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Comments sent via electronic mail on 7/17/2015 to cdraecs@placer.ca.gov, references sent via Fedex

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Re: Comments on Squaw Valley Specific Plan Draft Environmental Impact Report

Dear Mr. Krach,

These comments are submitted on behalf of the Center for Biological Diversity (“Center”) on the Draft Environmental Impact Report (“DEIR”) for the proposed Village at Squaw Valley Specific Plan (“Project”). The DEIR fails to adequately analyze a range of environmental impacts and mitigation measures. At a minimum, the DEIR must be revised and recirculated to remedy these deficiencies, so that agency decision-makers and the general public can be properly informed of the Project’s significant environmental effects. The Project must also be revised to resolve its failure to comply with the California Environmental Quality Act (CEQA).

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has more than 900,000 members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Northern California.

While the DEIR's shortcomings are numerous, this letter focuses specifically on the DEIR's analysis of the project's impacts on water resources, biological resources, and greenhouse gases.

I. The DEIR's Water Extraction Information is Flawed and Misleading

California is currently in the midst of an unprecedented drought. Climate change is also expected by many to put a strain on the state's water resources and infrastructure. During this time the public and decision-makers should be especially conscious of new projects and activities that intend to further exploit California's scarce water resources. This DEIR does not sufficiently describe or analyze the Project's expected water extraction activities. Some of the information offered is confusing, contradictory, or misleading. It is essential that the Project's impacts with regards to water extraction are fully known and understood during the EIR process, so that appropriate mitigation measures can be put in place to ensure that this Project does not exacerbate California's already dire water problems.

A. The DEIR's description of water extraction in the Project area is inconsistent and incomplete

An "accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Cnty. of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655 (project description held unstable and misleading).) "However, a curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*San Joaquin Raptor*, 149 Cal.App.4th, at 655.).

An inaccurate or truncated project description is prejudicial error because it fails to "adequately apprise all interested parties of the true scope of the project." (*See City of Santee v. Cnty. of San Diego* (1989) 214 Cal.App.3d 1438, 1454-55.) "Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives." (*San Joaquin Raptor*, 149 Cal.App.4th, at 655.)

The DEIR for the Village at Squaw Creek violates the CEQA requirement to provide an "accurate, stable, and finite" description of the true project, because it is not clear from a reading of the complete document exactly where the Project intends to acquire water for operations, how much water will be extracted from these sources, and how those extractions will affect the sources.

At various locations within the DEIR and the Water Supply Assessment (“WSA”) upon which the DEIR relies, the Applicant describes the Project as relying upon between one and four separate water sources to support its operations. First, the WSA begins its “Water Supply” chapter by declaring that “this WSA assumes that the Project’s total demand will be met with groundwater produced from the [Olympic Valley Groundwater] Basin.” (DEIR Appendix C at 5-1.) However, the WSA goes on to state, in the same chapter, that fractured bedrock groundwater “will continue to be a source of [water] supply,” and that wells accessing this source “are located in fractured bedrock, and not in the alluvial Olympic Valley Groundwater Basin.” (DEIR Appendix C at 5-3.) This makes the fractured bedrock a second source of water for the Project, and means that the WSA’s initial statement confusing and misleading. As explained above, this lack of clarity and consistency in the project description makes the DEIR inadequate under CEQA. (14 Cal Code Regs § 15124.)

If the Project will indeed be relying on continued exploitation of the fractured bedrock groundwater found in the slopes above the Olympic Valley floor, the DEIR should more fully explore the impacts of utilizing this resource. Neither the DEIR nor the WSA describe in sufficient detail how the fractured bedrock groundwater is replenished, or how this replenishment may be affected by the current or future drought, or by climate change. It is therefore impossible for the public or decision-makers to decide whether extractions from this source are appropriate and whether mitigation measures should be required. It is also unclear from these documents whether the bedrock fractures are related to the groundwater or surface water systems found on the opposite side of the ridges on which the fractures are found. It is conceivable that extracting water from one side of a ridge would affect the availability of water on the other side. If the physical structure of these fractures makes that impossible, that should be described and explained. If this type of interaction is indeed possible, then the DEIR should analyze the impact of these extractions on biological and other resources and systems located in other areas affected by these bedrock fractures.

The third water source described in the DEIR is “a small amount of surface water is collected in ponds” for use in snowmaking. (DEIR at 14-3.) However, the DEIR does not describe this source of water in any meaningful detail. There is no information provided in the DEIR about where this surface water comes from, how much is collected, how much will be used, whether and how excess water will be disposed of, how this source may be affected by drought or climate change, where these ponds are located, or whether any biological resources will be affected by extractions from these ponds. There is also no mention of whether the ponds may qualify as “waters of the United States” for the purposes of the Clean Water Act, making their use subject to the attainment of additional federal permits.

The lack of clarity in the DEIR makes it appear like there may also be a fourth source of water that the Applicant plans to use for the project. The DEIR claims that “the resort’s snow making water supply system” does not utilize water from the aquifer, but rather it “relies on a different water source, [and] may provide irrigation water at some time in the future.” (DEIR at 4-31.) Because the DEIR does not specify whether or not this “different source” is one of the sources previously discussed, it is not possible for the public or decision-makers to assess the effects of this water usage and any necessary mitigations. As in the case of the surface water source described above, the DEIR does not sufficiently describe or analyze this source of water. There is no information provided in the DEIR about where this water source comes from, how much will be extracted from the source, how water is extracted from the source, how this source will be affected by drought or climate change, where this source and the associated extraction mechanisms are located, or whether any biological resources will be affected by extractions from this source. There is also no mention of whether the source may qualify as “waters of the United States” for the purposes of the Clean Water Act, making their use subject to the attainment of additional federal permits.

Uncertainty surrounding the number of sources of water for this Project as well as the impacts associated with exploiting each of them undermines the DEIR’s value as an assessment of the environmental impact of the Project and undermines the ability of decision-makers and the public to assess the impact of the Project. This runs counter to the purpose of the DEIR and of CEQA to provide the public and decision-makers with the information necessary to make informed decisions regarding the proposed Project. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

B. The DEIR does not sufficiently describe and analyze future snowmaking activities related to the Project

The DEIR does not fully discuss the future water supply needs that are associated with snowmaking at the Project site. As discussed more thoroughly below, neither the DEIR nor the WSA properly analyze the impact of drought or climate change on the Project. Of special concern for an analysis of the Project’s water needs is the impact that these environmental processes may have on water demand for use in snowmaking. Both drought and climate change can have large impacts on snowfall levels and it is foreseeable that the Applicant would desire to supplement natural snowfall with artificial snowmaking in years where the natural supply of snow is not sufficient for the typical operations of the Project.

The WSA undertakes its analysis of water supply and demand for the Project by assuming that the volume of water the Applicant will use for snowmaking will equal the average amount that they used over the past decade. However, the WSA states only that the Applicant has “indicated a commitment to hold snowmaking production from the Basin to historical volumes.” (DEIR Appendix C at 4-4.) This language does not create an enforceable mitigation

measure, because it is not certain or measurable. This is especially true as the water volume used for snowmaking varies widely from year to year, presumably depending on snow conditions on the mountain. (DEIR at 14-6.) It is unclear whether the “historical volumes” mentioned above are a reference to a multi-year average, a historical maximum, or some other figure.

The lack of clarity surrounding the volume of water that is expected to be used by the Applicants in order to produce artificial snow, particularly in conjunction with the confusion about the source of water used in snowmaking (discussed above), is a violation of CEQA, because it does not provide the public and decision-makers with the information necessary to make informed decisions regarding the proposed Project. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

C. The DEIR’s Water Supply Assessment improperly underestimates the impact of the project on groundwater resources

Independent analysis of the WSA has shown that its model substantially overestimates the amount of water available within the Squaw Creek watershed in a given year at a factor of 10:1. (Tom Myers, Technical Memorandum: Review of Draft Environmental Impact Report for the Village at Squaw Valley Specific Plan (2015) at 2.) The WSA also underestimates the impact that the groundwater pumping proposed in the DEIR would have on drawdown in the alluvial aquifer. (Id.)

The DEIR admits that withdrawing too much water from the aquifer would have serious, negative ecological consequences to Squaw Creek and the biological communities that rely upon it. (DEIR at 13-52 – 13-75.) Since it has been shown that the WSA’s analysis of the sustainability of pumping from the aquifer is fundamentally flawed, the DEIR’s associated mitigation measures need to be redesigned to take into account the smaller amount of water available in the watershed.

Failing to create a new water supply and demand model, or failure to create new mitigation measures that take into account the new and more accurate water supply and demand model violate CEQA by failing to provide the public and decision-makers with the information necessary to make an informed decision, and it would also be an inappropriate deferral of analyzing a mitigation measure. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

D. The Water Supply Assessment is unacceptably outdated

The DEIR’s analysis of the Project’s impacts on water resources is primarily supported by the WSA which is supplied as an Appendix to the DEIR itself. (DEIR at 14-2.) Additionally, many mitigation measures throughout the DEIR rely at least in part on the analyses conducted in

the WSA. (See e.g., DEIR at 6-78–79.) However, the WSA is now over a year old and admittedly lacks data from 2014 and 2015 that would better represent the effects of the current drought. The WSA states:

The Tahoe region and the rest of California are currently in the midst of another multiple year drought that could be more severe than those currently represented in the Model. The effects of this drought have not yet fully occurred and the observation data resulting from these effects (such as water levels, stream flow, etc.) continue to be collected. The Model should be updated when these data becomes [sic] available . . . The current year, 2014, could be the year with the lowest snowfall on record. For this period, the effects of the current drought have not yet been observed in the Basin. Generally, water levels are at their lowest in the early fall, so the specific water levels for 2014 are unknown at this time. In addition, observed data for Squaw Creek are not yet available and are necessary to understanding the Basin response. Therefore, data for this time period could not be included in the modelling [sic] or used to assess water sufficiency. (DEIR Appendix C at 6-6.)

Here, the WSA itself admits that it should be updated and that the assessment was done without the proper data for understanding the response of the Squaw Creek basin. Today there are more and better data available to assess the impacts of the current drought on the Project site, and to defer analyses of these data until after the completion of the EIR process would be inappropriate, as it would fail to create a complete analysis of the Project's impacts and it would deny the public and decision-makers the ability to make a fully informed assessment of the Project. (CEQA Guidelines § 15125(a).)

Additionally, the State of California has enacted new water regulations since the finalization of the WSA that warrant discussion and analysis as they relate to the Project and the Project site. These regulations may alter the Applicant's ability to use of the site as contemplated in the DEIR, or may impact the Applicant's ability to install or use new or existing wells.

Perhaps more significantly, the DEIR does not appropriately take into consideration the effect of climate change on water supply availability or on the availability of natural snow for recreational use at and around the Project site. The DEIR does not address the possibility of climate change reducing the reliability of water supply to the Project. (DEIR at 16-22.) Furthermore, while the WSA gave a qualitative assessment of potential changes in precipitation patterns at the Project site, it did not venture to explain how these changes may coincide or conflict with water demand from the Project or the water needs of local biological communities. (DEIR Appendix C at 7-1). The DEIR also fails to discuss the potential of reduced snowfall as a

result of climate change. (DEIR at 16-22.) The WSA mentions reduced snowfall and climate change, but fails to analyze their potential effects. (DEIR Appendix C at 6-6 (“Decreased snowfall could result in increased artificial snowmaking and changes in water demand due to climatic changes, which add further variables to the non-linear relationship between precipitation and groundwater elevations. Therefore, it is not possible to accurately estimate the volume and timing of recharge to the Basin without appropriate data.”).)

The DEIR should make every effort to fully analyze the likely environmental impact of the Project, including the foreseeable impacts of drought and climate change. Failing to do so deprives the public and decision-makers of the information necessary to make informed decisions regarding the proposed Project. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus*, 48 Cal.App.4th 182, 204-206 (1996) (analysis of significant effects may not be deferred to later developments under the specific plan, nor to later tiered EIRs.).)

E. The DEIR does not provide specific, enforceable mitigation measures

The DEIR indicates that some water conservation measures will be undertaken, but does not commit the Applicant to any measurable, verifiable, or enforceable measures, as required under CEQA. (DEIR at 14-31, 14-35, Appendix C 4-5, Appendix C 4-6.) Given the flaws in the WSA modeling (discussed above), it is likely that projected water use will create significant environmental impacts. These impacts would need to be mitigated by the Applicant in the EIR. Deferring the proposal and analysis of these mitigation measures is inappropriate and violates CEQA. (*Stanislaus*, 48 Cal.App.4th 182, 204-206 (1996) (analysis of significant effects may not be deferred to later developments under the specific plan, nor to later tiered EIRs.).)

II. The DEIR Fails to Sufficiently Assess the Project’s Impact on Water Quality

A. The DEIR does not provide sufficient information to determine the Project’s impact on waters of the United States

The entire Project area is within the Squaw Creek watershed, which includes the main stem and some smaller tributaries to the creek. (Ascent Environmental, Village at Squaw Valley Specific Plan Draft Environmental Impact Report (May 2015) 3-4 & 13-9 [hereinafter “DEIR”].) Squaw Creek then drains into the Truckee River only a few miles downstream from the Project area. The DEIR admits that many of the bodies of water within the Project site should properly be considered “waters of the United States” for the purposes of the Clean Water Act, and that the Applicant will therefore have to receive Clean Water Act Section 404 permits from the U.S. Army Corps of Engineers (USACE) for discharge and fill taking place in the jurisdictional waters as a result of construction activities on the site. (DEIR at 3-40.)

Applicant claims to have already submitted their proposed delineations of the waters of the United States to USACE, but have not had them verified yet. (DEIR at 6-17.) However, without a finalized, definitive delineation of the waters of the United States (including jurisdictional wetlands), the lead agency and the public do not have enough information to evaluate the Project's impacts on those waters and wetlands, assess the sufficiency of the proposed measures to mitigate these impacts, and consider project alternatives. (*Sierra Club v. City of Orange* (2008) 163 CA4th 523, 533). Without a complete and accurate description of the Project, it is not possible to determine the scope of environmental review and provide an accurate analysis of environmental impacts. (*County of Inyo v City of Los Angeles* (1977) 71 Cal.App.3d 185, 199). The EIR should reflect the verified delineation of the waters of the United States, so that any impacts to them can be appropriately assessed and mitigated by the Applicant.

By failing to offer an analysis based on accurate description of existing conditions, the DEIR fails to provide the correct baseline information that would allow the public or decision-makers to evaluate significant adverse impacts the Project will have on the environment, in violation of CEQA. (CEQA Guidelines § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310, 315 (Cal. 2010).) A valid baseline should accurately depict the “physical conditions in the project area as they exist at the time of the [DEIR].” (CEQA Guidelines § 15125(a) & (e).) Because the DEIR fails to provide this baseline, neither it nor the interested public could compare “what will happen if the project is built with what will if the site is left alone.” (*Woodward Park Homeowners Assn, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 687.)

B. The DEIR does not adequately analyze and disclose the type and volume of pollutants that will be discharged into Squaw Creek and other surface waters

While the DEIR devotes some discussion to allowable sediment load in Squaw Creek as a result of construction and operation of the Project, this issue is not fully analyzed and nor are a host of other water pollutants that may be released into Squaw Creek as a result of implementation of the Project. (DEIR at 13-25, 13-47.) CEQA requires that a DEIR disclose and analyze the full scope of the project and its impacts, in order that the public and decision-makers have a full understanding of the proposal. Failing to provide the details necessary for this disclosure fundamentally undermines the purpose of CEQA. (*County of Inyo, supra*, 71 Cal.App.3d 185.)

In this case, the Applicant failed to disclose all of the potentially harmful chemicals it intends to use on the site during the construction and operations phases of the Project, and the extent to which these chemicals are likely to enter Squaw Creek. These chemicals may include, but are not limited to, pesticides and fertilizers. Because such substances are regularly used for similar types of projects, it is foreseeable that they will be used for this Project. To be legally adequate, a project description must include all reasonably foreseeable activities associated with

the project. (*Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376). At the very least, it is reasonably foreseeable that the Project will rely on the use of some of these chemicals to install and maintain landscaping features of the Project. An adequate DEIR would include a description of these expected chemical uses, or explain alternative methods that the Project may plan to use in lieu of these chemicals. In addition to disclosing the chemicals that the Applicant intends to use, the DEIR must include an analysis of the potential environmental effects of this usage, as well as methods to minimize and mitigate these impacts. The Applicant must consider the potential for these chemicals to enter Squaw Creek as runoff and analyze the significant environmental impacts that may result from this runoff.

Additionally, Applicant plans on storing snow from plowing and other snow-removal activities on-site. (DEIR at 13-80.) Plowed snow often contains a number of pollutants picked up from the roadways including vehicle fluids, sediments, and trash. The DEIR accurately identifies the significant environmental impact that is posed by high volumes of chemicals and sediments entering Squaw Creek when this stored snow melts. (Id.) Nevertheless, the DEIR does not fully explain how it will sufficiently minimize and mitigate this potentially toxic impact to Squaw Creek. There are two proposed alternative solutions for pollution from snowmelt and runoff, but each are described extremely briefly. (Id. at 13-84.) These alternatives include “water quality treatment features” and “water quality treatment facilities,” but there are no details provided about those features or facilities, and no analysis provided about their effectiveness in treating the melt water before it enters Squaw Creek. (DEIR at 13-80.) The Applicant's failure to provide detail about these mitigation measures, and to choose the best measure, is inadequate under CEQA. (CEQA Guidelines § 15126.4(a)(1)). When alternative measures are available to mitigate an impact, each must be discussed and the reasoning for choosing a particular measure must be described. (CEQA Guidelines § 15126.4(a)(1)(B)). The evaluation and choice of mitigation measures cannot be deferred to a later time. (Id.)

Additionally, the DEIR claims that the Applicant's commitment to using snow storage “best management practices” (“BMPs”) would also help to mitigate the impact of pollution from melted stored snow. (DEIR at 13-84.) However, these BMPs are not described, but are simply assumed to be sufficient mitigation techniques. The DEIR's reliance on BMPs as it is currently stated in the DEIR violates CEQA requirements because they do not commit the Applicant to any specific conduct or provide the public with adequate information upon which to base a recommendation. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.) The DEIR should be revised to clarify what mitigation is required under its BMPs mitigation for water quality. (DEIR 2-26; 4.2-118.) If the Applicant has specific management practices in mind, the Applicant should list and compel them, or else this proposed mitigation is invalid. (CEQA Guidelines § 15126.5(a)(2).)

Such a cursory discussion of mitigation measures to protect water quality does not provide the public or decision-makers with sufficient information to analyze the sufficiency of the proposed mitigation. Furthermore, delaying the decision of which alternative to implement is impermissible to the extent that it defers the DEIR's mitigation analysis and decisions until after the conclusion of the EIR process. (CEQA Guidelines § 15126.4(a)(2); *Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th 200, 236 (Cal. App. 3d Dist. 2011).) In choosing not to fully analyze these potential impacts to water quality, the DEIR fundamentally fails to provide the public and decision-makers with requisite information upon which to base recommendations. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

III. The DEIR's Evaluation of the Impact on Biological Resources is Incomplete and Insufficient

A. The DEIR fails to establish an accurate baseline for Sierra Nevada yellow-legged frog

An EIR must accurately identify the significant impacts would result from a proposed project. (CEQA Guidelines § 15126.2(b).) An EIR must determine significance in relation to an analysis of the physical conditions in the project area as they exist at the time of the notice of preparation. (CEQA Guidelines § 15125(a) & (e); “[T]he significance of a project’s impacts can be ascertained only if the agency first establishes the physical conditions against which those impacts are to be measured.” (Michael H. Remy, et al., *Guide to the California Environmental Quality Act 198* (11th ed., Solano Press 2007).) CEQA then requires the Applicant to compare “what will happen if the project is built with what will happen if the site is left alone.” (Woodward Park, *supra*, 150 Cal.App.4th, at 687.)

The DEIR fails to establish an accurate baseline for the Sierra Nevada yellow-legged frog (“SNYLF”). The SNYLF is listed as endangered under the federal Endangered Species Act (“ESA”). (Endangered and Threatened Wildlife and Plants; Endangered Species Status for Sierra Nevada Yellow-Legged Frog and Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and Threatened Species Status for Yosemite Toad; Final Rule, 79 Fed. Reg. 24,256 (Apr. 29 2014); DEIR.) As is discussed in the DEIR itself, a significant portion of the project site lies within the boundaries of the Five Lakes Subunit (also referred to as Subunit 2D) proposed by the U.S. Fish and Wildlife Service (“FWS”) to become designated critical habitat of the SNYLF. (Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and the Yosemite Toad; Proposed Rule, 78 Fed. Reg. 24,516 (Apr. 25, 2013); DEIR.) The proposed critical habitat encompasses the majority of the western parcel of the project site. (*Id.*)

The DEIR does not include any reliable information about whether or not SNYLF are currently present on the Project site. Rather, the DEIR claims that undergoing a survey for SNYLF is part of a mitigation measure. (DEIR at 6-53.) Given the nature of amphibian life cycles and distribution habits, especially during a drought, a rigorous, multi-year survey should be conducted using extremely rigorous techniques as part of the DEIR process. (Cite?) Currently, FWS is developing a specific survey protocol for SNYLF. (Survey Protocols and Other Guidelines, U.S. Fish and Wildlife Service, Sacramento Fish & Wildlife Office (May 14, 2015; accessed July 9, 2015), https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/es_survey.htm.) Lacking reliable information about SNYLF presence on the Project site, it is impossible for the public or decision-makers to assess the impacts of the Project on the species and determine if the proposed mitigation measures are appropriate or sufficient to protect the endangered frog and its critical habitat. Applicants should engage in a new SNYLF survey using the forthcoming FWS survey protocol before the completion of the EIR process.

By failing to offer an analysis of current SNYLF presence and habitat suitability, the DEIR fails to provide the correct baseline information that would allow the public or decision-makers to evaluate significant adverse impacts the Plan will have on the environment, in violation of CEQA. (CEQA Guidelines § 15125(a); CBE SCAQMD, 48 Cal.App.4th, at 315.) A valid baseline should accurately depict the “physical conditions in the project area as they exist at the time of the [DEIR].” (CEQA Guidelines § 15125(a) & (e).) Because the DEIR fails to provide this baseline, neither it nor the interested public could compare “what will happen if the project is built with what will if the site is left alone.” (Woodward Park, supra, 150 Cal.App.4th, at 687.)

B. The Project will significantly degrade proposed critical habitat for the Sierra Nevada yellow-legged frog

The Project will significantly increase the threats to the Sierra Nevada yellow-legged frog within the Five Lakes Subunit of proposed critical habitat. FWS identifies the threats present within the Subunit as “Fish Presence, Timber Harvest, [and] Recreation.” (79 Fed. Reg. 24,256.) In spite of the current levels of these threats, FWS still proposed protecting a significant portion of the Project site as critical habitat for the SNYLF. (Id.) Thus the portion of the Project site within the SNYLF's proposed critical habitat is an area that the FWS identifies as “essential for the conservation of the species.” (16 U.S.C. § 1532(5)(A).) Rather than working to minimize and mitigate impacts to this important habitat, the Project proposes to intensify two of the FWS's identified threats to SNYLF within the Five Lakes Subunit, and fails to thoroughly discuss the impacts of these changes on SNYLF or its proposed critical habitat.

In discussing the Project's proposed alterations to the physical attributes of Squaw Creek, the DEIR concludes that no mitigation is necessary (beyond assuring the proper implementation of the proposed alterations) because the proposed alterations will create better habitat for trout

within the creek and therefore the alterations are a beneficial impact of the Project. (DEIR at 13-76.) However, elsewhere within the DEIR, the Applicant admits that these trout are invasive species. (DEIR at 6-14.) Furthermore, the DEIR acknowledges that the invasive trout are such efficient predators of SNYLF that it relies on the trout's presence to support its assertion that SNYLF are not breeding in the Project area. (DEIR at 6-51.) (While we agree that fish presence is a serious threat to establishing healthy SNYLF populations, we still believe that it is necessary to undergo a thorough survey as discussed above to determine whether SNYLF are still utilizing the site in some way, in spite of the fish presence.)

The trout found in Squaw Creek are not native, but rather are present because of a century of intentional fish stocking intended to provide recreational fishermen with more opportunities to fish in High Sierra lakes and streams. In recent years, this stocking has been curtailed, due in large part to overwhelming evidence of the immense environmental harms caused by this stocking and litigation brought by the Center against the California Department of Fish and Wildlife. (See *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 230.) State policy now acknowledges that the continued presence of these fish in high elevation lakes and streams is a threat to a native species and that non-native trout should only be stocked in locations where they will not have a negative impact on native species. (Final Hatchery and Stocking Program Environmental Impact Report (EIR) / Environmental Impact Statement (EIS), California Department of Fish and Wildlife, (January 2010, accessed July 9, 2015).)

Applicant claims that the Project's proposed alterations to Squaw Creek, including removing barriers to fish passage and the resulting increase in fish presence, is beneficial to SNYLF. (DEIR at 6-52.) This claim rests on the assumption that SNYLF will benefit from a more naturalistic channel construction. However, this contradicts what the FWS has said about SNYLF habitat. In identifying SNYLF's critical habitat, FWS analyzed the greatest threats to the species, which they deemed to include fish presence, but does not mention stream channelization. (78 Fed. Reg. 24,516.) In fact, FWS believes that fish presence is such a threat to SNYLF, that they suggest the *installation* of fish barriers as a management practice that could greatly benefit SNYLF populations. (Id. at 24,523.) FWS goes on to say that the invasive fish "could prevent or preclude recolonization of otherwise available breeding or overwintering habitats, which is necessary for range expansion and recovery of Sierra Nevada yellow-legged frog." (Id. at 24,540.) Because it contradicts the current scientific consensus and stated governmental policy, the Applicant must provide a more thorough explanation and analysis of how removing fish barriers and strengthening fish populations in Squaw Creek will benefit the SNYLF. (Id. & EIR/EIS.)

Additionally, the Project anticipates greater use of the Project site for recreation. (See a more thorough discussion of increased utilization as a result of the Project below in Section IV.) This would exacerbate another key threat to SNYLF identified by FWS in the Five Lakes Subunit. Recreational activities, including skiing, are a known threat within this portion of the proposed critical habitat. (78 Fed. Reg. at 24,528.) The DEIR fails to mention that any increased recreational use of land within the Subunit would amount to increasing a known threat to an endangered species within its proposed critical habitat. (See DEIR.)

The DEIR fails to explicitly address numerous negative impacts to proposed SNYLF critical habitat, including increased invasive fish presence and increased recreation on the Project site. It also fails to justify its claim that creating better habitat for these invasive fish will result in an environmental benefit for the Project site. In doing so, the DEIR completely and improperly omits addressing significant environmental effects that may result from the implementation of the Project. (CEQA Guidelines §§ 15126.2(a) and 15128; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 399 (CEQA requires an EIR to “attempt in good faith to . . . provide sufficient meaningful information regarding the types of activity and environmental effects that are reasonably foreseeable.”).) It is reasonably foreseeable that these projected impacts will indeed cause harm to SNYLF and the native ecosystem as a whole. The DEIR’s failure to adequately discuss these impacts is therefore in violation of Section 15126.2 of CEQA.

C. The Project does not adequately mitigate its impacts on the Sierra Nevada yellow-legged frog or on the proposed critical habitat

The DEIR must include the full range of potentially significant impacts, as well as reasonably prudent avoidance, minimization, and mitigation measures in the EIR to comply with California Environmental Quality Act’s (“CEQA”) information disclosure requirements. (Cal. Pub. Res. Code § 21000 et seq.) CEQA requires the Applicant to “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Res. Code § 21002.1(b).) Mitigation of a project’s significant impacts is one of the “most important” functions of CEQA. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41 (1990).) Importantly, mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” (*Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

It is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.” (Pub. Res. Code § 21002.) Under CEQA, “[e]conomic unfeasibility is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical.”

(Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587, 600 (internal citation omitted).) Even where an EIR includes some actual discussion of economic infeasibility, it must still be sufficient “to allow informed decision-making.” (*Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal.App.4th 866, 884.*)

Because the Applicant failed to properly assess the impacts of the Project’s streambed reengineering on the SNYLF, it failed to create measures to mitigate those harms to the SNYLF. The applicant must revise the DEIR to include a scientifically-based analysis and discussion of the impacts of its proposed stream work on the SNYLF, as well as mitigation measures that it will use to minimize the project’s significant impacts on the SNYLF and its proposed critical habitat. The DEIR includes a discussion of mitigation measures that will be used to avoid impact to the SNYLF during the construction process, but none that aim to offset the continuing harm the Project will cause, through an increase in invasive fish presence and an increase in recreational use of the site. (See generally DEIR.)

The Applicant neglected to propose a mitigation scheme specific to SNYLF that analyzed or would directly address the project’s harm or the cumulative harm to the endangered SNYLF or its critical habitat.

In its designation of the Five Lakes Subunit of critical habitat, FWS explicitly expressed special concern about the impacts of fish presence and recreational activity within the subunit on the SNYLF. (78 Fed. Reg. at 24,531.) However, nothing in the DEIR addresses the need to mitigate the long-term impacts of these threats to SNYLF and its critical habitat on the project site. Instead, as discussed above, the Project exacerbates both of these threats and provides no mitigation whatsoever. Because it fails to propose mitigation measures for these increased threats, the DEIR fails to reduce Project impacts to SNYLF to less than significant, as required under CEQA. (Pub. Res. Code §§ 21002, 21002.1(b), 21081(a); 14 Cal Code Regs. §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).)

Given the grave threat to SNYLF that is posed by the continued existence of fish in Squaw Creek, and the admission that the Project will likely result in a stronger population of these fish, Applicants should create a mitigation plan for this impact. One potential mitigation measure that should be analyzed is the potential for permanently removing invasive fish from Squaw Creek. It is conceivable that using proven methods and technologies, the fish present in Squaw Creek could be removed and a fish barrier could be constructed to prevent their return. However, the DEIR does not discuss this possible mitigation measure or its ability to minimize the Project’s impacts on SNYLF.

Another mitigation measure that Applicant should analyze is to set enforceable minimum water levels in Squaw Creek, to ensure that water depletions resulting from the Project do not have a greater-than-anticipated effect on the environment. These levels could be set in terms of

either stream flow volume or stream depth, and it would be valuable to assess how using either metric may impact the environment, as some species may require a certain degree of water flow and others may not. Creating an enforceable commitment to maintaining water in Squaw Creek would minimize some of the impacts of the Project.

Applicant should also consider other mitigation measures such as committing to greater and enforceable protections (or improvements) to other areas of SNYLF habitat. Applicant owns other portions of the Five Lakes Subunit and could undertake actions in that area that would better support SNYLF populations in that area. This could potentially serve as a component of mitigation for the impacts of the Project. Applicant could also mitigate the impacts of the Project by acquiring additional SNYLF habitat protected by conservation easements, purchasing mitigation credits, or contributing financially to the rehabilitation of SNYLF habitat elsewhere in its range.

D. The DEIR did not discuss mountain lion presence or require mitigation for this species

Mountain lions are a “specially protected mammal” in California. (Fish & Game Code § 4800(a).) “It is unlawful to take, injure, possess, transport, import, or sell any mountain lion or any part or product thereof.” (*Id.* § 4800(b)(1).)

The DEIR admits that the Project lies within the range of the Loyalton-Truckee Deer Herd. (See e.g., DEIR at 6-14, 6-27, etc.) Mountain lions are known to prefer rocky and mountainous areas, such as the areas in and around the Project site, and are particularly fond of areas that support populations of deer. (California Cougars, U.S. Department of the Interior, Bureau of Land Management (Apr. 26, 2007; accessed July 9, 2015), <http://www.blm.gov/ca/st/en/prog/wildlife/cougar.html>.) Nevertheless, the DEIR does not mention the potential impacts of the Project on mountain lions. (See generally, DEIR.)

By not discussing the presence of mountain lions at the Project site in the DEIR, the DEIR failed to create an accurate baseline for this species, as required by CEQA. (CEQA Guidelines § 15125(a) & (e).) The DEIR should have discussed potential impacts to and suggested mitigation for this species. CEQA’s requirements help ensure that the public and decision-makers that are reviewing and deciding on the Project know the full scope of the project and its impacts. Environmental review that fails to provide these details undermines the fundamental requirement of public disclosure in CEQA. (*County of Inyo, supra*, 71 Cal.App.3d 185.)

Examples of impacts the DEIR should have considered are: (1) the effects of rodenticides on mountain lions, (2) the potential destruction or degradation of mountain lion habitat and corridors, (3) the potential for increased vehicle strikes.

Mountain lions prefer to avoid being near humans, and increased human presence can cause cougars to avoid large portions of their previous habitat. (See Fred G. Van Dyke et al., *Reactions of Mountain Lions to Logging and Human Activity*, 50 J.WILDLIFE MANAGEMENT 95 (1986).) Because these big cats are “shy,” increasing human presence in the Project area can have a large impact on the mountain lion that will be felt well beyond the acres developed in the Specific Plan. (*Id.*)

Furthermore, the DEIR should have discussed the effects of rodenticide bioaccumulation and prohibited its use at Squaw Valley. Research has shown that mountain lions can be poisoned or bleed out after directly ingesting or eating smaller mammals that have been poisoned with rodenticides. (Seth D. Riley et al., *Anticoagulant Exposure and Notoedric Mange in Bobcats and Mountain Lions in Urban Southern California*, 71 Wildlife Management 1874 (2007); Mourad W. Gabriel et al., *Anticoagulant Rodenticides on Our Public and Community Lands: Spatial Distribution of Exposure and Poisoning of a Rare Forest Carnivore*, 7 PLoS ONE 1 (2012).)

The DEIR’s biological resources baseline is invalid because it provided no information or discussion of mountain lions. (Michael H. Remy et al., *supra*, at 198; CEQA Guidelines § 15125(a) & (e); Woodward Park, *supra*, 150 Cal.App.4th, at 687.) Completely ignoring this species in the DEIR fundamentally fails to provide the public and decision-makers with requisite information upon which to base recommendations. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

E. The DEIR fails to provide an adequate baseline for all federally listed species that may be affected by the Project

While the DEIR includes a discussion of some species that may be affected by the Project, no individualized species list was requested from FWS. (DEIR at 6-16, 6-17) The DEIR instead relies on an FWS website that according to its own references section was last updated in 2011, making the data now nearly five years out-of-date. Over the course of five years there can be significant changes in listings under the ESA, as well as species distribution and scientists’ understanding of a species’ life history and requirements. There have also been a number of California species that have been newly-listed in the last five years that would not be reflected in the list relied upon by the DEIR. Additionally, the website that the DEIR relies upon is not accessible from the hyperlink that is included in their references section, making it impossible for a reader to verify that the list as presented in the DEIR reflects even that outdated information. The DEIR should rely upon the most current information available. References cited in the DEIR should be accessible to the public and to decision-makers in order to allow readers to review and consider the information that the DEIR relies upon.

The Project will be required to obtain a Clean Water Act permit from the USACE for alterations to Squaw Creek and other affected waters of the United States. In that process, the USACE will be required to obtain a list of species listed under the Endangered Species Act that may be affected by the Project from the FWS and it will be required to consult with the FWS to determine whether the project is likely to adversely affect any of those species. (16 U.S.C. § 1536(a)(2).) As the production of such a list will be necessary for the completion of the Project, this should be done as part of the EIR process in order to allow the public and decision-makers to fully assess the impact the Project will have on federally listed species.

The DEIR's biological resources baseline is invalid because it did not provide a thorough, accurate, up-to-date list of species that could potentially be affected by the Project. (Remy et al., supra, at 198; CEQA Guidelines § 15125(a) & (e); Woodward Park, supra, 150 Cal.App.4th, at 687.) Utilizing an inaccurate or out-of-date list of species in the DEIR fundamentally fails to provide the public and decision-makers with requisite information upon which to base recommendations. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

IV. The DEIR Fails to Provide an Accurate Assessment of the Project's Impact on Greenhouse Gas Emissions

A. The DEIR uses inconsistent data regarding projected vehicle use in and around the Project and thereby underestimates greenhouse gas emissions attributable to the Project

The DEIR includes significant discussion of transportation infrastructure, traffic flow, and related issues, including the greenhouse gas emissions associated with the Project's anticipated transportation needs. However, the DEIR does not use consistent data or assumptions to discuss these issues, particularly when discussing the number of vehicles that will be accessing the final Project site, and the impact of greater traffic congestion on greenhouse gas emissions.

When discussing the site's need for more transportation infrastructure, the Applicant concluded that the Project would create a demand for an additional 1,263 visitor parking spaces and 183 additional employee parking spaces. (DEIR at 9-7.) As a result, the Project proposes increasing the total parking availability at the Project site to 5,110 spaces. (Id.) Additionally, the DEIR claims that the increased traffic that will result from the greater number of vehicles attempting to access the Project site will yield such a large increase in traffic congestion and vehicle queuing problems that the impacts on local roadways would be "significant and unavoidable." (DEIR at 9-59 & 9-63.) These examples strongly indicate that the Applicant believes that there will be an increase in the number of vehicles accessing the Project site and that the average drive time required for each of those vehicles to reach the Project site will also increase.

However, when the DEIR undertook an analysis of the impact of the Project on greenhouse gas (GHG) emissions, the assumptions used for modeling emissions from vehicles are not in keeping with those discussed above. Rather than calculating the emissions impact by taking into account a greater number of annual vehicle trips as a result of the Project, the GHG emissions model assumed that the total number of annual vehicle trips would be the same before and after completion of the Project. (DEIR at Appendix H.) There also was no apparent consideration of additional GHG emissions resulting from increased traffic congestion or vehicle queuing. (Id.)

The DEIR's various discussions of the Project's impact on vehicles are inconsistent and make it nearly impossible for the public and decision-makers to fully assess the environmental impact of the Project. In this respect, the DEIR fails to inform decision-makers and the public of the true scope of the Project from which all interested parties could assess the direct and indirect environmental effects of the Project. (City of Santee, 214 Cal.App.3d, at 1454-55; San Joaquin Raptor, 149 Cal.App.4th, at 655; Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 83-86.)

B. The DEIR does not sufficiently commit the Project to maintaining current greenhouse gas mitigation measures or to implement new mitigation measures

The DEIR discusses and seems to rely upon greenhouse gas emissions reductions procedures that it utilizes in current operations on the site as part of the baseline analysis. (DEIR at 16-3) Additionally, the DEIR suggests some additional reduction procedures that are being contemplated by the Applicant. (Id.) However, such measures, whether currently in practice or only proposed, must be clearly described and analyzed to provide the public and decision-makers the information needed for an informed understanding of the environmental impact of the Project. If these measures are intended to form part of the GHG baseline analysis, then the Applicant must commit to continuing these programs into the future. If they are intended to be part of the mitigation efforts associated with the Project, then they must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." (Federation of Hillside & Canyon Ass'ns v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1261.)

Conclusion

Thank you for the opportunity to submit comments on this proposed Project. We look forward to working to ensure that the Project and environmental review conforms to the requirements of state law and to make certain that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge you to deny this Project in its current

form. At a minimum, the DEIR must be revised and recirculated to address its deficiencies under CEQA. Please do not hesitate to contact the Center with any questions at the number listed below. We look forward to reviewing the Applicant's responses to these comments in the Final EIR for this Project once it has been completed.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Loda". The signature is written in a cursive style and is placed on a light-colored rectangular background.

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