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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

BY FAX

SIERRA WATCH,

Petitioner,

v.

PLACER COUNTY; PLACER COUNTY BOARD OF SUPERVISORS; and DOES 1-20,

Respondent.

SQUAW VALLEY REAL ESTATE, LLC; and DOES 21-40,

Real Parties in Interest.

Case No. SCV0038777
[Related to Case No. SCV0038917]

PETITIONER'S OPENING BRIEF

[California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq.: CCP § 1085 (alternatively § 1094.5)]

Date: April 26, 2018
Time: 8:30 a.m.
Dept.: 43
Judge: Hon. Michael W. Jones

Petition Filed: December 15, 2016

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I. INTRODUCTION

This action challenges Placer County's decision to approve a massive new development (the "Project") in Squaw Valley, located in the North Tahoe region of California's Sierra Nevada. The proposed Project would radically transform this environmentally sensitive and cherished mountain region with 850 new hotel, time share, and residential units in a series of tall high-rises, and a 90,000 square-foot indoor waterpark. Because the County relied on a legally inadequate Environmental Impact Report ("EIR") for the Project, its approval violated the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq.[1] and the CEQA Guidelines, California Code of Regulations, Title 14, section 15000 et seq. ("Guidelines").[2]

Petitioner and others repeatedly warned the County that the Project would inflict significant, irreversible harm on the environment and create a grave risk to public safety. Nevertheless, the County approved an EIR for the Project that does not begin to meet CEQA's legal standards of adequacy.

To begin with, the EIR fails to apprise readers of the Project's environmental setting, largely ignoring its potential to degrade the nearby Lake Tahoe Basin, including the Lake's famed clarity. It also neglects to disclose the legal vulnerability of the principal water source for the Project, the Olympic Valley Groundwater Basin. The EIR's incomplete description of the Project's environmental setting alone requires the Court to set aside the Project's approval. *See Cleveland National Forest Found. v. San Diego Assn. of Govs.* (2017) 17 Cal.App.5th 413, 439-40 ("*CNFF II*").

The EIR also summarily dismisses the Project's extremely serious evacuation hazards, even though the site lies in a "Very High" Fire Severity Zone and only one escape road connects it to State Route ("SR") 89. As the Squaw Valley Fire Chief stated, the County's analysis was "rife with generalization and inaccuracy" (AR 2:657-60[3]); its conclusion that the Project poses no safety risk is simply not credible. Similarly, the EIR improperly masks the severity of the Project's noise impacts,

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[1] Except as otherwise noted, all further statutory references are to the Public Resources Code.

[2] The Guidelines "implement the provisions of CEQA" and are afforded "great weight . . . except when a provision is clearly unauthorized or erroneous under CEQA." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2 ("*Laurel Heights I*").

[3] Citations to the Administrative Record shall be indicated by an "AR" followed by the volume number and page number separated by a colon.

even though loud construction activities would occur over 25 years, and it fails to identify or adopt adequate mitigation for the Project's significant traffic, transit, and climate impacts.

Finally, the County committed two fundamental errors at the end of the CEQA process, each of which requires invalidation of the Project approval. First, it refused to recirculate the EIR's climate analysis for public comment even though it had completely revised that analysis after the close of the comment period. Second, the County rejected the EIR's reduced-density alternative based on purported justifications that find no support in the record, and it refused to consider other environmentally superior alternatives proposed by the public.

Because the County abused its discretion in certifying the EIR and approving the Project, a writ of mandate must issue directing the County to vacate its decision.

II. STATEMENT OF FACTS

A. The Environmental Setting of the Project.

The Project site lies in Squaw Valley (also called Olympic Valley), a narrow alpine valley about two and a half miles long and half a mile wide at the base of Squaw Valley Ski Resort. AR 3:1287, 1741. It consists of 93.3 acres covering two parcels—the 84.5-acre Village Parcel and the 8.8-acre East Parcel—and connects to State Route 89 via a single road. AR 3:1745, 1749. The site includes the mouth of Shirley Canyon, a popular hiking spot, and is adjacent to the Tahoe National Forest. *See* AR 3:1753; 4:1827. It is also near Lake Tahoe, one of the nation's most treasured natural resources. *See* AR 3:1639.

The Squaw Valley Ski Resort is internationally known for hosting the 1960 Winter Olympics and for its varied, challenging ski terrain. *See* AR 3:1744; 12:6896. It is adjacent but not physically connected to Alpine Meadows Resort. *See* AR 38:22366, 22369.

B. The Project.

Real Party first proposed a version of the Project in 2011, seeking entitlements to dramatically intensify the level of development in the Valley. *See* AR 3:1642. On October 10, 2012, the County issued a Notice of Preparation ("NOP") of a Draft Environmental Report ("DEIR") for the proposed Village at Squaw Valley Specific Plan and Phase I Project. AR 5:2505. Sierra Watch—among many other agencies, individuals, and organizations—commented on the NOP, urging the County to conduct a thorough environmental review. *See* AR 5:2646-52. The Project was then revised, and in January 2014,

Real Party proposed the Specific Plan that the County eventually approved, with minor modifications, as part of the Project. *See* AR 30:17116-351; 2:1067-3:1250.

As approved, the Project would install massive residential, retail, and resort development across 51 acres in Squaw Valley. AR 3:1747, 1749. On the main Village Parcel, the Project would allow 1,493 new bedrooms—mostly in high-rise condo hotels—including multiple timeshare units at the mouth of Shirley Canyon. AR 3:1747, 1750, 1753. The Project also calls for nine acres of parking structures, an equipment yard, and approximately 274,000 square feet of new commercial space in the Village, including a 96-foot tall, 90,000-square foot indoor water park. AR 3:1752. This entertainment park, dubbed "Mountain Adventure Camp," would include indoor water slides, action rivers, arcades, 30 bowling lanes, simulated sky diving, miniature golf, indoor water skiing, trampolines, and more. AR 2:1114; 3:1752, 1754. The Project would demolish historic Olympic buildings and construct a propane "farm" of up to five 30,000-gallon tanks across two lots. AR 3:1766; 7:3902.

In addition to the main Village development, the Project calls for 300 beds of dormitory-style housing for employees, another parking structure, and 20,000 square feet of commercial space, including both a market and a shipping and receiving center on the East Parcel. AR 3:1752. The entire Project would take 25 years to construct. AR 3:1650.

C. Environmental Review and Project Approval.

On May 18, 2015, the County circulated the DEIR for the Project. AR 3:1644. The document garnered significant attention; over 350 individuals, many conservation groups, and more than a dozen governmental agencies provided comments AR 7:3885-96. Sierra Watch submitted a 130-page extensive critique of the DEIR and attached detailed supporting information and expert reports. *See* AR 39:22850-979. Even with the shortcomings identified in these comments, the DEIR revealed that the Project would cause wide-ranging adverse impacts, including significant impacts on historic buildings, scenic vistas and visual resources, night skies, traffic, and noise. AR 3:1685, 1690-92, 1695, 1697-98, 1712-13.

On April 7, 2016, the County issued the Final EIR ("FEIR"), which included responses to comments received on the DEIR. *See* AR 1:212. Once again, the County received dozens of comments on the FEIR, including comments from Sierra Watch warning the County that it had not corrected the errors identified in the DEIR. *See* AR 7:3885-96; 38:22222-315. Notably, the California Attorney

General also commented, expressing concern that the environmental review did not adequately analyze or mitigate the Project's impacts on the Tahoe Basin or on climate change, two issues of particular concern to the state. AR 38:22207-21.

On May 14, 2016, the Squaw Valley Municipal Advisory Council considered the Project at a public meeting. AR 79:46870-72. Twenty members of the public testified, raising concerns about the Project's short- and long-term impacts on the environment and on the community. Only four people spoke in favor of the development. AR 79:46871. After careful deliberation, the Council recommended denial of the Project. Council members expressed "concerns similar to those voiced during public comment on environmental impacts and the scope of the project as proposed." Importantly, the Council recommended that "serious consideration be given to the project at a level approximately 50% of what is currently proposed." AR 79:46872.

On August 11, 2016, the Placer County Planning Commission held its public hearing on the Project. *See* AR 15:8817-20. The Commission received comments from 98 members of the public, the vast majority of whom opposed the Project. AR 17:10121; *see* AR 17:9897-10082. Despite this overwhelming opposition, the Planning Commission voted four to two to recommend approval of the Project and certification of the EIR. AR 17:10121.

Finally, on November 15, 2016, the Board of Supervisors held a public hearing on the Project. *See* AR 17:9783-85. On November 9, 2016, just six days before the hearing, the County posted on its website approximately 1,000 pages of Project documentation, including new responses to comments, FEIR "errata," and proposed Findings of Fact, including a Statement of Overriding Considerations. *See* AR 38:21994. Faced with this massive volume of new documents, Sierra Watch immediately requested that the Board postpone the hearing to give the public time to review this information. *Id.*

The Board refused and went forward with the hearing on November 15, 2016. *See* AR 17:9783-85. Large numbers of the public attended, and over 100 individuals testified, with the vast majority opposing the Project. *See* AR 16:9460-17:9711. At the hearing, the County announced for the first time the existence of a last-minute memorandum and amendment to the Development Agreement for the Project, which purported to address concerns raised by the Attorney General regarding the Project's impacts to Lake Tahoe. *See* AR 16:9427-29. No member of the public had the opportunity to review the

new documents, let alone comment on them, prior to the hearing.

Despite the widespread opposition, the Board voted four to one to approve the Project. AR 17:9784-85 The Supervisor who represents the Tahoe area—the area most impacted by the Project—voted to deny the Project. *See id.* The approval included adoption of the Village at Squaw Valley Specific Plan, its Development Standards and Design Guidelines, and a Development Agreement. AR 1:7-8, 116-17; 2:1067-68. The approval also included the Project's Water Supply Assessment (AR 3:1255-56), certification of the FEIR, adoption of CEQA Findings of Fact and Statement of Overriding Consideration and a Mitigation Monitoring and Reporting Plan (AR 1:211-13), and related planning approvals (AR 1:113-14; 3:1251-53). After the County filed its Notice of Determination for the Project (AR 1:1), Petitioner timely filed this lawsuit.

III. STANDARD OF REVIEW

CEQA's dual standard of review is well-settled. A court will "determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements,'" while according "greater deference to the agency's substantive factual conclusions." *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (citations omitted). Thus, when reviewing an agency's CEQA compliance, the "court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 ("*Vineyard*").

Whether an EIR "omit[s] essential information," or fails to address an issue, is a procedural issue subject to de novo review. *Banning Ranch*, 2 Cal.5th at 935. By contrast, courts use the "substantial evidence" test to review an agency's "substantive factual conclusions." *Id.* "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, Petitioner challenges the EIR's failure to disclose basic information regarding the Project's environmental setting and impacts on the Lake Tahoe Basin, emergency evacuations, transit, noise, and water supply. For these matters, Petitioner disputes "whether the EIR is sufficient as an informational

document." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 711. The Court must therefore review these claims de novo, as a matter of law. *Banning Ranch*, 2 Cal.5th at 935.

Petitioner also contends the County failed to support its determinations regarding the adequacy of mitigation for the Project's transportation impacts, failed to recirculate the EIR's climate change analysis, and improperly rejected feasible mitigation and alternatives. The "substantial evidence" test applies to these claims. *See, e.g.*, *Napa Citizens for Honest Gov. v. Napa County* (2001) 91 Cal.App.4th 342, 359 (mitigation); *Vineyard*, 40 Cal.4th at 447 (recirculation); *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 598-99 (alternatives).

As the Supreme Court instructed in the landmark *Friends of Mammoth v. Board of Supervisors* case, CEQA must be construed broadly to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (1972) 8 Cal.3d 247, 259 (superseded by statute on other grounds). Moreover, the fact that the EIR here is a programmatic document does not change the court's standard for reviewing its adequacy. As the Court of Appeal recently held, "designating an EIR as a program EIR … does not by itself decrease the level of analysis otherwise required in the EIR. All EIR's must cover the same general content." *CNFF II*, 17 Cal.App.5th at 426 (citations omitted).

Finally, the County's errors and omissions were prejudicial. By preparing an EIR that precluded informed decision-making and meaningful public participation, the County prejudicially abused its discretion. *See Banning Ranch*, 2 Cal.5th at 942.

IV. THE COUNTY FAILED TO COMPLY WITH CEQA.

A. The EIR Omits Critical Information Regarding the Lake Tahoe Basin and Fails to Determine Whether the Project Would Have Significant Impacts on This Resource.

The Project site is just outside the Lake Tahoe Basin, an international destination renowned for its deep, clear lake surrounded by scenic mountains. *See* AR 3:1639. CEQA explicitly recognizes the Basin as having "Statewide, Regional, or Areawide Significance" and thus meriting particular attention in an EIR. Guidelines § 15206(b)(4)(A). The Tahoe Regional Planning Agency ("TRPA")—one of the agencies designated to protect and preserve the Lake Tahoe Basin—has determined the "environmental carrying capacity" for the Basin. That capacity designates the point at which the Basin can no longer sustain the environmental attributes that make it an area of statewide and regional significance. *See* AR

7:4128; *League to Save Lake Tahoe v. Tahoe Regional Planning Agency* (E.D. Cal. 2010) 739 F. Supp.2d 1260, 1265, 1292-93 (affirmed in part and reversed in part on other grounds).

The EIR, however, largely ignores this environmentally sensitive setting. It also fails to determine whether the Project's impacts on the Basin would be significant or to evaluate mitigation to lessen such impacts—even while ultimately admitting the Project would pour 23,842 new vehicle miles traveled ("VMT") into this sensitive area *per day* during peak periods. AR 7:4016.

1. The EIR Fails to Describe the Environmental Setting for the Tahoe Basin.

The first step in an EIR's environmental impact analysis is to identify the applicable environmental setting, which "must include a description of the physical environmental conditions in the vicinity of the project … from both a local and regional perspective." Guidelines § 15125(a). Such information will normally serve as the "baseline" from which an agency will determine whether an impact is significant. *Id.* "Knowledge of the regional setting is critical to the assessment of environmental impacts," and "[s]pecial emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." Guidelines § 15125(c); *see also id.* § 15064(b) ("significance of an activity may vary with the setting"). Courts have repeatedly held that where, as here, an EIR contains an "inadequate description of the environmental setting for the project, a proper analysis of project impacts [i]s impossible." *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729.

Here, the DEIR's environmental setting information includes only a few, scattered geographic data points that fall within the Basin. It provides no information on the current physical conditions of the Lake Tahoe Basin that would enable a reader to assess whether the Basin is reaching its environmental carrying capacity. *See, e.g.*, AR 4:2043-52, 2126-67. In particular, the document lacks any relevant information on (1) the current status of air quality in the Basin, including Basin-wide traffic, VMT, and visibility; (2) water quality and clarity of Lake Tahoe; and (3) scenic resources. *See id.*; *Cadiz Land Co. v. Rail Cycle* (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). Although the FEIR includes one statistic about total VMT in the Basin (AR 7:4016), this

does not satisfy CEQA's robust requirement that an EIR describe the regional environmental setting. *See Banning Ranch*, 2 Cal.5th at 941 (EIR inadequate where reader required to "ferret out" relevant data).

2. The EIR Fails to Determine Whether the Project Would Have Significant Impacts on the Tahoe Basin or to Identify Any Mitigation Measures for Those Impacts.

a. CEQA Requires the Identification of Impacts on the Tahoe Basin.

Under CEQA, an EIR must "identify the significant effects on the environment of a project, [] identify alternatives to the project, and [] indicate the manner in which those significant impacts can be mitigated or avoided." § 21002.1(a); *see also* §§ 21100(b), 21060.5, 21061; Guidelines § 15125(c). The EIR must also analyze a project's significant cumulative impacts, and evaluate mitigation measures or alternatives to lessen such 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. 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). Further, CEQA specifically requires that an EIR evaluate any inconsistencies between the Project and "plans for the protection of the … Lake Tahoe Basin." Guidelines § 15125(d).

Abundant evidence in the record reveals that the Project's addition of a large number of car trips to the Basin—1,353 average daily car trips and 23,842 peak day VMT (AR 7:4016, 4132)[4]—could significantly impact air and water quality in the Basin, including the potential to degrade Lake Tahoe water clarity. As the County ultimately admits, "VMT can [] be related to water quality effects associated with wintertime application of abrasives such as sand to the roadway, which can be crushed by tires and washed into the lake by stormwater runoff and, to a lesser degree, aerial dispersion. Water quality is also affected by atmospheric deposition of pollutants emitted by cars, primarily nitrogen and particulates." AR 2:611; *see also, e.g.,* AR 2:613, 621, 682-83; 39:22503-13.

In order to protect the Basin from such adverse effects of car travel, TRPA has established a

[4] Evidence in the record suggests these numbers are underestimates. *See, e.g.*, AR 7:4129 (TRPA computed 2,686 daily in-basin trips and a range of daily in-basin VMT of 28,800 to 48,700); 8:4370-72. However, even the County's figures demonstrate the Project's significant impacts to the Basin.

Basin-wide cumulative carrying capacity threshold of 2,067,600 VMT; any car trips above that threshold will cause irreparable harm to the Basin. AR 7:4016, 4129. Critically, the Basin is now close to meeting that cumulative tipping point. *Id.* Accordingly, TRPA has set a *project-level* car trip threshold of 200 daily trips, beyond which additional project car trips to the Basin would constitute a significant environmental impact. AR 7:4129.

Under CEQA, the County was required to analyze the Project's impacts on the environmental carrying capacity of the Lake Tahoe Basin, even though the Project lies just outside the Basin boundary. *See, e.g.*, §§ 21002.1(a), 21060.5. As the Supreme Court has stated, "an 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." *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 575; *see also* Guidelines § 15126.6(f)(1) ("projects with a regionally significant impact should consider the regional context" in the alternatives analysis).

b. The EIR Fails to Determine Whether the Project Would Significantly Impact the Tahoe Basin's Sensitive Resources.

Despite CEQA's requirements and record evidence demonstrating the Project's potential to significantly impact Tahoe Basin resources, the EIR entirely fails to assess the Project's individual or cumulative impacts on the environmental carrying capacity of the Basin or plans for its protection. The DEIR adopts neither TRPA's significance thresholds nor any comparable thresholds to determine these impacts. Consequently, it never reaches a significance conclusion regarding the Project's impacts to the Tahoe Basin, or evaluates any mitigation measures or alternatives for such impacts. These omissions violate CEQA. *See Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("[I]n preparing the EIR, the agency must determine whether any of the *possible* significant environmental impacts of the project will, in fact, be significant.")

Many commenters, including Petitioner, TRPA, and the League to Save Lake Tahoe, informed the County that the DEIR's approach was wholly inadequate under CEQA. *E.g.*, AR 7:4128-31; 8:4364-77, 4387-92, 4610. In a dismissive response, the FEIR acknowledged TRPA's environmental carrying capacity thresholds for the Basin. It then immediately claimed that the DEIR's *traffic* discussion was sufficient and that the County "is not required to apply TRPA's threshold standards as part of [its]

consideration of a proposed project located outside the Basin, or evaluate the ability of TRPA to meet the thresholds." AR 7:4033, 4076. But traffic standards are not the same as standards assessing the Project's environmental impacts on the Basin, such as air and water quality impacts.

While the County claims to have discretion in selecting thresholds of significance, courts have long recognized that agencies violate CEQA by choosing thresholds that obscure rather than elucidate impacts of concern. *See, e.g.*, *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1381-82 ("*Berkeley Keep Jets*") (EIR improperly relied on a daily average threshold for noise impacts that failed to provide critical information about nighttime noise events); *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1109 ("notwithstanding compliance with a pertinent threshold of significance, the agency must still consider any fair argument that a certain environmental effect may be significant"). Here, the EIR may not ignore abundant evidence of Basin impacts simply by using rote traffic thresholds that bear no relation to the environmental carrying capacity of the Basin. *See Banning Ranch,* 2 Cal.5th at 936-41 (EIR may not ignore a project's environmental setting and must identify its conflicts with other agencies' plans to protect unique resources); *Cleveland National Forest Foundation v. San Diego Assn. of Govs.* (2017) 3 Cal.5th 497, 515 ("*CNFF I*") (agency cannot ignore science and data underpinning standards, even where the standards are not binding legal requirements).

The FEIR offers two other excuses for the DEIR's omissions (AR 7:4016-17), but neither is tenable. *See* AR 2:619-27, 676-91, 748-50. First, the FEIR asserted that the addition of the Project's VMT would not cause the Basin to exceed its *cumulative* total carrying capacity of 2,067,600 VMT. AR 7:4016-17. Notably, however, the FEIR did not calculate the cumulative VMT from the Project in combination with other past, current, and probable future projects. *See id.*; Guidelines § 15065(a)(3). This failure to calculate cumulative VMT is particularly egregious in light of the County's simultaneous review of the planned massive development for the Martis Valley West Project, which would also generate a large number of trips to the Basin. *See* AR 2:683-86.

Second, the FEIR baldly claims that "Mitigation Measure 9-7 would generate permanent ongoing funding to expand transit services, including service between Squaw Valley and the Tahoe Basin, which would reduce VMT impacts of the project in the Basin." AR 7:4017. But Measure 9-7 was not designed to mitigate impacts on the Basin (AR 4:2040-41), and as explained *infra* (Part C.3), the

measure is insufficient in any event. *See* AR 8:4373-75; 2:625-26. More importantly, an EIR must *first analyze* the severity of the impact, and *then identify* mitigation measures or alternatives to lessen or avoid that impact. *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65 ("'CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount.'") (citation omitted). The EIR here fails to do so.

c. The County's Last-Minute Response Does Not Salvage the EIR.

Perhaps recognizing the failings in the EIR, the County prepared a last-minute "supplemental" response to comments—released just days before Project approval and buried in an attachment to a staff report. This supplement reiterates the response in the Final EIR while adding some information on Lake Tahoe water quality standards and cumulative impacts. AR 2:611-16; *see also* AR 15:8853-54 (staff memo). While this eleventh-hour response finally admits the connection between VMT and Lake clarity, it does not correct the EIR's deficiencies. *See* AR 2:611-16. Notably, the response does not (1) provide complete environmental setting information, or (2) adequately analyze the Project's individual and cumulative significant impacts on the Basin. *See id.*; AR 38:22057-60, 21995-96. Equally important, even if the response had included the required analysis, it is well settled that the EIR itself must contain this information. *See Ukiah Citizens*, 248 Cal.App.4th at 266-67 (subsequent analysis cannot cure deficiencies in EIR); *see also Laurel Heights I*, 47 Cal.3d at 405.

The response provides a host of excuses for the gaping holes in the EIR's analysis, each of which fails. First, the response repeats the FEIR's claim that the EIR's thresholds of significance for *traffic* are sufficient to assess Basin impacts. AR 2:611-16. But the EIR's traffic delay analysis, which is limited to three roadway segments and one intersection in the Basin, never addresses impacts on Basin resources such as water quality and Lake clarity. *See* AR 2:615, 622; 4:2034-38, 2369-70, 2372-74. Second, the EIR points to other programs for improving Lake clarity, such as the Total Maximum Daily Load. AR 2:611-16. But the existence of such programs in no way absolves the agency from conducting the required CEQA analysis; moreover, a CEQA analysis may not be based on a comparison to other plans. *See Communities for a Better Environment v. S. Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320-21. Third, the response cites figures from the DEIR for the County's Area Plan, but that incomplete, flawed data does not indicate that this Project's impacts to the Lake and Basin will not be

cumulatively considerable. AR 2:615-16; 38:21996, 22058, 22106-69.

B. The EIR Fails to Adequately Analyze the Impacts on Emergency Evacuations Despite the Project's Location in a "Very High" Fire Hazard Zone.

An EIR must discuss "health and safety problems caused by [a project's] physical changes" to the environment. Guidelines § 15126.2(a). Here, the EIR fails this requirement because it never apprises readers whether the Project could cause significant impacts on emergency evacuations in the event of a wildfire or other disaster. Instead, the EIR improperly concludes, without analysis, that impacts to public safety are insignificant after mitigation, even under cumulative conditions. AR 4:2391; AR 1:460-61.

Squaw Valley is designated for state and federal protection as a "wildland area[] that may contain substantial forest fire risks and hazards." AR 4:2257, 2265. In recent years, the tree mortality epidemic has only increased these risks. AR 2:773; 39:22693-94. The EIR admits: "Most of the project site and surrounding lands are designated as very high fire hazard severity zone" (AR 4:2257-59)—the most hazardous rating. *See* AR 2:773 fn.7; Gov. Code § 51178. Yet the Project would exacerbate this risk by placing residential and commercial development and a 150,000-gallon propane "farm" within the Wildland Urban Interface. *See* AR 1:222-23; 2:773-77; 4:2257; 8:4692-96. Worse yet, the Project is accessible by a single road (Squaw Valley Road) connecting to SR 89, the only road leading out of the area (AR 4:2274), and both roads would operate at gridlock at peak periods (AR 4:2030-39, 2365, 2369-73). In short, the Project's location and design combine to create a recipe for disaster.

Under CEQA, the EIR must fully evaluate the risks of evacuating the Project area under hazardous conditions. Guidelines § 15126.2(a), App. G § VIII(g)-(h). Such a site-specific analysis logically must include two components. First, it must estimate the number of cars evacuating the Project area and identify any significant impacts caused by that mass evacuation. Second, it must assess the impacts to emergency personnel responding to the wildfire during the evacuation.

Here, the DEIR includes neither component. *See* AR 4:2274; 8:4649-50. The one-page discussion admits that traffic from Project construction would significantly impact emergency evacuation. Then, however, it summarily concludes that preparation of a "Construction Traffic Management Plan" would mitigate this impact to a "less-than-significant level." AR 4:2274. For Project operation, the DEIR merely references a two-page, generic Wildland Fire Evacuation Plan (AR 7:3862-

63), but neither this "plan" nor the DEIR analyzes or identifies mitigation for the Project's emergency evacuation impacts during non-construction periods.[5] AR 4:2274; *cf.* AR 13:7328-85 (San Diego guidelines for evaluating fire risk). Finally, the DEIR summarily concludes, without analysis, that the Project would have no significant cumulative impacts on emergency evacuation. AR 4:2391.

The FEIR provides some additional information, such as revealing that the applicant "is preparing" an Emergency Preparedness and Evacuation Plan, but it does not correct the DEIR's deficiencies. AR 7:3969-70, 4011-14; 2:773-77. For example, the FEIR still does not estimate response times for emergency personnel to access the Project site during an evacuation. *See* AR 7:3969-70, 4011-14. Tellingly, the Squaw Valley Fire Chief criticized the information that was provided as both "unreasonable" and "rife with generalization and inaccuracy." AR 2:657-60.

Given the severity of the fire danger in the area, the FEIR is shockingly deficient. As the document admits, if a wildfire occurred during one of Squaw Valley's summer events, "it is estimated that it could take up to *10.7 hours* for every vehicle present to leave the Valley." AR 7:4013 (discussing cumulative conditions) (emphasis added). Even absent such an event, evacuation could take between *5 hours* (existing plus Project conditions) and *6.5 hours* (cumulative plus Project conditions). *Id.* And the EIR recognizes that the Project would increase current evacuation times by between 2 and 4.5 hours. *Id.*

Nevertheless, the FEIR astonishingly claims that the added delay "does not necessarily generate a safety risk"—and it never changes the DEIR's significance conclusions. *Id.* Moreover, the FEIR does not estimate the time needed for residents to evacuate the entire area *after* the evacuation reaches gridlock conditions on SR 89 and I-80. *Id.*; AR 7:4010.

Nor does the EIR *support* its empty conclusion that the Project would cause no significant impact on emergency evacuations. First, the EIR's time estimates apparently assume that any evacuation would proceed in orderly fashion without unexpected incidents, such as fallen trees blocking roads. *See* AR 7:4013; 18:10297-307. The Squaw Fire Chief bluntly characterized this assumption as "foolish." As he explained, fire is unpredictable and people tend to evacuate "at the last minute when emotions are high and conditions are terrible—visibility is obscured by smoke and exiting residents encounter

[5] The EIR calls for compliance with fire regulations and more staff at the local fire station (AR 4:2275-76), but neither measure addresses a mass emergency evacuation. *See* AR 2:776-78.

emergency apparatus attempting to access affected areas. It is a chaotic and dangerous situation for everyone involved." AR 2:659. Second, even assuming the County's estimates are correct, a 5- to 10.7-hour evacuation time *by itself* constitutes evidence of a significant impact, given the ability of a wind-driven fire to consume the Project area in just a few hours. *See* AR 2:659 (nearby King Fire spread 10 miles over "a few hours"); *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 391-95 (invalidating EIR for lack of evidence supporting agency's conclusion that project posed no safety risks); Guidelines § 15088.5(a) (requiring recirculation when significant new information added).

The County claims that Squaw Valley Road and SR 89 will be congested even without the Project, so the Project's additional cars would make little difference in an emergency situation. AR 7:4011. This argument, however, defies common sense. It also contradicts other parts of the EIR. The EIR concludes that, in peak periods *without an emergency evacuation*, the Project's traffic would cause significant impacts by either turning bad traffic into gridlock or exacerbating already unacceptable conditions. *See* AR 1:420-25, 464-66. The EIR never explains how an evacuation of the same Project residents from a wildfire, during the same peak periods, is *not* significant. The logic is undeniable: if the Project would cause significant traffic impacts during non-emergency conditions, a fortiori it would cause significant impacts during an emergency evacuation. *See E. Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302 (finding of traffic significance outside city's core area belies finding of insignificance inside core area with similar conditions).

The EIR's reliance on the concept of "shelter in place" is equally untenable. Sheltering in place during a wildfire in a "very high fire severity zone" unquestionably exposes people to serious safety risks. For example, the EIR itself admits that Squaw Valley canceled an event during the King Fire due to poor air quality. AR 7:4014. Despite this evidence, the EIR fails to disclose or analyze risks from "shelter in place." *See* AR 4:2274-75.

Finally, the last-minute Emergency Preparation and Evacuation Plan prepared for the Project cannot save the inadequate EIR. *See* AR 21:12168-227; 2:661; 38:21996-98. While the Plan provides some helpful information about responding in an emergency evacuation, it undertakes no analysis of the Project's impacts on evacuations in this hazardous area. *Id.* Furthermore, even if the Plan had included such information, the County did not include it *in* the EIR. Under settled case law, the EIR remains

inadequate under these circumstances. *See Laurel Heights I*, 47 Cal.3d at 405.

The County must revise the EIR to include an adequate discussion of the Project's impacts on emergency evacuations and feasible mitigation measures or alternatives to mitigate those impacts.

C. The EIR Fails to Adequately Analyze or Adopt Effective Mitigation for the Project's Traffic Impacts, and Fails to Analyze or Mitigate Its Impacts to Public Transit.

1. The EIR's Conclusion that Certain Traffic Impacts Would Be Mitigated to a Less than Significant Level Is Not Supported by Substantial Evidence.

The EIR acknowledges the Project's addition of thousands of new vehicle trips each day would significantly exacerbate the area's notoriously bad traffic. AR 4:2030-39, 2364-74. However, the EIR promises that many of the Project's significant traffic impacts will be avoided because the Real Party would impose measures to "manage" the huge number of cars traveling to, parking at, and leaving the site. *See* AR 4:2031-33, 2368-69 (discussing measures 9-1a and 9-2a through 9-2d). Yet, the EIR fails to acknowledge Squaw Valley's well-documented history of providing inadequate parking and mismanaging on-site traffic flow. Accordingly, the FEIR's conclusion that future promises of traffic and parking management would prevent significant impacts lacks foundation. *See Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1167-69 (rejecting mitigation where evidence showed measures would not be effective or fully implemented); Guidelines §§ 15091(a)(1), (b) (mitigation findings must be supported by substantial evidence); 15126.4(a)(1), (2) (mitigation must be effective and enforceable).

Inadequate parking can cause serious traffic problems as drivers circulate, wait for spaces, or park illegally. AR 8:4588. Existing problems related to inadequate parking and traffic management at Squaw Valley are well-known. According to the Squaw Valley Fire Chief, "current issues" with traffic and circulation in Squaw Valley and "ripple effects" on other area roads "have their basis in poor planning and management/operation of parking at Squaw Valley resort." AR 11:6053. The Fire Chief also noted the resort's "unwilling[ness] to accept responsibility" for towing vehicles blocking driveways and fire lanes, and Placer County's "limited" and "infrequent" parking enforcement. AR 2:657-58. Indeed, the County's parking study reveals that dozens to hundreds of visitors are forced to park along Squaw Valley Road on peak days. AR 6:3345.

Squaw Valley's current inability to manage parking and traffic problems fatally undermines the

DEIR's primary mitigation measures—i.e., promises to "operate traffic management" on busy days (AR 4:2031, 2033)—as well as its conclusion that the measures would render impacts less than significant (AR 4:2030, 2033). A project proponent's "prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR." *Laurel Heights I*, 47 Cal.3d at 420. Squaw Valley resort's history of traffic mismanagement and failure to correct problems, combined with the County's failure to provide adequate enforcement, weigh against finding these measures sufficient. *Id.* (discussing relevant factors). Nor does the EIR identify any evidence that another measure—providing real-time parking and travel speed information—would effectively dissuade travelers from coming to the resort on busy days, even if similar measures have been implemented at resorts in other states. AR 2:843.

The FEIR dismisses concerns with promises that future traffic mitigation measures would be enforced (AR 2:661) and assurances that "the applicant has the ability to control the parking demand so as to not exceed the available supply" (AR 7:4014). But these responses fail to confront specific evidence—including the Fire Chief's comments—of Squaw Valley's and the County's demonstrated *inability* to control parking demand and associated impacts. *See* AR 2:657-58; 11:6053-54. Such parking issues are hardly insubstantial, as they not only worsen traffic but also result in evacuation hazards and increased air pollution, noise, and greenhouse gas ("GHG") emissions.

2. The EIR Fails to Adopt Feasible Mitigation for the Project's Significant Traffic Impacts, and Did Not Respond to Public Comments Proposing Specific Measures.

As discussed, the EIR lacks substantial evidence that some of the Project's significant traffic impacts would be mitigated to a less-than-significant level based on traffic and parking management measures. At the same time, the County found several of the Project's other traffic impacts to be significant and unavoidable despite mitigation. *See* AR 1:256-60 (direct impacts), 268-71 (cumulative impacts). Yet the County declined to evaluate or adopt additional, feasible mitigation measures that would have further reduced these significant impacts. Rejection of these measures violated CEQA, which requires adoption of all feasible measures to lessen significant impacts. §§ 21002, 21002.1(b), 21081. Moreover, since these measures differ significantly from other transportation measures and were suggested in public comments, CEQA required recirculation of the EIR. *See* Guidelines § 15088.5(a)(3).

Specifically, comments on the DEIR proposed formal adoption of several optional air pollution mitigation measures, which would not otherwise be required but would clearly reduce traffic impacts if implemented. AR 8:4654-56; 2:781-82. These measures included offering free, shared, or discount bicycle rentals to guests; providing shuttle service to other regional destinations; furnishing showers, secure bike parking, and other "end-of-trip" amenities for employees biking to work, as well as all-weather bike lockers and storage for employees living at the East Parcel; subsidizing and providing parking for car-sharing services for employees and guests; and providing bulletin boards where employees could coordinate carpools. AR 4:2060-61.

The DEIR listed these measures among various options for achieving air pollution limits (*id.*), and the County presumably found them feasible, but it did not require implementation of any particular measure. *See* AR 1:317-22. Yet the FEIR completely failed to respond to commenters' suggestions that regional shuttle service, end-of-trip amenities for bike commuters, East Parcel bike storage, and carpool bulletin boards be adopted as enforceable traffic mitigation. AR 8:4764-65. The FEIR responded to other suggestions with only voluntary, unenforceable assurances; for example, it offered to "consider" providing "access to bicycles" rather than committing to making them available. AR 8:4765. Still other suggestions were only partially implemented, such as providing preferred parking for carpools without subsidizing car-sharing. AR 8:4764. An EIR not only must respond to significant comments (*The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 616-17), but also must evaluate each mitigation proposal that is not "facially infeasible," even if such measures would not completely eliminate an impact or render it less than significant, (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029-31 ("*LAUSD*")). The County's failure to respond to comments, adopt feasible measures to reduce traffic impacts, and recirculate the EIR violated CEQA.

3. The EIR Fails to Adequately Analyze the Project's Impacts on Public Transit, or Identify Effective Mitigation for Those Impacts.

The EIR acknowledges that the Project would increase demand on Tahoe Area Regional Transit ("TART") system routes already strained to capacity (*see* AR 4:2040; 7:4018), yet it fails to provide a description of existing transit demand sufficient to support a meaningful analysis of this impact. For example, the DEIR failed to disclose existing summer transit demand despite the Project's substantial

increase in summer traffic, and further failed to provide existing rider data or capacity information for the Truckee-Squaw Valley TART route. AR 8:4652; *see also* AR 2:780-81. The FEIR failed even to address comments seeking summer demand information, much less remedy the deficiency (*see* AR 8:4762; 7:4018-19; 2:844)—again violating CEQA. *The Flanders Foundation*, 202 Cal.App.4th at 616-17. Referring to the DEIR's Tahoe City-Squaw Valley data, the FEIR claimed "it is likely that similar travel patterns exist" on the Truckee-Squaw Valley route but identified no basis for the assertion. AR 7:4018. Absent a thorough description of existing conditions, meaningful analysis of impacts is impossible. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89 ("*CBE*").

Equally troubling, Mitigation Measure 9-7 improperly defers mitigation for the Project's admittedly significant transit impacts. An agency may defer formulation of detailed measures only if it articulates "specific performance criteria … at the time of project approval." *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280; Guidelines § 15126.4(a)(1)(B). Here, the EIR concedes that Mitigation Measure 9-7 contains no performance standards, stating that "performance metrics [would] be established by TART." AR 8:4385. The EIR claims "[o]ne evaluation" of the Project's "anticipated" fair share contribution "indicate[d]" that it would pay for one additional winter AM peak-hour bus (AR 7:4018), but the document fails to identify the source of the evaluation or the amount of the fair share contribution, even when comments specifically requested this information. *See* AR 2:781 (comment), 844 (failure to respond). The Measure's vague references to more frequent headways, longer hours of operations, or different routes (AR 1:425) do not establish specific performance criteria.

Nor may an agency predicate mitigation on recommendations in a management plan that has not been formulated or analyzed in the EIR. *Preserve Wild Santee*, 210 Cal.App.4th at 281. Here, Measure 9-7 relies on an as-yet-unwritten "Engineer's Report" that would be used either to calculate the Project's fair share contribution to transit improvements or create transit funding districts—the Measure does not specify which. AR 1:425. County staff reports claim the Real Party has promised some additional funding beyond Measure 9-7, but these reports fail to add specificity to Measure 9-7 or otherwise show the total funding would ameliorate the Project's actual impacts. *See* AR 13:7790; 15:8887. The County's deferral of mitigation is unlawful, and its conclusion that Measure 9-7 would reduce transit impacts to a

less-than-significant level is unsupported.

D. The County Failed to Recirculate the EIR After Revising Its Climate Change Analysis, and Refused to Reevaluate Mitigation in Light of the New Analysis.

The DEIR's discussion of climate change acknowledged that GHG emissions, such as carbon dioxide (CO_2), can exacerbate critical problems such as drought and wildfire risk. AR 4:2279, 2297. However, it relied on an analytic approach that the Supreme Court has since rejected. Because the Project would emit over 1,100 metric tons per year of CO_2, the DEIR used an "efficiency" standard, which assumed that the Project's climate impacts would be insignificant if it met AB 32's statewide reduction target for GHG emissions by the year 2020. AR 4:2286, 2291. The DEIR then measured the Project's GHGs against a "no action taken" or "business as usual" scenario. AR 4:2292-95. Later, in *Center for Biological Diversity v. Dept. of Fish & Wildlife,* the Court expressly disallowed this approach for development projects. (2015) 62 Cal.4th 204, 227-28. It found that agencies cannot rely on a state standard without providing substantial evidence that the standard is applicable to the local project. *Id.*

After Petitioner alerted the County to this problem (AR 8:4659-63), the County released a FEIR that admitted the DEIR's analysis was unsupportable and abandoned the efficiency standard. AR 7:3972, 4081-83; 8:4769. The FEIR then replaced that standard with a new, static threshold of significance (emissions of 1,100 metric tons per year of CO_2) and presented entirely new conclusions. *Id.* However, the County committed two fundamental CEQA errors. First, it failed to recirculate the revised GHG analysis for public review and comment. Second, it failed to reevaluate feasible mitigation in light of the FEIR's new analysis.

CEQA requires recirculation of a draft EIR whenever "significant new information" is added to the EIR after its release for public comment. § 21092.1. "Significant new information" includes a change to the EIR that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." Guidelines § 15088.5(a). This test is met where the new information demonstrates that the draft EIR was "fundamentally and basically inadequate and conclusory in nature." Guidelines § 15088.5(a)(4).

Here, the DEIR presented a climate analysis that the Supreme Court later declared—and the

County has admitted—is flatly inadequate. *See* AR 8:4769 (FEIR stating "efficiency standard is not substantiated and is no longer used in the FEIR as a significance threshold for this project"). This fact alone requires recirculation of the FEIR. *See Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052-53 (recirculation required where draft EIR lacked adequate cumulative impacts analysis); *Pesticide Action Network North America v. Dept. of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 251-52 (recirculation required where agency's pending reevaluation of effects of certain pesticide chemicals rendered its initial environmental documents inadequate).

An agency's identification of a "substantial increase in the severity of an environmental impact" also qualifies as "significant new information" for purposes of CEQA's recirculation requirement. Guidelines § 15088.5(a)(2). Here, the FEIR's revised analysis of GHG emissions reveals new, more severe impacts than previously disclosed. The DEIR found the Project would *not exceed* the efficiency threshold in 2020, but that it "may be less efficient than needed" after 2020. AR 4:2292. By contrast, the FEIR shows that the Project, which generates roughly 40,000 metric tons of CO_2 per year at buildout, would *vastly exceed* the new significance threshold of 1,100 metric tons per year. AR 7:3974-76; *see also* AR 7:3924. Thus, assuming the Project is built in phases, it would exceed the threshold early on, when only about 3 % of the Project has been built. AR 2:787-88.

The County argues that the new GHG analysis need not be recirculated because the FEIR retained the DEIR's overall conclusion that the Project's long-term GHG impacts would be significant. *See* AR 2:844, 7:4083-88. This argument misunderstands CEQA. As the Supreme Court has explained, an "EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect." *CNFF I*, 3 Cal.5th at 514. Here, the DEIR masked the true magnitude of the Project's climate impacts by evaluating only the Project's alleged "efficiency" and by representing that GHG emissions would be insignificant in the development's early phases. AR 4:2292. The public must be given an opportunity to comment on the FEIR's corrected analysis, which shows for the first time that (1) the Project would exceed the new climate threshold *by approximately 3,500 %*, and (2) GHG impacts would be significant even in its early phases. *See American Canyon Community*, 145 Cal.App.4th at 1078-81 (new information showing traffic increases of only 2.3 % constituted "substantially increased effects"); *see also* AR 2:786-88.

In addition, the recirculated EIR must include an analysis of feasible mitigation measures to address the significant impacts identified in the new GHG analysis. Guidelines § 15088.5(a). Because the DEIR relied on a threshold based on a statewide efficiency standard, it included only one mitigation measure, Measure 16-2, which referenced state goals. AR 4:2296. After the FEIR deleted the efficiency standard and concluded that the Project would have immediate, substantial climate impacts, the County failed to reevaluate Measure 16-2.

This oversight left the Project with completely ineffective climate mitigation. Measure 16-2 requires the developer to implement mitigation only if the Project conflicts with an adopted statewide target or plan that has substantial linkage to the Project (AR 2:1063-64, 7:3978-79), and the County admits that no such target or plan currently exists (AR 7:3974 ("There are no current mechanisms available to determine the level of GHG-efficiency needed on a single project in order to determine if it fits within the State's Scoping Plan targets.")).[6] While the EIR suggests that mitigation might be developed in the future (AR 2:792-94, 8:4668-71), CEQA prohibits this approach. *CNFF II*, 17 Cal.App.5th at 432-34 (mitigation measures "assuring little to no concrete steps toward emissions reduction" do not suffice); *CBE,* 184 Cal.App.4th at 94-95 (unspecified GHG mitigation is inadequate); *see also* AR 2:630-33, 792-94. Because the EIR fails to consider feasible mitigation for the Project's significant climate change impacts, the Project approval cannot stand. § 21002; Guidelines § 15088.5(a).

E. The EIR Fails to Adequately Disclose or Mitigate the Project's Noise Impacts Even Though Its Construction Activities Will Disturb Residents for 25 Years.

CEQA establishes a California policy to "take all action necessary to provide the people of this state with … freedom from excessive noise," thus providing the public "a statutorily protected interest in quieter noise environments." *Berkeley Keep Jets,* 91 Cal.App.4th at 1379-80 (citing § 21001(b)). Noise is a particularly important issue in this case: not only is the Project located in a serene, quiet mountain setting (see AR 4:2379) but it would build out over a lengthy, 25-year period, including nights and weekends, impacting sensitive receptors.[7] AR 3:1650; 4:2085-86.

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[6] Although the FEIR cites additional climate mitigation "tools" (AR 7:3979-80), these "tools" are optional and were not evaluated as mitigation for the Project. *See* AR 2:1063-64, 12:6732.

[7] "Sensitive receptors" include residences, parks, schools, historic sites, places of worship, recreation areas, and transient lodging. See AR 4:2071.

However, the EIR's noise analysis fails to disclose the nature and extent of the Project's noise impacts on sensitive receptors over the full 25-year construction period. The EIR's abbreviated discussion begins by identifying the location of some sensitive receptors (AR 4:2073) and existing noise levels at some locations near the Project (AR 4:2075). Next, the EIR identifies, generically, noise levels that can be heard, at 50 feet, from various types of demolition and construction activities. AR 4:2085. Then, the EIR states generally that these activities might occur within 50 feet of certain receptors near the Project, including various lodging units, the Squaw Valley Chapel, and "other scattered residences." AR 4:2085-86. Finally, the EIR reaches the obvious, general conclusion that "construction-related noise during the daytime … may result in excessive noise levels that disturb nearby receptors." *Id.*

The EIR's paltry discussion does not come close to meeting CEQA's requirements. Rather, it raises more questions than it answers. For example, the EIR does not disclose the *duration* of the Project's construction noise at any specific location—and thus whether the construction noise would disturb someone's home for a few weeks or every day for 25 years. Nor does the EIR analyze the *full geographic range* of noise impacts from Project construction because it ignores activities occurring farther than 50 feet from sensitive receptors. Finally, the EIR makes no attempt to describe the *nature* of the noise impact, i.e., how the Project noise could affect residents' quality of life, speech, sleep, and health. Instead, the EIR merely (1) recites generally how noisy some construction activities are, and then (2) notes that these activities would occur for undefined periods of time, at undefined distances from sensitive receptors. *See* AR 4:2085-86. This cursory analysis is inadequate. Case law requires the EIR to provide enough information so readers can determine whether project-related noise would "merely inconvenience" people or "damn them." *Berkeley Keep Jets*, 91 Cal.App.4th at 1371, 1382; *see also Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123 (EIR must describe impact of noise increase in light of existing conditions).

Petitioner warned the County that the EIR's noise analysis was inadequate (AR 8:4672-74), but the County claimed it had no obligation to provide greater detail because the EIR is a "programmatic" document. AR 7:4031; 8:4782. However, as explained (*supra* Part III), whatever the "type" of EIR, the County must analyze the Project's impacts to the extent it "ha[d] 'sufficient reliable data to permit preparation of a meaningful and accurate report on the impact' of the factor in question." *LAUSD*, 58

Cal.App.4th at 1028 (citation omitted).

A more specific analysis would not be speculative, as the County claims. *See* AR 7:4031. Here, the County knew where sensitive receptors were (AR 4:2071-73), the size and character of the buildings proposed to be demolished and constructed (AR 3:1749, 1754), and where construction would generally occur (AR 3:1748-49, 1753, 1755). With this information, the County certainly could have (1) estimated how long it would take to demolish and construct specific buildings, and (2) calculated the impact to residents from construction noise.

Tellingly, the FEIR did include a detailed analysis of the Project's noise impacts on one sensitive receptor: Squaw Valley Academy. Here, the EIR explained that construction near the Academy "is expected to last 24 to 30 months within the [Project's] 25-year timeframe" and would cause daytime noise levels as high as 85 decibels outside the Academy buildings. AR 7:4031. The County has no excuse for failing to provide this same level of analysis for other sensitive receptors in the Project area, such as the residences on Indian Trail Court or the Squaw Valley Chapel, which may be exposed to longer construction durations than the Academy. *See* AR 4:2072. It violated CEQA by refusing to "use its best efforts to find out and disclose all that it reasonably [could]." *See Berkeley Keep Jets*, 91 Cal.App.4th at 1370 (quoting Guidelines § 15145).

Finally, the EIR's failure to adequately analyze the Project's construction-noise impacts meant that the County never effectively mitigated those impacts. An agency must adopt any feasible mitigation that can substantially lessen a project's significant environmental impacts "whenever it is feasible to do so." *City of San Diego v. Bd. of Trustees* (2015) 61 Cal.4th 945, 963 (quoting § 21002.1(b)). But here, because the analysis of noise impacts lacked detail, the County could not develop appropriate mitigation. Instead, the EIR relies on vague measures, such as requiring use of "quieter procedures" "where feasible" and ensuring equipment is "properly maintained." AR 4:2086. Indeed, only one measure—related to equipment back-up alarms—sets standards for mitigation, requiring certain noise levels not be exceeded. *See id.* Because the EIR provides no performance standards for every other measure, there is no assurance they would actually work to avoid noise impacts. *See Preserve Wild Santee,* 210 Cal.App.4th at 280; *CBE*, 184 Cal.App.4th at 93 (rejecting "the perfunctory listing of possible mitigation measures … [that] are nonexclusive, undefined, untested and of unknown efficacy").

Again, the specific noise mitigation for the Academy sharply contrasts with the County's approach to other sensitive receptors. Here, the FEIR establishes precise interior noise standards that Project construction may not exceed, and requires the developer to achieve them through specific methods, such as replacing windows and adding insulation. AR 68:40376. Moreover, to ensure that this mitigation is enforceable, the developer must submit an acoustical study demonstrating that the performance standards are met. *Id.*

By contrast, the EIR provides for no such defined, enforceable mitigation to protect other sensitive receptors in the Project area—even nearby homes. Instead, it defends the disparity by arguing that mitigation for the Academy was necessary to "protect the primary function of this use." AR 2:849. But that rationale cannot justify omitting mitigation protecting the primary functions of *other* sensitive receptors, like residences and churches. While the County claims that it would be infeasible to provide new windows and insulation to these affected residents (*id.*), it offers no support for this assertion. *See Sierra Club*, 231 Cal.App.4th at 1170 (no substantial evidence in record to support conclusion that mitigation would be effective in reducing impacts to insignificance).

The County also argues that further mitigation is unnecessary because "the Placer County noise ordinance exempts daytime construction noise from its standards." AR 2:849. But case law rejects such excuses. *See Berkeley Keep Jets*, 91 Cal.App.4th at 1380 (CEQA does not look to local noise ordinances to determine significance of impacts); *E. Sacramento*, 5 Cal.App.5th at 300-01 (EIR could not ignore significant increases in traffic simply because traffic was within levels permitted by local general plan).

In sum, the EIR violated CEQA with its cavalier approach to analyzing and mitigating noise impacts from the Project's 25-year construction process.

F. The EIR Fails to Adequately Analyze the Project's Impacts on Water Supplies.

Water availability for the Project was a chief concern of many stakeholders, especially given the state's recent extreme drought, climate change, and efforts to import water from Martis Valley to serve Squaw Valley. *See, e.g.*, AR 1:568; 2:674, 707, 719, 752, 906-07, 924-25. Even a local water agency questioned the EIR's conclusions regarding the Project's water supply. AR 39:22844.1-.17. Commenters also raised concerns that pumping water to meet Project demand would damage Squaw Creek. *See, e.g.*, AR 13:7407, 7462; 39: 22844.1-.17. Nevertheless, the EIR contravened CEQA by omitting a critical

fact: that the Project's identified water source was potentially uncertain for legal reasons.

1. The EIR Fails to Disclose that the Project Relies on Water from a Subterranean Stream that Is Subject to State Water Board Jurisdiction.

The Project would depend almost exclusively on water from the Olympic Valley Groundwater Basin ("Olympic Basin"). AR 4:2135-37. The EIR posits that this water is local groundwater regulated by local agencies. AR 4:2160-61; *see also* AR 3:1293-94. Because local regulations would allow owners of real property overlying the Olympic Basin to pump unlimited groundwater for beneficial uses (*see* AR 3:1293-94; *see also City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240), the EIR assumes that the Project would have unrestricted access to groundwater (*see* AR 4:2212).

The EIR, however, fails to disclose that the Olympic Basin is actually a "subterranean stream" over which the State Water Resources Control Board ("State Water Board") can assert jurisdiction. If it did, the State Water Board could regulate all withdrawals from that Basin as surface water and could allocate that water to users based on an entirely different priority scheme. *See* Water Code §§ 1350, 1381. Given the scarcity of water in the area[8], the water supply identified by the EIR may be illusory.

The State Water Board utilizes a four-part test to determine whether groundwater is a "subterranean stream": (1) a subsurface channel must be present; (2) the channel must have a relatively impermeable bed and banks; (3) the course of the channel must be known or capable of being determined by reasonable inference; and (4) groundwater must be flowing in the channel. *N. Gualala Water Co. v. State Water Res. Control Bd.* (2006) 139 Cal.App.4th 1577, 1585, 1606.

The Olympic Basin possesses these characteristics. As Petitioner's hydrologic expert explained: (1) the Basin lies in a glacial-carved valley of granitic bedrock that forms a subsurface channel; (2) the Basin is relatively impermeable; (3) the course of the channel is defined by the bedrock valley; and (4) groundwater flows from west to east through the Valley, and then discharges into Squaw Creek or the Truckee River. *See* AR 8:4469. Together, these facts demonstrate that the Olympic Basin meets the State Water Board's test for a subterranean stream. *See N. Gualala*, 139 Cal.App.4th at 1585.

[8] For example, claims to Truckee River water (into which water from the Olympic Basin flows) are subject to the Truckee River Operating Agreement ("TROA"). AR 4:2222. If the Olympic Basin is regulated as surface water, it would be part of the Truckee River and subject to TROA's strict limits on diversions from that water body. *See* AR 3:1295.

The conclusion of Petitioner's hydrologist is consistent with other descriptions of the Olympic Basin in the record. First, the EIR observes that "[t]he bedrock beneath Olympic Valley forms a trough that trends generally east of northeast," indicating the presence of a subsurface channel. AR 4:2135; *see also* AR 34:19430 (Olympic Valley Groundwater Management Plan noting same). Second, the EIR describes this trough as impermeable. AR 4:2135 (trough "not porous"); *see also* AR 3:1440 (Olympic Basin is "underlain by igneous bedrock with no primary porosity"); 110:64869 (boundary between alluvium and bedrock is a "no flow boundary"). Third, a bedrock map in the Squaw Valley Public Services District's Groundwater Management Plan for the Olympic Basin depicts the channel as having a defined course. AR 34:19432. Finally, the EIR and other record sources show that flows in the channel run from west to east, generally parallel to Squaw Creek, and discharge into the Truckee River. *See, e.g.*, AR 4:2137; 3:1441 (water supply assessment for Project); 34:19441 (Groundwater Management Plan); 110:64849 (Public Service District groundwater development study); 8:4469.

Petitioner alerted the County to this evidence. AR 8:4469. The FEIR's response, however, was cursory and nonsensical: "absent evidence to the contrary, groundwater is presumed to be percolating groundwater." *See* AR 8:4515. It then asserted that "[t]he State Water Board has not proposed to assert jurisdiction over the [Basin]." AR 8:4740; *see also* AR 8:4513.[9]

The County's response is legally deficient. The fact that the State Water Board has not yet asserted its jurisdiction in no way changes the *characteristics* of the Olympic Basin or the Board's right to assert its jurisdiction. Because the Basin plainly meets the Board's definition of subterranean stream, the Board could classify it as such at any time, completely changing the regulatory regime controlling the Project's water. The EIR never grapples with this uncertainty over the water supply.

2. The EIR Violated CEQA by Failing to Disclose the Vulnerability of the Project's Water Supply.

The County's misleading assessment of the Project's water supply violated CEQA in three ways.

[9] The FEIR also cites the recharge source of Olympic Basin water (AR 8:4513, 4515), but recharge is not relevant to the four factors that establish a subterranean stream. *See N. Gualala*, 139 Cal.App.4th at 1585. Additionally, the FEIR cross-references two responses that are irrelevant to the subterranean stream issue (AR 8:4740): (1) 08b-7, concerning riparian habitat on the Truckee River (AR 8:4540), and (2) 08b-15, discussing the impacts of groundwater withdrawals on vegetation (AR 8:4542-48).

First, a lead agency must accurately describe a project's environmental and regulatory setting. *See Cadiz Land Co.*, 83 Cal.App.4th at 91-93 (invalidating EIR for omitting full scope of environmental setting for groundwater basin); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874-75 (invalidating EIR for failing to disclose another regulatory process that could authorize diversions from project's water source). Here, the EIR violated this requirement by not apprising readers that the Olympic Basin is a subterranean stream subject to reallocation by the State Water Board. *See id.*

Second, an EIR must describe all water sources for a proposed project. *Vineyard,* 40 Cal.4th at 429-30 (reviewing cases). If an EIR does not disclose the potential loss of, or uncertainty about, an identified source, it fails as an informational document. *Id.* at 430-31 (EIR may not "simply ignore[] or assume[] a solution to the problem of supplying water to a proposed land use project"). Further, where a project's water source is uncertain, the EIR must include "some discussion of possible replacement sources or alternatives." *Id.* at 432; *see also Napa Citizens for Honest Gov.*, 91 Cal.App.4th at 373 (EIR failed to analyze alternative water sources despite uncertainties in planned supply). Here, the Project's features—including a 90,000 square-foot water park—would require massive amounts of water. *See* AR 3:1299 (Project causing 48% increase in water withdrawals from Olympic Basin). Nonetheless, the EIR fails to alert readers that the State Water Board could restrict the Project's use of water from the Olympic Basin, and thus leaves the mistaken impression that the Project's water supply is unbounded.

This omission is significant. Because the EIR does not disclose the Olympic Basin's status as a subterranean stream and the consequences of that status, it never discusses alternate water sources for the Project. *See Vineyard*, 40 Cal.4th at 432. The EIR thus deprived decision-makers and the public of sufficient facts to "evaluate the pros and cons of supplying the amount of water that the [project] will need." *Id.* at 431 (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829). The EIR is therefore inadequate as a matter of law. *See Banning Ranch*, 2 Cal.5th at 935.

Finally, the County's dismissive responses to Petitioner's comments on the DEIR alone violated CEQA. An agency must provide "good faith, reasoned analysis" in response to comments and, if it rejects a specific suggestion, explain "in detail, giving reasons why." Guidelines § 15088(c). "Conclusory statements unsupported by factual information will not suffice." *Id.*; *see also Vineyard,* 40 Cal.4th at 432 (CEQA requires a "reasoned analysis of the circumstances affecting the likelihood of the

water's availability."). Here, the County violated CEQA by providing no reasoned analysis or factual basis for rejecting the evidence regarding the nature of the Basin. *See The Flanders Foundation*, 202 Cal.App.4th at 616-17.

G. The County Improperly Rejected Not Only the EIR's Reduced Density Alternative, But Also Two Environmentally Superior Alternatives Proposed by the Public.

The alternatives analysis lies at "[t]he core of an EIR." *Citizens of Goleta Valley,* 52 Cal.3d at 564; Guidelines § 15126.6. CEQA prohibits public agencies from approving projects as proposed if a feasible alternative would substantially lessen their significant environmental effects. *Berkeley Keep Jets*, 91 Cal.App.4th at 1354 (quoting § 21002). As the Supreme Court has explained, "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights I,* 47 Cal.3d at 404.

Furthermore, an agency cannot reject an alternative without explaining why that alternative does not satisfy the project's goals, does not offer substantial environmental advantages, or cannot be accomplished. *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 883. The explanation for rejecting an alternative must be "sufficient to enable meaningful public participation and criticism." *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1458. Likewise, it may not consist of unsupported conclusions or unanalyzed theories. *Id.* at 1465. Here, the County violated CEQA because no evidence in the record supports its claim that the EIR's environmentally superior alternative—the "Reduced Density Alternative" or RDA (AR 4:2313, 2323-30)—is infeasible.[10]

The County supplied two principal reasons for rejecting the RDA, neither of which withstands scrutiny. First, the County claimed that the RDA would not generate a high enough profit, or internal

[10] The other three alternatives in the EIR—Widened Squaw Valley Road, Preservation of Historical and Wetlands Resources, and Alternative Water Tank Location options—do not reduce the Project's impacts to a substantial degree. All of them involve modifications to only a small number of Project features, and in two cases actually increase impacts. *See* AR 4:2313-46; 8:4724-26; 9:4820. While the County claims the Historical and Wetlands alternative reduces Project development, the reduction is minimal and does not address some of the most serious Project impacts. AR 9:4817-18. The EIR does include variants on a no-project alternative, as CEQA requires, but these options do not meet Project objectives. *See* AR 1:238-41; 4:2314-23.

rate of return ("IRR"). AR 1:243-44; 21:11869-12025, 12304-09; 38:22002-04. However, as one financial expert attested, the County did not have sufficient information to make this determination. AR 38:22017-23 (insufficient "information relating to the Project's specific development components …; the market support for the proposed residential sales prices and commercial rent rates; and the long term absorption assumptions"). Furthermore, the County assumed that the RDA required far more acreage than it conceivably would need. AR 38:22003-04, 22020-22; 79:46591. Specifically, even though the RDA would reduce the Project's development by 48%, the County's feasibility analysis assumed that the RDA would require 80% of the Project's land area and 80 to 94% of its infrastructure costs. *Id.* Had the County reviewed the RDA under reasonable assumptions, the IRR for the RDA would likely have been acceptable. *See* AR 79:46590, 46593-96.

Second, the County claimed that the RDA's reduced residential units and amenities would undermine the Project's ability to compete with other "world class" ski resorts. AR 1:243-44. It based this conclusion primarily on a "units-to-skiable acreage" ratio that the County used to compare the RDA to other world class ski resorts. *Id.* But no substantial evidence supports the County's approach. Here, the County's "skiable acreage" numbers—the ratio's denominator—inexplicably included skiable acreage located in both Squaw Valley *and* Alpine Meadows, a neighboring but unconnected resort. AR 38:22004, 22021; *see also* AR 79:46592. By thus inflating the denominator in the "units-to-skiable acreage" calculation, the County produced a "low" ratio for the RDA and then claimed that this "low" ratio rendered the alternative infeasible. *Id.* Yet, the County repeatedly asserted elsewhere that Squaw Valley and Alpine Meadows are completely *separate* resorts. *E.g.*, AR 8:4737 (County stating that Squaw and Alpine "serve different purposes and neither depends on the other in order to succeed").

The County cannot have it both ways. Because it represented that the two ski resorts are independent of each other, the County could not include Alpine's terrain in the "skiable acreage" for Squaw.[11] If the County had included only Squaw's ski terrain, the units-to-skiable acreage for the RDA would have fallen well within the range of other "world class resorts." AR 38:22004, 22021; 79:46592.

[11] Because there is a proposal to connect Squaw and Alpine, Petitioner asked the County to review both projects together in a single EIR. The County refused, insisting the resorts are independent of each other. AR 8:4609, 4737.

In rejecting the RDA, the County not only relied on the bloated ski acreage figure, but it also completely ignored the Project's objectives to "[p]rotect and enhance natural resources in Olympic Valley" and "[p]rovide a compact development that minimizes the overall resort footprint." AR 4:2301. By narrowly focusing on one objective—competing with "world class resorts"—to the exclusion of others, the County violated CEQA. Guidelines § 15126.6(b) (agency must consider feasible alternatives "even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly"); *North Coast River Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 668-69 ("lead agency may not give a project's purpose an artificially narrow definition") (citation omitted). Moreover, the County's improperly narrow parameters caused the County to reject not just the RDA but *any* reduced-size project alternative, including two proposed by members of the public. *See* AR 1:238-48, 370; 38:22040-47; 79:46589-96.

In sum, no substantial evidence supports the County's rejection of the RDA or its refusal to consider other reduced-density alternatives. Accordingly, the County violated CEQA. *See Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1355-58 (record did not provide "independent facts [or] analysis" or "meaningful detail" to support agency's finding that a reduced-size alternative was infeasible); *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 203-06 (no substantial evidence demonstrating infeasibility of mixed-use alternative); *Uphold Our Heritage,* 147 Cal.App.4th at 587 (City's finding that alternatives were financially infeasible not supported by substantial evidence).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court issue a writ of mandate directing the County to vacate its approval of the Project and certification of the EIR.

DATED: January 17, 2018

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961675.10

PROOF OF SERVICE

Sierra Watch v. Placer County, et al.
Case No. SCV0038777
Placer County Superior Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On January 17, 2018, I served true copies of the following document(s) described as:

PETITIONER'S OPENING BRIEF

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Larkin@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 17, 2018, at San Francisco, California.

Patricia Larkin

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Case No. SCV0038777
Placer County Superior Court

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