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FILED
Superior Court of California
County of Placer

AUG 13 2018

Jake Chatters
Executive Officer & Clerk
By K. Zaragoza, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

SIERRA WATCH,

 Petitioner,

 vs.

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

 Respondents.

SQUAW VALLEY REAL ESTATE, LLC;
and DOES 21-40,

 Real Parties in Interest.

Case No.: SCV-0038777

RULING ON PETITION FOR WRIT
OF MANDATE

FACTUAL AND PROCEDURAL BACKGROUND

The Village at Squaw Specific Plan

This action involves a dispute regarding the Village at Squaw Valley Specific Plan (Project). The Project is located in Squaw Valley at the base of the Squaw Valley Ski Resort. It spans 93.3 acres covering two parcels –

1 the 84.5 acre Village Parcel and the 8.8 acre East Parcel. (AR 3:1744.)
2 The Project includes hotel, residential and commercial uses, as well as
3 parking. On the Village Parcel the Project would allow for 1,493 residential
4 units, nine acres of parking structures, an equipment yard, and
5 approximately 274,000 square feet for an entertainment park. (AR
6 3:1747-1753.) On the East Parcel, the Project would allow for dormitory-
7 style housing for employees, a parking structure, and 20,000 square feet of
8 commercial space, including a market and a shipping and receiving center.
9 (AR 3:1752.) The Project retains 36.35 acres of open space. (AR
10 13:7789.) It is estimated that it will take 25 years to complete
11 construction of the Project. (AR 3:1650.)

12 Environmental Review and Project Approval

13 Real party in interest Squaw Valley Real Estate, LLC (Squaw)
14 submitted a draft outline of the Village at Squaw Specific Plan in 2011. (AR
15 15:8826.) On October 10, 2012, the County issued a Notice of Preparation
16 of a Draft Environmental Impact Report (DEIR). (AR 5:2505.) In January
17 2014, the Project was revised to reduce the number of bedrooms from
18 3,187 to 1,493. (AR 15:8826.) The County circulated the DEIR for the
19 Project on May 18, 2015. (AR 3:1644.) Numerous comments were
20 submitted during the comment period. (AR 7:3885-3896; 39:22850-
21 22979.) The County issued the Final EIR (FEIR) on April 7, 2016. (AR
22 1:212.) Additional comments were submitted following the issuance of the
23 FEIR. (AR 7:3885-3896; 38:22207-22315.)

24 On May 14, 2016, the Squaw Valley Municipal Advisory Council held a
25 public meeting to consider the Project. (AR 79:46870-46872.) After
26 receiving public comment, the Council recommended denial of the Project.
27 (AR 79:46871-46872.) On August 11, 2016, the Placer County Planning
28 Commission held a public meeting to consider the Project. (AR 15:8817-

1 8820.) After receiving public comment, the Planning Commission voted
2 four to two to approve the Project and certify the EIR. (AR 17:10121.)

3 On November 15, 2016, the Placer County Board of Supervisors held
4 a public hearing for comments on certification of the FEIR. (AR 17:9783-
5 9785.) Following public comment, the Board voted four to one to approve
6 the Project, including adoption of the Village at Squaw Valley Specific Plan,
7 its Development Standards and Design Guidelines, and a Development
8 Agreement. (AR 1:7-8, 116-117.) Approval also included the Project's
9 Water Supply Assessment, certification of the FEIR, adoption of CEQA
10 Findings of Fact and Statement of Overriding Consideration and a Mitigation
11 Monitoring and Reporting Plan, and related planning approvals. (AR 1:113-
12 114, 211-213; 3:1251-1253.)

13 Current Litigation

14 Petitioner filed its petition for writ of mandate and complaint for
15 injunctive relief on December 15, 2016, alleging violations of CEQA. Squaw
16 filed its verified answer on January 8, 2018. The County filed its answer on
17 January 16, 2018. The hearing on the petition took place on May 24, 2018,
18 in Department 43 of the above-entitled court. Attorneys Amy Bricker,
19 Rachel Hooper, Laura Beaton and Daniel Selmi appeared on behalf of
20 petitioner. Attorneys Whit Manley and Nathan George appeared on behalf
21 of Squaw. Attorney Clayton Cook appeared on behalf of the County. The
22 court has considered the moving and opposing papers on file and the oral
23 arguments of counsel, and rules on the petition as follows:

24 Discussion

25 Standard of Review

26 Petitioner focuses on eight areas of CEQA violations that challenge
27 the adequacy of the EIR. An EIR is presumed to be adequate under CEQA.
28 (Pub. Res. Code § 21167.3.) Based upon this presumption, the petitioner

1 has the burden of proving the EIR is inadequate. (*Concerned Citizens of S.*
2 *Central Los Angeles v. Los Angeles Unified School Dist.* (1994) 24
3 Cal.App.4th 826, 836; *Cal. Native Plant Society v. City of Rancho Cordova*
4 (2009) 172 Cal.App.4th 603, 613-614.) The court's inquiry when reviewing
5 an agency's compliance with CEQA is to determine whether there was a
6 prejudicial abuse of discretion. (Pub. Res. Code § 21168.5.) In conducting
7 this review, the court looks to whether the agency has not proceeded in a
8 manner as required by law, or if there is a determination that is not
9 supported by substantial evidence. (Pub. Res. Code §§ 21168, 21168.5;
10 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*
11 *Cordova* (2007) 40 Cal.4th 412, 426-427.) The review of these two types
12 of errors differs. Where the error is one of improper procedure, a showing
13 that the agency's failure to follow the law is prejudicial or presumptively
14 prejudicial requires the determination to be set aside. (*Vineyard Area*
15 *Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40
16 Cal.4th at 435.) "Courts must 'scrupulously enforce all legislatively
17 mandated CEQA requirements.'" (*Native Plant Society v. City of Santa Cruz*
18 (2009) 177 Cal.App.4th 957, 984.) An EIR will only be found legally
19 inadequate and subject to independent review for procedural error where it
20 omits information required by CEQA, and necessary for an informed
21 discussion. (*Id.* at 986.) "To sum up, the omission of required information
22 constitutes a failure to proceed in the manner required by law where it
23 precludes informed decision-making by the agency or informed
24 participation by the public. [Citation.]" (*Id.* at 987.) Where the error is a
25 dispute over facts, the agency's substantive factual conclusions are given
26 greater deference and the conclusions are reviewed for substantial
27 evidence. (*Id.*)

28

1 The Environmental Setting

2 Petitioner asserts that (1) the EIR failed to adequately describe the
3 environmental setting for the Lake Tahoe Basin; (2) the EIR failed to make
4 determinations regarding significant impacts or mitigation of impacts of the
5 Project on the Basin; and (3) the County's supplemental responses to the
6 EIR did not remedy the omissions regarding the Basin. Petitioner seeks to
7 invoke de novo review by asserting that the Project substantially impacts
8 the Basin, requiring additional analyses that were omitted from the EIR.

9 The Tahoe Basin is an area deemed to be of regional significance and
10 subject to the Tahoe Regional Planning Compact codified in Government
11 Code sections 66800 and 66801. This compact created the Tahoe Regional
12 Planning Agency (TRPA), a legal entity established to maintain the region's
13 resources in the face of future developments within the Tahoe Basin. (Gov.
14 Code § 66801.) CEQA recognizes the Basin as having "Statewide, Regional,
15 or Area wide Significance", thus meriting particular attention in an EIR.
16 (CEQA Guidelines § 15206(b)(4)(A).)

17 "An EIR must include a description of the physical environmental
18 conditions in the vicinity of the project, as they exist at the time the notice
19 of preparation is published ... from both a local and regional perspective.
20 This environmental setting will normally constitute the baseline physical
21 conditions by which a lead agency determines whether an impact is
22 significant. The description of the environmental setting shall be no longer
23 than is necessary to an understanding of the significant effects of the
24 proposed project and its alternatives." (CEQA Guidelines § 15125(a).)

25 The court finds that the EIR adequately describes the regional
26 environmental setting in this case. The Project is located outside of the
27 Tahoe Basin, and is not subject to TRPA. (AR 3:1639, 8:4343.) The EIR
28 was not required to discuss inconsistencies between the Project and regional

1 plans for the Lake Tahoe Basin as the Project is not subject to such plans.
2 (CEQA Guidelines 15125(d); *Sierra Club v. City of Orange* (2008) 163
3 Cal.App.4th 523, 544.)

4 "[A]n agency enjoys the discretion to decide, in the first instance,
5 exactly how the existing physical conditions without the project can most
6 realistically be measured, subject to review, as with all CEQA factual
7 determinations, for support by substantial evidence." (*Communities for a*
8 *Better Environment v. South Coast Air Quality Management Dist.* (2010) 40
9 Cal.4th 310, (*Communities for a Better Environment*.) Nevertheless, the
10 EIR "may not ignore the regional impacts of a project proposal, including
11 those impacts that occur outside of its borders; on the contrary, regional
12 perspective is required." (*Citizens of Goleta Valley v. Board of Supervisors*
13 (1990) 52 Cal.3d 553, 575.) In this case, the EIR examines regional
14 impacts, including impacts to the Basin.

15 The area of concern for the Basin highlighted by petitioner is impacts
16 caused by the increased traffic expected in the Basin because of an increase
17 in the numbers of people drawn to the area due to the Project. The EIR
18 does not obscure impacts of concern. The EIR describes air quality based on
19 data from monitoring stations located within the Basin. (AR 4:2043-2047.)
20 The EIR includes information regarding local and regional traffic, including in
21 the Basin. (AR 4:1979-1980.) The EIR studies corridors within the Basin
22 where visitors would likely travel. (AR:8:4380-4381.) The EIR estimates
23 vehicle miles traveled (VMT) to calculate air pollutant and GHG emissions.
24 (AR 4:2050, 2054, 2057-2059, 2289, 6:3361-3362, 3417-3419, 3432-
25 3434.) The EIR analyzes increases in VMT in the Basin in comparison to
26 TRPA's basin-wide cap of VMT, including with other proposed projects. (AR
27 2:615-616.)

28

1 The EIR was not required to use TRPA's environmental carrying
2 capacity thresholds in analyzing the impacts of the Project. TRPA recognizes
3 that the VMT threshold is a surrogate for traffic congestion, air quality and
4 lake clarity. (AR 2:612.) However "a direct link between a specific number of
5 VMT and attainment of Lake clarity goals has not been established." (AR
6 2:613.) The EIR concludes that impacts would not be significant because the
7 increase in VMT caused by the Project, as well as other proposed projects,
8 would not cause the TRPA's VMT threshold to be exceeded. Substantial
9 evidence supports the EIR's determinations regarding whether the Project
10 would have significant impacts on the Basin. Petitioner fails to establish that
11 the County's supplemental response to comments submitted after release of
12 the FEIR was improper.

13 Emergency Evacuations

14 Petitioner contends that the EIR fails to adequately analyze Project
15 impacts on emergency evacuations. CEQA requires the EIR to evaluate the
16 risks of evacuating the Project under hazardous conditions. (CEQA
17 Guidelines section 15126.2(a), Appx. G section VIII(g)-(h).) In reviewing
18 the EIR, the agency's factual conclusions are given deference, and reviewed
19 for substantial evidence. (*Cal. Native Plant Society v. City of Santa Cruz*
20 (2009) 177 Cal.App.4th 957, 987.) " "Technical perfection is not required;
21 the courts have looked not for an exhaustive analysis but for adequacy,
22 completeness and a good-faith effort at full disclosure." [Citations.]" (*Id.* at
23 979.) Petitioner identifies two components to wildfire evacuation risks: (1)
24 evacuation of cars from the Project; and (2) impacts to emergency
25 personnel responding to the wildfire during an evacuation. Petitioner
26 contends that the EIR fails to adequately address either component.

27 Contrary to petitioner's assertions, there is substantial evidence within
28 the record to support the EIR's analysis and determinations regarding

1 evacuation from the Project in the event of an emergency. (AR 7:4011-
2 4014; 18:10297-10310; 21:12168-12303; see also AR 17:9823-9826
3 (discussing multi-agency coordination and public notification); AR 15:8799
4 (Emergency Preparedness and Evacuation Plan excerpts).) There is also
5 substantial evidence in the record to support the availability and propriety of
6 allowing residents and visitors to shelter in place in the event of emergency
7 if necessary. (AR 7:4011-4012, 17:9834, 18:10310, 36:21145.) Notably,
8 Squaw Valley Fire Chief Pete Banson identified Squaw Valley as "pretty
9 favorable in terms of fuels and topography and the unlikely host event for a
10 large wildland fire" such that "a mass evacuation of Squaw Valley is a very,
11 very, very unlikely event." (AR 17:9832-9833.)

12 Similarly, there is substantial evidence in the record to support the
13 EIR's analysis and determinations regarding impacts to the ability of
14 emergency personnel to respond in the event of an emergency evacuation,
15 either during construction or during Project operation. The EIR evaluates
16 emergency access to the Project area. (AR 28:16195.) A study
17 commissioned by the Squaw Valley Fire Department (SVFD) analyzed the
18 ability of SVFD to respond to emergencies at the Project, and recommended
19 additional funding to add staff and support a new fire substation at the west
20 end of the valley, to reduce the potential for traffic on Squaw Valley Road to
21 influence an emergency response to the Project. (AR 7:4011-4012,
22 28:16194-16199.) These recommendations are followed in the EIR, and
23 were adopted by the Board. (AR 4:2252-2253; 2:1061-1062.) The EIR
24 evaluates impacts caused by construction and recommends adoption of a
25 Construction Traffic Management Plan to address removal of obstructions
26 during emergency evacuation events and preservation of emergency vehicle
27 access during construction. (AR 4:2274) The Construction Traffic
28 Management Plan was adopted by the Board. (AR 2:1042-1043.)

1 Traffic Impacts

2 Petitioner asserts that the EIR does not contain substantial evidence to
3 support the conclusion that mitigation measures will adequately address
4 impacts to traffic caused by the Project. According to petitioner, the EIR
5 fails to acknowledge current issues in managing parking and traffic in the
6 area, which undermine the proposed mitigation. (See *Laurel Heights*
7 *Improvement Ass'n v. Regents of the Univ. of Cal.* (1993) 47 Cal.3d 376,
8 420 (*Laurel Heights I*.) "[A] project proponent's prior environmental record
9 is properly a subject of close consideration in determining the sufficiency of
10 the proponent's promises in an EIR." (*Id.*) However, consideration "must
11 also be given to measures the proponent proposes to take in the future, not
12 just to the measures it took or failed to take in the past." (*Id.*) In *Laurel*
13 *Heights I*, the California Supreme Court proposed a balancing test in
14 analyzing prior shortcomings and promises for future action. The factors to
15 be considered by the court include, "the length, number, and severity of
16 prior environmental errors and the harm caused; whether the errors were
17 intentional, negligent, or unavoidable; whether the proponent's
18 environmental record has improved or declined; whether he has attempted
19 in good faith to correct prior problems; and whether the proposed activity
20 will be regulated and monitored by a public entity." (*Id.*)

21 The substantial evidence test governs petitioner's argument. (*Laurel*
22 *Heights I, supra*, 47 Cal.3d at 407-408.) The record reveals evidence of
23 prior poor planning and management and/or operation of parking at the
24 Project location. (AR 2:657-658, 11:6053.) However, there is also
25 evidence in the record that prior errors were not intentional, the Project
26 proponent has proposed good faith efforts to correct prior problems even if
27 the Project was not implemented, and implementation of parking
28 management plans with respect to the Project will be managed by the

1 County. (AR 73:42836, 2:661, 1041-1042.) As in *Laurel Heights I*, the EIR
2 can be fairly read as a firm commitment by Squaw to comply with the
3 measures detailed in the EIR. (*Laurel Heights I, supra*, 47 Cal.3d at 421-
4 422.) On balance, there is substantial evidence to support the EIR's
5 conclusions regarding mitigation of traffic impacts.

6 Petitioner also argues that the EIR ignores feasible mitigation
7 measures suggested in public comments with respect to unavoidable traffic
8 impacts. Petitioner identifies various measures that were proposed, such as
9 offering bike rentals to guests, shuttle service to regional destinations, end
10 of trip amenities for employees biking to work such as bike lockers, storage,
11 parking and showers, subsidized parking for car-sharing services, or bulletin
12 boards to coordinate carpools for employees. (AR 4:2060-2061.) In fact,
13 the EIR discusses nearly all of the numerous mitigation measures identified
14 by petitioner, or substantially similar measures, proposes implementation, or
15 implementation where feasible, and explains in some cases why
16 implementation is infeasible. (AR 8:4764-4765, 7:4018.) There is
17 substantial evidence in the record showing that the EIR evaluated and
18 responded to the majority of the mitigation proposals suggested in public
19 comments. The County was not required to set forth an analysis of each
20 mitigation measure proposed, no matter how insubstantial. (*See Santa*
21 *Clarita Organization for Planning the Environment v. City of Santa Clarita*
22 (2011) 197 Cal.App.4th 1042, 1054.) Petitioner fails to meet its burden on
23 this issue.

24 Public Transit Impacts

25 Petitioner argues that the EIR fails to adequately analyze the Project's
26 traffic impacts because it contained insufficient information about existing
27 transit needs. Contrary to petitioner's arguments, there is substantial
28 evidence in the record regarding existing transit demand, rider data or

1 capacity information, to support the EIR's conclusions about Project impacts
2 on public transit. (AR 4:1995-1996, 2001.)

3 Petitioner argues that the EIR improperly defers mitigation measures
4 relating to impacts to public transit because Mitigation Measure 9-7 fails to
5 articulate specific performance criteria. (*See Preserve Wild Santee v. City of*
6 *Santee* (2012) 210 Cal.App.4th 260, 280 (*Preserve Wild Santee*); CEQA
7 Guidelines § 15126.4(a)(1)(B).) Mitigation Measure 9-7 requires the Project
8 applicant to either contribute fair share fees to the Tahoe Area Regional
9 Transit system (TART) or to create a Community Service Area or a
10 Community Facilities District to cover increased transit service, once
11 ridership approaches capacity.

12 In *Preserve Wild Santee*, the EIR called for formulation of a plan for
13 active management of a protected butterfly, but did not describe any actions
14 anticipated for such management, did not specify performance standards,
15 and did not provide any other guidelines for active management. The court
16 noted that the success or failure of mitigating the project's impacts to the
17 Quino largely depended on this active management plan. (*See also*
18 *Communities for a Better Environment v. City of Richmond* (2010) 184
19 Cal.App.4th 70, 92.) The facts of the instant case are distinguishable, as
20 Squaw has committed itself to a particular course of action, either the
21 payment of fair share fees, or the creation of a Community Service Area or
22 Community Facilities District, based on an Engineer's Report which must be
23 completed to the satisfaction of the Department of Public Works and
24 Facilities, prior to the recordation of any Small Lot Final Map. (AR 2:1041.)

25 The payment of fair share fees is permissible where reasonably related
26 to the mitigation at issue. (*Friends of Lagoon Valley v. City of Vacaville*
27 (2007) 154 Cal.App.4th 807, 818-819.) Where the local entity commits
28 itself to mitigation and lists the alternatives to be considered, analyzed and

1 possibly incorporated in the mitigation plan, deferral of specifics may be
2 permissible. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261,
3 1275.) The EIR does not improperly defer mitigation under Mitigation
4 Measure 9-7. (See AR 8:4385; 2:1041-1042; 4:2041; 7:4018; 18:10407.)

5 Greenhouse Gas (GHG) Impacts

6 Petitioner asserts that the County was required to recirculate the EIR
7 after the climate change analysis was revised. Recirculation is required
8 when there is significant new information that deprives the public of a
9 meaningful opportunity to comment regarding substantial adverse
10 environmental effects. (CEQA Guidelines § 15088.5(a).) The substantial
11 evidence standard of review applies to an agency's decision not to
12 recirculate. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*
13 (1993) 6 Cal.4th 1112, 1135; *Citizens for a Sustainable Treasure Island v.*
14 *City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1063.)

15 The DEIR analyzes GHG emissions under a two-tier approach. Under
16 Tier I, the "numeric threshold", operational emissions of the Project would
17 not have a significant impact unless they exceeded 1,100 MTCO₂e/year.
18 Under Tier II, the "efficiency analysis", the Project would not have a
19 significant impact if operational emissions exceeded 1,100 MTCO₂e/year, but
20 the Project could demonstrate a 21.7 percent reduction from a "no action
21 taken" scenario compared to the proposed project operating in 2020. (AR
22 7:3972.) Following publication of the DEIR, the California Supreme Court
23 issued its decision in *Center for Biological Diversity v. California Department*
24 *of Fish and Wildlife* (2015) 62 Cal.4th 204 (*Newhall Ranch*). The effect of
25 the *Newhall Ranch* decision was to invalidate use of the efficiency standard
26 in analyzing GHG emissions. However, use of the numeric threshold was
27 found to be permissible. (*Id.* at 230-231.)

28

1 The DEIR, while using both the Tier I and Tier II criterion to analyze
2 GHG emissions, relies on the Tier I numeric threshold as the basis for its
3 significant conclusions. (AR 7:4084, 4092-4098; 4:2292-2296.) The DEIR
4 concludes that the impact would be significant, and the FEIR retains this
5 conclusion. (AR 4:2295; 7:4088.) Substantial evidence supports the
6 County's decision not to recirculate.

7 Petitioner also argues that the EIR improperly fails to reevaluate
8 mitigation measures in light of revisions to the climate change analysis. As
9 noted above, no duty to recirculate or reevaluate mitigation was triggered.
10 Petitioner criticizes Mitigation Measure 16-2 as "completely ineffective" as it
11 requires compliance with statewide targets or plans that have yet to be
12 adopted. Mitigation Measure 16-2 ties compliance to subdivision map
13 submittal, and GHG reduction targets in effect at the time, and the EIR
14 describes a menu of specific reduction measures to be used in combination
15 to ensure compliance. (AR 2:1063-1064; 7:3979-3980; 12:6730-6739;
16 *see City of Hayward v. Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th
17 833, 855.) The EIR nevertheless concludes that impacts to the
18 environment caused by GHG emissions remained significant and
19 unavoidable. (AR 1:263-264; *see Fairview Neighbors v. County of Ventura*
20 (1999) 70 Cal.App.4th 238, 242.) Contrary to petitioner's assertions, there
21 is substantial evidence in the record to support the EIR's analysis of
22 mitigation with respect to GHG emissions.

23 Noise Impacts

24 Petitioner contends that there is insufficient evidence in the record to
25 support the EIR's conclusions regarding noise impacts. The EIR identifies
26 sensitive receptors, and their proximity to the Project. (AR 4:2072-2074.)
27 Existing noise levels are analyzed at 19 different locations. (Id.) The EIR
28 estimates and analyzes noise emissions based on construction activity

1 during the day and night. (AR 4:2084-2087; 7:3806-3809.) The EIR
2 examines noise impacts from construction based on a "worst case
3 scenario", analyzing the maximum amount of construction activity that
4 could occur during the most active possible construction year. (AR 4:2083-
5 2085.) The EIR notes that the sequence and pace for constructing various
6 land uses and facilities would be market driven, and that a specific
7 construction schedule does not exist and would be speculative. (AR
8 4:2084.) The EIR concludes that noise impacts from construction would be
9 significant, even with mitigation measures. (AR 1:260-263, 271; 4:2083,
10 2086-2087; 2:1047-1051.) Contrary to petitioner's assertions, there is
11 substantial evidence in the record to support the EIR's analysis regarding
12 noise impacts.

13 Water Impacts

14 Petitioner argues that the EIR improperly fails to disclose that the
15 Project's identified water source could potentially be considered a
16 "subterranean stream" as opposed to percolating groundwater. The EIR
17 identifies the Project's water source as the Olympic Valley Groundwater
18 Basin (OVGB). The EIR states that the OVGB is local groundwater regulated
19 by local agencies. Local regulations allow owners of real property overlying
20 the Olympic Basin to pump unlimited groundwater for beneficial uses. (AR
21 3:1293-1294, 4:2135-2137, 2160-2161.) The EIR assumes the Project
22 would have unrestricted access to groundwater. (AR 4:2212.)

23 Petitioner argues that the Project's water source is uncertain because
24 the OVGB is potentially not percolating groundwater, but rather a
25 subterranean stream. Because the State Water Resources Control Board can
26 assert jurisdiction over a subterranean stream, petitioner argues that the
27 Project's water source is uncertain, and that the EIR must include some
28 discussion of possible replacement sources or alternatives.

1 The EIR must address impacts of reasonably foreseeable future
2 activities related to the proposed project. (*Laurel Heights I, supra*, 47
3 Cal.3d at 398-399.) In *Napa Citizens for Honest Government v. Napa*
4 *County Board of Supervisors* (2001) 91 Cal.App.4th 342 (*Napa Citizens*), the
5 EIR for an industrial development project stated that water would be
6 supplied by the City of American Canyon. While American Canyon's water
7 sources were adequate in the short term, they would fall short in the longer
8 term for planned growth unless the city was able to purchase additional
9 water from the City of Vallejo. The appellate court held that the EIR, which
10 did not disclose possible alternative water sources and their impacts, was
11 inadequate in light of the uncertainty regarding future water supply. (*Id.* at
12 372-373.) "[F]uture water supplies identified and analyzed must bear a
13 likelihood of actually proving available; speculative sources and unrealistic
14 allocations ('paper water') are insufficient bases for decisionmaking under
15 CEQA." (*Id.* at 432, citing *Santa Clarita Organization for Planning the*
16 *Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 720-
17 723.) "[W]here ... it is impossible to confidently determine that anticipated
18 future water sources will be available, CEQA requires some discussion of
19 possible replacement sources or alternatives to use of the anticipated water,
20 and of the environmental consequences of those contingencies." (*Id.*, citing
21 *Napa Citizens, supra*, 91 Cal.App.4th at 373.)

22 Petitioner argues that while the EIR assumes that the OVGB will
23 continue to be regulated as it currently is by local agencies as local
24 groundwater, it fails to consider whether the Project will need to employ a
25 different water source if the State Water Resources Control Board
26 determines that the Olympic Basin is not percolating groundwater, as it has
27 historically been considered, but rather a subterranean stream. The court
28 reviews for substantial evidence the County's conclusion that the anticipated

1 future water supply for the Project is realistic and reasonably certain to be
2 available. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of*
3 *Rancho Cordova, supra*, 40 Cal.4th at 436.)

4 Petitioner relies on a memorandum prepared by Tom Myers, PhD, its
5 hydrologic consultant. (AR 8:4461-4483.) Dr. Myers' conclusion that
6 "[g]roundwater flowing in the Olympic aquifer appears to be flowing in a
7 subterranean stream" is based on his review of observations set forth in
8 various studies which analyze groundwater supply, management and
9 development in the area, but do not themselves purport to analyze whether
10 a subterranean stream is present. (*Id.*) Dr. Myers' conclusion that the
11 groundwater "appears to be flowing in a subterranean stream", based on
12 discrete observations set forth in groundwater studies which did not
13 themselves suggest evaluation of that particular issue, is speculative.

14 *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108
15 Cal.App.4th 859, cited by petitioner, is inapplicable. In *Friends of the Eel*
16 *River*, the EIR was found to inadequately describe the Project's
17 environmental setting where it failed to disclose that proposals were pending
18 before FERC to curtail water diversions upon which the Sonoma County
19 Water Agency depended. (*Id.* at 874-875.) Petitioner in this case points to
20 no evidence in the record suggesting that there is any application before the
21 State Water Resources Control Board to reclassify the Project's designated
22 water source.

23 Contrary to petitioner's arguments, there is substantial evidence to
24 support the County's factual conclusion that the OVGB is an unadjudicated
25 basin which consists of an alluvial aquifer and percolating groundwater. (AR
26 4:2135-2143.) The County satisfied its burden to identify the likely water
27 source for the Project, and the court finds no error in the EIR's failure to
28 discuss alternative water sources for the Project.

1 Rejection of Alternatives

2 Petitioner asserts that there is insufficient evidence in the record to
3 support the County's conclusion that the Reduced Density Alternative (RDA)
4 is infeasible. An agency's finding of infeasibility is "entitled to great
5 deference" and is "presumed correct". (*Los Angeles Conservancy v. City of*
6 *W. Hollywood* (2017) 18 Cal.App.5th 1031, 1041.) In this case, the County
7 determined that the RDA was economically infeasible, and would not achieve
8 the Project's objective of becoming a year-round destination resort on par
9 with peer world class destinations. (AR 1:242-244.)

10 Substantial evidence supports the County's finding of economic
11 infeasibility. (AR 21:11883-11885, 11908, 11914; 36:21119-21121;
12 17:10075-10078.) Similarly, substantial evidence supports the County's
13 conclusion that the RDA would not achieve Project objectives. While
14 petitioner criticizes the County's use of a "units-to-skiable-acreage ratio",
15 this was only one of the factors noted by the Board, which also pointed to
16 reduction of the proposed Mountain Adventure Camp and corresponding
17 reduction of amenities to draw destination lodgers and lessened potential for
18 increasing resort attendance during shoulder seasons. (AR 1:243-244.)

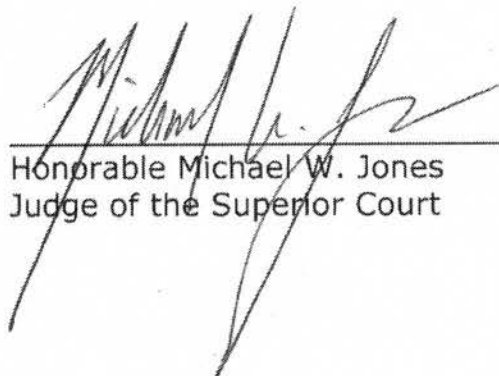
19 Disposition

20 The petition for writ of mandate is denied.

21 IT IS SO ORDERED.

22
23 DATED:

August 13, 2018



Honorable Michael W. Jones
Judge of the Superior Court