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LEAGUE TO SAVE LAKE TAHOE, MOUNTAIN  
12 AREA PRESERVATION FOUNDATION and  
SIERRA WATCH

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF PLACER**

16 CALIFORNIA CLEAN ENERGY  
COMMITTEE, a California nonprofit  
17 corporation,

18 Petitioner,

19 v.

20 COUNTY OF PLACER, a political  
subdivision of the State of California; and  
21 DOES 1-50, inclusive,

22 Respondents.

23 SIERRA PACIFIC INDUSTRIES, a  
California corporation; MOUNTAIN  
24 PARTNERS, LLC, a limited liability  
company; MVWP DEVELOPMENT, LLC, a  
25 limited liability company, and DOES 51-100,  
inclusive,

26 Real Parties in Interest.  
27  
28

Case No. SCV0038578  
(consolidated with  
Case No. SCV0038666)  
[CEQA Cases]

**PETITIONERS LEAGUE TO SAVE LAKE  
TAHOE, MOUNTAIN AREA PRESERVATION  
FOUNDATION, AND SIERRA WATCH'S  
OPENING BRIEF**

Date: November 7, 2017  
Time: 8:30 a.m.  
Dept.: 43

Assigned for All Purposes to:  
Hon. Michael W. Jones

Complaint Filed: October 26, 2016

Case No. SCV0038666

Complaint Filed: November 10, 2016

Hearing Date: November 7, 2017

1  
2 LEAGUE TO SAVE LAKE TAHOE,  
3 MOUNTAIN AREA PRESERVATION  
FOUNDATION, and SIERRA WATCH,

4                   Petitioners,

5                   v.

6 PLACER COUNTY; PLACER COUNTY  
7 BOARD OF SUPERVISORS; and DOES 1-  
20,

8                   Respondents.

9  
10 SIERRA PACIFIC INDUSTRIES;  
11 MOUNTAINSIDE PARTNERS LLC;  
MVWP DEVELOPMENT LLC; and DOES  
21-40,

12                   Real Parties in Interest

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1 Most fundamentally, the EIR systematically masks the Project’s most severe environmental  
2 effects. For example, even though the Project site lies within, and on, the border of the Lake Tahoe  
3 Basin, the County refused to analyze the Project’s significant impacts on this important state and  
4 regional resource. As a result, the EIR fails to evaluate feasible mitigation measures and alternatives to  
5 lessen the Project’s damaging effect on the Basin and plans for its protection. This omission flies in the  
6 face of CEQA’s specific mandates calling for protection of the Basin. *See, e.g.*, Guidelines §§  
7 15206(b)(4)(A) (recognizing the Basin as an area of “Statewide, Regional, or Areawide Significance”),  
8 15125(d).

9 The EIR also summarily dismisses the Project’s serious emergency evacuation hazards, even  
10 though the Project is in a “Very High” Fire Severity Zone and all roads in and out of the Project lead to  
11 State Route (“SR”) 267. While the EIR admits the Project will result in gridlock conditions on SR 267  
12 during peak periods—a significant and unavoidable impact—it somehow finds that the Project would  
13 have insignificant impacts to evacuation plans under those same conditions. The conclusion is  
14 unsupportable. At the same time, the EIR does not disclose and mitigate the Project’s significant  
15 regional traffic impacts on Interstate 80 (“I-80”), the main freeway serving the Project area.

16 This pattern of understating or overlooking the Project’s effects persists throughout the EIR. For  
17 example, the EIR minimizes the Project’s serious biological impacts by simply assuming the Project’s  
18 alleged plans to preserve *another* area (the “East Parcel”) will somehow offset the Project’s destruction  
19 of numerous acres of sensitive species habitat. Here, the EIR engages in a process that CEQA flatly  
20 prohibits: it assumes that proffered mitigation will fully address an environmental impact without first  
21 evaluating that impact. *See Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 653-54. By  
22 conflating the two analytic steps into one, the EIR fails not only to reveal the true extent of the Project’s  
23 impacts, but also to consider whether other mitigation might be more effective. This error in analysis is  
24 particularly troubling here, as the alleged mitigation is uncertain: notably, the Project provides no  
25 guarantee that the East Parcel will actually be preserved.

26 The EIR’s analysis of visual impacts exhibits similar omissions. Although the Tahoe region’s  
27 dark night skies are an important part of the area’s scenic and wild visual character, the EIR provides  
28 only a cursory, subjective discussion of the Project’s light and glare impacts to this resource. This

1 approach violates CEQA, which requires a science-based, informative analysis that enables the public  
2 and decision-makers to assess the Project’s true impacts to this treasured resource in Tahoe. *See*  
3 *Guidelines § 15064(b); Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95.

4 The County continued its cavalier approach to CEQA compliance through the end of the  
5 administrative process. After admitting that the Draft EIR’s climate change analysis was inadequate  
6 under a recent Supreme Court decision (*Center for Biological Diversity v. Department of Fish &*  
7 *Wildlife* (2015) 62 Cal.4th 204 (“*CBD*”)), the Final EIR revamped that section, using a different metric  
8 for these impacts. Because the County’s new analysis revealed more severe impacts, Petitioners  
9 requested that the County recirculate the analysis for public comment and to consider additional  
10 mitigation. The County’s refusal to do so violated CEQA. *See Guidelines § 15088.5(a).*

11 In addition to these claims, Petitioners incorporate the CEQA arguments advanced in the  
12 California Clean Energy Committee’s (“CCEC”) opening brief, which is being filed concurrently in the  
13 consolidated case. Because CCEC covers these arguments in detail, Petitioners only briefly address  
14 them here. As CCEC explains, the EIR fails to adequately analyze and mitigate the Project’s energy  
15 impacts—an especially serious concern given that the Project would serve primarily as a second-home,  
16 resort community. CCEC also faults the EIR for failing to adequately analyze the Project’s forestry  
17 impacts, particularly in light of the area’s tree mortality epidemic, or consider feasible mitigation for the  
18 Project’s significant forestry, climate, and traffic effects.

19 The County’s violation of the Timberland Productivity Act (“Act”) was equally egregious.  
20 Under the Act, a local agency may approve the “immediate” removal of forestland from the protective  
21 TPZ zoning only if it makes very specific findings documenting the reasons for urgency. Because of the  
22 Act’s generous tax treatment of TPZ lands, a rezoning out of TPZ is otherwise not effective until 10  
23 years after the rezoning’s approval. Here, the Board of Supervisors’ findings fall far short of the Act’s  
24 requirements, as they fail to articulate any urgency—or any public interest rationale—to justify an  
25 immediate rezoning of the Project site to accommodate luxury residences, the vast majority of which  
26 would be second homes.

27 Finally, Petitioners emphasize that they do not file this litigation lightly. Over many years,  
28 Petitioners attempted to work with the Project applicants (Real Parties in Interest, or “Applicants”) to

1 formulate a development proposal that fully takes into account the pristine environmental setting and the  
2 Project's proximity to Lake Tahoe. Unfortunately, those efforts were unsuccessful. Petitioners submit  
3 that it is essential that before approving this far-reaching Project, the County fully comply with state  
4 laws protecting the important resources at stake.

5 Because the County abused its discretion in failing to comply with CEQA and the Act, the  
6 environmental harm from this Project would be felt by generations to come. Accordingly, Petitioners  
7 request that the Court issue a writ of mandate directing the County to (1) rescind its approval of the  
8 Project, and (2) decertify the EIR.

### 9 STATEMENT OF FACTS

#### 10 I. The Environmental Setting of the Project.

11 The Project site encompasses over 7,000 acres of mountainous, forested land in the Martis  
12 Valley, an environmentally sensitive area that is a key gateway to Lake Tahoe, one of California's most  
13 treasured natural resources. *See* AR 2:899, 902.<sup>3</sup> The site consists of two large parcels, the "East Parcel"  
14 (6,376 acres) and the "West Parcel" (1,052 acres), both of which are owned by Sierra Pacific Industries  
15 ("SPI"). *See* AR 2:899, 902, 905. The East and West Parcels are bisected by SR 267, a heavily  
16 congested, two-lane connector road that serves as a primary route for people travelling from I-80 to  
17 Lake Tahoe. *See* AR 3:1262, 1487. The Project site's rolling forests and ridgeline thus comprise a  
18 significant part of the scenic landscape for those entering the Lake Tahoe Basin.

19 The Project site is completely undeveloped and in "High" and "Very High" Fire Severity Zones.  
20 AR 2:902, 924; 3:1260. Approximately 130 acres of the site are located within the Tahoe Basin, on the  
21 scenic ridgeline of Brockway summit. *See* AR 3:1259. The property has historically been used for  
22 logging and, more recently, outdoor recreation. *See* AR 2:899, 902. The Tahoe Rim Trail, a federally  
23 designated National Recreation Trail, runs parallel to the site's southern border. AR 3:1701.

24  
25  
26  
27 <sup>3</sup> Citations to the Administrative Record shall be indicated by an "AR" followed by the volume number  
28 and page number separated by a colon.

1 **II. Background of the Development Plan for the Project Site.**

2 The Project site is under the regulatory jurisdiction of the County and, because a portion of the  
3 site lies within the Tahoe Basin, also the Tahoe Regional Planning Authority (“TRPA”). AR 3:1259.  
4 The County’s Martis Valley Community Plan (“MVCP”) establishes the land use designations for the  
5 portion of the site that lies outside the Basin. Prior to Project approval, the MVCP designated the West  
6 Parcel as Forest; the West Parcel also fell within TPZ zoning, which limits the uses on the site to  
7 timberland production or compatible uses, in exchange for significant landowner tax benefits. *Id.* The  
8 majority of the East Parcel was designated Forest and zoned TPZ. AR 3:1260. The MVCP did designate  
9 a portion of the East Parcel as Low Density Residential and General Commercial; that portion of the site  
10 was zoned Single-Family Residential and Neighborhood Commercial. AR 3:1260.

11 Around 2009, Petitioners Sierra Watch and Mountain Area Preservation Foundation (“MAP”)  
12 began discussions with SPI regarding its plans for the site, to see if there could be a shared vision for  
13 appropriate development. *See* AR 2:783-84; 3:1267. This effort culminated in the 2013 Martis Valley  
14 Opportunity Agreement (“MVOA”).<sup>4</sup> *Id.* The goal of the MVOA was to facilitate the permanent  
15 conservation of the East Parcel and to create a framework for discussions regarding limited development  
16 of the West Parcel. *See* AR 2:706, 784. The MVOA included a tentative, conceptual agreement for a  
17 maximum 760-unit residential project on the West Parcel, with the final development to be established  
18 through a collaborative process. AR 3:1267.

19 Unfortunately, that collaborative process broke down, and the Applicants ultimately proposed a  
20 project that, Petitioners believed, was far outside the bounds of the MVOA. *See* AR 1:400; 2:706. That  
21 project included both: (1) a 760-unit housing component (whose design would encourage sprawl  
22 development in the area), and (2) a 550-site campground and recreational facility within the Tahoe Basin  
23 (the “Brockway Campground”). *See* AR 2:706-07. Because the Campground was within the Basin, it  
24 needed approval from both the County and TRPA, which operates under federal law. Consequently, on  
25 March 28, 2014, the County issued a Notice of Preparation (“NOP”) of a combined EIR under CEQA  
26

27 \_\_\_\_\_  
28 <sup>4</sup> Although Petitioner League to Save Lake Tahoe (“League”) participated in some discussions, the  
League was not a party to the MVOA. *See* AR 3:1267.

1 and an environmental impact statement (“EIS”) under the National Environmental Policy Act  
2 (“NEPA”), 42 U.S.C. § 4321 et seq., for the development. AR 2:1154; 21:11690.

3       Petitioners and numerous others expressed serious concerns about the significant environmental  
4 effects the proposed development would have to the Lake Tahoe Basin. *See, e.g.*, AR 4:2269-73, 2292-  
5 93, 2297-98; 29:16744. In the face of this public controversy over in-Basin development, and in an  
6 attempt to expedite the environmental review for their housing development, the Applicants revised the  
7 Project description to exclude the Brockway Campground. AR 2:1165. At the same time, the Applicants  
8 proposed the Campground as a separate project, which is pending before the County and TRPA. *See* AR  
9 13:7454-55.<sup>5</sup> However, the Applicants failed to address Petitioners’ concerns about the planned  
10 development.

11 **III. The Project as Ultimately Proposed.**

12       The Project as ultimately proposed would develop 760 luxury residences, the vast majority of  
13 which are predicted to serve as second homes, and 56,500 square feet of commercial uses and amenities  
14 on the West Parcel. *See* AR 2:708; 3:1267. The Project would include a mix of dwellings, some of  
15 which could be built directly adjacent to the popular Tahoe Rim Trail. *See* AR 2:514. It would allow  
16 buildings as high as 75 feet on a scenic ridgeline above Lake Tahoe. *See* AR 1:17; 2:707. The Project is  
17 not close to any existing development, but completely isolated; it would be accessed only by a single  
18 new entry and exit point off of SR 267. AR 3:1262.

19       The proposed Project would keep the East Parcel as “open space.” AR 3:1269. However, that  
20 designation does not prohibit logging or provide any protections for conservation values. *See id.*

21       On February 27, 2015, the County issued a revised NOP and Initial Study for the Project, which  
22 excluded the Brockway Campground development. AR 4:1865. Since the new proposal did not include  
23 plans for construction in the Tahoe Basin (requiring TRPA approval), the County determined it needed  
24 only to prepare environmental documents pursuant to CEQA, and not NEPA. *Id.*

25  
26  
27 <sup>5</sup> Prior to Project approval, SPI announced that it would be selling the Brockway Campground site to the  
28 Forest Service. *See* AR 29:16723. At the time of Project approval, however, that sale had not been  
consummated and the Brockway Campground development proposal was still pending.

1 **IV. Environmental Review and Project Approval.**

2 The County circulated the Draft EIR for the Project on October 22, 2015. AR 2:1132. The Draft  
3 EIR generated significant attention, with at least 175 agencies (including TRPA), organizations, and  
4 individuals commenting. AR 6:3050-55. In particular, Petitioners submitted comprehensive comments  
5 on the Draft EIR, providing detailed information regarding the numerous deficiencies in the document.  
6 *See* AR 36:21041-63; 37:21150-21206. Still, even as written, the Draft EIR revealed that the Project  
7 would result in a number of significant and unavoidable impacts, including gridlocked traffic on SR 267,  
8 cumulative impacts to the night sky, and climate change impacts. *See* AR 1:118-20.

9 In May 2016, the County issued the Final EIR, including responses to the comments received on  
10 the Draft EIR. AR 6:3042. Again, the County received a flood of comments, including from Petitioners,  
11 explaining that the Final EIR failed to adequately respond to or correct the Draft EIR's faults. *See* AR  
12 14:8181-84; 30:17257-17454. Notably, the Attorney General commented, expressing her concerns that  
13 the environmental review did not adequately analyze or mitigate the Project's impacts on the Tahoe  
14 Basin and on climate change, two issues of particular concern to the State. *See* AR 29:16763-81.

15 The Project was first considered by the North Tahoe Regional Advisory Council on May 12,  
16 2016. AR 38:22142-43. The Council declined to support to the Project, as it was concerned about the  
17 Project's impacts on Tahoe's dark skies and its effects in combination with the proposed Brockway  
18 Campground. Instead, the Council voted to request that the Planning Commission postpone any action  
19 for 30 days, to allow time for review of the Final EIR. AR 38:22145.

20 Nonetheless, the County Planning Commission held a public hearing on the Project on June 9,  
21 2016. *See* AR 19:10386-88. After receiving testimony from 41 members of the public, almost  
22 exclusively in opposition to the Project, the Commission continued the hearing to receive additional  
23 information on the Project's impacts to Lake Tahoe, emergency evacuation, and traffic. AR 21:11495;  
24 *see also* AR 30:17248-53. At the continued July 7, 2016 hearing the public again expressed near-  
25 unanimous opposition to the Project, citing the impacts to Lake Tahoe, development in areas of high fire  
26 risk, and traffic generated by the Project. *See* AR 20:11169-11224. In light of these grave concerns, by a  
27 vote of five to two, the Planning Commission voted to recommend denial of the Project and disapproval  
28 of the EIR. AR 20:11266.

1 On September 13, 2016, the Board of Supervisors held a public hearing on the Project, where  
2 public turnout was the largest yet—with 60 members of the public testifying, mostly in opposition to the  
3 Project and the EIR. AR 20:10935-11043; *see also* AR 29:16685-16708, 16717-53. However, the Board  
4 did not heed public input or the Planning Commission’s recommendation that it deny the Project.  
5 Instead, it voted four to one to tentatively approve the Project, and then continued the matter for a  
6 month. AR 20:11105-06. Notably, the Supervisor who represents the Tahoe area voted against the  
7 Project. *See id.*

8 On October 11, 2016, the Board again voted four to one to approve the Project, including  
9 approval of the Specific Plan and its Development Standards and Design Guidelines (AR 1:4; 2:889,  
10 1107); certification of the Final EIR and adoption of CEQA findings of fact and statement of overriding  
11 consideration and a mitigation monitoring and reporting plan (AR 1:100); and related planning  
12 approvals (AR 1:38; 2:1121, 1126).<sup>6</sup> The Project approvals included the immediate rezoning of the West  
13 Parcel out of TPZ, to allow residential and commercial development. AR 1:30.

14 The County filed its Notice of Determination for the EIR on October 12, 2016 (AR 1:1), and  
15 Petitioners timely filed this lawsuit thereafter.

## 16 STANDARD OF REVIEW

### 17 I. Standard of Review for CEQA.

18 CEQA’s dual standard of review is well-settled: a court will “determine de novo whether the  
19 agency has employed the correct procedures, ‘scrupulously enforc[ing] all legislatively mandated CEQA  
20 requirements,’” while according “greater deference to the agency’s substantive factual conclusions.”  
21 *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (citations omitted).  
22 Thus, when reviewing an agency’s CEQA compliance, the “court must adjust its scrutiny to the nature  
23 of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a  
24 dispute over the facts.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*  
25 (2007) 40 Cal.4th 412, 435 (“*Vineyard*”).

26 \_\_\_\_\_  
27 <sup>6</sup> The County included as an attachment to the staff report for the October 11, 2016 meeting a lengthy  
28 response to all comments made on the Final EIR, which was not itself part of the EIR. *See* AR 14:8181.  
This document was not a part of the staff report for the Board’s September 13 meeting.

1           Whether an EIR “omit[s] essential information,” or fails to address an issue, is a procedural issue  
2 subject to de novo review. *Banning Ranch*, 2 Cal.5th at 935; *see also Citizens to Preserve the Ojai v.*  
3 *County of Ventura* (1985) 176 Cal.App.3d 421, 428. By contrast, courts use the “substantial evidence”  
4 test to review an agency’s “substantive factual conclusions.” *Banning Ranch*, 2 Cal.5th at 935.  
5 “Substantial evidence” is “evidence of ponderable legal significance, reasonable in nature, credible, and  
6 of solid value, evidence that a reasonable mind might accept as adequate to support a conclusion.”  
7 *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145  
8 Cal.App.4th 1062, 1070.

9           Here, Petitioners challenge the EIR’s failure to disclose basic information regarding the Project’s  
10 impacts on the Lake Tahoe Basin, the region’s emergency evacuation plans and I-80, and its effect on  
11 biological and scenic resources. Petitioners thus do not dispute the County’s factual determinations, but  
12 rather “whether the EIR is sufficient as an informational document.” *Kings County Farm Bureau v. City*  
13 *of Hanford* (1990) 221 Cal.App.3d 692, 711. Accordingly, the Court must review these claims de novo,  
14 as a matter of law. *Banning Ranch*, 2 Cal.5th at 935.

15           Petitioners also contest the County’s failure to recirculate the EIR’s climate change analysis,  
16 which was substantially revised after the close of public comment. The “substantial evidence” test  
17 applies to this claim. *Vineyard*, 40 Cal.4th at 447. Here, because the initial climate change analysis was  
18 admittedly deficient and the revamped analysis found more severe impacts, no credible evidence  
19 supports the County’s action.

20           Finally, the County’s errors and omissions were prejudicial. By preparing an EIR that precluded  
21 informed decision-making and meaningful public participation, the County prejudicially abused its  
22 discretion. *See Banning Ranch*, 2 Cal.5th at 942.

## 23 **II. Standard of Review for Timberland Productivity Act.**

24           Petitioners’ related challenge, under the Timberland Productivity Act, asserts that the County  
25 improperly approved the immediate rezoning of forestland from TPZ. Because the Act requires public  
26 notice and a hearing prior to the County’s action, the Court reviews this claim under Code of Civil  
27 Procedure section 1094.5, which requires invalidation of an action if the County abused its discretion.  
28 Code Civ. Proc. § 1094.5(a), (b).

1 Abuse of discretion occurs where an agency has not proceeded in the manner required by law, or  
2 where its findings are not supported by the evidence. *Id.* § 1094.5(b). Section 1094.5 thus establishes a  
3 dual standard of review. Where an agency fails to proceed in the manner required by law—such as  
4 where it fails to make required findings—the Court reviews the matter de novo, as a question of law.  
5 *Coe v. City of San Diego* (2016) 3 Cal.App.5th 772, 781. On the other hand, where the County’s  
6 findings are not supported by the evidence, the court applies the substantial evidence test. Code Civ.  
7 Proc. § 1094.5(c). In the present case, Petitioners assert that the County’s findings suffer from both  
8 infirmities.

9 **ARGUMENT**

10 **I. The County’s Approval of the Project Violates CEQA.**

11 **A. The EIR Omits Critical Information Regarding the Lake Tahoe Basin and Fails to**  
12 **Determine Whether the Project Will Have Significant Impacts on This Important**  
13 **Resource.**

14 The Project site borders on—and a 130-acre portion is within—the Lake Tahoe Basin, an  
15 international destination renowned for its deep, clear lake surrounded by scenic mountain ranges. AR  
16 2:1159. The Basin is “a defined governmental jurisdiction governed by the terms of an approved and  
17 federally sanctioned bi-State Compact. The Compact recognizes Lake Tahoe as one of our nation’s  
18 greatest treasures.” AR 6:3154. CEQA explicitly recognizes the Basin as having “Statewide, Regional,  
19 or Areawide Significance,” and thus meriting particular attention in an EIR. Guidelines §  
20 15206(b)(4)(A).

21 TRPA—one of the agencies designated to oversee the protection and preservation of the Lake  
22 Tahoe Basin—has determined the “environmental carrying capacity” for the Basin, or the point at which  
23 it no longer sustains the environmental attributes that make it an area of statewide and regional  
24 significance. AR 4:1988-89. TRPA and other agencies have set threshold standards to ensure that  
25 capacity is not exceeded, such as through TRPA’s Regional Plan. *Id.*; AR 6:3118, 3154. These include,  
26 *inter alia*, standards for protection of air quality, noise, scenic resources, recreational access, and water  
27 quality, such as those designed to maintain and improve the Lake’s famed clarity and its status as an  
28 “Outstanding National Resource Water” under the federal Clean Water Act. *See League to Save Lake*  
*Tahoe v. Tahoe Regional Planning Agency* (E. D. Cal. 2010) 739 F. Supp. 2d 1260, 1265, 1292-93

1 (affirmed in part and reversed in part on other grounds).

2 The Draft EIR, however, largely ignored this significant environmental setting and relevant  
3 standards. It provided *no analysis* of the Lake Tahoe Basin’s environmental carrying capacity or the  
4 Project’s significant impacts on it and, consequently, identified no mitigation measures or alternatives to  
5 avoid or lessen such impacts. The Draft EIR took this perfunctory approach even while recognizing that  
6 public comments had specifically requested that the Draft EIR address the Project’s impacts to the  
7 Tahoe Basin (AR 2:1165) and while declaring that one of the Project objectives was to “[c]onsider the  
8 regional implications of development in the Martis Valley on resources outside of the Valley (i.e.,  
9 Truckee River, *Lake Tahoe Basin* . . .).” AR 2:1264 (emphasis added); *see also, e.g.*, AR 4:2297-98  
10 (League comments on NOP). It did so under the premise that no Project construction would occur within  
11 the Basin. Yet, as the Final EIR recognizes, the Project could pour more than a thousand new car trips  
12 into the Basin *per day* (AR 6:3118), resulting in direct impacts such as to air and water quality.

13 The EIR’s approach to the Lake Tahoe Basin violates CEQA in several key respects.

14 **1. The EIR Fails to Describe the Environmental and Regulatory Setting for the**  
15 **Lake Tahoe Basin.**

16 The first step in an EIR’s environmental impact analysis is to identify the applicable  
17 environmental setting, which “must include a description of the physical environmental conditions in the  
18 vicinity of the project, as they exist at the time the notice of preparation is published . . . from both a  
19 local and regional perspective.” Guidelines § 15125(a). Such information will normally serve as the  
20 “baseline” by which an agency will determine whether an impact is significant. *Id.* “Knowledge of the  
21 regional setting is critical to the assessment of environmental impacts,” and “[s]pecial emphasis should  
22 be placed on environmental resources that are rare or unique to that region and would be affected by the  
23 project.” Guidelines § 15125(c); *see also id.* § 15064(b) (“[T]he significance of an activity may vary  
24 with the setting.”).

25 Courts have repeatedly held that where, as here, an EIR contains an “inadequate description of  
26 the environmental setting for the project, a proper analysis of project impacts [i]s impossible.” *Galante*  
27 *Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122; *see also*  
28 *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873-75 (holding

1 EIR’s description of environmental setting inadequate where it failed to describe the regional setting for  
2 water diversions). Here, the EIR’s environmental setting information includes only a few, scattered  
3 geographic data points that occur within the Basin; it provides no information on the current physical  
4 conditions of the Lake Tahoe Basin that would enable a reader to assess whether the Basin is reaching  
5 its environmental carrying capacity. In particular, the document lacks any relevant information regarding  
6 the current status of air quality in the Basin, including Basin-wide traffic, vehicle miles traveled  
7 (“VMT”), and visibility; water quality and clarity of Lake Tahoe; and scenic resources. *See Cadiz Land*  
8 *Co.*, 83 Cal.App.4th at 91-93 (EIR failed to provide adequate environmental setting for groundwater  
9 basin because it lacked information about the amount of water in the basin at baseline conditions).  
10 Although the Final EIR includes one statistic about total VMT in the Basin, that statistic is from 2010.  
11 AR 6:3118; *see also* AR 29:16753.7-16753.9. One outdated figure in a response to comments hardly  
12 satisfies CEQA’s robust requirement that an EIR describe the regional environmental setting. *See*  
13 *Banning Ranch*, 2 Cal.5th at 941 (EIR inadequate where reader required to “ferret out” relevant data).

14           Moreover, the Draft EIR’s description of the Project’s regulatory setting fails to address the  
15 applicable standards for protection of the Lake Tahoe Basin. Rather, the document misleadingly states  
16 that because the Project only includes construction in areas outside the Basin, “[t]his obviates the need  
17 to discuss applicability of . . . TRPA goals and policies in the regulatory setting of each resource  
18 chapter.” AR 3:1295-96. After much criticism of the Draft EIR, the Final EIR generally acknowledged  
19 TRPA’s role and thresholds, but limited its discussion to thresholds pertaining to car trips and VMT in  
20 the Basin. AR 6:3118-19. This truncated approach violates CEQA. The EIR must describe all relevant  
21 regulatory standards, including TRPA’s and other agency’s thresholds, TRPA’s Regional Plan and  
22 Regional Transportation Plan, and water quality standards such as the Total Maximum Daily Load  
23 (“TMDL”) established to protect Lake Tahoe water clarity. *See* AR 29:16745-49; *Banning Ranch*, 2  
24 Cal.5th at 936-37; Guidelines § 15086(a)(3) (lead agency must consult with agencies that “exercise  
25 authority over resources which may be affected by the project”).

1                   **2. The EIR Fails to Determine Whether the Project Will Have Significant**  
2                   **Impacts on the Lake Tahoe Basin or Identify Any Mitigation Measures or**  
3                   **Alternatives to Lessen or Avoid Those Impacts.**

4                   Under CEQA, an EIR must “identify the significant effects on the environment of a project, []  
5 identify alternatives to the project, and [] indicate the manner in which those significant impacts can be  
6 mitigated or avoided.” § 21002.1(a); *see also* §§ 21100(b), 21061. “The EIR must demonstrate that the  
7 significant environmental impacts of the proposed project were adequately investigated and discussed  
8 and . . . considered in the full environmental context.” Guidelines § 15125(c). The EIR must also  
9 analyze a project’s significant cumulative impacts, and evaluate mitigation measures or alternatives to  
10 lessen such impacts. CEQA defines cumulative impacts as “two or more individual effects which, when  
11 considered together, are considerable or which compound or increase other environmental impacts.”  
12 Guidelines § 15355; *see also* *Communities for a Better Environment v. Cal. Res. Agency* (2002) 103  
13 Cal.App.4th 98, 120 (overruled in part on other grounds). An effect is “cumulatively considerable” when  
14 the “incremental effects of an individual project are significant when viewed in connection with the  
15 effects of past projects, the effects of other current projects, and the effects of probable future projects.”  
16 Guidelines § 15065(a)(3).

17                   Further, the Guidelines specifically require that an EIR evaluate any inconsistencies between the  
18 Project and “plans for the protection of the . . . Lake Tahoe Basin.” Guidelines § 15125(d). Here, the  
19 Draft EIR entirely fails to assess the Project’s significant impacts on the environmental carrying capacity  
20 of the Lake Tahoe Basin or plans for its protection. Again, the purported rationale for this omission was  
21 that the Project did not involve any construction within the Basin, and therefore did not need to take  
22 TRPA’s thresholds into account. *See, e.g.*, AR 3:1295-96. This excuse is unavailing.

23                   Many commenters, including TRPA and Petitioner League to Save Lake Tahoe, informed the  
24 County that the Draft EIR’s approach was wholly inadequate under CEQA. *E.g.*, AR 6:3154-57, 3448-  
25 55. In a two-page response, the Final EIR discussed TRPA’s VMT threshold for the Basin: “TRPA  
26 posited that more VMT would result in increased traffic congestion, increased nitrate loading into the  
27 atmosphere (and subsequent deposition into Lake Tahoe), and an increase in the airborne concentration  
28 of particulate matter known to adversely affect regional and sub-regional visibility and human health.”  
AR 6:3118-19. The document then revealed that the Project would generate an additional 1,394 car trips

1 and 13,745 VMT to the Basin per day under peak conditions. AR 6:3118.<sup>7</sup> These numbers far exceed the  
2 significance thresholds of *200 daily trips* or *1,150 VMT* used by the County for various in-Basin projects  
3 surveyed in the Final EIR. AR 6:3119. The Final EIR brushed aside the issue by summarily concluding  
4 that the addition of the Project’s VMT would not cause the Basin to exceed its *cumulative* total VMT  
5 carrying capacity of 2,067,600 VMT, but, notably, it did not calculate the cumulative VMT from the  
6 Project in combination with other past, current, and probable future projects. *See* Guidelines §  
7 15065(a)(3). This error is particularly egregious in light of the County’s simultaneous review of the plan  
8 for the massive expansion of the resort at Squaw Valley, which will also generate a large number of trips  
9 to the Basin. AR 17:10014; 29:16749-50; 30:17302. The Final EIR also baldly claimed that “Mitigation  
10 Measure 10-5 would generate permanent ongoing funding to expand transit services, which would  
11 reduce VMT impacts of the project in the Basin.” AR 6:3118-19.

12 Tellingly, the EIR ultimately failed to determine whether the Project’s addition of a massive  
13 number of car trips and VMT to the Basin was a significant impact, or a cumulatively considerable  
14 significant impact. Rather, it reiterated the Draft EIR’s conclusion that “the proposed project does not  
15 occur in the Basin and is not under the jurisdiction of TRPA, so effects on *the TRPA thresholds are not*  
16 *used as standards of significance in this EIR* (although, physical effects on the Basin are evaluated,  
17 where applicable).” AR 6:3118 (emphasis added); *see also* AR 6:3110 (claiming the County has  
18 discretion to set its own thresholds of significance). As a result, the EIR does not identify mitigation or  
19 alternatives to reduce these Basin impacts to a level of insignificance.

20 As Petitioners and the California Attorney General warned the County, this approach violates  
21 CEQA. AR 29:16734-37, 16749-50, 16763-75; 30:17301-03. While the County need not adopt TRPA’s  
22 thresholds of significance, it must make its own determination as to whether the Project would result in  
23 significant impacts to the Basin or plans for its protection, and evaluate mitigation measures and  
24 alternatives to lessen or avoid such impacts. *See, e.g.,* § 21002.1(a); Guidelines § 15126.6(f)(1)  
25 (“projects with a regionally significant impact should consider the regional context” in the alternatives  
26

27 <sup>7</sup> Evidence in the record suggests these numbers are underestimates (*see, e.g.,* AR 13:7589-92;  
28 30:17377-90, 17403 [traffic expert noting EIR vastly understates the Project’s trip generation and thus  
VMT]), but even the County’s figures demonstrate the Project’s significant impacts to the Basin.

1 analysis); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th  
2 1099, 1109 (“[I]n preparing the EIR, the agency must determine whether any of the *possible* significant  
3 environmental impacts of the project will, in fact, be significant.”). As the Supreme Court has stated, “an  
4 EIR may not ignore the regional impacts of a project proposal, including those impacts that occur  
5 outside of its borders; on the contrary, a regional perspective is required.” *Citizens of Goleta Valley v.*  
6 *Board of Supervisors* (1990) 52 Cal.3d 553, 575.

7 Further, although the County has some discretion in selecting thresholds of significance, courts  
8 have long recognized that agencies violate CEQA by choosing thresholds that obscure rather than  
9 elucidate impacts of concern. *See, e.g., Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*  
10 (2001) 91 Cal.App.4th 1344, 1381-82 (EIR improperly relied on a daily average threshold for noise  
11 impacts that failed to provide critical information about nighttime noise events); *Protect the Historic*  
12 *Amador Waterways*, 116 Cal.App.4th at 1109 (“notwithstanding compliance with a pertinent threshold  
13 of significance, the agency must still consider any fair argument that a certain environmental effect may  
14 be significant”). Here, there is abundant evidence that the Project’s addition of VMT to the Basin could  
15 significantly impact air and water quality in the Basin, including the potential to degrade Lake Tahoe  
16 water clarity. *See, e.g., AR 29:16765* (“Increased vehicular use generates significant amounts of dust  
17 and leads to nitrogen deposition in the lake, which in turn causes algae growth that threatens the clarity  
18 of the lake.”); 30:17436-46 (same); 6:3156-57 (unmitigated VMT from out-of-basin projects negatively  
19 impacts per capita greenhouse gas emissions in the Basin, as well as Lake clarity).

20 Critically, TRPA and others also alerted the County that approval of the Project could impair  
21 TRPA’s ability to approve much needed, environmentally beneficial projects in the Basin, as planned in  
22 its 2012 Regional Plan Update. *See, e.g., AR 6:3157* (TRPA letter noting, “[t]he environmentally  
23 beneficial redevelopment relied upon by TRPA may be threatened by unmitigated out-of-basin increases  
24 in trips and VMT”); 29:16771-72 (Attorney General noting same). The EIR may not ignore such  
25 impacts simply by choosing thresholds that do not take into account the environmental carrying capacity  
26 of the Basin or TRPA’s standards to protect this important area.

27 The Supreme Court recently invalidated an EIR for similar errors. *Banning Ranch* holds that an  
28 EIR may not ignore a project’s environmental setting and must identify its conflicts with other agencies’

1 plans to protect unique resources. 2 Cal.5th at 936-41. There, a city’s EIR for a massive development  
2 project in the coastal zone failed to evaluate whether the project contained or would significantly impact  
3 environmentally sensitive habitat areas (“ESHA”), which are protected by the California Coastal  
4 Commission, and thus failed to evaluate any project alternatives or mitigation measures to lessen or  
5 avoid impacts to ESHA. *Id.* Like the County here, the city argued that the EIR need not make a  
6 determination based on another agency’s standards, and that the EIR sufficiently evaluated the project’s  
7 significant impacts on physical environmental resources. *Id.* at 932-33. The Court rejected this approach  
8 as “untenable,” holding that the city could not “ignore the fact that Banning Ranch is in the coastal  
9 zone.” *Id.* at 936. “Given the ample evidence that ESHA are present on Banning Ranch, the decision to  
10 forego discussions of these topics cannot be considered reasonable.” *Id.* at 937.

11 Similarly here, the County cannot ignore the fact that the Project site is located within and  
12 adjacent to the Lake Tahoe Basin. Although the Project does not involve construction within the Basin,  
13 there is no question that Project will impact that sensitive area. Indeed, even the County recognizes that  
14 Project would generate over 13,000 new VMT in the Basin in a single day. AR 6:3118. Given this  
15 “ample evidence,” it is inexcusable that the EIR did not identify the current environmental setting in the  
16 Basin, consider the Project’s inconsistencies with TRPA’s and other agencies’ goals and policies for  
17 protection of the Basin, and evaluate the Project’s significant and cumulative impacts on the  
18 environmental carrying capacity of the Basin. *See Banning Ranch*, 2 Cal.5th at 937-39. Under *Banning*  
19 *Ranch*, the EIR was also required to consider mitigation and alternatives to avoid or lessen these  
20 impacts. *Id.* (“[A] lead agency must consider related regulations and matters of regional significance  
21 when weighing project alternatives.”); *see also* Guidelines § 15126.6(f)(1); AR 6:3451-52; 30:17269.

### 22 3. The County’s Last-Minute Response Does Not Salvage the EIR’s Omissions.

23 Perhaps recognizing the failings in the EIR, the County prepared a last-minute “supplemental”  
24 response to comments—released just a few days before Project approval and buried in an attachment to  
25 a staff report—which reiterates the response in the Final EIR while adding some information on Lake  
26 Tahoe water quality standards and cumulative impacts.<sup>8</sup> AR 15:8724-28. This supplemental response

27 \_\_\_\_\_  
28 <sup>8</sup> Staff also prepared a memo for the Planning Commission with additional information regarding the  
(footnote continued on next page)

1 first recognizes that “[t]he connection between VMT and Lake clarity is important, as vehicle emissions  
2 and roadway fine [sediment] are known contributors to loss of clarity.” AR 15:8726. The response then  
3 claims that the Final EIR *did* rely on TRPA’s “threshold standard” for VMT “and determined that the  
4 standard would not be exceeded by the addition of the project generated VMT,” citing the Project’s  
5 transit mitigation (Measure 10-5). AR 15:8727; *see also* AR 15:8748 (claiming Final EIR found impact  
6 from Project’s adding VMT to Basin is “less than significant”). This eleventh-hour response is  
7 insufficient for several reasons.

8 *First*, the County’s belated claim that the EIR reached a significance determination using the  
9 TRPA VMT threshold is belied both by the statements in the EIR discussed above (AR 3:1295-96;  
10 6:3110, 3118) and by the County’s approval documents, which make no finding regarding significance  
11 under the TRPA threshold. *See, e.g.*, AR 1:141-263.

12 *Second*, even if the Final EIR could be seen as employing TRPA’s VMT threshold, there is no  
13 substantial evidence to support its alleged “conclusion” that the Project will have no significant impacts  
14 to the Tahoe Basin. *See CBD*, 62 Cal.4th at 227-28 (no substantial evidence where agency failed to  
15 research and document that statewide numeric standard applied at the project level). The referenced  
16 VMT threshold is the maximum carrying capacity for the entire Basin from *all sources*. AR 6:3118.  
17 Because no single project is meant to exceed this threshold, the threshold is virtually useless in assessing  
18 whether the Project will have a significant impact on the Basin. *See* AR 6:3155; 29:16735, 16766; *Kings*  
19 *County*, 221 Cal.App.3d at 721 (“The EIR improperly focused upon the individual project’s relative  
20 effects and omitted facts relevant to an analysis of the collective effect this and other sources will have  
21 upon air quality.”). If the EIR truly employed TRPA thresholds, it would recognize the significance of  
22 the Project’s addition of 1,394 daily car trips into the Tahoe Basin, which is nearly seven times TRPA’s  
23 “200 daily trip” threshold. *See* AR 6:3155; 29:16735, 16764-65.

24 *Third*, no substantial evidence supports the County’s last-minute “analysis” of *cumulative*  
25 impacts to the Tahoe Basin. AR 15:8727-28; *see* § 21080(e); Guidelines § 15384. Because the County

26 \_\_\_\_\_  
27 (footnote continued from previous page)

28 Project’s potential impacts to Lake Tahoe water clarity, which ultimately led the Planning Commission  
to recommend denial of the Project. AR 17:10159-63; 20:11266.

1 cites cumulative data from another project’s review out of context, the public is unable to assess its  
2 validity. In any event, the data on its face appears unreliable. As the County acknowledges, “the  
3 *cumulative* VMT [which is supposed to include *all* relevant projects] for Highway 267 in the subject  
4 EIR/EIS is less than the 13,745 shown in the Martis F[inal] EIR for the Martis West project alone.” AR  
5 15:8728 (emphasis added); *see also* AR 29:16772 (Attorney General noting that combining Project’s  
6 VMT with just that of the proposed Squaw Valley Project will bring “total VMT in the Basin to  
7 2,022,187, just a small margin below TRPA’s threshold of 2,067,600 total basin-wide VMT”);  
8 29:16749-50. Because the Project’s VMT alone will push cumulative VMT so close to the TRPA  
9 threshold, the EIR may not summarily discount this impact.

10 *Fourth*, the supplemental response’s reference to the Project’s transit mitigation (AR 15:8727)  
11 does not resolve the EIR’s deficient analysis. To begin with, Measures 10-5 a and b were not designed to  
12 specifically mitigate impacts to the Basin, and there is no guarantee that any of the transit benefits would  
13 be realized within the Basin. *See* AR 3:1517; 17:10009-10; 29:16750-51. More importantly, an EIR  
14 must first *analyze* the severity of the impact, and then identify mitigation measures or alternatives to  
15 lessen or avoid that impact. *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256,  
16 264-65. As the court in *Ukiah Citizens* explained, “CEQA EIR requirements are not satisfied by saying  
17 an environmental impact is something less than some previously unknown amount.” *Id.* at 264; *see also*  
18 *Lotus*, 223 Cal.App.4th at 653-54 (invalidating EIR analysis that improperly conflated an impacts  
19 analysis with a discussion of mitigation).

20 Finally, even if the County’s last-minute response could be considered an “analysis” of the  
21 Project’s impacts on the Lake Tahoe Basin, it would be insufficient under CEQA. It is well settled that  
22 this information must be contained in the EIR itself. *See Ukiah Citizens*, 248 Cal.App.4th at 266-67  
23 (subsequent analysis cannot cure deficiencies in EIR); *see also Banning Ranch*, 2 Cal.5th at 941.

24 In sum, the County prejudicially abused its discretion by certifying an EIR that failed to analyze  
25 the Project’s individual and cumulative impacts to the regionally significant Tahoe Basin, including  
26 plans for its protection, or to identify any mitigation measures or alternatives to address such impacts.  
27 *Banning Ranch*, 2 Cal.5th at 941-42.

1           **B.     The EIR Fails to Adequately Analyze the Project’s Impacts on Plans for Emergency**  
2           **Evacuation During a Wildfire or Other Emergency.**

3           CEQA requires an EIR to discuss “health and safety problems caused by physical changes” in  
4 the environment from the Project. Guidelines § 15126.2(a). The present EIR fails this requirement  
5 because it lacks information necessary to determine whether the Project will result in significant impacts  
6 to emergency evacuations in the event of a wildfire or other disaster. Accordingly, the EIR’s bald  
7 conclusion that such impacts to public safety are insignificant, even under cumulative conditions (AR  
8 3:1253, 1255), is unsupportable.

9           As the EIR recognizes, Project development will be located in a “Very High” Fire Hazard  
10 Severity Zone, where “the combination of dense forests, heavy fuel loads, low humidity, potential for  
11 high winds and the steep terrain in the Sierra Nevada’s can rapidly turn even small fires into lethal,  
12 major disasters.” AR 3:1260; 17:10163-64. In recent years the situation has become even worse due to  
13 the tree mortality epidemic in the area. AR 28:15721-29; 30:17448-49. The Project exacerbates this risk  
14 by placing 760 homes and 56,500 square feet of commercial development and amenities within the  
15 Wildland Urban Interface. AR 7:3617; 17:10163-64; 24:13488-540. Moreover, not only would the  
16 Project site be accessed by a single point along SR 267, but all emergency evacuation roads would also  
17 lead to SR 267—a road that would operate under gridlock conditions with Project-generated traffic at  
18 peak periods. AR 1:573-74. In other words, the Project’s location and design are a recipe for  
19 catastrophic disaster.

20           The EIR must adequately inform the public and decision-makers about the risks of attempting to  
21 evacuate the Project area under such conditions. Such a site-specific analysis would include two  
22 components. First, it would estimate the number of cars attempting to evacuate the Project area,  
23 evaluating any significant environmental impacts from such a mass evacuation. Second, it would assess  
24 the impacts to emergency personnel trying to respond to the wildfire in light of the evacuation. Here, the  
25 Draft EIR provides neither piece of critical information. AR 3:1741-42. Rather, it concludes in cursory  
26 fashion that, because the Project includes emergency evacuation routes, calls for a future Fire Protection  
27 Plan, and causes only an “incremental increase” in normal operational traffic, “the project’s impact  
28 relative to emergency evacuation is less than significant” and therefore no mitigation is required. AR

1 3:1742. It then reaches the same conclusion under cumulative conditions. AR 3:1745.

2 The Final EIR provides some additional data, but it does not fill the informational gap. AR  
3 6:3138-40. What the document states, however, is alarming: “[I]t would take approximately *1.3 hours*  
4 for all vehicles to exit the MVWPSP project site under existing plus project conditions and *1.5 hours*  
5 under cumulative plus project conditions.” AR 6:3140 (emphasis added). Despite this fact, the Final EIR  
6 astonishingly claims that such gridlock during a wildfire or other emergency “does not necessarily  
7 generate a safety risk”—and it never changes the Draft EIR’s significance conclusions. *Id.* At the same  
8 time, the Final EIR omits the assumptions used for its evacuation figures, and provides no information  
9 as to the time residents need to evacuate the entire area once they reach gridlock conditions on SR 267.  
10 *Id.*

11 Likewise, the document fails to provide response times for emergency personnel to access the  
12 site during an evacuation. AR 6:3140; *cf.* AR 3:1715 (providing response times for standard “incident”  
13 calls). While the Project includes an emergency access road and seasonal secondary access to the local  
14 “Fibreboard Freeway” through a narrow dirt road connector, those “roads” would also be used to  
15 evacuate residents, and again all roads lead to gridlock on SR 267. AR 3:1715. By omitting such  
16 relevant analysis regarding emergency evacuation, the County prejudicially abused its discretion under  
17 CEQA. *See Save Our Peninsula Com. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th  
18 99, 118.

19 Finally, the EIR’s cursory conclusion that the Project would not result in any significant impacts  
20 to plans for emergency evacuation is simply unsupportable. To begin with, the Final EIR’s evacuation  
21 figures appear to be based on the assumption that any evacuation would proceed in an orderly fashion  
22 with no unexpected incidents. *See* AR 28:15790, 15793. But this assumption is untenable. As one  
23 County official noted, “[I]t’s always going to be difficult. There’s no evacuation that ever goes textbook  
24 smooth.” AR 20:11134; *see also* AR 1:312. The EIR also problematically assumes that all cars would  
25 park and wait near the Truckee airport, when many would try to leave the area on I-80, another roadway  
26 that will likely be gridlocked. *See* AR 1:324; 3:1511; 7:3654 (I-80 at SR 267 operates at unacceptable  
27 service levels); *infra* Part I.C. But, even accepting the County’s unfounded assumptions as true, the  
28 County’s estimate of a 1.3 to 1.5 hour Project evacuation time is itself evidence of a significant impact

1 given the ability of a wind-driven fire to consume the Project area in a similar timeframe. *See* AR 1:311  
2 (expert noting ability of fire to “move across the county in a few hours”); *see also* AR 3:1260; 20:10918.

3 Equally troubling, the EIR concludes that, *even without an emergency evacuation*, the Project  
4 would result in significant and unavoidable traffic impacts along SR 267 by either turning bad traffic to  
5 gridlock or by exacerbating already unacceptable conditions during peak periods. *See* AR 1:182-83;  
6 3:1511-16. Remarkably, however, the EIR never explains how an evacuation of Project residents from a  
7 wildfire during the same peak periods would somehow avoid these gridlock conditions. Indeed, if the  
8 Project would result in significant traffic impacts during non-emergency conditions, then *a fortiori*, the  
9 Project would result in significant impacts during an emergency evacuation. *See* AR 20:11145-50  
10 (testimony of Captain Stonebraker).

11 The EIR must be revised to include an adequate discussion of the Project’s significant impacts  
12 on emergency evacuation plans, and feasible mitigation measures or alternatives to mitigate or avoid  
13 such impacts. Guidelines § 15126.2(a); *see also* Guidelines § 15088.5(a)(4).

14 **C. The EIR Fails to Adequately Analyze and Mitigate the Project’s Significant Traffic**  
15 **Impacts on Interstate 80.**

16 The EIR also fails to adequately analyze the Project’s regional impacts to I-80. Even though I-80  
17 is the main highway leading to SR 267, which provides the sole access to the Project, the Draft EIR  
18 completely omitted any analysis of the Project’s contribution to traffic on the main lanes of I-80.  
19 Instead, it limited its analysis to I-80 on- and off-ramps. AR 3:1516. After Petitioners and others alerted  
20 the County to the error (AR 7:3602), the Final EIR provided some trip data for I-80 (AR 7:3654).  
21 However, it then declared the Project’s impacts to I-80 to be “less than significant” based on an  
22 irrelevant traffic standard—the County’s threshold of significance for SR 267, a two-lane road. *Id.*

23 As Petitioners warned, the Final EIR’s “less than significant” finding completely ignores  
24 Caltrans’ threshold of significance for I-80. AR: 30:17394, 17423. And the omission is telling. Under  
25 Caltrans’ standard, the Project’s traffic impact to I-80 would be significant, and thus would require the  
26 County to evaluate feasible mitigation. *Id.* (Caltrans proscribing any lowering of level of service for  
27 existing highways operating at unacceptable target); AR 7:3654 (showing I-80 operating at unacceptable  
28 level of service).

1 While the County has some discretion in selecting thresholds of significance, it may not blindly  
2 rely on an irrelevant threshold to avoid disclosure of a potentially significant impact. *East Sacramento*  
3 *Partnerships for a Livable City v. City of Sacramento* is directly on point. There, the Third District held  
4 that the EIR for a residential development violated CEQA because no substantial evidence supported its  
5 conclusion that the project’s traffic effects would be insignificant. Even though the project would  
6 worsen traffic at various intersections, the EIR found the impact insignificant because policies in the  
7 city’s general plan permitted such congestion. (2016) 5 Cal.App.5th 281, 300. The city argued that,  
8 because the EIR used these general plan policies as its official threshold of significance, the  
9 “insignificance” determination must be upheld. *Id.*

10 The court disagreed, holding that an agency’s discretion to develop thresholds “is not  
11 unbounded, as the determination that the Project has no significant environmental impact must be  
12 supported by substantial evidence.” *Id.* It explained that rote reliance on a project’s compliance with the  
13 general plan does not insulate an EIR from challenge where substantial evidence shows a significant  
14 impact. *Id.* at 301-02. “[A] threshold of significance cannot be applied in a way that would foreclose the  
15 consideration of other substantial evidence tending to show the environmental effect to which the  
16 threshold relates might be significant.” *Id.* at 303 (quoting *Protect the Historic Amador Waterways*, 116  
17 Cal.App.4th at 1109).

18 The County made the same error here. Just as the City of Sacramento’s use of the general plan as  
19 a threshold masked the project’s traffic impacts, so the County’s use of its threshold for a local roadway  
20 conceals a significant impact to I-80. At the same time, the EIR lacks any analysis of the Project’s  
21 cumulative impacts on I-80, even while admitting that I-80 would operate at unacceptable levels of  
22 service. AR 7:3654.

23 The County’s failure to adequately analyze the Project’s individual and cumulative impacts on I-  
24 80 violates CEQA, which expressly requires an analysis of regional impacts. *See* Guidelines § 15125(c)-  
25 (d); *see Citizens of Goleta Valley*, 52 Cal.3d at 575. While the County notes that Caltrans did not  
26 specifically request such analysis (AR 7:3653), this fact is beside the point. The County is required to  
27 follow state law regardless of comments from other agencies.

1           **D.    The EIR Fails to Adequately Analyze and Mitigate the Project’s Impacts on**  
2           **Biological Resources, Including Sensitive Species.**

3           The EIR evades disclosure of the Project’s true impacts on biological resources, including  
4 sensitive wildlife species and habitat, by improperly combining review of the Project’s impacts and  
5 mitigation measures into a single analysis. For example, rather than disclosing the effects of the  
6 Project’s plans to raze large areas of sensitive species habitat, the EIR assumes that such impacts would  
7 be less than significant because the Project includes “preservation” of the East Parcel, thereby allegedly  
8 “offsetting” any impacts from development of the West Parcel. By conflating the analysis of Project  
9 impacts with purported mitigation for those impacts, the EIR both downplays the Project’s impacts on  
10 habitat and wildlife and avoids identifying effective, enforceable mitigation, as CEQA requires.  
11 Compounding the problem, the claimed mitigation (“preserving” the East Parcel), upon which the EIR  
12 relies to determine that the Project will have a less than significant impact on certain biological  
13 resources, provides no guarantees that the Project’s effects will actually be reduced. These procedural  
14 errors, which result in omission of essential information from the EIR, are reviewed de novo. *Banning*  
15 *Ranch*, 2 Cal.5th at 935.

16           As a general rule, an EIR’s impacts analysis for a given resource involves two steps. First,  
17 CEQA requires that an EIR set forth, in detail, all of a project’s significant environmental impacts.  
18 *Lotus*, 223 Cal.App.4th at 653 (citing § 21100(b)). Next, the EIR must identify all feasible mitigation  
19 measures for each significant impact, and where several measures are available, the EIR must discuss  
20 the reasons for choosing one over another. *Id.* This sequence—analyze impacts first, then identify  
21 mitigation—is crucial, as “[o]nly by [the agency] making this disclosure can others, be they courts or  
22 constituents, intelligently analyze the logic of the [agency’s] decision.” *Id.* at 654 (citation omitted).

23           *Lotus* is directly on point. There, the Court of Appeal held that an agency could not characterize  
24 what were effectively mitigation measures as part of a project in order to conclude that the project’s  
25 impacts would be less than significant. *Id.* at 655-56. The project at issue in *Lotus* involved “Avoidance,  
26 Minimization and/or Mitigation Measures” that were incorporated into a roadway widening project in a  
27 forested area to “offset” the project’s impacts to trees. *Id.* at 650. The EIR concluded that because the  
28 roadway project, with these measures, would have no significant impacts, the EIR need not examine any

1 further mitigation. *Id.* at 651. The court rejected this approach, holding that the agency violated CEQA  
2 by failing to separately analyze the significant impacts of the roadway construction and, in turn, feasible  
3 measures to reduce such impacts. *Id.* at 658. The court reasoned that the proper procedure is necessary  
4 (1) to inform the public about the Project’s true impacts, and (2) to ensure not only that all feasible  
5 mitigation measures are evaluated, but also that the adopted measures are enforceable as part of the  
6 required mitigation monitoring and reporting plan. *Id.* at 656-57. “By compressing the analysis of  
7 impacts and mitigation measures into a single issue,” the court held, “the EIR disregards the  
8 requirements of CEQA.” *Id.* at 656.

9 Similarly here, the County short-circuited CEQA’s required analytic procedure. Just as the  
10 Department of Transportation improperly incorporated mitigation measures into the roadway project in  
11 *Lotus*, so the County relied on a Project component—maintaining the East Parcel as “open space”—to  
12 conclude that the Project’s impacts from development of the West Parcel would be less than significant  
13 as to certain sensitive species and habitat. *See* AR 3:1393 (impacts to common vegetation communities  
14 and wildlife habitats less than significant in part due to conservation of East Parcel), 1402 (impacts to  
15 northern goshawk and California spotted owl less than significant in part due to conservation of East  
16 Parcel), 1404 (impact analysis for mule deer relying on East Parcel conservation), 1406 (same for Sierra  
17 marten and Sierra Nevada snowshoe hare). For example, the EIR dismisses the destruction of 169 acres  
18 of foraging habitat for the California spotted owl and northern goshawk as less than significant based,  
19 *inter alia*, on the assumption that the habitat loss would be “offset” by the “long-term conservation” of  
20 suitable foraging habitat on the East Parcel. AR 3:1402. Nowhere does the EIR disclose what the  
21 impacts of developing the West Parcel on existing biological resources would be without considering  
22 “preservation” of the East Parcel as compensation.

23 Under *Lotus*, the EIR may rely on the purported conservation of the East Parcel to reduce the  
24 impacts of the Project’s construction, but only in a mitigation analysis after the Project’s impacts have  
25 been fully disclosed. *See Lotus*, 223 Cal.App.4th at 656. Otherwise, by building one, pre-selected  
26 mitigation measure into the description of the Project—and thereby assuming impacts will be less  
27 severe—the EIR fails “to discuss the significance of the environmental impacts apart from the proposed  
28 . . . mitigation measures and thus fails to consider whether other possible mitigation measures would be

1 more effective.” *Id.* at 657.

2           The EIR’s error is particularly troubling here, given that there is no guarantee that the so-called  
3 “conservation” of the East Parcel will actually offset the Project’s impacts on the spotted owl, goshawk,  
4 and other species, as the EIR claims. Notably, the Project’s Specific Plan and Development Agreement  
5 require only that (1) the East Parcel be conserved as “open space,” and (2) if not sold to a conservation  
6 group at market price by August 2020, the developers record a limited conservation easement that  
7 restricts only commercial and residential development on the property. AR 3:1269. The record  
8 demonstrates that sale to a conservation group is highly unlikely. *See* AR 29:16693. Nothing in the  
9 Project approval prevents the continued operation of the East Parcel as timberland—a likely use that  
10 could plainly result in the destruction of habitat through logging, road-cutting, and other related timber  
11 production and harvest activities. Indeed, the County has relied on the fact that the East Parcel will be  
12 zoned as TPZ, where logging must be allowed, to justify the immediate rezoning of the West Parcel out  
13 of TPZ for residential and commercial development. *See infra*, Part II; *Big Creek Lumber Co. v. County*  
14 *of San Mateo* (1995) 31 Cal.App.4th 418, 428. The County cannot have it both ways. Because the  
15 potential for timberland use renders the East Parcel’s “mitigation” wholly uncertain, the County was  
16 required to analyze other feasible measures. *See* Guidelines § 15126.4(a)(2) (“Mitigation measures must  
17 be fully enforceable through permit conditions, agreements, or other legally-binding instruments.”).

18           Petitioners warned the County that the EIR improperly conflated its analysis of biological  
19 impacts with its discussion of mitigation, in violation of *Lotus*. AR 6:3584-85. In response, the County  
20 admitted that the East Parcel’s conservation factored into its significance determinations, but then  
21 inconsistently claimed it did not treat preservation of the East Parcel as “mitigating” any impacts. AR  
22 7:3637. The County’s attempt to split hairs is unavailing. The EIR gives the East Parcel’s “preservation”  
23 as two of the four enumerated reasons for determining that the Project’s impacts on the California  
24 spotted owl and northern goshawk would be less than significant. AR 3:1402. Clearly, the EIR relies on  
25 the East Parcel to compensate for the Project’s habitat destruction.

26           In sum, as in *Lotus*, the EIR’s “shortcutting of CEQA requirements subverts the purposes of  
27 CEQA by omitting material necessary to informed decisionmaking and informed public participation. It  
28 precludes both identification of potential environmental consequences arising from the project and also

1 thoughtful analysis of the sufficiency of measures to mitigate those consequences.” *Id.* at 658. The EIR  
2 must be revised, to inform the public and decision-makers as to the true extent of the Project’s impacts  
3 without reliance on the East Parcel, and to develop all feasible mitigation. *Id.*

4 **E. The EIR Fails to Adequately Analyze and Mitigate the Project’s Impacts on Night**  
5 **Skies.**

6 CEQA requires careful review of harms to the visual landscape, recognizing that it is the State’s  
7 policy to “[t]ake all action necessary to provide the people of this state with . . . enjoyment of aesthetic,  
8 natural, scenic, and historic environmental qualities.” § 21001(b); *see Ocean View Estates Homeowners*  
9 *Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401 (“Any substantial negative effect  
10 of a project on view and other features of beauty could constitute a significant environmental impact  
11 under CEQA.”). The Tahoe region’s dark night skies are integral to the area’s scenic and wild visual  
12 character. As one local planning document explains, the region’s “clear mountain air and the lack of  
13 light pollution” allows for “the experience of natural darkness at night” and exceptional views of stars.  
14 AR 13:7535; *see also* AR 3:1431 (Draft EIR recognizing importance of dark sky for visitors, residents,  
15 and wildlife). Here, however, the EIR provides only the most cursory discussion of the Project’s impacts  
16 on these visual resources, and lacks any basis to conclude those impacts are insignificant. AR 3:1473-78.

17 As explained, an EIR must “provide clear and definite analysis” of existing environmental  
18 conditions—the baseline—against which an agency measures the significance of an impact. *San Joaquin*  
19 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729; Guidelines  
20 § 15125(a), (c). A proper baseline provides “critical information necessary to evaluate the significance  
21 of the [project’s] impact on a valuable resource.” *Cadiz Land Co.*, 83 Cal.App.4th at 95. Here, the EIR’s  
22 baseline description of the area’s night sky merely consists of: (1) three photographs of the Project area,  
23 and (2) a few sentences describing the location of the lights appearing in the photographs. AR 3:1473-  
24 78. These photographs provide only the sketchiest depiction of existing night sky conditions: in one,  
25 trees obscure the sky; another was taken at 6 p.m., before full darkness. Because it is uncertain whether  
26 the photographs accurately document the area’s night sky, they may actually diminish the perception of  
27 brightness from the Project.

28 The EIR’s paltry, near-random description of the baseline falls far short of CEQA’s

1 requirements. *See* Guidelines § 15064(b) (agencies must base their significance determinations on  
2 “scientific and factual data.”); *Laurel Heights I*, 47 Cal.3d at 405. As Petitioners informed the County,  
3 there are accepted quantitative methods by which agencies can objectively measure the luminance of  
4 existing nighttime light and glare. *See* AR 30:17291, 17324-25. The County’s refusal to use such a  
5 quantitative method violated CEQA. *See Cadiz Land Co.*, 83 Cal.App.4th at 95 (invalidating EIR’s  
6 description of existing conditions that failed to use quantitative measures).

7         Similar lack of precision plagues the EIR’s photosimulations, which purport to show the  
8 Project’s effect on the area’s night sky. To begin with, because the EIR describes its methodology in  
9 only the most general terms, the reader cannot ascertain either how the simulations actually model the  
10 lights of Project buildings, or how these lights would actually brighten the sky. For example, while the  
11 Final EIR asserts that it used existing residential projects as a predictor of the Project’s brightness and  
12 spectrum (AR 7:3647), it provides no evidence that these residential developments bear any similarity to  
13 the character or size of the proposed Project.

14         The County’s questionable alteration to one of the photosimulations, between the Draft and Final  
15 EIR, raises further doubts as to the usefulness of these simulations. Commenting on the Draft EIR,  
16 Petitioners Sierra Watch and MAP noted that the sky in one of the simulations showed a glow above the  
17 horizon, presumably caused by the Project. AR 6:3594. In response, the Final EIR produced a new  
18 version of the simulation, purportedly to correct a “compression inconsistency”—and that new version  
19 *reduced* the evident glow in the original photosimulation. *Compare* AR 3:1477 *with* AR 7:3645-46. This  
20 “correction” shows how variably light can be represented in a photograph, demonstrating that merely  
21 presenting photographs without adequate baseline data or information on the County’s methods for  
22 modeling light and glare is insufficient to assess night sky impacts. For this reason, the EIR fails to serve  
23 its “chief purpose” of providing a “meaningful assessment” of the Project’s significant impacts. *Save*  
24 *Our Peninsula Com.*, 87 Cal.App.4th at 119-20.

1           **F.     The County Failed to Recirculate the Draft EIR After Significantly Altering Its**  
2           **Climate Change Analysis, and Failed to Reevaluate Feasible Mitigation Measures in**  
3           **Light of the New Analysis.**

4           The Draft EIR included, as it must, a section analyzing the Project’s impacts to global climate  
5 change. However, the document relied on an approach that the Supreme Court has since directly  
6 rejected. That is, the Draft EIR relied on a so-called “efficiency” standard, which assumed that the  
7 Project’s climate change impact would be insignificant if it met AB 32’s statewide reduction target for  
8 greenhouse gas (“GHG”) emissions by the year 2020; the document then measured those climate  
9 impacts against a “no action taken” or “business as usual” scenario (hereinafter “BAU threshold”). AR  
10 3:1567. But *CBD* expressly rejected this approach for a housing project. 62 Cal.4th at 227-28. It found  
11 that agencies cannot blindly rely on a state standard without substantial evidence that the standard is  
12 applicable to the local project. *Id.*

13           After Petitioners alerted the County to this problem (AR 7:3610-11), the Final EIR admitted that  
14 the Draft EIR’s approach was unsupportable, and abandoned the BAU threshold in favor of a static  
15 threshold of significance (emissions of 1,100 metric tons per year of CO<sub>2</sub>) used by the local Air District.  
16 AR 6:3121-23, 3130. However, the County committed two fundamental CEQA errors in the Final EIR.  
17 First, the County failed to recirculate the revised GHG analysis, which altered its significance threshold  
18 and conclusions. Second, it failed to reevaluate feasible mitigation measures in light of the Final EIR’s  
19 new significance findings.

20           CEQA requires recirculation of a draft EIR whenever “significant new information” is added to  
21 an EIR after its release for public comment. § 21092.1. This “essential part of the CEQA process”  
22 ensures that the public has adequate information about a project’s environmental impacts and that the  
23 lead agency can receive and meaningfully respond to public comments. *Laurel Heights Improvement*  
*Ass’n v. Regents* (1993) 6 Cal.4th 1112, 1123-25 (“*Laurel Heights II*”).

24           The CEQA Guidelines elaborate on the type of “significant new information” that can require  
25 recirculation. If information is “new,” it becomes significant when its addition “deprives the public of a  
26 meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a  
27 feasible way to mitigate or avoid such an effect (including a feasible project alternative).” Guidelines §  
28 15088.5(a). Examples of “significant new information” include the identification of a “new significant

1 environmental impact” or a “substantial increase in the severity of an environmental impact . . . .” *Id.*

2 Here, the Final EIR’s revised analysis of GHG emissions unquestionably reveals new, more  
3 severe impacts than previously disclosed. The Draft EIR found the Project would *not exceed* the BAU  
4 threshold in 2020, but it “may be less efficient than necessary” after 2020. AR 3:1571. By contrast, the  
5 Final EIR reveals that the Project, which would generate roughly 30,000 metric tons of CO<sub>2</sub> per year at  
6 buildout, would *vastly exceed* the significance threshold of 1,100 per year. AR 6:3131-33; *see also* AR  
7 1:540-41. And as Petitioners explained, even assuming the Project is built in phases, the Project would  
8 exceed the threshold early on, when only about three percent of the Project has been built. AR 30:17312.

9 The County argues that the document need not be recirculated because the EIR’s overall  
10 conclusion that the Project’s long-term GHG impacts will be significant did not change under its new  
11 threshold. AR 6:3123. However, that is not the test. Rather, the Draft EIR must inform the public about  
12 the increase in the severity of the Project’s GHG impacts throughout its lifespan. Guidelines §  
13 15088.5(a)(2). Moreover, recirculation is required where the omission of information has rendered the  
14 draft EIR “fundamentally and basically inadequate and conclusory in nature.” *See Laurel Heights II*, 6  
15 Cal.4th at 1120 (citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043);  
16 Guidelines § 15088.5(a)(4). Here, the Draft EIR provided a climate change analysis that the Supreme  
17 Court has declared—and the County has admitted—is flatly inadequate. The public must be given an  
18 opportunity to comment on the Final EIR’s new analysis, including its discussion of the severity of the  
19 Project’s GHG impacts. *See American Canyon Community*, 145 Cal.App.4th at 1075-81 (new  
20 information that showed traffic would increase by only 2.3 percent constituted “substantially increased  
21 effects on the environment”).

22 Equally important, the recirculated EIR must include an analysis of feasible mitigation measures  
23 to address the significant impacts identified in the new GHG analysis. Because the Draft EIR found the  
24 Project’s GHG impacts would be less than significant in 2020, it did not identify *any* mitigation prior to  
25 2020. AR 3:1574-75. The Draft EIR then deferred the formulation of mitigation measures that might  
26 apply *after* 2020, claiming state reduction programs were yet to be formulated for those years. *Id.* But as  
27 Petitioners alerted the County, “if the D[raft] EIR had properly utilized and applied GHG thresholds [],  
28 it would demonstrate that the Project’s actual GHG emissions would cause a significant impact

1 throughout the life of the Project, which should be mitigated in conjunction with Project approval.” AR  
2 7:3614; *see also* AR 30:17315-17. Petitioners then listed numerous GHG mitigation measures the EIR  
3 should consider. AR 7:3615-16.

4 Since the County’s new analysis reveals, for the first time, that GHG impacts would be  
5 significant throughout the life of the Project based on a new metric, the EIR was required to evaluate  
6 mitigation for these effects. Guidelines § 15088.5(a). Because the County refused to conduct this  
7 analysis (*see* AR 1:544-46), it violated not only CEQA’s mitigation requirements, but also its  
8 requirement for recirculation. Guidelines § 15088.5(a); *see also* Opening Brief of CCEC.

9 **II. The County Violated the Timberland Productivity Act When the Board Approved the**  
10 **Immediate Rezoning of the West Parcel Based on Insufficient Findings.**

11 The County violated another state law by approving the immediate rezoning of 662 acres of  
12 forestland on the West Parcel from the protective Timberland Productivity Zone (“TPZ”) to residential  
13 and commercial zoning. Under the Timberland Productivity Act (“Act”), the Board of Supervisors must  
14 make specific written findings in order to avoid the standard ten-year waiting period for the rezoning of  
15 TPZ lands. Here, the Board abused its discretion by adopting findings that were legally inadequate and  
16 unsupported by substantial evidence. *See* Code Civ. Proc. § 1094.5(b).

17 **A. The Timberland Productivity Act Severely Restricts the Immediate Rezoning of**  
18 **TPZ Land.**

19 In the face of a growing state population threatening forested lands, the Legislature passed the  
20 Act to “*protect* California’s forest resources and timberlands.” *Clinton v. County of Santa Cruz* (1981)  
21 119 Cal.App.3d 927, 934; Gov. Code § 51101. The Act’s purpose is to ensure the continued availability  
22 of the State’s timberland by discouraging “premature or unnecessary conversion of timberland to urban  
23 or other uses” and the “expansion of urban services into timberland.” Gov. Code § 51102. To that end,  
24 the Act gives owners of timberland generous property tax breaks in exchange for placing the timberland  
25 under TPZ zoning, which strictly constrains the land’s use to timber production and limited  
26 “compatible” uses. *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1148.

27 In order to prevent landowners “who ha[ve] taken advantage of the substantial benefits created  
28 by the state” from “merely ‘opt[ing]’ out of the system,” the Act also provides that any landowner  
desiring to remove a parcel from TPZ zoning must wait ten years after the local agency approves the

1 rezoning for the new zoning to become effective. *Clinton*, 119 Cal.App.3d at 932; Gov. Code §  
2 51120(d). Only in rare situations, where continued timberland use “is neither necessary nor desirable” to  
3 achieve the Act’s purposes, may the land be immediately rezoned. Gov. Code § 51130.

4 In the extraordinary case where immediate rezoning of TPZ land may occur, the Act requires the  
5 local agency to make special findings before tentatively approving the rezoning. Gov. Code § 51133.  
6 Specifically, the local agency must find that:

7 (1) “immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of  
8 Article XIII of the California Constitution and of [the Act]”<sup>9</sup>; *and*

9 (2) “immediate rezoning is in the public interest.”  
10 Gov. Code § 51133(a)(2)-(3).<sup>10</sup> After approving the immediate rezoning, the local agency then must  
11 forward the matter to the State Board of Forestry and Fire Protection, which may approve the immediate  
12 rezoning only if it makes further findings. Gov. Code § 51133(b); Pub. Resources Code § 4621.2. The  
13 rezoning does not become effective until the State Board’s final approval.

14 Here, when approving the immediate rezoning of 662 acres on the West Parcel, the Board of  
15 Supervisors failed to make legally adequate findings under the Act, and the findings it did adopt were  
16 unsupported by substantial evidence.

17 **B. The Board Erred in Finding that the Immediate Rezoning of the West Parcel Is Not**  
18 **Inconsistent with the Constitution and the Act.**

19 The Board’s first finding—that the immediate rezoning is not inconsistent with the purpose of  
20 the Constitution and the Act—is legally inadequate and unsupported by substantial evidence. The Act  
21 implements the Constitutional provision’s direction that any alternative tax system for timberlands “shall  
22 encourage the continued use of timberlands for the production of trees” and restrict other uses on those  
23 lands. *See* Cal. Const., art. XIII, § 3(j). To this end, the Act provides not only for continued use of  
24

25 <sup>9</sup> Subdivision (j) authorizes the Legislature to establish an alternative taxation system for forest land that  
26 “shall encourage the continued use of timberlands for the production of trees for timber products, and  
27 shall provide for restricting the use of timberland to the production of timber products and compatible  
28 uses with provisions for taxation of timberland based on the restrictions.” Cal. Const., art. XIII, sec. 3(j).

<sup>10</sup> The Board of Supervisors mistakenly made findings under Government Code section 51134(a). *See*  
AR 1:31-32. Petitioners discuss section 51133, which is the applicable provision.

1 productive timberlands, but also for maintenance of the lands’ environmental benefits, protecting them  
2 from urbanization, especially in “areas where second home subdivisions have been encroaching on  
3 valuable timberland.” *Clinton*, 119 Cal.App.3d at 934, fn. 7 (quoting legislative history for Act). The  
4 West Parcel is currently a productive forest, which has been well-managed to increase the stand’s vigor.  
5 AR 17:9622. Accordingly, it is exactly the kind of forested land the Act intends to protect from  
6 conversion. *See* Gov. Code § 51102.

7       Perhaps recognizing that removing the West Parcel from TPZ conflicts with the Act, the Board  
8 adopted findings that rely almost exclusively on its rezoning of the *East Parcel* into TPZ as part of the  
9 Project.<sup>11</sup> AR 1:32. Tellingly, a report from the Applicant touts this connection: “[w]hen considered  
10 with the *East parcel zoning*, the application for immediate rezone of the West parcel is not inconsistent  
11 with [the purposes of the Constitution and the Act].” AR 17:9626 (emphasis added). But the Act  
12 requires the Board to find that the immediate rezoning *itself* is not inconsistent with the Constitution and  
13 the Act; findings regarding another zoning action on a separate parcel are insufficient. *See* Gov. Code  
14 § 51133(a)(2). Because the Board’s findings regarding the *East Parcel* do not address whether the  
15 residential and commercial uses planned for the *West Parcel* would serve the Act’s purposes, the  
16 findings are inadequate as a matter of law.

17       In addition to relying on the East Parcel’s rezoning, the Board’s findings assert that rezoning the  
18 West Parcel would address “residential demands” in the area. AR 1:32. But this finding also does not  
19 satisfy the requirements of the Act. Rather, the razing of forested land to develop more than 700 luxury  
20 residences that will largely serve as second homes directly undercuts the Act’s purpose of preventing  
21 “unnecessary conversion of timberland.” Indeed, this sort of unneeded urbanization is *exactly* what the  
22 Legislature sought to curtail in passing the Act. *Clinton*, 119 Cal.App.3d at 934, fn. 7 (noting Act’s  
23 purpose to prevent urbanization of forestlands, including the construction of “second home subdivisions  
24 . . . on valuable timberland”).

25       Moreover, the record provides no evidentiary support for the County’s claim that the Project is

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27 <sup>11</sup> The full East Parcel was previously zoned TPZ, but the County began the ten-year rollout process for  
28 rezoning 670 acres of that parcel in 2003; it converted out of TPZ in 2013. AR 19:10702. However,  
there are no approved plans or vested rights to develop the East Parcel.

1 actually needed for local housing. The Project is a “resort community” with substantially less than 20  
2 percent of the homes projected to be occupied full-time. AR 3:1274. Similar nearby developments  
3 currently experience an average of just over 7 percent full-time occupancy. *Id.* Furthermore, as the  
4 record shows, the vacancy rate for homes in the area was a staggering 51 percent in 2010, up from 45  
5 percent in 2000—while California as a whole has an average home vacancy rate of just 8.1 percent. AR  
6 3:1339-40. In short, contrary to the Board’s finding, the construction of more high-end second homes in  
7 this area is entirely unnecessary.

8 Finally, the Board’s findings provide no grounds for deviating from the “ordinary” ten-year  
9 process for removing a parcel from TPZ zoning. *See Sierra Club v. City of Hayward* (1981) 28 Cal.3d  
10 840, 854 (superseded by statute on other grounds).<sup>12</sup> As the Supreme Court instructs, a local agency may  
11 not approve *immediate* rezoning unless the record contains “substantial evidence that awaiting the  
12 normal [ten-year roll-out process] would fail to serve the purposes that purport to justify [immediate  
13 rezoning].” *Id.* (substituting Timberland Productivity Act terminology for Williamson Act terminology).

14 Here, there is no evidence, let alone substantial evidence, supporting the County’s extraordinary  
15 action to immediately rezone the West Parcel. As the record shows, additional luxury, second-home  
16 residences in the Tahoe area are not needed to meet the area’s housing needs. Accordingly, the objective  
17 of constructing more high-end vacation homes in this area can be equally served after the ten-year roll-  
18 out period required by the Act. Without any evidence to the contrary, the Board abused its discretion in  
19 finding the immediate rezoning consistent with the Act. *See id.* at 854-55.

20 **C. The Board Erred in Finding that the Immediate Rezoning Is in the Public Interest.**

21 The Act also requires a second finding: that the immediate rezoning is “in the public interest.”  
22 Gov. Code § 51133(a)(3). Here, the Board found that immediate rezoning of the West Parcel would  
23 provide “environmental and economic benefits for the public.” AR 1:32. The Board then identified the  
24

25 <sup>12</sup> *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840 interpreted the Williamson Act, which concerns  
26 preservation of agricultural land. Because the Timberland Productivity Act was intended to replace  
27 Williamson Act contracts on timberland (Gov. Code § 51110(b)), the two statutes contain similar (or  
28 identical) provisions for restricting land use in exchange for tax benefits. Accordingly, courts have relied  
on Williamson Act cases when interpreting the Timberland Productivity Act. *See, e.g., Clinton*, 119  
Cal.App.3d at 932.

1 rezoning of the *East Parcel* into TPZ as the sole environmental benefit. *Id.* As for economic benefit, the  
2 Board found that immediate rezoning of the West Parcel would “benefit the local tax base through  
3 increased property and business tax revenue.” *Id.* Both findings are insufficient to support immediate  
4 rezoning.

5 To begin with, the Board may not rely on rezoning of the East Parcel *into* TPZ to find that  
6 immediately rezoning the West Parcel *out* of TPZ is in the public interest. Nothing in the Act remotely  
7 authorizes such a “swap.” The Act clearly states that the Board must find that the *proposed* immediate  
8 rezoning is in the public interest—not that some *other* proposed zoning action serves the public interest.  
9 *See* Gov. Code § 51133(a)(3). Here, the Board relies exclusively on the *East Parcel* to find that rezoning  
10 the West Parcel would be environmentally beneficial; it identifies no environmental benefit of  
11 immediately rezoning the *West Parcel*.

12 In fact, there is no record evidence indicating that rezoning and developing the West Parcel  
13 would have environmental benefits. To the contrary, as explained above, the West Parcel’s residential  
14 and commercial development would result in myriad environmental impacts, including significant  
15 impacts to the Lake Tahoe Basin (such as degradation of the Lake’s clarity), increased evacuation risk in  
16 a wildfire, and destruction of important wildlife habitat. The EIR itself admits that development of the  
17 West Parcel would result in significant and unavoidable impacts to scenic resources, traffic, and climate  
18 change. AR 1:135.

19 At the same time, the Board’s finding that the immediate rezoning would benefit the local tax  
20 base is also insufficient, as a matter of law, to support immediate rezoning. When interpreting a similar  
21 provision under the Williamson Act, the Supreme Court held that local agencies must “analyze the  
22 interest of the [state] as a whole in the value of the land for open space and agricultural use.” *Sierra*  
23 *Club*, 28 Cal.3d at 856. While agencies may consider the interests of local communities, “no decision  
24 regarding the public interest can be based exclusively on their parochialism.” *Id.* Because the Board here  
25 considered only the local community and its tax base—and not the state’s interest in preserving valuable  
26 timberland—its finding is unlawful.

27 Any other result would render the Act meaningless. Because TPZ lands are taxed at a much  
28 lower rate than other lands (Gov. Code § 51110(b)), *any* rezoning out of TPZ will result in an increase in

1 tax revenue. If local agencies could rely on local tax increases as a “public interest” justification for  
2 immediate rezoning of TPZ land, such rezoning would be automatic, “render[ing] the Act ineffective as  
3 a land-use control device” and allowing it to “simply function as a tax shelter for real estate  
4 speculators.” *Sierra Club*, 28 Cal.3d at 853; *see also Clinton*, 119 Cal.App.3d at 932 (landowner  
5 enjoying Act’s tax benefits should not be allowed to easily “opt” out of system).

6 Finally, because the Act is “explicitly and unequivocally protective” of state timberlands, the  
7 Board must find that the Act’s objectives for immediate rezoning are “substantially outweighed by other  
8 public concerns.” *Sierra Club*, 28 Cal.3d at 857; *see Gov. Code §§ 51101, 51102*. Here, the Board made  
9 no such determination. This omission provides yet another, independent basis for invalidating the  
10 County’s public interest findings.

11 In sum, because the Board’s findings fail to satisfy the Act’s strict requirements for converting  
12 timberland on an urgent basis, a writ should issue ordering the County to vacate its approval of the  
13 immediate rezoning of the West Parcel.

#### 14 CONCLUSION

15 As demonstrated above, the EIR is fundamentally inadequate in numerous respects. It fails to  
16 properly analyze, or mitigate, the Project’s severe impacts to the Tahoe Basin, the area’s emergency  
17 evacuation plans in the event of a wildfire, regional traffic on the I-80, important biological resources,  
18 the region’s night skies, and climate change. Such flaws are not trivial, but concern issues that should be  
19 central to the County’s decision: whether to allow a massive development of second homes in a region  
20 entitled to special protection. The County must revise and recirculate the EIR to include proper analysis  
21 and mitigation of all the Project’s significant impacts. As it stands, the document fails as an  
22 informational document and violates CEQA.

23 Furthermore, the County’s findings fail to satisfy the mandates of the Timberland Productivity  
24 Act. Because the County has articulated no cognizable basis for an immediate rezone of the West Parcel  
25 from TPZ, its action cannot stand.

26 For the foregoing reasons, Petitioners respectfully request that the Court issue a writ of mandate  
27 directing the County to vacate its approval of the Project and certification of the EIR.

1 DATED: June 30, 2017

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1 **SERVICE LIST**

2 ***California Clean Energy Committee v. County of Placer, et al.***

3 **Case No. SCV0038578**

4 ***(consolidated with***

5 ***League to Save Lake Tahoe, et al. v. Placer County, et al.***

6 **Case No. SCV0038666)**

7 **Placer County Superior Court**

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