November 15, 2024

Placer County Board of Supervisors
c/o Clerk of the Board of Supervisors
175 Fulweiler Avenue
Auburn, CA 95603

Dear Chair Jones and Honorable Supervisors:

The *League to Save Lake Tahoe* and *Sierra Watch* join together in respectfully urging you to deny Alterra Mountain Company's (Alterra) request for entitlements for its proposed *Village at Palisades Tahoe Specific Plan (the Project)*. In its current state, the Project would create too many unmitigated impacts on Olympic Valley and the surrounding region. We believe that a right-sized project is possible, but the present iteration put before you is not the right path.

The *League to Save Lake Tahoe* protects and restores the environmental health, sustainability and scenic beauty of the Lake Tahoe Basin, with a 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. This letter is submitted in the spirit of the shared values reflected in each mission; and both organizations appreciate the opportunity to participate in the public planning process.

As is made clear in the attached letter, as well as through a decade of environmental review and public comment, the proposal would have unacceptable impacts on the future of Olympic Valley, Truckee and the Lake Tahoe Basin. Furthermore, its current Environmental Impact Report is inadequate under state law.

Alterra's proposal would add thousands of new daily vehicle trips to existing regional traffic gridlock. It would threaten public safety by making evacuation from wildfire impossible. It would exacerbate our workforce housing crisis. It would strain local water supplies. It would draw customers and employees from existing local businesses. And traffic from the new development would add the pollutants – from tailpipes and roadway erosion – that are causing the region's most unique and important resource, Lake Tahoe, to lose its clarity.

The Final EIR for the Project however, continues to downplay, diminish or disparage those impacts, issues and values – each so important to the region's environmental and economic future.

This project's RDEIR/FEIR dismissed the water quality analysis instead of attempting to acknowledge and mitigate the known and foreseeable impacts to Lake Tahoe. Increased vehicle trips, associated tire and road wear, including the need for additional traction materials for more vehicles, would all lead to degradation of water quality. In responses to comments, Placer County takes a very narrow view on discharge (November 19 Board Agenda, Item 2. A, page 1,345) as related to the Truckee watershed, but continues to dismiss impacts from vehicle traffic and increased visitation on water quality in Lake Tahoe proper, even though these impacts have been acknowledged by the project proponent. Current scientific study by Dr. Veronica Nava of the University of Milano-Bicocca acknowledges that microplastics, derived in part from traffic's wear and tear on automobile tires, are impacting Lake Tahoe's water quality.[1]

Lake Tahoe is one of only two waterbodies in California and Nevada to be given the rare federal distinction as an Outstanding National Resource Water (ONRW) due to its unique water quality and clarity. As an ONRW, Lake Tahoe has earned the highest protections against degradation at the state and federal level for both *point and non-point source pollution*. These same natural resource values justified the creation of the Lake Tahoe Total Maximum Daily Load (TMDL), the Tahoe Regional Planning Agency (TRPA) and a half century of scientific, land management and regulatory action to preserve and restore the lake's water quality and clarity. Despite these concerted efforts, in 2023 the annual average measurement of Lake Tahoe's water clarity measured 68.2 feet, far from the TMDL target of 97.4 feet. Lake Tahoe is already not meeting water quality standards and threshold standards set by TRPA and dictated by its ONRW status. Because this Project would further degrade water quality and clarity, it cannot be approved as proposed without substantial mitigation.

Public safety is another fundamental consideration. And there is no way around it: Alterra's proposed development would put the people who live, work, and play in Olympic Valley in danger. The entire project is proposed for a *Very High Fire Hazard Severity Zone* with one way in and, in the event of wildfire, barely one way out. As you will see in the attached letter, Christopher A. Dicus, PhD, Professor, Wildland Fire & Fuels Management, California Polytechnic State University, cites a high risk that new development could make Olympic Valley a "death trap" during a red flag wildfire event. The last-minute addition of a new action item to adopt a "Resolution granting an exception to the State Minimum Fire Safe Regulations" only proposes to further ignore the real-world danger of wildfire – and prioritize Alterra's entitlements over public safety.

There's a better way. Both the *League to Save Lake Tahoe* and *Sierra Watch* encourage the County to pursue a more collaborative approach to planning the future of Olympic Valley. We sincerely believe that, working together, we can come up with a plan worthy of this incredible place. And you, as the Board of Supervisors with land use decision-making authority, have the opportunity to chart that better course. The Tahoe-Truckee region deserves no less.

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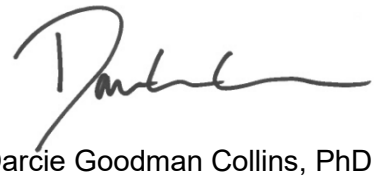
[1] Nava, V., Chandra, S., Aherne, J. *et al.* Plastic debris in lakes and reservoirs. *Nature* **619**, 317–322 (2023). https://doi.org/10.1038/s41586-023-06168-4

Sincerely,

Tom Mooers
Executive Director, Sierra Watch



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November 15, 2024

Via Electronic Mail

Placer County Board of Supervisors
c/o Clerk of the Board of Supervisors
175 Fulweiler Avenue
Auburn, CA, 95603
BoardClerk@placer.ca.gov

Re: Village at Palisades Tahoe Specific Plan and Revised Environmental Impact Report

Dear Chair Jones and Honorable Supervisors:

We submit this letter on behalf of the League to Save Lake Tahoe/Keep Tahoe Blue (the "League") and Sierra Watch to provide comments on the recommendation of the Placer County Planning Commission to approve the Village at Palisades Specific Plan and related resolutions and ordinances (collectively, "the Project"), including certification of the environmental impact report ("EIR"), which consists of the 2016 environmental impact report ("2016 EIR") and the Revised Environmental Impact Report ("REIR"), and proposed Findings of Fact and Statement of Overriding Considerations ("Findings") for the Project.

As is clearly established below and in our previous comment letters, environmental review to date has neither provided the public and decision makers with the information necessary to properly evaluate the Project nor remedied the inadequacies identified in 2021 by the Court of Appeal. The League and Sierra Watch therefore respectfully urge the Board of Supervisors to deny approval of the Project as proposed and require that the EIR be recirculated with an adequate analysis of all the Project's potentially significant impacts, as well as consideration of all feasible mitigation measures and a reduced density alternative to lessen or avoid such impacts.

As explained below, the Board has full authority to deny the Project or request that an additional alternative(s) be analyzed. Neither the 2016 EIR nor the Olympic Valley

General Plan in any way constrain the Board's decision-making power with respect to this Project, which has no current entitlements.

Earlier this year, the Olympic Valley Municipal Advisory Council ("MAC") considered the wide ranging implications of this Project and voted unanimously to pass the following motion:

> To deny the project with a message to Placer County and the applicant that:
>
> 1) the community is overwhelmingly against this plan;
>
> 2) the County and applicant are encouraged to evaluate a different, reduced-sized project than originally submitted with a reduced-sized Mountain Activity Center; and
>
> 3) the community wants collaborative input on the revised plan.

Likewise, on November 14, 2024 the North Tahoe Regional Advisory Council (NTRAC) discussed similar issues and voted to send a letter to Placer County expressing concerns about the Project and stating its opposition to approving it as currently proposed.

As you may be aware, this Project is before you once again because, following the Board's 2016 approval of this Project (then called the Village at Squaw Valley Specific Plan), the Court of Appeal found significant flaws with the original environmental impact report ("EIR") for this Project. *See Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86. The Court of Appeal also separately found that the Board violated the Brown Act in its approval of the Project. *See Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

After the Board rescinded all Project approvals, the County released a Revised Draft EIR ("RDEIR") in November, 2022 and a Revised Final EIR ("RFEIR") in August, 2024. We provided comments on both these documents, both times alerting the County to its failure to correct the errors identified by the Court of Appeal or to meet the most basic requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq. and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("CEQA Guidelines"). *See* Letter dated January 30, 2023 from SMW to Patrick Dobbs, Senior Planner ("SMW RDEIR Comments"); Letter dated September 3, 2024 from SMW to the Planning Commission ("SMW RFEIR Comments"). These letters

are incorporated herein by reference and can be accessed at the links provided in the footnote.[1]

For the sake of brevity, this letter does not repeat all of the points raised in our prior comments. However, we urge the Board to review those (and all other) comments carefully. This letter focuses on topics raised during the Planning Commission Hearing and in the Board's staff report,[2] as well as additional information and reports that were not discussed in our prior comments. This letter also details that, in addition to the inadequacies of the REIR, the County's proposed Findings of Fact and Statement of Overriding Considerations ("Findings") are unsupported by substantial evidence, legally erroneous, or both. Further, it details why the Board cannot lawfully consider or approve the applicant's newly requested exception to the State Minimum Fire Safe Regulations at its November 19 meeting.

As explained in our prior comments and as supplemented here, the REIR does not make a serious attempt to correct the gross inadequacies identified by the Court of Appeal. Instead, it attempts to dodge key issues and mislead the public and decision makers with incomplete or inaccurate information and often circular logic. Over 2,700 individuals, organizations, and agencies alerted the County to the RDEIR's deficiencies and requested further analysis and mitigation. *See* Exhibit 1 (Sierra Watch Summary Report). The RFEIR failed to provide a "good faith, reasoned analysis" in response to these comments that addresses the issues raised "in detail giving reasons why specific comments and suggestions were not accepted." CEQA Guidelines § 15088(c). And the supplement response to comments provided in the staff report fares no better. This requirement "is designed to promote the integrity of the process by preventing stubborn

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[1] RFEIR:
https://shutemw-my.sharepoint.com/:f:/g/personal/breckenridge_smwlaw_com/EkN6JpG7i3xKoeeSu8O-_lcBD7fSpGrVCIwxXMba1-CwTA?e=OlvaWx

RDEIR:
https://shutemw-my.sharepoint.com/:f:/g/personal/breckenridge_smwlaw_com/EqDjdE5UKbtGgioori6oWJwBFYBT6v7CHevHdEdWWrPkRQ?e=4OFXep

[2] The Staff report is over thirteen hundred pages long and includes, among other things, information on a newly requested exception to fire standards and 37 pages of new responses to comments. Given the length of this document, the League and Sierra Watch may continue to supplement these comments with further submissions up until and/or during the Project hearing.

problems or serious criticism from being swept under the rug." *King & Gardiner Farms, LLC v. County of Kern* ("*KGF*") (2020) 45 Cal.App.5th 814, 880. Here, the responses in the RFEIR, like its analysis, are "[c]onclusory" and "unsupported by factual information." *See* CEQA Guidelines § 15088(c). Often, rather than addressing the factual information and analysis provided, the RFEIR simply asserts that future litigation of this issue would be barred by *res judicata*. The RFEIR's deficient responses to public comments on particular issues are addressed in Sierra Watch's comments on the RFEIR and further below.

To ensure that the public and the Board have adequate information to consider the proposed Project, the County must prepare and recirculate a revised EIR that adequately addresses public concerns, analyzes the Project's significant impacts, considers significant new information, and identifies feasible measures or alternatives to mitigate those impacts. Unless and until the County corrects the legal inadequacies of the REIR and the Findings, and corrects the procedural errors discussed below, the Board may not lawfully approve the Project. And because these CEQA violations remain, the Superior Court may not discharge the writ and allow the County to approve this Project. For all these reasons, the League and Sierra Watch respectfully urge the Board of Supervisors to deny the Project as currently proposed.

We submit with this letter, and incorporate by reference, the following technical reports: Christopher A. Dicus, Ph.D, Professor, Wildland Fire & Fuels Management, California Polytechnic State University, attached as Exhibit 2 ("Dicus Report"); Tom Brohard, Transportation Engineer with Tom Brohard & Associates, attached as Exhibit 3 ("Brohard Report"); Greg Kamman, Hydrogeologist with CBEC Eco Engineering, attached as Exhibit 4 ("CBEC Supplemental Report"); and visual simulation conducted by 3D Model by Adam Noble/Fastcast, attached as Exhibit 5.

For ease of reference, the contents of this letter are as follows:

TABLE OF CONTENTS

Page

I. The Board Has Full Authority to Deny the Project or Request that an Additional Alternative(s) Be Analyzed.

At the Planning Commission hearing, the County staff presentation appeared to presume that approval of the Project was a foregone conclusion. As explained below, the Project proponent is not "entitled" to any approvals and *res judicata* neither constrains the Board's authority to deny or request modifications to the Project. The County Board of Supervisors is legally obligated to exercise its independent judgment in reviewing this Project, which is being proposed by a private corporation without any entitlements.

First, County staff (and at least one Planning Commissioner) insinuated that Alterra was somehow "entitled" to approval of the Project because the Project is within the densities allowed by the 1983 Olympic Valley General Plan. This is incorrect. General Plans provide a general blueprint for growth in an area but do not guarantee any specific entitlements. In other words, the General Plan provides designations that may invite project proponents to *apply* for entitlements; they are in no way development "rights." The Board has complete discretion to deny an application for a specific project where, as here, it presents environmental or other health or safety concerns. Moreover, as Commissioner Beckler aptly pointed out, the 1983 Plan is plainly outdated and there have been many significant changes in the area (and the world) over the last *41 years*, including large-scale development in the area. To put things in perspective, in 2007, *well over 2 decades after the adoption of the general plan*, the California Office of Planning and Research recognized climate change as an issue that needed to be addressed in CEQA (and the I-Phone was invented)! The old 1983 Plan is in desperate need of updating to reflect current conditions and in no way "entitles" the Project. In fact, the County would be well advised to update its outdated plan *before* considering this or any other significant project in Olympic Valley.

Second, statements at the hearing relied on the doctrine of *res judicata* to avoid providing additional requested information about the Project and its impacts.[3] However, as our prior comments explained *res judicata* is solely a judicial doctrine that determines whether an issue may be relitigated in court. Whatever a court may determine at a later date about re-litigation *does not* constrain the Board of Supervisors *now* in requiring that Alterra/Palisades and/or the EIR provide up-to-date information about Project impacts. Even if *res judicata* were to prevent a particular issue from being relitigated, which

[3] *Res judicata* is a legal doctrine that prevents the re-litigation of matters "arising from the same material facts in existence at the time of the judgment," a situation that is not present for the issues raised herein. *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 480.

would not be true with the issues raised in our comments, that *does not in any way mean* the Board is prevented from asking for additional information about a topic that it feels is relevant to its decision making. There are currently *no* entitlements to develop this property – the Board has, pursuant to court order, rescinded the prior Development Agreement and all other approvals for the Project in their entirety. Thus, the Board has full legislative authority to deny the Project altogether, to direct that the environmental analysis be recirculated, and/or to request a prior or new alternative be analyzed or presented in more detail should you determine such actions are appropriate.

In sum, on-going insistence that the Project must be approved under the 1983 General Plan and/or principles of *res judicata* is disconcerting at best. Neither the old General Plan nor legal doctrines governing potential litigation remove the Board's discretion to deny Alterra the extremely valuable entitlements it demands or to require significant Project modifications. Further, the Board must ensure that any Project approval is fully compliant with CEQA and all other laws and is in the best interests of the County's citizenry. In order to review the Project for consistency and compliance, the Board should demand and thoroughly review a reduced density alternative as indicated by the Olympic Valley MAC and should consider all relevant information.

II. The Promise of "Subsequent Review" Is a Red Herring.

At the Planning Commission hearing, it was asserted that any lacking environmental analysis should be excused because the REIR is merely a "program" level document and subsequent review would be conducted at later development stages. This is a red herring. To begin, labelling the EIR a "program" EIR "does not by itself decrease the level of analysis otherwise required"; the level of specificity is determined by the nature of the project. *Cleveland National Forest Foundation v. San Diego Assn. of Govs.* (2017) 17 Cal.App.5th 413, 426 (internal quotation marks omitted). "Even if more precise information may be available during project-specific review, the County must still provide reasonably obtainable information, or explain (supported by substantial evidence) why it cannot do so." *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 545.

Here, the Project is site-specific and would lock in specific development entitlements through approval of a Development Agreement, Specific Plan, Development Standards and Design Guidelines, general plan and zoning changes, and a Large-Lot Vesting Tentative Subdivision Map. The County cannot grant these entitlements based on promises of *future* environmental review. "CEQA's informational purpose 'is not satisfied by simply stating information will be provided in the future.'" *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,

441. Program EIRs lacking specific details are meant for policy level plans where the analysis is necessarily broad, not project-specific proposals. *See, e.g., Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 342 (program EIR focused on "broad policy choices" regarding alignment alternatives between Bay Area and Central Valley). The County cannot allow the developer to lock in very specific—and very valuable—entitlements based on vague "program-level" analysis and vague mitigation for ill-defined impacts.

Furthermore, there is no assurance that an *EIR* will be prepared for future approvals. The promised "subsequent review" could mean nothing more than a determination that a future approval is already "within the scope" of this EIR, a determination the public might not even be aware of. As California courts have warned, because environmental review may be limited for "later activities that are found to be 'within the scope' of the program EIR," impacts that are not analyzed in a program EIR "may potentially escape analysis" altogether. *Cleveland National Forest Foundation,* 17 Cal.App.5th at 425-26, 440.[4] Moreover, even if the County did prepare a later CEQA document, the basic and critical Project parameters, including allowable heights and densities, will already have been established. *See e.g.*, Gov. Code, §§ § 65865.4 (county may not impose requirements that contravene the vested rights granted by the Development Agreement); 65589.5(j) (state law limits disapproval of subdivisions that comply with objective standards set forth in approved subdivisions or zoning).

The Board should not let this Project go forward based on empty promises of later "conformity" review. The Board must act now to ensure the Project's impacts are fully addressed and that it is redesigned or modified to avoid significant environmental damage.

III. The Board's Consideration of a Resolution to Grant an Exception to the State Minimum Fire Safe Regulations Is Both Procedurally and Substantively Improper at this Time.

The Board's agenda includes an action item entitled: "Adoption of a Resolution granting an exception to the State Minimum Fire Safe Regulations [("Exception")]." As explained below, the Board's consideration and approval of this item on November 19 would be both procedurally and substantively improper. Moreover, it is important to

[4] Indeed, the County has already shown its hand by conducting the absolute minimum amount of subsequent review it believes to be required by the courts at this time based on *res judicata*, even though many years have passed and significant new information has come to light since the 2016 approval of this Project.

remember that these laws are the *minimum* standards that exist to protect public safety and to ignore them is to disregard the lives of the people who live, work, and recreate in Olympic Valley. *See* 14 CCR § 1270.02(a)

A. The Board's Agenda and Notice Regarding this Item Violates State Law.

First, the Board's agenda violates the Ralph M. Brown Act because it is fundamentally misleading. Government Code § 54954.2. The agenda states that the Board's hearing is to "Conduct a Public Hearing to consider the Placer County Planning Commission's recommendation to approve/adopt the following:," and then it lists the Resolution for the Exception as one of the items the Planning Commission recommended for approval. However, the Planning Commission did not even consider, much less recommend approval of, the Exception. *See* Planning Commission Agenda, available at https://www.placer.ca.gov/DocumentCenter/View/82644/2024-090524-FINAL-Agenda.

This error is prejudicial as the agenda improperly leads the public and decision-makers to believe that the Planning Commission fully reviewed the important implications of excusing the Project from the *minimum* standards that are critical to public safety and well-being during a wildfire, and still recommended approval of the Specific Plan and related entitlements. This was not the case and thus the agenda is fatally misleading. The County committed a similar Brown Act violation in 2016 when the Board approved a Development Agreement that the agenda misleadingly stated was recommended to it by the Planning Commission, when in fact is was not. *Sierra Watch v. Placer County*, Case No. C087892, 3rd District Court of Appeal, Slip Op. at pp. 18-19 (County violated Government code section 54952.2 when it "considered a version of the agreement that the Planning Commission had never considered.") (citing *Santa Barbara School District v. Superior Court of Santa Barbara County* (1975) 13 Cal.3d 315). As a result of that case, the County is under court order by way of writ of mandate to "take all necessary actions to comply with the Brown Act's requirement in Government Code section 54954.2." If the County approves the Exception without proper notice, it will be in violation of the Brown Act and the writ of mandate, and will be thereby establishing a pattern and practice of Brown Act violations.

The misleading language about the Planning Commission's recommendation was also included in the hearing notice in violation of the requirements of Government Code § 65000 et seq. *See Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 890–893, 70 Cal.Rptr.3d 474 (notice of hearing before legislative body on actions subject to the Planning and Zoning Law must inform the

public as to what the planning commission recommended). Thus, the County must re-issue and re-publish the required 10 day public notice.

B. The Board's Approval of the Exception at this Time Would Violate the Placer County Code.

Second, the Board's consideration of the Exception at this time would violate the Placer County Code, which requires the Planning Commission to consider the issue first and then make a recommendation to the Board. *See e.g.*, Placer County Code §§ 17.60.90, 17.60.100. This step is crucial as the Planning Commission reviewed the Specific Plan and other entitlements that explicitly require compliance with fire safety regulations. For example, VPTSP Policy PS-1 states the Project must "[c]omply with existing law and fire safety measures and protocols and work with law and fire on implementing a comprehensive security and emergency system that is calibrated to current and future protocols/ emergency response systems." Likewise, Policy PS-3 states the Project will "[d]esign and site all new structures in a manner that minimizes the risk from fire hazards and meets all applicable State, County, and Olympic Valley Fire District fire safety standards." Moreover, the Project's Conditions of Approval for the Large Lot Tentative Map that were reviewed and recommended for approval by the Planning Commission explicitly state: "Each subsequent Small Lot Final Map must comply with all Small Lot Tentative Map conditions of approval and the Village at Palisades Tahoe Development Agreement, Specific Plan, Development Standards and Design Guidelines, *and applicable State Minimum Fire Safe Regulations*." (Emphasis added). Similarly, the recommended CEQA Findings were conditioned on compliance with the minimum fire safe regulations.

As discussed further below, the Fire Chief must also be given ample time to consult regarding the requested Exemption. The fire safety and evacuation situation for the Project area is dire. The Board must allow the Planning Commission to consider the Exception (and the whole Project and environmental review in light of the Exception) in the first instance after consultation with appropriate fire professionals including the Fire Chief. Without that proper procedure, the Planning Commission recommendation regarding the Project that is before the Board is severely compromised.

C. The County Has Not Demonstrated that the Measures Identified by the Applicant Provide the Same Practical Effect As Constructing a Secondary Access Road.

The State Minimum Fire Safe Regulations ("Fire Safe Regs.") establish minimum wildfire protection standards related to emergency ingress and egress, signing and

building numbering, water availability, and fuel modification. 14 Cal. Code Regs. ("C.C.R.") §§ 1273.00-1276.05. These standards apply to a wide range of development approvals, including building permits, use permits, road construction, and the approval of new parcels. *Id*. at 1270.03(c). Of particular import here are the requirements related to emergency ingress and egress. Ingress and egress can only be provided via a dead-end road if the length of that road does not exceed the maximum length standards provided in the Regulations. 14 C.C.R. § 1273.08(a). For parcels zoned for less than one acre, the maximum length of a dead-end road is 800 feet. *Id*. For parcels zoned for 1 acre to 4.99 acres, the maximum length of a dead-end road is 1,320 feet. *Id*. For parcels zoned for 5 acres to 19.99 acres, the maximum length is 2,640 feet. *Id*. For parcels zoned for 20 acres or larger, the maximum length is 5,280 feet. *Id*. If access to a property is provided solely by a dead-end road that exceeds the Fire Safe Regs.' maximum length standards, the project applicant must construct a secondary access road to connect the dead-end road to a road network. *See* 14 C.C.R. § 1273.00.

Here, the only access to the Project is provided by Olympic Valley Road, a dead-end road that is approximately 2-miles long, significantly over the maximum length provided by the Fire Safe Regs. The Fire Safe Regs. require the Applicant to construct a secondary access road to connect Olympic Valley Road to a larger road network. However, the Applicant refuses to comply with the dead-end road standard, asserting it is infeasible to connect Olympic Valley Road to Alpine Meadows Road, the closest road network. The Applicant submitted a request for an exception to the dead-end road standard, arguing that certain facts about the Project area and proposed new Project components are sufficient to ensure fire safety. The staff report recommends the Board approve the exception request.

The Fire Safe Regs. authorize a project applicant to avoid compliance with a standard if the local jurisdiction approves a "Request for an Exception." 14 C.C.R. § 1270.07. However, the County may only approve an exception request "where the Exceptions provide the Same Practical Effect as these regulations towards providing Defensible Space." *Id*. "Same Practical Effect" is defined as an "Exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including (1) access for emergency wildland fire equipment; (2) safe civilians evacuation; (3) signing that avoids delays in emergency equipment response; (4) available and accessible water to effectively attack wildfire; and (5) fuel modification sufficient for civilian and fire fighter safety." 14 C.C.R. § 1270.01(aa). The County therefore cannot approve the exception request unless the Applicant proposes alternative measures that will provide the same level of fire safety as

connecting Olympic Valley Road to Alpine Meadows Road. The County has failed to satisfy this requirement.

The Applicant's exception request and the County's proposed approval are entirely unsupported by technical expertise. The Fire Safe Regulations require the County to provide Cal Fire or its designee (i.e., the Olympic Valley Fire Department) with notice of projects subject to the regulations. 14 Cal. Code Regs. § 1270.04(a). The Fire Safe Regulations invite the relevant fire agency to "review and make fire protection recommendations on applicable construction or development permits or maps provided by the" County. *Id*. § 1270.04(b). Here, there is no indication that the County or the Applicant shared the Exception request with the Olympic Valley Fire Department.

The Applicant's Exception request is not informed by any technical expertise on wildfire evacuation. The exception request simply lists a number of existing facts about the Project area, including that Olympic Valley Road can accommodate three lanes, and certain Project components, including the building of a new fire station, and asserts these provide the "Same Practical Effect" as a secondary access road. In the Resolution, County staff simply summarizes the Applicant's exception request and concludes that it meets the applicable requirements. County staff do not appear to have sought the advice and expertise of the fire agency that would ultimately be responsible for ensuring adequate wildfire evacuation in the Project area. In fact, as discussed further below and in our prior letters, the Olympic Valley Fire Chief has already expressed his serious concerns about fire safety with respect to the Project and has requested additional measures that he believes are feasible, but that the RFEIR refused to implement. Without the input of the Fire Chief, the County cannot conclude that the existing facts about the Project area and Project components identified by the Applicant provide the Same Practical Effect as constructing a secondary access road.

The only wildfire evacuation expert to review the Exception request, Dr. Dicus, concludes that the measures identified in the request are not sufficient to justify an exemption from the dead-end roads standards. *See* Exh. 2 at pp. 14-15. While Dr. Dicus acknowledges that the new fire station may help some initial instances of fire, suppression success will be severely hampered during extreme weather, Red Flag Warning days. Additionally, the Exception request relies on strategies for staff preparedness, but these do not provide a functional equivalent to trained and experienced first responders. Dr. Dicus concludes that, unless there is a significant lead time for evacuation—a very uncertain proposition, safe civilian evacuation cannot be accomplished with the identified measures. The Exception request also relies on temporary refuge locations to support the conclusion that civilians will be able to safely evacuate, but Dr. Dicus cautions that these locations should only be used as an *alternative*

to evacuation and also carry their own significant safety risks. These measures therefore cannot support the conclusion that evacuation will be safe. Dr. Dicus also casts doubt on the reliability and availability of water, as he has personally witnessed water tank failure during wildfire, imploring the County to require construction of water tanks in such a way that precludes failure. Lastly, Dr. Dicus warns that vegetation management is not ensured in perpetuity at the development, and fuel management requirements are not regularly enforced. Thus, in his professional opinion, "State Minimum Fire Safe Regulations should not be exempted at the Palisades development."

Moreover, the Exception request relies on the assertion that Olympic Valley Road is "wide enough to allow for three lanes of traffic," and thus "[d]uring an evacuation, the road *can* be managed to provide two lanes out and one lane in, exclusively for emergency equipment." (emphasis added). However, the Applicant does not and cannot provide assurances that Olympic Valley Road *will* be used in this manner in a wildfire emergency. As noted by many experts, including in the attached Dicus Report, the coning and smooth management of emergency evacuation during a wildfire event is very unlikely, especially given the construction that would be occurring over the next 25 years. Again, neither the Applicant nor the County appear to have sought the expertise of the Olympic Valley Fire Department, who should weigh in on the Exception. Without such consultation, the Applicant's and County staff's assertion is nothing more than speculation.

The Exception request is also deficient because it relies on the outdated 2015 Water Supply Assessment. To support its conclusion that the Project "will provide available and accessible water," the Applicant relies on the 2015 Water Supply Assessment, which purportedly "concluded that there was adequate water to serve existing and future development." However, as our prior comments have explained, significant new information related to the impact of climate change on groundwater supply render the 2015 Water Supply Assessment inadequate. It cannot be relied on for compliance with either CEQA or the Fire Safe Regs.

In sum, the County's approval of an Exception to the *minimum* state fire safety standards at this time would be both unlawful and unwise. These standards are in place for a reason. And as discussed further below (infra Part IV.C), the Project site is at very high risk to become a "death trap" during a red flag wildfire event and any exceptions to state standards should be granted only after very serious consideration and consultation with wildfire officials.

IV. The EIR for the Project Violates CEQA, the Court of Appeal's Opinion, and the Writ of Mandate that Applies to the Project.

Our prior letters explain in detail why the RDEIR and RFEIR fail to comply with CEQA, the CEQA Guidelines, the Court of Appeal's opinion, and the Writ of Mandate that is still in force against the County with respect to this Project. Again, we do not repeat every detail here, but refer the Board to those prior letters and incorporate them by reference here. Below, we provide a brief summary of some of the points raised in our prior letters, as well as supplemental information demonstrating that the EIR, which includes the REIR as well as the 2016 EIR, remains inadequate and must be recirculated.

A. The EIR Fails To Adequately Analyze and Mitigate the Project's Impacts on Lake Tahoe's Water Quality and Clarity.

The Project would pump thousands of visitors and vehicles into the Tahoe Basin every day, adding the pollution that causes the Lake to lose its clarity. The Court of Appeal held that the 2016 EIR failed to adequately analyze the Project's potentially significant impacts on Lake Tahoe's water quality and clarity. Among other flaws, the court held the 2016 EIR failed to (1) adequately describe the environmental setting, including the special protections for Lake Tahoe, (2) adopt a threshold of significance for this impact, and (3) failed to assess the Project's impacts and reach a significance conclusion. As discussed in our prior letters and as supplemented below, the REIR fails to correct these deficiencies and must be recirculated.

1. The REIR fails to apply appropriate significance thresholds.

The REIR claims the Project's impacts on Lake Tahoe are significant only if the Project will "substantially degrade Lake Tahoe water quality or water clarity" or "conflict with TRPA Threshold Standards related to Lake water quality." RDEIR at 13-18. This approach to determining the significance of the Project's impacts on Lake Tahoe is flawed. First, the EIR's conclusion that a Project's impacts are insignificant unless they "substantially degrade" Lake Tahoe is unjustifiable. Lake Tahoe is a world-renowned federal and state designated Outstanding National Resource Water ("ONRW" or "Tier III") for which *no* degradation of water quality is allowed. Not only does state and federal law prohibit projects from *degrading* Lake Tahoe's waters, but the goal of the regulatory system is to *improve* Lake Tahoe water quality to correct its past degradation and return its historic clarity. The practical importance of this designation is that no permanent or long-term degradation of water quality is allowed in Tier III waters. Short-term degradation is generally defined as weeks to months, not years of water quality degradation. The Project would lead to years of degradation.

Second, with regard to its use of "TRPA Threshold Standards," the EIR is contradictory. It identifies any conflicts with TRPA Thresholds standards as its CEQA threshold of significance and notes that that "TRPA goals and policies address the actions needed . . . to restore lake clarity . . . and reduce point and non-point sources of pollutants that affect water quality." RFEIR 3.3-34. Yet at the same time it states that the Standards are only "related to direct pollution management and Basin project development" and therefore "[n]one are related to the project." *Id.*; *see also* 3.3.24 (asserting "[a]ny attempt to use the TRPA threshold would . . . be inappropriate") (addressing VMT). Moreover, the EIR does not even identify the "Threshold Standards related to Lake water quality." Even after Sierra Watch submitted them to the County (*see* Exhibit K to Sierra Watch DEIR Comments (TRPA's Threshold Standards and Regional Plan (last amended on April 28, 2021)), the RFEIR refused to analyze or apply the Standards. For example, when commenters pointed out its conflict with TRPA's WQ-3.10 policy, the RFEIR claimed it was "not applicable to the project." RFEIR 3.3-34.

As explained in our prior comments, the County is simply wrong in claiming that TRPA standards—which the REIR ironically uses as thresholds of significance for the Project—do not relate to the Project. These standards go beyond "direct pollution management and Basin project development." RFEIR 3.3-34. One aim of the TRPA Thresholds is to reduce pollutant loading into Lake Tahoe in order meet clarity and quality goals; such pollutant loading can come from runoff or from atmospheric deposition. The Project would contribute to such pollutant loading by, *inter alia*, resulting in increased vehicle miles traveled (VMT) in the region. Vehicles emit nitrogen and phosphorous, produce microplastics and the toxin 6PPD-Q (linked to toxicity for Coho Salmon and other aquatic species) from tire wear, and grind and kick up fine sediment on roads, all of which end up in Lake Tahoe and negatively impact its water clarity and quality. *See* Exhibit 6, Exhibit 7 (SF Gate Article) at pp. 12-14, *see generally* Exhibits 8-12; infra Part IV.A.2.

In 2016, the County estimated that in a *single* peak day, the Project would add 23,842 VMT to the Basin. The County admits that cumulative traffic has become even worse than it was in 2016, compounding the effects of this VMT. That makes the Project a direct threat to TRPA's ongoing efforts to protect the Lake by limiting car travel in the Basin. In addition to TRPA's TSC-1, which explicitly provides a VMT standard for the Basin and is discussed further below, there are numerous thresholds (for both nearshore and deep water) that aim to reduce pollutants that are produced by VMT. For example, TRPA's water quality management standards for Load Reductions require as follows:

- WQ34) Reduce fine sediment particle (inorganic particle size < 16 micrometers in diameter) load to achieve long-term pelagic water quality standards (WQ1 and WQ2).

- WQ35) Reduce total annual phosphorus load to achieve long-term pelagic water quality standards (WQ1 and WQ2) and littoral quality standards (WQ5 and WQ6).
- WQ36) Reduce total annual nitrogen load to achieve long-term pelagic water quality standards (WQ1 and WQ2) and littoral quality standards (WQ5 and WQ6).

- WQ37) Decrease total annual suspended sediment load to achieve littoral turbidity standards (WQ3 and WQ4).

- WQ38) Reduce the loading of dissolved phosphorus to achieve pelagic water standards (WQ1 and WQ2) and littoral quality standards (WQ5 and WQ6).

- WQ39) Reduce the loading of iron to achieve pelagic water standards (WQ1 and WQ2) and littoral quality standards (WQ5 and WQ6).

- WQ40) Reduce the loading of other algal nutrients to achieve pelagic water standards (WQ1 and WQ2) and littoral quality standards (WQ5 and WQ6).

- WQ41) The most stringent of the three dissolved inorganic nitrogen load reduction targets shall apply:

    i. Reduce dissolved inorganic nitrogen loads to pelagic and littoral Lake Tahoe from
        a. surface runoff by approximately 50 percent of the 1973-81 annual average,
        b. groundwater approximately 30 percent of the 1973-81 annual average, and
        c. atmospheric sources approximately 20 percent of the 1973-81 annual average.
    ii. Reduce dissolved inorganic nitrogen loading to Lake Tahoe from all sources by 25 percent of the 1973-81 annual average.
    iii. To achieve littoral water quality standards (WQ5 and WQ6).

As explained in the report to the Legislature regarding the Lake Tahoe Nearshore Water Quality Protection Plan, "Updated [Regional Plan] policies . . . promoting the

reduction of vehicle miles traveled are all important elements for nearshore water quality protection." *Lake Tahoe Nearshore Water Quality Protection Plan: Report to the Legislature*. (2014), pp. 8, 11. TRPA's thresholds also acknowledge that due to prevailing wind patterns, pollutant loading in Lake Tahoe can be atmospherically deposited from sources outside the Basin, such as the Project. For example, TRPA's Water Quality Threshold relating to nitrogen loading (listed above) explicitly states that:

> *This threshold relies on predicted reductions in pollutant loadings from out-of-basin sources as part of the total pollutant loading reduction necessary to attain environmental standards*, even though the Agency has no direct control over out-of-basin sources. The cooperation of the states of California and Nevada will be required to control sources of air pollution which contribute nitrogen loadings to the Lake Tahoe Region.

TRPA Threshold Standards (Amended May 22, 2024), at p. 7, n.2 (emphasis added).

Thus, the REIR's claims that TRPA's threshold standards are not relevant to the Project are unsupported. Further, if the REIR could support such claims (which again it cannot), the REIR should have used a different, applicable standard as a threshold of significance for the Project's impacts on Lake Tahoe water quality and clarity. The Court of Appeal invalidated the 2016 EIR for acknowledging TRPA standards but failing to apply them (or another applicable standard) to the Project. *Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86, 102-03. The REIR makes the same mistake, merely repeating its claims that TRPA standards are inapplicable to the Project. *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).

2. The EIR fails to adequately analyze or mitigate the Project's impacts on Lake Tahoe water quality and clarity.

The EIR's water quality analysis is also flawed. As detailed in our prior comment letters, the analysis ignores potential degradation to Lake Tahoe's water quality and clarity from Project-related emissions, wildfires, microplastics, and cumulative growth and inaccurately claims that the increase in fine sediment, nitrogen, phosphorous and other pollutants from Project traffic and operations would not degrade Lake water quality.

The Court of Appeal found that the 2016 EIR failed to analyze "the potential impacts from the project's generation of an additional 23,842 VMT per day in the Lake

Tahoe Basin," identify clear standards for assessing the significance of the additional VMT (both the direct and cumulative) or analyze the Project's impacts against such standards. *Sierra Watch*, 69 Cal.App.5th at 102-03. Despite these inadequacies, the County did acknowledge in late 2016 that the "'connection between VMT and Lake clarity is important, as vehicle emissions and roadway fi[n]e [sediments] are known contributors to loss of clarity.'" *Id.* at 102. The County also acknowledged that "TRPA has historically 'linked higher VMT to,' among other things, 'increased airborne concentrations of particulate matter that could affect regional and subregional visibility and human health.'" *Id.*

The RFEIR, however, reverses course. It now insists that there is no meaningful link between traffic in the Lake Tahoe Basin and Lake Tahoe water clarity and claims, therefore, that the Project would not result in significant water quality impacts on Lake Tahoe. As our prior letters demonstrate, this is untrue. Indeed, as set forth in Exhibit 6, scientific research has for decades consistently shown that motor vehicles are a major source of the loss of Lake clarity and a degradation of Lake water quality. As discussed above, vehicles emit nitrogen and phosphorous, produce microplastics from tire wear, and grind and kick up fine sediment on roads; all of these pollutants end up in Lake Tahoe and negatively impact its water clarity and quality. While acknowledging this science in places, the RFEIR sows confusion and misleads the public and decision makers by making the baseless assertion that there is no meaningful link between vehicles and Lake water quality and clarity. The County fails to provide substantial evidence to support this assertion.

The staff report provides additional responses to our comments on the RFEIR in Attachment P. Those response provide additional discussion of microplastics in Lake Tahoe, including some information on the environmental setting, such as the residence time of water in Lake Tahoe. Staff Report, Att. P, at pp. 1335-39. This information is too little, too late. To begin, the environmental setting information and a discussion of microplastics should have been provided in the Draft REIR, not in staff report released well after the Final REIR and just days before the hearing on the Project. Further, although the discussion acknowledges the severity of the problem for Lake Tahoe and does not deny that tire wear and visitation are known contributors, it throws up its hands and says the issue is too speculative to consider. However, just because a precise formula is not known for calculating microplastics impacts, that does not mean that the REIR cannot identify the Project's role in exacerbating the problem and evaluate feasible mitigation to lessen the Project's contribution to the problem. The scientific understanding of many environmental problems is constantly evolving; CEQA takes this into account and requires an agency to find out and disclose all that it reasonably can.

The EIR also wrongly assumes that adequate progress is being made to meet TRPA goals. In fact, the Lahontan Water Board's TMDL Performance Report, adopted in *2024,* states that "FSP loads in urban stormwater must be reduced by one-third to meet the Clarity Challenge" intended to return Tahoe to its historical clarity. *Id.* at 1. Placer County has not met its "target pollutant load reductions" in recent years. *Id.* Likewise, the Board's "Lake Tahoe TMDL 2024 Strategy & Current Themes FINAL – JANUARY 2024"[5] states: "Fine sediment and algae continue to be the primary drivers of lake clarity. While the relative impact of these factors varies over time, findings support continuing efforts to control fine sediment and nutrient inputs to the lake." The RFEIR repeatedly relies on others' efforts to reduce these drivers through roadway management programs, claiming such programs are more cost effective. But merely because such programs exist and may be cost effective *does not mean* that the Project would not individually or cumulatively impact Lake water quality and clarity.

The REIR claims that TRPA's VMT standard (TSC-1) is not a water quality standard and that it does not apply, and could not be applied, to Projects outside the Basin. As to the first claim, our prior comments demonstrate that the VMT standard *does* protect water quality; in addition, TRPA has many other thresholds that apply to pollution caused by VMT that were not evaluated in the REIR.

As to the second claim, the RFEIR provides a "hypothetical" VMT analysis in an apparent attempt to show that the Project's VMT would not be significant. However, it admits the hypothetical scenario is "not a valid approach" and "could be misleading." RFEIR at 3.1-123 to 3.1-124; Exhibit 3 (Brohard Report) at 2 and 3. In addition, the RFEIR fails to explain any of the assumptions made for the hypothetical analysis and appears to omit trips from approximately 300,000 square feet of commercial uses. *Id*. Given that commercial uses are large generators of trips and VMT, and that TRPA considers any unmitigated net increase in commercial or recreational VMT to be a significant impact, this failing makes the hypothetical analysis even more misleading. *See, e.g.*, TRPA Code section 65.2.3.E. Moreover, while the REIR admits that cumulative traffic has increased in the region since 2016, it entirely fails to analyze the significance of this change. Recognizing it was critical to understanding traffic-related impacts, Caltrans specifically requested a "VMT-Focused Transportation Impact Study for this project," but the RFEIR refused, saying no such study is required. RFEIR 3.2-5.

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5 https://clarity.laketahoeinfo.org/FileResource/DisplayResourceAsEmbeddedPDF/07ef9629-3d51-493b-b4fa-ccd6b157d7cd

The RFEIR's responses to the comments of the public and Caltrans on this topic are inadequate. Even if TRPA's formulas for assessing VMT are not a perfect match given the Project's location, the Project indisputably would cause a huge increase on VMT in the Basin and County must do all that it reasonably can to analyze and disclose the potentially significant impacts of this increase on Lake Tahoe and the Tahoe Basin. The County must recirculate the REIR with this information.

As set forth in our prior letters, *after* the Project's impacts have been properly analyzed and disclosed, the REIR must evaluate all potentially feasible mitigation to lessen or avoid such impacts. The Specific Plan includes policy CP-2, which specifies that the Project would "enhance and supplement transit…to reduce vehicle trips and emissions." But this vague measure does not make up for the REIR's deficient analysis of the Project's impacts on Lake Tahoe. The public and decision makers cannot determine whether a measure will alleviate an impact without fully understanding its extent. Moreover, the RFEIR provides no evidence that the Project includes specific, enforceable measures to implement this policy, much less that such measures would adequately mitigate the Project's individual and cumulative VMT impacts on Lake Tahoe and the Tahoe Basin. Exhibit 3 (Brohard Report) at 8. Indeed, as our prior comments explain, the EIR admits 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 also suggests that the Project's "voluntary payment of $2 million [to the Tahoe Regional Planning Agency ("TRPA")] to fund programs designed to reduce VMT in the Tahoe Basin" constitutes adequate mitigation of water quality impacts to Lake Tahoe. RFEIR 3.3-12. But again, this does not cure the failure to adequately disclose the Project's impacts as required by CEQA. Moreover, the County never explains how the $2 million payment was calculated. Instead, the REIR says only that the amount is in line with mitigation fees typically required for similar in-basin projects. RFEIR at 3.1-85. The RFEIR cites a consultation with TRPA who agreed that the fee was a reasonable estimate of what the agency might charge for a similar in-basin project. No examples are given, however, of other similar projects in the Basin, perhaps because none exist. But the fact that TRPA would charge such a fee is evidence that TRPA believes there would be a significant impact to Lake Tahoe and the Basin, as it only charges mitigation fees for projects with significant impacts. *See, e.g*. TRPA Code section 65.2.3. And in such cases it requires payment of a fee *and implementation of mitigation measures* that ensure TRPA's VMT standards (including no net increase in VMT for commercial and recreational uses) are met. *See id.*, TRPA Code section 65.2.4. The staff report claims TRPA's statement is irrelevant to the Project's potential impacts, but cites nothing for this claim.

Here, there are no mitigation measures that ensure TRPA's (or any other) VMT standards are being met. Compounding the problem, none of the $2 million (or money from an additional tax to be imposed) is even ear-marked for VMT reduction or water quality improvements, like best management practices (BMPs) to reduce water quality impacts such as from road runoff pollutants. Instead, the RFEIR once again employs circular reasoning to justify omitted analysis. There is no basis for concluding that the "mitigation" would significantly reduce the 23,842 miles of Project-related car trips in the Basin on a busy day, much less the impacts from the as yet unanalyzed cumulative VMT. In fact, a $ 2 million mitigation fee would do little to cover the capital costs of, and costs for maintaining and operating, new buses to address Project-related impacts to area transit. *See* Exhibit 3, Brohard Report at 9.

An EIR must do the analysis. It cannot simply adopt a voluntary (and illusory) mitigation measure (even one included in a Development Agreement) whose impact is never assessed and claim that it fully reduces a water quality impact that is never analyzed or disclosed under a significance threshold that is never identified.

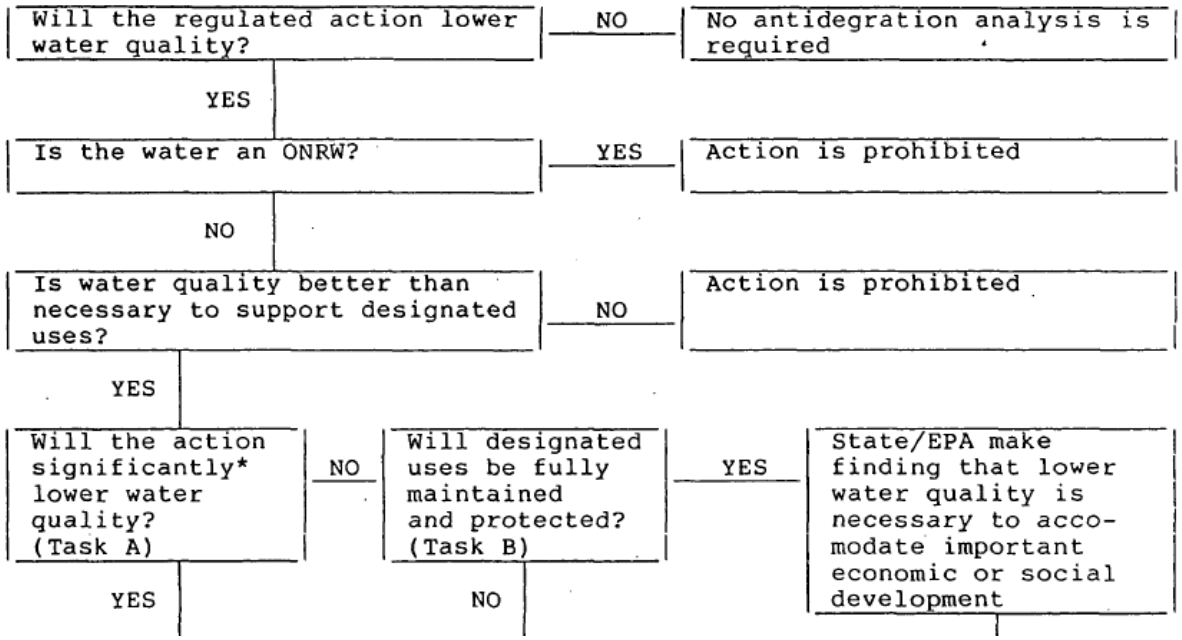
3. The EIR should include an Antidegradation Analysis Regarding the Project's Impacts on Lake Tahoe, an Outstanding National Resource Water.

The EIR should also include an antidegradation analysis under federal and state law. California's "Antidegradation Policy" requires, at minimum, that the Project comply with waste discharge requirements that include "the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained." *See* State Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California."[6] For ONRW waters such as Lake Tahoe, this would permit *no* degradation of water quality. *See* Lahontan Basin Plan at 3-15 (finding that "[n]o permanent or long-term reduction in water quality is allowable" in ONRWs). Lake Tahoe is "controlled by federal and state antidegradation regulations," which recognize that attainment of "deep water transparency and productivity standards requires control of nutrient and fine sediment particle loading." Basin Plan at 5-1. This flow chart demonstrates the legal landscape for ONRWs:

[6] Available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf

FIGURE 1

Antidegradation Flow Chart



US EPA Region 9, *Guidance on Implementing the Antidegradation Provisions of 40 C.F.R. 131.12* (June 3, 1987) ("Region 9 Guidance"), at p. 13 (Figure 1 [partial]).[7]

Contrary to claims made at the Planning Commission hearing and in the staff report, antidegradation policy applies to nonpoint as well as point sources. State law requires that nonpoint source control programs (Wat. Code, § 13369(a)) address nonpoint source pollution "in a manner that achieves and maintains water quality objectives and beneficial uses, *including any applicable antidegradation requirements*." State Board "Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program" ("NPS Policy"), May 2004,[8] at 12 (emphasis added). The State's antidegradation policy is considered a "water quality standard" under the Clean Water Act. *Id.* at 3. ("The beneficial use designations and water quality objectives, together with

[7] Available through EPA's National Service Center for Environmental Publications: https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=91008B8V.txt

[8] Available at https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf.

the State's antidegradation policy, constitute water quality standards for purposes of the CWA."). Lake Tahoe stringently regulates non-point source pollution through the Lake Tahoe Total Maximum Daily Load (TMDL) for fine sediment particles, nitrogen, and phosphorus.

Where, as here, a "proposed action" "could or will lower water quality" for an ONRW, an "antidegradation analysis" is required. Region 9 Guidance at 4. The EIR admits that the Project "could" or will lower water quality. *See, e.g.,* RDEIR at 1-9 (acknowledging that "increased VMT could result in an increase in the amount of pollutants entering Lake Tahoe"). Moreover, this is a long-term, not a short-term impact, as the Project would increase traffic to the Basin for the foreseeable future. As the Lahontan Water Board has recognized, for Lake Tahoe any "long-term lowering of baseline water quality would violate antidegradation policy." Final Environmental Impact Report/Environmental Impact Statement, Appendix C (Draft EIR/EIS July 6, 2020), Tahoe Keys Lagoons Aquatic Weed Control Methods Test[9] at 3.1-1. An Antidegradation Analysis must show that Lake Tahoe's water quality would be "maintained and protected" despite the Project activities and address "how waste discharge requirements result in the best practicable treatment or control of the discharge."[10]

The Lahontan Basin Plan recognizes that the antidegradation policy "applies to all waters of the Lahontan Region" and "requires continued maintenance of existing high quality waters." Basin Plan. at 5.1-5. Thus, the Antidegradation Analysis should include not just Lake Tahoe, but other waters within the Project area, including the Truckee River and Washeshu Creek.

B. The EIR Fails To Adequately Analyze and Mitigate the Project's Impacts on Air Quality in the Lake Tahoe Air Basin.

The EIR's failure to adequately address the Project's air quality impacts in the Lake Tahoe Air Basin is set forth in our prior comment letters, which show *inter alia* that

[9] Available at https://www.waterboards.ca.gov/lahontan/water_issues/programs/tahoe_keys_weed_control/docs/app_c_deirdeis.pdf.

[10] California Regional Water Quality Control Board Lahontan Region, Waste Discharge Requirements And National Pollutant Discharge Elimination System (NPDES) Permit For Tahoe Keys Property Owners Association Tahoe Keys Lagoons Aquatic Weed Control Methods Test, Order No. R6T-2022-0004, G-4, available at https://www.waterboards.ca.gov/rwqcb6/water_issues/programs/tahoe_keys_weed_control/docs/npdes-R6T-2022-0004.pdf

the REIR failed to consider the emissions from *all* Project-related emissions, dismissed peak VMT, ignored impacts from the release of pollutants from tire wear, and fails to adequately analyze cumulative impacts.

The EIR is particularly misleading with regard to the Project's operational emissions. The EIR estimates Project operational emissions to be as high as 180.2 lb/day of ROG and 82.7 lb/day of NOx. DEIR at 10-16; RDEIR at 10-19. The RDEIR states that it is revising MM 10-2 to reflect "more stringent" air district rules which would require emissions to be *reduced* from 82 to 55 lbs/day. It states: "When the 2016 EIR was certified, PCAPCD guidance established a threshold of 82 lbs/day for ROG and NOx. As noted above, PCAPCD issued updated guidance in 2017, and this new, more stringent guidance is being followed here although not required under the Ruling." RDEIR at 10-14. The RDEIR redlines this revision to MM 10-2 as:

> Prior to recordation of each Small Lot Final Map, the project applicant shall prepare, to the satisfaction of Placer County Planning Services Division and PCAPCD, a chart or table with supporting analysis, which demonstrates that construction and operation of the proposed phase, combined with emissions from all past approved phases, will not result in ROG or NOx emissions in excess of ~~82~~ 55 lbs/day.

RDEIR 10-19; *see also* RFEIR 4-34.

In fact, the EIR *substantially increased* the allowed ROG and NOx emissions because the 2016 Final EIR required that they be reduced below 10 lbs/day, not 82 lbs/day**.** 2016 FEIR 2-21, 23, 2-57-59, 2-88. Thus, the FEIR's MMRP included MM 10-2 as follows:

> This measure is designed to reduce the project's operational emissions of ROG or NOx to less than PCAPCD's project-level threshold of 82 lbs/day and to less than PCAPCD's cumulative threshold of 10 lbs/day. …Prior to recordation of each Small Lot Final Map, the project applicant shall prepare, to the satisfaction of Placer County Planning Services Division and PCAPCD, a chart or table with supporting analysis, which demonstrates that construction and operation of the proposed phase, combined with emissions from all past approved phases, **will not result in ROG or NOX emissions in excess of 10 lbs/day.**

FEIR4 4-31 (emphasis added). Adding to the confusion, the RDEIR states that it is adopting both a 10 lbs/day *and* that it is adopting a 55 lbs/day standard, thus providing conflicting information to the public. *Compare* RDEIR 2-22 & 2-23 (stating MM 10-2 will reduce Project impacts below PCAPCD's "cumulative threshold of 10 lbs/day"), 2-57, 2-59, 2-88 (same) *with* RDEIR 10-15, 10-18-19, 10-22-23, , 2-7, 34 (stating MM 10-2 will reduce ROG and NOX below threshold of 55 lbs/day).

Moreover, nothing in the RFEIR supports its conclusion that the vague measures in MM 10-2 will reduce ROG to 30% of projected levels (based on the 55 lbs/day standard). In fact, the County relied on the essentially the same mitigation to claim it could reduce emissions of ROG to 47% of projected levels (based on the 85 lbs/day standard in the DEIR) and to 5% of projected levels (based on the 10 lbs/day standard in the FEIR). The same is true with regard to NOx. And the EIR also relies on MM 10-2 to reduce GHG emissions as well as direct air emissions. *See* RDEIR 2-81-82; RFEIR 4-58 (MMRP).

CEQA requires that mitigation be genuine, quantifiable, additional, and verifiable at the time of preparation of the EIR. *See Golden Door Properties, LLC v. County of San Diego*, (2020) 50 Cal. App. 5th 467. An agency cannot simply claim that future, vague mitigation, developed and approved *outside the public review process,* will be effective in eliminating significant Project impacts, as the EIR does here. The County's claims, in three different CEQA documents, that the same measure would reduce ROG emissions to 5%, 30% and 47% of projected levels shows that the RFEIR's conclusion that Project operational emissions will be reduced to insignificant levels is arbitrary and capricious and not supported by substantial evidence.

Lastly, our prior comments demonstrated that the REIR failed to properly analyze the Project's individual and cumulative VMT impacts on air quality in the Lake Tahoe Air Basin. As with water quality impacts, the RFEIR claims that TRPA does not maintain any VMT standards that are relevant to the Project. This claim fails for the reasons discussed above for Lake Tahoe water quality impacts. Moreover, as explained in the TRPA Staff Report for the change from the prior air quality threshold to TSC-1: "While the work plan to update the VMT threshold standard focuses on identifying appropriate measures and targets for the concerns more salient today, *it does not mean that TRPA is moving away from VMT as a measure. Reducing VMT will remain a central focus of TRPA's Regional Plan, and transportation and air quality programs*." Exhibit 8. Indeed, the mandate to reduce "air pollution which is caused by motor vehicles" and "[t]o reduce dependency on the automobile" is enshrined in the TRPA Compact itself. Article V(1)(c)(2). The County must recirculate the REIR with an adequate analysis of the Project's VMT impacts on air quality in the Lake Tahoe Air Basin.

C. The REIR Fails to Adequately Analyze and Mitigate the Project's Impacts on Public Safety with Respect to Wildfire Danger.

In our prior comments, we raised concerns about the REIR'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 and its failure to evaluate Project impacts in light of evidence demonstrating significantly increased fire danger in the Project area. We submit additional comments on this topic below, which are supported by comments prepared by Dr. Christopher Dicus, Professor of Wildland Fire & Fuels Management at California Polytechnic State University, San Luis Obispo. Dr. Dicus's comments are attached as Exhibit 2 (Dicus Report).

1. The REIR Fails to Take Into Account the Significant Increase in Fire Danger Risks in the Project Area, Does Not Substantiate its Claims that Fire Personnel Would Safely Evacuate the Area, and Improperly Dismisses Suggested Mitigation Measures.

As explained in the Dicus Report, the risk of a high intensity fire in the project area is already extreme and is expected to get worse for several reasons. Dicus Report at pp. 4 and 5. These include high fuel loads on surrounding public lands and high numbers of dead trees caused by drought and insect epidemics, that are prone to wildfires. *Id*. Furthermore, climate change, which is increasing temperatures and lowering moisture content in vegetation is increasing wildfire risk as well, with US Forest Service lands in the Sierra Nevada identified as being susceptible to the largest impacts. *Id*. and Exhibit 13 (Keeley, J.E., and A.D. Syphard. 2017. Different historical fire-climate relationships in California. International Journal of Wildland Fire 26: 253–268 https://doi.org/10.1071/WF16102). The heightened fire threat is clearly evidenced by the increasing inability of residents to obtain fire insurance. Dicus Report at pp. 4 and 5.

Dr. Dicus' comments are in line with the Olympic Valley Fire Chief (Chief Riley) who expressed serious concerns about the REIR's wildfire analysis and warned the County that "California has experienced the eight largest wildfires in modern state history" in recent years, including "the Caldor Fire in 2021 [which] demonstrated that wildfires indeed can burn upslope into the Tahoe Basin." RFEIR 3.2-102. The County dismissed these comments as well as our prior comments on the significant increased risks from wildfire in Olympic Valley, contending that it is not "new information" and therefore did not need to be addressed. This is inaccurate. The County's 2016 approval of the Project was based on former Fire Chief Bansen's assertion that Olympic Valley was an unlikely host for major wildfire. Chief Riley's comments made clear that the shift in circumstances is pronounced and very significant: "The District now understands that

Olympic Valley, *in sharp contrast to Chief Bansen's Opinion in 2016*, could in fact be host to catastrophic wildfire." *Id*. (emphasis added).

Moreover, as Dr. Dicus explains, fire suppression is largely ineffective during extreme weather events known as "red flag" events, which are now reasonably expected to occur in the area. Dicus Report at p. 6. High winds during such events mean both that firefighting through air operations is extremely limited and that fire spread aided by the wind outpaces ground firefighting efforts. *Id*. In Dr. Dicus's professional opinion, while the REIR touts pre-positioning of fire personnel as a solution to extreme weather "Red Flag" occurrences (RFEIR Master Responses Pg. 3.1-63), any ignitions during such times would reasonably be expected to exceed firefighting capabilities and spread with severe intensity and speed. *Id*.

In the event that multiple wildfire ignitions were to occur in the Tahoe region, firefighting crews and equipment would be needed in multiple areas, which would strain the ability to fight all of the fires, even if wind were not a factor. *Id*. Given all of these factors combined (i.e., abundant fuels, weather, topography in the local area and a CAL FIRE Hazard Rating of "Very High"), conditions in the area are favorable for "a fast-spreading, destructive wildfire should an ignition occur there during an extreme weather event." Dicus Report at 6.

Given these heightened risks in the Project area, the County must recirculate the EIR's analysis of the extent to which the Project, by bringing thousands of new residents and visitors into the urban wildland interface, would increase the risk of a human-caused wildfire over the existing baseline. *See People ex rel. Bonta v. County of Lake* (Cal. Ct. App., Oct. 23, 2024, No. A165677) 2024 WL 4553306, at *7 ("the FEIR fails to reasonably describe the 'additional wildfire risk factors as compared to existing conditions' that the project would 'introduce' to the area."). The EIR's cursory and outdated conclusions regarding this risk are inadequate in light of the new information discussed in prior comments and in the Dicus Report. The revised analysis should include industry standard modeling tools, and explain its methodology and analysis. Once the EIR adequately reveals the Project's impacts on increased risks, it should incorporate those findings into the evacuation discussion.

As the Dicus Report explains, the RFEIR Master Responses seems unconcerned about a fire occurring in the local area – a *Very High Fire Hazard Severity Zone*, stating that "days of lead time are often available to assess risk and make evacuation determinations" RFEIR at 3.1-60 and Dicus Report at 8. However, given all of the factors at play, as discussed above and in prior comments, such lead time is not guaranteed, and the County should be addressing serious concerns about emergency response time and

public safety, not ignoring them. According to Dr. Dicus, "the size of the project could render evacuation a near death trap should a wildfire ignite near the development during Red Flag conditions." *Id*. This public safety hazard would be further exacerbated by the fact that the Project site has only one point of ingress/egress.

The RFEIR relies on "incident command" and that traffic control at key intersections would be managed by California Highway Patrol ("CHP") and the Placer County Sheriff's Office to determine that public could evacuate safely during a wildfire. But as Dr. Dicus explains, "even if emergency personnel are present for evacuation from Palisades, an orderly (and safe) evacuation is not ensured, especially in the early, chaotic stages of a wildfire event." Dicus Report at 8. Moreover, CHP itself expressed concern about increased traffic from the Project and noted that additional traffic could result in slower emergency response times and impact public safety. RFEIR 3.2-8. The CHP also encouraged traffic mitigation efforts to reduce vehicles on SR-89 South, I-80, SR-28 and Olympic Valley Road. RFEIR 3.2-8. The RFEIR's responses to these comments were also dismissive, stating that updating traffic information was unnecessary because the County it not reconsidering the information in the 2016 EIR and suggesting that the CHP should have suggested specific mitigation. RFEIR 3.3-2 and 3.3-3.

Yet, the County also dismissed the comments of Chief Riley, who *did* suggest specific mitigation, including but not limited to: improvements to existing roads and trails for emergency access and financial contributions to fund fire reduction improvements. RFEIR 3.2-100-101. The County's response dismissively stated that its 2016 analysis was adequate and no additional mitigation would be considered. RFEIR 3.3-16-17. This is especially egregious given that the Project applicant is now asking for an exception to minimum fire safe regulations for dead end roads, without assessing any further measures to mitigate for the added dangers such an exception would impose.

In short, numerous experts, including Olympic Valley's own Fire Chief, have warned the County that the Project's placement in what is now confirmed as a high risk area for a severe wildfire that would likely result in the need for a mass evacuation, poses a major public safety risk. The County's "evidence" for why that would not be the case amounts to an irresponsible "trust us" approach. Although the County does have some discretion in evaluating a Project's impacts, that discretion has limits and must be supported by substantial evidence. Here, the County pushes its discretion beyond all reasonable limits. Given the massive amount of development the Project would entail in a narrow, forested alpine valley that is essentially a tinder box with only one way in and one way out, the REIR's conclusion that the Project would not result in significant safety impacts during a wildfire is absurd. If there is not a significant safety impact under such circumstances, one would be hard pressed to find a situation where there would be such

an impact. The County should recirculate the REIR with a disclosure and analysis (supported by substantial evidence) of the high risk of wildfire in the area, how much that risk would be exacerbated by the Project, the unpredictable nature of wildfire, and the inability of the County to guarantee a safe evacuation. The County should evaluate and adopt all feasible mitigation or a reduced density alternative to lessen this impact, but in the end, the evidence indicates this would be a significant and unavoidable impact.

2. The REIR Fails to Properly Evaluate or Mitigate the Project's Impacts to Emergency Evacuation During Its 25-Year Construction Period.

The REIR's failure to adequately evaluate and mitigate the Project's safety impacts during a wildfire is even more pronounced during the Project's 25-year construction period. As the Court of Appeal found, "The County, notably, acknowledged that increased traffic along [Olympic] Valley Road and State Route 89 could, at some point, significantly interfere with emergency evacuation plans. That consideration led it to conclude that increased traffic from project construction would significantly interfere with emergency evacuation plans." The Court noted the EIR's failure to adequately explain why Project construction would result in such a significant impact, but Project operation would not. The REIR also fails to sufficiently explain this difference, as it contains not a shred of methodological analysis or evidence as to when or why an evacuation would turn from safe to unsafe. The REIR acknowledges Project operation could result in an evacuation time of up to 11.2 hours, but somehow finds this to be "safe." It fails to disclose by how much Project construction could increase the estimated evacuation times, and at what point such an increase results in a significant impact. This is significant given that Project construction is anticipated to last for the next 25 years and would occur primarily at times of the year that are dry and thus are prone to higher fire risk. The County must show its work so that the public and decision makers can properly evaluate the serious risks involved with this Project, as well as the effectiveness of proposed mitigation.

Equally disturbing, the REIR improperly concludes that a vague mitigation measure would reduce the significant safety impacts during the 25-year construction period to less than significant. Again, the REIR takes an improper "trust us" approach. The REIR promises that large "construction equipment blocking a roadway such as loaders or backhoes . . . can be quickly moved off the road to allow vehicles to pass" and that lane closures can be reversed on a dime. RFEIR at 3.1-80. Common sense and experience dictates that in the best of circumstances it can take a long time to restore roadway conditions from construction activities. In the harried scene of a wildfire event, the task would likely be impossible.

The RFEIR promises that personnel would be on-site to direct these actions, but are these the same personnel that are supposed to be directing traffic? The public and decision makers are left unsure of these and other important questions, as the details of the mitigation measure for this significant impact (preparation of a Traffic Management Plan (TMP)) are improperly deferred to a later date. No standards are imposed on the yet-to-be prepared TMP. Indeed, it is not even required to ensure compliance with applicable regulations such as those set forth in Cal. Code Regs., tit. 14, § 1273 et seq. For example, one such regulation requires that all roads shall "provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping." Cal. Code Regs., tit. 14, § 1273.01. Would the Project being able to comply with this requirement during construction? Again, the answers to such questions and the provision of standards are imperative as the Project has a 25 year construction timeline, with most construction occurring during the most fire prone times of the year. The County must revise and recirculate both the analysis and proposed mitigation for the Project's significant effects on emergency evacuation during construction.

3. The REIR's Analysis of, and Reliance on, Shelter In Place and/or the Use of Temporary Refuge Areas Is Inadequate.

The RFEIR at times appears to acknowledge the unpredictable and dangerous nature of wildfire, but maintains that even in the event of a wildfire where safe evacuation is not possible, the Project would not result in a significant safety impact because Project residents and visitors could either shelter in place or use a Temporary Refuge Area (TRA) to survive. However, as Dr. Dicus explains, while these two approaches can reduce harm when properly planned and used as a back up to evacuation, they in no way guarantee public safety and are not an excuse to properly evaluate and mitigate evacuation risks. Dicus Report at 11 and 12. The Dicus Report echoes our prior comments that the REIR fails to provide any details about the design of the shelter in place structures aside from citing compliance with existing codes and regulations, which are not adequate on their own. *Id*. What criteria are provided are so vague that decision-makers and the public are asked to trust that the applicant will figure it out at an unspecified later date. *Id*. This again constitutes improper deferral.

Similarly, TRAs can be useful as a last resort, but can also be dangerous. Dicus Report at 12. As described in the Dicus Report, users of TRAs frequently suffer serious physical injuries, including damage from smoke inhalation, and long-term mental trauma. *Id*. Therefore, the REIR should have considered all of the new information regarding changes in climate and more intense weather that create conditions favorable to highly destructive fires, as well as the mitigation proposed by the Fire Chief (or explained why

such mitigation is infeasible). The County's failure to do so may put property -- and lives at risk.

The REIR also proffers no substantial evidence that the Project would not result in significant safety impacts for others in the region that are attempting to evacuate during a wildfire event. Those residents and visitors would be coming from other surrounding areas and would not be on the Project site to "shelter in place." The REIR must adequately examine this safety risk. The staff report acknowledges a new study looking at evacuation times in the area, but states it could not asses it because it did not have access to the study. The study is attached (*see* Exh. 14) and demonstrates the already very lengthy evacuation times at issue. *See also* Exh. 15. The REIR must analyze how and to what extent the Project would exacerbate this dangerous situation, and what feasible measure can be taken to lessen the impact.

In sum, the County's cursory treatment of the severe wildfire and evacuation dangers of the area is not only a violation of CEQA, but would put lives at risk. The County must recirculate the EIR with a serious examination of the Project's impacts on public safety due to wildfires and evaluate all feasible mitigation to reduce such impacts.

D. The EIR Fails to Adequately Analyze and Mitigate the Project's Transportation and Safety Impacts.

In our prior submissions, we pointed out multiple flaws related to the EIR's analysis of Project-related impacts to transportation and traffic. The RFEIR presents a technical memo ("Memo") with new analysis and proposed mitigation regarding queuing impacts for vehicles turning at the SR 89/Olympic Valley Road Intersection. As explained in the Brohard Report, the Memo fails to consider stopping sight distances at the end of the forecast queues under various conditions. Exhibit 3 (Brohard Report) at 4 to 6. As a result, the Memo fails to include measures that ensure traffic safety under various conditions on SR 89 north and south of Olympic Valley Road. *Id*.

Specifically, for the Cumulative Plus Project Conditions, the Memo recommends increasing the length of the northbound left turn by 700 feet and increasing signal timing. According to the Brohard Report, the queuing traffic would not fit within the turn pocket and would extend 400 feet into the single through lane along the horizontal curve of SR 89, which would trigger the need for major reconstruction and widening of SR 89. Exhibit 3 (Brohard Report) at 5 and 6. As the Brohard Report explains, this required widening into the narrow road's horizontal curve "creates an extremely dangerous condition and should not be considered." *Id.* at 6.

The RFEIR fails to identify the extent and severity of this new, undisclosed public safety impact. Moreover, 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 analyze the safety and other environmental impacts of additional queuing traffic, which would necessitate reconstructing and widening SR 89 to accommodate Project traffic, and recirculate this and other needed revisions to the REIR for public review.

In addition, several Specific Plan policies for transportation management programs are not satisfied by the Project. For example, policy CP-1 states: "Other measures are available to manage the peak traffic flows, such as three-lane operation with cones, signage, and traffic personnel." As explained in the Brohard Report, Mitigation Measure 9-1a requires the project applicant to prepare a transportation management program for Olympic Valley Road that includes a prediction of when traffic volume would exceed 13,500 ADT.[11] Exhibit 3 (Brohard Report) at 7. When the traffic volume exceeds this threshold, personnel and materials (such as cones, signage, and personnel) are supposed to be available on site to implement a three-lane operation. *Id*. The discussion erroneously indicates that a three-lane operation would reduce the volume-to-capacity (v/c) ratio to pre-Project conditions at LOS D of 0.89 (15,300/16,875). But the correct results of the mathematical division is actually 0.90666, which triggers the threshold of LOS E. *Id*. As such, the measure proposed fails to mitigate the significant impact of the project: traffic would be at LOS E, not pre-project levels of LOS D, and the v/c ratio increase would be greater than 0.05. *Id*.

Both Caltrans and the California Highway Patrol ("CHP") also expressed their concerns about the Project's increased traffic and safety impacts. RFEIR at 3.2-5, 3.2-8. Caltrans requested a "VMT-Focused Transportation Impact Study for this project," expressing concern, inter alia, that "the overall increase in traffic volumes" will "exacerbate existing congestion conditions, and potentially introduce conflicts and resulting safety concerns at key locations," particularly "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 3.2-5. The RFEIR ignores these concerns about congestion and public safety, doubling down on its claim that no such analysis is required.

[11] "ADT" stands for "Average Daily Traffic," which means the average number of vehicles that travel through a specific point on a road during a given time period, calculated by dividing the total traffic volume during that period by the number of days in that period.

CHP also encouraged traffic mitigation efforts to reduce vehicles on SR-89 South, I-80, SR-28 and Olympic Valley Road. RFEIR 3.2-8. The RFEIR fails to adequately respond to these comments. Rather, the RFEIR faults the CHP for failing to identify what specific mitigation is lacking. RFEIR 3.3-3. It is the County's job to propose and adopt mitigation for the Project's serious traffic and safety impacts. If the County was unclear about what mitigation would be effective in reducing transportation and public safety impacts, it should consult with CHP, not dismiss its comments.

E. The EIR Fails To Adequately Analyze and Mitigate the Project's Impacts on Water Supply, Water Quality, and Biological Resources from Groundwater Pumping.

1. The RFEIR Improperly Dismissed Comments that the Project's Groundwater Pumping Would Result in Impacts on Water Supply, Water Quality, and Biological Resources that Would Be More Severe than what was Analyzed in the 2016 EIR, and that Additional Mitigation Would Be Required.

The County has failed to respond to at least three separate set of comments from experts in the field regarding the Project's groundwater impacts in light of new information since the Water Supply Assessment (WSA) was completed for the Project nearly a decade ago (in 2015). First, in our comments on the RDEIR (and RFEIR), we explained that the County was required to update its hydrology and water quality analysis to account for changes related to climate change that have occurred since the County certified the 2016 EIR. Greg Kamman, Hydrogeologist with CBEC Engineering, detailed new information related to climate change impacts on groundwater supply and groundwater recharge that indicated the 2015 WSA's and the 2016 EIR's analysis does not accurately reflect current groundwater conditions. Climate change has adversely impacted, and will continue to adversely impact, aquifer recharge in the Olympic Valley Groundwater Basin. The County has failed to properly respond to these comments.

Second, the Olympic Valley Public Service District ("OVPSD"), the agency that would be charged with supplying water to the Project, prepared extensive comments on the RDEIR, which were largely dismissed. OVPSD even went so far as to commission its own evaluation—the February 2024 UES Climate Change Modeling – Olympic Valley Groundwater Model. This Model showed that climate will change significantly affect groundwater recharge and reduce availability in dry months. Yet, the REIR ignores this new study and continues to rely on the outdated 2015 Water Supply Assessment. This constitutes error under CEQA, as well as Water Code section 10910(h). Tellingly, the County's water expert who addressed water supply at the Planning Commission hearing also did not reference OVPSD's comments or the new evaluation. The County must

reevaluate the water supply impact of the Project, which requires massive pumping of groundwater from the Basin, in light of this new information.

Third, the RFEIR also inappropriately dismisses the concerns of the Lahontan Water Board. The Board is both a responsible agency under CEQA and has jurisdiction over the Project pursuant to its own independent statutory responsibilities.

The Lahontan Water Board noted that additional groundwater pumping could affect surface flows and groundwater availability and negatively impact beneficial uses. It further commented: "Sediment loads have been allocated and therefore, any additional sediment inputs would be in violation of the TMDLs." RFEIR 3.2-52. The EIR fails to ensure that the Project would not result in additional sediment inputs or explain how it would avoid violating TMDLs.

The Water Board also raised other concerns about groundwater pumping and dewatering and the proposed mitigation:

> As described in Tables 6-5 and 6-6 as well as the narrative in Section 2.3.6, increases in groundwater pumping from the project have the potential to dewater over 10 acres of wet meadow, 5 acres of riparian area, and 4.4 acres of intermittent stream.

RFEIR at 3.2-55. The Water Board criticized the mitigation, stating that 5 years of monitoring is not sufficient to assess Project impacts, that "[d]ewatering of wet meadows directly conflicts with the Water Board's Climate Change Mitigation and Adaptation Strategy," and that the "loss of such a large area of aquatic resources in this headwaters area would be unacceptable, and purchasing credits to offset this loss is not sufficient to mitigate for such a significant impact." *Id.*

The RFEIR's Response to Comments essentially claims the Board made up the tables and wetland figures:

> The Draft REIR does not address biological resources . . . . Therefore, the comment's references to the "revised EIR 'Biological Resources' section 2.3.6" as well as "Impact 6-1" and "Tables 6-5 and 6-6" are confusing. These sections and tables are not included in the Draft REIR. Although Chapter 6 of the 2015 Draft EIR does address biological resources, . . .

> there is no Table 6-5 or 6-6 in the 2015 Draft EIR and no specific acreage of losses of these habitats from dewatering.

RFEIR at 3.3-10.

In fact, it is the RFEIR that is confused. The REIR *does* purport to address biological resources. The Water Board accurately references Section 2.3.6 "Revisions to Chapter 6, 'Biological Resources.'" *See* RDEIR at 2-38. Tables 6-5 and 6-6 show, as the Board stated, that increased groundwater pumping would impact 5 acres of sensitive habitat with the "Mapped Project Area" and 28 acres east of the Project area. *See id.* at 2-41 and 2-43. If anything, the Board *understated* the impact, as total habitat affected by groundwater drawdown would be 7 acres of Riparian habitat (3.73 in the Project Area and 3.3 acres east of the VSVSP) and 6 acres of Intermittent Stream (4.14 in the Project Area and 1.9 acres east of the VSVSP). *Id.*

Contrary to CEQA, the RFEIR fails to provide an adequate response to the Board's statement that the loss of habitat from the Project is "unacceptable" and contrary to agency policies requiring protection of ground and surface water and habitat.[12]

2. Information Developed Subsequent to the RFEIR also Demonstrates that the County Must Reevaluate the Project's Impacts from Groundwater Pumping.

The DEIR stated that "increased groundwater pumping has the potential to lower surface water levels in [Washeshu] Creek, such that the extent and/or duration of the creek drying may be more extensive than would be the case absent such pumping." (DEIR 13-65). However, relying on analyses created *in 2014*, the DEIR concluded that, with mitigation, the impacts of Project groundwater pumping on Washeshu Creek would be less than significant. (DEIR 13-73).

At the request of Sierra Watch and the League, Mr. Kamman of CBEC Engineering, prepared a report that focuses on the impacts of Project groundwater pumping on streamflow depletion in the Washeshu Creek. (Exhibit 4). Mr. Kamman's report evaluates the analyses relied on in the DEIR, in light of new Washeshu Creek flow data from 2019, which was published in the [Washeshu] Creek Hydrologic Monitoring

12 https://www.waterboards.ca.gov/lahontan/board_decisions/adopted_orders/2019/docs/r6t_2019_0277_resolution_for_climate_change_mitigation_and_adaptation_response_plan.pdf

Report and concludes that Project's impacts on streamflow depletion would be much more severe than disclosed in the 2016 EIR.

CEQA requires the County to update its outdated, insufficient analysis to account for new information related to climate change, including the 2019 Washeshu Creek flow data. The new analysis should evaluate the Project's potentially significant impacts on water quality and attendant biological resource impacts, as well as water supply, and evaluate feasible mitigation measures to lessen or avoid such impacts.

Additionally, the DEIR's conclusion that groundwater pumping for the Project would not cause significant impacts assumed the Olympic Valley wellfield would be built out consistent with wellfield configuration shown in the 2015 Water Supply Assessment.[13] The DEIR noted that, "at the basin-wide scale the decreases in projected percent saturation and groundwater elevation as modelled in the WSA would not have a significant adverse effect on the amount, location, and seasonality of groundwater recharge, groundwater storage, groundwater flow patterns, and total groundwater available for public supplies throughout the Olympic Valley."[14] However, as the DEIR explained, "this conclusion is based on evaluation and modelling in the WSA of a particular wellfield configuration with certain operating parameters."[15] The DEIR conceded that "groundwater availability and wellfield operations could be adversely affected" if "different wellfield construction or operations are ultimately implemented."[16] Because of this possibility, the DEIR concluded groundwater pumping impacts were potentially significant.[17]

The DEIR's ultimate conclusion that the Project's groundwater impacts are less-than-significant rested on the implementation of Mitigation Measure 13-4, designed to "ensure that water supply provided to the proposed project is managed in a manner that is consistent with the system analyzed in the WSA."[18] The WSA, in turn, modeled a wellfield configuration that included multiple wells owned and operated by the Everline Resort & Spa ("Everline"), which also lies in the Olympic Valley Basin.[19] This includes existing wells, proposed new wells, and a well Everline is required to dedicate to the

[13] DEIR at 13-52-13-65.
[14] DEIR at 13-63.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] Village at Squaw Valley Specific Plan Water Supply Assessment, at 6-4-6-10. (July 3, 2024) ("WSA").

Olympic Valley Public Service District ("PSD") pursuant to a Development Agreement.[20] However, Everline and the Public Service District are currently in the process of negotiating an amendment to the Development Agreement, which expired on November 6, 2024.[21] According to PSD staff, the amendment will include an extension to the deadline by which Everline must dedicate the well Everline previously agreed to dedicate.[22] Depending on the outcome of negotiations, Everline may not construct new wells as contemplated in the Development Agreement and WSA.

In short, the DEIR's conclusion that the Project's groundwater impacts would be less than significant is contingent on the Olympic Valley wellfield being built-out as it was modeled in the WSA. Actions taken by Everline and PSD after the certification of the 2016 EIR show that the actual wellfield configuration may not be consistent with the WSA. The DEIR's conclusion that the Project's groundwater pumping impacts would be less than significant is out of date. The DEIR must be recirculated and updated to reflect this material new information and change in circumstance.

V. The Proposed Findings of Fact and Statement of Overriding Considerations Are Not Supported.

The proposed Findings also violate CEQA. Given the Project's significant environmental impacts, the County can approve it only if it adopts all feasible mitigation or alternatives to lessen or avoid those impacts, and adequate override findings explaining the "specific overriding economic, legal, social, technological, or other benefits of the project [that] outweigh the significant effects on the environment." Pub. Res. Code § 21081(b); *King & Gardiner Farms, LLC v. County of Kern* ("*KGF*") (2020) 45 Cal.App.5th 814, 866; Guidelines § 15093.

First, the County "'must adopt feasible mitigation measures'" to reduce significant impacts "'to insignificance.'" *KGF*, 45 Cal.App.5th at 852 (citation omitted), 865. And it can approve the Project using override findings only where alternatives and mitigation measures to "avoid those effects have properly been found to be infeasible." *See City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 368-69. But here, the EIR failed to comply with CEQA in concluding that there were no additional feasible mitigation measures or alternatives to lessen the Project's significant and unavoidable impacts on transportation and circulation, noise, and climate change. As our and others'

[20] WSA at 6-8.
[21] Olympic Valley Public Service Board of Directors Meeting Agenda for September 24, 2024 Meeting, Engineering Report p. 2 (Exhibit 16).
[22] *Id.*

comments explained, there are feasible measures and/or a reduced density alternative that could lessen such impacts. Further, for the reasons set forth above and in prior comments, the EIR erred in finding that the Project's impacts on, *inter alia*, water and air quality in the Lake Tahoe Basin, public safety during a wildfire and evacuation, transportation and transit, water supply and quality, biological resources, population and housing, noise, and growth-inducing impacts were either less-than-significant to begin with or would be reduced to a less-than-significant level by proposed mitigation. Accordingly, the Findings that all feasible mitigation has been adopted for significant impacts is erroneous and not supported by substantial evidence. The Findings with respect to fire hazards must also be reevaluated in light of the applicant's last minute Exception request.

Second, the Findings fail to support a conclusion that better alternatives to the proposed Project are infeasible. Feasibility findings must consider "[s]pecific economic, legal, social, technological, and other considerations" and support findings of infeasibility with substantial evidence. *See* Pub. Res. Code § 21081(a)(3); *Save Round Valley v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1462 (EIR invalid where it lacked information about comparative costs or profitability of project alternatives).

Here, the findings recognize that the Reduced Density Alternative is the environmentally superior alternative (other than No-Project). The findings also recognize that the Olympic Valley Municipal Advisory Council (OVMAC) recommended denial of the Project as proposed and "requested that the County and the applicant work with the community to develop a new, reduced density alternative and conduct further CEQA environmental review for the community-preferred option." The OVMAC explained that the County should review the proposed Reduced Size Alternative ("RSA") as part of its CEQA analysis and undertake an analysis of its economic infeasibility. Contrary to CEQA, however, neither the CEQA analysis nor the Findings, address this credible alternative in detail or find it infeasible.

Instead, the Findings simply assert that a different alternative, the RFEIR's Reduced Density Alternative is infeasible, a conclusion that is based almost entirely on a 2016 analysis that essentially sets up a straw man – utilizing inflated infrastructure costs and unnecessary and inflated profit requirements. It is also based on economic conditions and projections from over eight years ago. No evidence at all, much less substantial evidence, is provided to show that a reduced density alternative is economically infeasible in 2024 based on current economic conditions, including current interest rates, taxes, market conditions, and materials and labor costs. As discussed in our prior letters, new information demonstrates that those conditions have substantially changed over the past eight years impacting the feasibility of a reduced sized alternative. The fact that a less intensive "alternative may be more expensive or less profitable is not sufficient to

show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." *Sierra Club v. Tahoe Regional Planning Agency* (E.D. Cal. 2013) 916 F.Supp.2d 1098, 1124 (quotation marks omitted). The lack of updated, relevant information in the RFEIR or the findings that support the Board's proposed rejection of an environmentally superior alternative violates CEQA. *See id.* at 1131(concluding that Placer County's and TRPA's finding that reduced ski resort alternative is economically infeasible is not supported by substantial evidence).

Third, because the County has erroneously failed to analyze or mitigate numerous significant environmental impacts of the Project, it "necessarily follows" that the override statement is invalid. *City of Marina,* 39 Cal.4th at 356-66, 368-69. This is because the purpose of override findings is to weigh the Project's "significant, unmitigated [environmental] effects" against its benefits. *Id.* at 368. But here, because the RFEIR repeatedly understates or fails to disclose the Project's true impacts, the override findings are skewed and unsupported. The RFEIR's informational deficiencies undermine the foundation upon which the statement of overriding consideration rests. *See Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1130 (project "incorrectly approved" where override findings based on flawed noise analysis). Likewise, the Project benefits are unsupported because the economic benefits are based on a 2016 economic analysis that has not been updated to reflect current market conditions.

Finally, for all of the reasons discussed above and in our prior comments, the Findings' conclusion that recirculation is not required is unsupported.

VI. Conclusion

For the foregoing reasons and for those set forth in our prior comments, the League and Sierra Watch respectfully urge the Board of Supervisors to deny approval of the Project at this time. The Board should not reconsider the Project unless and until the County prepares and recirculates a revised EIR that adequately analyzes the Project's significant impacts, taking into account significant new information, and identifies all feasible measures or alternatives to mitigate those impacts. Further, the Board may not approve the requested Exception to the Minimum Fire Safe Regulations unless and until the proper procedures have been followed.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Amy Bricker

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Carmen J. Borj

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Orran Balagopalan

cc.

Office of the Attorney General of California
Tahoe Regional Planning Agency
Olympic Valley Fire Department
Olympic Valley Public Service District
Placer County Planning Commission
Town of Truckee
Lahontan Regional Water Quality Control Board

Exhibit List

Exhibit 1	Sierra Watch Report on Comment Letters Revised Draft Environmental Impact Report Village at Palisades Tahoe Specific Plan
Exhibit 2	Dicus Report -Wildfire Hazard and Evacuation Considerations at the Proposed Village at Palisades Tahoe, California
Exhibit 3	Brohard Report re Village at Palisades Specific Plan
Exhibit 4	CBEC Supplemental Report
Exhibit 5	Visual Simulations Prepared by Fastcast
Exhibit 6	Partial List of Sources Demonstrating the Link Between Vehicle Miles Traveled and Loss of Water Clarity and Quality in Lake Tahoe
Exhibit 7	SF Gate - *Ski traffic in Tahoe is already a nightmare. This Development Could Make It Worse.*
Exhibit 8	Tahoe Regional Planning Agency. (2019) Staff Report Re VMT Threshold Update
Exhibit 9	Mejia, J., et al., Desert Research Institute Division of Atmospheric Sciences (Prepared for the Tahoe Science Advisory Council Threshold Update 2017-18). (Rev. 2019) *Final Report: Vehicle Miles Traveled Review*
Exhibit 10	Rinke, N. et al., Office of the Attorney General of California. (2016) Letter to Placer County re Squaw Valley [now Palisades Tahoe] Specific Plan Environmental Impact Report
Exhibit 11	TRPA Letter to Placer County re DEIR 12.22.2015
Exhibit 12	*Vehicles Impact Lake Tahoe Clarity*. (2007)
Exhibit 13	Keeley, et al., International Journal of Wildland Fire 2017, 26, 253–268. *Different historical fire-climate patterns in California*

Exhibit 14 Independent Lake Tahoe Basin Evacuation Report

Exhibit 15 Schism between Tahoe residents - SF Gate 9.18.2024

Exhibit 16 Olympic Valley Public Service Board of Directors Meeting Agenda

Exhibits are available to download at:
https://shutemw-my.sharepoint.com/:f:/g/personal/breckenridge_smwlaw_com/EjU4_B2hSaVAnOKwFTykxBgBqWKTlx2heFM3dtaerYW7xg

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