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VIA OVERNIGHT COURIER

Paul Thompson, Interim Agency Director
Placer County Board of Supervisors
3091 County Center Drive
Auburn, CA 95603

RE: Martis Valley West Specific Plan Environmental Impact Report

Dear Mr. Thompson and Supervisors:

Our office has reviewed the environmental impact report (EIR) for the Martis Valley West Specific Plan (the Project) and respectfully submits the following comments. We request that you consider our comments and address them prior to certifying the EIR. The California Attorney General has a longstanding interest in the protection of Lake Tahoe as a state and national treasure. The Attorney General's interest dates back over four decades (see, e.g., *California ex rel. Younger v. Tahoe Regional Planning Agency* (9th Cir. 1975) 516 F.2d 215) and is as recent as our involvement in the 2012 Tahoe Regional Planning Agency (TRPA) Regional Plan Update and our submission of comments on August 9, 2016, regarding the proposed Squaw Valley Specific Plan, also pending before Placer County. Our concerns with the EIR for the Project are similar to the concerns we expressed with regard to the EIR for the Squaw Valley Specific Plan.

The Project sets forth a 20-year framework for the residential development and open space preservation of two parcels totaling over 7,000 acres. The Project is located in the Martis Valley near the Northstar Resort and the Lake Tahoe Basin (basin). The Project is located just outside of, but adjacent to, the Lake Tahoe Basin, and its entrance lies on State Highway 267, the gateway to Tahoe's North Shore. While we applaud the Project's open space preservation, because of the proximity of the proposed development to Lake Tahoe, we are concerned about the impacts the development will have within the Tahoe Basin. We are particularly concerned with the Project's resulting increases in vehicular use and traffic within the basin. The traffic issues have two components – (1) level of service impacts to specific roadway sections within the basin; and (2) increases in vehicle miles travelled and daily vehicle trips within the basin, which in turn have impacts on air and water quality and may limit the ability of environmentally beneficial redevelopment projects in the basin to go forward. These impacts are especially a concern when viewed in combination with the similar impacts anticipated from the proposed 25-year plan for the redevelopment of nearby Squaw Valley. The EIR has not adequately analyzed

or mitigated these impacts. Increased traffic also increases greenhouse gas emissions, another issue of statewide importance, which is an identified significant impact of the Project that can and should be mitigated. As you are aware, on July 7, 2016, the Placer County Planning Commission voted against certification of the EIR and we urge you to do the same in order to address the inadequacies we have identified.

A. THE EIR INCLUDES AN ANALYSIS OF THE INCREASED VEHICLE USE IN THE BASIN THAT WILL RESULT FROM THE PROJECT, BUT FAILS TO DETERMINE WHETHER THE INCREASE IS A SIGNIFICANT IMPACT.

In its response to comments, the final EIR (FEIR) includes a discussion of the Project's impact on vehicle use within the basin. The FEIR anticipates that the Project's summer peak daily traffic would generate 1,394 daily trips traveling into the basin. (FEIR 3-17.) The TRPA, the agency charged with regulating and protecting Lake Tahoe, considers the addition of more than 200 daily trips to be a significant impact. (TRPA Code, § 65.2.3.G.) The FEIR also projects that the Project will create an estimated 13,745 additional vehicle miles travelled (VMT) on a summer Friday, an estimated .07 percent increase in VMT within the basin. The addition of the Project's VMT would bring the total VMT in the basin to 1,998,345, which is below TRPA's threshold for basin-wide VMT, but only by a small margin (the VMT threshold is 2,067,600). (FEIR 3-17.) The EIR acknowledges TRPA's standards but asserts that it need not use them as the standards of significance for evaluating the Project's traffic impacts within the basin. (FEIR 3-17.) Rather than identify an alternative standard of significance against which to measure the increase in traffic within the basin, the document's discussion of whether the increase is significant ends there. (FEIR 3-17 to 3-18.)

Lead agencies have the discretion to set standards of significance and are not required to accept significance standards adopted by agencies that will not have regulatory authority over the project. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) However, if evidence is submitted showing that the environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence. (See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) If the agency does not respond by changing the standard, it should respond by explaining the basis for the standard used. (*Id.*; see also, *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 898 [the substantial evidence standard applies to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied].) Because Placer County did not set a standard of significance for assessing traffic impacts to Lake Tahoe, it is impossible to know whether its rejection of TRPA's standard is appropriate and supported by substantial evidence.

In addition, while Placer County, as the lead agency, may not be required to use TRPA's standards, it must still determine whether the increase in VMT in the basin that will result from the Project is a significant impact. (See *Protect the Historic Amador Waterways v. Amador Water Agency, supra*, 116 Cal.App.4th at p. 1109 [holding that even where a pertinent standard of significance exists, compliance with that standard does not relieve an agency of considering other evidence that suggests an impact may exist]; *Lotus v. Department of Transportation* (2014)

223 Cal.App.4th 645, 654 [finding environmental document inadequate where discussion of impacts was included but without any information to enable the reader to evaluate the significance of the impacts discussed].) Because the EIR fails to identify whether the increased vehicular use within the basin is a significant impact, the EIR is inadequate.

B. THE EIR FAILS TO ANALYZE AND MITIGATE FOR THE IMPACTS ASSOCIATED WITH INCREASED VEHICULAR USE WITHIN THE TAHOE BASIN.

Although, as discussed above, Placer County in its EIR did not determine the significance of the increased vehicular use in the Tahoe Basin, it does appear that this impact will be significant. The EIR anticipates that the Project will result in more than six times the number of daily trips to the basin that TRPA would determine to be significant. (FEIR 3-17.) The EIR also projects that the Project will create an estimated .07 percent increase in VMT, bringing the total VMT in the basin within a close margin of TRPA's threshold. (FEIR 3-17.) The FEIR did not consider the impacts associated with this increase in vehicular use in the Tahoe Basin. These include impacts to air and water quality within Lake Tahoe and impacts to TRPA's ability to implement its Regional Plan and achieve its environmental goals within the Tahoe Basin. Placer County should analyze these impacts prior to certifying the EIR.

An EIR must identify all of the environmental impacts, direct and indirect, associated with a proposed project. (Cal. Code Regs., tit. 14, §§ 15123, 15126.2.) Indirect effects include secondary effects. (Cal. Code Regs., tit. 14, §§ 15358(a)(2); 15064(d)(2).) In addition, the impacts analysis must take into account the regional setting with "special emphasis" on environmental resources that are rare or unique to the region and would be impacted by the project. (Cal. Code Regs. , tit. 14, § 15125(c).) The CEQA Guidelines are clear that "[t]he EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (Cal. Code Regs., tit. 14, § 15125(c).) Here, the EIR does not include an analysis of the impacts that will be associated with the Project's increase in vehicular use within the Tahoe Basin and is, therefore, inadequate.

1. The EIR does not include an analysis of the air and water quality impacts associated with the Project's increased traffic within the basin.

The significant increase in traffic within the basin will have a direct impact on the air and water quality of Lake Tahoe. Increased vehicular use generates significant amounts of dust and leads to nitrogen deposition in the lake, which in turn causes algae growth that threatens the clarity of the lake. (See Final Lake Tahoe Total Maximum Daily Load Report, November 2010, 3-7, 7-8, and 11-11.)[1] Vehicle trips also contribute to air pollution and global warming. The

[1] The report is available at: http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/docs/tmdl_rpt_nov2010.pdf.

EIR does not include an analysis of these environmental impacts to Lake Tahoe that will result from the Project's increase in vehicular use.

The traffic analysis contained in the draft EIR (DEIR) is limited to impacts to level of service on specific roadway sections. (See FEIR Chapter 10.) It was not until the FEIR, in response to comments, that Placer County considered VMT and daily vehicle trips to Lake Tahoe. (FEIR 3-17 to 3-18.) While Placer County was correct to include this analysis, the information it yielded also should have been folded into the document's analysis of air and water quality, with a particularized discussion of impacts to Lake Tahoe.

Several commenters on the DEIR requested this analysis. Rather than revisit the air and water quality analyses, however, the FEIR suggests instead that mitigation measures proposed in the DEIR and policies incorporated into the Project to address transit impacts would address any impacts that may result from the increased vehicle use in the basin. (FEIR 3-18.) This response is legally insufficient. An EIR cannot substitute or compress its analysis of impacts with a discussion of mitigation measures. (See *Lotus v. Department of Transportation*, *supra*, 223 Cal.App.4th, at p. 656 ["By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA."].)

Interestingly, in the staff report to the Planning Commission, Placer County staff included a discussion of the air and water quality impacts associated with increased vehicular use in the basin. (See June 30, 2016, Staff Report to the Placer County Planning Commission, 5-6.) The staff report acknowledges that "the majority of vehicle-related pollutants that enter Lake Tahoe are from vehicle sources within the Tahoe Basin." The staff report goes on to conclude that "[t]hus, the 65-70 percent of vehicle trips associated with the project that would not enter the Lake Tahoe Basin would not affect Lake Tahoe water quality. Furthermore, project-related vehicle trips that would enter the Lake Tahoe Basin would remain below TRPA's VMT threshold." (*Id.*) This post-EIR analysis does not cure the EIR's deficiency and only underscores the fact that the EIR should have included an analysis of these air and water quality impacts. (See *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 [emphasizing that the EIR must contain facts and analysis necessary to ensure a meaningful public process]; *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841 [requirement of detail in EIR "helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."].)

In addition, even if the analysis provided in the staff report had been included in the document, compliance with TRPA's VMT threshold is not an adequate basis for concluding that the increase in traffic will not have impacts to air and water quality within the basin. TRPA's threshold for VMT is an environmental carrying capacity for the basin. Because it is a basin-wide carrying capacity, no single project *should* exceed the threshold. In order to achieve the thresholds, TRPA is required to adopt a Regional Plan that sets forth standards for projects and activities within the basin. (See TRPA Compact, Art. V(c).) These standards apply in addition to the thresholds and are the primary mechanism by which TRPA ensures that new development contributes to, and does not thwart, threshold attainment. Thus, these standards provide additional criteria that apply to individual in-basin projects to ensure environmental impacts are adequately mitigated.

Of particular relevance here, TRPA's standards characterize any proposed development that creates more than 200 daily vehicle trips as having a significant traffic impact and requires an analysis of air quality impacts associated with the project prior to project approval. In addition, all new development projects are required to provide an air quality mitigation fee to offset regional and cumulative impacts. (TRPA Code of Ordinances § 65.2.) These standards apply regardless of whether or not the project will exceed the TRPA VMT threshold. As a result, it is inaccurate to suggest that compliance with the VMT threshold is sufficient to ensure that the project will not have air and water quality impacts within the basin. Further, in discussing the vehicle impacts, the document specifically indicates that it need not apply and is not applying TRPA standards in order to determine whether the in-basin impacts are significant. (FEIR 3-17 ["the proposed project does not occur in the basin and is not under the jurisdiction of TRPA, so effects on the TRPA thresholds are not used as standards of significance in this EIR…"].) It is inconsistent, on the one hand, to decline to apply TRPA's standards for purposes of the traffic analysis in the EIR, but then, on the other hand, rely on TRPA's standards post-EIR in order to conclude that the increase in traffic will not have air and water quality impacts.

Rather than point to the VMT threshold post-EIR, when it specifically elected not to apply the VMT threshold as the standard of significance in the EIR, or point to other mitigation measures, Placer County should revise and recirculate the EIR to include a meaningful analysis of the air and water quality impacts that will result from the Project's vehicular impacts within the Tahoe Basin.

2. The EIR does not include an adequate discussion of potential mitigation measures to address the impacts associated with the Project's increased traffic within the basin.

In addition to declining to analyze the Project's air and water quality impacts to the Tahoe Basin, the EIR likewise fails to discuss adequate mitigation measures that could, to the extent necessary, address these impacts. The failure to identify mitigation measures for air and water quality impacts that will occur in the basin as a result of the Project's increase in vehicular use follows, in part, from the EIR's failure to analyze these impacts and determine whether or not they are significant. Nevertheless, because Placer County points to proposed mitigation measures and policies that it claims "would reduce VMT impacts of the Project in the Basin" (see FEIR 3-18), a discussion of these measures and policies is warranted. It is also worth discussing the mitigation measures that several commenters proposed to address these impacts, as well as Placer County's discussion of these air and water quality impacts in its staff report to the Planning Commission for the Project.

a. The mitigation measures and policies Placer County points to are insufficient to address the impacts of increased vehicle use within the basin.

Placer County points to mitigation measures that have been adopted for transit impacts and policies to enhance transit built into the Project as being sufficient to reduce VMT impacts of the Project in the basin. (FEIR 3-18.) While it is difficult to gauge whether mitigation is

sufficient when the impacts have not been quantified, in this instance the measures are facially deficient because they do not guarantee implementation of effective mitigation, nor are the mitigation measures specific to the impacts within the Lake Tahoe Basin. Regardless of the extent of the impacts, these mitigation measures are not sufficient to reduce the environmental impacts resulting from increased VMT within the basin, let alone the transit impacts they purport to address.

First, mitigation measure 10-5a consists of establishing a new Zone of Benefit or annexing into an existing Zone of Benefit to "provide adequate funding of capital and ongoing operational transit services/requirements." (DEIR 10-33.) The mitigation measure does not specify the amount of the funding obligation, nor does it identify target projects, nor is there any guarantee that the projects it identifies will improve conditions in the basin versus elsewhere in Placer County (e.g., in the town of Truckee). (See FEIR 3.5-448 [stating that the specific level of transit service improvements that would be funded has not yet been defined].) While funding contributions to improve transit could be a valid mitigation measure, the funding obligation is too vague and too disconnected from impacts within the basin to serve as a valid mitigation measure for these impacts. (See *California Clean Energy Commission v. City of Woodland* (2014) 225 Cal.App.4th 173, 197 [fair share fee to fund studies to identify strategies to address urban decay too speculative where EIR did not estimate costs, define how strategies might be implemented, or commit city to undertake actual measures to address urban decay]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 [requirement that project applicant pay funds to purchase replacement groundwater not adequate mitigation because it was not known whether groundwater was available].)

Second, mitigation measure 10-5b is also inadequate. Mitigation measure 10-5b consists of a requirement that the commercial and homeowner associations maintain membership in the Truckee North Lake Tahoe Transportation Management Association. (FEIR 2-21.) Membership in an association does not ensure active participation nor that any on the ground improvements will be implemented to relieve impacts related to increased vehicle use in the Lake Tahoe Basin, let alone the transit issues the mitigation measure is designed to address. (See Cal. Code Regs., tit. 14, § 15370 [defining mitigation as including activities that will avoid, minimize, rectify, reduce, or compensate for an impact].)

Third, the policies Placer County points to are, likewise, vague and not sufficiently specific enough to ensure that there will be no impacts from increased vehicular use within the basin. For example, Placer County points to Policy CP-13 of the Project, which proposes to implement a shuttle with construction of the 340th unit of the Project (FEIR 3.3-5.) The basis for the timing of implementation of the shuttle service is not clear, nor is it clear that the shuttle would address VMT impacts within the basin – e.g., the routes for the shuttle are not specified, nor is the frequency of the service. Rather than point to these other measures and policies, Placer County should: (1) provide an adequate analysis of the vehicle impacts and associated air and water quality impacts within the basin, and (2) as necessary, propose adequate and binding mitigation measures tailored to address any significant impacts that result from increased vehicular use in the basin.

b. Placer County should address the feasible mitigation measures suggested by commenters on the DEIR.

While the mitigation measures and policies Placer County relies upon are not adequate for mitigating impacts within the basin, several commenters suggested other measures that would specifically reduce impacts within the Lake Tahoe Basin. (See e.g., FEIR 3.3-3, 3.5-444.) Placer County has not adequately considered or responded to these suggested measures. For example, TRPA's comments on the draft EIR suggest at least two specific opportunities for mitigating in-basin traffic impacts. First, the Project could contribute traffic mitigation fees to implement transportation and transit capital improvement programs (CIP). TRPA indicates that "there are opportunities to identify those CIP elements that would result in improvements in transit services needed to reduce the trips to the Tahoe Basin by individual automobiles." Second, TRPA suggests that opportunities exist to set up "ongoing operations funding streams in amounts necessary for added transit service to offset the increase in in-basin trips generated by the project." TPRA also suggests measures to encourage visitors to use public transit. (FEIR 3.3.-3.) In response to these comments, the FEIR does not discuss the feasibility or efficacy of the suggested measures, but instead points again to mitigation measures 10-5a and 10-5b and other policies contained within the proposed Project. This response by redirection does not comport with CEQA.

Another commenter suggested mitigation measures, such as fee transit subsidies for residents, shuttle service to key destinations, and recruiting of transit riders. In response, the FEIR states that these measures are not appropriate because the Project, unlike the Village at Squaw Valley Specific Plan, is "not a resort that would be controlled by the project applicant following construction and allowing for the implementation of these measures." (FEIR 3.5-444.) This is a direct but erroneous response to the mitigation measures suggested. It does not make sense that the project applicant could require the homeowner and commercial associations that will have control of the Project post-construction to maintain membership in the Truckee-North Tahoe Transportation Management Association, as mitigation measure 10-5b proposes, but not be able to require the homeowner and commercial associations to provide transit passes to residents or implement the other measures the commenter has suggested to reduce the Project's external vehicle trips. It also does not make sense that the Project Applicant plans to implement a shuttle to service the resort triangle upon construction of the 340th residential unit, but that it could not implement a shuttle to Tahoe Basin destinations or itself implement or fund the other measures the commenter has suggested.

CEQA requires that an EIR discuss mitigation measures that can minimize the project's significant environmental effects. (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15126.4.) And in particular, CEQA requires that a lead agency respond to specific suggestions for mitigation measures unless they are facially infeasible. (See, e.g., *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029; *Flanders Found. v. City of Carmel by the Sea* (2012) 202 Cal.App.4th 603, 616; *Masonite Corp v. County of Mendocino* (2013) 218 Cal.App.4th 230, 241.) TRPA and other commenters have proposed specific mitigation measures that appear to be feasible, and Placer County must reasonably address the efficacy and feasibility of these measures.

c. Placer County acknowledges these air and water quality impacts in its staff report to the Planning Commission, but inappropriately suggests that they need not be analyzed or addressed because of the Lake Tahoe Total Maximum Daily Load.

Placer County, in its staff report to the Planning Commission, suggests that the Lake Tahoe Total Maximum Daily Load (Lake Tahoe TMDL) and measures Placer County is implementing to comply with the Lake Tahoe TMDL will resolve any potential water quality impacts to Lake Tahoe. (See June 30, 2016, Staff Report to the Placer County Planning Commission, 5-6.) The discussion acknowledges that urban storm water represents the greatest source of fine sediment particles that impact Lake Tahoe's clarity and that "attaining the load reduction goals [of the TMDL] hinges on reducing fine sediment particles originating in urban areas and transported to the lake through stormwater runoff." (*Id.*) The staff report goes on to outline some of the measures Placer County is implementing to comply with the Lake Tahoe TMDL. (*Id.*) This post-EIR discussion cannot substitute for the County's obligation to analyze, and as necessary, mitigate the impacts of increased vehicular use within the basin as part of the EIR and Project approval process.

The measures Placer County is taking to comply with the TMDL exist independently from the Project. From our review, it does not appear that the Lake Tahoe TMDL and the measures Placer County is taking to comply with the TMDL are discussed in the DEIR or in the FEIR. Placer County is implementing those measures to comply with the regulatory demands of the Lahontan Regional Water Quality Control Board, regardless of the Project, and the Project is not contributing to those implementation measures. The only mention of the TMDL is in the staff report and even there, Placer County does not suggest that the Project is contributing to the measures Placer County is taking to comply with the TMDL. Rather, Placer County discusses the TMDL not as a mitigation opportunity for the Project, but as a reason mitigation of the Project's air and quality impacts related to vehicle use within the Basin is not necessary – an erroneous conclusion.

The Lake Tahoe TMDL is not a panacea. The TMDL is a regulatory program that requires local jurisdictions to take measures to minimize pollutant loading to Lake Tahoe. The implementation of these load reduction measures does not mean that Placer County should not be concerned about new projects that add pollutants that will later need to be prevented from entering Lake Tahoe. The more pollutants there are in the environment, the harder it will be to prevent loading into Lake Tahoe.[2] Indeed, the TMDL is just one piece of a complex regulatory puzzle that applies in tandem with other policies and regulations designed to protect Lake Tahoe. Placer County cannot use the TMDL in lieu of complying with CEQA by accounting for the Project's resulting increase in vehicular use in the Lake Tahoe Basin.

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[2] If anything, the Project may actually make it more difficult to achieve the TMDL. The staff report's discussion of the TMDL only underscores that the EIR should have included an analysis of the Project's impacts on Lake Tahoe's water quality. (See *supra* at 3-5.)

Further, even if Placer County could to some degree rely on the TMDL to mitigate impacts of the Project (e.g., perhaps the Project could contribute funding to enhance the implementation measures Placer County is taking to comply with the TMDL), it needs to first analyze and quantify the impacts in the EIR; and second, as necessary, propose and require implementation of adequate mitigation measures in a recirculated EIR. (See Pub. Resources Code, § 21092.1 [requiring recirculation when significant new information becomes available]; Cal. Code Regs., tit. 14, § 15088.5 [defining significant new information as information showing a new significant impact, or feasible mitigation measure not previously analyzed that would clearly lessen the project's impact, or where the draft EIR was so fundamentally inadequate and conclusory that meaningful public review was precluded].)

3. The EIR must analyze the impacts of the Project's increased vehicle use within the basin on TRPA's Regional Plan and attainment of environmental goals.

In addition to considering the air and water quality impacts to Lake Tahoe that would result from the Project's increase in vehicular use in the basin, the EIR also needs to consider the impact this increased vehicle use will have on TRPA's ability to implement its Regional Plan and attain its environmental goals. CEQA expressly requires that the EIR discuss any inconsistencies between the proposed project and any applicable regional plans, including the regional land use plan for the protection of the Lake Tahoe Basin. (Cal. Code Regs., tit. 14, § 15125(d).)

After the Project is constructed there will only be a small margin of VMT remaining before TRPA's basin-wide VMT threshold is met. With so little VMT remaining, in-basin projects may not be able to move forward. Further, if new out-of-basin projects are allowed to ignore the TRPA thresholds, they could easily exceed the basin's environmental carrying capacity without identifying this as a significant impact or providing adequate mitigation. This could preclude new development and redevelopment within the basin, which is a particular concern because the 2012 Regional Plan Update relied upon redevelopment as the means for environmental improvements that would allow TRPA to attain other thresholds (e.g., lake clarity). In the 2012 Regional Plan Update, TRPA recognized the critical need to redevelop aging infrastructure with new, environmentally beneficial development. Environmental redevelopment within the region results in substantial reduction of fine sediment and nutrient deposition, the pollutants degrading Lake Tahoe's famed clarity and blueness. As TRPA pointed out in its comment letter on the draft EIR, "[t]he environmentally beneficial redevelopment relied upon by TRPA may be threatened by unmitigated out-of-basin increases in trips and VMT. As a result of VMT capacity used elsewhere, efforts to protect Lake Tahoe may suffer without the ability to approve in-basin development." (FEIR 3.3-4.)

The EIR must disclose and consider the impact the Project will have on implementation of TRPA's Regional Plan and the attainment of environmental thresholds in Lake Tahoe. It is entirely inconsistent with the purposes of CEQA to allow a development project to move forward without consideration of the totality of the environmental impacts it will cause, especially where a unique resource, such as Lake Tahoe, will be affected. As the CEQA Guidelines make clear:

> Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to the region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(See Cal. Code Regs., tit. 14, § 15125(c).) Because the EIR has not fully considered the regional impacts of the Project, it is inadequate and should not be certified.

4. The EIR needs to analyze the impacts associated with the increase in vehicle use within the basin from past, current, and probable future projects.

The information regarding VMT and daily vehicle trips to the Tahoe Basin also must be considered in the EIR's cumulative impacts analysis. The EIR sets forth a framework for considering cumulative impacts. It identifies a list of "probable future projects" that may, in conjunction with the Project, result in impacts that are cumulatively significant. It then considers the cumulative impacts with regard to particular resources within the chapter on the individual resource. (DEIR 4-2, FEIR 3-8.) The increase in vehicular use and the associated impacts to the Tahoe Basin were not discussed in the DEIR, either individually or cumulatively. The "transportation and circulation" chapter of the DEIR only focused on impacts to individualized roadway segments, not to regional traffic implications in Tahoe (DEIR Chapter 10). The air and water quality sections likewise did not reflect consideration of this information. As discussed above, the air and water quality analyses were done at the DEIR stage without the benefit of the VMT and daily trip information for the Tahoe Basin, which was only provided at the FEIR stage. Therefore, these sections do not provide an analysis of the individual or cumulative air and water quality impacts associated with the increase in traffic in the Lake Tahoe Basin.

The omission of an analysis of the cumulative impacts of increased vehicular use and associated impacts within the Tahoe Basin is particularly concerning, given the pending Squaw Valley Specific Plan and other projects that are identified by the EIR as appropriate for consideration of cumulative impacts. (DEIR 4-4 to 4-8) The EIR identifies several projects that are likely to cause increases in traffic and associated impacts on their own, as well as cumulatively with the Project, including the Brockway Campground (proposed for development on land adjacent to the Project and formerly part of the proposed Project), the Homewood Mountain Resort Ski Area Master Plan, Boulder Bay, and the Kings Beach Commercial Core Improvement Project. (*Id.*) Combining the Project's traffic impacts with the traffic forecasted to result from the Squaw Valley Specific Plan alone will result in the addition of nearly 3,000 daily trips to the Tahoe Basin and an increase in VMT of 1.9%, bringing total VMT in the Basin to 2,022,187, just a small margin below TRPA's threshold of 2,067,600 total basin-wide VMT. It is entirely conceivable that when combined with these other projects, the VMT threshold for the basin will be exceeded.

An EIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." (Cal. Code Regs., tit. 14, § 15130(a).) A project's incremental contribution is cumulatively considerable if "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Cal. Code Regs., tit. 14, § 15065(a)(3).) If the lead agency concludes that a cumulative impact is not significant, the EIR must include a brief explanation of the basis of the finding and identify the facts and analysis supporting it. (Cal. Code Regs., tit. 14, § 15130(a)(2).) Here, the EIR plainly does not discuss the cumulative impacts of the increase in vehicle use and the associated impacts on air and water quality or the impacts to TRPA's ability to implement its regional plan and attain environmental goals within the Lake Tahoe Basin. The EIR must be revised to address these impacts.

C. THE EIR'S DISCUSSION OF ROADWAY SERVICE IMPACTS WITHIN THE BASIN IS INADEQUATE.

As discussed above, the EIR does not adequately discuss the Project's impact on increased vehicular use or its associated environmental and regional effects within the Tahoe Basin. In addition, the EIR's analysis of roadway service impacts within the basin as a result of the increased traffic is inadequate because it does not fully disclose and mitigate the roadway service impacts of the project.

1. The EIR fails to provide an adequate discussion of potential mitigation measures for the significant roadway service impacts in the Tahoe Basin.

The EIR indicates that the proposed Project would add up to 1,195 cars to the segment of SR 267 from the Project to SR 28.[3] (DEIR 10-30.) This segment currently operates at an unacceptable level of service (LOS) E. (DEIR 10-29.) LOS rankings range from A-F, with F being the worst. Placer County considers LOS E to be unacceptable. (*Id.*) Placer County also considers an increase in the volume-to-capacity ratio of greater than .05 for segments that are already unacceptable to be a significant impact. (DEIR 10-18.) SR 267 already operates at unacceptable LOS E. In addition, with the Project the conditions on SR 267 will experience an increase in volume-to-capacity that exceeds .05. The traffic impacts on this segment of SR 267 are, therefore, considered to be significant. (DEIR 10-29). The EIR further concludes that because there are no capacity-increasing improvements planned for this segment of SR 267, the impacts to LOS on this segment are significant and unavoidable. (DEIR 10-32.) The EIR fails to consider any other potential mitigation measures that could reduce the severity of this traffic impact.

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[3] It is unclear how this number is lower than the estimated number of daily vehicle trips the Project will add to the Tahoe Basin, estimated to be 1,394 daily trips, as this segment of SR 267 terminates in the Tahoe Basin and is the only direct route from the Project to the Tahoe Basin.

CEQA requires that an EIR discuss mitigation measures that can minimize the project's significant environmental effects. (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15126.4.) Here, there are a number of measures that could be implemented to reduce the number of trips from the Project to the Lake Tahoe Basin, ranging from incentives for visitors to take public transit, guest shuttles to Tahoe attractions, increasing transit services, or a reduced project density. Although several commenters on the DEIR requested consideration of additional measures, the FEIR declined to consider or adopt these additional measures. (See e.g., 3.5-444, and 3.5-282.) For example, the North Tahoe Preservation Alliance suggested measures to increase transit usage on SR 267 including funding of marketing and signage, implementation of fare free routes, providing free tickets to targeted groups and/or residents, partially subsidizing fares for certain groups, and funding transit stop upgrades. (FEIR 3.5-282.) In response, Placer County points to mitigation measures 10-5a and b and asserts that "no additional measures are necessary." (FEIR 3.5-322.) Placer County cannot, however, dismiss suggested mitigation measures unless the impacts are otherwise reduced to less-than-significant levels or the mitigation measures proposed are infeasible. (See, e.g., *Los Angeles Unified School District v. City of Los Angeles*, *supra*, 58 Cal.App.4th at p. 1029; *Flanders Found. v. City of Carmel by the Sea*, *supra*, 202 Cal.App.4th at 616; *Masonite Corp v. County of Mendocino, supra,* 218 Cal.App.4th 230 at p. 241.) Placer County should discuss whether additional improvements could be made to improve or encourage transit usage as suggested.

Placer County also asserts that because there is a fee program in place and because that program does not include improvements to SR 267 between the Project and SR 28, it is relieved of its obligation to mitigate LOS impacts on this roadway segment. (FEIR 3.5-258.) In support for this assertion, Placer County cites to *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 913. (*Id.*) *Tracy First* involved traffic impacts to an intersection that was within the jurisdiction of the county, not the city that was approving the project. Because the county did not have a plan in place to improve the intersection, the court held that the city was not required to itself create and implement a plan to improve the intersection. In contrast, here the roadway segment at issue is within Placer County's jurisdiction and the fee program is Placer County's own Capital Improvement Program (CIP). (FEIR 10-17.) In addition, the commenters have not suggested, nor do we suggest, that Placer County needs to revise the CIP to include the addition of lanes to SR 267. Rather, the commenters have suggested that Placer County consider other mitigation measures, such as improvements to transit and providing incentives to visitors to use transit. *Tracy First* does not support the proposition that Placer County need not consider these alternative potential mitigation measures.

Placer County also cites to CEQA Guidelines section 15162.4, which requires that mitigation measures be "roughly proportional" to a project's contribution to an impact. (FEIR 3.5-258.) This section is inapplicable to Placer County's consideration of the other mitigation measures suggested, as the County does not assert and provides no evidence that the mitigation measures would be disproportionate to the Project's contribution to traffic or traffic-related impacts.

2. The EIR's cumulative impacts analysis for roadway service impacts is inadequate.

The EIR's analysis of cumulative impacts is also inadequate with respect to the roadway service impacts within the Tahoe Basin. The EIR finds that the cumulative roadway service impacts within the Tahoe Basin, along SR 267 to its intersection with SR 28, will be significant and unavoidable. (DEIR 10-31.) While we do not disagree with that conclusion, the EIR seems to omit consideration of several significant pending projects that will also impact roadway service along SR 267 to SR 28 in its analysis. Thus, the analysis is inadequate and likely underestimates the cumulative traffic impacts of the Project.

The EIR identifies "probable future projects" for consideration of cumulative impacts within individual resource chapters of the document. (DEIR 4-3.) However, it does not appear that this list was used for the traffic analysis. Rather, the traffic analysis states that "the cumulative setting associated with the traffic analysis is based on the Town of Truckee's TransCAD traffic model, which provides forecasts of traffic volumes throughout Truckee as well as the Martis Valley portion of Placer County." (DEIR 10-37.) It is not clear if this model would include pending projects within the Tahoe Basin. There are several projects pending within the basin that will likely impact traffic within the basin and traffic along SR 267, which should be considered in the cumulative impacts analysis, including the Homewood Mountain Resort Ski Area Master Plan, Boulder Bay, and the Kings Beach Commercial Core Improvement Project.[4] All of these projects were identified by Placer County as "probable future projects" in the DEIR (DEIR 4-5 to 4-8) but, again, this list was not used for the cumulative traffic analysis. Further, all of these projects will have potentially significant traffic impacts in and around the intersection of SR 267 and 28 (e.g., Boulder Bay is anticipated to generate 3,415 daily trips within the Tahoe Basin) and should have been considered when evaluating the Project's cumulative traffic impacts within the basin.

D. THE EIR'S GREENHOUSE GAS ANALYSIS IS FLAWED AND INADEQUATE.

As the EIR recognizes, the increases in atmospheric concentrations of greenhouse gases (GHGs), due largely to fossil fuel consumption, are expected to impact California with increasing severity over time. (DEIR 12-1, 2.)[5] These potential impacts by just 2050 include

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[4] Several commenters expressed concern that the Brockway Campground and Squaw Valley Specific Plan were not included in the cumulative traffic analysis. (See e.g., FEIR 3-4 and 3.5-96.) While it appears that these plans were not included in the analysis, Placer County has indicated that the model assumed full build out of the land use allowances at Squaw and full build out of the Project, which would have included residential development on the Brockway Campground site, both of which would have amounted to greater development than currently being proposed. (See e.g., FEIR 3.5-163.)

[5] The draft EIR relies on key reports from the Intergovernmental Panel on Climate Change and the California Natural Resources Agency.

increases in average statewide temperatures of 2.7° F above 2000 averages, a Sierra snowpack decrease of 25 to 40 percent from historic average, sea level rise of 10 to 18 inches along the California coastline, and increased frequency and intensity of forest fires. (DEIR 12-2.)

In this context, the need for addressing our continuing contribution to atmospheric GHG pollution is well recognized. Because GHGs persist in the atmosphere for decades and in some cases millennia, in order to stabilize the climate and avoid the most catastrophic outcomes of climate change, the science informs us that we must substantially reduce our annual statewide GHG emissions over time, achieving a low carbon future by mid-century. While the EIR recognizes the leadership role California has played at the State level (DEIR 12-3 to 12-6),[6] it is also the case that "[a]s the State shifts its climate focus to the long-term, regional and local governments and agencies will play an increasingly important role in achieving California's goals." (See First Update to the Climate Change Scoping Plan (May 2014) (hereafter the "Scoping Plan Update"), at D1-3.)[7] For example, the Scoping Plan Update notes that while "[the California Air Resources Board] has effective regulations to increase vehicle fuel efficiency and lower the carbon intensity of fuel," increases in vehicles miles travelled (VMT)—which local governments can influence through land use planning on a project level—is undoing some of those gains. (*Id.* at D1-2.) "One of the most critical, cross-cutting issues for addressing climate change and other integrated policy priorities is land use and development," an area where local and regional governments have broad influence. (*Id.* at 103, 111.)

1. Summary of the EIR's GHG Analysis.

In the DEIR, the County uses two different benchmarks to measure significance, labeled "Tier I" and "Tier II." (DEIR 12-9.) Tier I states that operational emissions of a project would not have a significant impact on the environment if they are less than 1,100 metric tons of carbon dioxide equivalent per year ($MTCO_2e$/year). Tier II states that operational emissions that exceed 1,100 MTCO2e/year, but that are also 21.7 percent reduction from a "no action taken" (NAT) scenario compared to the proposed project operating in 2020, would not conflict with the ARB Scoping Plan and would thus not be significant. There are, however, significant shortcomings with the Tier II approach, including that the Project would extend well beyond 2020, and, in addition, the EIR fails to include a reasoned explanation connecting the 2020 statewide reduction objective to this particular development project. (*See Center for Biological Diversity v. Dept. of*

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[6] Most recently, the Legislature passed SB 32, which now has been enrolled and is awaiting action by the Governor. SB 32 directs the California Air Resources Board, "in adopting rules and regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions reductions authorized by [AB 32], to ensure that statewide greenhouse gas emissions are reduced to at least 40 percent below the statewide greenhouse gas emissions limit no later than December 31, 2030." (Sen. Bill 32, 2015-16 Reg. Sess.) SB 32 expresses the State's continuing commitment to addressing climate change over the long term, consistent with the science.

[7] The Update and its appendices are available at https://www.arb.ca.gov/cc/scopingplan/document/updatedscopingplan2013.htm.

Fish and Wildlife (2015) 62 Cal.4th 204, 226 [noting that "a greater degree of reduction may be needed from new land use projects than from the economy as a whole"].)

In the FEIR, the County excised the Tier II analysis, and relied solely on Tier I. (FEIR 2-21.) The FEIR determines that the Project's GHG emissions would be significant because they exceed the 1,100 $MTCO_2e$/year benchmark. (FEIR 2-21 to 2-23.) Under CEQA, this determination gives rise to a legal obligation to impose feasible measures to mitigate the impact. (Pub. Resources Code, §§ 21002; Cal. Code Regs., tit. 14, § 15126.4.) If the public agency rejects a mitigation measure or alternative as infeasible, the agency must make specific findings, supported by substantial evidence, that a mitigation measure or alternative is not feasible. (Pub. Resources Code, §§ 21081 and 21081.5.)

Here, the FEIR identifies a number of *potential* mitigation measures, including the following:

- Requiring that all buildings exceed Title 24 energy-efficiency requirements by 15 percent.
- All new residential buildings shall meet or exceed the guidelines for the California ENERGY STAR® Homes Program Policy (Policy ER-AQ5).
- Selecting a building's orientation, massing and fenestration design to maximize effective day lighting to reduce building energy requirements and use of exterior sun controls (Policy ER-AQ6).
- Efforts to reduce and recycle construction waste are required as well as regional procurement of construction materials when feasibly possible in order to reduce transport (Policy ER-AQ14).
- Installation of state-of-the-art energy efficient interior lighting (Policy ER-AQ17).

(FEIR 2-26.)

In addition, the DEIR refers to various Martis Valley West Parcel Specific Plan Policies that are applicable to an evaluation of GHG emissions. The policies identified include:

- Prohibition of wood burning stoves.
- Use of Energy Star or equivalent windows, appliances, water heaters and air conditioning systems.
- Use of water-efficient fixtures.
- Native and drought tolerant landscaping.
- Collection bins for recycling at businesses.
- A covered bus shelter/transit stop.
- Development of a network of pedestrian, cross-country skiing, hiking and bike trails.

- A Homeowners Association (HOA) shuttle to reduce single-occupancy vehicle trips.

(DEIR 12-9.)

While the FEIR and DEIR respectively contain the above described lists of measures that could mitigate GHG emissions from the Project, neither document appears to adopt them as enforceable mitigation. This raises two concerns.

As discussed in Part a. below, while the FEIR adds significantly to the DEIR's list of potential mitigation measures, it defers consideration of those measures to the time at which a subdivision map for particular phases of the development are submitted. At that point, the developer has a renewed opportunity to make a Tier II-type argument that the piece of the Project meets a "statewide GHG reduction goal"; if it is does, then no further mitigation will be required. If it does not, then the development "can choose" from seven listed options (e.g., requiring that new residential buildings meet or exceed the guidelines for the California ENERGY STAR® Homes Program Policy). The FEIR makes no showing, however, that it would be infeasible or impractical to adopt these mitigation measures now, at the time of Project approval. Nor does it contain any analysis establishing that a statewide-target-based benchmark can be developed for this individual Project, or that future development phases will meet that yet-to-be developed target by implementing only the measures listed. Further, the FEIR appears to offer the developer the opportunity to re-open a significance determination that must be made at the time this Project is approved. For these reasons, the FEIR improperly defers both mitigation, and the significance determination itself, to future phases of the project.

And, as discussed in Part b. below, the FEIR falls short for its lack of consideration of all feasible mitigation measures in at least two respects. First, it fails to discuss how the Project could meet the relevant regional transportation targets. Second, the FEIR appears to have missed a broad range of potentially feasible mitigation measures, either because it fails to identify them in the first instance or because it identifies them but declines to consider them as mitigation.

a. The EIR improperly defers the significance determination and mitigation.

It is generally inappropriate to defer formulation of mitigation measures to the future. (Cal. Code Regs., tit. 14, § 15126.4(a)(1)(B).) A lead agency can defer mitigation where formulation of the precise means of mitigating impacts is truly impractical at the time of project approval or where practical considerations prohibit devising such measures early in the planning process. (*Sacramento County Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-1029.) To defer mitigation consistent with CEQA, the EIR must set forth criteria governing future actions to implement mitigation, and the agency must have assurances that future mitigation that is both "feasible and efficacious" will in fact be implemented. (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17.)

Here, the FEIR fails to explain why formulation of the precise means of mitigating impacts of GHG emissions is "truly impractical" at this stage. Absent such a showing, the adoption of feasible mitigation measures should occur at the time of approval. Indeed, as noted above, the DEIR and FEIR each identify Project policies that have already been formulated and, if made mandatory, could qualify as mitigation measures. (See DEIR 12-9; FEIR 2-26.) Placer County has determined that the Project will result in significant GHG impacts, but has failed to make mandatory the specific measures it has identified for mitigating GHG impacts. This is impermissible under CEQA.

In addition, as the CEQA Guidelines state, the advantage of doing a programmatic EIR is to:

> [p]rovide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action, [e]nsure consideration of cumulative impacts that might be slighted in a case-by-case analysis, [a]void duplicative reconsideration of basic policy considerations, and [a]llow the Lead Agency to consider broad policy alternatives and programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts...."

(Cal. Code Regs., tit. 14, § 15168, subds. (b)(1)-(b)(4).) As the DEIR and FEIR acknowledge, GHG emissions are a significant impact and a cumulative impact. As such, those emissions should be addressed at the programmatic level.

Further, Placer County appears to allow future phases of the Project to revisit the significance determination when determining whether mitigation will in fact be required. As described in the FEIR, no mitigation will be required if the applicant demonstrates upon future submittal of each separate subdivision map that the operation of the Project (or County projects generally, if it has adopted a climate action plan) will be consistent with then-existing statewide GHG targets, provided there is a substantiated linkage between the Project or the County Plan and the statewide GHG target. (FEIR 2-25.) This test is essentially the same as the County's Tier II threshold of significance test, which the County elected not to rely on as a significance criteria for this Project. (FEIR 2-21.) We are aware of no legal authority that would allow an agency to take back its determination that a project's impacts are significant, and by leaving this option open in the FEIR, the County effectively has avoided its obligation to make a significance determination *before* it approves the Project. This is error.

In addition, we are concerned that the FEIR improperly shifts the burden of making this Tier II type showing at a later stage onto the developer. (See *Cal. Clean Energy Comm.*, *supra*, 225 Cal.App.4th at p. 195 [mitigation measure violated CEQA for shifting the responsibility to the developer to produce the studies].)

b. The EIR improperly disregards potential mitigation measures.

The FEIR falls short for its lack of consideration of all feasible mitigation measures in at least two respects. First, the FEIR does not discuss how the Project could meet the transportation targets set by the Sacramento Area Council of Governments (SACOG) Metropolitan Transportation Plan/Sustainable Communities Strategy (SCS). That Plan obligates Placer County to meet 16 percent per capita vehicle emissions reductions by 2035. (DEIR 12-15.) Having referenced the SCS targets as potentially relevant to the significance determination, the FEIR fails to analyze the feasibility of meeting them or of imposing the mitigation measures contained in the SCS. Rather, the FEIR appears to reject the SCS, not because it is infeasible, but because it "is geared toward GHG emissions from transportation only." (FEIR 12-15.) Transportation comprises over one-third of the projected GHG emissions from the Project. Having determined that the Project's GHG emissions would be a significant impact, and having further acknowledged that the Project is within the jurisdiction of the SACOG MTP/SCS, Placer County has provided no basis for not analyzing the feasibility of adopting the SCS's policies and strategies to mitigate the Project's impacts.

Second, missing from the mitigation measures discussed in the FEIR are a range of other potential measures that have been identified by regional and local governments as effective. For example, there is no indication the EIR has considered the feasibility of the following types of GHG-reducing measures:

- Requiring the Project meet a percentage of its anticipated electricity requirements with rooftop solar installations.
- Requiring use of solar or electric water heating.
- Providing the infrastructure to support car-sharing stations and electric vehicle charging.
- Requiring the use of electric powered landscaping equipment.
- Requiring the use of construction equipment that uses alternative fuels.
- Limiting the idling of construction equipment.
- Setting mandatory minimum waste diversion requirements.

(See, e.g., Climate Action 2020 and Beyond, Sonoma County Regional Climate Action Plan, Appendix A.) In addition, the DEIR mentions a number of Project policies—which may or may not be mandatory—that could mitigate GHG emissions, but declines to analyze their feasibility or to adopt them as enforceable mitigation measures. (DEIR 12-9.) There may be valid reasons for finding that some of the policies suggested above and those listed in the DEIR are not feasible, but the FEIR fails to conduct such an analysis. Unless and until the FEIR analyzes all feasible mitigation measures, its finding that the Project's GHG significant impacts are "unavoidable" is not supported.

Placer County has an opportunity now to consider and implement Project-wide mitigation measures that could achieve significant cumulative GHG reductions consistent with long-term

state goals. To that end, the FEIR should evaluate the GHG impacts of this Project in the context of those long-term goals, propose robust Project-wide mitigation measures, and analyze the feasibility of implementing those measures. It fails to do so.

In conclusion, the FEIR should be revised and recirculated to adequately address the Project's GHG impacts and potential impacts to Lake Tahoe. Climate change is a critical issue for California and Lake Tahoe is a national and state a treasure and Placer County should not disregard impacts in these areas in reviewing the Project. More information is needed to fully understand what the Project's impacts will be on greenhouse gas emissions and on Lake Tahoe. We appreciate your consideration of our comments and hope that the County will undertake a full consideration of the Project's impacts to Lake Tahoe and GHG emissions prior to certifying the environmental document and reviewing the Project for approval.

Sincerely,

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