CASE NO. C087102

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

LEAGUE TO SAVE LAKE TAHOE, et al.

Appellants and Cross-Respondents

v.

PLACER COUNTY, et al.

Respondents and Cross-Appellants

MOUNTAINSIDE PARTNERS, LLC, et al.

Real Parties in Interest and Cross-Appellants

Appeal from Judgment of the Superior Court of California
County of Placer
Case No. SCV0038666
Honorable Michael Jones

CROSS-APPELLANTS' REPLY BRIEF

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INTRODUCTION

Sierra Watch's opposition brief on the wildland fire/evacuation issue is most notable for what it omits. Sierra Watch repeatedly asserts that Placer County (the "County") devoted virtually no attention to this issue. The assertion is based on either ignoring or dismissing the record evidence showing that the County, in fact, took this issue very seriously. Sierra Watch's strategy appears to be to simply wish this evidence out of existence.

No one disputes that, in the forested regions of eastern Placer County (indeed, in much of the State), agencies must prepare for the threat of wildland fire. As the record makes clear, however, the County, first responders and the project sponsors ("MVWP") all understood that. That is why they went to such lengths to ensure that the Martis West project (the "project") would be developed and maintained to minimize the risk of wildland fire, that the fire department would have adequate resources and access to respond, and that plans would be in place should evacuation become necessary. On this record, if – as Sierra Watch hopes – the Court were to conclude that the County did not do enough to address this risk, it would be difficult to imagine *any* project that would pass muster.

Sierra Watch may believe that no development should occur anywhere in the region. Some north Tahoe residents advocated for just that: they argued that, having secured their own homes, the Placer County Board

of Supervisors (the "Board") should impose a moratorium to prevent anyone else from joining them. (AR 20:10979 [at September 13, 2016, Board meeting, north Tahoe resident Ellie Waller states: "Maybe, just maybe, it's time to say the 'M' word – yes, moratorium"].) [1]

Whether to slam the door on all future projects – even those that reduce zoning by 600 residential units and preserve well over 6,000 acres as permanent open space – was not a decision for north Tahoe residents hoping to raise the drawbridge. Nor was it a decision for environmental groups who initially endorsed the project, only to later drum up opposition and then sue the County. Rather, the decision was for the Board. CEQA simply requires that the Board, in deciding to approve the project, made an informed decision on the wildland fire and evacuation issue. It did.

STANDARD OF REVIEW

Sierra Watch argues that, under the Supreme Court's recent ruling in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, whether an EIR omits "critical information" presents a question of law, subject to de novo review by the Court. (Appellants' Reply Brief and Cross-Respondents' Opposition Brief ("Sierra Watch's Opposition Brief"), p. 112.)

[1] "AR 20:10979" refers to the County's certified record of proceedings, volume 20, at page 10979. The same format is used throughout this brief to cite to the record.

Here is what the Supreme Court actually said: "The ultimate inquiry … is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' [Citations.] The inquiry presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations — including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect — may warrant deference. [Citations.] Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted. [Citation.]" (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 516.)

In this case, the County found that the Martis West project, as designed and mitigated, would not have a significant impact on hazards associated with wildland fire, or substantially interfere with evacuation plans. (AR 1:258-259, 260-263 [CEQA findings].)

Although Sierra Watch suggests the EIR ignored these issues, that suggestion is false. The EIR addressed them at length. (E.g., AR 3:1279, 1282, 1288, 1703-1704, 1706, 1708-1709, 1714-1717, 1720-1721, 1724-1725, 1728-1735, 1741-1746 [Draft EIR]; 6:3056, 3138-3140, 3164-3165, 3174 [Final EIR]; 7:3666-3668, 3794-3795 [Final EIR]; 28:15789-15802

[analysis by traffic consultant cited and summarized in Final EIR].) Instead, Sierra Watch simply disagrees with the EIR's conclusions.

Given the amount of attention the County devoted to this issue, in the words of the Supreme Court, "factual questions predominate." (*Sierra Club v. County of Fresno*, *supra*, 6 Cal.5th at p. 516.) Under those circumstances, the "substantial evidence" test applies. (*Ibid*.)

A recent case – the first published case involving a challenge to an EIR expressly applying *Sierra Club v. County of Fresno* – illustrates these principles. In *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321 (*SOMCAN*), the Court of Appeal applied *Sierra Club v. County of Fresno*'s two-prong standard of review to a multi-faceted attack on an EIR. Whether the EIR contained an adequate project description was a question of law, subject to de novo review. (33 Cal.App.5th at p. 332.) By contrast, in considering other issues in the case – the methodology used to analyze cumulative impacts, the geographic scope of the analysis, whether the traffic study ought to have considered additional intersections, whether the project was consistent with applicable or draft plans, the scope of the analysis of alternatives, whether the record supported the city's statement of overriding considerations – the Court applied the "substantial evidence" standard of review, and reviewed the record to determine whether the agency conducted a good-faith analysis. (*Id*. at pp. 336-355.)

The *SOMCAN* decision illustrates that, even in the wake of *Sierra Club v. County of Fresno*, a Court should refrain from second-guessing the myriad of decisions an agency and its consultants must make in preparing an EIR. Indeed, as the Supreme Court noted, "[i]n reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, our task is 'not to weigh conflicting evidence and determine who has the better argument.'" (*Sierra Club v. County of Fresno*, *supra*, 6 Cal.5th at p. 512.)

Here, the Draft EIR evaluated the Project's consistency with adopted emergency evacuation plans, the Final EIR responded to comments on the issue, the issue was the subject of lively debate and input from multiple stakeholders and experts, and the EIR informed this debate. Sierra Watch's argument focused on the County's conclusion: that the Project would not have a significant impact on the County's adopted emergency evacuation plans or expose residents to a significant risk from wildland fire. Under such circumstances, even if the issue is evaluated as a question of law, the EIR did its job by "includ[ing] sufficient detail to enable those who did not participate in [the EIR's] preparation to understand and to consider meaningfully the issues the proposed project raises [citation]. . . ." (*Sierra Club v. County of Fresno*, *supra*, 5 Cal.5th at p. 510.)

Throughout its brief, Sierra Watch places much emphasis on the trial court's ruling on the fire/evacuation issue. Such emphasis is understandable; this was the single issue on which Sierra Watch prevailed at trial. (JA:8:1572-1573.) The trial court's ruling on this issue, however, carries no weight. "An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.)

Notwithstanding its success at trial, on appeal Sierra Watch continues to bear the burden of proof on this issue. (*Town of Atherton v. California High-Speed Rail Auth.* (2014) 228 Cal.App.4th 314, 349-350.)

ARGUMENT

In its opposition brief on the cross appeal, Sierra Watch characterizes the County as "indifferent" to public safety in the event of a wildland fire, stating that the EIR's analysis of the issue consisted of no more than disjointed "snippets." (Sierra Watch's Opposition Brief, p. 111.)

The characterization suffers from a legal flaw. In hopes of parsing (and thereby minimizing) the EIR's discussion, Sierra Watch repeatedly differentiates between the analysis in the Draft EIR, and the responses to

comments in the Final EIR. (Sierra Watch's Opposition Brief, p. 114.) In fact, the EIR certified by the County consists of both the Draft and Final EIRs. (CEQA Guidelines, § 15132;[2] see AR 1:102 [Board resolution certifying Final EIR].) The Final EIR includes the text of the Draft EIR, revisions to that text, comments on the Draft EIR, and responses to significant environmental issues raised by those comments. (*Ibid*.) Responses to comments are equally part of the EIR. (*Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516-517 (*Cleveland I*); *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1272-1273 (*Defend the Bay*).) Moreover, the evidence that the County could rely upon to reach conclusions about the project's impacts is not confined to the EIR; rather, such evidence must simply be in the agency's record. (Pub. Resources Code, § 21081.5; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568-570 [in rejecting alternative sites as infeasible, county was not confined to information in EIR, but could consider entire record]; *Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Trans. Auth.* (2015) 241 Cal.App.4th 627, 664-666 [preparation of addendum analyzing construction-related air pollutant emissions did not show EIR was inadequate because conclusion remained the same: impacts would not be significant].) For these reasons,

[2] The State CEQA Guidelines ("CEQA Guidelines" appear at Cal. Code Regs., title 14, § 15000 et seq.

Sierra Watch's repeated attempt to diminish any information that was not within the four corners of the Draft EIR is unwarranted.

A. The EIR acknowledged that the Martis West project is located in an area with a high risk of wildland fire, but that fact alone is not conclusive.

The EIR acknowledged that the property's "West Parcel," where development will occur, is located in an area that the California Department of Forestry and Fire Protection ("CalFire") has classified as a "very high" fire hazard severity zone. (AR 3:1724-1725.) The same is true of a large portion of eastern Placer County. (AR 8:4684 ["Fire Hazard Severity Zones" map for Placer County].)

As noted in MVWP's Opening Brief on Cross-Appeal, a recent decision makes clear that a project located in such an area does not automatically present a potentially significant impact with respect to evacuation. *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161 (*Clews*) involved a negative declaration adopted for a small school located in such a zone. The Court held that the school's presence in this zone did not, by itself, constitute a "fair argument" that the school would have significant effects with respect to fire risk or evacuations. (*Id.* at pp. 193-195.) The issue was instead whether, "[v]iewing the record as a whole," there was a "fair argument" that the project would "materially affect evacuation routes in the area." (*Id.* at p. 194.) The Court concluded that the answer was no. (*Ibid.*)

Sierra Watch argues that the *Clews* case is distinguishable on its facts. (Sierra Watch's Opposition Brief, pp. 133-134.) To state the obvious, the particulars of the project at issue in *Clews* differ from those of the Martis West project. Those differences include the scale of the project, its location, and the specific evacuation routes available. But Sierra Watch misses the point. *Clews* is relevant because it shows that a project's location in very high fire severity zone does not, by itself, mean a project will automatically have a significant impact on evacuations.

In *Clews*, the facts cited by the court included:

- The school would adhere to fire codes,
- The school would install water lines and hydrants,
- An existing, paved, 20-foot wide, 1,650-foot long road was available as a primary evacuation route,
- An existing, dirt road was available as a secondary evacuation route,
- The school would close on "red flag" days, and
- The risk of evacuation surrounding properties already existed, and the school would not significantly affect that risk.

(*Clews, supra,* 19 Cal.App.5th at pp. 193-194.) A fire safety expert submitted comments expressing concerns about fire risk and evacuation, but these comments were general in nature, and did not establish a nexus between those risks and the impacts of the proposed school. (*Ibid*.)

Clews is particularly noteworthy because the case involved a negative declaration, and therefore the "fair argument" standard of review. Under that standard, the Court shows no deference to the lead agency's conclusions. (*Clews*, supra, 19 Cal.App.5th at pp. 192-193.) Here, by contrast, the County certified an EIR, so the "fair argument" standard does not apply. Instead, "[w]here, as here, the agency prepares an EIR, the issue is whether substantial evidence supports the agency's conclusions, not whether others might disagree with those conclusions." (*North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614, 626-627 (*NCRA v. MMWD*) [EIR's visual analysis upheld; distinguishing "negative declaration" cases].)

The Martis West project is located in a very high fire hazard severity zone. But, as *Clews* makes clear, that fact alone is not conclusive. Sierra Watch's attempt to dismiss the relevance of *Clews* is therefore unpersuasive. Moreover, as explained below, in many respects the County's record is more robust than it was in *Clews*.

B. As the EIR explains, the area has extensive programs and plans in place to minimize the risk of wildland fire, and the Martis West project will build on those programs and plans.

Sierra Watch characterizes the site as "densely forested." (Sierra Watch's Opposition Brief, pp. 111, 134.) The characterization is misleading. The EIR describes the West Parcel as "undeveloped coniferous forest" that "has been regularly maintained through harvest procedures for

forest health and reduction of fire risk." (AR 3:1259; see also AR 3:1307-1311 [maps and descriptions of habitat types on West Parcel].)

Under the project, a portion of the West Parcel would be converted to residential and commercial uses, and to the installation of roads and infrastructure. Thus, a portion of the existing tree cover on the site would be removed to make way for this development. (AR 3:1326-1330.)

The balance of the West Parcel would remain forest. SPI would continue to manage the remaining forest to preserve its health, and to reduce fire risk, by removing dead or dying trees. (AR 3:1259-1260. 1734.)

Neighboring land is also managed to reduce the risk of wildfire by thinning timber and conducting controlled burns. (AR 3:1728-1729.) Of particular note, in 2015, the Northstar Fire Department ("NFD") – a component of the Northstar Community Services District ("NCSD") – adopted the Northstar Community Wildfire Protection Plan ("CWPP"). (AR 78:46780-46844; see AR 3:1288, 1724 [Martis West EIR references to NFD's plan].) Although MVWP cited this plan in its opening brief, Sierra Watch ignores it, despite its relevance.

As the introduction to NFD's plan explains, "[t]he objective of this Community Wildfire Protection Plan (CWPP) is to reduce or eliminate the loss of life, property and resources caused by a wildfire in the Northstar community. This will be accomplished through public input, planning and forest management practices. The first line of defense against a catastrophic

wildfire in Northstar is to prevent as many fires as possible from starting or, in the event of a fire, to keep it as small as possible. The second line of defense is to enforce defensible space requirements around structures and to manage fuels in common and boundary areas by creating firebreaks, safe escape routes and promoting a healthy forest ecosystem." (AR 78:46783.)

The CWPP includes a detailed assessment of the risk of wildfire in the area, including the effect of forest treatment to slow the spread of a wildfire. (AR 78:46787-46789.) Based on this assessment, the CWPP makes specific recommendations about treating the landscape to remove potential fuels, create firebreaks, protect evacuation routes, and generally reduce the risk of wildland fire. The recommendations build on the actions taken under the NFD's previous fuel reduction efforts. (AR 78:46789-46792.) The CWPP includes information regarding the methods that will be used to treat the landscape, the standards that will be applied, and how these activities will be funded. (AR 78:46792-46797.) Accompanying maps show areas to be treated based on the threat they present to the Northstar community. (AR 78:46800-46801.)

The CWPP is not a plan that NFD placed on a shelf and then forgot. Rather, NFD has led efforts to remove brush, thin the forest canopy, and reduce fuel loads in extensive areas around Northstar, in keeping with the CWPP's priorities. (AR 78:46790-46792, 46803.) These efforts are

ongoing (AR 78:46792 [updated priorities].) [3]

In addition to NFD's plan to treat the landscape to prevent or slow the spread of wildland fire, property owners must maintain "defensible space" around buildings. Under Public Resources Code section 4291, subdivision (e), CalFire has issued guidance for creating defensible space around buildings and structures in areas at risk of wildland fire. Under this guidance, "[a] defensible space perimeter around buildings and structures provides firefighters a working environment that allows them to protect buildings and structures from encroaching wildfires, as well as minimizing the chance that a structure fire will escape to the surrounding wildland." (AR 67:40206.) The guidance provides specific standards that homeowners must meet in order to provide sufficient defensible space. The standards include:

- Maintaining a 30-foot firebreak around each building or structure;
- Removing dead or dying trees or shrubs in the "Reduced Fuel

[3] The U.S. Forest Service and other agencies have adopted similar plans for land located in the Lake Tahoe basin. (AR 80:47713-47780 [Fuel Reduction and Wildfire Prevention Strategy for Lake Tahoe Basin], 80:47793-47965 [management plan for land in jurisdiction of U.S. Forest Service], 20:11150-11156 [U.S. Forest Service testimony regarding programs to thin forests for fire protection and forest health].) The Martis West EIR cited these plans (AR 3:1728-1729), as did MVWP's opening brief (MVWP's Opening Brief on Cross-Appeal, p. 127). Sierra Watch ignores them.

Zone" (a zone from 30 to 100 feet around each building or structure);

- Within 100 feet of each building or structure, retaining dead trees or snags only where they are well-spaced, are isolated from other vegetation, and do not have the potential to fall on buildings, structures, roads, driveways or sidewalks.
- Thinning, pruning and clearing vegetation within the Reduced Fuel Zone to meet the "plant spacing guidelines" set forth in the guidance.

(AR 67:40204-40212; see Cal. Code Regs. ("CCR"), title 14, § 1299.01 – 1200.05 ["defensible space" standards for property within a "State Responsibility Area"]; see AR 3:1706 [EIR's description of CalFire regulations establishing defensible space requirements].)

NFD has adopted, and enforces, CalFire's standards. An NFD fact sheet, cited in the Draft EIR (see AR 4:1811), states:

> The NFD is actively working to create a healthy forest and employs a full-time Forestry Supervisor to manage a Community Wildfire Protection Plan (CWPP) and a Fuels Reduction Program. Both programs ultimately aim to eliminate the loss of life, property and resources caused by a wildfire in the Northstar community. The CWPP was designed to reflect the community's values, needs, environmental concerns and opportunities within the plan's boundaries by focusing on its priorities. … The Forest Supervisor plans and executes fuels management/forest health projects with the emphasis on reducing excess fuels, the potential for insect and disease infestations and restoring the forest back to healthy historical standards. The Forestry

> Supervisor is available to provide forest health evaluations on your property and to answer questions you may have about defensible space and other natural-resource-related issues.
>
> Despite the NFD's efforts to keep our forests healthy, we can't do the job alone. Quality defensible space is the most important factor in limiting the spread of wildfire. Defensible space can be beneficial in many ways. It can prevent fire from advancing and endangering homes and lives. It improves property values while reducing the risk of loss. It provides a healthier environment for trees and shrubs by minimizing the impacts of competition for water and sunlight, insects and disease. Most importantly, it allows fire fighters to safely and effectively defend properly from an approaching fire.
>
> To ensure Northstar homeowners arc dedicated to the goal of making our community a healthier and safer environment, the NFD enforces numerous local and state ordinances regarding defensible space regulations. The NFD, in cooperation with CalFire, reminds all homeowners to maintain their property in compliance with Public Resource Code 4291, California Code of Regulations 1299 and local Ordinance 26-09.

(AR 78:46778.)

NCSD Ordinance 26-09, in turn, expressly adopts the standards set forth in 14 CCR section 1299, and adopts additional standards to maintain defensible space around buildings and structures. The standards set forth in Ordinance 26-09 are in addition to those established by CalFire under Public Resources Code section 4291. (AR 78:46807 [Ordinance 26-09, § 1].) Among other things, Ordinance 26-09 imposes the following requirements, which go significantly beyond CalFire guidance:

- A five-foot clear zone, free of all vegetation, must be maintained around every structure.

- Within 100 feet of a structure, pine duff must not exceed an average depth of one inch.
- Tree limbs within ten feet of any structure must be removed.
- Shrubs and trees must be spaced, with the required spacing varying depending on the slope (with greater slope requiring more spacing).
- All standing dead or dying trees must be removed.
- All lower limbs on trees must be removed, to a height of eight feet.
- "Fuel Reduction Zones" encompass all land within 300 feet of structures. Within these zones, (a) trees must be thinned as specified, depending on the tree species, (b) brush and understory must be removed as specified by the NFD, and (c) logging slash must be chipped, burned or hauled away to reduce the fuel load.

(AR 78:46808-46810.)

NFD provides property owners with technical guidance to implement these requirements, performs annual inspections, and enforces them. (AR 78:46810-46811, 78:46778-46779.) NCSD has also adopted Ordinance 28-13, which establishes a variety of building construction requirements that go beyond the standard Fire Code, and provides that the NFD Fire Chief can inspect properties, collect fees to cover inspection costs, and enforce the ordinance's requirements. (AR 78:46813-46822.)

The County retained Peter Hnat, an experienced fire professional, at MVWP's expense to peer review the EIR's analysis of wildland fire and evacuation. Mr. Hnat described NFD's program in the following terms: "Northstar Fire Department is a well-managed organization with a world-class defensible space program. The Forester on staff is committed to developing a wildland interface that both [a]esthetically pleasing and very practical for the environmental conditions. Risk will be reduced if these practices are carried over to the West Parcel." (AR 28:15788.)

Elsewhere, Mr. Hnat stated: "Northstar Fire Department has an aggressive defensible space and fire prevention program; every structure within the district gets inspected yearly for defensible space compliance. In addition to the traditional firefighters on staff, Northstar Fire Departments employs a board certified Forester to manage the fuel reduction program and other forest practices. The district is committed to developing a fire safe culture." (AR 28:15787; see also AR 78:46777 [NFD has achieved an Insurance Services Organization ("ISO") rating of "Class 3," an "exemplary" rating, as a result of its policies, programs and expertise].)

The Martis West EIR cited and described these requirements. (E.g., AR 3:1288, 1708-1709, 1715-1716, 1733-1734, 1742-1743.) As the Draft EIR explained, "[t]he entire MVWPSP project site is located within a State Responsibility Area (SRA) served by CAL FIRE. If the MVWPSP is adopted, the 662-acre West Parcel development area would be annexed into

the NCSD, which would provide fire protection services to the new development along with CAL FIRE. NCSD operates the Northstar Fire Department (NFD), which protects five square miles and provides fire prevention and suppression, and rescue services." (AR 3:1287.) Thus, as the EIR noted, the project included annexation to the NCSD service area, at which point the project would be subject to NFD Ordinance 26-09. (AR 1:55 [development agreement section 3.2.4 requiring annexation to NCSD "[p]rior to approval of the improvements plans for the initial improvements of the first phase of residential or commercial development"]; see also AR 3:1724 [EIR notes that annexation to NCSD is required], 2:618 [same], 2:627-631 [correspondence with NFD and project applicant confirming that project will comply with NFD's defensible space requirements].) Moreover, the Specific Plan includes policies requiring adherence to NFD's standards. (AR 2:946 [policy requiring preparation of Fire Protection Plan incorporating NFD standards], 2:1062-1065 [Project's Emergency Preparedness and Evacuation Plan requires compliance with cited standards], 2:1026 [Specific Plan Policy PSU-21 requires compliance with NCSD's Ordinance 28-13 – adoption of and amendments to Fire Code], 3:1715-1716 [adequate water supply and hydrants to meet NFD requirements; sprinklers in all buildings].) Thus, the standards adopted by NFD and NCSD to reduce wildland fire risk will be implemented at the

Martis West project as well, and the implementation of these requirements will be subject to review and approval by the NFD. (AR 3:1715-1716.)

Sierra Watch's response to these programs is simply to dismiss them. (Sierra Watch's Opposition Brief, pp. 116-118.) In its view, whether a project incorporates defensible space requirements, or requires enhanced Fire Code standards, or takes other steps to prevent or slow wildland fires, is irrelevant.

Sierra Watch cites no record evidence supporting this view. In fact, fire professionals repeatedly and uniformly noted that properly managing the landscape and constructing fire-resistant buildings were key factors in minimizing the risk of wildland fire. (E.g., AR 78:46778 [NFD fact sheet notes that defensible space can help contain wildland fire], 78:46788-46789, 46799, 46823-46828 [modeling showing that the rate at which wildland fire spreads is reduced significantly by establishing clear zones and defensible space], 80:47744-47748 [interagency task force in Tahoe basin, citing benefits of reducing fuel and establishing defensible space around structures], 20:11150-11155 [testimony from U.S. Forest Service representative regarding programs to thin forests for fire protection and forest health].) As one guidance document summarized, "vegetation fuel management must go hand-in-glove with ignition-resistant building construction to maximize the effectiveness of fire loss mitigation measures." (AR 78:46829.)

Sierra Watch argues that compliance with regulatory standards is not, standing alone, sufficient reason to conclude that an impact will be insignificant. (Sierra Watch's Opposition Brief, pp. 117-120.) The cases cited by Sierra Watch, however, are distinguishable. In *Californians for Alternatives to Toxics v. Dept. of Food and Agriculture* (2005) 136 Cal.App.4th 1 (*Californians for Alternatives to Toxics*), the court held that an agency's uncritical, unelaborated reliance on a pesticide registration program was insufficient to address the potential impacts of applying pesticides because the analysis did not consider the potential impacts that could occur from the application of specific pesticides in sensitive locations. Although the registration requirement was a precondition to using a pesticide, that program "does not and cannot account for specific uses of pesticides in the [pest control plan], such as the specific chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application, and the like." (*Id.* at p. 16.) Similarly, in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, the city cited the project's compliance with building code requirements to conclude a shopping center would not have significant energy impacts, but that left out energy use external to the building envelopes, such as during construction and from transportation sources. (*Id*. at pp. 210-212.)

In this case, by contrast, the EIR cited Specific Plan policies requiring compliance with ordinances adopted by NFD. The EIR went

further by describing these requirements, and explaining how such compliance would reduce the risk of wildland fire, slowing its spread. (E.g., AR 3:1288, 1623-1624, 1709, 1716, 1733-1734, 1742-1743.)

Compliance with regulatory requirements is routinely cited as support for the conclusion that a project's impact will not be significant on resources addressed by those requirements. (See, e.g., *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1059-1060 (*Treasure Island*) [requirement that site cleanup comply with regulatory standards supported conclusion that mitigation would avoid impacts from hazardous substances]; *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 409-413 (*City of Maywood*) [cleanup of school site under supervision of regulatory agency supported conclusion that impact would be insignificant]; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236 (*Clover Valley*) [requiring compliance with regulations a common and reasonable mitigation measure].)

Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884 (*Oakland Heritage*) is particularly apt.[4] That case involved a development project located in an area susceptible to large

[4] MVWP cited *Oakland Heritage* in its opening brief. (MVWP's Opening Brief on Cross Appeal, p. 143.) Sierra Watch does not cite, much less attempt to distinguish, the case.

earthquakes and liquefaction. The EIR described the seismic standards and code requirements applicable to buildings proposed in the project area. As individual buildings were proposed, engineers would have to prepare reports demonstrating compliance with these standards, subject to the city's review. The petitioner argued that this discussion was insufficient to support the city's conclusion that seismic and liquefaction impacts would be insignificant. The court disagreed, contrasting *Californians for Alternatives to Toxics* by noting that "the site-specific seismic and soil investigation and mitigation do account for the specific conditions on the project site" (*Id*. at p. 904), and concluding: "We see no abuse of discretion in a conclusion that conformity with the current building standards, as discussed and elaborated in the Revised EIR, in conjunction with the other requirements specified in the Revised EIR, adequately mitigated the seismic impacts of the project." (*Oakland Heritage,* at p. 905, fn. omitted; see also *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 734-736 [soil stability issues satisfactorily addressed by standard building code requirements].)

The stringent requirements adopted by NFD are directly analogous to the seismic and building codes at issue in *Oakland Heritage*. The EIR described these requirements, and the Martis West project will be subject to them. That is sufficient support for the County's conclusion that wildland fire risks will not be significant.

C. Experts found that the emergency vehicle access roads incorporated into the project were adequate.

Sierra Watch similarly dismisses the emergency vehicle access roads incorporated into the project, characterizing the commitment to upgrade and pave both emergency access roads as "last minute." (Sierra Watch's Opening Brief, p. 119.) This characterization is neither relevant nor accurate. It is irrelevant because CEQA contemplates that projects will evolve in the course of the environmental review process. As one court observed, "CEQA allows, if not encourages, public agencies to revise projects in light of new information revealed during the CEQA process." (*Treasure Island, supra*, 227 Cal.App.4th at p. 1062; see also *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199 ["The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal."].)

The characterization is inaccurate because the change was not "last minute." The Martis West project always incorporated three means of ingress and egress during an emergency: the main access road, and two emergency vehicle access ("EVA") roads (one connecting to State Route 267 ("SR 267") at Brockway Summit, and another connecting to the Fibreboard Freeway). (AR 3:1282, 1715, 1741 [Draft EIR's description of

EVAs incorporated into project], 28:16146 [Fibreboard Freeway is existing, paved road].)

The "public review draft" of the Specific Plan – issued in October 2015, at the same time as the Draft EIR, and a year before the County approved the project – included a map showing evacuation routes. The map shows all three routes: the main access road, the primary EVA leading to Brockway Summit, and the secondary, unpaved, "seasonal" EVA connecting to the Fibreboard Freeway. (AR 22:12098.)

One detail changed after that. In comments on the Draft EIR, NFD Fire Chief Mark Shadowens stated that all EVAs had to be paved and improved to meet state and local standards. (AR 6:3163.) The Final EIR responded that the primary EVA would be paved and widened, as would internal EVAs; the second EVA connecting to the Fibreboard Freeway, however, would not be paved because it would be used only seasonally. (AR 6:3164-3165; see AR 3:1701 [noting that Fibreboard Freeway is open to vehicles on a seasonal basis, when snow is not present].) To state the obvious, the risk of wildland fire is non-existent when snow is on the ground, so improving the second EVA so that it could be used year-round was considered unnecessary. (AR 6:3164-3165.)

Shortly after the County published the Final EIR, Fire Chief Shadowens sent another letter, reiterating the NFD's position that the secondary EVA had to be paved and widened. (AR 1:392, 31:17529.)

Immediately thereafter, MVWP sent a letter to the County, copying Fire Chief Shadowens; in this letter, MVWP stated that the secondary access road would be paved and widened, as requested by the NFD. (AR 2:627, 28:15771.) The County responded to both letters by noting that the secondary access road would be paved. (AR 1:393, 2:631.) If anything, the exchange shows that "[t]his is a case where CEQA worked." (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 206, fn. omitted.)

Here again, *Clews*, *supra*, 19 Cal.App.5th 161 is noteworthy. One of the reasons the *Clews* court upheld the county's determination that evacuation impacts were insignificant was the availability of "an alternate evacuation route westward along a dirt road." (*Id*. at p. 194.) This project (1) involves and EIR, rather than a negative declaration, (2) provides two alternative evacuation routes, rather than just one, and (3) includes paving and widening both.

Sierra Watch argues neither EVA counts because all evacuees will be funneled to SR 267, where (in its view) the real problem resides. Sierra Watch goes so far as to say that SR 267 is "the *only* road out of the area in an evacuation." (Sierra Watch's Opposition Brief, p. 118.) Sierra Watch's claim is false. The Fibreboard Freeway is not a cul-de-sac. Instead, the Fibreboard Freeway "passes near the southern boundary of the West Parcel, extends more than 14 miles from SR 267 at Brockway Summit southwestward through a corner of Burton Creek State Park and into Tahoe

City." (AR 3:1701; see also 3:1715, 3:1279 [Figure 3-9 in Draft EIR showing EVA connection to Fibreboard Freeway].) A figure from the Specific Plan indicating evacuation routes shows that the existing, paved Fibreboard Freeway extends to the west "to Tahoe City," and labels the road a "FIRE & LIFE SAFETY ACCESS ROUTE." (AR 22:12098.) The EIR includes a photograph of a segment of the Fibreboard Freeway near the project site. (AR 3:1468.)

Sierra Watch also argues that the Fibreboard Freeway does not count because the EIR did not identify it as an evacuation route, but instead stated that evacuees would be directed to SR 267. (Sierra Watch's Opposition Brief, p. 119.) The EIR did so, however, because the analysis focused on whether the project would "impair implementation or physically interfere with an adopted emergency response plan or emergency evacuation plan." (AR 3:1734-1735, 1741.) Here, the County adopted such a plan – the "East Side Emergency Evacuation Plan" (updated 2015) – and that plan designates SR 267 as the primary evacuation route through the Martis Valley. (AR 3:1733, 3:1741-1742, 17:10174-10197; see AR 78:46872 [map showing evacuation routes in north Tahoe area, including Project site].) Because SR 267 is the designated route in the County's "adopted [] plan," the EIR appropriately focused on whether the project would interfere with that plan. That hardly means that the Court must indulge Sierra Watch's fiction that the Fibreboard Freeway does not exist. (AR 1:492 [County

notes that the project would include a paved connection to the Fibreboard Freeway, which "could be used as a secondary emergency access if needed"].)

The primary case relied upon by Sierra Watch – *City of Maywood*, supra, 208 Cal.App.4th 362 – undermines its argument. In that case, the school district originally planned to close a busy street in order to construct a high school. Later, the district changed the design so that the street would remain open and bisect the school. The record, however, did not contain "any evidence" that the district considered pedestrian safety problems caused by this design. (*Id*. at p. 395.) By contrast, substantial evidence supported the district's conclusion that a nearby railroad line did not present a significant hazard to pedestrians. That evidence consisted of a report by an expert included as an appendix to the Final EIR, in which the expert concluded that students were unlikely to take a route to school that would involve crossing the railroad tracks. (*Id*. at pp. 423-424.)

Here, County staff and the Specific Plan both noted that, even if SR 267 served as the primary evacuation route under the County's adopted plan, the Fibreboard Freeway was available as a secondary emergency connection to both SR 267 to the east and Tahoe City to the west. (AR 1:492, 22:12098, 28:16030.) Citygate Associates, another expert consultant retained by the County at MVWP's expense, reviewed the plan. As Citygate noted:

> An emergency vehicle access (EVA) road would be provided by connection to SR 267 at Brockway Summit. The EVA would be a paved two-lane road that would be accessible year-round. The EVA would provide access for emergency vehicles only, unless needed to evacuate residents. *Fiberboard Freeway, a paved two-lane road that touches the southeastern corner of the project site and connects to SR 267 would provide a secondary emergency access during catastrophic events (e.g., wildfire).* [¶] … [T]he proposed roads will be within acceptable requirements.

(AR 77:46033-46034, emphasis added.)

The Draft EIR repeatedly cited the Citygate report, and included its recommendations as proposed mitigation measures (see, e.g., AR 3:1710, 1714-1717), which the County adopted. (AR 2:865-866 [Mitigation Monitoring and Reporting Program, Mitigation Measure 17-3], 1:248-249 [CEQA findings citing mitigation measure 17-3, requiring funding for additional NFD staffing in order to ensure adequate response times].)

D. The record supports the County's finding that, with the additional funding provided by the project, NFD's response times will be adequate.

Sierra Watch argues the County did not provide a sufficient analysis of NFD response times. (Sierra Watch's Opposition Brief, pp. 120, 126-127.) The only record evidence concerning NFD's response times, however, consists of the EIR's analysis and of supporting reports by the County's experts. These analyses noted the importance of prompt response times, and then concluded that, with the additional funding provided by the project to augment NFD's staff, response times would be adequate to

enable NFD to mount an aggressive response to prevent small fires from becoming large ones. (AR 77:46027-46047, 3:1716-1717, 3:1720-1721 [Draft EIR]; 7:3667-3668 [Final EIR]; see AR 77:46047 [map showing distance between fire stations and project site].) Thus, the experts assessed access and response times, and recommended additional funding and two paved EVAs to supplement the main entrance road. All of the experts' recommendations were incorporated into the project.

Sierra Watch argues none of this counts because NFD has insufficient resources to respond to a large-scale wildland fire, citing a last-second letter penned by its inexpert lawyer. (Sierra Watch's Opposition Brief, p. 127, citing AR 29:16733.) This letter, authored by a lawyer with no demonstrable expertise on the issue at hand, is not substantial evidence. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580.)

On top of that, no one claimed, or even suggested, that NFD would be left to fend for itself in the event of a major wildland fire. On the contrary, adopted plans and experts both emphasized the integrated unified command and mutual aid that would be brought to bear by Federal, State and local first responders throughout the region, should such an incident occur. (See, e.g., AR 17:10175-10184 [County's East Side Emergency Evacuation Plan describing unified command and agency coordination], 2:1054 [project's Emergency Preparedness and Evacuation Plan ("EPEP")

describing how dispatch and incident response occurs], 2:1057 [NFD mutual aid agreement with CalFire and other fire districts in region], 19:10833-10838 [John McEldowney, Program Manager, Placer County Office of Emergency Services, describing agency coordination, unified command structure, and emergency notification systems], 20:10845-10848 [expert consultant Peter Hnat describing unified command structure, mutual aid, and agency coordination facilitated by East Side Emergency Evacuation Plan and emergency notification system], 77:46036 [Citygate report notes that mutual aid is required for larger fires, while NFD should have resources to respond promptly to immediate threats before mutual aid resources can be brought to bear].)

On top of that, the additional funding provided by the project staff would surely help. This funding would enable NFD to augment its staff so that NFD would be able to respond quickly and aggressively to any fires that start in the area, before they become major conflagrations. (AR 20:10844 [Mr. Hnat notes that, by providing additional funding, NFD "has significant capacity to absorb the marginal increase in call volume" associated with the project], 28:15787 [NFD has successfully responded to fires within its boundaries; most significant threat is from large, regional fire starting outside area; such larger fires involve response from CalFire and other fire districts operating in coordinated fashion under mutual aid agreements].)

Sierra Watch seems to believe that further analysis was required. "A project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study [] might be helpful does not make it necessary." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 415 (*Laurel Heights I*); see *North Coast*, *supra*, 216 Cal.App.4th at pp. 639-643 [district did not need to perform further sampling, despite complaints from other agencies].)

E. The record amply supports the County's conclusion that the project is consistent with the East Side Evacuation Plan.

Sierra Watch argues that the County did not consider whether the project's reliance on SR 267 as a primary evacuation route was warranted. Sierra Watch attacks both the EIR's discussion of the issue, and the analysis performed by LSC Transportation, an expert traffic consultant, to support that analysis. (Sierra Watch's Opposition Brief, pp. 120-126.) The attack is unwarranted.

In March 2015, the County adopted an update to its East Side Emergency Evacuation Plan. (AR 3:1733; see AR 17:10174-10197, 78:46872 [map showing evacuation routes in north Tahoe area, including Project site].) The NFD has also issued an Emergency Preparedness and Evacuation Guide. NFD's Guide shows evacuation routes from the Northstar area. (AR 77:46060-46074.)

The Draft EIR cited and described the East Side Plan. (AR 3:1733, 4:1811.) As the Draft EIR noted, the East Side Plan designates SR 267 as a primary route for evacuating the Martis Valley region in the event of a wildland fire. (AR 3:1733.) The Specific Plan EPEP also cited and described the East Side Plan as well as the NFD Guide. (AR 2:1081-1082, 1085.) The NFD Guide also designates SR 267 as a primary evacuation route.

The EIR analyzed whether the project would "interfere with an adopted emergency response plan or emergency evacuation plan," or "expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands." (AR 3:1735.) These thresholds track the CEQA Guidelines. (CEQA Guidelines, Appendix G, § VII, subd. (h).) [5]

As MVWP noted in its opening brief on the cross-appeal, the EIR concluded that the Project would maintain primary and secondary evacuation routes to SR 267. The Project would also prepare its own evacuation plan, subject to review by NFD, and would not block or

[5] Sierra Watch does not propose alternative standards, much less cite authority for the proposition that these thresholds were impermissible. Sierra Watch thus concedes, as it must, that the County had discretion to rely upon thresholds adapted from Appendix G. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068; *Oakland Heritage, supra,* 195 Cal.App.4th at pp. 896-897.)

interfere with the use of SR 267 by other evacuees. As the Draft EIR stated, "[a] preliminary evacuation plan is provided in Appendix D of the Specific Plan," showing how the project's primary and secondary emergency access routes "relate to project roads and nearby emergency routes." (AR 3:1741; see AR 38:22150-22195 [preliminary draft of preliminary evacuation and preparedness plan for Project].) The EIR included the following discussion regarding whether the project would interfere with the use of SR 267 as the adopted evacuation route through the area:

> Vehicle trips during project operation would represent an incremental increase over existing traffic volumes on nearby roadways, particularly during summer and winter peak times. This volume is consistent with, and lower than, traffic volumes considered by the County in its approval of the MVCP. The proposed project would not cut off or otherwise modify any existing evacuation routes. In accordance with Policy PSU-25, a Fire Protection Plan (FPP) would be prepared for the project that would identify emergency evacuation routes, emergency access road standards, standards for signs identifying evacuation routes, and a program for disseminating public safety information. Because the project would develop an emergency evacuation plan as part of the FPP, provide adequate emergency vehicle access and points of ingress and egress in a manner that meets NFD requirements (Shadowens, pers. comm., 2015a), and result in operational traffic that, at buildout, would represent an incremental increase insufficient to interfere with the SR 267 Emergency Evacuation Plan, the project's impact relative to emergency evacuation is less than significant.

(AR 3:1741-1742; see AR 3:1745-1746 [project would not contribute to significant cumulative interference with evacuation via SR 267].)

The Draft EIR did not contain an estimate of the time required to evacuate the project site. Rather, the Draft EIR focused on whether the project would interfere with evacuation plans, and whether the project presented a significant risk with respect to wildland fires. (AR 3:1741-1746.) The analysis tracked the standards used by the County to determine whether these impacts would be "significant" (AR 3:1735), and these standards derived from the State CEQA Guidelines. (CEQA Guidelines, Appendix G, § VII, subd. (h).) The thresholds called for a qualitative judgment regarding whether the risks presented by wildland fire would be "significant." Given the qualitative nature of the thresholds, it is unsurprising that the Draft EIR did not include a quantitative estimate of evacuation times.

The CEQA process is, by nature, open ended and iterative. The lead agency presents its analysis, interested stakeholders weigh in, and the lead agency responds in good faith. (See *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 546-558 [describing CEQA's requirement to respond to comments raising environmental concerns].)

In this case, commenters expressed concern about the risks posed by wildland fire, and the potential need to evacuate the site. (E.g., AR 6:3250, 3312-3313, 3341-3343.) The Final EIR responded to these comments. (AR 6:3251, 3378, 3404 [cross-referencing "Master Response 9" and draft Emergency Preparedness and Evacuation Plan prepared for project].) The

Final EIR's Master Response, in turn, included an estimate of evacuation times, and cited an analysis performed by LSC as the source of those estimates. (AR 6:3140.) Among other things, the response stated:

> In addition to the draft EPEP prepared for the Specific Plan, further analysis of traffic conditions during an evacuation scenario has been conducted (LSC 2016). This separate analysis evaluated an example evacuation scenario for a theoretical wildland fire occurring during the peak of the summer tourist season. The example evacuation scenario assumed that all of the project residences would be occupied and that evacuation would occur to the north (all vehicles exiting the project site would be required to turn left (north) on SR 267. Many of the evacuation scenario assumptions are conservative in that they would generate more vehicles on fewer lanes than would actually occur. For example, it would be unlikely that 100 percent of all homes on the project site would be occupied at any one time. Based on the analysis and the assumptions used, it is estimated that it would take approximately 1.3 hours for all vehicles to exit the MVWPSP project site under existing plus project conditions and 1.5 hours under cumulative plus project conditions. These estimates represent the time required for the last vehicle to evacuate the MVWPSP site.
>
> Although the proposed project, or any project that adds people to an area, would increase the amount of time to complete an evacuation, this does not necessarily generate a safety risk. Emergency personnel who issue an evacuation order take into account the time needed to implement an evacuation when determining when and where to issue evacuation orders. For events like wildfires, the fires are tracked from the moment of discovery, and risk to nearby development is assessed on a regular basis. Hours or days of lead time could be available to assess risk and make evacuation determinations. During these periods, peak occupancy conditions typically do not occur as drifting smoke, awareness of the risk, or other factors result in people avoiding the area.

(AR 6:3140.)

The record also contains LSC's analysis. (AR 28:15789-15802.) LSC's analysis spelled out the conservative assumptions that were used to estimate evacuation time. (AR 28:15789-15792 [no expansion of SR 267, despite plans to do so; full occupancy; evacuation during summer peak traffic volumes on SR 267].)

The record thus shows that, in response to comments, the County provided the requested information. That is exactly how CEQA is supposed to work. (*City of Irvine v. County of Orange*, *supra*, 238 Cal.App.4th at pp. 557-558.)

Sierra Watch seems to suggest that none of this counts because it appeared in the Final EIR, rather than the Draft EIR. That suggestion is false. Responses to comments are part of the EIR, and the lead agency may cite the responses to support the agency's conclusions. (*Cleveland I*, *supra*, 3 Cal.5th at pp. 516-517; *Defend the Bay*, *supra*, 119 Cal.App.4th at p. 1273.)

Sierra Watch argues that the County had to explain why evacuation times of this length meant that the impact would not be "significant." (Sierra Watch's Opposition Brief, pp. 121-122.) The trial court agreed. (JA 8:1573.) Sierra Watch also calls LSC's analysis "plainly inadequate" and based on inappropriately optimistic assumptions. (Sierra Watch's Opposition Brief, p. 122.)

Sierra Watch is wrong and the trial court erred. As both the Final EIR and LSC noted, the assumptions underlying the analysis were, in fact, conservative. (AR 28:15789-15792, 6:3140.)

Indeed, in arguing that 1.3 or 1.5 hours is too long to complete an evacuation, Sierra Watch does not cite a regulatory requirement, adopted policy, or industry standard. Instead, Sierra Watch cites a letter from a consultant hired by a project opponent. (Sierra Watch's Opposition Brief, pp. 122-123.) That letter states that the County should have analyzed evacuation times under a variety of scenarios, rather than the single, conservative scenario focused upon by LSC. (AR 1:311-312.) Although the letter is dated May 2, 2016 (AR 1:308-315), [6] the County received the document as an attachment to a letter submitted on June 2, 2016, on the eve of the Planning Commission's hearing, a month after the County published the Final EIR. (AR 36:20906, 20913.) The County had no obligation to respond to the letter. (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 918-919 (*Gilroy Citizens*).) But the County responded anyway, stating:

> The comment suggests that 1.5 hours is a long time in the face of a serious wind driven fire event, and suggests that multiple scenarios should have been evaluated. The LSC memo analyzes the amount of time needed to evacuate the

[6] The May 2 date is probably a typographical error. The letter provides comments on the Final EIR, which the County did not release until May 3, 2016. (AR 36:20926.)

MVWPSP site on a peak summer day, when traffic levels on SR 267 would be high, and includes both existing and future conditions based on the traffic analysis in the Draft EIR. The analysis focuses on the amount of time it would take for residents and guests to travel to the airport. The comment suggests that the analysis should assess the rate at which fires would advance, considering such variables as wind speeds, direction, humidity and fuel moisture content considerations, topography, time of day, and fuel loadings (including brush). Because of the number of variables involved in the behavior of any given fire event, the number of scenarios that could be defined would be so numerous that selection of any one or several would be speculative and not necessarily representative. The more tangible metric, and a reasonable indication of the effect of the project on emergency evacuation, is the time required for evacuation of the project itself, and the effect of the project on overall evacuation times, as described in the EIR.

. . .

Regarding the contribution of traffic on SR 267 from other communities, the analysis is based on a peak summer day under both existing and cumulative conditions. Therefore, traffic from other projects is included in the baseline. The analysis is conservative, because it assumes 100% occupancy, which would occur seldom, if at all. Note that in an evacuation, traffic from these other areas has access to routes other than SR 267. For example, Northstar has an emergency access route through Martis Camp, so evacuees from Northstar would not necessarily use SR 267.

The comment also identifies two specific situations that might happen-a family van towing a boat trailer that tips over and blocks the evacuation route, and someone at the end of a queue responding to embers and smoke drifting across the road. These are speculative situations, one of a myriad that cannot meaningfully be incorporated into the quantitative analysis of time needed to evacuate the MVWPSP site.

(AR 1:324-325.) The County thus explained that the sort of multi-variable analysis demanded by the opponents' consultant was infeasible.

The record contains sufficient information to support the conclusion that, given the extensive efforts to reduce fuel loads on the project site, and thereby slow wildland fires, evacuation times of these lengths do not present a significant risk. NFD's Community Wildfire Protection Plan (AR 78:46780-46844) includes modeling showing the effect of thinning the forest and reducing fuel loads. As the CWPP notes, "[w]here fuels-reduction work has been completed, annual inspections and maintenance needs to be performed. In most cases, shrub-covered areas were reduced from a severe to dangerous fire threat to a manageable fire threat. Timber-covered areas, in most cases, were reduced from an unhealthy even-aged conifer stand with accumulated forest floor fuels to what is classically called a Shaded Fuel Break." (AR 78:46787.) The modeled results show that, by clearing brush and thinning trees, the rate at which a wildland fire spreads decreases dramatically. (AR 78:46788-46789 [in open brush, treatment reduces rate of spread from three miles in an hour to one mile in an hour; in timberland, treatment reduces rate of spread from 2,046 feet in an hour to 462 feet in an hour].)

As noted above, the project site will be annexed into NFD, and will be subject to the same forest management practices that NFD already

implements within the Northstar area. (AR 1:55, 2:618, 2:627-631, 2:946, 2:1062-1065.) The EIR cited the NFD's Wildfire Protection Plan, and notes that the project will have to comply with its standards. (E.g., AR 3:1288, 3:1715-1716, 3:1724.) These efforts, together with the County's emergency notification system (AR 19:10836-10837, 20:10840), support the County's conclusion.

An EIR must include a good-faith analysis of that which is reasonably foreseeable, but that does not mean an EIR must analyze every conceivable permutation under worst-case circumstances. *National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, is on point. There, commenters stated that a proposed landfill would alter surrounding sensitive habitat by attracting vermin and the like. The National Park Service proposed animal tracking studies and computer modeling to address the issue. The county did not perform these studies. Instead, the EIR identified various measures to reduce this risk. Various biologists weighed in; some thought the measures would suffice, and others did not. The county found that, as mitigated, impacts to the ecosystem would not be significant. The trial court disagreed, finding that the record contained insufficient information regarding the landfill's impact on the ecosystem as a whole. The Court of Appeal reversed, stating:

> . . . [A]s guided by the Supreme Court in *Laurel Heights I*, *supra*, 47 Cal.3d at page 422, we deem the County's approval decision to be supported by the record with regard to effects

> upon the Park, even if it does not specifically address all the variants on the issues that the opponents are arguing here: "That some items or types of evidence, however, are less than conclusive does not mean the evidence as a whole is not substantial. As we have explained in a related context, 'the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.' [Citation.] To paraphrase the Guidelines, a fair argument can be made to support the [County's] conclusion, even though other conclusions might also be reached. (Guidelines, § 15384, subd. (a).)" (*Laurel Heights I*, *supra*, 47 Cal. 3d at p. 422.)

(71 Cal.App.4th at p. 1365.)

Similarly, in *High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, the petitioners argued that a county's general plan update would invite sprawl by "open[ing] the floodgates" to small, rural subdivisions. (*Id*. at p. 124.) The court rejected this argument, finding that the county could rely on its experience concerning the pace of, and demand for, such development, as well as general plan polices imposing restrictions on where development could occur. As the court summarized, "CEQA does not require an agency to assume an unlikely worst-case scenario in its environmental analysis." (*Id.* at p. 126; see also *City of Irvine v. County of Orange*, *supra*, 238 Cal.App.4th at pp. 541-544 [EIR's traffic analysis did not need to analyze "multiple, intersection-by-intersection, studies of traffic impacts on all nearby intersections on a year-by-year basis, plugging in the multiple variables of not only the completion of the project itself, but of any nearby projects." (Fn. omitted)].)

Sierra Watch argues that LSC should have considered the effect of evacuations from other communities in the region. (Sierra Watch's Opposition Brief, p. 125.) As Mr. McEldowney stated at the Planning Commission hearing: "[T]he less development there is the better the evacuation is going to go. I would say in my opinion it would be a marginal difference. They're still going to get it done." (AR 20:11136.) Mr. McEldowney's statement echoed the EIR. (AR 6:3140.)

In its opening brief, MVWP noted that "level of service" analysis of SR 267 focuses on road congestion during typical, "peak" periods of traffic, and is thus a measure of driver convenience that is not directly relevant to emergency situations. (MVWP's Opening Brief on Cross Appeal, pp. 140-141.) Sierra Watch disputes this fact, characterizing the traffic analysis' conclusion as depicting "gridlock" during peak periods on SR 267. (Sierra Watch's Opposition Brief, pp. 123-124.)

Sierra Watch is wrong. Level of service, or "LOS," measures the flow of traffic during a typical, "peak" hour, and thus focuses on traffic congestion during those periods. (AR 3:1488, 1490.) The EIR's transportation analysis devoted considerable attention to typical, peak traffic conditions on SR 267, which makes sense, given that those traveling to or from the project site must travel on this roadway. (AR 3:1486-1493 [existing level of service along SR 267]; see AR 3:1504 [access to site via SR 267].) As Gordon Shaw, an expert traffic consultant, explained, the

project would cause an increase in the volume of traffic during a peak Friday afternoon in August – the busiest summer hour. Even then, the project would increase the amount of time needed to drive along SR 267 from Kings Beach, over the Brockway summit, past the project's entrance road, and to Interstate 80 by only 22 seconds – a four percent increase over the current time required to make this trip. (AR 20:10882-10883; see AR 3:1513-1516, 1527 [Draft EIR's analysis of traffic on SR 267 between Interstate 80 and State Route 28 in Kings Beach], 5:2447-2559 [transportation calculations in appendix to draft EIR].) Mr. Shaw also noted: "Looking specifically at the emergency response time, … the increase in travel time between the Station 52 in Kings Beach and the site, assuming the sirens are not on, the additional traffic adds 13 seconds of travel time in the summer and 14 seconds in the winter." (AR 20:10883; see AR 20:11227-11229 [summary of effect of project on SR 267 traffic].) Throughout the County's environmental review process, no one challenged these estimates, or provided alternative calculations. Thus, the effect on travel times and emergency response is not what Sierra Watch implies.

Moreover, SR 267 serves as the designated emergency access route in this portion of the County. (AR 78:46872 [East Side Emergency Access Plan – map showing designated evacuation routes in project area].) Under those circumstances, SR 267 would serve as the primary evacuation route

for the area. Under the East Side Plan, the incident commander assumes authority over how roads will operate. As the plan states:

- ***Evacuation and Reentry***

  In Unified Command, the decision to evacuate or to prioritize evacuations of multiple areas is made after consultation between Incident Commanders. Execution of the actual evacuation order is by PCSO, with assistance from all other responding law enforcement, if and as available. Individuals will be strongly encouraged to evacuate, however those who refuse evacuation will be allowed to shelter-in-place. During enforcement of the evacuation, law enforcement will encourage family, friends and neighbors to assist any who require assistance (medically fragile, aged, etc). Volunteers, if available, may also be employed to assist those needing help to include assisting those without vehicles get to evacuation bus stops when and if Tahoe Area regional Transit (TART) or Tahoe Truckee Unified School District (TTUSD) or other buses or means of public transport are used.

  To facilitate a rapid and effective evacuation, the IC will identify all directly threatened and potentially threatened areas for evacuation. Evacuation centers and emergency shelters for the evacuees have been pre-coordinated and contact information determined (Attachment A). Upon consultation with OES and American Red Cross, Unified Command will select the emergency shelters and evacuation centers to be used. The decision is based on the threat and the probability that the facilities and routes of ingress and egress will remain out of danger. Pending OES arrival at the incident, the senior County representative coordinates with ARC and HHS to ensure designated facilities are put into operational order.
  . . .

- ***Incident Command and Emergency Management***

  Tactical employment of fire, law and emergency medical resources, as well as the decision to warn, or evacuate or shelter-in-place is the purview of the [Incident Command], and is executed from the Incident Command Post (ICP).

> Evacuation orders issued during an active emergency response are coordinated under the direction of Incident Commanders acting in Unified Command.

(AR 28:15981-15982.)

Elsewhere, the plan states:

> **2. Law enforcement and fire Incident Commanders collaborate and issue, through Dispatch, an evacuation warning, order or shelter in place order:**
>
> - **Evacuation Warning**: To warn the residents and the public in a potentially threatened area being considered for evacuation (Advise both the public and the media, and use map grids or *control features* to identify the limits of the area).
>
> - **Evacuation Order**: To evacuate areas under immediate threat (use map grids or control features to identify the specific area).
>
> - **Shelter In Place Order**: To direct residents to remain in place (issued due to hazardous conditions such as narrow roads, poor visibility, toxic gases, etc.)

(AR 28:15989.)

As Mr. McEldowney with the Placer County Office of Emergency Services explained to the Board at its September 13, 2016, hearing, fire and police professionals, together with Caltrans, would issue evacuation orders and provide traffic control. (AR 19:10834-10836 [noting that Placer County recently updated Eastside Emergency Evacuation Plan encompassing region]; see AR 20:10839-10841 [Placer County Sheriff's Office Lieutenant Fred Guitron, stating that Sheriff issues evacuation order in light of nature of threat, determines evacuation routes to be used, and then manages

evacuation], 28:15983 [Incident Command issues evacuation orders, designates roads to be used], 20:10845-10848 [expert Peter Hnat, retained by County to peer review project's emergency evacuation plan, describes unified command structure established by County under its adopted East Side Emergency Evacuation Plan].)

The professionals providing their perspective to the Board acknowledged that a large-scale evacuation of eastern Placer County on a busy holiday weekend "would be a challenging event." (AR 19:10834-10835.) They also stated, however, that plans, notification systems, expertise and command structures were in place to handle such an event. As Mr. McEldowney, Program Manager for the Placer County Office of Emergency Services, summed up for the Board: "The bottom line is that the evacuation, no matter how difficult and challenging, it's going to get done." (AR 19:10835.)

Here, as elsewhere, Sierra Watch seeks to parse the various aspects of the County's analysis, and the requirements of the EPEP and applicable codes, in isolation from one another. In fact, they all work together to address the risk of wildland fire. While SR 267's suitability as an evacuation route is certainly important, other factors are equally important: NFD's staffing and equipment; mutual aid agreements and coordination; internal access; fuel management; landscape and construction requirements; communications and notification systems; and so forth. (See 19:10835-

10837 [citing County's early notification system], 20:10846-10847 [use of unified command structure], 28:15787-15788 [peer review noting importance of fuel management, communications and proper planning], 20:10850-10853 [describing various means of communicating with residents], 2:1082-1083 [Project designed to comply with adopted East Side Emergency Evacuation Plan], 2:1055 [map showing evacuation routes for Project, tying into County's plan], 17:10174-10197 [adopted East Side Emergency Evacuation Plan], 6:3139 [Project's EPEP is "designed to complement the County's East Side Emergency Evacuation Plan"]; see AR 28:15785 [in peer review report, expert Peter Hnat states: "Effective risk evaluation includes three things: the potential for an event; how the population is specifically vulnerable if the event were to occur; and what can be done it to reduce risk."], 20:11135-11137 [Mr. McEldowney's statements before Planning Commission].)

Sierra Watch disagrees. In its view, the only possible conclusion is that the time required to evacuate the project during an emergency is too lengthy. Sierra Watch is entitled to its opinion, but that does not mean the County was obliged to agree. (*City of Maywood*, *supra*, 208 Cal.App.4th at p. 424 [agency had discretion to rely on expert report to conclude rail hazard was not significant]; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 912-916 [consultants' reports supported finding that project would not cause significant railroad or

pedestrian hazards]; *Clover Valley*, *supra*, 197 Cal.App.4th at p. 243 ["a lead agency has the discretion to determine whether to classify an impact described in an EIR as 'significant'"].)

F. Sierra Watch's attempt to dismiss the project's "shelter in place" requirement is unpersuasive.

The Specific Plan includes Policy 4.4, which requires the developer to provide design and construct a facility where residents and the public can "shelter-in-place," rather than evacuate. (AR 2:1083.) Sierra Watch criticizes this policy as an inadequate "substitute" for an evacuation plan. (Sierra Watch's Opposition Brief, pp. 128-129.) The criticism is unwarranted.

NFD's Emergency Preparedness and Evacuation Guide states that, in the event of wildland fire, residents should be prepared to either evacuate or, if directed by authorities, to shelter in place. (AR 77:46065-46068.) An opponent of the project hired a consultant to criticize the project, but even that consultant recommended incorporating a shelter-in-place contingency plan, stating: "[P]rovisions to either provide 'shelter in place safety' for occupants *or* safe egress for occupants in situations without the potential for shelter-in-place safety [sic] . . . are certainly warranted." (AR 1:314.)

The project's Emergency Preparedness and Evacuation Plan goes beyond these recommendations by not merely incorporating shelter-in-

place as an option, but by requiring the developer to actually provide a facility where residents and the public can seek refuge. Policy 4.4 states:

> *Shelter-in-Place*
>
> In the unlikely event of an emergency wherein time necessary for proper valley evacuation is considered insufficient, it may be safer to "shelter-in-place", rather than to leave the West Parcel. The Master CC&Rs shall include a requirement that an HOA amenity that is designed and constructed to serve as a shelter-in-place location shall be constructed prior to the 200 unit. In an emergency where shelter-in-place is required, this amenity would be open to the public, not just owners, as an area of refuge.

(AR 2:1083.)

Sierra Watch argues that providing a location where residents and visitors can safely shelter in place means nothing. (Sierra Watch's Opposition Brief, pp. 128-129.) Such a location, however, will provide the Northstar NFD, and other responders, with an additional option for managing evacuations and keeping roadways clear. Thus, the shelter-in-place requirement is not, as Sierra Watch would have it, a "substitute" for an evacuation plan. Rather, the facility *augments* the evacuation plan, and makes the project safer than it otherwise would be. (AR 77:46065-46068, 1:313-314, 325.)

Sierra Watch demands specifics regarding the location and design of such a facility. (Sierra Watch's Opposition Brief, pp. 128-129.) Sierra Watch fails to cite a passage in the record where Sierra Watch, or any other person, demanded such specifics. For this reason, Sierra Watch fails to

carry its burden to show that the issue was raised with the County. (Pub. Resources Code, § 21177, subd. (a); see *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 615 [presenting issue to agency is a "jurisdictional prerequisite" to raising issue in litigation]; *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909 [petitioner has burden of proof to show that issue was raised with agency].)

Moreover, in demanding such specifics, Sierra Watch ignores the nature of the project proposed by MVWP and analyzed in the EIR. As stated repeatedly, the analysis is a "program EIR," as opposed to a project-specific EIR. (E.g., AR 2:1150, 3:1327.) That is in keeping with the nature of the entitlements approved by the County. (AR 3:1317 ["Because the proposed project is a Specific Plan, it stops short of prescribing specific locations, types, and magnitude of development. As such, environmental effects are analyzed at a program level."], 3:1292-1293 [list of permits project would require to be implemented].) Those entitlements included amending the County's Martis Valley Community Plan Land Use Diagram, adopting the Specific Plan, and rezoning the West and East Parcels. (AR 2:1155, 3:1292-1293.) The County also approved a "large lot vesting tentative subdivision map" for financing purposes (AR 21:11845-11854, 1:47-48 [list of County approvals]); the map "convey[ed] no development entitlements to the resulting parcels." (AR 1:107.) Thus, MVWP must go

through the small-lot subdivision process before anything can actually be built. Moreover, no development can commence until after the project site is annexed into the NCSD. (AR 1:55 [development agreement section 3.2.4 requiring annexation to NCSD "[p]rior to approval of the improvements plans for the initial improvements of the first phase of residential or commercial development"].) At the time the County approved the project, MVWP had not applied for a small-lot subdivision map, and thus no specifics regarding the location or design of the shelter-in-place facility – or, indeed, of any other specific building – existed. Sierra Watch thus demands specifics that do not exist.

CEQA authorizes the use of program EIRs for projects, like this one, involving general policy-making, with design details reserved for latter stages of the review process. (See, e.g., *In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1174-1175; *City of Hayward v. Trustees of California State University* (2012) 207 Cal.App.4th 446, 462.)

Importantly, any time MVWP applies for a small-lot subdivision map, that map will be subject to review and approval by NCSD and NFD. (AR 3:1288; see AR 1:55 [development agreement section 3.2.5].) Thus, when shelter-in-place facility must be provided, NCSD – including NFD – must sign off on the location and design of the facility. (See AR 1:55-56.) Review of a proposed tentative map is a public process. For this reason, to

the extent Sierra Watch (or anyone else) has concerns about the shelter-in-place amenity, they will have an opportunity to weigh in. (Gov. Code, § 66451.3; see Pub. Resources Code, § 21080, subd. (a) [CEQA applies to proposed tentative subdivision map]; Placer County Code, § 16.12.100 [tentative map subject to approval by Planning Commission].) Ultimately, NFD will determine whether the facility satisfies the Specific Plan's requirement that the facility serve as an adequate refuge for both owners and the public.

Sierra Watch accuses the County of citing the shelter-in-place requirement as a means of dodging analysis. (Sierra Watch's Opposition Brief, p. 129.) The case it cites, however, is distinguishable. In *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, the EIR for a highway widening project did not identify the standard used to determine whether impacts on redwood trees would be "significant." Instead, the EIR described optional "special construction techniques" "incorporated into the project" to minimize impacts to trees' root systems (*id*. at p. 650-651), but provided no information on how these techniques would avoid impacts. Thus, the EIR erred by "compressing the analysis of impacts and mitigation measures into a single issue[.]" (*Id*. at p. 656. Compare *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 185 [EIR is inadequate under *Lotus* "only if it precludes

or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures."].) [7]

Here, by contrast, the EIR provided extensive information regarding wildland fire and evacuation. The analysis addressed, among other things, wildland fire risks, defensible space and construction requirements, designating and upgrading emergency access and evacuation routes, and NFD equipment and staffing needs. (E.g., AR 3:1287-1288, 1703-1704, 1714-1717, 1724-1725, 1733-1734, 1741-1743, 1745-1746, 6:3138-3140.) The County did not approve the policy requiring a shelter-in-place facility in lieu of that analysis; rather, the policy augmented the many other steps taken to reduce wildland fire and evacuation risks to levels that the Board found to be acceptable. (AR 1:313-314, 325.) There was nothing wrong with the Board's consideration of this policy in reaching that conclusion. (See *Center for Biological Diversity v. County of San Bernardino* (2016) 247 Cal.App.4th 326, 348-351 [analysis properly focused on groundwater pumping allowed under agreements; EIR did not need to speculate about pumping in excess of the limits in the agreements]; *Treasure Island, supra,*

[7] Sierra Watch also cites *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256. That case involved an EIR that omitted any discussion of a project's energy impacts. The court held that the city could not plug this gap with an addendum prepared after the city had already certified the EIR and approved the project. (*Id*. at p. 266.) In this case, by contrast, the EIR addressed the relevant issues (wildland fire and evacuation), and no post-approval analysis is at issue. *Ukiah Citizens* is therefore inapposite.

227 Cal.App.4th at p. 1064 [city properly assumed that consultations with Coast Guard required as an element of the project description would address hazards to shipping]; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1037-1038 (*Taxpayers*) [agency could base analysis on elements of project description].)

CONCLUSION

According to Sierra Watch, the County claims unbound discretion to decide whatever it likes regarding the wildland fire and evacuation risks that exist at the project, or indeed, throughout the region. No fair-minded person could, upon review of this record, reach such a conclusion. In particular:

- The County retained two independent consulting experts to peer review MVWP's plan. Both consultants made recommendations about how to improve the project. Every recommendation was adopted.
- NFD – the local fire district that will serve the site – has a "world class" program in place to manage the landscape and reduce wildland fire risk. (AR 28:15788.) The project will be annexed into NFD and adhere to these requirements.
- The County has adopted a comprehensive plan to manage evacuations in the region. The project is specifically designed to

fit with that plan.

- Every time the County, its consultants or NFD made a suggestion regarding how to make the project better, MVWP immediately agreed.

These facts, and many others, show that the County took very seriously the risk of wildland fire and evacuation.

As the Supreme Court has stated, "[t]he wisdom of approving this or any other development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 576.)

Here, CEQA performed its role. The Board's decision was fully informed. The decision should therefore be upheld.

Dated: June 7, 2019

Respectfully submitted,

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By: _____

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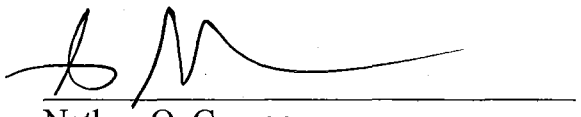
CERTIFICATE OF WORD COUNT
[Cal. Rules of Court, Rule 8.204(c)]

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this **CROSS-APPELLANTS' REPLY BRIEF** contains 12,833 words, according to the word counting function of the word processing software used to prepare this brief.

Executed on June 7, 2019, at Sacramento, California.



Nathan O. George

League to Save Lake Tahoe, et al. vs. Placer County, et al.
Third District Court of Appeal Case No. C087102
(Placer County Superior Court Case No. SCV0038666)

PROOF OF SERVICE

I, Kathryn A. Ramirez, am a citizen of the United States and I am employed in the City and County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, California, 95814. My email address is kramirez@rmmenvirolaw.com. I am over the age of 18 years and I am not a party to the above-titled action.

I am familiar with Remy Moose Manley, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On June 7, 2019, I served the following:

CROSS-APPELLANTS' REPLY BRIEF

☒ **VIA ELECTRONIC SERVICE, TRANSMISSION OR EMAIL**, by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below. I did not receive any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 7th day of June, 2019, at Sacramento, California.

Kathryn A. Ramirez

League to Save Lake Tahoe, et al. vs. Placer County, et al.
Third District Court of Appeal Case No. C087102
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