construction may be significant. DEIR at 13-47. However, the DEIR does not adequately analyze these impacts and thus fails to provide the detailed, complete, and full disclosure that CEQA requires. Guidelines § 15151. For example, the DEIR mentions, in passing, that the Project may include pumping shallow groundwater out of construction sites ("dewatering"). DEIR at 13-48. But there is no discussion of the details of this process, which are essential to assessing dewatering's environmental impacts. Such details include identification of how much water is likely to be pumped for dewatering at the site, how many sites would require dewatering, which areas and habitats are likely to require dewatering, how dewatering would be conducted, where and how pumped water would be disposed, and how frequently dewatering would occur. Describing these details is certainly feasible because the depth to groundwater and its

seasonal and annual variation on the Project site are known. By failing to estimate the quantity and frequency of dewatering and its attendant impacts, the DEIR fails to disclose a potentially significant impact of the Project.

With regard to surface water bypass diversions and dewatering during construction, the DEIR states that the Project's impact would be less than significant in part because "[s]tandard NPDES permit conditions and typical requirements of the CDFW streambed alteration agreement would include measures" that would limit impacts. DEIR 13-52. This description is insufficient to allow a reader to determine whether the Project would have significant impacts from water diversions and dewatering. *See* Guidelines § 15151 (An EIR must contain "sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences."). An EIR cannot require the reader to conduct independent research to assess how the project would be conducted and whether its impacts would be significant.

Further, merely requiring compliance with agency regulations does not conclusively indicate that the Project would not have a significant and adverse impact. Here, the regulations and standard permit conditions may not be strong enough to protect against environmental impacts. Indeed, California courts have recognized as much. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716, for example, the court found that the fact that the EPA and the local air pollution control district had issued the necessary air emission permits for the construction of a coal fired cogeneration plant did not nullify the CEQA requirement that the lead agency analyze the significant air quality impacts of the entire project.

The DEIR's evaluation of the impacts of groundwater pumping on interactions between groundwater and surface water (Impact 13-5) is flawed in numerous respects. First and foremost, the analysis is inaccurate because it is based on the same faulty groundwater modelling discussed in section I.B.1 above. Second, as Dr. Myers explains, the modelling was not calibrated to estimate flow into or from Squaw Creek. *See* DEIR at 13-67. We can find no logical explanation for failing to calibrate the model since, as Dr. Myers explains, sufficient data exists to undertake this calibration in groundwater studies completed since 2011. *See* Exhibit 1 at 16. Third, the DEIR preparers did not present a simulated hydrograph of the areas between the groundwater and the Creek for each of the seven reaches of the Creek. In order to provide a comprehensive analysis of the Project's effects on groundwater and surface water interactions, it is necessary to evaluate each reach of the Creek because the stream/groundwater interactions are different at various points. Exhibit 1 at 16.

Fourth, the graphs in Exhibits 13-24 – 13-26 are insufficient to evaluate groundwater/surface water interactions. As Dr. Myers explains, they are "too coarse to make any definitive observations" about the length of time that the simulated groundwater level is below the stream bottom. Exhibit 1 at 18. Dr. Myers recommends the preparation of depth/frequency plots described as follows:

> [T]he plot should show the proportion of time the water level is below various depths. For example, there would be a percent time the water level is below various levels. Such graphs would improve the assessment of the time the water level is below various critical depths, as may be important for riparian species or other species requiring wet refugia.

Exhibit 1 at 18.

Fifth, the DEIR improperly foregoes discussion of a possible significant groundwater impact. The DEIR admits that its modelling assumed all wells contemplated in the WSA would be built but that "the actual number of future wells could be fewer and the effect more locally severe in the vicinity of some wells modeled." DEIR at 13-73. The DEIR then goes on to dismiss the potential significance of this impact because the water provider "would site wells and operate the system in a manner that minimizes groundwater effects and achieves results consistent with the groundwater modelling and WSA." *Id.* The DEIR cannot decline to analyze this potentially significant impact, especially when there is no guarantee that the wells would be constructed in a manner consistent with the WSA.

Sixth, the DEIR completely fails to describe the potentially significant impacts that would occur if the creek restoration project turns out to be unsuccessful (Impact 13-6). The DEIR states: "While successful implementation of the creek restoration would be a beneficial impact overall, without monitoring, adaptive management, and assurances of ongoing funding to support these activities, creek restoration efforts might not provide the anticipated benefits, and could ultimately result in greater disturbance to hydrologic conditions and degradation of water quality than benefit." DEIR at 13-76. The document makes no mention of what those impacts would actually be if restoration fails. Without this fundamental impact analysis, the DEIR fails to fulfill its purpose as an informational document.

Nor does the DEIR recognize that there could be effects on water quality if the restoration is successful. Dr. Myers explains that when the newly restored channel decreases sediment passing through the Village stretch and entering the stretch of the

Creek through the meadow, it could increase erosion in the meadow. Exhibit 1 at 19. This is because flow with lower sediment loads can be "hungry" for additional sediment and trigger more erosion in the meadow. *Id.* Also, if restoration increases the Creek's flood conveyance capacity, less water would be temporarily detained, increasing flow rates through the meadow, which could increase erosion. *Id.* The DEIR errs because it does not disclose the potential for these impacts.

Another error arises in the DEIR's discussion of impacts from managing runoff water flows. Here, the DEIR describes the Project's Low Impact Development ("LID") stormwater quality protection systems, which would exclude offsite water (runoff from the mountain). DEIR at 13-79 The DEIR claims this would allow the LID system to more effectively treat the onsite runoff. *Id.* However, as Dr. Myers concludes, "this may have the effect of allowing more sediment to pass through the site and into Squaw Creek because the offsite runoff [which carries more sediment] is not treated and therefore may reach the Creek with less sediment removed than there is currently." Exhibit 1 at 19. The DEIR should evaluate this potential impact of the Project's change to the area's stormwater management systems.

Finally, the DEIR's analysis of the Project's impacts on water quality fails to disclose impacts on the Truckee River's water quality, which the DEIR acknowledges is already impaired for sediment. Squaw Creek drains into the Truckee River, and impacts on Squaw Creek's water quality therefore may degrade the Truckee River's water quality. The DEIR must analyze this potentially significant impact.

The DEIR's analysis of the Project's hydrology and water quality impacts suffers from serious flaws. Such defective analysis thwarts CEQA's fundamental purpose to inform the public and decision-makers and is in itself a CEQA violation. The EIR must be revised to correct these deficiencies and recirculated.

(c) The DEIR Does Not Identify Adequate Mitigation for the Project's Impacts on Hydrology and Water Quality.

The DEIR relies on Mitigation Measure 13-2a to protect water quality by requiring revegetation of all areas temporarily disturbed by construction. DEIR at 13-49. However, the DEIR provides no description of what revegetation would look like. Would the applicant be required to use native plants? Drought tolerant plants? How dense must the revegetation be? How much growth is adequate to mitigate the Project's impacts? As it is currently written, this measure is vague and unenforceable.

The measure also requires that the revegetation "shall include regular watering to ensure adequate growth." *Id.* However, the DEIR does not discuss the potential environmental impacts of requiring watering for what may be a very large swathe of newly planted vegetation. We can find no indication that this potential irrigation was accounted for in the water demand for the Project. Because the Project area already suffers from a limited groundwater supply that the Project would further tax, the DEIR must disclose the potential impacts of this mitigation measure. *See* Guidelines § 15126.4(a)(1)(D).

Other mitigation measures for impacts to hydrology and water quality rely on implementation of mitigation measures for other impacts. However, several of those measures are legally deficient. For example, Mitigation Measure 13-5 requires implementation of measures 13-4 and 6-1c, which suffer from myriad problems, enumerated above. Further, one reason that measure 13-5 purports to rely on measure 6-1c is because measure 6-1c "requires monitoring of riparian vegetation in the portions of the creek that would be most affected by reduction in groundwater levels, and replacement of such vegetation if it is lost." DEIR at 13-75. However, measure 6-1c allows for replacement vegetation to be planted *off-site*, which would do nothing to reduce water quality impacts from drawdown at the creek site. *See* DEIR at 6-49.

Similarly, Mitigation Measure 13-6—intended to mitigate any impacts from improper restoration of Squaw Creek—relies solely on implementation of measures 6-1a and 6-1b. DEIR at 13-76. The DEIR states that these measures will "assure the development of performance criteria for creek restoration, monitoring and adaptive management for the restoration, and ongoing funding to support these activities." *Id.* But reliance on these measures does not achieve these goals.

As discussed above, measure 6-1a suffers numerous deficiencies in its own right. But additionally, it would not achieve what measure 13-6 relies on it to. Measure 6-1a does not provide any description of or standards for monitoring the successfulness of creek restoration. Nor does it describe what an adaptive management plan would entail. For its part, measure 6-1b requires compensation for unavoidable loss of stream and riparian habitat from Project construction and monitoring of the compensatory sites. DEIR at 6-48. However, the measure's description of the required monitoring plan says nothing about how management of compensatory habitat would be adapted if the restoration work were to fail. *Id.* at 6-49. And neither Measure 6-1a nor 6-1b provide any mechanism for the "ongoing funding to support" the management of the restored creek that measure 13-6 relies on them to provide.

The DEIR must be revised to correct the numerous deficiencies in the DEIR's mitigation for hydrology and water quality.

(d) The DEIR's Analysis of Cumulative Impacts to Hydrology and Water Quality is Insufficient.

The DEIR does not provide a sufficient analysis of the Project's contribution to cumulative impacts on water quality in the area. Most glaringly, the DEIR fails to consider the Project's contribution to water quality impacts outside of the Squaw Valley area. The DEIR erroneously asserts that "[p]rojects outside the Olympic Valley would not interact with the proposed project relative to impacts on hydrology and water quality in Squaw Creek, other surface waters, and in the Olympic Valley Groundwater Basin." DEIR at 18-37. However, Squaw Creek drains directly into the Truckee River, and impacts to the Creek's flow and water quality very well could contribute to impacts to the Truckee River, which would also come from developments outside Squaw Valley. This is a major error, and the DEIR must be revised accordingly and recirculated.

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

Transportation in and around Olympic Valley is a critical issue. Unfortunately, the DEIR's analysis of transportation impacts fails to achieve CEQA's most basic purpose: informing governmental decision-makers and the public about the potential significant environmental effects of a proposed activity. CEQA Guidelines § 15002(a). In fact, the DEIR's analysis is riddled with flaws. For example, the DEIR omits an analysis of summer daily traffic despite the DEIR's assertion that the Project is expected to generate three times more traffic in the summer than in the winter. The DEIR also substantially underestimates the volume of winter peak-hour traffic and relies on faulty methodology to identify the amount of traffic the Project would be expected to generate. The DEIR also fails to analyze the Project's impacts on regional transportation facilities in the Tahoe region, such as I-80, and does not evaluate the effect that the Project's increase in traffic would have on emergency access. In addition, the DEIR fails to identify feasible mitigation for the Project's significant and "unavoidable" impacts.

The Report prepared by Neal Liddicoat at MRO Engineers ("MRO Report"), attached as Exhibit 4, provides detailed comments on the shortcomings in the DEIR's transportation impacts analysis. Some of its most troubling errors are as follows.

(a) The DEIR Errs Because It Does Not Analyze Daily Summer Conditions.

The Project would generate three times more traffic in the summer (8,410 new daily trips) than in the winter (2,821 new daily trips), but the DEIR fails to analyze summer daily traffic conditions on the area's highways. *See* DEIR at 9-3. In fact the DEIR's transportation chapter contains no information relating to daily traffic for summer conditions at all. What information that is provided is contained in the DEIR's air quality chapter.

As the MRO Report explains, the addition of over 8,400 daily vehicles each summer to the local road system (with all of them on Squaw Valley Road) would adversely impact traffic operations and the quality of life of nearby residents. Exhibit 4 at 2. Because the DEIR provides no analysis of summertime daily traffic operations, Mr. Liddicoat analyzed two key locations. He determined that the addition of the Project traffic would increase the summer daily traffic volume from 12,900 vehicles per day to ("VPD") to 21,310 VPD on Squaw Valley Road west of Squaw Creek Road. This increase in traffic would constitute a significant impact, as the volume/capacity ("V/C") ratio along this segment would increase from 0.86 (level of service ("LOS" D)) to 1.42 (LOS F). *Id.* On Squaw Valley Road west of State Route ("SR") 89, the daily traffic volume would increase from 12,600 VPD to 21,010 VPD, with a corresponding increase in V/C ratio from 0.56 (LOS A) to 0.93 (LOS E). This would also represent a significant impact. *Id.* at 3. Given the substantial amount of traffic that would be generated by the Project in the summer, there is no plausible explanation for the DEIR's failure to analyze summer traffic operations. The EIR should be revised to provide this analysis.

(b) The DEIR Underestimates The Volume of Winter Peak Hour Traffic.

Next, the DEIR underestimates the volume of winter peak hour traffic and therefore substantially underestimates the Project's traffic impacts. The DEIR addresses conditions in three peak-hour scenarios: (1) Winter Saturday AM Peak Hour; (2) Winter Sunday PM Peak Hour; and (3) Summer Friday PM Peak Hour. The DEIR explains that the analysis of winter Saturday AM peak hour is particularly important because "this represents conditions when the most skiers use the mountain." DEIR at 9-4. Yet, as the MRO Report explains, the fact that the most skiers are using the mountain means that they are already at Squaw Valley; they are not *travelling to* Squaw Valley. Exhibit 4 at 4. Consequently, the analysis of the winter Saturday AM peak hour is of little value in determining the transportation impacts of the Project.

In order to accurately analyze the Project's traffic impacts in the winter, the DEIR should have analyzed winter Friday afternoon traffic. The DEIR acknowledges the importance of analyzing traffic operations on Friday afternoons when it discusses summer operations:

> For this DEIR, the summer condition represents a Friday afternoon peak hour in August . . . Friday afternoon conditions typically represent peak conditions resulting from various recreational activities and overnight visitor travel to seasonal residences, rentals, or other lodging accommodations. DEIR at 9-3.

MRO aptly questions this approach: "If Friday afternoon is the peak time in the summer, why not in the winter, when all of the same conditions regarding recreational activities (e.g., skiing) and overnight visitor travel (such as the proposed Project) apply?" Exhibit 4 at 4.

In a further complication, the DEIR gives the misleading impression that the Project would generate substantially less traffic in the winter than the summer. As the MRO Report explains, in the summer Friday PM peak hour, the Project is estimated to generate *over four times as much traffic* as in the winter Saturday AM peak hour. Exhibit 4 at 6. Compared to the winter Sunday PM peak hour, the summer Friday PM peak hour represents over three times as much project-generated traffic. *Id.* Given the fact that Squaw Valley is a ski resort, it is difficult to understand why the greatest volume of the Project's traffic would occur in the summer – and by a sizable margin. Inasmuch as one of the Project objectives is to provide a resort that is "on par with peer world class North American ski destinations" (DEIR at 3-1), the DEIR's assertion that the Project would generate far more traffic in the summer than the winter simply makes no sense.

Because the DEIR substantially underestimates the volume of winter peak-hour traffic, the EIR must be revised to include an analysis of winter Friday PM peak hour conditions. In addition, inasmuch as the Project is expected to generate substantial traffic volumes in the summer Friday PM peak hour, the revised EIR should also analyze conditions when the summertime visitors depart, i.e., Sunday PM peak hour.

(c) The DEIR Understates the Project's Traffic Impacts Because it Understates the Project's Trip Generation.

A critical failure in the DEIR's analysis of the Project's traffic impacts is the document's assertion that the Project is not expected to add much traffic. DEIR at 9-37. This belies common sense. As noted above, one of the Project objectives is to provide a resort that is "on par with peer world class North American ski destinations." DEIR at 3-1. Achieving this objective would certainly result in substantial growth in day-skier demand. Moreover, we can find no logical explanation why a project that proposes to build 29,530 square feet of restaurants, 27,700 square feet of retail, a massive indoor amusement park, and 850 residential units (1,493 bedrooms) would not attract additional visitors.

One of the best examples of the DEIR's failure to accurately estimate the Project's trip generation is the indoor amusement park known as "Mountain Adventure Camp." Although the DEIR estimates that 1,200 guests would likely visit this amusement park every day, the document asserts that this attraction would generate only 58 car trips per day. *Id.* at 9-38, Table 9-18. The DEIR provides no evidentiary support for this unreasonably low trip generation estimate other than to assert that users of the amusement park would already be staying at Squaw Valley.[4] Clearly, the Project would generate more traffic than the DEIR discloses because, as the DEIR clearly explains, the numerous restaurants, retail venues, Mountain Adventure Camp, outdoor winter ice skating, and summer performance area "will be available to the broader community." *Id.* at 4-10.

Second, the DEIR determines its residential trip generation rates based on parking supply, an approach that is contrary to standard practice in the traffic engineering profession. The DEIR estimates trip generation from the condo hotel and fractional cabins as follows: 0.75 guest parking spaces per 1-bedroom unit; 1.0 guest parking space per 2-bedroom unit; and 1.25 guest parking spaces per 3-bedroom unit. *See* DEIR Appx. G. As the MRO Report explains, "there is simply no connection between the number of parking spaces and the volume of traffic generated in any peak-hour period. To be valid, the trip generation estimate must be based on the size of the actual 'generator,' which in this case is the number of lodging units." Exhibit 4 at 7.

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[4] If the applicant intends to rely on this estimate, the County must condition the Project with a provision that states that users of the amusement park shall be restricted to those who are staying in the Squaw Valley condos or hotels.

This is a critically important point since, as discussed further below, the Project does not appear to provide a sufficient amount of parking for its proposed uses. If the proposed parking supply is inadequate, the Project's trip generation would be underestimated. Of particular concern is the proposal to provide only 0.75 parking spaces per 1-bedroom unit at a development at which, surveys show, 100 percent of those individuals arrive by car. *See* DEIR 9-18 – 9-12, Tables 9-12 – 9-15; Exhibit 4 at 13. According to the trip generation tables presented in DEIR Appendix G, 1,118 of the 1,255 condo hotel units – i.e., 89 percent – would be 1-bedroom units. Thus, the Project would provide inadequate parking due to allocation of less than one parking space per unit to almost 90 percent of the lodging development.

Third, the DEIR substantially underestimates the trips that would be generated for the East Parcel retail land uses because the DEIR preparers relied on incorrect data. The Project includes a convenience market on the East Parcel, yet the DEIR relies on trip generation rates for a shopping center. Exhibit 4 at 6. When the East Parcel retail is appropriately treated as a convenience market, it is found to generate at least 6.5 times as much traffic as the DEIR indicates.

The EIR must be revised to include an accurate accounting of the Project's trip generation. Once the EIR identifies all of the trips that would be generated by the Project, the traffic analysis must also be revised.

(d) The DEIR Largely Ignores the Project's Effects on Emergency Access.

If approved, the Project would cause numerous highways in the area to operate at LOS F, i.e., gridlock. According to the MRO Report, this means that at traffic signal-controlled intersections the average driver would be delayed for over 80 seconds. Exhibit 4 at 10. At a stop sign, a driver would be delayed for over 50 seconds. *Id.* Setting aside for a moment the audacity of a Project that specifically allows gridlock on surrounding highways, the DEIR essentially ignores the effect that these congested highways would have on emergency access.

Squaw Valley Road and SR 89 are the only roadways by which emergency vehicles could approach or depart the proposed Project. What would be the effect on emergency vehicle response time when Squaw Valley Road between Squaw Creek Road and the Village area operates at LOS F? The DEIR never tells us. Nor does the DEIR evaluate a scenario where emergency vehicles attempt to leave the Squaw Valley resort at

the same time as extensive traffic congestion builds (e.g., queues reaching 800 – 825 feet) in the two eastbound lanes on Squaw Valley Road at SR 89.

The DEIR includes a "Wildland Fire Evacuation Plan," yet this plan includes no quantitative analysis with respect to whether adequate capacity exists on area roadways to accommodate the crush of traffic that would occur during an evacuation. Further, there is no indication of the incremental impacts of the added traffic resulting from construction of the proposed project. On a "typical" day, the added delays caused by the Project's traffic would be inconvenient and irritating. On a day when a wildfire threatens, the effects of the additional traffic could be disastrous. In a scenario where a wildfire is moving up Squaw Valley Road toward the Village, there is absolutely no way for residents or visitors to flee and no way in for the emergency responders. The DEIR cannot simply ignore this very real threat to public safety.

(e) The DEIR Fails to Analyze Regional Traffic Impacts Including Impacts to I-80 or its Ramps.

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

If the proposed Project were approved, extensive new traffic would travel on I-80. In fact, according to the MRO Report, more than 50 percent of the visitors to the proposed Project would travel eastbound on I-80. *See* Exhibit 4 at 10. In the summer time, this means that there would be about 4,300 additional daily trips that would travel on I-80 and its ramps. By not analyzing the Project's regional impacts, including impacts on I-80 and its ramps, the DEIR leaves the public and decision-makers in the dark as to the Project's regional traffic impacts. The revised EIR must evaluate these impacts.

(f) The DEIR Does Not Describe Existing Parking Deficiencies or Analyze the Impacts to Area Roadways That Would Result From Insufficient Parking.

Parking at Squaw Valley is already severely deficient. Motorists are currently forced to park along Squaw Valley Road since the parking lot at the Village routinely fills up. Despite this fact, the DEIR fails to include *any* information about existing parking deficiencies; instead it focuses only on parking needs associated with the proposed Project. DEIR at 9-7. Without an accurate accounting of existing parking supply and demand, an assessment of future parking needs is all but meaningless. The DEIR must be revised to include: (1) the amount of existing off-street parking spaces and (2) the number of vehicles that currently park on Squaw Valley Road on an average winter day and a peak winter day. Using this information as the baseline, the revised analysis must then identify parking demand and supply for the proposed Project.

The revised analysis must also describe the implications for traffic flow when on-site parking is constrained. The document must provide this analysis for existing conditions and under "with project" conditions. For example, as drivers search for the rare available parking spaces, some of those drivers inevitably wait in parking aisles for other drivers to depart, thereby blocking on-site traffic flow. A substantial parking deficiency also has implications with respect to air quality and greenhouse gas emissions, as late-arriving patrons would be forced to circulate through the parking facilities in a fruitless effort to find an available space. These potential environmental impacts, which have been ignored in the DEIR, must be addressed.

(g) The DEIR Fails to Adequately Describe Existing Public Transportation in the Area.

Given the Project's significant traffic impacts, public transit could play an important role in meeting some portion of the Project's transportation needs. Inasmuch as the Project purports to include a transit center and the proposed Specific Plan includes policies calling for the Project to supplement public transit (DEIR at 9-33), it is important for the public and decision-makers to fully understand how transit currently works in the region, the Project's impacts on transit, and opportunities to increase transit use. Unfortunately, the DEIR fails to provide this necessary information and analysis.

For example, the DEIR does not provide sufficient information about existing Tahoe Area Regional Transit ("TART") service. The document states that the Saturday morning bus between Tahoe City and Squaw Valley is close to capacity. DEIR at 9-24.

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.

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.

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.

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.

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

measures under CEQA. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140. To be adequate, however, these mitigation fees must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing. *Id.* at 140-41; *see also Anderson First 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.

(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.

(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

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.

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.

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.

- 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

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.

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:

- 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.

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.*

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.

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:

> 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

> 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.

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.

(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 PM_{10} 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 PM_{10} 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 PM_{10} emissions. *Id.*

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 PM_{10} 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.

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.

(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.

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

Project's impacts. CEQA Guidelines §§ 15064.4, 15064.7. The 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.

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.

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:

> 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,

unsurprisingly, finds that the Project would have fewer emissions than the artificially inflated BAU scenario.

Because the Project would have to comply with existing GHG-related laws and regulations anyway (including CEQA's requirement for mitigation), it is misleading for the DEIR to state that the Project would cause a 25% reduction in GHG emissions due to particular Project features, when in fact these features are required anyway. Likewise, it is misleading and inappropriate to compare the Project emissions against an artificially inflated baseline of alleged BAU or NAT conditions. Courts have recognized that comparing project impacts to such an artificially inflated baseline results in "illusory comparisons that can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts, a result at direct odds with CEQA's intent." *Communities for a Better Env't v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 322. A proper comparison in year 2020 would be to the Project site as it currently exists. Guidelines §§ 15126.2(a), 15064.4(b)(1).

An accurate comparison with existing conditions is particularly important with regard to climate change because existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional GHG emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. *See Communities for Better Env't v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 ("the greater the existing environmental problems are, the lower the threshold for treating a project's contribution to cumulative impacts as significant."); *see also Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) ("we cannot afford to ignore even modest contributions to global warming."). The County may not ignore the Project's contribution to climate change simply by choosing an inappropriate BAU/NAT threshold.

The DEIR claims it is relying on a so-called two-tiered threshold standard set by the Placer County Air Pollution Control District ("PCAPD") to reach its finding of no significance for 2020. *See* DEIR at pp. 16-9, 16-15. However, that GHG threshold, which was developed in collaboration with the Sacramento Metropolitan Air Quality Management District ("SMAQMD") and is set forth in SMAQMD's CEQA Guide, says nothing about a two-tiered standard. Rather, it recommends a bright line operational threshold of significance of 1,100 metric tons of CO2 per year, which the Project far exceeds with its anticipated emissions of 45,403 metric tons of CO2 per year. Exhibit 20 at pp. 6-10 (SMAQMD CEQA Guide (November 2014)); DEIR at 16-16. It's not clear if the Project's projected operational emissions include the current Squaw Valley

emissions, or are in addition to them. However, even when compared against the baseline of 13,765 metric tons of CO2 per year (*see* DEIR at 16-3), the Project would still add 31,638 metric tons of CO2 per year into the atmosphere, which far exceeds the significance threshold.

Even if the DEIR could legitimately use the BAU/NAT threshold (which as explained, it cannot), the DEIR is still required to consider this evidence that the Project may cause a significant GHG-related impact. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met"). For example, in a November 2013 EIR prepared for the Northstar Mountain Master Plan, the County found that the project at issue there—which would generate only *one quarter* of the annual CO2 emissions of the present Project—would result in a significant impact on global climate change and required mitigation. Exhibit 21 at pp. 16-20 to 16-21 (Northstar Mountain Master Plan EIR, Chapter 16). The problem of climate change has not been solved in the last year and a half. Therefore, there is no logical rationale why the current Project would not similarly have significant GHG emissions in 2020 requiring mitigation. The County may not hide behind a self-serving threshold and fabricated baseline to avoid this significant impact.

(ii) Even If the County Could Use a "Business As Usual" Approach, the DEIR Misapplies the Approach.

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

As recognized by the California Air Pollution Control Officers Association ("CAPCOA") in its CEQA & Climate Change White Paper, "greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources." Exhibit 22 at p. 33 (CAPCOA, CEQA & Climate Change).[6] Similarly, as one of its reasons for finding that a proposed 29% below BAU threshold of significance "will not withstand legal scrutiny," the Attorney General noted that "it seems that new development must be more GHG efficient than this average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit." Exhibit 18 at 3. The DEIR even further skews the results by making unfounded assumptions about GHG emissions in its hypothetical scenario. For example, in the hypothetical 2020 build-out scenario, the DEIR assumes annual construction emissions at a rate amortized over 40 years. DEIR at 16-17. If the Project is completed by 2020, construction emissions should only be amortized over a maximum four year period.

Accordingly, there is no scientific or factual basis supporting the DEIR's unsubstantiated opinion that new development that is 21.7% below a hypothetical BAU baseline will not interfere with California's near-term emission reduction objectives. *See* Pub. Res. Code § 21082.2(c) ("[a]rgument, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly inaccurate or erroneous" does not constitute substantial evidence); *see also Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal. App. 4th 1, 17 ("[C]onclusory statements do not fit the CEQA bill."). By simply assuming that AB 32 emission reduction targets would be achieved because Project emissions are purportedly 25.3% below a hypothetical "business as usual," the EIR's significance criteria does not reflect "careful judgment . . . based to the extent possible on scientific and factual data." Guidelines § 15064(b).

While it is important to assess the Project's consistency with the goals of AB 32, to reduce statewide GHG emissions to 1990 levels by 2020 through maximum economically and technologically feasible measures without limiting economic growth (*see* Health & Saf. Code §§ 38501, 38550), the BAU approach is inappropriate for a proposed new development project. *See* CEQA Guidelines § 15064.4(b)(3)). Instead, the

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

EIR should compare the Project's projected emissions in 2020 with those in the Project area in 1990. *See* Exhibit 24 at 4.8-25 (SANDAG EIR taking this approach). If the projected emissions would exceed those in the Project area, this should be considered a significant impact. *See id.*

(b) The DEIR Fails to Properly Analyze Whether the Project Conflicts with Applicable Plans for GHG Reduction.

The DEIR recognizes CEQA's mandate to evaluate whether the Project complies or conflicts with applicable plans and policies for GHG reduction. DEIR at 16-8 (citing CEQA Guidelines § 15064.4(b)(3)); *see also* Exhibit 23; Exhibit 20 at pp. 6-10. However, the DEIR fails to conduct the requisite analysis. Rather, it dubs the Project's GHG impacts after 2020 as "potentially significant" and largely defers analysis to a later date. This approach is unacceptable. In addition to properly analyzing consistency with the reduction goals set under AB 32 as described above, the DEIR must analyze the Project's consistency with the following plans and policies for GHG reduction:

- Sacramento Council of Government's ("SACOG") Metropolitan Transportation Plan/Sustainable Communities Strategy ("MTP/SCS")
- Executive Order S-3-05
- Executive Order B-30-15

(i) The Metropolitan Transportation Plan/Sustainable Communities Strategy

SACOG's MTP/SCS is an applicable plan for GHG reduction, and thus the DEIR must analyze the Project's consistency with this plan. The MTP/SCS was adopted to comply with the requirements of SB 375 and covers the Project area. SB 375 sets regional reduction targets for 2020 and 2035, both of which would occur prior to full build-out of the Project. Furthermore, SMAQMD's CEQA Guide specifically identifies the MTP/SCS as an applicable plan that should be analyzed in a CEQA analysis for a project. Exhibit 20 at pp. 6-10.

The DEIR recognizes the existence of the MTP/SCS and its target of 9 percent per capita reduction in vehicle emissions by 2020 and 16 percent per capita reduction by 2035, as compared to 2012 emissions. DEIR at 16-18. However, the DEIR claims "this

target cannot be directly translated into an overall threshold, given it is geared toward GHG emissions from transportation only." *Id.* This is no reason not to address the Project's consistency with the MTP/SCS. To begin, the DEIR could conservatively assume that the per capita reduction targets should apply to the Project as a whole, and determine whether the Project would meet these goals in 2020 and 2035. It is clear that the Project would not. Further, even if the DEIR focused on transportation-related GHG emissions, the analysis would be useful, as the DEIR estimates that vehicle trips account for 14,241 metric tons of the Project's annual CO2 emissions, or over 31% of the Project's total GHG emissions. This total is greatly underestimated (see discussion *infra*), but even so demonstrates the value in analyzing the necessary reduction in transportation emissions. Thus, the DEIR can and should analyze the Project's consistency with the thresholds set in the MTP/SCS.

Additionally, the DEIR should analyze the Project's inconsistency with the MTP/SCS's plan for growth. As the DEIR acknowledges, the Project area is shown in the SCS as "Lands Not Identified for Development." DEIR at 16-18. However, the DEIR fails to recognize this inconsistency as a significant impact. The MTP/SCS sets forth a regional plan for growth in order to meet its SB 375 GHG reduction targets. If the area grows in a way that is inconsistent with this Plan, such as if the County approves the proposed Project, the region may no longer be able to meet the targets. This would be a significant impact under CEQA. *See* CEQA Guidelines § 15064.4(b)(3); CEQA Guidelines Appendix G. The DEIR must provide the requisite analysis and mitigation for this potentially significant impact.

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

Executive Order ("EO") S-3-05 also sets forth state policy related to GHG reduction, including that it is the policy of the state to reduce GHG emissions to 80% below 1990 levels by 2050. EO B-30-15, signed by the Governor in 2015, establishes a new interim target to reduce GHG emissions by 40 percent below 1990 levels by 2030. The DEIR acknowledges EO S-3-05, but never analyzes the Project's consistency with EO S-3-05, and does not mention EO B-30-15.

The DEIR claims it would be "speculative" to analyze consistency with long term goals. DEIR at 16-18. Yet, other agencies have been readily able to utilize the Executive Orders as thresholds of significance for long-term projects. For example, likely in response to a Court of Appeal decision on the subject, the San Diego Association of Governments ("SANDAG") utilized the following threshold of significance in the EIR for its most recent Regional Transportation Plan/Sustainable Communities Strategy:

"GHG-4: Be inconsistent with the State's ability to achieve the Executive Order B-30-15 and S-3-05 goals of reducing California's GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050." Exhibit 24 at pp. 4.8-33; *see Cleveland National Forest Foundation v. SANDAG* (November 24, 2014) 180 Cal.Rptr.3d 548 (Review Granted, 343 P.3d 903).

The SANDAG RTP/SCS EIR evaluated the project's impacts by calculating a 40 percent and 80 percent reduction from the region's 1990 emissions and utilizing that as a target reference point for the RTP. It then compared the region's expected GHG emissions in the years 2035 and 2050 to the emissions that would be necessary to meet the EO trajectories. It included charts showing that the Plan will not come close to meeting the EO goals. It concluded: "Because the total emissions in the San Diego region of 25.5 MMT CO_2e in 2035 would exceed the regional 2035 GHG reduction reference point of 14.5 MMT CO_2e (which is based on EO-B-30-15 and EO-S-3-05), the proposed Plan's 2035 GHG emissions would be inconsistent with state's ability to achieve the Executive Orders' GHG reduction goals. Therefore, this impact (GHG-4) in the year 2035 is significant." Exhibit 24 at pp. 4.8-34. It has a similar conclusion for the year 2050 goal. This analysis is easily adaptable to the proposed Project's emissions.

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

(c) The DEIR Underestimates the Project's GHG Emissions.

As described in the comments on the DEIR's traffic analysis (*see* supra/infra, Section I.B.4), as well as in the MRO Engineers' Report, the DEIR does not accurately analyze the Project's transportation impacts. It substantially underestimates the number of trips that would be generated by the Project because it relies on an incorrect methodology used to calculate trips that would be generated by the retail uses on the East Parcel, from the Project's condo hotel uses, and from the Mountain Adventure Camp.

The DEIR also substantially underestimates the Project's increase in vehicle miles travelled ("VMT"). As the MRO Report explains, inaccurate trip generation figures necessarily result in inaccurate VMT estimates. The DEIR also appears to use unreasonably short trip lengths in its calculation of VMT. In addition, it appears that the DEIR only included VMT from the Project's summer and winter trips, ignoring entirely the VMT that would be generated in spring and fall. DEIR at 10-15. *See* Exhibit 4. Because the DEIR underestimates vehicular trips and VMT, it also underestimates the Project's transportation-related GHG emissions.

Finally, we can find no indication that the GHG emissions inventory includes emissions from air travel. Inasmuch as the applicant intends to ensure that Squaw Valley becomes a "world class" resort, it is likely that some percentage of visitors would arrive via air. The EIR must account for the emissions associated with this air travel.

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

(d) The DEIR Fails to Analyze and Adopt All Feasible Mitigation.

Because the DEIR concludes that the Project's GHG-related impacts will be less than significant in 2020, the DEIR does not recommend any immediate mitigation measures related to GHG impacts. Further, the DEIR punts on the issue of mitigation after 2020, finding it will only be necessary if a "comparison between No Action Taken and the subdivision as proposed scenarios" reveals that the Project does not achieve or exceed reduction targets. DEIR at 16-19. However, if the DEIR had utilized the proper thresholds as discussed above, it would demonstrate that the Project's actual GHG emissions would cause a significant impact throughout the life of the Project, which should be mitigated in conjunction with Project approval. *See* Exhibit 20 at p. 6-10 (SMAQMD's CEQA Guide stating, "[f]or projects that exceed the District's threshold of significance, lead agencies shall implement all feasible mitigation to reduce GHG emissions."). An agency may not defer mitigation except under specific circumstances not present here. Guidelines § 15126.4(a)(1)(B). Even if the DEIR could defer mitigation (which it can't), the standard for future mitigation is not supportable because it uses the same flawed BAU approach as described above.

The County can and should adopt all feasible mitigation for the Project's known and significant GHG impacts at the time of Project approval (if the Project is approved). The DEIR sets forth several mitigation measures, including making GHG policies in the

Specific Plan mandatory rather than "encouraged" or otherwise optional. *See* DEIR at 16-19. The DEIR provides no rationale why this mitigation could not be adopted if/when the Project is approved, and there is none.

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

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

- Provide education on energy efficiency.

- Reduce the use of pavement and impermeable surfaces;

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

- Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA AND CLIMATE CHANGE: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf.

- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf.

- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.

- Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

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

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

(e) The DEIR Fails to Adequately Examine the Effects of Climate Change on the Project.

The DEIR notes that climate science predicts a 25 to 40% decrease in snowpack in the Sierras by 2050 (not too long after anticipated Project buildout). DEIR at 16-2. *See also* Natural Resources Defense Council, *California Snowpack and the Drought Fact Sheet*, April 2014, attached as Exhibit 25. This could have drastic impacts for a residential and commercial development Project, the main objective of which is to be a world class ski resort. *Id.* at p. 3-7. Yet, the DEIR finds that there would be no significant impacts from climate change on the Project. There are several potential impacts that the DEIR fails to examine at all.

For example, as explained above regarding the DEIR's failure to adequately evaluate the Project's water supply and quality impacts, the DEIR and WSA fail to adequately account for the impacts of climate change on Squaw Creek and the Olympic Valley Groundwater Basin. As explained in the report from Dr. Tom Myers, climate change can drastically lengthen dry or no-recharge periods, thereby affecting the water supply of the aquifer, as well as Squaw Creek and wetlands in the area.

Further, the DEIR fails to acknowledge that if snowpack decreases by the anticipated amount, in order to maintain a viable ski operation, Squaw Valley would need to make much more of its own snow. Snow making requires energy and hence more potential GHG impacts. Snow making also requires water, which could result in additional significant water supply impacts. The DEIR must evaluate these issues and determine the extent of the potential environmental impacts from a potential 40% reduction in snow pack.

Reduced snow pack could also ultimately make skiing at Squaw Valley less desirable, and hence the Project less profitable and potentially the Project objectives less achievable. This outcome could affect the range of alternatives to be looked at, as well as

the feasibility and desirability of various alternatives already considered. The EIR must take this information into account.

Further, of the impacts from climate change that the DEIR does examine, the document appears to underestimate such impacts. For example, the DEIR claims the addition of one fire station should be enough to combat the increase in wildfires from climate change. However, as discussed below, wildfires are increasing at an alarming rate, particularly in the Sierras. The DEIR provides only the most superficial discussion of emergency response. It never evaluates, for example, a scenario in which a wildfire occurs when Squaw Valley Road is experiencing traffic gridlock, i.e., during the summer. Because this road provides the only access to and from Olympic Valley, this traffic congestion would block emergency access to the Valley and the resort. The DEIR provides no evidence whatsoever that one fire station would be able to handle a catastrophic wildfire affecting this isolated location.

7. The DEIR Fails to Adequately Analyze or Mitigate the Project's Noise Impacts.

A particularly glaring inadequacy of the DEIR is its analysis of and mitigation for the Project's noise impacts. The proposed Project would generate three distinct categories of noise impacts: (1) noise from construction equipment and operations; (2) noise from the Project's operational stationary noise sources such as heating ventilation and air conditioning ("HVAC") units, emergency generators, and loading dock activities; and (3) traffic noise from the Project's cars and trucks that would travel along area roadways. Some of the closest sensitive receptors would be only 50 feet from certain noise sources. *See* DEIR at 11-19, 25. The DEIR admits that sensitive receptors located within 50 feet of certain construction-related activities such as pile driving could be exposed to noise levels as high as 98 dBA, i.e., similar to a noise level of a jet-flyover at 1,000 feet. *Id.* at 11-2, 19. Noise levels from on-going operational activities such as loading dock operations could be as high as 86 dBA, which approaches a noise level similar to a gas lawn mower at 3 feet. *Id.* at 11-2, 26. In light of these excessive noise levels and the importance of peace and quiet in Squaw Valley, one would expect the DEIR to provide a comprehensive analysis of the Project's noise impacts. Unfortunately, in almost all instances, the DEIR does not provide quantitative impact analyses at all; instead it simply identifies *representative* noise levels associated with the Project's activities. The DEIR's excessively vague discussion of the Project's noise impacts therefore does not come close to describing the severity and extent of the Project's impacts. Consequently, the DEIR also errs because it does not propose mitigation measures capable of offsetting these significant impacts.

(a) The DEIR's Analysis of Noise Impacts is Hamstrung by Its Failure to Consider All of the Impacted Receptor Locations.

The Project would be developed in the established community of Squaw Valley; consequently, development of the Project would impact countless sensitive receptors. The DEIR, however, does not provide any specific information about these receptors other than a casual mention that there are scattered residences around the Project site. *Id.* at 11-6. The DEIR includes two graphics which purport to show the "specific locations" of receptors, but the document contains no explanation as to how these specific sensitive receptor locations were selected or whether these locations are in fact representative of all potentially affected sensitive receptors. Nor does the DEIR identify the distance between the sensitive receptors it does identify and the Project's expected sources of noise. If the DEIR under-represented the number and type of potentially affected receptor locations, it also necessarily underestimated the Project's noise impacts on these receptors.

The revised EIR must provide detailed documentation including an accounting of each potentially affected sensitive receptor. In addition to identifying residences, the revised EIR must identify each school, religious institution, picnic area, recreation area, playground, and active sport area and park that has the potential to be affected by the proposed Project.

(b) The DEIR's Analysis of and Mitigation For Construction-Related Noise Impacts is Legally Inadequate.

In lieu of actually analyzing construction-related noise impacts on nearby sensitive receptors, the DEIR simply identifies typical noise levels of construction equipment and suggests that construction noise would result in a temporary increase in ambient noise levels. DEIR at 11-17. This cursory approach to impact analysis violates CEQA. A conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational goal. *See Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 182; *Citizens of Goleta Valley*, 52 Cal.3d at 568. The DEIR fails to fulfill this paramount purpose of CEQA, both because it neglects to present all relevant facts relating to the Project's construction noise impacts upon sensitive receptors, and because its cursory conclusions are based upon no analysis.

The required evaluation of noise impacts must include a thorough description and understanding of the duration of the exposure at a particular receptor and the amplitude of

the noise exposure at a particular receptor. The evaluation would include the specific locations of sensitive receptors in the Project area, a description of existing ambient noise levels at these sensitive receivers, predicted noise levels during each phase of construction at these sensitive receptors, a comparison of noise levels during construction to the existing ambient noise levels, the establishment of appropriate significance thresholds to judge if the increase would be substantial, and a finding as to whether noise levels would substantially increase. Only upon completion of this analysis will the DEIR preparers be in a position to evaluate whether measures exist to mitigate this impact.

We can find no logical explanation as to why a quantitative analysis of the Project's construction-related noise was not conducted. All of the information necessary to determine the specific effects that construction-related noise would have on sensitive receptors currently exists or is readily attainable. The applicant knows the precise location of the Project's proposed structures. Presumably the applicant is also knowledgeable about the type of construction equipment and operations that would be required to demolish existing buildings and construct new buildings. *See, e.g.*, DEIR at 3-38 (listing the Project's expected construction activities). Certainly, the DEIR preparers could have modeled the increase in noise levels at each of the affected sensitive receptors to determine average and single noise events. In addition, based on the anticipated construction schedules, the DEIR preparers could have estimated how long over the course of hours, days, or months that sensitive receptors would be burdened by the increase in noise. In the case of the local schools – the Squaw Valley Academy and Squaw Valley Preparatory – the DEIR could have evaluated the effect that the construction-related noise would have on classrooms and whether noise levels would interfere with learning. At a minimum, the EIR could provide a detailed analysis of construction noise impacts for the first phase, which is proposed to begin as early as spring of 2016. *Id.* at 11-18. This evaluation needs to be done now, prior to Project approval. Otherwise, how do decision-makers and the public know exactly how long they would be burdened with unacceptably high noise levels?

The revised EIR must include a quantitative analysis of construction noise. This analysis must differentiate between daytime and nighttime noise because, as the DEIR explains, construction activities would sometimes occur at night. DEIR at 11-17, 19, 20. Noise can be far more intrusive during the evening and nighttime hours when ambient noise levels are at their lowest and residents are trying to sleep. The EIR must take into account this higher sensitivity to noise and evaluate how the increase in noise from the Project would *specifically* affect receptors during these time periods.

The revised EIR's noise impact analysis must also take into account single noise events and nighttime noise. Construction operations, in particular, are characterized by a high number of individual events, which often create a higher sustained noise level in proximity to areas sensitive to noise exposure. Analyzing only average noise impacts has been rejected by California courts because impacted residents do not hear noise averages, but single events. *See Berkeley Keep Jets Over the Bay v. Port of Oakland* (2001) 91 Cal.App.4th 1344, 1382. Single event noise levels have been shown to be likely to result in sleep disruption, speech interference, and heightened levels of stress and annoyance. Noting that "sound exposure level [SEL] has been found to be the most appropriate and useful descriptor for most types of single event sounds," the court in *Berkeley Keep Jets* held that the Port must prepare a supplementary noise analysis. *Id.* Accordingly, the revised EIR must analyze the impacts of single event noise on sleep, speech, stress and annoyance levels.

The revised EIR must also evaluate interior noise levels. The DEIR acknowledges interior noise standards of 45 dBA. DEIR at 11-19. The DEIR addresses interior noise in the context of operational Project-generated stationary noise sources (at 11-24) but conducts no analysis as to how the Project's construction-related noise would affect building interiors. This analysis is especially important because construction would occur during the summer season, when nearby residents would likely keep their windows open.

The DEIR identifies several measures that would purportedly reduce the Project's construction-related impacts (at 11-20), yet these measures lack the necessary evidence of their effectiveness. The measures include techniques such as locating staging areas as far as possible from sensitive receptors, proper maintenance of construction equipment, and the possible use of noise attenuating buffers such as noise curtains or sound walls. *Id.* In numerous instances, measures are suggested rather than required; e.g., operations and techniques shall be replaced with quieter procedures, "where feasible." *Id.* Other measures are vague and unenforceable; e.g., noise sensitive uses that are in close proximity to prolonged construction noise shall be shielded from construction noise. *Id.* The DEIR never defines the terms "prolonged construction" or "close proximity." Nor does the DEIR identify the decibel levels of "properly" maintained equipment or explain whether proper maintenance of, for example, a pile driver would result in a sufficient reduction in noise levels. In fact, the DEIR nowhere identifies the noise reduction expected from *any* of the mitigation measures.

In sum, the DEIR fails to provide a quantitative analysis of the Project's construction-related noise impacts and identifies vague and unenforceable mitigation

measures for these admittedly significant impacts. The DEIR should be revised to include a comprehensive analysis of the Project's noise impacts and specific, quantifiable and enforceable mitigation measures.

(c) The DEIR's Analysis of Construction Vibration Impacts is Legally Inadequate.

Vibration amplitudes are commonly expressed in peak period velocity ("PPV") which is used to evaluate the potential for building damage. DEIR at 11-3. With respect to structural damage, Caltrans recommends that a level of 0.2 in/sec PPV not be exceeded for the protection of normal residential buildings and that 0.1 in/sec PPV not be exceeded for the protection of old or historically significant structures. *Id.* at 11-15. Although PPV is appropriate for evaluating the potential for building damage, it is not always suitable for evaluating human response. *Id.* at 11-3. It takes some time for the human body to respond to vibration signals. With respect to human response, i.e. annoyance within residential uses, the DEIR therefore recommends a maximum acceptable vibration level of 80 VdB. DEIR at 11-15.

The DEIR determines that pile driving during construction would be potentially significant because it *could* expose structures to vibration in excess of 0.2 in/sec PPV with respect to structural damage and 80 VdB with respect to human disturbance. DEIR at 11-21, 22 (emphasis added). Yet, as with the DEIR's discussion of the Project's construction-related noise impacts, the DEIR fails to provide an actual analysis of the Project's vibration impacts. Instead it provides *representative* ground vibration levels and then relies on mitigation measures of unknown efficacy to concludes that the Project's vibration impacts would be less than significant. *Id.* (emphasis added). In addition, the DEIR's vibration analysis never even discloses whether there are any old or historically significant structures in the area. Thus, the DEIR provides no indication, whatsoever, as to whether there would be potential impacts to these structures.

The DEIR's main mitigation measure calls for a vibration control plan to be prepared and sets a 80 VdB performance limit: "Established setback requirements (i.e., 300 feet) can be breached only if a project-specific, site-specific, technically adequate ground vibration study indicates that the buildings would not be exposed to ground vibration levels in excess of 80 VdB, and ground vibration measurements performed during the construction activity confirm that the buildings are not being exposed to levels in excess of 80 VdB." DEIR at 11-23. Despite the apparent performance standard calling for vibration levels not to exceed 80 VdB, the DEIR lacks any indication that the measure would be sufficient to protect buildings or human response.

First, the DEIR errs because it does not include *any* analysis of likely ground vibration impacts, let alone a "project-specific, site-specific, technically adequate ground vibration study." In fact, the DEIR provides no indication why such a study could not be prepared now. Moreover, because the DEIR provides no indication of likely ground vibration levels, it provides no indication as to whether it is even feasible to achieve 80 VdB. What if actual construction results in 90 VdB or 100 VdB, and it is infeasible to reduce vibration levels to less than 80 VdB? Would the Project be terminated? Would the buildings that are under construction be moved? Either scenario seems highly unlikely. Moreover, none of the DEIR's mitigation measures include a performance standard pertaining to structural damage. The 80 VdB standard only addresses the Project's impact on human response. Because it contains no performance standard for structural damage that could result from ground vibration, the DEIR lacks any basis to conclude that these impacts would be less than significant.

The revised EIR must undertake a comprehensive construction vibration assessment and identify feasible, enforceable mitigation measures if these impacts are determined to be significant.

(d) The DEIR's Analysis of Noise Impacts Resulting from Operational Project-generated Stationary Noise Sources Is Legally Deficient.

The Project would include numerous stationary sources of noise, such as heating, ventilation, and air conditioning ("HVAC") units, back-up emergency generators, vehicular and human activity in parking lots, loading dock and delivery activities at commercial/retail land uses, and activities at outdoor recreational land uses. DEIR at 11-24. As with the construction- and vibration-noise impact analyses, the DEIR provides no specific analysis of the effect that any of these sources would have on nearby sensitive receptors. It excuses itself from this necessary analysis by stating that the "exact locations, building foot prints, and building orientation have not been finalized; it is unknown specifically where future stationary noise sources may be located." *Id.* at 11-24. This is a project-level, not a programmatic EIR. As discussed in the Project description section of this letter, this Project may never be the subject of further environmental review. The noise effects from these noise sources must be analyzed in this EIR, not after Project approval.

Here too, the DEIR asserts that mitigation measures will reduce stationary source noise impacts to existing sensitive receptors to less than significant levels. DEIR at 11-27, 28. But once again the DEIR errs in its approach to these measures. The DEIR

promises to do a noise study and then, based on the results, *design* the Project to avoid impacts: "the Project's loading docks and parking lots and structures shall be located and designed so that noise levels do not exceed local standards." *Id.* There are four fundamental flaws with this approach.

First, the DEIR has its tasks exactly backwards. The Project must first be designed. Only then is the DEIR capable of analyzing and mitigating the Project's impacts.

Second, the DEIR's approach of designing the Project to purportedly avoid the impact violates CEQA. The County cannot mitigate unanalyzed impacts of unknown methods by stating the Project will be redesigned. *See Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 429 (holding that "an EIR may not substitute a provision precluding further development for identification and analysis of the project's intended and likely water sources"). "[T]he EIR must address the project and assumes the project will be built." *Id.* (quoting *Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 206 (invalidating project approval that included a mitigation measure calling for the County not to permit development unless adequate water supplies were available)). "It is not mitigation of a significant environmental impact . . . to say that if the impact is not addressed then the project will not be built." *Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 205.

Third, as discussed above in the context of the EIR's vibration measures, given the proximity of nearby residences, it may not be possible to locate certain of these stationary noise source uses in locations on the Project site that avoid noise impacts. For example, a Project's loading docks must be sited in appropriate proximity to the building requiring deliveries; they cannot simply be randomly reassigned to a less bothersome location. Such an approach may seem effective in theory, but is an infeasible approach to mitigating the Project's noise impacts.

Fourth, if the Project is redesigned to avoid noise impacts, this redesign could result in significant environmental impacts that would not be subject to environmental review. For example, the new location could result in the loss of sensitive habitats or impact sensitive species. The new location could also result in significant visual impacts.

Redesign of the Project is not an effective mitigation measure for the Project's noise impacts. The EIR should be revised to include other feasible measures.

(e) The DEIR's Analysis of Noise Impacts Resulting from Operational Project-generated Transportation Noise Is Legally Deficient.

The DEIR's analysis of the Project's transportation-related noise is also flawed. First, as discussed in the transportation section of this letter, it is likely that the DEIR substantially underestimated the Project's increase in traffic. Consequently, if traffic volumes are underestimated, the noise from traffic is also underestimated. Once the EIR's traffic analysis is revised, the EIR preparers must also revise the analysis of the noise from transportation.

Second, the DEIR acknowledges that increases in traffic during the summer due to the proposed Project would expose sensitive receptors on Squaw Valley Road, between SR 89 and Squaw Creek Road, i.e., Squaw Valley Academy, to an increase in noise that exceeds the Placer County noise ordinance. DEIR at 11-32. In addition, all receptors within 450 feet of the centerline of SR 89 and within 170 feet of the centerline of Squaw Valley Road would be exposed to noise levels in excess of the County's noise standard during the summer peak days. *Id.* at 11-33. Notably the DEIR provides no analysis of impacts to pedestrians or bicyclists using the Squaw Valley Road bike path.

The DEIR concludes that there would be no feasible mitigation for impacts to sensitive receptors "since exterior noise levels at these locations could only be remediated by relocating roadways, building sound walls, and relocating sensitive receptors." *Id.* at 11-33. The DEIR goes on to state it is likely that interior noise at these locations is within standards of 45 dBA, given the colder climate and likelihood that most (or all) homes already have dual pane windows and insulation. *Id.* Typical construction of this type provides at least 25 dB exterior-to-interior attenuation. *Id.* The DEIR cannot simply assert that existing homes have sufficient noise retrofits; it must actually determine if each of the affected structures has dual pane windows and sufficient insulation. If not, the County has a duty to provide this mitigation, as it is clearly feasible.

In conclusion, the DEIR's failure to evaluate and mitigate the Project's noise impacts is a clear violation of CEQA. The EIR must be revised to include a legally adequate analysis of the Project's noise impacts. If the impacts are determined to be significant, the EIR must identify feasible mitigation measures or alternatives capable of reducing these impacts.

8. The DEIR Fails to Adequately Analyze or Mitigate the Project's Significant Visual Effects.

(a) The DEIR's Visual Simulations Do Not Show the Severity and Extent of the Project's Visual Impacts.

Under CEQA, it is the State's policy to "[t]ake all action necessary to provide the people of this state with . . . enjoyment of aesthetic, natural, scenic, and historic environmental qualities." Pub. Res. Code § 21001(b). Thus, courts have recognized that aesthetic issues "are properly studied in an EIR to assess the impacts of a project." *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 937 (overturning a mitigated negative declaration and requiring an EIR where proposed project potentially affected street-level aesthetics).

Here, the DEIR correctly acknowledges that the Project would result in significant and unavoidable impacts to visual and aesthetic resources, yet the document does not provide the comprehensive analysis necessary to accurately characterize the extent and severity of these impacts.[7] The analysis is crippled in large part because it fails to provide a proper evaluation of: (1) the stark visual changes to the existing Squaw Valley Village and (2) how the Project would affect views of the mountains that provide a stunning backdrop to the Project site.

The Project includes the development of a series of high-rise hotels, condominiums, restaurants, and parking structures, some of which would be ten stories tall – up to 108 feet. DEIR at 3-11. The Project also includes a massive indoor amusement park that would likely be as large as a big box store. As a point of reference, the character of built form in the existing Village is generally comprised of four-story

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[7] The DEIR identifies the following impacts as significant and unavoidable: (1) Impact

8-1: Adverse effect on a scenic vista (construction and operations as experienced by long-term residents); (2) Impact 8-2: Substantially degrade the existing visual character or quality of the site and its surroundings (construction); (3) Impact 8-3: Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a scenic highway (construction); (4) Impact 8-5: Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area (operations). DEIR at 2-4.

buildings. This existing development pattern, seen against a highly scenic mountain backdrop comprises the community's aesthetic character.

Although the Project would substantially alter the visual integrity of the site and its scenic views, the DEIR fails to include visual simulations that fully depict the magnitude of the Project's effects on public views. This omission results in an analysis that fails to disclose the severity and extent of these impacts. As we explained in our response to the Notice of Preparation, a primary way for the DEIR to accurately portray the change in the visual setting is to use story poles to indicate to the public the size and scale of this development. *See* Letter from L. Impett to M. Krach, May 9, 2012, submitted under separate cover.

Story poles are three-dimensional, full-scale, silhouette structures that outline the location, bulk and mass that a proposed structure would occupy on a site. They also outline the building's major wall planes, gables and ridges and enable near and far views of structures to be assessed. Story poles allow decision-makers and the public to assess the location and general massing of a proposed building from various vantage points and not just from where a project's architect model or rendering. Story poles must be installed to evaluate the impact upon view corridors since this Project would dramatically exceed established building heights. The only possible explanation for not installing story poles is that the County or the applicant do not want to show the public precisely how this Project would affect the integrity of the Village and its scenic surroundings.

The flaws in the DEIR's analysis of the Project's visual impact extend beyond the failure to install story poles. The DEIR never explains why only 12 viewpoints were selected and whether these points show the most significant visual impacts caused by the Project. For example, the DEIR does not include any nighttime viewpoints of the Project from areas more than a few hundred feet beyond the Project's boundaries, which are necessary to understand the visual impacts that the Project would have on the broader region, including the Tahoe Basin. Nor does the document include any vantage points that show what the views would be like within the Project, e.g., between its buildings or walking along its parking structures. Equally egregious, the DEIR provides no before/after viewpoints depicting the Project's heavy-equipment maintenance yard that would be developed on the western portion of the Project site.

Another weakness of the DEIR's selection of viewpoints stems from the fact that the simulation views generally do not include surrounding or adjacent development, a deficiency which precludes a clear depiction of the Project's scale and landscape context. In DEIR Exhibits 8-13 and 8-14 (view to the west from the meadow and golf course), for

example, the photographs are taken a considerable distance from the existing and proposed structures, giving the misleading impression that the difference in building heights is nominal. Obviously, this is not the case. For each simulation from a remote vantage point, the DEIR must also include a simulation closer to the proposed Project, i.e., from the near side rather than the far side of the meadow. Such an approach would more accurately depict the Project as larger in scale and more prominent.

In other instances, such as DEIR Exhibit 8-17 (simulated view to the southwest from Intrawest Village), it appears that the DEIR preparers may have used extreme wide-angle lens for the photographs. Although the panoramic photos are effective in portraying the expansive scenic views in the vicinity of the Project, the magnitude of the new development is diminished by extreme wide-angle simulations. This conceptual visual simulation does not fully illustrate the substantial level of visual change represented by the proposed Project.

Moreover this same simulation, DEIR Exhibit 8-17, appears to be the *only* simulation that shows the juxtaposition of the existing village and the new structures. CEQA requires an EIR to evaluate whether the project would substantially degrade the existing visual character or quality of the site and its surroundings. CEQA Guidelines Appendix G § I.c. Although the DEIR text correctly concludes that significant and unavoidable visual impacts would occur as a result of the Project, the DEIR fails to adequately address this key CEQA threshold question because the visual analysis lacks a clear evaluation of the Project's compatibility with the surrounding existing adjacent development. The DEIR fails to describe the compatibility of proposed and existing built form in terms of building height, scale, massing and architectural treatment. Instead, it simply asserts that the Project would "increase the number and size of structures on the project site" and "would increase the dominance of the built environment." DEIR at 8-52. These vague statements do not come close to disclosing to the public exactly how this Project would appear relative to the existing structures of the Village. Nor do they provide the required informative analysis of the Project's effect on the integrity of the Village. Substantial height differentiation is an integral issue in defining community character. The DEIR should recognize it as such and provide a comprehensive analysis of this impact.

The DEIR further understates the Project's visual impact because its photo-simulations show the Project with fully developed landscaping. For example, in DEIR Exhibit 8-12 (Viewpoint 4) (simulated view to the southwest from Squaw Valley Road), the simulation includes a large group of trees in the immediate foreground, thereby understating the Project's visibility from Squaw Valley Road. We understand that trees

may ultimately screen certain some portion of the Project from the roadway, but this landscaping would not be mature for at least a dozen years, if not longer. The DEIR should be revised to include simulations that illustrate the change in character with and without landscaping.

The EIR must be revised to show all of the vantage points that would undergo a visual transformation as a result of the proposed Project.

(b) The DEIR Does Not Include Feasible Mitigation for the Project's Significant Visual Impacts.

The DEIR proposes no real measures to mitigate the adverse impacts to the existing community character or to the renowned views and vistas in the area, essentially concluding that no mitigation measures are feasible. DEIR at 8-50 – 8-60. This approach is in direct violation of CEQA and is simply not correct. CEQA imposes a duty to mitigate significant effects on the environment to the extent feasible, even if the potential impacts remain significant and unavoidable. Pub. Res. Code §§ 21002, 21002.1; CEQA Guidelines §§ 15126.2(b), 15126.4.

Given the striking scenic beauty of Olympic Valley and its surrounding mountains, it is vitally important that the Project be designed to fit with the existing village and with the natural landscape. The way that development is placed in areas can have a profound effect on the visual landscape. Appropriately placed and designed buildings can complement the natural environment and essentially serve as extension to the natural landscape. Lands of the highest visual importance should be as free as possible from visual impacts of buildings. The Squaw Valley General Plan and Land Use Ordinance states (at p. 18) that in order to protect the unique and important visual characteristics of the Valley, "the placement of buildings, roads, and recreational facilities shall be placed so as to minimize their visual impact." In light of this guidance and the severity of the Project's effect on scenic views, the DEIR should include mitigation that explores visual and design mitigation techniques, including restricting density, restricting building heights, and alternative building massing. While the visual impacts associated with this development will likely remain significant even after mitigation, the DEIR must nevertheless address feasible mitigation measures to lessen the severity of these impacts.

(c) The DEIR's Analysis Of Light and Glare Is Legally Deficient.

Although the DEIR concedes that the Project's impacts relating to light and glare would be significant and unavoidable (DEIR at 8-60), it does not come close to adequately analyzing this issue. First, the DEIR provides *no* information on existing sources of light in the area or the quality of dark skies. The failure to establish a nighttime light baseline is fatal to any purported analysis of light pollution impacts. "Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, [an environmental document] cannot provide a meaningful assessment of the environmental impacts of the proposed project." *Save Our Peninsula Committee*, 87 Cal.App.4th at 119.

Once a proper baseline is established, the DEIR must then evaluate how the light from the Project would impact dark skies. Here, the DEIR provides no real analysis; it simply states the obvious:

> The project would create a new source of substantial nighttime lighting in the area and would potentially increase skyglow conditions in the area. Development, once completed, would have exterior lighting and indoor lighting that would cause light spill to the outside (i.e., light shining through windows illuminating exterior spaces), similar to lighting on existing resort structures nearby.

DEIR at 8-59. These types of vague statements do not constitute an adequate impact analysis. An agency is required to fully evaluate potentially significant environmental impacts *before* it approves a project. *See Laurel Heights II*, 6 Cal.4th at 1123.

Maintaining dark skies is of critical importance in the mountains because it is one of the dwindling number of locations where one is able to gaze at stars. Cities and suburban locations are fraught with light pollution. Dark skies are a very valuable commodity and worthy of preservation. The proposed Specific Plan explains the importance of darkness: "In the Sierra Nevadas, the experience of natural darkness at night and seeing the stars above is possible on cloudless evenings due to the clear mountain air and the lack of light pollution. Preservation of this resource not only benefits visitors and residents alike but also the region's wildlife." Squaw Valley Specific Plan at B-88.

According to the Dark Sky Coalition, in order to accurately evaluate light and glare impacts, one must take into account three aspects of lighting: (1) shielding of

fixtures; (2) spectrum of light sources; and (3) amount of light. *See* Dark Sky Coalition, attached as Exhibit 26. Here, the DEIR fails to adequately address these lighting aspects. It never quantifies the amount of light that the Project would generate nor does it provide any information on the spectrum of lighting. The document mentions the concept of shielding, but makes no commitment to actually shield light. A review of the Specific Plan's Master Lighting Plan confirms that there has been no specific analysis of the Project's lighting effects.

Nor does the DEIR take into account the effect that snow has on lighting. Snow is quite reflective compared to bare ground. Consequently, the Project's increase in light and glare would be particularly severe during those months where there is snow on the ground. The DEIR must address this Project impact.

The DEIR fails entirely to evaluate the Project's light and glare impacts beyond the Village of Squaw Valley. The Project's light pollution would affect not only the local community and visitors to Squaw Valley but the larger Tahoe Basin region, an area of statewide importance and "one of the natural treasures of the United States." Tahoe Regional Plan Association ("TRPA") Regional Plan Excerpts, attached as Exhibit 27 at 2-2. Lighting from urban development surrounding the Tahoe Basin is not confined to the originating property; it can adversely affect the natural and scenic character of the Tahoe Basin. TRPA Regional Plan Update Draft EIS, attached as Exhibit 28 at 3.9-12. Glare, in particular, may be visible from nearby or distant areas. One area that would be especially impacted by light and glare from the project is the federally-designated Granite Chief Wilderness Area, located to the immediate south of the project site. In fact, light pollution and glare from the Squaw Valley Resort already affects the Tahoe Basin. Exhibit 28 at 3.9-33.

Because light and glare from the Project would almost certainly have impacts on neighboring jurisdictions, the Granite Chief Wilderness Area, and the Tahoe Basin, the EIR must analyze these impacts. *See* CEQA Guidelines § 15206; *Citizens of Goleta*, 52 Cal. 3d at 575 ("[A]n EIR may not ignore the regional impacts of a project proposal, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required."). In addition, TRPA has stated a policy to cooperate with local jurisdictions to ensure that building lighting is "compatible with the natural, scenic, and recreational values of the Region" by ensuring that dark sky views are protected. Exhibit 27 at 2-22 – 2-24. The DEIR also errs in not identifying the Project's inconsistency with this TRPA policy as a significant impact of the Project.

(d) The DEIR Fails to Adequately Mitigate For the Project's Light and Glare Impacts.

The DEIR proposes ineffective mitigation to reduce the Project's light and glare impacts. The DEIR could have mitigated the Project's impacts by committing to measures for each aspect of lighting as follows:

(i) Shielding

Research shows that full shielding can reduce sky glow by 50% to over 90% when compared to a typical mix of partially shielded and unshielded lighting. *See* Exhibit 26. As shielding dramatically reduces glare and light trespass as well, it is and should be the highest priority in lighting codes. Here, the DEIR could easily have *required* that light be shielded, but it only states that light "will be shielded to the maximum extent possible." DEIR at 8-60.

(ii) Spectrum

Specification of yellow light sources (high-pressure sodium and PC-amber LED, or low-pressure sodium and AlInGaP "narrow-band" amber LED) for the majority of lighting uses can reduce sky glow by 70% to almost 90% when compared to white sources such as metal halide, fluorescent, and LED. *See* Exhibit 26. The DEIR never mentions spectrum at all. The Specific Plan states that high pressure sodium lighting will be used for parking lots, but as for the Project's other buildings and pedestrian spaces, the document merely states that such lighting is "preferred." Specific Plan at B-93. Moreover, the Specific Plan calls for fluorescent lighting in other areas, a lighting spectrum that is highly ineffective in preserving dark skies. *See* Exhibit 26. The DEIR should include a measure that requires the use of high-pressure sodium and PC-amber LED, or low-pressure sodium and AlInGaP "narrow-band" amber LED. If the EIR rejects this spectrum of lighting as infeasible, it must support its findings with substantial evidence.

(iii) Amount

Reasonable limitations on the total lighting (lumen) amount reduce the frequency and degree of careless and/or competitive over-lighting. *See* Exhibit 26 (Dark Sky Coalition). Lumen caps of 50,000 – 100,000 lumens per acre have been shown to reduce average lighting amounts (and thus all light pollution impacts) by 25% to 70% compared to average un-capped commercial lighting practice. In particular, applications such as

service station canopy lighting reduce lighting amounts by 90% or more. Here, the DEIR does not identify the amount of lighting at all. Nor does the Specific Plan place any limitation on lighting. The DEIR must first evaluate how much total lighting the Project would generate and then commit to a lighting cap. As part of the mitigation for the Project's impacts, the DEIR should include a mitigation measure that commits the Project to reducing overall lighting from the existing resort and retrofit existing lighting with yellow light sources.

As the attached "Pattern Outdoor Lighting Code" demonstrates, it is clearly possible to mitigate a Project's light and glare impacts while preserving safety, security, and the nighttime use and enjoyment of a property. *See* Exhibit 29. Practices such as these would go a long way toward preserving the dark skies of the Project area.

For the reasons set forth above, the DEIR's analysis of the Project's visual impacts, including light and glare is fatally flawed. Although the DEIR identifies these impacts to be significant and unavoidable, this does not replace the need for an accurate analysis of how this Project would appear to surrounding areas. The DEIR must be revised to provide a comprehensive analysis of these impacts and identify mitigation measures and/or project alternatives capable of mitigating these effects.

9. The EIR Fails to Adequately Analyze or Mitigate Significant Impacts to Cultural and Historic Resources.

As discussed, the EIR must evaluate the Project's potentially significant impacts on the environment. The term "environment," as used in CEQA, includes "objects of historic or aesthetic significance." Pub. Res. Code §§ 21060.5; 21084.1 ("A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment."). Here, the DEIR fails to adequately disclose or mitigate the Project's potential significant impacts on these important resources.

First, while the DEIR generally acknowledges the long history of skiing in the Project area, and also acknowledges that some buildings on the Project site are eligible for listing in the National Register of Historical Places and the California Register of Historic Resources, given their role in the VIII Winter Olympics in 1960, the DEIR entirely fails to identify that the Project site includes California Historical Landmark No. 724 (Pioneer Ski Area of America, Squaw Valley). The California Office of Historic Preservation describes the landmark as follows:

> NO. 724 PIONEER SKI AREA OF AMERICA, SQUAW VALLEY - The VIII Olympic Winter Games of 1960 commemorated a century of sport skiing in California. By 1860 the Sierra Nevada-particularly at the mining towns of Whiskey Diggings, Poker Flat, Port Wine, Onion Valley, La Porte, and Johnsville, some 60 miles north of Squaw Valley-saw the first organized ski clubs and competition in the western hemisphere.
>
> Location: Adjacent to Lobby Entrance of Cable Car Building at base of mountain, Squaw Valley

Exhibit 30 at p. 3 (Office of Historic Preservation, California Historical Landmarks by County); *see also* Exhibit 31 at pp. 1-2 (Sierra Nevada Geotourism Map Guide). Clearly, such a landmark is a "historical resource" within the definition of CEQA Guidelines section 15064.5(a)(3)(A) as a place "associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage." Indeed, the County recently acknowledged the historical significance of Historical Landmark No. 724 in the DEIR for the Northstar Mountain Master Plan EIR, but fails to do so here. *See* Exhibit 32 at pp. 7-8 (Northstar Mountain Master Plan EIR, Chapter 7, Cultural Resources).

The DEIR must therefore be revised and recirculated to identify this historic resource and to evaluate whether the Project would adversely affect it. In its analysis, the revised EIR must not only analyze whether the Project would destroy or alter the structure of the commemorative landmark itself, but also whether the entirety of the planned development would alter the character of the Project area in such a way as to materially diminish the features that rendered the site eligible for inclusion as a State Historical Landmark in the first instance. CEQA Guidelines § 15064.5(b). If the revised DEIR finds that the Project may cause a substantial impact to No. 724, the County must identify potentially feasible measures to mitigate such impacts. CEQA Guidelines § 15064.5(b)(3).

Second, while the DEIR identifies two buildings (the Nevada Spectators' Center and the Athletes' Center) as significant historic resources given their role in the 1960 Olympic games, the DEIR finds that three other such buildings used during the Olympics (the Clock Tower Building, the Reception, and the Media Buildings) are not significant historic resources. These three buildings are no doubt structures relating to the designation of Historic Landmark No. 724 given their use during the Olympics. In order

to downgrade the significance of these historic structures, the County should support its determination by a preponderance of the evidence. *See* CEQA Guidelines § 15064.5.

Yet, the DEIR provides no evidence or analysis at all. Instead, it cursorily claims that the buildings "do not retain their integrity." DEIR at 7-18. While the DEIR asserts the buildings have undergone changes in use and renovations, it does not describe these changes or otherwise inform the public as to the severity of the changes in order to support a determination that the buildings have been rendered insignificant. Even were the standard to be one of substantial evidence, substantial evidence is "evidence of ponderable legal significance, reasonable in nature, credible, and of solid value, evidence that a reasonable mind might accept as adequate to support a conclusion." *American Canyon Community United for Responsible Growth* v. *City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070. Here, the DEIR provides only a bald assertion that the Clock Tower Building, the Reception and the Media Buildings are insignificant historical resources. CEQA requires more. While still a bare bones analysis, it is notable that the DEIR provides more analysis for the gravel quarry, corral and fence line than for these three historic Olympic buildings. *See* DEIR at 7-16 to 7-17. The County must recirculate the EIR to provide sufficient evidence and analysis regarding the alleged severe alterations of these buildings.

Third, although the DEIR acknowledges that the Project would demolish two significant historic buildings [the Nevada Spectators' Center (now the Far East Center) and the Athletes' Center (now the Olympic Valley Lodge)], it fails to consider whether there is feasible mitigation that would avoid or substantially lessen this impact. The DEIR is correct that only the preservation of the historic structures could render the impact "less than significant." *See* DEIR at 7-19. The DEIR then references the "alternatives analysis" to claim the DEIR considers retention of the buildings, but asserts that because the alternatives *may* not be feasible "mitigation is available to only partially mitigate the impacts of the project on these two historic buildings." *Id.* at 7-19 to 7-20. However, as explained *infra*, the DEIR provides no analysis whatsoever regarding the feasibility of alternatives that would avoid the destruction of these two buildings. *See*, *infra*, Section I.C.1. (regarding the DEIR's failure to adequately evaluate alternatives).

If it is feasible to avoid destruction of historic buildings on the Project site, the County must do so, both to comply with CEQA and Placer County General Plan. Under CEQA, the lead agency must *actually adopt* any feasible mitigation that can substantially lessen the project's significant environmental impacts. § 21002; Guidelines § 15002(a)(3); *City of Marina,* 39 Cal.4th at 368-69. Further, Placer County General Plan Policy 5.D.6 states that the "County *shall* require that discretionary development projects

identify and protect from damage, destruction, and abuse, important historical, archaeological, paleontological, and cultural sites and their contributing environment."

If the County ultimately determines that avoidance of historic property destruction is infeasible, it must support that finding with substantial evidence, and provide the public with the analytical route from the evidence to its determination. §§ 21081(a)(3), 21081.5; Guidelines §§ 15091(a)(3), (b); *Village Laguna of Laguna Beach, Inc.* v. *Bd. of Supervisors* (1982) 134 Cal.App.3d 1022, 1032-35. Currently, the DEIR provides no such analysis or evidence to support a finding of infeasibility but, rather, jumps to the unsupported conclusion that mitigation to avoid this impact is not available. *See Kings County*, 221 Cal.App.3d at 728 (failure to evaluate whether a mitigation agreement was feasible was "fatal to a meaningful evaluation by the city council and the public").

Fourth, the DEIR improperly defers mitigation for potential impacts to archaeological site CA-PLA-164, and fails to support its determination that impacts to the site will be less-than-significant after mitigation. As discussed previously, CEQA allows a lead agency to defer mitigation under very limited conditions not present here. *CBE,* 184 Cal.App.4th at 94-95 " "; *San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 669-71; Guidelines § 15126.4(a)(1)(B). An agency may not satisfy its mitigation requirements by merely ordering a project proponent to "obtain a [] report and then comply with any recommendations that may be made in the report." *Defend the Bay*, 119 Cal.App.4th at 1275. This is essentially what the DEIR does here; it says a future report will be prepared and then lists mitigation measures that may or may or not be adopted "if feasible." DEIR at 7-22, 23. The DEIR does not define what is considered "feasible" or otherwise establish performance criteria for what mitigation the County would ultimately adopt. The public is thus left in the dark as to what mitigation would ultimately be employed for this impact.

Yet, the DEIR nevertheless concludes that the impact to archaeological resources would be "less-than-significant" after mitigation. Because mitigation is not certain, this conclusion is not supportable. As the DEIR elsewhere recognizes (at 7-19), impacts to historical resources cannot be mitigated to a less-than-significant level unless those resources are preserved. Because the DEIR's mitigation plan does not guarantee such preservation, it cannot claim impacts will be "less-than-significant" after mitigation. *Federation of Hillside and Canyon Ass'ns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (agency must "ensure that feasible mitigation measures will actually be implemented as a condition of development"); Guidelines § 5126.4(a)(2).

Finally, the DEIR claims, in conclusory fashion, that five historic objects/sites found during archaeological surveys of the Project area are not significant historic resources because they are "isolates" and provides no further analysis or mitigation. *See* DEIR at 7-7. However, the DEIR provides no evidence that these resources, which include a concrete foundation for a poma ski lift, a rock cairn, a prehistoric artifact, a trail blaze, and several historic high-cut stumps, could not on their own meet the criteria established in CEQA Guidelines section 15064.5(a) for historical resources.

The DEIR should be recirculated to provide a thorough analysis of the Project's impact on historic resources. It must also evaluate mitigation measures, such as protection of these locations and artifacts, to reduce any significant impacts.

10. The DEIR Fails to Properly Analyze and Mitigate the Risks to Public Safety That Would Occur Upon Implementation of the Project.

(a) Earthquake and Avalanche Hazards

The DEIR properly recognizes that the Project is located on or near potentially active faults and avalanche hazard zones and therefore labels seismic and geological hazards as a significant impact. The DEIR takes a wrong turn, however, by punting the study and mitigation of these impacts and then claiming the impacts have been mitigated to a less than significant level. As explained, deferral of mitigation is only acceptable in limited circumstances not present here. The DEIR does precisely what CEQA prohibits: it merely orders the project proponent to "obtain a [] report and then comply with any recommendations that may be made in the report." *Defend the Bay*, 119 Cal.App.4th at 1275. There is no reason why the DEIR cannot establish now the criteria for acceptable seismic and avalanche standards. The DEIR's avalanche hazard mitigation is even more egregious because it asks the County to essentially downgrade avalanche zones to allow building where it was previously prohibited.

Although there has been progress made in attempting to control damage from earthquakes and avalanches, these are, as the DEIR recognizes, highly unpredictable hazards that will always entail some amount of risk when we place people and structures near these hazard zones. While the DEIR must establish as many defined mitigation measures as it can at this stage to minimize these hazards to the extent feasible, in the end the DEIR must recognize that it cannot mitigate such hazards to a less than significant level due to their inherent uncertainty and potential to result in death. The public and decision-makers must understand that they would be taking an inherent risk in siting

more development in this area. As it stands, the DEIR does not adequately convey this risk.

(b) Wildfire Risks

As the past several years have demonstrated, wildfires dramatically alter the environment in California, pose a tremendous risk of injury and death, and cause billions of dollars of damage to buildings and infrastructure. The threat of wildfire is increasing. Megafires like the 2013 Rim Fire are becoming more common in the western United States, and the Sierra Nevada in particular is at risk.[8] Decades of fire suppression, a changing climate, and a shortage of forest restoration efforts have led to extremely unhealthy conditions in many of our forests. Combine those overgrown conditions with a record drought and you have frightening conditions for increased likelihood of disaster in the Sierra. In 2014, the King Fire burned nearly 100,000 acres and stopped just 8 miles short of the crest of the Sierra Nevada, threatening Squaw Valley.[9] Smoke was so thick in Squaw Valley that they were forced to cancel the international Lake Tahoe ironman competition.

The environmental destruction wrought by wildfires is exacerbated by development in the Wildland-Urban Interface ("WUI"), which unwisely places people and structures directly in the line of fire. More and more people are living in the WUI, which poses the most danger for wildfire conditions because of the complex mix of fuels (vegetation), topography (hills), accessibility (roads) and structures (homes). The proposed Project is located within the WUI. In some parts of Placer County, such as Squaw Valley, fire danger is worsened significantly by steep, rugged topography, which allows wildland fire to spread quickly and makes it more difficult to fight. Access to Squaw Valley is limited by the configuration of the Valley and the Truckee River canyon; there is only one means of ingress and egress, and a single road (SR 89) connects Squaw Valley to adjoining communities. DEIR at 15-13. Inadequate access, e.g., long roads with a single access point, significantly contributes to the inability to effectively evacuate residents during a disaster and provide necessary emergency access for fire, ambulance, or law enforcement personnel. The mixture of all of these factors creates the

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[8] http://www.sierranevada.ca.gov/press-room/sierra-wildfire-wire/introduction, accessed July 1, 2015.

[9] http://www.moonshineink.com/news/tahoe-feels-effects-king-fire, accessed July 10, 2015.

perfect situation for a serious threat to the safety of both the public and firefighters as well as the area's natural lands.

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

(i) The DEIR Fails to Adequately Describe the Existing Wildfire Conditions in the Sierra.

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

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

- How many major wildland fires have occurred in the Sierras within the last decade? How many structures were lost? How many acres of land were consumed? What was the financial cost of these fires?

- Was there adequate fire response for these wildland fire events? Were additional fire fighters recruited from across or outside the State? What was the standard response time for wildland events? Was there sufficient water to fight the wildland fires?

- How many people and homes are there in Squaw Valley?

- What percentage of the lands in the Sierras (i.e., conifer forests) that historically experienced frequent but low-intensity surface fires, are now predisposed to high-intensity, high-severity crown fires (because of the greater infrequency of fires due to greater fire suppression efforts)?

These are just a few of the questions that require answers so that the DEIR preparers are able to evaluate the severity of the risk associated with the proposed Project's intensification of land uses within Squaw Valley.

(ii) The DEIR Fails to Conduct an Adequate Impact Analysis Associated with the Risk of Wildfire.

The DEIR addresses public safety risks from wildfires in two locations: Impact 15-4: Interference with an adopted emergency evacuation plan and Impact 15-6: Expose people or structures to a significant risk of loss, injury, or death involving wildfires. DEIR at 15-19, 20. Unfortunately neither of these discussions adequately evaluate the listed impact.

It is vitally important that the DEIR provide a thorough analysis of Impact 15-4: Interference with an adopted emergency evacuation plan. Unfortunately, its discussion of this impact is entirely superficial. The DEIR looks primarily to the Wildland Fire Evacuation Plan, included as Appendix J, to conclude that impacts would be less than significant. DEIR at 15-19. This two-page plan does not evaluate how the Project would interfere with emergency evacuation and response. As discussed in section I.B.4. of this letter (transportation), the Project would result in 8,400 additional vehicular trips ever day in the summer. This traffic would cause LOS F, i.e. gridlock, along Squaw Valley Road, the single means of ingress for emergency vehicles and egress for Squaw Valley residents and resort visitors attempting to flee in the event of a wildfire. The DEIR misses the mark entirely because it never describes this foreseeable wildfire scenario.

Other jurisdictions employ modeling tools that evaluate these types of situations. For example, San Diego County employs Fire Behavior Modeling which evaluates a worst-case scenario wildland fire based on site topography, fuel loads, atmospheric conditions, and fire intensity. *See e.g.*, San Diego County Guidelines for Determining Significance Wildland Fire and Fire Protection at 9, attached as Exhibit 33.

Rather than evaluate the status of emergency access and response, the DEIR simply asserts that impacts would be less than significant because "the Placer County Department of Public Works would be involved in implementing measures to ensure acceptable traffic flow and reduce the risk of impairment to emergency evacuation routes." DEIR at 15-19. The DEIR arrives at this absurd conclusion without any evidentiary support as to how the Public Works Department would "ensure acceptable traffic flow." Of course, given the Project's access constraints and the fact that it would create gridlock on area roadways, it is quite clear that it is simply not possible for the Public Works Department to solve this problem.

Likewise the DEIR concludes that Impact 15-6 (expose people or structures to a significant risk of loss, injury, or death involving wildfires) would be less than significant

but the evaluation does not address the constraints to emergency access at all. The DEIR asserts that the development of a Construction Traffic Management Plan will be implemented to "maintain emergency vehicle access on area roadways." DEIR at 15-21. Here too, the DEIR lacks any evidentiary support as to how specifically a construction traffic plan would ensure that emergency access would be maintained. In addition, this mitigation measure addresses emergency access only during the Project's construction and does nothing to ensure adequate emergency access during the Project's operations.

In sum, the wildfire risks associated with the proposed Project warrant comprehensive scrutiny. The DEIR's superficial treatment of this issue is a fatal flaw requiring recirculation.

(c) Risks Associated with Increased Propane Storage

The Project proposes a substantial increase in the amount of propane stored on site. Although the DEIR does not identify the amount of propane that is currently stored on-site, it does acknowledge that total storage capacity would be 150,000 gallons at the Village site and another 15,000 gallons at East Parcel. DEIR at 3-27. We can find no indication that the DEIR has evaluated the risk to public safety from the storage of this massive amount of propane.

As the series of gas explosions at a Blue Rhino facility in Florida make clear, propane can be explosive. *See* "Massive explosions rock Florida propane plant, July 30, 2013, attached as Exhibit 34. In that event, authorities evacuated residents within a one mile-radius evacuation. *Id.* Three individuals suffered critical injuries. Fire raged at the facility for at least three hours after the initial explosions. Firefighters had to keep their distance from the site, limiting their ability to prevent the fire from spreading to the wooded area sounding the facility, as it was unsafe for them to approach the plant. *Id.*

Although the Project's propane storage facility would be located near resort lodging and existing residences (*see* Exhibit 3-5), the DEIR fails to provide any analysis of potential public safety risks. Instead, the DEIR simply asserts that the tanks would meet all applicable standards. DEIR at 3-27. As discussed previously, merely complying with regulatory requirements is not sufficient to conclude a project would not have a significant and adverse impact. One would imagine that the operators of the Blue Rhino facility also complied with applicable regulations yet such compliance did not prevent the massive explosion at that facility. Here, the DEIR cannot simply ignore the potential for a similar type incident.

The EIR should be revised to include an analysis of the public safety risk from placing potentially explosive materials in close proximity to individuals. As part of this analysis, the EIR must evaluate a scenario in which a wildfire reaches the propane tank facility.

11. The DEIR Does Not Properly Analyze the Project's Consistency with the Placer County General Plan and the Squaw Valley General Plan and Land Use Ordinance.

CEQA requires that environmental impact reports analyze the consistency of a project with applicable local plans, including General Plans. *See Napa Citizens for Honest Govt. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 386-87; CEQA Guidelines Appendix G, § IX(b). Inconsistencies with a General Plan or other local plan goals and policies that were enacted in order to protect the environment are significant impacts in themselves and can also be evidence of other significant impacts. *See id.*; *Pocket Protectors*, 124 Cal.App.4th at 929.

The DEIR's analysis of the Project's consistency with the Placer County General Plan and the Squaw Valley General and Plan Land Use Ordinance ("SVGPLUO" or "Ordinance") is fundamentally flawed. The DEIR takes the position that because amendments and minor adjustments to the General Plan and SVGPLUO are proposed, the Project would be consistent with both documents, and, therefore, any conflicts with plans would be less than significant. DEIR at 4-21. In order to evaluate the accuracy of this statement and the Project's consistency with the General Plan and Ordinance, the DEIR must identify the "minor adjustments" to the plan's policies. Unfortunately, the DEIR fails to provide this critical information.

(a) Placer County General Plan Policies.

Moreover, in its analysis, the DEIR glosses over numerous, glaring inconsistencies in order to reach the contrived conclusion that the Project is somehow consistent "overall" with the General Plan. *Id.* In addition to misinforming decision-makers and the public about the Project's consistency with the General Plan, this analysis underestimates the actual impacts of the Project and ignores some of the Project's most significant

impacts.[10] The DEIR must be revised and recirculated to provide a comprehensive and accurate analysis of all General Plan inconsistencies.

Numerous goals and policies within the County are relevant to the proposed Village Specific Plan Project. Many of these goals and policies are directly at odds with the proposed Project. Some of the most egregious violations are discussed below.

(i) The Project is Flatly Inconsistent with General Plan Policies Pertaining to Transportation.

If implemented, the Project would be directly at odds with the General Plan's fundamental principles that development only be allowed in areas where the circulation and transportation system capacity can accommodate such development. Other provisions in the General Plan call for requiring land development projects to pay their fair share of that development's impacts on the local and regional transportation system and to promote a balanced transportation system that provides alternatives to the automobile. The General Plan includes numerous guiding policies centered on these themes, including, but not limited to:

General Plan Policy 3.A.7

General Plan Policy 3.A.7 states that the County shall develop and manage its roadway system to maintain the following minimum levels of service (LOS), or as otherwise specified in a community or specific plan: (a) LOS "C" on rural roadways, except within one-half mile of state highways where the standard shall be LOS "D"; (b) LOS "C" on urban/suburban roadways except within one-half mile of state highways where the standard shall be LOS "D"; and (c) An LOS no worse than specified in the Placer County Congestion Management Program (CMP) for the state highway system. The General Plan allows "temporary slippage" in the LOS C at specific locations.

The Project is flatly inconsistent with this General Plan Policy. In allowing the exception to the LOS standards, the County is required to consider, among other factors, the impacts on general safety and the impacts of quality of life as perceived by residents.

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[10] Additionally, the DEIR's conclusion that the Project is consistent with various General Plan goals and policies is fatally undermined by the fact that the DEIR does not contain an adequate discussion of the Project's impacts on the resources which those goals and policies are meant to protect. *See Napa Citizens for Honest Govt.*, 91 Cal.App.4th at 381.

As discussed in sections I.B.4 (transportation) and I.B.10 (public safety) of this letter, by allowing the proposed Project to degrade highways and intersections to LOS F, the Project would be a threat to public safety, such as in the event of a wildfire, and would irreparably affect the neighboring community's quality of life. The Project's inconsistency with Policy 3.A.7 also constitutes a significant impact of the Project.

General Plan Policy 3.A.8

General Plan Policy 3.A.8 states that the County shall work with neighboring jurisdictions to provide acceptable and compatible levels of service and joint funding on the roadways that may occur on the circulation network in the cities and the unincorporated area.

In direct violation of Policy 3.A.8, if the proposed Project is approved, the County would be allowing significant and unavoidable traffic impacts on local and regional highways. Moreover, although the Project's traffic congestion would adversely impact neighboring jurisdictions, the County is not requiring the applicant to fund necessary mitigation, e.g., contributing funding for necessary transit improvements or financing roadway repaving, etc. The Project is inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 1.G.1

General Plan Policy 1.G.1 states that the County will support the expansion of existing winter ski and snow play areas and development of new areas where circulation and transportation system capacity can accommodate such expansions or new uses and where environmental impacts can be adequately mitigated.

In clear violation of Policy 1.G.1, as discussed in section I.B.4 (Transportation) of this letter, the existing transportation system does not have the capacity to support the traffic that would be generated by the Project. The Project would result in significant and unavoidable traffic impacts to Placer County intersections and Caltrans' highway segments. This traffic congestion would also adversely impact neighboring jurisdictions. In addition, the proposed Project would not "adequately mitigate" its environmental impacts. The Project would result in significant and unavoidable impacts to cultural resources, visual resources, noise, and GHG emissions. Furthermore, the Project would result in numerous significant and unavoidable cumulative impacts. This egregious conflict with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 3.A.13

General Plan Policy 3.A.13 states that the County shall assess fees on new development sufficient to cover the fair share portion of that development's impacts on the local and regional transportation system. Exceptions may be made when new development generates significant public benefits (e.g., low income housing, needed health facilities) and when alternative sources of funding can be identified to offset foregone revenues.

The Project violates Policy 3.A.13. The Project would result in significant and unavoidable traffic impacts to local and regional intersections and highways, yet the Project applicant is not being required to contribute any funding to cover the Project's impacts on the local and regional transportation system. Nor is the Project providing public benefits; it is not contributing to low income housing or providing needed health facilities. In addition, we can find no indication that alternative sources of funding are available to offset foregone revenues. The Project is inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 3.A.9

General Plan Policy 3.A.9 states that the County shall strive to meet the level of service standards through a balanced transportation system that provides alternatives to the automobile.

In direct violation of this Policy, the Project does not provide a balanced transportation system. Access to the existing Squaw Valley Resort is 100% auto-based (*see* Exhibit 4), and the DEIR provides no indication that the Project would result in an increase in transit mode share. The Project would result in LOS F at numerous intersections along local and regional highways. The Project is blatantly inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 3.B.9

General Plan Policy 3.B.9 states that the County shall require development of transit services by ski resorts and other recreational providers in the Sierra to meet existing and future recreational demand.

The Project is in clear violation of this General Plan Policy. The DEIR provides no indication that the Project would result in an increase in transit mode share. Rather

than meeting recreational demand with transit service, the proposed Project would likely be completely auto-based. In addition, the Project would result in a significant impact on local transit service providers for which the DEIR does not identify adequate mitigation. The Project is inconsistent with this General Plan Policy which also constitutes a significant impact.

(ii) The Project is Inconsistent with General Plan Policies Calling for the Protection of Biological Resources and Water Quality.

The General Plan embodies values and principles that recognize the importance of the ecological resources in the area including maintaining water quality in the area and protecting the area's unique wildlife and sensitive habitats. The following policies are indisputably linked to protecting the environment through avoiding impacts on sensitive resources:

General Plan Policy 6.A.1

General Plan Policy 6.A.1 states that the County shall require the provision of sensitive habitat buffers which shall, at a minimum, be measured as follows: 100 feet from the centerline of perennial streams, 50 feet from centerline of intermittent streams, and 50 feet from the edge of sensitive habitats to be protected including riparian zones, wetlands, old growth woodlands, and the habitat of rare, threatened or endangered species.

The Project clearly violates this Policy because it would result in the destruction of habitats including approximately 26 acres of existing mixed conifer forests, 5.32 acres of intermittent stream, 4.16 acres of riparian, and over 2 acres of sagebrush scrub. *See* DEIR at 6-9 and DEIR Exhibit 6-1. In addition to destroying these habitats, the Project does not provide for the adequate setbacks from habitats that would remain after construction. *See* Specific Plan at B-16, fig. B.2. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 6.A.3

General Plan Policy 6.A.3 states that the County shall require development projects proposing to encroach into a creek corridor or creek setback to do one or more of the following, in descending order of desirability: (a) Avoid the disturbance of riparian vegetation; (b) Replace riparian vegetation (on-site, in-kind); (c) Restore another section

of creek (in-kind); and/or (d) Pay a mitigation fee for restoration elsewhere (e.g., wetland mitigation banking program).

The Project violates this General Plan Policy. As noted above, the Project would destroy at least 4.16 acres of riparian vegetation. In addition, the DEIR provides no evidence that the applicant made any attempt to avoid riparian habitats. Furthermore, although the Project purports to include the restoration of Squaw Creek, the DEIR provides no certainty that the creek restoration will be successful. The Project is clearly inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 6.A.8

General Plan Policy 6.A.8 states that where the stream environment zone has previously been modified by channelization, fill, or other human activity, the County shall require project proponents to restore such areas by means of landscaping, revegetation, or similar stabilization techniques as a part of development activities.

The Project blatantly violates this General Plan Policy. Squaw Creek is channelized within the Plan Area. While the Project would purportedly maintain a 100-200 foot wide corridor for the Creek, the Project does not include measures intended to revegetate or otherwise stabilize Squaw Creek, outside of limiting the types of structures that may be constructed within the Creek Preserve. *See* Specific Plan 7-4 – 7-9. As discussed previously, the DEIR lacks the evidentiary support that the Squaw Creek restoration project and/or the attempts to revegetate the riparian habitat will be successful. The Project is inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 6.C.1

General Plan Policy 6.C.1 calls for the County to identify and protect significant ecological resource areas and other unique wildlife habitats critical to protecting and sustaining wildlife populations. Significant ecological resource areas include the following: (a) Wetland areas including vernal pools; (b) Stream environment zones; (c) Any habitat for rare, threatened or endangered animals or plants; (d) Critical deer winter ranges (winter and summer), migratory routes and fawning habitat; (e) Large areas of non-fragmented natural habitat, including Blue Oak Woodlands, Valley Foothill Riparian, vernal pool habitat; (f) Identifiable wildlife movement zones, including but not limited to, non-fragmented stream environment zones, avian and mammalian migratory

routes, and known concentration areas of waterfowl within the Pacific Flyway; (g) Important spawning areas for anadromous fish.

The Project is in clear violation of this Policy. As explained in section I.B.2 (biological resources) of this letter, the Project not only fails to protect the unique habitats of several endangered and threatened species, it actively destroys habitats. In fact, the Project would result in the destruction of habitat for the federally endangered Sierra Nevada yellow-legged frog (SNYLF), yet the DEIR proposes no mitigation for this loss of habitat. The Project is blatantly inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 6.C.2

General Plan Policy 6.C.2 states that the County shall require development in areas known to have particular value for wildlife to be carefully planned and, where possible, located so that the reasonable value of the habitat for wildlife is maintained.

The Project violates this General Plan Policy. The Project site is located on proposed Critical Habitat for the SNYLF. The Project site also has particular value for other sensitive species including special-status birds (northern harrier, long-eared owl, California spotted owl, and northern goshawk), Sierra Nevada mountain beaver, Sierra Nevada snowshoe hare, spotted bat, pallid bat, western red bat, and Townsend's big-eared bat. The Project further encroaches into and destroys valuable habitats for these species. The Project is inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 6.C.5

General Plan Policy 6.C.5 states that the County shall require mitigation for development projects where isolated segments of stream habitat are unavoidably altered. Such impacts should be mitigated on-site with in-kind habitat replacement or elsewhere in the stream system through stream or riparian habitat restoration work.

The Project is flatly inconsistent with this General Plan Policy. As discussed above, the DEIR lacks evidentiary support for its conclusion that impacts to stream habitats would be fully mitigated. In addition, the DEIR provides no evidence that wetland and riparian mitigation would even occur on site. *See* DEIR at 6-47 ("If the project applicants elects to provide all or a part of wetland or riparian mitigation off-site,

and off-site mitigation has been determined to be acceptable to the County…"). The Project is clearly inconsistent with this General Plan Policy which also constitutes a significant impact.

General Plan Policy 6.C.6

General Plan Policy 6.C.6 states that the County shall support preservation of the habitats of threatened, endangered, or other special status species. Where County acquisition and maintenance is not practicable or feasible, federal and state agencies, as well as other resource conservation organizations, shall be encouraged to acquire and manage endangered species' habitats.

The Project violates this General Plan Policy because it would encroach into the habitats of endangered and other special state species. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 6.D.14

General Plan Policy 6.D.14 states that the County shall require that new development avoid ecologically-fragile areas (e.g., areas of special status, threatened, or endangered species of plants and riparian areas). Where feasible, these areas should be protected through public or private acquisition of fee title or conservation easements to ensure protection.

The Project violates this General Plan Policy because it would encroach into ecologically fragile areas, including the habitats of endangered and other special status species. Despite destroying habitat for sensitive wildlife species such as the SNYLF, the Project proposes no mitigation for the loss of this habitat. For this reason, the Project does nothing to "ensure protection" of these habitats. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 4.E.10

General Plan Policy 4.E.10 states that the County shall strive to improve the quality of runoff from urban and suburban development through use of appropriate site design measures including, but not limited to vegetated swales, infiltration/sedimentation basins, riparian setbacks, oil/grit separators, rooftop and impervious area disconnection, porous pavement, and other best management practices (BMPs).

The Project violates this Policy. Although the Project purports to include some low-impact development stormwater features, it would, in fact, increase the amount of impervious surface on the site by approximately 4.5 acres. DEIR at 13-76. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 4.E.15

General Plan Policy 4.E.15 requires that the County require that new development in primarily urban development areas incorporate low impact development measures to reduce the amount of runoff, to the maximum extent practicable, for which retention and treatment is required.

The Project would violate this Policy because it would add almost five acres of impervious surface. This implies the Project is not using low-impact development measures "to the maximum extent practicable." *See, e.g.*, DEIR at 13-77 – 13-78. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 6.A.11

General Plan Policy 6.A.11 states that where a stream zone has previously been modified by channelization, fill, or other human activity, the County shall require project proponents to restore such areas by means of landscaping, revegetation, or similar stabilization techniques as a part of development activities.

The Project clearly violates this Policy because although the Project would widen the existing corridor for the channelized Squaw Creek in some locations, the Project does not include measures intended to revegetate or otherwise stabilize the creek, outside of limiting the types of structures that may be constructed. In fact, the DEIR does not provide any assurance that the Squaw Creek restoration effort would be successful. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 6.A.13

General Plan Policy 6.A.13 requires the County to protect groundwater resources from contamination and further overdraft by pursuing the following efforts: Identifying and controlling sources of potential contamination; Protecting important groundwater recharge areas; Encouraging the use of surface water to supply major municipal and industrial consumptive demands; Encouraging the use of treated wastewater for groundwater recharge; and Supporting major consumptive use of groundwater aquifer(s)

in the western part of the County only where it can be demonstrated that this use does not exceed safe yield and is appropriately balanced with surface water supply to the same area.

The Project is in direct violation of this Policy. The Project would degrade water quality. The Project includes the construction of new water supply wells, thus consumptive demands would be met by groundwater, not surface water. Moreover, there is no evidence that there is a sufficient amount of water to supply the Project Nor is there any indication that the Project would use treated wastewater to support groundwater recharge. Clearly, the Project does not comply with the measures envisioned by this Policy; these inconsistencies constitute a significant impact.

(iii) The Project is Flatly Inconsistent with General Plan Policies Pertaining to Visual Resources.

It is undisputable that the proposed Project – given the height, bulk, and scale of its proposed structures – would irreparably alter the community's character and views of the surrounding mountains. By the DEIR's own admission, the Project's impacts on scenic vistas, the visual character or quality of the site, scenic resources, and light and glare would be significant and unavoidable. DEIR at 2-4. The DEIR's conclusion that the Project would not conflict with the General Plan policies pertaining to visual resources would be laughable if the implications were not so ominous. Certain of the most egregious violations include:

General Plan Policy 1.K.1

General Plan Policy 1.K.1 states that the County shall require that new development in scenic areas (e.g., river canyons, lake watersheds, scenic highway corridors, ridgelines, and steep slopes) is planned and designed in a manner which employs design, construction, and maintenance techniques that: Avoid locating structures along ridgelines and steep slopes; Incorporate design and screening measures to minimize the visibility of structures and graded areas; and Maintain the character and visual quality of the area.

The Project is in clear violation of this Policy. As discussed in the visual resources section of this letter, the bulk, height, and mass of the Project's structures would substantially alter the character and visual quality of the area. In large sections of the Project site, buildings would be constructed to height limits of 96 feet or even 108 feet (ten stories tall). Currently the Village is developed with one- to four-story

buildings. The vast majority of the Project's structures are so large that screening is not feasible. Clearly, the Project does not comply with the measures envisioned by this Policy; these inconsistencies constitute a significant impact.

General Plan Policy 1.K.5

General Plan Policy 1.K.5 states that the County shall require that new roads, parking, and utilities be designed to minimize visual impacts. Unless limited by geological or engineering constraints, utilities should be installed underground and roadways and parking areas should be designed to fit the natural terrain.

In violation of this Policy, the Project includes large structured parking which would be in stark contrast to the natural terrain. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 1.L.3

General Plan Policy 1.L.3 requires the County to protect and enhance scenic corridors through such means as design review, sign control, undergrounding utilities, scenic setbacks, density limitations, planned unit developments, grading and tree removal standards, open space easements, and land conservation contracts.

Squaw Valley Road was designated a scenic highway in the 1977 Placer County General Plan Scenic Highway Element. As discussed in the visual resources section of this letter, the bulk, height, and mass of the Project's structures would substantially alter views from this scenic highway and would thus violate Policy 1.L.3. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 1.F.3

General Plan Policy 1.F.3 states that the County shall require public facilities, such as wells, pumps, tanks, and yards, to be located and designed so that noise, light, odors, and appearance do not adversely affect nearby land uses.

The Project is blatantly inconsistent with this Policy. The Project would develop the western portion of the site with industrial land uses. Machines, equipment and massive propane storage tanks would be located directly adjacent to existing land uses. The noise, light, glare and odors from this unsightly equipment would adversely affect

the local community as well as the region. The Project's clear inconsistency with this General Plan Policy also constitutes a significant impact.

(iv) The Project is Inconsistent with General Plan Policies Pertaining to Cultural Resources.

Notwithstanding the fact that the Project would result in the demolition of historically significant buildings, an impact that the DEIR identifies as significant and unavoidable, the DEIR never bothers to analyze the Project's consistency with the following General Plan policies: As discussed below, the Project is inconsistent with the County's General Plan policies call for the preservation of historic resources.

General Plan Policy 1.D.10

General Plan Policy 1.D.10 states that the County shall encourage the preservation of historic and attractive buildings in existing downtowns/village centers, and encourage new development to enhance the character of downtowns/village centers.

The Project would be in clear violation of this Policy, as its approval and construction would result in the destruction of historic structures associated with the 1960 Winter Olympics. Also, rather than enhance the character of the existing Squaw Valley Village, the Project would substantially alter the character by introducing buildings that are dramatically out of scale with the existing buildings. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 5.D.6

General Plan Policy 5.D.6 states that the County shall require discretionary development projects to identify and protect from damage, destruction, and abuse, important historical, archaeological, paleontological, and cultural sites and their contributing environment. Such assessments shall be incorporated into a countywide cultural resource data base, to be maintained by the Department of Museums.

The Project is inconsistent with this Policy. As discussed above, the Project would destroy all but one of the remaining Olympic buildings. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

(v) The Project is Flatly Inconsistent with General Plan Policies Pertaining to Risks from Fire Hazards.

The DEIR fails to discuss or acknowledge the Project's inconsistency with the following policies intended to ensure that development in high-fire-hazard areas be designed to minimize public safety risks:

General Plan Policy 8.C.1

General Plan Policy 8.C.1 requires the County to ensure that development in high-fire-hazard areas is designed and constructed in a manner that minimizes the risk from fire hazards and meets all applicable state and county fire standards.

The Project is blatantly inconsistent with this Policy. The Project site is almost entirely in a zone of very high-fire-hazard severity. By allowing the area's roadways to operate at LOS F, the Project would expose people to a significant risk of injury or death involving wildland fires. In addition, the Project's traffic would physically interfere with emergency response and evacuation efforts. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

General Plan Policy 8.C.2

General Plan Policy 8.C.2 states that the County shall require that discretionary permits for new development in fire hazard areas be conditioned to include requirements for fire-resistant vegetation, cleared fire breaks, or a long-term comprehensive fuel management program. Fire hazard reduction measures shall be incorporated into the design of development projects in fire hazard areas.

The Project would appear to conflict with this Policy as we can find no evidence that the Project includes fire breaks, fire-resistant vegetation, or other forms of fuel management. The Project's inconsistency with this General Plan Policy also constitutes a significant impact.

(b) Squaw Valley General Plan and Land Use Ordinance.

The applicable community plan covering the Project area is the 1983 Squaw Valley General Plan and Land Use Ordinance ("SVGPLUO" or "Ordinance"). The SVGPLUO is both a community plan document that establishes policies that build on the policies found in the Placer County General Plan, and a zoning document that establishes

land use regulations and development requirements. The Ordinance contains important information regarding the community's values and character. In fact, it is this document that serves as an important backdrop to one of the fundamental questions before the County: What kind of development should be permitted on the Project site?

The DEIR asserts that the SVGPLUO contains existing land use designations applicable to the plan area that not only allow for, but also encourage, further ski resort development with the goal of developing a year-round destination resort. DEIR at 4-21. Although the Ordinance does in fact encourage the development of a destination resort at Squaw Valley, the DEIR conveniently fails to mention why the Ordinance seeks this type of project – to reduce the traffic congestion that was already plaguing the Valley. Developing a destination resort was intended to *reduce* present peak traffic:

> The major challenge for the 1983 General Plan is to find a type of development which will not aggravate present or future traffic projects. The destination resort concept, in theory, appears to meet this criterion.
>
> Traffic projections assume management of new condominium and hotel units as a destination resort. The combined effect of such management practices is assumed to be a 50% reduction in peak hour traffic generation. If these units are not to be managed in this manner, the potential number of such units must be reduced by 50% to keep peak-hour traffic within acceptable service levels.

Ordinance at 43, 44 (emphasis in original). The proposed Project would not, of course, reduce traffic by 50%. Instead, as discussed above, the Project would cause gridlock conditions on many of the area's intersections and highways; impacts that the DEIR identifies as significant and unavoidable.

In addition to the Project's clear conflicts with the SVGPLUO relating to transportation, the Project also violates the Ordinance's numerous provisions intended to protect the environment:

- The Ordinance is clear that "no further encroachments of buildings, impervious surfaces, or other development activity … should occur on the lands designated in the Plan as 'Conservation Preserve.'" Ordinance at 19. Rather than adhere to this strict policy, the Project proposes to redesignate

and develop lands that are currently designated as Conservation Preserve. DEIR at 4-22. As part of the development on Conservation Preserve lands, the Project would convert more than 12 acres to non-forested uses. *Id.* at 4-31. This redesignation of Conservation Preserve lands is a clear violation of the SVGPLUO which also constitutes a significant impact of the Project.

- The SVGPLUO clearly states that "in an ecologically sensitive area such as Squaw Valley, development beyond a certain capacity will damage the recreational and living experience of current and future users." Ordinance at 7. As discussed above in the context of the Project's inconsistencies with the General Plan's provisions relating to traffic and visual resources, there can be no doubt that the Project's traffic, visual effects and noise would irreparably alter the living experience of Squaw Valley residents and users of the resort. The Project is blatantly inconsistent with the Ordinance which also constitutes a significant impact.

- The SVGPLUO states that the visual attributes of the Squaw Valley environment are one of its most important characteristics. Ordinance at 17. The document further acknowledges that visual and environmental quality control in Squaw Valley has not been given the attention it deserves by both the private and public sector. *Id.* at 54. To remedy this, the Ordinance contains guidelines and planning principles intended to ensure sound conservation and development practices. The Ordinance further states that both the quality and quantity of development must be planned to conserve, protect, and enhance the aesthetic, ecological, and environmental assets of Squaw Valley. SVGPLUO at 4. It is evident that provisions such as these were developed explicitly to prevent the approval the type of development proposed by this Project. Development of a massive indoor amusement park and high-rises, for example, would irreparably harm the aesthetic, ecological and environmental assets of Squaw Valley. The Project is blatantly inconsistent with the Ordinance which also constitutes a significant impact.

Accordingly, just as this Project plainly conflicts with General Plan policies, so too it directly violates the SVGPLUO's clear intent to protect and preserve Squaw Valley from over-development. Approval of the Project would allow the exact scenario the Ordinance and the General Plan seek to avoid, and the EIR's failure to analyze the critical inconsistencies and resulting significant impacts is a fatal flaw.

(c) The Project is Inconsistent With Regional Goals to Redevelop Aging Town Centers.

As explained in other sections of this letter, this Project would have impacts on the Tahoe Basin, even though the Project itself is located outside of the Basin. CEQA demands that a lead agency take a regional perspective when analyzing project impacts. *Citizens of Goleta,* 52 Cal. 3d at 575. Here, the DEIR does not acknowledge the fact that the Project is inconsistent with adopted regional plans that are intended to improve the quality of regional land uses and the unique natural environment.

The recently updated Tahoe Regional Plan states that "redeveloping existing town centers is a high priority" for the region. Exhibit 27 at 2-2. The Plan recognizes that existing development in the region generally occurred without recognizing the sensitivity of the region's natural resources and states the paramount need for "environmentally beneficial redevelopment and rehabilitation of identified Centers." *Id.* The Placer County Area Plan provides more focus for this priority, identifying Tahoe City and Kings Beach as Town Centers. Placer County Area Plan, attached as Exhibit 35 at 95-96. The Area Plan states a similar policy to "[d]irect development towards Town Centers and preserve the character of surrounding neighborhoods." *Id.* at 105.

Unfortunately, the Project directly contradicts this regional priority. The Project simply does not follow the stated policies of the County and the Tahoe Regional Planning Agency. The Project site is located seven miles northwest of the town center of Tahoe City. DEIR at 3-1. Thus the Project captures redevelopment potential that could otherwise be directed towards Tahoe City and Kings Beach. The County has a responsibility to analyze the effect that the Project would have on the redevelopment potential of the Town Centers and the vision of TRPA's Regional Plan. Because the DEIR fails to recognize the inconsistency of the Project with these Town Center redevelopment policies, it fails to analyze whether the Project would have a significant effect on these Town Centers. Approval of the Project would result in development that prevents the County's fulfillment of its stated policy.

12. The DEIR's Analysis of and Mitigation for the Project's Population, Employment, and Housing Impacts Are Inadequate.

For a project as large as the one proposed here, it is especially important that the DEIR comprehensively identify and analyze its impacts on population, employment, and housing demand. When a project draws new people to an area, the increased population is likely to require new services and new housing, which will impact the environment.

CEQA requires that an EIR analyze these impacts. California courts have established a framework for considering population-related impacts. When analyzing these impacts,

> [an EIR] should, at a minimum, identify the number and type of housing units that persons working within the [p]roject area can be anticipated to require, and identify the probable location of those units. The [EIR] also should consider whether the identified communities have sufficient housing units and sufficient services to accommodate the anticipated increase in population. If it is concluded that the communities lack sufficient units and/or services, the [EIR] should identify that fact and explain that action will need to be taken . . . .

Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 370. Once the EIR determines the action needed to provide sufficient housing and services, CEQA then requires it to examine the environmental consequences of such action. For example, as discussed previously, the California Supreme Court held that where a new development would need an increased water supply, CEQA requires the agency to analyze the environmental impacts of providing that water supply. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 438-47.

A complete analysis of population growth thus requires two distinct, logical steps. First, an EIR must accurately estimate the population growth that a project would cause, both directly and indirectly. Specifically, in this case, the DEIR must estimate the population growth accommodated by new housing and the number of employees that the Project would require, including whether those employees are likely to be new to the region. Guidelines Appx. G § XII(a) (directing analysis of whether project would induce substantial population growth). The DEIR also must consider the growth that a project would *indirectly* cause, whether through stimulating the local economy so that new employment opportunities draw new population or by providing infrastructure that allows new residential construction. Guidelines § 15126.2(d) ("Discuss the ways in which the proposed project could foster economic or population growth . . . .").

The second step in analyzing the impacts of population growth is to consider the environmental impacts of serving that estimated new population. Thus, the EIR must not only evaluate whether a project would "[i]nduce substantial population growth," but also whether such growth would require construction of new housing. Guidelines Appx. G

§ XII(a), (c). If new construction will occur, then the EIR must analyze the environmental impacts of that construction. *See, e.g., Napa Citizens*, 91 Cal.App.4th at 373 (EIR must disclose "environmental consequences of tapping" water resources needed to serve growing population). The EIR must also consider whether the new population would place demands on public services, such as fire protection, law enforcement services, or schools. Guidelines Appx. G § XIII(a). The EIR then must consider the environmental impacts of providing such facilities if they are necessary. *See Napa Citizens*, 91 Cal.App.4th at 373.

Here, the DEIR failed to estimate and analyze indirect population growth caused by the Project. While the DEIR identifies the Project's direct population impacts—the growth from people moving into the housing provided by the Project and from people moving to the area to work at the Project's facilities—it does not disclose that the Project would also indirectly induce additional people to move to the area, which could result in additional potentially significant environmental impacts.

The DEIR incorrectly states that the Project would not indirectly cause population growth because "it would be developed in locations where there is already access to urban services." DEIR at 5-12. However, access to these services does not mean that they would be sufficient to satisfy the demands of the new population. The DEIR acknowledges that both the increased population of short-term vacation residents and the Project's employees "may result in additional demands for housing, goods, and services." *Id.* at 5-12. But then it jumps to the conclusion that the Project would have no indirect impacts on population because "the project would not remove obstacles to additional growth outside of the plan area." *Id.* This is too simplistic of a conclusion, as no single factor determines whether a project will indirectly trigger population growth.

For example, in this case, the population increase—even a seasonal one—would almost certainly require new and expanded services and would inject new money into the local economy. A larger population would increase demand on both emergency services (as discussed below in Section I.B.14) and commercial services like restaurants, grocery stores, and medical care. This increased demand would induce businesses to expand and new businesses would crop up to serve the larger population. This would require new employees and could draw new residents to the area, who would need housing. Indeed, Squaw Valley President and CEO Andy Wirth has touted the fact that the Project will eventually create more than 2,300 jobs. *See* "Squaw Valley ski resort scales back expansion plan," *The Denver Post* (Dec. 17, 2013), *available at* http://www.denverpost.com/news/ci_24741340/squaw-valley-ski-resort-scales-back-

expansion-plan. This is far more than the 574 FTE jobs the Project would directly create—the number that serves as the basis of the DEIR's analysis.

The DEIR errs in not considering the impacts from the Project's indirect job creation. Instead, it states in conclusory fashion that "the economic activity generated by visitors would be largely contained within the commercial components of the project" and thus "induced growth from economic activity . . . would be more limited than if the project did not include commercial development." DEIR at 5-12. While the Project may indeed cater to more of the visitors' needs than if it contained no commercial development, the DEIR does not explain how many or which demands would be met. Nor does it make any mention of how the Project's employees' commercial and service needs would be satisfied. The DEIR should have identified the Project's indirect impacts on population—which would likely expand to meet demands from the Project's new residents and employees—and the environmental impacts of such growth.

Also, the assumptions underlying the DEIR's analysis of the Project's impacts on housing are flawed. Specifically, as discussed previously in Section I.B.1 above, the 55 percent occupancy rate used throughout the DEIR is questionable. For example, the DEIR's occupancy rate assumption is based on historical use of the area, which exhibited some fluctuation in population seasonally. *See* Exhibit 1 at p. 2; *see also* Village at Squaw Valley Economic Impact and Urban Decay Analysis ("EIDA") at Table B-2. However, the DEIR itself belies its own claims that the Project's occupancy will mirror the past, seasonally fluctuating occupancy pattern. Throughout the DEIR, the Project is described as one that will attract year-round visitors, offering both winter and summer recreational opportunities. *See, e.g.*, DEIR at 18-60. The DEIR cannot rely on those historic seasonal occupancy rates to estimate future occupancy of a year-round resort development. Also, seasonal fluctuations in population are irrelevant to determining whether the Project would have a significant impact on housing supply. The analysis must be based on the busiest times of year, when there would be the highest demand for housing because the area would need to have housing available for every person living there at any one time.

With regard to housing for employees, the DEIR states that while the Project is expected to "generate an additional 574 FTE employees annually," assuming 300 employees would reside in on-site housing, there would only be "an average overnight population increase of 111 [employees], assuming a 55 percent occupancy rate on average for the year." DEIR at 5-11. But the assumed 55 percent occupancy rate is based on data about hotel/motel occupancy, not on occupancy of employee housing and

area long-term residential housing. *See* EIDA at Table B-2. The DEIR must explain how it came to a 55 percent occupancy rate assumption for housing for employees.

Finally, the DEIR recognizes that the Project does not include enough housing for employees to meet the housing requirement set by the County's General Plan, which constitutes a potentially significant impact. DEIR at 5-13. However, the DEIR improperly defers mitigation for this impact. As discussed previously, agencies may only defer mitigation under narrowly defined conditions and such condition do not exist here. The DEIR states that to mitigate the impacts of the Project on housing in the area, the project applicant "shall develop a detailed 'VSVSP Employee/Workforce Housing Plan' for Placer County review and approval." *Id.* This plan will "assure" there will be adequate employee housing by "a combination of one or more" actions, including developing on-site or off-site employee housing, dedicating land for needed units, or paying an in-lieu fee. *Id.* The DEIR provides no explanation as to why the applicant cannot now prepare a plan that demonstrates adequate employee housing.

Further, there are no assurances that the future mitigation would be "feasible and efficacious." Merely listing a handful of options that may or may not be selected is not sufficient for decision-makers to determine whether the applicant would provide adequate employee housing. For example, a provision calling for the applicant to pay an in-lieu fee provides no assurance employee housing would in fact be built. CEQA does not condone vague and ineffective mitigation measures.

Finally, the proposed mitigation, if actually implemented, would necessarily involve construction of new housing for employees, which would have a significant impact on the environment in its own right. CEQA requires that if a mitigation measure will cause its own significant effects in addition to the ones caused by the project, the EIR must discuss the mitigation measure's effects. Guidelines § 15126.4(a)(1)(D). Here, the DEIR fails to evaluate the impacts of constructing more employee housing, nor could it without giving any information about the location, size, or design of the buildings.

The DEIR's failure to adequately evaluate the Project's impacts on population, employment, and housing constitutes a serious flaw. The DEIR should be revised to include a comprehensive analysis of these impacts and identify effective and enforceable mitigation for those impacts that are determined to be significant,

13. The DEIR's Analysis of the Project's Growth-Inducing Impacts is Flawed.

CEQA requires that an EIR include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337. A proposed project is either directly or indirectly growth-inducing if it: (1) fosters economic or population growth or requires additional housing; (2) removes obstacles to growth; (3) taxes community services or facilities to such an extent that new services or facilities would be necessary; or (4) encourages or facilitates other activities that cause significant environmental effects. Guidelines § 15126.2(d). While the growth-inducing impacts of a project need not be labeled as adverse, the secondary impacts of growth (*e.g.*, loss of open space/habitat/agricultural lands, air quality, transportation, etc.) may be significant and adverse. In such cases, the secondary impacts of growth inducement must be disclosed as significant secondary or indirect impacts of the project.

In this case, the DEIR acknowledges that the Project is "relatively large and is intended to generate substantial economic activity" and would draw an overnight population of up to 3,625 and up to 574 FTE staff to the Valley. DEIR at 18-60. As discussed previously, these occupancy numbers are questionable and may significantly underestimate the population the Project would bring to Squaw Valley. But even if these numbers are accurate, such a substantial development with the capacity to attract a large population would undoubtedly induce growth in the area, but the DEIR fails to adequately analyze this impact.

First, the DEIR attempts to downplay the significance of bringing new employees to the area, claiming that "the nature of the [on-site employee] housing suggests demands for goods and services would follow what is typical for a transient population versus a permanent residential population, because the employment would be mostly seasonal." DEIR at 18-60. But the claim that employment would be predominantly seasonal is directly contradicted by the immediately preceding paragraph in the DEIR, which states that the "project is intended to be a year-round resort." *Id.* The DEIR fails to explain how a year-round resort would attract only seasonal employees.

Nor does the DEIR explain why it assumes the employees' demands for goods and services would be akin to those of a short-term, recreational visitor. The DEIR claims that the Project's on-site amenities, like a convenience store, are "anticipated to serve the employee population by providing access to necessities and limiting the need to frequent off-site retailers." DEIR at 18-60. But the DEIR does not explain what goods and

services would be provided on site and whether they are sufficient to fully meet the needs of its employee population. Nor does it elaborate on its theory that employees would not want to go off-site, especially in light of the fact that the employees would be long-term residents, who would have different needs than those of the transient resort visitors for whom the Project's commercial development is designed.

Also, the DEIR focuses too narrowly on those employees who would live on-site. It does not discuss the needs of those employees who would not live on-site in the Project's employee housing but who the DEIR recognizes would live elsewhere in the area, including outside of Squaw Valley. *See* DEIR at 18-60. The DEIR provides no rationale for so limiting its analysis. CEQA specifically requires an agency to assess all environmental impacts of a project, even if "the project's effect on growth and housing will be felt outside of the project area." *Napa Citizens*, 91 Cal.App.4th at 369. As the court in *Napa Citizens* stated, "the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." *Id.*

Second, the DEIR fails to discuss the impacts of growth induced by expanding infrastructure. The Project would expand water supply and sewer capacities in the area, thereby removing obstacles to expanding development. The DEIR recognizes as much. DEIR at 18-61. However, the DEIR's discussion of growth-inducing impacts does not describe the potential impacts of removing these obstacles. Instead, it refers readers to the DEIR's cumulative impacts section, which it says describes the impacts of that growth. *Id.* But the cumulative impacts analysis considers the impacts only of likely future projects and does not discuss the likely impacts of currently unplanned growth that would be made newly possible by the Project's infrastructure improvements. The revised EIR must take into account the growth-inducing impacts from the expansion of infrastructure. As part of this analysis, the EIR must include an evaluation of the growth-inducing impacts associated with the eight-mile water supply pipeline to Martis Valley.

Finally, the DEIR fails to consider the likelihood of inducing further recreational and tourism growth in the area. Though the DEIR consistently attempts to minimize the Project's impacts, it also touts the fact that the Project would be a world-class, luxury, year-round recreational destination. Drawing thousands more visitors annually to the area, during all seasons, is very likely to induce development of more recreational opportunities in the area to meet burgeoning demands. The DEIR must disclose the potential impacts of this future tourism-oriented development.

Along these same lines, the DEIR must evaluate the precedent-setting nature of the Project. If approved, the Project would allow a level and intensity of development unanticipated by the Placer County General Plan. Other resorts in the County such as Donner Ski Ranch, Boreal, Sugar Bowl and, of course, Alpine Meadows may request authorization from the County to substantially expand their resorts. The EIR must be revised to analyze the environmental impacts resulting from the potential expansion of these other resorts.

14. The DEIR Fails to Adequately Analyze the Project's Impact on Public Services and Utilities.

The DEIR's discussion of the Project's impacts on public services and utilities is also deficient. First, the DEIR fails to evaluate the environmental impacts of proposed mitigation for the Project's significant impacts on sewer infrastructure and emergency services. CEQA requires that when "a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed," though it need not be in as great of detail as required when analyzing the effects of the Project as proposed. Guidelines § 15126.4(a)(1)(D).

Here, the DEIR does not discuss *at all* the environmental impacts of constructing wastewater detention facilities to mitigate the Project's potentially significant effect of overloading the Truckee River Interceptor during peak flow times. *See* DEIR at 14-36. The DEIR states that the Tahoe-Truckee Sanitation Agency is "currently studying" whether a part of the area's sewer infrastructure (an "interceptor") will accommodate the Project's peak flows, explaining that it may not be able to. *Id.* As an initial matter, this "study" should have been conducted as part of this EIR. Wastewater service is not a mere technicality; without adequate wastewater service the Project cannot proceed. Equally important, if the Project's peak wastewater flows would overwhelm the existing interceptor, the DEIR states that construction of new wastewater detention facilities "shall be incorporated into the Specific Plan." *Id.* But the DEIR fails to disclose the environmental impacts associated with the construction of these new wastewater detention facilities.

Likewise, the DEIR fails to analyze the environmental impacts of constructing a new fire station, which it recognizes as necessary mitigation to ensure the Project does not overtax the area's existing emergency services. *See* DEIR at 14-44. Because the Project would put too great a demand on the existing fire station, by the time the Project is about half completed, a new station must be constructed. DEIR at 14-43. The station

may be built outside the Project area, but the DEIR does not disclose any of its possible environmental effects. These impacts are likely to be significant, as with any new building construction. Instead, it states, vaguely, that building a new station "would have similar environmental effects to other relatively small development projects in Olympic Valley." DEIR at 14-44. Though an EIR may provide somewhat less detail when discussing the environmental impacts of proposed mitigation, the DEIR here provides no useful information at all. Without reference to or description of what impacts those other "small development projects" had, the DEIR fails to disclose information necessary to informed decision-making.

Second, the DEIR's analysis of the Project's impact on parks and recreational facilities is flawed. The DEIR states that because the Project includes new recreation facilities, it will not significantly increase the use of existing ones. DEIR at 14-42. The DEIR makes this claim despite the fact that the Project would draw thousands of new visitors at a time to the area, in addition to the hundreds of employees who would call the area home and seek recreation in their free time. Yet the DEIR does not explain how the Project's planned recreation would satisfy all of these recreational needs without impacting existing facilities.

Further, the DEIR reveals that the Project will actually likely increase use of existing recreational facilities by enhancing public access to backcountry trails, improving trailheads, and connecting paths at the Project to existing trails. DEIR at 14-42. The DEIR nonetheless concludes, perplexingly, that these improvements will have no impact on those recreational resources. If anything, connecting existing trails to the Project's own trail system and improving trailheads and access would encourage *more* people in the area to use existing recreational resources. The DEIR should have analyzed this potential impact.

Third and finally, the DEIR's analysis of cumulative effects on public services and utilities fails to adequately explain how the cumulative impacts of this and other projects would not together significantly contribute to the overtaxing of existing public services and utilities. *See* DEIR at 18-46. Indeed, as discussed above, the DEIR admits that the Project, alone, will significantly impact emergency services in the area. It is basic logic that if the Project would significantly impact a service, the Project together with more projects would also have an impact—a more severe one.

The DEIR's cumulative impacts analysis merely states, vaguely, that utility and public service "providers employ various programs and mechanisms to support provision of these services to new developments." DEIR at 18-46. As examples, the DEIR

references development fees levied by the County on new developments and utilities' connection fees. *Id.* at 18-46. But the DEIR fails to explain how the County's and utilities' fees would be used and whether they would suffice to completely mitigate the cumulative impacts of development in the area. The DEIR cannot rest its analysis on these fees without explaining how they would be used and their projected efficacy.

In sum, the DEIR's approach to analyzing the Project's impacts on public services is lackluster, at best. The revised EIR must include a thorough analysis of these impacts and identify feasible mitigation measures for those impacts determined to be significant.

15. The DEIR's Analysis of the Project's Energy Impacts is Legally Deficient.

The CEQA's Guidelines declare that "[t]he goal of conserving energy implies the wise and efficient use of energy." CEQA Guidelines Appx. F. To achieve this goal, a Project should "(1) decreas[e] overall per capita energy consumption, (2) decreas[e] reliance on fossil fuels such as coal, natural gas and oil, and (3) increas[e] reliance on renewable energy sources." *Id.* Thus, CEQA requires that an EIR discuss the potential impacts of proposed projects on energy conservation. *Id.; see also* Pub. Res. Code § 21100(b)(3). In considering the Project's potential impacts on energy resources, a DEIR must discuss the energy consumption that will occur during both construction and operation of the Project. CEQA Guidelines Appx. F(II)(A). Failure to include an analysis of energy impacts and mitigation measures "preclude[s] informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process." *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 212 (citations omitted).

Here, the DEIR fails to adequately analyze the Project's energy impacts, as required by Appendix F to the CEQA Guidelines. The DEIR's first mistake was basing its determination that Project was sufficiently energy efficient on a comparison of the Project's projected energy consumption to existing developments in the area. DEIR at 14-39. Because the Project would be more energy efficient than those developments, the DEIR concludes that the Project would not wastefully or inefficiently use energy. This is not a workable standard. The DEIR provides no information about when those developments were built nor what sort of technology or procedures are in place there to conserve energy. Without this information, it is impossible to tell whether the Project is energy efficient by today's standards. The DEIR should have measured the Project's energy consumption against only recently constructed or updated, similar developments

that use modern, energy-efficient technology or against a hypothetical model development that uses the latest technology in energy efficiency.

The DEIR also fails to provide an accurate analysis of the Project's transportation energy impacts or provide adequate mitigation, for a number of reasons. First, the DEIR did not identify the number of vehicle trips associated with *construction*—not just operation—of the Project or how much transportation energy would be needed by those trips. Because this impact was not identified, the DEIR could not determine its significance, nor could it "include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy"; this renders the DEIR "fatally defective." *California Clean Energy*, 225 Cal.App.4th at 209.

Second, though the DEIR claims to have identified the energy use associated with vehicular trips generated by the Project (at 14-40), as discussed above in Section I.B.4 (Transportation), the DEIR relies on an inaccurate estimate of trip generation and vehicle miles travelled. Consequently, the DEIR very likely underestimates the extent of the Project's transportation energy impacts. Without an accurate assessment of the Project's transportation-related energy impacts, it is impossible to identify mitigation measures to reduce these energy impacts. *See California Clean Energy*, 225 Cal.App.4th at 210.

Third, the DEIR cannot rely on mitigation for the Project's *greenhouse gas* impacts to satisfy its obligations to mitigate the Project's *energy use* impacts. The DEIR states that "[e]nergy efficiency would be further encouraged through implementation of Mitigation Measures 10-2 and 16-2, which limit emission of ozone precursors and [greenhouse gases]." DEIR at 14-40. But as the court in *California Clean Energy* recognized, "[a]ir quality mitigation is not a substitute for an energy analysis" and it cannot be "assume[d that] the overlap is sufficient under CEQA's study and mitigation requirements." *California Clean Energy*, 225 Cal.App.4th at 208 fn.6.

Another problem with the DEIR's discussion of energy impacts is that it failed to discuss "renewable energy options that might be available or appropriate for the project." *See id.* at 213. In *California Clean Energy*, the court held that CEQA was violated when the "EIR contains no discussion of a potentially significant environmental consideration" like a "discussion or analysis of renewable energy options for [the Project]." *Id.* at 213. Here, the DEIR just states, vaguely, that the Project will "encourage use of alternative energy with the goal of using 25 percent renewable energy," but it provides no explanation of what sort of renewable energy is available nor how it could be used. This

is insufficient to meet CEQA's requirements for analysis of a project's energy impacts. *See id.*

The DEIR also errs because it does not discuss whether there are less energy-intensive methods and equipment for constructing the Project. Instead, the DEIR presents the selected construction equipment and methods as a foregone conclusion. Consequently, neither the public or decision-makers are able to determine whether there may be more energy efficient approaches for Project construction. *See* Guidelines Appx. F(II)(D).

The DEIR also fails to adequately evaluate whether the materials used in construction would be produced in an energy-efficient way. The DEIR makes a single, conclusory statement that "[e]nergy efficiency is also expected for the off-site production of construction materials, based on the economic incentive for efficiency." DEIR at 14-39. The DEIR does not state which materials would be produced in an energy-efficient manner. Nor does it provide any explanation or evidence that it is uniformly economically beneficial to conserve energy when producing construction materials. Indeed, in some areas, cheap and plentiful nonrenewable resources may encourage wasteful manufacturing processes. Energy-efficient and economically efficient are not always synonymous.

Finally, the DEIR fails to conduct the required comparative evaluation to determine whether any of the Project alternatives would result in more or less energy use. Guidelines Appx. F(II)(E). Without comparing the alternatives' energy efficiency, the DEIR prevents the public and decision-makers from making an informed choice between the Project's alternatives.

The DEIR fails to provide a legally defensible analysis of the Project's energy impacts. The document must be revised to provide an accurate assessment of these impacts.

16. The DEIR Fails To Adequately Analyze And Mitigate the Project's Significant Cumulative Impacts.

As the DEIR acknowledges, CEQA requires the lead agency to analyze and mitigate a Project's potentially significant cumulative impacts. CEQA defines cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Guidelines § 15355; *see also Communities for a Better Env't v. Cal. Res. Agency*, 103

Cal.App.4th at 120. An effect is "cumulatively considerable" when the "incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." Guidelines § 15065(a)(3). A proper cumulative impact analysis is "absolutely critical," *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1217, as it is a mechanism for controlling "the piecemeal approval of several projects that, taken together, could overwhelm the natural environment," *Las Virgenes Homeowners Fed'n, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306.

Where the DEIR has failed to analyze or mitigate the Project's cumulative impacts for a given environmental impact, that failure is discussed in conjunction with each issue area addressed above. However, the DEIR's cumulative impact analysis is flawed in several additional respects. First, the analysis includes a "list" of cumulative projects, but that list fails to include all of the relevant probable future projects. For example, as set forth above (Section I.A (project description)), there are two planned projects that are clearly related to the Project: the Squaw-Alpine connector and Project 60. Even if these projects were not considered part of the current Project, at a bare minimum the DEIR must analyze and mitigate the impacts from these planned projects as cumulative impacts. The DEIR's current silence as to these two probable, and clearly related, future projects, is unacceptable.

Second, the DEIR's summary of development from applicable land use plans is too conclusory. The DEIR fails to explain the basis for the projections of future development (to 2039) in Squaw Valley. What is factored in? The DEIR should explain the method used for its calculations.

Third, the cumulative impacts analysis assumes that all proposed mitigation measures will be adopted. DEIR at 18-7. This assumption runs the risk that if any mitigation measures later prove infeasible and the County declines to adopt the measure(s), it will be unclear as to whether cumulative impacts may result or may be more severe than previously disclosed. In that event, the County would need to recirculate the EIR. To solve this issue, the DEIR should additionally analyze cumulative impacts assuming mitigation measures are not adopted.

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

Under CEQA, a proper analysis of alternatives is essential to comply with the Act's mandate that significant environmental damage be avoided or substantially

lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. As stated in *Laurel Heights I*, "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d at 404.

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

1. The DEIR Fails to Analyze an Adequate Comprehensive Alternative to the Project.

After presenting CEQA's required "no project" alternatives, the DEIR offers only one project-wide alternative (the Reduced Density Alternative). The three other "alternatives" (Widened Squaw Valley Road; Preservation of Historical and Wetlands Resources; and Alternative Water Tank Location) all involve modifications to only a small number of project features (which in two cases actually increase, rather than lessen impacts (see *infra*)). Therefore, these three alternatives are more in line with CEQA's requirement to identify mitigation for specific impacts, and they do not contribute to a "reasonable range" of alternatives to the whole Project. *See* Pub. Res. Code § 21100(b)(3), (4); CEQA Guidelines §§ 15126.4, 15126.6. Further, the Reduced Density Alternative does not address the impacts to historical and wetlands resources. The DEIR provides no explanation or analysis as to why these two alternatives could not have been combined to provide a more comprehensive approach to impact avoidance.

While there is no "magic number" for how many alternatives an EIR should examine to present a "reasonable range," at a minimum CEQA requires an agency to examine at least one potentially feasible comprehensive alternative to try to avoid or lessen significant environmental impacts that are central to the Project. *See Watsonville*

Pilots Ass'n., 183 Cal.App.4th at 1089-90 (EIR was deficient for failing to include reduced development alternative that would avoid or lessen the project's primary growth-related significant impacts); *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1285, 1305 (invalidating EIR that failed to discuss any feasible alternative that would lessen the project's primary water supply impact). Further, for a large development project in a sensitive region such as this one, the agency should evaluate more than one such alternative in order to help inform the decision-makers and the public of the potential short and long-term consequences of this project.

As described throughout this letter, there are numerous significant environmental impacts that the DEIR has failed to reveal. However, the DEIR acknowledges that the Project would have at least 23 significant and "unavoidable" environmental impacts. These significant and allegedly unavoidable impacts are all to resources that the Squaw Valley community and entire Tahoe region care deeply about – traffic, visual resources, noise, cultural resources, and climate change. While the Reduced Density Alternative would minimize some of these impacts, it fails to address other key impacts such as cultural impacts. Furthermore, this Alternative would create impacts in other categories by eliminating some of the Project's critical mitigation, including Squaw Creek restoration. CEQA's alternatives analysis is not meant to provide such an impossibly difficult choice. The DEIR must evaluate a potentially feasible alternative that could eliminate or reduce all of the Project's significant environmental impacts (both those disclosed and thus far undisclosed).

The DEIR presents no evidence that a comprehensive alternative that would address all or most of the Project's significant impacts would be infeasible. Indeed, while the DEIR identifies the Reduced Density Alternative as the "environmentally superior alternative," it fails to provide any analysis of the financial feasibility of even that alternative. *See* DEIR at 17-45 (claiming only that "its financial feasibility is not known"). While it is up to the Board of Supervisors to determine the ultimate feasibility of any specific alternative, the DEIR must either examine a comprehensive alternative that would lessen as many of the Project's impacts as possible, or provide evidence that such an alternative is infeasible. *See Center for Biological Diversity v. Cnty. of San Bernardino* (2010) 185 Cal.App.4th 866, 884-85. Such a feasibility analysis is necessary to allow the public and decision-makers to have an open and informed discussion about viable alternatives to the proposed Project.

2. Two of the Alternatives in the DEIR Would Increase Environmental Impacts, Rather Than Minimize Them.

The widened Squaw Valley Road alternative was developed with the intent of avoiding or lessening the Project's transportation impacts, which the DEIR views as unacceptable levels of service ("LOS") on Squaw Valley Road. However, the DEIR fails to acknowledge the Legislature's direction to the Office of Planning and Research ("OPR") to develop new Guidelines for transportation impacts that no longer use LOS as a significance threshold. OPR has already prepared draft Guidelines which instruct agencies to consider how increasing roadway capacity leads to induced demand, which leads to increased environmental impacts in the long-term. Given that there is a recognized shift away from increasing roadway capacity to alleviate transportation impacts, the DEIR should examine at least one alternative that aims to reduce automobile trips rather than providing roadway widening to temporarily alleviate local traffic.

The Alternative Water Tank Location Alternative admittedly causes greater impacts than the proposed Project. The DEIR claims it examined this alternative in case the applicant is unable to purchase the land for the water tank location proposed as part of the Project. However, the DEIR fails to explain why no other alternate location that could reduce, rather than augment, the Project's environmental impacts could be explored. As it stands, an alternative that would increase the Project's environmental impacts does not contribute to a "reasonable range" of alternatives. *See* § 21100(b)(4); Guidelines § 15126.6(a) & (b).

3. The DEIR Should Examine a Project Alternative that Excludes the Mountain Adventure Camp.

The DEIR's rationale for failing to evaluate an alternative (aside from the no project alternatives) that does not include the Mountain Adventure Camp is not supported by substantial evidence. First, the DEIR fails to acknowledge or analyze the water impacts from this feature. As discussed above (Section I.B.1(water supply)), given the current drought, impacts from climate change, and the uncertainty of water availability from the groundwater Basin, the Project would likely result in significant water supply impacts. The Mountain Adventure Camp alone requires 32,170 gallons of water per day. *See* Village at Squaw Valley Water Supply Assessment, 17 June 2014, Table 1 at pdf p. 84. Second, the DEIR claims (at 17-11) that the Mountain Adventure Camp will not attract additional visitors by itself, but would only serve as an amenity for those already on-site. The DEIR provides no evidence, much less substantial evidence, to support this claim.

In sum, the DEIR must be revised and recirculated to provide a reasonable range of alternatives to allow the public and decision-makers to understand what options are available for this site, and whether there is another viable route that would avoid or substantially the Project's numerous significant environmental impacts. A reasonable range must provide at least *one* potentially viable comprehensive alternative that aims to reduce all the Project's major impacts, not the current options that give with one hand and take with the other.

D. The DEIR Must Be Recirculated.

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

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

II. APPROVAL OF THE PROJECT WOULD VIOLATE THE STATE PLANNING AND ZONING LAW AND THE SUBDIVISION MAP ACT.

The State Planning and Zoning Law (Gov't Code § 65000 *et seq.*) requires that development decisions be consistent with the jurisdiction's general plan. General plans establish long-term goals and policies to guide future land use decisions, thus acting as a "constitution" for future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. As reiterated by the courts, "[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law."

Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1336.

To promote coordinated land use policies and practices, state law requires local governments not just to formulate theoretical land use plans, but also to conform their development and land use projects and approvals with those duly certified plans. *Citizens of Goleta*, 52 Cal.3d at 570; *see also* Gov't Code §§ 65860 (requiring consistency of zoning to general plan), 66473.5 & 66474 (requiring consistency of subdivision maps to general plan), and 65359 and 65454 (requiring consistency of specific plan and other development plan and amendments thereto to general plan). It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens for Honest Gov't v. Napa County* (2001) 91 Cal.App.4th 342, 379. The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Napa Citizens*, 91 Cal.App.4th at 379. In addition, a General Plan must be internally consistent. Gov't Code § 65300.5. Thus, the General Plan amendments that are part of this Project cannot cure any inconsistencies between the amended General Plan provisions and other remaining provisions.

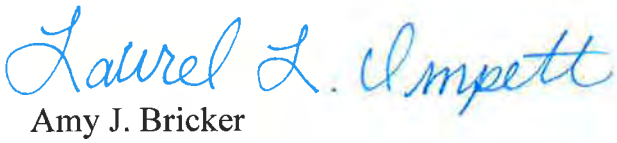
For the reasons described in Section I.B.11 (General Plan Impacts)of this letter, the Project is inconsistent with the General Plan and the SVGPLUO. Because of the Project's glaring inconsistencies with these planning documents, approval of this Project would violate State Planning and Zoning Law and the Subdivision Map Act.

III. Conclusion

As set forth above, the Village at Squaw Valley Specific Plan DEIR suffers from numerous deficiencies, many of which would independently render it inadequate under CEQA. Taken as a whole, the deficiencies of the DEIR necessitate extensive revision of the document and recirculation for public comment. Moreover, as currently designed, the Project conflicts with the Placer County General Plan and Squaw Valley General Plan and Land Use Ordinance. Sierra Watch respectfully requests that the County reevaluate the Project in light of its inconsistencies with County plans and ordinances and make changes to the design to reduce the Project's serious environmental impacts.

Best regards,

SHUTE, MIHALY & WEINBERGER LLP



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Exhibits (see disc):

1	Myers, T., *Review of Draft Environmental Impact Report for the Village at Squaw Valley Specific Plan*, July 13, 2015
2	Gordon-Reedy, P., *Conservation Biology Institute Letter Re Village at Squaw Valley Specific Plan DEIR – review of impacts to sensitive habitats*, July 13, 2015
3	Stallcup, J., *Conservation Biology Institute Letter Re Village at Squaw Valley Specific Plan DEIR – review of impacts to Sierra Nevada yellow-legged frog*, July 2015
4	Liddicoat, N., *MRO Engineers Letter Re Review of Transportation and Circulation Analysis Village at Squaw Valley Specific Plan Draft Environmental Impact Report*, June 18, 2015
5	Squaw Valley Real Estate LLC, *Village at Squaw Valley Specific Plan Draft* excerpts, April 2015
6	Squaw Valley Ski Holdings, *Squaw Valley – Alpine Meadows Base to Base Gondola,* April 2015
7	Associated Press, *Gondola would create 1 of largest US ski areas near Tahoe*, April 13, 2015
8	Herbert, C., *Tahoe Sierra IRWM*
9	Martineau, P., *California Water Year 2014 Among Driest Years on Record*, 2014
10	Ault, T.R., et al., *Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data*, 2014

11	Rice, D., *California's 100-year Drought: Megadroughts a Threat to Civilization*, 2014
12	Cook, B.I., et al., *Unprecedented 21st-Century Drought Risk in the American Southwest and Central Plains*, 2015
13	Diffenbaugh, N.S., et al., *Anthropogenic Warming Has Increased Drought Risk in California*, 2015
14	Office of Governor Edmund G. Brown Jr., *A Proclamation of a State of Emergency*, 2014
15	State of California, *California Drought* Blog
16	Squaw Valley Public Service District, *Water Supply Assessment – Village at Squaw*, SVPSD Newsletter, Summer 2015
17	Illingworth & Rodkin, Inc., *Construction Health Risk Assessment*, December 2013
18	Rechtschaffen, C., *Letter from Attorney General to San Joaquin Valley Air Pollution Control District re: Final Draft Staff Report on Greenhouse Gas Emissions Under CEQA*, November 4, 2009
19	California Natural Resources Agency, *Final Statement of Reasons,* December 2009
20	Sacramento Metropolitan Air Quality Management District, *CEQA Guide*, November 2014
21	PMC, *Northstar Mountain Master Plan Draft EIR, Chapter 16, Greenhouse Gases and Climate Change*, November 2013
22	California Air Pollution Control Officers Association, *CEQA & Climate Change*, January 2008
23	Bay Area Air Quality Management District, *CEQA Guidelines Appendix G,* May 2011
24	San Diego Association of Governments, *Greenhouse Gas Emissions*, San Diego Forward: The Regional Plan Program EIR, April 2015
25	Natural Resources Defense Council, *California Snowpack and the Drought Fact Sheet*, April 2014
26	Flagstaff Dark Skies Coalition, *Dark Matters!, Color Matters!, Outdoor Lighting Codes,* March 22, 2015
27	Tahoe Regional Planning Agency, Regional Plan Excerpts, February 9, 2013
28	Tahoe Regional Planning Agency, *Regional Plan Update Draft EIS Exerpts*, December 12, 2012
29	International Dark-Sky Association, *Pattern Outdoor Lighting Code*, July 2010

30	California State Parks Office of Historic Preservation, *California Historical Landmarks by County*, 2015
31	Sierra Nevada Geotourism Map Guide Project, *Sierra Nevada Geotourism Map Guide*
32	Placer County Community Development/Resource Agency, *Northstar Mountain Master Plan EIR*, Chapter 7, Cultural Resources, November 2013
33	Land Use and Environment Group, Department of Planning and Land Use, *San Diego County Guidelines for Determining Significance Wildland Fire and Fire Protection*, August 31, 2010
34	RT, *Massive explosions rock Florida propane plant*, July 30, 2013
35	Placer County, et al., *Placer County Tahoe Basin Area Plan,* June 2015

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