Letter: Martis Valley West cannot go forward

Publisher's note: ***The following letter regarding the Martis Valley West Project was sent Oct. 7 to the Placer County Board of Supervisors on behalf of Sierra Watch and Mountain Area Preservation.***

Dear Supervisors,

We respectfully submit this letter on behalf of Sierra Watch and Mountain Area Preservation ("MAP"), with respect to the above referenced matter in advance of the Oct. 11, 2016, Board of Supervisors meeting.

As an initial matter, we note that the county cannot approve the project until it holds a full public hearing, including public comment, on the currently proposed approval documents. The Brown Act states: "Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item." Gov't Code § 54954.3(a).

Although the board considered the Martis Valley West Parcel Specific Plan ("MVWP" or "Project") at its Sept. 13, 2016, public hearing, at that time, it was considering the Planning Commission's recommendation to deny the project. Thus, the public has not been given an opportunity to comment on the resolutions, ordinances, and findings as presented in the agenda for the Oct. 11, 2016 meeting. By way of illustration, the item listed as "to adopt findings and fact and statement of overriding considerations" in the agenda did not appear in the prior agenda for this matter, and thus
members of the public were not on notice that the prior public hearing would cover such a topic. Indeed, the final proposed

findings, resolutions, and ordinances had not been prepared in advance of the Sept. 13, 2016, hearing and thus a member of the public could not comment on such topics.

Even if the prior hearing could be viewed as covering the same "item of interest" as the upcoming public hearing (which, as explained, it cannot), the item has undergone substantial changes that require the county to hold an additional public hearing. As discussed, the currently proposed findings, resolutions, and ordinances are substantially different than those provided as attachments to prior staff reports. Among other changes and language modifications, these documents: (1) add an approval of onsite work force housing units, (2) add an approval of the Water Supply Assessment ("WSA"), and (3) include substantial modifications to the development agreement.

These are not minor changes, and the public has not been given an opportunity to address the supervisors on any of these important issues. Given the project's significant environmental impacts in an area of regional and statewide importance, the project both requires and deserves a full public vetting.

In addition to the lack of proper public notice and comment, Sierra Watch and MAP wish to reiterate that, for the reasons set forth in their prior comment letters and oral testimony, project approval would be unlawful under the California Environmental Quality Act ("CEQA"), California Planning and Zoning Law, and the Government Code.

The groups' prior comments are hereby incorporated by reference. Sierra Watch and MAP submit these additional comments for the Board of Supervisors' consideration on the proposed findings, resolutions, and ordinances provided with the agenda packet for the Oct. 11, 2016 meeting.

I. The county's proposed CEQA findings are inadequate.

The staff's proposed CEQA Findings of Fact and Statement of Overriding Considerations (collectively "findings") are inadequate under CEQA. The findings are not supported by substantial evidence and do not supply the logical step between the findings and the facts in the record, as required by state law. As the Planning Commission correctly understood, any benefits of the project do not outweigh the severe environmental and safety impacts associated with the project, including but not limited to the exacerbation of fire hazards, traffic and air pollution, and impacts to treasured Lake Tahoe.

A. "Permanent Preservation" of the East Parcel is illusory.
The county's findings rely on conservation of the east parcel as a primary and fundamental reason for approval of the project. However, true conservation of the east parcel is currently illusory. The county has stated that "[t]he sale of or recordation of a conservation easement on the east parcel would be carried out by private parties, and does not require approval or action by Nevada or Placer Counties." See County Staff Report (Sept. 13, 2016). Yet, the Truckee Donner Land Trust and Trust for Public Land, the private entities to which the county refers, have recently explained to the ounty that conservation of the land is still highly speculative, and the needed funds cannot be raised at this time (even with the discount offered by the developer). See Letter from P. Norris and D. Sutton (Oct. 3, 2016), attached hereto as Exhibit A. Thus, substantial evidence does not support a finding that there will be "permanent preservation of the entire 6,376-acre east parcel" by private entities. See County Staff Report (Oct. 11, 2016), Ex. 1 at p. 51.

The proposed approvals do offer an alternative to private parties conserving the east parcel, which is that the "Developer shall record on the east parcel a conservation easement (conservation easement) that permanently prohibits commercial

and/or residential development of the East Parcel." County Staff Report (Oct. 11, 2016), Ex. 9 at Section 3.11. While developer control of the east parcel is the likely outcome given that the land trusts have noted the unlikelihood of a private party conservation deal, notably this fall back provision does not require or provide funding for "conservation" of the land. Prohibiting commercial and/or residential development does not equate to "preservation" or "conservation" of land. There are other intensive uses that could be permitted under this scenario that could, and likely would, lead to destruction or degradation of the biological resource values of the site. These include uses such as timber harvesting and campground sites that either are currently occurring or have been proposed in the area, and thus are likely on the East Parcel. Indeed, a Timber Harvest Plan was approved for the East Parcel in 2013 and SPI has been working to enact that
Plan.

"Permanent preservation" requires a deep commitment, including at a minimum a requirement for a restrictive conservation easement, and a monitoring and funding plan, in order to maintain and enhance the biological resource values of the site.

The project as currently proposed does not come close to such a commitment. Thus, the county cannot rely on permanent preservation of the east parcel as a benefit that will overcome the project's significant and unavoidable impacts.

B. The Findings' Conclusions Regarding the Project's Significant Impacts Are Not Supported By Substantial Evidence.
As explained above and in our prior letters, there is no substantial evidence to support the findings' conclusions regarding the project's significant impacts. With respect to traffic, the Oct. 11, 2016, Staff Report (at 12) states that the board expressed support for the project partly on the

basis that “the added traffic generated by the project is a small percentage to the existing holding capacity.” This type of rationaleis illogical, inconsistent with CEQA, and is not supported by substantial evidence. The board’s “drop-in-the-bucket” approach to cumulative impacts has been explicitly rejected by the courts. In Kings County Farm Bureau, the court invalidated an EIR that concluded that increased ozone impacts from the project would be insignificant because it would emit relatively minor amounts of precursor pollutants compared with the large volume already emitted by other sources in the county. 221 Cal.App.3d at 717-18. The Kings County Farm Bureau court aptly stated, “The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.” Id. at 718. Here, traffic is a serious problem. The EIR determined that the project would result in numerous significant and unavoidable traffic impacts. See DEIR at 2-38 -2-43. The EIR has also determined that the project’s contribution to this impact would be cumulatively considerable. DEIR at 2-43. While at the same time finding that traffic impacts would be but a “small percentage,” the findings state that the project’s traffic impacts are significant and unavoidable. As Sierra Watch and MAP explained, however, the county cannot make this finding without properly considering adequate mitigation. We suggested several measures intended to reduce the number of trips generated by the project including but not limited to: providing covered bicycle parking near the project’s retail establishments; providing subsidies for transit use; providing free transit passes to each of the project’s residences; providing funding to actively recruit transit riders; distributing transit information to residences, stores and restaurants; operating a transit assistance center; andactively recruiting transit riders by

distributing transit information to each residence and retail establishments in the development. Without explanation, the county rejects the
vast majority of these measures. Thus, there is no substantial evidence to support the findings' conclusions that impacts relating to the project-specific and cumulative traffic impacts would be significant and unavoidable.

Likewise, the EIR lacks substantial evidence to support the findings' conclusions that impacts relating to the project's cumulative impacts on light and glare would be significant and unavoidable. The findings conclude that no additional
mitigation is possible for these impacts. The facts in the record contradict this finding. Our letter included extensive mitigation measures that would reduce these light and glare impacts. Specifically, we explained that the project proponents could prepare and adopt a lighting plan for the project. We went so far as to attach a sample "Outdoor
Lighting Code" that had been prepared by the International Dark Sky Association to curtail the degradation of the nighttime visual environment. The county did not adopt this measure. The findings make the same error with respect to greenhouse gas impacts. Sierra Watch and MAP suggested numerous mitigation measures or reduced density alternatives to reduce this impact, which were improperly dismissed.

As explained in our prior comment letters, there is also no substantial evidence to support the findings' conclusions that other significant impacts have been mitigated to a less than significant level. To take but one example, the findings lack
substantial evidence that impacts relating to emergency response would be less than significant. The findings even go so far as to state, "The project will reduce the risk of wildfire in the area through improved access to water and defensible space." County Staff Report (Oct. 11, 2016), Ex. 1 at p. 52. However, as set forth below (infra, Part II) and inour prior comment letters, abundant evidence shows the

Project would increase fire andsafety hazards, as well as evacuation times.

Additionally, the findings cannot support its statements that there are no feasible environmentally superior alternatives. As the findings recognize, the EIR did not even evaluate an environmentally superior alternative (other than the “no project” alternative, which under CEQA cannot serve as the sole environmentally superior alternative) that would avoid any of the project’s significant environmental impacts, even though others and we proposed such alternatives.

II. The Additional Required Findings Are Not Supported by SubstantialEvidence.

There is also no substantial evidence to support the findings required by law for each of the project approvals. For example, there is no evidence to support the findings required by Government Code section 51134(a) for the immediate rezoning of the West Parcel. Given the project’s safety hazards and significant environmental impacts, the rezoning is not in the public interest, the property is not suitable for the proposed uses, is not necessary, and does not comply with State law. Similarly, there is no evidence to support the findings required by State law or Placer County Code section 17.58.240 for the development agreement, including but not limited to the finding that the agreement “will not be detrimental to the health safety and general welfare of persons residing in the vounty.”

Likewise, the vounty cannot make the requisite findings pursuant to Government Code section 66474.02 for areas in a state responsibility area or very high fire hazard severity zone. As vounty staff recognized, the project site is particularly risky as the combination of dense forests, heavy fuel loads, low humidity, potential for high winds, and the steep terrain can rapidly turn even small fires into lethal,

major disasters. Placer County, June 30, 2016 Staff Report at 7, 8. Staff also determined that these problems "would complicate any emergency evacuation operations." Id. Inadequate access, i.e., gridlock conditions on SR 267, would significantly contribute to the inability to effectively evacuate residents during a disaster and provide necessary emergency access for fire fighters and other emergency personnel. The mixture of all of these factors creates the perfect situation for a serious threat to the safety of both the public and firefighters as well as the area's natural lands.

Our letters requested that the vounty prepare a site-specific analysis that would take into account the site's topography, fuel loads, atmospheric conditions, and fire intensity and evaluate how the project would affect emergency access and emergency vehicle response. The vounty was required to do just that as a result of a settlement agreement with the California Clean Energy Committee in connection with the Homewood Mountain Resort Ski Area Master Plan Project. The settlement required the preparation of the Homewood Evacuation and Life Safety Report (Homewood Safety Report) which examined the site-specific constraints at Homewood and identified standards, measures, and procedures to ensure that the Project would not result in any significant wildland fire impacts. See Homewood Evacuation and Life Safety Report,Sept. 25, 2016, attached as Exhibit B (emphasis added).

According to the Homewood Safety Report, several elements would be needed to protect the project and the nearby community from the threats of a wildland fire. The report determined that "irrespective of the cause of the disaster, every viable emergency response plan must include a shelter-in-place concept." Homewood Safety Report Plan at 5 (emphasis added). Recognizing that sheltering in place goes beyond simply requiring residents to stay and defend their homes during a wildfire, the report requires establishment of:

(1) an on-site central fire control facility and (2) a new fire
station in a central location that will allow crews and equipment to be pre-positioned, i.e., essentially on or adjacent to the Project site on a 24/7 basis.

The relevance to the Martis Project is clear, as the site constraints at Homewood and Martis are very similar. Evacuation of both sites may not be feasible due to events or conditions outside of the control of the authorities, let alone the projects. The Homewood Safety Report further confirms the need for the county to evaluate the site specific constraints associated with the Martis Project, and to identify and require the specific elements needed to protect the public's safety. In particular, given the estimated 9 to 10 minute response time for firefighters to reach the proposed Martis project site, viable shelter-in place measures are critical. See DEIR at 17-17. It is certainly conceivable that a Safety Report for the Martis Project could also require a new on-site fire control facility or a new centrally located fire station. Yet, because no site specific study has been conducted, it is not possible to determine the specific measures and
specific procedures that are necessary to protect the public. The time to require this study is now. Once the Martis project is approved, the county will no longer have the leverage to require that the developer implement these critical public safety measures.

In sum, there is simply not enough evidence to support the required findings for project approval. Further, additional public notice and comment is required.

For these reasons, we respectfully request that the board either (1) postpone its decision and schedule a further public hearing and comment on the matter, or (2) reverse its tentative approval and deny the project, as recommended by the Planning Commission.

Amy Bricker, Laurel L. Impett, AICP, Urban Planner