Appendix B

Letter from James Moose to David Mohlenbrok 2-11-22

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REMY | MOOSE | MANLEY LLP

James G. Moose
jmoose@rmmenvirolaw.com

February 11, 2022

Via Electronic Mail
David.Mohlenbrok@rocklin.ca.us

David Mohlenbrok
Community Development Director
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677

Re: College Park Draft EIR – Responses to legal issues raised in comments from legal counsel for Save East Rocklin and other individual commenters

Dear Mr. Mohlenbrok:

On behalf of Evergreen Sierra East, LLC, Cresleigh Homes Corporation, and USA Properties Fund, Inc., which are the joint Applicants for the proposed College Park mixed-use development project (Project), we submit the following information and analysis in order to respond to legal issues raised in comments on the Draft Environmental Impact Report (DEIR) for the Project from legal counsel for Save East Rocklin and other individual commenters.[1]

Because the City of Rocklin (City) has received a number of comments that raise legal arguments in addition to factual contentions, the Applicants thought it proper for their legal team to weigh in with respect to those legal arguments. Candidly, we have done so in anticipation of possible litigation that might be filed by Save East Rocklin or others if the City Council should approve the Project.

In particular, this letter responds to legal contentions raised in letters submitted on behalf of Save East Rocklin by The Law Offices of Allan R. Frumkin, Inc., received October 21, 2021 (Frumkin Letter) and Shute Mihaly & Weinberger, LLP, dated

[1] This letter supersedes an earlier version dated January 14, 2022. In this new version, we have corrected a handful of typographical errors and made minor wording changes intended to express our thoughts more precisely.

November 8, 2021 (Shute Mihaly Letter). We also submit responses to some additional legal, quasi-legal, and factual issues raised by other agencies, organizations, and individuals on assorted topics, as detailed below.[2]

With respect to the recurring theme in certain comment letters that the Sierra Joint Community College District (District), as the underlying landowner of the two Project sites, was violating the law by making the sites available for development, we reached out to District staff and their attorneys. As a result of this outreach, we received a letter written on behalf of the District by Lozano Smith law firm, included here as **Attachment A** . It explains in detail why various commenters are absolutely wrong in claiming that the District has no legal authority or right to allow its land to be devoted to the uses contemplated by the Project. Indeed, the District has the discretion to dedicate its land to the generation of revenues that will help fund the District's educational mission. We have also attached a binding agreement between Evergreen Sierra, LLC/Cresleigh Homes and Flying Change Farms Equestrian Facility, included here as **Attachment B** , that provides clarity on comments regarding land use conflicts between the Project and adjacent animal operations within the Town of Loomis (Loomis).

With respect to purely factual or technical issues raised in comments on the DEIR, the Applicants' legal team reached out to two technical consultants for assistance, Raney Planning and Management, Inc. (Raney) and Madrone Ecological Consulting (Madrone). We asked these firms for their expert assessments of the factual and technical criticisms of the DEIR and the Project on issues relating to air quality and greenhouse gas (GHG) emissions (Raney) and biological resources (Madrone). The resulting expert reports are submitted as **Attachment C** and **Attachment D** , respectively, to this letter. With respect to certain hydrological issues, Wood Rodgers has produced a letter that is included as **Attachment E** . Some of their contents are summarized herein. We ask that the City review each report in detail, as each one contains valuable technical information and analysis. Additionally, for the City's and the public's convenience, we have included

[2] These letters include: the November 3, 2021, letter from the Town of Loomis (Loomis Letter); the November 7, 2021, letter from the Loomis Union School District (Loomis School District Letter); November 8, 2021, letter from the California Wildlife Foundation (CA Wildlife Foundation Letter); the November 7, 2021, letter from Sierra Geotech (Sierra Geotech Letter), which is substantively nearly identical to the Frumkin Letter; the November 6, 2021, letter from Kent Zenobia, P.E. (Zenobia Letter); and the November 4, 2021, letter from November 4, 2021, from Denise Gaddis on biological resources (Gaddis Letter), which is also included as an attachment to the Shute Mihaly Letter.

the myriad of other documents and materials referenced throughout this letter in **Attachment I** .

The Applicants submit this letter to provide the City and the public with what we hope are helpful clarifications and additional information relating to the Project in order to contextualize and explain some of the issues and questions raised by the comment letters that we and the experts address. The City is free to use any information presented in this letter and attachments as part of its efforts to prepare the Final EIR, if the City agrees with our analysis and rebuttals. We have made our responses as objective and straightforward as possible in the hope that the City will find them to be credible and persuasive. The Applicants fully recognize, however, that both California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require the City to exercise its independent judgment in analyzing the Project's potential environmental effects and in deciding how best to mitigate or avoid those effects. (See Pub. Resources Code, § 21082.1, subd. (c)(1); CEQA Guidelines § 15084, subd. (e).)

Before diving into our responses to the comments we have chosen to address, we provide a brief summary of the planning history of the two Project sites.

I. BACKGROUND

The District acquired the site for the Sierra College main Rocklin campus in 1961. Construction began shortly thereafter, and, once the campus opened, enrollment steadily increased and the campus grew in response.[3] In 1968, the District acquired the approximately 35-acre property currently known as the South Village site. In or around 1975, the District purchased the approximately 72-acre property currently known as the North Village site (referred collectively hereafter as "the Project sites.") Loomis home sites adjacent to the North Village site did not begin to materialize until, we believe, the late 1980s. City of Rocklin homes adjacent to the South Village site were not constructed until the early to mid-1990s and beyond.

[3] See Sierra College, *Sierra College Timeline*, available at: https://www.sierracollege.edu/80/timeline.php#origins.

By 1999, the City had zoned one half of the South Village site for planned commercial development, and by 2002 the North Village site had been annexed into the City and also fully zoned for college development. (See DEIR, p. 2.0-5[4]). By 2012, the City had redesignated the North Village site for mixed-use development, and by 2014 it had done the same for the South Village site.[5] Then, "[i]n 2015, the [District] Trustees initiated a process to identify a developer for the proposed Project and declared the Project Area (North Village and South Village) as surplus property in 2016." (DEIR, p. ES-2.[6]) "In November 2016, the District selected Evergreen Sierra East, LLC [] to partner with it in development efforts." (Attachment A, District Letter.)

We begin with this brief timeline to illustrate that the development proposed here is not novel or unforeseen. In fact, planning for the development of the Project sites has been contemplated and in process for decades. Thus, this Project and the development of these sites should not come as a surprise to nearby residents, whose homes were built well after the Rocklin campus was established and flourishing, and the after the District had acquired the two Project sites. Indeed, it is likely that many, if not most or all, of the commenters who claim residency adjacent to the Project sites purchased their properties after the sites were completely designated and zoned for development.[7] As a result, this group of commenters should have had, at least, constructive notice of impending development prior to their home purchases. We make these points because this level of

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[4] See also the *Rocklin Road East of 1-80 General Development Plan* (1999) and *Sierra College Area General Development Plan* (2002), available at: https://www.rocklin.ca.us/sites/main/files/file-attachments/rocklin_rd_east_of_i-80_complete.pdf and https://www.rocklin.ca.us/sites/main/files/file-attachments/sierra_college_-_ord_857.pdf?1474396890.

[5] Redesignation of the North Village site was effectuated through Resolution 2012-171 (see also Exhibit C to the 2012 General Plan); and redesignation of the South Village sites was effectuated through Resolution 2014-12 and 2014 Ordinance No. 1007. See also City of Rocklin General Plan Map (revised Aug. 3, 2021), available at: https://www.rocklin.ca.us/sites/main/files/file-attachments/existinggeneralplanmap_0.pdf?1628802986, for current land use designations for the sites.

[6] See also Sierra College, *Facilities Master Plan: Sierra College Rocklin Campus* (Jun. 2014), available at: https://www.sierracollege.edu/_files/resources/governance-planning/accreditation/2016/midterm-evidence/5F-Facilities-Master-Plan-2014.pdf, p. 25 [the District designated the Project sites "for development and revenue-generating purposes" or "potential future facility needs should development opportunities not arise"]. At least one commenter has claimed that there "is no evidence in the record to substantiate" a statement made in the DEIR that the Project sites have been envisioned for development for years to "economically benefit Sierra College." (Sierra Geotech Letter, p. 6, see also DEIR, p. ES-1.) In factual fact, there is abundant evidence documenting this history.

[7] Planned commercial development zoning in the City allows a variety of permitted and conditional uses, including most retail types, personal service establishments, educational institutions, theaters, clubs, hotels and motels, food service establishments, etc. The mixed-use designation allows for development that includes commercial, office, and residential, with up to 40 dwelling units per acre.

actual or constructive notice is exactly what a city should want for its home-owning residents, so that they may purchase their property with their eyes wide open and a good understanding of the kinds of land uses that are likely to be developed on nearby properties.

We also mention these points because they are legally relevant under both CEQA and the Planning and Zoning Law (PZL) (Gov. Code, § 65000 et seq.), both of which contain very short statutes of limitations for challenges to planning actions (30 days and 90 days, respectively). (Pub. Resources Code, § 21167, subd. (c); Gov. Code, § 65009, subd. (c)(1)(A).) Each designation/zoning action approved for the Project sites—in 1999, 2002, 2012, and 2014—underwent CEQA review, and none of the actions were legally challenged. As a result, the environmental review documentation for these prior designation and zoning changes are "conclusively presumed to comply with [CEQA]." (Pub. Resources Code, § 21167.2; CEQA Guidelines, § 15231.) Nor can amendments to General Plans or rezoning actions be challenged years after they were lawfully adopted after public process. (Gov. Code, § 65009, subd. (a)(3) [the purpose of the short PZL statute of limitations is "to provide certainty for property owners and local governments regarding decisions made pursuant to" the PZL].)

For the convenience of the City, its consultants, and the public we have organized our responses first topically and then by specific comments, with references to the applicable comment letters. We begin with issues that fall outside the ambit of CEQA. Our format is first to provide the commenter's comments and then to provide our responses.

II. RESPONSES TO NON-CEQA COMMENTS

A. The Applicants' Identities

1. *The City "does not have…documentation on file" that identifies "the Project Applicant and Owners of the land under consideration" as required under "California Government Code 65940."* (Frumkin Letter, p. 7; see also Zenobia Letter, p. 2; Sierra Geotech Letter, pp. 1, 7.)

This comment is representative of others that imply that the Project is being pursued by shadowy interests who want to keep their identities private. This perception is

simply not accurate. The Applicants are proud of what they are seeking to accomplish, and have been actively meeting with members of the Rocklin community in order to work with them to learn more about their concerns with the Project, and to persuade such community members that the Project will benefit the City, region, and State by providing, among other things, hundreds of new housing units at a time of a statewide housing crisis. (See, e.g., Gov. Code, § 65589.5, subd. (a)(1)(A) ["[t]he lack of housing … is a critical problem that threatens the economic, environmental, and social quality of life in California"].)

The very first pages of the text of the Draft EIR, on pages ES-1 and ES-2, are quite explicit in stating that the Project sites are owned by the District and have been identified for potential development for years. This point is made again on page 2.0-5, where the text states that:

> the College's 2014 Facilities Master Plan designates the Project Area for revenue generation to benefit the College's students, programs, and facilities. In 2015, the Trustees initiated a process to identify a developer for the proposed Project and declared the Project Area (North Village and South Village) as surplus property in 2016. In response, the applicant has developed the College Park General Development Plan (College Park GDP), which would allow for the integrated development of the approximately 108-acre Project Area.

The fact that the EIR text does not specifically mention Evergreen Sierra East, LLC, or Cresleigh Homes Corporation, or USA Properties Fund, Inc. as the formal Applicants is of no importance from a legal standpoint. For example, nothing in CEQA requires that an EIR disclose the identity of an applicant, as such information is not relevant to environmental impact analysis. In an analogous context, CEQA case law has held that the name of the "end user" for a project is irrelevant to the adequacy of environmental review. (See *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 120 Cal.App.4th 396, 442 [an adequate project description does not "require disclosure of the end user of the project"].) Thus, an EIR can be perfectly adequate from a legal standpoint even if the project applicants are unknown. Even so, the Applicants invite the City to disclose their identities in the Final EIR and to include their names in the ultimate Notice of Determination for the Project (should the City Council approve the Project, as we hope).

In addition, the above-mentioned comment is simply wrong, both factually and legally, in stating that the City "does not have…documentation on file" that identifies "the Project Applicant and Owners of the land under consideration" as required under "California Government Code 65940."

As a parenthetical matter, we note that the statute cited by the commenter – Government Code section 65940 – does not even apply to the Project. Section 65940 is part of the Permit Streamlining Act (Gov. Code, § 65920 et seq.) (PSA), which does not apply to projects, such as this one, that require legislative actions such as General Plan amendments and rezones. The law on this point has been clear for nearly four decades. (See *Landi v. County of Monterey* (1983) 139 Cal.App.3d 934, 936 [court concludes that the PSA, with its mandatory timelines for processing applications for "development projects," does not apply to projects requiring legislative actions]; *Land Waste Management v. Contra Costa County Board of Supervisors* (1990) 222 Cal.App.3d 950, 956 [same].) PSA only applies to local development projects that can be processed under existing General Plan and zoning designations without change.

More importantly, however, the commenter is wrong in stating that the City lacks a formal application. The Application for the Project was filed in 2017, and identified the Applicant as Sierra Evergreen East, LLC. This application, along with other Project materials, can be viewed online, in the portion of the City website devoted to the Project at https://www.rocklin.ca.us/post/college-park-formerly-sierra-villages. (See the last item: Original Application Submitted January 9, 2017.) In the application, Sierra Evergreen East, LLC, stated that the application was being submitted on behalf of the Sierra Joint Community College District. At the time, the Project was called "Sierra Villages." As indicated earlier, Cresleigh Homes Corporation and USA Properties Fund, Inc. are now pursuing the Project alongside Sierra Evergreen, LLC, and the District.

In short, the Applicants are not trying, and have not tried, to avoid public disclosure of their identities. Nor has Sierra College attempted to avoid acknowledgment of its ownership of the Project sites. The Project is being pursued openly, consistent with the District's well-known and longstanding intention of devoting the two Project sites to revenue-generating uses that will provide funds to assist the District in pursuing its educational objectives.

B. The Validity of the Existing General Plan Designations and the City's Authority to Approve the Project

1. *The Project sites' designation and zoning were "erroneously changed" in 2016* [sic] *to mixed use and do not carry out a "City of Rocklin legitimate power or purpose."* (Frumkin Letter, pp. 9–10, 14–15, 18–19; see also Sierra Geotech Letter, pp. 30–36.)

In his letter on behalf of Save East Rocklin, attorney Allen R. Frumkin argues at considerable length that the City acted illegally, and even unconstitutionally, when it imposed a Mixed Use (MU) General Plan designation on the North Village site and portions of the South Village site. Mr. Frumkin incorrectly asserts these planning changes occurred in 2016; however, they actually occurred in 2012 and 2014 (see Section I above). These allegations inspire several responses.

First, it is far too late to complain about City planning actions taken in 2012 and 2014. Those actions are not a part of the Project under CEQA review here, and the 90-day PZL statute of limitations for challenging the City's 2012 and 2014 planning decisions ran more than nine and seven years ago, respectively. (Gov. Code, § 65009, subd. (c)(1)(A); *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 387–90 [court rejects belated attack on General Plan as part of an attack on subsequent project approvals].)

Nor can the City's past CEQA compliance actions associated with its 2012 and 2014 planning decisions be revisited at this late hour. As stated above in Section I, the City's CEQA determinations for those decisions, which were not challenged, are "conclusively presumed to comply with [CEQA]." (Pub. Resources Code, § 21167.2; CEQA Guidelines, § 15231; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130 (*Laurel Heights II*) ["[t]his presumption acts to preclude reopening of the CEQA process even if the initial EIR is discovered to have been fundamentally inaccurate and misleading in the description of a significant effect or the severity of its consequences"; "[a]fter certification, the interests of finality are favored over the policy of encouraging public comment"]; *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 111 ["'CEQA contains a number of procedural provisions evidencing legislative intent that the public interest is not served unless CEQA challenges are promptly filed and diligently prosecuted'"].)

Second, Mr. Frumkin's constrained view of the City's legislative discretion under its police power is at odds with long-recognized legal principles that emphasize the scope and breadth of that power. For example, on page 14 of his letter, he argues that both the City's 2012 and 2014 decisions to impose the MU designation on the Project sites and the Applicants' pending requests for General Plan amendments do not or would not address a "legitimate public purpose," in that the permissible uses under the designations would be in "conflict with the community character which is demonstrated by the development adjacent to the parcels[.]" On page 15, he goes on to argue that both the City's 2012 and 2014 decisions to impose the MU designation on the Project sites and the Applicants' pending requests for General Plan amendments do or would violate the equal protection clause of the Fourteenth Amendment to the United States Constitution.

These contentions bear no relation to reality. Nothing in statutory law or the United States Constitution permanently locks in low-density or open space zoning as some sort of unchangeable condition. Under Article XI, section 7, of the California Constitution, each city and county enjoys a robust police power that, within its territorial limits, is "as broad as the police power exercisable by the Legislature itself." (*Candid Enterprises, Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885; see also *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782.)

"Public safety, public health, morality, peace and quiet, law and order – these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it. The concept of the public welfare is broad and inclusive …." (*Berman v. Parker* (348 U.S. 26, 32–33 (1954).) In general, a land use regulation comes within the police power if it has a "'real or substantial relation to the public health, safety, morals or general welfare.'" (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604 (*Associated Home Builders*), quoting *Miller v. Board of Public Works* (1925) 195 Cal. 477, 490.) "[S]uch ordinances are presumed to be constitutional, and come before the court with every intendment in their favor." (*Associated Home Builders*, *supra*, 18 Cal.3d at pp. 604–05, citing *Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460.)

"[T]he police power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race. In brief, 'there is nothing known to the law that keeps more in step with human progress than does the exercise of this power.'" (*Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal.2d 515, 522 [some internal quotation marks omitted].) "The courts may differ with the Legislature as to the wisdom and propriety of a particular enactment as a means of accomplishing a particular end, but as long as there are considerations of public health, safety, morals, or general welfare which the legislative body may have had in mind, which have justified the regulation, it must be assumed by the court that the legislative body had those considerations in mind and that those considerations did justify the regulation." (*Ibid.*)

In light of the Legislature's repeated determinations in recent years that California is facing a statewide housing crisis, there can be no doubt that a city's exercise of its legislative discretion to facilitate the construction of new housing is a legitimate use of the police power. As noted earlier, Government Code section 65889.5, subdivision (a)(1)(A), states that "[t]he lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California." Subdivision (a)(1)(D) of that section adds that "[m]any local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects."

This same legislation states that "[a]ccording to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025," and that "California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions." (Gov. Code, § 65589.5, subds. (a)(2)(D), (a)(2)(E).)

In light of this dire state of affairs and the long-recognized breadth of the City's police power, it is unthinkable that a court would hold that the City's approval of the proposed legislative actions associated with the Project would be an abuse of the police power. Residents do not have an absolute right to be surrounded in perpetuity by legal parcels in which only limited, rural-type activities may occur.

There can also be no doubt that legislative actions by the City to facilitate the retail commercial, business and professional, and recreation-conservation components would also serve legitimate purposes. State law charges each city and county with the obligation to prepare a General Plan. (Gov. Code, § 65300.) That General Plan must contain a "land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, greenways, … and other categories of public and private uses of land." (*Id.*, § 65302, subd. (a).) In choosing where to locate such decisions, cities and counties have broad discretion, though such decisions must reflect consideration of the location of land and natural resources identified in the parallel conservation element. (*Ibid.*) Here, the Applicants are proposing to preserve intact very large areas of open space with natural values on the South Village site and to devote 15.62 out of 72.6 acres of the North Village site to Recreation-Conservation uses. These numbers translate into 21.49 percent of the North Village site and 41.06 percent of the South Village site, respectively, being preserved for recreation and open space purposes, for a total of 27.95 percent of the Project as a whole. There can be no serious contention that the proposed land uses and layout, if approved, would either violate the PZL or exceed the City's police power.

It is also unthinkable that a court would find a violation of the Equal Protection Clause of the Fourteenth Amendment. If a court were ever to review such an implausible contention, the court would apply the well-settled "rational basis" standard of review. As many decades of case law from the United States Supreme Court has made clear, this highly deferential standard applies to a plaintiff's Equal Protection claims where there is no protected class (e.g., racial or religious minorities) being discriminated against, and no individual liberties (e.g, freedom of religion or freedom of the press) are at stake. (See,

e.g., *F.C.C. v. Beach Communications, Inc.* (1993) 508 U.S. 307, 313–19.) As the high court has explained,

> Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [Citations.] Where there are "plausible reasons" for Congress' action, "our inquiry is at an end." [Citation.] This standard of review is a paradigm of judicial restraint. "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." [Citation.]
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> (*Id.* at p. 314 [footnotes omitted].)

The Project presents the City Council with a chance to engage in garden-variety economic regulation of a kind that courts are loath to interfere with under the United States Constitution.

C. The District's Right to Allow Development on its Land

1. *The District "does not have the authority nor established statutorial purpose to enter private urban development endeavors."* (Frumkin Letter, pp. 14–15, 17–18; see also Sierra Geotech Letter, pp. 7, 36.)

Mr. Frumkin, like some other commenters, asserts that the District has no legal authority to allow development that is not directly relevant to education to occur on its property. Notably, these commenters do not cite to any legal authority for these broad statements. In fact, they are wrong. Public institutions of higher education may, and regularly do, enter into public/private partnerships to generate revenue to serve their educational missions.

As explained in detail by Megan E. Macy, legal counsel for the District, in Attachment A, Education Code section 70902 authorizes the District to "control the district's operational and capital outlay budgets," [m]anage and control district property," and "hold and convey property for the use and benefit of the district."

(Attachment A, p. 4.) Education Code section 81360 authorizes the District to "sell any real property belonging to the district." (*Ibid.*) "Indeed, this authority to dispose of parcels that are no longer needed for educational purposes is so fundamental to the powers of community colleges, it predates the adoption of the School Code in 1929. (*Woodland Hills Homeowners Organization v. Los Angeles Community College Dist.* (1990) 218 Cal.App.3d 79, 90, citing to former School Code, § 6.170, derived from Pol. Code, § 16171/2, Stats. 1917, ch. 785.)." (*Ibid.*)

Taken together, these statutory provisions allow the District to manage, develop, otherwise use, and/or sell the Project sites in a manner that the District's Governing Body deems to be of benefit to the District. "Notably, the statutes do not limit the manner by which the District may convey the Property. Rather, the District is required to exhaust certain procedural processes set forth in the Education Code before conveying the Property," which it certainly will do. (*Ibid.*) "In sum, the Governing Board is empowered to 'initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.'" (Ed. Code, § 70902(a)(1).) (*Ibid.*)

The revenues that the District will receive pursuant to the Project will be used in furtherance of the District's educational mission, including the construction of new on-campus facilities, to the benefit of the students and residents of the City and Placer County, as explained by counsel for the District:

> The College estimates $500 million will be available to support new construction over the next 10 years through the combination of the Measure E Bond Program, State Funding, *and sale of the Project sites*. The success of the District's facilities program is due in large part to the District's excellent fiscal management, including the District's AAA credit rating and ability to reduce interest cost from 3.8% to 1.96%, saving taxpayers an estimated $41 million over the life of Measure E. During this time, the District has also been committed in outreach to local firms to generate interest and opportunities for local businesses to participate in the construction of District facilities, so that tax payer dollars are reinvested into the local economy. Over the last two years, almost 70% of District's facilities spending has been within Placer County and adjoining counties. These are all examples of how the District has fulfilled its primary mission to educate students with the larger public interest in mind.

(Attachment A, p. 3 [original italics].)

In short, Save East Rocklin has erroneously accused the District of breaking the law, when in fact the District has followed the law with each and every step preceding the City's issuance of the Draft EIR for the Project. Proceeds from the Project will lead to an improvement in the quality of education on the Sierra College campus.

D. The Absence of Any Prescriptive Easement on District Property

1. *A prescriptive easement "run[s] along the creek which crosses through the middle of the entire South Village Project area."* (Frumkin Letter, pp. 56–57; see also Sierra Geotech Letter, pp. 38–39.)

Like some other commenters, Mr. Frumkin asserts that the Project design must accommodate an alleged prescriptive easement that, he and they claim, has come into existence on District property through long-term trespassing that the District has essentially permitted to occur.

Again, this contention runs afoul of state law. Prescriptive easements cannot materialize on publicly-owned property. The legal principles relating to this category of easements are set forth in the California Civil Code, Division 2, Part 4. Section 1007 of that code makes it clear that "property...dedicated to or owned by the state or any public entity" cannot be acquired through occupancy. (Civ. Code, § 1007.) This rule applies to both Project sites, which are currently owned by the District—a public entity—and have been since well before either site would have been used by nearby residents for recreational purposes.

"The basis of that doctrine is '[t]here can be no adverse holding of such land which will deprive the public of the right thereto, or give title to the adverse claimant, or create a title by virtue of the statute of limitations. The rule is universal in its application to all property set apart or reserved for public use, and the public use for which it is appropriated is immaterial.... The public is not to lose its rights through the negligence of its agents, nor because it has not chosen to resist an encroachment by one of its own number, whose duty it was, as much as that of every other citizen, to protect the state in its rights.'" (*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 827, quoting *People v. Kerber* (1908) 152 Cal. 731, 734.)

Moreover, Civil Code section 1009, subdivision (b), precludes prescriptive easements on privately owned property for recreational purposes. Consequently, there is no scenario here whereby nearby residents can assert a credible claim to a prescriptive easement. To the contrary, commenters describe a kind of unauthorized use of the South Village site that suggests ongoing or occasional trespassing and vandalism—making property "improvements," establishing a "gathering place," and cutting holes in fencing, all of which actions are illegal.

E. The Project's Compliance with the City's Riparian Setback Policy

1. *"The Project conflicts with the General Plan's riparian setback policy (Action Step OCRA-11) and therefore violates state planning and zoning law."* (Shute Mihaly Letter, pp. 3–5.)

The Project does not conflict with the General Plan's riparian setback policy set forth in Action Step OCRA-11,[8] as explained below at length in Section III.F.13. Therefore, the Project is consistent with the City's General Plan and does not violate the State's Planning and Zoning Law that requires such consistency.

III. RESPONSES TO CEQA COMMENTS

Having dispensed with the preceding non-CEQA issues, we now turn to key CEQA comments and arguments found in various comment letters. The first of these relates to the relative weight a reviewing court would give, respectively, to the City's factual conclusions, as set forth in the EIR, and opponents' critique of those conclusions.

[8] "OCRA" refers to "Action Steps" taken to implement the policies of the Open Space, Conservation, and Recreational Element of the City's General Plan.

A. Standard of Review

1. *A "fair argument can be made that the Project may cause significant impacts that have not been disclosed" because "the DEIR's conclusion that the Project will have a less than significant impact on the environment is unsupported (California Public Resources Code Section 21064.5)."* (Frumkin Letter, pp. 4, 16; see also Sierra Geotech Letter, p. 4.)

The commenter's mention of a "fair argument" and his citation to Public Resources Code section 21064.5 are misplaced. These refer to the judicial standard of review and document requirements for a *negative declaration*, not an EIR. An agency must prepare an EIR, rather than a negative declaration, where the agency is presented with substantial evidence, viewed in light of the whole record, supporting a fair argument that a proposed project *may* have a significant environmental effect. (CEQA Guidelines, § 15064, subd. (f); Pub. Resources Code, § 21080, subd. (d); *Newtown Preservation Society v. County of El Dorado* (2021) 65 Cal.App.5th 771, 781.) "'The fair argument standard is a "low threshold" test.'" (*Ibid.*) Courts are not deferential to public agencies on the question of *when* to prepare an EIR, in that the mere existence of substantial evidence that a significant effect may occur is sufficient to trigger the need for an EIR, even if the agency is also presented with other substantial evidence that the project will not have a significant effect. (*Ibid.*).

Here, of course, there is no debate as to *whether* the City should prepare an EIR for the Project. Rather, a Draft EIR was prepared for public review, and Save East Rocklin advocates factual conclusions different from those reached by the City. The principles relevant to challenges to negative declarations are therefore irrelevant here. Once a lead agency has prepared an EIR, the factual conclusions in the document will be upheld by a reviewing court if they are supported by substantial evidence. Contrary substantial evidence put forward by project opponents does not change the judicial deference to which lead agencies are entitled. Even where project opponents support their attacks with true expert evidence, a lead agency may choose to rely on contrary substantial evidence as found in its EIR. "Disagreement among experts does not make an EIR inadequate[.]" (CEQA Guidelines, § 15151.)

When reviewing an EIR, a court does "'not exercise [its] independent judgment on the evidence, but shall only determine whether the act or decision is supported by

substantial evidence in the light of the whole record." (Pub. Resources Code § 21168; see also *id.*, § 21168.5.)" (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1396–1397 (*Mani Brothers*).) "For CEQA purposes substantial evidence is defined by statute as including 'fact, a reasonable assumption predicated upon fact, and expert opinion supported by fact. ([Pub. Resources Code] § 21080, subd. (e)(1).)" (*Id.* at p. 1397.) "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence." (Pub. Resources Code, § 21082.2, subd. (c).)

Even where the question is whether an EIR is sufficiently detailed to adequately and meaningfully address a particular significant environmental effect, an agency's "underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 (*Sierra Club*).) "[T]o the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted." (*Ibid.*)

In short, the commenter does not understand his burden of proof to show inadequacies in the City's EIR. The low level of evidentiary persuasiveness needed to trigger the preparation of an EIR in the first instance falls far short of demonstrating the inadequacy of an EIR.

B. Project Description

1. *The EIR mischaracterizes the Project as "infill development" because it does not meet the definition in the California Health and Safety Code for such development.* (Frumkin Letter, pp. 3–4, 20, 22–23; see also Zenobia Letter, p. 2; Sierra Geotech Letter, pp. 3–4, 5, 8.)

Mr. Frumkin notes that the DEIR, in places, describes the Project as an "infill project," and argues that the City is misusing the term. He suggests that the one and only permissible use of the term "infill project" in an EIR is the very complex and technical term that, he says, is defined in California Health and Safety Code section 53545.16. Such a statute does not exist, however. He apparently meant to refer to section 53545.12,

subdivisions (d) and (e), which define both "qualifying infill area" and "qualifying infill project." The commenter says that "the statement that the Project is an Infill Project is misleading at best and outright false making the whole analysis flawed based on that characterization of the Project area."

The commenter has accused the City of perpetrating falsehoods without good cause. The particular statutory definitions that he (mis)cites do not apply to the Project, as these definitions are found, as the commenter himself notes, within the Housing and Emergency Shelter Trust Fund Act of 2006, with which the Project has nothing to do. The legislative intent behind that Act is set forth in Health and Safety Code section 53545, subdivision (a), which states that "[t]he Legislature intends that the proceeds of bonds deposited in the [Housing and Emergency Shelter Trust Fund of 2006] shall be used to fund the housing-related programs described in this chapter over the course of the next decade [2014–24]." To qualify for the subsidies created by bond proceeds, a "qualifying infill project" in a "qualifying infill area" must meet very specific statutory criteria. This is not surprising, in that the Legislature was understandably very precise about the exact types of housing projects it wanted to subsidize with bond proceeds. As the name of the Housing and Emergency Shelter Trust Fund Act suggests, the focus of such subsidies is on emergency shelters, "[s]upportive housing for people with disabilities who would otherwise be at high risk of homelessness," and similarly compelling types of housing projects serving especially needy Californians. (*Ibid.*)

Other definitions of "infill" can be found in other statutes. There is no standard definition applicable in all situations. Between them, CEQA and the CEQA Guidelines alone contain multiple nonidentical definitions of "infill sites" and "infill projects," each of which is attached to special CEQA rules for differing kinds of development. CEQA Guidelines section 15332 contains a categorical exemption for "infill projects," which are not specifically defined but made subject to various qualifications. The concept of "infill" addressed in section 15332 requires surrounding uses be "urban," but is silent on the exact nature of those urban uses. The main criteria for qualifying for the exemption are that a project be located within a city on a parcel of five or fewer acres and be consistent with existing General Plan and zoning designations. A statutory definition of "infill site" can be found in Public Resources Code sections 21061.3. A somewhat less precise

statutory definition of the same term can be found in section 21099, subdivision (a)(4). A separate statutory category of "residential infill projects" are subject to rules set forth in Public Resources Code section 21081.2. The CEQA Guidelines include yet another definition of "infill site" in section 15191, subdivision (e). This definition informs the incredibly complex multi-factory statutory exemptions for infill projects found in CEQA Guidelines section 15195, which tracks the statutory exemption found in Public Resources Code section 21159.24.

Here, the City obviously did not intend to use the term "infill" as a term of art defined in any one of these statutes or CEQA Guidelines provisions, none of which is relevant to the CEQA strategy that the City chose to employ here: preparing a generic EIR not subject to any special set of streamlining rules. In the DEIR, the City uses the term "infill" in a nonspecific manner and does not claim that the Project meets any particular legal definition of that term, including the obviously inapplicable one (incorrectly) cited by Mr. Frumkin and other commenters.

Nevertheless, the Project embodies a common-sense concept of infill, as that term is commonly used in planning parlance. The Project sites are situated amidst existing urban development, and the Project will fill in those undeveloped gaps. The Project would not extend the urban footprint outward into prime agricultural land or pristine wildlife habitat. Rather, the South Village site is already surrounded by commercial, residential, and public development on all sides. The North Village site is across the street from the Sierra College Rocklin campus on the west and is adjacent to high-density residential development to the south, low-density residential development to the east, and commercial and residential development to the north. Figures 2.0-2 through 2.0-10 in the DEIR show this surrounding development. No one reading the EIR, with its multiple graphics showing the locations of the two Project sites, was misled about their locations or the nature of the surrounding properties. (Gov. Code, § 65080, subd. (b).)

Moreover, in its comment letter, the Sacramento Area Council of Governments (SACOG) identifies the Projects as a beneficial "infill and redevelopment project[]." (See November 4, 2021, SACOG Letter, p. 1.) This favorable characterization strongly suggests that the Project is exactly the kind of Project that California needs from a macro environmental standpoint. By law, SACOG is responsible for preparing and periodically

updating a "sustainable communities strategy" (SCS) intended to embody land use patterns consistent with other state laws requiring ongoing reductions in GHG emissions. (See Gov. Code, § 65080, subd. (b).) The fact that SACOG favors the Project carries a lot of environmental weight.

In short, the City did not break any laws by publishing an EIR that calls the Project an infill project. Nor did that characterization in any way undermine the impact analysis in the document. The Project does not include subsidized emergency shelters or supportive housing for disabled persons, and therefore does not need to satisfy the definition of "qualifying infill project found in Health and Safety Code section 53545.12. If approved, the Project would make an efficient use of empty properties by building much needed housing in locations consistent with long-term statewide GHG reductions.

2. *The DEIR "fails to provide a definitive description" because it does not present a "finite number of residential dwelling units and commercial retail space."* (Frumkin Letter, p. 20.)

On page 2.0-5, the DEIR states that "the proposed College Park project includes the approval of the College Park GDP to facilitate the development of *up to* 342 single-family units, 558 multi-family units, 120,000 square feet of non-residential uses...." (Italics added.) This information is repeated on page 2.0-9 and parsed out between the two Project sites on pages 2.0-9 through 2.0-11. These numbers present a maximum projected buildout scenario. Any future tentative map or permit applications will require the final number of residential units and commercial square footage.

This use of a maximum projected buildout scenario is an acceptable, and common, way to present a project's description under CEQA and often results in a project having lesser levels of impacts than anticipated in the EIR when and if the final development is less intense or dense than the assumed maximum buildout. (See, e.g., *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 334 (*South of Market*)[including the "maximum possible scope of the project...enhanced, rather than obscured, the information available to the public"]; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052–55 [upholding the project description in an EIR for a project consisting of flexible design standards governing a variety of possible ultimate

land uses; "the EIR made an extensive effort to provide meaningful information about the project, while providing for flexibility needed to respond to changing conditions and unforeseen events that could possibly impact the Project's final design"]; see also CEQA Guidelines, § 15124, subd. (c) [a project description need only include a "general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities"]; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26–36 [upholding a generalized project description against an attack arguing that it was insufficiently specific].)

The DEIR does include mention of ranges of development density in a few sections. These ranges are based on the allowable minimum/maximum development for the proposed General Plan land use designations and zoning. In some circumstances, such as with air quality, analysis is based on the maximum legally permissible number of units within these ranges. What is allowed in theory under a General Plan or zoning designation is typically higher than what experienced planners project will actually occur based on relevant data and past experience. (See, e.g., *High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, 122 ["[a]lthough High Sierra imagines a worst case scenario for rural sprawl in Plumas County, it does not demonstrate the County erred in relying on its experience and data showing minimal growth outside the planning areas would occur in the reasonably foreseeable future"].)

When the DEIR assumes theoretical levels of impacts that are not likely to occur in actual practice, the resulting analysis becomes very conservative because the modeling upon which analysis is based assumes a higher level of development which results in the over-statement of impacts. For example, with air quality, the air emissions modeling assumed 848 multi-family residential units—which represents the maximum allowable units within the proposed land use designations and zoning. (See DEIR, Appendix B: 1.1 Land Usage.) The anticipated maximum buildout, however, would be only 558 multi-family residential units. Therefore, the air emissions modeled and analyzed exceed those that will reasonably occur. Likewise, traffic modeling assumed 573 multi-family residential units—fifteen more than the anticipated maximum buildout. (See DEIR, Appendix I: 1. Executive Summary: Overview of Proposed Project.) Overstating impacts

to a minor degree is not a sin under CEQA, but understating them can be. (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431 ["[i]t is vitally important that an EIR avoid minimizing the cumulative impacts"].)[9]

Lastly, the commenter again cited to an irrelevant CEQA Guidelines section, section 15070, subdivision (a)(b), dealing with negative declarations, *not* EIRs. (See Section III.A of this letter, above.)

3. *The DEIR does not properly describe the "geographic boundary to the proposed Project which is a violation of Government Code and Public Resources Code."* (Sierra Geotech Letter, p. 5.)

The commenter does not cite to any specific Government or Public Resources Code for its comment. It is worth noting that the DEIR accurately describes the exact location of the Project sites and depicts them on numerous graphics, such as Figures 2.0-2, 2.0-3, and 2.0-5 to 2.0-9. In particular, the commenter characterizes the DEIR as being "not accurate and misleading" by stating that the "North Village and South Village sites are infill development sites located within the City of Rocklin approximately one quarter mile apart along the Rocklin Road corridor" because the "North Village is not off Rocklin Road but rather it is adjacent to Sierra College Boulevard." This criticism is misplaced in that, in fact, the North Village site *is* bound to the south by Rocklin Road, and the Project will have an ingress/egress on that roadway.

In this same comment, the commenter also nitpicks the use of the term "corridor" to describe Rocklin Road, but again provides no specific code or other regulation to support his definition of the term. The Circulation Element of the Rocklin General Plan, on page 4C-3, describes Rocklin Road as "an east-west arterial in the City of Rocklin. It connects Sierra College Boulevard to I-80 (via the Rocklin Road interchange) and to Central Rocklin to the west. East of Sierra College Boulevard, Rocklin Road extends to Barton Road in Loomis. Rocklin Road is four lanes wide from west of Pacific Street in

[9] As described in the Project Description Chapter 2.0 of the DEIR (at pp. 2.0-9 – 2.0-10), Project Description), the Applicants propose to develop the 72.6-acre North Village with 317 single-family dwelling units, 378 multi-family dwelling units, 45,000 square feet of non-residential building uses, 9.0-acres of open area, and 6.6-acres of parks. Additionally, the Applicants propose to develop the 35.8-acre South Village site with 25 single-family dwelling units, 180 multi-family dwelling units, 75,000 square feet of non-residential building uses, 13.5 acres of open space, and 1.2 acres of parks.

downtown Rocklin to Sierra College Boulevard and two lanes to the Loomis town limit east of Sierra College Boulevard. The segment between Sierra College Boulevard and the Loomis town limit includes a three to two lane transition in the westbound direction." Nothing in this description is inconsistent with the use of the term "corridor."

C. Aesthetic Resources

1. *The DEIR "fails to describe the aesthetics setting" because it "does not provide photographs…of viewsheds" or "Topographic Maps of the area from which the proposed Project can be seen."* (Frumkin Letter, p. 23; Sierra Geotech Letter, p. 10.)

CEQA does not dictate how a lead agency should evaluate impacts to aesthetic resources, either with respect to the relevant visual setting or the analysis of visual effects. Rather, for both issues, agencies have considerable discretion, and the ultimate question is whether substantial evidence supports the analysis and conclusions reached in an EIR. "An agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR." (*Sierra Club*, *supra*, 6 Cal.5th at p. 515.)

In general, "[t]he description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives." (CEQA Guidelines, § 15125, subd. (a).) And "the significance of an activity may vary with the setting." (*Id.*, § 15064, subd. (b)(1).) "[A]n activity which may not be significant in an urban area may be significant in a rural area." (*Ibid.*) "To conclude that replacement of a virgin hillside with a housing project constitutes a significant visual impact says little about the environmental significance of the appearance of a building in an area that is already highly developed." (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 589 (*Bowman*).)

Here, the DEIR contains adequate narrative information and supporting maps and other graphics to allow readers to understand the nature of the visual setting – an urban area adjacent to a large community college campus served by two busy major thoroughfares (Rocklin Road and Sierra College Boulevard). A topographic map of the Project sites is provided in the DEIR's Project Description (Figure 2.0-4). (DEIR, p. 23.) Additional topographic maps are provided throughout Appendices C through F. Landscape and viewshed photographs on and of the Project sites are provided throughout

Appendices C, D, and F. Aerial photographs of the Project sites with overlays showing the proposed Project are available in the Project Description (Figures 2.0-9 and 2.0-10). (DEIR, pp. 33, 35.) Additional aerial photographs are available throughout Appendices C through H.

Although topographical and photographic depictions exist in the document, none of these are expressly required by CEQA for an analysis of visual resource impacts. The DEIR provides a thorough narrative description of existing conditions that spans four pages, and then describes impacts to these conditions throughout Section 3.1. (See DEIR, pp. 3.1-1 to 3.1-4.) In particular, the DEIR describes "views of the Project Area" under existing conditions, and upon development, from multiple locations, such as from Sierra College Boulevard and Rocklin Road for the North Village site and Rocklin Road and El Don Drive for the South Village site. (DEIR, pp. 3.1-11 to 3.1-13.)

Taken together, these efforts are sufficient to satisfy the CEQA requirements for the environmental setting for a visual resource impact analysis for a proposed project in a highly developed urban environmental setting.

2. *The DEIR "provides no visual resources inventory" or evaluation of the "scenic quality" of the site, and should discuss "Key Observation Points" and utilize "factors for landscape evaluation" created by "scholars at Virginia Technical University" in 1994.* (Frumkin Letter, pp. 24, 27–28; see also Sierra Geotech Letter, pp. 11–13.)

As noted above, CEQA does not dictate how a lead agency should evaluate impacts to aesthetic resources. The methodologies suggested here by commenters are not required by law. CEQA does not require a "visual resources inventory" with the explicit parameters expressed by commenters. It does not require a discussion of "Key Observation Points." Nor does it suggest that a lead agency use factors created almost three decades ago by scholars from the East Coast. Even if these methods were effective and relevant (although the commenters present no evidence that they are), the methods still would not be required *under CEQA*. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 415 (*Laurel Heights I*) ("[a] project opponent…can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study …

might be helpful does not make it necessary"].) Commenters insist that the "City must apply the basic principles of design" when resolving visual impacts, but, in addition to failing to identify those principles, they do not appear to understand that the City has only an obligation to apply the basic principles of applicable law. (Sierra Geotech Letter, p. 13.)

The DEIR, however, *does* discuss and evaluate "visual resources" on the Project sites. It discusses visual features such as rolling hills, oak trees, and a tributary. (DEIR, pp. 3.1-11 to 3.1-12, 3.1-14.) The DEIR also discusses, using significance thresholds derived from the checklist found in CEQA Guidelines Appendix G, whether any scenic vistas exist (they do not) and whether the sites are viewable from a scenic highway (they are not). (DEIR, pp. 3.1-11, 3.1-16.) The DEIR adequately describes and evaluates the aesthetic resources that professional CEQA practitioners ascertained exist onsite. Furthermore, as noted in the DEIR: "Impacts related to a change in visual character are largely subjective.... People have different reactions to the visual quality of a project or a project feature, and what is considered 'attractive' to one viewer may be considered 'unattractive' to other viewers." (DEIR, p. 3.1-14.) Thereby, what one commenter views as scenic, such as "vegetation" (Frumkin Letter, p. 23), another observer might view as a nuisance or fire hazard.

As discussed above in Section III.C.1 and just below in Section III.D.3, the Project sites are located in an urbanized and highly developed area. Any legitimate "Key Observation Points" – meaning those that do not originate from a private view such as a residence – would be located on major local thoroughfares (Sierra College Boulevard and Rocklin Road) that are already replete with development.

Notably, case law is clear that EIRs need not address impacts on purely *private* views. (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492–94 (*Mira Mar*) [noting, too, that "neither state nor local law protects private views from private lands"].)

The view of the South Village site from Rocklin Road shows primarily a graded and graveled overflow parking lot in which multiple vehicles are often present. The view of the North Village site from Rocklin Road, eastbound, shows a power pole, scattered trees, some vegetation typical for open space in the region, broken barbed wire fencing,

and a long row of awkwardly angled oak trees with small trunk diameters in various states of health that were planted on a raised berm, which impedes views of the site from the roadway. The view of the North Village site from Sierra College Boulevard, northbound, shows the typical open space vegetation from a different angle, along with scattered trees, a barbed wire fence, power poles and lines, some advertising signage, the singular house that already exists on the property, and an area of denser oaks that blocks views of the larger property.

These views would be seen only briefly from the two thoroughfares used primarily by motorists, including commuters, driving the speed limit of 40 to 50 miles per hour with a primary interest in reaching their destination and not sightseeing through the roadway corridors. Accordingly, views from these "Key Observation Points" do not offer any scenic vistas as understood by the City, under CEQA, or by any other applicable standard; and the EIR's conclusion that the Project will cause less-than-significant impacts is appropriate and supported by substantial evidence. (See DEIR, p. 3.1-16.)

3. *The DEIR "does not justify how a construction of thousands of square feet of commercial retail and high-density multi-family residential facilities…is not an impact."* (Frumkin Letter, p. 26.)

As stated previously, the Project would be located in an urbanized area, where the views from public locations would be from fast-moving motorists on Rocklin Road and Sierra College Boulevard. Both Project sites are surrounded on all sides by development of some kind—a goodly portion of which consists of commercial, retail, and high-density residential uses. Major local thoroughfares abut both sites; and both sites are adjacent to Sierra College. This existing level of urbanization is suggestive that development on the sites would not per se substantially degrade their surroundings.

Expansive and/or multistory structures in cities, in and of themselves, generally do not cause significant visual effects. As stated by a court addressing this exact subject, "[t]he aesthetic difference between a four-story and a three-story building on a commercial lot on a major thoroughfare in a developed urban area is not a significant environmental impact, even under the fair argument standard." (*Bowman*, *supra*, 122 Cal.App.4th at p. 592.) The court went on to warn against aesthetic impacts being ascribed to development in urban areas where "enough people could be marshaled to

complain about how it will look." (*Ibid.*) The court reasoned that it was not the Legislature's intent in enacting CEQA for "the aesthetic merit of a building in a highly developed area" to necessarily be considered an environmental impact.

Given the Project's urban setting, site characteristics, and the need for the Project to comply with certain objective design guidelines, substantial evidence supports the City's conclusion, set forth in the DEIR, that the Project's visual effects will be less than significant. (DEIR, pp. 3.1-10, 3.1-15 to 3.1-16 [Project must comply with objective standards in "Chapter 17.72, Design Review, of the City's Zoning Code which contains standards and provisions related to site design and visual requirements; and the City's Design Guidelines which includes architectural design principles and [] provide[] criteria for evaluation of plans…to ensure that proposed development in the city is in conformity with the intent and provisions of the ordinance"].)

Furthermore, nothing about the existing vacant lots is visually special when measured against the City's significance thresholds, which were derived from the CEQA Guidelines Appendix G checklist and the City's goals, policies, and determinations associated with aesthetic and visual resources. (See DEIR, pp. 3.1-5 to 3.1-7 [listing applicable goals and policies], 3.1-11 ["[n]o part of the Project Area is designated as a scenic vista by the City of Rocklin General Plan, nor does the Project Area contain any unique or distinguishing features that would qualify it for designation as a scenic vista"], 3.1-14 to 3.1-15.) Nor is the surrounding setting particularly special—the area is highly developed (see Section III.C.2 above). The DEIR sufficiently establishes these conclusions through its analysis. (See *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 376 (*Eureka Citizens*) [upholding an agency's determination "that the Project's aesthetic impacts would be insignificant, and EIR contained, as required, statements addressing the reasons for that conclusion"]; see also *North Coast Rivers Alliance v. Marin Municipal Water Dist.* (2013) 216 Cal.App.4th 614, 625–27 [upholding the conclusion in an EIR that the visual effects of visible hillside tanks associated with a proposed desalination project would be less than significant].)

"[A] lead agency has the discretion to determine whether to classify an impact described in an EIR as 'significant,' depending on the nature of the area affected"; and

the City does exactly that here. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243 (*Clover Valley Foundation*); see also *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068 ["CEQA grants agencies discretion to develop their own thresholds of significance"].) The City made its determination after accounting for a variety of factors, goals and policies, and the nature of the area, as well as the fact that the Project includes an abundance of natural open space, so some of the most scenic parts of the Project sites are being preserved.

Thus, notions put forth by commenters that a reduced-unit development, or development without multi-story structures, would somehow reduce an otherwise significant aesthetic impact are predicated on the flawed premise that a slightly larger development in an urbanized area would create a larger or more adverse aesthetic impact.

Notably, if it were embraced by the City and other local governments in California, the commenters' approach to visual impact analysis—by which less density and intensity of use is always better than more—would lead to environmentally counterproductive results. CEQA requires that, where feasible, significant environmental impacts should be mitigated. (Pub. Resources Code, § 21002.) If density and intensity of use, without more, are understood to create significant aesthetic effects that should be mitigated, then the obvious solution is to approve projects with less density and intensity. But such an outcome would require an inefficient use of urban land and therefore more sprawl, greater air pollutant and GHG emissions, and more expensive housing. The environmental benefits of infill development are well known, and the need for more, and specifically more affordable, housing to address the current statewide housing crisis has been mentioned above.

As the Legislature has stated in Government Code section 65589.5, subdivision (a)(2),

> The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.
> Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, *urban sprawl*, *excessive commuting*, and *air quality deterioration*.

***

> California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and *undermining the state's environmental and climate objectives*.
>
> ***
>
> An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. *California's cumulative housing shortfall therefore has not only national but international environmental consequences*.
>
> (Italics added; paragraph numbering omitted.)

The City, like the courts, should construe and apply CEQA in a holistic way that maximizes environmental protection related to planetary and public health by putting the aesthetic impacts of infill projects within urbanized area into a larger environmental context.

Furthermore, Public Resources Code section 21159.26 provides that, in considering how to mitigate the significant environmental effects of a "project that includes a housing development," the reduction of housing units is not permitted where other feasible options are available.

4. *"The City has not addressed the loss of privacy of existing single family homes" as a result of the Project.* (Frumkin Letter, p. 27.)

For reasons explained above, any loss of privacy for individuals surrounding the Project sites is not an impact that need be considered under CEQA or under any City standard or policy. (*Mira Mar*, *supra*, 119 Cal.App.4th at pp. 492–94 [EIRs are not required to address impacts to private views]; see also *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 734 (*Ukiah*) [court "differentiate[s] between adverse impacts upon particular persons and adverse impacts upon the

environment of persons in general," finding that CEQA is not concerned with the former].) As held by the court, in dealing with such concerns in another case, "the height, view and privacy objections raised by the Association impacted only a few of the neighbors and were properly considered by City in connection with its site development permit approval, along with other aesthetic concerns." (*Ukiah*, *supra*, 2 Cal.App.4th at p. 734.)

Nevertheless, the nearest residences to the east of the North Village site are separated from any proposed development by James Drive and are set back from the roadway by approximately 25 to 30 feet. These existing residences will be further separated from new homes in the North Village by the distances from the eastern edge of the new lots and the structures within those lots. "[D]eeper lots would be included on the east side of the North Village site as a transition to adjacent rural residential uses in Loomis," with heavier densities toward the middle of the plan area. (DEIR, pp. 2.0-8, 3.10-15.) Indeed, a minimum depth of 100 feet will be required for all of the residential lots located along the east property line and adjoining arena facilities within the Flying Change Farms Equestrian Facility's property east of the northern portion of the North Village site. (See Attachment B.) In addition, rear-yard fencing in the form of a seven-foot masonry wall will be required for residential lots along the east property line adjacent to the main outdoor arena and covered arena for a distance of approximately two hundred fifty (250) feet extending southward from the northern boundary line of Sierra Villages property. The latter requirement will be subject to approval by the City of the additional entitlement required to construct a wall over six feet in height. (*Id.,* including Exhibit B thereto.)

For the South Village site, residential densities will be lower as the Project transitions toward "adjacent existing neighborhoods to the south." (*Ibid.*) As discussed above in Section III.D.1, the land uses proposed by the Project would not conflict with adjacent land uses in Loomis.

Further, residences located in Loomis and adjacent to the North Village Site are forward facing toward the Project site, and thus only their frontages, which are already publicly viewable, might potentially be visible from the site. The residences surrounding the South Village site are currently situated closely to one another with lot sizes and

layouts that are typical for the area. The majority have fencing and developed trees and other landscaping on shared property lines that promote privacy. Thus, privacy concerns appear unwarranted.

5. *The DEIR should discuss impacts to "[r]ecreational sightseers" or sensitivities of "the adjacent land uses."* (Frumkin Letter, p. 27.)

As previously stated, the Project would be constructed in an urbanized area, and the two Project sites are surrounded by a variety of development types in areas zoned for retail, commercial, and residential uses. Because there are no recreational sightseeing opportunities adjacent to the sites, there would be no "recreational sightseers" who might be impacted by the Project. Athletic/transportation activities, such as bicycling, that occur on roadways surrounding the Project sites (e.g., along Rocklin Road or Sierra College) are not sightseeing activities under any traditional definition. And any recreational activities conducted onsite are done so without permission of the property owner and are likely considered trespass (see Section II.A.4 above).

The only other recreational-type activity near the Project sites occurs at the Flying Change Farms Equestrian Facility located in Loomis to the northeast of the North Village site. The owner/operator of that Facility and the Applicants have discussed the Project at length and have entered into an agreement indicating that the Project is compatible with the Facility's operations. (See Attachment B, Agreement between Evergreen Sierra, LLC/Cresleigh Homes and Flying Change Farms Equestrian Facility (July 24, 2018).) The commenter, therefore, does not represent the interests of the property owner of Flying Change Farms, who is content to see the Project go forward.

Any discrete sensitivities of adjacent land owners and users are not required to be addressed in an EIR and are certainly not evidence of a significant adverse environmental impact. (*Eureka Citizens*, *supra*, 147 Cal.App.4th at p. 376 ["[t]he possibility of significant adverse environmental impact is not raised simply because of individualized complaints regarding the aesthetic merit of a project"]; *Ukiah*, *supra*, 2 Cal.App.4th at 734 [court "differentiate[s] between adverse impacts upon particular persons and adverse impacts upon the environment of persons in general"].) Moreover, these supposed sensitivities do not represent or establish a right under which adjacent property owners

can unilaterally prevent or modify a proposed development that has proceeded in a manner according to law and all City standards and policies. (See *Mira Mar*, *supra*, 119 Cal.App.4th at p. 494 ["the rights of one private landowner cannot prevail over the rights of another private landowner except in accordance with uniformly applied standards and policies as expressed in the City's general plan…and zoning ordinances"].)

6. *"Urban development proposed at the North Village, especially high density residential on the SE corner, will impact the visual character of Rural Estate land uses in Loomis and should be considered a significant impact."* (Loomis Letter, p. 3.)

"Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." (See *Mira Mar*, *supra*, 119 Cal.App.4th at pp. 492–94.) The "Rural Estate land uses in Loomis" mentioned in this comment consist entirely of individually owned private residential property. Any aesthetic impact to these particular individuals need not be considered in the EIR. As succinctly stated by the court in a case brought by Loomis over another development:

> Loomis claims the EIR's conclusion that impacts on views from western Loomis toward the project's southeastern border would [] not be significant is not supported by substantial evidence and is contradictory. We disagree. The EIR stated an impact to aesthetic resources would be considered significant if the proposed project would '[s]ubstantially alter or degrade the visual character or quality of the project site; or [h]ave a substantial adverse effect on a scenic vista….' Using this standard of significance, the EIR concluded the impacts on views from western Loomis toward the project's southeastern border would be less than significant. Substantial evidence supports this conclusion, and the finding is not contradictory.… [I]t is not a significant impact because the area is already a residential area. By containing factual statements addressing why this impact is not significant, the EIR provided substantial evidence supporting its conclusion, and the conclusion is not contradictory.
>
> (*Clover Valley Foundation*, *supra*, 197 Cal.App.4th at p. 243.)

Here, the DEIR addresses aesthetic impacts and provides evidence to support its conclusions. That "[s]ome residents of Loomis may not want their views towards [the Project site] to change" does not obviate that evidence nor does it provide evidence that the DEIR has not satisfied CEQA requirements. (*Id.* at p. 239; see also *Mira Mar*, *supra*, 119 Cal.App.4th at p. 492 ["California landowners do not have a right of access to…view

over adjoining property"].) Please refer also to the Section II.D.1 for a discussion on compatibility between the Project and adjacent Loomis land uses.

D. Agricultural Resources

1. *The DEIR "fails to address the potential conflict between agricultural operations of nearby chicken farms, goat farms, and horse boarding stables" within Loomis.* (Frumkin Letter, pp. 30–33; see also Sierra Geotech Letter, pp. 13, 14–16.)

To the extent that CEQA is concerned with impacts to "agricultural resources," its focus is on defined "Farmland," and not on minor agricultural operations in rural residential areas in which landowners might be engaging in modest levels of crop production or animal husbandry. Here, any "agricultural activities" occurring on parcels in Loomis adjacent or close to the North Village site do not rise to the level of, or conform to, the kind of "agricultural resources" or "Farmland" protected by CEQA.

Public Resources Code section 21060.1 defines "agricultural land" as "prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California." In its questions about potential project impacts on agricultural resources, Appendix G of the CEQA Guidelines uses the general term "Farmland," which is characterized as being limited to these same three classifications. CEQA, then, does not protect just any property on which activities that could be characterized as "agricultural" are occurring.

These classifications of Farmland exist to properly designate land that has the ability to sustain agricultural crop production. (See DEIR, pp. 3.2-3 to 3.2-4.) The Farmland Mapping and Monitoring Program (FMMP) of the California Resources Agency defines prime farmland as that containing prime soils *and* which "has been used for irrigated agricultural production at some time during the four years prior to the mapping date." (DEIR, p. 3.2-10.) These classifications do not include grazing land, land used for animal husbandry, or land used for animal-based recreational activities. By these definitions, the Project site is not considered farmland, nor is the adjacent Loomis land. (*Ibid.*)

In general, CEQA is concerned with the effects of projects on the environment, and not the effects of existing environmental conditions on future project residents or users. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377 (*CBIA v. BAAQMD*).) The "environment," moreover, is defined as "the *physical conditions* which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance." (CEQA Guidelines, § 15360 [italics added].) Although, under this definition, "[t]he 'environment' includes both natural and man-made conditions" (*ibid.*), the definition is not broad enough to include economic, social, or recreational activities occurring on particular lands close to a project site. "Economic or social effects of a project shall not be treated as significant effects on the environment." (CEQA Guidelines, § 15131, subd. (a).) Nor are potential effects on "community character" impacts on the "environment," except to the extent that aesthetic impacts may be involved. (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 576–77 (*Preserve* Poway).)

In *Preserve Poway*, *supra*, 245 Cal.App.4th at pp. 565, 568, the opponents of a proposed residential project expressed concerns about the project's potential negative impacts to the "community character" of their equestrian community. The project site for years had supported a horse boarding facility that the opponents were loath to lose. One person said that "[t]he thing that concerns me the most is that when this city was founded, the founders of this city decided to come up with a motto of the city in the country.[¶]…And I've watched over the years and we're losing more and more country out of our city".) (*Id.* at p. 578.) The court characterized such concerns as going "well beyond aesthetic impacts." (*Id.* at p. 577.) Rather, "[t]he community character issue here is not a matter of what is pleasing to the eye; it is a matter of what is pleasing to the psyche. This includes Poway's residents' sense of well-being, pleasure, contentment, and values that come from living in the 'City in the Country.' In this case, community character is not merely aesthetics, but also includes psychological and social factors giving residents a sense of place and identity, what makes them feel good and at home in Poway. (*Ibid.*) While these concerns may be considered by decisionmakers outside the context of CEQA, the court concluded that CEQA did not require the respondent city to

"study psychological and social impacts upon its community character." (*Id.* at p. 581.)

Similar non-environmental concerns appear to be at play with respect to the College Park Project. In the eyes of some, development of the North Village site will introduce housing densities inconsistent with what some Loomis residents to the east of that site might like to see. Any discomfort they might feel, or any lack of enthusiasm for the Project on their part, do not constitute effects on "the environment" in general or on "agricultural resources" in particular.

The land adjacent to and east of the North Village site in Loomis, referenced in the comment, is zoned by Loomis as RA (Residential Agricultural). This zone allows for some agricultural uses, but, to our knowledge, the land itself does not qualify as agricultural land or Farmland by any CEQA definition. The residents within that zone may well feel that they are enjoying a semi-rural community character that they prefer to life in a more urbanized setting. Yet the fact that the North Village Site may support high-density housing does not, by itself, cause adverse effects on agricultural resources. Therefore, the DEIR therefore properly concluded that the Project would have no impact on agricultural operations adjacent to the North Village. No such operations, pursuant to applicable definitions, are occurring on those properties. (DEIR, p. 3.2-11.)

The uses on this adjacent land in Loomis are primarily residential, with some animal-based operations, such as the equestrian facility discussed above in Section III.C.5. Although commenters have raised concerns about potential impacts on activities and animals on adjacent properties in Loomis, the commenters have presented no concrete evidence that a conflict would occur between these operations and the Project. Even if we assume that the potential conflicts of concern somehow implicate CEQA, evidence exists to the contrary.

The owner/operators of arguably the largest of these animal operations—the Flying Change Farms Equestrian Facility—agree that the Project is compatible with its existing use (see Attachment B), which incidentally was approved by Loomis and established *after* the Project's application had already been filed with the City. This compatibility assessment is telling because Flying Change Farms is the only animal-based operation not separated from the Project site by a roadway and thereby would, in theory, incur the most conflicts.

In negotiating the agreement with Flying Change Farms in July 2018, the Applicants obtained the commitment of the owner/operator to design her project and its operations to the current state of the art in order to avoid or minimize potential conflicts with future residents of the North Village site, with a particular focus on odor and noise issues. More specifically, the Applicants worked with the owner of Flying Change Farms to formulate improved fly control measures and to modify the original layout for the horse arena, the soils to be used in the arena, and locations for temporary manure piles. These revisions and commitments were embodied in the site plan exhibit attached to the parties' agreement and were reflected in both (i) the Project Description and Mitigation Measures contained in the May 2018 Initial Study/Mitigated Negative Declaration prepared for the Flying Change Farms project and (ii) in the Conditions of Approval contained in the Town of Loomis's staff report for that project dated July 24, 2018. (See Attachment B, esp. Exhibit A thereto [agreed-on site plan for Flying Change Farms]; see also Attachment F [Draft Initial Study and Notice of Intent to Adopt a Mitigated Negative Declaration for the Flying Change Farms Project], pp. 3-15 to 3-17 [discussion of odor issues and odor mitigation]; Attachment G [Staff Report to Planning Commission regarding Major Use Permit and Design Review Application #17-08 "Flying Change Farms Equestrian Center"] (July 24, 2018); Attachment H [Exhibit 4 to Staff Report to Planning Commission regarding Major Use Permit and Design Review Application #17-08 "Flying Change Farms Equestrian Center," including conditions of approval] (see esp. conditions of approval 28–43, 46, 52).)

The other animal operation(s) occurs across James Drive (a two-lane roadway). This separation further decreases any likelihood of conflicts give the distance from the Project. Decreasing the potential conflicts even more is the fact that ingress and egress for the North Village site will be located on Sierra College Boulevard and Rocklin Road, so there will be no Project-related traffic on James Drive that might potentially disturb animals or animal operations. Moreover, any effects on individual animals would not constitute a significant effect on the environment.

Finally, we note that, to the extent that commenters have expressed concern that the future residents of the North Village site might be exposed to odors or other externalities emanating from property in Loomis, CEQA is not concerned with such

possible effects. As noted earlier, "CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents." (*CBIA v. BAAQMD*, *supra*, 62 Cal.4th at p. 386.) Even so, the Applicants have designed the North Village site so as to protect future residents in the easternmost portion of the property against such intrusions. (See Section III.C.4 above for a discussion of the masonry fences that will be built along the northeastern portion of the North Village site and Section III.E below for a discussion of odor issues.)

2. *The Project conflicts with State and local policies for "the conservation of farmland," specifically "AB 857 (2003)."* (Frumkin Letter, p. 8; see also Sierra Geotech Letter, p. 30.)

As stated just above, neither the Project sites nor the properties immediately surrounding them contain Farmland as identified by any CEQA or any State definition. Nor does any commercial crop farming occur on any of this land. Therefore, the Project will not directly convert Farmland or, by any stretch of the concept, cause the conversion of Farmland to non-agricultural uses. As a result, the Project would not conflict with State and local policies associated with the conversion of farmland.

Moreover, the commenter again makes an erroneous citation. AB 857 from 2003 dealt with autism. AB 857 from 2002 dealt with State infrastructure planning. Government Code section 65041.1, subdivision (b), which was created from this 2002 bill, states generally that one of the State's planning priorities is "[t]o protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection." This is far too general a policy statement (as applied to the State) to take away Rocklin's planning and zoning discretion as a local government, and, regardless, does not apply to the Project in regards to farmland, for aforementioned reasons. In general, broad legislative policy statements do not create specific statutory duties that are enforceable in court. (*Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 3d 612, 634; *Sierra Club v. Gilroy City Council* (1990) 222

Cal.App.3d 30, 41–42.)

E. Air Quality/Greenhouse Gas Emissions

1. *The DEIR used inaccurate CalEEMod assumptions which resulted in underestimated emissions* (Frumkin Letter, pp. 35–36, 52; see also Sierra Geotech Letter, pp. 16–18, 25.)

As noted earlier, the Applicants' requested that Raney Planning and Management, Inc. (Raney) address a wide variety of air quality issues raised by various commenters. Raney's technical analysis is submitted as Attachment C to this letter.

Among the issues that Raney addressed at length are the reasons why the air quality analysis did *not* include inaccurate assumptions, and in fact represents a conservative analysis that, if anything, may modestly overstate Project impacts rather than underestimate them. Below are some excerpts from the Raney memorandum:

> Construction emissions were not underestimated, based on the reasonable construction schedule provided by the applicant and the topography of the project sites and soil import/export expectations during construction. According to the CalEEMod results, the construction schedule was updated based on the schedule provided by the project applicant, which is a standard practice. The actual hours of equipment use were not adjusted by the consultant, and are auto-populated as part of CalEEMod based on schedule duration. Furthermore, the User-Entered Comments & Non-Default Data section in the model include a note that the site is generally flat, and mass soil import or export is not anticipated, all which are reasonable and responsible assumptions. Thus, the consultant who ran CalEEMod for the Draft EIR reasonably reduced the duration of site preparation and grading activities compared with the default assumptions, which anticipate sites on which grading is more challenging.
>
> ***
>
> The project description includes land use summaries for each village, information regarding the proposed General Plan and zoning designations, the actual development proposed by the project applicant, and allowable maximum buildouts for each village under the proposed land use designations and zoning, as well as graphics showing lotting patterns consistent with the tentative subdivision maps submitted by the applicant. The applicant is also seeking approvals for design review, improvement plans, grading plans, and drainage plans. This level of detail is sufficient for accurate air quality modeling, which is generally based on the proposed land uses and the surface area/acreage of the project site. CEQA analyses are often required to address projects that propose changes only to General

> Plan and zoning designations, and do not seek approvals of tentative subdivision maps, design review, or other very precise discretionary actions. Air quality analyses are still required for such projects, as landowners and other applicants have the right to request changes in General Plan and zoning designations without simultaneously applying for tentative subdivision maps, use permits, and other more site-specific approvals. Under such circumstances, air quality modelers must make reasonable assumptions about the likely densities and intensities of use that will ultimately be developed. Here, the CalEEMod user input the following information into the model: 342 single-family residential units; 848 multi-family residential units; 120,000 square feet of commercial uses; and 7.8 acres of park. The modeler also used trip generation assumptions provided by transportation consultant Fehr & Peers. (See Appendix B to Draft EIR, User Entered Comments & Non-Default Data.) The unit numbers used by the modeler are a combination of the maximum allowable development under the project's proposed new land use designation and zoning and the project as proposed by the applicant. While the model includes 848 multi-family residential units, the project being proposed by the applicant includes only 558 multi-family residential units. Thus, the modeling is conservative. The modeling, therefore, overstates project air emissions because it includes emissions for housing units that are not proposed and will not be built. The City presumably took this conservative approach out of an abundance of caution, which is a common strategy in CEQA documents, where there is a need ensure that impacts are not understated.
>
> (See Attachment C, Raney Letter, pp. 1, 2.)

2. *"The DEIR fails to identify sensitive receptors which will be impacted by the proposed Project."* (Frumkin Letter, p. 37; see also Sierra Geotech Letter, p. 18.)

Nearby sensitive receptors are identified on page 3.3-10 of the DEIR, under the heading "Sensitive Receptors." Impact 3.3-1 analyzes air quality impacts on these sensitive receptors resulting from project operations. (DEIR, pp. 3.3-24 to 3.3-27.) The main source of air pollutants from project operations are motor vehicles that will be traveling to and from the Project sites. (*Id.* at pp. 3.3-25, 3.3-26 [Table 3.3-7], 3.3-27.) Because "there is no guarantee that the Project would be able to reduce operational [reactive organic gas] emissions to below the applicable [Placer County Air Pollution Control District] threshold of 55 pounds per day," the DEIR conservatively concludes that operational impacts to sensitive receptors will be significant and unavoidable and offers two mitigation measures containing at least ten individual sub-measures to reduce impacts. (*Id.*, pp. 3.3-27 to 3.3-29.) Notably, reactive organic gases (ROGs) are of

concern because they contribute to the formation of ozone, a regional pollutant with adverse effects on human health. By itself, ROG is not treated as a source of concern under either the federal Clean Air Act or the California Clean Air Act. After it is dispersed from the emissions source (e.g., a tailpipe), ROG can be converted into ozone in the presence of sunlight. Thus, ROG emissions do not cause concentrated health effects at the locations where emissions occur. (*Id.*, pp. 3.3-2 to 3.3-3, 3.3-23.)

To put the potential human health effects attributable to the operations of the Project or of any other specific development project into a regional context, the DEIR explains that "[e]missions generated by a project or plan could increase some local concentrations of photochemical reactions and the formation of tropospheric ozone … (even if regional emissions are reduced with implementation of a project or plan), which at certain concentrations, could lead to increased incidence of specific health consequences at the local level. Although these health effects are associated with ozone and particulate pollution, the effects are a result of cumulative and regional emissions. As such, a project or plan's incremental contribution cannot be traced to specific health outcomes on a regional scale[.]" (*Id.*, p. 3.3-24.)

With respect to *construction-related* emissions (as opposed to operational emissions), the discussion of Impact 3.3-2 concludes that, with mitigation, impacts on sensitive receptors will be less than significant. (*Id.* pp. 3.3-29 to 3.3.-32.) From the standpoint of residents of East Rocklin, the DEIR's conclusion relating to construction-emissions should be of more direct interest than the conclusion relating to operational emissions, as onsite construction emissions will be far more concentrated than the diffuse emissions from motor vehicles traveling to and from the Project sites once construction is over and the two Project sites are fully developed. Fortunately, "[c]onstruction-generated emissions are short-term and of temporary duration, lasting only as long as construction activities occur[.]" (*Id.*, p. 3.3-31.)

Notably, every existing East Rocklin resident who drives a motor vehicle powered by gasoline or diesel fuel is contributing to existing polluted conditions in the air basin. "Existing air quality concerns within Placer County and the entire air basin are related to increases of regional criteria air pollutants (e.g., ozone and particulate matter), exposure to toxic air contaminants, odors, and increases in greenhouse gas emissions contributing

to climate change. The primary source of ozone (smog) pollution is motor vehicles which account for 70 percent of the ozone in the region." (*Id.*, p. 3.3-7.)

3. *The DEIR does not "provide reasonable mitigation measures" for air quality impacts.* (Frumkin Letter, p. 36; see also Sierra Geotech Letter, p. 18.)

The commenters criticize the City's mitigation measures for air quality impacts, but neither offer any specific criticisms of any specific measures nor provide any suggestions for alternate superior measures. The commenters fail to acknowledge the very extensive measures included in the DEIR to address emissions from both construction and Project operations. (DEIR, pp. 3.3-27 to 3.3-29, 3.3-36 [Mitigation Measures 3.3-1, 3.3-2, 3.3-3].) The commenters also fail to acknowledge Project features that tend to reduce emissions (*id.* at p. 3.3-25) and the panoply of Placer County Air Pollution Control District (PCAPCD) rules and standard conditions of approval with which the Project must comply (*id.* at p. 3.3-17 to 3.3-18, 3.3-30 to 3.3-31). As the DEIR explains,

> Mitigation Measure 3.3-1 includes requirements to install Project features that would reduce emissions in finished buildings during Project operation. These features include electric vehicle charging infrastructure, electric vehicle-ready parking spaces, reductions in building energy usage, installation of Cool Roofs, usage of low-VOC[10] architectural coatings, and infrastructure to power electric landscaping equipment. Separately, Mitigation Measure 3.3-2 requires the Project applicant to either establish mitigation off-site for ROG[11] by participating in an off-site mitigation program, or participate in PCAPCD's Off-site Mitigation Program by paying the equivalent amount of fees for the project's contribution of ROG that are above the applicable PCAPCD thresholds.

(*Id.* at p. 3.3-26.)

In addition, Mitigation Measure 3.3-13 includes fourteen different requirements that, taken together, would reduce diesel particulate matter (DPM) emissions, other toxic air contaminant (TAC) emissions, and other emissions of concern to sensitive receptors to less than significant levels. (*Id.* at pp. 3.3-35 to 3.3-36.)

This comprehensive approach to addressing air quality impacts certainly constitutes "reasonable mitigation."

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[10] VOC stands for volatile organic compounds.
[11] ROG stands for reactive organic gases.

4. *The DEIR does not disclose "potential health impacts" associated with toxic air contaminants; "unmitigated [diesel particulate matter] emission released during Project construction would result in an excess cancer risk to the 3rd trimester of pregnancy and infants…;" and health risk assessment must be included.* (Frumkin Letter, pp. 38, 40–42; see also Sierra Geotech Letter, pp. 18–20, 27–28.)

Raney also addressed the question of whether a formal health risk assessment (HRA) was required for the Project. One was not. Yet, in order to dispel any concerns about the potential health effects on sensitive receptors, Raney prepared an HRA, which is included within Attachment C and is provided to the City for its own use. Raney summarized its conclusions and findings as follows:

> Construction-related TACs are discussed on page 3.3-35 of the Draft EIR, which notes that construction associated with the proposed project would generate emissions of diesel particulate matter (DPM). As a result, the Draft EIR includes Mitigation Measure 3.3-3 to ensure that such emissions do not result in significant adverse health impacts. Under the State's air toxics program, local air districts regulate air toxic emissions by adopting ARB air toxic control measures, or more stringent district-specific requirements, and by requiring individual facilities to perform a health risk assessment if emissions at the source exceed district-specific health risk thresholds (https://www.arb.ca.gov/ch/handbook.pdf). Based on the Draft EIR and the supplemental analysis presented in Response to Comment 10, none of the construction thresholds of significance would be exceeded.
>
> Nonetheless, given the project site's proximity to existing sensitive receptors, a construction health risk assessment has been prepared to further support the conclusion that TAC emissions associated with construction would not be considered significant.
>
> The PCAPCD maintains thresholds of significance for the review of local community risk and hazard impacts. The thresholds are designed to assess the impact of new sources of TACs on existing sensitive receptors. Based on the PCAPCD thresholds, the proposed project would result in a significant impact related to TACs if, due to the exposure of sensitive receptors to TACs related to construction activities, nearby sensitive receptors would experience an increased cancer risk of greater than or equal to 10 in one million people, or experience a chronic or acute hazard index of greater than or equal to 1.0.
>
> ***
>
> *** [T]he cancer risk, acute hazard index, and chronic hazard index associated with construction of the proposed project, including

> demolition of the on-site residence and the off-site roadway improvements, would be below all applicable thresholds of significance. Therefore, the proposed project would not have the potential to expose sensitive receptors to substantial pollutant concentrations, and the conclusion presented in the Draft EIR remains accurate.
>
> (Attachment C, pp. 6-8 footnote omitted].)

5. *The DEIR fails to provide any quantification of air emission for the decommission of the Project after its lifespan."* (Frumkin Letter, p. 39; see also Sierra Geotech Letter, p. 20.)

In general, housing is not thought to have a lifespan and is not seen as development that requires decommissioning. We are not aware of any CEQA document that discusses the decommissioning of residential housing, nor is there any case that address it. Essentially, this is a nonissue. Still, Raney addressed it:

> The demolition of off-site buildings is not part of the proposed project and, thus, is not required to be evaluated in the CEQA document. However, the project would include demolition of one existing single-family residence on the project site. ***
>
> ***
>
> The proposed project does not include demolition of the proposed buildings. The project proposes to build permanent structures such as homes that will remain in place for the indefinite future. It would be pure speculation to try to predict exactly when, many decades from now, particular structures could be demolished.
>
> (Attachment C, pp. 4, 8.)

6. *Placer County Air Quality Pollution Control District GHG thresholds apply to "large industrial projects" only.* (Frumkin Letter, p. 53; see also Sierra Geotech Letter, p. 26.)

To start, PCAPCD's comment letter did not raise any concern about misuse of its threshold. (See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380 (*Gentry*) ["[t]his lack of comment, like Sherlock Holmes's 'dog in the night-time' which tellingly failed to bark..., was in itself evidence"].) The fact that the very agency whose thresholds the City applied had no complaint about how these thresholds were used strongly

suggests that they were used properly.

In addition to PCAPCD's 10,000 MT CO2e threshold, the City also applied PCAPCD's efficiency threshold, which commenters do not seem to acknowledge. Raney, quoting from the DEIR, explained the thought process and analytical steps that went into the analysis of the Project's GHG-related effects:

> The 10,000 MTCO2*e*/yr threshold of significance applies to the project, but is not the only applicable threshold, as the Draft EIR makes clear. The 10,000 MTCO2*e*/yr threshold has been adopted by the PCAPCD, which is the air district that has jurisdiction over the project site and, therefore, is the applicable threshold of significance for CEQA review. The substantial evidence that is used to support such thresholds of significance can be found in the PCACPD's California Environmental Quality Act Thresholds of Significance Justification Report (available at: https://www.placer.ca.gov/DocumentCenter/View/2061/Threshold-Justification-Report-PDF). This threshold does, as the commenter states, apply to industrial projects containing stationary sources of GHG emissions. Pursuant to the PCAPCD's CEQA Handbook, however, the adopted 10,000 MTCO2*e*/yr threshold also applies to all other land use projects, including commercial and residential development. But the 10,000 MTCO2*e*/yr threshold is not the only applicable threshold for these other land use projects. Operational emissions for land use projects are also subject to a de minimis threshold and, if it is exceeded, efficiency thresholds, depending on the land use type. The following excerpt from page 24 of the PCAPCD CEQA Handbook explains the intended use of the District's GHG thresholds:
>
> > *"The District's Bright-line GHG Threshold of 10,000 MT CO2e/yr is applied to land use projects' construction phase and stationary source projects' construction and operational phases. In general, GHG emissions from a project (either the construction or operational phase) that exceed 10,000 MT CO2e/yr would be deemed to have a cumulatively considerable contribution to global climate change.*
> >
> > *The Efficiency Matrix and De Minimis Level are only applied to a land use project's operational phase. For a land use project, it can be considered as less than cumulatively considerable and be excluded from future GHG impact analysis if its operational phase GHG emissions are equal to or less than 1,100 MT CO2e/yr. A land use project with GHG operational emissions between 1,100 MT and 10,000 MT CO2e/yr can still be found less than cumulatively considerable when the results of the project's related efficiency analysis meet one of conditions in the efficiency matrix for that applicable land use setting and land use type."*
>
> The City of Rocklin, as the CEQA lead agency and with guidance from the PCAPCD, has elected to use the PCAPCD's adopted threshold of

significance for this analysis for the Draft EIR, which is appropriate pursuant to guidance in CEQA Guidelines Sections 15064(b)(2) and 15064.7(a). The Draft EIR (on page 3.7-27) correctly described the multi-step process recommended by PCAPCD as follows:

> *"The PCAPCD has established a layered approach to determining whether a project would be considered to have a cumulatively considerable contribution to climate change.1 Specifically, the PCAPCD has determined the following thresholds:*
>
> *• A bright-line threshold of 10,000 MT CO2e per year for the construction and operational phases of land use development projects as well as the stationary source projects;*
> *• A 'De Minimis' GHG threshold of 1,100 MT CO2e per year for the operational phase of a project.*
> *• An efficiency matrix for residential and non-residential projects (for the operational phase of land use development projects when emissions exceed the De Minimis Level, but which are below the bright-line threshold of 10,000 MT CO2e. The efficiency levels for residential projects are: 4.5 MT CO2e per capita for urban projects, and 5.5 MT CO2e per capita for rural projects. The efficiency levels for non-residential projects are: 26.5 MT CO2e per capita for urban projects, and 27.3 MT CO2e per capita for rural projects."*

The Draft EIR then described, on pages 3.7-31 and 3.7-32, how it applied these thresholds:

> *"With the implementation of mitigation (i.e. Mitigation 3.7-1), Project-related GHG emissions would be reduced to below 10,000 MT CO2e/year. As a result, the PCAPCD advises that the proposed Project's GHG emissions should be compared to the PCAPCD's efficiency matrix for impact significance determination. The efficiency level for residential projects is 4.5 MT CO2e per capita for urban projects. The proposed Project is anticipated to support a population of 2,520 new residents (see Section 3.12: Population and Housing, for further detail). Since mitigated operational GHG emissions (after implementation of Mitigation Measure 3.7-1) would reduce GHG emissions to below 10,000 MT CO2e/year, 10,000 MT CO2e/year divided by the new population of 2,520 residents would result in an efficiency ratio of 3.97, which would meet the 4.5 MT CO2e per capita condition for urban residential projects.*
>
> *Therefore, with implementation of Mitigation Measure 3.7-1, the Project's GHG emissions would be reduced below the PCAPCD's threshold for GHG emissions. Therefore, with implementation of Mitigation Measure 3.7-1, Project GHG impacts would have a less than significant impact."*

(Attachment C, pp. 9–10.)

7. *"The analysis for 3.7-1 also indicates that because of mitigation measure 3.7-1, the project would be consistent with PCAPCD's efficiency matrix for impact significance determination of 4.5 MT CO2e per capita for urban residential projects but uses an incorrect assumption and divides an emissions threshold of 10,000 MT CO2e, rather than the unmitigated total of 11,764 MT CO2e, by estimated population (2,520). Using the unmitigated total, since a mitigated total cannot be determined, the result is 4.67 MT CO2e, which exceeds the standard."* (Loomis Letter, p. 4.)

Raney also addressed this comment, explaining why the commenter's mathematical calculations were mistaken:

> The commenter is correct in that the unmitigated GHG emissions would result in an exceedance of the applicable efficiency threshold. However, with the required implementation of Mitigation Measure 3.7-1, which would ensure that GHG emissions are reduced to 10,000 MTCO2*e*/yr or less, the proposed project would meet the 4.5 MTCO2*e*/capita/yr efficiency standard and the associated impact would be reduced to a less-than-significant level, as stated on page 3.7-32 of the Draft EIR.
>
> (Attachment C, p. 12.)

8. *The DEIR does not discuss odor impacts from "existing livestock activity in the Town of Loomis" on the Project.* (Frumkin Letter, pp. 30–31; see also Sierra Geotech Letter, pp. 13–14.)

As stated previously, "CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents." (*CBIA v. BAAQMD*, *supra*, 62 Cal.4th at p. 386.) Even if this were a required topic, however, no evidence has been presented by commenters that adjacent animal operations would create odors that might substantially adversely affect future Project residents. (See CEQA Guidelines, § 15382 [definition of "significant effect on the environment"].) As discussed above in Sections III.D.4 and III.E.1, these operations are sufficiently distanced from the proposed housing units on the North Village site. Given that distance and the individualized variation in odor detection/reaction (see DEIR, pp. 3.3-9 to 3.3-10), coupled with the relatively small nature of the operations, it would be too speculative to evaluate such odor impacts and thereby no discussion is required. (See CEQA Guidelines, § 15145; see also *Laurel Heights I*, *supra*, 47 Cal.3d at p. 415 ["additional study or analysis" imagined by a project opponent is not necessarily necessary even if it

"might be helpful"].)

9. *"[C]arbon impacts of the proposed tree removals are not included in the analysis presented in" the DEIR, but they should be.* (CA Wildlife Foundation Letter, p. 2.)

CEQA Guidelines section 15064.4 does not require that an EIR discuss the loss of carbon sequestration as a result of the removal of vegetation or trees; it only dictates that an EIR discuss GHG emissions, which the DEIR does (see Section 3.7.3). The focus on emissions, as opposed to the potential loss of sequestration, is a result of the original 2007 legislative directive by which the Governor's Office of Planning and Research and the California Natural Resource Agency developed and promulgated the CEQA Guidelines dealing with GHG emissions. This statute, Public Resources Code section 21083.05, was amended again in 2012, but its focus on *emissions* is still unmistakable:

> The Office of Planning and Research shall periodically update the guidelines for the mitigation of *greenhouse gas emissions or the effects of greenhouse gas emissions* as required by this division, including, but not limited to, effects associated with transportation or energy consumption to incorporate new information or criteria established by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.
>
> (Italics added.)

Notwithstanding the Legislature's focus on GHG *emissions*, the loss of existing carbon sequestration in the trees to be removed from the Project site will be partially, if not fully, offset by planting substantially more than 1,000 new, healthy trees in residential yards, parks, along roadway corridors, etc. The landscape architects for the Project have identified a minimum of 1,085 trees that will be replanted, but have noted that there will also be more, though the total cannot yet be quantified.[12] These new trees will sequester carbon the same manner as the many unhealthy, older oak trees to be removed.[13]

Furthermore, more than 10 percent of the trees proposed for removal are either dead, wounded, or in varying states of decay, and a large portion of the remainder of the

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[12] In comparison, the Project will entail the removal of 1,393 oak trees, according to the Oak Tree Mitigation Plan found within Appendix C to the Draft EIR (at page 9).

[13] "The younger trees [store] carbon in a faster rate because they're producing food more quickly than the older forest." (Anwar, A., *Does the Age of a Tree Effect Carbon Storage?* (2001), NASA Goddard Institute for Space Studies, available at: https://icp.giss.nasa.gov/research/ppa/2001/anwar/.)

trees to be removed are of an inferior ecological quality, with defects and a lack of species diversity. (See DEIR, Appendix C: Attachment E, pp. 7, 14.) As is well known, dead trees eventually decay and release carbon dioxide, a GHG, into the atmosphere.[14] Thus, under a No Project scenario in which the dead, wounded, and otherwise unhealthy trees are not removed to make room for development, the process of their decay would contribute to GHG emissions.

In contrast, the oak trees proposed for conservation in the College Park Oak Tree Mitigation Plan, prescribed by Mitigation Measure 3.4-9, are more mature, have fewer defects, and include a broader species diversity than the trees present on the Project sites. (See DEIR, Appendix C: Attachment E [College Park Oak Mitigation Plan], pp. 14–15.) Thus, these protected healthy and mature trees, which could continue to thrive for many decades into the future, will provide better carbon sequestration and release far less carbon into the atmosphere than a large portion of those slated for removal as part of the Project.[15]

10. *"Carbon credits must not be relied upon to ensure mitigation of [GHG] impacts at the Rocklin/Loomis boundary."* (Loomis Letter, p. 4.)

The commenter is simply wrong in suggesting that carbon credits – or "carbon offsets" – are not a viable form of mitigation under CEQA. GHGs present a broader global impact, which is why offsite mitigation for GHG emissions should occur on a broader scale, such as the purchase of carbon offset credits. (See CEQA Guidelines, § 15126.4, subds. (c)(3) [suggesting "[o]ff-site measures, including offsets that are not otherwise required, to mitigate a project's emissions"].) The reality is that until such time as the persons driving to and from project sites are all using electric vehicles powered by renewable energy, carbon offsets will be a necessary tool for mitigating GHGs generated by emissions from fossil fuel powered vehicles.

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[14] "Standing dead and fallen trees...will decompose over years or decades eventually releasing carbon back into the atmosphere." (U.S. Department of Agriculture, Office of Sustainability & Climate, *Forest Carbon FAQs*, available at: https://www.fs.usda.gov/sites/default/files/Forest-Carbon-FAQs.pdf.)

[15] "The carbon that makes up a center of a mature white oak remains bound up for a long time. It has been pulled out of the atmosphere a hundred or more years ago, and it will remain bound up until the tree dies and is decomposed. That process can take decades to centuries depending on how long the tree is alive." (Norman, C., Kreye, M., *How Forests Store Carbon* (Sept. 24, 2020), Penn State Extension, available at: https://extension.psu.edu/how-forests-store-carbon.)

The commenter should not be concerned about any potential environmental or health impacts resulting from GHG emissions near the boundary of Rocklin and Loomis. GHGs such as carbon dioxide have no known direct localized health effects. Thus, there is no reason to mitigate their potential release at the Rocklin/Loomis boundary.

F. Biological Resources

1. *The DEIR "omits critical details regarding the Projects impacts on biological resources" because it omits "biological designations for [Important Bird Areas]."* (Frumkin Letter, pp. 23–24; see also Sierra Geotech Letter, p. 20.)

The commenter is mistaken here. The Project sites are not located within Important Bird Areas. As Madrone has explained:

> Upon review of the "Important Migrant and Wintering Bird Concentration Areas of Western Placer County" document that Mr. Frumkin references, we determined that the Project site was located within the Study Area for this document, but none of the "Important Concentration Areas" identified in the document occur within the Project site. It should be noted that all of western Placer County west of Meadow Vista (including all of the urban areas in downtown Auburn, Lincoln, Rocklin, and Roseville) is within the Study Area for this document.
>
> We visited the Bird Life International link provided on 14 December 2021, and did not find the "Sierra Nevada Foothills" on the list of Important Bird Areas (IBAs), and the Audubon Society map of IBAs does not show anything in the vicinity of the Project site (https://www.audubon.org/important-bird-areas).
>
> (Attachment D, Madrone Letter, p. 10; see also *id.* at p. 11 [includes map showing IBAs, none of which are located near the Project sites].)

2. *"Biological resource surveys would need to be conducted for specific development footprints of the South Village project site."* (Frumkin Letter, p. 42; see also Sierra Geotech Letter, p. 21.)

CEQA Guidelines require that an EIR "describe the physical environmental conditions in the vicinity of the project...as they exist at the time the notice of preparation [NOP] is published...." (CEQA Guidelines, § 15125, subds. (a), (a)(1).) Here, the NOP was published February 1, 2019. Fourteen biological resources field surveys were conducted on the Project sites by qualified biologists at Madrone Ecological Consulting,

Inc., from the point in time when the NOP was published through 2020. (See DEIR, p. 3.4-5.) Another eight were conducted prior to publication of the NOP between 2016 and 2017. (*Ibid.*) California Tree and Landscaping Consulting, Inc., also conducted a tree survey of each Project site after publication of the NOP, and conducted an additional survey of the South Village site in 2017. (See DEIR, p. 3.4-6.) And several database searches were conducted in 2017, 2019, and 2021. (See DEIR, pp. 3.4-6 to 3.4-7.) These surveys and searches were comprehensive, and their respective reports are included in full in Appendix C of the DEIR. Survey findings are discussed through Section 3.4.

In addition to surveys already conducted, the DEIR contains several mitigation measures that require pre-construction surveys for specific species and/or habitat, including Mitigation Measure 3.4-1 (valley elderberry longhorn beetle and habitat), Mitigation Measure 3.4-3 (western pond turtle), Mitigation Measure 3.4-4 (nesting birds, nests, and Swainson's hawk), Mitigation Measure 3.4-6 (bats), and Mitigation Measure 3.4-7 (special-status plant species). These efforts and measures meet all CEQA requirements for biological resource impacts. (See *Laurel Heights I*, *supra*, 47 Cal.3d at p. 415 "[a] project opponent...can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study of wind dispersal might be helpful does not make it necessary"].)

3. *Biological resource surveys are too old and fail to comply with federal and State recommendations.* (Frumkin Letter, p. 43; see also Sierra Geotech Letter, p. 21; Gaddis Letter, p.1.) *Also, Madrone Ecological Consulting, the preparer of the surveys, is "not an unbiased participant."* (Gaddis Letter, p. 1.)

For detail on biological resources surveys, see the response just above. Surveys conducted in 2019 through 2021 are well within the timeline prescribed by CEQA Guidelines to effectively describe existing conditions onsite. Under the plain language of CEQA Guidelines section 15125, subdivision (a)(1), the EIR could have relied on surveys that reflected conditions as they existed on February 1, 2019, when the NOP was issued. But additional information was gathered in 2020 and 2021. As a matter of law, these surveys, taken together, cannot be too old for use in the DEIR.

These surveys, in addition to pre-construction surveys required by various

mitigation measures, meet CEQA requirements. These efforts comply with industry standards and any known governmental recommendations, despite the fact that, except where surveys are needed for laws other than CEQA, the City, in preparing an EIR under CEQA, does not have to follow protocols for other agencies. The question CEQA wants answered is whether substantial evidence supports the City's conclusions, not whether the City followed another agency's protocol developed for a law other than CEQA. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1393–97 (*AIR*).) Here, there is ample substantial evidence on the record to support the DEIR's conclusions. (See Pub. Resources Code, § 21168; *Mani Brothers*, *supra*, 153 Cal.App.4th at pp. 1396–1397.)

Commenters also accuse Madrone Ecological Consulting of being biased, yet present no evidence to support this accusation. Madrone is a widely used biological resources firm with an excellent regional and local reputation that employs highly qualified biologists. (See Attachment D hereto, attachment A thereto [resumes of Sarah VonderOhe and Daria Snider].) Madrone has worked on hundreds of projects in the area on behalf of agencies, developers, and other entities, and, as a result, are highly knowledgeable about biological conditions in Placer County and highly qualified to detect local species and habitats. For more information, please refer to Madrone's website at www.madroneeco.com. Conversely, to our knowledge, none of the commenters are qualified biologists or have professional biological resources survey experience. For example, Denise Gaddis, the presumed representative of Save East Rocklin, is not a trained biologist, as far as we know. Thus, "her assertions of presence of certain species cannot be relied upon." (See Attachment D, p. 11.) Allan Frumkin, a legal representative for Save East Rocklin, is an attorney. His Facebook page describes him as a "divorce and family lawyer." (https://www.facebook.com/Law-Offices-of-Allan-R-Frumkin-Inc-1549572381974296/) His assertions are not substantial evidence, but rather constitute advocacy for his clients. (See *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 578-580 [comment letter by general counsel for Native American tribe did not rise to the level of substantial evidence "because it consists almost exclusively of mere argument and unsubstantiated opinion, which are excluded from the definition of substantial evidence under CEQA"].) Sierra Geotech, commenting

on behalf of Montclair Circle Property Owners, is a geotechnical engineering firm practicing in the areas of transportation, public buildings, and water.

CEQA affords a lead agency flexibility when preparing an EIR. As noted earlier, "[a]n agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR." (*Sierra Club*, *supra*, 6 Cal.5th at p. 515.) CEQA also allows a lead agency to "require the project applicant to supply data and information" and also allows an agency to contract directly with a consultant for EIR preparation, or receive draft material from an applicant's consultant, as long as it performs its "own review and analysis." (CEQA Guidelines, § 15084, subds. (b), (d), (e); see also *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452–55 [upholds practice of agencies accepting entire draft EIRs prepared by project applicants].) This is exactly what happened here.

4. *"Biological 3.4-4: Mitigation for Swainson's hawk is not adequate to reduce impacts to a less than significant level. The existing North Village nest site should be avoided by expanding the open area zone within the North Village. North Village development plans should be modified to provide open space around the nest location and maintain the nest site for future activity."* (Loomis Letter, p. 4.)

Madrone does not agree with the commenter on this point, and defends the conclusion that any impacts to Swainson's hawk nests will be mitigated to less than significant levels. Madrone explains that

> [t]he commenter is referring to nesting activities identified in a Fremont's cottonwood tree in the Northern Village site in 2019. (See Draft EIR, p. 3.4-33.) Nesting was not observed in this same tree during occasional visits to investigate nesting status in 2020 and 2021. Regardless, although the tree is shown within the impact area [i.e., the area that might be impacted during construction] on the impact exhibit (Draft EIR, page 3.4-59, Figure 3.4-5a), the tree itself will be preserved. The area that includes and surrounds the tree would become a proposed park; as such, the tree where nesting was observed in 2019 will be preserved, and a substantial amount of surrounding area will remain open parklands that may be used for foraging. Furthermore, only one nesting attempt has ever been documented in this tree, and there are numerous additional suitable nest trees that will be preserved by this Project, both on-site and off-site.
>
> (Attachment D, Madrone Letter, p. 4.)

In short, there may be no active nest in the tree of concern, which will nevertheless

be preserved and located within open space that would be left largely undisturbed, aside from some potential temporary and mitigated encroachment during construction (see DEIR, Mitigation Measures 3.4-2, 3.4-2, 3.4-5, and 3.4-9). In addition, other nearby trees suitable for nesting will also be preserved and protected.

5. *The DEIR's analysis "is flawed" in regards to the tri-colored blackbird.* (Frumkin Letter, p. 44; see also Sierra Geotech Letter, p. 22.)

Again, Madrone disagrees with the comment, stating that "[w]e feel that the existing setting for tricolored blackbirds is accurately reported." (Attachment D, Madrone Letter, p. 7.) Madrone "concur[s] that the Project site is within the range of the tricolored blackbird and the species has the potential to occur on-site," but states that "[t]his has been acknowledged and analyzed in the DEIR." (*Ibid.*)

Madrone adds that, as noted in the Biological Resources Assessment (BRA), "the Wellington Way location has not been used in more than 20 years. When nesting was last documented in this location, the habitat was much different, and there was substantial grassland present to the north. This location is now considered a 'permanently unsuitable' nesting location by the Tricolored Blackbird Portal. As a result, comparisons of habitat to this location are not informative." (*Ibid.*)

Finally, Madrone notes that "avian point count surveys are not necessary to document what special-status bird species have the potential to occur within the Project site, analyze potential impacts to those species, and detail mitigation for those impacts. If the analysis relied solely on point-count surveys, certain species that may occur only infrequently could be omitted, and not analyzed in the CEQA document. Furthermore, in our analysis, we not only searched for documented occurrences of species in the [California Natural Diversity Datat Base (CNDDB)] (which tracks nesting locations), but also eBird and iNaturalist, which are citizen-science projects that document all records of birds." (*Ibid.*)

Furthermore, Mitigation Measure 3.4-4 contains several measures that will be effective in protecting any tri-colored blackbirds that might be nesting or foraging onsite during construction. These measures include conducting a pre-construction survey within and around the areas of construction during known active nesting seasons "no

more than 14 days prior to the initiation of construction." (DEIR, p. 3.4-34.) Mitigation Measure 3.4-4 also requires that no construction activities occur within 500 feet of a tri-colored blackbird nest or colony in consultation with the California Department of Fish and Wildlife (CDFW). (*Ibid.*) Buffers may be increased depending on the birds' reactions to construction activities. (DEIR, p. 3.4-34.) This exact type of mitigation was upheld by the court in *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 523–26 (*Save Panoche Valley*), and is appropriate here to protect tri-colored blackbirds.

6. *The DEIR contains no "documentation of nesting birds" which is "misleading."* (Frumkin Letter, p. 46; see also Sierra Geotech Letter, p. 23; Gaddis Letter, pp. 11–13.)

Per Mitigation Measure 3.4-4, preconstruction surveys will be required that will document nesting birds. (DEIR, pp. 3.4-34 to 3.4-45.) If active nesting colonies are found for any special-status bird or songbird species, construction activities will cease within either a 500-foot perimeter until the young have fledged or a 100-foot no disturbance zone, respectively. (DEIR, p. 3.4-34.) Mitigation Measure 3.4-4 also contains a provision for increased buffers if birds show signs of disturbance. (DEIR, p. 3.4-35; see also *Save Panoche Valley*, *supra*, 217 Cal.App.4th at pp. 523–26.) See the response just above for more detail.

Madrone explains the methodology it used to assess the potential presence of nesting birds on the Project sites as follows:

> As detailed in the Biological Resources Assessment (BRA) (included within the Draft EIR as Appendix C), the biological resources surveys conducted for this Project were reconnaissance-level in nature (with the exception of protocol-level surveys for certain relatively static biological resources), and were conducted to identify habitat for special-status species. While some bird species show nest fidelity, most nest in a new location each year; as such, a protocol-level nest survey is not informative as to where nests will be when construction occurs. What is informative is identifying nesting habitat, which shows where birds are most likely to nest. This is documented in Section 5.4 of the BRA. Neither the BRA nor the DEIR conclude that no birds are nesting within the Project site; they identify which birds are most likely to nest in which habitats on-site. Furthermore, both the BRA and the DEIR discuss a Swainson's hawk nest within the North Village site (BRA, p.28 and DEIR p. 3.4-33). ***

***

*** A number of bird species were documented as occurring on-site, even if they were just flying. An urban housing development is not generally considered "habitat" for bird species that fly over them; likewise, birds simply flying over the College Park Project site do not indicate that the Project site is habitat for them. Bird species reported as only flying over the site include bald eagle, osprey, and red-tailed hawk. There is no information regarding the Sandhill crane documentation, but given the habitat on-site, we would suspect that the bird was documented flying over the site during migration. ***

***

The yellow warbler (Setophaga petechia) is not listed and protected pursuant to either the California or federal Endangered Species Acts; but it is a CDFW species of special concern. The yellow warbler is largely extirpated as a breeder in the Sacramento Valley, but it is a common migrant during the fall and winter months (Shuford and Gardali 2008). Yellow warblers generally occupy riparian vegetation in close proximity to streams. Preferred habitat in northern California is dominated by willows (Salix spp.), cottonwoods (Populus spp.), and Oregon ash (Fraxinus latifolia) (Shuford and Gardali 2008). Although the Study Area is generally considered outside of this species' current breeding range, it has been documented within the vicinity of the Study Area on the Sierra College campus just north of the Study Area (eBird 2021). Suitable winter foraging habitat for the species is located in the riparian woodland in the South Village. With the implementation of Mitigation Measure 3.4-4, effects to yellow warbler and other protected nesting birds will be less than significant.

(Attachment D, Madrone Letter, pp. 5–6.)

In summary, Madrone followed standard methodologies in consulting data bases, conducting reconnaissance-level surveys, assuming the presence of particular species when in doubt, and recommending mitigation measures that will require preconstruction surveys to ensure that any bird nests present at that time will be protected. As Madrone notes, birds fly, and thus are especially mobile compared with other creatures. And they do not always use the same nests from year to year. What matters most is whether suitable habitat may be present on a project site, where birds might be nesting just prior to construction.

7. *The DEIR makes incorrect conclusions regarding the Western pond turtle.* (Frumkin Letter, p. 44; see also Sierra Geotech Letter, p. 22; Gaddis Letter, pp. 3–5.)

The EIR's discussion of Western pond turtles is straightforward and logical, and reflects the fact that, unlike the North Village site, the South Village site has a stream corridor running through it (which will be protected). Madrone explains that, as was stated on page 3.4-31 of the Draft EIR, "[t]he main perennial creek running through the South Village Study Area represents suitable habitat for western pond turtle, and the adjacent riparian wetlands and riparian woodlands provide suitable nesting habitat." The only location in the DEIR where there is a conclusion that western pond turtle is absent is in reference to the North Village site, which does not contain any habitat that could support the species. This conclusion is not based on the lack of observations during a reconnaissance-level survey, but rather based on the lack of the habitat that the species requires." (Attachment D, Madrone Letter, p. 8.)

8. *The DEIR should analyze whether and to what extent the project would have downstream impacts on [Central Valley Steelhead]" in Secret Ravine Creek.* (CA Wildlife Foundation Letter, p. 3.)

The Project includes large swaths of open space, including a corridor through which an unnamed tributary of Secret Ravine Creek corridor that runs through the South Village site. The only potential impacts to any fish species associated with the Project would be due to stormwater runoff that might pick up pollutants as it washed across the developed Project sites and into the tributary. Because the Project has been designed, and will be mitigated, to ensure that any polluted runoff will be clean by the time it enters into any receiving waters, the fish species downstream in Secret Ravine Creek will not suffer as a result. Madrone explains:

> Because the project footprint does not touch on Secret Ravine Creek, which is protected by riparian buffers, the potential impacts on Central Valley steelhead would be as a result of changes to water quality by the addition of visible and dissolved pollutants, including pesticides and fine sediment (sand) to the watershed and changes in hydrology. Potential impacts to water quality were addressed in the DEIR, Section 3.9.
>
> The current project design incorporates measures that would include both volume-based best management practices (BMPs) (i.e., bioretention,

> infiltration features, pervious pavement, etc.) and flow-based BMPs (i.e., vegetated swales, stormwater planter, etc.), which will provide biofiltration of storm water from the Project Site and will maintain flows to Secret Ravine at 90% of pre-project conditions (a reduction in post-project from pre-project conditions). These BMPs will include a network of drainage pipes in the North Village site that flow into two water quality/detention basins which will drain overland into Secret Ravine; an underground detention vault which will gravity discharge to existing drainage systems under Sierra College Blvd.; and an underground detention vault or water quality detention basins (design not yet finalized) that will gravity discharge to existing drainage systems under Rocklin Road. Storm water in the South Village would be piped into four water quality/detention basins which will gravity discharge into the tributary to Secret Ravine. With the incorporation of the mitigation measures as described in Section 3.9, effects to Central Valley steelhead downstream of the project would be less than significant with mitigation.
>
> (Attachment D, Madrone Letter, p. 8.)

9. *Biologists made a "critical error" when conducting surveys for special-status plant species because they "did not visit reference sites."* (Frumkin Letter, p. 45; see also Sierra Geotech Letter, pp. 22–23.)

On this issue, as with their other biological comments, the commenters are in error once again. Without any indication that they have any expertise in biological resource science, they attack the methodologies used by professional scientists with unquestioned expertise over the subject matter of plant species in south Placer County.

As Madrone explains, its biologists visited sites with "reference populations" and conducted their surveys at times of year calculated to find any special status plants of concern in bloom:

> Reference populations were visited for all special-status plants that have nearby populations, and surveys were conducted approximately one week after the spring target species (which have a very brief bloom window) were observed in bloom. Those without nearby populations were viewed at the UC Davis Center for Plant Diversity (herbarium), and the survey was conducted when they would be identifiable. Big-scale balsamroot is a relatively conspicuous perennial that would have been identifiable at least to genus even if not in bloom due to the large, conspicuous dissected grey leaves. Ahart's dwarf rush is a small annual rush, and the survey was conducted when similar small annual rushes were identifiable. The reference population table is included as Attachment B of the special-status plant survey report. Reference population checks serve two functions: they ensure that surveys are conducted at a time of year when the target species are in

> bloom (especially for early spring species, which can have a very short bloom period), and they document whether climatic conditions were appropriate for the target species to germinate, grow, and bloom that year (this is especially important for annual species). The reference population table documents that of the species for which reference populations could be found, climatic conditions allowed these species to develop properly during the survey year.
>
> We are not aware of any special-status plants that have previously been documented within either the North Village or South Village sites. The commenter was not specific about what project the surveys he refers to were conducted for. If the commenter is referring to the Sierra College Rocklin Campus Facilities Master Plan Draft EIR, which was published in 2018, no portion of the Study Area was within that Project area, and no special-status plants were found within that area. Neither the CNDDB or CalFlora's data (which includes all herbarium records in California) report any occurrences of special-status plants on or near the Project sites. The results of our surveys are consistent with this lack of data in the CNDDB and CalFlora tools.
>
> The surveys were conducted almost exclusively by Madrone botanist Daria Snider, who has been conducting botanical inventories for over a decade. She has observed all of the target plant species in the field during prior surveys, with the exception of big-scale balsamroot, which has not been documented in the region since 1958. Her qualifications are provided as Attachment A of the rare plant survey report.
>
> The Study Area for the special-status plant surveys is consistent with the area analyzed in the DEIR, and covers both the proposed development and any associated off-site infrastructure and improvements.
>
> (Attachment D, Madrone Letter, pp. 9-10.)

10. *The DEIR "fails to document over 60 wildlife species that are well-known to habitat [sic] the College Park South location along the tributary creek."* (Gaddis Letter, pp. 1–10.)

Madrone is not guilty of the omission of which it is accused here by a person who, as far as we know, is not a trained wildlife biologist. As Madrone explains,

> In regards to Ms. Gaddis' comments, as noted throughout this response letter, the BRA surveys were reconnaissance-level in nature, and were conducted to identify habitat for special-status species. This is standard methodology for a survey to identify potential impacts that require analysis under CEQA. We did not conduct intensive surveys for specific special-status wildlife species, but rather assumed that they could be present and analyzed impacts based on the assumption of their presence. Ms. Gaddis notes that 60 wildlife species have been documented on-site, and on page 7

> of her letter, refers the reader to a google folder (https://drive.google.com/drive/folders/0B1lebQtuPdbNejBibURKUHlQdnM?resourcekey=0--1xBHMLaSWlACRM2oe6yQ), with documentation of some of the wildlife species. Page 8 contains the comprehensive list. After comparing the wildlife list contained in the BRA against Ms. Gaddis' "list", we determined that she failed to document a number of relatively common wildlife species that Madrone observed only during reconnaissance level surveys, including American crow, American kestrel, oak titmouse, pygmy nuthatch, tree swallow, and Bewick's wren, among others. She has documented a number of both special-status and common wildlife species in this document, including a number of species that have been introduced to the area (Eastern fox squirrel, American bullfrog, red-eared slider, European starling and ring-necked pheasant). *** As noted previously in this letter, the observations of Sierra Nevada red fox and kit fox are well outside of their known ranges and are almost certainly misidentified common fox species. Quite a few species were documented by Ms. Gaddis as "sighting" or "sighting in area" with or without a date; for the purposes of this response, we are assuming that these were in fact documented within the Project site, and not in other nearby areas that are not part of this analysis. The song sparrow documented by both Madrone and Ms. Gaddis on the Project site is not a special-status species. Although the "Modesto" population, and several sub-species of song sparrow are considered special status, the Project site is outside of the range of all of these. Of the remaining species that she documented, the following are special-status and must be analyzed under CEQA: western pond turtle, Swainson's hawk, white-tailed kite, tricolored blackbird, yellow warbler and monarch butterfly.
>
> (Attachment D, Madrone Letter, pp. 5-6.)

11. *"The DEIR's analysis of Project Impacts on wildlife movement is inadequate because it fails to disclose the existence of an important wildlife corridor on the [South Village] site."* (Shute Mihaly Letter, pp. 2–3.)

The commenters are unpersuasive in arguing that the DEIR was deficient for failing to deal sufficiently with potential impacts on wildlife movement. The entire corridor of the unnamed tributary to Secret Ravine Creek will be preserved intact, and will continue to allow for wildlife movement to and from areas to the west and east of the two Project sites. Notably, however, some of those external areas provide for more constricted movements than the preserved onsite corridor will provide; and the surrounding areas are generally urbanized. So the areas to which the preserved corridor will continue to connect may have limited value as habitat. Madrone summarized the

situation as follows:

> The commenter's statements to the effect that a number of the special-status species are likely to "utilize the corridor" are inaccurate or misleading. Northern harrier nest and forage in grasslands and open marshy areas – this species is unlikely to use the riparian corridor at all. This species is most likely to be found in the grasslands in the North Village. The other bird species listed certainly may utilize the riparian corridor; however, it is misleading to include them in a discussion about movement corridors, as they certainly don't need a habitat corridor for movement; they can easily fly over urban areas to access different habitat patches, and a number of them have been documented nesting in urban areas.
>
> The riparian corridor that borders the east-west oriented drainage on-site (the tributary to Secret Ravine) could be used as a wildlife movement corridor for common species as asserted by the commenter. The two north-south oriented riparian areas would not be considered "movement corridors" as both of those areas originate in urban areas, and as such there would not be any natural habitat that wildlife is moving from.
>
> Importantly, the Project's riparian avoidance area along the tributary to Secret Ravine preserves a similar or wider riparian corridor than is present in many areas upstream and downstream of the site. Downstream of the site, near Aguilar Road, the preserved riparian corridor is roughly 100 feet wide, and upstream of the site, south of Cobble Creek [C]ircle, the corridor narrows to roughly 110 feet wide. The [on-site] corridor is between 180 and 300 feet in most areas, which is consistent with what is proposed within this Project site. The minimum width of the east-west riparian avoidance corridor is 165 feet, and the width is over 250 feet in most areas. The corridor is over 300 feet wide in many areas, and the maximum width is 390 feet. If this corridor is indeed serving as a movement corridor for wildlife, then that wildlife must by definition be moving between the habitat patches within the riparian habitat corridors on either side of the Project site. As the existing habitat corridors are similar to, and in many cases narrower than the proposed corridor, implementation of the Proposed project will not have a significant impact on movement of wildlife through the riparian corridor along the tributary to Secret Ravine within the Project site.
>
> (Attachment D, Madrone Letter, pp. 3-4.)

12. *"[T]he EIR presents incomplete and erroneous information about the riparian habitat on the [South Village] Project site and fails to adequately assess and mitigate for the Project's significant impacts."* (Shute Mihaly Letter, pp. 3–5; see also Gaddis Letter, pp. 13–14.)

The response immediately above is also responsive to this comment. The riparian corridor addressed in that response will be preserved, except for minor intrusions allowed by the City General Plan.

The Biological Resources Report prepared for the Project states that "[t]he riparian zone within the Western Study Area has been largely avoided by the proposed development" with the exception of "five road, trail, and utility crossing," most of which already exist. (DEIR, Appendix C, p. 33 and Figure 11.) This report, prepared by expert biologists at Madrone Ecological Consulting, presents ample substantial evidence to support this statement. (See Pub. Resources Code, §§ 21082.2, subd. (c), 21168.5; *AIR*, *supra*, 107 Cal.App.4th at 1396–97 [agency was entitled to rely on analysis prepared by biologist]; *South of Market*, *supra*, 33 Cal.App.5th at p. 339 [agency was entitled to rely on "its own experts and consultants"]; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413 [agency may rely on opinions of agency planning staff].) The commenters, conversely, have not presented any evidence to the contrary and, as noted above in Section III.G.3, are not qualified biologists (to our knowledge) and do not have professional biological resources survey experience. Nor have they identified any expert resources upon which they have relied for their conclusions. Madrone Ecological Consulting, however, is an expert biological resources firm that is widely used with an excellent regional and local reputation that employs highly qualified biologists. (See Attachment D hereto, attachment A thereto [resumes of Sarah VonderOhe and Daria Snider].)

The commenters challenge the impact conclusions associated with riparian habitat, and cite to the permanent loss of aquatic resources, but they fail to explain why the "no net loss" measure for aquatic resources in Mitigation Measure 3.4-8 does not mitigate impacts to aquatic resources. (DEIR, pp. 3.4-38 to 3.4-9.) But, this is a common and legally upheld CEQA mitigation measure with specific performance criteria for ensuring a biological resource is not significantly impacted. (See *Clover Valley Foundation*, *supra*, 197 Cal.App.4th at p. 237 [upholding "no net loss" of wetlands

mitigation measure]; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 619–25 (*CNPS*) [same]; see also CEQA Guidelines, § 15370, subd. (e) [compensation is a valid form of mitigation].) To the extent that a "no net loss" performance standard "nets out" the impact at issue, Mitigation Measure 3.4-8 goes beyond the call of duty under CEQA. (*Save Panoche Valley*, *supra*, 217 Cal.App.4th at p. 529 ["[t]he goal of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels"].)

The commenters also cite to the permanent loss of terrestrial habitat as means to challenge the impact conclusions associated with riparian habitat. The commenters fail to acknowledge, however, that "the terrestrial vegetation communities on the Project site are not considered sensitive habitats" (DEIR, p. 3.4-40) pursuant to "local or regional plans, policies, regulations or by the CDFW or USFWS" (DEIR, p. 3.4-39) and therefore their loss is not considered significant (DEIR, p. 3.4-40). The threshold used for riparian habitat in the DEIR was derived from questions posed in the CEQA Guidelines Appendix G checklist. That checklist, adopted by regulation, states, in item 8 under the heading, "Evaluation of Environmental Impacts," that "lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected." The checklist asks the planners and scientists who prepared it whether a proposed project would "[h]ave a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and [Wildlife] Game or US Fish and Wildlife Service." This focus on riparian habitats and sensitive natural communities specifically "identified in local or regional plans, policies, regulations" or by the expert state and federal wildlife agencies indicates that the focus of CEQA analysis on impacts to natural communities should be those that are considered particularly important either in the law or in the minds of expert agencies.

The commenters further fail to acknowledge that the majority of the road, trail, and utility crossings, which are specifically mentioned in the comments as negatively impactful to riparian habitat, already exist. Thus, the Project does not create these theoretical impacts. In fact, the Project would reduce the severity of any ongoing existing impacts to riparian areas associated with these trails and crossings, as discussed below.

Currently, these trails and crossings on the South Village site are regularly being used by nearby residents for unauthorized recreational activities (see Section II.A.4 above). The same organization, Save East Rocklin, that this commenter represents stated via another attorney representative that "existing residents residing surrounding...the proposed Project site (South Village)" have been using trails near and over the unnamed tributary "for over 30 years." (Frumkin Letter, p. 55.) Save East Rocklin even indicated that "vehicles" have been used "along the existing trails" and that residents have "made improvements" to the area substantial enough that they may need to be demolished prior to Project construction. (Frumkin Letter, pp. 56–57.) The existing use described by Save East Rocklin represents an ongoing and unauthorized impact to riparian habitat surrounding the tributary. The Project would bring these impactful activities to a halt and would preserve and protect the riparian habitat surrounding this tributary with a minimum 50-foot buffer in which vehicles owned and operated by nearby residents and personal recreational structures would not be allowed. In this manner, the Project will improve conditions for riparian habitat beyond what currently exists.

13. *"The DEIR fails to adequately disclose, analyze, and mitigate the Project's conflict with the City's riparian setback policy [Action Step OCRA-11 of the City's General Plan]" on the South Village site.* (Shute Mihaly Letter, pp. 5–6; see also Gaddis Letter, p. 11.)

Table A-2 of the City's General Plan Open Space, Conservation, and Recreation Element contains forty-two General Plan Policy Action Steps (OCRAs).[16] The eleventh of these steps, OCRA-11, states the following in relevant part:

> Apply open space easements to all lands located within 50 feet from the edge of the bank of all perennial and intermittent streams and creeks providing natural drainage. The easement will also extend to include associated riparian habitat. In addition, the City may designate an easement greater than 50 feet for perennial streams when it is determined such a buffer is necessary to adequately protect drainage and habitat areas.... However, features which may be considered acceptable within the 50 foot setback, buffer area and/or open space easements include, but are not limited to, de-minimis encroachments of a public thoroughfare, bridges, trails, drainage facilities, utilities, and fencing intended to delineate or protect a specific resource.... The above setbacks and buffers shall

[16] *City of Rocklin General Plan, Summary of Goals and Policies & Action Plans* (October 2012), available at https://www.rocklin.ca.us/sites/main/files/file-attachments/table_a-2_-_open_space_-_revised_2015_ulop.pdf.

> apply to residential and non-residential development unless the land owner can demonstrate that literal application of this Action Plan item would preclude all economically viable use of the land under existing zoning.

With the goal of ensuring compliance with OCRA-11, City staff, the District, the Applicants, and a team of biologists and engineers took great pains to delineate the riparian corridor surrounding the intermittent stream on the South Village site. Madrone explained the process as follows:

> As detailed in the Biological Resources Assessment (BRA) (included within the Draft EIR as Appendix C), the boundaries of the riparian corridor as defined by the City's Riparian Policy were finalized following a field review of the boundaries with City staff. In quite a few locations, the boundaries of the riparian corridor are indeed much greater than 50 feet from the top of bank of the stream (greater than 100 feet north of the entire eastern portion of the creek). Furthermore, an additional setback has been incorporated into the project design in many locations, increasing the "riparian corridor" beyond what was required by the City policy. The minimum width of the east-west riparian avoidance corridor is 165 feet, and the width is over 250 feet in most areas.
>
> There are some areas along the southern edge of the Secret Ravine tributary where "impacts" are shown outside of the riparian woodland, but within 50 feet of the creek. As shown on the exhibit provided as Attachment B to this letter, these areas are associated with an existing sewer line and trail, which are considered to be acceptable in the setback areas under Open Space, Conservation and Recreation Element Action 11 (OCRA-11) and will ensure long-term access to the line for maintenance. The exhibit more clearly demonstrates where project elements will be located in relation to the approved riparian setback. No structures/lots will be built within 50 feet of the creek.
>
> (Attachment D hereto, Madrone Letter, pp. 1–2; see also *id.*, attachment B thereto.)

As demonstrated with substantial evidence, including the above-referenced graphics submitted with the Madrone letter, the Project maintains a minimum 50-foot buffer corridor along both banks of the intermittent stream on the South Village site and extends that corridor where riparian habitat is present to ensure a minimum 50-foot buffer exists from the edge of the habitat. This buffer meets, and at many points substantially exceeds, the buffer requirements of OCRA-11. Qualified biologists and engineers in consultation with City staff delineated this buffer; City staff approved it as

compliant with OCRA-11; and the Applicants designed the Project around these buffers. This is the appropriate group of persons to make these judgement calls—not attorneys rendering opinions after looking at maps and diagrams.

Likewise, the commenters, lacking biological credentials (so far as we know) are not technically qualified to assert that a 50-foot buffer is not biologically sufficient. Notwithstanding that the buffer exceeds 50 feet at several points, qualified biologists and engineers in consultation with City staff made the determination that the prescribed buffers were adequate. And the City itself, by requiring a 50-foot buffer pursuant to its General Plan, had previously made policy determinations and factual judgments about the size of buffers needed to protect riparian areas.

As the CEQA lead agency in charge of creating these General Plan policies, the City receives judicial deference with respect to how it implements and interprets its own policies. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1129–30 (*Gray*) ["[i]t is well settled that a County is entitled to considerable deference in the interpretation of its own General Plan"]; *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 142 (*Save Our Peninsula*) ["the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity"; "[b]ecause policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes"]; see also *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 896 (*Berkeley Hills*), quoting *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193 ["a city's interpretation of its own ordinance '"is entitled to great weight unless it is clearly erroneous or unauthorized"'"]; *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 696 [a local agency's "findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion"].)

A recent decision of the Third District Court of Appeal provides an example of judicial deference given to local agencies on such issues. In *Old East Davis Neighborhood*

Association v. City of Davis (Cal. Ct. App., Dec. 20, 2021, No. C090117) 2021 WL 6426082, at *12, the court deferred to the determination by the City of Davis that a proposed mixed-use project with a multi-level apartment complex "'would be substantially consistent with the applicable design guidelines.'" The court said that "'we accord great deference to the agency's determination.'" (*Ibid.*, quoting *Save our Peninsula*, *supra*, 87 Cal.App.4th at p. 142.)

14. *The removal of native oak trees for the Project "runs counter to many of the City of Rocklin's policies," such as "Land Use Element Policy 5" and Open Space and Natural Resources "Policy OCR-1."* (CA Wildlife Foundation Letter, pp. 1–2.)

City General Plan Policy OCR-1 generally provides that it is City policy to "[e]ncourage the protection of open space areas, natural resource areas, hilltops, and hillsides from encroachment or destruction through the use of conservation easements, natural resource buffers, building setbacks or other measures." General Plan Policy LU-5 focuses specifically on oak trees, providing that it is City policy to "[e]ncourage residential, commercial, and industrial development projects to be designed in a manner that effectively protects existing oak trees designated to be retained through the development review process."

It is important to note that, while both of these policies "encourage" certain actions, they do not mandate them. The policies also must be read in connection with, and reconciled with, other General Plan policies that contemplate development for all of the benefits that it brings. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 244 ["[a]s with the interpretation of statutes in general, portions of a general plan should be reconciled if reasonably possible"].) Such other policies make it clear that the City does not intend to require the preservation or retention of each and every oak tree on property to be developed. For example, Policy OCR-2, which comes right on the heels of Policy OCR-1, provides that the City shall "[r]ecognize that balancing the need for economic, physical, and social development of the City may lead to some modification of existing open space and natural resource areas during the development process." This policy clearly contemplates the loss of some biological resources as part of the development process.

The General Plan Open Space, Conservation, and Recreation Element, on page

4.B-6, also plainly recognizes that the City's Oak Tree Preservation Ordinance (Oak Tree Ordinance) expressly authorizes the removal of oak trees, provided that mitigation requirements are followed:

> In addition to several General Plan policies related to special status species, the City of Rocklin maintains an Oak Tree Preservation Ordinance regulating the protection and preservation of oak trees along with mitigation measures for trees allowed to be removed. The ordinance applies to oaks with a trunk diameter at breast height of six inches or more. Prior to removal of any native oak, an application must be submitted for an Oak Tree Removal Permit. A certified arborist report may be required prior to removal. Mitigation for removal may include replacement on a one-to-one basis or greater ratio based on the diameter of the tree removed, payment into the City's Oak Tree Preservation Fund, or dedication of land. On finished single family residential lots, oak trees can be removed with mitigation measures established in the ordinance to allow the owner to build on the lot. On developed multifamily, commercial and industrial lots, oak trees can be removed without mitigation only if dead or diseased. On property proposed for development, preservation and removal of healthy oak trees is addressed during the development application review process.

General Plan Policy OCR-43, in fact, requires that the City "[m]itigate for removal of oak trees and impacts to oak woodlands *in accordance with the City of Rocklin's Oak Tree Preservation Ordinance*, or for projects located in zones not directly addressed by the Oak Tree Preservation Ordinance mitigation measures, on a project-by-project basis through the planning review and entitlement process." (Italics added.)

The City's discretion to allow for the loss of oak trees as part of the development process is also inherent in the language of Policy LU-5. Policy LU-5, which, as noted above, encourages the City to use its "development review process" to designate certain oak trees on a development site for retention. After such designation, the policy then encourages the city to ensure the protection of these retained trees through project design.

In light of the flexibility found in all of these General Plan policies, and in the Oak Tree Ordinance, the City clearly has substantial discretion to approve development projects resulting in the loss of oak trees, provided that mitigation requirements are satisfied.

Here, the Applicants have designed the Project to retain the most biologically valuable oak woodland habitat and to retain trees likely to remain healthy for decades.

The Applicants enlisted California Tree and Landscaping Consulting to conduct tree surveys of each Project site (see DEIR, pp. 3.4-6) and then had a certified arborist prepare an Oak Tree Mitigation Plan that outlines the onsite trees to be retained and preserved/protected (see DEIR, Appendix C: Attachment E, p. 7). The Project was then designed to avoid these trees by creating neighborhood park and open space uses on the North Village site that maintain oaks and oak woodlands and by setting aside 13.5 acres on the South Village site for the same purposes. (See DEIR, pp. 3.10-12 to 3.10-13.) Further, the DEIR includes Mitigation Measure 3.4-9, which sets forth the standard preservation and protection requirements such as the use of fencing around trees at least three feet from the tree's dripline during construction and the installation of signage denoting the costs associated with damaging the tree. The measure also ensures compliance with the City's Oak Tree Preservation Guidelines, via the Project's Oak Tree Mitigation Plan, which requires a conservation easement over healthy matures oak trees and woodland habitat to mitigate for the commensurate removal of oak trees and woodland from the Project sites (see Section III.F.15 below for more detail on this conservation easement). (DEIR, p. 3.4-45.) These efforts ensure consistency with Policy LU-5. (See DEIR, pp. 3.10-12 to 3.10-13.)

Policy OCR-1 does not deal directly with oak trees but encourages the protection of natural resources. It also encourages the use of conservation easements, buffers, and setbacks, which are included as part of Project mitigation. As discussed just above, Project development will be set back from the retained oak trees onsite and buffers will be established during construction. In addition, Mitigation Measure 3.4-9 will require a conservation easement over existing healthy and mature oak trees and woodland. Thus, the Project will be consistent with Policy OCR-1.

In summary, the Project is consistent with Policies LU-5 and OCR-1, and all other policies applicable to oak tree preservation, and therefore has a less-than-significant impact (with mitigation) regarding potential conflicts with local policies. (DEIR, pp. 3.4-41, 3.4-44.)

15. *"The proposed removal of [native oak trees and oak woodland] is a substantial permanent loss of habitat, which is inadequately mitigated by the conservation proposal."* (CA Wildlife Foundation Letter, p. 2.; see also Loomis Letter, pp. 4, 5.)

The Project's impacts on oak woodlands are appropriately mitigated through, among other things, the preservation of an existing high-quality oak woodland habitat located on the existing Sierra College campus. The reasons why this approach is viable and appropriate are explained below.

Oak woodlands are not a habitat type that enjoys any special protection under the federal or state Endangered Species Act, as oak trees are not endangered or threatened species. Without trivializing the aesthetic and biological significance of oak woodlands viewed holistically, federal and state environmental laws are primarily concerned with the ecological significance of particular oak woodlands in terms of (i) the special status plant and animal species that they might support and (ii) whether such woodlands serve as valuable wildlife corridors or nurseries.

Thus, there is no language in the questions found in the CEQA Guidelines Appendix G Checklist indicating that the loss of oak woodlands, in and of itself, per se creates a significant environmental impact. Rather, a lead agency's focus should be on whether a particular oak woodland supports special-status species or provides an important nursery or corridor for wildlife movement.[17] (See CEQA Guidelines, appen. G, Sample Questions, § IV, Biological Resources; see also *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1040 (*Environmental Council*) [differentiating "taking of habitat" from taking of animals or species].) Where particular oak woodlands do not have these especially valuable ecological attributes, a proposed project's impacts to such woodlands may still be addressed under CEQA, consistent with Appendix G, where, as here, such woodlands are protected by local policies or ordinances. (CEQA Guidelines, appen. G, Sample Questions, § IV, Biological Resources, question (f).)

Here, the DEIR appropriately addresses the loss of oak woodlands on the Project sites in light of a significance threshold by which impacts are significant where the project

[17] CEQA Guidelines section 15065, subdivision (a)(1), contains some general language on a proposed project's tendency to substantially reduce species habitat or create a threat of elimination of an entire plant or animal community, but such outcomes will not occur under the Project. (See DEIR, pp. 3.4-30 to 3.4-45.)

would "[c]onflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance[.]" (DEIR, pp. 4.3-29, 4.3-41 to 4.3-45.) The DEIR dealt separately with impacts on special status species and their habitats, as well as with impacts to riparian habitat, sensitive natural communities, wetlands, and wildlife movement corridors. The analysis of these other categories of impacts did not treat the onsite oak woodlands as rising to the level of being an object of concern.

CEQA does contain some special rules for *mitigating* impacts on oak woodlands, though the Legislature made these binding only on counties (and not cities). These rules are found in Public Resources Code section 21083.4, which was created as part of the California Oak Woodlands Conservation Act of 2001. Subdivision (b) of that section contains specific guidance on mitigation for oak woodland removal.

Notably, subdivision (b)(1) explicitly allows the use of oak woodland conservation, effectuated through conservation easements, as a form of mitigation for the "conversion of oak woodlands that will have a significant effect on the environment." While section 21083.4 is only binding on counties, we see no reason why the City should not be able to avail itself of conservation as a mitigation option. In fact, the legislative history for the California Oak Woodlands Conservation Act shows that the purpose of the bill was to address statewide conversion of oak woodlands at the "'local government[]'" level. (Sen. Com. on Env. Quality on Sen. Bill No. 1334 (2003–04 Reg. Sess.) Apr. 19, 2004.) Here, the Applicants and the City have chosen to rely on conservation because it is allowed under the City's Oak Ordinance and because it is biologically superior to compensatory mitigation approaches, as explained below.

For many years the courts have viewed the conservation of existing habitat as a valid mitigation strategy for the loss of habitat under CEQA. (See, e.g., *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 278 [loss of habitat mitigated by conservation of other habitat at a one-to-one ratio]; *CNPS*, *supra*, 172 Cal.App.4th at pp. 610–611, 614–626 [mitigation for wetland losses by offsite preservation of two acres of existing habitat or the creation of one acre of new habitat for each acre of habitat impacted by the project]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [mitigation by "off-site preservation of similar habitat"]; *Environmental Council*, *supra*, 142 Cal.App.4th at p. 1038 [purchase of a half-acre for

habitat reserves for every acre of development].) It is useful to note, however, that while the California Oak Woodlands Conservation Act was created to preserve oaks and oak woodlands as desirable natural elements of the State, these elements are not endangered, rare, or threatened under California Endangered Species Act or the California Native Plant Protection Act. Therefore, the loss of some net oak woodlands need not be considered a significant impact under CEQA. (*Save Panoche Valley*, *supra*, 217 Cal.App.4th at p. 529 ["[t]he goal of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels"].)

Consistent with the California Oak Woodlands Conservation Act, the City's Oak Tree Ordinance permits this exact type of mitigation. The Oak Tree Ordinance requires mitigation when oak trees are removed from undeveloped properties for future development and, in circumstances where onsite tree replacement is not feasible (such as for the Project because of its development density), mitigation "shall be by off-site replacement, *land dedication* or payment of a fee in an amount set by resolution of the city council into the Rocklin oak tree preservation fund." (City Municipal Code, §§ 17.77.050, subd. (A), § 17.77.080, subd. (B)(4), italics added.)

The Oak Tree Ordinance further requires that the City adopt Oak Tree Preservation Guidelines (Oak Tree Guidelines) to aid in the administration of implementation of the Ordinance. (*Id.*, § 17.77.100, subd. (A).) Those Oak Tree Guidelines (updated in 2006) state that land dedicated "to the city in lieu of planting the replacement trees…must be usable for establishing an oak tree preserve and must be approved by the governing body for acceptance as a mitigation measure." (Oak Tree Guidelines, p. 9.)

The Project's Oak Tree Mitigation Plan, prepared by a certified arborist and referenced as mitigation in Mitigation Measure 3.4-9, was crafted with these underlying directives in mind. (See DEIR, Appendix C: Attachment E, pp. 1–2.) The arborist considered, when crafting the Plan, that, at least in this instance, conservation is ecologically preferable to planting replacement trees. As stated in the Plan, replacement plantings (i) are "typically planted in various locations" that result in them being "inadequately maintained"; (ii) "are land and water consumptive"; (iii) require elaborate irrigation systems and monitoring/maintenance; and (iv) have an attrition rate of "30 to

50 percent." (*Id.*, p. 10; see also Oak Tree Guidelines, p. 9.) As a result, these replacement plantings "are not effective in preserving the types of habitat that have triggered the mitigation." (*Ibid.*) In contrast, evolving data show that "preserving oak woodland resources is favorable" because preserved woodlands contain "mature woodland habitat with ecological complexity" that are already thriving and require far less maintenance and fewer resources than new plantings. (*Ibid.*)

The Oak Tree Mitigation Plan also points out that this type of mitigation approach is exactly what was prescribed by the Legislature in the California Oak Woodlands Conservation Act. And this strategy will result in more canopy being preserved (22.5 acres) than would be lost (18.3 acres); and more inches of total trees will be preserved (12,688 inches) than would be required under an alternative replacement scenario undertaken pursuant to the tree replacement formula in the Oak Tree Guidelines (9,132 inches). (DEIR, Appendix C: Attachment E, pp. 9, 12–13; Oak Tree Guidelines, p. 10.) Thus, by all metrics and data, a conservation easement imposed on oak woodlands on the Sierra College campus will be far superior to replacement planting to mitigate for the removal of Project site oak trees and oak woodland habitat.

Moreover, creating and maintaining this permanent conservation easement on the campus will result in better and stronger regional oak woodlands than would occur if all of the existing oak woodlands on the Project sites were to be preserved. As previously discussed, more than 10 percent of the trees proposed for removal from the Project sites are either dead, wounded, or in varying states of decay, and have been recommended for removal by a certified arborist. (See DEIR, Appendix C: Attachment E, p. 7.) A large portion of the remainder to be removed are of an inferior ecological quality and are not original growth trees but instead are second and third-growth trees. (*Id.*, pp. 3, 14.) These trees and habitat are demonstrably inferior to those proposed for in-perpetuity conservation to the north and northwest of the developed portion of the Sierra College campus. (*Id.*, p. 10.)

Additionally, approximately 24 percent of the tree canopy on the North Village site and 58 percent of the South Village site canopy will be preserved, so the Project has been designed, to a substantial degree, to work around, and thereby preserve, the healthier oak woodlands on the two sites. (*Id.*, p. 7.)

Overall, the Project presents a data-driven oak tree mitigation plan that includes retention and preservation of healthy trees and woodlands, removal of unhealthy and non-thriving trees and woodland, and the permanent conservation of a healthy and mature tree and woodland ecosystem on the nearby Sierra College campus. This type of "comprehensive and integrated" approach has been upheld by the court as effective mitigation. (*Environmental Council of Sacramento*, *supra*, 142 Cal.App.4th at pp. 1038–41.)

G. Cultural Resources

1. *A "comprehensive ground survey" must be conducted "on a project-specific level to ensure proper compliance with cultural resources regulations" and to make significance findings in the DEIR* (Frumkin Letter, p. 47; see also Sierra Geotech Letter, p. 24.)

For good reason, CEQA does not require invasive subsurface explorations for possible archaeological resources as part of the process of preparing an EIR. Surface disturbance might harm any subsurface cultural resources found to exist through digging and trenching activities. Such disturbance could also harm surface biological resources.

Rather, the typical, and more sensible, approach is to conduct data searches and onsite pedestrian surveys, and then to impose mitigation measures to deal with any valuable archaeological resources that might ultimately be encountered during project grading or construction.[18] This overall approach recognizes that subsurface cultural resources (whether "unique archaeological resources,"[19] "historical resources of an archaeological nature,"[20] or "tribal cultural resources"[21]) are best left untouched if possible. This is why "preservation in place" is a preferred mitigation strategy for such underground resources. (Pub. Resources Code, § 21083.2, subd. (b); CEQA Guidelines, § 15126.4, subd. (b)(3)(A).)

Here, both Project sites were thoroughly surveyed for cultural resources:

> On July 6 and 7, 2016, the entire North Village property was subjected to an intensive pedestrian survey under the guidance of the Secretary of the Interior's

[18] Pub. Resources Code, § 21083.2, subd. (i); CEQA Guidelines, § 15064.5, subds. (e)–(f).)
[19] See Pub. Resources Code, § 21083.2; CEQA Guidelines, § 15064.5, subd. (c).
[20] See CEQA Guidelines, § 15126.4, subd. (b)(3); see also *id.*, 15064.5, subd. (c).
[21] See Pub. Resources Code, § 21084.2.

> Standards for the Identification of Historic Properties (NPS 1983) using 15-meter transects. Additionally, on October 2, 2020, the 1.4-acre Otani Parcel containing an existing residence was subjected to an intensive pedestrian survey under the guidance of the Secretary of the Interior's Standards for the Identification of Historic Properties (NPS 1983) using transects spaced 10 to 15 meters apart. A total of two person-days was expended in the field for each survey.
>
> (DEIR, p. 3.5-17.)
>
> On July 6, 2016, the entire South Village property was subjected to an intensive pedestrian survey under the guidance of the Secretary of the Interior's Standards for the Identification of Historic Properties (NPS 1983) using 15-meter transects. A total of one-half person-day was expended in the field.
>
> (*Id.*, p. 3.5-21.)

These ground surveys were sufficient, and, to use the commenter's term, even "comprehensive." The surveys certainly complied with prevailing government standards. Any more intrusive surveys would require ground disturbance, which could be detrimental to culturally and biologically sensitive areas and not necessary in light of Mitigation Measure 3.5-1, which ensures any cultural resources found during construction will be properly mitigated, pursuant to statutory guidance. The commenter pointed to no legal authority indicating that more is required.

H. Geology and Soils

1. *The DEIR's conclusion that impacts associated with geology and soils "would be less than significant with mitigation" is "speculative and not based on substantial evidence."* (Frumkin Letter, p. 51; see also Sierra Geotech Letter, pp. 24–25.)

This comment is without substance. And we wonder why the commenter is concerned about geological conditions, given that Rocklin is not an area in which earthquakes, landslides, or similar geological phenomena are of concern.

The DEIR's conclusions regarding impacts associated with geology and soils "are based primarily on the *Geotechnical Engineering Report* prepared by Wallace-Kuhl & Associates for the Project, which is included in Appendix E of the EIR." (DEIR, p. 3.6-15.) Wallace-Kuhl & Associates, established in 1984, is a professional engineering firm that specializes in geotechnical engineering. For more information, please refer to Wallace-Kuhl's website at www.wallace-kuhl.com.

Because Wallace-Kuhl engineers have technical training and abundant relevant experience, the conclusions from their report constitute substantial evidence that supports the DEIR's conclusions (see Pub. Resources Code, §§ 21082.2, subd. (c), 21168.5; *AIR*, *supra*, 107 Cal.App.4th at 1396–97 [agency was entitled to rely on analysis prepared by biologist]; *South of Market*, *supra*, 33 Cal.App.5th at p. 339 [agency was entitled to rely on "its own experts and consultants"]; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413 [agency may rely on opinions of agency planning staff].)

In contrast, the commenters present no evidence to support their assertions that the Wallace-Kuhl analysis is speculative. In any event, the commenters' primary concerns appear to be with the proposed structures and the safety of future residents of the Project. While such concern about future residents may be commendable, this concern is not one that requires consideration under CEQA. (See *CBIA v. BAAQMD*, *supra*, 62 Cal.4th at p. 386 ["CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents"].)

I. Hydrology and Water Quality

1. *The DEIR does not present all available data and "the quantification method used in the DEIR can potentially underestimate effects."* (Frumkin Letter, p. 54; see also Sierra Geotech Letter, p. 29.)

The commenters make vague contentions here, with no supporting evidence and no proof of credentials that demonstrate they have any particular expertise on the subject. For example, the commenters do not offer suggestions on what information, exactly, is missing. In contrast, the DEIR's hydrological analysis and conclusions are based on studies prepared by Wood Rodgers, which are included in Appendix G of the DEIR. Wood Rodgers, established in 1997, is a professional engineering firm that specializes in water resources. For more information, please refer to Wood Rodgers' website at www.woodrodgers.com. Because Wood Rodgers engineers have technical training and abundant relevant experience, the conclusions from their studies constitute substantial evidence that supports the DEIR's conclusions. (See Pub. Resources Code, §§ 21082.2, subd. (c), 21168.5; *AIR*, *supra*, 107 Cal.App.4th at 1396–97 [agency was entitled to rely

on analysis prepared by biologist]; *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 339 [agency was entitled to rely on "its own experts and consultants"]; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413 [agency may rely on opinions of agency planning staff].)

Furthermore, as stated in the DEIR, "a quality control review was conducted by GEI Consultants" of the Wood Rodgers study of the Project sites, to ensure that the proposed drainage system would fully mitigate impacts, included as Appendix G of the DEIR. (DEIR, pp. 3.9-29 to 3.9-30.) GEI consultants found that the drainage design "meets the City's and PCWFCD drainage design criteria, as well as the City's MS4 permit requirements" for both sites and therefore "fully mitigates downstream impacts of the North Village site" (*Id.* at p. 3.9-29) and "fully mitigates downstream impacts from Parcel C of the South Village site" (*Id.* at p. 3.9-30).

It is important for the commenters, and indeed for all Rocklin residents, to understand that, in order to comply with applicable regulatory requirements, the Applicants will be obligated to *improve* the current drainage situation on the two Project sites. There is thus no possibility that hydraulic impacts have been understated.

The on-site drainage systems were designed to meet the requirements of the Placer County Stormwater Management Manual (SWMM) for flood control, which mandate that post-project stormwater flow volumes coming off the Project sites can be no more than 90 percent of pre-project flow volumes. In other words, ten percent less water will flow off the Project sites during and after storm events than currently flows off the undeveloped sites.

As explained by engineer Jeffrey M. Carpenter of Wood Rodgers in the technical document included as Attachment E to this letter, "the proposed developments will decrease the existing drainage flows (discharge), currently experienced within the undeveloped areas by a minimum of 10 percent [during storm events]. Coupled with the recent drainage culvert improvements on El Don, specific[ally] at College Park South, the neighborhoods served by this drainage corridor will see an overall decrease in drainage conveyance and newly installed drainage culverts. The recently installed drainage pipes under El Don, just south of Monte Verde Park, replaced the deteriorated corrugated metal pipes (CMP) which failed during the October rain event." (Attachment

E, p. 2.)

The drainage system will not have any adverse effects with respect to existing hydrology of the Project sites, such as creating new seepage where none currently exists. As Mr. Carpenter explains that, "[a]s required, the proposed basins (2) collect, detain and release drainage flows at 90 percent of the pre-development flows. The proposed basins are strategically located in an area whereas the piped drainage discharge locations will occur in the existing natural drainage course locations. Historic drainage patterns will be maintained by this strategy with the reduced flow requirements. The maintaining [of] historic drainage is an obligation of neighboring property owner." (*Ibid.*)

The drainage design will also include numerous measures to ensure that stormwater flows are cleaned of any pollutants that they might pick up from pavement and other surfaces on which rain falls. Such measures are required by the City of Rocklin Post-Construction Manual Design Guidance for Stormwater Treatment (RPCM) and the West Placer Storm Water Quality Design Manual (WPSWQM). As Mr. Carpenter explains,

> The proposed drainage conveyance system includes on-site detention facilities. These detention facilities will also act as a bioretention basin for stormwater quality treatment.
>
> The detention facilities will treat an equivalent amount of runoff volume through bioretention at depths greater than recommended in the City's Post-Construction Manual. The methods follow current WPSWQM guidelines.
>
> A portion of the southern shed of College Park North, will utilize an underground vaulted detention basin rather than an above-ground structure. Storm water quality treatment will be achieved through a treatment vault structure, outfitted with filtration comparable to bioretention facilities located adjacent to the flood detention facility.
>
> (Attachment E, p. 2.)

2. *The DEIR must include "site-specific studies of groundwater and water supply conditions."* (Frumkin Letter, pp. 54–55; see also Sierra Geotech Letter, p. 29.)

The commenters' demand for groundwater studies is puzzling. They seem unaware of how the water supply and land use planning processes work in parallel under

California law.

As stated in the DEIR, the Project's water supply will come from the Placer County Water Agency (PCWA), "which primarily uses surface water as its source of supply." (DEIR, p. 3.9-25.) In satisfaction of its obligations under Water Code sections 10910 through 10912, which require the preparation of water supply assessments (WSAs) in connection with CEQA projects of a certain magnitude, PCWA prepared a WSA for the Project, assessing whether PCWA had sufficient supplies to serve the Project, together with other planned development in the next 20 years, even during drought conditions. (See DEIR, pp. 3.15-15, 3.15-18 to 3.15-23; and Appendix J [WSA]; Wat. Code, § 10910, subd. (c)(3).) In the WSA, PCWA concluded that its "existing and planned future supplies will be sufficient to meet demand from existing customers, the proposed College Park Project, and from other planned land uses, including agricultural and manufacturing uses." (DEIR, p. 3.15-23.)

Because PCWA water will be piped to the Project sites, no groundwater wells are proposed for the two sites. Furthermore, because "no groundwater basins are identified within the Project area," the reduction in impervious surfaces as a result of Project implementation "would not substantially interfere with groundwater recharge." (*Ibid.* ["[t]he nearest groundwater basin is the Sacramento Valley Groundwater Basin, North American subbasin located approximately 2.0 miles west of the North Village site and 1.55 miles northwest of the South Village site"].)

Thus, the Project will have little impact, if any, on groundwater, and no additional studies are warranted. (See *Laurel Heights I*, *supra*, 47 Cal.3d at p. 415 "[a] project opponent...can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study of wind dispersal might be helpful does not make it necessary"].)

J. Land Use

1. *Coordination must occur between the City and Loomis to ensure land use compatibility of the Project.* (Frumkin Letter, p. 2; see also Sierra Geotech Letter, p. 2.)

The coordination suggested by commenters is not legally required. As a purely legal matter, the City of Rocklin is entitled to exercise its planning and zoning powers

within its boundaries without obtaining the permission of adjacent jurisdictions. Even so, we are certain that the City is very interested in what Loomis has to say about the Project. Through public notice mechanisms, Loomis was made aware of the Project and had an opportunity to comment on it during the CEQA process; and it in fact has done so. Some of its comments are addressed in this letter. In short, the City has consulted with Loomis with respects to the Project, in the manner required by CEQA.

2. *"City [sic] of Loomis must remove Agricultural Zoning immediately adjacent to the Project area to remove conflicts."* (Frumkin Letter, p. 55; see also Sierra Geotech Letter, p. 37.)

This comment would be better directed to Loomis. Rezoning property within Loomis is not part of the Project and would be entirely within the discretion of Loomis. Nevertheless, the Applicants do not believe that any such changes would be necessary because, as discussed above in Section III.D and just below, the Project does not conflict with adjacent land uses in Loomis.

3. *"[T]he DEIR fails to address how the project buffers proposed land uses from those existing uses in Loomis or addresses compatibility with land uses in Loomis."* (Loomis Letter, p. 5.)

As discussed above in Section III.D.1, the Project does not present compatibility conflicts with adjacent land uses in Loomis. Also discussed above in Section III.C.4, the nearest Loomis residences to the east of the North Village site are separated from any proposed development by James Drive, set back from the roadway by approximately 25 to 30 feet, and further separated by backyards created by "[d]eeper lots would be included on the east side of the North Village site as a transition to adjacent rural residential uses in Loomis." (DEIR, p. 3.10-15.) In addition, as also explained in Section III.C.4 above, the Applicants reached an agreement with Flying Change Farms by which both the North Village site and the Flying Change Farms equestrian facility will be designed to minimize any potential incompatibilities between the uses of the two properties. (See also Attachment B hereto.)

In short, the existing infrastructure and Project both provide for adequate buffers between the new residences within the Project and the existing rural residences within

Loomis.

4. *"The proposed high density residential at the southeast portion of the [North Village] site is not compatible with residential estate located immediately east in the Town of Loomis."* (Loomis Letter, p. 5.)

As discussed above in Section III.D.1, and to some extent Section III.C.4, the Project does not present compatibility conflicts with adjacent land uses in Loomis. The North Village site is situated in an urbanized area and is considered infill development by its nature and as identified by SACOG (see Sections III.B.1 and III.C.3 for more detail). Therefore, this type and density of development is appropriate and, in fact, allowable under current land use designations and zoning. Furthermore, the commenter here does not explain why proposed Project uses are incompatible with existing adjacent uses in Loomis. As stated above in Section III.C.6, the fact that "[s]ome residents of Loomis may not want their views towards [the Project site] to change" does not provide evidence that the DEIR has not satisfied CEQA requirements. (*Clover Valley Foundation*, *supra*, 197 Cal.App.4th at p. 243.)

5. *The land uses proposed in the Project "would be in conflict with rural residential agricultural land uses" and therefore violate "General Plan Land Use Policy LU-16."* (Frumkin Letter, p. 8; see also Sierra Geotech Letter, p. 30.)

City General Plan Policy LU-16 provides that "[t]o the extent feasible," the City shall "require that new development in areas contiguous to neighboring jurisdictions be compatible with those existing land uses." (DEIR, p. 3.10-15.) As discussed above in Section III.D.1, the land uses proposed by the Project would be compatible with adjacent land uses in Loomis. Further, as stated in the DEIR on LU-16, "[d]eeper lots would be included on the east side of the North Village site as a transition to adjacent rural residential uses in Loomis." (*Ibid.*)

In preparing the DEIR, City staff found that the Project was consistent with LU-16. The City Council will be entitled to agree with this conclusion, as it is supported by analysis and involves the need to interpret the phrase "[t]o the extent feasible," as it appears within the policy. The Council will be entitled to judicial deference on that point of interpretation. (See *Berkeley Hills*, *supra*, 31 Cal.App.5th at p. 896, ["a city's

interpretation of its own ordinance '"is entitled to great weight unless it is clearly erroneous or unauthorized"]; *Gray, supra*, 167 Cal.App.4th at pp. 1129–30 ["[i]t is well settled that a County is entitled to considerable deference in the interpretation of its own General Plan"].)

6. *"The proposed intense development is directly contrary to the policies and implementation of the [Sierra College Campus Facilities Master Plan]" in terms of impacts on biological resources.* (Frumkin Letter, p. 2; see also Sierra Geotech Letter, pp. 2–3, 6.)

Contrary to the comment, the Project does not conflict with, but is consistent with, the Sierra College Campus Facilities Master Plan (Master Plan), which does not require the long-term protection of biological resources on the two Project sites, and as a technical matter, does not even purport to govern the two Project sites. The Master Plan repeatedly refers to the two Project sites as being designated for future development, and being outside the scope of the Master Plan. Obviously, the District would not be cooperating with the Applicant if it did not want to see these properties developed.

The applicable threshold of significance here is whether the Project would "[c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect." (DEIR, p. 3.10-8.) More generally, CEQA Guidelines section 15125, subdivision (d), requires that an EIR consider whether proposed projects "may conflict with an *applicable* land use plan, policy, or regulation of an agency with jurisdictions over the project adopted to avoid or mitigate an environmental effect." (Italics added.)

First, the Master Plan is *not* a plan "adopted for the purpose of avoiding or mitigating a significant environmental effect." Rather, the Master Plan is intended to assess and account for on-campus facility needs over time in the face of increasing enrollments, while dealing with on-campus parking issues and the need for better vehicle circulation and pedestrian usage. (See, e.g., Master Plan, pp. 2, 5, 6, 8–11, 14–19.) Thus, the Plan is not even implicated by the applicable significance threshold.

Second, the Master Plan is not an "applicable land use plan" for purposes of CEQA Guidelines section 15125, subdivision (a). Technically, the two Project sites are not subject to the Master Plan, as the document itself indicates on pages 2 and 25, and as

is apparent in Appendices A and B to the Plan, which are maps depicting the Master Plan, in which the two sites do not appear. Thus, the Project need not be "consistent" with the Master Plan, as it is not an "*applicable* land use plan" under the quoted significance threshold.

On page 2, the Master Plan states that "[w]hile the Sierra College Rocklin Campus consists of approximately 300 acres in its entirety, the Master Plan focuses solely on the facility planning and site development of the primary 192 acres bounded by Interstate 80 (I-80), Rocklin Road and Sierra College Boulevard. *The remaining 108 acres (72 acres along the east side of Sierra College Boulevard and 36 acres along the south side of Rocklin Road at El Don Drive) has been designated by the District for potential development by non-District agencies and has been excluded from the master planning process.*" (Italics added.) On page 25, the Master Plan states that "[t]he 36 and 72-acre properties adjacent to the Rocklin Campus are currently identified by the District for development and revenue-generating purposes and, at this point, *are not included in the Master Plan.*" (Italics added.) Clearly, commenters interpretation of the Master Plan area departs from the District's understanding of their own planning document.

The commenters may be thinking that Master Plan policies dealing with the on-campus "Nature Area" apply to the South Village site, but such a view would reflect a misreading of the Master Plan. The "Nature Area" is located on-campus between the developed portion of the campus and Interstate 80:

> The Rocklin Campus features approximately 90 acres of oak woodland and green space located between I-80 and the developed campus. This area is densely populated with natural vegetation, primarily oak trees, shrubs and grassland, and is home to many species of reptiles, amphibians, fish, insects and other wildlife.
>
> A prominent element of the nature area is Secret Ravine, a perennial tributary that spans approximately 10.5 miles through surrounding communities and unincorporated portions of Placer County. The stream runs along I-80, stretching from the northeast to the southwest corners of the Rocklin Campus. This area is rich in biodiversity, as it is home to more than 900 species of plants and animals. Lists maintained by the Sierra College Biology Department include approximately 550 plant species, 220 invertebrates, 14 species of fish, 24 species of reptiles and amphibians, 33 mammals and 92 birds. Numerous eco-habitats are also featured in the nature area, including oak woodlands, grasslands, oak savannas, riparian

> zones, ponds, springs and vernal pools. In addition, evidence of Native American settlement, such as bedrock mortars, pestles and subterranean structures, have been found throughout the area.
>
> The nature area is a very unique biological asset to the Rocklin Campus and a rare feature for a community college campus. Many disciplines use this outdoor space for educational purposes including Biology, Botany, Zoology, Microbiology, Environmental Studies, Geology, Geography, Anthropology, Agriculture, Physical Education, Art, Music, among others. In addition to the collegiate disciplines, this area is also used extensively by the public, as well as other school and community groups.
>
> (Master Plan, p. 13; see also *id.* at p. 21 [additional discussion of Nature Area].)

Far from harming this Nature Area, the Project will help to preserve it thorough the imposition of a conservation easement over part of it pursuant to the Oak Tree Mitigation Plan discussed in Section III.F.15 above.

Finally, we note that the District does not have planning and zoning authority over the two Project sites. Rather, that authority rests with the City. The applicable land use plan, then, is the City's General Plan. The Draft EIR contains a detailed table (3.10-1) addressing the Project's consistency with all relevant policies.

7. *A Project's inconsistency with applicable planning documents "indicates a potentially significant impact on the environment (See Pocket Protectors vs. Sacramento (2005) 124 Cal.App.4th 903)."* (Frumkin Letter, p. 8; see also Sierra Geotech Letter, pp. 29–30.)

In arguing that a project's inconsistency with a planning documents translates into a significant environmental effect under CEQA, the commenters again cite to inapplicable law. The *Pocket Protectors v. City of Sacramento* case deals with a negative declaration, not an EIR, and involved the application of the "fair argument" trigger for an EIR discussed earlier in this letter in Section III.A.1. In that case, the court held that a fair argument of an inconsistency with an environmentally protective plan triggered an EIR.

Once an agency has prepared an EIR, the standard of judicial review becomes far more deferential to the public agency, both on the substance of an EIR's factual conclusions and with respect to interpretations of General Plan policies, as repeatedly

discussed above.

As noted in the preceding section, moreover, the commenters have not identified any inconsistencies between the Project and any applicable plan adopted for the purposes of environmental protection. (See Section III.J.6 above.) Even if they had, however, a potential plan consistency cannot be an effect on the physical environment absent a concrete adverse physical consequence associated with the inconsistency. (See CEQA Guidelines, § 15382 [defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in *any of the physical conditions within the area affected by the project*, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance"] [italics added].)

8. *The Project conflicts with General Plan Land Use Policies LU-57, LU-58, and LU-67.* (Frumkin Letter, pp. 11–12; see also Sierra Geotech Letter, pp. 31–32.)

City General Plan Land Use Element Policy LU-57 urges "Placer County to maintain low density rural land use designations and large parcel zoning in areas that have the potential to impact the City." Policy LU-58 provides that the City shall "[d]iscourage residential, commercial, or industrial development at urban densities or intensities in areas on the periphery of the Rocklin planning area, unless public services can be provided and annexation is accomplished to an appropriate city." Policy LU-67 provides that the City shall "[e]ncourage communication between the County and the cities of Roseville, Loomis, Lincoln, and Rocklin to ensure the opportunity to comment on actions having cross-border implications and to address other community interface issues, including land use compatibility, circulation and access, and development standards."

None of these policies create an enforceable mandate. They each only urge, discourage, or encourage action but do not directly dictate action that must be taken. They are not "fundamental, mandatory, and clear" and thus are not enforceable against the City. (*Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 100.) Rather, the City has very considerable discretion as to how to best interpret and implement these flexible and elastic policies. (See *Berkeley Hills*, *supra*, 31 Cal.App.5th

at p. 896 ["a city's interpretation of its own ordinance '"is entitled to great weight unless it is clearly erroneous or unauthorized"].) Notably, in preparing Table 3.10-1 in the Land Use section of the DEIR, City staff did not even address these policies, implying that there was no rational basis for worrying that the Project might conflict with them. (See DEIR, pp. 3.10-11 to 3.10-19.)

Moreover, Policy LU-57 is irrelevant to the Project. The Project site is within the City's jurisdiction, not Placer County's. Policy LU-58 is, again, not "fundamental, mandatory, and clear." Nevertheless, public services are readily available for the Project (see DEIR, pp. 3.3-16 to 3.3-23) and the Project sites are within the City, so there is no need for annexation. Policy LU-67 also is not "fundamental, mandatory, and clear." The City, however, did engage Loomis throughout the process, as evidenced by Loomis' comment letters on the Project. Loomis commented on both the NOP and the DEIR, as did residents within Loomis. (See DEIR, pp. ES-4, 1.0-8.) In its February 6, 2019, NOP comment letter, Loomis thanked the City "for continuing to send us any referrals that may have an impact on Sierra College Boulevard and other roadways within the Town of Loomis," so obviously there was continuing communication. (DEIR, Appendix A.)

9. *The DEIR must evaluate and make consistency findings between the Capital Improvement Programs (CIPs) of the Placer County Water Agency (PCWA) and South Placer Municipal Utility District (SPMUD) and the proposed General Plan amendment.* (Frumkin Letter, p. 58; see also Sierra Geotech Letter, p. 40)

CEQA does not require that an EIR make consistency findings between proposed general plan amendments and public utility CIPs. The DEIR does, however, discuss potential impacts to both PCWA and SPMUD. (See, e.g., DEIR, pp. 3.15-2 [SPMUD wastewater system and participation as a partner in the South Placer Wastewater Authority (SPWA)], 3.15-3 to 3.15-4 [SPMUD's Strategic Plan and Sewer System Management Plan], 3.15-6 to 3.15-7 [less than significant effects on SPMUD's wastewater system], 3.15-8 to 3.15-14 [PCWA's water system], 3.15-17 to 3.15-23 [PCWA's Urban Water Management Plan and less than significant effects on PCWA's water system].)

The DEIR concludes that "[w]astewater generated by the proposed Project would be treated at the [SWPA] Dry Creek Wastewater Treatment Plant. The proposed

Project's wastewater generation would represent approximately 0.38 percent of the treatment plant's total remaining capacity. This increased demand would not be expected to adversely affect the wastewater treatment plant's capacity." (DEIR, p. 3.15-7.) The effect would be less than significant. (*Ibid.*)

The DEIR also concludes that, according to PCWA's 2020 Urban Water Management Plan, there is sufficient water to serve the property. (DEIR, pp. 3.9-25 to 3.9-26, 3.15-8 to 3.15-14, 3.15-17, 3.15-23.) As discussed above in Section III.I.2, moreover, PCWA prepared a water supply assessment (WSA) for the project. (DEIR, Appendix J.) As mentioned earlier, the WSA concludes that

> The revised Project's water demand is within the previous budgeted demand and PCWA has concluded that the 2020 WSA remains appropriate for the revised project. The Agency concludes that existing and planned future supplies will be sufficient to meet the demands of the Project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

SPMUD wrote a comment letter asking for additional information, but indicated that, with its information requests granted, a will-serve letter could be obtained.

Regardless, these two agencies have a duty to serve development approved by the City and should update their CIPs if need be. (See, e.g., *Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal. App. 3d 512, 524 [water district has a "continuing obligation to exert every reasonable effort to augment its available water supply in order to meet increasing demands"]; *Glenbrook Development Co. v. City of Brea* (1967) 253 Cal. App. 2d 267, 277 ["county water district has a mandatory duty of furnishing water to inhabitants within the district's boundaries"]; see also *Lukrawka v. Spring Valley Water Co.* (1915) 169 Cal. 318, 332 [water company accepting franchise to furnish water assumes duty to provide service system that keeps pace with municipality's growth]; *Building Industry Assn. of Northern California v. Marin Municipal Water Dist.* (1991) 235 Cal. App. 3d 1641, 1648–1649 [discussing municipal water district's duty to augment its water supply and its discretion in determining how the existing water system can and should be augmented]; *Lockary v. Kayfetz* (9th Cir. 1990) 917 F. 2d 1150, 1155–1157 [water agencies that fail to take seriously the duty to acquire new supplies may expose themselves to liability for inverse condemnation if their inaction denies a property owner all economically viable use of its land].)

K. Noise

1. *The DEIR's less-than-significant noise impact conclusion is not supported by substantial evidence because "the location of individual specific projects…are not declared and possibly unknown."* (Frumkin Letter, p. 59; see also Sierra Geotech Letter, p. 40.)

This is a project-level EIR and the noise analysis included in Appendix H of the DEIR is sufficient for foreseeable uses under the General Plan and zoning designations being sought. As a project EIR, the DEIR "examine[s] all phases of the project including planning, construction, and operation." (CEQA Guidelines, § 15161.) The location of onsite development and sensitive receptors within and around the site is currently known with sufficient specificity to conduct a defensible noise analysis.

For existing offsite sensitive noise receptors, the major source of operational noise will be the additional traffic on existing streets generated by the Project. The amount of traffic from the Project will not be affected by the placement of buildings within the two Project sites. The DEIR addresses this potential operation noise effect as follows:

> Based upon Table 3.11-7, the Project will result in increases in traffic noise levels between 0 dB and 1 dB under the Existing + Project scenario. The Project will result in increases in traffic noise levels between 0 dB and 2 dB under the Cumulative + Project scenario. Some noise sensitive receptors located along the Project-area roadways are currently exposed to exterior traffic noise levels exceeding the City of Rocklin exterior noise level standard for residential uses. As shown by Table 3.11-7, these receptors will continue to experience elevated exterior noise levels with implementation of the proposed Project. However, the Project will not result in a significant increase in traffic noise levels. In one case, under the Existing + Project scenario, the Project will result in an exceedance of the 60 dB Ldn standard by 1 dB (Rocklin Road between Sierra College Blvd. and Rocklin Manor West). However, this is an apartment complex, and the common outdoor area is located more than 200-feet from the roadway; as such, the predicted traffic noise levels will be less than 60 dB Ldn. Therefore, this would be a ***less than significant*** .
>
> (DEIR, p. 3.11-15.)

Noise impacts on Project residents will also be less than significant. Although noise impacts on project residents are technically outside the ambit of CEQA, except to the extent that the Project will slightly exacerbate existing noise levels (see *CBIA v. BAAQMD*, *supra*, 62 Cal.4th at pp. 377–78), we note that, with mitigation, Project

residents, including those inhabiting the upper floors in three- and four-story structures, will enjoy interior noise levels considered to be acceptable under Rocklin standards (45 dB L_{dn}). Reductions in traffic-related noise will be achieved through construction techniques and materials that include, among other things, special windows and sliding glass doors designed to greatly reduce exterior noise. (See DEIR, pp. 3.11-18 to 3.11-21.) Mitigation Measure 3.11-3 requires that, "[p]rior to issuance of building permits, the North Village residences within Village 8, which are 100-feet from the Sierra College Boulevard centerline, will be required to incorporate STC 32 or higher windows and sliding glass doors into the final building design for second floor rooms. This applies to windows and sliding glass doors parallel and perpendicular to Sierra College Boulevard." (*Id.* at p. 3-11-21.)

In addition, with mitigation, the Project will also achieve acceptable exterior noise levels within the Project sites due to features such as noise barriers, setbacks, and the shielding of outdoor activity areas with building facades. (*Id.*, pp. 3.11-16 to 3.11-18, 3.11-20 to 3.11-22.)

2. *The Project conflicts with General Plan Noise Policy N-1.* (Frumkin Letter, p. 17; see also Sierra Geotech Letter, p. 35.)

City General Plan Noise Element Policy N-1 directs the City to "[d]etermine noise compatibility between land uses, and to provide a basis for developing mitigation, an acoustical analysis shall be required as part of the environmental review process for all noise-sensitive land uses which are proposed in areas exposed to existing or projected exterior noise levels exceeding the level standards contained within this Noise Element." (DEIR, p. 3.11-9.) A noise assessment was prepared for the Project by acoustical experts J.C. Brennan & Associates and is included in the DEIR in Appendix H.

This noise assessment took into account the proposed development (DEIR, pp. 3.11-14 to 3.11-20) and the exterior land uses and commensurate noise levels surrounding the Project site (DEIR, pp. 3.11-4 to 3.11-8.) This noise assessment served as the basis for developing noise mitigation measures to ensure the Project will have a less-than-significant noise impacts on either existing offsite receptors or future onsite receptors. (See DEIR, pp. 3.11-14 to 3.11-23.)

The DEIR discussed the Sierra College stadium as an existing "single event" noise source that occasionally exceeds City standards, and this source, too, was taken into consideration with conducting analysis and creating mitigation measures, including the installation of sound barriers, noise reducing windows and doors, and other noise reduction measures determined by a qualified acoustical consultant based on final plans. (DEIR, pp. 3.11-7.3.11-20 to 3.11-21.) These other measures may include increased setbacks and the use of buildings to shield noise from park and residential uses. (DEIR, p. 3.11-21.) Acoustical experts determined that, with these mitigation measures, exterior noise sources would have a less-than-significant impact on future Project residents. (See DEIR, p. 3.11-22.)

Furthermore, mitigation measures for Project traffic noise will reduce sounds overall from college sporting events. More importantly, exiting noise from the stadium is part of the existing environment, and CEQA is concerned with impacts on project residents and users only to the extent that a project would exacerbate such effects. (See *CBIA v. BAAQMD*, *supra*, 62 Cal.4th at p. 386 ["CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents"].) Thus, the City went beyond the call of duty under CEQA by considering the effects of stadium noise on future Project residents. The commenter does not suggest that the Project will exacerbate noise coming from the stadium.

3. *"The DEIR cannot rely on City noise ordinances which have been documented to not have been enforce to mitigate [construction] noise impacts."* (Frumkin Letter, p. 59; see also Sierra Geotech Letter, p. 40.)

The DEIR does not rely on City noise ordinances to mitigate construction noise impacts. Mitigation Measure 3.11-5 contains actions and measures intended to ensure that construction noise will result in a less-than-significant impact. (See DEIR, p. 3.11-23.) Included in that mitigation are the limitations on hours that construction activities can occur, pursuant to the City's construction noise guidelines. (See DEIR, pp. 3.11-11, 3.11-22 to 3.11-23.) Construction noise is treated separately from operational noise for obvious reasons. It is temporary and can only occur during daylight hours, with rare exceptions. The Measure will ultimately be incorporated into a Mitigation Monitoring and Reporting Program intended to ensure compliance during Project implementation.

(Pub. Resources Code, § 21081.6, subd. (a)(2); CEQA Guidelines, § 15097, subd. (a).)

Even though the Project will not simply rely on the Noise Ordinance for noise impact mitigation, it is worth noting that compliance with existing statutes, regulations, ordinances, or policies that protect the environment is entirely appropriate, as a legal matter, as long as an agency has a reasonable expectation that compliance will bring impacts down to less than significant levels. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308; *Gentry*, *supra*, 36 Cal.App.4th at p. 1393.)

L. Population and Housing

1. *"The DEIR includes no assurance that affordable housing units will be constructed...[p]rovide information on how the applicant and Rocklin will ensure these affordable housing units are constructed...."* (Loomis Letter, p. 5.)

Under CEQA, lead agencies are afforded the presumption that the Project will be implemented as proposed (see, e.g., *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1119–20). The DEIR proposes "senior affordable multi-family dwelling units," and the commenter does not present any evidence that these units will not be constructed. (DEIR, p. 2.0-11.) The commenter appears to imply that this supposed lack of assurance may result in an inconsistency with the government codes listed on page 3.10-10 under Impact 3.10-2. However, in addition to the presumption just articulated, Government Code section 65300, cited on page 3.10-10, does not apply only to "affordable" units—it seeks to preserve land zoned for all types of housing.

M. Public Services

1. *The number of multi-family units in the Project "could be much higher than the 558 assumed in the calculation" for Quimby Act fees.* (Loomis Letter, p. 7.)

As discussed above in Section III.B.2, the unit numbers presented in the Project Description, inclusive of the 558 multi-family units, describe a maximum projected buildout scenario. Any future tentative map or permit applications will require the final number of residential units and commercial square footage, at which time Quimby Act fees will be assessed and collected. (See Gov. Code, § 66477, subd. (a)(2) ["[t]he amount

of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household"].) Thus, these fees would be commensurate on the number of units actually approved and the impact to park facilities would be less than significant, as stated in the DEIR. (DEIR, p. 3.13-25.)

2. *"Developing urban uses adjacent to Loomis agricultural uses poses wildland fire risks" that the "nearest fire station is not equipped" to handle.* (Loomis Letter, p. 3.)

The commenter does not explain why development adjacent to Loomis property zoned as RA (Residential Agricultural) poses increased wildland fire risks. Intuitively, it seems that the risk for fire may decrease with development that would reduce dry and overgrown vegetation that often exists on the North Village site. No matter, as stated in the DEIR, "[t]he site is not located within an area where wildland fires are known to occur, or within a high or moderate Fire Hazard Severity Zone as indicated by Calfire FHSZ Map;" therefore, Project impacts associated with wildland fires are less than significant. (DEIR, p. 3.8-29.) The DEIR also states, after a thorough evaluation of the capabilities of the Rocklin Fire Department and the much higher level of development that was examined for the Project sites under the General Plan, that "existing fire department facilities are sufficient to serve the proposed Project." (DEIR, p. 3.13-18.) See also Section III.D.1 above for a discussion on the compatibility of the Project and existing adjacent land uses in Loomis.

3. *"[W]ithout any restrictions" on the affordable senior housing, "impacts to school enrollment" are understated in the DEIR.* (Loomis Letter, p. 6.)

The DEIR's discussion of the Project's potential to increase school enrollment conservatively did *not* assume that the affordable senior housing proposed as part of the Project would generate fewer students than other types of housing available to young families. Consequently, the DEIR overstated impacts relating to school enrollment. There is no need for the City to impose specific limitations on the Project to reduce the student generation potential of this affordable senior housing.

Impact 3.13-3 addresses whether the Project might result in any substantial

adverse physical impacts associated with the construction of new or physically altered school facilities needed to handle the student population associated with the Project. In discussing these potential physical impacts, the DEIR states that "because 180 of the proposed units in the South Village would be senior affordable multi-family units, the actual student generation resulting from the project would likely be significantly lower. Therefore, the above analysis is considered conservative." (DEIR, p. 3.13-19.)

A key point to note here is that Impact 3.13-3 is focused on *environmental* impacts that could result from new or expanded school facility *construction*. The "impact" at issue is not the generation of students by itself or whatever financial burdens school districts might face in trying to accommodate an increased student population. Rather, the analysis is concerned with the kinds of environmental impacts associated with any new or expanded school development.

After stating that "[t]he Project would not directly include development of any school facilities," the DEIR notes that the Loomis Unified School District (LUSD) "is currently in the process of acquiring a site for a new school and associated facilities." (*Id.*, at p. 3.13-23.) The text goes on to state that "[a]t this stage, the environmental effects of this future school facility are undetermined. Depending on the ultimate location, it is possible that development of the future Loomis school site would result in environmental effects. The proposed project would indirectly contribute to any impacts associated with that school because of the new students that are added from the proposed Project." (*Ibid.*) Faced with this uncertainty, the DEIR called the potential "environmental effects of the future LUSD school facility" significant and unavoidable, but noted that "once an exact location and design is developed by the School District, it is possible that this impact would be reduced to an insignificant level[.]" (*Ibid.*; see also CEQA Guidelines, § 15145 ["[i]f, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact"].)

The DEIR's approach to addressing school-related impacts is legally sufficient and consistent with California law has it has existed since 1998, when the Legislature passed Senate Bill 50 (Stats. 1998, ch. 407). Under Senate Bill 50, any *financial* impacts on school districts associated with increased school enrollment are fully mitigated for CEQA

purposes by the payment of school impact fees by developers, which are applied to all new construction regardless of age restrictions on the development. (Gov. Code, § 65995, subd. (h); *Chawanakee Unified School Dist. v. County of Madera* (2011) 196 Cal.App.4th 1016, 1025–26 (*Chawanakee*); see also Ed. Code, § 17620, subds. (a)(1)(B) [fees apply to "new residential construction"], (a)(1)(C)(ii) [unless "that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code"]; Rev. & Tax. Code, § 74.3, subd. (a) [senior housing not listed as an exclusion].)

Senate Bill 50 also forbids local governments from disapproving development proposals, including those requiring only legislative actions, due to the potential of such projects to contribute to, or exacerbate, school overcrowding. (Gov. Code, § 65996, subd. (b).)

The approach to CEQA mitigation set forth in Senate Bill 50 is consistent with prior case law holding that school overcrowding is *not* considered an environmental effect, but rather an economic or social effect outside the ambit of CEQA. (*Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1029–34 (*Goleta*); see also CEQA Guidelines, § 15131, subd. (a) ["[e]conomic or social effects of a project shall not be treated as significant effects on the environment"]; and *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 843 ["[t]he need for additional fire protection services is not an environmental impact that CEQA requires a project proponent to mitigate"].) To the extent that a project will foreseeably cause new school facility construction with environmental impacts, or will otherwise cause physical consequences such as increased traffic or air pollution, such *environmental* impacts must be addressed. (*Chawanakee*, *supra*, 196 Cal.App.4th at pp. 1026–29.)

In short, under Senate Bill 50, the only CEQA mitigation that a lead agency may impose for impacts to school facilities is to require payment of school impact fees. The payment of such fees "provide[s] full and complete school facilities mitigation" under CEQA. (Gov. Code, § 65996, subd. (b); see also DEIR, pp. 3.13-11, 3.13-23.) To the extent that the commenter is suggesting that either the City or the Applicants have a legal obligation to mitigate school overcrowding as though it were some kind of recognized

environmental impact, the commenter is mistaken.

Notably, as the DEIR suggests, LUSD will be lead agency for its anticipated new school facility under Public Resources Code section 21151.8 and CEQA Guidelines section 15186. When LUSD proposes to build a new school, LUSD, as the lead agency, will have to conduct impact analysis and formulate its own mitigation. LUSD, therefore, will have to conduct any site-specific review, and in this review take into consideration projected enrollment and associated impacts. In fact, before adopting a negative declaration or certifying an EIR for school site acquisition or construction, the governing board of the affected school district must make specific findings regarding issues required to be addressed in the negative declaration or EIR. (Pub. Resources Code, § 21151.8, subd. (a)(3); Guidelines, § 15186, subd. (c)(3); Ed. Code, § 17213, subd. (c).)

4. *"Addition of high school aged students would further exacerbate overcrowding at Del Oro High School."* (Loomis Letter, p. 6.)

See discussion just above. As stated, under Senate Bill 50 and CEQA case law, school overcrowding is *not* considered an environmental effect, but rather an economic or social effect outside the ambit of CEQA. (*Goleta*, *supra*, 37 Cal.App.4th at pp. 1029–34; Gov. Code, § 65995, subd. (h); see also CEQA Guidelines, § 15131, subd. (a).)

5. *A mitigation agreement between the School District and the Applicant is "critical" and would serve to mitigate "Environmental Impact 3.13-3."* (Loomis School District Letter, pp. 1–2.)

As explained above, mitigation agreements are not required by law, as the payment of school impact fees is sufficient mitigation for impacts on school facilities. Developers and landowners sometimes enter into such agreements, but do so voluntarily and only when the resulting costs are acceptable to them and not prohibitive. Under CEQA, as explained above, all that is required by law to mitigate impacts to school facilities is payment of school impact fees. See discussion in Section III.M.3 above for more detail.

A mitigation agreement of the kind sought by LUSD would presumably involve

financial consideration and funding for new facilities, and thus would not address the kinds of physical impacts associated with facility *construction* (dust generation, noise, loss of biological resources, etc.), which were the subject matter of Impact 13.3-3. Thus, the commenter's argument here that a mitigation agreement will mitigate the future physical impacts identified in Impact 3.13-3 is in error.

6. *The EIR "must be re-written" because the Project "will have a significant impact on the District."* (Loomis School District Letter, p. 5.)

As repeatedly explained above, the DEIR appropriately focuses on the physical impacts of new or expanded school facilities. And, after five pages of careful analysis, the DEIR concluded that impacts to school facilities would be significant and unavoidable. (DEIR, pp. 3.13-18 to 3.13-23.) Even if additional analysis of the Project's impact on school facilities were to be conducted, this conclusion will not change. It appears that the commenter is trying to argue for a more generalized impact that can be mitigated by money rather than the kind of mitigation needed for physical impacts. This type of impact analysis and mitigation, however, are not required under CEQA and are precluded by Senate Bill 50. As discussed just above in detail, if and when a particular new school is built or an existing school is modified, LUSD must function as lead agency and must conduct its own impact analysis and formulate mitigation. Thus, the DEIR does not need to be rewritten.

7. *The Project may violate City General Plan Policy PF-1 unless the Applicant enters into a mitigation agreement with the School District.* (Loomis School District Letter, p. 3.)

General Plan Public Services and Facilities Element Policy PF-1 requires "adequate lead time in the planning of needed expansions of public services and facilities." (DEIR, p. 3.15-16.) This policy is very general and should not be construed to require a mitigation agreement. To our knowledge, the City does not interpret this policy in the inflexible manner suggested by the commenter. (See *Gray, supra*, 167 Cal.App.4th at pp. 1129–30 ["[i]t is well settled that a County is entitled to considerable deference in the interpretation of its own General Plan"].)

More to the point, however, this vague General Plan policy cannot be understood to trump the limitations in state law (Senate Bill 50) providing that the payment of school impact fees is all the funding that developers are required to pay for new schools. (See the discussion in Section III.M.3 above). Mitigation agreements are purely voluntary, and not something that the City can make the developers enter into. Therefore, the Project does not violate Policy PF-1.

In any event, the original Project application was submitted to the City in 2017; and the NOP was published on February 1, 2019. Project site development (grading, etc.) is planned to commence this year (2022), but vertical construction would not start until 2023 at the earliest. Conservatively, the first newly enrolled child to attend an LUSD school would enter a school building in Fall of 2024. Thus, the LUSD has already had, and will continue to have, a great deal of "lead time" in which to ready itself to serve students from the Project.

8. *The Project may violate City General Plan Policy PF-3 unless an "Assessment District for the District's school related expenses" is formed.* (Loomis School District Letter, p. 3.)

General Plan Public Services and Facilities Element Policy PF-3 requires "that any development that generates the need for public services and facilities, including equipment, pay its proportional share of providing those services and facilities. Participation may include, but is not limited to, the formation of assessment districts, special taxes, payment of fees, payment of the City's Construction Tax, purchase of equipment, and/or the construction and dedication of facilities." (DEIR, p. 3.15-4.)

This policy's requirement to "pay its proportional share" is fulfilled through payment of school impact fees, which, as discussed above in Section III.M.3, are all that is required by law to mitigate impacts to school facilities. The list of optional means for participation in this proportional sharing, such as formation of an assessment district, are just that: optional. Under Senate Bill 50, the creation of an assessment district cannot be required as mitigation for impacts to school facilities. This principle of state law cannot be evaded through a creative interpretation of General Plan Policy PF-3.

9. *The Project may violate City General Plan Policy PF-4 unless the Applicant enters into a mitigation agreement with the School District.* (Loomis School District Letter, p. 3.)

General Plan Public Services and Facilities Element Policy PF-4 requires disapproval of "development proposals that would negatively impact *City provided* public services, unless the negative impact is mitigated." (DEIR, p. 3.13-12 [italics added].) Like Policies PF-1 and PF-3, this policy must be interpreted in light of the preemptive effects of Senate Bill 50. (See Section III.M.3 above for more details.) Regardless, Policy PF-4 refers to services provided by the City of Rocklin, not to services provided by other agencies such as LUSD. Approval of the Project without a Mitigation Agreement would not violate Policy PF-4.

10. *The Project may violate City General Plan Policy PF-26 without additional fees for the School District and without the formation of a "Communities Facilities District."* (Loomis School District Letter, pp. 3–4.)

General Plan Public Services and Facilities Element Policy PF-26 requires an evaluation of "all residential development project applications for their impact on school services and facilities. Where an impact is found, the project may be conditioned to the extent and in the manner allowed by law to mitigate the impact, such as requiring payment of school district fees and/or participation in a community facilities district to fund school facilities." (DEIR, p. 3.13-13.) The policy includes the qualifying phrase "in the manner allowed by law," and then it specifically mentions school impact fees. And school impact fees are all that are required by law to "mitigate the impact" to school facilities. (See Section III.M.3 above for more details.) The list of other mitigation options, such as participating in a community facilities district, are not required by law. Again, the City's General Plan policies must be construed in a manner that does not run afoul of Senate Bill 50.

N. Transportation and Traffic

1. *The DEIR's traffic study is not site-specific enough.* (Frumkin Letter, p. 60; see also Sierra Geotech Letter, p. 41.)

The analysis presented in the DEIR is project-level and therefore is already site-specific. This EIR is not the equivalent of a program EIR for a general plan or specific plan. The amount of vehicle miles traveled (VMT) to be generated is based on reasonable assumptions about buildout and developed using the City's travel demand model. (See DEIR, pp. 3.14-13 to 3.14-16.) The fact that project-specific transportation demand reduction plans will be required does not mean that the impact analysis is too general and thus deficient.

2. *"Analysis of potential traffic impacts associated with the South Village high density residential site entrance on Rocklin Road are under reported," and recently approved cumulative development "will exceed the roadway capacity" at the intersection of Rocklin Road and Sierra College Boulevard and will result in "level of service (LOS) impacts."* (Loomis Letter, pp. 1–2.)

These comments on "roadway capacity" and intersection functionality all relate to LOS, which is no longer required to be analyzed under CEQA. LOS ceased to be a CEQA issue in late 2018, when it was determined that "automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to [CEQA], except in locations specifically identified in the [CEQA] guidelines, if any." (Pub. Resources Code, § 21099, subd. (b)(2); *Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 625–26.) For projects with draft EIRs published after July 1, 2020, LOS has been replaced with VMT, which was the primary metric used for assessing transportation and traffic impacts in the DEIR.

3. *"Transporting students to a new school site will create roadway/intersection impacts that are not disclosed in the DEIR."* (Loomis Letter, p. 6; see also Loomis School District Letter, p. 2.)

These "roadway/intersection impacts" implicate LOS, which is not required to be addressed in an EIR. See above response for more detail. Notwithstanding, this impact is

"too speculative for evaluation" given that LUSD is still only in the process of acquiring a new school site. (CEQA Guidelines, § 15145; see DEIR, p. 3.13-20.) The City cannot be expected to analyze future transportation impacts to a non-existent, unknowable future school site. As discussed in more detail above in Section III.M.5, if and when school facilities are built or modified, the affected school district will function as its own lead agency and will have to conduct impact analysis, including impacts associated with transportation and traffic, and formulate mitigation. (Pub. Resources Code, § 21151.8; CEQA Guidelines, § 15186.)]

4. *Impacts to "each [school] District's bus routes and pick up-drop off locations" should be analyzed.* (Loomis School District Letter, pp. 2–3.)

These impacts implicate LOS, which is not required to be addressed in an EIR. See above response for more detail.

O. Alternatives

1. *The No Project Alternative is the only one that can be "legally considered for adoption by the Rocklin Planning Commission and City Council."* (Frumkin Letter, pp. 60–61; see also Sierra Geotech Letter, p. 45.)

The Commenters' assertion that only the No Project Alternative can be legally considered for adoption has no basis in the law or reality. As explained at length in Section II.B.1 above, the City Council has broad discretion to approve the proposed Project if it finds it to be the best choice from a policy perspective, particularly in light of recent findings by the Legislature that the State is suffering a housing crisis of historic proportions. CEQA constrains the City Council's police power somewhat, but does not substantially reduce the robustness of that power.

Public Resources Code section 21004 provides that "[i]n mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than [CEQA]. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law." In other words, CEQA does not give agencies any power that they do not already possess, but does require

agencies to exercise the powers they do have in order (i) to ascertain whether the environmental effects of their proposed actions would be significant, and if so, (ii) to formulate feasible mitigation measures or alternative courses of action that could be implemented pursuant to those powers. (See also CEQA Guidelines, § 15040; *Kenneth Mebane Ranches v. Superior Court* (1992) 10 Cal.App.4th 276, 291 ["CEQA does not grant a local public entity additional powers, independent of those granted by other laws"]; *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 102 ["'an agency's authority to impose mitigation measures must be based on legal authority other than CEQA'"].)

Here, the Rocklin City Council, like any other, has a robust police power, though it is circumscribed in some situations by state legislation intended to serve statewide purposes such as, for example, the need to provide housing during a time of crisis-level housing shortfalls. (See, e.g., Gov. Code, §§ 65589.5, subd. (j), 66300, subd. (b).) But generally, when a city or county is engaged in land use planning, the local agency's CEQA obligation to adopt *feasible* mitigation measures or alternatives as means of lessening or avoiding significant environmental effects still leaves the agency with broad legislative discretion to achieve outcomes consistent with what the agency's decisionmakers regard as desirable public policy. (See, e.g., *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 ["'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors"]; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 [same]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17 [same]; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1506–09 [upholding CEQA findings rejecting alternatives in reliance on applicant's project objectives]; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 314–15 [court upholds an agency action rejecting an alternative because it would not "entirely fulfill" a particular project objective and "would be 'substantially less effective' in meeting" the lead agency's "goals"]; and *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165, 1166 ["feasibility is strongly linked to achievement of each of the primary program objectives";

"a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal"].)

In light of (i) the City's broad police power, (ii) legislation limiting that power in light of the State's unprecedented housing crisis, and (iii) the fact that CEQA case law interprets the concept of "feasibility" in a way that imposes minimal limits on an agency's regulatory authority, the notion that the No Project Alternative is the only legally permissible choice before the City Council is nothing short of absurd.

2. *The DEIR "should include an alternative that eliminates the significant and unavoidable impacts report for VMT."* (Loomis Letter, p. 2.)

CEQA does not rank the importance of different categories of environmental impacts, though it imposes a general obligation to try to minimize or avoid *significant* environmental effects where feasible. This absence of a hierarchy of impact categories of environmental impacts is evident in the directive that an EIR "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen *any* of the significant effects of the project[.]" (CEQA Guidelines, § 15126.6, subd. (a) [italics added].) Here, then, the City was not required to isolate VMT as an impact to try to reduce through the formulation of alternatives.

Notably, however, both the Increased Density Alternative and the Reduced Footprint Alternative would have VMT-related impacts less severe than that of the Project. (DEIR, pp. 5.0-41, 5.0-49 to 5.0-51.)

3. *The DEIR should "explain why a reduced footprint/density/intensity alternative was not developed that would avoid significant and unavoidable impacts."* (Loomis Letter, p. 2; see also p. 7.)

The DEIR includes an alternative with a smaller footprint ("Reduced Footprint Alternative") that is analyzed in the document. (See DEIR, pp. 5.0-42 to 5.0-50.) The Reduced Footprint Alternative would reduce the total development acreage footprint, which accordingly would reduce housing units. (DEIR, p. 5.0-42.) The DEIR concludes

that this alternative would result in reduced impacts to some environmental resources, although impacts to transportation and circulation would remain significant and unavoidable. Other impacts under the Reduced Footprint Alternative would remain the same as with the Project.

The commenter's suggestion, however, that a project alternative should be created that reduces transportation impacts below a significant and unavoidable level goes against the grain of recent legislation such as Senate Bill 330, the Housing Crisis Act of 2019 (Stats, 2019, ch. 654). Senate Bill 330 created Government Code section 66300, which prevents a city from changing the residential general plan, specific plan, and zoning designation to "a less intensive use" or to reduce the intensity of the designation below what was allowed on January 1, 2018 (absent offsetting increases in units or intensities elsewhere within a jurisdiction. (See Gov. Code, § 66300, subds. (b)(1)(A), (h)(2)(i)(1).)

Another statute that circumscribes a local agency's ability to reduced housing units is Government Code section 65589.5, subdivision (j). Under that statute, a city or county may not deny a housing project that "complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete," or may not reduce the number of units within such a project, unless the city or county finds, based on a preponderance of the evidence, that "[t]he housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density." (See also *California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820; and Pub. Resources Code, § 21159.26 [disallowing the reduction of housing units as mitigation where other feasible mitigation options are available].)

As the Applicants intend to demonstrate at length in subsequent correspondence, the City Council cannot deny the housing components of the Project as proposed, or reduce the Project's residential unit count, without violating either section 66300, subdivision (b)(1)(A), or section 65589.5, subdivision (j).

As a practical matter, there would be little value in the creation of an additional EIR alternative that reduced the Project's housing unit count to the low level needed to achieve a less than significant VMT impact.

4. *"The argument that a reduced footprint/density/intensity alternative cannot meet the project's objectives is not supported."* (Loomis Letter, p. 2.)

The DEIR contains ten Project objectives that discuss a variety of goals, including the following: creating two high quality new and financially viable mixed-use neighborhoods that include residential, commercial, office, and/or public uses located along two significant transportation corridors in the City; developing a diverse mix of residential densities and home ownership opportunities near a major regional employer so as to actually reduce regional VMT and GHG emissions; developing open space and recreation amenities; developing the properties in a way that integrates their natural and environmental features into the project in an interactive way; and developing the two neighborhoods with an emphasis on quality architecture and diversity of housing and creatively contribute to the City's regional housing mix. (DEIR, pp. 2.0-5 to 2.0-6, 5.0-3.) Thus, the commenter's claim that the City based its "the project objectives solely on the number of housing units or square footage" is incorrect and misleading.

One of the Project objectives is compliance with Senate Bill 330, which is an existing State statute discussed immediately above. As also explained just above, the type of alternative being suggested by the commenter would not comply with Government Code section 66300, subdivision (b)(1)(A) because the alternative would not include the same number of housing units, or a greater number, than the number allowed under current General Plan and zoning designations. Therefore, this type of alternative cannot meet this Project objective.

There are other objectives that also likely would not be met with this type of reduced density alternative, such as the objectives that the Project create "financially viable mixed-use neighborhoods" and "[d]evelop a diverse mix of residential densities and home ownership opportunities." These objectives rely on a robust mix of housing types, including high-density housing, which it appears, based on the nature and totality of comments, the commenter objects to. The commenter, of course, has not and does

not suggest any specific alternatives, other than to assert that "the College could defer ultimate buildout of the properties." (See DEIR, p. 5.0-4 ["[n]o specific alternatives were recommended by commenting agencies or the general public during the NOP public review process"].)

Deferral of ultimate development of the Project sites, however, would accomplish none of the Project's objectives and would withhold much-needed housing from the State and region. "CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives." (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 276–77.) Here, the District and the Applicants have every right to pursue the Project and the public policy objectives associated with it.

5. *"CEQA requires the agency to state, in writing, the specific reasons for considering a project acceptable when significant impacts are not avoided or substantially lessened," pursuant to "CEQA Guidelines § 15093(b)."* (Sierra Geotech Letter, p. 3.)

This is not an EIR requirement. CEQA Guidelines section 15093 deals with requirement that the lead agency make a statement of overriding considerations when "the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened." Nothing in CEQA requires that an EIR address the potential benefits of a Project that would be included in such a statement of overriding considerations. Here, of course, the benefits are obvious. The state is facing a housing crisis (see Section II.B above).

P. Cumulative Impacts

1. *The analysis failed to address individual projects such as the Sierra College Facilities Plan.* (Frumkin Letter, pp. 48–49; see also Sierra Geotech Letter, pp. 43–44; Zenobia Letter, pp. 3–4.)

CEQA Guidelines section 15130, subdivision (b)(1), provides that "an adequate discussion of significant cumulative impacts" must include *either* (i) "[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* (ii) "[a] summary of

projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect."

With respect to the second option, "[s]uch plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency." (CEQA Guidelines, § 15130, subd. (b)(1)(B).)

As this language makes clear, an agency's use of the "summary of projections" approach to ascertaining future cumulative conditions obviates any need to identify specific projects expected to occur within a cumulative time frame. Such a project-by-project listing is only necessary where an agency employs what is commonly called "the list method."

Here, the DEIR used the "summary of projections" approach. This approach is fully explained in Section 4.1 of the DEIR. (DEIR, pp. 4.0-1 to 4.0-3.) "This EIR uses a projection approach for the cumulative analysis and considers the development anticipated to occur upon buildout of the various General Plans in the area." (*Id.* at p. 4.0-3.)

2. *Cumulative construction impacts on transportation systems "are not discussed and this "needs to be corrected."* (Zenobia Letter, pp. 5–6.)

See the response set forth immediately above. As part of the "summary of projections" approach employed in the DEIR, the City looked to the 2020 Metropolitan Transportation Plan/Sustainable Communities Strategy to inform the analysis of potential cumulative impacts to transportation and circulation. (DEIR, p. 4.0-2.) Cumulative impacts to transportation and circulation are discussed on pages 4.0-20 to 4.0-27 and, because of the approach taken, do not need to include a discussion of the potentially cumulative effect of construction of multiple individual projects on transportation systems. Any transportation impacts associated with Project construction, however, would be temporary, short-term, and less than significant. (See DEIR, pp.

3.14-29 to 3.14-30.)

Q. References

1. *The DEIR did not provide "accurate and verifiable references in accordance with the CEQA Guidelines and Public Resources Code."* (Frumkin Letter, pp. 48–49; see also Sierra Geotech Letter, p. 5; Zenobia Letter, pp. 4–5.)

It appears that the DEIR contains some defunct hyperlinks in references and may lack some page number specificity for other references. It is our understanding that the City will be revising the Final document to clarify and correct these issues. These clarifications and non-substantive corrections are not considered significant new information that could trigger recirculation of the DEIR. (See CEQA Guidelines, § 15088.5, subd. (b) [r]ecirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR].)

* * *

Thank you for your time and consideration. We are more than happy to discuss anything in this letter with the City and answer any questions you may have.

Very truly yours,

James G. Moose
Casey A. Shorrock

Cc: Sheri Chapman (sheri.chapman@rocklin.ca.us)
Armeen Komeili (Armeen.Komeili@rocklin.ca.us)
Aly Zimmerman (alyz@rocklin.ca.us)
Bret Finning (Bret.Finning@rocklin.ca.us)
George Phillips (gphillips@phillipslandlaw.com)
Jim Gillum (jim@gillumconsulting.com)
Deana Ellis (dellis@cresleigh.com)
Robert Cole (rcole@colepartners.com)
William Duncan (wduncan@sierracollege.edu)
Holly Tiche (htiche@aol.com)

Attachments:

Attachment A. Letter from Megan E. Macy of Lozano Smith on behalf of Sierra College School District (January 6, 2021)

Attachment B. Agreement between Evergreen Sierra, LLC/Cresleigh Homes and Flying Change Farms Equestrian Facility (July 24, 2018)

Attachment C. Letter from Raney Planning & Management, Inc., on Air Quality/GHG Comments (January 10, 2021)

Attachment D. Letter from Madrone Ecological Consulting on Biological Resources Comments (January 7, 2021)

Attachment E. Letter from Wood Rodgers on Hydrology and Water Quality (January 11, 2021)

Attachment F. Draft Initial Study and Notice of Intent to Adopt a Mitigated Negative Declaration for the Flying Change Farms Project (May 2018)

Attachment G. Staff Report to Planning Commission regarding Major Use Permit and Design Review Application #17-08 "Flying Change Farms Equestrian Center" (July 24, 2018)

Attachment H. Exhibit 4 to Staff Report to Planning Commission regarding Major Use Permit and Design Review Application #17-08 "Flying Change Farms Equestrian Center" (July 24, 2018)

Attachment I. Additional References

- Sierra College, *Sierra College Timeline*, available at: https://www.sierracollege.edu/80/timeline.php#origins
- *Rocklin Road East of 1-80 General Development Plan* (1999), available at: https://www.rocklin.ca.us/sites/main/files/file-attachments/rocklin_rd_east_of_i-80_complete.pdf.
- *Sierra College Area General Development Plan* (2002), https://www.rocklin.ca.us/sites/main/files/file-attachments/sierra_college_-_ord_857.pdf?1474396890.
- *Facilities Master Plan: Sierra College Rocklin Campus* (Jun. 2014), available at: https://www.sierracollege.edu/_files/resources/governance-planning/accreditation/2016/midterm-evidence/5F-Facilities-Master-Plan-2014.pdf
- *College Park (Formerly Sierra Villages)*, available at: https://www.rocklin.ca.us/post/college-park-formerly-sierra-villages.
- Anwar, A., *Does the Age of a Tree Effect Carbon Storage?* (2001), NASA Goddard Institute for Space Studies, available at: https://icp.giss.nasa.gov/research/ppa/2001/anwar/.
- U.S. Department of Agriculture, Office of Sustainability & Climate, *Forest Carbon FAQs*, available at: https://www.fs.usda.gov/sites/default/files/Forest-Carbon-FAQs.pdf
- Norman, C., Kreye, M., *How Forests Store Carbon* (Sept. 24, 2020), Penn State Extension, available at: https://extension.psu.edu/how-forests-store-carbon
- Sen. Com. on Env. Quality on Sen. Bill No. 1334 (2003 2004 Reg. Sess.) Apr. 19, 2004.