Appendix J

Comment Letter 105 Attachment

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August 09, 2016

VIA OVERNIGHT COURIER

Paul Thompson, Interim Agency Director
Placer County Board of Supervisors and Placer County Planning Commissioners
c/o Planning Services Division
3091 County Center Drive
Auburn, CA 95603

RE: Squaw Valley Specific Plan Environmental Impact Report

Dear Mr. Thompson, Supervisors, and Commissioners,

Our office has reviewed the environmental impact report (EIR) for the Squaw Valley Specific Plan (the Project) and respectfully submits the following comments. We request that you consider our comments and address them prior to certifying the EIR. The California Attorney General has a longstanding interest in the protection of Lake Tahoe as a state and national treasure. The Attorney General's interest dates back over four decades (see, e.g., *California ex rel. Younger v. Tahoe Regional Planning Agency* (9th Cir. 1975) 516 F.2d 215) and is as recent as our involvement in the 2012 Tahoe Regional Planning Agency (TRPA) Regional Plan Update.

The Specific Plan sets forth a 25-year plan for expansion, development, and upgrades to the existing Squaw Valley Ski Resort. The Squaw Valley Ski Resort is located outside of the Lake Tahoe Basin but its entrance lies less than five miles away on State highway 267, the main gateway to Tahoe's North Shore. Because of the proximity of the proposed development to Lake Tahoe, we are concerned about the impacts the development will have within the Tahoe Basin. We are particularly concerned with the Project's resulting increases in vehicular use and traffic within the basin. The traffic issues have two components – (1) level of service impacts to specific roadway sections within the basin; and (2) increases in vehicle miles travelled and daily vehicle trips within the basin, which in turn have impacts on air and water quality and may limit the ability of environmentally beneficial redevelopment projects in the basin to go forward. The EIR has not adequately analyzed or mitigated these impacts. In addition, we are concerned with the EIR's inadequate analysis of greenhouse gas emissions – another issue of statewide importance.

A. THE EIR INCLUDES AN ANALYSIS OF THE INCREASED VEHICLE USE IN THE BASIN THAT WILL RESULT FROM THE PROJECT, BUT FAILS TO DETERMINE WHETHER THE INCREASE IS A SIGNIFICANT IMPACT.

In its response to comments, the Final EIR (FEIR) includes a discussion of the Project's impact on traffic within the basin. The FEIR anticipates that the Project's summer peak daily traffic will be 3,300 daily vehicle trips with 41 percent, or 1,353 trips, traveling into the basin. (FEIR 3-25.) The TRPA, the agency charged with regulating and protecting Lake Tahoe, considers the addition of more than 200 daily trips to be a significant impact. (TRPA Code, § 65.2.3.G.) The FEIR also projects that the Project will create an estimated 23,842 additional vehicle miles travelled (VMT) on a summer Friday, an estimated 1.2 percent increase in VMT within the basin. The addition of the Project's VMT would bring the total VMT in the basin to 2,008,442, which is below TRPA's threshold for basin-wide VMT, but only by a small margin (the VMT threshold is 2,067,600). (FEIR 3-25.) The EIR acknowledges TRPA's standards but asserts that it need not use them as the standards of significance for evaluating the Project's traffic impacts within the basin. (FEIR 3-25 to 3-26.) Rather than identify an alternative standard of significance against which to measure the increase in traffic within the basin, the document's discussion of whether the increase is significant ends there.

Lead agencies have the discretion to set standards of significance and are not required to accept significance standards adopted by agencies that will not have regulatory authority over the project. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) However, if evidence is submitted showing that the environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence. (See, *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) If the agency does not respond by changing the standard, it should respond by explaining the basis for the standard used. (*Id.*; see also, *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898 [the substantial evidence standard applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied].) Because Placer County did not set a standard of significance for assessing traffic impacts to Lake Tahoe, it is impossible to know whether its rejection of TRPA's standard is appropriate and supported by substantial evidence.

In addition, while Placer County, as the lead agency, may not be required to use TRPA's standards, it must still determine whether the increase in VMT in the basin that will result from the Project is a significant impact. (See, *Protect the Historic Amador Waterways v. Amador Water Agency, supra*, 116 Cal.App.4th at p. 1109 [holding that even where a pertinent standard of significance exists, compliance with that standard does not relieve an agency of considering other evidence that suggests an impact may exist]; *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 654 [finding environmental document inadequate where discussion of impacts was included but without any information to enable the reader to evaluate the significance of the impacts discussed].) Because the EIR fails to identify whether the increased vehicular use within the basin is a significant impact, the EIR is inadequate.

B. THE EIR FAILS TO ANALYZE THE IMPACTS ASSOCIATED WITH INCREASED VEHICULAR USE WITHIN THE TAHOE BASIN.

Although, as discussed above, Placer County did not determine the significance of the increased vehicular use in the Tahoe Basin, it does appear that this impact will be significant. The EIR anticipates that the Project will result in more than six times the number of daily trips to the basin that TRPA would determine to be significant. (FEIR 3-25.) The EIR also projects that the Project will create an estimated 1.2 percent increase in VMT, bringing the total VMT in the basin close to TRPA's threshold. (FEIR 3-25.) The FEIR did not consider the impacts associated with this increase in vehicular use in the Tahoe Basin. Placer County should analyze these impacts prior to certifying the EIR.

An EIR must identify all of the environmental impacts, direct and indirect, associated with a proposed project. (Cal. Code Regs., tit. 14, §§ 15123, 15126.2.) Indirect effects include secondary effects. (Cal. Code Regs., tit. 14, §§ 15358(a)(2); 15064(d)(2).) In addition, the impacts analysis must take into account the regional setting with "special emphasis" on environmental resources that are rare or unique to the region and would be impacted by the project. (Cal. Code Regs., tit. 14, § 15125(c).) The CEQA Guidelines are clear that "[t]he EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (Cal. Code Regs., tit. 14, § 15125(c).) Here, the EIR does not include an analysis of the impacts that will be associated with the Project's increase in vehicular use within the Tahoe Basin and is, therefore, inadequate.

1. The EIR does not include an analysis of the air and water quality impacts associated with the Project's increased traffic within the basin.

The significant increase in traffic within the basin will have a direct impact on the air and water quality of Lake Tahoe. Increased vehicular use generates significant amounts of dust and leads to nitrogen deposition in the lake, which in turn causes algae growth that threatens the clarity of the lake. See Final Lake Tahoe Total Maximum Daily Load Report, November 2010, 3-7, 7-8, and 11-11.[1] Vehicle trips also contribute to air pollution and global warming. The EIR does not include an analysis of these environmental impacts to Lake Tahoe that will result from the Project's increase in vehicular use.

The traffic analysis contained in the Draft EIR (DEIR) is limited to impacts to level of service on specific road sections. (See FEIR 3.2.4-128. ["To clarify, Chapter 9, 'Transportation and Circulation,' does not contain any discussion of VMT because an understanding of VMT is not critical to evaluating the transportation impacts analyzed in that chapter, which are based on

[1] The report is available at: http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/docs/tmdl_rpt_nov2010.pdf.

[level of service] LOS and other systems criteria."].) It was not until the FEIR, in response to comments, that the County considered VMT and daily vehicle trips to Lake Tahoe. (FEIR 3-25 to 26.) While Placer County was correct to include this analysis, the information it yielded also needed to be folded into the document's analysis of air and water quality, with a particularized discussion of impacts to Lake Tahoe.

In its response to comments on this issue, Placer County insists that it did adequately consider impacts to Lake Tahoe, pointing to its analysis of roadway service impacts in Lake Tahoe and its analysis of air quality impacts in the Lake Tahoe Air Basin. (FEIR 3.2.4-99 and -116.) However, these analyses are inadequate. First, roadway service is just one piece of the equation and does not itself account for the broader environmental impacts associated with increased traffic in the basin. Second, the air quality analysis was done as part of the DEIR, prior to and without the benefit of the basin VMT and daily trip calculations. The air quality analysis was not revisited in the FEIR to include consideration of the VMT and in-basin daily trip information. Neither the air quality or traffic analyses contained in the DEIR can therefore be relied upon as accounting for the impacts associated with the increased vehicle use in the basin.

Placer County also asserts in its response to comments that the EIR did not need to analyze the air quality impacts associated with the increased VMT in the basin because the VMT will not exceed TRPA's threshold. (See, e.g., FEIR 3.2.4-117 – 118.) The document reasons that because the VMT threshold is a proxy for air and water quality impacts, so long as the VMT threshold is not exceeded, air quality and other impacts are not a concern. (*Id.*) This reasoning is flawed. First, in discussing the traffic impacts, the document specifically indicates that it need not apply and is not applying TRPA standards in order to determine whether the in-basin impacts are significant. It is inconsistent, on the one hand, to decline to apply TRPA' standards for purposes of the traffic analysis, but then, on the other hand, to rely on TRPA's standard in order to conclude that there are no impacts and no analysis is necessary for purposes of the air quality analysis.

Second, compliance with the VMT threshold alone does not ensure there are no significant air quality impacts. TRPA's threshold for VMT is an environmental carrying capacity for the basin. Because it is a basin-wide carrying capacity, no one project *should* exceed the threshold. In order to achieve the thresholds, TRPA is required to adopt a Regional Plan that sets forth standards for projects and activities within the basin. (See TRPA Compact, Art. V(c).) These standards apply in addition to the thresholds and are the primary mechanism by which TRPA ensures that new development contributes to, and does not thwart, threshold attainment. Thus, these standards provide additional criteria that apply to individual in-basin projects to ensure environmental impacts are adequately mitigated.

Of particular relevance here, TRPA's standards characterize any proposed development that creates more than 200 daily vehicle trips as having a significant traffic impact and require an analysis of air quality impacts associated with the project prior to project approval. In addition, all new development projects are required to provide an air quality mitigation fee to offset regional and cumulative impacts. (TRPA Code of Ordinances § 65.2.) These standards apply

regardless of whether or not the project will exceed the TRPA VMT threshold. As a result, it is inaccurate to suggest that the VMT threshold is a proxy for air quality and other environmental impacts associated with increases in VMT. Attempting to rely on the VMT threshold as a proxy for air quality impacts stretches the VMT threshold beyond its intended use and should not be condoned as a rationale for declining to analyze the air quality impacts associated with increased vehicular use in the basin. Rather than point solely to the VMT threshold, Placer County should analyze the air and water quality impacts to the Tahoe Basin that will be associated with the Project's increased VMT and daily vehicle trips within the basin.

2. The EIR must analyze the impacts of the Project's increased vehicle use within the basin on TRPA's Regional Plan and attainment of environmental goals.

In addition to considering the air and water quality impacts to Lake Tahoe that would result from the Project's increase in vehicular use in the basin, the EIR also needs to consider the impact this increased vehicle use will have on TRPA's ability to implement its Regional Plan and attain its environmental goals. CEQA expressly requires that the EIR discuss any inconsistencies between the proposed project and any applicable regional plans, including the regional land use plan for the protection of the Lake Tahoe Basin. (Cal. Code Regs., tit. 14, § 15125(d).)

After the Project is constructed there will only be 59,158 VMT remaining before TRPA's VMT threshold is met. With so little VMT remaining, in-basin projects may not be able to move forward. Further, if new out-of-basin projects are allowed to ignore the TRPA thresholds, they could easily exceed the basin's environmental carrying capacity without identifying this as a significant impact or providing adequate mitigation. This could preclude new development and redevelopment within the basin, which is a particular concern because the 2012 Regional Plan Update relied upon redevelopment as the means for environmental improvements that would allow TRPA to attain other thresholds (e.g., lake clarity). In the 2012 Regional Plan Update, TRPA recognized the critical need to redevelop aging infrastructure with new, environmentally beneficial development. Environmental redevelopment within the region results in substantial reduction of fine sediment and nutrient deposition, the pollutants degrading Lake Tahoe's famed clarity and blueness. As TRPA pointed out in its comment letter on the draft EIR, "[t]he environmentally beneficial redevelopment relied upon by TRPA may be threatened by unmitigated out-of-basin increases in trips and VMT. As a result of VMT capacity used elsewhere, efforts to protect Lake Tahoe may suffer without the ability to approve in-basin development." (FEIR 3.2.X-6.)

The EIR must disclose and consider the impact the Project will have on implementation of TRPA's Regional Plan and the attainment of environmental thresholds in Lake Tahoe. It is entirely inconsistent with the purposes of CEQA to allow a development project to move forward without consideration of the totality of the environmental impacts it will cause, especially where a unique resource, such as Lake Tahoe, will be affected. As the CEQA Guidelines make clear:

> Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to the region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(See Cal. Code Regs., tit. 14, § 15125(c).) Because the EIR has not fully considered the regional impacts of the Project, it is inadequate and should not be certified.

3. The EIR needs to analyze the cumulative impacts associated with the increase in vehicle use within the basin.

The information regarding daily vehicle trips to the Tahoe Basin and VMT also must be considered in the EIR's cumulative impacts analysis. In its response to comments on this issue, Placer County indicates that it did include a comprehensive traffic analysis and air quality analysis and that both analyses include consideration of impacts in the basin. (FEIR 3.2.X-8.) However, as discussed above, these analyses were done at the DEIR stage without the benefit of the VMT and daily trip information for the Tahoe Basin, which was only provided at the FEIR stage. Therefore, these sections do not provide an analysis of the cumulative air and water quality impacts associated with the increase in traffic in the Lake Tahoe Basin. The cumulative impacts analysis is also devoid of any discussion of these impacts. (See DEIR chapter 18.)

An EIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." (Cal. Code Regs., tit. 14, § 15130(a).) A project's incremental contribution is cumulatively considerable if "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." (Cal. Code Regs., tit. 14, § 15065(a)(3).) If the lead agency concludes that a cumulative impact is not significant, the EIR must include a brief explanation of the basis of the finding and identify the facts and analysis supporting it. (Cal. Code Regs., tit. 14, § 15130(a)(2).) Here, the EIR plainly does not discuss the cumulative impacts of the increase in vehicle use and the associated impacts on air and water quality or the impacts TRPA's ability to implement its regional plan and attain environmental goals within the Lake Tahoe Basin. The EIR must be revised to address these impacts.

C. THE EIR'S DISCUSSION OF ROADWAY SERVICE IMPACTS WITHIN THE BASIN IS INADEQUATE.

As discussed above, the EIR does not adequately discuss the Project's impact on increased vehicular use or its associated environmental and regional effects within the Tahoe Basin. In addition, the EIR's analysis of roadway service impacts within the Basin as a result of the increased traffic is also inadequate because it does not fully disclose and mitigate the roadway service impacts of the project.

1. The roadway service analysis underestimates the Project's trip generation.

The EIR underestimates the Project's trip generation. The EIR uses parking spaces as a starting point for computation of trip generation. Parking is a poor indicator of trip generation because it is unrelated to the intensity of proposed uses and having too few parking spaces is a common feature of developments. In this case, it appears that the EIR has in fact underestimated the number of parking spaces needed for the Project. (See FEIR 3.3.4-323[MRO Engineer's report indicating that the Plan provides .75 parking spaces per unit even though survey data shows that 100% of all overnight winter visitors arrive by car]; FEIR 3.24-336 [Placer County's response referring only to its master response related to parking]; FEIR 3-23 [Placer County's master response related to parking does not explain why it is appropriate to provide less than one space per unit for overnight guests].) The EIR should be revised to adequately account for overnight guests in its trip generation calculations.

2. The EIR fails to provide an adequate discussion of potential mitigation measures for the significant service impacts in the Tahoe Basin.

The EIR indicates that proposed project would add 160 vehicles during the summer peak hours to the segment of State Route (SR) 28 east of SR 89 in Tahoe City, which currently operates at an unacceptable level of service (LOS) E. (DEIR 9-16, 9-63.) LOS rankings range from A-F, with F being the worse. Placer County uses TRPA's standard of significance for LOS, which considers anything worse than LOS D to be unacceptable. The traffic impacts are considered significant. The EIR concludes that because there are no capacity-increasing improvements planned for this segment of SR 28, the impacts to LOS on this segment of SR 28 are significant and unavoidable. (DEIR 9-63.) The EIR fails to consider any other potential mitigation measures that could reduce the severity of this traffic impact.

CEQA requires that an EIR discuss mitigation measures that can minimize the project's significant environmental effects. (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15126.4.) Here, there are a number of measures that could be implemented to reduce the number of trips from the Project to the Lake Tahoe Basin, ranging from incentives for employees to take public transit, guest shuttles to Tahoe attractions, increasing transit services, or a reduced project density. Although several commenters on the DEIR requested consideration of additional measures, the FEIR declined to consider or adopt these additional measures. (See, e.g., FEIR 3.2.4-115; 3.2.4-389-3913.2.4-499-430, 3.3.X-5.)

TRPA's comments on the Draft EIR suggest at least two specific opportunities for mitigation of in-basin traffic impacts. First, the Project could contribute traffic mitigation fees to implement transportation and transit capital improvement programs (CIP). TRPA indicates that "there are opportunities to identify those CIP elements that would result in improvements in transit services needed to reduce the trips to the Tahoe Basin by individual automobiles." Second, TRPA suggests that opportunities exist to set up "ongoing operations funding streams in

amounts necessary for added transit service to offset the increase in in-basin trips generated by the project." Specifically, TPRA suggests funding increased transit runs on the resort triangle loop. TPRA also suggests measures to encourage guests to use public transit. (FEIR 3.2.X-5.)

In response to these comments, the FEIR does not discuss the feasibility or efficacy of the suggested measures, but instead points to mitigation measures 9-7a and 9-7b, which were included in the FEIR as mitigation for impacts to transit service. (FEIR 3.2.4-115; 3.2.X-8.) This response is inadequate. First, an FEIR must respond to comments making specific suggestions for mitigation of a significant impact unless the suggested measure is facially infeasible. (See, e.g., *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029; *Flanders Found. v. City of Carmel by the Sea* (2012) 202 Cal.App.4th 603, 616; *Masonite Corp v. County of Mendocino* (2013) 218 Cal.App.4th 230, 241.) The measures TRPA and others have suggested are not facially infeasible and should have been considered.

Second, the mitigation measures the FEIR points to are, as a factual matter, insufficient to address the traffic impacts in Tahoe City, let alone the transit impacts they purport to address. Mitigation measure 9-7a consists of a commitment to make funding contributions to the Tahoe Area Regional Transit service, or to form a community service area or a community facilities district to fund the costs of increased transit service. (FEIR 2-20.) The amount of the funding obligation is not specified, nor are target projects identified. In addition, the funding obligation will only be triggered when "ridership approaches capacity"; not when traffic impacts are seen in Tahoe City. While funding contributions to improve transit could be a valid mitigation measure, the funding obligation is too vague and too disconnected from traffic impacts in Tahoe City to serve as a valid mitigation measure for these impacts. (See *California Clean Energy Commission v. City of Woodland* (2014) 225 Cal.App.4th 173, 197 [fair share fee to fund studies to identify strategies to address urban decay too speculative where EIR did not estimate costs, define how strategies might be implemented, or commit city to undertake actual measures to address urban decay]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 [requirement that project applicant pay funds to purchase replacement groundwater not adequate mitigation because it was not known whether groundwater was available].)

Mitigation measure 9-7b is likewise inadequate. Mitigation measure 9-7b consists of a requirement that the Project maintain membership in the Truckee North Lake Tahoe Transportation Management Association. (FEIR 2-21.) Membership in an association does not ensure that any on the ground improvements will be implemented to relieve traffic issues in the Lake Tahoe Basin, let alone the transit issues the mitigation measure is designed to address. (See Cal. Code Regs., tit. 14, § 15370 [defining mitigation as including activities that will avoid, minimize, rectify, reduce, or compensate for an impact].)

Rather than obliquely rely on inadequate mitigation measures adopted for transit impacts, Placer County should consider the reasonable mitigation measures that TRPA and other commenters have suggested for addressing the significant traffic impacts in Tahoe City and in the basin. While roadway improvements may not be feasible, several alternative mitigation measures have been suggested that appear to be feasible and merit consideration.

3. The EIR's cumulative impacts analysis for roadway service impacts is inadequate.

The EIR's analysis of cumulative impacts is also inadequate with respect to the roadway service impacts within Tahoe City. The EIR finds that the cumulative roadway service impacts in Tahoe City will be significant and unavoidable. While we do not disagree with that conclusion, the EIR fails to include significant pending projects that will also impact roadway service in Tahoe City in its analysis.

The EIR purports to include an analysis of "probable future projects," which it defines as:

> Probable future projects are those in the project vicinity that have the possibility of interacting with the proposed project to generate a cumulative impact and either: 1. Are partially occupied or under construction; 2. Have received final discretionary approvals; 3. Have applications accepted as complete by local agencies and are currently undergoing environmental review; or 4. Are otherwise considered likely to be developed, based on historic development patterns, including the rate of development, in the Olympic Valley. The other criterion used is timing. The cumulative list considers related projects likely to be constructed over the 25-year buildout of the proposed project.

(DEIR 18-1.)

The EIR, however, fails to consider at least two projects in the area that meet its own definition of "probable future projects" – (1) Brockway Campground, the application for which is pending with TRPA (see http://brockwaycampground.com/; http://www.trpa.org/wp-content/uploads/APPLICATION.pdf); and the Homewood Mountain Resort Ski Area Master Plan, which TRPA approved for redevelopment in 2011 (see http://www.trpa.org/document/projects-plans/). (See FEIR 18-4; and DEIR Table 18-1 and 18-2 [listing the projects considered in the cumulative impacts analysis].) Both of these projects constitute probable future projects that will have an impact on traffic in Tahoe City (e.g., Homewood's EIR estimated that it would have up to 1,466 external daily trips) and should have been considered when evaluating the Project's traffic impacts within the basin.

D. THE EIR'S GREENHOUSE GAS ANALYSIS IS FLAWED AND INADEQUATE.

The EIR properly determined that the Project's greenhouse gas (GHG) emissions would be a significant and unavoidable impact. (FEIR 3-104, 109.) Under CEQA, this determination gives rise to a legal obligation to impose all feasible measures to mitigate the impact. (Cal. Code Regs., tit. 14, § 15126.4.) The FEIR, however, fails to provide an adequate discussion of potential mitigation measures.

1. Summary of the EIR's GHG Analysis.

The FEIR relies on the County's adopted numerical significance threshold of 1,100 MT CO_2e/year[2] – a threshold that applies regardless of the size of the project – to find that the Project's projected GHG emissions of 42,094 MT CO_2e/year would be "potentially significant." (FEIR 3-102, 103.) Partly because the project "could not feasibly" reduce emissions to below this target, the FEIR concluded that the impact was "unavoidable." (*Id.* at 3-109.)

To put a finer point on the actual "significance" of the Project's emissions, the EIR relied on the California Air Resources Board's (CARB) standard statewide reduction from a "no action taken" (NAT) scenario,[3] to claim that the Project would be "relatively efficient." (*Id.* at 3-105.) Specifically, Placer County determined that the Project would emit 28.6 percent fewer emissions than it would emit under a NAT scenario, and compared this to the statewide emissions reduction goal of 21.7 percent below NAT. (*Id.*) The FEIR declined to analyze the Project against the more stringent 2050 target (80 percent below 1990 levels), claiming that any post-2020 target was too "speculative." (*Id.* at 3-107, 108.)

To mitigate the Project's GHG emissions, the FEIR proposed Mitigation Measure 16-2, an "ongoing operation greenhouse gas review and reduction program" (hereinafter, "mitigation program"). (*Id.* at 3-107.) The mitigation program does not propose measures to mitigate the GHG emissions of the Project as a whole; rather, it promises that "subsequent project subdivisions" (or sub-projects[4]) will be required to reduce emissions "to the extent needed and feasible" to operate within whatever targets are in place "at the time the project is submitted for approval." (*Id.* at 3-107, 108.) The FEIR requires no mitigation if the sub-project applicant demonstrates, based on sub-project-specific adjustments to the statewide goal backed by

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[2] The FEIR quantifies emissions in metric tons (MT) of carbon-dioxide equivalent (CO_2e).

[3] In 2005, Governor Schwarzenegger issued Executive Order No. S-3-05, which established a goal of reducing the State's GHG emissions to 1990 levels by 2020, and to 80 percent below 1990 levels by 2050. The 2020 goal was codified into law by the Global Warming Solutions Act of 2006 (Assem. Bill No. 32 (2005-06 Reg. Sess.) Sep. 27, 2006) (AB 32).) As required by AB 32, the CARB prepared a scoping plan that outlined how the agency would achieve the 2020 target. In that plan, CARB concludes that California must reduce its GHG emissions by approximately 21.7 percent below projected 2020 "business-as-usual" (or "no action taken") emissions.

[4] It is not initially clear whether the mitigation program even applies to the Project. Rather, it expressly applies to future "projects processed by the County … at the time the project is submitted for approval." (FEIR at 3-103.) Only later does the FEIR clarify that the referenced "projects" are "subsequent project subdivisions" (*id.* at 3-109) suggesting that each individual *component* of the Project will individually be subject to subsequent environmental review and approval.

substantial evidence, that the sub-project is in line with statewide reduction goals. (*Id.* at 3-107.) If the sub-project does not meet the applicable target, then the County will impose mitigation measures. (*Id.*)

The EIR lists a "menu" of mitigation measures that a sub-project could adopt. (*Id.* at 3-108.) The FEIR found that, if it were to adopt all of them here, the Project's "mitigated GHG efficiency" would be 38 percent. (*Id.*) Although acknowledging that "it is not possible to link this project-specific reduction to the statewide goal of 21.7 percent," the County nonetheless concluded that, assuming all mitigation measures are adopted, it is "difficult to argue that this project conflicts with the Scoping Plan targets." (*Id.* at 3-108.)

In the alternative, the FEIR suggests there is no need to mitigate the vast majority of GHG emissions associated with the Project, because 99 percent of emissions attributable to it – vehicle emissions, propane use, and electricity consumption – are subject to the State's Cap-and-Trade program and other GHG-reducing regulations. (*Id.* at 3-97.) As such, those emissions are accounted for in the statewide emissions cap, which the State will continue to lower in line with AB 32 goals. (*Id.*) The FEIR rationalized that emissions regulated under the program do not need to be mitigated under CEQA. (*Id.*)

2. The EIR's GHG analysis is flawed and inadequate.

a. The County relied on a flawed NAT analysis to infer that the Project is satisfactorily "efficient."

There is no doubt the Project's GHG emissions will be significant as measured against the County's adopted numerical threshold, given that projected emissions are almost *forty* times that value. This significance determination triggered the legal obligation for the County to impose all feasible mitigation measures. (Pub. Resources Code, §§ 21002, 21081; Cal. Code Regs., tit. 14, § 15126.4.) Rather than accepting this obligation to adopt all feasible mitigation measures, the FEIR instead conducted the NAT analysis, "to help characterize the nature of the [GHG] impact." (FEIR 3-104.) The FEIR then relied on the results of the NAT analysis to infer that mitigation is not really necessary, because, for a project of its size and scope, the Project will actually be "relatively efficient."

To the extent the FEIR relies on a NAT analysis for anything at all, the analysis must be done correctly, and here, it was not. The lead agency has the discretion to rely on CARB's statewide goal in its GHG impact analysis (including to determine whether the Project's GHG impact will be significant in the first place, which the County does not do here). In relying on the statewide goal, however, the agency must provide substantial evidence that connects the statewide goal to the reduction needed from the individual project to attain that goal based on local conditions. (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 226 [noting that greater reductions may be required from new projects, because designing new projects to increase energy efficiency and renewable energy use would be more cost-effective than retrofitting existing facilities].) Any analysis that compares a project's GHG efficiency to the statewide goal without making such adjustments is impermissible under CEQA.

(*Id.* at 221.) Here, the FEIR made no such adjustments, dismissively stating, "it is not possible to link this project-specific reduction to the statewide goal of 21.7 percent." The County cannot have it both ways. If it really believes that it is not possible to derive an appropriate project-specific target from the statewide goal, then it cannot purport to use the statewide goal to show that the Project will be "efficient."

Given the prolonged timeline of the Project, the FEIR further erred in relying on the 2020 target, rather than considering a more stringent 2050 GHG-reduction target. The FEIR claims it is self-evident that a 38 percent hypothetical reduction is in line with AB 32's 21.7 percent reduction target. (See *id.* at 3-108 [stating, it is "difficult to argue that this project conflicts with the Scoping Plan targets"].) But by 2037, the year the Project is expected to be completed, the 2020 targets will long be obsolete. The EIR recognizes this, at one point describing the 2020 standard as "moot." (FEIR 3.2.4-504.) Based on the more aggressive future reductions the State intends to implement, comparing the efficiency of a project in 2037 to the efficiency targets for 2020 is comparing apples to oranges. The EIR provides no analysis to show that a 38 percent reduction at full build-out in 2037 would be in line with targets that will likely be in place at that time. Whether a long-term project is legally required to be consistent with the 2050 GHG reduction target is currently before the California Supreme Court. (*Cleveland Nat. Forest Found'n v. San Diego Assn. of Gov'ts* (*SANDAG*), Case No. S223603.) Regardless of the outcome of that case, it is plainly inconsistent for the EIR to conclude that the Project is "efficient" on the basis of a "moot" standard and then to essentially rely on that conclusion to ignore the legal requirement to adopt all feasible mitigation measures.

b. The EIR improperly defers mitigation.

It is generally inappropriate to defer formulation of mitigation measures to the future. (Cal. Code. Regs., tit. 14, § 15126.4(a)(1)(B).) A lead agency can defer mitigation only where, among other things, the EIR sets forth criteria governing future actions to implement mitigation, and the agency has assurances that future mitigation will be both "feasible and efficacious." (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17.) Impermissible deferral occurs when an EIR calls for mitigation measures to be created based on future studies but the agency fails to commit itself to specific performance standards. (*Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 195.)

Mitigation Measure 16-2 – the ongoing "mitigation program" – amounts to improper deferral of mitigation for several reasons. First, the mitigation program uses an undefined, currently nonexistent analytical framework to evaluate mitigation measures. (FEIR 3-107.) Specifically, the mitigation program requires the applicant to demonstrate the Project's consistency with GHG statewide targets "based on a substantiated linkage" between the project and statewide goals. (*Id.*) But, as noted above, the County itself declined to conduct this analysis because it claims it is "not possible to link this project-specific reduction to the statewide goal" and "there are no current mechanisms available." (*Id.* at 3-103, 108.) The FEIR thus imposes on the project proponent the burden to perform an analysis that the County itself finds is currently impossible to conduct. This is impermissible under CEQA. (See *Cal. Clean*

Energy Comm., *supra*, 225 Cal.App.4th at p. 195 [mitigation measure violated CEQA for shifting the responsibility to the developer to produce the studies].)

Second, the FEIR also leaves open what criteria the County will use when evaluating whether the Project has adequately mitigated its GHG impacts. The FEIR provides no binding reduction targets or other performance criteria that the mitigation program must meet. The County's numerical significance threshold is not an option; even if the entire "menu" of mitigation measures listed in Appendix G were adopted, the yearly greenhouse gas emissions would still be thirty times higher than the threshold. (FEIR at 3-108.) And the FEIR offers no alternative performance criteria, and there is no process in place – binding or recommended – for how the County should proceed when proposed mitigation measures fail to achieve their unspecified targets. The FEIR only commits the County to calculating emissions reductions from mitigation measures "to determine *if* targets can be achieved." (*Id.*; emphasis added.) After making this determination, the County is not required to take any action, because again, the Project is not held to any performance standard.

Lastly, the FEIR only requires the County to adopt measures "to the extent feasible" without providing any conditions or criteria under which a measure would be considered "feasible." (*Id.*) It is unclear whether a mitigation measure would be rejected on the basis of lack of technical or economic feasibility, or both. (See *Sierra Club v. County of Fresno* (2014) 226 Cal.App.4th 704 [holding that an EIR violated the requirement in CEQA to provide measures that are "fully enforceable" in requiring that heating and venting units be fitted with a catalyst system if feasible, but then failing to determine whether a catalyst system was feasible].)

c. The EIR improperly rejects certain mitigation measures.

As previously discussed, a lead agency may not reject a mitigation measure recommended in an EIR unless it provides comparable mitigation through another measure or finds, on the basis of substantial evidence, that it would be infeasible to implement on the basis of specific economic, social, or other considerations. (Pub. Resources Code, §§ 21002; Cal. Code Regs., tit. 14, § 15126.4.)

The FEIR claims there are no regulations in place that obligate it to achieve post-2020 targets. But it also acknowledges that the County is subject to the Sacramento Area Council of Governments (SACOG) Metropolitan Transportation Plan/Sustainable Communities Strategy (SCS), which obligates the County to meet 16 percent per capita vehicle emissions reductions by 2035. (FEIR 3-106.)

Whether SCS targets are binding in the CEQA context is pending before the Court in *SANDAG*, but, having referenced the SCS targets, the FEIR fails to meet its obligation to analyze the feasibility of meeting them or of imposing the mitigation measures contained in the SCS. Rather, the FEIR rejects the SCS out of hand, not because it is infeasible, but because it "only concerns GHG emissions from transportation." (FEIR 3-106.) Transportation comprises over one-third of the projected GHG emissions from the Project; the County offers no reason why the SCS does not apply to these emissions. The County also argues that, because the Project site is

shown in the SCS as "Lands Not Identified for Development," the SCS does not apply. (*Id.*) This is illogical. The SCS set growth predictions and reduction targets for all of the SACOG Planning Area, not just for areas projected for development. Thus, the reduction targets apply to any lands within that Planning Area and subject to the jurisdiction of the SCS.

d. The EIR improperly conflates regulatory compliance with adequate mitigation.

Underscoring that its mitigation plan is insufficient, the County argues there is really no need to mitigate the vast majority of GHG emissions associated with the Project at all, because 99 percent of the Project's emissions are subject to the State's Cap-and-Trade program and other GHG-reducing regulations. (*Id.*) There are several problems with this assertion.

As a fundamental matter, by attempting to rely on Cap-and-Trade to mitigate the Project's emissions, the County misses the point of CEQA: the task is not to compare Project emissions to the maximum possible emissions scenario, but to the *current physical conditions*. (Cal. Code. Regs., tit. 14, § 15125(a).) Once it is clear that an impact is significant and that mitigation is necessary – and here, it is – the County must impose all feasible mitigation measures. It is not enough that, because California is committed to reducing GHG emissions generally, emissions attributable to the Project will be less than what they otherwise might be or that the County can ignore mitigating the impacts.

Second, as noted above, where the EIR relies on a statewide goal, it must provide substantial evidence connecting that goal to project-specific reductions, based on local conditions and the characteristics of the project. (*Center for Biological Diversity*, *supra*, 62 Cal.4th at p. 226.) Applied in the mitigation context, this means that the EIR must show how the Advanced Clean Cars regulations or the Low Carbon Fuel Standard results in meaningful mitigation of the specific impacts caused by the Project. The FEIR cannot presume – and it provides no evidence to show – that no adverse impacts would occur from the Project's GHG emissions when regulated under these programs. Even if the additional emissions are less than they would be if they were not regulated by fuel efficiency standards (i.e., relative to a "maximum possible" emissions scenario), they are still absolute, *additional* GHG emissions. For example, while fuel efficiency is regulated under the Low Carbon Fuel Standard, vehicle miles traveled (VMT) is not. Even if all the vehicles associated with the Project were energy efficient, the additional trips created by the Project would generate substantial GHG emissions. VMTs alone account for 15,382 MT CO_2e/year in the full build-out scenario. The EIR cannot assume that those emissions are simply being displaced from elsewhere; it is more likely that those emissions – regulated or otherwise – would not exist *but for* the Project, the stated intent of which is to draw visitors from around the world for short-term visits. This is a significant impact that must be mitigated.

Finally, the assertion that the California Cap-and-Trade or other GHG-reducing regulations cover all projected vehicle emissions ignores the location of the Project. Squaw Valley is on the California-Nevada border, and 43 minutes from the Reno airport. By assuming

that Cap-and-Trade will cover all transportation emissions, the FEIR ignores the substantial emissions that will be generated from sources beyond California's regulatory reach.

In conclusion, the FEIR should be revised and recirculated to adequately address the Project's GHG impacts and potential impacts to Lake Tahoe. Climate change is a critical issue for California and Lake Tahoe is a national, state, and local treasure and the County should not disregard impacts in these areas in reviewing the Project. More information is needed to fully understand what the Project's impacts will be on greenhouse gas emissions and on Lake Tahoe. We appreciate your consideration of our comments and hope that the County will undertake a full consideration of the Project's impacts to Lake Tahoe and GHG emissions prior to certifying the environmental document and reviewing the Project for approval.

Sincerely,

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