Taryn Vanderpan

From:

Lucy Schwallie <ldschwal@gmail.com> Monday, December 28, 2020 8:44 PM

Sent: To:

Quincy Yaley; Natalie Rizzi; BOS Members

Subject:

Re: Terra Vi Comment

On Mon, Dec 28, 2020, 11:39 PM Lucy Schwallie < ldschwal@gmail.com wrote:

Dear-Board of Supervisors,

I understand you are undertaking the review of the Terra Vi EIR at your board meeting tomorrow. I am writing to express my significant and sincere concerns with the EIR process and procedures for this development. When the EIR was being presented to the Planning Commission for review, I only received notice the day before the hearing because of the Thanksgiving holiday. As you can see below, I contacted Ms. Yaley via email immediately, requesting information on submitting comments under the circumstances. I never received a response. At all! I would strongly encourage you to return the EIR for additional public comment and consideration to the planning commission, given the highly unusual timing and process that gives the appearance of suppression of public participation. I understand the extreme pressure you are under, but taking a shortcut here in the process could have significant negative impacts on the county's financial health moving forward, given the almost certain litigation.

Wouldn't the more prudent path be to ensure that the process was followed in a way to encourage as much public participation as possible? Please return the EIR to the planning commission for additional review.

Lucy Schwallie

From: Lucy Schwallie < LSchwallie@seols.org > Sent: Tuesday, December 1, 2020, 4:49 PMTo: Taryn Vanderpan; QYaley@co.tuolumne.ca.usCc: Matt deTarSubject: Re: Additional Comments Posted to the Terra Vi Website

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Hi Taryn, Quincy: Is there still an opportunity to submit comments? I was out of office because of the holiday so I didn't see the initial November 20th email call for comments until I returned today. I would love to be able to review the EIR thoroughly and be able to submit comments for consideration by the planning commission. Let me know and thank you for your consideration! Lucy

From: Taryn Vanderpan < TVanderpan@co.tuolumne.ca.us > Sent: Tuesday, December 1, 2020 4:26 PMSubject: Additional Comments Posted to the Terra Vi Website Good afternoon, Additional comments received from interested stakeholders by 9AM this morning have been uploaded to the project website in four parts: https://www.tuolumnecounty.ca.gov/1158/Terra-Vi-Lodge-Yosemite Participation instructions are below: When: Dec

1, 2020 05:00 PM Pacific Time (US and Canada)Topic: TCPC - Terra Vi Please click the link below to join the

webinar: https://us02web.zoom.us/j/8905136668107 iPhone one-tap: US: +16699006833,,89051366681# or +13462487799,,89051366681# Or Telephone: Dial(for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 Webinar ID: 890 5136 6681 International numbers available: https://us02web.zoom.us/u/kceZRn4XdB Thank you, Quincy Yaley, AlCPDirector, Community Development Department48 Yaney (physical)2 South Green Street (mailing)Sonora, CA 95370209-533-5633https://www.tuolumnecounty.ca.gov/170/Development Taryn VanderpanAdministrative AssistantCommunity Development DepartmentCounty of Tuolumne (209) 533-5635www.tuolumnecounty.ca.gov

Taryn Vanderpan

From:

jenny pfeiffer < jenny@pfeifferfoto.com>

Sent:

Monday, December 28, 2020 2:59 PM

To:

Taryn Vanderpan; John Gray; Tracie Riggs; BOS Members

Cc:

Quincy Yaley

Subject:

Re: Terra Vi BOS Agenda

I have a few more comments to add:

Members said the area needs jobs but it has repeatably pointed out by existing hotels that they have a hard time finding enough locals to hire. So this reason should not be in consideration.

During the last meeting 2 people from a local campground called in to say they need a place to send people when they are full, well someone looking for a \$20 a night camping spot is not going to go up the road to a \$400/night hotel room, you all know this to be true. So this resort will not alleviate the camping that happens up sawmill mountain road. If you really wanted to solve this problem you would make more campgrounds in the area.

Members said money is not the motivation, if not that what is? I fail to see the benefits that outweigh the enormous cost of this development on the environment.

The developer said they voluntarily made the hotel smaller which they thought would win people over, reducing the population by 15%, which would not require the lobby to be any smaller is not enough. It's laughable that they thought this amount of reduction would make the community happy, they would need to reduce by 50% at least.

The members mentioned how Rush Creek did not get this much push back, that is because they know the area and know what business model would work here. They are locals from the community and the community is happy to support each other. We are also protecting a community owned business, we do not want this new project to put Rush Creek or Evergreen out of business.

Another reason this project is getting so much more pushback is because unlike Rush Creek this project is directly next to a community of cabins who will be directly and negatively impacted.

I still do not believe the developers when they say that the helipad will only be used for emergencies, can we have any assurances that they will not let guest use it? if they do will they get fined? What are the consequences for them if they go back on their word?

The developers say conservation is in their DNA, I am alarmed that they will only be using single serve plates and utensils, will these be compostable? Even if so which products will they use, some are more compostable than others. The thought of 400+ guest and employees using disposable utensils for 3 meals day all year is horrifying and any conservationist should feel the same. They will produce a mountain of garbage in a year's time. If they switch to plastic utensils at some future date is there a penalty?

Also no member during the meeting could state how many people the resort can fit, this tells me they have not done their due diligence on this project. How can you know if this project will be a benefit or not to the community if you do not know how many people could be staying there every night?

The developers say they want to be good neighbors, then why did they pick the closest spot to all of its neighbors? And why is the entrance off sawmill mt rd and not 120? These 2 things are a big reason there is so much push back from their future neighbors. If they would have moved the resort down the property and moved the entrance off HWY 120 that would be better than this plan.

Please delay this project so they can rework their plans so they are more responsible, if this truly is a great project the next board will pass it.

Just a reminder, this has been widely reported this year: 2020 was the worst fire season for CA on record 5 of the 6 largest fires occurred in 2020

Burned 46m acres

"land-use change" is a cause of similar importance to climate change. This project would contribute to this "land use change".

I hope you all consider all these points as well as the extreme fire danger this resort will create and vote to conserve the land and not to exploit it.

Thank you for taking the time to read this, jenny

From: Taryn Vanderpan <TVanderpan@co.tuolumne.ca.us>

Date: Monday, December 28, 2020 at 12:26 PM

To: <undisclosed-recipients:;>
Subject: Terra Vi BOS Agenda

Good Afternoon,

Attached is the Agenda for the 12-29-2020 BOS meeting for Terra Vi Lodge.

Below is the link to the Terra Vi Lodge Webpage where additional public comments have been uploaded. If you have any questions or concerns, please do not hesitate to contact us.

https://www.tuolumnecounty.ca.gov/1158/Terra-Vi-Lodge-Yosemite

Thank you,

Taryn Vanderpan
Administrative Assistant
Community Development Department
County of Tuolumne
(209) 533-5635
www.tuolumnecounty.ca.gov

Taryn Vanderpan

From:

deTar, Matthew <detar@ohio.edu>

Sent:

Tuesday, December 29, 2020 7:15 AM

To:

BOS Members

Cc:

Quincy Yaley; Natalie Rizzi

Subject:

Comments on Terra Vi

Dear Board of Supervisors,

I am writing to strongly oppose the approval of the EIR for the Terra Vi development. I request that the Board send the EIR back to the planning commission to enable further time for public comment and review.

My most significant concern with this project is the continuing lack of consultation with local fire departments and experts. The risk of devastating fire in this area is extremely high as we learned from the 2013 Rim Fire. Groveland fire and county fire resources combined are inadequate to respond to a development of this size, and Groveland and county fire officials have said this in public meetings. Ignoring the concerns of local fire officials puts all of the towns in the area at risk. Without significant coordination with the combined fire services in the area, approving this EIR and moving forward with the Terra Vi development is extremely irresponsible. California has witnessed too many devastating fires in the last 5 years to not take fire danger and emergency response service limitations seriously.

I am also concerned that the Terra Vi EIR discounts the presence of endangered species in the area because they are difficult to measure. I have witnessed juvenile bobcats on numerous occasions within 100 feet of the project site since 2017. This species is protected and endangered in California. The EIR and especially the development plan presume that the forest on the site is the same as it was nearly a decade ago after the Rim Fire. The forest is recovering, species have returned, and this development will massively disrupt this delicate recovery.

Finally, in the rush to push through this massive development, I have never once been notified of a public meeting, deadline, environmental document, or avenue for public participation despite registering as a stakeholder with the county in 2018. The legal process has simply not been followed. The county is legally required to notify stakeholders, but has not. At the same time, the county initially accepted the appeal of parties with no standing in the development (who materially stood to gain from the development) in order to speed through the process. The process of attempting to approve this development has run afoul of the County's own policies and of basic ethics of oversight.

I strongly believe a development of this scale will unalterably damage the 120 corridor's status as the gateway to Yosemite. The increased traffic alone in the area will create negative affects on the communities in this entire corridor all the way west to the intersection of highway 108/120. Previously more private communities like Greeley Hill will find themselves overrun with people seeking more isolated outdoor activities. These issues combined with the fire risk and sparseness of emergency servives should be unacceptable to the Board of Supervisors. This development will endanger all of us.

Thank you for your consideration, Matthew deTar

Tuolumne County Board of Supervisors

RE: Appeal of Terra Vi Comment Letter

Part One of Two

December 28, 2020

Dear Supervisor,

I am writing to you as a second generation owner of a one bedroom cabin on fourteen acres of beautiful meadows, springs and forest on the outskirts of Yosemite National Park but sharing a long property line with the Timber Preserve now proposed for large high-end resorts.

As such I am essentially the "new kid on the block" as my neighbors, many of whom are cousins or uncles, have owned their Sawmill Mountain and Hardin Flat cabins for many more generations. Some neighbors are on their fifth generation here. My family has had many wonderful experiences here and the younger generations have been able to grow up with an appreciation and respect for nature. For example, I learned how to respect, and avoid, poison oak and stay out of the bushes when I was about 7.

I also learned about deer, Incense Cedars, hawks, natural springs, wild streams and rivers, stargazing and many other things.

This is a peaceful, tranquil and intensely beautiful location. All of the families have worked extremely hard to protect and care for our retreats, the wildlife which inhabits or visits and the centuries and the sensitive old growth forest which surrounds us.

We spent many, many days of hard work and many, many hundreds of thousands of dollars to restore our land following The Rim Fire. We took turns taking sentry duty along Sawmill Mountain Road when someone was lighting the fires on Sawmill Mountain this past August. We watch our neighbor's properties for burglars, timber thieves and unauthorized tree cutters. We look out for our land, our mountain, our forests, our rivers and each other.

We wish for our children and their children to have the same opportunity to grow up in such a wonderful natural environment and to take over for us in clearing the brush and dead trees, keeping the watercourses open, eliminating items which would attract bears, etc.

These are just a couple of reasons why we are so passionate and dedicated to contesting these large commercial Conversions of Timber Preserve to luxury resorts.

There is a place for everything. For close to one hundred years the Communities of Sawmill Mountain and Hardin Flat have been a place for small, low density family vacation cabins. Typically one bedroom cabins on five or more acres.

This just isn't the place for sprawling commercial resorts, restaurants, event centers, canvas tents with interior wood burning stoves, seven acre leech fields, deed high production wells, hundreds of automobiles, thousands of lights, noise from hundreds and hundreds of tourists wandering into highly flammable dry forests and all the impacts which come along with large scale commercial development.

We understand The County needs to increase it's sources of tax. But there are other places where this can be accomplished, such as The Scare and also by keeping your existing hotels in business.

Hopefully by now you have accepted our invitation and have seen our Community, got a feel for our way of life and realize what a serene and tranquil area this is.

I am providing this backround so that you will understand why the **entire Sawmill Mountain and Hardin Flat Community** is **unanimously** and **adamantly OPPOSSED**to these developments and why we are determined to fight to the end to protect this Mountain and this River.

This community is populated by hundreds of successful, established, intelligent and dedicated individuals.

You are probably aware by now that an Approval of this project will lead only to expensive and time consuming litigation. Up to this point the entitlement process has been rushed and accelerated to prohibit the community and our experts to

have a fair and reasonable chance to review and opine on the project. Almost all of the significant and substantially negative impacts have been ignored,, glossed over or rejected without valid supporting evidence. All timelines have been structured so as to minimize public participation. Word is getting out and the rest of Tuolumne County is starting to take notice and is watching your actions. Many residents prefer the Board they elected this November will be allowed to evaluate and vote on these projects. We hope you will make a decision today to change this direction by sending the project back to staff for further review.

By now you have seen hundreds and hundreds of pages of studies, letters, articles and much other data listing thousands of reasons why this is not the appropriate place for these developments and, at the very least, why more research needs to be conducted.

I will summarize a few of those in the next section of my Comment Letter.

Sincerely,

Dan Courtney

Trustee, The Jacqueline Courtney Trust

Owner, 11250 Sawmill Mountain Road

Groveland, CA

Cell: (858) 337-7019

Email: Dan@excaliburre.com

20756 Point View Drive, Groveland, CA 95321

(209) 962-7990

December 28, 2020

Tuolumne County Community Development Department 2 S. Green Street Sonora, CA 95370

I believe the Terra VI project FEIR needs to be send back to the TC Planning Department as it grossly fails to provide even the basics. The study is inadequate and the TC Planning Department failed to acknowledge the cumulative effects of TWO major projects directly opposite each other on H120. Here are my major concerns:

- The sightlines for H120 EB traffic are extremely poor approaching the intersection of 1S09 and 1S03 and H120. The Terra VI mitigation proposes to bulldoze the cut on the North side of H120. No mitigation was proposed for under canvas at 1S09. I also wonder if this encroaches on the Caltrans building there.
- Considering what highway changes were made for Rush Creek Lodge, it would follow
 that the stretch of H120 from the 1S03/1S09/H120 intersection to the highway curve
 East of Harden Flat Rd would need to be widened to five lanes as Rush Creek has four
 and it is only one side of the highway.
- My new understanding is that there are two heliports proposed one for each of these
 projects. Even though Tuolumne County stated at the public hearing that it would only
 be used for emergencies, the FEIR states that it will be used for emergencies and
 other uses.
- The vehicle studies cited do not consider traffic that builds on H120 at peak times for the entrance to Yosemite. I have personally witnessed multiple times a backup for at least three miles West of the entrance. The studies seem to expect all the traffic to come evenly spread out across the entire day.
- The traffic studies mention YARTS. It should be noted that during the peak of the season buses frequently have standing room only. People expecting to ride those buses will have to skip the bus and go back to their cars to drive into the park adding more traffic to the highway that was not accounted for in the study.
- No one has talked about the problems with people crossing H120 between Under Canvas and Terra VI. It does not take much to imagine somebody sitting at their tent listening to a band playing across H120 at Terra VI and deciding to go across the highway to enjoy the music, have a couple of drinks, and return two under canvas in the evening. Also, Terra VI will have a grocery store that will not exist across H120.
- Each project relies on USFS Roads 1S03 and 1S09. These roads enter H120 at just about the same place. Both will require the appropriate federal studies (NEPA) and then an application for an encroachment permit with Caltrans. Extra consideration for 1S03 seems appropriate as this would have persistent heavy truck traffic servicing Terra VI both in construction as well as in operations. 1S03 does not meet standards for that and the intersection with H120 is blind to EB traffic.

Respectfully submitted, Robert Asquith.

Taryn Vanderpan

From:

Gene Pfeiffer < gene10302@gmail.com>

Sent:

Monday, December 28, 2020 1:43 PM

To:

Quincy Yaley; Taryn Vanderpan; bosm@co.tuolumnecounty.ca.gov

Subject:

Terra Vi letter

December 28, 2020

T0: Quincy Yaley, Natalie Rizzi, , Taryn Vanderpan, and Board of Supervisors,

We have a cabin on Sawmill Mt. that was built in 1970. My Mother and Dad came up to camp in Hardin Flats for the first time in 1926. They said I came up to Hardin Flats in 1941. They built a cabin along the South Fork of the Tuolumne River in 1952 and is still in use by their Grandchildren and Great-grandchildren.

My wife and I were contacted by Terra Vi in 2019 to do water testing for their EIR report. Unfortunately we agreed. Our current well was drilled in 2015 and produced about 7 gallons per minute. After Terra Vi pumped over 250,000 gallon of water out of our well for testing, our output from our well went up to 13 gallon per minute. That is good news, but we soon noticed scale deposits on our faucets, glasses, pots, and sink. I suspect that an additional water fracture in the granite opened up due to the additional pumping. They installed a filter on our system that helped somewhat, but the problem still continued. Their plumbing contractor said that we need a water softener on our water supply. Terra Vi agreed to pay for the purchase of the unit and I am now installing it. The question is with the increased plumbing by Terra Vi if this project is approved, will Terra Vi pay for other wells in the area if and when their well water supply is also affected?

I have already sent letters and agree with others regarding the problems with fire danger, one road to evacuate, traffic safety, gateway to Yosemite Park, and other issues with this project. Supervisors have stated that the property is fitting as it is zoned commercial. The problem is that the rezoning in 1991 should not have been approved. I and others pointed out why it should not be rezoned commercial, but the EIR at that time did not adequately address the issues.

Please do not approve this project,

Sincerely,

Gene Pfeiffer

SHUTE, MIHALY WEINBERGERLLP

396 HAYES STREET, SAN FRANCISCO, CA 94102 T: (415) 552-7272 F: (415) 552-5816 www.smwlaw.com ELLISON FOLK
Attorney
Folk@smwlaw.com

December 28, 2020

Via E-Mail

Tuolumne County Board of Supervisors 2 South Green St., 4th Floor Sonora, CA 95370 bosm@co.tuolumne.ca.us

Re:

Terra Vi Lodge Yosemite Project Appeal Hearing re Site Development Permit SDP18-003 and Certification of Final Environmental Impact Report

Dear Members of the Board of Supervisors:

We write on behalf of Save Sawmill Mountain, a community group committed to preserving the rural nature and character of Groveland, California. We respectfully request that you grant Save Sawmill Mountain's appeal of the Tuolumne County ("County") Planning Commission's December 1, 2020 approval of the Terra Vi Lodge Yosemite project, including approval of Site Development Permit SDP18-003 and certification of the Final Environment Impact Report ("FEIR") (collectively, the "Project") and reverse the Planning Commission's approval of the Project.

Like the Draft Environmental Impact Report ("DEIR"), the FEIR for the Project reveals many serious violations of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq*. Among other deficiencies, the EIR¹ fails to adequately analyze the Project's significant environmental impacts on wildfire, evacuation and emergency response, water quality and water supply, noise, public services, housing, traffic, and roadway hazards. Moreover, the EIR fails to adequately mitigate project impacts and relies on mitigation measures that are infeasible and inadequate. Further, the EIR relies on an inadequate project description and fails to analyze a reasonable range of Project alternatives. Finally, the County failed to include

¹ Except where otherwise noted, references to the "EIR" in this letter refer to both the DEIR and to the FEIR, which made only minor changes to the earlier document.

the Mitigation Monitoring and Reporting Program in the DEIR as required by the County Code. Tuolumne County Code § 17.72.220. When combined with the County's extremely abbreviated public review period for the FEIR, this omission deprived members of the public the opportunity to adequately review and comment on the feasibility and enforceability of mitigation for the Project. Without revision to the FEIR and recirculation, the County may not legally certify the FEIR or approve the Project.

In addition to violating CEQA, the Project is also inconsistent with numerous provisions of the County General Plan and the County Ordinance Code. Because the Project conflicts with fundamental, mandatory policies of the General Plan, approval of the Project would violate the California Planning and Zoning Law, Gov't Code § 65000 *et seq*.

We described the many substantive flaws in the EIR's analysis in our comment letters of July 29, 2020, September 16, 2020, and December 1, 2020, which are hereby incorporated in their entirety, including all attachments. On behalf of Save Sawmill Mountain and the many other members of the public potentially affected, we urge you to reject this ill-considered and environmentally harmful Project for the reasons identified in our prior letters and in numerous other public and expert comments. As you will hear in the appeal hearing on this Project, the answer is clear: this Project is incompatible with Tuolumne County's commitments to protecting its residents' safety, quality of life, and the environment. We respectfully request that the Board grant the appeal and reverse the Planning Commission's decision.

While the EIR remains inadequate for all of the reasons identified in our prior letters, we will not reiterate our prior comments here. Rather, this letter elaborates on just a few of the egregious flaws in the EIR's analysis.

I. The EIR Violates CEQA.

- A. The EIR Lacks an Adequate Project Description.
 - 1. The FEIR's Description of the Project's Staffing Requirements is Inadequate.

In order for an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." San Joaquin Raptor/Wildlife Rescue Center v. County of

Stanislaus (1994) 27 Cal.App.4th 713, 730 (quoting County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a "truncated project concept" violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. San Joaquin Raptor, 27 Cal.App.4th at 729-30. Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." Id. at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

Here, in its description of the Project's "Components," the EIR provides that the Project will create a total of 40 jobs once operational. DEIR at 3-8. This description is both unsupported and contradicted by evidence in the record, which shows that the Project will in fact require a significantly higher number of employees. This inaccuracy not only prevents the "intelligent evaluation" of the Project's potential environmental impacts, but appears designed to artificially minimize those impacts. Because the FEIR relies on an inaccurate description of the Project's staffing requirements, its analysis of the Project's environmental impacts is legally insufficient.

a. The FEIR's description of the Project's staffing requirements is unsupported and contradicted by evidence in the record.

Although the FEIR repeatedly asserts that the Project will employ only 40 people, it contains no evidence that supports this conclusion. Nor does it attempt to correlate the vast and multiple components of the Project—a 2,800-square-foot public market, a three-story lodge with 100 guestrooms, 26 cabin rooms in seven separate buildings, a 3,000-square-foot ballroom, an indoor gym, laundry facilities, bar, indoor dining area, pool, spa, and several guest barbeque areas —with the estimated number of necessary staff. Rather, the FEIR offers vague assertions about the Project's supposed "operational efficiencies" and provides a handful of alleged examples of such efficiencies, none of which substantiate the claim that the Project will require no more than 40 employees. FEIR at 5-166-67.

Unsurprisingly, evidence shows that the FEIR's staffing estimate is woefully low. For instance, nearby Rush Creek Lodge, which is similar in scale to the Project, employs between 150-200 people. See FEIR Comment Letter #ORG9 (July 30, 2020 Letter from Lee Zimmerman), FEIR at 5-149. Indeed, Mr. Zimmerman, based on his experience as co-owner of Rush Creek Lodge and Evergreen Lodge, notes that the FEIR's staff projection is "unrealistically extremely low." Id., FEIR at 5-166. Even operating with

limited service described in the EIR, Terra Vi will require a minimum of 80-100 staff, perhaps more, which is at least 2-2.5 times greater than the 40 they assert. See Exhibit A (Anderluh 12/14/2020 letter). If Terra Vi shifts to a more full-service model over time, staffing will increase to near the level of the nearby facilities described above with similar amenities and complexity

Because an EIR may not be "premised on an improperly curtailed and distorted project description," the FEIR's reliance on an inaccurate and inconsistent description of necessary staff "mandates the conclusion" that the County has not proceeded "in a manner required by law." *San Joaquin Raptor*, 27 Cal.App.4th at 730 (internal quotations omitted).

b. Because the FEIR relies on an inaccurate description of Project staff, its environmental impact analysis is inherently unreliable.

The EIR's inaccurate description of the Project's staffing requirements affects its analysis of nearly all of the Project's potential environmental impacts. For instance, the EIR concludes that the Project will not "necessitat[e] the construction of replacement housing elsewhere," or "contribute to significant cumulative . . . housing impacts." DEIR at 4.13-4, 4.13-5. In reaching these conclusions, the EIR relies on the assumption that the Project will only employ 40 people, and that those 40 jobs will likely be filled by existing County residents. DEIR at 4.13-4. Even assuming that the Project will employ only 40 people, this finding is specious for a number of reasons. First, because the vast majority of "vacant" properties in and around the Project area are being used for short-term vacation rentals, there is extremely limited (i.e., near-zero) rental housing available. Therefore, even at 40 employees, and even taking into consideration the limited on-site employee rooms, the Project will have a significant impact on housing, either by requiring the construction of new homes or displacing people from existing homes.

The EIR fails entirely to grapple with this dearth of housing, noting only that as of January 2019 the County had a vacancy rate of 29%. DEIR at 4.13-3. While this may be technically accurate, it ignores that nearly all of these vacancies are "vacation homes located in the high country," a fact that the County itself acknowledged in the recent update to its Housing Element. County of Tuolumne Housing Element Update (September 3, 2019) at 3-54. Moreover, any reliance on the vacancy rate in Tuolumne County as a whole is inappropriate, as it fails to take into account the sheer size of the County—2.274 square miles in total. Because employees cannot be expected to commute from all parts of the County, the overall County vacancy rate is irrelevant. What matters is the availability of housing near the Project area, which, as noted above, is essentially

negligible. By way of example, virtually none of the 200 peak-season employees of nearby Rush Creek Lodge commute from the Jamestown/Sonora area. And, if employees do commute from far flung corners of the County because adequate housing is not provided by the Project, it will add significantly to the number of project trips and vehicle miles traveled.

Because rental housing near the Project is so extremely limited, even a modest increase in the number of employees—for instance, to 60 or 80 employees—would substantially increase the Project's impact on housing. Certainly, had the FEIR done what CEQA requires, i.e., analyzed the impact using an accurate number of employees—80 to 100 (or more to appropriately design for more full-service operations)—it would have found that the Project will have a significant impact on housing, and that this impact would be avoidable only with mitigation measures—for example, a requirement that the Project provide additional on-site housing for employees, or develop off-site affordable housing.

Finally, the FEIR's assertion that Project employees will be primarily local is unsupported and inaccurate. There are few potential Project employees in the area, and therefore it's very likely that the majority of Project staff will be recruited from outside of Tuolumne County. Again, a comparison to nearby Evergreen Lodge and Rush Creek Lodge is instructive: out of those facilities' 325 total peak season staff, only 30 are true locals, despite continuous efforts to attract local staff and the clear organizational benefits of doing so.

Because the FEIR's analysis depends on an inaccurate description of Project staffing, the FEIR necessarily fails to "intelligent[ly] evaluat[e]" the Project's potential impacts to housing in the Project area. See *San Joaquin Raptor*, 27 Cal.App.4th at 730. Moreover, because the EIR relies on the inaccurate project description in its analysis of other potential impacts, this same failure occurs throughout the EIR, including but not limited to in its analysis of impacts on air quality (DEIR at Chapter 4.2), water supply (DEIR at Chapter 4.10), waste water treatment requirements, public services and recreation (DEIR at Chapter 4.14), and evacuation, traffic and Project-generated vehicle miles traveled (DEIR at Chapter 4.15). These failures, both individually and collectively, are fatal to the legal adequacy of the EIR. *Id*.

These impacts are exacerbated by County's recent approval of the Under Canvas project, which also underestimated employment levels and the corresponding need for housing and other impacts. The County must revise its project description and based on an accurate description, it must analyze both the Project's individual impacts as well as its cumulative impacts, before it may approve the Project or certify the FEIR.

B. The EIR Lacks Evidence that the Project Would Not Expose People and Structures to Significant Risks Relating to Wildland Fire.

As the EIR concedes, due to its location in a Very High Fire Hazard Severity zone, the Project would increase the likelihood of wildfire ignitions on or near the Project site. FEIR at 5-16. By increasing the likelihood of wildfire in this hazardous location, it is undisputable that the Project has the potential to expose people and structures to a significant risk of loss, injury, or death involving wildland fires. As we have explained, the EIR lacks evidentiary support that "fire-resistant" building features, vegetation treatment, and compliance with building codes would be sufficient to reduce wildfirerelated impacts to a less than significant level. As support for this position, we again direct the County to a letter submitted by the California Attorney General in connection with a project in San Diego County. See Letter from California Attorney General to San Diego County re: Otay Ranch Resort Village – Village 13, November 12, 2020, attached as Exhibit A to our December 1, 2020 letter to the Planning Commission. While the Attorney General's letter was prepared in connection with a different project, the points it raises, and the scientific studies referenced by the Attorney General, are directly relevant to the Terra Vi Project because both projects inappropriately focus on code compliance and fire-resistant building features to allegedly protect people and structures from wildland fire.

The Attorney General cites to studies undertaken by leading experts Alexandra Syphard and Jon Keeley that directly refute the Terra Vi EIR's claims that the Project will not pose a risk to people and structures from wildfires because the Project would be designed to be ignition resistant. The AG states:

In their paper entitled "Factors Associated with Structure Loss in the 2013-2018 California Wildfires," Mr. Keeley and Ms. Syphard found that "MANY of the houses destroyed were newly built. Newer construction definitely may help but is not a panacea by any means. That also goes for defensible space." (Ex. A, p. 1, emphasis added; see Ex. F, Syphard and Keeley, Factors Associated with Structure Loss in the 2013-2018 California Wildfires (Sept. 2019) Fire, 2, 49.) Their work also shows that fuel breaks have a "limited effectiveness at preventing fire spread during severe wind conditions when 99% of the structure loss occurs." (Ex. A, p. 1.) In other words, "[t]hose measures in a new development do not mean those homes are safe from fire." (Ibid.)

There is ample support for Keeley and Syphard's conclusion that in the event of wind-driven wildfires, even structures built to be "fire-safe" can be damaged or destroyed. As California's recent devastating wildfires make clear, homes that are built to the latest fireproofing standards, including with vegetation clearance and screens over gutters and vents to block flying embers and synthetic roofs are continuing to be destroyed by wildfires. *See* Should Development Be Extinguished on California's Fire-Prone Hills?, Center For Investigative Reporting, July 3, 2018, attached as Exhibit B. The author explains,

Conventional wildfire planning suggests that newer homes, built to tougher fireproofing standards, would fare better than older ones. But an analysis of Cal Fire data from the Tubbs Fire defies that logic: A building code update added new fireproofing standards for homes in the wildland-urban interface in 2008. Yet, according to the Cal Fire inventory, 56 of the 64 homes built after that year in the Tubbs Fire footprint were destroyed.

In a separate report prepared by Licensed Fire Protection Engineer Christopher Lautenberger with REAX Engineering, Lautenberger explains that a study of the 2017 Thomas Fire in Ventura and Santa Barbara counties found that the majority of the structures that were damaged or destroyed were of fire-resistant construction, had multipane window, and had vent screens. *See* Wildfire Report, C. Lautenberger, REAX Engineering, April 27, 2020 at 6, attached as Exhibit C. Lautenberger concludes that the numbers from the Thomas Fire losses illustrate that ignition resistant construction are not sufficient defense against extreme wildfires. *Id*.

C. The EIR Fails to Adequately Analyze or Mitigate the Project's Impacts on Emergency Access, Evacuation and Emergency Response.

We explained in our July 29 and December 1st letters to the County that the EIR lacks adequate evidence or analysis in support of its conclusion that the Project would have less than significant impacts on emergency access, evacuation, and response. The EIR's analysis of emergency access, evacuation, and response remains inadequate for all of the reasons identified in our prior letters. However, we will not reiterate our prior comments here, except to elaborate further on the Project's inappropriate reliance on Forest Route 1S03 as the primary means of access to the site.

As we noted in our prior letters to the County, the EIR's discussion of emergency access is flawed because the EIR fails to accurately describe Forest Route 1S03 or

evaluate the Project's proposed use of the road. Forest Route 1S03 is a 22-foot wide Forest Service route with no shoulders ending in a cul-de-sac. Several nearby residences rely on Forest Route 1S03 as their sole means of access to SR-120, and their only evacuation route. The applicant proposes that access to the Project be from this Forest Service route rather than from the main highway, SR-120. Forest Route 1S03 was never intended for commercial access, and is not designed to provide sufficient emergency access or evacuation capacity for a development on the scale of the proposed Project.

The DEIR acknowledges that the United States Forest Service (USFS) has jurisdiction over Forest Route 1S03. DEIR at 4.6-1, 4.15-6. The FEIR asserts that "County staff have communicated with the U.S. Forest Service throughout the EIR process and are unaware of any concerns regarding the proposed access points or use of the roadway." FEIR at 5-70. However, the EIR fails to acknowledge that the Project's use of Forest Route 1S03 requires approval from the USFS. The EIR does not identify USFS as a "responsible agency" with approval power over the use of the road. DEIR at 3-29. Because it must approve the Project's route of Forest Route 1S03, USFS is a "responsible agency" under CEQA, and the EIR must identify it as such. Guidelines § 15381.

Even if the County believes that USFS will approve use of the road, such action is not within the jurisdiction of the County. As explained in our prior letters, the EIR fails to support its conclusion that the Project's reliance on Forest Route 1S03 as the primary means of access to the Project site would not have significant impacts on traffic transportation, evacuation, emergency response, and emergency access. The County must find that the Project's reliance on Forest Route 1S03 would have significant impacts requiring mitigation, and must find that the responsibility for mitigating those impacts lies with USFS. Pub. Res. Code § 21081(a)(2); Guidelines § 15091(a)(2).

Moreover, federal regulations preclude the use of Forest Route 1S03 for commercial developments such as the Project. Federal law prohibits "special use authorizations," including permits, leases, and easements, for National Forest System roads and highways that are "maintained in connection with commercial recreation facilities." 36 C.F.R. § 251.53(l)(6) ("Section 251"). The Project footprint would be located in an area that is zoned Commercial Recreation (C-K), and the Project is clearly a commercial recreational facility. DEIR at 3-3, 3-6, 4.1-3. Therefore, per Section 251, the USFS may not approve the Project, which would permit the special use of Forest Route 1S03—a National Forest System road—for a commercial recreation facility.

D. The EIR Fails to Adequately Analyze or Mitigate the Project's Noise Impacts.

We commissioned an independent review of the FEIR's noise impact analysis by professional acoustic and vibration consultants. *See* Papadimos Group Report re: Terra Vi Lodge Project FEIR, December 23, 2020, attached as Exhibit D. That independent review concluded that the FEIR does not cure the deficiencies in the DEIR's noise analysis, and remains inadequate. (The Papadimos Group had previously identified many flaws in the DEIR's noise analysis in a July 28, 2020 report, attached to our July 29, 2020 letter to the County and hereby incorporated by reference).

1. The EIR Does Not Adequately Describe Existing Noise Receptors and Uses Inadequate Significance Criteria for Noise.

We explained in our July 29 letter that the DEIR failed to identify the location of nearby sensitive noise receptors that would be impacted by Project noise. The FEIR has added an 80-page supplemental noise analysis, including analyses of 15 noise-sensitive receptors near the Project site. See FEIR Appendix L. These receptors includes 12 homes to the immediate north of the project site and three homes south of the site. See FEIR at 5-99. The supplemental analysis concludes that noise impacts on these receptors (including generator noise and ambient noise) would be significant before mitigation, but would be mitigated to a level below significance. Id. The addition of this substantial amount of completely new information about the Project's noise impacts and the FEIR's identification of new significant impacts on nearby noise-sensitive receptors require that the EIR be recirculated.

Moreover, the FEIR still fails to identify all noise sensitive receptors in the Project vicinity and does not properly describe the characteristics of these receptors. While the EIR lists 15 nearby residential structures as receptors, it must also consider the Project's noise impacts on other nearby noise-sensitive land uses. All noise sensitive receptors need to be clearly identified, including establishing existing ambient conditions by attended and unattended noise monitoring. The Project's noise impacts should be measured at the Project boundaries and on all surrounding properties, not just at nearby residential structures. Papadimos Group Report, Exhibit D at 2. General Plan Noise Element Table 5C states that stationary noise standards "should not be exceeded as determined at the property line of the noise-sensitive land use." The FEIR contends that rural residential uses should not be considered noise-sensitive, but the General Plan provision it cites (Noise Element Table 5C) does not support this assertion. FEIR at 5-101. General Plan Table 5C provides a list of examples of uses that are considered noise-sensitive, including "urban residential" uses, but does not indicate that this list is

exhaustive and does not expressly exclude rural residential uses from the list. Residents of nearby homes will be affected by Project noise while outside in their yards, so noise impacts should be evaluated at their property lines, not only at the location of their homes. Similarly, General Plan Tables 5A (transportation noise) and 5B (aircraft noise) state that "[w]here the location of outdoor activity areas is unknown, the exterior noise level standard shall be applied to the property line of the receiving land uses." Users of adjacent National Forest land may be impacted by Project noise while engaged in outdoor recreational activities, so the EIR must evaluate Project noise levels at the property line of the National Forest land.

The EIR relies on inadequate significance criteria to evaluate the Project's noise impacts. As explained in the Papadimos Group's July 28, 2020 report and our July 29 letter, the 5dB significance standard for ambient noise increases used in the EIR is too permissive, and a 3dB increase in ambient noise would be a more appropriate standard for determining the significance of Project impacts. See Comment #ORG6, FEIR at 5-103. In response to this comment, the FEIR asserts that "the noise analysis in the Draft EIR appropriately utilizes standards established in the Tuolumne County General Plan," and that the Project's noise impacts remain less than significant after mitigation. FEIR at 5-103, 5-104.² General Plan Noise Element Table 5D applies either a 1.5 dB, 3dB or 5dB significance threshold for noise increases, depending on whether pre-project ambient noise levels are over 65dB, between 65 and 60dB, or less than 60dB, respectively. DEIR at 4.12-6. However, as discussed in our July 29 letter, the EIR does not adequately measure baseline ambient noise levels at the site, making it impossible to reliably apply this standard. Furthermore, the Project's asserted compliance with General Plan standards does not mean that the Project's noise impacts would be less than significant. See Communities for a Better Environment v. Cal. Resources Agency, 103 Cal. App.4th at 111-14 (compliance with regulations cannot displace an agency's separate obligation to consider whether a project's environmental impacts are significant); Californians for Alternatives to Toxics, 136 Cal.App.4th at 15-17 (same); Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal. App. 4th 1099, 1108-09 (environmental effect may be significant despite compliance with regulatory requirements). Even if the 5dB significance threshold for ambient noise increases is applied, the EIR must measure compliance with that threshold at the property line of all neighboring receptors, as required by General Plan Table 5C, and not merely at residential property lines, as discussed above. Finally, the EIR's failure to identify the

² The FEIR's response to this comment ignores the fact that the EIR found the noise impacts from the Project helipad to be significant and unavoidable even after mitigation, as discussed below. FEIR at 3-19: 3-20.

location of all sensitive noise receptors near the Project site makes it impossible to meaningfully evaluate Project impacts.

2. The EIR Fails to Adequately Analyze or Mitigate the Project's Operational Noise Impacts.

The EIR lacks support for its conclusion that noise impacts resulting from Project-generated traffic or cumulative traffic would be less than significant. The FEIR acknowledges that noise increases from Project-generated traffic along Forest Route 1S03 would exceed the County General Plan cumulative noise increase significance criteria. FEIR at 5-105. The FEIR asserts that this noise increase from Project-generated traffic would be less than significant, because cumulative traffic noise levels along Forest Route 1S03 would be below the General Plan's exterior noise level standard for traffic noise affecting residential uses and because interior noise levels at nearby residences would be below the General interior noise level standard for residential uses. FEIR at 5-106. However, as explained above, the Project's asserted compliance with these General Plan standards does not mean that the Project's noise impacts would be less than significant. Moreover, as noted above, the FEIR should have assessed on-site traffic noise at the Project property boundaries, and not just at the nearest surrounding residential structures, to determine the significance of the increased noise caused by the Project. Papadimos Group Report, Exhibit D at 2.

The FEIR's analysis of other operational noise sources also remains inadequate. The EIR finds that noise impacts from the Project's maintenance yard and combined onsite operational noise would be significant before mitigation, but less than significant after mitigation. DEIR at 4.12-15, 4.12-18, 4.12-19; FEIR at 3-18, 3-19. However, the EIR's analysis does not provide adequate support for this conclusion. The area is an exceptionally quiet, residential area and the introduction of commercial uses will forever alter these conditions with ongoing noise disturbance including back up beepers, noise from air conditioning and ventilation systems, and project traffic, among other sources of noise. As discussed above, the EIR should have analyzed all operational noise impacts at the Project property boundaries and not just at the nearest surrounding residential structures to determine whether the increase over ambient noise levels would be significant. Papadimos Group Report, Exhibit D at 2. The EIR should have conducted this analysis for noise generated from parking area activities, truck deliveries, loading dock activities, mechanical equipment, refuse collection, swimming pool and BBQ areas, the maintenance yard and generator, grounds maintenance, and any other Project uses that would generate noise that is out of character with the surrounding noise sensitive uses. Id. Moreover, the FEIR's analysis of noise from the maintenance yard building should have addressed cumulative noise for multiple activities occurring concurrently and

considered any openings for ventilation that would allow for noise to escape to the outdoors. Papadimos Group Report, Exhibit D at 3.

The EIR lacks evidentiary support for its conclusion that the proposed mitigation measures for operational noise would be effective. The FEIR revises Mitigation Measure NOI-1.1 to increase the height of the noise barrier around the Project's maintenance yard from 8 feet to 11 feet. FEIR at 5-111, 5-112. However, the FEIR fails to require that the maintenance yard building's noise barrier be constructed of masonry or concrete, stating that a wood barrier would also be acceptable. Wood barriers tend to degrade over time and are generally ineffective where barriers are over 6 feet in height. Papadimos Group Report, Exhibit D at 3. The revised Mitigation Measure NOI-1.1 also states that "a custom engineered generator enclosure may be required in order to achieve an overall equipment noise level of 70 dB at 50 feet." FEIR at 5-113. However, because sound enclosures for generators are typically rated at or below 74 dBA at 23 feet under free field conditions, the FEIR should have specified the generator's correct noise performance. Papadimos Group Report, Exhibit D at 3. Until these issues are corrected, there is no assurance that Mitigation Measure NOI-1.1 would reduce noise impacts to a less than significant level. The FEIR does not provide sufficient evidence that these new mitigation measures would be effective, nor does it evaluate the possible environmental impacts that may result from these mitigation measures themselves. Like the FEIR's voluminous new noise impact analysis and identification of new significant impacts on nearby noise-sensitive receptors, the revision of these mitigation measures requires that the EIR be recirculated.

The FEIR asserts that a mitigation measure limiting truck deliveries and refuse collection activities to daytime hours only "would result in combined project noise levels from normal on-site operations [achieving] a state of compliance with the applicable Tuolumne County General Plan cumulative noise level increase criterion, and therefore result in an impact finding of less than significant." FEIR at 5-115. However, the mere fact that the Project's noise level increase would assertedly comply with these General Plan standards does not mean that its impact would be less than significant. *See Communities for a Better Environment*, 103 Cal.App.4th at 111-14; *Californians for Alternatives to Toxics*, 136 Cal.App.4th at 15-17; *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1108–09.

3. The EIR Does Not Adequately Analyze or Mitigate the Project's Construction Noise Impacts.

The DEIR failed to adequately analyze or mitigate noise impacts from Project construction, and the FEIR does not remedy this deficiency. The FEIR acknowledges that

the DEIR omitted analysis of potential construction noise impacts from excavators, foundation work, and erection of structures. FEIR at 5-117. However, the EIR asserts that because construction noise would be short-term and intermittent, and because the Project would be required to comply with the construction-related noise criteria and implementation measures established in Policy 5.A.5 of the Tuolumne County General Plan, construction noise impacts would be less than significant. FEIR at 5-116, 5-119; DEIR at 4.12-20. Again, as explained above, the Project's asserted compliance with General Plan standards does not mean that the Project's noise impacts would be less than significant. In fact, construction of the Rush Creek Lodge took nearly two years. This duration is not short-term or intermittent. Even if the construction phase would not extend for a two-year period, the assertedly short duration or intermittency of construction noise also does not mean that impacts would be less than significant.

The EIR must be revised to actually analyze construction noise impacts, and to mitigate those impacts if they are found to be significant. Construction noise monitoring should be required at the closest sensitive receptors to the active construction areas, including notification to an appointed construction coordinator when set noise limits have been exceeded so that construction methods can be modified appropriately. Papadimos Group Report, Exhibit D at 4. Pile driving and blasting should not be allowed during Project construction unless it can be adequately demonstrated that associated noise and vibration levels would not significantly impact nearby sensitive receptors. *Id.*

4. The EIR Fails to Adequately Analyze or Mitigate Noise Impacts From the Project's Helipad.

Like the DEIR, the FEIR fails to adequately analyze the Project's helicopter noise impacts. Typically, as part of the application process for helipads, an acoustic study would be required to be submitted to relevant regulatory agencies, including the California Department of Transportation (Caltrans) Division of Aeronautics. Papadimos Group Report, Exhibit D at 3. In order to properly evaluate helicopter noise impacts, the FEIR should have included a comprehensive acoustic study listing types of helicopters to be used, frequency of anticipated flights, approach and departure flight paths, and climbing and descent rates. *Id.* The study should set clear acceptance acoustic criteria, and include detailed analysis results with noise contour maps. *Id.* Until such detailed information is made available it is not possible to evaluate the noise effects of the Project's helicopter operations.

The EIR does not include any acoustic study of helicopter noise from the Project, and its analysis falls far short of the standards required by CEQA. Instead of providing a full analysis of helicopter noise, the FEIR asserts that "it is difficult to accurately quantify

with certainty the future noise exposure associated with the proposed emergency helipad at the nearest existing sensitive uses." FEIR at 5-121. The EIR notes a generic noise level associated with operation of one particular helicopter model, but makes no attempt to calculate the actual noise impacts on nearby residences from the Project's helipad. The FEIR asserts that "assuming that only a small-percentage of emergency response incidents would require a helicopter, use of the helipad for the hotel would be very rare." *Id.* However, the EIR provides no evidence in support of this assumption. Moreover, the FEIR acknowledges that "the project proposes to make the helipad available to the greater community for emergency response for non-project incidents and, therefore, it could be used for non-project service calls as well." Despite this, the FEIR fails to analyze the additional noise impacts that would result from use of the Project helipad for emergency response calls unrelated to the Project. The EIR's extremely limited analysis does not provide sufficient information to allow for meaningful review of noise impacts from the proposed helipad operation.

The EIR's mitigation for the helipad's noise impacts is also inadequate. The FEIR revises Mitigation Measure NOI-3.1 to require the relocation of the Project helipad to another area of the Project site that is further from residential properties, "if another feasible location can be identified." FEIR at 3-19; 5-122 (emphasis added). The FEIR proposes an alternative location west of Forest Route 1S03 close to its intersection with SR-120, but states that "[t]he feasibility of this alternate location would be determined through the design and approvals process for the helipad, including input from permitting agencies." FEIR at 3-19. In effect, the FEIR improperly seeks to defer implementation of this mitigation measure until after Project approval. The EIR must determine whether the alternative helipad location is feasible, and analyze noise and other impacts associated with that alternative location, before the Project can be approved. If the alternative location is later determined to be infeasible, the helipad's noise impacts to neighboring residences would remain unmitigated.

Regardless of the helipad's location, the EIR does not provide adequate support for its conclusion that the helipad's noise impacts would be significant and unavoidable, and fails to consider all feasible mitigation measures. A lead agency must adopt all feasible mitigation measures to reduce a project's significant impacts to a less than significant level. King & Gardiner Farms v. County of Kern (2020) 45 Cal.App.5th 814, 852. Pub. Resources Code § 21002.1, subd. (b) (agencies must mitigate significant effects of projects they approve "whenever it is feasible to do so"). Findings regarding the feasibility or infeasibility of mitigation measures must be supported by substantial evidence. Masonite Corp. v. County of Mendocino (2013) 218 Cal.App.4th 230, 237; Save Panoche Valley v San Benito County (2013) 217 Cal.App.4th 503, 522. Our July 29

comment letter called for the EIR to consider helicopter noise mitigation measures such as limitations on flight paths or a prohibition on nighttime flights except during dire emergencies. The FEIR summarily rejects these proposed mitigation measures as unreasonable, without explaining *why* they would not be feasible. FEIR at 5-123. Without any explanation, the FEIR asserts that "mitigation measures such as limitations on aircraft models and frequency of flights per day (i.e., number per day and time of day) are generally considered to be infeasible in application," and therefore concludes that helicopter noise impacts are significant and unavoidable. FEIR at 3-20. The EIR's failure to support its conclusion that impacts are unavoidable violates CEQA.

We also proposed in our July 29 letter that the EIR consider retrofitting nearby residences with sound-resistant windows and doors and/or upgraded ventilation systems as a helicopter noise mitigation measure. The FEIR provides no response at all to this proposed mitigation measure, simply referring to another response which makes no mention of this type of mitigation. FEIR at 5-123. Not only does the FEIR fail to explain why soundproofing upgrades of nearby homes would not be a feasible mitigation measure, it entirely fails to respond to this comment. This failure to evaluate feasible mitigation measures or respond to comments on this issue is particularly egregious in light of the FEIR's conclusion that helicopter noise impacts on neighboring homes are significant and unavoidable. The EIR must be revised to evaluate the feasibility of residential soundproofing as a mitigation measure.

E. The EIR's Analysis of the Project's Impact on Greenhouse Gas Emissions is Inadequate.

Reducing GHG emissions to minimize the harms from climate change is one of the most urgent challenges of our time. Scientific evidence continues to mount that we are not only facing a true climate crisis, but also rapidly running out of time to confront it. The law is clear that lead agencies must thoroughly evaluate a project's impacts on climate change under CEQA, and identify and adopt feasible mitigation measures to address project-specific or cumulative impacts. See Communities for a Better Env't v. City of Richmond (2010) 184 Cal.App.4th 70, 89-91; CEQA Guidelines § 15064.4.

The EIR concludes that the Project would generate a substantial net increase in greenhouse gas ("GHG") emissions, and that GHG impacts from Project construction and operation would be significant and unavoidable even after mitigation. DEIR at 4.8-11. The EIR estimates that Project construction would generate 1,032 metric tons of carbon dioxide equivalent ("MTCO2e") over a two-year construction period, and that annual operational GHG emissions from the Project would be 1,948 MTCO2e. DEIR at 4.8-10.

However, the EIR substantially understates the Project's operational GHG emissions attributable to Project-generated motor vehicle traffic. Moreover, the EIR's proposed mitigation measures are inadequate, and the document does not provide evidence that the Project's GHG impacts are unavoidable or could not be effectively mitigated.

1. The EIR Underestimates GHG Emissions from Vehicle Miles Travelled.

The EIR estimates that annual operational GHG emissions from the Project would be 1,948 MTCO2e. DEIR at 4.8-10. The EIR states that approximately 75% of this total (1,465 MTCO2e) would be from motor vehicle travel. Id. The amount of Projectgenerated GHG emissions from motor vehicles is a direct consequence of the vehicle miles travelled ("VMT") by Project-generated traffic (as well as other factors such as vehicle fuel efficiency). However, as we explained in our September 16, 2020 letter to the County, the EIR's traffic analysis is significantly flawed. That letter attached a report from Griffin Cove Transportation Consultants ("GCTC"), which concluded that the EIR's VMT analysis substantially underestimated the amount of Project-generated traffic, including number of trips and average trip length. See GCTC Report on Terra Vi Project, September 15, 2020, attached to September 16, 2020 letter from Laurel Impett to Quincy Yaley, at 11-13. This failure is exacerbated by the EIR's failure to fully account for staffing needs. By undercounting the quantity and length of Project-generated trips, the EIR understated the VMTs associated with the Project. That inaccurate VMT estimate in turn renders the EIR's GHG calculations unreliable. Because Project VMTs are an important determinant of the Project's operational GHG emissions from motor vehicles, the EIR's underestimate of VMTs results in a similar undercount of the Project's operational GHG emissions. The EIR must be revised to address this deficient GHG analysis, and then recirculated.

2. The Proposed GHG Mitigation Measures are Inadequate, and the EIR Does Not Provide Evidence that GHG Impacts Are Unavoidable.

Enforceable, concrete commitments to mitigation are required under CEQA. An EIR is inadequate where proposed mitigation measures are so undefined that it is impossible to evaluate their effectiveness. San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61, 79. Moreover, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments." CEQA Guidelines § 15126.4(a); King & Gardiner Farms, 45 Cal.App.5th at 852. The record must also contain substantial evidence of the

measures' feasibility and effectiveness. Sacramento Old City Assn. v. City Council of Sacramento (1991) 229 Cal. App.3d 1011, 1027. Here, the EIR's GHG mitigation measures fail to meet these standards. The EIR concludes that the Project's GHG emissions impacts would be significant and unavoidable even after mitigation. DEIR at 4.8-11. As explained below, the EIR's proposed GHG mitigation measures are entirely inadequate, and the EIR does not provide sufficient evidence that the Project's GHG impacts are unavoidable.

The EIR proposes two mitigation measures calling for the applicant to purchase carbon credits to offset Project emissions from construction and operational emissions, respectively. Id. (Mitigation Measures 1.1b and 1.2b). However, these measures do not actually require the applicant to purchase emissions credits, instead disingenuously claiming that "it is unknown if local carbon credit offsets would be available at the time the project is implemented." Id. (Mitigation Measure 1.1b). There are and will continue to be sufficient carbon offset credits available for purchase in California. See Stillwater Associates, Future Supply and Demand of California Carbon Offsets, October 17, 2018, attached as Exhibit E. A requirement to purchase carbon offset credits may be used as mitigation for GHG emissions impacts under CEQA. Guidelines, § 15126.4, subd. (c)(3); Golden Door Properties, LLC v. County of San Diego (2020) 50 Cal. App. 5th 467, 506; see also Settlement Agreement between Center for Biological Diversity et al. and Newhall Land and Farming Company et al., September 22, 2017, attached as Exhibit F, at 3-4. Here, however, the EIR's mitigation measures reject the possibility of requiring the Project to purchase these credits, instead asserting that "the CEQA legal adequacy of applying statewide or national offsets to individual local projects has been questioned" and that "the County General Plan places a higher priority on implementing local mitigation measures before application of offsets. As a result of the unknown availability of local carbon credits, mitigation measures needed to eliminate any net increase in GHG emissions are considered to be not available." Id. In fact, Mitigation Measures 1.1b and 1.2b do not require anything at all, and are therefore inadequate under CEQA. CEQA requires that mitigation measures contain binding and enforceable commitments. King & Gardiner Farms, 45 Cal.App.5th at 852.

The EIR's assertion that feasible mitigation measures to offset the Project's GHG emissions are unavailable is incorrect and entirely unsupported by evidence. On the contrary, as noted above, carbon emissions offset credits are widely available for purchase in California. The EIR's claim that emissions offsets are not available as a mitigation measure because the General Plan prioritizes local mitigation measures is nonsensical. General Plan Implementation Program 18.A.a calls for the County to "[e]stablish [a] local carbon offset program" and to "[r]equire that, where feasible, on-site

design features will be utilized to reduce GHG emissions and VMT before a development applicant may purchase off-site mitigation credits or carbon off-sets." However, nothing in the General Plan prohibits the use of non-local emissions offsets generated elsewhere in California, and the Plan's preference for GHG reduction via on-site design features does not mean that offset purchases are unavailable or infeasible as a mitigation strategy. To the extent the EIR suggests that non-local or "statewide" offsets cannot be used to mitigate the Project's GHG emissions under CEQA, that legal contention is unsupported. See Golden Door Properties, 50 Cal.App.5th at 503 (declining to decide whether a mitigation measure allowing in-county emissions to be offset with out-of-county reductions was consistent with a county General Plan).

It is completely feasible to require the Project to purchase emissions credits to offset Project GHG emissions, and the County must adopt that requirement as a mitigation measure. The EIR's mitigation measures must include a quantifiable and enforceable obligation to purchase GHG emissions credits. General Plan Implementation Program 18.A.a calls for the County's Climate Action Plan to "[r]equire all mitigation relying on offsets of GHG emissions to be quantifiable, enforceable, and additional to any GHG reductions that otherwise would have occurred." To ensure consistency with the General Plan, the EIR's use of GHG offsets must be quantifiable and enforceable. State law establishes specific standards for GHG offsets used in California's Cap-and-Trade program: emissions reductions from projects producing offset credits must be real, permanent, quantifiable, verifiable, and enforceable, as well as "additional" to any reductions required by law or that would have occurred anyway for any other reason. See Health & Safety Code § 38562(d)(1) & (2). All of these requirements apply equally to GHG offsets used as CEQA mitigation. *Golden Door Properties*, 50 Cal.App.5th at 506-507.

The EIR also fails to analyze additional feasible on-site mitigation. The EIR includes mitigation measures requiring the use of electric construction equipment "where feasible," and requiring the use of electric landscaping equipment in Project operations. DEIR at 4.8-11 (Mitigation Measures 1.1a, 1.2a). The EIR acknowledges that these measures would not be sufficient to reduce Project construction and operational GHG emissions to a less than significant level. *Id.* If a project would have significant impacts, the lead agency must adopt all feasible mitigation measures to reduce the impact to a less than significant level. *King & Gardiner Farms*, 45 Cal.App.5th at 852. The insufficiency of the EIR's proposed measures does not absolve the County of its obligation to adequately mitigate the Project's significant environmental impacts where feasible. Pub. Resources Code, § 21002; *see id.*, § 21002.1, subd. (b) (agencies must mitigate significant effects of projects they approve "whenever it is feasible to do so"). The EIR

cannot simply assert that impacts are unavoidable in order to circumvent CEQA's requirement to mitigate Project impacts. The EIR must adopt additional feasible measures to mitigate the Project's GHG impacts.

For example, the EIR estimates that the Project's hotel, market, and employee housing would collectively consume 41,225 gallons of propane gas per year for heating and cooking facilities. DEIR at 4.5-9; 4.17-31. Propane is a fossil fuel whose combustion for heating or cooking generates GHG emissions. *See* U.S. Energy Information Administration, Carbon Dioxide Emissions Coefficients by Fuel, attached as Exhibit G. The EIR should consider on-site mitigation measures to reduce or eliminate the Project's propane consumption, e.g. by powering heating and cooking equipment with electricity generated from renewable sources wherever possible. It is entirely feasible for the EIR to require that the Project use all-electric heating and cooking appliances, such as electric heat pumps and electric or induction cooking ranges. *See* Greentech Media, So, What Exactly is Building Electrification?, June 5, 2020, attached as Exhibit H; Building Decarbonization Coalition, A Roadmap to Decarbonize California Buildings, February 12, 2019, attached as Exhibit I.

II. Approval Of the Project Would Violate the State Planning And Zoning Law.

The State Planning and Zoning Law (Gov't Code § 65000 et seq.) requires that development decisions be consistent with the jurisdiction's general plan. This includes the requirement that zoning must be consistent with the general plan. Gov't Code § 65860. As reiterated by the courts, "[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens for Honest Government v. Napa County Bd. of* Supervisors (2001) 91 Cal.App.4th 342, 379. The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Id.* Here, the proposed Project does more than just frustrate the General Plan's goals. For the reasons discussed in our December 1, 2020 comment letter to the Planning Commission, the Project is directly inconsistent with

numerous provisions in the Tuolumne County General Plan, including goals and policies related to wildfire, emergency access, evacuation, and fire protection services. Because of these inconsistencies, approval of this Project would violate State Planning and Zoning Law.

III. The DEIR failed to include a Mitigation Monitoring and Reporting Program as required by the County code.

The DEIR for the Project failed to include a Mitigation Monitoring and Reporting Program (MMRP) as required by County code section 17.72.220. While the FEIR does include an MMRP in Appendix R, this is not sufficient to comply with the code. Tuolumne County Code section 17.72.220 provides that "[m]onitoring and/or reporting plans for projects for which an EIR is prepared shall be included in the *draft* EIR. *The plan shall be subject to the same public review and comment afforded to all other portions of the EIR*." (emphasis added). By failing to include an MMRP in the DEIR, the County violated its own code and deprived the public of a full opportunity to review and comment on the MMRP along with the rest of the DEIR.

IV. Failure to Provide Adequate Notice.

Government Code section 65090 requires public notice of a hearing on an appeal of the Planning Commission's decision be published 10 days prior to the hearing in a paper of general circulation in the County. Save Sawmill Mountain's review of the Tuolumne County Press Democrat indicates that notice of the December 29 hearing on its appeal was not published. This apparent failure also violates Government Code section 54956. Moreover, the County website for the Terra Vi project continues to list December 18 as the date of the hearing on the Terra Vi appeal.

https://www.tuolumnecounty.ca.gov/1158/Terra-Vi-Lodge-Yosemite. Finally, it also appears that the County's setting of a special meeting—generally identified as a meeting addressing a specific topic—is inappropriate. The County has also included on the agenda matters that are unrelated to the Terra Vi project, thereby undermining the idea that this matter required special attention that could not be addressed at a regular meeting of the board, which could and should have been scheduled after the new board is seated.

This failure to provide adequate notice violates the requirements of the Government Code and is inconsistent with the requirement to provide adequate notice to the public generally regarding this appeal. Consequently, the matter should be re-noticed and set for hearing more than 10 days after adequate notice is provided.

V. Conclusion

For all of the foregoing reasons, as well as the reasons presented in our prior letters and other public and expert comments, and in light of the evidence in the record, the Board of Supervisors should uphold the appeal, reverse the Planning Commission's decision, and deny the proposed Project. In any event, the Board cannot lawfully approve this Project without first preparing and recirculating a thorough, accurate, and complete EIR that discloses, analyzes, and provides mitigation for the Project's impacts to this unique environment.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Ellison Folk

Patrick Woolsey

Father Wooder

List of Exhibits:

- Exhibit A: Letter from Brian Anderluh re: Appeal of Planning Commission's Approval of the Yosemite Under Canvas Project and Terra Vi Project, December 14, 2020
- Exhibit B: Should Development Be Extinguished on California's Fire-Prone Hills?, Center For Investigative Reporting, July 3, 2018, URL
- Exhibit C: Wildfire Report, C. Lautenberger, REAX Engineering, April 27, 2020.
- Exhibit D: Papadimos Group Report re: Terra Vi Lodge Project FEIR, December 23, 2020.

Exhibit E: Stillwater Associates, Future Supply and Demand of California Carbon

Offsets, October 17, 2018.

Exhibit F: Settlement Agreement between Center for Biological Diversity et al. and

Newhall Land and Farming Company et al., September 22, 2017.

Exhibit G: U.S. Energy Information Administration, Carbon Dioxide Emissions

Coefficients by Fuel.

Exhibit H: Greentech Media, So What Exactly is Building Electrification?, June 5,

2020.

Exhibit I: Building Decarbonization Coalition, A Roadmap to Decarbonize California

Buildings, February 12, 2019.

cc: Mary Beth Campbell, Save Sawmill Mountain