

September 3, 2024

Placer County Planning Commission
Attn.: Clerk of the Board
175 Fulweiler Avenue
Auburn, CA 95603
planningcommission@placer.ca.gov

Dear Planning Commissioners,

Thank you for the opportunity to comment on the Final Revised Environmental Impact Report (FREIR) for the Village at Palisades Tahoe Specific Plan (VPTSP, Project).

The League to Save Lake Tahoe (League) is dedicated to protecting and restoring the environmental health, sustainability, and scenic beauty of the Lake Tahoe Basin. In connection with our mission, we advocate for the implementation of and compliance with policies contained within Tahoe's regional land use and planning documents, including the Bi-State Compact (Compact), the 2012 Regional Plan Update (RPU), the Regional Transportation Plan (RTP), and Tahoe Basin Area Plans.

The VPTSP, while not located within the Tahoe Basin, is directly adjacent, and will impact the Tahoe Basin's environment while undermining efforts within the Tahoe region to implement adopted plans and policies and to protect the environment by achieving and maintaining TRPA's environmental thresholds, specifically those concerning air quality, water quality, and transportation.

The League's position on the VPTSP has remained consistent for more than a decade, as the Project proponent (Alterra Mountain Company) has not made any substantive changes to the VPTSP's design or environmental analysis despite years of feedback from the League, Sierra Watch, Olympic Valley Municipal Advisory Council, other regional conservation organizations, and the public. The League opposed the project when it was proposed in 2012 as the Village at Squaw Valley Specific Plan, and continued to oppose it as it was approved by Placer County in 2016. We continue to oppose the Project in this, its most recent iteration. Consistent with our 2012 concerns, still unaddressed, the League's opposition is due to the significant, unanalyzed, and unmitigated impacts to Lake Tahoe's environment – most notably from the large number of added daily vehicle trips and related vehicle miles travelled (VMT) that will be absorbed by the Basin.

By not accepting responsibility for their impacts to Tahoe, Alterra is attempting to profit on their proximity to Tahoe without showing due concern for protecting its unique and fragile environment and those who enjoy it.

The League's Main Concerns Are:

- The VPTSP will undermine the Tahoe Regional Planning Agency's (TRPA) federal directive to attain and maintain Threshold Standards. The Tahoe Region's VMT Threshold (environmental carrying capacity) will be more difficult if not impossible to achieve and maintain with this Tahoe-adjacent project adding unmitigated VMT to the Tahoe Basin at a rate of 1,353 new daily car trips (12,406 VMT) on an average day and 3,300 new daily car trips (23,842 VMT) on an already busy summer day.¹
- The environmental/regulatory setting and the significant environmental impacts to Tahoe – including but not limited to VMT, water quality, and wildfire – remain inadequately analyzed in the RFEIR and unmitigated in the Project plan.
- New and pertinent information has become readily available since the EIR was certified which shows that new or substantially more severe significant impacts will occur.

The environmental impacts from the VPTSP can only be addressed with a new recirculated EIR, likely analyzing a reduced-size project. The new EIR must accurately analyze significant impacts using the best currently available science within the current environmental and regulatory setting and mitigate impacts with specific projects and programs implemented or funded by the Project.

The attached letter was researched and prepared by the law firm of *Shute, Mihaly & Weinberger*, as well as a team of experts in planning, hydrology, transportation, fire safety, and air quality. Our comments are submitted in the spirit of the shared values reflected in the missions of the League and Sierra Watch, and we appreciate the opportunity to play a positive role in the public planning process.

Sincerely,



Gavin Feier
Policy Director
on behalf of the League to Save Lake Tahoe

¹ Partially Revised Final Environmental Impact Report for the Village at Palisades Tahoe Specific Plan (pages 3.1-115 and 3.1-86, respectively).



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Dear Planning Commissioners:

Thank you for the opportunity to comment on the Final Revised Environmental Impact Report (“FREIR”) for the *Village at Palisades Tahoe Specific Plan*.

Please accept this packet consisting of two cover letters and detailed comments on the proposed project, submitted jointly by the *League to Save Lake Tahoe* and *Sierra Watch*. The *League to Save Lake Tahoe* protects and restores the environmental health, sustainability and scenic beauty of the Lake Tahoe Basin. They focus on water quality and its clarity for the preservation of a pristine Lake for future generations. *Sierra Watch* secures conservation outcomes to protect the natural resources, mountain communities, and timeless values of the Tahoe Sierra.

The attached letter was researched and prepared by the law firm of *Shute, Mihaly & Weinberger*, as well as a team of experts in planning, hydrology, transportation, fire safety, and air quality. Our comments are submitted in the spirit of the shared values reflected in our missions, and we appreciate the opportunity to play a positive role in the public planning process.

Alterra Mountain Company seeks new approvals from Placer County for its old proposal, now known as the *Village at Palisades Tahoe Specific Plan*. The County had issued entitlements for the project in 2016. But the Court of Appeals, in deciding *Sierra Watch v. County of Placer*, found flaws in the County’s earlier environmental review and the trial court ordered full rescission of all approvals.

The RFEIR seeks only to remedy the shortcomings found by the court; for other issues and impacts the County proposes to recycle the previous EIR – the one drafted in 2015 and rescinded in 2022.

This approach, as clearly established in the attached letter, misses the mark. First of all, the RFEIR fails to remedy the shortcomings found by the Court of Appeals. Second, by relying on the outdated assessment of the rescinded EIR, it fails to acknowledge and assess how key issues – like fire danger, water supplies, and workforce housing – have evolved. Both render the RFEIR inadequate under the most basic requirements of the California Environmental Quality Act (CEQA).

CEQA requires a broad assessment of wide-ranging issues. The RFEIR, however, takes a myopic approach, dealing with only those issues raised by the court – offering not more assessment but, instead, less. Even on that narrow set of issues flagged in the court’s decision, it fails to address the project’s impacts on Lake Tahoe and its clarity; on noise in Olympic Valley; on traffic and transit; and on public safety in the event of wildfire.

For other issues, the FREIR only re-hashes the rescinded EIR of 2016, ignoring real-world changes and claiming there is no new significant information regarding important issues such as water supplies, fire danger, housing, and climate change. As if, over the last eight years, time stood still. It didn’t. And the Tahoe region is not the same place it was eight years ago.

Three issues provide glaring examples of how the new RFEIR and the rescinded EIR fail to respect Tahoe and its mountain communities – and fall short of CEQA:

1. *Clarity of Lake Tahoe*: CEQA requires an assessment of the development’s impacts on Tahoe. More specifically, the court ordered an evaluation of how pollution from cars could affect lake clarity, as well as air quality in the Lake Tahoe Basin. The RFEIR does neither.

Decades of science identify car pollution as a major contributor to loss of lake clarity. And current policy seeks to address the problem. The RFEIR, however, seeks to dissolve that long-established link, downplay the Project’s impacts, and make the whole issue someone else’s problem, brazenly concluding that “while it was previously thought that there was a strong correlation between VMT and sediment loading, this is no longer the case.” This head-in-the-sand approach to the impacts of traffic on lake clarity is a direct threat to the multi-generational commitment to *Keep Tahoe Blue*.

2. *Water Supplies*: By re-hashing the rescinded 2016 EIR and exhuming its outdated Water Supply Assessment, the County ignores new information about climate change and its impacts on water supply.

That old assessment showed only that there *was* water in the past – not if there *will be* water in the future. Since then we’ve come to understand hard truths about how climate change is turning snow in the Sierra into rain. And it’s going to get

worse over time, threatening both anyone with running water in the valley and the biological resources that rely on a flowing stream and functioning watershed.

3. *Fire Safety*: One of the primary reasons the court demanded the County rescind the 2016 EIR was its inadequate treatment of public safety, particularly the feasibility of safely evacuating the valley in the event of wildfire. The RFEIR does no better. First, it relies on an outdated assessment of fire danger, ignoring what Sierra communities have been learning over the last six years.

The RFEIR does actually increase the projected evacuation time – how long it would take people to leave the resort and travel three miles to Highway 89 – from 10.7 to 11.1 hours. That pace, by the way, is one-third the speed of a turtle. And yet the RFEIR baldly concludes that this extraordinarily long evacuation timeframe would not generate a safety risk, claiming “There is not a direct nexus between the time needed to conduct an evacuation and the preservation of public safety during a wildfire.”

In a tacit admission that evacuation will be too slow – or impossible, the EIR suggests people could flee the flames and “shelter in place” – on the golf course and in a parking lot. Because this is an issue of public safety – of human lives, this is not just a shirking of responsibility. It is a dereliction of duty.

Maybe there’s a simple reason why after twelve years of process, attempts at environmental assessment continue to fail to meet the mark set by CEQA. Environmental Impact Reports are designed to convey how a project would *impact* a place and its people. But Alterra’s Village at Palisades Tahoe proposal seeks to *transform* Tahoe.

They are trying to cram a giant square peg of a project in the small round hole of Olympic Valley. And it just doesn’t fit. It is so out of scale with the surrounding Tahoe environment and existing mountain communities that any attempts to quantify its impacts are so far off the charts the numbers seem surreal: 3,300 new daily car trips; 78,263,299 gallons of water; 11 hours to evacuate; 25 years of construction.

Small wonder that of the more than 2,600 comment letters submitted on the last round of environmental review, more than 99% expressed opposition. And the Olympic Valley Municipal Advisory Committee, at a packed meeting in Olympic Valley last month, voted to recommend denial of the project, stating, “The Community is overwhelmingly against the current plan.”

There’s a better way. Both the *League to Save Lake Tahoe* and *Sierra Watch* remain hopeful that all parties can work collaboratively, under the leadership of Placer County’s land use decision-making authority, to chart a different course and plan a future worthy of this incredible place.

In the meantime, we'll carry on with our commitment to play a positive, proactive role in the public planning process and ensure that any entitlements at least meet the standards of CEQA.

Tahoe deserves no less.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Mooers", is written over a light blue horizontal line.

Tom Mooers
Executive Director

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September 3, 2024

Via Electronic Mail Only

Chair Anthony DeMattei and
Members of the Planning Commission
c/o Placer County Clerk of the Board
3091 County Center Drive
Auburn, CA 95603
planningcommission@placer.ca.gov

Re: **Village at Palisades Tahoe Specific Plan and Revised FEIR**
(SCH# 2012102023)

Chair DeMattei and Planning Commissioners:

On behalf of Sierra Watch and the League to Save Lake Tahoe (Keep Tahoe Blue) (the “League”), we have reviewed the Revised Final Environmental Impact Report (“RFEIR”) for the Village at Palisades Tahoe Specific Plan (“Project”). We submit this letter to state our position that the RFEIR does not correct the inadequacies of the Revised Draft EIR (“RDEIR”) that were identified by Sierra Watch, the League, and hundreds of other commenters in previously submitted comments on the RDEIR. Sierra Watch’s comments on the RDEIR dated January 30, 2023, and the League’s comments dated January 18 and 30, 2023, are expressly incorporated herein. Additionally, the Revised EIR (including the RDEIR and RFEIR, collectively referred to as the “REIR”) prepared for the Project violates the California Environmental Quality Act (“CEQA”) and the writ of mandate issued to the County for all of the reasons set forth below.

It bears repeating that the County has rescinded all of the prior approvals for the Project, including the development agreement, the certification of the EIR, and all land use approvals. Importantly, and as the RFEIR appears to recognize, in revisiting the Project approval process, the County is not limited to considering corrections of the flaws identified by the Court of Appeal. Rather, the County must review the Project and any CEQA documentation anew, and any approval must reflect the County’s “independent judgment.” Pub. Res. Code § 21082.1; CEQA Guidelines § 15090. Thus, the County

retains its full legislative discretion to deny the Project. The County should ensure that any development approved for the site offsets its environmental impacts and comports with the priorities of the County and its citizens, not of the developer. This is a fresh start – a chance for the County to listen to, and make the right decision for, the environment and the community. In so doing, the County should demand the most up-to-date information and an extremely thorough analysis of the potential impacts this large-scale development would have on this sensitive region and the health and safety of its residents and visitors for decades to come.

Unfortunately, the REIR fails to provide the public and decision makers with the information necessary to properly evaluate the Project. The RFEIR neither adequately responds to comments previously raised nor cures the legal inadequacies identified by those comments. As explained in prior letters to the County, the RDEIR fails to correct the inadequacies in the environmental review as identified by the Court of Appeal. In particular, it fails to provide: (1) adequate environmental setting information for, and adequately analyze and mitigate, the Project's potentially significant impacts on Lake Tahoe and the Tahoe Basin; (2) an adequate evaluation of the Project's evacuation hazards during a wildfire, especially in light of significant changes in conditions since 2016; (3) an adequate analysis or mitigation of the Project's significant transit impacts, and (4) an adequate analysis or mitigation of the Project's significant noise impacts. Rather than revise the REIR to comprehensively address these issues, the RFEIR merely seeks to defend the erroneous assertions and conclusions of the prior document. Where the REIR does add analysis or make changes, it fails to acknowledge the significance or impacts of the changes or recirculate the document.

Furthermore, the RFEIR improperly dismisses information about changed circumstances in the Project area since the 2016 EIR was prepared, which constitutes substantial new information that must be considered. For example, the Project as proposed would have new, and more severe, environmental impacts related to transportation, hydrology and water quality, biological resources, population and housing, greenhouse gas emissions ("GHG"), and wildfire public safety risks that were unknown when the 2016 EIR was certified. These changes, as well as changed economic circumstances, require that the County also reconsider feasible alternatives, including a reduced size alternative, to lessen or avoid Project impacts.

Despite unprecedented community concern and comments from several agencies on a wide range of issues, such as inadequate analysis of the Project's impacts on the Tahoe Basin, project-related traffic volumes and congestion, and inadequate analysis and mitigation related to wildfire hazards and evacuation, the applicant continues to put forth the same exact Project it proposed in 2015 with no adjustments to size or scale.

Compounding the issue, the RFEIR is dismissive of the court order and agency and community comments. Rather than updating key environmental analyses and implementing all feasible measures to avoid or lessen environmental impacts and preserve public safety, the RFEIR presses on, only proposing changes to be included in a Development Agreement prepared without public scrutiny or comment. This approach does not comport with the letter or the spirit of CEQA or the Court of Appeal's decision.

The Olympic Valley Municipal Advisory Council ("MAC") appears to agree with this assessment. At its August 17, 2024 meeting, the MAC unanimously recommended that the Project be denied and "encouraged [the County] to evaluate a different, reduced-sized project than originally submitted with a reduced-sized Mountain Activity Center." Sierra Watch and the League to Save Lake Tahoe also urge the County to reject this misguided Project.

The remainder of this letter explains how the RFEIR perpetuates the failings of the RDEIR. Included with these comments are letters prepared by: Baseline Environmental Consulting ("Baseline Supp. Report"), attached as Exh. 1; Salter Inc. ("Salter Response") attached as Exh. 2; and CBEC Inc. Eco Engineering ("CBEC Response") attached as Exh. 3. Each of these reports are incorporated herein by reference. We respectfully refer the County to these attached reports, both here and throughout these comments, for further detail and discussion of the RFEIR's inadequacies. Because the reports provide detailed comments on the RFEIR, we will not reiterate each of those comments in this letter. Instead, the discussion below highlights the main issues.

I. Res Judicata Does Not Excuse the RFEIR's Failure to Examine the Full Scope of the Project's Significant Environmental Impacts in Light of Changed Circumstances.

The RFEIR invokes *res judicata* broadly and at length in explaining that it need not address, or even respond to comments on, numerous issues. *See, e.g.*, RFEIR at 3.1-6-12. As an initial matter, *res judicata* is a legal principle that applies to *litigation* and bars relitigation of issues adjudicated in an earlier action. It does not preclude an agency from undertaking relevant CEQA analysis or excuse an agency from responding to public comments. Placer County decisionmakers and the public should not be deprived of important, up-to-date, information regarding the consequences of this Project before making a decision on it that would impact generations to come.

Res judicata would also not bar the legal claims raised by Sierra Watch or the League in their comments. In the prior litigation, the trial court set aside the EIR and Project approvals. The County is now considering new approvals based on new CEQA

analysis and must “begin anew the analytical process required under CEQA.” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 425; see also *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1257-59 (“CBD”) (“we think it clear that ‘the legislature intended that the agency should exercise a continuing jurisdiction with power to modify or alter its orders to conform to changing conditions’ so the ‘doctrine of *res judicata*’ does not bar reconsideration of prior approvals after earlier EIR is decertified and revised) (internal citation omitted).

First, as the RFEIR concedes, *res judicata* would not bar the public from making claims based on new circumstances or new information. *Res judicata* prevents relitigation of issues that were raised or could have been raised in an earlier proceeding, *only* if the current litigation “*is on the same cause of action as the prior proceeding.*” *Plan. & Conservation League v. Castaic Lake Water Agency (PCL)* (2009) 180 Cal.App.4th 210, 226 (emphasis added). Because “a cause of action is framed by the facts in existence” at the time a complaint is filed, *res judicata* is not a bar to further litigation if “there are changed conditions and new facts which were not in existence” at the time of the original action. *Id.* at 227.

Second, *res judicata* would not bar claims based on the substantial portions of the EIR that have been revised. The issues raised by the public involve different analyses, mitigation, and findings in the RDEIR (and RFEIR) that the Court of Appeal directed the County to revise. These issues could not have been raised earlier and would not be barred by *res judicata*. See *PCL*, 180 Cal.App.4th at 227-28 (challenges to a revised EIR “involve distinct episodes of purported noncompliance” regarding “the public’s statutory right to an adequate EIR” and are not barred by *res judicata*) (citation omitted); *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador* (2019) 33 Cal.App.5th 165, 170-173 (*res judicata* did not bar claims addressing impacts agency was “required to revisit” in a revised EIR). Likewise, *res judicata* would not bar claims that the revised analysis in the REIR fails to cure the deficiencies identified by the Appellate Court. *PCL*, 180 Cal.App.4th at 227-28.

Thus, as discussed throughout this letter, the RFEIR’s attempts to excuse the REIR’s failure to provide additional analyses or mitigation based on *res judicata* must fail.

II. The RFEIR Fails to Correct the Deficiencies in the RDEIR’s Analysis and Mitigation in the Issue Areas Identified By the Court of Appeal.

A. The RFEIR Fails to Correct the RDEIR’s Inadequate Analysis and Mitigation of the Project’s Individual and Cumulative Impacts on Lake Tahoe Water Quality and Clarity.

Sierra Watch, the League to Save Lake Tahoe,¹ and numerous others submitted comments to the County detailing why the RDEIR fell far short of complying with CEQA and heeding the court’s directive to give serious consideration to the Project’s potentially significant impacts on Lake Tahoe – a unique and sensitive regional and national resource that maintains status as an Outstanding National Resource Water (“ONRW”). *See* CEQA Guidelines, § 15125(c)-(d) (identifying the Lake Tahoe Basin as a unique resource worthy of “special emphasis”). Unfortunately, the RFEIR largely ignores those concerns and doubles down on the document’s unsupported conclusions that the Project would not, and could not, significantly impact Lake Tahoe’s water quality (or air quality in the Basin, as discussed below). The County’s stubborn refusal to comply with CEQA and the courts’ orders has led the League to Save Lake Tahoe, a decades-old organization with expertise backing their well-known Keep Tahoe Blue campaign, to retain our law firm along with Sierra Watch in an effort to compel compliance with the law. As detailed further below, like the RDEIR, the RFEIR’s excuses for failing to disclose the Project’s significant impacts on Lake Tahoe do not pass muster.

1. The RFEIR Fails to Justify the Document’s Limited Scope of Analysis of the Project’s Impacts on Lake Tahoe.

Sierra Watch’s comments explained that the revised analysis regarding the Project’s significant impacts on Lake Tahoe should not be limited to impacts from Project VMT occurring within the Basin. *See* RFEIR at 3.2-125. As noted, when a court, as did the Court of Appeal here, finds that an EIR failed to properly describe the environmental and regulatory setting, it is impossible for the document to have properly evaluated the project’s impacts. *See id.* (quoting *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122). The Court of Appeal repeatedly

¹ The League’s comments echo the points raised in the comment letter we filed on behalf of Sierra Watch. This letter primarily discusses and cites the response to comments issued by the County to the Sierra Watch, but the points raised herein apply with equal force to the response the County issued to the League’s comments. In fact, many of the County’s responses on these issues were delivered as “Master Responses,” intending to respond to all comments on these issues.

emphasized this fact: “Again, as the CEQA Guidelines instruct, ‘[k]nowledge of the regional setting is critical to the assessment of environmental impacts.’” *Sierra Watch*, 69 Cal.App.5th at 98. And it also clearly held that “the County’s EIR never meaningfully discussed Lake Tahoe in its description of the environmental setting.” *Id.* at 96. Thus, even though the Court *separately* found that EIR failed to adequately evaluate the Project’s impacts on the Lake, and noted that Project VMT in the Basin could result in such impacts, that does not mean the revised analysis is limited to that issue, as argued in the REIR. *See, e.g.*, RFEIR at 3.3-23 (Responses 22 and 23). Rather, “[i]t is entirely foreseeable that the information developed on these important topics in the revised EIR will result in new or increased impacts being identified.” *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 101–102.

a. The RFEIR’s Rationale for Failing to Evaluate the Potential Impacts on Lake Tahoe from Wildfire Smoke and Other Air Pollutants Is Insufficient.

As Sierra Watch further explained, one potential new impact that was identified by the revised environmental setting information is the potential for wildfire smoke to impact Lake Tahoe’s water clarity and quality. *See* RFEIR at 3.2-125 to 3.2-126; RDEIR at 13-9. Since the Project would admittedly exacerbate fire risks in the area, the REIR should address this issue. The RFEIR offers three rationales as to why it need not evaluate such potential impacts from the Project. RFEIR at 3.3-24. Each of these fails.

First, the RFEIR claims that “[t]EIR – the Draft REIR plus the 2016 EIR – does not conclude, suggest, or in any way state that the project would exacerbate fire risk.” RFEIR at 3.3-23. This denial is troubling, and belied by the EIR. As stated in the Draft EIR, wildfire is a dangerous issue in the Project area “due to location of people and structures at an interface with heavy fuel loads, steep terrain, summer dry conditions, and multiple Ignition sources.” DEIR at 15-20. It is undeniable that the Project will bring an enormous amount of people and structures into the urban wildland interface, thereby exacerbating wildfire risks. Further, the DEIR admits, as it must:

The Placer County Local Hazard Mitigation Plan estimates that there will be more human-caused wildfires in the region, as more people live in the area on a full-time basis. As more homes are developed in areas which border wildland areas, *the cost and complexity of fighting fires that would endanger such homes increases* (Placer County 2010: Annex M.9). This impact would be **potentially significant**. DEIR at 15-20 (emphasis added).

Again, there is no question that the Project would bring a staggering amount of new people to the area, thereby exacerbating this fire risk, which as explained has only gotten worse in the Project area since 2016. *See* RFEIR at 3.2-151 to 3.2-153, 3.2-174 to 3.2-178; *see also* *infra* Parts II.F and III.E. Moreover, those structures and the increased emergency response times as a result of the Project would exacerbate wildfires that ignite in other areas should those fires come into Olympic Valley, as has now been shown possible. *Id.*

Second, the RFEIR claims “[t]his issue was addressed in the 2016 EIR. There is no significant new information that would change the significance of this issue.” RFEIR at 3.3-24. This is false. Nowhere did the 2016 EIR address the potential for wildfire smoke to impact Lake Tahoe’s water quality or clarity. The RFEIR cites to no such analysis, and nor could it.

Third, the RFEIR claims that it need not evaluate the issue because it “is speculative: whether particles from wildfire affect Lake Tahoe water quality (the issue is being studied, see page 13-9 of the Draft REIR); whether a fire would originate in Olympic Valley as a result of the project.” RFEIR at 3.3-24. The RFEIR admits, however, that “whether smoke particles from a wildfire in Olympic Valley would potentially deposit on Lake Tahoe is less speculative [as] winds from the northwest direction (the site is northwest of the Lake) . . . do occur approximately 7 percent of the time. (Meteoblue 2023)” RFEIR at 3.3-24. But just because an impact is being studied and may not be specifically quantifiable does not mean an EIR does not need to analyze it. As the Supreme Court instructs: “[S]cientific certainty is not the standard. But if it is not scientifically possible to do more than has already been done . . . the EIR itself must explain why, in a manner reasonably calculated to inform the public of the scope of what is and is not yet known about the Project’s impacts.” *Fresno*, 6 Cal.5th at 520; *see also Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1370-71 (lack of “universally accepted” methodology for calculating impacts does not excuse lack of analysis).

Additionally, as detailed below (*infra* Part II.B) the RFEIR fails to adequately support its claim that other air pollutants from the Project from outside the Basin (both VMT generated by the Project as well as operational emissions) would not enter the Basin and get deposited into the Lake. As explained below and in the attached report from Baseline consulting (Exh. 1), research demonstrates that such transfer of pollutants would happen due to prevailing wind patterns and topography. Thus, the REIR must address the Project’s potential to impact Lake water quality from these sources as well.

b. The REIR Must be Recirculated to Address the Project's Potential Contribution to Microplastics Pollution on the Lake.

As the RFEIR admits, data indicates that microplastics from litter in the Basin are now a known problem for the Lake. RFEIR at 3.3-41. Microplastics “concern was amplified by reports in the San Francisco Chronicle of extensive littering of Tahoe beaches during the 2023 July 4th weekend, where over 6,000 pounds of litter such as plastic bottles was left on one beach (Thomas 2023).” *Id.* Indeed, in a recent study published in *Nature*, Lake Tahoe was the third most polluted in microplastics out of the 38 lakes studied, showing levels even higher than ocean gyres (systems of ocean currents notorious for accumulating plastic waste). *See* Exh. 4 (“Plastic Debris in Lakes and Reservoirs”). Lake Tahoe was considered an extraordinary case, because the first two highest polluted lakes were in densely populated areas with wastewater inlets. *See* Exh. 5 (“Lake Tahoe Has High Concentration of Microplastics, Global Research Shows”). In contrast, “[t]he area surrounding Lake Tahoe is not densely populated, wastewater has been exported for the past 50 years, and policies are in place to limit excess runoff into the lake.” *Id.* The study attributed the high concentration to human presence (i.e. from visitors to the Lake). *Id.* As explained in a recent research study by the Tahoe Environmental Research Center (TERC) and One Health Institute, which similarly found extremely high levels of microplastics in Lake Tahoe:

There is currently no treatment system for stormwater in the Tahoe Basin prior to it flowing into the lake potentially contributing to a large microplastic load from a range of sources such as trash, rubber tire wear and road paint. Microplastics deposited by atmospheric deposition may also be a contributor.

Exh. 6 (*To Sink or Swim: A Snapshot Evaluation of the Fate and Types of Microplastics in Lake Tahoe*) (“TERC Microplastics Report”) at p. 36. Yet, although the RFEIR admits that “[a]ny effect of the VPTSP on Lake Tahoe clarity would [] be tied to increased visitation” (RFEIR at 3.3-24), it fails to acknowledge that the Project’s largescale addition of visitors to the Basin would contribute to this problem, much less evaluate any potential mitigation to help lessen the impacts.

Instead, the County continues with its pattern of sidestepping its responsibility for any impacts on Lake Tahoe, claiming that the Court’s ruling only requires evaluation of the Project’s VMT impacts in the Basin. This argument fails because, as explained above, it is a new issue that arises from the current environmental setting information for Lake Tahoe.

Further, as discussed below, the microplastics issue is also related to VMT. And in any event, because microplastics were detected in Lake Tahoe for the first time in 2019, the issue constitutes significant new information that would result in new or more severe impacts than could have been discussed in the 2016 EIR. *See* Smithsonian Magazine, “Lake Tahoe’s Clear Water is Brimming with Tiny Plastics.”²

2. The RFEIR Fails to Correct the Deficiencies in the RDEIR’s Environmental and Regulatory Setting Information

Sierra Watch’s comments on the RDEIR explained that the document did not provide accurate or adequate setting information regarding Lake Tahoe, as required by CEQA and the courts’ orders. *See* RFEIR at 3.2-127 to 3.2-133. To begin, our comments noted that the setting information was misleading because it largely downplayed the role that vehicles play in adding pollution to Lake Tahoe, despite decades of science showing a strong connection between vehicles and Lake pollution. It further misled the public by relying on the Project’s average daily vehicle miles traveled (“VMT”) rather than peak VMT as a starting point for the assessment of the Project’s impacts, which in some months cuts VMT but nearly half, and by improperly narrowing the geographic scope of the relevant setting. The RFEIR’s responses to these comments track the responses to similar points made about the REIR’s failure to adequately analyze the impacts on Lake Tahoe from Project VMT. These responses are all discussed in detail below (*infra* Part II.A(3)). That discussion will not be repeated here, but is incorporated herein by reference.

Sierra Watch’s comments also explained that the regulatory setting information for the RDEIR was also deficient for several reasons. First, the document failed to discuss relevant portions of TRPA’s Regional Plan, despite employing a standard of significance that alleges to evaluate the Project’s consistency with the plan. *See* RFEIR at 3.2-131 to 3.2-132 (comments 36-38). For example, the RDEIR fails to mention WQ-3.10, a TRPA water quality policy that aims to reduce “local emissions of oxides of nitrogen and entrained dust, primarily from automobiles” in order “to ensure that atmospheric sources do not degrade Lake Tahoe’s water quality.” *Id.* (quoting WQ-3.10). Thus, this policy is directly applicable to the Project, which would add up to 23,842 VMT or 1,353 car trips per day to the Tahoe Basin (and even more to the surrounding area) on a peak day. In response, the RFEIR claims that WQ-3.10’s “focus on entrained dust and emissions of nitrogen oxides is consistent with the conclusions in the Draft REIR.” RFEIR at 3.3-29. It

² July 24, 2023. Available at <https://www.smithsonianmag.com/smart-news/lake-tahoes-clear-water-is-brimming-with-tiny-plastics-180982587/#:~:text=The%20alpine%20lake%2C%20which%20straddles,swirling%20in%20the%20world's%20oceans.>

then pivots, however, and claims that WQ-3.10 is a “selective citation of TRPA’s regional plan [that] overstates the role of nitrogen oxides and requires context.” *Id.* But there is nothing “selective” about WQ-3.10. Rather, it is a TRPA policy that speaks directly to the Project’s potentially significant impacts on the Basin.

The RFEIR then quotes extensively from a staff report addressing a prior air quality standard (AQ14) that TRPA updated to be more in line with the RTP (the new standard is now TSC1). RFEIR at 3.3-29 to 3.3-30. But nothing in that staff report or TSC1 states that WQ-3.10 is outdated or inapplicable. Rather, WQ-3.10 is in the latest Regional Plan Update amendments (May 22, 2024).³ AQ14 pre-dated the TMDL by nearly 30 years and was based on a (10%) nitrogen reduction goal established before technological improvements made that goal obsolete. But that does not mean that reduction in VMT is not a water quality objective. It is. As stated in TRPA’s Regional Plan, in the RTP, and the TMDL, “local emissions of oxides of nitrogen and entrained dust, primarily from automobiles” still need to be reduced to maintain the Lake’s water quality objectives, and that reduction is to be achieved through both the roadway control measures identified in the TMDL *as well as* VMT reduction measures. While maintaining that WQ-3.10 “is not applicable the project,” the RFEIR at least reluctantly acknowledges that “less traffic results in less air pollution, including atmospheric emissions of nitrogen and dust entrainment.” RFEIR at 3.3-34 (Response 37). It then tries to claim that the Project includes sufficient VMT reduction measures. But, as discussed below, such measures are inadequate and, in any event, cannot remedy the failure to identify WQ-3.10 as a relevant water quality standard or to assess the Project’s consistency with it.

Furthermore, other TRPA thresholds are applicable as well. As explained in a report by the State Water Resources Control Board on Lake Tahoe’s nearshore water quality:

Updated [Regional Plan] policies . . . promoting the reduction of vehicle miles traveled are all important elements for nearshore water quality protection. TRPA retained its existing nearshore clarity threshold standard and adopted two new nearshore related threshold standards to reduce extent and distribution of attached algae and aquatic invasive species.

Exh. 7 (Report: Lake Tahoe Nearshore Water Quality Protection Plan) at p. 8.

Likewise, Sierra Watch alerted the County that the 2020 RTP/SCS and TRPA’s mitigation program (which implements TSC1) should be included in the regulatory setting information for this Project. RFEIR at 3.2-132 to 3.2-133 (Comment 39). The RFEIR

³ Available at <https://www.trpa.gov/wp-content/uploads/Adopted-Regional-Plan.pdf>.

appears to concede that the RTP covers the Project, but fails to assess the Project's consistency with the RTP. RFEIR at 3.1-116. Rather, the RFEIR baldly assumes that the RTP somehow incorporates the Project. *Id.* This is backwards logic. The RTP is a new regulatory framework applicable to the Project that must be addressed in the REIR.

The RFEIR responds that mobility fee is not applicable to the Project “[b]ecause the project is outside the Basin and TRPA’s jurisdiction.” RFEIR at 3.3-34. But this misses the point. The REIR employs consistency with TRPA standards as a threshold of significance under CEQA. TRPA assesses a project’s VMT impacts and then employs its mitigation fee as one mechanism to help mitigate those impacts. Thus, even if the Project is not jurisdictionally required to pay the TRPA fee, it is relevant to the assessment and mitigation of impacts. TRPA’s comments on the RDEIR indicate that the agency agrees. TRPA states:

In light of TRPA’s transportation and sustainable communities threshold standard and updated mobility mitigation fee, we appreciate the attention on transportation solutions for the greater Tahoe Region. TRPA is currently in consultation with Placer County under CEQA Guidelines section 15086(a)(5) as a regional transportation planning agency with transportation facilities that could be affected by the project. Our respective staffs have engaged in productive discussions on how to address these Lake Tahoe Region impacts (referred to here as “in-basin” impacts). We greatly appreciate the cooperation and collaboration with Placer County and the time and attention expended to explore proposed mitigation and other mechanisms that could be applied to address the in-basin impacts, and we look forward to continuing that collaboration to determine the appropriate mitigation measures and other mechanisms. RFEIR at 3.2-285 (Emphasis added).

The RFEIR also touts features of the Project that are in line with measures called for in TRPA’s Ordinance. *See* RFEIR at 3.1-116 to 3.1-117. But this fails to address the fact that, even with these features, the Project would still *add* volumes of VMT to the area, which would impact the Lake Tahoe Basin. The RFEIR then says that the applicant will, in any event, “voluntarily” pay a fee that is roughly equivalent to what it would have paid for an in-Basin project. RFEIR at 3.1-118. But, as discussed further below, any such “voluntary” payment does not and cannot substitute for a proper description of the relevant regulatory setting and an adequate *analysis* of the Project’s impacts.

Finally, Sierra Watch stated that the RDEIR should include further information on the Basin Plan. RFEIR at 3.2-133 (Comment 40). The RFEIR states the comment failed to identify the information that should be included. RFEIR at 3.3-35. While it is the agency’s responsibility to provide relevant setting information, not commenters, specific relevant

information from the Basin that should have been included is discussed below (infra Part III.A(3)).

3. The RFEIR Does Not Remedy the RDEIR's Deficient Analysis and Mitigation of the Project's Individual and Cumulative VMT Impacts on Lake Tahoe.

Sierra Watch's comment letter on the RDEIR detailed how—even when considering the Project's VMT in the Basin alone---the document's conclusion that the Project would have *no* significant individual or cumulative impacts on Lake Tahoe's water clarity or quality, and thus *no* mitigation was required, was unsupported and unsupportable. Rather than acknowledge the impacts of the Project's addition of massive amounts of vehicles to the sensitive Lake Tahoe Basin – impacts that are supported by decades of research and laws/regulations to protect this important resource – the RFEIR doubles down on its improper CEQA analysis. The RFEIR again attempts to downplay the well-known roll that vehicular traffic plays in polluting the Lake. The RFEIR states: “the project site is located in Olympic Valley, which does not drain toward Lake Tahoe; thus, activities within Olympic Valley have no direct effect on lake clarity.” RFEIR at 3.3-24. As the Court of Appeal said, this argument is unperuasive. *See Sierra Watch*, 69 Cal.App.5th at 98 (noting that “increased VMT in the basin has a ‘direct role in lake clarity’”). And regardless of whether one considers the Project's impacts on Lake Tahoe as direct or indirect impacts, it is irrelevant to the required CEQA analysis. *See Guidelines* § 15064(d)(2).

The RFEIR summarizes the County's “analysis” of the Project's impacts on Lake Tahoe as follows:

With regard to the specific science behind Lake clarity and the roles of road abrasives, nitrogen, and other factors, the Draft REIR addresses each of these issues, and concludes that, based on available information and the understanding of the level of project VMT (0.8 percent of Basin total) and the success of various programs aimed at reducing pollution (see the Master Response regarding the Lake Tahoe Basin), it cannot be reasonably argued that the proposed project would significantly affect Lake Tahoe water quality, including clarity.

RFEIR at 3.3-28.

As Sierra Watch and others explained, and as discussed further below, these arguments do not hold water.

a. The REIR Cannot Avoid an Adequate Analysis of the Project's Impacts on Lake Tahoe by Claiming It Only Contributes a Small Percentage of VMT.

As our comments explained, the RDEIR improperly relied on its claim that the Project would only amount to a 0.8 percent increase in Basin VMT levels to conclude that the Project would not result in significant impacts on Lake Tahoe. *See, e.g.*, RFEIR at 3.2-135 (Comment 48). First, the claim that Project VMT is only “0.8 percent of the Basin total” is misleading. As Sierra Watch’s comments explained, the number is a gross understatement because it is based on average daily VMT rather than peak VMT, which reduces the total VMT considered by nearly half in some months. In response, the RFEIR asserts that it switched to daily average VMT due to a change in the way the Air District reviews emissions. However, as explained in detail below (*infra* Part II.B) and in the attached report by Baseline Consulting, this is very misleading as the Air District also reviews emissions on a seasonal/quarterly basis.

The RFEIR also claims we did not provide any valid reasons for utilizing peak VMT rather than daily average VMT. Not so. As explained in our comments on the RDEIR and below (*infra* Part II.B), given the seasonal nature of the Project and the vast fluctuations in VMT throughout the year, using daily average VMT instead of peak VMT conceals environmental impacts. This is especially true for the Lake and Basin, where in the summer months (when VMT is the highest) Lake clarity declines and air quality/visibility impacts can be more severe. CEQA prohibits the utilization of methodologies that conceal impacts. Moreover, as noted, the TMDL uses peak VMT in its assumptions.

Second, the courts have long rejected claims that a Project could not possibly have significant impacts because those impacts are only a small amount (or a “drop in the bucket”) as compared to the total, especially where (as here) the setting is already out of attainment with environmental standards. As stated by the Court of Appeal in the landmark *Kings County* decision, “the relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718; *see also Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 (rejecting a similar “ratio theory” for noise impacts).

As discussed below, due to the sensitive nature of Lake Tahoe, the fact that it is not meeting goals for Lake clarity, and the fact that it is subject to special protections as an

Outstanding National Resource Water (“ONRW”) and subject to a unique regulatory regime, it is reasonable to conclude that *any* addition of unmitigated VMT would result in a significant impact on Lake Tahoe. Thus, given the Project’s large addition of VMT to this sensitive area, the “drop in the bucket” argument is not adequate under CEQA.

b. The REIR Cannot Downplay the Project’s Impacts By Pointing to Roadway Protection Measures Called for by the TMDL.

The RFEIR claims that, rather than assessing Project VMT, “the Draft REIR addressed the impact analysis in the context of the Lake Tahoe TMDL . . . which are directly linked to attainment of water quality standards and clarity targets.” RFEIR at 3.3-24. Then, as with the RDEIR, it claims that any impacts to the Lake from vehicles (including deposition of fine sediments and atmospheric deposition) are best dealt with through “roadway management and operation.” *See, e.g.*, RFEIR at 3.3-25. Due to the success of these programs, the RFEIR argues, the Project would not have any significant impacts on Lake Tahoe. *See, e.g.*, RFEIR at 3.3-28. This approach fails for several reasons.

First, as Sierra Watch explained, regardless of any plan for reducing pollutants that affect Lake Tahoe, the EIR must evaluate the Project’s impacts on this important resource. *See Communities for a Better Environment v. S. Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320. The County cannot unilaterally exempt itself from this analysis by claiming that separate agencies’ programs attempt to reduce Lake pollutants. *See Northwest Indian Cemetery Protective Ass’n v. Peterson* (9th Cir. 1986) 795 F.2d 688, 697, *rev’d on other grounds sub nom. Lyng v. Northwest Indian Cemetery Protective Ass’n* (1988) 485 U.S. 439 (“Adherence to the BMPs does not automatically ensure that the applicable state standards are being met”).

Second, the TMDL program does not specifically address the Project or pollutants from mobile sources in general. Rather, as the Court of Appeal has explained, the TMDL relies upon TRPA’s transportation and air quality plans to address pollutants from these sources:

The Lake Tahoe TMDL was finalized in 2010 by the California Regional Water Quality Control Board, Lahontan Region, and the Nevada Department of Environmental Protection, and it was approved by the federal Environmental Protection Agency in 2011. It established a transparency standard for the lake, and it determined the amounts of existing loads of fine sediment particles, phosphorus, and nitrogen that had to be reduced to attain that standard. It also set forth an implementation plan for agencies to implement to achieve those reductions.

To achieve the transparency standard, the TMDL focused on reducing fine sediment particle loading from runoff through improvements to stormwater controls, as that provided the largest and most cost-efficient opportunity to reduce fine sediment particle and phosphorus loads. The TMDL did not propose actions to reduce atmospheric loads of nitrogen to the lake caused by mobile sources. *Instead, the TMDL relied on TRPA's air quality programs and transportation plans to manage the loads of nitrogen from vehicles.*

League to Save Lake Tahoe Mountain etc. v. County of Placer (2022) 75 Cal.App.5th 63, 85. The TMDL Report indicates that further reductions in atmospheric deposition are required to meet the TMDL standards, and such reductions must come from updates to TRPA's regional transportation programs (i.e. any updated VMT standards and RTP updates):

This TMDL relies on the Tahoe Regional Planning Agency's (TRPA) air quality and transportation plans to continue managing the load of nitrogen to the atmosphere from the mobile sources; this continued management is expected to reduce the basin-wide nitrogen load by at least one percent within 15 years. A two percent reduction in nitrogen load from the atmosphere is needed to attain the transparency standard. The TRPA Regional Plan update is anticipated to include an atmospheric nitrogen emission reduction strategy that meets the TMDL transparency standard attainment needs.

TMDL Report at 11-11;⁴ *see also id.* at 9-3 (“Nitrogen emissions from mobile sources (i.e., vehicles) will be controlled through continuation of the air quality control programs enforced by the Tahoe Regional Planning Agency, including implementation of the updated Lake Tahoe Regional Transportation Plan.”).⁵ The Lahontan Basin Plan also acknowledges this. Lahontan Basin Plan at 5.15-2 (relying on “[t]he TRPA Regional Plan [to set forth] control measures to be implemented by TRPA and local governments to reduce atmospheric nutrient deposition” in order to meet TMDL water quality standards). Thus, the REIR should evaluate the Project's compliance with the TRPA Regional Plan/thresholds and the RTP.

⁴ The TMDL Report was included as Exhibit R to Sierra Watch's comments on the RDEIR.

⁵ *See also* <https://clarity.laketahoeinfo.org/Results/Detail/AtmosphericDeposition> (TMDL relies on TRPA's air quality and transportation management plan to reduce VMT and thereby reduce atmospheric deposition in the Lake), attached hereto as Exh. 8; Exh. 9 (TMDL 2024 Performance Report) at p. 2 (noting the same).

And to the extent that the TMDL includes assumptions about vehicular traffic in the Basin, as Sierra Watch explained (RFEIR at 3.2-135 (comment 35)), those assumptions are now outdated and the assumptions have been surpassed. Indeed, the protections for the Tahoe Basin (including the TMDL regime) assume and are dependent upon the growth caps implemented by TRPA in the Basin. They do not plan for large-scale growth (such as proposed by the Project) in areas near the Basin. The RFEIR does not deny this fact, but argues that it “misses the point” because TMDL targets are being met and “[t]he real world success, based on TMDL monitoring reports, has been encouraging.” RFEIR at 3.3-37. It is the REIR, however, that misses the point. The TMDL targets are set in order to achieve certain clarity standards for the Lake. Unfortunately, even though certain reduction targets may be being met, Lake clarity has not been improving as intended by the TMDL. *See* Exh. 10 (2023 TMDL Findings and Recommendations Memo) at p. 6. Rather, annual clarity has remained stagnant for the past 20 years and summer clarity continues to decline by over a half-foot per year. *See* Exh. 11 (2024 State of the Lake Executive Summary); Exh. 12 (noting that despite progress in TMDL implementation plans, other efforts need to be made to reach clarity goals).⁶ Furthermore, the 2024 TMDL Performance Report noted that Placer County *did not meet* its reduction targets. *See* Exh. 9 (TMDL 2024 Performance Report).

Moreover, the TMDL itself is at the end of its intended duration. It was a 15-year plan that began in 2010; thus, 2024 is meant to be the last year of its planned effectiveness. As stated in the TMDL Report, “[a]fter the first fifteen years, ongoing implementation measures and additional load reduction actions will be needed to further reduce fine sediment particle and nutrient loads to meet the transparency standard.” TMDL Report at 9-2. Thus, while the past successes of the roadway management programs pursuant to the TMDL have no doubt been helpful in staving off drastic declines in clarity, that does not mean the initial TMDL targets will achieve the clarity standards for the Lake and, importantly here, it does not mean that the Project’s addition of massive amounts of VMT to the area will not significantly impact the Lake. Moreover, even if TMDL reduction targets are currently being met, there may be a tipping point of additional VMT where that would no longer be the case. The REIR must be revised and recirculated with an adequate discussion of the Project’s potential impacts on Lake Tahoe; the document’s bald reliance on TMDL programs is insufficient. Further, as discussed below, the TMDL is not the only water quality standard at issue for Lake Tahoe, which is designated an Outstanding National Resource Water (“ONRW”) and subject to a special protection regime.

⁶ Available at <https://clarity.laketahoeinfo.org/Home/AboutLakeClarityTracker>

Additionally, even if TMDL programs did somehow “cover” the Project, which as explained they do not, if anything, the roadway management programs and BMPs could only be seen as partial (and now outdated) mitigation for the problem. But as discussed further below, an EIR must first evaluate the Project’s contribution to the problem and then consider and adopt mitigation. And to consider this as valid mitigation, the EIR would need to demonstrate that the Project actually complies with the plan and that it adequately contributes towards the mitigation. *See City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 359-360, 367. The REIR does neither. Furthermore, the EIR would need to explain how effective the measures are at reducing *the Project’s* impacts on Lake Tahoe, and then determine whether any additional mitigation is required. *See Northwest Indian Cemetery Protective Ass’n*, 795 F.2d at 697 (“A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.”)

c. Like the RDEIR, the RFEIR is Simply Wrong in Claiming that Project VMT Would Not Significantly Impact Lake Tahoe.

The reason that the TMDL relies on TRPA’s transportation and air quality policies to protect the Lake is that there remains a strong connection between vehicular traffic and Lake clarity and quality. Yet, the RFEIR maintains the opposite, claiming that the “data and the analysis in the Draft REIR support the conclusion that VMT is very weakly correlated to sediment pollution.” RFEIR at 3.1-85.

But as Sierra Watch’s comments on the RDEIR explained, the science continues to support the fact that vehicles, from both their impact on fine sediments and atmospheric deposition of various pollutants, account for a substantial amount of Lake pollution. *See* RFEIR at 3.2-128 to 3.2-131, 3.2-134 to 3.2-138. At times, the REIR does not disagree. For example, it admits “that the science behind development of the TMDL” has not changed. RFEIR at 3.3-28. And the RDEIR admits that “[f]or some time, it was thought that there was a strong correlation between automobile travel—reflected as VMT—in the Basin and water quality.” RDEIR at 13-9. Again, the science behind this conclusion has not changed, despite all the confounding discussion the REIR provides in an attempt to confuse the public and make them question this fact. Thus, the RFEIR cannot support its statement that “while it was previously thought that there was a strong correlation between VMT and sediment loading, this is no longer the case.” RFEIR at 3.1-82.

TERC is one of the research centers that is designated to study Lake Tahoe’s clarity and produces the annual “State of the Lake” report. In its most recent (2022) manual for training docents for Lake Tahoe, where it put the issue into lay people’s terms, TERC plainly states: “[E]xcessive automobile use degrades air quality and contributes to the

decline in Tahoe’s clarity.” Available at <https://tahoe.ucdavis.edu/docents> and attached hereto as Exh. 13 (Chapter 4: Environmental Problems Facing Lake Tahoe) at p. 26. It explains the problem as follows:

Driving on roads, motor vehicles on dirt trails, and development are all sources of erosion and soil disturbances. These activities grind up soil and sediment into microscopic particles. The extremely small particles (1 – 10 microns) are especially harmful to water clarity. These small particles get into the lake via the air, storm drains, and tributaries. Some particles are so small that they stay suspended in the water column and are believed to be the major contributor to Lake Tahoe’s long-term clarity loss.

...

Another important pollutant is nitrogen, over one-half of which comes from atmospheric fallout created by *vehicle exhaust* and pollution blown in from surrounding urban areas. A third critical pollutant is phosphorus, with disturbed and natural watersheds contributing two-thirds of the load. All wastewater is treated and exported from the Tahoe Basin. In 2020, microplastics were found in Lake Tahoe.

Id. at 2, 23 (emphasis added).

Each contributor to Lake Tahoe water quality and clarity degradation from vehicles is discussed in turn below.

Fine Sediment from Crushed Road Abrasives:

Sierra Watch’s comments alerted the County that the RDEIR offered no support for its about face conclusion that a “weak relationship has [] been found between VMT and atmospheric deposition of fine sediment” and that the Project would not result in significant impacts on Lake Tahoe from fine sediments. RFEIR at 3.2-130 (comment 32), 3.3-136 to 3.2-137 (comments 50-52). Rather, the RDEIR only offered “evidence” of the success of various efforts to help reduce sediment loads in the Tahoe Basin. In response, in seeming contradiction to the RDEIR’s claim of a “weak relationship,” the RFEIR admits that “[t]here is no question that vehicles mobilize sediments, sediments make their way into Lake Tahoe, and they affect the clarity of the Lake.” RFEIR at 3.3-31. The RFEIR then pivots back to the RDEIR’s justification that the TMDL focused on more “cost-effective”

ways to reduce sediment including various roadway control measures, which have had some success in reducing sediment loads. RFEIR at 3.3-31 to 3.3-32, 3.3-38 to 3.3-39.⁷

But the response misses the point of the comment. As discussed above, just because the TMDL has focused its efforts on different BMPs, and regardless of whether those BMPs have had some success, this *does not mean* that the Project's addition of large amounts of VMT to the area could not impact the Lake. Rather, VMT is a known contributor to a loss of Lake clarity, including from fine sediment contribution. Stated another way, if the REIR's theory of significant impacts were correct, that would mean that new projects in the area could add an unlimited amount of VMT to the sensitive Tahoe Basin without regard for any impacts, simply because other agencies have been working on BMPs in the area. Such a conclusion is absurd.

The RFEIR claims that there is a stronger correlation between the surface area of roads and the amount of sedimentation than VMT itself. RFEIR at 3.1-82. But even assuming this is the case, it is admitted that it is the vehicles on the road that are primarily responsible for the fine sediment loading, and not the existence of the roads themselves. Furthermore, the more VMT, the more pressure there is to have additional road surface area. Thus, even if road surface area is a more useful metric, it does not mean that adding vehicles to the regional roadways has either no or a negligible impact on the Lake. The REIR should examine the potential impact and then evaluate mitigation measures, such as contributing the Project's fair share to regional roadway improvements, to lessen that impact. *See, e.g.*, TRPA PIA Guidelines⁸ at 38 (citing TRPA Policies to maintain roadways in order to protect water quality).

Further, the RFEIR again admits that “[f]ine sediment loading from unpaved road surfaces is calculated considering VMT.” RFEIR at 3.3-39 (citing Lahontan RWQCB and NDEP 2008). However, it rejects Sierra Watch's comment that the REIR should disclose the amount of unpaved roads in the area and assess the impact of the Project's VMT on those roads. RFEIR at 3.3-32 (Response 33). The RFEIR claims such disclosure and analysis would be “speculative.” *Id.* However, it then claims “[m]ost of these roads are managed by the US Forest Service.” *Id.* If that is the case, it should be relatively easy for

⁷ The REIR also relies on a 2008 “study” that allegedly claimed a 25% reduction in VMT would only reduce fine sediment loads by a small amount. RFEIR at 3.3-32. But the REIR does not include this study. Moreover, this study was already in existence in 2016 when the County found that there was an “important” connection between VMT and a loss of Lake clarity from fine sediment deposition.

⁸ The PIA Guidelines are referenced in the RFEIR and are available on TRPA's website at <https://www.trpa.gov/wp-content/uploads/documents/PIA-Guidelines-Final.pdf>.

the County to ascertain how many unpaved roads there are in the area. Further, the REIR admitted there is a formula for calculating fine sediment loading in the Lake from VMT. The RFEIR claims it is unknown precisely how many visitors from the Project would use these roads, but a CEQA analysis always requires some degree of forecasting. For example, the County could not say with certainty how many people from the Project would visit the Basin, but the EIR was able to forecast a percentage. There is no reason why it could not do the same with respect to the use of unpaved roads. The RFEIR claims Sierra Watch did not provide “evidence” of usage (RFEIR at 3.3-32), but it is the County’s job to provide the relevant information and analysis, not the public’s. “To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency and would allow the agency to avoid an attack on the adequacy of the information contained in the report simply by excluding such information.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 724. In short, an agency may not excuse itself from CEQA’s informational requirements by baldly labeling an issue “speculative.” Rather, it must find out and disclose all that it reasonably can.

Finally, Sierra Watch’s comments asked for additional information on the role of vehicles in contributing crushed road abrasives in winter conditions, when the RDEIR claimed fine sediment loading can be 10 times higher. RFEIR at 3.2-130 to 3.2-131 (comment 34). However, rather than providing the requested information, the RFEIR provides a passage about the benefits of switching from volcanic cinders to Washoe sand as a winter abrasive material. RFEIR at 3.3-33. This is not responsive to the comment. Even if “Washoe sands can withstand more abuse,” this does not answer the questions of whether adding more VMT would diminish those benefits. Nor does the response indicate which areas have committed to permanently use Washoe sand and whether Project VMT would travel in areas that do not. Again, merely because prior (here, voluntary) efforts have shown successes does not mean that adding VMT would not detract from those successes or otherwise impact the Lake.

Atmospheric Deposition of Nitrogen:

The RFEIR appears to acknowledge, as it must, that the addition of VMT would result in increased atmospheric deposition of nitrogen to Lake Tahoe, and the attendant increase in algal growth and reduction in Lake Clarity. *See* RFEIR at 3.3-36 (Response 46); *see also* RDEIR at 13-19 (admitting same). Yet, rather than provide information or analysis about the Project’s expected contribution of nitrogen deposition on the Lake, the document maintains that the addition of Project VMT could not result in significant impacts because “nitrogen reduction is on target to meet and substantially exceed TMDL targets, primarily due to stricter vehicle pollution standards, not reduction in VMT.” RFEIR at 3.3-36.

However, the REIR does not deny (nor could it) that the TMDL relies upon regional transportation policies, including those in the TRPA Regional Plan and RTP, to achieve nitrogen reduction goals. Yet, the RFEIR (like the RDEIR) stubbornly refuses to analyze the Project's consistency with these policies. As explained below, the REIR's justifications for this are inadequate.

Moreover, as discussed above and below, the Lake is not currently on track to meet clarity goals despite successes to date in nitrogen reduction from stricter vehicle pollution standards; additional progress will be needed. As explained, the TMDL's VMT assumptions have already been exceeded and that the TMDL standards are outdated. And the REIR presents no credible evidence that, with the addition of the Project and other planned development in the area, the region would meet the TMDL's anticipated reduction goals, much less that clarity goals could be achieved. When Lake clarity and other attributes remain in a degraded state, it is illogical to conclude that just because stricter vehicle emissions standards have somewhat reduced (but admittedly have not come close to eliminating) nitrogen emissions, that the addition of massive amounts of new vehicles to the area would not or could not result in further degradation of Lake water quality or clarity.

Phosphorous:

Sierra Watch commented that the RDEIR failed to discuss the Project's contribution of phosphorous, a known pollutant for Lake Tahoe, even though atmospheric deposition (largely through road dust generated by vehicular traffic) accounts for 18% of the annual load to the Lake. RFEIR at 3.2-137 to 3.2-138 (comment 53). The RFEIR attempts to remedy this deficiency by providing some information on phosphorous, but downplays any Project impacts based on two rationales: "[1] Load reduction aimed at TMDL targets to return Lake clarity has been successful and [2] TRPA reports no direct relationship between VMT and phosphorous in the Lake." RFEIR at 3.3-41. First, as explained, Lake clarity has not returned to anticipated levels, even with implementation of the TMDL. Moreover, the TMDL is, as explained above, at the end of its horizon and the control measures under the TMDL were only ever intended to generate a 7 percent reduction in phosphorous in any event, which is insufficient for restoring Lake clarity. TMDL Report at 9-3; RFEIR at 3.3-40 (recognizing long-term target of reducing atmospheric deposition of phosphorous by 61%). As discussed, the TMDL relies upon TRPA's land use and transportation plans for reductions in atmospheric deposition.

Second, even if there is not a direct relationship between VMT and phosphorous, as the RFEIR recognizes there is certainly an indirect link. *See* RFEIR at 3.3-40. CEQA

requires analysis of both direct and indirect changes in the environment which may be caused by the project. *See* Guidelines § 15064(d)(2). And even if there is not a precise VMT target associated with phosphorous reduction, TRPA's Regional Plan Land Use and Transportation policies support the reduction of phosphorus by reducing automobile dependency. TRPA Regional Plan at 2-37. Here, the REIR should be recirculated with a disclosure of the Project's contribution to phosphorous pollution in the Lake (even if that contribution is derived indirectly from the Project) and an adequate discussion of the Project's consistency with relevant policies and standards.

Microplastic Pollution from Tire Wear:

Sierra Watch's comments also noted the serious impacts that microplastics are having on Lake Tahoe, and that the REIR must analyze the Project's contribution to this problem, as vehicle tires are a known source of microplastics. *See* RFEIR at 3.2-138 (comment 54). As tires wear down into tiny particles as they are crushed on roads, they can enter Lake Tahoe either through runoff or through atmospheric deposition. *See id.* In response, the RFEIR acknowledges, as it must, that "[t]hese studies raise important concerns" and that the most recent State of the Lake report confirms that microplastics are a serious threat to the Lake. *See* RFEIR at 3.3-42. The RFEIR also acknowledges, as it must, that studies have identified tires from vehicles driven on roadways as a major contributor to microplastic pollution in various lakes. RFEIR at 3.3-42.

The RFEIR then immediately washes its hands of the problem, claiming the problem is too "speculative" to evaluate because it is being studied. The RFEIR states: "However, more study is needed to determine effects of microplastic pollution on Lake Tahoe (per UC Davis, this is being studied) and if tire wear at Lake Tahoe is a significant contributor. Given the lack of specific data on this issue applicable to Lake Tahoe, it would be speculative to conclude that microplastics from tires are a significant source of pollution in Lake Tahoe and, relatedly, it is speculative whether VMT from the project would contribute to such pollution." RFEIR at 3.3-42. This response is insufficient under CEQA. As noted above, an EIR cannot defer analysis on a topic simply because more study may be required. *See Berkeley Keep Jets*, 91 Cal.App.4th at 1370-71 (lack of "universally accepted" methodology for calculating impacts does not excuse lack of analysis).

Microplastics are now a well-know problem for Lake Tahoe, as is the fact that tires on roadways contribute to the problem. *See, e.g.,* Exh. 6 (TERC Microplastics Report) at p. 36 (identifying wear from rubber tires as a significant contributor to microplastics pollution in Lake Tahoe); Exh. 14 ("Tires: The plastic polluter you never thought about," National Geographic, September 20, 2019). Furthermore, it is undisputed that the Project will add a substantial amount of vehicles, which all have tires, to the area. Even if roadway BMPs

may help alleviate the problem to some extent, as explained above, this does not absolve the County from evaluating the Project's contribution to the problem and then identifying and implementing appropriate mitigation.

Moreover, methodologies for evaluating the environmental harms from tire microplastic particles have become more established over the last several years. *See, e.g.*, Exh. 15 ("Environmental risks of car tire microplastic particles and other road runoff pollutants"), Exh. 16 ("Where the rubber meets the road: Emerging environmental impacts of tire wear particles and their chemical cocktails"); Exh. 17 ("Wear and Tear of Tyres: A Stealthy Source of Microplastics in the Environment"), Exh. 18 ("Tires and brakes emit more particulates than tailpipes"); Exh. 19 ("A ubiquitous tire rubber-derived chemical induces acute mortality in coho salmon"); *see also* Exhs. S & T (attached to Sierra Watch comments on RDEIR). And even if the analysis and mitigation cannot be precise at this time, the County could formulate performance standards and adaptive measures and management as more becomes known over time. The problem is not unlike climate change or other environmental problems that involve ongoing study and adaptation.

GHG Emissions:

Sierra Watch's comments on the RDEIR noted that climate change is having major impacts on Lake Tahoe and that the REIR should examine the Project's contribution to the problem. RFEIR at 3.2-138 (comment 55). In response, the RFEIR admits, as it must, that climate change is indeed negatively altering the Lake's ecology. RFEIR at 3.3-42. The RFEIR also acknowledges that the Project, which would generate 36,497 MT CO₂ equivalent per year *after* mitigation, would produce significant and unavoidable climate change impacts. *Id.* The RFEIR then states, however, that the Project could not possibly have any impacts on the Lake due to climate change because climate change is a global problem and the Project's GHG emissions would only be a drop in the bucket. RFEIR at 3.3-42 to 3.3-43. But as the RFEIR appears to acknowledge, this "drop in the bucket" approach has been rejected by the legislature and the courts in terms of a CEQA analysis. To find otherwise would mean that no project would be required to mitigate their emissions, as all projects could claim the drop in the bucket defense. The EIR correctly holds that the Project would have significant climate change impacts, but it never examined those impacts in the context of Lake Tahoe (either on an individual or cumulative basis). The REIR should examine such impacts and evaluate additional mitigation measures. For example, the Project could contribute its fair share to any measures that would help lessen climate effects on the Lake.

The REIR must be recirculated to include an analysis of the amount of the above pollutants that the Project would contribute to the Lake as well as an assessment, based on

substantial evidence, of the Project’s potential (both individually and cumulatively) to interfere with the obtainment of Lake water quality and clarity goals and standards.

d. The RFEIR Fails to Correct the RDEIR’s Deficient Analysis of the Project’s Potential to Violate Water Quality Protection Standards

Sierra Watch’s comments on the RDEIR questioned why the document was not evaluating the Project’s potential to violate any water quality standard. *See* RFEIR at 3.2-134 (comment 44). In response, the RFEIR claims that the RDEIR “clearly addresses whether the project would violate any water quality standards.” RFEIR at 3.3-36. However, while the REIR attempts to address the Lake Tahoe TMDL—a discussion that is inadequate for the reasons set forth above---it does not adequately discuss other applicable standards.

For example, as the RDEIR recognizes, Lake Tahoe is designated an “outstanding national resource water” (“ONRW”) under federal and California law, and is therefore “provided the highest level of protection under the EPA Antidegradation Policy.” RDEIR at 13-13. The designation covers “waters of exceptional recreational or ecological significance” and requires that their “water quality shall be maintained and protected.” 40 C.F.R. § 131.12(a)(3); *see also* 48 Fed. Reg. 51400-01 (1983). This standard goes above and beyond those set in the Lake Tahoe TMDL. Indeed, there are only two lakes in California with this special designation – Lake Tahoe and Mono Lake.

Every state must adopt an antidegradation program under the CWA. 40 C.F.R. § 131.12; 33 U.S.C. § 1313. California implements these requirements in part through regional water quality control plans, or basin plans, developed by the Regional Water Quality Control Boards and approved by the State Water Resources Control Board. *See* Water Code §§ 13240, 13241, 13245. Water quality standards covered by basin plans include designated uses that must be maintained, water quality criteria, and antidegradation requirements. *See* US EPA, *Water Quality Standards Handbook*, Ch. 1, p. 3.⁹

The antidegradation policy generally prohibits the degradation of ONRWs for any reason. 40 C.F.R. § 131.12(a)(3) (“Where high quality waters constitute an outstanding

⁹ Available at <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>; <https://www.epa.gov/sites/default/files/2014-10/documents/handbook-chapter1.pdf>

National resource, . . . that water quality *shall be maintained and protected.*”) (emphasis added). As the RDEIR recognizes, “EPA interprets this provision to mean that no new or increased discharges to ONRWs shall be permitted if that discharge would result in lower or poorer long-term water quality.” RFEIR at 13-13; *see also* US EPA, Water Quality Standards Handbook (2012) Chapter 4: Antidegradation at 12¹⁰ (“EPA interprets this provision to mean *no new or increased discharges* to ONRWs” or their tributaries “that would result in lower water quality”). State law incorporates the federal antidegradation policy¹¹ and the State Board has also adopted this interpretation: “If the receiving water has been designated as an [ONRW], . . . no discharge which will lower existing water quality shall be allowed.” State Board, Administrative Procedures Update 90-004 (July 7, 1990), page 4¹²; *accord League to Save Lake Tahoe v. Tahoe Regional Planning Agency* (E.D. Cal. 2010) 739 F.Supp.2d 1260, 1292, *aff’d in part, vacated in part on other grounds*, (9th Cir. 2012) 469 Fed.Appx. 621 (CWA “prohibits any degradation of existing water quality standards with a limited exception for short-term or temporary changes in quality”). As the RDEIR acknowledges, TRPA thresholds for Lake Tahoe transparency have not been met; rather the decline in clarity has merely slowed. RDEIR at 13-9. Thus, approval of any project that would allow *any* degradation of Lake Tahoe water quality or result in new or increased pollutants into Lake Tahoe violates the Clean Water Act and state law.

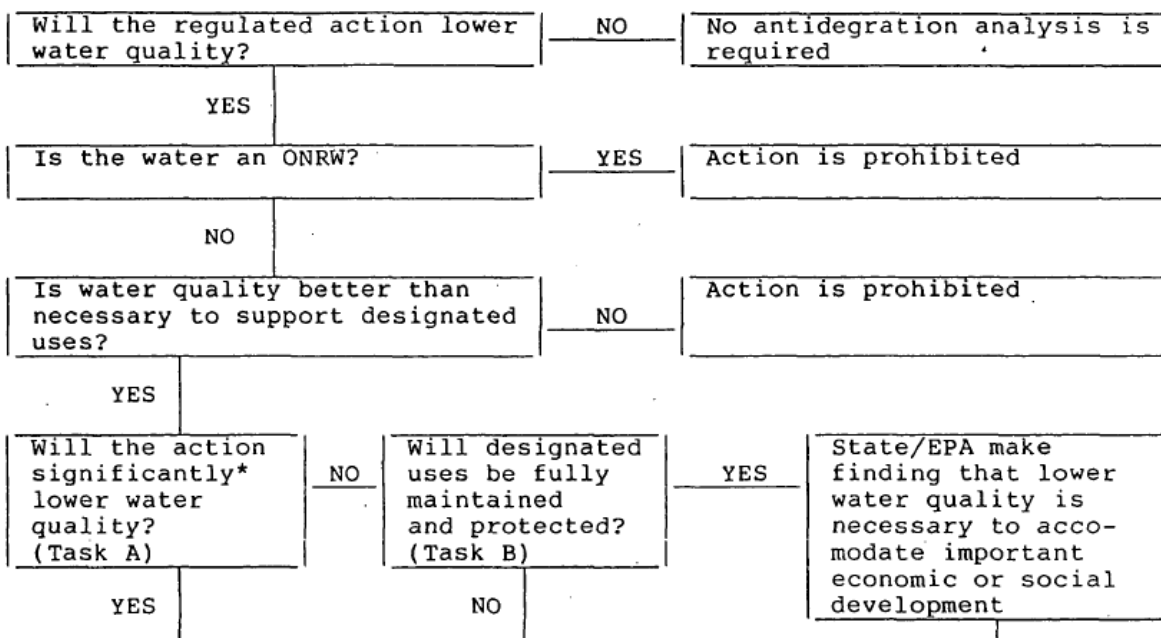
The REIR’s threshold of significance claims Project impacts on the Lake are not significant unless they “substantially” degrade Lake Tahoe’s water quality. DEIR, 13-18. But this standard ignores the ONRW designation and belies the REIR’s claim that it evaluates the Project’s potential to violate any water quality standard. The threshold for significance for the Project should clearly state that “*any* degradation” of Lake Tahoe water quality would be considered a significant impact. *League to Save Lake Tahoe*, 739 F.Supp.2d at 1292. This is what distinguishes ONRW waters from waters that receive less protection under federal and state law:

¹⁰ <https://www.epa.gov/sites/default/files/2014-10/documents/handbook-chapter4.pdf>

¹¹ Lahontan Regional Water Quality Control Board (2021) *Water Quality Control Plan for the Lahontan Region*, at p. 3-14 (available at https://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.html)

¹² Available at https://www.waterboards.ca.gov/water_issues/programs/npdes/docs/apu_90_004.pdf.

FIGURE 1
Antidegradation Flow Chart



US EPA Region IX (1987), *supra*, at p. 13 (Figure 1 [partial]). Even the flawed REIR recognizes that the Project would adversely impact water quality: “the Draft REIR does not conclude ‘no impact’ to Lake Tahoe clarity and water quality from project generated VMT in the Lake Tahoe basin, but concludes that there would be a less-than-significant impact.” RFEIR 3.3-8; *see also* RDEIR at 13-19 (acknowledging “the potential for tailpipe emissions to increase atmospheric nitrogen deposition that can contribute to algal growth and reduced lake clarity. . . . The greater the VMT, the higher the levels of tailpipe emissions.”). Because the Project would admittedly result in some impacts on Lake Tahoe clarity and water quality, it would violate the standards for Lake Tahoe as an ONRW. To ensure compliance with ONRW protections under the CWA and to comply with CEQA, the REIR must inform the public what the (admitted) impact of the Project on water quality will be and adopt alternatives and mitigation to ensure Lake Tahoe water is “maintained and protected.”

Likewise, as Sierra Watch’s comments explained, TRPA also has numerous Threshold Standards and Goals and Policies for water quality in the Lake. RFEIR at 3.2-136 (Comment 48). The RFEIR dismisses all of these out of hand as not pertaining to the

Project. RFEIR at 3.1-113 (“[T]he proposed project, which is located outside the Basin, is not subject to the Regional Plan; the TBAP; or other TRPA standards, ordinances, or regulations.”). The County’s response is déjà vu all over again as it is the same approach taken in the 2016 EIR, an approach that the Court of Appeal roundly rejected. The question is not, and has never been, whether TRPA has approval jurisdiction over the Project. Rather, the question is whether the Project would result in significant individual or cumulative impacts on Lake Tahoe’s water clarity and quality. Here, the REIR employed a threshold of significance for this question that included whether the Project “would conflict with TRPA Threshold Standards related to Lake water quality.” RDEIR at 13-18. The County is apparently attempting a bait and switch as, when asked to evaluate the Project’s consistency with such standards, the RFEIR replies that they do not apply to the Project.

Contrary to the claims in the RDEIR (13-21), as discussed above and in voluminous comments on the RDEIR, there is plenty of evidence to suggest that the Project, with its massive increase in VMT, *would* impede attainment of thresholds and degrade Lake Tahoe’s water clarity and quality. And, as discussed further below, the RFEIR contains no evidence that the vague trip mitigation measures proposed in the MMRP will have any measurable impact on VMT or the Project’s impacts on the Lake.

e. Contrary to the Claims in the RFEIR, the County Could Apply Regional Transportation Planning Goals and Standards to the Project.

As discussed above, Sierra Watch’s comments noted several times that, to both include relevant information and to adequately assess the Project’s impacts in line with the REIR’s threshold standard, the REIR should examine the Project’s consistency with the 2020 RTP/SCS and TRPA’s mobility mitigation fee (implementing the new threshold TSC1).

In response, the RFEIR does acknowledge the relevance of the RTP, but glosses over it as already including the Project. Instead of providing actual evidence for this claim, it relies on the fact the 2020 RTP *impliedly* included the Project in its forecasts, while admitting the Project is nowhere explicitly referred to in the plan. *See* RFEIR at 3.3-36 to 3.3-37. It is just as likely that the 2020 RTP did not include the Project, because the Project was being challenged in court at the time of its development. *See, e.g.*, RFEIR at 3.3-44 to 3.3-45 (acknowledging that VMT estimates used for the RTP are different than those in the REIR). But regardless, the 2020 RTP, as well as related TRPA rules and regulations, relies on the fact that individual projects will undergo an assessment of VMT impacts and

mitigate such impacts—an assessment the County refuses to conduct here. The mere existence of the RTP does not erase Project impacts.

The RFEIR also claims that the Project’s transit mitigation is consistent with suggestions made in the RTP and such mitigation will lessen Project VMT from visitors to the Basin. RFEIR at 3.1-115. However, as discussed further below, the County elsewhere claims that the transit mitigation for the Project was in fact *not* designed to accommodate any Project visitors (only employees). RFEIR at 3.1-137. The County cannot have it both ways.

Moreover, as Sierra Watch explained, the RTP (as well as other TRPA Thresholds) direct agencies to assess the impacts of individual projects (and provide mitigation therefore) using TRPA’s assessment tool and mobility mitigation fee. RFEIR at 3.2-132 to 3.2-133 (Comment 39); *see also* RFEIR at 3.2-285 (TRPA comment letter noting that the Project’s in-Basin impacts must be mitigated through implementation of transportation measures). In response, the RFEIR provides a verbose argument that the formula and plan that TRPA has developed for evaluating the VMT impacts and mitigation of projects in the Basin simply cannot be applied to projects outside the Basin, citing Project Impact Assessment (PIA) Zones and hypothetical analyses that put the Project close to Tahoe City. *See* RFEIR at 3.1-120 to 3.1-124.

To begin, the REIR utilizes (sometimes admittedly) questionable, unrealistic, and misleading assumptions for this “hypothetical” analysis. A project of this size could never be built in the Tahoe Basin given the growth caps implemented by TRPA and the fact that there simply isn’t enough available land. Furthermore, the RFEIR focuses on residential and housing uses, and some food and beverage, but largely ignores the 300,000 square feet of commercial uses, which would be an enormous trip/VMT generator.

But regardless, the discussion boils down to further excuses for the County’s failure (and refusal) to assess the impacts from the Project’s addition of VMT to this area. Even if TRPA’s rules are not configured as an exact match for the Project, this should not serve as an impediment for an evaluation of impacts from the Project’s VMT on the Basin. As stated in TRPA’s PIA Guidelines, and as indicated in the agency’s comments on the REIR, TRPA is willing to work with lead agencies on adapting the VMT assessment guidelines as necessary depending on a project’s circumstances. The PIA Guidelines state:

TRPA and/or the lead agency will review the VMT analysis in transportation studies based on the guidance presented here and under an applicable Memorandum of Understanding. Each project, however, is unique, and *the guidance in this document is not intended to be so prescriptive as to be impractical. Not all criteria*

and analyses described will apply to every project. Early and consistent communication with TRPA and local agency staff is encouraged to confirm the type and level of analysis required on a case-by-case basis.

PIA Guidelines at p. 3 (emphasis added); *see also* RFEIR at 3.2-285 (TRPA comments noting that the Project's known impacts on the Basin must be mitigated and that TRPA is consulting with Placer about how to do so).

The County has already calculated the amount of VMT the Project would generate, including the amount entering the Basin, in peak periods and as averages. As discussed above and below (and in our RDEIR comments), to account for the Project's full impacts, the REIR should examine the Project's full VMT at peak periods. Further, the County has access to regional VMT figures, either through their own data or consultation with TRPA. As the RFEIR admits, TRPA was already able to confirm with the County that a voluntary proposed payment "is a reasonable estimate of mitigation fees that would be required for a similar in-basin project." RFEIR at 3.1-118. This "confirmation" could not be possible if there were not a readily accessible way to assess Project VMT in light of TRPA standards. Further, this "confirmation" provides substantial evidence that the Project would have significant impacts from Project VMT. *See, e.g.*, PIA Guidelines at 2, 11-12. As explained below, TRPA standards require not just the payment of the fee, but also that the project proponent mitigate the impacts of VMT to the threshold standards. The REIR's failure to analyze and disclose these potentially significant impacts and adequately mitigate them violates CEQA.

Moreover, as discussed further below (and in Sierra Watch's comments on the RDEIR), Placer County has issued its own Transportation Study Guidelines for VMT, which include a threshold of zero net increase. The Guidelines include VMT calculation guidance, including for projects with VMT that crosses jurisdictional borders. But as discussed below, the County is attempting to evade that analysis as well.

As the RFEIR admits, TRPA uses its PIA tool to evaluate a Project's impacts. RFEIR at 3.1-119. As stated in the PIA Guidelines (at p. 2):

To approve any project, TRPA requires a finding that the project will not cause the environmental thresholds to be exceeded and that the project is consistent with the Regional Plan. Conducting a VMT analysis in accordance with these guidelines can demonstrate compliance with the Code standards, and thereby substantiate the conclusion that a project is not negatively impacting an environmental threshold.

In other words, TRPA uses VMT as a proxy for a Project's potential impacts on Lake Tahoe and the Basin. *See also* PIA Guidelines at 20 (“VMT can also serve as a proxy for impacts related to energy use, air pollution emissions, greenhouse gas (GHG) emissions, safety, and roadway maintenance.”), 38 (citing TRPA Policies to preserve the transportation system to protect water quality). As discussed, the REIR relies on consistency with TRPA standards as a threshold of significance for water quality impacts on Lake Tahoe. The REIR should therefore provide a reasonable analysis, based on substantial evidence, of whether the Project is consistent with TRPA standards. If the County concludes it truly is impossible to do so (and adequately supports that conclusion), which as discussed does not appear to be the case, then the REIR must employ some other mechanism to evaluate the Project's impacts on Lake Tahoe water quality. As it stands, for the reasons discussed above and in comments on the RDEIR, the REIR's reliance on (1) roadway improvements provided by others via the TMDL, and (2) the fact that the Project purportedly accounts for only a small amount of the region's total VMT are insufficient to support a finding that the Project would not result in significant impacts on Lake Tahoe. This is especially the case given Lake Tahoe's special status as an ONRW.

4. The RFEIR Fails to Correct the RDEIR's Inadequate Cumulative Impacts Analysis for Water Quality Impacts on Lake Tahoe.

Sierra Watch's comments on the RDEIR informed the County that the document failed to provide an adequate cumulative impacts analysis of the Project's impacts on Lake Tahoe “in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects,” as required by the Court of Appeal. RFEIR at 3.2-139 (Comment 57) (*quoting Sierra Watch*, 69 Cal.App.5th at 320). Instead, the RDEIR improperly relied on its analysis of the Project's impacts alone (an analysis that is flawed in its own right) as a substitute for a cumulative analysis. This approach defeats the purpose of a cumulative impacts analysis. As the Court of Appeal has explained:

One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1214 (citation omitted).

In response, the RFEIR yet again relies upon the TMDL as panacea for *all* potential impacts on the Lake. The RFEIR claims the TMDL covers “the totality of development in the Basin (past, present, [and] future).” RFEIR at 3.3-44. It likewise claims that “[t]he TMDL, by definition, addresses pollution from cumulative, sources, development, and actions.” *Id.* According to the REIR’s logic then, *any* level of development proposed in the area could not result in cumulative impacts on Lake Tahoe so long as the BMPs from the 2010 TMDL are in place. But the RFEIR cites nothing in the TMDL to support such outlandish claims. In fact, as discussed above, these claims are unsupported for several reasons.

First, the TMDL by its own terms was only designed to cover actions in the Tahoe Basin until the year 2025. Second, the VMT assumptions used in the TMDL have been well surpassed, and did not anticipate large additions from projects such as this one that abut the Basin. Third, the TMDL, which was adopted in 2010, could not have incorporated the Project in setting its reduction targets, as the Project was not proposed until several years later. Nor could it have incorporated other future projects not known at the time. Fourth, as discussed, the TMDL is clear that it does not cover atmospheric deposition from mobile sources; instead, it relies upon TRPA’s transportation policies. Fifth, the TMDL does not purport to address all potential water quality impacts on the Lake (e.g., it does not address microplastics or smoke deposition) or to ensure compliance with standards set under other laws, such as anti-degradation standards pertaining to ONRWs. Rather, it only addresses point source pollution for specific pollutants under the CWA. Thus, the TMDL cannot be relied upon as a surrogate for all potential cumulative impacts, nor was it intended to be used as such. *See Bakersfield*, 124 Cal.App.4th at 1216-17 (EIR may not rely on an approved planning document that does not include impacts from the Project). In short, the REIR fails to explain how implementation of the TMDL will ensure that the Project’s incremental contribution is not cumulatively considerable when considered in conjunction with all past, existing and future projects.

Nor can the REIR’s claim that the Project only adds 0.8 percent VMT to the Basin rescue its faulty cumulative analysis. While we dispute the 0.8 percent figure for the reasons discussed above, in any event courts have long held that utilizing such a ratio theory/comparative approach to cumulative impacts violates CEQA. As noted above, the *Kings County* decision held that “the relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718. Likewise here, the relevant question is not what percentage of VMT the Project would add to the area, but

whether any additional amount of VMT, when also reviewed in light of all other past, present and future projects, would be significant given Lake Tahoe's non-attainment status and the sensitivity of the resource.

Finally, the REIR cannot circumscribe the geographic area or the type of pollutants considered to minimize cumulative impacts. *See, e.g., Bakersfield*, 124 Cal.App.4th at 116. For the reasons discussed above, the REIR should have considered the full geographic scope of any/all pollutants that could result in potentially significant cumulative impacts on Lake Tahoe.

B. The RFEIR Fails to Correct the RDEIR's Inadequate Analysis and Mitigation of the Project's Air Quality Impacts on the Tahoe Basin.

1. The RFEIR Fails to Justify the Limited Scope of Its Air Quality Analysis.

Our comments on the RDEIR explained that in order to adequately consider air quality impacts on the Lake Tahoe Air Basin (LTAB), the REIR needed to consider emissions from all Project and cumulative sources that could reach the LTAB, rather than just emissions from VMT in the Basin. *See* RFEIR at 3.2-140 (Comment 58). In response, the RFEIR says nothing further was required because "the scope of the air quality analysis is intended to address deficiencies identified by the Court, which were limited to analysis of VMT impacts on air quality in the Lake Tahoe Basin." RFEIR at 3.3-45 (Response 58). But as explained further below, nothing in the Court of Appeal's Opinion (or the trial court's subsequent writ) authorized an analysis that does not comply with CEQA. Rather, the County was directed to rescind the Project approvals and not re-approve them unless and until it complies with CEQA.

Here, an analysis that excludes potential sources of air quality impacts does not comply with CEQA. As discussed further below and in a supplemental report prepared by Baseline Consulting (attached hereto as Exh. 1 and incorporated herein by reference ("Baseline Supp. Report")), emissions of nitrogen oxides (NOx), reactive organic gases (ROG),¹³ and coarse particulate matter (PM10) from outside the Basin boundary line can transfer to the LTAB due to prevailing winds and topography, resulting in attendant air quality impacts. These emission can come from VMT or other emissions from Project operations. The courts have long held that an EIR may not look at air quality impacts from one source in isolation from others. As held by the Court of Appeal in rejecting an

¹³ NOx and ROGs are also referred to as ozone precursors.

agency's attempt to separate emissions from train and truck truck traffic from on-site emissions:

CEQA ... is designed to measure all project-related pollution emissions and prohibits the division of a project into parts for purposes of environmental review.

...

The resulting emissions from truck or train traffic are related to the project and cannot be ignored when determining whether air emissions meet existing standards for purposes of invoking the presumption of no significant impact. Therefore, although it is accurate to describe emissions as coming from separate sources, it is inaccurate and misleading to divide the project's air emissions analysis into on-site and secondary emissions *for purposes of invoking the presumption the project will have no significant impact.*

Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 716.

As explained in Baseline's Supplemental Report, the combined emissions of ROG and NOx from Project-generated VMT and on-site operations would exceed the CEQA thresholds and result in an undisclosed significant impact on the Basin, even if considering the REIR's deflated figures. Exh. 1 (Baseline Supp. Report) at p. 18. The REIR must be revised and recirculated to evaluate the Project's potentially significant air quality impacts in the LTAB from both on-site and off-site sources.

2. Like the RDEIR, the RFEIR Improperly Ignores Consistency with TRPA's Air Quality Standards.

As our comments on the RDEIR explained, TRPA has adopted new air quality standards via TSC1, the RTP, and implementing codes and regulations. *See* RFEIR at 3.2-140 to 3.2-141. Our comments provided detailed quotes from both the Regional Plan and the RTP explaining that these standards were, in fact, related to air quality. *Id.* The RFEIR fails to respond to these comments and instead just doubles down on its unsupported determination that "they are not air quality thresholds." RFEIR at 3.3-46 (Response 59). Rather, the RFEIR states, "TRPA's VMT threshold is intended to address greenhouse gas reduction, auto dependency reduction, and land use and development patterns for development within TRPA's jurisdiction." *Id.* But as Sierra Watch's comments explained, TRPA was very clear that one purpose of these goals was to help reduce air quality impacts in the region. Further, the RFEIR fails to respond to comments that GHG emissions are air quality emissions and that TSC1 would qualify as new information requiring a new analysis.

The RFEIR also repeats here its argument that, in any event, TRPA's VMT standards are inapplicable to the Project because it is located outside the Basin. RFEIR at 3.3-46 (Response 59). This response fails for the same reasons discussed above with respect to water quality. *See supra* Part II.A.

3. The RFEIR Fails to Correct the RDEIR's Inadequacies with Respect to the Air Quality Analysis it Purports to Conduct.

As our comments and Baseline's report explained, even the analysis the RDEIR purports to conduct is flawed. For the reasons set forth below, the RFEIR fails to correct the identified deficiencies.

a. The REIR's Geographic Radius for VMT Impacts Remains Too Narrow.

Sierra Watch's comments on the RDEIR explained that the revised analysis should include an evaluation of impacts on Lake Tahoe's air quality from *all* of the estimated project-related VMT and not just from the limited portion of VMT that enters the Basin. *See* RFEIR at 3.2-142 to 3.2-143 (Comment 62). In response, the RFEIR doubles down on its view that the Court of Appeal's opinion requires an analysis of only the portion of VMT from the Project that would enter the Lake Tahoe Basin. *See* RFEIR at 3.1-85. The RFEIR claims: "The deficiency in the 2016 EIR identified in the Ruling concerned the lack of a significance threshold by which the significance of in-basin VMT impacts on the LTAB air quality could be determined; it did not concern the scope of the analysis." *Id.* This is incorrect. As the RFEIR acknowledges, the Court of Appeal held:

Even supposing the EIR actually reached a conclusion about the project's impacts, we would still find it defective. Under CEQA, an agency's conclusion as to whether a given impact is significant is not enough; "there must [also] be a disclosure of the 'analytic route the ... agency traveled from evidence to action' " — something that never occurred in the EIR here.

Sierra Watch, 69 Cal.App.5th at 101-02 (citation omitted).

The court thus clearly stated the issue was not solely one of the EIR failing to identify whether the Project's impacts on the Lake Tahoe Basin's air quality were significant. In addition, the court identifies a problem with the EIR's "scope of analysis" or, more aptly here, the lack of any analysis whatsoever. While the Court acknowledged the large level of Project VMT that would be entering the Basin as evidence that the EIR needed to conduct such an analysis, it in no way circumscribed the extent of that analysis,

or the methodology to be employed, once the agency conducted it. *See* Exh. 1 (Baseline Supp. Report) at pp. 2-3. Indeed, in another part of its opinion, the Court of Appeal firmly held that an agency “cannot employ a methodological approach in a manner that entirely forecloses consideration of evidence showing impacts to the neighboring region [or] impacts beyond a project's boundaries,” or that otherwise engages in “arbitrary line drawing” in its analysis. *Sierra Watch*, 69 Cal.App.5th at 107. Yet, that is precisely what the RFEIR attempts to do with respect to air quality impacts from Project VMT.

As Baseline explained in its prior report, limiting an air quality analysis to only VMT that enters the Basin is misleading and conceals the full extent of the Project’s impacts on air quality in the Lake Tahoe Air Basin. RFEIR at 3.2-271 to 3.2-272 (Comments 4-5); *see also* Exh. 1 (Baseline Supp. Report) at 3; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716 (“CEQA . . . is designed to measure all project-related pollution emissions and prohibits the division of a project into parts for purposes of environmental review”). This is because air pollution does not stop at the Basin’s jurisdictional boundary line. RFEIR at 3.2-271 to 3.2-272. Indeed, as the REIR admits, prevailing winds flowing to the east bring emissions from outside the Basin into the Basin. RFEIR at 10-5. In its supplemental report, after reviewing the RFEIR, Baseline reiterates its concern that the REIR’s approach fails to account for the full extent of the Project’s impacts on the Lake Tahoe Air Basin. Exh. 1 at pp. 2-9.

Apart from its argument that its limited scope of analysis was sanctioned by the court, the RFEIR attempts various post hoc rationalizations for the approach, each of which fail. To begin, the RFEIR claims that “CARB has not designated the LTAB as a transport basin, meaning that emissions from adjacent air basins do not typically contribute to nonattainment status within the LTAB.” RFEIR at 3.3-64. To support this statement, the RFEIR cites a 2001 study conducted by CARB to support its regulation of upwind stationary sources. A primary purpose of the study was to identify upwind air basins or subregions that cause or contribute to violations of the State ozone standard in downwind air basins or subregions. But as the Baseline supplemental report explains, the CARB study and regulation, which is now over two decades old, did not assess the LTAB because the LTAB was not (and is not) in non-attainment for the state standard of Ozone at that time. Exh. 1 (Baseline Supp. Report) at p. 5. Moreover, the study and regulation only pertain to stationary sources and do not address VMT emissions. *Id.*

Next, the RFEIR cites a study from Rayne et al. of regional meteorology on ozone levels in the Lake Tahoe Basin that allegedly shows that “elevated ozone concentrations on the eastern side of the basin are likely from local (in-Basin) emission sources.” RFEIR at 3.1-87. But, as explained in the Baseline supplemental report, this statement is false and highly misleading. Exh. 1 (Baseline Supp. Report) at pp. 5-7. What the Rayne et al. and

other studies actually demonstrate is that “local generation of ozone and long-range transport of ozone and precursors are both important when it comes to elevated ozone levels within the LTAB.” *Id.* at pp. 5-7; *see also* Exh. 20 (“An assessment of ozone concentrations within and near the Lake Tahoe Air Basin”); Exh. 21 (“Surface ozone in the Lake Tahoe Basin”). Thus, neither the 2001 CARB study nor the Rayne et al. report cited by the RFEIR provides a justification for the REIR to ignore the contribution of VMT emissions from areas outside the LTAB that could impact the LTAB. The County must expand the study area to include all Project generated VMT (as well as other sources of emissions) that could result in individual or cumulative air quality impacts on the LTAB.

b. The RFEIR Fails to Justify the Use of Average Daily Emissions Rather than Peak Daily Emissions In Its Analysis of the Project’s Air Quality Impacts.

In commenting on the RDEIR, both Sierra Watch and Baseline explained that the RDEIR’s air quality analysis was misleading because it relied on average daily emissions, rather than peak emissions, to determine air quality impacts. RFEIR at 3.2-143 to 3.2-144 (Comment 63); RFEIR at 3.2-272 to 3.2-273 (Comments 6-7). With respect to this Project, this makes a significant difference because of the large fluctuations of emissions in peak periods due to the seasonal nature of the Project’s attractions. For example, the month of July has roughly *double* the VMT of the daily average. Exh. 1 (Baseline Supp. Report) at 12.

In response, the RFEIR claims that “[t]he methodology used in the Draft REIR [of utilizing average daily VMT] follows direction from the responsible air district, the PCAPCD, and links the CEQA thresholds to the State Implementation Plan [“SIP”] and long-term goals for air quality attainment.” RFEIR at 3.3-64 (Response 6). However, as the supplemental Baseline report explains, the PCAPCD uses thresholds that incorporate seasonal fluctuations in emissions so that adequate mitigation can be required to maintain the air quality standards. Exh. 1 (Baseline Supp. Report) at pp. 11-12. As discussed above, as the Court of Appeal held in this case, while the County has some discretion in setting thresholds, that discretion ends if the chosen threshold ignores or conceals evidence that impacts may be greater than what is being discussed in the EIR. Again, that is precisely what is going on here. As noted by Baseline, use of an average daily emission rate for entire calendar year is deceptive because it mutes (in some months by nearly half) the seasonal air quality impacts associated with tourist traffic that is unique to this project. *Id.* To further illustrate the point, Mitigation Measure 10-2 for the Project is intended to be implemented in a way such that the Project “will not result in ROG or NOx emissions in excess of 55 lbs/day.” RFEIR at 3.3-66. However, if the data being utilized is based on “per day” estimates that are derived from an annual average, the measure would not

operate as intended as there will be many days of the year where the Project would exceed 55 lbs/day of emissions. This exceedance would result in attendant impacts to human health and visibility in the LTAB. Thus, in this case, peak emissions must be used to disclose and mitigate the full extent of Project's air quality impacts on the LTAB.

c. The REIR Should be Recirculated to Address the Air Quality Impacts from Tire Wear.

As discussed above, it has become increasingly clear that toxic particulates and chemicals associated with tire wear impacts not only water quality, but also air quality and human health. *See, e.g.*, Exh. 18 (“Where the rubber meets the road”); Exh. 19 (“Wear and Tear of Tyres”), Exh. 20 (“Tires and brakes emit more particulates than tailpipes”). Because the Project is increasing existing traffic volumes in the region, a revised air quality analysis must take into account these potential impacts from tire wear. This issue has not been addressed in the REIR. Further, it constitutes significant new information since the 2016 REIR that would result in new and unanalyzed potentially significant impacts.

d. The RFEIR Fails to Justify the RDEIR's Inadequate Mitigation for the Project's Air Quality Impacts.

Sierra Watch and Baseline commented that the RDEIR's proffered air quality mitigation was inadequate because it does not address the full scope of the Project's air quality impacts on the LTAB and because Measure 10-2 is vague and of unknown efficacy to mitigate such impacts. *See* RFEIR at 3.2-144 to 3.2-145, 3.2-275 to 3.2-276. In response, the RFEIR claims the air quality analysis is sufficient and no further mitigation is required. *See* RFEIR at 3.3-65. For the reasons set forth above, this is incorrect. The REIR should be recirculated with disclosure of the full extent of the Project's air quality impacts and with evaluation of all feasible mitigation measures to lessen such impacts.

The RFEIR further claims that Measure 10-2 is not vague as it “clearly lays out the performance standards the project must reach as well as the methodology by which performance will be measured.” RFEIR at 3.3-66. However, as Sierra Watch and Baseline pointed out, even though Measure 10-2 establishes a “performance standard” of remaining below 55 lbs/day of ROG and NOx emissions, the REIR fails to demonstrate how or whether the allowable methods of mitigation under Measure 10-2 would or could achieve that standard. For example, Baseline pointed out that the identified offset program was not shown to meet CEQA's requirements that the emissions reductions achieved by the offsets are genuine, quantifiable, additional, and verifiable. *See* RFEIR at 3.2-275 (comment 11); *see also* Exh. 1 (Baseline Supp. Report) at pp. 16-17. In response, the RFEIR claims that it

will be the PCAPCD's responsibility to make sure such standards are met. *See* RFEIR at 3.1-92 to 3.1-93. But Measure 10-2 prescribes that the *applicant*, not PCAPCD, is responsible for evaluating the measures: "Subsequent to the implementation of all selected reduction measures, the project applicant shall evaluate and report the effectiveness of the measures." RFEIR at 3.3-66. Moreover, as Baseline explains, nothing in PCAPCD's mitigation policy states that the District will be responsible for ensuring a project applicant can meet CEQA thresholds on an annual basis over the indefinite lifetime of a project. Exh. 1 (Baseline Supp. Report) at pp. 16-17. Such an assumption, absent an explicit agreement with the District, is not supportable given the level of resources involved for such an endeavor. Thus, the time for ensuring an approved offset program meets CEQA's criteria would be now, in conjunction with the EIR, not later when the self-interested applicant evaluates and reports on the emissions reductions achieved by the offsets.

The RFEIR claims that there are also other measures the applicant can use, which could cure any deficiencies. The RFEIR states, "the project applicant could: [e]stablish mitigation off-site within the portion of Placer County that is within the MCAB by participating in an off-site mitigation program, coordinated through PCAPCD." RFEIR at 3.1-93. But this example further demonstrates the point that the measure lacks assurances that the Project's impacts on the LTAB would be mitigated to less than significant levels. The RFEIR claims there is no "transport" between the MCAB and the LTAB. *See* RFEIR at 3.1-87. Assuming that were the case (which as explained above it is not), then offsite mitigation elsewhere in the MCAB would not alleviate air quality impacts in the LTAB. The County cannot have it both ways.

As Baseline explains, reductions from the vast majority of the "optional" measures are not quantifiable. Exh. 1 (Baseline Supp. Report) at p. 16. There is no reason for this as there are numerous measures available that are quantifiable. *Id.* As another specific example, Baseline stated that instead of stating generically that the applicant can provide electric vehicle charging stations, the REIR should specify standards to be met, such as the voluntary Tier 2 standards set by CALGreen. RFEIR at 3.2-275 (comment 10). The RFEIR fails to respond to this suggestion, or otherwise provide standards of efficacy for the measures allowed under Mitigation Measure 10-2. The evaluation of emissions reductions and the efficacy of various measures should not be left in the hands of the developer, as it is by Measure 10-2. As it stands, the measure is vague and unenforceable and not guaranteed to reduce the Project's air quality impacts to a less than significant level.

e. The RDEIR Fails to Properly Analyze the Project's Cumulative Air Quality Impacts on the Basin.

Sierra Watch's comments noted that all of the above outlined deficiencies including, but not limited to, the failure to look at all emissions sources that could impact the LTAB and the failure to look at peak or seasonal emissions, also result in a deficient cumulative impacts analysis. RFEIR at 3.2-145 (Comment 66). Likewise, Measure 10-2 is deficient at adequately reducing impacts from all potential emissions. The RFEIR responds that the analysis is sufficient for the reasons discussed above because air quality impacts are cumulative in nature. RFEIR at 3.3-47 to 3.3-48. Thus, for the reasons discussed above, whether considered a cumulative impact or an individual Project impact, the REIR's analysis and mitigation of the Project's air quality impacts on the LTAB is deficient.

The RFEIR also fails to respond to our comment that the revised analysis should have used PCAPCD's new NOx threshold. RFEIR at 3.2-145. The Master Response on changed circumstances says nothing about this new threshold. The County should revise the REIR to take into account the full extent of Project emissions as discussed above with this new threshold in mind.

In sum, for the reasons discussed above, the County should recirculate the RDEIR with an adequate analysis of, and mitigation for, the full extent of the Project's potentially significant impacts on the LTAB.

C. The Applicant's Purported "Voluntary Mitigation" Does Not and Cannot Correct the REIR's Failure to Properly Analyze and Mitigate the Project's Impacts on Lake Tahoe and the Lake Tahoe Basin.

Undoubtedly recognizing the obvious impacts the Project would have on Lake Tahoe and the LTAB, the RFEIR repeatedly relies on Aleterra's willingness to pay a mitigation fee and to also impose a tax on short-term lodgers at Palisades in order to "offset" any potential impacts from the Project on the Lake Tahoe Basin. *See, e.g.*, RFEIR at 3.1-85, 3.1-88, 3.3-47, 3.3-48, 3.1-118; Exh. ("Village at Palisades Tahoe Specific Plan partially-revised final environmental impact report released"); Exh. 23 ("Village at Palisades Tahoe's environmental report released"). However, this tactic fails for at least three reasons.

First, a primary purpose of CEQA is disclosure to the public and decision-makers of the environmental consequences of a proposed project. This goes to the heart of CEQA's legislative intent to promote informed decision-making. Stating that a project would not have significant impacts when that is not supported is directly contrary to this purpose.

Second, CEQA requires an agency to identify the extent of a project's environmental impacts *before* imposing feasible mitigation to lessen such impacts. There is

good reason for this requirement. If the public and decision makers are not made aware of the full extent and nature of the impacts, they would be unable to assess whether any given measure is effective at mitigating those impacts. Thus, agencies may not rely on possible mitigation of project impacts to avoid *analyzing* the full extent of those impacts. As the court explained in *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264, “CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount.” (Citation omitted). *See also Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 653-56 (EIR improperly conflated impacts analysis with discussion of mitigation).

Here, the RFEIR argues that RDEIR *did* properly analyze the Project’s impacts on the Lake and Basin and claims it properly found the Project would not have any such significant impacts. *See, e.g.*, RFEIR at 3.1-114, 3.3-28. As explained above, this claim is unsupported. Moreover, the claim is belied by the proffered after-the-fact mitigation itself, which is clear evidence that the Project would, in fact, have significant impacts on the Lake and Basin. Indeed, the RFEIR goes so far as to claim that “TRPA has confirmed [the applicant’s mitigation fee] is a reasonable estimate of mitigation fees that would be required for a similar in-basin project.” RFEIR at 3.1-118. Of course, TRPA would not require such a fee if a project would have no significant impacts and would be “well below TRPA’s VMT thresholds,” as the RFEIR claims is the case for the Project. RFEIR at 3.3-46 (Response 59). The RFEIR tries to dodge this obvious problem by labeling the payments as “voluntary mitigation,” which the Project proponent is presumably paying out of the kindness of its heart. But the County insults the intelligence of the public, its decision makers, and the Court when it attempts to convince them that Alterra Mountain Company, a for-profit conglomerate, would go against its own financial interests to pay \$2 million when it would not otherwise be required to do so.

The County and the applicant tried this same tactic in its 2016 approval of the Project, which was rejected by the Court of Appeal. The California Attorney General found the County’s prior analysis of the Project’s impacts on Lake Tahoe to be fundamentally inadequate. To avoid a lawsuit by the Attorney General, the applicant agreed to pay a similar after-the-fact mitigation fee to help reduce impacts on the Lake. Notably, even with the agreed upon payment, the Attorney General maintained that the EIR’s analysis of the Project’s impacts on Lake Tahoe was flawed. *See* Exh. 24 (Settlement Agreement Between Attorney General and Squaw Valley) at p. 2. The County and the applicant argued in court that utilization of a VMT standard to assess the Project’s impacts on the Basin was unnecessary because the County “approved[] mitigation requiring [the Applicant] to fund the same things” that TRPA mitigation funds. Respondents’ Brief in the Court of Appeal at pp. 36, 38-39. The Court declined to consider any such arguments, which the Court held

“came far too late in the CEQA process.” *Sierra Watch*, 69 Cal.App.5th at 103; *see also CBE*, 184 Cal.App.4th at 88. “To find otherwise, after all, would deny the public ‘an ‘opportunity to test, assess, and evaluate the [newly revealed information] and make an informed judgment as to the validity of the conclusions to be drawn therefrom.’ ” [Citation.]” *Sierra Watch*, 69 Cal.App.5th at 103.

Third, even assuming arguendo the County could try to cover its tracks with late imposed mitigation, which as explained it definitively cannot, there is no evidence that the proffered after-the-fact mitigation would be, in any event, sufficient to mitigate the Project’s serious regional impacts. Indeed, the RFEIR admits that “it is not possible to estimate the extent of VMT reductions [achieved by the mitigation fee] at [t]his time because it is not known at this time which transportation project will be funded.” RFEIR at 3.1-125. Any such reductions would be relatively small. Over the 25 year construction term of the Project, the \$2 million mitigation fee would amount to \$80,000 per year, which is a very small amount as compared to what is needed for pollution reduction measures and transit, especially when inflation is factored in. And of course, Project impacts would continue indefinitely (not just during the construction term). Moreover, TRPA does not consider payment of a fee alone sufficient to mitigate a project’s VMT impacts. Rather, the project must both implement measures to achieve the applicable VMT reduction standard *and* pay the applicable mitigation fee. *See* TRPA Code of Ordinances § 65.2.4 (Figure 65.2.4-1).

The RFEIR claims a short-term occupancy tax will provide an additional source of funding to help mitigate any Project impacts on Lake Tahoe and the LTAB, but does not reveal how the tax will be structured or how (if at all) the funds would be restricted. Thus, the public and decision makers are unable to assess the effectiveness of this “voluntary mitigation.”

D. The RFEIR Fails to Correct the RDEIR’s Inadequate Analysis of and Mitigation for the Project’s Severe Noise Impacts.

1. The RDEIR Discloses Significant Construction Noise Impacts that Greatly Exceed those Disclosed in the Original EIR.

The Court of Appeal found the original EIR’s analysis of construction noise impacts was insufficient because it solely identified noise impacts to sensitive receptors within 50 feet of construction. *See* RDEIR at 11-1. The RDEIR attempted to address this defect by disclosing the radius within which construction noise would exceed identified significance thresholds. RDEIR at 11-19 to 11-24. The RDEIR concluded that significant daytime construction noise impacts would be experienced up to 4,800 feet, and

significant nighttime construction noise impacts would be experienced up to 2,667 feet—well beyond the arbitrary 50-foot radius in the original EIR. RDEIR, Exhs. 11-4, 11-5.

The RFEIR claims that the RDEIR simply “clarifies, but does not change the extent of,” the noise impacts disclosed in the original EIR. RFEIR 3.1-92. The RFEIR asserts that the DEIR disclosed that significant daytime impacts would be experienced up to 4,258 feet, and nighttime significant impacts up to 2,541 feet. The increased radii disclosed in the RDEIR, according to the RFEIR, simply reflects “rounding and modeling differences, and do not indicate a change in construction noise anticipated to occur as a result of the project.” RFEIR 3.1-93 to 3.1-96.

Contrary to the RFEIR’s contention, the original EIR never adequately disclosed that significant daytime impacts would be experienced up to 4,258 feet, and nighttime impacts up to 2,541. Neither of these figures appear anywhere in the text of either the DEIR or FEIR. *See* DEIR 11-1 to 11-33; FEIR, 2-59 to 2-63. The only reference to these two figures is buried in an appendix; it is not clear at all that the measurements are intended to reflect the radii within which significant impacts will be experienced. DEIR, Appendix I, at 3, 5; *see California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239 (“information ‘scattered here and there in EIR appendices’ or a report ‘buried in an appendix’ is not a substitute for ‘a good faith reasoned analysis’”) (quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722-23). It is therefore immaterial whether modeling differences may account for the divergence between the 4,800 foot and 4,258 radius, or the 2,667 foot and 2,541 foot radius, because the original EIR only actually disclosed construction noise impacts within an arbitrary 50 foot radius of Project construction.

The RDEIR thus clearly disclosed significant construction impacts greatly exceeding those disclosed in the original EIR. The EIR must thus be comprehensively revised and recirculated to disclose and account for these increased impacts. For example, such increased noise impacts would significantly impact biological resources. The DEIR disclosed that construction noise would have significant impacts on sensitive species, including nesting birds, the Sierra Nevada mountain beaver, the Sierra Nevada snowshoe hare, bats, mule deer, and more. DEIR at 6-55, 6-58, 6-61, 6-63, 6-64. The EIR must be revised and recirculated with an analysis of construction noise impacts specifically on biological resources in the 4,000+ foot radius where significant impacts would occur.

2. The RFEIR Fails to Adopt Key Feasible Mitigation Measures.

Regardless of the validity of the RFEIR's contention with respect to the RDEIR disclosing more severe construction noise impacts, the County cannot avoid its obligation to adopt "all feasible mitigation measures" to reduce the severity of the significant impacts identified in the RDEIR. *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 865. An acoustical expert submitted a letter that recommended the adoption of numerous mitigation measures. Sierra Watch January 2023 Letter, Exh. E (Salter RDEIR Report). While the RFEIR adopted some of these recommended measures, the RFEIR failed to adopt two key measures relating to severe construction noise and nighttime construction. The same acoustical expert who recommended these measures has provided further explanation detailing why the RFEIR's failure to adopt these key measures lacks any justification. Exh. 2 (Salter RFEIR Report).

The RFEIR fails to justify its refusal to adopt strict limits on severe construction noise. The Salter RDEIR Report noted that the RDEIR's mitigation measures are simply intended to reduce construction noise, but do not specifically target severe or extreme construction noise (i.e., noise levels in excess of 80 dBA (hourly Leq) or 90 dBA (Lmax)). The Salter RDEIR Report recommended that the County add the following mitigation measure:

If noise levels in excess of 80 dBA (hourly Leq) or 90 dBA (Lmax) are expected at any nearby sensitive receptor, a construction noise management plan prepared by an acoustical consultant or similar qualified professional is to be submitted to the County detailing how construction noise is to be reduced to these limits. This would apply to any construction project within 100 feet of a sensitive receptor and any project that will require heavy impact tools such as demolition heavy impactors or impact pile drivers.

Salter RDEIR Report at 3.

The RFEIR refused to adopt this measure, asserting the Salter RDEIR Report did not provide "substantial evidence as to why these stricter limits should be required," and "[n]o additional noise limits beyond those adopted by the County are necessary." RFEIR 3.1-101. Contrary to the RFEIR, substantial evidence supports the necessity of this measure. Construction noise generated by the Project may reach 94 dBA at a distance of 50 feet, a level which is "high enough to approach Cal/OSHA thresholds that would dictate hearing protection and hearing conservation programs." Salter RFEIR Report at 2. None of the mitigation measures adopted in the RDEIR and RFEIR restrict such severe noise levels. *Id.* Establishing limits to prevent severe construction noise levels will help

to reduce the severity of the construction noise impacts generated by the Project. Requiring the preparation of a plan to demonstrate how severe construction noise will be limited is certainly feasible. The County's failure to adopt the measure would therefore violate CEQA.

The Salter RDEIR Report also noted that the Mitigation Measure 11-1b's allowance of exceptions to the prohibition against nighttime construction noise exceeding 45 dBA Leq at 50 feet would violate CEQA unless the Measure delineated criteria governing the issuance of such exceptions. In response, the RFEIR adopted vague guidance providing that exceptions would only be issued for "construction processes that necessitate extended daily working hours" and would be limited to "the minimum number of days required to complete the construction process with consideration of the number of exemptions allowed on a monthly or annual basis." RFEIR 2-25.

This limited guidance is not sufficient to prevent frequent exceedances of the County's nighttime noise standard. The RFEIR does not identify how the County would determine whether a construction activity "necessitate[s] extended daily working hours," or the "minimum number of days" required to complete a particular construction activity. Criteria governing the County's issuance of exceptions must be delineated in the Mitigation Measure itself; the County cannot wait to develop such guidance. CEQA Guidelines § 15126.4(a)(1)(B) ("Formulation of mitigation measures shall not be deferred until some future time"); *POET, LLC v. State Air Res. Bd.* (20130 218 Cal.App.4th 681, 735 ("it is inappropriate to postpone the formulation of mitigation measures").

To reduce impacts from nighttime noise, the Salter RFEIR Report recommends the County include additional restrictions. Salter RFEIR Report at 3. These recommendations should be adopted for the same reason the RFEIR adopted the others: they "could help further reduce nighttime noise exposure." RFEIR 3.1-102. Each of these restrictions is feasible and would certainly reduce the severity of the significant nighttime construction noise impacts generated by the Project. CEQA requires the County to either reject the Project or adopt all feasible measures to lessen or avoid significant impacts.

E. The RFEIR Fails to Correct the RDEIR's Inadequate Analysis of and Mitigation for the Project's Transit Impacts.

The appellate court identified the analysis and mitigation of the Project's impacts on regional transit as inadequate. Unfortunately, the RDEIR failed to adequately address the revisions required by the court and the RFEIR perpetuates its predecessor's failures. Here too, the RFEIR claims that res judicata excuses the County from further analysis, but as

explained throughout this letter, among other claims, *res judicata* would not bar claims based on the substantial portions of the EIR that have been revised.

1. The RFEIR Omits Consideration of Guests and Visitors in Assessing the Project's Transit Impacts.

As explained in our prior comments, the RDEIR clearly states that the purpose of transit service within Olympic Valley is to provide a viable alternative to the private automobile for residents and guests traveling to and from the Village Area and to reduce the Project's vehicle miles traveled (VMT). *See* RDEIR at 9-14; *see also* RDEIR at 13-20 ("The Village at Palisades Tahoe Specific Plan also includes multiple policies, amenities, and actions that support travel by walking, biking, and transit; thereby reducing reliance on the automobile for travel and reducing VMT. These items are listed in Appendix C, in a section titled 'Comparison of Project Attributes with TRPA Policies Reducing VMT' and include access to bikes, bike racks, and bike parking facilities; provision of a Transit Center, scheduled shuttle services, and on-demand shuttle services; *and promotion of transit services to guests and visitors.*" (emphasis original)).

Now, the RFEIR is changing the story. When faced with comments criticizing the RDEIR for failing to account for Project guest use of transit, the RFEIR points to a survey of current guests to conclude that Project guests would not use transit, so that only employee transit ridership need be considered. RFEIR at 3.1-137. However, neither the survey nor any details are provided leaving many questions unanswered. For instance, who designed the survey? What was the sample size of people were surveyed? During what season did the survey take place? What questions were asked? Were the guests surveyed asked if they would consider public transit if the frequency of service was increased? What if there was an incentive to encourage them to ride transit? (*e.g.* requiring permanent paid parking) These questions are important to help decisionmakers understand whether the purported survey was unbiased and whether the data collected is reliable.

Moreover, as discussed above in section II.A(3)(e) of this letter, the RFEIR present conflicting information about the purpose of the proposed transit mitigation. On the one hand, the RFEIR claims that the Project's transit mitigation is consistent with suggestions made in the RTP and such mitigation will lessen Project VMT from visitors to the Basin. RFEIR at 3.1-115. However, the RFEIR elsewhere claims that the transit mitigation for the Project was in fact *not* designed to accommodate any Project visitors (only employees). RFEIR at 3.1-137. The County cannot have it both ways.

The Project applicant proposes to build a facility that would be accessible by transit, and if the applicant truly intends to promote transit services to guests and visitors in good faith as stated in the RDEIR, it would be reasonable to assume that some number of future guests would use transit. RDEIR, Appendix C, Comparison of Project Attributes with TRPA Policies Reducing VMT. Therefore, the RFEIR should properly evaluate the number of guests and visitors that can reasonably be estimated to use transit to and from the resort under future conditions and recirculate the document with an adequate analysis of transit impacts.

2. The RDEIR Omits Consideration of the Project's Increase in Transit Demand During the Non-Winter Months.

In our prior comments, we noted that the REIR should have analyzed transit impacts during all seasons, not only during the winter. Even though the resort's current use trends are that they have more guests and visitors in the winter, the Project is designed to bring more guests year-round. *See* DEIR at 3-1 (“The Specific Plan envisions a world-class, recreation-based, *all-season resort* community”) (emphasis added); 3-7 (Project objectives include “Realize a year-round destination resort...developed into a top quality, year-round, destination resort.”). Therefore, the REIR cannot rely on existing summer/winter differences in ridership because the Project will draw more guests and visitors year-round. The REIR should therefore have estimated summer ridership under future conditions with the Project to estimate the Project's impacts on transit.

Surveying existing guests is only marginally helpful because they are experiencing the resort the way it exists today. The Project would result in substantial changes to the site with very different amenities. For example, the Project would add the proposed Mountain Adventure Camp (“MAC”). The 90,000-square-foot MAC would “offer an extensive indoor/outdoor pool system including water slides and other water-based recreation. The facility would provide additional entertainment options that could include indoor rock climbing, a movie theater (maximum 300 seats), a bowling alley (maximum 30 lanes), and a multigenerational arcade” as well as food and beverage facilities and group meeting venues. RDEIR at 3-13 to 3-15. Given the proposed expanded facilities with summer activities, it is reasonable to presume that the Project would attract day use visitors year-round and not just during the winter months. Therefore, while winter might be the resort's busy season currently, the new amenities are likely to increase use in year-round that would increase transit ridership by guests year-round as well.

In summary, because the REIR fails to account for the increase in transit demand from the Project's guests and visitors, it does not accurately identify the full extent of the Project's impacts on area transit. Once the EIR accurately accounts for the number of

guests and visitors that would be expected to use transit in the Project vicinity, the County must identify mitigation for these impacts. The EIR must be revised and recirculated with this information.

F. The RFEIR Fails to Correct the RDEIR's Inadequate Analysis of and Mitigation for the Project's Wildfire and Emergency Evacuation Impacts.

We have reviewed the RFEIR's responses to our comments regarding the RFEIR's failure to remedy the deficiencies identified by the court concerning the feasibility of safely evacuating the Project site in the event of a wildfire. Our review and the comments below are supported by comments through personal communication with Thomas Cova, Ph.D, who specializes in Environmental Hazards, Emergency Management, Geographic Information Science, Transportation, and Warning & Evacuation.¹⁴ Given the short time period available to review and prepare comments on the RFEIR, we anticipate submitting additional comments prepared by Dr. Cova in the coming weeks. As we explain below, the RFEIR fails to adequately respond to our comments on the RDEIR or to conduct further analysis as directed by the court.

1. As with the RDEIR, the RFEIR Fails to Adequately Take Into Account the Extreme Risk For Emergency Evacuation Posed by the Environmental Setting in Olympic Valley.

In our comments on the RDEIR, we stated that, in re-evaluating the Project's evacuation time as required by the Court of Appeal, the REIR must take into account significant changes in the environmental setting for the Project. *See* RFEIR at 3.2-151 to 3.2-153; *see also King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 899 (“[T]he normal choice of baseline conditions does not apply to the revised EIR's analysis of water supply impacts and air quality impacts because significant new information has become available on each subject.”). In particular, we raised concerns about new hazardous conditions presenting increased evacuation risks given the Project's location in a valley with only one means of ingress for emergency vehicles and one means of ingress and egress for evacuating residents and visitors. RFEIR at 3.2-152. OVPSD comments also expressed concerns related to the Project site's location posing an extreme risk during emergency evacuations due to lack of access in light of changed conditions. RFEIR at 3.2-100. The RFEIR dismisses both comments and responds that no evidence is presented regarding changes in the Project setting since 2016 that would substantially

¹⁴ Neal Liddicoat of Griffin Cove Transportation Consulting (“GCTC”) has retired, but we expect Thomas Cova's upcoming report will address the response to GCTC's report.

increase the severity of wildfires or how a wildfire would behave in Olympic Valley. RFEIR at 3.1-47. This response is incorrect.

First, as the RFEIR acknowledges, the Olympic Valley Community Wildfire Protection Plan (“OVCWPP”) “does provide new information in descriptions of vegetation conditions based on LiDAR (light detection and ranging) vegetation data collected in 2021 and field reviews conducted in 2022. An objective of this data collection was to describe the “density of small trees, shrubs, and other ‘ladder fuels’ adjacent to structures.” RFEIR at 3.1-54. However, the RFEIR then concludes that because there are few structures on the Project site and little vegetation, the new information does not apply to the Project area.

This limited interpretation of changed conditions in Olympic Valley ignores several facts. Ladder fuels up the canyon can promote fires to move through the canyon and towards the Project site, making the new data relevant. In addition, fire embers can be carried in wind currents for many miles ahead of the fire front. Therefore, fire embers can threaten structures far away from the burning fire. Furthermore (and as discussed further below, *infra* Part III), the meadow and golf course areas, as well as areas along SR 89, have all been upgraded in severity and are now all designated as being in the Very High Fire Hazard Severity Zone—a significant development since the 2016 EIR. These areas can provide fuels for fire. Therefore, the new data provided in the OVCWPP is, in fact, relevant to analysis of Project-related wildfire risks.

Second, the wildfire season has become longer since 2016. As pointed out by OVPSD and the Olympic Valley Fire Department in the OVCWPP, whereas fire potential was previously typically limited to the period from early spring to late fall, fire potential now is nearly year round due to severe drought in recent years. RFEIR at 15-3; OVCWPP at 20.

Relatedly, dangerous fire conditions have also increased in severity. In fact, in 2019 the National Weather Service introduced the term “Extreme Red Flag Warning,” an enhanced version of Red Flag Warnings to describe extremely dangerous conditions for fire growth and behavior due to a combination of strong winds, low humidity, long duration, and dry fuels. *See*, Exh. 25, Los Angeles Times, What are red flag warnings?, November 16, 2019. The need for a new term to describe never-before experienced fire danger conditions is indicative of increases in the severity of wildfires. Together, the two phenomena of longer fire seasons and increased dangerous fire conditions, indicate the potential for an increased risk and severity of wildfires overall.

Third, there is ample evidence in the record citing studies and reports showing that recent fires have burned at previously *unprecedented* rates aided by winds accelerating the

fire's spread and carrying embers igniting new sites up to 24 miles away. RFEIR at 3.2-152. In addition, as explained in the OVCWPP:

“[C]limate change is redefining the experts’ understanding of what it is possible for wildfires, and the past is a poor predictor of future conditions or scenarios. Both the 2021 Caldor and Dixie Fires demonstrated the inability of firefighters to stop major fuel-driven wildfires until weather or fuel conditions changed.”

OVCWPP at 11. Furthermore, “[A]s the climate changes, these more extreme weather events are becoming more common, and the community is at an increased risk.” OVCWPP at 8. Fire behavior has changed as climate change has resulted in higher temperatures, longer drought periods, and more intensive fires that create their own climate.

The Olympic Valley is not immune from experiencing the effects of these changed conditions; in fact, it is especially vulnerable to them. For example, OVPSD commented that statements by former fire chief Banson of the Squaw Valley Fire Department at the time, that a wildfire and mass evacuation in the Olympic Valley is unlikely is “not accurate and is not consistent with recent reports or District preparedness.” RFEIR at 3.2-102. Specifically, OVPSD explains that recent fires (e.g., Caldor Fire of 2021) demonstrate that wildfires can burn upslope into the Tahoe Basin and the Olympic Valley “could in fact be host to catastrophic wildfire.” *Id.* The RFEIR states that fire agencies have long known that fires may cross over the crest so that this is not new information. RFEIR at 3.1-44 and 45.

Fourth, Calfire’s most recent fire survey of the Olympic Valley area includes recommendations related to access and evacuation. The survey report specifically recommends creation of a secondary access to the residential area in Olympic Valley. Exh. 26 at 4.¹⁵ As discussed further below (*infra*, Part III), the recommendation is based on specific conditions in the Olympic Valley, including but not limited to, topographic features that contribute to the area’s susceptibility to wildfire.

Rather than stubbornly denying that changes in climate and fire behavior now make a catastrophic fire and need for a mass evacuation in the Olympic Valley more likely, the EIR should have incorporated recommendations from fire prevention and fire fighting agencies. These agencies called for preparation of a comprehensive analysis, identification of additional feasible mitigation (such as a secondary access to facilitate more efficient

¹⁵https://services1.arcgis.com/jUJYIo9tSA7EHvfZ/arcgis/rest/services/Subdivisions_Public_VIEW/FeatureServer/0/2357/attachments/1995

evacuation), and Project alternatives that would reduce evacuation risks and save lives (i.e., a greatly reduced size project).

The aforementioned changes, including the increase in the severity of wildfires and how a wildfire would behave in Olympic Valley and the surrounding region, constitute significant new information about the Project setting since 2016 that must be considered in the REIR's evacuation analysis. The REIR's failure to do so is a fatal flaw.

2. The RFEIR's Analysis of the Project-Specific Emergency Evacuation Impacts Remains Flawed.

The RFEIR dismisses comments calling for additional analysis of evacuation routes and times in Olympic Valley. Most egregiously, the RFEIR's response to comments regarding the need for additional analysis of evacuation routes and times, including cumulative conditions, are incomplete and inadequate. In the Court of Appeal's ruling on evacuation impacts and mitigations, the court found that the DEIR underestimated the length of time needed to evacuate the Project in the event of a wildfire. RFEIR at 3.2-153 and 154. The underestimation of time needed for a mass evacuation is significant. See *Sierra Watch*, 69 Cal.App.5th at 104 (unpublished portion). We criticized the RDEIR saying that "other than recognizing that the evacuation time would increase due to additional cumulative projects, the RDEIR makes no serious attempt at correcting the EIR's failed analysis." *Id.*; see *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1050 (an environmental document that essentially repeats an analysis the court rejected is insufficient).

The Court Ruling states that, because the 2016 EIR incorrectly identifies that the OVFD would provide traffic control as part of the 2016 EIR's evacuation analysis, the EIR "underestimated evacuation times in the event of an evacuation" and concluded that the underestimation is significant. *Sierra Watch*, 69 Cal.App.5th at 104 (unpublished portion). The sole revision made in the RDEIR in response to the ruling, was substitution of a different agency that would provide traffic control. RFEIR at 3.2-153 and 154. However, the RFEIR's assumption that adequate personnel would be available for traffic control or could even reach the site during a wildfire remains unsupported.

First, the RFEIR provides no evidence to support the claim that emergency personnel are guaranteed to be available to control traffic at intersections. RDEIR at 15-2 and 15-3 and RFEIR 3.1-57 and 3.1-58. The REIR only points to the Eastside Emergency Evacuation Plan ("EEEP") and the fact that it addresses responsibilities of first responders to traffic control during an emergency evacuation. RDEIR at 15-2. It is critical to not just to

swap out the names of the agencies that have primary responsibility to direct the evacuation, but also to provide substantial evidence that traffic control that assures safe evacuation is realistic.

Second, the assumption that there would be no significant impact related to emergency evacuations because an emergency plan for the region indicates that emergency personnel will direct traffic during an evacuation, borders on the ridiculous. Given the estimated amount of cumulative traffic in a mass evacuation scenario, it is highly unlikely that *any* personnel could get through to direct traffic, much less that there would be a free flow of traffic on Olympic Valley Road and SR 89. As the Eastside Emergency Evacuation Plan itself acknowledges “[P]otential issues include access and egress for emergency vehicles and evacuees alike...” EEEP at 6. In addition, a recent study commissioned by the nonprofit, Tahoe Sierra Clean Air Coalition, estimates that under current conditions “it could take nine to 14 hours — or more — to clear the tourist-laden area, as drivers gather on roads that may be jammed or closed.” See, “Could crowded Tahoe evacuate fast enough from an inferno? New study presents dire scenarios,” San Francisco Chronicle, August 28, 2024, attached as Exh. 27. Therefore, the RFEIR’s assumption of relying on traffic management at intersections is not supported by evidence.

Rather than looking to solutions to improve evacuation efficiency, the RFEIR relies on *res judicata* to excuse the County from further analysis, but as explained throughout this letter, among other claims, *res judicata* would not bar claims based on the substantial portions of the EIR that have been revised.

The RFEIR also relies on the ability to construct and designate shelter-in-place (“SIP”) shelters over successful evacuation, however, the REIR provides no evidence that such shelters are realistic or effective at the scale required for the Project. The RFEIR states that the Project would improve the existing evacuation/shelter-in-place strategy in Olympic Valley by replacing the existing surface parking lot with project facilities as the designated shelter-in-place location. RFEIR at 3.1-59. However, the question is not simply whether SIP is an improvement over a temporary refuge area (“TRA”). The two are different protocols that can be used depending on the circumstances. In the event of a fire in Olympic Valley, the Project would need to provide shelter-in-place space for thousands of people to safely accommodate all residents, employees, guests and visitors. This level of SIP has never been performed at this scale in any wildfire in world history, and is thus experimental. Personal communication, Carmen Borg, urban planner with Shute, Mihaly, and Weinberger and Thomas Cova, Ph.D, professor at the University of Utah, specializing in wildfire warning and evacuation analysis and modeling, August 22, 2024.

The Project's plan to provide SIP/TRA at the scale proposed raises many questions. For instance, the RFEIR describes a situation where "people are ordered the shelter-in-place." RFEIR at 3.1-65. Does this mean that people will not have the option to evacuate? Would the order be 'mandatory' with the expectation that some people wouldn't comply (evacuate)?¹⁶ Would the sole exit be blocked to ensure compliance with the SIP/TRA plan? What capacity would the SIP/TRA sites accommodate? How long would it take visitors/residents to get to a SIP/TRA and what safety risks would that travel entail? How would the plan accommodate people with respiratory conditions who might not survive the smoke in a SIP/TRA plan? Would residents in houses surrounding this development have access to the SIP/TRA sites or would they have to evacuate at their own risk? What level of protection would a SIP site offer (structure) relative to a TRA site (parking lot)? How long would the SIP/TRA sites be able to protect against heat exposure? What is the process proposed for ending a SIP/TRA of this scale? Answers to these questions cannot be deferred until after Project approval, especially given that lives would be at stake. While SIP/TRA can be a helpful back-up to evacuating communities at risk, SIP/TRA are not a panacea worthy of brushing safe egress aside. Given the proposed scale of the SIP proposed, at a minimum, the County must require, a comprehensive SIP/TRA plan prior to considering Project approval.

The RFEIR admits that the situation on the ground has changed due to cumulative conditions and there would be even more people trying to evacuate than previously thought. RFEIR at 2-2. In addition, as discussed further below, Calfire has upgraded the designation of portions of the Olympic Valley and areas along SR 89 that were designated as "Moderate" or "High" Fire Hazard Severity zones, to "Very High" Fire Hazard Severity zones. The combination of increased traffic combined with an increased wildfire risk, as demonstrated by the changed fire hazard severity designation, is a changed condition causing more potential hazards on area roads that must be evaluated.

3. The RDEIR Fails to Adequately Analyze or Mitigate the Project's Construction-Related Emergency Evacuation Impacts.

The RFEIR's remedy for the court-ordered revisions related to analysis of evacuation times during the Project's 25-year construction period remains inadequate. The RFEIR response merely reiterates the RDEIR's addition of Mitigation Measure 15-4, which requires implementation of Measure 9-8 and includes preparation of a Construction

¹⁶ For example, in Rancho Santa Fe, a community designed to SIP in homes, however, when the Witch Creek Fire burned through the development, not one resident stayed in their home. Personal communication, Carmen Borg, urban planner with Shute, Mihaly, and Weinberger and Thomas Cove, Ph.D, professor at the University of Utah.

Traffic Management Plan (“CTMP”). However, the RFEIR perpetuates the RDEIR’s failure of deferring preparation of the plan.

This approach is unacceptable under CEQA. Measure 15-4 improperly defers preparation of the plan a later date. CEQA generally prohibits deferral of mitigation, except in narrow circumstances. To do so, (1) there must be practical considerations that preclude development of the measures at the time of project approval, (2) the EIR must contain criteria to govern the future actions implementing the mitigation, and (3) the agency has assurances that the future mitigation will be both “feasible and efficacious.” *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17. This standard is not met here.

In addition, while Mitigation Measure 15-4 includes the objective of removing potential traffic obstructions during emergency evacuation, others are not defined. Only minimal performance criteria have been identified for the CTMP. DEIR at 9-67. Specifically, the four criteria are:

- 1) Delivery trucks do not idle/stage on Squaw Valley Road.
- 2) Squaw Valley Road does not feature any construction-related lane closures on peak activity days.
- 3) All construction employees shall park in designated lots owned or leased by Squaw Valley Resort.
- 4) Roadways, sidewalks, crosswalks, and bicycle facilities shall be maintained clear of debris (e.g., rocks) that could otherwise impede travel and impact public safety.

While these standards are a good start, they do not, on their own, provide substantial evidence that acknowledged significant impacts related to interference with implementation of applicable emergency evacuation plans would be reduced to less-than-significant levels.

Furthermore, the RFEIR has refused consideration of specific requested measures by OVPSD, which would facilitate evacuation both during construction and during operation of the Project site. For example, the RFEIR dismisses the need for a secondary access road and dismisses recommendations by OVPSD to improve existing roads to enhance access for emergency responders and evacuation of residents and guests. RFEIR, OVPSD comment at 3.2-100 and -101; response at 3.3-16 and -17. OVPSD calls these road improvements “critical components to the Valley’s wildfire evacuation system” and indicates that “enhancement of these roads could help mitigate the additional time for all vehicles to exit the Valley during a wildfire evacuation under the future development

conditions.” At 3.2-101. Moreover, the OVPSD feels strongly that the CTMP should be developed now. At 3.2-103. The County should prioritize implementation of measures recommended by the agency responsible for fire prevention and fire evacuation in the Project area. These mitigation suggestions also constitute substantial new information that must be considered in the REIR as discussed further below.

III. The RFEIR Does Not Correct the RDEIR’s Failure to Recognize New Substantial Information that Requires Revised Analysis of and Mitigation for Several of the Project’s Significant Environmental Impacts.

In our prior comments, we explained that because so much time has passed since preparation of the 2016 EIR, the County should update and recirculate the EIR. In addition, significant new information has become available that triggers CEQA requirements for preparation of subsequent environmental review and circulation. The RFEIR dismissed these comments claiming that *res judicata* excuses the County from considering new information, and that recirculation is not required. RFEIR, Master Response: Recirculation at 3.1-3. This rationale is incorrect.

As discussed throughout this letter, and the RFEIR itself concedes that, given that the trial court set aside the EIR for the Project, the County as lead agency is required to evaluate impacts based on new circumstances or new information. RFEIR at 1-2. Therefore, to ensure that the public, Planning Commissioners, and the Board of Supervisors have adequate information to consider the proposed Project, the County must prepare and recirculate a revised EIR that includes a full analysis of the Project’s impacts, including those related to transportation, hydrology and water supply, air quality, climate change, and biology among other topics. Moreover, the County is obligated to evaluate the Project’s consistency with applicable County and regional requirements. Unless and until the County corrects the legal inadequacies of the REIR, the County may not lawfully approve the Project.

A. The RFEIR Fails to Justify the County’s Refusal to Revise and Recirculate the EIR’s Transportation Analysis and Mitigation.

Like the environmental documents before it, the RFEIR dismisses numerous comments identifying flaws in the EIR’s transportation analysis. Rather than conduct the relevant analyses, the RFEIR stubbornly denies that CEQA requirements and new requirements and plans adopted by the Tahoe Regional Planning Agency, and the County itself, are applicable to the proposed Project. However, as explained in section I of this letter above, the RFEIR’s reliance on *res judicata* applies only to litigation, and it neither precludes the County from performing relevant CEQA analysis, nor excuses the County

from meaningfully responding to all public comments. Here, the EIR misses the mark on both fronts; first by foregoing an adequate analysis of transportation-related impacts and second by dismissing comments about significant traffic impacts and related impacts to public safety.

Furthermore, the EIR plays a shell game with the public and decisionmakers. Specifically, the County received many comments that increased traffic in the area constitutes significant new information that would result in new and substantially more severe traffic congestion impacts than analyzed in the 2016 EIR, thereby requiring recirculation. RFEIR at 3.1-129 and 3.1-130. The RFEIR response, on the one hand, cites to legislative and regulatory changes related to traffic analysis under CEQA that shift analysis requirements from a Level of Service (“LOS”) standard to vehicle miles travelled (“VMT”), thereby purportedly rendering the issue of traffic congestion moot. On the other hand, the RFEIR states that the EIR is not required to incorporate the new VMT approach for analyzing transportation impacts because the EIR was initiated prior to legislation requiring the analysis. RFEIR at 3.1-129. In this way, the RFEIR reaches the conclusion that *neither* analysis is required for the proposed Project. RFEIR at 3.1-131. In other words, the County is trying to have it both ways by not committing to fully evaluating traffic impacts under either potentially applicable standard.

The RFEIR acknowledged that “CEQA Guidelines Section 15064.3, became effective statewide, effectively removing LOS from consideration as a significant impact under CEQA and replacing LOS analysis with VMT analysis as the preferred metric for analyzing the transportation impacts of proposed projects.” RFEIR at 3.1-131. The EIR goes on to state that the CEQA Guidelines changes operate “prospectively” and are not “new information” triggering further review. *Id.* Tellingly, the RFEIR calls out its own hypocrisy when it states:

This conclusion may seem to conflict with responses to comments provided elsewhere in this Final EIR, but it does not. In the Master Response regarding changed conditions under CEQA and the Master Response regarding the VMT analysis, it is explained why the changes in the CEQA Guidelines resulting from SB 743, and reflected in CEQA Guidelines Section 15064.3, need not be considered in the REIR. Therefore, in those Master Responses it is identified that one component of SB 743, VMT impact analysis, is not applicable to this REIR, while in this Master Response, another component of SB 743, removal of LOS/traffic congestion as a significant impact under CEQA, is applicable to this REIR. These different approaches to different components of SB 743 are correct and appropriate.

RFEIR at 3.1-129.

In fact, the failure to evaluate significant impacts and identify appropriate mitigation or alternatives to minimize them, is inconsistent with CEQA requirements. Foregoing this analysis would lead not only to increased traffic delays, but to public safety hazards and degraded air quality, all at the expense of the communities that would be impacted.

1. CEQA Requirements Regarding Measuring Transportation Impacts Have Changed Since Project Review and Approval.

As explained above, the RFEIR incorrectly relies on res judicata to conclude that the County does not have to further analyze transportation impacts due to new information and changed conditions. Contrary to the REIR's assertions, the scale and far-reaching impacts of the Project combined with changed circumstances in the past eight years require the County to prepare a complete analysis of transportation impacts. Furthermore, as explained above, because the Court set aside the prior EIR, the County is now considering new approvals based on a new CEQA analysis and must "begin anew the analytical process required under CEQA." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 425.

As pointed out by Caltrans, the REIR fails to provide adequate trip generation information for the land uses proposed for the Project. Caltrans comment letter, RDEIR at 3.2-4 and 3.2-5. Caltrans requested a "VMT-Focused Transportation Impact Study" and explained that this "trip generation information is necessary to identify any changes in areawide Vehicular Miles Traveled (VMT), which is required under Senate Bill 743." *Id.*

Caltrans expresses concerns regarding:

the overall increase in traffic volumes, particularly during seasonal operation of recreational facilities and special events, to exacerbate existing congestion conditions, and potentially introduce conflicts and resulting safety concerns at key locations. This is especially important at locations where bicyclists and pedestrians may interact with vehicular traffic, such as at intersection crosswalks, mid-block crossing locations, access points for bicycle trails and transit stops.

RFEIR at 3.2-5.

The RFEIR dismisses the agency's concerns, stating only that the Project's increase in traffic has not changed since preparation of the 2016 EIR. RFEIR at 3.3-2.

Once again, the RFEIR ignores changed circumstances, such as existing traffic conditions in the region, and incorrectly relies on res judicata to justify the lack of analysis.

2. Placer County and TRPA Have Adopted New Transportation Planning Documents Applicable to the Project.

As explained in our comments on the RDEIR, since the Project was initially proposed, Placer County and TRPA have adopted new regulatory guidance, requirements, and plans related to transportation analysis. RFEIR at 3.2-164. The County's revised Transportation Study Guidelines ("TSG") apply under the following conditions:

- Permit applications subject to discretionary approval
- The project has the potential to create a significant environmental impact under CEQA that has not previously been addressed in a certified CEQA document, as determined by County staff.
- The project will substantially alter physical or operational conditions on a County roadway, bikeway, sidewalk, or other transportation facility.
- The project may affect roadway safety.
- The project generates a significant percentage of heavy vehicle trips.
- The project has the potential to generate 110 or more new passenger vehicle trips per day.

Placer County TSG at 9. Here, all of these conditions clearly apply to the proposed Project, and therefore, a revised environmental analysis consistent with the County's own Guidelines must be prepared.

In addition, the TSG provides guidance on establishing the study area boundary. The study area "should extend as far as any potential transportation impact might occur, including across jurisdictional boundaries," and "[C]areful consideration of all modes and facilities (i.e., transit, pedestrian, bicycle, vehicle, rail crossings, etc.) is required when selecting the study area." TSG at 14. This EIR fails to comply with this guidance.

Moreover, the TSG provides specific guidance for projects of statewide, area-wide, or of regional significance directing that the study area "shall consider highways and rail facilities within 10 miles of the project site." TSG at 14. The TSG requires that VMT analysis tools estimate VMT using the full length of trips, rather than truncating trips at jurisdictional boundaries. Here, many of the trips to the proposed resort would initiate from the urban centers of Sacramento and the San Francisco Bay Area, so that the full length of

those trips must be taken into account. *See also*, Exh. 1, Baseline Report at 12-14. Similarly, trips from the Project site into the Tahoe Basin must be taken into account. For potential impacts to pedestrian and bicycle facilities, the study area should include pedestrian facilities within a minimum of ½ mile and for bicycle facilities within a minimum of two miles of the Project site. This EIR fails to conduct this required analysis.

A revised analysis should include a comprehensive analysis of total VMT resulting from the Project using a threshold of zero net increase and incorporating all relevant assessments as directed and prescribed in the County's guidance. TSG, Table 2 at 27, and Chapters 4 (CEQA Impact Assessment) and 5 (Local Transportation Assessment). Finally, any significant VMT impact must implement applicable mitigation measures as provided in the guidance document. TSG, Table 4 at 34.

Similarly, the RFEIR should have applied regional transportation planning goals and standards, as well as TRPA regulations and requirements, as explained above in section II.A.3.e.

3. The RFEIR Introduces Further New Information With Analysis and Mitigation of Queing Impacts at the SR 89/Olympic Valley Road Intersection.

The RFEIR identifies a changed condition of increased Project-related trips based on new traffic counts conducted in February 2024. RFEIR at 2-2. The RFEIR consequently introduces a new analysis of queing impacts at the intersection of SR 89 and Olympic Valley Road. RFEIR and 2-1 to 2-4 and Appendix E, Fehr and Peers Memo at 5. The RFEIR discloses that level of service at the SR89/Olympic Valley Road Intersection under Existing Plus Project Conditions and Cumulative Plus Project Conditions would degrade significantly and would exceed available queing storage at the intersection. RFEIR, Appendix E, at 4-6 and 7-9. Therefore, the analysis reveals more severe impacts than previously disclosed, triggering CEQA requirements for recirculation. *Id.* and CEQA Guidelines § 15088.5

The RFEIR claims that the significance conclusion is unchanged from the 2016 EIR and that the modification of the mitigation measure is not a significant change. This conclusion is incorrect. The RFEIR proposes two related mitigation measures to address this queuing impact, which indicates that the changed condition would result in more severe significant impacts than previously disclosed. The mitigation measures comprise lengthening the northbound turn lane on SR 89 to accommodate greater queuing capacity. Appendix E, Fehr and Peers Memo at 9.

According to the Fehr and Peers Memo, implementation of the measures “would allow the entire queue to fit within the lengthened turn pocket.” *Id.* However, the RFEIR fails to provide any construction plans or details on implementation of the measures. Importantly, the RFEIR, like its predecessor, fails to assess cumulative impacts, such as the combined construction of a transit only lane on SR 89 as called for in the Resort Triangle Plan and 2020 RTP/SCS. RFEIR at 3.2-166. In addition, the RFEIR fails to adequately analyze potentially significant impacts resulting from implementing the new mitigation measures. For instance, construction along SR 89 could result in new significant impacts to recreational/transportation facilities, such as trails/paths and parks along the Truckee River. In addition, implementation of the measures could result in impacts to delineated wetlands in the area. RFEIR at 2-6. Yet, the RFEIR fails to evaluate impacts to recreational resources and glosses over potential impacts, such as impacts to wetlands.

Under CEQA, if proposed mitigation measures would themselves cause significant effects, the EIR must also disclose these impacts. CEQA Guidelines § 15126.4(a)(1)(D). Therefore, to comply with CEQA, the County must recirculate this and other needed revisions to the REIR.

B. The RFEIR Fails to Justify the County’s Refusal to Revise and Recirculate the EIR’s Analysis of and Mitigation for Impacts to Hydrology and Water Quality.

1. The RDEIR Trivializes the Substantial New Information Demonstrating Climate Change will Significantly Impact Hydrology and Water Supply.

In commenting on the RDEIR, Sierra Watch explained that there have been significant, material changes related to the impacts of climate change on hydrology and water supply since preparation of the original EIR. This includes, for example, a 2021 report by the United States Department of Agriculture concluding that climate change will reduce snowpack in the Sierra Nevada and that the region’s precipitation patterns will have substantial variability and uncertainty in the future. Additionally, a 2022 study by the California Office of Environmental Health Hazard Assessment also found that the proportion of precipitation as snow will decrease rapidly due to climate change, greatly affecting hydrologic conditions in the Sierra Nevada.

The RFEIR itself highlights a crucial change: the February 2024 release of the County-commissioned analysis of climate change impacts on groundwater in Olympic Valley, prepared by Universal Engineering Services, Inc (“UES”). Exh. 28 (UES Report). The purpose of the UES analysis was specifically to “update the Olympic Valley

groundwater model and reevaluate the findings of the current [Water Supply Assessment] with the publicly available resources and guidance issued by the California Department of Water Resources.”¹⁷ UES’s analysis provided vital conclusions:

- “Peak runoff in future 2070 climate conditions is predicted to shift from May under historical conditions to January or February by 2070 conditions, reflecting warmer temperatures and a significant shift from precipitation occurring as snowfall to rainfall, with a subsequent reduction in snowpack accumulation and snowmelt runoff. This shift in the timing of runoff will directly affect the timing of Olympic Valley aquifer recharge occurring from Washeshu Creek runoff.”¹⁸
- “Washesu Creek is an intermittent stream, in that runoff entering the valley at the western edge ceases for part of the year, typically from mid-summer to fall. The earlier peak runoff occurrence predicted for the future 2070 climate conditions is interpreted in this evaluation to result in an earlier cessation of flow in the summary by an average of 1 to 2 months. This lengthens the seasonal period when the Olympic Valley aquifer is receiving no significant recharge from streamflow and groundwater that is being pumped is derived from aquifer storage.”¹⁹
- “The cumulative effects of the modifications made to the model to represent future climate conditions of 2070 is that the saturated aquifer thickness during summer months will decrease.”²⁰

A hydrological expert has emphasized the key findings made by UES, characterizing them as new information that original EIR did not consider. Exh. 3 at 4-5 (CBEC RFEIR Report). Specifically, the CBEC RFEIR Report noted that the Olympic Valley Groundwater Basin will continue to recharge each year, but climate change will

¹⁷ Olympic Valley Public Service District, Memorandum Re Climate Change Modeling – Olympic Valley Groundwater Model, at 1 (February 27, 2024), available at https://www.ovpsd.org/sites/default/files/F-1_Climate%20Change%20Groundwater%20Modeling.pdf.

¹⁸ Universal Engineering Services, LLC, Memorandum Re Climate Change Modeling – Olympic Valley Groundwater Model, at 24-25 (February 20, 2024), available at https://www.ovpsd.org/sites/default/files/F-1_Climate%20Change%20Groundwater%20Modeling.pdf.

¹⁹ *Id.* at 25.

²⁰ *Id.*

narrow the seasonal period of significant aquifer recharge. *Id.* As a result, there will no longer be nearly as much recharge available to offset seasonal pumping demands that have historically occurred between April and July. *Id.* This finite volume of groundwater storage will need to be stretched over a longer dry seasonal period during the time of highest groundwater demands and pumping. *Id.* Additionally, the UES analysis demonstrated that climate change will cause notable and universal decreases in saturated thickness at pumping wells, which will adversely impact sensitive species within and adjacent to the mapped project area. *Id.* at 5.

2. The RFEIR fails to justify the County’s continued reliance on the outdated 2015 Water Supply Assessment.

The RFEIR does not seriously dispute the evidence put forward by Sierra Watch that shows climate change will reduce snowmelt in the Sierra Nevada Mountain Range, or that snowmelt reduction generally affects groundwater supply. Instead, the RFEIR takes the position that snowmelt reduction is entirely irrelevant in the “specialized circumstance” of Olympic Valley, where groundwater is filled primarily by precipitation, not snowmelt. The RFEIR cites to data provided by the Department of Water Resources (“DWR”) purportedly indicating “annual precipitation on the Valley floor is predicted to increase” as a result of climate change. RFEIR 3.1-35. The RFEIR also cites data from the WSA showing that “the total groundwater demand from the Basin in 2040 is expected to be ... 4.7 percent of the total precipitation on the watershed.” RFEIR 3.1-32. According to the RFEIR, because “the amount of annual precipitation available for groundwater recharge exceeds the water demand,” even “the most conservative estimates of annual runoff reduction would have a limited effect on the availability of groundwater in the Basin.” RFEIR 3.1-32.

The RFEIR’s position is untenable because it entirely ignores important timing concerns. Neither the WSA, nor any of the evidence cited in the RDEIR or RFEIR, in any way demonstrate that there will be sufficient groundwater supply *throughout the year*. That overall, annual precipitation levels may not be substantially affected by climate change does not mean that there will be sufficient groundwater supply in the dry months when refill is occurring at a very low level. The UES concluded that climate change will “lengthen[] the seasonal period when the Olympic Valley aquifer is receiving no significant recharge.” The RFEIR itself recites data from DWR showing that “individual months occur when precipitation is predicted to decrease.” (RFEIR 3.1-36.) A hydrologist who reviewed the UES analysis emphasized that the shift in peak runoff due to climate change will “undoubtedly lead to Washeshu Creek drying down much earlier than it does currently.” CBEC RFEIR Report at 4.

New information released after the certification of the original EIR provides substantial evidence demonstrating climate change will severely impact groundwater supply in the Olympic Valley Groundwater Basin in ways previously undisclosed in the 2015 WSA. The County must therefore recirculate the DEIR and prepare a new water supply assessment that adequately accounts for the impacts of climate change on hydrology and water supply. Specifically, the County must account for the voluminous new evidence demonstrating groundwater availability will be diminished for longer periods of the year than previously identified in the original EIR.

C. The RFEIR Fails to Justify the County’s Refusal to Revise and Recirculate the EIR’s Analysis of and Mitigation for Impacts Biological Resources.

Neither the RDEIR nor RFEIR attempt to supplement the original EIR’s biological resources analysis, despite new information illustrating the impacts of climate change on groundwater supply will be more severe than previously known. In the original DEIR, the County consistently emphasized that lack of groundwater availability would adversely affect numerous biological resources, including: riparian vegetation (DEIR at 6-42 to 6-44); meadow vegetation (*id.* at 6-44 to 6-45); Sierra Nevada yellow-legged frog habitat (*id.* at 6-51 to 6-53); and Yellow warbler nesting habitat (*id.* at 6-55 to 6-56). These impacts derive from the fact that the Project “will rely on groundwater as its primary water source, and the increase in total extraction, along with continued and increased pumping in existing and new wells, particularly near the stream corridor, could reduce groundwater support to streamflow and surface water elevations and/or expand the spatial extent of dry streambed and/or the duration of zero flow within and downstream of the main Village area.” DEIR at 6-78.

The DEIR and FEIR repeatedly emphasize that *consistent* groundwater availability is crucial to avoiding significant impacts, as sustained dry periods may result in such impacts:

- “Dry periods, from late summer through fall, when stream flows are at the annual minimum and some reaches experience desiccation, limit the growth and diversity of fish and invertebrate communities.” DEIR at 6-78.
- “Increased drying and reduced stream flow during the summer months would further promote the algal blooms that occur in Squaw Creek that occur in dry years under existing conditions.” DEIR at 6-78.

- “Decreased habitat availability and quality during the annual dry period limits the carrying capacity of the stream for resident fish for the remainder of the year or until the area can be re-colonized by immigration from downstream. The impacts could depress populations of fish and other aquatic species in the upper meadow reach of Squaw Creek near areas of increased well density and pumping. Reductions in fish populations during dry periods could also adversely affect trout fisheries within this localized area of the Squaw Creek meadow reach.” DEIR at 6-79.
- “[I]f the wellfield is not configured and operated as indicated in the WSA, longer and more frequently drying periods could occur, which could threaten the ability of the creek reaches near the well field to maintain a fish community.” DEIR at 6-79.

The RFEIR dismisses the new information presented by Sierra Watch and other commenters for the same reasons the RFEIR disregarded the evidence regarding the impacts of climate change on groundwater supply. The RFEIR states that the “data that is available regarding the effects of climate change in Olympic Valley does not result in changes in drought conditions or the availability of groundwater compared to what is provided as part of the 2016 EIR,” and thus any effects “dependent on water/groundwater (e.g. riparian habitat, meadows, individual species) would not be substantially changed.” RFEIR at 3.3-54.

As Sierra Watch pointed out in Section III.B, neither the WSA, nor any of the evidence cited in the RDEIR or RFEIR, in any way demonstrate that there will be sufficient groundwater supply *throughout the year*. That overall, annual precipitation levels may not be substantially affected by climate change does not mean that there will be sufficient groundwater supply in the dry months when refill is occurring at a very low level. The CBEC RFEIR Report emphasizes that the original EIR failed to evaluate the impacts of lower groundwater levels on sensitive riparian, wetland, floodplain, and wet meadow areas. CBEC RFEIR Report, at 5. Specifically, the analyses of potentially affected sensitive habitats from operational groundwater impacts within the mapped project area in the original EIR were based on simulated 2040 WSA groundwater levels—not the 2070 levels included in the UES analysis. *Id.* The new information presented by Sierra Watch and other commentators show that the total acres of potentially impacted habitats will increase due to updated knowledge of climate change impacts not known when the original EIR was certified. *Id.*

The new information presented by Sierra Watch demonstrates clearly that climate change will impact the timing of groundwater recharge, which will adversely impact

sensitive habitats within and nearby the Project area. The original EIR must be recirculated to account for, and evaluate, this new crucial information.

D. The RFEIR Fails to Justify the County’s Refusal to Revise and Recirculate the EIR’s Climate Change Analysis and Mitigation.

1. There is new science demonstrating significant environmental changes.

In our comments on the RDEIR’s analysis of impacts related to climate change, we commented that there is substantial new information and changed circumstances related to climate change that requires new analysis and additional mitigation. RFEIR at 3.2-171. The RFEIR response claims that because the 2016 EIR acknowledged that both climate change information and programs surrounding greenhouse gas reduction are evolving, new information about changed conditions is not considered “new information” under CEQA.

The undisputed fact that the existing setting related to climate change is more serious now than it was in 2016 is highly relevant. As explained throughout this letter, because the Court set the prior EIR aside, the County must consider the Project’s impacts anew. Significant changes in the setting and other changed circumstances, such as new applicable regulations, are very pertinent to this consideration. In addition, the County is required to analyze and disclose the extent and severity of the Project’s impacts where using the existing baseline is key. Where the environment is already degraded: “the relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718. Here, because the existing setting related to greenhouse gas emissions is worse than it was in 2016, the Project’s impacts will have a proportionally worse impact, which has not been disclosed.

2. There have been substantial regulatory and legal changes impacting the Project.

Sierra Watch and other commenters pointed out that there have been substantial regulatory and legal changes related to climate change in California since 2016 and that the REIR is required to take these these changed conditions into account. Instead of updating the analysis and mitigation, however, the RDEIR doubles down on relying on the 2016 analysis and fails to supplement it in any way. Simply acknowledging that the situation has degraded and will continue to evolve does not substitute for analysis that considers the

existing setting as the current baseline. Once the existing setting is updated, the EIR should then analyze the Project's impacts, and identify specific measures that will be implemented to minimize the impacts.

As explained in our comments on the RDEIR, it is particularly important that the County revise and recirculate the climate change section and mitigation to assess the new State's current Scoping Plan's recommendations because the sole mitigation measure for the Project's voluminous GHG emissions (MM-16-2) is tied to an attempt to comply with statewide reduction targets that have a substantial linkage to the Project. *See* FEIR at 2-81 to 2-82. The statewide reduction target requirements are new since 2016. FEIR at 2-77, 2-83. As the Court of Appeal subsequently found, in order to be legally sufficient mitigation, the EIR must either identify a statewide reduction target with a substantial linkage to the Project, or identify feasible and enforceable mitigation to lessen the Project's climate change impacts. *League to Save Lake Tahoe v. County of Placer* (2022), 75 Cal.App.5th at 121-22. The RFEIR fails to respond to this comment, instead restating that the Court upheld the 2016 EIR analysis of climate change impacts. RFEIR at 3.3-55. However, given that the *League* case was decided after the case on the 2016 EIR, the Court's decision signals that it is critical that for the mitigation to be effective, it must identify a statewide reduction target with a substantial linkage to the Project. At any rate, the County as lead agency is required to evaluate impacts based on new circumstances or new information, such as the setting, regulatory, and legal changes discussed herein, including the new Scoping Plan. RFEIR at 1-2.

As it is, the RFEIR's analysis of greenhouse gas emissions impacts remains legally inadequate under CEQA.

3. The EIR Must Consider Feasible New Mitigation Measures to Reduce the Project's Significant Climate Change Impacts.

As explained in our prior comments, the County is also obligated to identify specific, feasible measures to the ones included in the Project's GHG Mitigation Measure Toolbox, particularly mitigations that are new or newly found to be feasible since the original EIR was prepared, to reduce the Project's significant greenhouse gas emissions. The proposed mitigation measure highlighted in the RFEIR (Mitigation Measure 16-2) remains vague and defers the process of a) determining whether the new Scoping Plan constitutes a statewide reduction target that is substantially linked to the Project, and if so, b) identifying specific ways that the Project would meet those targets.

In our RDEIR comments, we recommended the EIR implement measures from the California Air Pollution Control Officers Association Handbook for Analyzing

Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (“CAPCOA 2021 Handbook”). This handbook includes state-of-art recommended measures that were not considered previously. The measures cover all areas that the Project could reduce emissions, including construction, energy use, and transportation. See, Exh. 29, excerpts of the CAPCOA 2021 Handbook. The County is required to identify specific measures to reduce the Project’s greenhouse gas emissions rather than deferring this mitigation until after Project approval.

Until the County performs the required analysis and identifies measures to meet the reduction targets, the public and decision-makers cannot know the extent and severity of the Project’s impacts on climate change, what measures the Project would implement to reduce its impacts to the greatest degree feasible, and how to monitor the Project’s compliance with MM 16-2 in light of the new Scoping Plan.

E. The RFEIR Fails to Justify the County’s Refusal to Broaden the Scope of the EIR’s Wildfire Analyses Beyond Emergency Evacuation Impacts.

As the catastrophic fires across California in the past decade demonstrated, wildfires dramatically alter the state’s environment, pose a tremendous risk of injury and death, and cause billions of dollars of damage to buildings and infrastructure. Further, the threat of wildfire is increasing. In the coming decades, climate change will alter temperatures, winds, precipitation, and species, with potentially substantial fire hazard impacts. To make matters worse, wildfire threats are no longer seasonal. Historically, fire season occurred during the summer or fall. But now, wildfire threats are almost year-round.

Development in the wildland urban interface, like the proposed Project, significantly exacerbates the human health and environmental damage wrought by wildfires. In addition to unwisely placing large numbers of people and structures directly in the line of fires, this development can dramatically increase ignition risks compared to existing undeveloped conditions. Common anthropogenic causes of fire include arson/incendiary, equipment use, debris burning, smoking, vehicles, fireworks, electricity, and outdoor cooking. *Id.* Additionally, structure fires sometimes spread and initiate wildland fires.

The resulting human health and environmental consequences are numerous and devastating. The most obvious is the direct loss life of life and property caused by the fires themselves. The ignition of a wildfire may occur with little or no notice and certain evacuation response operations are simply not feasible. In the October 2017 deadly Tubbs fire in Santa Rosa, “efforts to warn residents of approaching flames were successful only 50% of the time. The entire warning system was fraught with multiple levels of

malfunction and incompleteness.” See “*Alarming failures left many in path of California wildfires vulnerable and without warning*,” Los Angeles Times, Dec. 29, 2017, attached as Exh. 30.

In light of these facts, one would expect the REIR to have comprehensively analyzed the risk of wildfire-related impacts from the Project and from cumulative conditions. This analysis would evaluate the increase in the risk of wildfires due to human ignitions and the resulting harm to lives/human health, property, and the environment from these wildfires. Yet the REIR for the Project provide no such analysis. For instance, the REIR fails to disclose in any meaningful way the threat to individuals’ public safety as they attempt to evacuate, especially during a wind-driven fire. Generally the REIR describes vague emergency response plans that provides goals, objectives and actions for emergency response agencies, such as focusing on early evacuation and even sheltering in place. RFEIR at 3.1-60. Moreover, the REIR appears to assume that a fire will initially occur at some distance from a project site and that residents will have ample time to evacuate. This, of course, is far from guaranteed.

Furthermore, wildfires have a substantial economic impact on local communities. Aside from costs associated with potential loss of property, communities also suffer from increased healthcare costs resulting from exposure to fire and smoke, lost revenue for local businesses when visitors and guests leave the Tahoe area due to fire threat, smoke, and fire risk, increased fire insurance costs and increased costs of preventing and fighting wildfires. See, <https://www.frbsf.org/research-and-insights/publications/economic-letter/2024/08/wildfires-and-real-estate-values-in-california/>, attached as Exh. 31; <https://calmatters.org/economy/2021/10/california-wildfires-economic-impact/>, attached as Exh. 32, and <https://www.sfchronicle.com/california-wildfires/article/wildfire-insurance-cost-california-19361549.php>, attached as Exh. 33. All of these costs are exacerbated when the County fails to curtail unplanned growth in areas of extreme high fire risk.

In short, a project built in a location known to have extreme wildfire risk cannot compensate for this hazard simply through a “fire-resistant” design. The only way to protect human life and structures is to not build in these locations in the first place. Wildfires and the devastation they inflict will only worsen if the County continues to allow unfettered growth in high fire hazard zones.

The County must disclose the potential for increased wildfires due to the potential for increased ignitions from the Project and evaluate the increased risk to health, lives and property from these fires. Only when this analysis is undertaken will the public and decisionmakers be apprised of the real-world implications of developing a Project of this scaled in the urban wildland interface.

1. Wildfires Have Increased In Severity Since the EIR and the Olympic Valley Is Particularly at Great Risk.

In our prior comments, we discussed changed setting and circumstances in the Tahoe region generally, and in the Olympic Valley specifically, that result in increased wildfire risk and severity in the past few years. RFEIR, Sierra Watch Letter at 3.2-174. Comments from the Fire Chief of the Olympic Valley Public Service District (“OVPSD”) echoed similar concerns. *See* RFEIR, OVPSD-2 Letter at 3.2-99 to 3.2-104. The RFEIR adamantly claims that information about increased fire risk is not new information and that how fires behave elsewhere in California is not an indication of how a wildfire will behave in the Olympic Valley. RFEIR at 3.1-47. This conclusion is incorrect.

First, the OVPSD comment letter from Fire Chief Allen Riley dated January 30, 2023 specifically retracts the prior fire chief’s statements. In the comment letter, OVPSD quotes the old assessment and refutes its claim that Olympic Valley “is pretty favorable in terms of fuels and topography and the unlikely host event for a large wildfire.” RFEIR at 3.2-102. OVPSD disagrees, adding “to say that Olympic Valley is unlikely to host a large wildfire or require mass evacuation is *not accurate* and is not consistent with recent reports or District preparedness.” *Id.*; emphasis added. Indeed, OVPSD has concerns about basic public safety and “the evacuation time and the lead time available in order to conduct an orderly evacuation.” RFEIR at 3.2-100. As the RFEIR acknowledged, “The fire chief, by virtue of his position, is considered an expert on this issue.” RFEIR at 15-15. Yet, the RFEIR dismisses the fire chief’s comments. The RFEIR once again claims that increased fire risk is not new information and the County is not obligated to further analyze this issue under *res judicata*, and that the 2016 EIR’s conclusion that the “option of shelter-in-place even under evacuation scenarios where a long period of time would be required to complete an evacuation, public safety would be maintained” still stands. However, as discussed above in section II.F.2, and below in section III.E.3, this conclusion is not supported.

Second, whereas in the past, portions of the Olympic Valley and areas along SR 89 were designated as “Moderate” or “High” Fire Hazard Severity zones, all of the area is now designated as “Very High” Fire Hazard Severity zones. *See*, Exh. 34, CalFire Fire Hazard Severity Zones in State Responsibility Area for Olympic Valley, California, September 29, 2023. The RFEIR downplays this issue to make it sound as if the changes are inconsequential, which they are not. RFEIR at 3.1-52. Several areas on the Project site, including the meadow and golf course, and an area along the south edge of the main Village area, have been re-designated as Very High Fire Hazard Severity Zones. This change in designation is a clear indication that conditions related to wildfire risk have worsened in the Olympic Valley generally, and on the Project site specifically.

Third, Calfire's most recent fire survey of the Olympic Valley area includes recommendations related to access and evacuation. The survey report specifically recommends creation of a secondary access to the residential area in Olympic Valley. Exh. 26 at 4.²¹ The recommendation is based on specific conditions in the Olympic Valley, including but not limited to, topographic features that contribute to the area's susceptibility to wildfire.

The report indicates that Olympic Valley includes a combination of six topographic features including, canyon, mid-slopes, saddles, chimneys, slope setbacks and ridge tops. *Id.* at 2. These features contribute to the areas susceptibility to higher fire risk. For example, slopes can preheat, dehydrate and ignite fuels located uphill much faster and the steeper the slope, the faster moving fire results.²² Chimneys and canyons draw the leading edge of the fire and form convection currents of heated gasses ahead of the fire in quantities that can be deadly. *Id.* These are not generic descriptions of topography that could contribute to increased wildfire risk; they are conditions specific to Olympic Valley.

Moreover, the RFEIR itself acknowledges that "the available data indicates a trend over the last several years of increased size, severity, and destructiveness of extreme wildfires in California." RFEIR at 3.1-46. The Project would add substantial residential and hotel space that would bring thousands of additional people to Olympic Valley. The County must take seriously the changed conditions designating the site and surrounding area as Very High Fire Hazard Zones by state and local fire agencies and must implement related recommendations (*i.e.*, secondary access).

2. CEQA Requirements Have Changed Since the Prior EIR Was Published.

The RFEIR claims that changes to CEQA requirements since 2016 do not apply to this Project. RFEIR at 3.1-49. Specifically, the RFEIR claims that because the prior EIR was circulated and completed public review before the change in the CEQA Guidelines, the new Environmental Checklist questions regarding wildfire do not apply to this project. In this way, the REIR concludes that the required wildfire risk analyses do not constitute "new information" as defined in CEQA Guidelines Section 15162 and omits the analyses. However, in light of the significant new information regarding fire hazards in the Project

²¹https://services1.arcgis.com/jUJYIo9tSA7EHvfZ/arcgis/rest/services/Subdivisions_Public_VIEW/FeatureServer/0/2357/attachments/1995

²² National Wildfire Coordinating Group <https://www.nwcg.gov/course/ffm/fire-behavior/87-slope-effect-ros> and <https://www.cpf.org/health-and-safety/wildland-firefighter-safety/fire-behavior-factors>.

area discussed above, the REIR must provide an updated analysis utilizing the new CEQA Guidelines.

Notwithstanding the RFEIR's claim that the new CEQA requirements do not apply to the Project, the RFEIR states that even if the new CEQA Appendix G questions did apply to the Project, the analysis would not result in a new significant impact. One of the reasons cited is that the Project site is flat and the Project would not introduce elements or require infrastructure that would increase fire potential. This conclusion is incorrect. Many studies have shown that simply by introducing more people into an area, the risk of fire increases. See, California Attorney General Wildfire Guidance, at 4; Alexandra D. Syphard, *Why Are so Many Structures Burning in California?* (2020) Fremontia, 47(2), at p. 29 (attached as Exh. 35); Volker C. Radeloff, et al., *Rapid Growth of the US Wildland-Urban Interface Raises Wildfire Risk* (attached as Exh. 36); Heather Anu Kramer, et al., *High Wildfire Damage in Interface Communities in California* (2019) International Journal of Wildland Fire, available at https://www.fs.usda.gov/nrs/pubs/jrnl/2019/nrs_2019_kramer_001.pdf and attached as Exh. 37).

Furthermore, it is reasonable to assume that with an increase of thousands of additional residents, guests, and visitors there will be a significant increase in use of trails and other open space areas, which will in turn, further increase wildfire ignition risk. See Villages at Palisades Specific Plan at 3-1, 3-7, 5-5 and 5-7. Because the Project would place large numbers of people and structures directly in the line of fires, this development can dramatically increase ignition risks compared to existing undeveloped conditions. Common anthropogenic causes of fire include arson/incendiary, equipment use, debris burning, smoking, vehicles, fireworks, electricity, and outdoor cooking. *Id.* Additionally, structure fires sometimes spread and initiate wildland fires.

The RFEIR claims that the 2016 EIR provided a thorough analysis of project-related wildfire impacts, including addressing whether people or structures would be exposed to a significant risk of loss, injury, or death involving wildland fire. This statement is also incorrect. The REIR also fails to address several other CEQA Checklist questions new since 2016. For example, neither the prior EIR nor the REIR analyzed whether the Project would expose people to pollutant concentrations from wildfire. CEQA Guidelines, Appendix G, Environmental Checklist Form, Section XX.d. As discussed further below, development in the wildland urban interface, like the proposed Project, significantly exacerbates the human health and environmental damage wrought by wildfires. The County has a legal obligation to analyze these impacts.

The resulting human health and environmental consequences resulting from wildfire are numerous and devastating. The most obvious is the direct loss of life and property caused by the fires themselves. The ignition of a wildfire may occur with little or no notice and certain evacuation response operations are simply not feasible. In the October 2017 deadly Tubbs fire in Santa Rosa, “efforts to warn residents of approaching flames were successful only 50% of the time. The entire warning system was fraught with multiple levels of malfunction and incompleteness.” See “*Alarming failures left many in path of California wildfires vulnerable and without warning*,” *Los Angeles Times*, Dec. 29, 2017, attached as Exh. 30.

Aside from increased risks related to the direct loss of life, wildfires are known to have other health effects from exposure to fire and smoke. See, <https://journalistsresource.org/health/wildfires-longterm-impact-on-health/> attached as Exh. 38.

According to the [Centers for Disease Control and Prevention](#), wildfire smoke is a mix of gases and fine particulates from burning vegetation buildings, and other material. *Id.* The pollutants in smoke are 30 times smaller than the diameter of a human hair and can go deep into the lungs and into the bloodstream. *Id.* Such exposure to wildfire smoke can irritate the lungs, cause inflammation, alter immune function, and increase susceptibility to respiratory infections. *Id.* Several studies have established the short-term health effects of wildfire exposure, finding an association with higher risk of death and respiratory and cardiovascular complications. *Id.* Wildfires can also lead to mental stress and mental illness, such as post-traumatic stress disorder, also known as “PTSD”. *Id.* Project residents sitting in their cars for up to 11 hours as predicted by the RFEIR while attempting to evacuate alone could result in severe human health impacts and should be evaluated.

In sum, the new CEQA Guidelines questions regarding wildfire should and do apply to this Project. The County is required to complete a full analysis of new CEQA requirements before it can lawfully consider approval of the Project.

3. The Project Has the Potential to Result in Significant Wildfire-Related Impacts.

Multiple commenters, including Sierra Watch and the League to Save Lake Tahoe, raised concerns about the Project’s wildfire-related impacts, including impacts to public safety. For instance, the REIR failed to conduct any analysis surrounding shelter in place. At a minimum, the analysis should demonstrate:

- -- that people would be able to safely reach the designated shelter in place areas, which will require a short trip even to these designated locations;
- --that there is sufficient capacity to shelter all potential residents, guests, and visitors, including during a major event like a concert;
- --that there is a sufficient level of protection from radiant heat and smoke inhalation

The REIR omits all of these important details, once again improperly relying on res judicata to attempt to avoid the required analysis. The shelter in place/temporary refuge area plan should not be deferred to a later date. The details of this mass shelter-in-place plan are critical for decisionmakers to review now, prior to considering approval, to ensure that any project approval ensures efficient, safe evacuations during a wildfire.

F. The RFEIR Fails to Justify the EIR's Lack of Updated Analysis of Population and Housing in Light of Significant New Information.

In our comments regarding the Project's impacts on population and housing, we pointed out changed circumstances related to an increased population of people who are working remotely and an increase in unmet housing units in the area. RFEIR at 3.2-179. We explained that the change in population patterns was not – and could not have been – anticipated in 2015 when the original EIR was prepared, and thus the analysis must be updated to reflect the changed circumstances today. *Id.* We also commented that increases in rents and property values make it hard for workers to find housing in the Tahoe region. The RFEIR responds that analysis of changes to rents and property values is not required by CEQA because these changes do not result in impacts to the natural or physical environment. RFEIR at 3.3-56.

CEQA requires analysis of both direct and indirect impacts resulting from construction and implementation of a proposed project. CEQA Guidelines § 15064(d) (In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.).

Here, it is reasonably foreseeable that workers unable to find housing near the Project due to higher prices would have to live outside the Tahoe area or outside the state in Nevada and commute to jobs at the Palisades resort. Commuting would lead directly to higher VMT and to higher pollutant emissions, which in turn result in degraded air quality.

Therefore, an evaluation of housing requirements of persons working within a project and analysis of whether the area communities have sufficient housing and services to accommodate increased population is relevant and necessary under CEQA.

The RFEIR goes on to state that the rise in total unmet housing units in the region (1,059 since 2016) does not apply to the Project, because the unmet housing need for seasonal workers like those who would work at the Project has only increased by an estimated 80 units since 2016. RFEIR at 3.3-56. However, as explained in section II.D.2 of this letter above, the the Project is designed to bring more guests year-round. *See* DEIR at 3-1 (“The Specific Plan envisions a world-class, recreation-based, all-season resort community”); 3-7 (project objectives include “Realize a year-round destination resort...developed into a top quality, year-round, destination resort.”). Therefore, the REIR cannot continue to rely on having seasonal workers when the Project would change the community to an all-season resort, which presumably would require year-round employees. The County must evaluate how the Project would exacerbate unmet housing needs year-round and the relevant increase in housing need to evaluate is 1,059 units.

Notably, the Project would result in 574 new full-time equivalent (FTE) employees annually (which, if employees work less than full time, means the actual number of employees searching for housing could be much higher), yet the Project would provide on-site housing for only 300 employees. DEIR at 5-11. The RFEIR rationalizes that the issue of employees having difficulty finding housing is a “social effect” rather than an environmental one, however as discussed above, a lack of available affordable housing near the Project leads to indirect environmental effects. CEQA Guidelines § 15064(d).

Moreover, the fact that the Project is consistent with County General Plan requirements to provide housing for a minimum of 50 percent of the FTE employees generated by the development, does not excuse the County from conducting the analysis and disclosing the impact. RFEIR at 3.3-56 and -57. A thorough evaluation of both project-level impacts and cumulative impacts on area housing must be prepared prior to Project approval.

G. The County Must Reconsider and Recirculate Alternatives to the Project in Light of New Information.

Sierra Watch’s comments on the RDEIR explained that a proper consideration of alternatives in an effort to the lessen or avoid the Project’s significant impacts is imperative under CEQA. RFEIR at 3.2-180 to 3.2-181 (Comments 125 and 126). As noted, the RDEIR’s failure to re-consider alternatives is prejudicial in light of (1) the increase in significant impacts (such as increased local and regional VMT, evacuation

times and noise impacts) revealed by the RDEIR, (2) the significant impacts that would be revealed had the RDEIR conducted an adequate analysis in all issue areas, and (3) changed circumstances since 2016 that could render previously infeasible alternatives feasible and conversely could result in previously feasible alternatives being currently infeasible. In particular, the REIR should examine an alternative with a reduced footprint as proposed by members of the public, and as now officially recommended by the Olympic Valley MAC.

In response, the RFEIR claims that there is no new significant information regarding the environment to be considered and that the RDEIR does not reveal any new or more severe environmental impacts. *See* RFEIR at 3.3-57 (Responses 125 and 126). For the reasons set forth above, this is not true. The RFEIR also claims that it need not evaluate economic changes under CEQA because they do not amount to “an impact to the natural or physical environment.” *Id.* (Response 126). But the comments do not ask for the County to look at economic changes as an impact in their own right. Rather, those changes are relevant to the *feasibility* of alternatives. *See, e.g.*, CEQA Guidelines § 15364 (“‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account *economic*, environmental, legal, social, and technological factors.”) (Emphasis added). Based on changed economic and environmental conditions, there should be a reassessment of the 2016 Alternatives Economics Analysis prepared by Economic and Planning Systems (EPS), as recommended by the MAC.

Finally, the RFEIR falls back on *res judicata* once again. But as explained above, *res judicata* does not prevent re-litigation where there are changed conditions and new facts that were not in existence at the time of the original action, including those related to feasible alternatives. *See also* CEQA Guidelines § 15088.5(a)(3) (requiring recirculation where a feasible alternative exists that would lessen the impacts of the Project and the proponent declines to adopt it). Perhaps more importantly, as the RFEIR recognizes, *res judicata* does not prevent County decision-makers from considering *all* relevant information when deciding whether to approve the Project as proposed. A consideration of all reasonable alternatives, including a greatly reduced sized alternative as recommended by the MAC (the body most familiar with the area and the concerns of the citizenry), based on the most up-to-date information is critical to this decision. Relying on stale information from the 2016 EIR violates CEQA and is a dereliction of duty.

IV. Conclusion

As set forth above, the RFEIR failed to address or correct the many fundamental issues with the RDEIR. As a result, the REIR and prior EIR violate CEQA and cannot be certified. Because the REIR and EIR remain deeply flawed, Sierra Watch and the League urge the County to deny the Project.

Very truly yours,

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Enclosures

Cc: Office of the Attorney General of California
Tahoe Regional Planning Agency
Olympic Valley Fire Department
Olympic Valley Public Service District
Placer County Board of Supervisors

Exhibits are listed below and available for download at the following OneDrive Link:
[Palisades RFEIR Comments](#)

Exhibit List:

- Exhibit 1 Baseline Environmental Consulting Supplemental Report
- Exhibit 2 Salter Inc. Response
- Exhibit 3 CBEC Inc. Eco Engineering Response
- Exhibit 4 Plastic Debris in Lakes and Reservoirs
- Exhibit 5 Lake Tahoe Has High Concentration of Microplastics, Global Research Shows
- Exhibit 6 *To Sink or Swim: A Snapshot Evaluation of the Fate and Types of Microplastics in Lake Tahoe*
- Exhibit 7 Report: Lake Tahoe Nearshore Water Quality Protection Plan
- Exhibit 8 Lake Tahoe Info Lake Clarity Tracker, Atmospheric Deposition
- Exhibit 9 TMDL 2024 Performance Report
- Exhibit 10 2023 TMDL Findings and Recommendations Memo
- Exhibit 11 2024 State of the Lake Executive Summary
- Exhibit 12 Lake Tahoe Info Clarity Tracker About Page
<https://clarity.laketahoeinfo.org/Home/AboutLakeClarityTracker>
- Exhibit 13 TERC Docent Program Manual Chapter 4: Environmental Problems Facing Lake Tahoe
- Exhibit 14 Tires: The plastic polluter you never thought about,” National Geographic, September 20, 2019
- Exhibit 15 Environmental risks of car tire microplastic particles and other road runoff pollutants

Exhibit 16 Where the rubber meets the road: Emerging environmental impacts of tire wear particles and their chemical cocktails

Exhibit 17 Wear and Tear of Tyres: A Stealthy Source of Microplastics in the Environment

Exhibit 18 Tires and brakes emit more particulates than tailpipes

Exhibit 19 A ubiquitous tire rubber-derived chemical induces acute mortality in coho salmon

Exhibit 20 An assessment of ozone concentrations within and near the Lake Tahoe Air Basin

Exhibit 21 Surface ozone in the Lake Tahoe Basin

Exhibit 22 Village at Palisades Tahoe Specific Plan partially-revised final environmental impact report released

Exhibit 23 Village at Palisades Tahoe's environmental report released

Exhibit 24 Settlement Agreement Between Attorney General and Squaw Valley

Exhibit 25 Los Angeles Times, What are red flag warnings?, November 16, 2019

Exhibit 26 CalFire survey of the Olympic Valley

Exhibit 27 Could crowded Tahoe evacuate fast enough from an inferno? New study presents dire scenarios, San Francisco Chronicle, August 28, 2024

Exhibit 28 Universal Engineering Services, Inc Report

Exhibit 29 CAPCOA 2021 Handbook excerpts

Exhibit 30 *Alarming failures left many in path of California wildfires vulnerable and without warning*, Los Angeles Times, Dec. 29, 2017

Exhibit 31 Wildfires and Real Estate Values in California, Federal Reserve Bank of San Francisco

Exhibit 32 How much do wildfires really cost California's economy? Cal Matters, October 11, 2021

Exhibit 33 How much are wildfires costing every Californian? Here's the stunning Math, SF Chronicle, June 29, 2024

Exhibit 34 CalFire Fire Hazard Severity Zones in State Responsibility Area for Olympic Valley, California, September 29, 2023

Exhibit 35 Alexandra D. Syphard, *Why Are so Many Structures Burning in California?* (2020) *Fremontia*, 47(2)

Exhibit 36 Volker C. Radeloff, et al., *Rapid Growth of the US Wildland-Urban Interface Raises Wildfire Risk*

Exhibit 37 Heather Anu Kramer, et al., *High Wildfire Damage in Interface Communities in California* (2019) *International Journal of Wildland Fire*, available at

Exhibit 38 Naseem S. Miller, Wildfires have long-term health effects, both direct and indirect, several studies show, *The Journalist Resource*, July 26, 2023