Sierra Club Lake Group

PO Box 1011 Kelseyville, CA 95451

January 26, 2010

Supervisors Anthony Farrington, Jim Comstock, Jeff Smith, Denise Rushing, and Rob Brown

255 N. Forbes Street
Lakeport, CA 95453

Honorable Supervisors:

The Lake Group regrets the late submission of this letter, which is primarily intended to address the January 21, 2010 comments of the Cristallago Development Corporation President Matt Boeger, comments which we believe to be based on faulty assumptions and mistaken interpretations of CEQA policies and other aspects of California law.

We do however agree with Mr. Boeger that the Board has two separate actions before it, the first being the Lake Group appeal of the Cristallago Environmental Impact Report (EIR) certification. Previous submissions detail our reasons for believing that certification to be defective (reasons refuted by neither the length of the document nor the time required for its preparation), and there is no need to repeat them here. For a review of the distinction between a "programmatic" and a "project" level EIR as prescribed by law, we refer to the October 21, 2009 letter submitted by M.R. Wolfe and Associates on our behalf.

Despite its defects, the EIR very correctly identifies "significant and unavoidable" impacts to aesthetics, oak woodlands, and land use. Cristallago's impact on undeveloped terrain within the viewshed of the Highway 29 scenic corridor is unquestionable (the impact on Scotts Valley was never even addressed).

As for oak woodlands, the "oak trees themselves" constitute only one component of a complex oak woodland habitat, and assessing impacts to that habitat by the simplistic means of counting trees and multiplying by a set formula to derive an equivalence in acreage is absurd and irrelevant. Woodland density can and does vary substantially within this habitat category, and it is the impact to the habitat that requires mitigation, not merely the impact to the trees themselves. Furthermore, by removing both existing forest stock and the potential for further carbon sequestration, woodland conversions measurably increase greenhouse gas emissions rather than helping to reduce them as required by AB 32. Although preservation of some woodland habitat on site reduces total impacts, it does nothing to compensate for actual destruction of either habitat or carbon sequestration.

Land Use conflicts have been detailed repeatedly, and summarized in the Sierra Club letter submitted on January 20, 2010. Repetition would serve no purpose, but additional explication of the project's clear inconsistency with section LU-6.12 might be helpful.

LU-6.12 bars mixed-use resorts outside the Community Growth Boundaries unless the residential component is "secondary and subordinate," which is obviously not true of this project since two-thirds of the units are residential and only one-third are resort units. The January 14, 2010 Staff Report acknowledges that some of the resort units may in fact be used as residential units, further aggravating the inconsistency. Arbitrary accounting tricks, including an "annual population" metric, have been suggested as a way to claim that the project is consistent with LU-6.12. Under this absurd proposal, it is argued that the project could be found consistent because the number of unique visitors to the resort units over the course of a

year may exceed the number of unique visitors to the residential units—as indeed they would in resort units designed for transient occupancy. Obviously this is contention is ridiculous: no one could rationally suppose that the purpose of LU-6.12 is to ensure that the number of unique visitors exceeds the number of residents. The use of the period of a year to determine the relative population counts of the residential units and the resort units rather than an instant in time is entirely arbitrary. This analysis leads to the absurd interpretation that 364 residential units would be "subordinate" to one resort unit if it were rented each day to a different user. Indeed, why stop there? By using a ten-year period to compare relative population counts one could find that 3,649 residential units would be "secondary and subordinate" to a single resort unit that is to be rented to different people every day.

Staff's proposal that the Board require that resort amenities be constructed before the residential units or that at least one resort unit be built for each two residential units does not overcome the fundamental fact that at build-out, the Project will not comply with LU-6.12. Policy LU-6.12 does not contain any qualifications that would permit approval of a non-compliant mixed-use project on this basis.

The argument that the resort element is "primary" is not based on unit counts, but rather upon the claim that the primary economic value to the County is attributable to the resort units, not the residential units, but in rejecting the 200-residential unit alternative, the developers also argue that the resort units are not feasible without the residential units. Thus, it appears that the economic "value" to the County is in fact attributable to *all* of the units, not just the resort units. The argument that the entire project must stand or fall as a whole (since it is not economically feasible to develop it without all 650 residential units) is internally contradictory to the claim that the returns to the County are attributable to a single portion of the project. Mr. Boeger also references the ratio of resort and residential units used by Bend, Oregon for certain land use designations it claims are "Destination Resort" uses. However, whatever Bend's policy may be, it does not govern the interpretation of Lake County's LU-6.12. Essentially, these developers are asking the Supervisors to rewrite our General Plan for their benefit.

In claiming that the environmentally superior, smaller alternative in question is financially infeasible the developers reference an Economic Research Associates letter purportedly in support. Although a summary spreadsheet was provided on request, this letter was not in the staff report or made available to the public to review before the meeting.

Furthermore, as previously detailed by the Sierra Club, State Planning and Zoning law does not allow any jurisdiction to approve a project which conflicts with General Plan policies. This restriction is quite aside from "physical" impacts to the environment addressed under CEQA and referred to by Mr. Boeger.

Yours sincerely

Victoria Brandon

on behalf of the Sierra Club Lake Group