

LAW OFFICE OF DONALD B. MOONEY

129 C Street, Suite 2  
Davis, CA 95616  
530-758-2377  
dbmooney@dcn.org

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**VIA ELECTRONIC MAIL**

[cdraecs@placer.ca.gov](mailto:cdraecs@placer.ca.gov)

[swydra@placer.ca.gov](mailto:swydra@placer.ca.gov)

**AND REGULAR MAIL**

Stacy Wydra  
Environmental Coordination Services  
Placer County Community Development Resource Agency  
3091 County Center Drive, Suite 190  
Auburn, CA 95603

**Re: Comments on the Draft Environmental Impact Report for the Martis Valley West Parcel Specific Plan**

Dear Ms. Wydra:

This office represents the Mother Lode Chapter of the Sierra Club and submits the following comments on the Draft Environmental Impact Report for the Martis Valley West Parcel Specific Plan. As an initial matter, the commentators object to the proposed project on the grounds that the Draft Environmental Impact Report (“DEIR”) fails to meet the legal requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code, section 21000 *et seq.* and the CEQA Guidelines, section 15000 *et seq.* (Title 14 California Code of Regulations § 15000 *et seq.*)

**I. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

“CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Pub. Resources Code, §21001.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Pub. Resources Code, § 21000(g).] CEQA is to be interpreted 'to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' [*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259]”. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) “The environmental impact report, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision making and to expose the decision-making process to public scrutiny. (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910; citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.) This interpretation remains the benchmark for judicial interpretation of CEQA. (*Laurel Heights Improvement Association v. Regents of the University of California* (“*Laurel*

*Heights I*") (1988) 47 Cal.3d 376, 390, quoting *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274.) As the *Laurel Heights I* court noted, "[i]t is, of course, too late to argue for a grudging, miserly reading of CEQA." (*Laurel Heights I, supra*, 47 Cal.3d at p. 390.)

The EIR is "the heart of CEQA" and "an environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological point of no return." (*Id.* at p. 392.) The EIR is the "primary means" of ensuring that public agencies "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." (*Id.*, quoting Pub. Resources Code, § 21001(a).) The EIR is also a "document of accountability," intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions." (*Laurel Heights I, supra*, 47 Cal.3d at p. 392 (quoting *No Oil, Inc.*, *supra*, 13 Cal.3d at p. 86.)) Thus, "[t]he EIR process protects not only the environment but also informed self-government." (*Ibid.*)

The central purpose of an EIR is to identify the significant environmental effects of the proposed project, and to identify ways of avoiding or minimizing those effects through the imposition of feasible mitigation measures or the selection of feasible alternatives. (Pub. Resources Code, § 21002, 21002.1(a), 21061.) "An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of an agency's proposed decision." (*Mountain Lion Foundation v. Fish & Game Commission, supra*, 16 Cal.4th at p. 113.) Thus, the primary purposes of CEQA is to inform government decision-makers and the public about the potential significant environmental effects of proposed projects (CEQA Guidelines, § 15002(a)(1)) and to disclose to the public the reasons for approval of a project that may have significant environmental effects. (CEQA Guidelines, § 15002(a)(4).) Informed decision making and public participation are fundamental cornerstones of the CEQA process. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights I, supra*, 47 Cal.3d 376.) With this primary purpose of CEQA in mind, the California Supreme Court has stated that "[t]he environmental impact report ("EIR") is the primary means of achieving the Legislature's considered declaration that it is the policy of this State to take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State." (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1229 [emphasis added].)

Thus, when an agency fails to comply with CEQA's informational requirements of CEQA, an agency has failed to proceed in 'a manner required by law. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 118. If the deficiencies in an EIR "preclude[] informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred." (*Id.* at p. 128.)

As discussed in these comments as well as the comments submitted by the Friends of the West Shore ("FOWS") and the Tahoe Area Sierra Club ("TASC"), the DEIR fails to satisfy CEQA's legal requirements and fails as an informational document. Thus, the DEIR is legally deficient.

## II. THE DEIR'S PROJECT DESCRIPTION FAILS TO COMPLY WITH CEQA

The DEIR fails to provide an adequate Project Description. CEQA requires that environmental review document contain an accurate description of the entire project. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) In *County of Inyo*, the court stated that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Id.*) CEQA requires a complete project description to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1450, 1454.) As stated by the court in *County of Inyo*, "[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantages of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." (71 Cal.App.3d at pp. 192-193; see also *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 [court found project description inadequate where EIR concealed, ignored, excluded, or simply failed to provide pertinent information" regarding a reasonably foreseeable consequence of the project].) A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; quoting *County of Inyo, supra*, 71 Cal.App.3d at pp. 197-198.)

An accurate project description is essential as it allows the public and the decision-makers to evaluate the project's benefits against its environmental effects. (*County of Inyo v. City of Los Angeles, supra*, 71 Cal.App.3d at pp. 192-193.) An inaccurate project description may result in an EIR that fails to disclose impacts associated with the project. (See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) Moreover, an accurate project description provides for full disclosure and informed decision-making. (See Kostka & Zischke, *Practice Under the California Environmental Quality Act* (Cont. Ed. Bar 2013) § 12.7, at p. 580.) "[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives ... ." (*City of Santee v. County of San Diego, supra*, 214 Cal.App.3d at p. 1454.) If the description is inadequate because it fails to discuss an aspect of the project, the environmental analysis will probably reflect the same mistake. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.3d 713, 722-723.)

**A. The DEIR Fails to Identify and Describe Key Components of the Project.**

The DEIR's Project Description fails to meet CEQA's requirements as it lacks detailed information regarding specific project details such as the location of single family, multi-family homes and commercial development. In order to fully evaluate the project the DEIR needs to contain more specific information as to the location of development and the height of the development. The omission of this information from the Project Description leads to speculation as to the location of the development and the height of the development. Such speculation affects the DEIR's impact analysis and leads to uncertainty for the public and the decisionmakers.

Additionally, while the Project Description references a development agreement, the DEIR fails to describe the Development Agreement or include a draft of the Development Agreement. As the Development Agreement will govern implementation of the Project, the DEIR needs to either describe the development agreement or include a copy of the draft agreement so that the public can have the opportunity to review and comment.

**B. The DEIR Fails to Consider the Whole Project and Improperly Piecemeals the Environmental Review**

CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) As a result, courts have given the term "project" a broad interpretation and application to maximize protection of the environment. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4<sup>th</sup> 1165, 1198; *Friends of the Sierra Railroad v. Tuolumne Park & Recreation District* (2007) 147 Cal.App.4<sup>th</sup> 643, 653 ["CEQA's conception of a project is broad"].) Based upon this broad interpretation of "project", CEQA requires that an EIR address the whole of the project. (CEQA Guidelines, § 15378(a), (c)-(d); *RiverWatch v. Olivenhain Municipal Water District* (2009) 170 Cal.App.4<sup>th</sup> 1186.) The action reviewed under CEQA is not the approval itself but the development or other activities resulting from the agency's approval of the project. In preparing an EIR, an agency may not conceal environmental considerations by focusing on separate parts of the project and ignoring the cumulative effect of the whole action. (*Bozung v. LAFCO* (1975) 13 Cal.3d 268, 283.) Thus, CEQA "cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4<sup>th</sup> 1214, 1223.)

The DEIR fails to consider and evaluate any future development in the Tahoe Basin. The applicant suspended the application before the Tahoe Regional Planning Agency ("TRPA"), but has not completely disavowed any future development within the Tahoe Basin as part of the overall development. Nothing within the DEIR indicates that the proposal to develop within the Tahoe Basin has been permanently and irrevocably abandoned. As development within the Tahoe Basin appears to remain an option for the applicant, the DEIR should discuss and analyze the potential impacts associated with development in the basin.

The DEIR also segments environmental review by not including the Brockway Campground. An application for the Brockway Campground has been submitted to the County and TRPA. The proposal for the Brockway Campground is essentially part of the same development as it is on the same property as the current Project and is proposed by the same applicant/developer. Thus, there is nothing speculative about the Brockway Campground as it is a pending proposal that has been sufficiently defined by the applicant and is currently under consideration by the respective agencies. Excluding the Brockway Campground from the environmental review, conceals environmental considerations by focusing on separate parts of the project and ignoring the cumulative effect of the whole action. (See *Laurel Heights I*, *supra*, 47 Cal.3d 376, 396-397.) As such, the DEIR should be revised to include the Brockway Campground and then recirculated for public review and comment.

### **III. THE DEIR'S ALTERNATIVE ANALYSIS FAILS TO MEET CEQA'S REQUIREMENTS**

The EIR contains a legally flawed alternative analysis as it fails to contain a reasonable range of feasible alternatives that avoid or substantially lessen the Project's significant environmental impacts. (EIR at pp. 22-31; see Pub. Resources Code, §§ 21001(g); 21002.1(a); CEQA Guidelines, § 15126.6; *Goleta Valley*, *supra*, 52 Cal.3d at 566.)

#### **A. CEQA REQUIRES AN EIR TO CONSIDER A REASONABLE RANGE OF FEASIBLE ALTERNATIVES**

CEQA mandates that a lead agency adopt feasible alternatives or feasible mitigation measures that can avoid or substantially lessen the project's significant environmental impacts. (Pub. Resources Code, § 21002; Guidelines, § 15002(a)(3); *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at p. 566.) For that reason, "[t]he core of an EIR is the mitigation and alternatives sections." (*Id.* at p. 564.) "The purpose of an environmental impact report is to identify the significant effects on the environment of a project, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided. (Pub. Resources Code, § 21002.1(a) (emphasis added); see also Pub. Resources Code, § 21061.) Thus, a lead agency must ensure "that all reasonable alternatives to proposed projects are thoroughly

assessed.” (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; Pub. Resources Code, § 21001(g) (lead agency must “consider alternatives to proposed actions affecting the environment”); *Laurel Heights I, supra*, 47 Cal.3d at p. 400.)

The EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, and evaluate the comparative merits of the alternatives.” (CEQA Guidelines, § 15126.6(a).) The alternatives discussion must focus on alternatives that avoid or substantially lessen any significant effects of the project. (*Id.*, § 15126.6(b); *Goleta Valley, supra*, 52 Cal.3d at p. 566 (EIR must consider alternatives that “offer substantial environmental advantages”).) The range must be sufficient “to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” (*San Bernardino Valley Audubon Soc’y v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750; see also *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1217-18, 1222 (EIR that only considered two alternatives for less development was not a range of reasonable alternatives).) Although no rule governs the number of alternatives that must be considered, the range is governed by the “rule of reason.” (*Goleta Valley, supra*, 52 Cal.3d at p. 576; CEQA Guidelines, § 15126.6(a)(f).) *Marin Municipal Water District v. KG Land Corp.* (“*Marin*”) (1991) 235 Cal.App.3d 1652, 1664 (“CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR”).) The range of alternatives, however, must be selected and discussed in a manner that allows for meaningful public participation and informed decisionmaking. (*Id.*) The fact that CEQA does not require a specific number of alternatives does not excuse an agency’s failure to present *any* feasible, less environmentally damaging options to a proposed project. (See *Sierra Club v. Contra Costa County, supra*, 10 Cal.App.4th at 1217-18, 1222 (EIR that only considered two alternatives for less development was not a range of reasonable alternatives).)

In *Watsonville Pilot Association v. City of Watsonville, supra*, 183 Cal.App.4th at pp. 1086-1088, the court held that an EIR was legally inadequate because it failed to consider a reduced project alternative. The court rejected the City’s argument that no discussion of an alternative is required if that alternative would not meet a project objective. (*Id.*) The court held “it is virtually a given that the alternatives to a project will not attain *all* of the project’s objectives.” (*Id.* (emphasis in original).) The Court also rejected the City’s argument that the EIR adequately addressed a reduced development alternative by considering the no-project alternative. (*Id.* at pp. 1088-1089.) The court recognized that “the core of an EIR is the mitigation and alternatives sections” and that the purpose of an EIR is to identify the significant effects of a project on the environment, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided.” (*Id.*)

## **B. THE EIR FAILED TO INCLUDE A REASONABLE RANGE OF ALTERNATIVES**

Contrary to CEQA's directive, the DEIR fails to consider a "reasonable range" of alternatives that would reduce and avoid the Project's significant impacts. (See Pub. Resources Code, §§ 21002 and 21002(a); Guidelines § 15126.6(b); *Goleta Valley*, 52 Cal.3d at 566.) Failure to provide a range of potentially feasible alternatives means that the EIR fails to provide a choice to the decisionmakers. (*San Bernardino Valley Audubon Soc'y v. County of San Bernardino*, *supra*, 155 Cal.App.3d at 750 (range must be sufficient to provide a reasonable choice of alternatives); *California Native Plant Society v. City of Santa Cruz*, *supra*, 177 Cal.App.4<sup>th</sup> at 981 (the decisionmaking body evaluates whether the alternatives are *actually* feasible); CEQA Guidelines, § 15126.6(a) (EIR must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation).)

Other than the two No Project Alternatives (Guidelines, § 15126.6(e)), the EIR's alternative analysis contains only two alternatives. The DEIR's Alternative analysis fails to consider alternatives that would avoid or substantially lessen the potentially significant environmental impacts. (See CEQA Guidelines, 15126.6(b); see DEIR 19-37.) A review of Alternative 4 clearly indicates that it does not avoid or substantially lessen any of the project's impacts. The DEIR concludes that every impact is essentially similar to the proposed Project. (See DEIR 19-29 to 19-36.) Alternative 3 fairs a bit better, but still all of the impacts are essentially similar to the proposed Project. Thus, the DEIR's alternative analysis is legally inadequate as it fails to consider a reasonable range of alternatives that avoid or substantially lessen the Project's significant environmental impacts. (See *Watsonville Pilot Association v. City of Watsonville*, *supra*, 183 Cal.App.4<sup>th</sup> at pp. 1086-1088.)

The DEIR failed to examine an alternative that does not place development on the ridgeline and that any buildings cannot exceed the height of ridgeline so as not to impair the views from any location in the Tahoe Basin. Thus, in order to avoid significant impacts to visual resources as discussed below and in FOWS and TASC's comments, the DEIR should fully develop and analyze a non-ridgetop alternative, in which development is shifted and concentrated downslope, and any building footprints approaching the ridge should be subject to a building setback.

## **III. THE DEIR FAILS TO ADEQUATELY ADDRESS IMPACTS AND LACKS ADEQUATE MITIGATION MEASURES**

A fundamental problem with the DEIR's impact analysis is that it relies upon comparing the impacts of the proposed Project with a project that would allow the applicant/developer have an additional 600 units if development were approved. (See *Neighbors for Smart Rail v. Exposition Metro Line Authority* (2013) 57 Cal.4<sup>th</sup> 439, 457.) CEQA requires that an EIR should compare a project's impact to existing conditions, not hypothetical conditions that allow an agency to distort or minimize the Project's impacts and avoid the appropriate analysis and appropriate mitigation measures. (*Woodward*

*Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4<sup>th</sup> 683, 707 (EIR for planning and zoning changes for a new commercial development rejected because EIR compared proposed development only to hypothetical office park that could be developed under preexisting plan but did not compare proposed development with existing physical conditions on site).

In *Environmental Planning & Information Council v. County of El Dorado* (“*EPIC*”) (1982) 131 Cal.App.3d 350, 358, the Court that such an approach “can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts which would result.” Since the EIR failed to contain extensive detailed evaluations of the impacts of the proposed plans on the environment in its current state, the EIR failed as an informative document. (*Id.*)

The DEIR in the present matter suffers from the same fatal flaw. (See e.g. Impact 7-1, Impact 7-2, Impact 12-2.) It fails to inform the decision makers and the public of the proposed Project’s impacts to the existing environment. Instead it painstakingly compares this Project to a hypothetical project that may or may not be completed sometime in the future. Moreover, even if the other East Parcel was pursued at some point in the future, the amount of units approved for development is speculative at this point. Thus, under *EPIC* the baseline for assessing environmental impacts must be the existing environment and the agency preparing the EIR must compare the existing environment (little or no development) with the total amount of development permitted under the proposed plan. (*Id.* at p. 358; *City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246-247; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186-187.)

While the Court in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4<sup>th</sup> 439,454, held that “[N]othing in CEQA law precludes an agency ... from considering both types of baseline--existing and future condition--in its primary analysis of the project's significant adverse effects, it is clear that the EIR must contain an analysis based upon existing environmental conditions. The DEIR in this matter failed to consider the most important baseline, the existing environment. As such, the DEIR fails to meet CEQA’s legal requirements and the impact analysis is fatally flawed.

#### **A. The DEIR’s Greenhouse Gas Emissions Analysis Violates CEQA**

The DEIR’s analysis of GHG emissions is legally inadequate as it based upon a hypothetical buildout of “No Action Taken Scenario.” (DEIR 12-14.) The DEIR uses the environmental setting of full buildout of the East Parcel even though no such application has been filed let alone approved for the development of the East Parcel. As a result, the DEIR concludes that the Project would result in a 23.2 percent reduction in greenhouse gas emissions. (DEIR 12-13 to 12-15.) Based upon this analysis, the DEIR concludes that the GHG emissions associated with the operation of the Project would not conflict with the ARB’s Scoping Plan for 2020 targets. (DEIR 12-14 to 12-15.)



By relying on the hypothetical buildout of 1360 units in the East Parcel, the DEIR fails to analysis GHG emissions based upon existing conditions as required by CEQA. (See *Neighbors for Smart Rail v. Exposition Metro Line Authority* (2013) 57 Cal.4<sup>th</sup> 439, 457.) CEQA requires that an EIR compare a project's impact to existing conditions, not hypothetical conditions that allow an agency to distort or minimize the Project's impacts and avoid the appropriate analysis and appropriate mitigation measures. (*Woodward Park Homeowners Association v. City of Fresno, supra*, 150 Cal.App.4<sup>th</sup> at p. 707 (EIR for planning and zoning changes for a new commercial development rejected because EIR compared proposed development only to hypothetical office park that could be developed under preexisting plan but did not compare proposed development with existing physical conditions on site); see also *EPIC, supra*, 131 Cal.App.3d 350.)

The CEQA Guidelines address the specific baseline for evaluating GHG emissions. CEQA Guidelines section 15604.4(b) provides that in evaluating a project's GHG emissions, the agency should consider these factors among others: —(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting; (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. In *Neighbors for Smart Rail*, the Supreme Court held that “while an agency preparing an EIR does have discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or with informational value.” The present DEIR fails to discuss how it would be misleading to compare the Project's GHG emission to existing conditions in evaluating the significance of the GHG emissions. Thus, given the requirement of CEQA Guideline 15064.4 and *Neighbors for Smart Rail*, the DEIR's reliance on a hypothetical future baseline violates CEQA. As such, the DEIR and analysis of GHG emissions must be revised to compare the Project's emissions to existing conditions.

By comparing the proposed project to what *could* happen, rather than to what was actually happening, an agency relies upon a baseline not according to “established levels of a particular use,” but by “merely hypothetical conditions allowable”. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4<sup>th</sup> 310, 322; citing *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4<sup>th</sup> 645, 658, and *County of Amador v. El Dorado County Water Agency* (1999) 76 al.App.4<sup>th</sup> 931, 955 (impact analysis must on impacts to existing environment, not hypothetical situations).)

The DEIR's GHG emissions analysis also relies upon Business as Usual (BAU) approach to measure GHG impacts. This approach violates CEQA's requirements regarding analysis of a Project's GHG emissions. CEQA requires that one of the factors

in determining a Project's GHG impacts is whether the project "may increase or reduce greenhouse gas emissions compared to the existing environmental setting." (CEQA Guidelines, 15064.4(b)(1).) In relying upon BAU for the existing environmental setting, the DEIR assumes that the hypothetical project would be built and that no statewide regulations and/or laws governing GHG emissions would have gone into effect. The DEIR gives credits for the current Project complying with various regulations and policies to reduce GHG emissions. The result is a misleading analysis and conclusion regarding the Project's GHG emissions due to the artificially inflated baseline. The courts have rejected this approach. (See *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4<sup>th</sup> 310, 322; see also CEQA Guidelines §§ 15126.2(a), 15064.4(b)(1).) Thus, CEQA requires that the proper comparison for year 2020 is the Project site's existing conditions. (*Id.*)

When a project's GHG emissions may be significant, lead agencies must consider a range of potential mitigation measures to reduce those emissions. (See CEQA Guidelines § 15126.4(c).) The DEIR determines that the GHG emissions are potentially significant for after 2020, but not before 2020. (DEIR 12-16.) The DEIR then discusses Mitigation Measure 12-2. Mitigation Measure 12-2, however, must be revised to address the legally inadequate analysis regarding before 2020. The DEIR inappropriately assumes reduction of GHG emissions of 23.2 percent by 2020 when in fact, based upon the existing environmental setting, the GHG would be potentially significant. As such, the DEIR must be revised to consider mitigation measures to address GHG emissions impacts by 2020.

#### **B. The DEIR's Visual Resources Analysis Fails to Comply with CEQA Requirements**

One of the Sierra Club's major issues of concern remains the Project's potential impacts to visual resources. The modified Project occupies a ridge between Tahoe Basin and Martis Valley in one of the most scenic and publicly accessible places in the Sierra, visited by millions of people each year. The Project's footprint fails to recognize and reflect the extreme sensitivity of the Project's location. While the height and location of buildings, construction materials, indoor and outdoor lighting, screening, *etc.* can to some degree mitigate for visual impacts, but cannot offset an inappropriate project footprint.

The DEIR's design of the Project does not reflect the sensitivity of the Project's location. Rather than limiting development to the lower bench and flanks of the ridge, the County seeks to place commercial uses at the highest point on the ridge. Multi-family residential uses are also slated for the top of the ridge. The Project's current footprint unfortunately does not reflect an effort to avoid these impacts to visual resources.

A project that interferes with scenic views has an adverse aesthetic effect on the environment. (See, e.g., *Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App.4<sup>th</sup> 396, 401.) The significance of an environmental

impact is ... measured in light of the context where it occurs. (CEQA Guidelines § 15064(b).) The Guidelines confirm that ‘the significance of an activity may vary with the setting. (*Id.*) For example, an activity that may not be significant in any urban area may be significant in a rural area. (*Id.*; see *Bowman v. City of Berkeley* (2004) 122 Cal.App.4<sup>th</sup> 572, 589; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4<sup>th</sup> 1012, 1026-1027.) The CEQA Guidelines show that the relevant inquiry is whether a project would “[s]ubstantially degrade the existing visual character or quality of the site or its surroundings.” (Guidelines, appendix G, italics added.)

Substantial evidence includes facts, reasonable assumptions predicated upon facts and expert opinions supported by facts. (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, §15384(b).) Thus, argument, speculation and unsubstantiated opinion or narrative does not constitute substantial evidence. (Pub. Resources Code, § 21080(e)(2).) It should also be noted that with respect to visual resources, lay testimony constitutes substantial evidence where such input is credible. (See *Bowman v. City of Berkeley*, *supra*, 122 Cal.App.4<sup>th</sup> at p. 583.) To this end, the comments submitted by FOWS and TASC regarding visual resources constitutes substantial evidence regarding impacts to scenic resources as well as critique and discussion of the visual analysis study, including the location of key observation points. The Chapter joins in and incorporates the comments submitted by FOWS and TASC. In addition, the Chapter provides the following comments on visual resources.

The DEIR concludes that the Project will not result in significant impacts to scenic vistas, scenic resources or the existing visual character or quality of the site and its surroundings. (DEIR 9-32 to 9-43.) Additionally, the DEIR concluded that new sources of light and glare from the Project do not constitute a significant impact. (DEIR 9-45 to 9-48.) The DEIR’s conclusion relies upon the visual simulations prepared by Square One Productions. As discussed in FOWS and TASC’s comments the analysis contains significant flaws and assumptions and as such the visual simulations do not constitute substantial evidence to support the several determinations that the Project will not result in potentially significant impacts to visual resources.

With respect to scenic and visual resources the proposed Project is not consistent with the Placer County General Plan, the Martis Valley General Plan (2003) and TRPA’s Goals and Policies. CEQA requires that an EIR discuss inconsistencies with applicable plans. (CEQA Guidelines, § 15125(d).) Moreover, the Guidelines specifically require discussion of consistency with regional plans for the protection of Lake Tahoe. (*Id.*) Any such inconsistency may constitute evidence that the Project may result in a significant environmental impact.

The general plan is “at the top of “the hierarchy of local government law regulating land use.” (*DaVita v. County of Napa* (1995) 9 Cal.4th 763, 773. The Supreme Court described “the function of a general plan as a “constitution,” and labeled it the “basic land use charter governing the direction of future land use” in the locality.

(*Leshar Communications, Inc. v. City of Walnut* (1950) 52 Cal.3d 531, 540, *DeVita, supra*, 9 Cal.3d at p. 773.) Thus, land use decisions must be consistent with the general plan. (Gov't Code, § 65860(a); *Leshar Communications, Inc., supra*, 9 Cal.3d at p. 541.)

An action is consistent with the general plan if it furthers the objectives and policies of the general plan and does not obstruct their attainment. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817.) While a court accords deference to an agency's interpretation of its general plan and various elements, an abuse of discretion is established if the agency has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. (See Code Civ. Proc., § 1094.5; *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.) An action, however, must be consistent with the very specific and mandatory policies of the general plan. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 785-786, 789.; *Families Unafraid to Uphold Rural El Dorado v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1342.)

As discussed in FOWS and TASC's comments, the proposed Project conflicts with the TRPA's Goals and Policies that call for the protection of Lake Tahoe's scenic values. (See TRPA Policy LU-1.1, Goal SR-1.) The proposed Project is also inconsistent with the Placer County General Plan and Martis Valley Community Plan that require the County maintain the character and visual quality of scenic areas. (See MVCP, Policies 4.B.1 and 4.B.2 and Placer County General Plan, Polices 1.K.1 and 1.K.6.) The DEIR fails to adequately discuss the Project's inconsistency with the applicable plans for the protection of Lake Tahoe and Martis Valley. Moreover, the DEIR fails to evaluate whether such inconsistencies may result in significant environmental impact to visual and scenic resources. Thus, the DEIR must be revised to address the Project's inconsistency with the applicable plans and the impacts to scenic resources.

As discussed in FOWS and TASC comments, the DEIR's visual resource analysis does not appear to take into account the height of buildings, which may amount to 75 feet above the ridgeline. (See DEIR 9-9.) Thus, the visual resource analysis failed to evaluate the Project as proposed and fails to provide sufficient information to the public and decisionmakers. As such, the DEIR's visual simulation analysis must be revised to address the potential height of structures on the ridgeline. Without such information and analysis the DEIR's conclusions regarding potential impacts amount to speculation and does not constitute substantial evidence. (See Pub. Resources Code, § 21080(e)(2).)

The visual simulation used a heightfield bitmap to model the screening effect for the Project. (See letter dated March 5, 2015 from Richard Tsai, Field of Vision to Sydney Cotsworth.) As stated by Mr. Tsai, this methodology may not be appropriate for close range views such as from Fibreboard Freeway. (*Id.*) The use of actual tree models would provide a more accurate result with respect to exposure of residential and street lighting through the trees as well as close range views. (*Id.*) Thus, while the heightfield bitmap may be useful or appropriate for the long-distance views, it may not provide

accurate information and analysis for impacts of close range views. As such, the visual resources analysis must be revised.

The visual simulation also fails to address all tree removal that would be associated with the Project. While the analysis included tree removal associated with building homes, roads and other infrastructure and project features, the analysis failed to take into consideration tree thinning for forest health and fire prevention, as well as tree removal for defensible spaces around buildings. Thus, the screening from trees, so heavily relied upon in the analysis, may be significantly different and result in different conclusions.

The visual resource analysis is also inadequate as a result of the DEIR's segmentation of any future development in the basin and the Brockway Campground. Due to the segmentation, the DEIR failed to consider and evaluate any future development in the basin and the development of the Brockway Campground. As such, the visual resources analysis underestimates the potentially significant impacts to scenic views and visual resources. As the applicant has not completely disavowed any future development within the Tahoe Basin as part of the overall development, the visual resource analysis should address the potential impact of units within the Tahoe Basin. Additionally, as the Brockway Campground should be part of the DEIR, it needs to be part of the visual simulation. Therefore, the visual resource analysis must be modified to address the full buildout of the project and not represent the segmented environmental review.

As the visual simulation must be revised to satisfy CEQA's requirements and substantial evidence does not support the DEIR's no impact conclusion, the County must address mitigation measures to avoid or substantially lessen the potentially significant impacts to visual resources. As discussed in Sierra Club's comments on the Notice of Preparation, the following mitigations for visual impacts should be incorporated into the DEIR:

- Concentrate commercial and residential development in the lower bench area and limit any development in the upper bench to lower elevations, maintaining a several hundred-foot setback from the top of the ridge.
- Minimize visual impacts by limiting commercial buildings and single-family residential units should to a single story. Multi-family residential units should be limited to two stories, and confined to the lower bench.
- The project primarily appears to rely on the screening provided by mature trees to mitigate visual impacts. Thus, the DEIR must include tree survey in any areas in and around the project where the presence or removal of trees may relate to the effectiveness of screening. In addition to tree location, the tree survey should include height and diameter—tree health and age should

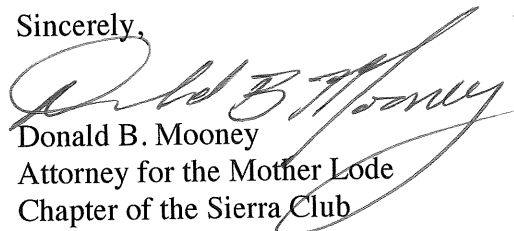
also be surveyed and assigned to individual trees. Screening effectiveness will be influenced by longevity. A conservative approach to this concern is appropriate given stresses to trees based on state's drought (with its indeterminate length), the effects of climate change, and the difficulty of trees under stress to ward off insects and disease. Trees relied on for mitigation may suffer mortality in the near-term; replanting (even when done in a timely manner) may not provide mitigation for many years in the future.

- In addition to tree mortality due to age and poor health, trees retained adjacent to infrastructure but not directly affected often suffer from partially compromised root systems and hydrological changes that hasten their demise. Trees retained in proximity to building footprints, roads and other infrastructure should not necessarily be counted to provide screening over time.
- While a targeted and ongoing tree-planting program is essential in providing screening as mitigation, the DEIR should acknowledge that replanting might be of limited value, since conifers common the site may take 50-100 years to establish themselves and attain the height needed for screening benefit. This must be taken into account when assessing whether impacts can be mitigated below the level of significance.

#### IV. CONCLUSION

As demonstrated in these comments and the comments submitted by the FOWS and TASC, the DEIR fails to meet CEQA's minimum requirements. Moreover, the DEIR fails as an informational document to the decisionmakers and public. As such the County must address the legal inadequacy and recirculate a revised DEIR as required by CEQA Guidelines, section 15088.5; see also *Mountain Lion Foundation v. Fish and Game Commission* (1989) 214 Cal.App.3d 1043.)

Sincerely,



Donald B. Mooney  
Attorney for the Mother Lode  
Chapter of the Sierra Club