



4/21/2020

Sent via email and FedEx

County of Lake
Community Development Department
Attn: Mark Roberts, Principal Planner
255 N. Forbes Street
Lakeport, CA 95453
guenocvalleycomments@lakecountyca.gov

Re: Guenoc Valley Mixed-Use Planned Development Project Draft Environmental Impact Report, SCH No. 2019049134

Dear Mr. Roberts:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the Draft Environmental Impact Report (“DEIR”) for the Guenoc Valley Mixed-Use Planned Development Project (“the Project” or “Proposed Project”). The Proposed Project is anticipated to build 450 resort and 400 hotel units, luxury resort amenities, 1,400 residential estates, 500 workforce cohousing units and extensive infrastructure in an undeveloped area of Southwest Lake County. The Project will degrade the current ecosystem on the Project site as well as negatively impacting sensitive biological resources in the area surrounding the Project. In addition to the ecological damage of paving over pristine natural habitat, the Project will put people in harm’s way by building in an area prone to wildfire. The Center has reviewed the DEIR closely and is concerned that the DEIR fails to adequately disclose, analyze and mitigate the Project’s potentially significant impacts on biological resources, greenhouse gas (“GHG”) emissions, wildfire risk and water resources, among other impacts. For these reasons, detailed below, we urge that the DEIR be revised to better analyze and avoid the Project’s significant environmental impacts.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people of California, including Lake County.

I. The Project Description Fails to Comply with CEQA

Under CEQA, a “project” is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222 (citing CEQA Guidelines § 15378, subd. (a).) An “accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Cnty. of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655 (project description held unstable and misleading) [hereinafter “*San Joaquin Raptor*”].) “However, a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” (*San Joaquin Raptor*, 149 Cal.App.4th, at 655.)

An inaccurate or truncated project description is prejudicial error because it fails to “adequately apprise all interested parties of the true scope of the project.” (*See City of Santee v. Cnty. of San Diego* (1989) 214 Cal.App.3d 1438, 1454-55 [hereinafter “*City of Santee*”].) “Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” (*San Joaquin Raptor*, 149 Cal.App.4th, at 655.)

Here, the Project Description and other sections of the DEIR present a convoluted picture of current and planned vineyards within the Project site. Readers of the DEIR are denied a clear understanding of the Project’s scope and impacts because although a significant portion of the Project site is slated to be converted to vineyards, those areas are not considered part of the Project by the DEIR. While the DEIR notes the areas of potential vineyard conversion are subject to a previous environmental analysis, the vineyard areas are still described as being within the Project site and are discussed throughout the DEIR. (DEIR at 2-5; 3.4-38.) Contrasted with areas under different ownership within the Project boundary that are explicitly “not in Project site” (DEIR at 2-18), the areas of potential vineyard conversions are included, despite the DEIR’s assertion that no additional vineyards are part of the Project (DEIR at 2-5). The 2009 FEIR did not provide specific plans or phasing for vineyard development covered by that review, so the DEIR must clearly explain how that previous project interacts with the Proposed Project.

In addition to failing to properly discuss the status of the potential vineyard areas within the POU (“Places of Use”) evaluated under a previous environmental review, the DEIR’s description of the Proposed Project is inadequate because it provides conflicting accounts of how many acres will be converted to vineyard. Failure to discuss the Project’s impacts in the context of yet-to-be-developed vineyard areas undermines the DEIR’s own impact and mitigation analysis. The the phasing of vineyard development must be established and disclosed so that the Project’s construction-related impacts can be accurately assessed. If adjacent areas are simultaneously developed under previous vineyard approvals and the Proposed Project, construction impacts are magnified, and mitigation planned without an understanding of vineyard conversion plans will likely be insufficient. These errors leave the public and decision-makers in the dark over the true scope of the Project and its effect on the environment, in violation of CEQA. (*San Joaquin Raptor*, 149 Cal.App.4th, at 655.)

Similarly, the DEIR fails to clarify whether the potential vineyard areas, under lease by a third party, will require additional discretionary approval before construction can begin, and fails to discuss how subsequent environmental review, if needed, will interact with the DEIR's analysis. The DEIR references the 2009 FEIR for the Guenoc Water Rights Modification Project ("2009 FEIR"), which expanded the POU for surface water within the Project site. (DEIR at 2-11.) Under the 2009 FEIR, the POU was expanded to allow for up to 2,765 acres of vineyards to be planted. (See DEIR at 3.4-48.) The expanded water rights thereafter "allowing for increased cultivation of vineyards within these identified plantable lands." (2009 FEIR at 3-7.) Critically, the 2009 FEIR stated that any vineyard development within the POU would be subject to Lake County's Vineyard Regulations and Guidelines, which require a discretionary approval of a grading permit and CEQA review. (2009 FEIR at 4.2-9; see also Lake County Code § 30-26.) The DEIR states that "large portions of the Guenoc Valley Site have been converted to vineyards or are already approved for future vineyard development." (DEIR at 3.4-4.) Therefore, the DEIR must describe the need for further discretionary approval before vineyard conversions can commence, without such a disclosure, stating that new vineyards are "already approved" is misleading to the reader of the DEIR.

The approval status of potential vineyard areas within the Project site must be made clear to the public and decision-makers, as any subsequent environmental review of vineyard conversions will involve analysis of wildlife and habitat impacts that could overlap this DEIR's analysis.

The 2009 FEIR required that 2,765 acres of open space be set aside to mitigate the impact of the vineyards allowed under the expanded POU (2009 FEIR at 2-41); that open space, outlined in the Open Space Preservation Plan ("OSPP"), is discussed as a feature of this Project (DEIR at 3.4-38). As noted above, vineyard conversions within the POU will need to undergo additional CEQA review before a grading permit can be issued, and this subsequent review may require environmental mitigation beyond what was required by the 2009 FEIR. New biological resource surveys of the potential vineyard sites could uncover the presence of special status plant and wildlife species that were not present in biological resource surveys conducted over ten years ago. The efficacy of the mitigation measures proposed under both the DEIR and the 2009 FEIR depends on up-to-date biological surveys that consider the scope of *all* potential habitat and wildlife impacts within the Project site.

Additionally, the 2009 FEIR did not analyze the greenhouse gas ("GHG") emissions impacts of clearing up well over 2,000 acres for new vineyards. Future site-specific analyses of individual vineyard projects may require mitigation that would need to take place on lands within the Project site that are already approved for development under this DEIR. In order to avoid future conflict, and to clearly present the environmental impacts to the Project site, the DEIR must clarify the status of potential vineyard conversions; and included the relevant analysis within the DEIR.

Beyond the need for clarification on the status of vineyard projects, the DEIR must remedy internal inconsistencies concerning how many acres of land are slated to become new vineyards. The Project Description section contains a map of existing and potential vineyard

expansion areas, noting 990 acres of currently planted vineyards, and 970 acres of potential vineyard locations. (DEIR at 2-5.) But then the Biological Resources section lists currently developed agriculture as 1,001.6 acres within the Project site (DEIR at 3.4-2), before stating that currently planted lands equal 1,681.6 acres (DEIR at 3.4-4). Further confusing the issue, the Water Supply Assessment (“WSA”) discusses amended lease lands (future project area vineyards not a part of the Project) as totaling 1,115 acres. (App. WSA at 48.) These internal inconsistencies render the DEIR misleading, undermining the public’s ability to comprehend the scope and magnitude of the Project’s impacts.

Lastly, the DEIR’s failure to properly discuss the relationship between the 2009 FEIR and the Proposed Project obscures the public’s ability to comprehend if the Project is satisfying CEQA’s essential requirement that environmental impacts be mitigated to the extent feasible. (Cal. Code Regs., tit. 14 [“CEQA Guidelines”] § 15126.4.) The DEIR notes that 2,765 acres “would remain” as open space, presumably acknowledging that this exact amount of acreage is already required under the 2009 FEIR. (DEIR at 2-40.) Many of the mitigation measures in the Biological Resources section require mitigation rations for impacted habitat types (see DEIR at 3.4-91), yet the DEIR fails to disclose where this mitigation will take place. As the DEIR appears to require no more open space than is already required under a previous CEQA project approval, the public can reasonably infer that the Proposed Project is essentially “double counting” mitigation. The DEIR must quantify impacts to specific habitat types, and clearly identify the amount and location of land that will be preserved in order to mitigate *this* Proposed Project’s impacts.

II. The DEIR Fails to Adequately Describe, Analyze, and Mitigate the Project’s Impacts to Biological Resources

A. The DEIR Fails to Adequately Describe, Assess, and Mitigate Impacts to Wildlife Movement and Habitat Connectivity

Roads and development create barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and roads can affect an animal’s behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function (Mitsch and Wilson 1996; Trombulak and Frissell 2000; van der Ree et al. 2011; Haddad et al. 2015; Marsh and Jaeger 2015; Ceia-Hasse et al. 2018). For example, habitat fragmentation from roads and development has been shown to cause mortalities and harmful genetic isolation in mountain lions in southern California (Ernest et al. 2014; Riley et al. 2014; Vickers et al. 2015), increase local extinction risk in amphibians and reptiles (Cushman 2006; Brehme et al. 2018), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al. 2010; Loss et al. 2014; Kantola et al. 2019), and alter pollinator behavior and degrade habitats (Trombulak and Frissell 2000; Goverde et al. 2002; Aguilar et al. 2008). Habitat fragmentation also severely impacts plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al. 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al. 2019). In addition, connectivity

between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes (Heller and Zavaleta 2009; Cushman et al. 2013; Krosby et al. 2018). Loss of wildlife connectivity decreases biodiversity and degrades ecosystems.

The DEIR fails to adequately describe the Project area's importance in wildlife connectivity. Lake County's heterogeneous habitats that include wetlands, streams, grasslands, scrublands, woodlands, and pine forest are important for wildlife connectivity and migration at the local, regional, and continental scale. Local connectivity that links aquatic and terrestrial habitats allows various sensitive species to persist, including state-protected foothill yellow-legged frogs (*Rana boylei*) and western pond turtles (*Actinemys marmorata*). At a regional scale, medium- and large-sized mammals that occur in Lake County, such as mountain lions (*Puma concolor*), bobcats (*Lynx rufus*), gray foxes (*Urocyon cinereoargenteus*), ring-tailed cats (*Bassariscus astutus*), and mule deer (*Odocoileus hemionus*), require large patches of heterogeneous habitat to forage, seek shelter/refuge, and find mates. These species are all known to occur in the Project area. And at a global scale, Lake County is an important stop for 200-300 resident and migratory bird species within the Pacific Flyway¹, a north-south migratory corridor that extends from Alaska to Patagonia. Lake County is a critical hub for local and global biodiversity; wildlife movement and habitat connectivity must be maintained throughout the County.

In an analysis that assessed connectivity between the Mayacama Mountains to the new Snow Mountain-Berryessa National Monument, Gray et al. (2018) identified the Project area as having high terrestrial permeability and terrestrial linkage potential as well as high riparian permeability and riparian linkage potential. In addition, the Project area was identified as a priority location for connectivity important for climate change resilience (Gray et al. 2018). None of this information is presented in the DEIR, despite such information being provided by Pepperwood Preserve in comments they submitted on the Notice of Preparation (DEIR Appendix NOP).

The Project's placement will subject the surrounding open space to urban edge effects and will likely impact key, wide-ranging predators, such as mountain lions and bobcats (Crooks 2002; Riley et al. 2006; Delaney et al. 2010; Lee et al. 2012; Vickers et al. 2015), as well as smaller species with poor dispersal abilities, such as song birds, small mammals, and herpetofauna (Cushman 2006; Benítez-López et al. 2010; Kociolek et al. 2011). Limiting movement and dispersal can affect species' ability to find food, shelter, mates, and refugia after disturbances like fires or floods. Individuals can die off, populations can become isolated, sensitive species can become locally extinct, and important ecological processes like plant pollination and nutrient cycling can be lost. In addition, linkages and corridors between major core habitat areas, like the Mayacama Mountains and Snow Mountain-Berryessa National Monument, are important to allow for range shifts and species migrations as climate changes. Therefore, it is imperative that thorough analyses are conducted to determine if Project activities will affect species movement. The DEIR fails to provide sufficient details and analyses to

¹ <https://lakecounty.com/blog/bird-watching/>

warrant their conclusion that Project impacts on habitat connectivity and wildlife movement would be mitigated to less than significant.

The DEIR fails to consider and adequately mitigate impacts to functional connectivity in the Project design and ignores the best available science. Effective, functional corridors are continuous (not fragmented by roads or other anthropogenic features), wide enough to overcome edge effects, dominated by native vegetation, and have equal or higher habitat quality than core habitat patches (Bennett et al. 1994; Brooker et al. 1999; Hilty and Merenlender 2004). However, edge effects of development and habitat degradation from the proposed Project would only result in low quality habitat that would not be able to support the area's biodiversity. Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency have been found to be biologically significant up to 300 meters (~1000 feet) away from development in terrestrial systems (Environmental Law Institute 2003). Yet the DEIR states that MM 3.4-19, which focuses only on fencing best practices, would reduce impacts to wildlife movement to less than significant. However, MM 3.4-19 does nothing to minimize impacts of vineyard exclusionary fencing, and only provides for 300-foot passageways between residential fences. This mitigation is insufficient and ignores the best available science.

B. The DEIR Fails to Adequately Assess and Mitigate Impacts to Sensitive Habitats

The DEIR undercuts the value of the thousands of acres of sensitive habitats within the Project area. Below are a few examples of how the DEIR's assessments of sensitive habitats and mitigation of impacts are inadequate and ignore the best available science.

i. Oak Woodlands

The DEIR fails to adequately assess and mitigate impacts to oak woodlands, ignores the best available science, and violates California Fish and Game Code. The DEIR applies an erroneous definition of oak woodlands. According to California Fish and Game Code, oak woodlands are defined as "an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover." (Cal Fish & Game Code § 1361.) According to the DEIR, "Areas with approximately 60 percent or less total canopy cover with less than two thirds of tree canopies touching are mapped as oak savanna. Areas with greater cover of blue oaks or a higher percentage of tree canopies touching are considered woodland." (DEIR at 3.4-20). Thus, the DEIR does not adequately describe the extant oak woodlands in the Project area, and therefore does not adequately explain nor appropriately mitigate potential impacts to oak woodlands due to the proposed Project. In assigning an arbitrary definition of oak woodlands and oak savanna, the DEIR blatantly violates CA Fish and Game Code.

MM 3.4-16 is unenforceable and insufficient to adequately mitigate potential impacts to oak woodlands. First, it differentiates impacts based on impacts "with significant loss of canopy cover" and impacts "without significant loss of canopy cover," though it is unclear how such categorizations are defined. If significant loss of canopy cover is determined (again, it is unclear how it would be determined), then "recommended" mitigation would include a minimum

mitigation ratio of 1.5:1, which is grossly insufficient. California has already lost over a million acres of oak woodlands since 1950 (Bolsinger 1988), and cannot afford to inadequately mitigate further impacts. The Oak Mitigation Plan further goes on to simply state that “impacts that result in a reduction in woodland canopy cover to 60 percent or less and less than 2/3 of the canopies touching would be considered conversion of habitat from oak woodland to oak savanna” (DEIR Appendix BRA1 Oak Mitigation Plan at 8), and provides no further discussion on this. Does this suggest that no mitigation would occur if oak woodlands with more than 60% canopy cover were reduced to less than 60% land cover? This provides a convenient space for the developer to have no obligation to mitigate impacts to oaks. The plan is unclear, fails to adequately describe the oak woodlands in the Project area, and does not provide any science regarding how their proposed mitigation measures, or lack thereof, would adequately mitigate any impacts to oak woodlands, as defined by Fish and Game Code, to less than significant.

The Oak Mitigation Plan provides “recommended” mitigation for circumstances in which there is no significant loss of canopy cover and removal of trees does not convert oak woodlands to oak savanna (using the DEIR’s definition, not the definition provided in the California Fish and Game Code), which includes replantings of 2:1 for trees with 3-15 inch-diameter at breast height (dbh) removed and 5:1 for trees with a dbh of 15 inches or greater removed. This pales in comparison to Santa Barbara County’s Deciduous Oak Tree Protection and Regeneration Ordinance, which requires a 15:1 mitigation ratio (via replacement planting or protection of naturally occurring oaks between six inches and six feet tall) for removed oak trees (County of Santa Barbara 2003). These mitigation measures for impacts to oak woodlands, as defined by California Fish and Game Code (*i.e.*, an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover), are grossly insufficient, unenforceable, and not based on any science. Such insufficient mitigation would not reduce impacts to oak woodlands to less than significant.

California has already lost over a million acres of oak woodlands since 1950 (Bolsinger 1988). Oak woodlands and other wooded areas, such as pine forests, provide valuable habitat and connectivity for a wide variety of species (Bernhardt and Swiecki 2001; Lawrence et al. 2011; Jedlicka et al. 2014; Tietje et al. 2015). If this pattern of forest and woodland conversion continues, Lake County will lose irreplaceable biodiversity and ecosystem services.

Not only are oak woodlands and forests necessary to sustain the area’s unique biodiversity, they are also important for many ecosystem services that communities rely on for safety and economic stability, including water quality protection, carbon sequestration, erosion control, and soil retention (Brown and Krygier 1970; Elliot 2010; Lawrence et al. 2011; Moyle et al. 2011; Pan et al. 2011; Jedlicka et al. 2014). Reduced forest cover has been shown to result in increased runoff (*i.e.*, pollutants such as pesticides and fertilizers flowing into groundwater and surface waterways), erosion, sedimentation, and water temperatures; changes in channel morphology; decreased soil retention and fertility; and decreased terrestrial and aquatic biodiversity (Brown and Krygier 1970; Pess et al. 2002; Dahlgren et al. 2003; Houlahan and Findlay 2004; Opperman et al. 2005; Lohse et al. 2008; Elliot 2010; Lawrence et al. 2011; Moyle et al. 2011; Zhang and Hiscock 2011; Jedlicka et al. 2014). In addition, forests are an important carbon sink that can help moderate the impacts of climate change (Padilla et al. 2010; Pan et al. 2011), and some researchers argue that at a global scale, trees are linked to increased

precipitation and water availability (Ellison et al., 2012). If the County chooses to prioritize rapid development without adequately assessing and mitigating impacts to sensitive habitats, these unique ecosystems and the invaluable services they provide to human communities will be lost.

The County can look to neighboring Napa County to see the negative impacts they're dealing with due to agricultural conversion and rural/urban development replacing much of its forests and woodlands. Poor land use management and lack of environmental oversight have led to degraded waterways from agricultural runoff, changes in flow, and increased erosion, sedimentation, and water temperatures in Napa County (Higgins 2006; Higgins 2010). These impacts are evident in the Napa River's muddy waters and the loss of native fishes that once thrived in these waters, such as Coho salmon (which have been extirpated), and steelhead trout (Higgins 2006). Contrary to industry claims that the Napa River has been delisted from the U.S. Environmental Protection Agency's 303(d) list of impaired waters, the Napa River remains a listed impaired water due to excessive sediment and nutrient pollution from historical and current land use practices, including vineyard conversions, grazing, and urbanization^{2,3}. And although the Napa River is in the process of being *considered* for possible delisting for nutrient pollution, it is not being considered for delisting for sediment pollution.

Lake County should learn from the errors of Napa County and implement environmentally responsible land-use planning. Removing oak woodlands and forest for development without adequately assessing and mitigating potential impacts could lead to severe levels of erosion and sedimentation and reduced water equality. Reckless removal of thousands of acres of oak woodlands and forest would also ramp up climate change by releasing more carbon into the atmosphere.

ii. Aquatic Resources, Including Riparian Habitat (Woodlands and Streams), Wetlands, Ponds, and Reservoirs

The DEIR fails to adequately describe or consider the best available science when discussing the Project area's aquatic resources. The proposed Project is within the Putah Creek watershed, which drains into Lake Berryessa. As described in the DEIR, the area consists of a large network of ponds and reservoirs connected by major tributaries as well as perennial and intermittent streams. There are almost 200 acres of riparian stream habitat (if not more) as well as over 400 acres of emergent wetlands, over 650 acres of ponds and reservoirs, and over 122 acres of jurisdictional wetlands, and over 10 acres of jurisdictional open waters in the Project area. Despite the vast amount of science highlighting the importance of these aquatic resources and adjacent upland habitat to native plants and animals as well as water resources, the DEIR fails to adequately mitigate impacts to less than significant. MM 3.4-17 Aquatic Resources Protection and Management provides grossly insufficient mitigation. Setbacks of 30 feet from perennial streams and 20 feet from ephemeral streams, wetlands, ponds, lakes, and reservoirs are grossly insufficient and will not adequately mitigate impacts to these resources due to the

² San Francisco Bay Regional Water Quality Control Board (2018) Napa River Sediment TMDL and Habitat Enhancement Plan. Available at:

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/napariversedimenttmdl.html

³ San Francisco Bay Regional Water Quality Control Board (2018) Napa River Nutrient TMDL. Available at: https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/naparivernutrienttmdl.html

proposed Project. In addition, a setback “to the outer extent of a riparian corridor” (DEIR at 3.4-93) is unclear and does not allow the reader to understand how that would be defined or implemented. Similarly, mitigation ratios of 2:1 for preservation or restoration/enhancement and 1:1 for created habitat are insufficient and do not align with current scientific knowledge. Such mitigation should be at least 5:1 for these sensitive habitats if mitigation is preserved, restored, or enhance. However, created habitat has a much lower success rate and should therefore have a much higher mitigation ratio of at least 10:1.

It is estimated that 90-95% of historic riparian habitat in the state has been lost (Bowler 1989; Riparian Habitat Joint Venture 2009). Using 2002 land cover data from CalFire, the Riparian Habitat Joint Venture estimated that riparian vegetation makes up less than 0.5% of California’s total land area at about 360,000 acres (Riparian Habitat Joint Venture 2004). This is alarming because riparian habitats perform a number of biological and physical functions that benefit wildlife, plants, and humans, and loss of what little is left will have severe, harmful impacts on special-status species, overall biodiversity, and ecosystem function.

Natural riparian systems are critically important because they slow water and allow for infiltration into the ground water, while providing habitat and connectivity for rare plants and animals. Similarly, Yet the DEIR fails to adequately assess and mitigate impacts to riparian habitats, including streams and upland habitat consisting of woodlands/scrub, due to the proposed Project. The DEIR should consider the best available science and require a minimum 300-foot setback from reservoirs and ponds to protect water quality. In addition, the DEIR should implement 300-foot setbacks from perennial and intermittent streams, and wetlands (including vernal pools) that are within designated critical habitat, support or have the potential to support special-status and/or sensitive species or provide connectivity and linkages to support multiple species. If the aquatic resources are not located within designated critical habitat, do not support or have the potential to support special-status or sensitive species, and do not provide essential habitat connectivity, as determined by a qualified biologist, then a minimum 200-foot buffer should be required

Science has shown that implementing adequate buffers throughout the catchment or watershed in addition to around the reservoir(s) is an effective strategy to keep pollutants and sedimentation out of reservoirs (Norris 1993; Whipple Jr. 1993). Researchers suggest that to reduce sedimentation and pollution in drinking water supplies a minimum 300-foot buffer should be established around reservoirs, and larger buffer zones should be established around upstream channels and tributaries closer to pollution sources (such as vineyards) of sediment and other pollutants (Nieswand et al. 1990; Norris 1993; Whipple Jr. 1993). Thus, the DEIR’s dismal setbacks of 20 to 30 feet will not adequately protect water quality from degrading due to sediment, turbidity, and other types of pollution, such as excessive nutrients (nitrogen and phosphorous) and pesticides. Larger buffer zones along streams and wetlands upstream of reservoirs would provide more stream bank stabilization, water quality protection, groundwater recharge, and flood control both locally and throughout the watershed (Nieswand et al. 1990; Norris 1993; Whipple Jr. 1993; Sabater et al. 2000; Lovell and Sullivan 2006). They would also protect communities from impacts due to climate change by buffering them from storms, minimizing impacts of floods, and providing water storage during drought (Environmental Law Institute 2008). Thus, the DEIR should require a minimum 300-foot buffer around reservoirs

with a minimum of 200- to 300-foot setbacks from streams and wetlands, depending on whether the habitat is located within designated critical habitat, supports or has the potential to support special-status and/or sensitive species, or if it provides important habitat connectivity or linkages.

In the San Francisco Bay Area, stream setbacks range between 30 – 200 feet, depending on the type of land use (*i.e.*, urban versus rural), or the quality or type of existing habitat (Robins 2002). For example, Sonoma County implements some of the more stringent setbacks, with requirements for a 200-foot buffer in the Russian River Riparian Corridor, a 100-foot buffer for flatland riparian stream corridors, and a 50-foot buffer for other riparian stream corridors⁴. Although smaller buffers may be locally adequate to alleviate water quality concerns in the short-term, they are often insufficient for wildlife (Kilgo et al., 1998; Fischer et al. 2000; Semlitsch & Bodie, 2003). Streams (perennial and intermittent), wetlands (including vernal pools), ponds, and reservoirs throughout the County support numerous special-status flora and fauna, including steelhead trout (*Oncorhynchus mykiss*), foothill yellow-legged frogs, and western pond turtles. Many species that rely on these aquatic habitats also rely on the adjacent upland habitats (*e.g.*, riparian areas along streams, and grassland habitat adjacent to wetlands). In fact, 60% of amphibian species, 16% of reptiles, 34% of birds and 12% of mammals in the Pacific Coast ecoregion (which includes Lake County) depend on riparian-stream systems for survival (Kelsey and West 1998). Many other species, including mountain lions and bobcats, often use riparian areas and natural ridgelines as migration corridors or foraging habitat (Dickson et al, 2005; Hilty & Merenlender, 2004; Jennings & Lewison, 2013; Jennings & Zeller, 2017). Additionally, fish rely on healthy upland areas to influence suitable spawning habitat (Lohse et al. 2008), and agricultural encroachment on these habitats and over-aggressive removal of riparian areas have been identified as a major driver of declines in freshwater and anadromous fish as well as California freshwater shrimp (*e.g.*, Stillwater Sciences 2002; Lohse et al. 2008; Moyle et al. 2011). Loss of biodiversity due to lack of habitat contributes to ecosystem degradation, which will diminish a multitude of ecosystem services in the long-term. Thus, to preserve the County’s valuable biodiversity in these habitats, it is important to develop and implement effective buffer widths informed by the best available science.

A literature review found that recommended buffers for wildlife often far exceeded 100 meters (~325 feet), well beyond the largest buffers implemented in practice (Robins 2002). For example, Kilgo et al. (1998) recommend more than 1,600 feet of riparian buffer to sustain bird diversity. In addition, amphibians, which are considered environmental health indicators, have been found to migrate over 1,000 feet between aquatic and terrestrial habitats through multiple life stages (Semlitsch and Bodie 2003; Trenham and Shaffer 2005; Cushman 2006; Fellers and Kleeman 2007). The foothill yellow-legged frog, a state-threatened species that occurs within the proposed Project, has been observed wintering in abandoned rodent burrows and under logs as far as 100 m (or over 300 feet) from streams (Zeiner 1988). Other sensitive species known to occur in the Project area, such as western pond turtles (*Actinemys marmorata*, a candidate species under the Endangered Species Act) and California newts (*Taricha torosa*), have been found to migrate over 1,300 feet and 10,000 feet respectively from breeding ponds and streams (Trenham 1998; Semlitsch and Bodie 2003). Accommodating the more long-range dispersers is

⁴ County of Sonoma (2008) General Plan 2020. Available at: <https://sonomacounty.ca.gov/PRMD/Long-Range-Plans/General-Plan/>

vital for continued survival of species populations and/or recolonization following a local extinction (Semlitsch and Bodie 2003, Cushman 2006). In addition, more extensive buffers provide resiliency in the face of climate change-driven alterations to these habitats, which will cause shifts in species ranges and distributions (Cushman et al., 2013; Heller & Zavaleta, 2009; Warren et al., 2011). This emphasizes the need for sizeable riparian and upland buffers around streams and wetlands in Lake County, as well as connectivity corridors between heterogeneous habitats.

MM 3.4-17 is grossly insufficient and will not slow the degradation of these aquatic resources and important ecosystems and the services they provide. To protect the Project area's highly diverse ecosystems and the services they provide, the DEIR should require a minimum 300-foot setback from all perennial and intermittent streams and wetlands (including vernal pools) that are within designated critical habitat, support or have the potential to support special-status and/or sensitive species, or provide connectivity and linkages to support multiple species. If the streams or wetlands are not located within designated critical habitat, do not support or have the potential to support special-status or sensitive species, and do not provide essential habitat connectivity, as determined by a qualified biologist, then a minimum 200-foot buffer should be required. Setback for ponds and reservoirs should be 300 feet.

iii. Chaparral, and Native Grasslands

The DEIR fails to adequately describe, assess, and mitigate impacts to chaparral and native grasslands. Chaparral hosts more rare and native California plant species than any other plant community (Halsey and Keeley 2016), and most chaparral flora have high site fidelity, meaning they do not occur in other habitats or plant communities (Quinn and Keeley 2006). Chaparral also provides habitat for numerous wildlife species, both seasonally and year-round, and as a whole it supports more species of mammals, birds, and reptiles than most California ecosystems (Quinn and Keeley 2006). Native grasslands are also important habitat for numerous native plant and animal species, and they are exceedingly rare.

In addition, chaparral ecosystems and native grasslands have been shown to store significant amounts of carbon within their vegetation and their soils, which makes them additional resources to help combat climate change (Koteen et al., 2011; Luo et al., 2007; Quideau et al., 1998). And like forests, these plant communities also provide other ecosystem services, such as soil stability, erosion control, and groundwater recharge.

MM 3.4-15 is insufficient to adequately mitigate impacts to sensitive habitats like chaparral and native grasslands. First, it only applies to impacts to about 33 acres of musk-brush chaparral, stating that since CDFW recognizes a leather oak-musk brush provisional association as sensitive, then the DEIR will treat it as sensitive (DEIR at 3.4-16). However, the same reasoning does not apply to over 2,500 acres of leather oak chaparral. Given that serpentine soils only occupy one percent of California's land area and support 15% of all plant taxa listed as threatened or endangered (Safford et al. 2005), and leather oak chaparral occurs on serpentine soils, the DEIR should mitigate impacts to leather oak chaparral. And given that other types of chaparral host such high levels of plant and animal diversity, mitigation should extend to those as well.

Another issue is that, as mentioned previously, native grasslands are extremely rare because of over a century of conversion to non-native grasslands and development. Only 11.7 acres of purple needlegrass are located in the Project area, and the DEIR states that about 8 acres would be impacted by Phase 1 activities. Such disregard for this sensitive habitat is unacceptable.

MM 3.4-15 only provides a 2:1 mitigation ratio for impacts to some of these sensitive habitats as in-kind preservation, restored/enhanced, or created habitat. This is insufficient and ignores the best available science. Given that these sensitive habitats host high levels of rare and native plants that likely support numerous wildlife throughout the year, impacts should be mitigated at a minimum 3:1 mitigation ratio for in-kind preservation and enhance/restored habitat and 5:1 for created habitat.

C. The DEIR Fails to Adequately Assess and Mitigate Impacts to Special-status Plants

The DEIR fails to adequately assess and mitigate the impacts to special-status plants that occur or have the potential to occur in the Project area. The proposed Project is within the California Floristic Province, one of 34 global biodiversity hotspots, named so because of the area's rich plant diversity and high levels of endemism. Special-status and rare plants occur throughout the County's diverse habitats, with a high concentration of species in chaparral/shrubland, serpentine chaparral and grasslands, oak woodlands, riparian woodlands, wetlands, and rock outcrops. According to the Biological Resources Assessment conducted for the Project (DEIR Appendix BRA1 and BRA2), WRA biologists identified 500 native vascular plant taxa within the larger Guenoc Ranch property and 131 special-status plant species in or adjacent to the property (DEIR BRA1 at 28). During reconnaissance-level surveys, 26 special-status plant species were observed in the Phase 1 Study Area, and the area was identified as having high potential to support an additional 81 special-status plant species. In addition, the large area of serpentine and volcanic substrates provides moderate to high potential for a large number of rare plants to occur (DEIR BRA1 at 28). Despite this information being provided buried in the appendix, the main text of the DEIR misleadingly states that "A total of 61 special-status plant species have the potential to occur within the Guenoc Valley Site." (DEIR at 3.4-24.) The DEIR blatantly misrepresents what the biologists reported in the Biological Resources Assessments conducted for the Project.

MM 3.4-3 General Special-Status Plant Mitigation is insufficient to reduce impacts to special-status plants to less than significant. The DEIR ignores the guidance provided in the Biological Resource Assessment. The Biological Resource Assessment in the appendix states, "When avoidance is not feasible or practicable, species-specific mitigation should be developed that minimizes impacts and compensates for any loss of federal or state listed rare, threatened, or endangered plant occurrences through a 58 combination of enhancement (e.g., weed management and supplemental seeding within existing stands of the species in question), restoration or creation (e.g., establishment of new populations), and preservation (e.g., placement of appropriate protective assurances over existing examples of high quality occurrences)" (DEIR Appendix BRA1 at 57), yet the DEIR only provides for a blanket 2:1 mitigation ratio for any impacted special-status plant species. Because of the rarity and endangerment of many of the

special-status plants that occur or have the potential to occur in the Project area, the DEIR should implement a minimum 5:1 mitigation ratio, with higher considerations for rarer or more protected species. Here is another example: the Biological Resource Assessment also suggests that Federal-listed, state-listed, and CNPS Rank 1 species should be prioritized for avoidance (DEIR Appendix BRA1 at 58), yet the DEIR provides no such measures. Ultimately, the DEIR downplays the magnitude of rare and special-status plant species in the Project area and inadequately mitigates potential impacts due to the Project.

D. The DEIR Fails to Adequately Assess and Mitigate Impacts to Special-status Wildlife

The DEIR fails to provide adequate descriptions of special-status species present or potentially present in the Project area. No descriptions are provided in the main text of the DEIR, one must dig into the appendices to understand which special-status species occur where in the Project area. The DEIR needs to provide the data about the special-status species present or potentially present in the Project area and the potential impacts to those special-status species in the text of the DEIR, not bury it in an appendix. Below are a few examples in which the DEIR fails to adequately describe special-status species and adequately assess and mitigate potential impacts due to the proposed Project.

i. Western Pond Turtle

The Species Account for the western pond turtle, which is provided in the Appendix, not in the main text of the DEIR, states that the western pond turtle is a “CDFW Species of Special Concern” (DEIR Appendix BRA1 at 50), but ignores the current status of the turtle’s potential for federal protections. The Center for Biological Diversity petitioned the US Fish and Wildlife Service (USFWS) to protect the western pond turtle under the Endangered Species Act in 2012 and the USFWS granted a positive 90-day finding for the turtle in 2015, determining that an Endangered Species Act listing may be warranted. (80 Fed. Reg. 19259 (April 10, 2015).) Therefore, the western pond turtle is a candidate species under the Federal Endangered Species Act.

The DEIR fails to adequately assess and mitigate the temporary impacts due to construction activities and the permanent impacts due to development and human activity to western pond turtles and the habitat they need to survive. In addition, the potential impacts to the turtle’s upland habitat are vastly underestimated in the DEIR’s proposed mitigation measures. MM 3.4-10 Western Pond Turtle Impacts – Construction states “To the extent possible, initial ground disturbance, vegetation clearing, and associated project activities within 300 feet of ponds, reservoirs, or wetted stream within 300 feet of ponds, reservoirs, or wetted streams where western pond turtle has been documented shall occur between July 1 and October 31 to avoid the peak nesting season and winter inactivity periods for western pond turtle.” This is not an enforceable mitigation measure, and it neglects areas where the turtles have the potential to occur, during nesting season or otherwise, and does nothing to mitigate the long-term impacts of the Project. In addition, it’s unclear why 300 feet was chosen as the threshold for this mitigation. The western pond turtle uses upland habitat well beyond 300 feet from aquatic habitats for nesting, overwintering, and migration, spending as much as seven months in terrestrial habitat

(Holland 1994; Zaragoza et al. 2015). They are known to nest as far as 1,312 feet from aquatic habitat and can be found overwintering up to 1640 feet from aquatic habitat, as well as migrating over 3,280 feet (1 km). (Holland 1994; Zaragoza 2015) In addition, as western pond turtles are wary and secretive, they are likely to be disturbed by people at distances beyond 300 feet. Bury and Germano (2008) found that “most individuals rapidly depart basking sites when disturbed by either visual or auditory stimuli of people (e.g., waving an arm, shouting) at distances of over 100 m [(328 feet)].” The DEIR does not adequately describe, assess, or mitigate the short- or long-term impacts of the proposed Project.

ii. Foothill Yellow-legged Frog

The Species Account for the foothill yellow-legged frog (FYLF), which is provided in the Appendix, not in the main text of the DEIR, ignores the current status of the frog’s potential for federal protections. The Center for Biological Diversity petitioned the US Fish and Wildlife Service (USFWS) to protect the FYLF under the federal Endangered Species Act in 2015 and the USFWS granted a positive 90-day finding for the turtle in 2015, determining that an Endangered Species Act listing may be warranted. (80 Fed. Reg. 19259 (April 10, 2015).) Therefore, the FYLF is a candidate species under the Federal Endangered Species Act.

The DEIR fails to adequately assess and mitigate impacts to FYLF and the habitat they need to survive. MM 3.4-11 only calls for lackluster mitigation in areas where FYLF has been documented, which includes no construction work within 100 feet of any wetted stream or associated feature where FYLF have been documented during the dry months “as possible” and that timing shall occur outside FYLF breeding “to the extent feasible” (DEIR at 3.4-89). This neglects areas where FYLF have the potential to occur, during breeding season or otherwise. In addition, it is unclear why 100 feet was chosen as the threshold for this mitigation. While FYLF are rarely encountered far from permanent water during breeding season and summer, during the winter FYLF have been observed in abandoned rodent burrows and under logs as far as 100 m (328 feet) from streams (Zeiner 1988) In addition, juvenile FYLF have been found up to 600 feet upslope from their natal stream channel (Twitty et al. 1967). Pre-construction surveys are insufficient and unclear; while the DEIR states a biologist will survey 500 feet upstream and downstream of the work area, it is not clear what area of upland will be surveyed along that stretch of stream. And measures to avoid the species if it is detected are vague, as they “may include, but are not limited to, a protective no-work buffer, exclusion fencing, monitoring, and/or coordination with CDFW” (DEIR at 3.4-89). Thus, the DEIR fails to adequately assess and mitigate impacts to FYLF.

III. The EIR’s Analysis of and Mitigation for the Project’s Greenhouse Gas Emissions is Inadequate

The EIR’s analysis of the proposed Project’s GHG emissions (DEIR Section 3.7) is inadequate. The Project would result in significant amounts of GHG emissions during construction and operation of the Project. (See DEIR p. 3.7-11, Table 3.7-1 [total annual construction emissions of 22,509 MT; p. 3.7-2 total Project emissions of 44,162 MT annually].) The EIR’s approach violates CEQA’s requirement that an EIR fully analyze and attempt to

mitigate all significant direct and indirect impacts of a project. (CEQA Guidelines § 15126.2; Pub. Res. Code § 21002.)

A. Climate Change Is a Catastrophic and Pressing Threat to California

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that the threats from climate change are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (“IPCC”), the leading international scientific body for the assessment of climate change, concluded in its 2014 Fifth Assessment Report that: “[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen,” and further that “[r]ecent climate changes have had widespread impacts on human and natural systems.” (IPCC 2014, p. 2) These findings were echoed in the United States’ own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that “[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years” (Melillo et al. 2014, p. 7) and “[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond.” (*Id.* at 10.) The 2017 Climate Science Special Report similarly concluded:

[B]ased on extensive evidence, ... it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.

In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor.

(USGCRP 2017, p. 10.)

The U.S. National Research Council concluded that “[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems.” (NRC 2010, p. 2.) Based on observed and expected harms from climate change, in 2009 the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations. (74 Fed. Reg. 66496 (Dec. 15, 2009) [U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule].)

These authoritative climate assessments decisively establish the dominant role of anthropogenic GHG emissions in driving climate change. As the Third National Climate Assessment explains: “observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.” (Melillo et al. 2014, p. 2; *see also id.* at 15 [Finding 1: “The global warming of the past 50 years is primarily due to human activities, predominantly the burning of fossil fuels.”].) The Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century. (*Id.* at 13-14, 649; *see also id.* at 15 [Finding 3: “Human-induced climate change is projected to continue, and it will accelerate significantly if global emissions of heat-trapping gases continue to increase.”].)

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes—in addition to increasing species extinction risk. (Warren et al. 2011.) Climate-change-related local extinctions are already widespread and have occurred in hundreds of species. (Weins 2016.) Catastrophic numbers of species extinctions are projected to occur during this century if climate change continues unabated. (Thomas, et al. 2004; Maclean et al. 2011; Urban 2015.) In California, climate change will transform our climate, resulting in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Therefore, immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO₂ must remain below about 1,000 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 1.5°C. (IPCC 2013, p. 25; IPCC 2014, pp. 63-64, Table 2.2.) These carbon budgets have been reduced to 850 GtCO₂ and 240 GtCO₂, respectively, from 2015 onward. (Rogeli et al. 2016, Table 2.) Given that global CO₂ emissions in 2016 alone totaled 36 GtCO₂ (Le Quéré et al. 2017), humanity is rapidly consuming the remaining carbon budget needed to avoid the worst impacts of climate change. As of early 2018, climate policies by the world’s countries would lead to an estimated 3.4°C of warming, and possibly up to 4.7°C of warming, well above the level needed to avoid the worst dangers of climate change. (Climate Action Tracker 2017.)

The United States has contributed more to climate change than any other country. The U.S. is the world’s biggest cumulative emitter of GHGs, responsible for 27 percent of cumulative global CO₂ emissions since 1850, and the U.S. is the world’s second highest emitter on an annual and per capita basis. (World Resources Institute 2014.) Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change.

In its 2018 *Special Report on Global Warming of 1.5°C*, the Intergovernmental Panel on Climate Change (“IPCC”)—the leading international scientific body for the assessment of climate change—describes the devastating harms that would occur at 2°C warming. The report highlights the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth (IPCC 2018). The report also provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement of and compliance with these measures is essential to help stabilize the climate and avoid catastrophic impacts to our environment. AB 32 mandates that California reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code § 38550.) Based on the warning of the IPCC and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emissions reductions to 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) In enacting SB 375, the legislature has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.

The legislature has found that failure to achieve GHG emissions reductions would be “detrimental” to California’s economy. (Health & Saf. Code § 38501(b).) In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- To increase electricity derived from renewable sources to 50 percent;
- To reduce petroleum use in cars and trucks by 50 percent;
- To double the efficiency of existing buildings and make heating fuels cleaner.

(Brown 2015.) In 2018, Governor Brown issued Executive Order B-55-18, in which he declared it to be a statewide goal to “achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter.”

Although some sources of GHG emissions may appear insignificant in isolation, climate change is a problem with cumulative impacts and effects. (*Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, (9th Cir. 2008) 538 F.3d 1172, 1217 [“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis” that agencies must conduct].) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California’s climate as a whole. Therefore, project-specific GHG emissions disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

The impacts of climate change are already being felt by humans and wildlife. Thousands of studies conducted by researchers around the world have documented changes in surface,

atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor (USGCRP 2017). In California, climate change will result in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Given the increasingly urgent need for drastic action to reduce GHG emissions, the DEIR's failure to fully disclose, analyze, mitigate, or consider alternatives to reduce the Project's significant climate change effects is all the more disappointing.

B. The DEIR Fails to Provide Enough Information About Its Emissions and Mitigation Calculations to Allow for Informed Decision-making

As a preliminary matter, the DEIR fails to provide readers with information essential to understanding its analysis of the Project's GHG emissions and therefore fails as an informational document. An EIR must disclose the "analytic route the . . . agency traveled from evidence to action. . . [and] contain analysis sufficient to allow informed decision making." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 [internal quotation marks and citations omitted].) Failure to do so deprives the public of the ability to fulfill its proper role in the CEQA process. (*Id.*)

Here, the EIR discloses that the Project would result in significant amounts of GHG emissions from construction and operation. Yet the DEIR fails entirely to explain how it arrived at these numbers, how they were calculated, what inputs were used to generate them, or what assumptions the modeling relied on to arrive at these numbers. (See DEIR p. 3.7-11, Table 3.7-1 [total annual construction emissions of 22,509 MT; p. 13.7-13, Table 3.7-2 [total Project emissions of 44,162 MT annually].) Instead, the DEIR states in passing that for construction and operational emissions, "CalEEMod inputs are provided in the CalEEMod Inputs Table included as Appendix AIR." (DEIR at 3.7-8 to -9.) Appendix AIR ("Air Quality Modeling Calculations") is an approximately 500-page list of data tables. The document does nothing to address the questions described above, nor explain to a reader how to interpret this raw data.

Moreover, information buried in a report or appendix—such as the GHG technical appendix here—is not a substitute for a good faith reasoned analysis in the EIR itself, which is entirely lacking here. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 [Where an agency relies on information not actually incorporated or described and referenced in the EIR, the agency has failed to proceed in the manner provided in CEQA.])

The DEIR makes the same omission with respect to the purported effectiveness of its proposed mitigation measures. The DEIR claims (although readers can discern this only by consulting and comparing two separate tables) that the mitigation measures it proposes (which are themselves inadequate—see below) will result in DEIR p. 3.7-14 (Table 3.7-3 claiming that, with mitigation, total project emissions will be reduced by 30% to 30,846 MT annually, down from 44,162 MT annually without mitigation [Table 3.7-2]). Yet, as with its "analysis" of the

Project's emissions from construction and operation, the DEIR fails entirely to disclose how it arrived at these calculations for quantifying the mitigation measures' effectiveness in reducing or avoiding GHG emissions. Mitigation measures' effectiveness and enforceability must be supported by substantial evidence in the record. *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.

In short, the DEIR must justify how it arrived at its calculations of the Project's GHG emissions, and of the purported reductions in those emissions from the proposed mitigation. It cannot merely point readers to an inscrutable 500 pages of raw technical data and tables. The DEIR should be revised to include this information and recirculated so that the public can adequately review and comment on this crucial aspect of the DEIR's GHG analysis.

C. Mitigation is Inadequate, Unenforceable, and/or Improperly Deferred

The DEIR's proposed mitigation measures are inadequate and fail to meet CEQA's requirements for mitigation. Mitigation must include concrete, specific, and enforceable actions. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173. [City's urban decay mitigation measures were inadequate under CEQA to address the impact from the development of a 234-acre regional shopping center on undeveloped agricultural land because the measures did not ensure the city would take concrete, measurable actions].) Additionally, they may not be deferred to a later date unless the EIR provides specific reasons why they cannot be developed now and provides specific performance measures to evaluate their success. (*Preserve Wild Santee v. City of Santee* (2012) 210 CA 4th 260, 281 [mitigation measures that are so undefined that their effectiveness is impossible to determine are legally inadequate].) Unfortunately, the DEIR's proposed mitigation fails to meet these standards.

The DEIR includes a single mitigation measure: Mitigation Measure 3.7-1. The DEIR misleadingly states, "Mitigation Measure 3.7-1 would reduce operational GHG emissions from energy use by requiring a commitment to 100 percent renewable energy for the Proposed Project." DEIR at 3.7-13. This is a commendable goal. Yet an examination of the actual text of Mitigation Measure 3.7-1 reveals that it contains no such requirement. Although the measure states that it will "Provide net zero renewable electrical energy for the Project's" residential and commercial uses, it does not include a binding commitment, and allows the County to issue occupancy certificates before ensuring that units are equipped with a net-zero electricity supply. It also fails to supply the standard by which the County will determine whether an electricity supply is "net-zero" with respect to carbon emissions. (See DEIR at 3.7-15 to -16.)

The measure also incorporates by reference traffic Mitigation Measure 3.13-4, which the DEIR claims "would also reduce project GHG emissions by reducing the overall mobile trips generated by the Proposed Project." (DEIR at 3.7-13, 3.7-15.) But the measure merely calls for the future preparation of a "Transportation Demand Management (TDM)" program that "shall identify all feasible measures to reduce the VMT per capita of the Proposed Project to below the regional average to the extent feasible." (DEIR at 3.13-36.) The measure thus improperly defers mitigation to an uncertain future date, and includes no standards for enforceability or measuring

its success. (Allowing the project applicant in the future to unilaterally determine the extent it believes it is “feasible” to reduce VMT, with no oversight by the County, is not a performance standard.)

What’s more, Mitigation Measure 3.13-4 sets forth four non-binding “strategies to be identified in the TDM,” but includes no actual requirements or specific measures to be implemented. For example, one such “strategy” is “Private Shuttle Service” is described in only the most vague, aspirational terms:

[T]he project could potentially provide a frequent direct weekday shuttle service specifically for employees during the peak morning and evening commute periods. This could operate between the project site any and off-site work force housing with a stop at the Lake Transit bus transfer point in Middletown. Please note that shuttles would need be fully accessible to passengers using wheelchairs. It is recommended the applicant also explore providing a real-time smart-phone app that tracks arrivals to make shuttle use more reliable and convenient. Shuttle service for patrons of the project has been assumed as part of this analysis. The current assumption is that regular shuttle service to and from San Francisco and Sacramento will accommodate approximately 40% of resort patrons.

(DEIR at 3.13-36.) The language used to describe the other “strategies” is similarly vague, aspirational, and lacking in specifics or actual enforceable requirements.

Finally, the DEIR apparently makes no attempt to mitigate the Project’s construction-related GHG emissions, which it states will total 22,509 MT over the life of the Project. (DEIR p. 3.7-11, Table 3.7-1.)

D. The DEIR Fails to Adopt All Feasible Mitigation Measures to Reduce the Project’s GHG Impacts to Less Than Significant Levels

By proposing inadequate mitigation and then concluding that the Project’s GHG impacts are significant and unavoidable, the County has fallen short of its obligation to consider all feasible mitigation to reduce or avoid the Project’s significant impacts. (*See* Guidelines § 15126.4(a)(1); *see also* Guidelines § 15126.4(a)(1)(B) [If more than one mitigation measure is available, the EIR must discuss each and describe reasons for the measure or measures it selects.].) It is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.” (Pub. Res. Code § 21002.) Adoption of additional feasible on-site and off-site mitigation measures during construction and operation of the project would lower the project’s overall GHG emissions and contribution to climate change. The County’s failure to mandate adoption of all feasible mitigation measures allows the project off the hook and only worsens California climate crisis.

In particular, the Project fails to incorporate—and the EIR fails to consider—feasible transportation-related measures that could considerably reduce VMT, a significant source of

GHG emissions from the Project. The California Air Pollution Control Officers Association (“CAPCOA”) has prepared a list of suggested mitigation measures to be considered by lead agencies approving projects with potentially significant GHG emissions. (CAPCOA 2010). The 2017 Scoping Plan Update also includes many feasible mitigation measures the Project can and should incorporate. (CARB 2017.) The Scoping Plan also prioritizes the use of on-site mitigation measures for GHG emissions, particularly for VMT related emissions. (CARB 2017 at 102 [“[t]o the degree a project relies on GHG mitigation measures, CARB recommends that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the project’s region that contribute potential air quality, health, and economic co-benefits locally”].)

IV. The DEIR Does Not Adequately Disclose or Analyze the Project’s Impacts on Water Quality and Hydrology

The Project site contains an extensive system of perennial and ephemeral streams and drainages that largely flow into Putah Creek, and then to Lake Barryessa. (DEIR at 3.9-3.) The surface water quality is inextricably linked to groundwater levels within and near the Project site, which is of particular importance since the Project relies exclusively on groundwater for its potable water supply. (App. WSA at 7.) Given that over 90% of the Project site is outside a defined groundwater basin (DEIR at 3.9-8.), it is critically important that accurate data be made available to accurately assess the quantity and quality of groundwater available to the Project. The DEIR notes that the groundwater basins that partially underlie the Project site are considered very low priority by the Department of Water Resources (“DWR”) (DEIR at 3.9-19), and goes on to state that despite limited groundwater data for the Project Area, “groundwater trends within the area can be inferred from surrounding groundwater basins which have long monitoring histories.” (App. WSA at 28.) The DEIR claims that groundwater levels in the Coyote Valley Basin (1,340 acres of Project site) “have generally been stable” (DEIR at 3.9-8) and that in the Collayomi Valley Basin (100 acres of the Project site) there is “no indication of increasing or decreasing trends in groundwater levels” (DEIR at 3.9-9).

However, it is concerning that these assertions cite a study from 2006, leading the reader to question the assessment’s value in projecting current and future groundwater levels. Significant changes in groundwater levels could have occurred in the intervening years, particularly considering the extended drought that California experienced during that period. Therefore, updated and site-specific groundwater testing must be conducted in order to fully apprise the public and decision-makers of the hydrological impacts of the Project.

V. The DEIR Lacks an Adequate Analysis of the Project's Impacts Relating to Wildfire and Emergency Evacuation

The majority of the Project site is located in an area designated by the California Department of Forestry and Fire Protection as a “Very High” or “High” Severity Fire Hazard Zone (DEIR, Figure 3.16-2; DEIR Appx. FIRE at p. 13 [“CAL FIRE’s Fire Hazard Severity Zones rating system and map. . . situates the resort site in a moderate to very high severity zone.”].) Yet the EIR fails to adopt feasible mitigation measures and alternatives that would reduce or avoid the Project’s fire safety impacts. Among other things, the County failed to fully

consider the likelihood that the Project would increase the chance of wildfires while simultaneously impairing evacuation routes for existing residents.

The Project site has historically been extremely susceptible to wildfire. As the draft Wildfire Protection Plan acknowledges:

A few of the more recent fires, including the Butts Fire in 2014 and the Jerusalem and Valley Fires in 2015, were large-scale fires which spread from off-site and affected large portions of the site as well as nearby properties. In particular, the Valley Fire caused wide-spread damage to the southern portion of the site, particularly along Butts Canyon Road. These affects are still visible and present today.

(DEIR Appx. FIRE, at p. 6) The County's own fire map (Exhibit 1)⁵ shows that since 2015 *a majority of the land area in Lake County has been subject to wildfire*. The Wildfire Protection Plan also discloses that *a majority of the Project site has been burned by wildfire* since the 1950s, with at least 12 separate wildfires burning a portion of the Project site. (DEIR Appx. FIRE at 6.) Additionally, the rural landscapes surrounding the Project area, which are not managed for vegetation fuel, also increase the site's wildfire risk. (DEIR Appx. FIRE at p. 14.) The property is bordered by ranches, pastures, woodlands, and forests with various levels of fire hazard severity. (*Id.*)

Given the extremely high risk of wildfire in the area, and the past history of large-scale repeated burnings at the Project site, it is doubly important that the County prepare an EIR that adequately discloses and analyzes the Project's wildfire impacts, and considers mitigation and alternatives to reduce these impacts.

A. The DEIR Fails to Acknowledge or Adequately Analyze the Increase in Fire Risk Resulting from the Project

The DEIR is deficient because it fails to acknowledge or adequately analyze the increased risk of wildfire that results from development and increasing intensity of use in high and very high wildfire zones. Indeed, the DEIR seeks to downplay this effect, claiming, implausibly, that the Project would *reduce* wildfire risk by adding a fire response center, year-round grazing, and vegetation removal. (DEIR at 3.16-10.) This conclusion is patently defective in the following ways.

- i. The DEIR ignores the abundant and mounting evidence that locating homes in high or very high wildfire areas demonstrably increases the risk of wildfire ignition*

According to a report from Governor Gavin Newsom's Office, construction of more homes in the wildland-urban interface is one of the main factors that "magnify the wildfire threat and place substantially more people and property at risk than ever before" (Governor Newsom's

⁵ Available on the County's website at:

<http://www.lakecountyca.gov/Assets/Departments/Administration/Vision/1518FireMap.pdf>

Strike Force 2019). In a new scientific study, Syphard et al. (2019) found that housing and human infrastructure in fire-prone wildlands are the main drivers of fire ignitions and structure loss. This is not new information; scientists have been reporting it for many years in scientific, peer-reviewed journals, and firefighters have observed it. Yet the EIR fails to adequately assess the Project’s impacts on wildfire risk by neglecting to use the best available science.

As another recent peer-reviewed study from Stanford University researchers explained, “Changing demographic factors have undoubtedly played a substantial role in community exposure and vulnerability—including the expansion of urban and suburban developments into the ‘wildland-urban interface.’” (Goss et al. 2020.) In fact, development in the wildland-urban interface, like the proposed project, is responsible for the most buildings burned in California, despite less fuel. (Kramer et al. 2019.) Researchers have determined that growth in the wildland-urban interface “often results in more wildfire ignitions, putting more lives and houses at risk.” (Radeloff et al. 2018.)

Sprawl developments with low/intermediate densities extending into habitats that are prone to fire have led to more frequent wildfires caused by human ignitions, and these types of developments have the highest chances of burning (Keeley et al. 1999; Keeley and Fotheringham 2003; Syphard et al. 2007; Syphard et al. 2013; Balch et al. 2017; Radeloff et al. 2018; Syphard et al. 2019). This can disrupt the natural fire regime and lead to a dangerous feedback loop of deadly fires and habitat destruction. Thus, developing housing in locations in California that currently have low or no density—such as the current Project site—dramatically *increases* the number of fires and the amount of area burned. *See* Keeley 2005; *see also* Syphard et al. 2013; Syphard et al. 2007 [stating that ninety-five percent of California’s fires are caused by human activity].) Common anthropogenic causes of fire include arson/incendiary, equipment use, debris burning, smoking, vehicles, fireworks, electricity, and outdoor cooking. Additionally, structure fires can spread and initiate wildland fires.

In fact, the 2015 Valley Fire, which started in Lake County and burned large portions of the Project site (WPP at p. 6), was a human-caused ignition, caused by faulty hot-tub wiring at a house in Cobb that arced and ignited dry grass. (Karimi 2016.)⁶ The fire cost 4 lives and \$57 million to extinguish, with 76,067 acres burned and 1,955 structures destroyed. (*Id.*)

In short, a project built in a location known to have very high or high wildfire risk cannot compensate for this hazard simply through a fire-resistant design. The only way to protect human life and structures is to not build in these locations in the first place. Wildfires and the devastation they inflict will only worsen if the County continues to allow unplanned growth in high fire hazard zones. Because it fails to acknowledge the significant wildfire impacts from increased risk of human ignition as a result of the Project, the DEIR also fatally fails to mitigate them or consider alternatives to the Project that would reduce these impacts.

B. The DEIR’s Reliance on the Wildfire Prevention Plan to “Reduce Wildfire Risks” to Less Than Significant Is Misplaced

⁶ The nearby 2017 Tubbs Fire, which killed 22 people and destroyed more than 5,600 structures, was similarly found to have been caused by failed electrical equipment on private property (McGough et al. 2019).

The DEIR apparently relies on a Wildfire Prevention Plan to “reduce risks in the area.” (DEIR at 3.16-10.) The plan is included as Appendix FIRE to the Draft EIR.

Among the Wildfire Protection Plan’s numerous flaws is the fact that its measures are not enforceable. For example, the draft Wildfire Protection Plan includes and relies on “Voluntary Property Boundary Fire Breaks,” which it admits are “[t]o be constructed at the discretion of the Homeowner’s Association if and when necessary.” (DEIR Appendix FIRE at p. 2.) It also identifies “*Potential Irrigated Vineyards Fire Breaks.*” (*Id.*) Fire breaks and irrigated vineyards make up 2 of the 3 pillars that constitute the Wildfire Protection Plan’s “prevention strategies.” (DEIR Appx. FIRE at p. 15.) Equally troubling, “oversight of the plan’s management, operations, and enforcement” will be in the hands of the future Homeowner’s Association. (*Id.* at p. 3.)

The plan is similarly vague and aspirational at the level of individual residential units, stating for example: “If a wildfire occurs, it poses a considerable risk to residential homes and their occupants. Homeowners *will be advised* to implement various wildfire prevention strategies.” (DEIR Appendix FIRE at p. 23.) The document then goes on to suggest “various [landscaping] strategies [that] can reduce wildfire risk where establishing a new landscape design.” (*Id.* at p. 25.) Finally, the document notes that “residential buildings will abide by” state building codes (*id.* at p. 28) and suggests “interior strategies,” such as smoke detectors, for reducing fire risk (*id.* at p. 29).

The Wildfire Protection Plan contains no data or analysis to support the EIR’s conclusions that implementing the plan will reduce wildfire risk in any meaningful way. Instead, it contains only vague discussions of measures (many of which are aspirational and unenforceable) that it claims can ameliorate wildfire risk, without making any attempt to quantify these assertions or support them with evidence. Bare conclusions, even if true, are insufficient to fulfill the informational purpose of an EIR. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736.) “The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency’s opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment.” (*Id.* [internal quotation marks and citation omitted].) The failure to provide information required by CEQA in an EIR is a failure to proceed in a manner required by law. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118.) The error is only compounded by the Wildfire Protection Plan’s failure to address or acknowledge the increase in wildfire risk that will result from the Project’s increased potential for human ignitions.

C. The DEIR Fails to Analyze the Impact to Biological Resources from Increased Fire Risk Resulting from the Project

The DEIR also fails to account for the impact to biological resources from increased fire risk from the Project. Fires, especially the hotter and longer-burning variety that have overtaken California in recent decades, can be disastrous for plant and animal life. If native habitat fire regimes are disrupted, the habitats they provide can become degraded (Keeley 2005; Keeley 2006.) When fires occur too frequently, type conversion occurs and the native shrublands are

replaced by non-native grasses and forbs that burn more frequently and more easily, ultimately eliminating native habitats and biodiversity while increasing fire threat over time (Keeley 2005; Keeley 2006; Syphard et al. 2009.)

Wildfires can have a long-lasting negative effect on habitat, and can impair animals' movement (Jennings 2018), mating ability, foraging, and reproductive success. (See Syphard et al. 2007 ["With more fires occurring in close proximity to human infrastructure, there may also be devastating ecological impacts if development continues to grow farther into wildland vegetation."].) This could have serious consequences for special-status species in the Project area that rely on these habitats for survival, including state and federally listed special-status species. In addition, large-scale landscape changes due to vegetation-type conversion from shifts in natural fire regimes could impact wide-ranging species like mountain lions. Thus, the EIR fails to adequately disclose, assess, and mitigate potential wildfire impacts of the Project on special-status species.

D. The DEIR's Mitigation for the Project's Wildfire Impacts Is Inadequate

Despite the Project's significant wildfire impacts, the DEIR proposes only a single mitigation measure to reduce the Project's operational wildfire impacts (a single additional measure purports to mitigate all wildfire impacts from Project construction). (DEIR at 3.16-15 to -16.) The measure is thoroughly inadequate and fails to meet CEQA's strict requirements for mitigation.

Mitigation measures for the Project must be considered in the EIR so that the proper environmental analysis can take place. (See *Sundstrom v. Co. of Mendocino* (1988) 202 Cal.App.3d 296.) Therefore, finalized safety plans (that provide for adaptive strategies/updates), such as an evacuation plan for the Project, need to be included in the EIR to enable the public and decisionmakers to evaluate the effectiveness of the plans in avoiding, minimizing, and mitigating wildfire impacts from the proposed Project. More analyses are needed to determine appropriate mitigation measures to effectively minimize wildfire risk in natural areas where fires have historically occurred and will inevitably occur again.

The DEIR relies on MM 3.16-2 ("Post Wildfire Emergency Response") as the sole mitigation measure to reduce Impacts 3.16-4 and 3.16-5, which involve exposure of people and structures to wildfire. Yet, the measure is toothless and virtually meaningless; it defers preparation of the plan to an uncertain date, contains no standards to guide its preparation, is not enforceable, and does not include any concrete measures that can be shown to actually reduce wildfire impacts. In short, it fails to comply with *any* of CEQA's requirements for mitigation in an EIR.

The measure provides for the future preparation of a "Post Wildfire Emergency Response Plan *in the event that a wildfire has already burned the Project site*. (DEIR at 3.16-16 [measure stating "After a wildfire, response measures shall include actions to minimize slope instability and installation of warning signs. . . ."].) Purporting to protect residents in the future from the effects of a *second or third* devastating wildfire is not acceptable mitigation and does not address how the Project will reduce exposure of people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires (Impact 3.16-5). Yet the DEIR

relies exclusively on MM 3.16-2 to purportedly reduce this impact to less than significant. (DEIR at ES-22.) The absurdity of relying on a *post-wildfire* impacts study to reduce the risk of exposure from wildfires before they happen is self-evident.

E. The EIR Fails to Account for the Project's Effects on Community Safety During a Wildfire Evacuation

The County has evidently not prepared a Wildfire Evacuation Plan for the Project, nor does the EIR even appear to address the issue of wildfire evacuation in any detail. Lake County's current population is approximately ~64,000 (DEIR 3.11-1) and the DEIR estimates a total Project population of 4,070 (DEIR at 3.11-5).⁷ In other words, the Project proposes to locate an additional 6% of the current County population on the Project site. However, the DEIR makes no effort to calculate or disclose how adding a permanent population of 4,000 residents, plus additional thousands of visitors, will affect evacuation times and effectiveness for *existing residents* in the vicinity of the Project site. Error is compounded by the fact that the Project site's evacuation routes must all travel through the bottleneck of Butts Canyon Rd. (See DEIR Figure 3.13-1, 3-16-9 ["Depending on where the fire is located, people at the Guenoc Valley Site would be directed to exit the site via the primary roadways to Butts Canyon Road"].)

Yet nowhere in the DEIR does the County disclose the impacts on evacuation times from adding thousands of additional residents to the Project area, who can be expected to need to evacuate in the event that a wildfire originates in (or approaches) the Project site or its surroundings, as happened as recently as 2018. While the DEIR's threshold of significance for Impact 3-16-1 on its face addresses this issue, the DEIR's subsequent analysis, in which it applies this threshold of significance is completely devoid of facts or data and fails to answer or even acknowledge critical questions, including, but not limited to: (1) what are the pre- and post-Project expected evacuation times for residents (both Project residents and nearby affected existing residents) fleeing wildfire in the vicinity of the Project site?; (2) what will the Level of Service be for emergency egress routes from the Project vicinity in the event a wildfire-driven evacuation becomes necessary?; (3) what, if any, alternative evacuation routes will be available for residents and nearby community members in the event that Project-generated evacuation traffic makes Butts Canyon Rd. and/or Hwy 29 or 175 impassable?; (4) what effect will resident evacuation on Butts Canyon Rd. and/or Hwy 29 or 175 have on the ability and timing for first responders who are responding to wildfire in the vicinity of the Project?; (4) how residents will be notified of the need for offsite evacuation or onsite relocation?⁸; and (5) where residents will take shelter if onsite relocation is deemed advisable in a given situation.

To the extent the EIR relies on the County's Community Evacuation Plan to account for, disclose, and mitigate the Project's impacts on evacuation times and routes in the event of a wildfire (see DEIR 3.16-8), it has failed to proceed in a manner required by law because the plan

⁷ Furthermore, it appears from Table 3.11-4 that the Project population estimates do not account for the potentially thousands of additional visitors to the Project site at any given time, which will include 850 hotel and resort residential units (DEIR at ES-1).

⁸ For example, In the deadly October 2017 Tubbs fire in Santa Rosa, efforts to warn residents of approaching flames were successful only 50% of the time. The entire warning system was fraught with malfunction. (St. John 2017.)

is not included as part of the DEIR or even with its Appendices. Data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442. Information scattered here and there in EIR appendices, or a report buried in an appendix, is not a substitute for ‘a good faith reasoned analysis. (*Id.*) Where an agency relies on information not actually incorporated or described and referenced in the EIR, the agency has failed to proceed in the manner provided in CEQA. (*Id.*) The EIR does not “include[] enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516. The Lake County’s Community Evacuation Plan does not contain detailed analysis responsive to the questions posed above, nor does it appear to anticipate the Project or the thousands of additional evacuees that will flood the region in the event of a wildfire due to the Project.

Courts have readily found EIRs invalid under CEQA due to the failure to describe and analyze the wildfire evacuation risk and to evaluate these questions. *California Clean Energy Commission v. County of Placer* (Dec. 22, 2015, No. C072680) ___ Cal.App.5th ___ [2015 Cal. App. Unpub. LEXIS 9360, at *1] [included as a reference].) In *California Clean Energy Commission*, the court found an EIR for a resort expansion plan deficient because it said “nothing about the impact of the increased population density created by the Project on emergency evacuations in the event a wildfire does occur, nothing about the effect of such evacuations on access for emergency responders and suggested no mitigation measures to address any such concerns.” (*Id.* at *78.)

The public—including future residents of the Project, and existing residents nearby who will be relying on Butts Canyon Rd. for evacuation—have a right to know the full extent of the Project’s impacts on wildfire evacuation. “Omission of material necessary to informed decision-making and informed public participation is prejudicial.” (*Sierra Club v. County of Fresno*, (2018) 6 Cal.5th 502, 515.)

F. The EIR Fails to Adequately Evaluate the Project’s Cumulative Wildfire Impacts

The DEIR’s analysis of the Projects cumulative wildfire impacts is cursory and wholly inadequate. CEQA requires an EIR to analyze a project’s significant “cumulative impacts,” defined in the CEQA Guidelines as two or more individual effects, which, when considered together, are considerable or that compound or increase other environmental impacts. (CEQA Guidelines § 15355; see also § 15130(a).) The CEQA Guidelines further state that individual effects may include changes resulting from a single project or a number of separate projects, or the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable future projects. (CEQA Guidelines § 15355.)

The purpose of analyzing cumulative environmental impacts is to assess adverse environmental change “as a whole greater than the sum of its parts.” (*Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 625.) Absent meaningful cumulative analysis there would be no comprehensive assessment of environmental impacts within a region

and “piecemeal development would inevitably cause havoc in virtually every aspect of the [] environment.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721.) By their nature, the impacts of one individual project may not appear to have a significant, but the combined impacts of many sources can drastically affect the region’s environment. The CEQA Guidelines specifically identify wildfire risk as a likely cumulative impact, stating that EIRs “should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g. . . .wildfire risk areas).” (CEQA Guidelines § 15126.2(a).)

Despite this requirement, the DEIR provides only a single, conclusory paragraph dismissing cumulative wildfire impacts with virtually no analysis. The DEIR acknowledges that “Development of these [other planned] projects [in the near vicinity] would introduce new people and infrastructure to the area. Increased development could potentially add more opportunities for igniting fires, more fuel, and make emergency response operations more complex.” (DEIR at 3.16-15.) Then, it concludes, without further analysis and in reliance on its own Wildfire Protection Plan and two mitigation measures that cumulative wildfire impacts from the Project will be less than significant.

A lead agency must “identify facts and analysis supporting its conclusion” that a project’s contribution to an environmental impact will be rendered less than cumulatively considerable. CEQA Guidelines § 15130(a)(3). The mere fact that the project proponent has prepared a Wildfire Prevention Plan for the Project itself does nothing to address the Newland Sierra’s cumulative wildfire impacts when considered along with the other projects proposed in the region; the document is silent about these other projects. (DEIR Appx. FIRE.) The DEIR simply gives no indication that the wildfire impacts from the cumulative projects have ever been considered collectively. Thus, the it lacks sufficient information and analyses for the public and decisionmakers to be able to evaluate the Project’s potential cumulative impacts to wildfire risk and hazard⁹ and the effectiveness of the proposed mitigation measures for the Project.

Furthermore, the geographic scope of the DEIR’s abbreviated cumulative wildfire impacts analysis appears to be tightly and impermissibly constrained. Although the DEIR’s general discussion of cumulative projects (DEIR § 4.2) describes and lists 14 projects and pending projects within a five-mile radius of the Project (DEIR at 4-4 to -7), the cumulative impacts analysis mentions only two of those projects, the Hidden Valley and Valley Oaks development projects.

Building over 1,400 residential units, along with the cumulative projects in the region units in thousands of acres of high fire hazard areas would not only create a significant impact, but would be a catastrophe in the making. In light of the devastation that wildfires have wrought this past year, it is inconceivable that the Board would consider putting County residents at even greater risk by dramatically expanding urban development in wildlands. In any case, to comply

⁹ For example, the County should, at a minimum, analyze and disclose the amount of time it would take to evacuate the entire Project under various scenarios, assuming simultaneous evacuation of existing homes in the vicinity of the Project *and anticipated future development in the vicinity*.

with CEQA, the County must disclose the potential for increased wildfires due to the potential for increased ignitions from the Cumulative Projects and evaluate the increased risk to lives and property from these fires. Only when this analysis is undertaken will the public and decisionmakers be apprised of the real-world implications of developing new residential communities in the urban wildland interface. Largescale development in such zones also is an irresponsible use of County and state funds and resources, as significant firefighting efforts will eventually be needed when (not if) fires occur.

VI. The DEIR Does Not Accurately Disclose or Analyze the Cumulative Impacts of the Project

CEQA defines “cumulative impacts” as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines § 15355.) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project “when added to other closely related past, present, and reasonably foreseeable probable future projects.” (CEQA Guidelines § 15355(b).) And while an agency is not expected to foresee the unforeseeable, it is expected to use its “best efforts to find out and disclose all that it reasonably can.” (CEQA Guidelines § 15144; see also *City of Richmond, supra*, 184 Cal.App.4th at 96; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 428 [hereinafter “*Vineyard*”].)

The purpose of analyzing cumulative environmental impacts is to assess adverse environmental change “as a whole greater than the sum of its parts.” (*Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 625.) Absent meaningful cumulative analysis there would be no control of development and “piecemeal development would inevitably cause havoc in virtually every aspect of the [] environment.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721.)

Here, the DEIR fails to discuss any of the past, current or reasonably foreseeable vineyard development within the POU on the Project site, as described in the 2009 FEIR for the Guenoc Water Rights Modification Project and other County and nearby project-specific documents. If the development of these potential vineyard sites are not a part of the Project(see *supra* the discussion above regarding project description) then the cumulative impacts analysis must include the vineyard conversions within the POU in its analysis. While the DEIR does list other vineyard development projects near the Project site, such as the Wild Diamond Vineyard and Winery project that is proposed approximately 5 miles away from the Project site, it ignores vineyard conversions *on the Project site*. (DEIR at 4-7.) It is puzzling why an 80-acre vineyard and winery project would be discussed, but the thousands of acres that may be developed within the Project site boundaries would be left out of the cumulative impact analysis. The failure to disclose and analyze the impacts of non-Project vineyard development within the Project site renders the DEIR’s cumulative impacts analysis inadequate and in violation of CEQA. (CEQA Guidelines § 15355(b); see also *Vineyard* at 428.)

VII. The Alternatives Analysis in the DEIR is Inadequate and Fails to Comply with CEQA

CEQA mandates that significant environmental damage be avoided or substantially lessened where feasible. (Pub. Res. Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d).) Moreover, although “an EIR need not consider every conceivable alternative to a project . . . it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.” (Guidelines § 15126.6(a).) Additionally, the “key to the selection of the range of alternatives is to identify alternatives that meet most of the project’s objectives but have a reduced level of environmental impacts.” (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.) Accordingly, a rigorous analysis of reasonable alternatives to the Project must be provided to comply with this strict mandate. Unfortunately, the DEIR fails to meet this requirement on two levels: the DEIR analysis of the alternatives proposed is inadequate and the DEIR fails to include a reasonable range of alternatives.

A. The DEIR should have analyzed a range of alternatives and included meaningful analysis of the impacts of these alternatives

The DEIR should have analyzed a wider range of alternatives. As courts have made clear, “[a] potential alternative should not be excluded from consideration merely because it would impede to some degree the attainment of the project objectives, or would be more costly.” (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1456-57 (quotations omitted).) The DEIR only analyzed three alternatives, one of which was the no project alternative. (DEIR at 5-5-6.) Beyond the no project option, the analysis only discussed lessening density within the proposed development footprint (Alternative B), and a reduced footprint with increased densities and consolidation of facilities within that new footprint (Alternative C). (*id.*) The DEIR should have included a larger range of alternatives from which decision-makers could choose.

The DEIR improperly limited the scope of its alternative analysis. The two alternatives, excluding the no-project alternative, assessed in the DEIR present a severely limited range of changes to the Proposed Project, ignoring alternatives that minimize environmental impacts by reducing and or consolidating other land uses. The core requirement of a CEQA alternatives analysis is that a range of alternatives be selected that meet most of the project objectives while minimizing or eliminating environmental impacts. (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.) The DEIR presents a limited “either or” comparison that demonstrates the lack of commitment to truly exploring alternatives to the Proposed Project. The DEIR should consider alternatives that not only consolidate hotel rooms, but also consolidate or eliminate resort areas so that contiguous open space can be increased. For example, removing or translocating development associated with the Bohn Ridge Resort and Equestrian Center and Lodge would dramatically lessen development impacts around Bucksnot creek, which would enhance habitat connectivity at a critical point in the Project site. (see DEIR at 2-18.) In failing consider such changes, the City “fixed” the results of the alternatives analysis and violated CEQA by including only an unreasonably narrow range of alternatives. (*See Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1456-57.) Therefore, an alternative that reduces, or eliminates, the conversion of open space to vineyards is feasible and should have been identified and discussed in the DEIR.

The DEIR should also include quantitative and meaningful comparisons between the Project's impacts and proposed alternatives' likely impacts, including analysis of estimated GHG emissions, quantified impacts to biological resources, water resources including water quality and water availability, and air quality resulting from each proposed alternative. Under CEQA, "the public agency bears the burden of affirmatively demonstrating that, notwithstanding a project's impact on the environment, the agency's approval of the proposed project followed meaningful consideration of alternatives and mitigation measures." (*Mountain Lion Foundation v. Fish & Game Com.* (1997), 16 Cal. 4th 105, 134.) The DEIR's general statements regarding these topics are insufficient. Table 5-2 of the DEIR presents an "impact comparison between the proposed project and alternatives," but this purported "comparison" only categorizes the alternative impacts as "similar" or "lesser" as compared to the proposed Project. (DEIR at 5-15.) The DEIR doesn't quantify any of the potential impacts of the alternatives considered; nor does it attempt to provide qualitative detail to the comparisons offered. These findings are conclusory and lack the necessary evidentiary support that CEQA requires. (*See Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 ("To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.") The blatant lack of detail leaves decision-makers and the public in the dark, guessing how much "lesser" a given impact would be under an alternative, or whether a "similar" impact may still be an improvement over, however minor, the proposed Project.

B. The DEIR utilizes undefined Project objectives to undermine the feasibility of an environmentally superior alternative

The DEIR relies on an undefined project objective in order to improperly reject the reduced development footprint alternative ("Alternative C"). The first objective listed in the DEIR is to "develop a luxury international destination resort that generates financial profits for the investor." (DEIR at 5-2.) There is no discussion of what constitutes a "luxury international destination," precluding meaningful analysis of whether an alternative meets this vague objective. Nor is there quantification of how much profit is needed to satisfy the objective. The DEIR concludes Alternative C "would not provide enough resort amenities or large enough lots for a financially viable luxury resort." (DEIR at 5-16.) The DEIR contains no analysis to support this finding. While it is true that alternatives can be rejected on the basis of infeasibility, an EIR must still provide the basis for such a finding. (14 Cal. Code Reg. §15126.6(c); *Citizen of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565; *see also Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.4th 866, 884 [an economical infeasibility analysis requires "meaningful comparative data"].) The DEIR's vague objective of creating a "luxury" resort undermines any meaningful comparison of Alternative C; and does not meet CEQA's requirements for adequately analyzing alternatives.

VIII. Conclusion

Thank you for the opportunity to submit comments on the Draft Environmental Impact Report for the Guenoc Valley Mixed-Use Planned Development Project. We look forward to working to assure that the Project and environmental review conforms to the requirements of

state law and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge the Project not be approved in its current form.

Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the County complies with its legal obligations including those arising under CEQA, we would like to remind the County of its duty to maintain and preserve all documents and communications that may constitute part of the “administrative record” of this proceeding. The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the County with respect to the Project, and includes “pretty much everything that ever came near a proposed [project] or [] the agency’s compliance with CEQA” (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the County’s representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the County’s representatives or employees and the Applicant’s representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the County (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



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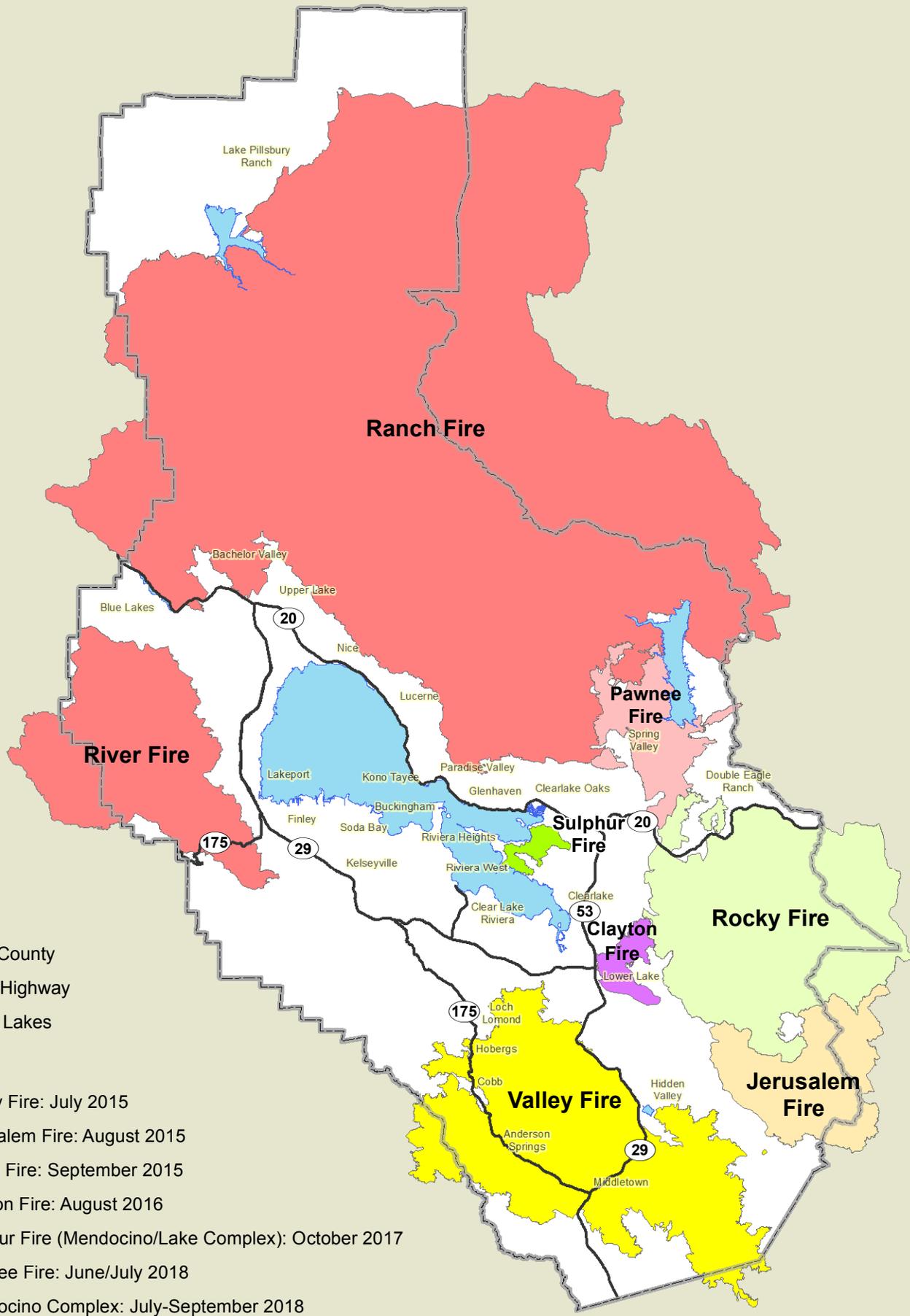
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Exhibit 1

2015-2018 Lake County Fire Map



Legend

-  Lake County
-  State Highway
-  Major Lakes

Fires

-  Rocky Fire: July 2015
-  Jerusalem Fire: August 2015
-  Valley Fire: September 2015
-  Clayton Fire: August 2016
-  Sulphur Fire (Mendocino/Lake Complex): October 2017
-  Pawnee Fire: June/July 2018
-  Mendocino Complex: July-September 2018

