January 21, 2010

Honorable Board Members
Lake County Board of Supervisors
Lake County
Lakeport, CA 95453

Dear Supervisors,

Cristallago Development Corp is submitting this letter in an attempt to clarify confusing statements and representations that have been presented in the Staff Report dated January 14th and delivered to us late Friday the 15th and a letter from the Sierra Club dated yesterday the 20th.

There are two completely separate actions before the Board. The first action is the consideration of an appeal of the Project's CEQA document that has been certified by the Planning Commission on a 4-1 vote. The second action is the consideration of the project's Development Application. It appears that there is significant confusion over the relationship between these two distinct actions. There also allegations made by project opponents that the CEQA document inappropriately defers required studies and analysis.

CEQA CERTIFICATION ISSUES:

EIR ADEQUACY STANDARD:

This Program EIR meets the CEQA standard for adequacy and the Planning Commission's certification should stand. The document is over 2100 pages long and has taken nearly three years to prepare. This EIR has identified all project impacts, provides appropriate project mitigation performance standards that will reduce these impacts to less than significant and properly evaluates a range of project alternatives. The document spells out the adequacy standard for an EIR, as provided for in Section 15151 of the CEQA Guidelines, on page 1.

> *"An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the*

environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The Courts have looked not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure."

PROGRAM EIR VERSUS PROJECT EIR:

We believe there one very easy way to tell if this document is appropriate as a Program or Tiered CEQA document. If the project requires further discretionary approvals, in this case the approval of a Specific Plan of Development and Use Permit, it will require additional CEQA review by law. If the County is required to conduct additional CEQA review prior to any construction activity, then by definition, this is a Program (Tiered) EIR. It is really as simple as that.

NO INAPPROPRIATE DEFERRALS:

The key issue here is that the imposition of PERFORMANCE STANDARDS upon a project is the appropriate and *reasonably feasible* method of impact mitigation. The application of a threshold performance standard as mitigation, complied with at some point in the future, does not result in the required analysis being inappropriately deferred as Sierra Club has claimed. This is standard procedure for the mitigation of impacts and has been applied to every project we have seen.

For example, it is not *reasonably feasible* for any applicant to fully engineer a project prior to approval. This is a massive undertaking in terms of time and money and the Courts have held that this level of detail is not required even at the Project level EIR stage, let alone the Program level such as this. This level of detail is not even required of small 20 lot projects where all the improvements would be installed at one time. Cristallago will be phased in over many years and design standards will need change along with the times and market conditions. There is, however, a certain amount of pre-engineering that is required in order to determine the scope of the environmental impacts so that an appropriate performance standard can be developed. Cristallago has gone above and beyond, in this regard, what is normally required for a Program level CEQA analysis and a General Plan of Development application.

The project's drainage impact mitigation is a perfect example of how a performance standard is applied in order to mitigate an impact. The standard applied here simply states that the project's final drainage plans must demonstrate, to the satisfaction of Public Works, that it will result in "No net increase in the rate of peak runoff". Regardless of exactly how

the final drainage plans move the water within the project boundaries, this standard assures there will be no impact to downstream owners. As long as the standard is complied with, the impact has been reduced to a level of less than significant.

This would also apply the mitigation for water quality. Every development project is required to obtain a "Storm Water Discharge Permit" issued by the State Water Resource Control Board. Water quality is under this agencies jurisdiction, not County Planning. This permit can not obtained until the lead agency completes the CEQA review and then a "Storm Water Pollution Prevention Plan" is prepared for approval by SWRCB. This is done after the final development plans and engineering have been completed but before any construction. Therefore, the appropriate mitigation measure at this stage in the process is for the lead agency to require the project to obtain these permits. Compliance with this mitigation will provide a level of environmental protection in this regard that is the commonly accepted standard. It is not appropriate for the lead agency to require, as some opposition has demanded, the preparation of a detailed discharge mitigation plan. The golf course will also be required to obtain a discharge permit for operations. It is this permit that will examine any potential for the discharge of herbicides or pesticides during flooding events (or any heavy rainfall event) and then impose appropriate mitigation measures in the form of the permit conditions. If these permit conditions are not conformed with, the developer can be fined as much as $10,000 per day. Builders and developers take these permit conditions VERY seriously.

Another example of a performance standard would be the mitigation measures and conditions of approval required of Cristallago for the domestic water supply. The project must provide funding guarantees to Special Districts that the required infrastructure upgrades will be completed prior to any final map being recorded. Condition of Approval L.3.b)i) states; "The North Lakeport WTP must be expanded to accommodate the planned growth for each phase of the development. These facilities are to be constructed by the Developer and deeded to CSA No.21. Cost of construction of these improvements will be paid for by the Developer. Funding shall be established prior to recording the final subdivision map." If the project complies with this very simple standard, then the project impacts relating to the water system will be mitigated. It is not necessary to demonstrate exactly how those improvements will be built in order to know the impact will be mitigated.

Some types of impacts are mitigated by requiring the project to satisfy other governmental agencies (CDF, USFW, Corp of Engineers, SWRCB) that have the appropriate jurisdiction at the time permits are obtained. Virtually all these agencies require that the project have a certified CEQA document included in the permit application. These other agencies use the County's CEQA document as a starting point or the basis for their analysis and permitting process. Some require detailed construction plans. Therefore, it is not reasonably feasible to obtain these permits or certifications prior to a decision to certify this EIR. Also, many of these additional studies required by the agencies are time sensitive and essentially have an expiration date on them. Usually these permits are only good for year. In this case where it

has taken over four years to complete the CEQA process, they would all need to be renewed time and time again. These agencies do not want to be doing this.

The application of a performance standard is an appropriate form of mitigation even for projects where there will be no further CEQA review required. Cristallago is still at the General Plan of Development stage and the project will still undergo another level of review and approval at the Specific Plan stage for each phase. The application of program level performance standards are an entirely appropriate form of mitigation .

The fundamental point here is that there is a huge difference between compliance with a performance standard at a point in the future and simply "deferring" environmental impact analysis as certain opposition have claimed. If future studies do uncover impacts that are new or different than those anticipated at this time, then a new CEQA analysis will need to be conducted and then reviewed and approved by this Commission before the project can move ahead.

IMPACTS ARE MITIGATED:

The EIR mitigates all identified project impacts to a level of less that significant, with three exceptions identified by the consultant. The three remaining Significant and Unavoidable impacts are Aesthetics, Oak Woodlands and Zoning Conflicts with surrounding land uses. We continue to dispute EIR consultant's Significant and Unavoidable findings for these three impacts. These findings are overly conservative and inappropriate. Our arguments against these findings are made below. We also discuss some of the other impacts that have been mitigated to a level of less than significant along with their performance standards. All mitigation measures contained in the EIR will be included as conditions of approval for the project and must be complied with.

SIGNIFICANT AND UNAVOIDABLE IMPACTS:

Aesthetics:

We disagree with the finding of significant and unavoidable impacts related to scenic vistas and visual character for the project site. It is certainly agreed that the project will alter the appearance of the site, however, we do not understand how the impacts from this project would be any different than the visual impacts caused by any other similar project on any other site on or near a public roadway. It is not clear as to how the determination that this site is a "scenic vista" was reached. This finding in the DEIR is the fundamental flaw in reaching the conclusion of significant and unavoidable. We believe that due to the natural topography of this site, the project is actually very well concealed by terrain in comparison to other similar projects. As stated in the DEIR on pg. IV.B-12, the project is **only visible from the highway for about a 20 second duration.** There is no evidence put forth in the DEIR that the project would in fact *"...have a substantial adverse effect on a scenic vista,*

as seen from a public viewing point." In addition, the project has incorporated an extensive list of mitigation measures in order to reduce the visual impacts of the project on its' surroundings. Foremost, the project is obligated to a grading program that would significantly reduce any alterations to the existing terrain. To the greatest extent feasible, the constructed units will conform to the existing slopes and will refrain from typical "flat pad" grading techniques. The DEIR refers to our best estimate of 500,000 cubic yards of cut and fill on the site. The majority of this would occur as a result of the golf course grading itself which is to be constructed down in the valleys of the site, not on the serpentine ridges. The buildings would be constructed with terra cotta colored roofs and earth tone stucco exteriors in order to blend with the natural terrain. The project has also committed to the use of low-glare materials and special exterior lighting measures in addition to extensive landscaping to reduce visual impacts. The EIR states that no mitigation measures are required but that fact is that the project has already committed to an extensive list of mitigations at the onset in our project description.

Biological Resources - Oak Woodland Impacts.

We have clearly demonstrated by way of a project aerial overlay, that the project will cause the removal of approximately 140 trees. While this analysis was not completed by a certified arborist, the results are self evident in any event. As we have stated previously, applying a typical oak woodland density of 50 trees per acre (used in other jurisdictions such as the City of Clear Lake), this represents less than three acres of total impact, not the 95 acres that has been identified by the Biological consultant in making their determination. As stated in our previous written comments on the Bio element, the impacts resulting from the removal of oak trees have been dramatically overstated and incorrectly characterized. While the consultant was initially required to take a very conservative position, we have provided the County and the consultant with a high resolution aerial overlaid with the detailed development plan. This exhibit demonstrates that the total number of trees that will require removal to be approximately 140 trees. Given that we have clearly demonstrated the impact to be less than 3.0 acres, we do not believe the finding of ***significant and unavoidable*** should stand. **The relevant impact to oak woodlands is the result of the removal of the oak trees themselves**. Much of this overstated oak land impact is being derived from the golf course area itself which has been previously cleared. This impact does not come primarily from the proposed residential units as the Staff Report suggests. The trees themselves are the "habitat" the County should be concerned about, therefore it would seem to us that the most appropriate method to determine the appropriate level of mitigation should be calculated by the actual number of trees that would be removed not the total acres of the biological community occupied by the various uses.

MM BIO-2c & d provide for oak land preservation and a replanting programs respectively. State law spells out the requirements for mitigation. Public Resources Code section 21083.4 states; "*If a County determines that there may be a significant effect to oak*

woodlands, the County shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands." There are four mitigation alternatives spelled out and deemed to mitigate the "significant effect". 1) Conservation easements, 2) Plant an appropriate number of trees (this can fulfill no more than 50% of the required mitigation), 3) Contribute funds to the Oak Woodlands Conservation Fund, 4) Other mitigation measures developed by the County. The project has obligated to the preservation of approximately 84 acres of oak woodland on-site. The project should receive mitigation credit for the preservation of onsite oak woodlands as provided for under the State Resources Code 21083.4. If the County still feels that tree replanting should be required, in addition to preservation easements, then a 3:1 replacement ratio as spelled out in BIO-2d is fine, but there must first be some credit provided for the preservation. These two programs are spelled in the code as acceptable forms of mitigation.

It would be in the County's best interest to consistently apply oak tree/oak woodland mitigation measures across all County projects and we do not think it is appropriate to develop a new and different set of measures to be applied to one project. We feel that the mitigation measures proposed here are more restrictive than what the County is currently requiring in recent project approval conditions. The EIR process should not be used as an occasion to create new County policies.

Surrounding Zoning Conflict:

The EIR finds that there is a Significant and Unavoidable impact resulting from the fact that the project would have, if approved, a zoning designation that would allow a residential density greater than allowed by the surrounding properties. Our objection to this finding is quite simple and is spelled out in the document on the next page IV.J-21. *"CEQA Guidelines 15125(d) states; "The EIR shall discuss any inconsistencies between the proposed project and the applicable general plans and regional plans." An EIR uses the policy analysis as an indicator of the resources that might be affected by a project. Inconsistency with a policy may indicate a significant physical impact, but the inconsistency is not itself an impact."*

A Significant and Unavoidable impact must be a PHYSICAL impact on the environment. This is not a PHYSICAL impact. If this logic was applied uniformly, any project that resulted in a zoning designation that was higher than any neighboring parcel would automatically have a significant and unavoidable impact.

The document goes on to state on the same page***; "The project is generally consistent with the applicable policies related to land use and planning. Therefore, impacts related to a conflict between the project and any applicable land use plan, policy, or regulation related to land use and planning would be less than significant and no mitigation***

measures are required."

The conclusion of this section states; *"With the implementation of the development standards included as part of the proposed project, project impacts related to a conflict with applicable land use plans, policies and regulations related to land use and planning would be* ***less than significant."***

The key to answering this question comes from the underlined sentence above. It is the implementation of the development standards (i.e. mitigation measures like setbacks, no access easements, etc.) that mitigate the actual physical environmental impacts on the neighboring properties that would not have the same type of uses allowed. The fact that adjacent property zonings are not the same is not a physical impact and therefore can not be significant and unavoidable. This finding is legally flawed and incorrect.

IMPACTS MITIGATED TO LESS THAN SIGNIFICANT:

Population & Housing:

The EIR consultant has elected to use a 5% vacancy rate. The County's long term vacancy rate is 27%. The County's actual historical rate has been acknowledged in the report itself. Given that this is such a fundamental assumption that affects so many other project impacts, we do not understand what the justification would be for such a low vacancy rate. In addition to the vacancy rate assumption, the consultant has taken the position that the project's creation of 560 new full time jobs should also be counted towards the project's population and household growth impacts. We find this assumption to be extremely flawed as well. It is clearly the construction of a single family dwelling unit that would create new households not the creation of a new job. If this line of logic was followed as a matter of policy, then every commercial or industrial project brought forward for permitting would be required to conduct an analysis of the "residential" type impacts resulting from each new job creation. This would be quite absurd. The unsupportable vacancy rate and the inclusion of 560 jobs in the assumptions serve to vastly overstate the project's specific and cumulative population, housing, school, County services, traffic, air quality, greenhouse gas emission, and noise impacts. Our attached analysis demonstrates that project impacts related to households and population would actually be 57% lower if more realistic assumptions are applied.

Cristallago Housing Impacts

	Draft EIR	*Recommended*

Cristallago			
Residential -	*665*		*665*
Hotel/Golf jobs	*560*	*(3)*	*0*
Subtotal	*1192*		*665*
LESS Vacancy rate -	*60*	*(1)*	*180 (2)*
Cristallago Total Households -	***1,132***		***485***

Overstated Total Households - 647 units or 133%

Impacts Related to Housing & Population REDUCED by 57%

Air Quality:

The Planning Commision staff report did a good job of explaining the project requirements relating to serpentine soils. We are required to gain approval for the dust control plan from AQMD prior to any grading permit. This would include reaching an agreement on the appropriate depth of soil cap in the residential use areas. We spent months developing what we believe to be the most comprehensive control plan in the State after consulting with the State of California Air Resources Board and other Counties that have extensive experience with this issue.

The project is obligated to a grading plan that minimizes the modification of the existing landforms on the site. We will refrain from the typical practice of "flat grading" building pads and instead will bear the additional cost to build raised foundation homes that can conform to uneven homesites. There will be no blasting.

The EIR finds that due to the green building and design measures that have been incorporated into this project, the resulting reductions in the Green House Gas emissions are significant when compared to the "business as usual" baseline. We detailed those emission reductions at a previous hearing. Cristallago is clearly already the "greenest" project ever brought forward in the Lake County if not the entire State. This project was found to have mitigated its GHG impacts to a level of less than significant, by the air quality consultant, prior to the inclusion of any solar requirements.

The LCAQMD Director Mr. Doug Gearhart did not agree with this finding. This is his opinion and he is entitled to it although we find it to be seriously misguided. Lake County

is not under any legal requirement to accept his demands for a mandatory solar requirement. This requirement would dramatically affect the potential financial viability of this project and every other County project since each of these solar packages will cost nearly $40,000 per home. It has been clearly demonstrated in the marketplace that there is only a very small portion of the general public that is willing to pay the increased cost for a solar home due to the very long time required to recover the additional investment. This means that this cost will simply need to be absorbed by the project. This additional cost represents an amount greater than the total expected profit margin for each home.

Mr. Gearhart claims that Lake County is required to reduce its' total GHG emissions by 20% by 2020 as required under AB32. The State has not yet decided where it plans to obtain these emission reductions but they are currently targeted to come from large emission sources like automobile mileage standards, diesel trucks, stationary power generation sources, fumigants and the likes. It is almost impossible to imagine that the State is going to take the position that ALL new construction must mitigate all the project's power requirements by way of green power sources. A recent bill to this effect was recently vetoed by the Governor.

While it is true that the consultant for Valley Oaks made the finding that GHG impacts for that project and this one did not. This is not surprising since there is really no standard baseline to evaluate against. Right now each consultant just comes to their own conclusion. We read the conclusion stated in the Valley Oaks EIR. It is not substantiated whatsoever.

It is not appropriate to use this CEQA process to impose new policies. This requirement effectively sets in place a new policy precedent without any opportunity for the public to give input. If the County Board of Supervisors does ultimately decide through a the normal ordinance adoption process that mandatory solar should be required on all new construction within the County, then Cristallago will be required to comply as well, but <u>to unilaterally impose a condition such as this is highly inappropriate.</u>

Hydrology:

The project has committed to a "no net increase in peak runoff flow" performance standard. This will assure no downstream flooding impacts are created. The final drainage plan will be reviewed against this standard by Public Works when the fully engineered plans are submitted for approval. The project will also be required to obtain a storm water discharge permit from the State Water Resources Control Board. Before the SWRCB will issue this permit, a project specific Storm Water Pollution Prevention Program must be prepared and submitted to SWRCB for approval. This must be in place before any work occurs. It is not reasonably feasible to require a detailed drainage plan at this stage because a detailed grading plan would have to be completed first. The detailed grading plan is impractical at this stage in the process because until the balance of the permitting and mitigation measure

requirements are met, an applicant does not know exactly where they can build (i.e. where are the avoidance areas). Even though the County code does not require any drainage analysis to be completed at the GPD stage, we did in fact provide a drainage analysis that utilized advanced computer watershed modeling software. Surface hydrology was estimated for existing conditions and idealized post project conditions with estimates for the required capacity of the prospective detention basins. The goal of the provided study was to simply demonstrate that the post-development increase in peak flow runoff could easily be retained on site. The project's impacts from an increase in peak runoff have been mitigated to less than significant.

Traffic:

The project will be required to pay its' fair-share traffic impact fees in order to mitigate impacts on the County road system. The project is also required to make specific improvements at the Park Way/Hill Rd. W. intersection as well as along a significant portion of Hill Road. As a result of the overstatement of the population impacts, this project impact has been significantly overstated. These impacts are likely overstated more than 20%. In spite of this overstatement the project's traffic impacts have been mitigated to a level that is less than significant.

Cultural:

At the last hearing a member of the public requested that the project be required to hire a Native American monitor to be onsite during all grading activities. This condition has been added to the draft conditions of approval by CDD Staff. The EIR requires the project to halt any grading activities if any artifacts are found during the grading process. We feel this is adequate and this new condition simply increases costs unnecessarily. The EIR found that the impacts related to Cultural Resources have been mitigated to a level of less than significant.

Fire:

The project is required to prepare and submit for review and approval the fire suppression system and fire safety plan to N. Lakeport Fire District and CDF. The project is also required to make significant improvements to the nearby fire station in order to accommodate full time living facilities. Also, some additional equipment will need to be purchased for the station as well. This will greatly improve fire response time for all of the North Lakeport area. These measures will reduce the project impacts on fire services to less

than significant.

Agricultural Resources:

Any concern over conversion of ag land by this project is unwarranted. The southern portion of the project, known as the Black Rock Golf Course property, has already been converted from whatever farmland previously existed in this portion of the site. This site was rezoned, permitted and constructed as a golf course long ago. CEQA findings made at that time stated that the former Black Rock golf project did not convert existing ag lands. Our proposal does not convert or change the allowed use. This change in the environment was already studied, approved and then the site was actually physically converted. This southern area is now a golf course and wetlands and could not be converted back to its' original condition under any circumstance.

This project does not impact Ag Resources for the following reasons;

In order for the project to cause an impact, there must be a physical change in the environment. Under "Impact AG-1", the impact would have to be change in use or loss of agricultural use as a result of changing the project's zoning from Agricultural to Residential. This change has already occurred as a result of previous approvals and rezoning issued for both of the properties. The properties have long since been rezoned from agriculture to a golf course and residential zones.

The project is not currently zoned for agricultural use, with the exception of two small parcels. One very small parcel is an old pump site on Scott's Creek and is not affected by the project. The other parcel, at the project's South entryway off Hill Rd., is currently designated as residential under the County's General Plan. The vast majority of the site (850 acres or 98%) is currently either open space or residential zoning.

The land does not physically hold the capacity to be used for any commercial agricultural production. The only soils that did contain some agricultural production value were long since rezoned and converted to golf course use and could not be converted back to its' former status since much of it is now considered to be wetlands. This is NOT productive County farmland.

There are currently no agricultural uses on the property with the exception of some limited grazing on the North Las Fuentes site. There have not been agricultural uses engaged on the site since the golf course was approved and partially constructed.

The impacts of the conversion of the Black Rock site from its' former agricultural use and zoning have already been reviewed and approved with CEQA findings. A golf course is already partially constructed. This project does not change this fact. It has already occurred.

As the report itself states, "the project site does not include any Farmland."

The Williamson Act contract status for the Black Rock portion of the project was set for expiration in March 2010 as a result of the former golf course project approvals. This expiration will occur regardless of this project's approvals. This project does not affect this outcome.

Sierra Club seems to make the argument that there will be an impact from the project because the LAP 3.4.1.i prohibits the rezoning or division of prime ag lands. Even if there ever was a change from an agricultural use or zone it has already occurred via previous approvals and rezones years ago and is not an impact created by this project.

Currently, there are no ag related activities being conducted on site so a reduction in agricultural related uses would be difficult to accomplish. Any restriction or policy that relates to the preservation of farmland should apply lands with existing agricultural land use designations not lands that are already zoned for residential uses.

Therefore, it is clear that the document makes the appropriate determination of Impacts to Agricultural Resources are ***less than significant.***

ROLE OF POLICY ANALYSIS:

The project does not need to be found to be consistent with any County policy in order to certify the CEQA document. CEQA is only concerned with actual PHYSICAL impacts. The policy analysis is conducted in an EIR in an effort to identify PHYSICAL impacts that could potentially result from a policy conflict with the project. The EIR is required to identify and mitigate PHYSICAL environmental impacts. The EIR correctly states on page IV.J-21. *"CEQA Guidelines 15125(d) states; "The EIR shall discuss any inconsistencies between the proposed project and the applicable general plans and regional plans." An EIR uses the policy analysis as an indicator of the resources that might be affected by a project.* ***Inconsistency with a policy may indicate a significant physical impact, but the inconsistency is not itself an impact."***

The role of the policy analysis in an EIR seems to be seriously confused in this latest Staff Report and by comments made by Sierra Club. Statements of overriding consideration cant be made for policy inconsistencies because these findings can only be made for PHYSICAL impacts. Policy inconsistencies are not PHYSICAL impacts. Determination of policy consistency is a separate decision from the decision as to whether or not the EIR is adequate for certification. The Planning Commission's action on the EIR certification was and should be based on the completeness and accuracy of the EIR as an information document, rather than on any question of possible "inconsistency" between some aspect of the project and the general plan. The Planning Commission was not required to find that the

project was consistent with all County policy in order to certify.

While it is true that the re-zoning (and other project approvals) must eventually be found to be consistent with the applicable General Plan policies, including policies applicable **subsequent** to the proposed General Plan amendments, this issue of "consistency" relates to the separate decision to approve the proposed re-zoning and GPD and not the certification of the EIR.

Every project application that requires a General Plan Amendment and Rezone is going to be inconsistent with the uses (and applicable policies) allowed pre-approval. It is therefore not reasonable to assert that there must be some finding of consistency with General Plan policy made as part of the EIR certification **prior** to consideration of the development application itself. If this was the case then a vote on the application itself would be required prior to the EIR certification in every case. It is during the subsequent consideration of the application that the project is considered against the General Plan policies **as a whole** for consistency.

ALTERNATIVES SHOULD BE REJECTED:

Among the factors that may be used when making CEQA findings to reject alternatives would be 1) failure to meet most of the basic project objectives, 2) infeasibility or 3) the inability to avoid significant environmental impacts.

Recent case law also tells us that the lead agency may also reject alternatives that are deemed undesirable from a policy standpoint as well. In California Native Plant Society v. City of Santa Cruz, the Court clarified the rules on when and how a lead agency may find alternatives to be infeasible. The Court held that the EIR adequately evaluated a reasonable range of alternatives, and that when making CEQA findings, the City properly rejected alternatives to the proposed project as infeasible based upon policy considerations.

In this case of Cristallago, three alternatives were considered as part of the EIR. Alternative "A" is the No Project alternative, alternative "B" is Development under the existing General Plan density alternative (134units, no resort, no golf), and Alternative "C" is the Reduced Density Alternative (325 residential units and 175 resort units=500 total). We now know that there has been a new alternative prepared by CDD Staff at the request of Commissioner Baur. The Commission did not request that this new alternative be included as part of the FEIR. It is however now part of the administrative record. This alternative would provide for 325 resort units and 200 residential units for a total of 525 units.

The EIR already states that the No Project "A" and Existing GP "B" alternatives clearly do not meet basic project goals of building a destination resort community. There would be no resort or golf course under either of these two alternatives. The EIR does state that

alternative “C” and now the record contains the new alternative that the consultant claims also meets the “project goals”.

While these two alternatives may meet the goals as they were extracted from our project application, they clearly do not meet fundamentally important project goals as laid out in other parts of the record. One project goal that these clearly do not meet would be that of delivering “relatively affordable” buyer options. We are including a simple spreadsheet that clearly demonstrates the effect on home pricing by reducing the residential density from the proposed 650 down to 200 units. This analysis demonstrates that in order to carry the cost of the significant amenity package, projected to cost at least $22M, the indicated final sales pricing of the homes would increase from approximately $440,000 with 650 SFD units up to $940,000 with only 200 SFD units. The recommendations we have received from our professional consultants have indicated that the key to a successful program in Lake County will be relative affordability when compared to other NorCal resort and second home opportunities like Napa, Sonoma, Truckee and Tahoe. We subscribe to this same conclusion in that we must provide a significantly better “value” than the alternatives in order to sell real estate. This leads us to what is an implied goal in that we must have a final project program that is viable in Lake County. If the project is not viable, then there will be no project to start with. We do not believe that selling homes at an average price level of $940,000 is feasible in Lake County. We are including a letter from Economic Research Analysts (ERA) which reaches the same conclusion that this project is not feasible if built at the densities described in either alternative “C” or the new alternative.

The most important factor in considering the alternatives is the ability of either alternative to significantly reduce or eliminate the Significant and Unavoidable impacts of the project. It is clearly the consultant’s opinion that neither alternative (“C’” or Bauer) significantly reduces or eliminates the significant and unavoidable impacts from aesthetics, oak woodlands or zoning conflict.

While the new alternative might reduce the visual impact somewhat by relocating all the homes from the lower front ridges, it is unclear to us where these units would actually physically fit anywhere else on the property without causing the golf course to become a nine hole course (thereby not meeting the standard for Jack Nicklaus or a championship resort course) or impacting the oak woodlands or wetlands to a greater degree. In addition, most of the visual impact will come from the hillside resort village which the new alternative does not seek to modify. We placed this density in this location in the first place because we felt like it was the only feasible place to locate it without significantly impacting the woodlands with steep slopes or wetlands.

We request that the Supervisors reject all the project alternatives based upon the findings in the EIR document, the October 2, 2009 letter from Geoff Reilly to Ms. Minton and the submitted exhibits and points above.

CONSIDERATION OF THE PROJECT APPLICATION:

GENERAL PLAN CONSISTENCY STANDARD:

The decision to make a decision either for or against the development application is a completely separate action from the EIR certification decision. This is the POLICY consistency determination. The project must be found to be consistent with the Lake County General Plan in order for the Commission to recommend approval. It is the role of the policy makers and in fact their duty to make a determination as to the application's consistency with the Lake County General Plan on the whole, not just one, two or even twelve policies out of hundreds to be considered.

The General Plan Guidelines published by the State OPR defines consistency as, *"An action, program, or project is consistent with the General Plan if, considering all its aspects, it will further the objectives and policies of the General Plan and not obstruct their attainment."*

The EIR document states on pg. IV.J-21; *"The project is generally consistent with the applicable policies relating to land use and planning. Therefore, impacts related to a conflict between the project and any applicable land use plan, policy, or regulation related to land use planning would be less than significant and no mitigation measures are required."*

The Commission must take the **ENTIRE** General Plan into consideration when this decision is made. No project is required to be consistent with each and every applicable

policy. This is not the standard. No project would ever gain approval if it was. This is the part of the process where the policy makers get to consider and weigh the project's positive benefits to the County against all the potential negative impacts considered by the EIR. If the positive benefits outweigh the impacts then the project application should be recommended for approvals.

RESORT IS PRIMARY:

Defn. –Merriam Webster

Adjective: ***primary***

Of first rank, importance or value;

The project's consistency with County Policy LU6.12 depends upon the policy maker's decision as to how "primary" is defined**. The dictionary defines the word as meaning the most important or of the highest <u>value</u>**. <u>This definition does not include a measurement in terms of a physical count.</u> The two project components (Resort and Residential) must be evaluated based upon their importance or value to the County. **<u>Value</u>** <u>is an economic concept, which is why Lake County commissioned an economic benefits analysis to be conducted for the project.</u> If the criteria for making a determination as to primary was going to be simply based upon a physical standard, such as a simple unit count, then it would seem there would have been no reason to conduct an economic benefit analysis in the first place. We could have just counted units and made the determination right then and there. The economic analysis identifies and quantifies the value to the County and the local economy for each of the two components. We have demonstrated that the Resort component of the project outweighs, in terms of value and importance, the Residential in every economic category. It is not even close. The Resort outweighs the Residential by a substantial 2.5:1 margin.

What is most important to the County? Is it going to be a 325 unit Resort that creates 532 full time jobs, 40,000 new visitors, $800,000 in TOT revenue, $47M in total local spending, and $1.4M in net fiscal benefit to the County or would it be the 325 unit differential between the residential and resort unit count.? I would think that 99 out of 100 people would say that this Resort component has the highest value to the County and would be the most important.

After Supervisor Farrington requested that the proposal be modified to include more resort and less residential, we searched around for an appropriate standard to apply to this project that was used in other jurisdictions for Destination Resort communities. Several, including ERA, referred us to Deschutes County in Oregon where Bend is located. The standard in

Deschutes County is a 2:1 ratio of residential to resort, provided the project provides a substantial amenity package and adequate open space, proper infrastructure, etc. They required a minimum $2.0 M amenity package. We are including a $22M amenity package and exceed every other category easily. This is a well established standard by a community that understands the value that a destination resort will provide. We decided that while this was a significant reduction in the number of the residential units potentially affecting viability of the project, we wanted to meet a standard that could be clearly supported and is commonly adopted. This is the basis for our requested density of 650 residential and 325 resort units at a 2:1 ratio, in addition to the fact that 650 units are necessary to support the $22 M amenity package and thereby make the project financially feasible. We reduced our original proposed density from 1000 sfd units down to 650 sfd units and then increased our

WHAT IS A RESORT UNIT?:

Cristallago proposes a mix of uses within the PDC zoning. There will be a mix of timeshare, fractional, traditional hotel and condo-hotel. The new General Plan Land Use section spells out the uses that are allowed within the Resort Commercial zoning designation. The description states; *"Typical uses that would be permitted include….destination resorts, various types of lodging facilities such as, but not limited to hotels, motels, retreats, fractional ownership lodging units and time-share units…".*

The only proposed use not specifically mentioned here as explicitly is the condo-hotel. Condo-hotel use would be an integral part of the hotel itself. The condo-hotel component will be required to make available to the hotel's rental pool a substantial portion of the total room nights. Without this, the hotel is not feasible. Therefore, any concern over the transient nature of this component is unwarranted. Significant occupancy restrictions must be imposed in order for this model to work financially and will be incorporated into the Specific Plan conditions of approvals.

All proposed resort uses are clearly allowed under the current General Plan for a CR zone.

FINANCIAL ASSURANCES:

There have been concerns raised by some that the project is not viable and that it will fail leaving the County with a huge mess to clean up and a scar on the local landscape. This is probably the most common concern we hear voiced each time we have gone through approval process. It is understandably so.

State Law and the Conditions of Approval require that either all the required infrastructure improvements are physically installed or financially guaranteed prior to the recordation of any final map. No property can be split and transferred without recordation of the final map by the County and the issuance of the "white paper" from the State Department of Real Estate. Lenders will not provide financing without a recorded final map in place. The typical mechanism used to assure the local agency that the required improvements will be installed is provided by way of a completion bond. The bond amount usually required is 150% of the engineer's estimate of the total improvement cost for ALL infrastructure needed for each phase.

This project is also required to provide these financial guarantees for the initial grading as well prior to ANY permits being issued for the project.

The project will not be allowed to pull any permit to start work until the completion bonding is provided to the County. These financial guarantee mechanisms assure that the project will not be left in partially completed state. If for some reason the developer does not complete the required improvements, then the agency can draw against this instrument to pay a third party to complete the work. This does not guarantee that the project will ultimately be a financial success but does assure completion of all required infrastructure.

If we are unable to obtain financing for the project, it will never be allowed to pull one permit for any work. It is that simple.

CLOSING:

Why are we still here in the face of the worst economic circumstances most of us have ever witnessed? We still have hope. We still believe that positives for Lake County outweigh the negatives. This project, if allowed to go forward will add significantly to those positive attributes and a much brighter future for Lake County. Are there still many hurdles to overcome? Yes..Plenty!

This type of project can not be built within any currently existing urban growth boundary. Nobody disputes this fact. This location made the most sense to us due to its superior roadway access, vicinity to existing utilities, urban services and the lake itself. The project does not remove any productive farmland and does not impact local groundwater supplies. The project incorporates all feasible green, low impact design and construction techniques currently available. The project creates 670 new jobs, will inject hundreds of millions into the local economy and bring 40,000 new visitors to the County each year.

Based upon the opinions given by several professional economic consultants, this type of mixed use program with resort and residential uses combined is the only program that is financially viable in Lake County. As determined in several previously completed hotel feasibility studies, prepared for Lake County, a resort hotel can not feasibly bear the burden

of the required amenity package on its own. This is because of the seasonal occupancy patterns for Lake County resorts. The average annual occupancy will be comparatively low. As discussed previously, the residential density must be high enough to absorb the project's $22M amenity package cost and still be relatively affordable when compared to other Northern California real estate opportunities such as Napa, Sonoma, Truckee and Tahoe. The success of this project depends upon its ability to offer "value". This can not be achieved at a 2-300 unit residential density level.

Please remember that you are not making a decision simply to allow Cristallago or keep this site in its current condition. You are deciding whether or not this clustered SRe density request, with a massive resort and amenity package and full design review authority, is more desirable than a 134 unit project spread all over the hillside for which the site is currently zoned. The current property owner has paid for water connection entitlements for years on this site based upon the right to build 134 units at some point in time. This is a far superior and beneficial project for the community.

You have a legally adequate EIR that identifies all the potential impacts and provides appropriate performance standards in order to reduce to a level of less than significant. You have everything you need to render a decision on the merits of this project. This is an overall County policy decision and a political decision. You legally have the flexibility to decide either for or against this project. You are not limited in that right. Please support a brighter future for this County. Please support this project and the benefits it will bring to your community.

Sincerely,

Matt Boeger
President
Cristallago Development Corporation

CRISTALLAGO DEVELOPMENT CORPORATION

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