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SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER
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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

CALIFORNIA CLEAN ENERGY
COMMITTEE, a California nonprofit
corporation,

Petitioner,

v.

COUNTY OF PLACER, a political
subdivision of the State of California; and
DOES 1-50, inclusive,

Respondents.

SIERRA PACIFIC INDUSTRIES, a
California corporation; MOUNTAIN INSIDE
PARTNERS, LLC, a limited liability
company; MVWP Development, LLC, a
limited liability company; and DOES 51-100,
inclusive,

Real Parties in Interest.

CASE NUMBER SCV0038578

Consolidated with SCV0038666

OPENING BRIEF BY CALIFORNIA CLEAN
ENERGY COMMITTEE IN SUPPORT OF
PETITION FOR WRIT OF MANDATE

Filing Date: October 26, 2016
Judge: Honorable Michael W. Jones
Department: 43
Date: November 7, 2017
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1
2 **PROJECT DESCRIPTION**

3 The project which is the subject of this proceeding is located in the unincorporated area of
4 Placer County approximately five miles north of Lake Tahoe. Known as the Martis Valley West
5 Parcel Specific Plan (MVWPSP), it specifies new land use controls for 7,428 acres of coniferous
6 forest land that is bisected by State Route 267 (SR 267). The smaller West Parcel is located to the
7 southwest of SR 267 and consists of 1,052 acres. The East Parcel consists of 6,376 acres located
8 northeast of SR 267. (AR 3:1259.) The overall intent of the project is to move residential and
9 commercial land use designations from the East Parcel to the West Parcel. (AR 2:1149.)

10 Previously, the West Parcel was entirely designated as Forest and Open Space. (AR
11 3:1318.) The East Parcel, however, contained 670 acres designated for Low Density Residential and
12 6.6 acres designated for General Commercial. The remainder of the East Parcel was designated
13 Forest or similar uses. (AR 3:1318.) The specific plan project would re-designate the residential and
14 commercial portions of the East Parcel to Forest. Further the entire East Parcel would be zoned
15 Timberland Production Zone (TPZ) and would be preserved as open space through either a
16 conservation easement or by selling the parcel to a land trust organization. (AR 3:1319.)

17 The specific plan project would then convert 662 acres of the West Parcel from Forest to
18 Residential. (AR 3:1318.) The remaining 390 acres of the West Parcel would be zoned TPZ. (AR 3:
19 1318.) The specific plan then establishes regulations governing development of the West Parcel and
20 provides for preservation of the East Parcel. (AR 2:893-1106.)

21
22 **PROCEDURAL HISTORY**

23 The California Clean Energy Committee (CCEC) is a non-profit corporation that has
24 advocated across California for energy conservation and environmental protection for nine years.
25 (AR 31:17530.) Sierra Pacific Industries (SPI) is a California corporation and the sole owner of the
26 MVWPSP project site. (AR 3:1306.) Mountainside Partners, LLC, is a limited liability company
27 and the project applicant. (AR 2:1157.) MVWP Development LLC was listed by the county on the
28 Notice of Determination filed October 12, 2016 as "Project Applicant/Owner." (AR 2:01.)

1 On October 22, 2015, the county published a draft environmental impact report (DEIR)
2 for the project. (AR 1:111.) The public comment period on the DEIR extended through December
3 22, 2015. (*Ibid.*) CCEC contributed extensively to a comment letter by the North Tahoe
4 Preservation Alliance (NTPA) that was delivered to County of Placer offices on December 21, 2015.
5 (AR 6:3482-3524.) The county released the final EIR on May 3, 2016, which adopted the contents
6 of the DEIR without restatement and made a series of amendments. (AR 1:112) The final EIR
7 contained copies of comment letters and responses along with a mitigation monitoring and reporting
8 program. On June 3, 2016, CCEC submitted written comments on the final EIR (AR 17530-45) and
9 supporting petitions signed by more than 40 residents of the North Tahoe area requesting that the
10 county require robust energy conservation and environmental stewardship in the MVWPSP. (AR
11 31:17546-54).

12 The Placer County Planning Commission considered the project at its June 9, 2016
13 meeting. Forty-one members of the general public provided testimony that was virtually unanimous
14 in condemning the project for a host of reasons including wildfire evacuation concerns, traffic
15 congestion, impacts on lake clarity, visual impacts, and biological impacts. (AR 21:11492-95;
16 20:11268.) The Planning Commission continued its consideration of the project and at a subsequent
17 hearing on July 7, 2016, received testimony from an additional 31 individuals. At that hearing the
18 Planning Commission took action by a vote of 5 to 2 recommending to the Board of Supervisors that
19 the project be denied. (AR 20:11263-66.)

20 On September 13, 2016, the Placer County Board of Supervisors held a public hearing on
21 the project and received testimony from 60 members of the public. At that time the Board took
22 action to tentatively approve the project by a vote of 4 to 1 and continued the hearing. (AR
23 20:11102-06.) On October 11, 2016, the Board took the following actions:

- 24 a. Certified the Martis Valley West Parcel Specific Plan Final Environmental Impact
25 Report and adopted Findings of Fact, a Statement of Overriding Considerations,
26 and the Mitigation Monitoring and Reporting Program (Resolution 2016-193);
- 27 b. Approved the Martis Valley West Parcel Specific Plan (Resolution 2016-194);
- 28 c. Approved the Martis Valley West Parcel Specific Plan Development Standards

(Ordinance 5838-B);

d. Approved the Martis Valley West Parcel Specific Plan Design Guidelines (Resolution 2016-195);

e. Approved an amendment to the Martis Valley Community Plan Land Use Diagram to incorporate the Martis Valley West Parcel Specific Plan land use designation (Resolution 2016-196);

f. Amended the Martis Valley Community Plan to add Goal 6.J and associated policies 6.J.1 and 6.J.2 related to emergency preparedness (Resolution 2016-197);

g. Approved the tentative immediate rezone of 662 acres of the West Parcel from TPZ to SPL-MVWPSP (Ordinance 5839-B);

h. Approved the rezone of all remaining acreage in the West Parcel from OS to SPL-MVWPSP and the rezone of 670 acres of the East Parcel from RS and C-1 to TPZ (Ordinance 5840-B);

i. Approved the Development Agreement relative to the Martis Valley West Parcel Specific Plan (Ordinance 5841-B); and

j. Approved the large-lot vesting tentative subdivision map.

(AR 19:10803-05.) A Notice of Determination for the project was filed and posted by the County Clerk of Placer County on October 12, 2016. (AR 1:01.)

LEGAL DISCUSSION¹

I. ENERGY CONSERVATION

A. OWNING A SECOND HOME AT LAKE TAHOE WOULD NOT REDUCE INDIVIDUAL ENERGY USAGE.

The Initial Study for the MVWPSP determined that utility impacts were potentially significant (AR 14:7955) and discussed energy impacts along with other utility impacts in Chapter

¹ CCEC incorporates the CEQA arguments advanced in the League to Save Lake Tahoe opening brief which is being filed concurrently including Tahoe Basin impacts, impacts to emergency evacuation, failure to declare impacts to I-80, failure to recirculate the GHG analysis, biologic impacts to sensitive species habitat, and scenic or visual impacts.

1 16 of the final EIR (AR 3:1665-98). The EIR projected that at full build-out, the operational
2 electrical demand of the entire MVWPSP project would be 2.98 megawatt hours (mWh) per year
3 and natural gas demand would be 1.8 million therms per year. (AR 3:1689.) It stated that project
4 operation would be typical for residential and commercial uses in the area. (AR 3:1690.) The EIR
5 informed readers that the buildings constructed would be required to comply with current building
6 codes governing energy efficiency. (*Ibid.*) It asserted that there were several provisions in the
7 proposed specific plan that would encourage efficiency upgrades. (*Ibid.*; AR 2:973-74.) It pointed
8 out that the transportation design for the project includes trails, a bus shelter, on-site commercial,
9 and contributions to public transit, without which the project would consume more energy. (AR
10 3:1690.) The EIR then concluded that "the policies described herein would reduce per capita energy
11 use" and further that the project "would encourage use of renewable energy sources." (*Ibid.*)

12 Those conclusions were unsupported. According to the EIR, residential units in the
13 Truckee/Lake Tahoe region are frequently vacation or second homes and are not occupied on a full-
14 time basis. The county estimated that 80 percent of the residential dwellings at the project site would
15 be part-time residences. (AR 3:1505.) In addition the dwellings built would likely be large, high-
16 end, second homes. The adopted design guidelines for the residential areas call for expensive
17 architectural design. (AR 2:1109-20.) The energy analysis done for the developer by Bender
18 Engineering assumes that the single family homes will be 5000 square feet and the "cabins" will be
19 2500 square feet. (AR 63:37536, 37537.)

20 The impact of second homes on energy consumption was studied in a similar resort
21 community in Aspen, Colorado, by Richard Heede of Climate Mitigation Services. (AR 33:19077-
22 97.) The Heede study reported that most new homes built in Aspen are second homes, and the
23 average second homeowner spends 88 days per year in Aspen and leaves the property empty for 277
24 days per year. (AR 33:19079.) It reported that second homes are "set to run warm in the winter and
25 cool in the summer; the hot water heater is often on year-round, multiple refrigerators keep things
26 (or nothing at all) cool, the wine collection cool, the security and ventilation and snowmelt systems
27 on, and exterior and interior light to simulate occupancy." (*Ibid.*) "Owners of second homes may
28 have staff employed year-round, which in turn results in energy and emissions from services

1 rendered, maintenance and upkeep, such as house-cleaning, landscaping, flower delivery, snow
2 removal, and car shuttling with attendant lighting, heating, hot water, and gasoline requirements.
3 Many of these services are essential to a well-run home in constant readiness for owner or guest
4 visits." (AR 33:19080.) The study concluded "that an *unoccupied home uses as much energy and*
5 *emits as much carbon dioxide on average, as a fully occupied home.*" (AR 33:19086, emphasis
6 original.) "The interesting result is that the low occupancy of second homes--88 days per year-- does
7 not appear to reduce average energy intensity and total emissions." (AR 33:19087, emphasis
8 original.) That conclusion is consistent with the EIR for the MVWPSP which assumed for purposes
9 of analyzing energy usage that all residences would be occupied year-around. (AR 3:1680.)

10 CEQA "requires that EIRs include a discussion of the potential energy impacts of
11 proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and
12 unnecessary consumption of energy." (CEQA Guidelines, App. F, § I, emphasis added.) The CEQA
13 Guidelines explain that "the wise and efficient use of energy" is to be achieved by (i) decreasing
14 overall per capita energy consumption, (ii) decreasing reliance on fossil fuels such as coal, natural
15 gas and oil, and (iii) increasing reliance on renewable energy resources. (CEQA Guidelines, App. F,
16 § I, emphasis added.) The county framed the issue as a question of whether the project would "result
17 in inefficient and wasteful consumption of energy." (AR 3:1679.) CEQA requires every EIR to
18 identify all significant effects of the proposed project on the environment. (Pub. Resources Code, §
19 21100(b)(1); *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935
20 (*Banning Ranch*).) As with any other environmental analysis, the energy analysis should address the
21 peak level of impact that can be expected. (*San Joaquin Raptor Rescue Center v. County of Merced*
22 (2007) 149 Cal.App.4th 645, 660 (*San Joaquin Raptor*) [necessary to include analysis of peak
23 operations].) An EIR must address the impacts of "reasonably foreseeable" future activities related
24 to the proposed project. (*Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412,
25 428.)

26 On June 3, 2016, CCEC corresponded with the Placer County Community Development
27 Resource Agency and notified it that there was no support in the EIR for the conclusion that the
28 project would reduce per capita energy consumption. (AR 31:17538.) CCEC notified the county that

1 by its own estimate, 80 percent of the dwellings in the project were expected to be second homes,
2 and that the county's conclusion that the project would reduce per capita energy consumption was
3 effectively saying that owning and commuting to a second home in Lake Tahoe would reduce a
4 person's annual energy consumption. (*Ibid.*)

5 Occupying two homes is clearly an inefficient, unnecessary and often wasteful use of
6 energy, and it should have been identified and analyzed as such. A 5000 square foot second home
7 with luxury features entails significant energy usage. Occupying that home as well as another home
8 is plainly not energy efficient. It was misleading to assert that providing luxury second homes at
9 Lake Tahoe would reduce per capita energy consumption. Many of these homes will be vacant for
10 large portions of the year and will continue to consume virtually as much energy as if they were fully
11 occupied. While that vacant luxury home consumes energy, the owners will be occupying another
12 home consuming energy there as well. Although the record reflects various energy-saving features,
13 nothing supports the conclusion that this project would reduce per capita energy usage. Abuse of
14 discretion is established if the agency decision is not supported by substantial evidence. (Pub.
15 Resources Code, § 21168.5.) Projects that increase per capita energy consumption have a significant
16 adverse impact under CEQA. (CEQA Guidelines, App. F, § I.) Developing luxury second home at
17 Lake Tahoe that will be empty most of the time clearly entails the inefficient, wasteful, and
18 unnecessary consumption of energy.

19 **B. THE COUNTY FAILED TO EVALUATE INCREASED RELIANCE ON**
20 **RENEWABLE ENERGY.**

21 The county's discussion of energy in the EIR contained no discussion of reducing reliance
22 on fossil fuels or of increasing reliance on renewable energy. It contained only a brief conclusory
23 statement that the policies described would encourage the use of renewable energy sources. (AR
24 3:1690.) Which policies might do that, how they might "encourage" renewable energy usage, and
25 why "encouragement" could even be meaningful was not discussed. Such a discussion does not
26 meet CEQA's disclosure standards. "There must be good faith, reasoned analysis. Conclusory
27 statements unsupported by factual information will not suffice." (CEQA Guidelines, § 15088(c); see
28 (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d

1 376, 404 (*Laurel Heights I*.) An EIR must contain facts and analysis, not an agency's bare
2 conclusions or opinions. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,
3 568.) The EIR must demonstrate that the potentially significant environmental impacts of the
4 proposed project were adequately investigated and discussed. (CEQA Guidelines, §§ 15125(c),
5 15382.)

6 On June 3, 2016, CCEC corresponded with the Community Development Resource
7 Agency (CDRA) informing it that the EIR should analyze the potential for using solar energy to
8 reduce fossil fuel consumption. (AR 31:17539.) CCEC informed the county that it should determine
9 whether failing to include solar photovoltaic generation as part of the project would result in a
10 significant impact to energy conservation. (*Ibid.*) The county was informed that its statement in the
11 EIR that the project would encourage the use of renewable energy resources was unsupported. (*Ibid.*)
12 Those errors were not corrected.

13 "Energy conservation measures . . . shall be discussed when appropriate." (CEQA
14 Guidelines, § 15126.4(a)(1)(C).) The CEQA Guidelines explain that "the wise and efficient use of
15 energy" is to be achieved by (i) decreasing overall per capita energy consumption, (ii) decreasing
16 reliance on fossil fuels such as coal, natural gas and oil, and (iii) increasing reliance on renewable
17 energy resources. (CEQA Guidelines, App. F, § I, emphasis added.) An EIR that fails to undertake
18 "an investigation into renewable energy options that might be available or appropriate for a project"
19 fails to comply with CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225
20 Cal.App.4th 173, 213 (*CCEC v. City of Woodland*).) The CEQA Guidelines provide that energy
21 efficiency be considered in terms of cost-effectiveness. (CEQA Guidelines, App. F, § I.)

22 CCEC provided the county with an analysis, prepared by Energeia USA, on the feasibility
23 of using rooftop solar photovoltaic at the project site to increase reliance renewable energy content.
24 (AR 36:20890-97.) Energeia estimated annual solar generation for the project site using generation
25 profiles from the National Renewable Energy Laboratory (NREL). (AR 36: 20892.) It modeled
26 average annual electricity demand based on hourly load profiles. (AR 36:20893.) It evaluated
27 Liberty Utility electricity tariffs applicable to the project site. (AR 36:20894.) It derived the costs of
28 installing residential solar from NREL cost data. (*Ibid.*) Based on that data, Energeia concluded that

1 properly-sized investments in rooftop solar would be an economic investment for all dwellings on
2 the project site. (AR 36:20895-96.)

3 The Energeia report demonstrates not only a compelling opportunity to increase reliance
4 on renewable energy but also that it was quite feasible for the County to conduct an analysis of
5 renewable energy resources. (CEQA Guidelines, App. F, § I.) When a standard, accepted
6 methodology is available to assess a significant impact, an EIR must evaluate the impact unless a
7 reasoned basis for not doing so is provided. (*Berkeley Keep Jets Over the Bay Comm. v. Board of*
8 *Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1370 (*Berkeley Jets*)). The county failed to analyze
9 increased reliance on renewable energy.

10 Whether an EIR has omitted essential information is a procedural question subject to de
11 novo review. (*Banning Ranch, supra*, 2 Cal.5th at 935.) The lead agency “must consider and resolve
12 every fair argument that can be made about the possible significant environmental effects of a
13 project.” (*Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal.App.4th 1099,
14 1109.) An EIR must include a detailed discussion of “[a]ll significant effects on the environment of
15 the proposed project.” (Pub. Resources Code, § 21100(b)(1).) CEQA is violated when an EIR
16 contains no discussion of a potentially significant environmental consideration. (*California Oak*
17 *Foundation v. Regents of the University of California* (2010) 188 Cal.App.4th 227, 236.) Omitting
18 meaningful consideration of a potentially significant environmental impact constitutes a failure to
19 comply with the information disclosure provisions of CEQA. (*Bakersfield Citizens for Local Control*
20 *v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1208.) Failing to comply with CEQA’s
21 procedural or information disclosure requirements is a prejudicial abuse of discretion where
22 decisionmakers or the public are deprived of information necessary to make a meaningful
23 assessment of the environmental impacts. (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th
24 1215, 1236-37 (*Sierra Club*)).

25 Moreover, the county's solitary assertion that the project would encourage the use of
26 renewable energy sources (AR 3:1690) was unsupported. The energy discussion contains nothing to
27 suggest why the project would encourage the use of renewable energy. (AR 3:1689-90.) The energy
28 discussion states only that Liberty Utilities secures about 20 percent of its energy from renewable

resources. (AR 3:1690.) The specific plan contains nothing that would encourage the use of renewable energy. The only reference to renewable energy is a statement that buildings would be solar ready to the extent required by the California Energy Code. (AR 2:1097.) The air quality section of the EIR contains Mitigation Measure 11-6, which provides that if air quality issues are later determined to exist, the developer could mitigate those with green building features which could possibly include solar panels. (AR 3:1555.) That is simply a mitigation requirement. Abuse of discretion is also established where the agency decision is not supported by substantial evidence. (Pub. Resources Code, § 21168.5.)

C. THE TRANSPORTATION ENERGY DISCUSSION CONSISTED OF A LISTING OF PROJECT FEATURES.

The EIR reported that various features of the specific plan would reduce transportation energy use including (i) providing zoning for neighborhood commercial, (ii) developing onsite trails connecting to the regional trail system, (iii) building a bus stop at the project entrance, (iv) financially supporting transit service, and (v) joining the local transit association. (AR 3:1690.) While those project characteristics could help to reduce energy usage, the county has simply singled out positive features and listed them in the EIR and considered that to be an analysis of transportation energy impacts.

In *CCEC v. City of Woodland, supra*, the court held that such an analysis of transportation energy impacts was not adequate. The court rejected the City of Woodland's argument that the EIR's mitigation measures designed to reduce vehicle trips would also reduce energy impacts, explaining that the City of Woodland "cannot say how much less transportation energy is needed for the project as approved because the issue has never been assessed in an EIR. CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount." (*Id.* at p. 210.)

Land use planning decisions affect transportation activity including vehicle trips, vehicle miles travelled, the proportion of trips made by different transportation modes, and the amount of active transportation such as walking and biking. (AR 11:6116.) Urban, suburban and rural areas have different features that considerably affect travel activity. (*Ibid.*) Central location residents

1 typically drive 20-40% less and walk, cycle and use public transit two to four times more than they
2 would at a suburban location. (*Ibid.*) More compact and less sprawling development reduces travel
3 distances and increases destinations within cycling and walking distance. (AR 11:6123.) Land use
4 management strategies can help to reduce per capita energy consumption. (AR 11:6120.)

5 The transportation energy baseline for the project is zero because the site is located in an
6 existing rural area about 5 miles from the commercial areas of Kings Beach. (AR 3:1486.) When the
7 project is built, the EIR projects 3,985 vehicle trips daily will be exiting the project onto SR 267 for
8 external destinations. (AR 3:1507.) According to the county's projections, 30-35% of these trips will
9 be driving south on SR 267 toward Lake Tahoe and around 15% will be driving north to Truckee.
10 (AR 3:1506.) On a peak day the project would generate approximately 13,745 vehicle miles
11 travelled (VMT) within the Tahoe Basin alone. (AR 6:3118.)

12 The CEQA Guidelines require analysis of transportation energy impacts. (CEQA
13 Guidelines, App. F, § II.A.5 [project description to describe "additional energy consumed per trip by
14 mode"], App. F, § II.C.6 [impacts include "projected transportation energy use requirements and its
15 overall use of efficient transportation alternatives"].) The EIR should have addressed how siting
16 these dwellings in a rural area on large lots will impact energy consumed per trip by mode, i.e.,
17 reliance on more automobile community and longer distance automobile commuting, rather than
18 shorter trips and less energy intensive transportation modes.

19 NTPA corresponded with the county on December 21, 2015, and informed the county that
20 the large footprint of the project was energy inefficient and should be analyzed as an impact to
21 energy and urged the county to reduce impacts by adopting an overall site plan compliant with smart
22 growth principles. (AR 6:3497-98.) CCEC corresponded with the county on June 3, 2016, and
23 informed the Community Development Resource Agency that from a transportation standpoint, the
24 project was energy inefficient and that transportation energy should be analyzed and reported to the
25 public as a significant adverse impact. (AR 31:17538.)

26 The EIR does not provide decisionmakers with sufficient analysis to make a decision that
27 intelligently takes into account the transportation energy implications of the project. (CEQA
28 Guidelines, § 15151.) The agency has not used its best efforts to find out and disclose all that it

1 reasonably can. (CEQA Guidelines, § 15144.) Decisionmakers have been deprived of information
2 necessary to make a meaningful assessment of project impacts. (*Sierra Club*, *supra*, 7 Cal.4th at
3 1236-37.) "There must be good faith, reasoned analysis. Conclusory statements unsupported by
4 factual information will not suffice." (CEQA Guidelines, § 15088(c).)

5 **II. TREE MORTALITY**

6 **A. THE COUNTY'S CUMULATIVE ANALYSIS OF FOREST RESOURCE** 7 **IMPACTS CONSIDERED THE PROJECT IN ISOLATION FROM OTHER** 8 **IMPACTS ON FOREST RESOURCES.**

9 Forest die-off in the Sierra Nevada is now a critical concern. On December 8, 2015, the
10 Placer County Board of Supervisors adopted Resolution No. 2015-253 declaring the existence of a
11 public emergency in Placer County due to the "widespread and rapidly increasing incidence of tree
12 mortality." (AR 28:15727-28.) In its resolution the Board concluded that local resources were
13 overwhelmed "because of the rapid increase in tree mortality and the sheer size and scope of the
14 problem throughout Placer County" and that tree mortality had "reached epidemic levels across the
15 entire western slope of the Sierra Nevada range which includes a large portion of Placer County."
16 (AR 28:15728.)

17 Similarly, on October 30, 2015, Governor Jerry Brown proclaimed a state of emergency in
18 California finding that "drought conditions and resulting bark beetle infestations across broad areas
19 have caused vast tree mortality in several regions of the state, with the United States Forest Service
20 estimating that over 22 million trees are dead and that tens of millions more are likely to die by the
21 end of this year." (AR 28:15723-26.) Governor Brown's proclamation further concluded that "recent
22 scientific measurements suggest that the scale of this tree die-off is unprecedented in modern
23 history." (AR 28:15723.)

24 The county's EIR reported that the 662-acre development area proposed for the West
25 Parcel contained approximately 651.5 acres of coniferous forest consisting of an estimated 46,245
26 trees at least six inches in diameter. The species were predominantly white fir followed by Jeffrey
27 pine, sugar pine and others. The EIR estimated that the project would disturb a maximum of 251.3
28 acres of the site and result in the removal of 21,798 trees. (AR 3:1327-29.)

1 The EIR referenced an analysis of cumulative impacts on forest resources that had been
2 done 30 years earlier in an environmental impact report evaluating the 1986 Countywide General
3 Plan. (AR 3:1332.) According to the reference, that document reported that Placer County contained
4 423,000 acres of commercial forestland in 1986. The 1986 Countywide General Plan was expected
5 to result in the conversion of 3 percent of forestland in the county by 2010. (*Ibid.*) That loss of forest
6 resources was concluded to be less than significant in 1986. (*Ibid.*)

7 In view of the 1986 EIR, the County concluded that the cumulative impact of the
8 MVWPSP on forest resources "would be small, less than one percent relative to the approximately
9 400,000 acres available in the area." (*Ibid.*) Such a loss of forest resources, according to the EIR,
10 would not cause regional forest loss projections to be exceeded and would not substantially reduce
11 the quantity or quality of common forest habitat types in the region. (*Ibid.*) The Biological
12 Resources section of the EIR also took this approach to analyzing forest resource impacts. (AR
13 3:1410.)

14 In June, 2016, CCEC corresponded with the Placer County Community Development
15 Resource Agency (CDRA) regarding the tree mortality impact. (AR 31:17539.) CCEC informed the
16 county that its purported cumulative impact analysis concerning the conversion of forest land to non-
17 forest use was insufficient. (*Ibid.*) The county was informed that it must determine whether the
18 combined impact of the project and other conversions of forestland would be significant. (*Ibid.*)
19 CCEC notified the county that the analysis should include the effect on forest resources of climate
20 related influences such as drought, wildfire, and bark beetle. (*Ibid.*) The county was advised that its
21 analysis of forestland conversion should not use a baseline consisting of the potential future build-
22 out of forest land under the existing community plan. (*Ibid.*) Similar comments were submitted by
23 NTPA. (AR 6:3494-95.)

24 The county's cumulative impact analyses of forest resource loss do not comply with
25 CEQA. The project's impact on forest resources should not be viewed in isolation from other
26 impacts on forest resources. The point of a cumulative impact analysis is to view the project's
27 impacts in connection with the effects of other projects. (CEQA Guidelines, § 15065(a)(3).) A
28 cumulative impact consists of an impact which is created as a result of the combination of the project

1 evaluated together with other projects causing related impacts. (CEQA Guidelines, § 15130(a)(1).)
2 The county failed to consider the combined loss of forest resources. There is no discussion of the
3 loss of forest resources resulting from forest die-off or from other current projects. Instead the
4 county compares the number of trees this specific project would eliminate to the forest resources that
5 existed in 1986. (AR 3:1332.) There is no discussion of what the current rate of forest loss is.

6 "Proper cumulative impact analysis is vital 'because the full environmental impact of a
7 proposed project cannot be gauged in a vacuum. One of the most important environmental lessons
8 that has been learned is that environmental damage often occurs incrementally from a variety of
9 small sources. These sources appear insignificant when considered individually, but assume
10 threatening dimensions when considered collectively with other sources with which they interact.'"
11 (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214
12 (*Bakersfield Citizens*).)

13 The county stated that it considered "the proposed MVWPSP in combination with other
14 foreseeable development within the Martis Valley and various regional and local land use plans."
15 (AR 3:1330.) Those other foreseeable developments were listed in Table 4-2, which named each
16 one and listed its development status and location. (*Ibid.*; AR 3:1299-1302.) Table 4-2 contains no
17 information regarding the cumulative loss of forest resources and there was no reference to such data
18 in the cumulative analysis. (AR 3:1332-33.)

19 Further, a cumulative impact analysis cannot rely on outdated and inaccurate projections.
20 The emergency declaration from the Placer County Board of Supervisors demonstrates that forest
21 conditions have changed considerably since the 1986 EIR was prepared for the Countywide General
22 Plan. In *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184
23 (*Bakersfield Citizens*), the lead agency prepared separate environmental impact reports for two
24 proposed shopping center projects proposed by different developers and located 3.6 miles apart. The
25 analysis of the cumulative impact was challenged for having considered each shopping center in
26 isolation from the other. The argument was made that the analysis effectively accounted for both
27 projects because the discussion was based on a summary of projections. That argument was
28 rejected. "As recognized in a respected CEQA treatise, '[t]he summary-of-projections approach may

1 present problems if the projections in the general plan or related planning document are inaccurate or
2 outdated." (*Id.* at 1217, citing 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality
3 Act (Cont.Ed.Bar 2017) § 13.43 (Kostka), emphasis added.) The court concluded, "Proper
4 cumulative impacts analysis is absolutely critical to meaningful environmental review of the
5 shopping center projects." (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1217.)

6 **B. THE EIR USED AN OUTDATED AND UNLAWFUL ENVIRONMENTAL**
7 **BASELINE FOR FOREST RESOURCES.**

8 The EIR points out that due to the elimination of residential and commercial land use
9 designations from the East Parcel, there would be a net increase of 8 acres in land zoned TPZ. (*Ibid.*)
10 Based on that, the EIR concludes "the total acreage of lands zoned TPZ would increase slightly, and
11 the MVWPSP would not conflict with, or result in additional conversion of, forest land." (AR
12 3:1333.) That was a comparison to a general plan, not to the existing physical environment. In June,
13 2016, CCEC corresponded with Placer County regarding tree mortality and informed the county that
14 its analysis of forest conversion should not use a baseline consisting of the potential future build-out
15 of forest land under the existing community plan. (AR 31:17539.)

16 Numerous cases have held that EIRs evaluating updates to land use plans must analyze
17 impacts on the existing physical environment. (*Woodward Park Homeowners Ass'n, Inc. v. City of*
18 *Fresno* (2007) 150 Cal.App.4th 683, 710; *Environmental Planning and Information Council of*
19 *Western El Dorado County, Inc. v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358; *St.*
20 *Vincent's School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th
21 989, 1005; *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (1986) 183
22 Cal.App.3d 229, 246.)

23 "An EIR must include a description of the physical environmental conditions in the
24 vicinity of the project as they exist at the time the notice of preparation is published from both a
25 local and a regional perspective. This environmental setting will normally constitute the baseline
26 physical conditions by which the Lead Agency determines whether an impact is significant." (CEQA
27 Guidelines, § 15125(a).) "Knowledge of the regional setting is critical to the assessment of
28 environmental impacts." (CEQA Guidelines, § 15125(c).) The EIR must permit potentially

1 significant environmental impacts to be considered in the full environmental context. (CEQA
2 Guidelines, §§ 15125(c), 15382.) The significance of an activity depends on the setting. (CEQA
3 Guidelines, § 15064(b); *Kings County Farm Bureaus v. City of Hanford* (1990) 221 Cal.App.3d 692,
4 718 (*Kings County Farm Bureau*).)

5 The EIR also discussed setting information that consisted of repeating information from
6 an EIR done 30 years earlier. (AR 3:1332.) As demonstrated by Board of Supervisors Resolution
7 No. 2015-253, the dominating feature of forest resources in the region at this time is dramatic levels
8 of forest die off connected with climate-related influences such as drought, wildfire, and bark beetle.
9 No plausible description of baseline conditions in the vicinity of the project could ignore those facts.

10 In *San Joaquin Raptor/Wildlife Rescue v. County of Stanislaus* (1994) 27 Cal.App.4th
11 713, the description of the environmental setting was held inadequate because it did not describe the
12 specific location and extent of riparian habitat adjacent to the property. In *Galante Vineyards v.*
13 *Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1122, a generalized
14 reference to adjacent vineyards that could be affected by the project was an inadequate description of
15 the environmental setting. In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108
16 Cal.App.4th 859, 873-75, an abbreviated description of historical water diversions from the Eel
17 River was inadequate in light of the impact on salmonid species. Without a credible description of
18 the on-going and projected loss of forest resources, it was impossible to determine from the EIR
19 whether the forest loss should be considered cumulatively considerable.

20 **III. HIGHWAY EXPANSION**

21 The county's transportation analysis concluded that the project would cause significant
22 traffic congestion on five segments of SR 267 between the Placer County line and SR 28, resulting
23 in those segments either degrading from an acceptable level of service (LOS) D to unacceptable
24 LOS E or exacerbating already unacceptable LOS E conditions. (AR 3:1513.) In an attempt to
25 mitigate that impact, the county discussed and then adopted Mitigation Measure 10-2. (AR 3:1515-
26 16; AR 1:103.) Measure 10-2 subjects the project to payment of a traffic impact fee representing the
27 project's fair share primarily of widening SR 267 to four lanes from the Placer County line to
28 Brockway Summit at an estimated cost of \$32.4 million. (*Ibid.*) The final EIR concludes that the

1 impacts to SR 267 would remain significant and unavoidable. (AR 3:1516.)

2 In its December 21, 2015 comment letter, the North Tahoe Preservation Alliance (NTPA)
3 pointed out that the county intended to charge a transportation impact fee to provide for roadway
4 expansion and warned the county that it should evaluate the environmental impacts of expanding SR
5 267. (AR 6:3492.) NTPA pointed out that roadway expansions typically result in increased
6 automobile travel bringing additional air quality emissions and GHG emissions. (*Ibid.*; see also AR
7 10:5472-81 [Caltrans study]; AR 10:5433-71 [Litman report].)

8 The county responded asserting that the expansion of SR 267 to four lanes had been
9 identified and adopted as county policy at the time the county approved the Martis Valley
10 Community Plan (MVCP) and that the EIR for the MVCP had evaluated the environmental impacts
11 of widening SR 267 to four lanes. (AR 6:3352.) The county went on to state that "[i]n the future, if
12 Caltrans moves forward with a project to widen SR 267, the project would be subject to a separate
13 environmental study to analyze and disclose the impacts of widening the highway."

14 CEQA nevertheless requires that where a mitigation measure would itself cause
15 potentially significant environmental impacts, those impacts must be discussed in the EIR. (CEQA
16 Guidelines, § 15126.4(a)(1)(D); *Save Our Peninsula Committee v. Monterey County Board of*
17 *Supervisors* (2001) 87 Cal.App.4th 99, 130 ["An EIR is required to discuss the impacts of mitigation
18 measures."]; *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, 1027
19 ["If the inclusion of a mitigation measure would itself create new significant effects, these too, must
20 be discussed, though in less detail"])

21 While the county potentially could have incorporated or tiered off the earlier EIR, it was
22 not excused from disclosing the impacts of the highway widening. (CEQA Guidelines, §§ 15152(g),
23 15150(c).) The county itself may know what those impacts are, but the EIR certainly did not
24 disclose them to decisionmakers or the public. It is not evident what impacts were found in the
25 earlier EIR or whether the project studied there actually included widening SR 267 to four lanes all
26 the way to Brockway Summit. NTPA cited the tendency of such road-widening projects to increase
27 reliance on automobile travel resulting in additional air quality emissions and GHG emissions. (AR
28 6:3492.) The failure to disclose the impacts of mitigation was an abuse of discretion. Where an

1 agency has failed to include information in its environmental analysis as required by CEQA, the
2 agency has failed to proceed in the manner required by law. (*Vineyard Area Citizens, supra*, 40
3 Cal.4th at 435.)

4 IV. GREENHOUSE GAS MITIGATION

5 A. THE COUNTY ERRONEOUSLY ASSUMED THAT REDUCING GHG 6 EMISSIONS FROM THE PROJECT WAS BEYOND ITS CONTROL.

7 "Global warming poses a serious threat to the economic well-being, public health, natural
8 resources, and the environment of California." (Health & Safety Code, § 38501(a).) In the final EIR,
9 the county modified the threshold for identifying whether the MVWPSP would result in a significant
10 contribution to global warming in view of *Center for Biological Diversity v. California Department*
11 *of Fish and Wildlife* (2015) 62 Cal.4th 204 (*Center for Biological Diversity*). As a result of that
12 case, the county concluded that there was no process available to determine whether the project
13 would meet the targets identified in the California Air Resources Board's Climate Change Scoping
14 Plan. (AR 6:3077.) In lieu of such a process, the county determined that the greenhouse gas (GHG)
15 emissions resulting from the project would be deemed significant if the combined global warming
16 potential was equivalent to emitting 1,100 metric tons of CO₂ (MT CO₂e) per year. (AR 6:3076.)
17 The EIR then projected that at full build-out the total GHG emissions associated with project
18 operation would be 29,964 MT CO₂e per year. (AR 6:3079.) Since that amount greatly exceeded
19 the threshold of 1,100 MT CO₂e per year, the county deemed there would be a significant impact.
20 (AR 6:3078.) The Board of Supervisors adopted findings stating that the project has the potential to
21 result in a substantial contribution to GHG emissions. (AR 1:120.)

22 As a result, the county had a statutory duty to describe feasible GHG mitigation measures
23 in the EIR. (Pub. Resources Code, §§ 21002.1(a), 21061; CEQA Guidelines, §§ 15121(a),
24 15126.4(a).) However, in approaching that duty, the county adopted the erroneous assumption that
25 reducing GHG emissions was largely beyond its jurisdiction. It stated in the final EIR that "[w]hile
26 project design and implementation of MVWPSP policies contribute to reducing potential GHG
27 emissions from the project, achievement of future GHG efficiency standards is largely dependent on
28 regulatory controls applied to all sectors of the California economy." (AR 3:1573.) The California

1 Air Resources Board takes the opposite view --

2 Local governments are essential partners in achieving California's goals to
3 reduce greenhouse gas emissions. They have broad influence and, in some
4 cases, exclusive authority over activities that contribute to significant direct
5 and indirect greenhouse gas emissions through their planning and
6 permitting processes, local ordinances, outreach and education efforts, and
7 municipal operations.

8 (AR 9:4866-67.) The County was notified of its error on June 3, 2016. (AR 31:17532.) The county
9 violated CEQA by failing to use its best efforts to find out and disclose all that it reasonably could.
10 (CEQA Guidelines, § 15144.)

11 **B. THE COUNTY'S GHG MITIGATION WAS CONDITIONED ON NON-**
12 **EXISTENT REGULATIONS AND RELIED ON MEASURES THAT COULD**
13 **SIMPLY BE DEEMED INFEASIBLE.**

14 Laboring under that self-imposed incapacity, the county developed a single mitigation
15 measure--Mitigation Measure 12-2-- to address the significant GHG emissions expected from
16 operation of the project. The paramount feature of measure 12-2 was that it would not come into
17 effect unless at some time in the future, new GHG targets or regulations were adopted. (AR 6:3080-
18 81.) To trigger the mitigation, new regulations would have to apply "both before and after 2020," be
19 "based on a substantiated linkage between the project (or Placer County projects in general if a
20 countywide qualified GHG reduction plan is approved) and statewide GHG reduction goals," and be
21 "required" by legislative action or administrative action. (*Ibid.*) The EIR acknowledges that such
22 targets or programs do not exist at this time. (AR 6:3081-82.) Worse still, the final EIR conceded
23 the significant difficulty in establishing such a regulation, stating that it is "unclear how . . . to
24 develop the evidence to reliably relate a specific land use development project's reductions to the
25 Scoping Plan's statewide goal." (AR 6:3124.)

26 When a project will result in an adverse change to the physical environment, CEQA
27 requires the lead agency to provide measures that mitigate or avoid the significant effects and that
28 are fully enforceable through permit conditions, agreements, or other measures. (Pub. Resources

1 Code, § 21081.6(b).) "The purpose of these requirements is to ensure that feasible mitigation
2 measures will actually be implemented as a condition of development, and not merely adopted and
3 then neglected or disregarded." (*Federation of Hillside and Canyon Associations v. City of Los*
4 *Angeles* (2000) 83 Cal.App.4th 1252, 1261 (*Federation*); *CCEC v. City of Woodland, supra*, 225
5 Cal.App.4th 173, 189.) Here there is nothing to ensure that feasible mitigation ever will occur
6 because hypothetical regulations which do not exist must be adopted before the mitigation could
7 become operative.

8 And even if applicable regulations do come into existence, Mitigation Measure 12-2
9 would still be subject to further conditions. Measure 12-2 would only reduce emissions "to the
10 extent needed and feasible." (AR 6:3080, emphasis added.) In the future, the GHG mitigation could
11 be rejected very simply by citing competing policy considerations. (2 Kostka & Zischke, Practice
12 Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2017) § 17.29.) This is not enforceable
13 mitigation. The courts have rejected mitigation of this kind for GHG emissions. In *CBE v. City of*
14 *Richmond, supra*, the City of Richmond adopted GHG mitigation requiring (i) that within one year
15 of project approval Chevron hire and fully fund a qualified independent expert to identify GHG
16 reduction opportunities, (ii) that the expert consider a list of specified candidate measures, and (iii)
17 that Chevron submit to the city council a plan mitigating all GHG emissions over baseline
18 conditions. (*Id.* 184 Cal.App.4th at 91-92.) The court found that mitigation deficient concluding--

19 Here, the final EIR merely proposes a generalized goal of no net increase
20 in greenhouse gas emissions and then sets out a handful of cursorily
21 described mitigation measures for future consideration that might serve to
22 mitigate the 898,000 tons of emissions resulting from the Project. No
23 effort is made to calculate what, if any, reductions in the Project's
24 anticipated greenhouse gas emissions would result from each of these
25 vaguely described future mitigation measures. Indeed, the perfunctory
26 listing of possible mitigation measures set out in Mitigation Measure 4.3--
27 5(e) are nonexclusive, undefined, untested and of unknown efficacy.

28 (*Id.* at 93.)

1 CEQA requires that an EIR set forth feasible mitigation measures for the significant
2 adverse impacts of the project. (CEQA Guidelines, § 15126.4(a)(1).) Mitigation Measure 12-2 is
3 unenforceable, speculative and infeasible because the prerequisite GHG regulations do not exist and
4 because the GHG mitigation listed may not be feasible or needed. An EIR that makes the entire
5 GHG mitigation program dependent upon non-existent regulations does not set forth enforceable
6 feasible mitigation.

7 **C. THE DEVELOPER WOULD RE-EVALUATE THE SIGNIFICANCE OF GHG**
8 **EMISSIONS AND GHG MITIGATION AFTER THE BOARD OF**
9 **SUPERVISORS HAS ADOPTED FINDINGS AND APPROVED THE**
10 **PROJECT.**

11 The county amplified the speculative and unenforceable nature of the GHG mitigation by
12 delegating to the developer the future evaluation of whether the impact would be deemed significant
13 and evaluation of what mitigation would be implemented. Mitigation Measure 12-2 provides that in
14 consultation with Placer County and the Placer County APCD, "the applicant shall demonstrate,
15 based on currently adopted regulations and industry-accepted GHG calculation methods, whether
16 operation of the project would be consistent with GHG targets adopted by the State." (AR 6:3080,
17 emphasis added.) Such a mitigation measure is unlawful. Under CEQA, a lead agency cannot
18 charge the project developer with responsibility for evaluating and determining whether a project's
19 impacts are significant, particularly when the lead agency has already decided that question. Such a
20 practice inevitably biases the determination toward the developer's interests.

21 "Under CEQA, a public agency cannot charge a developer with the responsibility to study
22 the impact of a proposed project." (*CCEC v. City of Woodland, supra*, 225 Cal.App.4th 173, 194.)
23 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3rd 296 (*Sundstrom*) held "that the
24 conditions improperly delegate the County's legal responsibility to assess environmental impact by
25 directing the applicant himself to conduct the hydrological studies subject to approval of the
26 planning commission staff." (*Id.* at 307.) That is precisely what Placer County has done here. The
27 Placer County Board of Supervisors has assigned to the developer, in consultation with agency staff,
28 responsibility to determine "whether operation of the project would be consistent with GHG targets

1 adopted by the State." (AR 6:3080.) That is a determination of significance, not the implementation
2 of mitigation. The developer's analysis will determine whether the project meets the hypothetical
3 targets and whether mitigation of any kind will be required. (AR 6:3081.)

4 It is a primary purpose of every environmental impact report to identify the significant
5 environmental impacts of a project. (Pub. Resources Code, § 21002.1(a).) "Direct and indirect
6 significant effects of the project on the environment shall be clearly identified [in the EIR] and
7 described, giving due consideration to both the short-term and long-term effects." (CEQA
8 Guidelines, § 15126.2(a).) "The fundamental purpose of an EIR is 'to provide public agencies and
9 the public in general with detailed information about the effect which a proposed project is likely to
10 have on the environment.'" (Vineyard Area Citizens, *supra*, 40 Cal.4th at 428.)

11 The county would transform this process into a back-room deal between the agency and
12 the developer made long after the project has been approved and the design fixed. As the court
13 noted in *CBE v. City of Richmond, supra*, "[f]undamentally, the development of mitigation
14 measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project
15 proponent and the lead agency after project approval; but rather, an open process that also involves
16 other interested agencies and the public." (*Id.* 184 Cal.App.4th at 93.) Allowing the developer to
17 revise the significance determination in the future if a regulatory target has been adopted conflicts
18 with the basic CEQA principle that an environmental analysis should be prepared as early as feasible
19 in the planning process. (*Laurel Heights I, supra*, 47 Cal.3d at 395.)

20 **D. THE COUNTY FAILED TO DETERMINE A PERFORMANCE STANDARD**
21 **FOR GHG MITIGATION.**

22 NTPA submitted comments on December 21, 2015, advising the county that it should not
23 defer the analysis of GHG impacts or defer the formulation of mitigation. (AR 6:3497.) NTPA
24 advised that the county should not rely on the developer to demonstrate whether mitigation is
25 required or feasible. (*Ibid.*) CCEC jointly authored a comment letter with NTPA submitted on June
26 3, 2016, that advised the county to set forth feasible climate mitigation in the EIR. (AR 31:17532.)
27 The letter advised the county that Mitigation Measure 12-2 would only apply if a new GHG target or
28 program were established and that it was not sufficient for mitigating GHG impacts. (*Ibid.*) The

1 comment letter demanded that the county formulate specific and enforceable GHG mitigation for the
2 project. (*Ibid.*) It noted that if the design of GHG mitigation were going to be deferred, the county
3 must identify a performance standard. (AR 31:17532-33.) The county was advised that Mitigation
4 Measure 12-2 was speculative and unsupported. (AR 31:17533.)

5 In a letter dated December 20, 2015, Friends of the West Shore and the Tahoe Area Sierra
6 Club advised the county that the EIR had unlawfully deferred the analysis of GHG impacts and
7 mitigation to the future. (AR 6:3344-59.) On October 7, 2016, Sierra Watch and Mountain Area
8 Preservation corresponded with the Board of Supervisors and advised them that the proposed CEQA
9 Findings of Fact and Statement of Overriding Considerations were inadequate, were not supported
10 by substantial evidence, and did not supply the logical step between the findings and facts in the
11 record. (AR 29:16686.) The letter explained that the facts in the record contradict the findings for
12 greenhouse gas impacts. The letter advised the county that the findings that these impacts are
13 significant and unavoidable and that no additional mitigation is possible were contradicted by the
14 record. The letter pointed to the numerous mitigation measures and the reduced density alternative
15 that were improperly dismissed by the county. (AR 29:16688-89.)

16 In a comment letter dated September 6, 2016, the Attorney General noted the
17 determination in the FEIR that GHG emissions would be significant and pointed out the county's
18 obligation to impose feasible mitigation and the requirement to make specific findings supported by
19 substantial evidence if a mitigation measure were rejected. (AR 29:16777.) The Attorney General
20 went on to list the potential measures in Mitigation Measure 12-2 and the specific plan policies that
21 the county had identified as applicable to GHG emissions. (AR 29:16777-78.) The Attorney General
22 pointed out that those policies had not been proposed as enforceable mitigation. (AR 29:16778.)

23 Mitigation measures that are adopted must be enforceable through conditions of approval,
24 contracts or other means that are legally binding. (Pub. Resources Code, § 21081.6(b); CEQA
25 Guidelines, § 15126.4(a)(2); *Woodward Park Homeowners Association v. City of Fresno* (2007) 150
26 Cal.App.4th 683, 730.) Mitigation measures may specify a performance standard which would
27 mitigate a significant effect of the project and which may be accomplished in more than one
28 specified way. (*Ibid.*) When the formulation of mitigation is deferred, the proposal for deferred

1 mitigation must specify a performance standard. (CEQA Guidelines, § 15126.4(a)(1)(B).)

2 Here there is no identified performance standard in existence, and as discussed, it is not
3 known whether an applicable standard can or ever will be adopted. Mitigation measure 12-2
4 provided that if new statewide GHG standards were adopted with a "substantiated linkage" to the
5 proposed project, then the developer in consultation with the county would conduct an evaluation of
6 whether the project would comply with that standard. (AR 6:3080.) If it ever exists, what that
7 standard might be remains unknown. There is no performance standard for GHG mitigation.

8 CEQA requires a commitment on the part of the agency to mitigate the impact, not an
9 open-ended proposal to determine whether mitigation is feasible or needed under hypothetical
10 regulations. For example, in *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208
11 Cal.App.4th 899 (*Rialto Citizens*), the mitigation required a survey by a qualified mammalogist for
12 kangaroo rat habitat and if habitats were found, required that trapping be conducted per USFWS
13 protocol. If the species were found, the applicant would be required to determine the appropriate
14 mitigation through Section 10(a) consultation pursuant to the Endangered Species Act of 1973. (*Id.*
15 at 943.) The court stated that "when for practical reasons, mitigation measures cannot be fully
16 formulated at the time of project approval, the lead agency can commit itself to devising them at a
17 later time, provided the measures are required to '*satisfy specific performance criteria articulated at*
18 *the time of project approval.*'" (*Id.* at 944, emphasis original.) The court held the kangaroo rat
19 mitigation measures "incorporated specific performance criteria and as such were not so open-ended
20 that they allowed potential impacts on the species to remain significant." (*Id.* at 941.) Placer County
21 by contrast has adopted a GHG mitigation measure that has no performance criteria.

22 **E. THE GHG MITIGATION ADOPTS A DIFFERENT SIGNIFICANCE**
23 **THRESHOLD FROM THE IMPACT ANALYSIS.**

24 As noted, the county adopted a significance threshold of 1,100 metric tons of GHG
25 emissions per year (AR 6:3076) and subsequently found that threshold would be exceeded resulting
26 in a substantial contribution to GHG emissions (AR 3077-78). As a result, the county was required
27 to set forth in the EIR mitigation measures to "minimize the significant effects on the environment."
28 (Pub. Resources Code, § 21100(b)(3); CEQA Guidelines, § 15126.4(a)(1).) The county erred in

1 designing mitigation because it did not use the 1,100 MT CO₂e threshold adopted in the EIR as the
2 target for the mitigation. Rather the county's mitigation is only intended to meet some hypothetical
3 "new GHG targets or other programs or metrics" that the Legislature or the Governor's Office might
4 establish in the future. (AR 6:3080.) There is nothing to suggest that compliance with the
5 hypothetical regulations would minimize emissions that exceed 1,100 MT CO₂e per year.

6 The goal of mitigation measures is to reduce the impact to an insignificant level. (*Save*
7 *Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 529.) According to the EIR,
8 emissions of less than 1,100 MT CO₂e per year would be less than significant. Consequently the
9 goal of the mitigation must be to reduce GHG emissions to less than 1,100 MT CO₂ per year.
10 Mitigation Measure 12-2 does not do so. It only purports to mitigate GHG emissions that might
11 exceed some hypothetical regulatory standard adopted in the future. The purpose of an EIR is to
12 identify the significant effects on the environment and "to indicate the manner in which those
13 significant effects can be mitigated or avoided." (Pub. Resources Code, § 21002.1(a).) The county's
14 EIR fails to meet the information disclosure provisions of CEQA because it does not set forth
15 mitigation to minimize the significant GHG impact reported in the EIR.

16 **F. THERE WAS NO JUSTIFICATION FOR DEFERRING THE**
17 **FORMULATION OF GHG MITIGATION.**

18 The county deferred the formulation of GHG mitigation. Measure 12-2 will not become
19 operational unless and until a special type of GHG regulation is adopted. (AR 6:3080.) If such a
20 regulation were adopted, the developer would then determine in consultation with the agencies what
21 mitigation might be needed or feasible. (*Ibid.*) Any combination of GHG reduction measures could
22 be adopted including options listed in Measure 12-2.

23 The formulation of mitigation measures should not be deferred to some future time if it is
24 practical to formulate mitigation during the planning process. (CEQA Guidelines, §
25 15126.4(a)(1)(B).) In *San Joaquin Raptor, supra*, the court concluded "no reason or basis is
26 provided in the EIR for the deferral to a future management plan (or plans) of these particular
27 mitigation measures Accordingly, we conclude that the analysis of mitigation measures with
28 respect to special-status species in the vernal pool areas was inadequate, since it improperly deferred

1 formulation of land management aspects of such mitigation measures." (*Id.* at 671.) Similarly, in
2 *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, the court concluded
3 that in situations where it would not be feasible at the time of project approval to formulate the
4 precise means of mitigating impacts, the agency could commit itself to eventually devising measures
5 that will satisfy specific performance criteria. (*Id.* at 1029; see also *Rialto Citizens, supra*, 208
6 Cal.App.4th at 943["when for practical reasons, mitigation measures cannot be fully formulated at
7 the time of project approval"].)

8 Placer County provides nothing suggesting that deferring the formulation of mitigation
9 was necessary or proper. The agency points out that new regulations have not been adopted (1:120),
10 but the analysis of GHG impacts was completed. New regulations were not needed to evaluate the
11 impact, and they are not needed to formulate GHG mitigation. Indeed, the county conceded, as the
12 Attorney General had pointed out, that it had the option of simply making the practices listed in
13 Mitigation Measure 12-2 enforceable mitigation at the time the project was approved, stating in the
14 EIR that "[t]he MVWPSP contains many policies that, if strictly implemented, would result in
15 additional GHG reductions. Such policies and recommendations include: exceed current Title 24
16 standards, use the HOA community shuttle, design individual buildings to a level equivalent to the
17 U.S. Green Building Council's LEED-ND certification program or other comparable rating, and
18 other actions to reduce GHG emissions. The efficiency of the MVWPSP policies cannot be
19 predicted, in large part because many are not mandatory (in some instances, actions are 'encouraged,'
20 'should' be implemented, would be implemented 'if feasible')." (AR 3:1574.)

21 In addition a variety of different mitigation measures were recommended by commenters.
22 (AR 31:17531-38 [CCEC]; 7:3614-16 [MAP and Sierra Watch].) The Attorney General publishes a
23 list of recommended GHG reduction measures. (AR 35:20060-77.) The California Air Pollution
24 Control Officers Association has published model policies for reducing greenhouse gas emissions.
25 (AR 34:19810-35:20059.) There was no legitimate reason given for failing to adopt enforceable
26 GHG mitigation at the time of project approval. The county prejudicially abused its discretion by
27 failing to meet the information disclosure requirements of CEQA. (*Sierra Club, supra*, 7 Cal.4th at
28 1236-37.)

1 **G. THE FINDING THAT GHG IMPACTS WERE SIGNIFICANT AND**
2 **UNAVOIDABLE WAS UNSUPPORTED.**

3 The Board of Supervisors CEQA Findings of Fact, adopted October 11, 2015, found that
4 the project would generate GHG emissions exceeding the Tier I mass-emission threshold [1,100
5 metric tons per year] and that therefore the project would result in a substantial contribution to GHG
6 emissions. (AR 1:118-20.) The Board of Supervisors further found that feasible mitigation measures
7 had not been identified and that the impact was therefore "unavoidable." (AR 1:120.) That finding
8 was clearly erroneous and not supported by substantial evidence. The record demonstrates
9 numerous feasible measures were available and were identified for the county in comments
10 submitted. As has been noted, there were many options for mitigation that were never discussed in
11 the EIR. (*Ante*, § IV.F.) As noted, the County conceded it could simply have made the measures
12 listed in Mitigation Measure 12-2 binding. In her letter, the Attorney General listed the potential
13 measures in Mitigation Measure 12-2 and the specific plan policies that the county had identified as
14 applicable to GHG emissions and pointed out that these policies had not been proposed as
15 enforceable mitigation. (AR 29:16777-78.) The county's finding that the GHG impacts were
16 significant and unavoidable was unsupported. (Pub. Resources Code, § 21081(a); CEQA Guidelines,
17 § 15091(a), (b).)

18 **V. TRANSPORTATION MITIGATION**

19 **A. THE COUNTY FAILED TO RESPOND TO SUGGESTIONS TO MITIGATE**
20 **TRAFFIC CONGESTION USING FARE-FREE TRANSIT AND**
21 **TRANSPORTATION DEMAND MANAGEMENT.**

22 The EIR concluded that the project would have a significant adverse impact on traffic
23 congestion along five segments of SR 267 between the Placer County line and SR 28. (AR 3:1513.)
24 The county reported that some of those segments could be mitigated by road widening if funding
25 were available. Other congested segments are not expected to be widened. Ultimately, the county
26 concluded that the impact was significant and unavoidable. (AR 3:1515-16.)

27 The evaluation of project mitigation measures is "[t]he core of an EIR." (*Banning Ranch*,
28 *supra*, 2 Cal.5th at 937.) CCEC urged the county to mitigate impacts on congestion and GHG

1 emissions by adopting a package of transportation demand management (TDM) measures designed
2 to reduce transportation demand and increase transit usage on SR 267. CCEC recommended on-
3 going marketing and signage that encourages travelers to use transit, funding to implement fare-free
4 transit to increase transit ridership, and programs that encourage travelers to avoid vacationing by
5 car. (AR 6:3491-92; 31:17536.) The county would not evaluate the use of those measures to reduce
6 congestion and GHG impacts. Rather the county's response was that it had looked at whether the
7 project would have some adverse impact on transit services that are already operating on SR 267,
8 e.g., overcrowding buses. (AR 3:1517.) It ultimately concluded that the project would not have a
9 significant adverse impact on transit operations (6:3073), but nevertheless included some mitigation
10 measures for transit impacts. (AR 6:3073-74.)

11 In other words the county would not consider how transportation demand management
12 and transit services could be used to address congestion on SR 267 and GHG emissions. The county
13 failed to evaluate CCEC's suggestion that TDM and zero-fare transit could be used to reduce
14 congestion and GHG impacts and reiterated the mitigation for transit impacts. (AR 6:3531.) The
15 EIR did not discuss using transit as a tool to reduce congestion and GHG impacts.

16 On December 22, 2015, the Tahoe Regional Planning Agency (TRPA) provided the
17 county with a similar comment--

18 Providing these additional new transit runs would cost around \$220,000
19 annually. Equally important, however, is ensuring that visitors are
20 incentivized to use the new transit so that the investment in transit capital
21 and operations results in actual trip reduction. Potential options for
22 incentivizing transit use could include free transit fares, an origin-based
23 parking charge . . . or destination-based parking charges within the Tahoe
24 Basin.

25 (AR 6:3156, emphasis added.) TRPA concluded that through the provision of adequate transit
26 facilities and operations, the trips and VMT generated by development in the region could be offset.

27 (AR 6:3157, emphasis added.) Again the county failed to analyze fare-free transit or to discuss
28 transportation demand management to mitigate the project's GHG and congestion impacts. (AR

1 6:3158.)

2 In September, 2016, the California Attorney General corresponded with the county and
3 pointed out that the county's "response by redirection" to the TRPA comments on transit failed to
4 comply with CEQA. (AR 29:16769.) As the Attorney General pointed out, CEQA requires that an
5 EIR discuss mitigation measures that can minimize the project's significant environmental effects.
6 (Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4.) CEQA requires that a lead agency
7 respond to specific suggestions for mitigation unless they are facially infeasible. (*Los Angeles*
8 *Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029 (*Los Angeles*
9 *Unified*), 1029; *Flanders Foundation v. City of Carmel by the Sea* (2012) 202 Cal.App.4th 603, 616
10 (*Flanders Foundation*); *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 241
11 (*Masonite*).) "CEQA compels an interactive process of assessment of environmental impacts and
12 responsive project modification which must be genuine." (*Concerned Citizens of Costa Mesa, Inc. v.*
13 *32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.)

14 The Transportation Research Board of the National Academies has extensively studied the
15 impact of implementing fare-free transit. Its report makes it clear that fare-free transit is a powerful
16 tool for increasing transit ridership and thereby reducing congestion and GHG emissions.

17 Providing fare-free public transit service is virtually certain to result in
18 significant ridership increases no matter where it is implemented.

19 Evidence from the literature search and returned surveys indicate that
20 ridership will usually increase from 20% to 60% in a matter of just a few
21 months, and even more in some areas. The most recent institution of fare-
22 free public transit service that occurred in Corvallis, Oregon, in 2011
23 resulted in a 43% increase in ridership within two months, with no increase
24 in service hours.

25 (AR 13:7357.) The Transportation Research Board further noted--

26 Fare-free public transit in resort communities is regarded as a vital
27 component of what makes the community attractive to visitors. Many ski
28 resort towns now believe they need to provide fare-free public transit

1 service to remain economically viable and competitive with other resort
2 communities.

3 (*Ibid.*) In addition the California Attorney General has published recommendations for mitigating
4 GHG impacts by providing public transit incentives such as free or low-cost monthly transit passes
5 to employees or free ride areas to residents and customers. (AR 35:20072.)

6 The U.S. Department of Transportation distinguishes measures that relieve traffic
7 congestion by increasing the supply of roadway capacity from demand-side measures that reduce
8 congestion by addressing people's need to travel on a particular route at a particular time. (AR
9 36:20769-70.) Demand-side strategies, referred to as transportation demand management or TDM,
10 provide incentives and information to help people make informed travel choices that reduce the
11 demand for roadway capacity. (AR 36:20770.) TDM measures provide a valuable tool to mitigate
12 transportation system congestion. The U.S. Department of Transportation reports that demand side
13 measures can have a significant impact on travel and can reduce vehicle trips and vehicle miles
14 travelled as much as 10% to 20%. (AR 36:20810.)

15 In *City of Hayward v. Board of Trustees of the California State University* (2015) 242
16 Cal.App.4th 833, the new master plan for California State University East Bay anticipated a
17 significant increase in traffic and parking demand. To address that impact, the EIR set forth
18 mitigation measure TRANS 1a requiring that the university prepare a comprehensive TDM
19 implementation plan including steps necessary to plan, fund, implement, and monitor the
20 effectiveness of the measures set forth in the TDM plan. (*Id.* at 851-56.) The mitigation measure
21 was subsequently validated by the First Appellate District. (*Id.* at 856.)

22 Fare-free transit and transportation demand management remain important mitigation
23 tools for reducing the significant and unmitigated congestion and GHG impacts of the MVWPSP.
24 The county failed to address these measures. Rather the county only considered impacts on transit
25 services. Indeed the transit measures adopted by the county were expressly "not required to reduce a
26 significant impact." (AR 6:3073-74, emphasis added.) The county's failure to identify zero-fare
27 transit and TDM as feasible mitigation for the transportation and GHG impacts constituted a failure
28 to comply with the information disclosure provisions of CEQA. (Pub. Resources Code, §

1 21002.1(a); CEQA Guidelines, § 15126.4(a)(1).) Further, the county's findings that no additional
2 feasible mitigation measures had been identified for transportation or GHG impacts (AR 1:119) was
3 not supported by substantial evidence. (Pub. Resources Code, § 21081(a); CEQA Guidelines, §
4 15091(a), (b).)

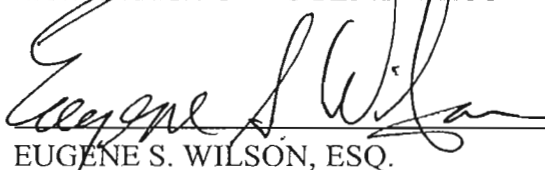
5 **B. THE COUNTY FAILED TO SET FORTH BICYCLE INFRASTRUCTURE AS**
6 **MITIGATION FOR GHG AND CONGESTION IMPACTS.**

7 The Lake Tahoe Region Bicycle and Pedestrian Plan (LTRBPP) states that vehicle miles
8 travelled (VMT) and GHG emissions can be reduced by implementing bicycle facilities.
9 Construction of the full bike and pedestrian network under the LTRBPP is expected to reduce VMT
10 by 8,500 miles per day in summer saving approximately 1,400 metric tons of CO2 emissions per
11 year. (AR 32:18234-35.) The LTRBPP calls for bicycle lanes on SR 267 and a bicycle path
12 paralleling SR 267 to connect Kings Beach to Northstar Resort. (AR 32:18252.) The TRPA
13 recommends that funding for bicycle improvements in the region be included in local traffic
14 impact/mitigation fee programs. (AR 32:18295.) CCEC recommended to the county that it address
15 in the EIR and adopt as mitigation for the project's transportation and GHG impacts a requirement
16 that the project fund bicycle facilities in the North Tahoe area. (AR 31:17537.) The EIR failed to
17 describe feasible mitigation. (Pub. Resources Code, § 21002.1(a); CEQA Guidelines, §
18 15126.4(a)(1).) The county's process violated the requirements of CEQA. Public agencies should
19 not approve projects as proposed if there are feasible mitigation measures available which would
20 substantially lessen the significant environmental impacts. (Pub. Resources Code, § 21002.) The
21 findings that no additional feasible mitigation measures had been identified for transportation or
22 GHG impacts (AR 1:119) was not supported by substantial evidence. (Pub. Resources Code, §
23 21081(a); CEQA Guidelines, § 15091(a), (b).)

24 Dated: June 30, 2017

Respectfully submitted,

LAW OFFICE OF EUGENE WILSON



EUGENE S. WILSON, ESQ.

Attorney for California Clean Energy Committee

1
2 PROOF OF SERVICE

3 STATE OF CALIFORNIA

4 COUNTY OF YOLO

5 I am employed in the County of Yolo, where the mailing occurred. I am over the age of
6 eighteen and not a party to this action. My business address is 503 Del Oro Avenue, Davis,
7 California 95616. On June 30, 2017, I served the OPENING BRIEF BY CALIFORNIA
8 CLEAN ENERGY COMMITTEE IN SUPPORT OF PETITION FOR WRIT OF MANDATE in the
9 within case by placing a true and correct copy thereof enclosed in a sealed envelope addressed as
10 follows:

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14 175 Fulweiler Avenue
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27 ///

28 ///

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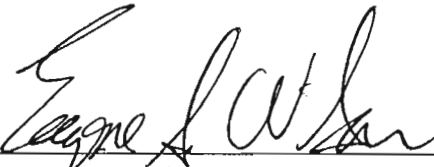
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23 number of the sending facsimile machine was 530-756-5930. A transmission report was properly
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was executed on June 30, 2017, at Davis,
3 California.

4
5
6 
7 Eugene S. Wilson
8
9