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By Fax & E-Mail

Lake County Planning Commission
c/o Richard Coel, Community Development Director
255 North Forbes Street, Third Floor
Lakeport, CA 95453
Fax: (707) 263-2225
Email: CDD@co.lake.ca.us; richardc@co.lake.ca.us

**Re: Cristallago General Plan Amendment, Rezone, General Plan of
Development & Final Environmental Impact Report; GPAP 05-09,
RZ 05-12, GPD 05-05**

To the Lake County Planning Commission:

This letter is submitted on behalf our client, the Sierra Club Lake Group (“Sierra Club”), and its members that live, work, and visit Lake County. The Sierra Club previously submitted comments on the draft EIR (“DEIR”) for the Cristallago Project referenced above during the public review period. The EIR preparers provided nominal responses to those comments, as well as to the comments of other organizations, individuals and agencies, in the final EIR (“FEIR”). After reviewing these comment responses and finding their adequacy questionable, the Club retained us to review the Project’s DEIR, FEIR, staff reports and other supporting materials prepared by the County to determine whether and what extent the County has properly complied with CEQA in undertaking the Project’s environmental review.

As discussed in detail below, we find that the comment responses in the FEIR fail do not adequately address the numerous concerns raised by the Club and others in comments on the DEIR. At the same time, the disclosure, discussion, and mitigation of several potentially significant impacts in the EIR remains fundamentally flawed. As a result, the EIR fails as an informational document under CEQA, and the County may not properly rely on it to approve entitlements for the Project. The County should prepare a revised Draft EIR that corrects the analytic deficiencies identified below, and recirculate it for an additional public comment period before taking any action on the proposed entitlements.

I. INTRODUCTION AND SUMMARY OF COMMENTS

The FEIR falls far short of satisfying the information disclosure requirements of CEQA in the following key respects:

- The EIR claims to be a project-level review for some components of the Project, but fails to identify those components with specificity. At the same time, the EIR claims to be merely “programmatically,” relying on this characterization as justification for not describing the Project in detail, and for not evaluating foreseeable impacts accordingly.
- The Project fails to comply with the requirements of the Lake County Code for planned developments. The application for entitlements does not include mandatory information about Project phasing, the identity and location of all public facilities, nor does it provide a complete description of the natural features on the Project site.
- As a result, the EIR fails adequately to describe several key Project features, including most of the Project’s public facilities, *i.e.*, drainage systems, the fire station and emergency access and egress routes, potable water supply infrastructure, wastewater treatment facilities, and raw lake water infrastructure. Information is or should be available about these facilities and should have been disclosed in the EIR. Because the information is omitted, impacts from the provision of these facilities are not adequately evaluated. This violates CEQA’s requirements that an EIR provide an adequate project description; that a first-tier EIR evaluate all impacts that are determined by first-tier approvals; that formulation of mitigation measures not be deferred without reason and without adequate performance specifications; and that CEQA analysis not be piecemealed.
- The FEIR fails to provide reasoned, good-faith responses to comments received on the draft EIR, and the County has not used its best efforts to find out and disclose all that it reasonably can where information is available to address questions raised by the public. This too violates CEQA.
- The EIR fails to provide an adequate description of the environmental setting with respect to such critical resources as wetlands and waters. Without this information, the EIR fails as an informational document for responsible agencies and cannot support an adequate evaluation of impacts.
- The EIR fails to meet the requirements of SB 610 and CEQA case law with respect to water supply planning. It fails to acknowledge uncertainty as to water supply and uses inconsistent growth assumptions. The FEIR

provides a wholesale revision to the water supply assessment but fails to acknowledge the Project's dry year conflicts with the Geysers project or to provide required information about use of raw lake water and recycled water. And the FEIR's new water supply analysis requires recirculation of the EIR.

- The EIR's traffic analysis and mitigation is inadequate. The EIR fails to provide critical traffic data and studies, even in response to requests from responsible agencies. The EIR fails to evaluate impacts to all affected facilities or to explain why that is not necessary. The EIR fails to provide an adequate cumulative impact analysis, again, even after responsible agencies objected. Proposed impact fees do not meet CEQA's requirements and other mitigation is not enforceable.
- The EIR's analysis of greenhouse gas impacts is flawed. The significance finding is unsupported and rests on inconsistent claims. Project emissions are clearly cumulatively considerable, but the EIR unaccountably and unreasonably finds them to be less than significant and fails to propose appropriate and enforceable mitigation. Because all of the substantive analysis of greenhouse gas impacts is contained in the FEIR, the County must recirculate it for public review and comment.
- The EIR's agricultural land impact analysis fails to provide information LAFCO requested in scoping comments and violates CEQA's requirement to integrate the Project's necessary CEQA reviews to the fullest extent possible.
- The EIR's air quality analysis unreasonably concludes that the Project's emissions of ozone precursors is not significant because it ignores available background information for criteria pollutants despite comments from the Air Quality Management District.
- Mitigation measures for cultural and biological resources are inadequate.
- The formulation of Project alternatives failed to consider impacts related to land use conflicts with neighboring property and to population and housing impacts, even though those impacts were identified as unavoidably significant. The alternatives analysis fails to provide essential information to enable decision makers to evaluate alternatives.

Following are detailed comments substantiating the deficiencies listed above.

II. VIOLATION OF COUNTY CODE REQUIREMENTS FOR PLANNED DEVELOPMENTS

The planned development application is incomplete because it lacks required information regarding phasing, public facilities, and existing site conditions.

An application for a Planned Development must include specified information in graphic and narrative form. Lake County Code, §§ 21-13.9(c), 21-15.9(c). In particular, the graphic submission must contain “the intended phasing of the development” and “the type and location of proposed public facilities.” Lake County Code, §§ 21-13.9(c)(1)(iv) and (vii), 21-15.9(c)(1)(iii) and (vi).

The narrative submission must contain “[a] development schedule indicating the approximate date when construction of the project can be expected to begin and be completed for each phase of the project; including the permit phase.” Lake County Code, §§ 21-15.9(c)(2)(iv), 21-13.9(c)(2)(iii).

The narrative information must also contain “[a] statement of the applicant’s proposal for utilities and services including sewage disposal; water supply; police and fire protection; schools; solid waste disposal; power/electricity; cable; telephone; and storm water runoff.” Lake County Code, §§ 21-15.9(c)(2)(vi), 21-13.9(c)(2)(v). The narrative information must also provide the location of structures for each district or area. Lake County Code, § 21-15.9(c)(2)(vii).

The graphic submission must also include information about existing site conditions in detail, as follows:

“The existing site conditions showing all topographic features such as natural drainage ways, streams, creeks, shorelines, vernal pools or ponds, significant rock outcroppings, slides and depressions; location and types of on-site trees; and general areas of historic or archaeological value.” Lake County Code, §§ 21-15.9(c)(1)(vii), 21-13.9(c)(1)(viii)

We requested the application materials for the Project and were advised that they consist of Attachments 3 and 4 to the September 10, 2009 Staff Report. E-mails between Victoria Brandon and Emily Minton, October 12 and 13, 2009. These attachments consist of the “Cristallago Project Description - Amended August 10, 2006” and the same “General Plan of Development” as is contained in the DEIR as Figure III-11.

A. The Application Does Not Include An Adequate Phasing Plan

Phasing of future Specific Plans of Development is permitted only if a phasing plan is approved as part of the General Plan of Development:

“PDC’s may be phased if phasing is approved as part of the general plan of development. Specific plans of development and tentative and final map proposals shall conform to the phasing of the approved general plan of development.” Lake County Code, §§ 21-13.8, 21-18.8.

Thus, a phasing plan must at minimum identify each proposed specific plan of development and tentative and final map and indicate its timing.

However, neither the application nor the DEIR contain an adequate phasing plan. The graphic material submitted with the application contains no information whatsoever about phasing, in violation of Lake County Code Sections 21-13.9(c)(1)(iv) and 21-15.9(c)(1)(iii). See DEIR, Figure III-11.

The written application states:

“The project build-out will be phased over a 15 to 20 year build out period and will be planned in 20 phases. Residential and Commercial components will be developed at the first available opportunity at the major entrances to the project. Resort unit construction in the Tuscan Hillside Village is also slated to begin within the project’s first year’s construction. Golf Course construction will begin as well concurrently with the phase one infrastructure for the development. The applicant plans to have the golf course operational within the first year of the project’s home sales activities. The entire project will be phased over the planning horizon to allow for the implementation of approved mitigation at appropriate points in the project schedule and in order to adequately address public services needs and allow planning flexibility as the market demand provides. A more detailed phasing plan will be developed based upon site engineering plans and construction cost determination.” Cristallago Project Description - Amended August 10, 2006, p. 24.

The DEIR states:

“**Phasing** The proposed project would be phased over a 15- to 20-year build out period and would be planned in 20 phases. Residential and commercial components would be developed at the first available opportunity at the major entrances to the site. Resort unit construction in the Tuscan Hillside Village would also begin within the project’s first year of construction. Golf course construction would begin concurrently with the first infrastructure for the development. The project applicant proposes to have the golf course operational within the first year of home sales activities. A more detailed phasing plan would be developed based upon site engineering plans and construction cost determination.” DEIR, p. III-31.

Neither of these written descriptions of the phasing plan identify dates for “each phase of the project,” as is required by Lake County Code, §§ 21-15.9(c)(2)(iv), 21-13.9(c)(2)(iii).

The absence of phasing information is not only a failure to comply with the County Code and the State Planning and Zoning Law, but a failure to provide essential information for the CEQA review. For example, construction-related air emissions could not be accurately projected in the absence of a phasing plan. And, as noted below, the planned phasing is essential to accurate evaluation and mitigation of traffic and water supply impacts.

B. The Application Does Not Identify Or Locate All Proposed Public Facilities

The graphic information in the application fails to provide the type and location of all public facilities, in violation of Lake County Code, §§ 21-13.9(c)(1)(vii), 21-15.9(c)(1)(vi). The General Plan of Development omits the following public facilities:

- Storm water drains, storm water treatment and detention facilities
- Fire station
- Secondary fire access and egress routes
- Potable water supply pipelines, (offsite) treatment facilities, and tanks
- Recycled water supply pipelines, (offsite) treatment facilities, and storage facilities
- Wastewater pipelines, pump stations, and (offsite) treatment facilities
- Walking trails
- Bike trails
- Pedestrian circulation elements
- Pathway connection to Marina site and Rodman Slough Park

Note that since the Project entails the expansion and/or rehabilitation of offsite water supply and waste water treatment facilities, the identity and location of these public facilities should have been disclosed in the application.

Furthermore, the written submission fails to provide the approximate dimensions and location of structures for each district or area, in violation of Lake County Code Section 21-15.9(c)(2)(vii).

These omissions are not rectified by the DEIR. As discussed below, the DEIR fails to provide the specific locations of these public facilities. Without this information, critical impacts cannot be evaluated. For example, the DEIR's analysis of biological impacts is guesswork because pipeline alignments are not described. DEIR, p. IV-E-61; FEIR, p. II-141.

C. The Application Does Not Adequately Disclose Existing Conditions

The graphic information in the application purports to describe wetlands and water. DEIR, Figure III-11. However, the DEIR acknowledges that the wetland delineations are incomplete and still underway, and that they have not been accepted by the Army Corps of Engineers (“ACOE”). DEIR, pp. IV.E-59 and 83. Indeed, the DEIR reports that the Project engineers and EIR consultants do not even agree on the wetlands determinations. DEIR, p. IV.E-60. ACOE commented that the applicant should complete an adequate delineation and should then design the Project and evaluate alternatives to avoid wetlands and discharge of fill into wetlands to the maximum extent feasible. FEIR, p. II-10. Without an adequate mapping of wetlands, this cannot be done. The failure to provide accurate delineation of the wetlands violates Lake County Code Sections §§ 21-15.9(c)(1)(vii) and 21-13.9(c)(1)(viii).

Even more problematically, the application fails to identify and locate “significant rock outcroppings, slides and depressions; location and types of on-site trees; and general areas of historic or archaeological value,” again in violation of Lake County Code Sections §§ 21-15.9(c)(1)(vii) and 21-13.9(c)(1)(viii). The DEIR does not rectify this failure. Geological studies are incomplete and the DEIR simply postpones the necessary studies, even as it admits that the area contains numerous existing landslides, steep slopes, and weak soils. DEIR, pp. IV.G-7, 14-15. On-site trees are not mapped. DEIR, Figure III-11. All areas of archeological value are not identified even though there is substantial expert evidence that the Project contains additional archeological sites. FEIR, II-17 to 21.

III. CEQA VIOLATIONS

A. The EIR Incorrectly And Inconsistently Claims To Be A Final, Project-Level Review For Some Aspects Of The Project

The DEIR is at best ambiguous as to the level of purported detail of its analysis. In the Introduction it claims to be a program level EIR, presumably under CEQA Guidelines, Section 15168, and references future individual project approvals being subject to CEQA:

“The Cristallago project is a Planned Development with a conceptual build-out plan for the site. A planned development typically includes building locations, uses, traffic circulation, parking, utilities, drainage, environmental issues, and a discussion about the look and character of the project. It is not an implementation plan, and its adoption does not constitute a commitment to any specific project, construction schedule, or funding priority. Rather, it describes the anticipated development program for the Cristallago Planned Development over the next twenty years. Each project undertaken during the planning horizon of the Planned Development must be approved individually by the County of Lake, in compliance with CEQA. *Therefore, this DEIR is a Program EIR that evaluates*

the effects of the entire Planned Development at a program level.” DEIR, I-2, emphasis added.

The DEIR repeats the claim that it is a program-level, first-tier document in the Project Description section, but then states that future projects only “may” require additional CEQA review:

“As discussed in Section I (Introduction), the proposed project is a Planned Development with a conceptual build-out plan for the site. A planned development typically includes building locations, uses, traffic circulation, parking, utilities, drainage, environmental issues, and a discussion about the look and character of the project. It is not an implementation plan, and its adoption does not constitute a commitment to any specific project, construction schedule, or funding priority. Rather, it describes the anticipated development program for the Cristallago Planned Development over the next twenty years. *Therefore, this DEIR is a Program EIR that evaluates the effects of the entire Planned Development at a program level. Future development projects subject to additional discretionary review (i.e., tentative maps, site plans, conditional use permits, etc.) may require subsequent environmental review in compliance with the State CEQA Guidelines, and will utilize this DEIR as a foundation document for tiered-review under CEQA.” DEIR, III-17, emphasis added.*

However, the DEIR claims inconsistently that it is a project-level EIR for the “near-term projects” that are part of the “Master Plan:”

“This DEIR is also a project DEIR that evaluates near-term projects that are proposed for implementation as part of the Master Plan. As required by CEQA and the CEQA Guidelines, the project DEIR examines all phases of the near-term projects, including planning, construction, operation, and reasonably foreseeable phases. With respect to other development projects that may be proposed during the Cristallago Master Plan planning horizon, CEQA and the CEQA Guidelines state that subsequent projects should be examined in light of the Program EIR to determine whether additional environmental documentation must be prepared. If no new significant effects would occur, all significant effects have been adequately addressed and no new mitigation measures would be required, the subsequent projects within the scope of the Cristallago Master Plan could rely on the environmental analysis provided in the Program EIR, and no additional environmental documentation must be prepared.” DEIR, I-3, emphasis added.

The DEIR’s claim that it is a “project-level” review for some aspects of the Project implies that some portions of the Project could proceed without any further CEQA review, *e.g.*, they would not even require an evaluation under CEQA Guidelines Sections 15168 (to determine whether an additional environmental document must be prepared for a project that is part of a program evaluated in a Program EIR) or 15152 (to determine if

project may cause significant effects that were not adequately addressed in a first-tier EIR).

However, the public cannot discern what elements of the Project are purportedly reviewed at the project level and therefore will not require further CEQA review, because the terms “Master Plan” and “near-term projects” are not defined in the EIR. As noted above, the public cannot guess what projects may be considered “near-term,” since the Project’s phasing plan has been deferred. DEIR, p. III-31. Nor can the public discern what future projects *will* require future CEQA review, because the EIR does not identify them either; it refers only to “tentative maps, site plans, conditional use permits, etc.” that “may require” additional CEQA review. DEIR, p. III-17.

The DEIR’s list of the intended uses of the EIR and the related environmental review and consultation requirements, as required by CEQA Guidelines, Section 15124(d), is no help. DEIR, pp. III-34 to 35. CEQA Guidelines require that “[i]f a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur.” CEQA Guidelines, § 15124(d)(2). The list provided in the DEIR omits a number of obviously required discretionary approvals from the County itself, including Use Permits for Specific Plans of Development under Lake County Code Section 21-13.10; grading permits under Lake County Code Section 30-24; the permits and approvals required for wastewater treatment hookups, capacity expansion, and linear facilities; and the permits and approvals required for potable water treatment capacity expansion, hookups, and linear facilities. The Project Description entirely fails to specify the permits, approvals, and related environmental review and consultation requirements that will be imposed by agencies *other than* the County of Lake, contenting itself with a list of the agencies themselves, in violation of CEQA Guidelines, Section 15124(d)(1).

The failure to identify for what portions of the Project, if any, this EIR constitutes the final project-level review is critical in light of the DEIR’s claims that certain infrastructure impacts have been fully evaluated. For example, the DEIR claims that impacts related to construction of streets, potable water distribution linear facilities, and water tanks have all been evaluated and found less than significant with no mitigation required. DEIR, pp. IV.O-21 to 22. When comments objected that the evaluation of biological impacts from water lines in the absence of specific alignments for these facilities was just guesswork, the FEIR contradicted the DEIR by claiming that some mitigation *would* likely be required in response to “project-level environmental review of the alignments.” FEIR, p. II-141.

As discussed herein, it is clear that no portion of the Project has been adequately evaluated in this purported program level EIR. Furthermore, in response to comments objecting to the lack of detailed analysis, the EIR repeatedly recites that it is only a Program or first-tier EIR. See, *e.g.*, FEIR, p. II-141. Thus, the EIR’s claim that it constitutes “project-level” review of any aspect of the Project is simply incoherent.

B. The EIR Fails Adequately To Describe And Assess Impacts From The Project's Public Facilities And Infrastructure, About Which Information Is Or Should Be Available

The EIR lacks fundamental information describing and evaluating the impacts of public facilities and infrastructure, many of which are intended to mitigate Project impacts. This information must be supplied because 1) as discussed above, the County Code requires an applicant for a Planned Development to describe and locate all public facilities; 2) CEQA requires an adequate description of the Project; 3) CEQA requires an agency to conduct a thorough evaluation to assess all impacts that are determined by first-tier approvals; 4) CEQA prohibits "piecemealing" of a project into multiple projects, instead it requires analysis of the whole project; and 5) CEQA prohibits deferral of the formulation of mitigation measures unless there is good reason to do so and unless the measures are adequately described and specified.

The DEIR repeatedly and erroneously claims that approval of the Project "does not constitute a commitment to any specific project, construction schedule, or funding priority." DEIR, I-2. In response to claims that the DEIR fails to evaluate infrastructure impacts, the FEIR claims that "[a]doption of a Planned Development does not constitute a commitment to any specific project or construction schedule." FEIR, II-141. While it is true that the applicant can walk away from this Project at any time, approval of the General Plan of Development and rezoning *will commit the County* to permit this specific Project, however inadequately described and evaluated, a Project that will entail mass grading and the construction and operation of hundreds of housing units, thousands of square feet of commercial development, a golf course, a set of roads, pipelines, water storage and treatment facilities, and numerous public facilities. Although subsequent environmental reviews may occur, the County is obliged to evaluate those impacts that are determined by the pending approvals in *this* EIR, not some later environmental document.

The EIR's Project description is incomplete and inconsistent because it omits, insufficiently describes, or inconsistently describes Project infrastructure features and public facilities.

The EIR's impact analysis is inadequate because it improperly defers analysis of the impacts of these essential features to later-tier environmental review even though these impacts are in fact determined by the first-tier approvals. The postponement of the analysis of the Project's infrastructure and public facilities is an impermissible piecemealing of analysis.

1. Relevant CEQA Principles

PROJECT DESCRIPTION: An accurate, stable, and finite project description is the *sine qua non* of an informative and legally adequate EIR. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192. As one analyst notes:

“The adequacy of an EIR’s project description is closely linked to the adequacy of the EIR’s analysis of the Project’s environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake.” Kostka and Zischke, Practice Under the California Environmental Quality Act, p. 580 (CEB 02/09 update).

The description must include all reasonably foreseeable future activities that are part of the project. *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 396. In particular, an EIR is invalid if it fails to include in the project description offsite facilities that are implicit in the project. *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829-830 (omission of required water delivery facilities invalidated an EIR); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-734 (EIR invalid for failure to describe and analyze wastewater treatment plant).

TIERING: While tiering may allow an agency to defer the analysis of some details of a long-term project until they come up for approval, an agency may not simply postpone analysis by simply asserting that information will be provided in the future. *The California Supreme Court has made it clear that CEQA requires that the agency evaluate all impacts that are determined by the first-tier approval decision; only the analysis of site-specific impacts that are specific to later phases may be deferred:*

“While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, CEQA's demand for meaningful information “is not satisfied by simply stating information will be provided in the future.” [citation omitted] As the CEQA Guidelines explain: “Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” (Cal.Code.Reg., tit. 14, § 15152, subd. (b).) Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases. For example, to evaluate or formulate mitigation for “site specific effects such as aesthetics or parking” (*id.*, § 15152 [Discussion]) may be impractical when an entire large project is first approved; under some circumstances analysis of such impacts might be deferred to a later tier EIR. [footnote omitted] But the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis. An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.

The Court notes that for a multi-building project, “traffic impacts and other common environmental impacts would properly be discussed in a first-tier EIR covering the entire set of buildings” and “[i]mpacts specific to the individual buildings' designs would properly be analyzed in later tier documents.” *Id.* at 431, fn. 7.

An impact is ripe for evaluation when an agency has sufficient reliable data to permit preparation of a meaningful and accurate report on the impact. *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028. However, an agency must conduct a “thorough evaluation” before deciding that an impact is too speculative to evaluate. CEQA Guidelines, § 15145.

MITIGATION: Many of the infrastructure features and public facilities are proposed or required as mitigation for the Project’s impacts (*e.g.*, drainage and storm water management features, recycled water features, fire facilities and access). An agency may only defer the formulation of mitigation measures when it “recognizes the significance of the potential environmental effect, commits itself to mitigating its impact, and articulates specific performance criteria for the future mitigation.” *Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1411, citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029; CEQA Guidelines § 15126.4(a)(1)(B). An agency cannot simply state that an applicant will comply with requirements to be determined later: “an agency goes too far when it simply requires a project applicant to obtain a . . . report and then comply with any recommendations that may be made in the report.” *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777. The agency must discuss each potential mitigation measure and “the basis for selecting a particular measure should be identified.” CEQA Guidelines § 15126.4(a)(1)(B).

Proposed mitigation measures must be feasible. CEQA Guidelines § 15126.4(a)(1). CEQA precludes deferring mitigation measures when there is considerable uncertainty as to the ultimate feasibility or efficacy of the measures and where deferral precludes public participation. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; CEQA Guidelines, § 15126.4(a)(1)(B); *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only “for kinds of impacts for which mitigation is known to be feasible”). CEQA precludes deferring the identification of mitigation measures when the deferral would transfer authority for reviewing and approving the measures from the proper decision maker to some other entity. *Sundstrom, supra*, 202 Cal.App.3d at 302-308. Finally, an agency must have, and must articulate, a good reason for deferring the formulation of mitigation. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670, 684. Absent such a reason, deferral is simply not acceptable.

PIECEMEALING: CEQA requires that an EIR evaluate the whole of a project. Thus, an agency may not break a project into pieces to avoid analyzing it as a whole.

Santiago County Water District v. County of Orange (1981) 118 Cal.App.3d 818, 829-830 (omission of required water delivery facilities invalidated an EIR); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-734 (EIR invalid for failure to describe and analyze wastewater treatment plant).

Set forth below are examples of instances in which the EIR fails adequately to describe and evaluate infrastructure and public facilities impacts, even though the County has, or should have, adequate information to provide such descriptions and evaluations.

2. Drainage Plan

EIR FAILS TO PROVIDE DRAINAGE PLAN: The DEIR fails to provide a master drainage plan for the site as a whole. Instead, it presents a dated drainage study containing runoff calculations that it admits are inadequate to describe the Project's effects or the efficacy of its proposed mitigation. DEIR, pp. IV.I-11, 19 to 21. The DEIR admits that no drainage plan has been prepared and that the runoff calculations *understate* the Project's impacts. DEIR, pp. IV.I-19, 21.

Comments by Project neighbors object to the reliance on the admittedly inadequate drainage study and the failure to evaluate impacts to adjacent property. FEIR, p. II-156 to 157; *see also* FEIR, p. II-156 (objection to reliance on defective study); FEIR, pp. II-316-318 (objecting to lack of adequate plan and analysis). Lake County Public Works objected to the drainage analysis because no details of the calculations were presented in the DEIR. FEIR, p. II-12; *see also* FEIR, p. II-317 (objecting to failure to produce calculations).

Public Works and the Regional Water Quality Control Board ("RWQCB") also objected that the proposed use of Eachus Lake as a detention basin is inappropriate. FEIR, pp. II-12, 23; *see also* FEIR, II-322 (objecting to use of Eachus Lake based on flooding concerns). Note that the drainage study assumes the use of this facility.

Public Works and other comments objected to the failure to provide a Master Drainage Plan, without which it could not be determined whether approval of individual phases conflict with future required drainage facilities. FEIR, pp. II-14, 156 to 157; FEIR, p. II-295 (City of Lakeport requests comprehensive drainage plan prior to Project approval). In short, without a Master Drainage Plan, the County cannot determine whether cumulative drainage impacts will be mitigated or can feasibly be mitigated.

The RWQCB commented that the Project must implement all Low Impact Development practices to meet required standards unless those practices are technically infeasible or cost prohibitive, and it identified ten specific practices. FEIR, pp. II-24 to 25. The RWQCB also commented that the Project must incorporate a Hydromodification Management Plan to control the magnitude, volume, and duration of runoff. FEIR, pp. II-26 to 27.

Comments objected to the piecemeal analysis of drainage and to the lack of information about responsibility for management and maintenance of detention facilities. FEIR, II-313. Comments specifically asked whether the owner would construct all of the detention ponds in the first phase to accommodate full build-out. FEIR, p. II-313.

As all of these comments indicate, the EIR must provide at least a conceptual drainage plan and demonstrate that it will be adequate to address Project impacts. In response to these comments, the FEIR argues that the County Code does not require a drainage plan for an application for a General Plan of Development. FEIR, p. II-12, 156. But the County Code requires that an application describe and disclose the location of proposed public facilities, so even if a final design were not required, the applicant was bound by County Code to provide an adequate description of the overall drainage plan. And even if the County Code did not require this information, CEQA requires that the EIR evaluate impacts that are determined by first-tier approval. Since the drainage plan is intended to mitigate flooding and water quality impacts, it is a mitigation measure, and CEQA prohibits the deferral of the formulation of this mitigation without good reason and clear performance specifications.

COMMENT RESPONSES ARE INADEQUATE: CEQA also requires that the FEIR provide reasoned, good-faith response to DEIR comments. CEQA Guidelines, § 15088(c); *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1365-1367. Where information is available to address questions raised by the public, an agency must use its best efforts to find out and disclose all that it reasonably can. CEQA Guidelines, § 15144; *Berkeley Jets* at 1370. Here, the FEIR’s responses to comments regarding drainage fail to evince good-faith, reason, or best efforts to investigate and disclose essential information.

The FEIR claimed that the DEIR’s drainage analysis estimated worst case conditions in order to size detention basins. FEIR, p. II-156. The claim that the analysis evaluated worst case conditions is inconsistent with the admission in the DEIR that the analysis *underestimated* Project impacts. DEIR, p. IV.I-19 to 21. Furthermore, it is simply unreasonable for the FEIR to rely on a study that the DEIR admits to be flawed.

In response to Public Works request for detailed calculations, the FEIR states that the applicant claims that drainage calculations had been submitted to Public Works prior to the DEIR and claims that the calculations have been re-submitted to Public Works for review. FEIR, p. II-12. However, because the EIR itself does not contain the calculations, members of the public cannot evaluate these calculations. Public Works is not the only commenter seeking this information; another commenter objects to the lack of detailed calculations, but the FEIR reports no arrangements to provide the data to other members of the public. FEIR, p. II-317. CEQA does not permit private responses to comments. Responses must be in the FEIR itself.

In response to comments asking that a Master Drainage Plan be developed to ensure that all phases of project are compatible, the FEIR simply repeats its response that

detailed Drainage Plans will be developed for each phase of project development. FEIR, P. II-14. This response misses the point of the comment, which is that an evaluation of a Master Drainage Plan is required at the first-tier stage of Project approval in order to verify that the future development phases are compatible and that full mitigation will be feasible. Thus, the Project description and proposed mitigation are both incomplete without a Master Drainage Plan.

Indeed, the County admits that a Master Drainage Plan for the entire Project is essential before the start of any construction: proposed condition of approval G.3 requires it. Staff Report, Oct. 8, 2009, Attachment 6, p. 4. However, that condition is no substitute for CEQA's requirements for open, public disclosure of the Project's plans and impacts.

In response to objections to the use of Eachus Lake as a detention basin, the FEIR states that a Storm Water Pollution Prevention Plan ("SWPPP") will be developed later. II-13, 23. This "response" simply fails to address the substance of this comment voiced by two responsible agencies, which violates CEQA's requirements for comment responses. Furthermore, if a fundamental assumption in the drainage study is invalid, there is simply no credible evidence that drainage will be properly managed and that impacts will be less than significant. Deferral of mitigation is impermissible when there is uncertainty as to its feasibility.

In response to objections that the DEIR fails to identify responsibility for continuing management of detention ponds, the FEIR fails to answer the question and simply states that drainage plans will be "prepared in coordination with applicable agency input and review." FEIR, p. II-313. The FEIR simply ignores the question whether the owner would construct all of the detention ponds in the first phase to accommodate full build-out, violating CEQA's requirements for good faith responses to comments. FEIR, p. II-313.

In response to the RWQCB's specific recommendations for mitigation measures, including ten Low Impact Development measures and a Hydromodification Management Plan to control the magnitude, volume, and duration of runoff, the FEIR is entirely unresponsive. The FEIR states that the Project will incorporate low impact development practices "as applicable and practicable," but fails to identify which ones *are* applicable and practicable or to revise the proposed mitigation measures. FEIR, p. II-25. The FEIR states that "all technically and economically feasible BMPs will be considered for the project," but again fails to identify which of the identified BMPs will be incorporated or to revise the proposed mitigation measures. FEIR, p. II-27. Furthermore, "considering" a BMP is not the same as making a feasibility determination and then requiring the mitigation measure to be implemented.

In response to the RWQCB's recommendation that the Project incorporate a Hydromodification Management Plan, the FEIR states that the comment "does not state a specific question regarding the sufficiency of the analysis or mitigation measures

contained in the DEIR.” FEIR, pp. II-27. Absurd. The RWQCB clearly stated that the DEIR should implement such a plan.

Proposed mitigation measures HYDRO-2 and HYDRO-3a and b do not contain any enforceable commitment to the performance specifications and features identified by expert agency comments. DEIR, p. IV.I-21, 22. Furthermore, the EIR fails to provide any justification for deferring the formulation of any of the mitigation measures for hydrological impacts. DEIR, section IV.I.

The FEIR’s responses to the RWQCB comments are clearly deficient because they fail to make a feasibility determination, and, indeed, provide no reasoned analysis whatsoever, in response to specific mitigation proposals offered by a responsible agency. *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028-1030.

Even though the FEIR fails to respond to the RWQCB request that the Project be required to control the magnitude, duration, and volume of runoff through a Hydromodification Plan, the FEIR simply acquiesces to the applicant’s request to alter the proposed drainage mitigation to eliminate the DEIR’s requirement to control runoff volumes. FEIR, pp. II-347. This substantive change in the proposed mitigation measure was made without any analysis whatsoever of the effect of altering this performance standard and with absolutely no evidence to support the applicant’s claim of infeasibility. The elimination of this performance standard directly conflicts with comments by the expert agency that the Project must be designed to control not just peak flows but also to control post-development runoff volumes to avoid downstream erosion, flooding, and habitat impacts, and to ensure maximum percolation. FEIR, p. II-27.

Incredibly, in response to a comment asking whether detention ponds will mitigate increases in runoff volumes, the FEIR fails to disclose that the applicant will no longer be required to control runoff volumes. Instead, the FEIR simply states that the ponds will mitigate some of the volume increases. FEIR, p. II-317. This response fails to meet CEQA’s requirements for good-faith disclosure.

In sum, a master drainage plan is required for the Project and the failure to describe and evaluate it constitutes impermissible piecemealing of the Project under CEQA. No adequate reason is provided for the deferral of the formulation of the drainage plan. The proposed mitigation measures do not contain meaningful or enforceable performance specifications and the FEIR does not provide adequate responses to comments.

3. Fire Station and Emergency Access and Egress Routes

Neither the application materials nor the DEIR provide the location for the fire station, water tanks for fire suppression, fire hydrants, or the emergency access and egress routes required for cul-de-sac development, all of which are public facilities that

the DEIR proposes to be required as mitigation. DEIR, pp. IV.H-12 to 13, IV.M-12. This violates the County Code requirement that a Planned Development application identify and locate public facilities, CEQA's requirements for an adequate project description, and CEQA's requirements that mitigation measures not be deferred without adequate reason and performance specifications.

Although the DEIR states that the applicant will be required to develop a fire safety plan with "input from the LFPD for the design of the project's fire suppression system," the EIR impermissibly defers formulation of this fire safety plan without providing any performance standards and without justifying the deferral. DEIR, p. IV.M-12. The FEIR claims that the fire safety plan would be "subject to the review and approval by the Lakeport Fire Protection District." FEIR, p. II-154 to 155. However, the only actual fire hazard mitigation is the requirement to provide a fire station at an unidentified location. DEIR, pp. IV.M-13; FEIR, p. II-94. Thus, whether the eventual fire safety plan is completed with input from LFPD or subject to its review and approval, there is in fact no enforceable mitigation requiring that a fire safety plan be prepared at all.

The FEIR's responses to comments objecting to the lack of an adequate fire safety plan and adequate emergency routes was not to provide the requested information but simply to reiterate that the planning would come later. FEIR, pp. II-154-155. This violates CEQA's requirements for good faith responses to comments and for use of best efforts to find out and disclose all that can reasonably be determined.

The DEIR acknowledges that construction of the fire station will have potentially significant adverse physical impacts. DEIR, p. IV.M-13. However, the proposed mitigation for these impacts is simply a requirement to reserve a location and construct the facility; nothing in the mitigation even addresses the admitted physical impacts of constructing this facility. Thus, the DEIR simply fails to evaluate and mitigate this acknowledged impact. DEIR, pp. IV.M-13; FEIR, p. II-94. Again, a fundamental problem is that the General Plan of Development is incomplete because it does not comply with County Code requirements to identify and locate all public facilities. Lake County Code, §§ 21-13.9(c)(1)(vii), 21-15.9(c)(1)(vi)

4. Potable Water Supply Infrastructure

Provision of potable water will require offsite upgrades to the North Lakeport Water Treatment Plan ("NLWTP"), to rectify existing inadequacies and to provide future capacity for the Project. DEIR, pp. IV.O-9-10, 12 to 13, 20-21. These upgrades are not identified in the application materials or adequately described in the EIR, and the physical impacts of providing these upgrades are not evaluated. The DEIR's sole consideration of this impact is the statement that "[u]pgrades to the NLWS [North Lakeport Water System] would be subject to environmental review and approvals and project-specific impacts would be *less than significant*."

NO EVIDENCE TO SUPPORT SIGNIFICANCE FINDINGS REGARDING PHYSICAL IMPACTS OF INFRASTRUCTURE: As noted above, an EIR is invalid if it fails to include in the project description and to evaluate the impacts of constructing and operating offsite facilities that are implicit in the project. *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829-830 (omission of required water delivery facilities invalidated an EIR); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-734 (EIR invalid for failure to describe and analyze wastewater treatment plant). Here, the EIR simply fails to provide the necessary information. Its facile conclusion that impacts will be less than significant, based on a future environmental review, cannot form the foundation for a finding regarding the impacts of off-site treatment plant expansion.

Similarly, the Project will require the construction of storage tanks, distribution pipelines, and pump stations. Although the location of two of the storage tanks is identified in the Project description and application materials, the location of the remaining tanks is not identified. DEIR, p. IV.O-21. Nor is the location of the pumping stations provided. The DEIR purports to identify the “likely tie into the existing CSA No. 21” water lines. DEIR, p. IV.O-22. However, it then admits that additional biological surveys and mitigation would be required “following the precise locations of the lines.” DEIR, p. IV.E-61. Given the lack of information on the location of tanks and water lines, there is no substantial evidence to support the DEIR’s claims that the impacts associated with construction of this infrastructure would be less than significant and that no mitigation is required. DEIR, p. IV.O-21, 22. Rather than to defend the DEIR’s unsupported claims that biological impacts from this infrastructure have been adequately evaluated in the absence of final location information, the FEIR changes tack and states that the impacts will be evaluated later during project-level reviews. FEIR, p. II-141. Thus, the application and the EIR both fail to adequately describe the Project and the EIR impermissibly defers and piecemeals the impact analysis.

NO PLAN FOR, OR ENFORCEABLE REQUIREMENT TO FUND, OFFSITE FACILITIES: The DEIR does not propose mitigation measures to address funding and ensure provision of the necessary upgrades to potable water treatment and distribution facilities. The DEIR relied on the claim that a group of developers would fund a \$3.8 million expansion of the North Lakeport Water Treatment Plant. DEIR, IV.O.12. However, last minute errata to the FEIR admit that, contrary to the DEIR, the North Lakeport Water System Water Treatment Expansion project is “not moving forward at this time.” Staff Report, Oct. 8, 2009, FEIR Errata, p. 15. Thus, it is apparent that there is in fact no plan in place to provide the necessary potable water treatment. Accordingly the DEIR and Water Supply Assessment are deficient for failure to present an essential element of the plan to supply potable water or to acknowledge that the supply is uncertain and to propose alternatives.

The FEIR responds to comments from Lake County Special Districts concerning the lack of a financing plan by reciting a list of additional conditions for project approval, purportedly agreed to by Special Districts. FEIR, pp. II-104 to 106. With respect to

expansion of the potable water treatment plant, the proposed conditions require that “[f]unding shall be established prior to recording the final subdivision map.” FEIR, p. II-105. This condition is inadequate because it does not clearly identify what funding and what final map are at issue. Any number of final maps may be issued for future phases of the Project.

Last minute provisions in the proposed conditions of approval now require the developer to repair existing deficiencies and to expand capacity of the NLWTP. Staff Report, Oct. 8, 2009, Attachment 6, p. 6, condition L.2. This provision makes it clear that construction and operation of this water treatment facility is in fact an integral part of the Project, and that its impacts should have been evaluated.

NO DESCRIPTION AND LOCATION OF DISTRIBUTION FACILITIES: With respect to distribution infrastructure, including “water storage tanks, mains, booster stations, etc.,” the proposed conditions provide that the developer will, at some unspecified point in the future, undertake modeling to demonstrate the adequacy of proposed distribution facilities and that the developer must construct the required facilities prior to recording of the final subdivision map and deed them to CSA No. 21. FEIR, p. II-105. This condition impermissibly postpones the identification and location of adequate and properly sized public facilities, the need for which will be determined by the first-tier approval. Since the conditions also require that the existing deficiencies at the potable water treatment plan be corrected (FEIR, p. II-106), it appears that immediate action is required; however, the proposed condition postpones any action by the developer until recoding of an unspecified final map.

5. Wastewater Treatment and Disposal and Recycled Water Supply Infrastructure

The DEIR acknowledges that upgrades will be required to LACOSAN’s Northwest Regional Wastewater Treatment Plant (“NWRWWTP”). DEIR, pp. IV.O-33-39. The DEIR states that a tertiary treatment system would be constructed at LACOSAN’s site to provide golf course irrigation. DEIR, pp. IV.O-41. Although the FEIR modifies the proposed timing of the construction of this tertiary treatment facility, it still contemplates that the facility will be required as part of the Project. FEIR, App. C.

OFFSITE IMPACTS NOT EVALUATED: Without providing any analysis other than the statement that the NWRWWTP has been graded to accommodate future improvements, the DEIR concludes that impacts from construction of the NWRWWTP capacity upgrades and tertiary water treatment facilities will be less than significant. DEIR, p. IV.O-43. The proposed mitigation measure, UTIL-5, requires a capacity analysis and payment of fair shares for necessary capacity increases, but provides absolutely no conditions to address the potential secondary physical impacts of constructing and operating these facilities. Absent such conditions and any meaningful analysis of the impacts of constructing and operating this offsite facility, there is no

substantial evidence to justify the EIR's conclusion that the impact is less than significant.

IMPACT FEES NOT ADEQUATE MITIGATION: In addition, payment of fair shares is not adequate mitigation when the impact fee program has not been reviewed under CEQA. *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026, 1055-1056. Here it is apparent that the expansion of the treatment plan has not yet been reviewed, so payment of fair shares cannot be deemed to mitigate the impact associated with inadequate treatment capacity.

Furthermore, when impact fees are proposed as mitigation, the record must contain evidence that the necessary infrastructure improvements will actually be constructed when needed. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728. An agency must provide substantial evidence that the impact fees will be used to implement a "reasonable, enforceable plan or program that the relevant agency commits itself to implementing." *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188. The EIR does not establish that there is an adopted plan to expand the WWTP to accommodate the Project. To the contrary, the DEIR admits that the LACOSAN Master Plan does not include the Project because it is not within the service area. DEIR, p. IV.O.42. Thus, there is no enforceable plan to which any agency is committed. Absent such a plan, mere payment of impact fees is not adequate mitigation.

NO ENFORCEABLE REQUIREMENT TO IMPLEMENT RECYCLED WATER: Furthermore, the FEIR's modification of the plans for use of recycled water is inconsistent with Mitigation Measure UTIL-5. UTIL-5 assumes that the Project will simply make fair share payments toward the tertiary treatment facility (DEIR, p. IV.O-43), whereas the FEIR states that "the future capital costs of installation of tertiary treatment facilities could be paid through a variety of means" and that "there are many options available for financing the future conversion" to reclaimed water. FEIR, App. C, p. 7.

Inconsistently, the FEIR also responds to comments from Lake County Special Districts by reciting a list of additional conditions for Project approval, purportedly agreed to by Special Districts. FEIR, pp. II-104 to 106. With respect to the provision of tertiary treatment facilities, the proposed conditions simply require that the developer implement a funding source "prior to recording the final subdivision map." FEIR, p. II-105. Again, the relevant final map is not specified. Nor is the timing of the transition to recycled water for the golf course irrigation specified other than a vague commitment to provide reclaimed water "at such time as the reclaimed water becomes available for use without endangering the ability of LACOSAN to meet its contractual obligations with NCPA to provide reclaimed water to the Geysers Geothermal power project."

As discussed below, the EIR fails to evaluate and respond to specific concerns raised by NCPA that the Project may not be able to use recycled water without

compromising NCPA's entitlement to recycled water in dry years. Thus, the failure to specify the relevant final map or the point at which the developer will be required to fund a transition leaves open the possibility that the developer will simply walk away from the Project (perhaps after selling off acreage for future phases to other developers) rather than fund the recycled water facilities. This possibility appears very likely given that the FEIR projects that golf course irrigation by lake water will not be constrained by the Yolo County Flood Control and Water Conservation District's ("YCFWCWCD's") 2,800 acre-feet per year entitlement until well after the complete build-out of the Project. FEIR, App. C, p. 3 (CSA No. 21 will "quite likely" still have adequate capacity to provide raw lake water for golf course irrigation at Project build-out); p. 7 (the need to implement reclaimed water may not be driven by water supply constraints if CSA No. 21 depending on the real build out capacity of CSA No. 21).

Finally, the FEIR glibly assumes that LACOSAN will agree to price recycled water at the cost of treatment and conveyance (FEIR, p. 105), regardless of the then-current market rates for water or the importance of controlling use through pricing, and regardless of LACOSAN's actual willingness to accept such a price. In the absence of an enforceable agreement between LACOSAN and the developer reflecting all of the terms set out in the FEIR, the mere assumption that LACOSAN will provide recycled water on the terms set forth is not based on a legally enforceable agreement. Indeed, the developer could easily evade compliance with the proposed Project condition purporting to require implementation of recycled water. For example, the condition purports to bind LACOSAN to pricing terms that LACOSAN may subsequently reject; the condition lacks any firm deadline for performance; and the condition states only that recycled water "eventually, *could* supplant the use of raw lake water" Staff Report, Oct. 8, 2009, Attachment 6, p. 5, condition L.3.

In sum, there is no enforceable condition that would actually require the developer to implement recycled water for golf course irrigation – even though that program is identified as mitigation for both water supply and greenhouse gas impacts. This violates CEQA's requirement that mitigation be fully enforceable. CEQA Guidelines, § 15126.4(a)(2).

NO DESCRIPTION AND EVALUATION OF LINEAR FACILITIES: The DEIR acknowledges that the location of the sewer force main and pump stations have not been determined and that additional environmental review would be required when more detailed plans are available. DEIR, pp. IV.O-41. This clearly violates CEQA's requirement that a project describe and evaluate the impacts of providing water supply and treatment infrastructure.

6. Lake Water Supply Infrastructure And Water Use

The DEIR initially proposed irrigation of the golf course via recycled water. However, in response to comments by NCPA, the FEIR proposed a phased implementation of that plan, under which the developer would use raw lake water for golf

course irrigation for the foreseeable future. FEIR, p. II-51 and App. C. The use of raw lake water for this purpose is not disclosed in the Project application or the Project description in the DEIR, violating the County Code and CEQA. The facilities required to implement the use of raw lake water are not adequately described in the FEIR. FEIR, App. C, p. 2.

The FEIR does not contain an adequate analysis of the physical impacts of constructing and operating facilities for diverting and applying raw lake water. No analysis of construction period impacts is provided. The FEIR's only analysis of the operating impacts of this proposal is the claim that "use of raw water from Clear Lake to irrigate the golf course at Cristallago has no net impact on Clear Lake when compared to the use of reclaimed water from the Northwest Regional WWTP." FEIR, App. C, p. 6; *see also* FEIR, p. II-52. The FEIR's rationale for this irrelevant point is that the same amount of lake water would be drawn under each of two possible scenarios: 1) the DEIR's scenario under which Project takes 600 acre-feet of recycled water from LACOSAN, forcing LACOSAN under its contract with the Geysers Geothermal project to provide 600 acre-feet of lake water to the Geysers, or 2) the FEIR's scenario under which the Project takes the 600 acre-fee of water directly out of the lake in the first instance. The problem with the EIR's "analysis" is that neither the DEIR nor the FEIR actually evaluate the effects of drawing another 600 acre-feet of water out of Clear Lake every year – even though the Project will result in this outcome regardless which irrigation scenario occurs. Merely to say that the impact in the FEIR is the same as an impact that has not been analyzed in the DEIR does not provide an analysis of the impact.

The omission is significant since the additional pumping from Clear Lake may have impacts on biological resources and on other water users. For example, at least one grower has asked to purchase water from YCFCWCD. Other growers pump from Clear Lake using riparian/littoral rights. The DEIR's WSA does not quantify or evaluate agricultural water use; instead, it simply assumes that this water use will not exceed the maximum allowable withdrawals. WSA, p. 13. The potential impact should have been discussed.

Other deficiencies in the water supply assessment are discussed below in a separate section of this letter. Furthermore, as discussed below, the belated provision of a new proposal for water supplies to irrigate the golf course is new information that requires that the EIR be recirculated.

C. The EIR Fails Adequately To Describe The Environmental Setting

In determining whether a project's environmental impacts are significant, and EIR must compare the potential impacts of the project with pre-project environmental conditions. This has come to be referred to as "setting the baseline" for environmental review. *See Kostka & Zischke, Practice Under the California Environmental Quality Act* (2d ed., 2008 supp.), § 12.19. "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice

of preparation is published. . . from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines, § 15125(a); *see also* § 15126.2(a). Courts have affirmed that establishment of the baseline is critical to a meaningful assessment of the environmental impacts of a project, because the significance of environmental impacts cannot be determined without setting this baseline. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.

As discussed above, neither the application materials nor the DEIR provide an adequate description of wetlands and water on the Project site. The DEIR also fails to provide an adequate description of geological hazards, trees, and areas of archeological significance. Proposed and appropriate mitigation measures would require that the Project be designed to avoid all of these features to the maximum extent feasible.

However, the applicant has laid out 650 residential units, 325 resort units, a golf course, roads, commercial development and other public facilities without determining the location of these existing natural features that should be avoided. Flexibility to re-design the Project at any substantial scale will no longer exist after the first-tier approval. Project re-design and alternatives that may be possible now to avoid these natural features will quite likely no longer be deemed feasible if the Project is approved on the basis of the existing design: the Project will have obtained momentum and inertia; areas may be sold to other developers who may be constrained to meet their development goals within unsuitable land; and developers will claim that it is not feasible to avoid these features based on their investment and pro-forma financial projections. And of course the developers will assert an absolute entitlement to the number and proposed location of the units. Now is the time to identify and evaluate these site constraints and to ensure that the Project is designed to avoid them as feasible. CEQA requires it.

D. Water Supply Analysis And Mitigation Is Inadequate

An EIR must demonstrate that adequate long term water supplies will be available. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431. The water supply identified must be reasonably certain and the analysis cannot rely on paper water. *Vineyard* at 432. An EIR must provide some discussion of total supply and demand to show there is an approximate long-term sufficiency, which requires the EIR to disclose the existence of competing uses. *Vineyard* at 441-442. The EIR must present data so as to inform the public; it cannot rely on scattered data or data buried in appendix or reference. *Vineyard* at 442.

Generally, SB 610 requires that a Water Supply Assessment (“WSA”) identify available supplies and determine their adequacy for normal, single dry, and multiple dry years. Water Code, § 10910(c). If available supplies are not sufficient, then the WSA must disclose plans to acquire additional supplies. Water Code, § 10911(a). CEQA case

law also requires that, where an agency cannot confidently determine that sufficient water is available, the EIR must discuss alternative sources and the significant foreseeable environmental effects of providing the alternative sources. *Vineyard* at 432-434

1. The EIR Fails To Evaluate And Acknowledge Water Supply Uncertainty

The EIR assumes that potable water will be supplied to the Project through expansion of the CSA No. 21 service area, relying on CSA's contractual entitlement to 2,800 acre-feet per year ("AFY") of water from the Yolo County Flood Control and Water Conservation District ("YCFCWCD"). However, the EIR fails to acknowledge and discuss the uncertainty of this assumed water supply.

First, there is simply no certainty that CSA No. 21 or LAFCO will agree to the expansion of the CSA No. 21 service area.

Second, as discussed above, there is no plan in place for the required remedial work and capacity expansions for the potable water treatment and the distribution facilities needed. SB 610 requires that the EIR spell this information out by providing information about the capital outlay program "that has been adopted" for financing delivery of the water and information about the Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water. Water Code, § 10910. As noted, CEQA case law requires this information as well.

Third, even if the service area is expanded, CSA No. 21's contract with YCFCWCD may not in fact entitle it to an uninterrupted supply of 2,800 AFY. The Water Supply Assessment confidently asserts that this 2,800 AFY will be available to CSA No. 21, and the Project, regardless of conditions:

"According to the water service agreement, "the operating criteria regulating withdrawals of water from Clear Lake do not limit the District's right, under any condition, to withdraw water from Clear Lake for municipal use within Lake County". Therefore the projected water supply from YCFCWCD County is expected to remain at 2,800 AF per year during normal, single-dry and multiple-dry years." DEIR, App. L, Water Supply Assessment, Oct. 7, 2008 ("WSA"), p. 2.

However, buried in the appendices of the DEIR are memoranda from CH2M Hill, Lake County Counsel, and YCFCWCD that question this assumption and conclude that, under YCFCWCD's contract with CSA No. 21, water may not in fact be available to CSA No. 21 under shortage conditions. The CH2M Hill memorandum notes that the recital relied upon by the WSA (to the effect that the Solano Decree does not limit YCFCWCD's right to withdraw water from Clear Lake) is at odds with another recital that limits YCFCWCD's obligation to furnish water to CSA No. 21. In effect, regardless of YCFCWCD's rights under the Solano Decree (to which CSA No. 21 is not a party), CSA No. 21 would only be entitled to its 2,800 AFY contractual allotment "to the extent

that District [YCFCWCD] has water supplies available from Clear Lake sufficient to meet” CSA 21’s needs. DEIR, App. L, Daniel Wendell, memorandum to Anne Kernkamp and Mark Dellinger (Manager, Lake County Special Districts), Feb. 18, 2008. Memoranda from YCFCWCD and Lake County Counsel concur with this opinion. Christy Barton (YCFCWCD), letter to Mark Dellinger, May 29, 2008; Anita Grant (County Counsel), memorandum to Mark Dellinger, Feb. 14, 2008.

The WSA does not discuss or reveal this conflicting assessment of the certainty of the 2,800 AFY from YCFCWCD. Although the DEIR makes passing reference to the fact that YCFCWCD may deny CSA No. 21 water (DEIR, p. IV.O-4), neither the WSA nor the DEIR actually assess this as a possibility in the analysis of water supply sufficiency in dry and multiple-dry years. Instead, both documents simply assume that the full 2,800 AFY would be available even in multiple-dry years. Indeed, in their discussions of the multiple-dry year scenario, the both the DEIR and the WSA recite the Solano Decree language without noting that this language is limited by the YCFCWCD’s contract with CSA No. 21. DEIR, p. IV.O-8; WSA p. 15.

This omission is entirely misleading and also violates SB 610’s requirements to identify water entitlements. Water Code, § 10910(d)(2). The DEIR relies on paper water without disclosing the real possibility that it may be curtailed during dry years. And the DEIR buries conflicting information in an appendix.

2. Water Supply Analyses Use Inconsistent Growth Assumptions And Equivocate About Build-Out Deficit

It is clear that CSA No. 21’s 2,800 AFY entitlement to use lake water would not be sufficient to support the Project, including its golf course, and the build-out of the rest of the CSA No. 21 service area. A report by the WSA consultants rejected the use of lake water for the golf course on the grounds that there will not be sufficient water available. DEIR, App. L, Waterworks Engineers, Cristallago Development Wastewater Collection, Treatment, Effluent Reuse and Golf Course Irrigation, April 9, 2008 (“Waterworks Report, April 9, 2008”), pp. 24-25, Table 10. The report demonstrates that at service area buildout there will be 2.8 mgd average daily demand, but CSA No. 21 has only has 2.5 mgd entitlement (the 2,800 AFY contract with YCFCWCD). The WSA itself demonstrates that at service area buildout there will be a total demand of 2,100 AFY without the Project, and that the Project plus golf course will demand an additional 1,002 AFY, for a total demand of 3,102 afy, which is more than the 2,800 AFY that YCFCWCD must supply to CSA No. 21. WSA, Tables 9 and 11.

Despite this, the WSA concludes that there will be sufficient water available for the Project and the golf course from YCFCWCD’s lake water entitlement, even without the use of recycled water throughout the 20-year analysis horizon mandated by SB 610. The WSA’s analysis and sufficiency conclusion is based on assuming that the rest of the CSA No. 21 service area grows only at a rate of 3% per year – even though the WSA admits that short term growth may be at 5-10%. WSA, p. 16. In short, the WSA’s

sufficiency conclusion is critically dependent on the assumed slow growth of the rest of CSA No. 21's service area. The WSA only manages to demonstrate sufficient supply by not assuming that buildout of the rest of the CSA service area will occur within the 20 year horizon.

This aggressive assumption may not have mattered when the Project was assumed to provide for 600 AFY of its demand (to irrigate the golf course) through recycled water from inception. However, in response to comments from Northern California power Agency ("NCPA") that demonstrate a conflict between the Project's proposed use of LACOSAN's supply of recycled water and NCPA's entitlement to this recycled water, the FEIR abruptly abandons the proposal to implement recycled water for the golf course from Project inception. FEIR, p. II-51 and App. C. Instead the FEIR proposes to use raw lake water to irrigate the golf course for the foreseeable future, which it proposes to acquire from CSA No. 21, based on CSA No. 21's entitlement from YCFCWCD to use 2,800 AFY of lake water.

Thus, the FEIR's finding that there would be sufficient water for the Project, including the golf course, despite the switch to lake water, is in fact critically dependent on the assumption that a reclaimed water supply will be made available before other demand from CSA No. 21 buildout consumes the 2,800 AFY limit.

The entirely new analysis provided in the FEIR purports to show that reclaimed water will become available to the Project as the Project and CSA 21 service area grow toward buildout. The memo purports to show that there would be sufficient water under the YCFCWCD-CSA No. 21 agreement for 20 years without using reclaimed water, assuming full Project build-out in 20 years and a 2% annual average growth rate for rest of CSA service area. FEIR, App. C, Table 4. *But the WSA used a 3% annual growth rate to project the growth of the rest of CSA No. 21*, and noted that growth in the short term could be 5-10%. No explanation is provided for the changed assumption regarding CSA No. 21's growth rate. The use of an unexplained and inconsistent assumption about growth in the FEIR's new analysis of water supply sufficiency vitiates the FEIR's analysis.

Furthermore, the FEIR incorrectly and inconsistently concludes that the use of raw lake water rather than reclaimed water would not exceed CSA No. 21's 2,800 AFY entitlement "at the system build-out condition:"

"With this plan to use raw lake water rather than reclaimed water for irrigation of the Cristallago golf course, at the system build-out condition, water usage from CSA#21 does not exceed the 2800 acre-ft/yr water supply agreement between CSA#21 and YCFCWCD, as previously analyzed in the Water Supply Assessment." FEIR, App. C, p. 6.

However, the FEIR actually demonstrates that use of reclaimed water rather than raw lake water is *essential* at system build-out to avoid exceeding CSA No. 21's 2,800 AFY entitlement. FEIR, App. C., p. 4, Table 3.

3. FEIR's Amendment To The Water Supply Assessment Is Inadequate

SB 610 require that when an agency finds that the existing water supply is or will be insufficient, it must provide information about "the measures that are being undertaken" to acquire and develop additional water supplies, including cost and financing; permits, approvals, and entitlements; and timeframes for availability. Water Code, § 10911(a). The FEIR's abrupt change to the water supply plan for the Project, under which raw lake water and an eventual phase-in of recycled water was substituted for the initial plan, does not meet SB 610's requirements. The FEIR does not provide adequate information as to cost and financing; permits, approvals, and entitlements; and timeframes for availability for both the use of raw lake water and the eventual phase-in of recycled water. FEIR, App. C. By way of example, there is no disclosure of the waste discharge permit that would be required to use recycled water for the golf course. FEIR, p. II-108.

4. Water Supply Analysis Fails To Acknowledge Dry Year Conflict With Geysers Project

As NCPA explained in comments, in a dry year, if the lake is at or below Rumsey Gauge 3.5, LACOSAN cannot provide *any* lake water to the Geysers project, and so the Geysers would be entitled to all of LACOSAN's reclaimed water, leaving none for the golf course. FEIR, II-54. The FEIR failed to respond to the substance of this comment. Instead, it simply referenced the sufficiency analyses in the DEIR's Water Supply Assessment and the phasing plan for recycled water use provided in the FEIR's Appendix C proposal to irrigate the golf course with raw lake water and eventually to phase in reclaimed water.

However, the DEIR's WSA does not address this issue because it simply *assumes* the availability of sufficient reclaimed water for both the golf course and the Geysers. And the WSA does not even consider the possibility that reclaimed water supplies may be constrained in dry years by the Geysers' entitlements. This violates SB 610's requirement that a water supply assessment identify other water users that receive water from, or have entitlements to, a new source of water. Water Code, § 10910(e).

Nor does the FEIR Appendix C address NCPA's comment about dry year competition for reclaimed water. The analysis of the sufficiency of reclaimed water in Appendix C does not evaluate normal, dry, and multiple dry year water supply. Although Appendix C purports to project recycled water *supplies*, Appendix C does not consider the total *demand* for recycled water or its allocation to competing users, including the Geysers project.

The Geysers project is entitled to 11,460 AFY annually, which may include up to 7,950 AFY of lake water in a normal year, but LACOSAN must replace the lake water with recycled water when the lake is at Rumsey Gauge 3.5 or below on May 1. FEIR, pp. II-53 and 54. Thus, in a dry year, the first 11,460 AF of recycled water would have to be allocated to the Geysers project. The Appendix C analysis shows that even at CSA No. 21 build-out conditions, at most 1,366 AF of recycled water would be produced.¹ And as CSA No. 21 approaches buildout, it would not be able to provide raw lake water to the golf course for irrigation without exceeding its 2,800 AFY constraint.

Thus, not only is there is no evidence that there will be sufficient recycled or lake water for the golf course in dry years, the available evidence demonstrates the contrary.

If the Project deprives the Geysers of essential water, it will result in unacknowledged impacts to energy supplies because the Geysers would be forced to limit its production of green energy.² FEIR, p. II-55.

In sum, the EIR simply fails to evaluate the conflict between the Geysers and the Project's demand for recycled water and fails to present a complete analysis of dry and multiple-dry year scenarios as required by SB 610. In addition, it fails to provide a good faith, reasoned response to comments by NCPA.

5. DEIR Inconsistently Finds Water Supply Impact Less Than Significant, But Imposes Mitigation Anyway

Although the DEIR concludes that the Project will not result in significant impacts to water service, it proposes mitigation measures UTIL-2a,b, and c, purporting to conserve water.³ DEIR, p. IV.O-26, 27. Since CEQA does not require mitigation for impacts that are found to be less than significant, the identification of these mitigation measures makes no sense. However, these half-measures are not a substitute for an adequate water supply analysis, which would likely determine that the Project will have significant impacts as discussed above. CEQA requires that an EIR honestly evaluate

¹ The EIR fails to provide any analysis of LACOSAN's other sources of recycled water or other demands on that supply.

² Indeed, the FEIR fails to acknowledge that the Appendix C proposal to pump lake water to the golf course will cause more energy use, which was not assumed in the EIR's analysis of energy and greenhouse gas impacts. Indeed, the FEIR's entirely new analysis of GHG impacts continues to assume that the Project will use recycled water from the golf course. FEIR, p. II-64.

³ Anomalously, the DEIR states that water use will not be reduced in dry and multiple-dry years, but then projects "potential water use reductions" by sector for single-dry and multiple dry years. DEIR, pp. IV.O-14, 16, Table IV.O-4. These potential reductions are not identified or discussed in the DEIR's WSA, so there is no foundation for them. The DEIR itself does not explain why this information is included or what contingency it is intended to address. (We note that no reduction is projected for the golf course, even though reductions of 18 to 36% are projected for other uses.) The FEIR fails to explain the purpose of this information in response to comments. FEIR, pp. II-267, 268.

impacts based on a clear threshold of significance, make a significance determination, propose mitigation, and evaluate how effective that mitigation will be.

6. Revision Of The Water Supply Assumptions Requires Recirculation

Recirculation of an EIR is required if the draft EIR is so fundamentally and basically inadequate that public comment on the draft EIR is rendered meaningless. CEQA Guidelines, § 15088.5(a). CEQA requires that where essential information to critical analysis of water supply is omitted, it must be supplied and the project EIR must be recirculated. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131.

The wholesale revision of the water supply analysis in the FEIR Appendix C is precisely the sort of new information that requires recirculation of the EIR.

E. The EIR's Traffic Analysis And Mitigation Is Inadequate

1. EIR Fails To Provide Studies And Data

The DEIR does not contain a separate traffic study. FEIR, p. II-33. Instead, the DEIR presents conclusions and an appendix that includes only the Level of Service ("LOS") calculations for a selected set of intersections. Caltrans objected to the failure of the traffic analysis to conform to Caltrans Guidelines, as had been requested in scoping comments, and requested that the County provide it with a completed traffic study. FEIR, pp. II-33, 36. Caltrans recommended that the Project approval be conditioned on its review and approval of an adequate traffic study and stated that it would not issue an encroachment permit to enable Project construction unless this condition is met. FEIR, p. II-36.

The FEIR's response was to state that the County would provide additional information to Caltrans as applicable (FEIR, p. II-33), and that this data would be supplied when the encroachment permit application is submitted. FEIR, p. II 36. CEQA provides no authority for private responses to comments. The public is as entitled as Caltrans to receive the requested data, and this data must be provided in the EIR, not through some later private permitting process.

The FEIR claimed that all data required by Caltrans guidelines was included in the DEIR (FEIR, pp. II-33, 36), but then inconsistently admitted that the DEIR failed to evaluate a project build-out year scenario as required by Caltrans guidelines. FEIR, p. II-37. These contradictory responses are unacceptable under CEQA.

Caltrans requested that the EIR analyze and mitigate queuing impacts. FEIR, p. II-34. The FEIR states that a queuing analysis was prepared in response and that it was determined that mitigation would be required. FEIR, p. II-34 to 35. However, the FEIR

fails to provide the queuing analysis itself, so the public has no way to determine if the analysis is adequate.

The EIR must be revised and recirculated to provide all of the requested studies and data so that the public has a meaningful opportunity to review it, comment, and receive responses. This data would include at minimum the missing data discussed in comments and below: the trip distribution study that purportedly determined that that no additional intersections or road segments required evaluation, the study that purportedly determined that no additional turn lanes would be required, the signal warrant analyses, the queuing analyses, schematic representations of intersection turning movements, and the basis for determining that no update of the cumulative impact study was required.

2. EIR Fails To Evaluate Affected Facilities

Comments by County Public Works and the City of Lakeport objected that the DEIR fails to evaluate all affected intersections and roadway segments, including impacts to streets in the City of Lakeport. FEIR, pp. II111 to 112, 290, 291. Public Works noted that intersections receiving 50 or more daily trips from the Project should have been analyzed. FEIR, p. II-111.

The FEIR's response was again not to disclose any information to the public or even to the City of Lakeport. Instead, the FEIR simply reports that in a conference call with County Public Works it was determined that no new intersections need to be evaluated. FEIR, pp. II-111, 112. No basis for this claim was identified and no analysis was provided in the FEIR. The public has no way to evaluate this "determination."

And indeed, the determination is suspect, since the data in the DEIR indicates that the Project will generate 10,938 daily trips (DEIR, Table IV.N-4), and that 5% of the trips will use Hill Road East, 5% Hill road West, and 5% Lakeshore Boulevard. Thus, these local roadways will receive at least 550 daily trips from the Project alone, plus cumulative traffic from existing and future development. The public is entitled to understand on what basis the EIR consultants decided that no impacts would occur. The DEIR must be revised and recirculated to provide this data.

Furthermore, the FEIR's response to these comments simply fails to meet CEQA's requirements for good faith responses in which the County uses its best efforts to find out and disclose all that it reasonably can.

3. EIR Fails To Provide Cumulative Impact Analysis

The California Supreme Court has held that impacts that are determined by first-tier review must be evaluated in the first-tier EIR; thus for a multi-building project, "traffic impacts and other common environmental impacts would properly be discussed in a first-tier EIR covering the entire set of buildings." *Vineyard Area Citizens for Responsible*

Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412, 431, fn. 7. Here, the EIR fails to evaluate cumulative traffic impacts that will result from approving this Project.

The quantitative analyses of traffic presented in the EIR include “existing plus project” conditions and “future conditions.” DEIR, p. IV.N-13, 14. Future conditions are evaluated for the year 2020 (DEIR, p. IV.N-11; FEIR, p. II-37), which would be approximately half way through the Project’s build-out if construction begins next year and takes 20 years. Any reasonable cumulative analysis of traffic requires that the analysis establish a projected date for project build-out so that ambient conditions can be projected. However, due to the applicant’s failure to provide the required phasing plan, the DEIR has not established a project build-out date.

The basis of the analysis of future conditions was a nine-year old study projecting traffic on roads throughout the County. DEIR, p. IV.N-11. The Project was not assumed in this study, which did not even contemplate development outside the CGB. Neither the traffic model for the study nor the transportation impact fee program the study was intended to support has been approved by the County. Staff Report, Feb. 5, 2009, p. 3-4.

The February 5, 2009 Staff Report promised that a cumulative impact study that develops a fair-share payment would be included in the Final EIR. *Id.* It was not.

County Public Works objected that Project traffic would substantially exceed the assumptions made in the Countywide Transportation Impact Fee Report and that, therefore, “it is impossible to determine the cumulative impact associated with this project without an update of the traffic model for the Report.” FEIR, p. II-114. In response, the FEIR stated that in a conference call with Public Works “it was determined that the traffic model does not need to be updated and that the current traffic model adequately accounts for projected volumes at the proposed intersections.” FEIR, p. II-114. This conclusion is repeated in the October 8, 2009 Staff Report. Staff Report, Oct. 8, 2009, p. 6. Once again, this response is inadequate because CEQA does not countenance a private response to comments.⁴

Caltrans objected that the EIR failed to include a cumulative impact analysis showing the effects of the Project at the time of its build-out, an analysis that is required by Caltrans guidance and under CEQA. FEIR, p. II-36; CEQA Guidelines, § 15130. The FEIR responds by acknowledging that the EIR provides no analysis of a project build-out year scenario. FEIR, p. II-37. Thus, the EIR simply fails to provide a cumulative conditions analysis because it does not evaluate conditions at Project build-out.

⁴ Furthermore, it is apparent that any analysis that may have been privately conducted failed to reflect either the “summary of plan projections” or the “list of projects” methods that are the only acceptable methods to evaluate cumulative impacts. CEQA Guidelines, § 15130(b)(1). The Project itself is not included in the General Plan, and there is no evidence that the consultants could or did identify all future projects that will be in place at the time of Project buildout.

Incredibly, the FEIR claims that “[t]he Future plus Project scenario, which has a horizon year of 2020, reflects worst case conditions with project related traffic as well as area wide growth.” This claim defies common sense. There is no indication that area growth will have reached its maximum build-out by 2020, and the EIR’s other analyses (e.g., water supply) assume continued growth of the surrounding area after 2020. Although no phasing plan is provided, nowhere does the EIR claim that the Project itself will be built out by 2020, and the EIR’s vague references to phasing indicate that the Project will take at least 20 years to construct. And there is absolutely nothing to indicate that additional roadway facilities will magically appear after 2020 to handle growing traffic. Indeed, the County has not even adopted a transportation impact fee program. Once again, this comment response does not meet CEQA’s requirements for good-faith, reasoned analysis and use of best efforts at disclosure..

The EIR must be revised and recirculated to provide an adequate cumulative traffic analysis.

4. Impact Fee Requirement Fails To Meet CEQA’s Requirements

The October 8, 2009 Staff Report indicates that proposed conditions of approval require payment of a fair-share fee toward regional transportation improvements found to be necessary, as determined by the Department of Public Works. Staff Report, Oct. 8, 2009, Attachment 6, condition K.2. It appears that this condition is intended to mitigate the Project’s obviously considerable future impacts to the County’s roadways.

This “mitigation” is not acceptable under CEQA. When impact fees are proposed as mitigation for traffic impacts, the record must contain evidence that the necessary infrastructure improvements will actually be constructed when needed. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728. An agency must provide substantial evidence that the impact fees will be used to implement a “reasonable, enforceable plan or program that the relevant agency commits itself to implementing.” *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188. In *Anderson First Coalition*, a project was required to pay 16.87% of the cost of Phase I improvements to an I-5 interchange and “to participate in the program” to provide Phase II improvements to that interchange. *Id.* at 1188. Even though the City stated that “it is preparing an update to the Traffic Impact Fee Program to include the I-5 interchange” and “condition 16 requires payment of the impact fee,” the Court found that this provision was too vague and speculative to constitute a “reasonable, enforceable plan or program.” *Id.* at 1189. Thus, a provision that a project pay a future fee is not sufficient when the project covered by that fee has not yet been adopted or the fee has not been determined.

Similarly, in *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 785, the Court rejected fee-based mitigation because there was no evidence that a program of improvements was actually in place that would attain the required level of service. By contrast, in *Save Our Peninsula Committee, supra*, 87

Cal.App.4th at 140-141, fee-based mitigation was upheld expressly because the specific necessary improvements were part of a program that had actually been adopted by the County. Regardless of the reasonableness of a developer's contribution, payment into a fee program is insufficient mitigation where the agency will not have sufficient funds to construct the improvements the program is intended to implement. *Napa Citizens, supra*, 91 Cal.App.4th at 364; *Endangered Habitats League, supra*, 131 Cal.App.4th at 785.

In sum, fee-based mitigation under CEQA requires that the specific improvement projects actually be included in an adopted, enforceable plan or program *and* that this program include funding provisions that can be attained. Here, the County has not adopted a mitigation fee program or identified the necessary facilities. There is simply no evidence that the future ad-hoc exactions called for by the proposed condition of approval K.2 would actually mitigate Project impacts.

5. Other Identified Mitigation Is Unenforceable

Mitigation Measures TRANS-1 through 5, calling for construction of intersection and other improvements, are unenforceable because they are so vaguely worded that they do not contain any schedule mandating a deadline for the necessary improvements. DEIR, p. IV.N-19, 20; FEIR, p. II-35. Mitigation that is not enforceable does not meet CEQA's requirements.

F. Noise Analysis Is Inadequate

The EIR fails to provide separate analyses of the Project's own noise impacts and of its contribution to cumulative noise impacts. The DEIR's analysis relies on the same Table IV.K-9, captioned "Future Off-Site Future Roadway Noise Levels," for both analyses. DEIR, p. IV.K-15 to 17. Under CEQA, the determination of the significance of a project's individual impacts must be treated as a distinct analysis from the determination whether its impacts are cumulatively considerable. A project's individual impacts may be less than significant even though its contributions to a cumulative impact are considerable. The DEIR simply fails to recognize this distinction.

Furthermore, the DEIR fails to provide a reasonable analysis of cumulative noise conditions because it is not based on conditions that will exist at Project buildout. Although the DEIR's discussion of cumulative traffic noise claims that it "considers development of the project in combination with ambient growth and other development projects within the vicinity of the project site" (DEIR, p. IV.K-17), it is apparent that the only ambient growth considered was growth to the year 2012, at which point construction of the Project itself would be barely underway.

The DEIR states that "[t]he cumulative baseline and cumulative plus project ambient noise levels are presented in IV.K-9." DEIR, p. IV.K-17. Table IV.K-9, captioned "Future Off-Site Future Roadway Noise Levels," is based on DEIR Appendix E. However, the traffic noise analysis provided in Appendix E of the DEIR is based on

traffic *as of the year 2012*, which obviously does not represent conditions at Project build-out. DEIR, App. E.

Indeed, it is entirely misleading to call the 2012 noise levels in Table IV.K-9 “future” noise levels at all. The noise analysis purports to be based on the “traffic volumes from the project traffic analysis.” DEIR, p. IV.K-10. However, in the traffic analysis, the “future” scenario was based on the year 2020, not 2012. DEIR, p. IV.N-11.

Indeed, it is clear that the cumulative noise analysis failed to make even rough estimates of future cumulative ambient noise conditions. For example, based on a County study, the “future” scenario evaluated in the traffic analysis made adjustments to traffic volumes on SR29 to reflect projected growth by multiplying existing levels by a factor of 1.80. DEIR, p. IV.N-11. However, the noise analysis claimed that it would be difficult to forecast future volumes on SR29 because forecasts are not available from Caltrans; accordingly the cumulative noise analysis simply assumed that noise increases from SR29 traffic noise would be insignificant without providing any quantitative analysis. DEIR, p. IV.K-15, fn. 5.

As discussed above, the EIR fails to provide details of the traffic analysis, including the average daily traffic for each segment and intersection. Thus, the public has no way to determine whether the Appendix E traffic noise analysis incorporates all of the Project traffic at build-out. However, it is clear that the Appendix E analysis does not even purport to include the traffic noise from other projects that should reasonably assumed to be generating traffic at the time the Project is built-out, which will be long after 2012.

Also as discussed above, any reasonable cumulative analysis of traffic or traffic noise requires that the analysis establish a projected date for project build-out so that ambient conditions can be projected. However, due to the applicant’s failure to provide the required phasing plan, the DEIR has not established a project build-out date.

The DEIR must be revised and recirculated to evaluate the Project’s contribution to cumulative noise conditions as a distinct analysis. This analysis must be based on an accurate projection of the noise contributed by other projects in addition to this Project, at the time of this Project’s build-out.

G. Greenhouse Gas Emissions Impact Analysis And Mitigation Is Inadequate

1. Significance Finding Is Unsupported And Incorrect

The DEIR provides no quantitative assessment of the Project’s greenhouse gas (“GHG”) impact and simply concludes that the Project’s impacts would be less than significant on the basis of its purported consistency with the 2006 Climate Action Team Report (“2006 CAT Report”). DEIR, pp. IV.D29 to 34.

In response to objections from the Lake County Air Quality Management District (“LCAQMD”), the FEIR provides an entirely new analysis, purporting to quantify emissions, and assess significance based on consistency with guidance documents and County policies. FEIR, pp. II-60 to 77.

NO CUMULATIVE ANALYSIS: Preliminarily, we note that the EIR nowhere evaluates whether the Project’s contributions to the cumulative and undoubtedly significant global GHG impact is cumulatively considerable. Thus, the purported significance evaluation is incomplete because the EIR simply fails to address cumulative GHG impacts.

Furthermore, the FEIR’s finding that impacts are not significant on the basis of purported consistency with identified guidance documents and strategies is incomplete, inconsistent, and unsupported.

IRRELEVANT ANALYSIS OF CARB EARLY ACTION STRATEGIES: The FEIR evaluates consistency with 44 CARB early action strategies, only 6 of which it finds even potentially applicable. However, the discussion of those six strategies boils down to the assertion that the Project is consistent with the strategies because there will be no industrial facilities on the site and commercial facilities on the site will be required to comply with CARB’s rules regarding refrigerants and foam products. This discussion is essentially irrelevant because it does not address relevant guidance for discretionary land use decisions and irrelevantly credits the Project with emissions reductions that are not attributable to the Project’s design or to conditions imposed on the construction and operation of the project.

ACKNOWLEDGED CONFLICTS WITH OPR MITIGATION MEASURES: The FEIR then evaluates consistency with OPR’s list of exemplary mitigation measures and finds that the Project would be consistent with some but not all of these measures. As noted below, the FEIR admits that the Project is not consistent with OPR’s critical and relevant measures applicable to discretionary land use decisions, including job/housing proximity and compact projects, infill, encouragement of alternative transportation, and integration of civic and retail with housing. These findings are clearly justified by the design of the Project as a classic piece of rural sprawl. These findings are echoed by other comments and by Planning staff. The FEIR itself admits that residents will shop in Lakeport and throughout the County, not just in Project (FEIR, p. II-102), and it is clear that residents will be unlikely to staff on-site jobs. The FEIR finds that the Project is only “partially consistent” with OPR’s recommendations for on-site energy production since solar panels are only “recommended” for commercial and community buildings to provide a “majority” of energy used, and panels are only an option for residential units.

Please note that last minute additions to the proposed conditions of approval do not rectify the failure of analysis in the FEIR, since the FEIR’s analysis was not predicated on these conditions of approval. Furthermore, the language of the proposed condition does not actually require that the Project be carbon neutral. Staff Report, Oct. 8, 2009, Attachment 6, Condition B.2 It requires only that all units have *some* solar power

equipment, but not necessarily enough to offset that unit's carbon footprint entirely. Although the Project may in the alternative provide other green energy sources "to power all units in the project," this does not require that the units be fully powered by green energy or that green power be used for facilities not identified as "units," *e.g.*, common facilities and infrastructure. Finally, the proposed condition includes a provision calling for "offsite improvements such as bike paths, sidewalks, etc., subject to review and approval" of the Air District and Community Development Department. However, it is unclear whether this condition is in addition to the other conditions or part of the second alternative, and there are no criteria for determining acceptable levels or certainty of the carbon offsets to be realized through these means.

These admissions of inconsistencies with OPR's exemplary mitigation measures should themselves be the basis for a finding that the Project's impacts are significant (or cumulatively considerable), because the FEIR adopts consistency with relevant guidance and policies as its ostensible threshold of significance. In the absence of some more definite metric for determining consistency (and such metrics are available), the FEIR is bound by its expressly adopted standards: if the Project is inconsistent with the strategies and guidance it identifies as significance criteria, its impacts must be judged significant. Nowhere does the FEIR purport to apply a balancing test that would excuse some inconsistencies or weigh the inconsistencies against the consistencies. Despite this, the FEIR ultimately concludes that impacts are less than significant. FEIR, p. II-77.

FINDING OF CONSISTENCY WITH CAPCOA STRATEGIES DIRECTLY CONFLICTS WITH OPR ANALYSIS: The FEIR purports to evaluate consistency with the CAPCOA White Paper and to find the Project consistent because it provides transportation alternatives and walkable neighborhoods:

"As shown above in the OPR comparison table above and discussed below in analysis (3), the project provides a variety of transportation choices by including safe and convenient transportation alternatives such as bus stops, golf carts, walking and biking paths and a community shuttle to and from all uses in the project site. Trail systems would allow the public to walk or bike throughout the project site. The project also creates walkable neighborhoods by locating housing, business, shopping, and recreation options within walking distance to residents. Therefore, the project's mitigation measures and design are generally consistent with the CAPCOA white paper." FEIR, p. II-74.

The express basis of this claim is the FEIR's earlier analysis of consistency with OPR mitigation measures – *but that analysis shows that the Project does not encourage jobs/housing proximity or infill, does not encourage walking and alternative transportation, and does not reduce VMT by integrating housing with civic and retail amenities.* Set forth below are the FEIR's findings regarding the Project's inconsistencies with the OPR mitigation measures:

“Project Consistency with OPR Recommended Greenhouse Gas Mitigation Measures

OPR Recommended Mitigation Measure	Project Consistency
Implement land use strategies to encourage jobs/housing proximity, encourage compact, mixed-use projects.	Not Consistent. Although the project is designated as a mixed-use development consisting of residential and resort communities, as well commercial uses, the project is not a high density development and does not locate housing in close proximity to jobs.
Encourage infill, redevelopment, and higher density development.	Not Consistent. The project is not an infill, redevelopment or higher density development.
Encourage walking, bicycling, and the use of public transit systems.	Not Consistent. The project provides a variety of transportation choices by including safe and convenient transportation alternatives including bus stops, golf carts, walking and biking paths and a community shuttle to and from all uses on the project site as well off-site. Although the project includes walking and biking paths, these are for recreational purposes, rather than for transportation purposes. Also, there are no bus routes in the immediate vicinity of the project site.
Encourage new developments to integrate housing, civic and retail amenities (jobs, schools, parks, shopping opportunities) to help reduce VMT resulting from automobile trips	Not Consistent. The project is designated as a mixed use development consisting of residential and resort communities, as well commercial uses. However, the project does not integrate housing, civic and retail amenities to help reduce discretionary automobile trips.”

Source: FEIR, p. II-72.

Clearly, the FEIR cannot logically acknowledge that the Project is inconsistent with these OPR strategies regarding walkable communities, infill development, jobs/housing proximity and alternative transportation, and then cite that very analysis as support for the *opposite* conclusion with respect to the CAPCOA White paper.

PROJECT EMISSIONS ACTUALLY EXCEED CAPCOA SIGNFICANCE THRESHOLDS: Indeed, the FEIR’s finding that the Project would generate 21,113 tons of CO2 emissions annually would require a finding that the impact *is considerable* under the CAPCOA White Paper’s proposals for quantitative thresholds of significance. CAPCOA evaluated several quantitative thresholds and rated their greenhouse gas reduction effectiveness and consistency with the emission reduction targets established by AB 32 and Executive Order S-3-05. CAPCOA, CEQA and Climate Change, January 2008 (“CAPCOA Report”). The County could readily have relied on one of the thresholds CAPCOA determined was effective at addressing the cumulative impacts of greenhouse gas emissions. The emission reduction scenario set by AB 32 and Executive Order S-3-05, whereby emissions are reduced to 1990 levels by 2020 and then to 80% below 1990 levels by 2050, is consistent with the reductions needed to stabilize atmospheric concentrations of greenhouse gas emissions at a level that would avoid dangerous climate change. Accordingly, a valid threshold of significance for greenhouse gas emissions must demonstrate consistency with these emission reduction targets.

CAPCOA determined that a quantitative threshold of zero tons and a threshold of 900 tons of CO₂ eq. emissions had a “high” GHG emission reduction effectiveness and “high” consistency with California’s emission reduction targets. (CAPCOA Report, p. 57) Looking at significance from the perspective of reducing business-as-usual emission, CAPCOA determined that a 28-33% reduction from project business-as-usual emissions had “low” GHG emission reduction effectiveness and consistency with AB 32 and Executive Order S-3-05. (CAPCOA Report, p. 56) CAPCOA determined that even 50% reductions from business-as-usual emissions would make it impossible to reach the 2050 emission reduction target necessary to stabilize the climate “even if existing emissions were 100% controlled.” (CAPCOA Report, pp. 33-34) Instead, reaching “the 2050 milestone would require an estimated 90 percent reduction (effective immediately) of business-as-usual emissions.” (CAPCOA Report, p. 33.)

Comparison of the Project’s emissions to the CAPCOA thresholds makes clear that the DEIR’s analysis of Project consistency with the CAT Report and the FEIR’s analysis of consistency with other standards and criteria are not sufficient to support a less than significant finding for the Project’s cumulative greenhouse gas impacts. Meeting these criteria of significance (assuming they are relevant and that the Project does in fact meet them) does not end the required analysis when there is evidence that impacts are nonetheless significant.

The 21,113 tons of CO₂ emissions the EIR estimates would be generated by the Project is far in excess of the 900-ton quantitative threshold CAPOCA evaluated as highly effective as reducing greenhouse gas emissions and meeting California’s emission reduction targets. (FEIR, p. II-63; CAPCOA Report, p. 57)

FINDING OF CONSISTENCY WITH COOL COUNTIES INITIATIVE DIRECTLY CONFLICTS WITH FEIR’S OPR ANALYSIS: The FEIR also inconsistently finds that the Project is consistent with goals of the Cool Counties initiatives, which include mixed use and use of alternative transportation. FEIR, pp. II-74-75. Again, these claims are directly contradicted by the FEIR’s analysis of consistency with OPR mitigation measures.

DISCUSSION OF PROJECT FEATURES DOES NOT SUPPORT A FINDING THAT IMPACTS ARE LESS THAN SIGNIFICANT: Finally, the FEIR recites a number of Project features from the Project description that it claims will “sufficiently” reduce GHG emissions. FEIR, pp. II-75 to 76. Because the FEIR does not explain, much less quantify, what a “sufficient” reduction would be, this discussion is essentially meaningless. Note that this discussion does not even purport to identify an exhaustive list of essential GHG mitigation measures and determine that the Project meets them, it simply rehashes portions of the earlier discussions about the Project’s purported consistency with CARB, OPR, and CAPCOA strategies.

Furthermore, the list includes a number of features that have been abandoned, that the FEIR admits are not present in the Project, or that the FEIR refuses to specify in any meaningful detail:

- The FEIR again claims that mixed use will allow the residents to avoid use of cars, but this claim is inconsistent with the FEIR's admission to the contrary in the OPR analysis.
- The FEIR claims energy savings because construction will only occur in developed areas. The areas are clearly not developed now, so the claim makes no sense. If the claim is that construction will only occur in areas *to be* developed, it cannot represent a savings over business as usual, because it is simply not usual to conduct construction in areas that are not developed.
- The FEIR claims that sewer effluent will be used to irrigate the golf course, but, as discussed above, this Project feature has been postponed for up to 58 years (well beyond the current estimates of the tipping point for action to prevent catastrophic global warming), is unenforceable, and is quite likely never to be implemented.
- The FEIR cites LEED certification, but nowhere does the Project commit to a specific level of LEED certification. In response to comments pointing out that there are various LEED certification levels of increasing stringency and requesting information about the actual Green Building proposed by the Project, the FEIR refuses to provide any specifics, again asserting that the EIR is only "programmatic." FEIR, p. II-308 to 309. Without any real commitment to a specific standard, the FEIR's analysis of the energy savings is without substance. FEIR, p. II-64.
- The FEIR cites solar panels for commercial and community buildings "to provide a majority (if not all) of the energy needed" and the option for residential solar panels. FEIR, p. II-76. No enforceable condition of approval or mitigation measure actually mandates that the Project as a whole be carbon neutral or even that that all or a given percentage of the Project's electrical energy be supplied by renewable sources. As discussed in footnote 7 above, the last-minute changes to conditions of approval regarding renewable energy do not change this conclusion, and, in any event, these changes were not relied on in the FEIR's analysis.

In sum, the FEIR purports to quantify Project emissions, but it merely guesses at the efficacy of Project features at reducing these emissions, and it fails to compare those emissions to a numerical threshold. The Project's quantified emissions are clearly cumulatively considerable because they exceed the CAPCOA quantitative thresholds. The FEIR's significance analysis does not provide even a coherent *qualitative* analysis of the Project's GHG impacts: it announces criteria of significance, many of them irrelevant; admits that the Project does not meet all of these criteria; contradicts itself as

to those criteria; and then concludes that the impacts are less than significant without explaining how the Project's failure to meet the criteria can be excused. The Project's GHG impacts are clearly significant or cumulatively considerable by virtue of the criteria that are admittedly not met. The obvious conclusion is that the Project should be required to meet these criteria, or it should be required to provide offsets if it cannot meet them. Since the impacts should be found cumulatively considerable, the EIR should propose all feasible mitigation.

As noted above in connection with water supply impact mitigation, half-measures are not a substitute for an adequate analysis and mitigation. CEQA requires that an EIR honestly evaluate impacts based on a clear threshold of significance, make a significance determination, propose mitigation, and evaluate how effective that mitigation will be. The GHG analysis fails to do this.

2. Recirculation Of The GHG Analysis Is Required

The FEIR's provision of an entirely new GHG analysis renders the public's comments on the DEIR's GHG analysis essentially meaningless. For example, the public was not given an opportunity to comment and receive responses regarding the entirely new quantitative analysis of GHG emissions presented for the first time in the FEIR appendices and the purported efficacy of Project features at reducing these emissions. Nor was the public given adequate opportunity to review, challenge, and receive responses to comments on the entirely new qualitative analysis of significance. The County must recirculate the EIR.

H. Agricultural Land Impact Analysis And Mitigation Is Inadequate

The EIR fails adequately to evaluate impacts to agricultural land because it uses unduly narrow definition of prime agricultural land. This analysis is contrary to LAFCO's request in scoping comments that the EIR evaluate impacts with respect to the definition of prime agricultural soils contained in Government Code Section 56064. DEIR, App. B. In response to LAFCO's objection that the DEIR ignored its scoping comments, the FEIR simply asserts that it was not required to evaluate agricultural impacts as defined by Government Code Section 56064. FEIR, pp. II-47, 48.

However, CEQA requires that the County identify all uses of the EIR of which it is aware and list all "related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies." CEQA Guidelines, § 15124(d)(1)(C). This obviously includes LAFCO's review, of which LAFCO made the County aware in scoping comments. The County is also required to "the fullest extent possible" to "integrate CEQA review with these related environmental review and consultation requirements." *Id.* Thus, the DEIR's failure to respond to LAFCO's requirement for analysis that supports LAFCO's obligations as a responsible agency is an abdication of the County's responsibility under CEQA to prepare an adequate informational document and to comply with CEQA Guidelines.

As noted above, the DEIR's evaluation of agricultural impacts is also unduly narrow because it does not acknowledge General Plan policies that identify soils of type I-IV as prime soils. CEQA requires that an EIR identify inconsistencies with applicable plans. CEQA Guidelines, § 15125(d).

I. Air Quality Analysis Is Inadequate

The DEIR failed to provide a meaningful evaluation of the Project's potential to cause a violation of air quality standards because its analysis of criteria pollutants incorrectly assumed that background concentrations of these pollutants in Lake County are zero. FEIR, p. II-58, Staff Report, Oct. 8, 2009, Attachment 3, Douglas Gearhart (LCAQMD), memorandum to Emily Minton. Sept. 9, 2009. LCAQMD has advised the County that, in fact, ozone levels approach the Ambient Air Quality Standards ("AAQS") and therefore the projected NOx emissions of approximately half the AAQS levels would result in exceeding the standards and placing the district in non-attainment status. Mr. Gearhart's expert comments directly contradict the DEIR's assertion that, in view of the County's attainment status, it is "unlikely" that background concentrations are sufficient to result in an exceedance. DEIR, p. IV.D-15.

In view of this expert agency's repeated comments that the EIR's analysis is insufficient and that an adequate analysis would likely reveal significant impacts, the County cannot hide behind the claim that data are not available. The County must obtain the most reliable ambient data that are available, undertake a credible analysis, and recirculate the EIR with appropriate mitigation.

J. Cultural Resource Analysis And Mitigation Is Inadequate

As comments demonstrate and as noted above, the EIR fails to provide an adequate description of the environmental setting with respect to cultural resources. Furthermore, the FEIR fails to respond adequately to comments questioning the proposed mitigation. Comments by the Sierra Club pointed out that Mitigation Measures CULT-1b and CULT-2 are ineffective because it will be impossible to detect artifacts during mass grading. II-248. The FEIR's response is that "[t]he comment is acknowledged for the record and will be forwarded to the decision-making bodies for their consideration in reviewing the project." FEIR, p. II-248.

K. Biological Mitigation Is Inadequate

Mitigation for impacts to the Clear Lake hitch calls for determining whether suitable habitat is present and then formulating and implementing a Mitigation Program that includes "revising the extent of the proposed development to allow for maximum habitat avoidance and protection and/or contributing funds to restore hitch spawning habitat or to assist with the removal of known barriers to hitch passage." DEIR, p. IV.E-66. Formulation of this mitigation measures is impermissibly deferred without any

justification stated, in violation of CEQA. Furthermore, a fundamental principle of conservation biology and mitigation is that avoidance is preferable to minimization of impacts and both are preferable to compensation. However, deferral of the mitigation may render its implementation through avoidance infeasible, because by the time the surveys are complete, other phases of the Project may have been developed so as to commit the developer to a Project design that makes avoidance of hitch habitat infeasible. Feasibility should be determined now by conducting necessary surveys, completing the necessary wetlands and waters delineation, and designing the Project to maximize avoidance.

Similarly, the mitigation for impacts to wetlands impermissibly defers the identification of wetlands with no justification. DEIR, p. IV.E-82, 83. The mitigation requires “such measures as revising the extent of the proposed development to allow for maximum avoidance and protection of wetlands and other waters . . .” This language is entirely ambiguous. Either the EIR should require avoidance of wetlands or it should determine that this is not feasible based on a completed wetland delineation. As written, the measure is vague and therefore unenforceable. Required revisions to the site layout should be made now while flexibility exists to redesign the Project in an accountable public forum under CEQA. Furthermore, the mitigation does not identify any mitigation for permanent impacts (as opposed to construction phase impacts) other than “maximum avoidance.” As written, there is no discussion of, or requirement for, minimization of impacts or compensation for impacts. Without this, the measure is incomplete. For example, even if “maximum avoidance” results in substantial loss of wetlands, the EIR does not propose any compensation for this loss.

Finally, the wetlands discussion fails to provide the information necessary for responsible agencies (*e.g.*, ACOE, CDFG) to act on necessary Project approvals. Again, CEQA requires that the County identify all uses of the EIR of which it is aware and list all “related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies.” CEQA Guidelines, § 15124(d)(1)(C). This obviously includes review by CDFG and ACOE. The County is also required to “the fullest extent possible” to “integrate CEQA review with these related environmental review and consultation requirements.” *Id.* Thus, the DEIR’s failure to provide information that ACOE and CDFG will certainly need as responsible agencies is an abdication of the County’s responsibility under CEQA to prepare an adequate informational document and to comply with CEQA Guidelines.

L. Alternatives Analysis Is Inadequate

The EIR’s selection of a range of alternatives does not meet the rule of reason because it was not adequately guided by consideration of the Projects unavoidably significant impacts. For example, the EIR failed to formulate an alternative that would avoid or reduce the acknowledged unavoidably significant impact due to inconsistency with surrounding land uses or population and housing. DEIR, p. IV.J-20. Indeed, the alternatives analysis simply failed to identify these issues in its discussion of the purpose

of its formulation of alternatives. DEIR, p. VI-1. The FEIR's response to comments on this issue is inadequate. FEIR, p. II-158.

In addition, the EIR's alternatives analysis failed to consider an alternative that would meaningfully mitigate the unavoidably significant aesthetic impacts, *e.g.*, an alternative that would avoid ridgeline development. Again, the FEIR's response to comments on this point was inadequate. The FEIR claimed that the reduced development alternative evaluated in the EIR would have concentrated development on gentler slopes. FEIR, p. II-125. However, this claim is belied by the DEIR's finding that visual impacts for this alternative would be similar to the visual impacts from the Project. DEIR, pp. VI-12, 16.

The FEIR fails to provide an adequate analysis of the impacts of alternatives. For example, it fails to determine whether impacts would be rendered less than significant or would remain unavoidably significant. DEIR, p. VI-16. Without this information, the EIR fails as an informational document and cannot guide decision makers in considering approval of alternatives.

We note that the EIR contains no information regarding the feasibility of the alternatives other than statements regarding attainment of project objectives. None of the alternatives was identified as infeasible on that account. Accordingly, the County cannot reject environmentally superior alternatives on the basis of infeasibility on this record.

Finally, we note that a memorandum attached to the October 8, 2009 Staff report analyses another alternative, permitting only 200 residential units that would be situated away from ridgelines. Staff Report, Oct. 8, 2009, Attachment 2. This 200 residential unit alternative was apparently intended in part to address visual and other impacts, and the memorandum does conclude that impacts would be less than for the Project itself. This alternative obviously was not incorporated in the EIR's alternatives analysis, which renders the EIR's analysis and comparison of alternatives incomplete. For example, while this alternative would clearly reduce impacts, no indication is given whether it would be the environmentally superior alternative, a determination that CEQA requires the agency to make.

Furthermore, if the applicant declines to adopt this alternative, which would clearly lessen the Project's impacts, then the County must recirculate the EIR. CEQA Guidelines, § 15088.5(a)(3).

IV. Conclusion

For the foregoing reasons, the EIR comprising both its draft and final forms fails as an informational document under CEQA. As a result, the County may not lawfully approve the Project in reliance on the EIR's defective analysis. If the Planning Commission intends to recommend approval of the Project, the County must revise and

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recirculate the EIR to address the many defects discussed above and in others' comments before proceeding further.

Thank you for your consideration of these concerns and please call with any questions.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to read 'M Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe

John H. Farrow

On behalf of the Sierra Club Lake Group

JHF: ms

cc: Emily Minton (by email only to: emilym@co.lake.ca.us)

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Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

Mark R. Wolfe