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February 3, 2012

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Roger Trout, Director  
Shawna Purvine, Senior Planner  
El Dorado County Development Services  
2850 Fairlane Court, Bldg. C  
Placerville, CA 95667

Re: Mitigated Negative Declaration for the Tilden Park Project  
File No. A08-0015 / Z08-0039 / PD08-0025- / TM08-1485  
State Clearinghouse # 2011092065

Dear Mr. Trout and Ms. Purvine:

We appreciate the opportunity to provide the following comments on behalf of Stop Tilden Park ("STP") regarding the above-reference project. These comments are intended to supplement, and not replace comments previously submitted by STP and any of its members.

As explained below, the Initial Study and Mitigated Negative Declaration (referred to together herein as "MND") for the Project does not comply with the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.) in certain essential respects. An Environmental Impact Report ("EIR") must be prepared for the Project.

An overarching concern in this case is the fact that the MND ignores potentially significant adverse impacts with little justification and almost no documentation. After review of the MND, we firmly believe that the environmental review has been truncated by avoiding full disclosure of the Project's impacts, and also relying upon future regulatory action to fully "mitigate" impacts, with little or no analysis.

It is especially shocking that the MND does not include traffic as a potentially significant effect on the environment. (MND, p. 3.) The Department of Transportation ("DOT") submitted a letter stating that the Project will indeed have significant impacts, and the County pretends that this is not an issue, and relies on the an impact fee that may or may not ever result in the necessary improvements being constructed. This fatal

flaw in the MND is set forth in the traffic section of this letter.

As discussed in detail below, there are several areas of impact where substantial evidence in the record supports a fair argument that the Project may have a significant environmental impact. A full EIR is required.

## **I. Standard for use of a Negative Declaration**

The standard in reviewing an agency's decision not to prepare an EIR for a project is subject to the "fair argument test" and is *not* reviewed under the substantial evidence test that governs review of agency determinations under Public Resources Code sections 21168 and 21168.5. The "substantial evidence test" that generally applies to review of an agency's compliance with CEQA provides that if any substantial evidence in the record supports the agency's determination, then the determination will remain undisturbed.

In stark contrast, an agency's decision to omit the preparation of an EIR will not stand if *any* substantial evidence in the record would support a fair argument that the Project *may* have a significant effect on the environment. (*No Oil, Inc. v. city of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003; Pub. Resources Code § 21151.)

There is substantial evidence to support a fair argument that each of the Project impacts discussed below *may* be significant. A full EIR should be prepared for other reasons as well. The cumulative impacts of the Project are significant. In fact, the experts at the El Dorado County Air Pollution Control District ("APQD") and the California Department of Transportation ("DOT") have submitted comment letters stating that the Project's impacts *are* cumulatively considerable and significant. Where a project's impacts are cumulatively considerable, adoption of a mitigated negative declaration is inappropriate unless the evidence in the record demonstrates that the mitigation measures will reduce all impacts to a level of insignificance. (See *San Bernardino Valley Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4<sup>th</sup> 382, 391.) In this case it does not. Finally, the Initial Study simply does not contain enough information to fulfill its purpose as an informational document.

## **II. The Project Description is Insufficient**

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) A complete project description is necessary to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.)

The MND does not provide a complete, consistent project description sufficient to support environmental analysis.

The MND does not explain how or when the land necessary for the expansion of Crossroads Drive will or can be obtained from the three private owners. At the

Planning Commission meeting on October 27, 2011, the private owners made clear that they are not willing to sell an easement or other property interest in the area needed for the Project as proposed. There is nothing in the MND about the fact that the Project applicant must acquire real property rights in order to implement the Project. The public and the decision-makers are entitled to know that this will be necessary, and that at the moment, there does not appear to be any feasible way for the needed area to be acquired other than through eminent domain proceedings.

Additionally, the Project applicant seeks three design waivers, including a waiver of required frontage improvements, including curb, gutter and sidewalk, along Crosswood Drive. (October 27, 2010, Staff Report ["Staff Report"], p. 3.) The MND indicates that the DOT supports with these design waivers on Crosswood Drive, except for the curb and gutter. (MND, p. 1.) It appears that DOT's support is contingent on the number of total daily trips remaining below 300. (*Id.*) The Final Traffic Impact Study (Prism) reveals that the number of daily trips exceeds 300, and the MND does not address this issue. The Staff Report recommends the waivers in its introduction, but the "Conditions of Approval" attached to the staff report appear to be for approval of the waivers, except that curbs and gutters will be required on Crosswood Drive. None of this is ever discussed in the staff report in a coherent way. (See Staff Report, p. 3 and Attachment 1, p. 10.) The Project description is confusing and misleading in this regard.

The MND also fails to include analysis of the impacts of developing a new sewer lift station, and provides only a vague description of the required construction of utility connections, and storm drain devices. These are integral parts of the Project and must be analyzed in the MND.

Another aspect of the Project description that is incomplete, and therefore leads to incomplete analysis in the MND, is the question of how "open space" areas of the Project will be protected, if at all. It is unclear from the MND if trails or other access will be constructed or improved for humans, horses or vehicles through the "open space" areas of the Project. Increased numbers of people, horses or vehicles (such as bicycles) could result in an adverse effect on the Pine Hill ceanothus and/or habitat for the other listed species that occur on site (a thorough analysis of the incidence of listed species has not been prepared, so there is no way to make a conclusion supported by evidence with respect to this question). There is no indication in the MND that the open space areas will be protected outside of the fact that structures will not be located there. Additionally, there is no information about how the potential degradation or destruction of the Pine Hill ceanothus population on the Project site may impact the adjacent Pine Hill Preserve. (See email from Graciela Hinshaw, Preserve Manager, Pine Hill Preserve, January 3, 2012, indicating that analysis of impacts to Pine Hill ceanothus is "always in relation to how these potential effects may impact the rare plant at Pine Hill Preserve.") There is no analysis of whether the population on the Project site may provide pollination opportunities for the Pine Hill Preserve, or what other impacts may occur there when the population on the site is surrounded by urban uses with no apparent protection.

The MND must contain an accurate description of how the listed plant species (more than a dozen) that occur on the Project site will be protected in the long term. Analysis of indirect impacts to Pine Hill ceanothus and other sensitive species must be

included in the MND.

### **III. The Direct Impacts of the Project are Not Adequately Addressed**

The MND simply does not adequately address the Project's potential significant impacts, attempting to avoid the analysis by pointing to various regulatory programs. Several areas of impact are discussed in detail below, and additional areas of impact and flaws in the environmental review are discussed in detail in the letter from STP, dated February 3, 2012.

#### **A. Agriculture**

The MND concludes that there are no impacts to agriculture. The El Dorado County Resource Conservation District disagrees. The conclusion by experts at the Conservation District is that "**Rk soils are classified by the Agriculture Department as Unique and/or Soils of Local Importance.**" (January 26, 2009, letter from Shelley Janek, p. 2.) The Conservation District requested that the County consider the loss of this potential farmland when evaluating the Project's impact. The County has apparently determined that it disagrees with the experts at the Conservation District. This disagreement requires the preparation of an EIR.

#### **B. Air Quality**

The El Dorado County Air Pollution Control District ("APQD") has submitted a comment letter to the County, stating that the Project will have a significant cumulative impact on air quality. The County claims that if the Project is held to various APQD requirements, then the impacts will be mitigated to a level of insignificance. There is no evidence whatsoever to support this conclusion. And, "[i]f there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and prepare and EIR." (CEQA Guidelines § 15064(g).) The experts at the APCD concluded that the Project would have a significant impact.

Despite the potentially significant impacts, the MND concludes that if future development in the Project area is held to compliance with requirements of the APCD, then any air quality impacts will have been reduced to a level of insignificance. (MND, p. 9.) There is no evidence that the County went through any of the analyses required by the APCD in order to make this finding.

The Project will have a potential significant cumulative effect because it involves changing the zoning designations in a way that will increase pollutant emissions. (See September 3, 2010, letter from APCD, p. 1.)

It bears noting here that the County did not do any modeling or develop any data with respect to the pollution emissions that the Project will generate. The El Dorado County APCD CEQA Guide describes the level of analysis necessary with respect to various types of emissions. With respect to ROG and NO<sub>x</sub>, the APCD indicates that if the Project can demonstrate consistency with the AQAP for ROG and NO<sub>x</sub> emissions, the Project may be categorized as not having a cumulative air quality

impact with respect to ozone. This requires being able to say that the Project does not require a change in the existing land use designation and projected emissions. That is a statement that *cannot* be made with respect to the Project.

For other pollutants, including CO, PM<sub>10</sub>, SO<sub>2</sub>, NO<sub>2</sub> and TACs, there is no applicable air quality plan containing growth elements. (APCD CEQA Guide, Chapter 8, p. 2.) For CO, if there exists the possibility of CO “hotspots” caused by the proposed project in conjunction with other nearby projects, “for example, modeling will ordinarily be required if the proposed project and one or more other large projects jointly change traffic density levels to service level E or lower on the same roadway links...” (*Id.* at 2.) The Project *does* lower the level of service to E and F on area intersections. (MND, p. 30.) There was no modeling done for the Project. There is simply not enough analysis of this impact to support the conclusion that it has been mitigated to a level of insignificance.

For PM<sub>10</sub>, SO<sub>2</sub> and NO<sub>2</sub>, the Mountain Counties are in non-attainment for state standards. The impacts of PM<sub>10</sub> emissions can be significant cumulatively even where the project-specific emissions are not. The APCD requires, at a minimum, dispersion modeling in order to determine whether a project will result in significant emissions of these constituents. (APCD CEQA Guide, Chapter 8, p. 3.) There is no evidence of any dispersion modeling or other data collected for the Project.

The APCD describes in detail what is required for an adequate CEQA analysis of air quality impacts. (APCD CEQA Guide, Chapter 8, pp. 3-6.) The adequate cumulative impacts analysis begins as follows:

1. Either one of the following two elements:
  - a. A list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the agency, or
  - b. A summary of projections contained in an adopted general plan or related planning document that is designed to evaluate regional or area-wide conditions;
2. A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and
3. An analysis of the cumulative impacts of the relevant projects. (APCD CEQA Guide, Chapter 8, p. 4.)

The County did not even begin to meet these requirements for the air quality cumulative impacts analysis. The MND simply notes that the APCD has stated that there are existing cumulative air quality problems in El Dorado County, which can be exacerbated by construction activities. The MND acknowledges that this is a potentially significant impact, but fails to follow through by concluding that compliance with standard regulations will mitigate the impacts to a less than significant level.

The conclusion is not based on substantial evidence, and also defers the development and adoption of mitigation measures to the future. The deferral of analysis and development of mitigation measures for air quality impacts is a violation

of CEQA, as the MND does not meet the standards for any exception to the rule. In *Gentry v. City of Murrieta* the court of appeal explained that CEQA's normal requirement that mitigation be adopted prior to project approval may be met if an agency prepares a draft EIR that (1) analyzes the "whole" of the project; (2) identifies and disclosed with particularity the project's potentially significant impacts; (3) establishes measurable performance standards that will clearly reduce all of the identified impacts to less-than-significant levels; and (4) describes a range of particularized mitigation measures that, when taken in combination, are able to meet the specified performance standards. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359, 1394-1395, comparing and contrasting *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 with *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) The *Gentry* court further explained that promises by a lead agency to implement future recommendations that other agencies might make after project approval is not sufficient to find that a proposed project's potentially significant effects have been mitigated to less-than-significant levels. (*Id.*)

The MND's air quality section is insufficient under all applicable legal authority.

### **C. Biological Resources**

The MND concludes that the Project's impacts to biological resources will be less than significant with mitigation measures relating to oak canopy. (MND, pp. 10-13.) There are no other mitigation measures for impacts to biological resources. (*Id.*)

The evidence in the record is clear; the Project will have significant impacts to listed and sensitive species and/or their habitat, and will also isolate a wetland. These potentially significant impacts require the preparation of an EIR.

The MND acknowledges that the biological survey for the Project site revealed the existence and possible existence of wetlands, several special-status plant species, as well as California horned lizards and birds of prey. (MND, p. 11.) The County chooses to ignore the special status species, and claims that the 66 Pine Hill ceanothus plants will be "avoided." As set forth in detail above, it is entirely unclear what that means.

#### **1. Impacts to sensitive and listed species**

Despite County's attempt to bury its head in the sand, there is substantial evidence from experts showing that the Project may have significant impacts on listed and sensitive species. A March 5, 2009 letter from Kent Smith of the Department of Fish and Game ("DFG") states: "The biological evaluation indicates that the proposed project area contains many valuable biological resources. DFG is particularly concerned that the proposed project site contains habitat for fourteen (14) special status plants, of which sixty-six (66) Federal Endangered and State Rare Pine Hill ceanothus (*Ceanothus roderickii*) plants were observed at the southern end of the identified gabbroic northern mixed chaparral community on the site. . ." The DFG is concerned that the amount assessed to the Project by the current in-lieu fee program may not alone be adequate to offset the potential impacts. The in-lieu program has not been adjusted to reflect current costs to implement an effective plant habitat acquisition and management program, nor has the County funded the entire required 50 percent of the total cost of

the rare plant program. Projects approved by the County over time have cumulatively led to the loss of rare plant habitat and rare plant occurrences throughout a significant portion of their limited range. Therefore, at a minimum, the DFG recommends that the in-lieu fee program be re-evaluated and updated for the above reasons prior to its use to mitigate impacts to rare plants to below a level of significance.”

The DFG experts have expressed an opinion that the Project will have a significant impact and the mitigation measure suggested by the County will not be effective. This alone requires an EIR, not to mention the fact that “mandatory findings of significance” under CEQA are applicable to these facts. (CEQA Guidelines § 15065(a); and see Section III.H below; and see *California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App. 4th 1026.)

A September 13, 2010 letter from Mark Egbert of the El Dorado County Resource Conservation District states: “A review of the California Natural Diversity Database (CNDDDB) did identify the potential presence of federally threatened or endangered species (Pine Hill Ceanothus and Layne’s Ragwort) within the project footprint.” The Botanical Inventory by Sycamore Environmental did not find the presence of the federally threatened Layne’s Ragwort that has been known to exist on the site in the past. Therefore, further investigation is warranted. The County may not disregard this expert opinion from a responsible agency.

## **2. Impacts to wetlands**

In finding no significant impact to wetlands, the MND similarly relies upon one mitigating factor, the 50-foot setback required by County code. (MND, p. 11.) Then, the MND notes that the setback requirement will *not* be met in three areas. According to the MND, an applicant may “demonstrate that a different setback is necessary and would be sufficient to protect the particular riparian area at issue.” (*Id.*) There is no discussion in the MND about how the applicant demonstrated that the setback requirement could be violated on the Project site and still protect riparian values. The MND actually goes on to admit that mitigation was “infeasible” with respect to one isolated wetland. Thus, the significant impact will not be mitigated or avoided. The Initial Study for the Project is not much more than a naked checklist for several areas of impact. With respect to Biological Resources, the MND includes the oak woodland mitigations from the General Plan policies, but takes a superficial and conclusory approach to sensitive/listed species and riparian/wetland resources.

## **3. Impacts to oak canopy**

With respect to oak canopy, Sycamore Environmental Consultants, Inc. prepared an Oak Canopy Analysis on November 25, 2008. Since that time, the project map was significantly modified, sometime after April 19, 2010, to add a 20-foot wide fire access lane behind the hotel (this is noted by the absence of the fire lane in maps dated April 19, 2010, but the addition of the fire lane in maps dated August 15, 2011 and later). The MND relies upon an outdated calculation of impacts to oak canopy and the evidence does not support the conclusions of the County. A new oak canopy analysis must be prepared.

#### **D. Greenhouse Gas Emissions**

Based upon a finding that the greenhouse gases generated by the project “would be negligible compared to global emissions or emissions in the county...” the MND concludes that the Project’s impacts would be less than significant. (MND, p. 17.) This conclusory analysis falls short of CEQA’s requirements.

The CEQA Guidelines (effective on March 18, 2010), clarified how greenhouse gas (“GHG”) emissions should be analyzed and mitigated under CEQA. These Guideline requirements are *not optional*. The adopted changes to the CEQA Guidelines include the following:

- A lead agency should make a good-faith effort to calculate or estimate the amount of GHG emissions resulting from a project. Although a lead agency retains discretion to determine the model or methodology used for such analysis, the lead agency is required to support its decision to employ a particular model or methodology with substantial evidence (14 CCR § 15064.4(a));
- The following factors should be considered when assessing the potential significant impacts from GHG emissions on the environment: (i) the extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting; (ii) whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and (iii) the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (14 CCR § 15064.4(b));
- When adopting thresholds of significance, a lead agency may adopt thresholds previously adopted or recommended by other public agencies or recommended by experts, provided the decision to adopt such thresholds is supported by substantial evidence (14 CCR § 15064.7(c));
- Lead agencies must consider feasible means, supported by substantial evidence and subject to monitoring and reporting, of mitigating the significant effects of GHG emissions related to a project (14 CCR § 15126.4(c));
- If an Environmental Impact Report is required, then the EIR should evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions such as floodplains, coastlines and wildfire risk areas, in addition to considering any significant environmental effects the project might cause by bringing development and people into the area affected (14 CCR § 15126.2(a)); and Appendix G (the sample form with questions a lead agency should consider in its Initial Study) has been modified to include analysis related to whether the project will generate GHG emissions and whether the project would conflict with any applicable plan, policy or regulation adopted for the purpose of reducing GHG emissions.

The County has not evaluated any of the areas required under CEQA. None of the Project’s emissions have been quantified, and none of the required analysis has been done. At this time, the County has the opportunity and the obligation to evaluate the GHG emission impacts of the Project and develop and adopt feasible mitigation measures for the entire Project area.

### E. Hydrology and Water Quality

The Project may have a significant impact as a result of altering drainage patterns on the Property. The MND concludes that water quality standards will not be impacted, in part because of the 50-foot setbacks. (MND, p. 20.) The MND actually states that “[t]he project would be able to comply with all requirements for setbacks and BMPs, thus all potential impacts can be offset through existing regulations.” (*Id.*) This statement is untrue. There are three areas on the Project site where the 50-foot setback requirement will *not* be met.

With respect to drainage patterns, the MND relies upon a preliminary study (it is unclear why any study beyond a “preliminary” study was not prepared), and the MND goes on to make a finding of less than significant based upon a conclusion that construction management practices regulated by the County and the RWQCB will mitigate the impacts. This relates to drainage impacts during construction. There is no analysis of possible mitigation for the drainage impacts that will result from the impervious surfaces on the Project site as it is proposed. Ignoring this impact violates CEQA.

Direct, personal observations by several Project neighbors reveal that there is already a drainage problem in and around the Project area. First-hand accounts of drainage problems that arise in the area are substantial evidence, as there is no particular expertise associated with observing flooding and drainage problems on the ground surface. (See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.)

The following evidence supports a fair argument that the Project’s drainage impacts may be significant:

Project neighbors have observed that the open field on the 12-acre Project site has several natural springs underground as well as Oak Mill Creek, an intermittent creek, that runs through the property every year. Also, each year, Crosswood Drive on the north/west side of the road is flooded and at times the water is so high that it cannot adequately pass through the existing drainpipe. Two years ago the neighbors enlarged the drainpipe to better accommodate the flow.

Other personal statements by neighbors include:

- In 2010 the homeowners of Crosswood Drive installed a 48" pipe under the road. The previous pipe was 30" and could not handle the drainage flows. For the past 31 years Crosswood Drive would flood every year on the North side of the Tilden Park property as it drains hundreds of acres to pass under the freeway and into Durock Pond. The name of the creek is the Old Mill Creek;
- Arnold Pierce (property runs alongside of Tilden Park property) has major flooding problems, especially in the winter. In the winter his family cannot use their clothes washer because of the flooding;
- Ken Young (letter dated 2/26/09 in Tilden Park file) documents his home has flooding problems due to the springs. He has a sump pump that runs continuously. (His property is directly north and adjacent to the Tilden Park

- property);
- Dave Koupal (property also runs alongside Tilden Park property) was to have a propane heater installed by his propane supplier. They had to go under the house to extend a supply line to the heater. They couldn't go under the house, as there was too much water. They supplied a sump pump and it took three (3) days to clear out the water.
- The Koupal's have a detached wine cellar. The cellar is approximately 8' deep. This unit has a sump pump and runs continuously due to winter rain and from underground springs.
- There are permanent sand bags on Many Oaks Lane due to flooding of that road. All the water that comes down Many Oaks Lane drains on the north/west side through Crosswood Drive. When the natural drainage of Old Mill Creek is paved over (72% to be paved) our neighborhood flooding and Many Oaks Lane flooding will make these areas impassable. This road (Many Oaks Lane) is the only road (dead end road) that is used by over 125 homes that travel in and out each day.

Because there is substantial evidence in the record showing that drainage is already a hazard in the area. An EIR is required and the Project's drainage impacts, after construction, must be evaluated and mitigated.

## F. Noise

### 1. Noise impacts may be significant and an EIR is required

The MND and Staff Report provide the following facts with respect to Project noise impacts:

- The Project will result in “[a] substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.” (MND, p. 22.)
- The Restaurant Parking Lot will have noise levels exceeding the El Dorado County ambient noise level threshold criteria. (MND, p. 25.)
- The study identified potentially significant noise associated with the use of the parking lot and loading facilities in close proximity to the existing residence in the east as well as future residences to the north. (MND, pp. 23-24.)
- Brennan & Associates, Inc. conducted continuous 24-hour noise level measurements on January 14-15, 2008 and four (4) short-term noise assessments on January 11 and 14, 2008, on the project site. Noise levels from the adjacent Highway 50 and project-related commercial uses are predicted to **exceed the County's noise standards at the nearest proposed and existing residential lots.** (Staff Report, p. 10.)
- Construction related activities would occur only during daylight hours, on intermittent days, and would involve intermittent use of heavy equipment, drills, air compressors and generators and would potentially exceed the thresholds established by the General Plan. **This is a potentially significant impact.** (MND, p. 23.)

The proposed mitigation involves noisy construction equipment, and attempts

that can be made to reduce the level of noise they produce. The MND concludes that the impact will be insignificant because construction activity will be “limited” to 7 days a week, 12 hours per day during the week and 9 hours per day on the weekends and holidays. (MND, p. 23.) This means that construction may continue any number of days in a row, with no break for Project neighbors.

The County itself provides substantial evidence of a potentially significant noise impact, by concluding in the MND that the construction noise may exceed County standards. Allowing construction 7 days per week for most of the daylight hours does not reduce this impact in any way; it simply prevents additional nighttime violations of County standards. Further, there is not sufficient analysis of the potential noise violations to allow for development of adequate mitigation measures.

With respect to noise over the long-term, the MND states that the Project will result in significant noise impacts on hotel customers and some existing and future residences. The two mitigation measures defer analysis to the future. Noise impacts on existing residences are resolved by stating that noise barriers must be constructed, and that they will be reviewed when a Project grading plan is available. (MND, p. 24.) For impacts to hotel customers, the MND defers analysis to a future noise study. (*Id.*) There is no provision for future residential uses adjacent to the Project site.

As set forth in detail above, a mitigation measure must include performance standards, and deferral of studies and/or development of mitigation measures is a violation of CEQA. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359, 1394-1395, comparing and contrasting *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 with *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

The County has not prepared adequate noise studies, and the evidence in the record supports the conclusion that the Project will have significant noises impacts that remain unmitigated.

## **2. The Project will violate specific General Plan Policies**

An additional problem with the Project’s noise impacts is the fact that the Project will result in violation of specific, noise policies in the General Plan. California law requires that development entitlements must be consistent with the General Plan before they may be approved. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1187; and *City of Carmel by the Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 992.)

Consistency determinations are not appropriate where they directly conflict with a goal or policy expressed in a general plan. For example, in *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4<sup>th</sup> 1332, 1338-1342, the appellate court reversed a consistency determination because the proposed residential project was incompatible with the general plan’s *specific* density requirements. (*Id.*)

In the case of the Project, it is inconsistent with a *specific noise threshold standard*. The County’s findings in the MND admit that the Project will exceed the

General Plan noise standards at the hotel and the nearest residences. (Staff Report, p. 10.) As set forth in detail above, the County may not defer a detailed noise analysis to the future (after the Project is constructed and there is nothing that can be done about interior noise impacts). This violates CEQA and the Project is inconsistent with the General Plan.

### **G. Traffic and Circulation**

The MND properly finds that the Project will have a significant impact on traffic, but goes on to conclude that the payment of traffic mitigation fees is sufficient to reduce the impact to a level of insignificance. The "mitigation" will occur if and when the County Capital Improvements Program ("CIP") has sufficient funds to widen the two intersections *already* operating at levels of service F and E, respectively. (MND, p. 30.) Payment of mitigation fees to go toward capital improvement programs is an acceptable form of mitigation, but it must be shown that the improvements will actually be completed and mitigate the impacts if the County wishes to make a conclusion of less than significant impact. (See *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173; and *Napa Citizens for Honest Government v. Board of Supervisors* (2001) 91 Cal.App.4th 342.)

On October 25, 2011, the California Department of Transportation commented on the Project and the MND, stating as follows: "When project traffic is added in the level of service goes to LOS F and LOS E for these two intersections, both unacceptable conditions. (DOT Letter, p. 1.) The DOT also noted that a conclusion of less than significant traffic impacts is impossible unless the County can assure completion of the road improvement projects when the Project is scheduled for completion, not at some uncertain future date." (*Id.* at 1-2.)

On October 27, 2011, testimony at the Planning Commission hearing confirmed that these improvements to the US 50/Ponderosa Road/South Shingle Interchange and the Realignments to North Shingle and Durock Roads have been part of the CIP for many years, but may not be completed within the next 20 years due to a lack of funding. The Final Traffic Impact Study (Prism) also concluded that it is unlikely that the improvements would be made in the foreseeable future. (Final Traffic Impact Study, p. 30.) Accordingly, there is no substantial evidence to begin to support the conclusion that these improvements will *ever* be completed, much less before the Project is completed. The only conclusion is that the Project will have a significant traffic impact that remains unmitigated and an EIR must be prepared.

### **H. Mandatory findings of significance**

There are two mandatory findings of significance that must be made for the Project. The Project may indeed reduce the number or restrict the range of a rare or endangered plant or animal. In its comments to the Planning Commission, the DFG submitted substantial evidence to show that the Project site contains habitat for fourteen (14) special status plants, of which sixty-six (66) Federal Endangered and State Rare Pine Hill ceanothus (*Ceanothus roderickii*) plants were observed at the southern end of the identified gabbroic northern mixed chaparral community on the site." There is no

substantial evidence in the record to show that the County has even determined whether or not the Project will reduce the number or restrict the range of any of the listed species noted on site, other than Pine Hill ceanothus. Further, as set forth in detail above, there is no evidence that simply leaving the Pine Hill ceanothus in an "open space" area of the Project will actually protect the plants. There is no evidence that the area would be managed in such a way that the listed plants and their habitat will not be harmed.

The second mandatory finding relates to cumulative impacts. The County failed to do an adequate analysis to be able to make a determination regarding cumulative impacts. Section 15130(b)(1) of the CEQA Guidelines provides two options for considering potentially significant cumulative adverse impacts. This analysis can be based on either: (1) A list of past, present and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency; or (2) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency.

The County did not perform the required analysis under either of the options, and so the MND contains an insufficient review of the Project's cumulative impacts.

#### IV. Conclusion

Because of the issues raised above, we believe that the MND fails to meet the requirements of the California Environmental Quality Act and the Project is inconsistent with the General Plan and its approval will violate the planning laws. For these reasons, we believe the document should be withdrawn and a revised environmental document, a full EIR, should be prepared.

Very truly yours,



Marsha A. Burch  
Attorney

cc: Stop Tilden Park