

**RESPONSE TO JUNE 29, 2012, TOWN OF LOOMIS LETTER, APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT AND APPROVAL OF A VESTING TENTATIVE SUBDIVISION MAP AND CONDITIONAL USE PERMIT FOR THE ORCHARD AT PENRYN PROJECT**

The Town of Loomis submitted an appeal letter dated June 29, 2012 to the Placer County Community Development Resource Agency, which included as attachments, their August 25, 2011 comment letter on the Draft EIR and January 25, 2012 comment letter on the Final EIR. The August 25, 2011 comment letter was previously responded to in the Final EIR (FEIR, pp. 2-26 to 2-35). This document serves as a formal response to concerns raised by the Town of Loomis.

**Comment 1:** The County's response failed to adequately address the Town's comments to the DEIR as required by Public Resources Code section 21091(d)(2) and the CEQA Guidelines section 15088. (See, Letter D of Chapter 2 of the FEIR.) In particular, CEQA Guidelines section 15088(c) provides as follows:

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

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

**Response 1:** **The County disagrees with the Town's assertion that its responses to the Town's comments were summarily dismissed or conclusory. As demonstrated in the Final EIR, the County provided responses equivalent in detail and specificity to the comments made by the Town. In many instances, the County devoted several paragraphs in response to specific proposals and suggestions of the Town. An objective assessment of the record does not support the Town's assertion that the County did not provide the required "good faith, reasoned analysis" required under CEQA. (CEQA Guidelines, § 15088, subd. (c).)**

**Comment 2:** For example, in the third paragraph of comment D-2 at page 2-27, the County states that "Mitigation Measure 14.2a requires that the project applicant make a "good faith effort" at contributing a fair share amount towards modifying the geometry and signal

phasing at this intersection” (emphasis added). The standard for mitigation is not a “good faith effort.” Rather, CEQA requires that mitigation measures be “fully enforceable through permit conditions, agreements, or other legally-binding instruments.” (CEQA Guidelines, § 15126.4(a)(2); see also Public Resources Code, § 21081.6(b).) A mitigation measure must be adopted so that it results in an enforceable requirement. (See *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730.) For example enforceable mitigation measures include a requirement for a project applicant to construct improvements or pay fees.

**Response 2:** **Mitigation Measure 14.2a is compliant with CEQA. The County cannot require more of the project applicant than a good faith effort to contribute its fair share amount of the recommended intersection improvements to the Town of Loomis’s Capital Improvement Program, when there is not currently any agreement between the Town and the County regarding the cross-jurisdictional sharing of traffic mitigation payments for extra-territorial impacts caused by projects in their respective jurisdictions. A fair share payment would be considered as mitigation only if the Town of Loomis is able to demonstrate to the County’s satisfaction that the Town’s Capital Improvement Program covers or will cover the contemplated improvements such that a fair share payment will actually result in construction of the contemplated improvement within a reasonable period of time. Because the Town of Loomis controls what occurs at the intersection, and because the County is uncertain as to whether the Town would be willing to cooperate in the construction of the contemplated improvements within a reasonable period of time (i.e., prior to the issuance of building permits), the impact is conservatively considered significant and unavoidable. CEQA does not require that the County ignore the legal constraints such as another local government’s authority over its own jurisdiction. In fact, CEQA expressly recognizes jurisdictional and legal constraints on a lead agency’s authority as a factor to be considered in determining the ultimate feasibility of mitigation. (CEQA Guidelines, §§ 15091, subd. (a)(2), 15364 [definition of “feasible”] see also *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1.)**

**Comment 3:** The FEIR continues to fail to identify and adopt mitigation measures that will reduce traffic impacts to a less than significant level, even though feasible mitigation measures exist. An EIR must describe significant environmental impacts as a result of a proposed project and identifies ways in which such impacts can be mitigated or avoided. (Public Resources Code §§ 21002.1(a), 21061; CEQA Guidelines § 15121.) Further, an EIR must describe feasible mitigation measures, if any, that can minimize or avoid the significant environmental impacts of a proposed project. (Public Resources Code § 21002.1(b); CEQA Guidelines § 15126.4(a).) Here, feasible mitigation measures exist – the improvements can be developed or installed or the project applicant can be required to pay its proportionate share to the Town to mitigate the impacts of the proposed project.

It is incorrect to conclude in the FEIR that the Project is not required to actually mitigate for its significant impacts, when feasible mitigation measures exist, because there is no existing fee agreement between the Town and the County. (See *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 725-730.) The County cites to *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1 “regarding a

Lead Agency’s responsibilities for extra-territorial intersection improvements.” (FEIR at p. 2-28.) The *Tracy First* case is distinguishable because the improvements at issue were outside of the jurisdiction of the City of Tracy, whereas here, the traffic improvements are outside of the Project but within the jurisdiction of the County as Lead Agency.

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

**Response 3:** The County does not conclude that “the Project is not required to actually mitigate for its significant impacts,” as the Town asserts. In fact, the County proposes a mitigation measure that requires the applicant to cooperate in good faith with the Town in trying to carry out the recommended mitigation by paying its fair share of recommended intersection improvements. This mitigation measure is enforceable in that the County will require the developer to document its efforts to work out an agreement with the Town for payment of its fair share. Notably, the Town never disputes the County’s position that the County has no authority to make the Town implement the improvements. Rather, the Town simply demands that the applicant pay money to the Town with no guarantee that the monies paid will, in fact, be put toward mitigating the impact they are intended to address.

Contrary to the Town’s argument, *Tracy First* is on point. There, the EIR for a proposed shopping center concluded the center would cause substantial traffic impacts at two intersections outside the respondent city’s borders. The county asked the city to require fair share payments towards the cost of upgrading the intersections. The city declined, noting that the county had not adopted plans or programs encompassing the intersections. Absent such plans or programs, “the EIR appropriately concluded that the impact on the intersections was significant and unavoidable. [¶] . . . Without jurisdiction and without a county plan in place, the [c]ity cannot insure that mitigation measures will be implemented, even if funding is required by the EIR. The [c]ity did not fail to proceed in the manner required when it found that the impact on extraterritorial intersections was significant and unavoidable.” (177 Cal.App.4th at p. 938.) In other words, because the neighboring jurisdiction did not have a program that would utilize the funding to implement mitigation, the city was not required to impose a fair share payment. (*Ibid.*) In reaching this conclusion, the court distinguished *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341 on the basis that, in that case, plans existed that included the improvements that would mitigate impacts. (*Id.* at pp. 937-938.)

Here too, the improvements are within the Town’s jurisdiction, so the County cannot guarantee they will be constructed (and thus that the impact would be mitigated to less than significant). The County is requiring the applicant to cooperate with the Town in the fair-share funding for improvements within the Town’s jurisdiction, but since it cannot guarantee the improvements will actually be built, the County

appropriately determined the impacts would be significant and unavoidable.<sup>1</sup> The County, therefore, is justified in not agreeing to require the applicant to provide funds to the Town absent evidence that the improvements will, in fact, be carried out. The County's conservative approach complies with CEQA, and in fact, goes above and beyond CEQA's requirements by requiring the applicant to make a good faith effort to provide a fair-share payment even though no existing Town plans or programs account for the improvements. This conservative approach to impact characterization has been upheld by the courts. (See *Tracy First, supra*, 177 Cal. App. 4th 912 [where there is no plan, enforceable by the agency, that would insure that required mitigation funds would actually go toward mitigation, EIR appropriately concluded that the impact on the intersections was significant and unavoidable]; see also *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028 (SOCA) [where the precise means of mitigating impacts is impractical at the time of project approval, the agency should commit itself to eventually working out such measures as can be feasibly devised, but treat the impacts in question as being significant at the time of project approval].)

Under *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1187, fair share mitigation fees imposed by an agency have been found to be adequate mitigation measures under CEQA to reduce a project's contribution to a cumulative impact to a less than significant level. This holding, however, assumes that there is an existing program by which mitigation measures can be funded on a fair-share basis. (*Id.* at 1188.) While Loomis has a Capital Improvement Program (CIP) for funding traffic improvements in the Town of Loomis, the program is not one that is set up to receive fair-share funding from other jurisdictions.

Therefore, Mitigation Measure 14.2a sets forth the traffic improvements in Loomis that the County would require the Project to make a good faith effort toward contributing its fair share toward funding.

Once the Project is approved, the mitigation is enforceable because the Board will have adopted mitigation measures. (Pub. Resources Code, § 21081.6, subd. (b) [a public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures]; CEQA Guidelines, § 15126.4, subd. (a)(2) [mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding

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<sup>1</sup>/ The Town has previously acknowledged this predicament under CEQA, as the Town's attorney, Don Mooney, stated in a comment letter to the City of Rocklin regarding the Rocklin Crossings project: "The EIR incorrectly assumes that paying pro-rata fees for future road improvements, which may or may not happen, amounts to mitigation. *Paying a traffic fee without any assurance the road improvements will occur, is not adequate mitigation of the Project's significant impacts.* (*Id.* [Rio Vista Farm Bureau Center v. County of Solano (1992) 5 Cal.App.4th 351, 376]; *Kings County Farm Bureau v. City of Hanford* [1990] 221 Cal.App.3d [692] at p. 728 (a commitment to pay fees without any evidence that mitigation will actually occur is inadequate).)" (May 27, 2008 Letter from Don Mooney to Rocklin City Council, page 6, italics added.) Thus, it appears that the Town has at least on one prior occasion acknowledged to a neighboring agency that the uncertainty about whether another agency would implement the recommended improvements, even if paid for them, is a reasonable and allowable basis under CEQA for conservatively concluding that an impact is significant and unavoidable.

instruments].) Therefore, the County is legally bound to require the project applicant to make a good faith effort to work with Loomis to mitigate for the Project's fair share of its impact on this intersection within Loomis, which is demonstrable through the applicant's documentation of those efforts. (See, e.g., *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 447-449 [failure to comply with adopted mitigation measure is a failure to proceed in a manner required by law under CEQA].)

No court has ever held that CEQA could compel a lead agency to pay into another agency's fee program. And such a result would be inherently unjust, as such fee programs could be adopted without any input or approval from the lead agency. Rather, CEQA and the courts have repeatedly recognized that an appropriate fair-share payment is appropriate mitigation for extra-territorial impacts as part of a "reasonable mitigation plan," and nothing more is required. (*City of Marina, supra*, 39 Cal.4th at p. 369; CEQA Guidelines, § 15130.) For each of the reasons discussed above, the County's extra-territorial traffic mitigation complies with CEQA.

**Comment 4:** In its August 25, 2011 letter, the Town explained that the DEIR did not analyze alternative mitigation measures such as a reduction in Project size as a means to reduce traffic impacts. The County dismissed this alternative as a possible mitigation measure because it would not result in the significant environmental impacts being avoided. (FEIR at p. 2-27.) While it is true that CEQA requires implementation of mitigation measures or alternatives to proposed projects that can avoid significant impacts, CEQA also demands implementation of feasible mitigation measures that minimize, substantially lessen, or reduce such significant impacts. (Public Resources Code §§ 21002, 21100(b)(3); CEQA Guidelines §§ 15126.4(a)(1), 15370.) Accordingly, even if a mitigation measure cannot completely avoid the significant environmental impacts, a reduced project size can lessen and alleviate traffic and safety impacts resulting from the proposed project and must be analyzed.

**Response 4:** As explained in the FEIR's response to this comment from the Town (Response D-2), any addition of traffic to an intersection that already operates at an unacceptable LOS is considered a significant impact. Therefore, the addition of even one traffic trip to the intersection in the cumulative condition would be considered a significant impact. With approximately 10 percent of project traffic traveling westbound on Taylor Road, even a development as small as 15 residential units (one unit per acre) could result in a single trip traveling on this portion of Taylor Road. Thus, the significant impact would not be avoided, or minimized, substantially lessened, or reduced. It would still be significant even with an alternative so reduced in size that it would not meet any of the project objectives. The County is not required to consider alternatives that would not meet most of the basic objectives (CEQA Guidelines, § 15126.6, subds. (a), (c)); therefore, it appropriately rejected this suggestion from the Town.

**Comment 5:** CEQA requires that an EIR discuss and analyze any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. (CEQA Guidelines § 15125(d).) Both the DEIR and FEIR fail to discuss the planned gated exit onto Taylor Road and its inconsistency with the Penryn Community Plan, especially

strategy 1b, which provides for pedestrian and bicyclist accessibility along Penryn Road and Taylor Road.

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

**Response 5:** The County disagrees with the Town's belief that the planned gated exit onto Taylor Road creates a safety hazard and disagrees that this feature is inconsistent with the Horseshoe Bar/Penryn Community Plan strategy 1b. As explained in the FEIR in Response D-4, the DEIR considered sight distance at the project driveway on Taylor Road (DEIR, p. 7-14), stating that 605 feet of corner sight distance is necessary and is available. The sight distance requirement is based on rate of travel on Taylor Road. Therefore, there is no expectation that use of the exit-only access point on Taylor Road would create a safety hazard.

Additionally, grading cuts proposed for the exit driveway will match the grade of the new driveway to the elevation of Taylor Road at this intersection and will provide for additional, sufficient clearance (20 feet) under the existing powerlines.

The Town's comments on the FEIR provide no new information or substantial evidence indicating that the details provided in the EIR regarding the adequacy of the sight distance or the sufficiency of the powerline clearance are incorrect or inconsistent with accepted engineering and building standards.

The County further disagrees with the Town's assertion that the Project is inconsistent with the Horseshoe Bar/Penryn Community Plan such that land use impacts would be significant. See the County's responses to Keith Wagner's letter for appellant Stop 150 Apartments for further detailed responses regarding similar claims of planning inconsistency.

**Comment 6:** Similarly, the County's comments at D-7 at page 2-30 of the FEIR confuses the issues of greenhouse gas emissions and ensuring adequate public transportation as a means to achieve consistency with the Penryn Community Plan. The Town does not require provision of public transportation as a means to reduce greenhouse gas emissions, but rather, simply states that a benefit of providing accessibility to public transportation is a reduction in greenhouse gas emissions.

**Response 6:** The County acknowledges that a reduction in greenhouse gas emissions can be an added benefit of providing accessibility to public transportation. That said, the DEIR concludes that the project would result in less than significant greenhouse gas emissions. Additionally, as noted in the FEIR's response to the Town's original

comment on this subject, it is not clear to which Community Plan goal the comment refers, as Goal 8 in the General Community Goals on page 3 of the Community Plan does not match the language that the Town's comment purports to quote, and it does not mention transit. Several other goals throughout the Community Plan do mention transit, and the Project was determined to be generally consistent with the Community Plan (see DEIR, pp. 4-12 to 4-14 and Appendix B to DEIR.) Furthermore, as noted in the FEIR at Response D-7, requiring the Project to be responsible for a substantial modification to bus routing in the project vicinity would not be roughly proportional to the project impact. The Traffic Impact Study prepared for the Project noted that "the addition of the proposed project is not anticipated to have a noticeable effect on this [existing] transit service." (DEIR, App. E, p. 22.) The Project is providing a bus stop at the project entrance along Penryn Road, which is consistent with both the Community Plan and the smart growth principles embodied in other relevant plans such as the SACOG Blueprint. Furthermore, the Project does not impede or constrain the ability to provide additional public transit to the area in the future. Therefore, the County has concluded that the Project is not inconsistent with planning policies regarding public transit and other forms of transportation alternatives.

**Comment 7:** The point of the Town's comment number 4 of its August 25, 2011 letter is that the Project should ensure adequate public transportation access, including bus service along Penryn Road, as means of achieving the Project's stated objective of "provid[ing] attainable housing for working families in the Loomis/Penryn area, thereby reducing commutes to nearby employment centers." (DEIR at p. 2-2.) Further, such modification to the project is required in order to ensure that the Project is consistent with the Penryn Community Plan goal 8. (CEQA Guidelines § 15125(d).) By providing adequate public transportation service, human interaction and a neighborhood identity will be encouraged, as called for by goal 8. Without such public transportation, the Project fails to be in compliance with the Penryn Community Plan, resulting in an inconsistency between the Project and the County's land use plans. The County should conduct further analysis of such inconsistencies and should consider options to mitigate such inconsistencies, such as ensuring bus service along Penryn Road.

**Response 7:** See Response to Comment 6 above.

**Comment 8:** In the last paragraph of comment D-5 at page 2-29 of the FEIR, the County states that even without the Project, there will be cumulative impacts related to traffic along Taylor Road. The FEIR also explains that the Project itself will create significant impacts along Taylor Road. As a result, the Project will contribute to the already existing cumulative impacts. CEQA requires that an EIR must include an analysis of reasonable, feasible options for mitigating or avoiding a project's contribution to significant cumulative impacts. (CEQA Guidelines § 15130(b)(5); see also *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1604.) Therefore the FEIR must analyze cumulative impacts created by the Project along Taylor Road. Appropriate mitigation measures related to such impacts must also be adopted and enforced.

**Response 8:** See Responses to Comments 2, 3, and 4 above.

**Comment 9:** The County refers to, at the second paragraph of comment D-6 at page 2-30 of the FEIR, the “assumed trip distribution pattern described on page 7-10 of the Draft EIR.” The information provided on page 7-10 of the DEIR, including the trip generation rate table at 7-5, provides no information specific to trips to the high school. Instead, the FEIR simply states that the maximum number of peak-hour trips attributed to the Project along Taylor Road is nine. (DEIR at p. 7-13.)

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

**Response 9:** In response to the comments on student generation numbers and potential impacts to schools, as discussed in the Initial Study and on page 1-5 of the Draft EIR, with payment of required school facility fees, the project is expected to have less than significant impacts to schools. The fees are based on student generation rates and the total fee payment amount reflects the student population anticipated to reside within the project. Student generation rates are set by each school district. High school students residing at the project would attend Del Oro High School, which is part of the Placer Union High School District. The student generation rate in this district is 0.2362 students per home. The project is therefore expected to house up to 35 Del Oro High School students. The Loomis Union School District would serve the elementary and middle school students residing at the project site. The student generation rate in this district is 0.343. The project is therefore expected to house up to 51 elementary and middle school students.

In response to the comments on traffic generation figures for Del Oro High School traffic, the County did not simply “fabricate a number” for trips to the high school attributable to the Project. As noted in the DEIR, the estimated trips generated by the Project are based on a Traffic Impact Analysis prepared by Kimley-Horn and Associates and included in the DEIR as Appendix E. That analysis states that a Del Oro High School Traffic Assessment was prepared and considered specifically per the request of the

Town of Loomis. (DEIR, App. E, p. 23.) The analysis noted that although the school likely experiences peak-hour congestion primarily due to the peaking nature of high school traffic, the addition of the proposed project is not anticipated to noticeably affect traffic operations at the school site. (*Ibid.*)

The calculation of the amount of traffic that would travel to or past Del Oro High School during peak hours was based on the trip generation rates and trip distribution patterns documented in the Traffic Impacts Analysis and EIR. Trip generation rates used in the Traffic Impacts Analysis are taken from the Institute of Transportation Engineers (ITE) studies of similar land uses, in which counts are taken of the actual traffic to and from a given land use. Those traffic counts include trips related to school attendance; however, the trip generation rates published by ITE are provided as a single value for an entire project site and no breakdown of the proportion of trips related to specific destinations is given. The ITE rates do not indicate the specific amount of traffic related to school commutes, the specific amount of traffic related to work commutes, the specific amount of traffic related to shopping trips, or any other discrete category of trips.

The County's traffic consultant applied the ITE rates to the proposed Orchard at Penryn project to determine the total number of traffic trips the project would likely generate, and used their knowledge of the area and professional judgment to develop reasonable assumptions regarding how those trips would be distributed onto the existing circulation network. In part, the distribution assumptions reflect the fact that the existing levels of congestion on Taylor Road compared with relatively free-flowing conditions on Interstate 80 would encourage drivers to use the freeway for most trips. This could include trips to drop off or pick up Del Oro High School students. Several other factors influence the number of vehicle trips to and from the high school on Taylor Road, such as: students walking or bicycling, students carpooling, drivers using Boyington to access the high school, and students arriving or leaving early or late due to extra-curricular activities, jobs, or other reasons (thus their travel does not occur during the peak hour). It is also noted that the Town's accounting of four trips per student includes both "drop-off" and "pick-up" periods, while the nine peak hour trips referenced in the EIR account for only one peak hour period (i.e., only the drop-off period or the pick-up period, not both). In summary, while there could be up to 35 high school students residing at the project site, not all of those students would be expected to arrive at or leave Del Oro High School individually in a vehicle that travels on Taylor Road during the peak hour, as asserted by the Town. Given the other available transportation options (including alternate routes), it is reasonable to assume that the proposed project would generate the 9 new trips on Taylor Road that were estimated in the Traffic Impact Study during the peak hour.

The Town's reliance on the Los Gatos memorandum as authoritative with respect to the demographics of this area of Placer County is misplaced. There is no information in either the Town's comment letter or in the Los Gatos memo to support an inference that generation rates would be similar between that jurisdiction and this area of Placer County. In fact, as the Los Gatos memo notes, "[t]he number of students per home from higher density units is almost always lower than in single-family neighborhoods. Actual counts from nearby districts and districts with similar academic

standing confirm fewer students on average per new dwelling as density increases.” (Los Gatos Memorandum attached as Exhibit A to Loomis comments on DEIR, page 1.) Even if the County were to accept the student generation rates used in the Town of Los Gatos memorandum as reliably predictive of high school student generation for the proposed Project, using those rates would not result in a substantially different number of students than the nine predicted in the County’s EIR. The proposed Project is a market-rate apartment complex, so applying the grades 9-12 generation rate used in the memo for “Apartments” (as opposed to “affordable apartment” and “attached condominiums”), the number of high school students generated for the proposed Project with 150 units would be 11.25 (0.075\*150). A potential difference of two students does not signify a substantially more severe contribution to the peak hour high school traffic than was already disclosed in the EIR.

**Comment 10:** The Project has failed to demonstrate that there will be an adequate water supply or that an appropriate water supply assessment was conducted. Impact 12.2 of the DEIR indicates that the Placer County Water Agency (PCWA) has only provided a letter to the project applicant stating that water can be made available to serve the Project’s needs upon execution of a Facilities Agreement and payment of fees. Until the County requires the Project to enter into a Facilities Agreement with PCWA, there is no assurance that there is a sufficient supply of water to serve the Project.

**Response 10:** The DEIR adequately explained how and why the Project would obtain rights to, and supplies of, water. (DEIR, p. 12-12.) Based on the Placer County Water Agency’s letter stating that water would be made available and information in the Urban Water Management Plan indicating that there is adequate water now and in the future to serve the demand generated by the Project, the County’s record contains the requisite substantial evidence to support a conclusion that the Project would not result in the need to develop additional water supplies or cause adverse impacts relating to the construction of new water infrastructure. Neither CEQA nor the California Water Code require the preparation of a Water Supply Assessment for a residential project of less than 500 units (CEQA Guidelines, § 15155; Water Code, § 10910 et seq.). Furthermore, recent case law (of which the Town is presumably aware since it was a plaintiff in the consolidated cases) confirms that this level of documentation satisfies the obligations of a lead agency under CEQA. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 250-251 [“PCWA’S written certification that it currently has sufficient water for this project and all other developments contemplated for the next 20 years satisfies this test”, referring to the standards outlined by California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412].)