November 30, 2020

Matthew Chapman
30445 Sawmill Mt. Road
Groveland Ca. 95321
209 962-0663 Home
209 206-1706 Mobile
Voice Mail

BEFORE TUOLUMNE COUNTY
PLANNING COMMISSION

RE; RESOLUTION OF MATTERS
TERRA VI DEVELOPMENT PROJECT

Statement of requisite standard of review.

The matters for decision before the Planning Commission are quasi-judicial in nature and require adequate findings based upon evidence in support of their decisions.

The California Supreme Court has laid down distinct, definitive principles of law detailing the need for adequate findings when a city approves or denies a project while acting in a quasi-judicial administrative role. In Topanga Ass'n for a scenic comm. v County of Los Angeles, 11 Cal 3d 506 (1974) the court interpreted Code of Civil Procedure 1094.5 to require that a city's decision are supported by findings, and the findings supported by evidence. The Court defined findings, explained their purpose, and showed when they were required

Planning Commission Handbook
Governors Office of Planning/research

Among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of it's ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusion.

Topanga Ass'n for a scenic Comm.
v County of Los Angeles 11 Cal 3d 506 (1974)

**ISSUE 1** Failure of the Lead Agency to recognize and respond to Sub-division Map Act Unlawful Land Division / land survey fraud, no lawful zoning of a western parcel

The Lead Agency within their NOP failed to include the CEQA recognized topical category Land Use and Planning. This commentator pursuant to, and justified by a standard within the CEQA Guidelines, presented within his NOP submittal, an incident of an
Unlawful Land Division Complaint relating violations of the State Sub-Division Map Act.

b) Cause a significant environmental impact do to a conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the General Plan, specific plan, local coastal program or zoning ordinance) adapted for the purpose of avoiding or mitigating and environmental affect.

Appendix G Environmental Checklist Form pg 63
Chapter 3 Guidelines for the Implementation of California Environmental Quality Act
Division 6 California Natural Resource Agency
Title 14 Natural Resources

The Lead Agency in disregard of that CEQA Guidelines standard, and in abuse of discretion under that law determined to fail to recognize that bona-fide CEQA claim, failed to respond to the NOP submittal, and determined to omit the Unlawful Land Division Complaint from inclusion in the public DEIR record.

The CEQA Guidelines, direct the DEIR preparor, of the "need" for the DEIR to be "revised or expanded to conform to responses to the notice of preparation" see Article 7 § 15082 (a)(4)

(4) The Lead Agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The Draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

Article 7 EIR Process § 15082 Notice of Preparation and Determination of Scope of EIR

The lead Agency, thus, for a second time has abused their discretion under the law, ignoring the "need," "to conform to" a bona-fide, justifiable CEQA Land use and Planning issue, presented in "response to the Notice of Preparation"; in determining the lawful Scope of the EIR
The Lead Agency for a third time, abused their discretion under the law by omitting the CEQA justified Land use and Planning issue from public disclosure within the public DEIR documentation; see Natural Resource Code Div. 13 Environmental Quality; Chapter 1 Policy (21000-21006) at 21005.

21005 (a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or non compliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

Omissions of documents that permeate, and affect, the decisions before this Planning Commission public hearing today.

In failing to recognize a bona-fide CEQA land use and Planning issue, and failing to revise or expand the DEIR in preparation to conform that justified NOP response, further omitting the submittal from the Public record; the Lead Agency fails to address the matter raised therein, the matter of zoning regarding the western parcel of Hardin Flat LLC lands, upon which the bulk of development is proposed.

That western parcel of Hardin Flat LLC land, deeded back to Manly by CalTrans in 2003, was never part & parcel of the ±140 acres of Manly land zoned for commercial recreation in 1991, as it was at that time, owned in fee by CalTrns, having been condemned "for purpose of a highway" in mid 1960.

The initial response by the County Surveyor, upon serving the Unlawful Land Division Complaint on the Board of Supervisors; was the assertion that; "The issues you raise with respect to zoning relate more to development of parcels, and are dealt with at the time of permitting. see attached letter next page."
July 13, 2018

Matthew Chapman
30445 Sawmill Mt. Road
Groveland, CA 95321

Ref: Lot Line Adjustment No. 04T-02

Dear Mr. Chapman,

I received your letter of June 18, wherein you question the validity of this lot line adjustment, and seek to have it rescinded.

As I mentioned to you when you stopped by this office to obtain copies of relevant documents, a lot line adjustment is excluded from the requirement for a landowner to file a tentative and parcel map under the provisions of Government Code section 66412 (d) [Subdivision Map Act, or SMA], which occurs between four or fewer existing parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. No tentative map, parcel map, or final map shall be required as a condition of approval of a lot line adjustment. Further, Tuolumne County Ordinance Code Chapter 16.09 specifies the procedure for processing such applications.

You also question the validity of the Certificate of Compliance which was issued in advance of the lot line adjustment.

The Certificate was issued in response to the Manlys’ request for determination of the status of two parcels granted to them by the State of California at the end of reconstruction of a portion of Highway 120. That conveyance was made under the provisions of SMA section 66428 (a)(2), where a parcel map shall not be required for land conveyed to or from a governmental agency for rights-of-way. This is what CalTrans does when it obtains right-of-way parcels for proposed improvements and, at the conclusion of construction, relinquishes excess parcels to adjacent landowners.

You mischaracterize this procedure as somehow being a corrective process for perceived offset/gaps between the earlier alignment of the highway and the later resurvey of that alignment. CalTrans maps show the monuments used to control that alignment and the use of a Basis of Bearings as that of a filed Record of Survey. This results in a minor rotation in the bearings reported from those used previously, but is consistent in the calculations derived for use in preparing descriptions of parcels of land to be obtained. This is in adherence to CalTrans’ Right of Way Manual which addresses the constant advances in surveying equipment in retracing older surveys. Your reference to Code of Civil Procedure section 2077 is on point, where monuments are to be held as paramount.

The issues you raise with respect to zoning relate more to development of parcels and are dealt with at the time of permitting. As to the Assessor’s maps, since rights-of-way are exempt from tax, the assigning of parcel numbers is a function of land becoming subject to that assessment. This was done at the time the lot line adjustment was recorded.

If you would like to meet and discuss this further, I am available to do so.

Sincerely,

[Signature]
Warren D. Smith, LS
County Surveyor

Cc: Tuolumne County Board of Supervisors, California Board for Professional Engineers, Land Surveyors, and Geologists
Now is the time of permitting and the matter has been concealed thru the various forms of subtrefuge related above. As asserted in my commentary; never responded to by the Lead Agency, is the fact that no zoning amendment exists for the independant (not part of the ± 140 acres zoned CK) preexisting 1960 western parcel of Hardin Flat LLC lands

A lot-Line-Adjustment not a lawfully recognized zoning procedure.

As justified by CEQA topical category (X1) Land Use and Planning at (b) two(2) incidence of "significant environmental impact do to a conflict with any land use plan, policy, or regulation, adapted for the purpose of avoiding or mitigating an environmental affect" have been exhibited; (1) that of State Subdivision Map Act Violations (lack of application for, no coterminous owner notification by mail, no public hearing with consideration of CEQA review & Certificate of Compliance based on survey fraud) 1 and (2) conflict derived from a lack of lawful zoning for the western parcel of the Terra vi project; to which no lawful zoning amendment with associated lawful public process/CEQA review can be shown.

Proper, lawful quasi-judicial review of findings based on the evidence presented, cannot support any ultimate approval of the Terra vi project or the certification of the final EIR.

ISSUE 2 Inadequate response; use of USFS Forest System Road IS03

The Lead Agency response to the legal and factual issue related to project's proposed use of USFS System Road IS03, are baseless, unsubstantiated, contrary to Federal Law, and derived

1. The Unlawful Land Division Complaint consists of Cover letter to Board of Supervisors, Complaint/Facts and Circumstance 23 points, Record File; files A-F, Letters in correspondence. Submitted within the NOP response to the Lead Agency.
without fulfilling their duty to include the USFS as the Responsible Agency for purpose of integrating CEQA/NEPA environmental review, thus providing the required full scope of CEQA review, inclusive of Federal actions.

The lead agency, in their sole response to the issue, asserted, without any documented, factual or legal justification, stated:

"Sawmill Mountains Road (U.S. Forest Service Route IS03) traverses through the project property by means of a 66 foot easement, the terms of which permit the project site owner to use the roadway .... Tuolumne County Staff have communicated with the U.S. Forest throughout the EIR process The Draft EIR concludes that use of the roadway during project construction, could physically deteriorate the roadway ......"

Lead Agency Response at ORG-14

In fact that statement is misleading, if not outright false, attached is the response to the County Staff by Timothy Hughes Forest Engineer USFS; it relates at this time January 28, 2019, the need to ensure the alignment of the CEQA/NEPA environmental review, and additionally relates:

2. Ensure that CEQA requirements align with NEPA to minimize any additional work

5. After review of conceptual project plans and full understanding of proposal, the appropriate FS instrument would be determined (Special Use Permit, Easement, etc.) A single authorization of use & maintenance of the road would be prepared /issued.

E-mail Timothy Hughes to David Ruby January 28 2019

It is readily apparent that it is false of the Lead Agency to declare the use of USFS system Roadway IS03, could or would be accomplished without "Special Use Permit, Easement, etc."

Moreover that any use could be obtained without inclusion of National Environmental Policy Act (NEPA) environmental study (EIS), apparently, by law, required of CEQA.
Quincy Yaley

From: David Ruby
Sent: Monday, January 28, 2019 2:24 PM
To: Quincy Yaley
Cc: Tanya Allen
Subject: FW: Terra Vi Lodge Project - Forest Road 1S03 (Sawmill Mountain Road)

Quincy,

Tim Hughes, the USFS Forest Engineer, has just released the Forest's preliminary conditions for the Terra Vi project. Passing them along—

Thanks,
Dave

David Ruby
Junior Engineer / DBE Liaison Officer
County of Tuolumne Community Resources Agency
2 South Green Street / Sonora, CA 95370
209.533.6629 office / 209.533.5698 fax

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From: Hughes, Timothy - FS [mailto:thughes02@fs.fed.us]
Sent: Monday, January 28, 2019 2:20 PM
To: David Ruby
Cc: Martinez, Beth H -FS; Junette, Jim -FS
Subject: FW: Terra Vi Lodge Project - Forest Road 1S03 (Sawmill Mountain Road)

Dave,

I can finally respond to this! The Forest Service Public Services/Engineering requests the following:

1. Review of the conceptual project plans where they affect Sawmill Mountain Road (FR 1S03).
2. Ensure that CEQA requirements align with NEPA to minimize any additional work.
3. Formation of a CSA for road maintenance by the developer over the Forest Service segment of the project improvements.
4. Design to county standards. This route is a Maintenance Level 3 road in our system, which means passenger car accessible, but driver comfort not considered. Obviously the developer and the county will want a higher level of design and maintenance and this can be allowed under the CSA.
5. After review of conceptual project plans and full understanding of proposal, the appropriate FS instrument would be determined (Special Use Permit, Easement, etc.) A single authorization of use & maintenance of the road would be prepared / issued.

Tim Hughes, PE
Forest Engineer
Forest Service
Stanislaus National Forest

7/18
From: Duke York [mailto:DYORK@co.tuolumne.ca.us]
Sent: Wednesday, December 19, 2018 12:32 PM
To: David Ruby <DRuby@co.tuolumne.ca.us>; Hughes, Timothy - FS <thughes02@fs.fed.us>
Subject: RE: Terra VI Lodge Project - Forest Road 1503 (Sawmill Mountain Road)

Nice summary Dave, there will also be an on-site Heliport near the area of the leach fields. >>>>>> DUKE

Richard S. York Jr., R.C.E.
Community Resources Agency
Deputy Director- Roads
2 South Green Street, Sonora CA 95370
(209)533-5953 Fax (209) 533-5698
dyork@co.tuolumne.ca.us

From: David Ruby
Sent: Wednesday, December 19, 2018 9:22 AM
To: thughes02@fs.fed.us
Cc: Duke York
Subject: Terra VI Lodge Project - Forest Road 1503 (Sawmill Mountain Road)

Hi Tim,

We have received an application for a site development permit for a large, high-end hotel lodge/cabin project located on a parcel at SR120 and Sawmill Mountain Road (Forest Route 1503). The parcel itself is privately-owned and straddles 1503, which exists (according to the ALTA survey) in an easement 66’ (one chain) wide, and also incorporates the Caltrans sand shed located off the northwestern corner of the intersection. The project will have a 140-unit main lodge, restaurant, and convenience store, and a second phase with 100 units in 25 freestanding cabin structures, located on the northeast corner of the intersection. The primary leach field for the septic system is identified to be on the opposite (e.g., north) side of Sawmill Mountain Road, along with the proposed propane storage tank(s) and their maintenance outbuilding (to be built adjacent to the Caltrans sand shed).

Duke and I are tag-teaming the review of the project plans to condition its infrastructure development, but as the roads are not within our County jurisdiction, we’re in the weird position of not being able to fully condition them. Caltrans will, of course, chime in on the SR120 frontage, and we believe will condition a traffic study (the plans are indicating the addition of turn lanes and deceleration tapers on the highway). Duke and I would like to see aspects of the County Title 11 design requirements extended to the road, although we don’t have jurisdiction over it, and although the County is not going to be taking in this segment of the road (or any other part of it) into its maintained mileage. Can our office work with yours to hammer out the development details and conditions having to do with the road frontage and easement/"right-of-way" of Sawmill Mountain Road? Does the USFS have development standards that might be applicable to the road (to augment, or in lieu of TC Ordinance Code Title 11)?

We also have concerns regarding the long-term maintenance of the roadway itself, understanding the limited resources of the USFS and County. If this were a residential subdivision, we’d recommend a Community Services Area (CSA) district to be established to accrue and process funds to maintain the road, but it isn’t, and I don’t know what
In relation to the use of road IS03; road use of Federal Forest System roads, is governed under Federal authorities set forth by Acts of Congress, and subsequently related within the Federal Code of Regulation (CFR) Title 36 parts 200 to 299, Parks Forests, and Public Property.

CFR Title 36 at subpart B, Part 212; Administration of the Forest Transportation System, works in conjunction with both Part 251 Land Uses, Subpart B Special Uses, and Subpart D - Access to Non-Federal Lands. The above regulations relate among other issues, the requirement of NEPA EIS review, as well as prohibiting private commercial use of roadways as distinguished from commercial use of roadways authorized under the Multiple Use Sustainable Yield Act providing for "concessions" on federal land for Public Recreation and or timber, and range, public utility activities, etc., for which the Federal Lands are administered under the Multiple Use Sustainable Yield Act (1960)

(1) Permits, leases, and easements under the Federal Land Policy and Management Act of 1976 90 Stat 2776 (43 USC 1761-1771) for rights of way for;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways airways, livestock driveways, or other means of transportation except, where such facilities are constructed and maintained in connection with commercial recreation facilities

CFR Title 36 §251.53

Ultimately, the use of Forest System lands Road IS03, is a matter of federal jurisdiction, the matter of CEQA/NEPA integration another matter. The Natural Resource Code Div. 13 Environmental Quality; Chapter 1 Policy (21000-21006) at 21006 relates the following;

21006 (a) The legislature finds and declares that this division is an integral part of any public agency's decision making process including, but not limited to the issuance of permits licenses, certificates, or other entitlements required for activities undertaken pursuant to federal statutes contain-specific waivers of sovereign immunity.

9/18
The above is further reinforced by other CEQA commentary; see NEPA and CEQA Integrating Federal and State Environmental Reviews, Feb. 2014; by the White House Council on Environmental Quality (CEQ) and the California Governors Office of Planning and Research (OPR)

"Like NEPA, CEQA encourages cooperation with Federal Agencies to reduce, duplication in the CEQA process, In Fact CEQA recommends that lead agency's rely on federal EIS "whenever possible" so long as the EIS satisfies the requirements of CEQA (Cal. Pub. Resource Code § 21083.7) CEQA does not authorize state agency's to simply delay action until Federal agencies complete the NEPA process. Rather CEQA Guidelines section 15223 provides that if a state agency knows that it's authorization will be needed for a project, that agency "SHALL" consult as soon as possible.

Emphasis on "SHALL" in original pg. 4

Additionally as expressed within the CEQA Guidelines Article 14; Projects also subject to the National Environmental Policy Act; Title 14 Natural Resources Div. 6 Chapter 3 § 15222 Preparation of Joint Documents;

"If a lead agency finds that an EIS . . for a project would not be prepared by the federal agency by the time when the lead agency will need to consider and EIR . . the lead agency should try to prepare a combined EIR-EIS . . to avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in preparation of the joint document. The lead agency may also enter into a memorandum of understanding with the federal agency to ensure that both federal and state requirements are met. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

None of the above was done by the Lead Agency, despite the advise in concern, voiced by Timothy Hughes of the USFS, within his e-mail communication of January 28 2019.
Now the Lead Agency comes before this Planning Commission requesting certification of CEQA and approval of a project without having adequately addressed commentary put to them, from day 1 of the projects review; relating the ramifications of the private commercial use of Forest System Lands Road IS03.

**ISSUE 3  LEAD AGENCY FAILURE TO RESPOND TO COMMENTARY**

a) Failure to respond to commentary asserting roadway IS03 was in fact a cul-de-sac roadway, not properly maintained by the USFS for thru traffic, and out of the jurisdiction of the County to assert it a thru road, a road they do not maintain or control.

b) within the final EIR, responding to DEIR commentary, the only responses provided by the Lead Agency to this commentators submittal was to (1) address elements of that submittal related to the Unlawful Land Division Complaint in which the Lead Agency dismissed the matter with "no response is required", (2) the CFIP contract, which was not responsive to the specific points articulated to them to respond to, and (3) a response to the the Related Federal Regulation CFR Title 36 governing the use of forest land system road IS03, which related above at ISSUE 2 was wholely inadequate. THE BALANCE OF THE DEIR COMMENTARY REGARDING THE TOPICAL CEQA CATEGORIES WAS IGNORED BY THE LEAD AGENCY, NOT EVEN ACKNOWLEDGED. THAT IS ANOTHER ABUSE OF DISCRETION UNDER CEQA LAW, FAILING TO ACKNOWLEDGE AND RESPOND TO DEIR COMMENTARY WITHOUT CAUSE.

For the foregoing reasons the Final EIR certification and project approval are not warranted.
ATTACHMENTS

1. Table of Content Complaint: Unlawful Land Division
2. Letter to County Surveyor; August 8, 2018 (2 pgs.)
3. Letter response of County Surveyor August 17, 2018
4. Sketch; Lot-line-adjustment showing "certificate of Compliance parcel as an offset in southern boundary Right of way between 1960 survey and 2003 survey (the survey fraud)
5. 1960/2003 Comparison of Survey calls of southern highway right of way, showing no offset, discrediting the above lot-line-adjustment sketch, indicating survey fraud.

Matthew Chapman
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  i. Cover letter to Tuolumne County
  ii. Memorandum Facts and Circumstance (Points 1-23) 8 pgs.

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| B. Deeds: State of Calif. / Manly |
| i. Easement Deed, Manly to State of Calif.; Oct. 26, 2000 | B1  
| ii. Director's Deed (quitclaim), State of Calif. to Manly; Dec. 7, 2000 | B5 
| iv. Grant Deed, Manly to State of Calif.; Aug. 25, 2003 | B10 
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| vi. Grant Deed, Manly to Yosemite Title; April 5, 2004 | B19 
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### C. LOT LINE ADJUSTMENT #04T-2 Tuolumne County
  i. Application C1  
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### D. GRANT DEEDS/ Records; Portions SE¼ Sec 26 T1S R18E
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### E. CODES & LEGAL REFERENCE

### F. PLATS
  - Exhibit for Lot Line Adjustment F5, Assessor's Map 68-12 F6 
  - Records request to CalTrans by Matthew Chapman
August 8, 2018

Matthew Chapman
30445 Sawmill Mt. Road
Groveland Ca. 95321
209.206.1706 cell
209.962.0663 home

RE: Unlawful land division Complaint

Warren D Smith LS
Tuolumne County Surveyor,

Your responding letter of July 13, 2018 relates a mischaracterization of events represented by the facts and circumstance of my complaint of June 18 2018. Your assertion is unobservant of fact, and/or a negligent, willful, denial of fact.

In regard to parcels 1&2 derived via the “Certificate of Compliance” no excess land was ever transferred between Manly and Cal Trans (there was no reconstruction of the highway as you assert in your response) merely a deed correction utilizing a new “Basis of Bearing” N 07° 18' 29" W derived from the 1982 Survey of Record R/S 25-81, affecting that Manly/USFS property boundary; the East Line of the SE¼ of Sec. 26 T.1 S, R. 18 E, M.D.M. (see attached record at pgs. 1-2). A >7 degree difference from the 1960 survey “Basis of Bearing” N 0° E (see attached record at pgs. 3-7)

A survey circa 1960 and the survey of 2003 utilizing different “Basis of Bearing” is an undeniable factual occurrence, both survey’s indicate the highway land transferred by deed respective thereto as identical in location by measure in relation to the 3 monuments set in 1960, referenced as found within the 2003 survey. (see attached record at pgs.8-10) In relation to those monuments as paramount (as you assert in your response as "on point") there is no measurable distinction between the lands surveyed in 1960 and the survey of 2003. Thus no excess land transfer could occur, the survey’s reveal no excess land to transfer.

Yet it is also an undeniable fact that the real land description of parcels 1&2 within the Certificate of Compliance clearly relate a measurable distinction of an offset/gap between the two survey’s relative position of the highway’s southern right of way boundary. All the land south and west of the 2003 survey calls and north and east of the 1960 survey calls; resulting in 15.1 acres, per the Lot Line Adjustment sketch.

It is not possible for these two occurrences to simultaneously exist. The Tuolumne County Office of the Surveyor, then, and apparently now, thru your response, fail to ascertain the reason for such an absurdity. What was lost at the time, and now attempted to be explained away via various subterfuge is the affect of the > 7 degree change in the “Basis of Bearing”. Manly's Certificate of Compliance parcels 1&2 do not exist upon a proper retracing of the original 1960 survey utilizing the then “Basis of Bearing” or a proper, lawful interpretation of the 2003 survey with deference to the 1960 monuments as paramount.
The changes made by the 1982 USFS resurvey of the Manly/USFS common property boundary simultaneously changing and establishing a new "Basis of Bearing" for the highway survey of 2003 is being used to override the monuments set in 1960, apparently by relating the 1960 survey calls (derived from the 1960 'Basis of Bearing' N 0° E) to the changed "Basis of Bearing" of the 2003 survey (N 07° 18' 29" W), which is absurd. A fraudulent integrating of two separate survey's. The above assertion is evident within the Lot Line Adjustment sketch, wherein the 2 separate profiles of the highway's southern Right of Way boundary are depicted, and indicating by protractor a 7-10 degree divergence from their point of origin beginning at a common "Basis of Bearing".

You mischaracterize my complaint, I seek to have unlawful land division rescinded. Your efforts at subterfuge in defending the Lot Line Adjustment without the necessary lawful parcels is advanced by you in disregard of rudimentary Professional Land Survey practice. Rudimentary Land Survey practice articulated within Tuolumne County Lot Line Adjustment Code 16.09.020 (6) referencing Section 8762 of the Business and Professions Code; requiring a survey upon material discrepancy in the position of points or lines or dimensions, as set forth in my complaint at point 7 footnote 2 page 3. It is undeniable fact, that parcels 1&2 of the Certificate of Compliance exist as a result of material discrepancy in the position of points, lines, and dimensions. The Professional Land Survey Act placing it a duty of the county Surveyor at 8767 and 8768 requiring the noting of disagreement and explanation thereof, which did not occur in the creation of the above parcels 1&2. If it had it, the reasonable outcome would have revealed the fraudulent integration of the 1960 and 2003 survey I relate above.

As the 1960 survey and the 2003 survey indicate in reference to measurement in relation to the set and found monuments, there was no transfer of land, moreover no reconstruction of the highway ever occurred in relation thereto, your reliance on SMA section 66428 (a)(2) regarding the above parcels 1&2 is inapposite, I deny it's relevance as out of context. as there were no "excess parcels to relinquish to adjacent landowners."

I can see no point in meeting with you discuss this matter further, in light of your willful disregard of undeniable objective fact. If and when you come to realize your greater duty to Profession as a Land Surveyor and duty to enforce Tuolumne county Land Division Law, based on objective fact, please contact me.

Matthew Chapman

Copy to:
Tuolumne County Board Supervisors
CA. State Board Professional Engineers, Land Surveyors
Geologists

15/18
August 17, 2018

Matthew Chapman
30445 Sawmill Mt. Road
Groveland, CA 95321

Ref: Lot Line Adjustment No. 04T-02

Dear Mr. Chapman,

I received your letter of August 8, wherein you continue to seek to have this lot line adjustment rescinded.

I stand my earlier response of July 13, in that the County Surveyor’s processing of a Lot Line Adjustment submittal was performed pursuant to applicable laws and regulations. The State created excess parcels of land in 1960 through the acquisition of land outside the limits of its highway improvements, and properly disposed of them in 2003.

Thank you for bringing this matter to my attention.

Sincerely,

Warren D. Smith, LS
County Surveyor

Cc: Tuolumne County Board of Supervisors, California Board for Professional Engineers, Land Surveyors, and Geologists
We opposed to the proposed Terra Vi project ("TV").

As a preliminary matter, we object to this current process because the county didn’t give stakeholders adequate time to review the large volume of information. And we object to the county shortening the time of this review period. And we hereby request a continuance of today’s public hearing, in order to enable respondents to adequately review and prepare a response.

Our property on Hardin Flat Road is situated less than 1/4 mile downhill from the proposed TV site. Which means that our water well is subject to getting polluted and depleted from the project. It also means our water is subject to being diminished or completely taken by this and the under canvas glamping project.

The noise of having hundreds of people staying very close to our property will be intolerable. Having a helipad and helicopter traffic nearby will be intolerable. Please don’t ignore that concern. And remember, it’s not just humans who are disturbed by that level of noise. We object to this project because it will greatly diminished the natural environment of hardin flat for humans and critters.

There will be traffic safety issues involved with having hundreds, actually more than 1000, people driving in and out of Hardin flat and sawmill mountain. The county must weigh the cumulative impact of having both those developments there.

The county has failed to address other public safety issues. The roadway and those intersections could not handle emergency traffic during an evacuation. This was proven during recent evacuations. And the county simply does not have the resources to provide an adequate level of response for law-enforcement or fire or ambulance/rescue personnel.

Both TV and the under canvas projects are located within a stones throw of the South Fork of the Tuolumne River and inlets that feed it.
We object because there has been inadequate planning for the massive amount of effluent produced by TV and under canvas.
Sincerely,

Bill McMahon

30843 Hardin Flat Road

Groveland CA
December 1, 2020

Ms. Natalie Rizzi
Planner
Tuolumne County
2 S. Green Street
Sonora, CA 95370

Re: Terra Vi Lodge – Comments on Final EIR; also made verbally at Tuolumne County Planning Commission hearing of 12-01-2020

We have reviewed the Final EIR for the above referenced project, and submit the following additional comments:

- GCSD provided a similar comment letter to this during the Tuolumne County Planning Commissions consideration and subsequent approval of the Yosemite Under Canvas project on November 18, 2020 identifying that the project is located outside the boundaries of Groveland Community Services District (GCSD) as well as the Groveland Fire Department response area boundaries contained in the Tuolumne County Fire Service Providers Mutual/Automatic Aid agreement.

- GCSD provided comment letters on both projects under consideration, Terra Vi Lodge and Yosemite Under Canvas, identifying that both projects are outside the boundaries of Groveland Community Services District (GCSD) as well as the Groveland Fire Department response area boundaries contained in the Tuolumne County Fire Service Providers Mutual/Automatic Aid agreement.

- In commenting on the Under Canvas and Terra Vi projects, the goal is to continue conversations with County staff regarding fire service response standards and funding mechanisms for effective fire protection and emergency medical response within the County.

- GCSD is of the opinion there are options available to the County, and the fire protection agencies within the County, to support and improve fire services in addition to the special fire parcel tax currently being discussed for placement on the ballot next year. These options may rise in importance if the special tax is unsuccessful.

- GCSD recognizes that consideration of some of the funding mechanisms are County policy level decisions and GCSD is committed to continuing to work with staff on which options may be efficient and effective within the County long term.

- As these two projects are outside GCSD boundaries and the Mutual/Automatic Aid Agreement boundaries, GCSD has no jurisdiction or resources to respond to calls at the Terra Vi project location. Please see the attached GCSD Operational/Response Area Boundaries as contained within the Automatic/Mutual Aid Agreement referenced in the FEIR.
Although the CEQA document identifies GCSD has having primary responsibility for providing all-hazard emergency response services, that is inaccurate. However, GCSD is open to negotiating a service agreement with adequate funding to provide those services. Absent an agreement, GCSD will not be in a position to respond to any calls for service to the projects.

The County Fire Chief and Deputy Fire Chief were not authorized to act at a policy level on behalf of GCSD when meeting with the Consultant and County staff regarding whether or not GCSD fire would respond to incidents at the project site under the mutual aid/automatic aid agreement; as described in the FEIR Response to Comments. The County Fire Chief and Deputy Fire Chief had not consulted with nor did they have the authority of their contracting agency, GCSD, to offer emergency response and fire protection services to the project site outside of the GCSD response area boundaries.

- Mitigation Measures PS-1 and PS-2 as contained in the FEIR incorrectly assumes that by hiring two emergency staff and providing required but yet unspecified equipment, Terra Vi will have alleviated GCSD service demands. The FEIR correctly recognizes that the project will exacerbate this existing (deficient) condition, however providing on-site emergency response personnel under the supervision, control and direction of the lodge owner is inadequate mitigation. PS-1 and 2 do not reduce the need for additional trained, professional staff and equipment located at a reasonable response distance from the project and staffed at a level adequate so as to not exacerbate the existing deficient condition which will result in an increased risk to the life and property of the GCSD taxpayers while GCSD resources are responding long distances to the project site(s). The addition of increased professional fire/emergency personnel and equipment on the Highway 120 corridor is the only mitigation adequate to reduce the potential increase and demand of the project(s) for fire protection services from Significant to Less Than Significant.

- The FEIR confuses the reader/issues as it identifies “The (GCSD) General Manager has stated that within three years GCSD will find themselves in a difficult place to financially afford to fund CAL FIRE contract for fire services that are provided at the CAL FIRE station at 11700 Merrell Road in Groveland. Due to the current evaluation of several projects that could utilize GCSD resources, the GCSD Board directed their General Manager to work with the County towards future fire revenues and/or services”. The above paragraph stated in the FEIR is two separate issues, both of which were misstated:

  o First, the GCSD General Manager has consistently stated that the GCSD could afford BOTH the contract for services at the CAL FIRE station at 11700 Merrell Road in Groveland and its Schedule A agreement at Station 78 in Groveland. Relief of the cost of the CAL FIRE Groveland Amador agreement alone does not itself balance the GCSD Fire budget or provide additional funding for equipment or staffing.

  o Second, the GCSD Board directed its General Manager to work with the County towards future fire revenues and services related to our mutual need for additional fire services tax funding. The GCSD Board action to coordinate with the County had nothing to do with the current evaluation of several projects that could utilize GCSD resources (presumably Under Canvas and Terra Vi) as stated in the FEIR. In fact the GCSD Board recognized that we did not have the resources to respond to the project(s) unless additional staffing and equipment can be added to the local fire departments in Groveland.

- The statement in the FEIR is misleading regarding the County’s allocation of $263,466 for the Groveland Amador station to fund the GCSD portion of the CAL FIRE contract; as being action
Terra Vi Lodge FEIR Comments
Page 3 of 3

taken by the County Board to move towards its goal of providing additional first responder services along the Highway 120 corridor. The County funding of the CALFIRE Amador agreement does not provide additional fire or emergency response equipment or staffing on the Highway 120 corridor; it only maintains the same existing condition, identified as deficient in the FEIR and does not provide additional firefighting resources to respond to incidents at the project location(s) which would have alleviated any exasperation of the deficient fire service condition.

- GCSD appreciates the County’s assumption of the CALFIRE contract for the Groveland Amador station. However, the Amador station is seasonal, operated by CALFIRE to meet its statewide fire mission and financial relief from this obligation still does not balance the GCSD fire budget. Relief from the cost of the Amador Contract does not provide additional resources to GCSD increase staffing or equipment or to respond to Terra Vi Lodge.

- GCSD was pleased to see the project conditioned with a fee to support emergency response (Condition 57). However, a one-time fee will have limited impact and we question the ability of the County to impose a recurring annual fee. In addition, even if a fee is collected, there is nothing that obligates the County to contract with GCSD, the closest station to the project, to provide emergency services.

- GCSD is committed to being a good partner. However, GCSD cannot provide the requisite level of services to those within its boundaries and respond to calls outside its boundaries and existing mutual aid territory with limited district resources.

As each fire season grows in duration, GCSD is committed to finding ways to provide services and protect our residents. Part of our commitment is to continue to work with the County on a solution.

Sincerely,

Peter Kampa
General Manager

Attachment – GCSD Fire Response Boundary
Quincy Yaley

From: Natalie Rizzi
Sent: Wednesday, December 2, 2020 7:50 AM
To: Quincy Yaley
Subject: FW: Sawmill Mt Terra

Not sure if you got this. For the file.

Natalie Rizzi

From: Gene Pfeiffer <gene10302@gmail.com>
Sent: Tuesday, December 1, 2020 8:48 PM
To: Natalie Rizzi <NRizzi@co.tuolumne.ca.us>
Subject: Sawmill Mt Terra

The property owners in 1991 rezoning were against the it, but we were not listened too.
Gene pfeiffer
December 10, 2020

VIA EMAIL AND U.S. MAIL
Email: qailey@co.tuolumne.ca.us

Quincy Yaley
Director, Community Development Dept.
County of Tuolumne
2 South Green Street, Second Floor
Sonora, CA 95370

Re: Terra Vi Lodge Yosemite SDP18-003, Draft EIR
Response to Comments and Legal Contentions Regarding Terra Vi DEIR

Dear Ms. Yaley:

As you are aware, we have been retained as legal counsel for Hansji Corporation to address the comments and concerns raised with respect to Terra Vi Lodge Yosemite Project’s Draft Environmental Impact Report (“DEIR”) and the subsequent Final Environmental Impact Report (“FEIR”). It is our position that nearly all of the legal contentions made are irrelevant, incomplete or erroneous. Worse, the comments urge the County to take actions that would violate my client’s statutory and constitutional rights. We explain in detail below.

Introduction

The Terra Vi project (“Project”) has been planned to be the finest and most environmentally sensitive resort in the state. The location was carefully selected and is on a site that is already approved to accommodate a hotel. The resort is consistent with the Zoning and General Plan (explained in more detail below). Every element of the design was done after consultation with all relevant public agencies.

In fact, the exceptional features of the Terra Vi project have been generally acknowledged by opponents. Terra Vi has an environmentally conscious design, and the project will be built to the highest fire safety standards. Construction will be done using environmentally conscious techniques not required by any code, such as the use of recycled and other environmentally
friendly materials, the use of balanced grading and extensive waste treatment and water reuse. Every part of the Project was designed to minimize the environmental footprint. As to fire safety, the Project will remove vegetation that is essentially tinder dry upland chaparral and replace it with a carefully managed forest landscape. Terra Vi has implemented design features above and beyond those required by code elements such as higher than required Type I non-combustible construction design, providing trained firefighters on site, building a disaster shelter and creating helicopter access.

Overview of CEQA and its Relationship to Other Laws

As we have previously advised, Tuolumne County Code Sec. 17.31 ("TCC 17.31"), states that a hotel can be constructed as a matter of right. See, TCC 17.31.020 C. However, the County requires a “Site Development Permit” in their application package (we cannot find the source in the Code, but our client has not objected to applying for such a permit). The Site Development Permit should only be reviewing compliance with TCC Title 15 (cf. 17.31.010), making sure the plan complies with the building density rules (cf. 17.31.050) and other parts of the Code, such as cultural heritage. The County cannot, for example, decide it no longer likes the idea of a hotel in that location unless the County changes the zoning and amends the Tuolumne General Plan ("TGP"). “Projects” are, technically, only undertaken by public agencies. Discretionary approval of permits for private development are “projects” to the extent of the agency’s discretion. Pub. Res. Code, § 21065. See, Union of Medical Marijuana Patients, Inc. v. City of San Diego, 7 Cal. 5th 1171.

The fact that the County has chosen to do an EIR changes nothing insofar as the County’s authority. CEQA does not imbue a public agency with a magical ability to make ad hoc changes to laws, codes or regulations in the context of approving or disapproving a permit for a private project. Such ad hoc reconsideration of basic planning policy contravenes the legislative goal of long-term, comprehensive land use planning. “[T]he keystone of regional planning is consistency between the general plan, its internal elements, subordinate ordinances, and all derivative land use decisions. [citations omitted] Case-by-case reconsideration of regional land-use policies, in the context of a project-specific EIR, is the very antithesis of that goal. [Cite]” Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 572–573.

This Project is not similar to a project that is undertaken by a public agency. In the context of an action by a public agency, the agency’s discretion is only rarely circumscribed. A public agency is not legally constrained by location (it has the power of eminent domain), location of public streets, lot lines or sometimes even building codes. A public agency has options, including adopting new regulations, land use policies and standards private parties do not have. Public agencies usually have the option of doing nothing or doing the same thing in a different location. Such options are generally not available to private parties. Financial concerns are different for public agencies. This needs to be kept in mind when analyzing cases involving CEQA. As we explain, the legal contentions made in the comments fail to make this distinction.
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The Terra Vi permit application is likewise dissimilar to a situation where the private project requests a change in the zoning or the General Plan. In such a case, the public agency is well within its rights, indeed, obligations under CEQA to apply new, different conditions of approval. Terra Vi, in contrast, has a right to approval if it meets the conditions of approval. Due process and orderly regulation of land use require that property owners be able to rely on existing land use designations and regulations. As we will explain in more detail below, CEQA does not override existing land use laws. Contrary to some of the comments, neither public works standards, nor building and safety standards, change just because the agency prepares an EIR.

A couple of other incorrect contentions in the comments need to be corrected as well. The first should be obvious but seems not to be. An EIR addresses the project’s impact on the environment not the environment’s impact on the project. California Building Industry Assn. v. Bay Area Air Quality Management Dist. (2015) 62 Cal.4th 369, 377–378. Second, a public agency not only can rely on existing standards, in the context of evaluating a permit application for a private project such as Terra Vi, the agency must rely on such standards. We will discuss the law in this area in connection with specific comments.

To sum up, the opponents and legal comments are mostly inapplicable or incorrect. We elaborate about specific comments below.

Requests to Use the EIR as an Opportunity for ad hoc Land Use Planning Must be Rejected Out of Hand

Many commenters, most notably Central Sierra Environmental Resource Center (“CSERC”) and Rush Creek, suggested that the County reconsider the pace of development (Rush Creek) or rezoning the property (CSERC). As noted above, the existing land use is not up for discussion in this EIR. California Building Industry Assn, supra1. CSERC (among others) expresses this same thought in a different way by asking the County to somehow order the Project built in an alternate location. We have already expressed, in great detail, our view that such a consideration is illegal in a CEQA evaluation of a private project and will not repeat those points again here. However, we will reiterate our position that this discussion does not belong in the DEIR at all. Local property owners also suggest that the County ignore the zoning and land use decisions that have been in place for three decades on the basis that others will now have the opportunity to enjoy what they enjoy. These same property owners had decades to voice their objections and concerns in appropriate land use processes—opportunities they eschewed.

Another way of saying the County should amend the zoning is to argue the alleged loss of forestry resources. This argument is advanced in different ways by multiple commenters including notably CSERC, Rush Creek and Shute, Mihaly & Weinberger LLP (“SMW”). Again, in our view any discussion of this issue is inappropriate since the decision to zone the property for hotel use necessarily already decided the issue of loss of forest resources. The criticisms of the FEIR on this basis are simply an indirect attack on the zoning.

1 This same comment, recast as an argument that the zoning is inconsistent with the TGP, was also advanced by these and other commenters. We address the relationship between the TGP and existing zoning below.
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Criticism of the EIR on the Basis that Other Public Agencies Must Also Issue Approvals Are Improper

Many commenters both in the initial comments and in comments after the issuance of the FEIR argued that approval should be delayed. The commenters contended that approval by other public agencies needed to approve aspects of the Project. From this the commenters suggested that the County should not approve the Project. This is exactly backwards from what CEQA requires. Such required approvals by other agencies whether actual or merely alleged are definitely not a basis to delay approval.

CEQA has a “lead agency” process by which all the relevant agencies are allowed to participate in the EIR process so that approvals are not delayed by questions of which agency should go first. In those very rare situations where the agencies disagree as to which one should lead, the statute provides a process for resolving the dispute. CEQA very clearly does not allow a public agency to defer its decision on an environmental document merely because another agency might disapprove a permit or license.

Policy of Development in a Fire-prone Area is Beyond the Scope of this EIR

Many commentators advanced more or less the following criticism of the FDEIR: “Obviously there’s a significant adverse impact because all these people at the hotel will be in a Very High Fire Hazard Severity Zone (‘VHFSZ’).” Ironically, this argument is advanced even by those whose homes and businesses are in the very same VHFSZ. Many of these commentators own or live in buildings that are likely far less secure from fire than Terra Vi.

This comment would be true of any development in any fire-prone area. In fact, this comment would be true of any development in large sections of Tuolumne County, large sections of California, large portions of the western United States and most of the Continent of Australia. California and the County have adopted extensive building and landscaping policies and regulations that apply to locations in fire-prone areas to make such developments safe.2 State, national and international norms have decided to allow development in properly zoned locations. No commenters suggest restriction that would restrict their own right to develop their property because they are in a fire-prone area.

This situation is distinct from a situation where the County is, for example, approving a new subdivision in a VHFSZ. In such a case, the County would be considering the question of whether to exercise its discretion to change the use or density to expose people to the hazards of that location. That is not the case here. The decision to allow a hotel in this location was already decided. The comments ask that this decision be revisited. Though the law allows for such a reconsideration, the EIR process is not the vehicle to address this procedure. The appropriate way to address this issue is through changes in the TGP and zoning. If the real concern were people being in harm’s way, the response should be, at a minimum, to address the many

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2 For example, the CalFire fire building codes are found here: [https://osfm.fire.ca.gov/divisions/wildfire-planning-engineering/wildland-hazards-building-codes/](https://osfm.fire.ca.gov/divisions/wildfire-planning-engineering/wildland-hazards-building-codes/)
structures that were built under less strict codes, instead of attacking the developer who is proposing to build the safest structure in the area. Such legislative remedies exist, but the EIR process, which, by its nature can only deal with a single project, is not that process.

SMW has, in particular, camped on this point in its comments on the FEIR. In particular, SMW comments from material cribbed from a prior development in which it had been involved in the Otay Ranch area of San Diego County. The project in question was a huge dense residential subdivision development in an area that was zoned for very low density. The material seems intended to show that building a hotel in a VHFSZ is, in itself, improper. But the cited material shows the opposite of the point advanced. The material shows that the concern was about the “interface” between residential houses and forested areas. Not only does this not address single commercial properties built in the appropriate zoning, it shows the homes are more a danger to the hotel than vise versa. In fact, based on the information from SMW, it would seem that the hotel would be protecting the homes in the area by reducing the interface of the local residences with the unmanaged forest scrub that now characterizes the site.

The County Cannot Deny a Permitted Use Simply Because it will use Public Services

Every new development, as well as every new building, may increase the demand on public service. In a properly designed system, the taxes that will be paid will offset those demands. This is easy to see when taken out of the context of this project. No local agency would think to deny a building permit for a house being built on a vacant lot in the proper zone and to the proper code, merely because the house would require police and fire services that the vacant lot would not. The agency simply does not have the discretion to make such a determination based on the requirements of the permit. Moreover, the agency has already made a determination (impliedly or explicitly) through the planning process that the development will “carry its weight” though the taxes and other benefits it provides.

CEQA requires an analysis of the impact of a discretionary project on public services, including emergency services. A common application of this requirement is a large subdivision which will require additional public infrastructure such as increases in sewer treatment, new water capacity, a new school or fire station. The analysis in the EIR must include not only the subdivision itself but also the impact of the added infrastructure. Normally, such impacts are mitigated by the taxes, fees and in-kind contributions of the development. The FEIR largely ignores the Project’s contribution to the public coffers and only addresses impacts. If the contribution is too small, the remedy is to increase fees and taxes as needed. The County does not have the authority to deny this project which is in the proper zoning.

Many of the comments, and particularly those of SMW, involve some version of this argument. ‘The Project will require more visits from police/fire. If police/fire are at the Project, they might not be able to be somewhere else. Or, if police/fire are somewhere else, they might not be able to be at the Project.’ Ergo, the Project has a significant impact on services. The problem is that this is an argument that applies to any development. For example, even building a house on a vacant lot in the city will require some new public services. Thus, every new project has this
impact and such an impact is not a basis for denial of approval. The applies with even more force where the project is already in the appropriate land use designation.

This conflating of overall resource allocation for public services and approval of an individual project is most clearly seen in the comments from Groveland Community Services District (“GCSD”). GCSD recognizes that the issues involve “funding mechanisms” and are “County policy level decisions.” GCSD says that the $263,466.00 contributed by the County will simply leave the current situation unchanged: GCSD says the funding “maintains the same existing condition” but that the existing condition is insufficient. GCSD also complains that the fees paid by the Project may not go to GCSD. The County has added more resources but—as public agencies are wont to do—GCSD feels they need more resources. None of these problems are caused by the project. The Project is neither the problem nor the solution to this funding dispute. What is clear is the Project is not causing any significant impact on the physical environment. A Project that is being proposed for a location that is clearly proper and already approved for that use, cannot be held hostage by funding squabbles between agencies.

The County Must Use Existing Standards in Assessing Wildfire Risk

Many comments, and particularly those of SMW, find error in both the DEIR and FEIR based on two wrong legal arguments. The first is that a public agency must treat each design feature of the project as a “mitigation measure” and must therefore describe the impact of the project without the design feature and only then describe the impact. A second and related argument is that the public agency cannot rely on existing building and safety standards as to whether a design is “safe.” Each is incorrect as applied to the Terra Vi Project and such comments are wrong.

On Page 3 of the SMW comment letter it states: “The Project’s significant impacts must be determined first, and then the EIR must identify enforceable mitigation that will ‘offset’ the impacts. See Lotus v. Department of Transportation (2014) 223 Cal.App.4th 645, 656, 658 (rejecting EIR that relied on project designs to find no significant impact, instead of identifying significant impacts and considering potential mitigation measures).” Lotus, however, involved a unique situation in which a public agency, CalTrans, was expanding a road through old-growth redwoods. The environmental document, while implying the roads could harm the root system of the trees, never explained how or why this harm could occur. Instead, CalTrans merely stated that the design features which included actions such as restorative planting, removal of invasive plants, use of an arborist and specialized equipment, made any harm insignificant. The court found that this simply did not explain to the public what harm could occur or how the design features avoided the harm. Lotus held that these measures were “plainly mitigation measures and not part of the project itself.” Id. at p. 656 & fn. 8. These comments are more or less repeated in the comments on the FEIR.

Lotus has been rejected for the broad proposition cited by SMW that every mitigating feature of the project is a “mitigation measure.” A “project” for CEQA purposes is “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Guidelines, § 15378,
subd. (a) [emphasis added]. The “whole” includes all the measures included in the Project even if they mitigate environmental impacts. For example, in Save the Plastic Bag Coalition v. City and County of San Francisco (2013) 222 Cal.App.4th 863, 868, 882–883, the court held that San Francisco’s imposition of a 10-cent fee as part of an ordinance restricting the use of disposable bags at retail stores was part of the whole project and was not a mitigation measure designed to alleviate difficulties with the original plan but rather an effort to mitigate or offset the alleged adverse environmental impacts of the project. Likewise, a traffic-management plan part of a development project was found not to be a mitigation measure but part of the project. Berkeley Hillside Preservation v. City of Berkeley (2015) 241 Cal.App.4th 943, 960–961. See also, Wollmer v. City of Berkeley (2011) 193 Cal.App.4th 1329, 1352. (Developer’s commitment to “dedicate land for a left turn lane on Ashby Avenue, thereby reducing traffic impacts to less than significant” was part of the project.) Here, the County’s application process required the applicant to include design elements showing best practices in a number of areas including those related to fire protection. See, TCC 17.68.100. Such measures are clearly part of the project and not mitigation measures added later by the public agency.

SMW also argues that the County cannot rely on existing standards, particularly building and safety standards, but must instead reevaluate each standard to “demonstrate” application of the standard and that it will effectively mitigate the impact. SMW chiefly relies on Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs. (2001) 91 Cal.App.4th 1344 (Berkeley Jets). The petitioners there contended that an EIR for an expansion of the Oakland Airport failed to address the impacts of noise resulting from increased nighttime air cargo operations. (Id. at pp. 1349–1350, 1372, 111 Cal.Rptr.2d 598.) The EIR used a significance standard based on the Community Noise Equivalent Level (CNEL), the 24-hour average sound level, in decibels, obtained from the accumulation of all sound sources, with an additional weighting of sound levels during evening and nighttime hours. (Id. at p. 1373, 111 Cal.Rptr.2d 598.) A standard of 65 CNEL was used as the threshold for treating aircraft noise as significant, regardless of the change in noise that might be caused in quiet neighborhoods or whether the noise was in daytime or the middle of the night—though CNEL does give added weight nighttime noise. (Id. at pp. 1373, 1381, 111 Cal.Rptr.2d 598.) Notably, the 65 CNEL score was NOT a regulation.3 The petitioners claimed that the EIR should have included an analysis of the project’s impact on the sleep of nearby residents. (Id. at p. 1377, 111 Cal.Rptr.2d 598).

Berkeley Jets does not assist SMW. Unlike the general significance standard utilized in Berkeley Jets, the regulations here are specific expressions of what the public agencies have determined are appropriate for this exact situation. For example, in Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884, 896–900, the court rejected applying Berkeley Jets where the City of Oakland used existing earthquake standards to determine whether the structures would be “safe” in an earthquake. As with the fire standards used here, the earthquake standards needed to be applied to the individual project. Like the fire standards, the earthquake standards were existing regulations, not created standards of significance. Finally, the court found that

3 In fact, the FAA does not use CNEL at all. The FAA uses Day Night Average ("DNA") as its basis for review. See, https://www.faa.gov/regulations_policies/policy_guidance/noise/community/. CNEL is apparently “accepted” by the FAA.
while it was true that the earthquake standards could not be designed to eliminate any harm from
the very largest earthquakes that did not make the use of such standards inappropriate to
determine the structures were “safe.” As the court stated:

“Nothing in CEQA, the cases interpreting it, or common sense compels such a
conclusion. A less than significant impact does not necessarily mean no impact at all.
(See National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th
1341, 1359, 84 Cal.Rptr.2d 563; Cal.Code Regs., tit. 14, § 15064, subd. (b).) As the
Modified Mercalli intensity scale makes clear, an earthquake of the highest intensity
values could result in destruction of even well-built structures. Nothing in the record
suggests that feasible design standards would necessarily protect against building damage
in such an earthquake. In the circumstances, the question of what design standards to use
is properly a policy question for the City; and the question of whether seismic impacts
can be, or have been, mitigated to a less than significant level is properly treated as one of

_Berkley Jets_ was also explicitly rejected in _Tracy First v. City of Tracy_ (2009) 177 Cal.App.4th
912, 932–934. In that case, the issue was the use of California Building Energy Efficiency in
determining that the project would not have a significant energy impact. The court rejected the
exact line of argument suggested by SMW, _viz_. that the agency was required to go beyond those
standards in its analysis. As the court pointed out, the very purpose of the standards was to
promote energy efficiency and that the City had proceeded in the manner required by law when it
relied on the standards. 177 Cal.App.4th 912, 933–934. SMW also cites _Communities for a
_Californians for Alternatives to Toxics v. Department of Food & Agriculture_ (2005) 136
Cal.App.4th 1, 15-17 for the proposition that an agency has a separate obligation to consider
whether a project’s environmental impacts are significant even in the face of a regulatory
program. Neither case applies. Both of those cases involved direct regulatory actions by public
agencies whose job it was to evaluate the regulatory program. The County’s action is approving
a permit application by a private party. The County has no duty to revisit existing regulations
and cannot properly adopt regulations for a single property owner.

In short, the County can rely on existing regulations. SMW’s (and others) contention to the
contrary is simply wrong.

**Comments Conflate Impacts on the Project with Impacts on the Public**

It bears repeating: The environment’s impact on the Project is not an impact on the environment.
Nonetheless, the commenters conflate this frequently and sometimes, perhaps, intentionally. For
example, on page 7 et seq of the SMW letter, we find this statement:

> The DEIR acknowledges that the Project has the potential to expose people to elevated
pollutant concentrations due to wildfire. DEIR p. 4.17-26 (Impact WF-2). It states that
“due to the location of the proposed Project in a forested area, historic fires in the region,
and the fact that the proposed Project would bring people and vehicles to a site within a
fire-prone area, the Project has the potential to exacerbate wildfire risks and thereby expose Project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire.” DEIR p. 4.17-28. This statement is no substitute for a detailed analysis of these impacts. Under CEQA, such self-evident ruminations cannot substitute for meaningful analysis. City of Antioch v. City Council (1986) 187 Cal.App.3d 1325. Rather, an EIR must contain analysis sufficient to allow informed decision making. Here, the DEIR must actually analyze the potential levels of human exposure to air pollutants which might result during a wildfire at the Project site, including projected air pollutant concentrations. [emphasis added] Citing Sacramento Old City Assn. v. City Council of Sacramento (1991) 229 Cal.App.3d 1011, 1027 and Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 726-29.

SMW’s letter goes on to say that the DEIR provides no “substantial evidence” that “mere landscaping” will reduce the impacts to insignificance. But the cited cases are nothing like the Terra Vi Project. In Kings County, the EIR lacked any data on other potential projects in the area thus making cumulative analysis impossible. The citation to Sacramento Old City Assn. is puzzling. While the case does have a general statement about the review of findings, the opinion itself upholds the EIR and undercuts the contention made here. For example, the mitigation measure for housing replacement involved future “aggressive” action to replace the housing and aid to the affected residents. The court found this mitigation measure was supported by substantial evidence, based as it was on the sound judgment of local officials. 229 Cal.App.3d 1011, 1038-1039. The court goes on to quote the Supreme Court on the subject:

“The wisdom of approving this or any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced. Concurrently, we caution that rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.” (Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at p. 576, 276 Cal.Rptr. 410, 801 P.2d 1161.) 229 Cal.App.3d 1011, 1039.

Thus, exactly contrary to the suggestion made by SMW, the sound judgment of local officials who have long experience with the very issues discussed in the EIR is in itself “substantial evidence” as to the efficacy of a mitigation measure.

We turn now to the actual language of the DEIR which reads as follows:

Prevailing regulatory requirements and policies, in addition to proposed project design features would minimize the exposure of people to a significant risk of loss, injury, or death due to slope, prevailing winds and vegetation. However, due to the location of the proposed project in a forested area, historic fires in the region, and the fact that the proposed project would bring people and vehicles to a site within a fire prone area, the proposed project may have the potential to exacerbate wildfire risks and thereby expose
**project occupants** to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire. The project’s proposed features (listed in Table 4.17-2) would reduce potential wildfire hazards. However, the planting placement, density, and species on the project’s landscaping plans are not consistent with these proposed wildfire hazard reduction features. Therefore, the impact would be significant. Significance without Mitigation: Significant. DEIR pp 4.17-28-29

The FEIR is clear. Project occupants (not people generally) could be exposed to pollution from a wildfire (a significant impact) unless the planting and landscaping are improved. The DEIR requires feasible landscaping measures to keep fire further away from the buildings. This is simply an application of existing County landscaping policy. As noted above, the County may properly rely on applicable existing policies and regulations to determine the safety of a private project. In summary:

1. The DEIR is **not** saying the Project increases the risk of igniting a fire. There’s no evidence of that. Instead, it is saying that the people and vehicles that come to the project need to be protected from the environment.
2. The citation to *City of Antioch* is off base. The DEIR is not engaged in “ruminations” but rather is applying the existing regulations, knowledge and expertise of the local regulators to the design of the hotel.
3. The DEIR is **not** addressing the impact on “people” but rather the safety of occupants of the hotel and applying established regulations and standards to the design.

Criticism of the Project that would apply to any development in any fire-prone area, are policy arguments, not comments on the DEIR that address approval of a specific permit in a specific approved location. Terra Vi will be the most fire-resistant development in the area. It cannot fix the environment around it just as builders in other areas cannot fix earthquake faults. Regulators have learned how to reduce risks to individual structures to a reasonably safe level. Perfect safety is beyond human ability.

**Emergency Evacuation and Emergency Response Analysis in the EIR Must be Limited to Potentially Significant Environmental Impacts of the Project**

Commenters question the overall response time for first responders to the area and whether the state highway is a sufficient evacuation route. The policy questions raised may be important, but this EIR, for a single hotel permit, is not the place to address them. We address first the emergency evacuation issue.

Emergency fire access policy throughout California has been that a significant development must have two separate access points to a major street or highway and that the development itself comply with County Emergency Response Plans. There seems to be little dispute that Terra Vi meets these requirements. SMW spends many pages in an apparent attempt to have new, special regulations imposed on Terra Vi. Most of the comments ignore the limited discretion available to the County and instead, pretend this is a major new development. For example, SMW compares Terra Vi to a large new subdivision in the Escondido area. From what is publicly
available, it appears that SMW, representing a coalition of wealthy local landowners, hired the same expert they used here, to stop the development based largely on issues surrounding access to and from the subdivision. However, that project is quite different.

First, the Escondido project involved changing the density of the area from the approved zoning to a much higher density. This higher density, it seems, was not addressed in existing land use planning. Moreover, the site seemed to have only one, not two, access routes. Second, the agency was being asked to undertake a quasi-legislative action rezoning as opposed to the quasi-judicial action being taken here. Third, the project was huge, not just one hotel. Such distinctions are critical to an appropriate environmental analysis.

As we have explained above, ordinarily an agency may rely on existing regulations to determine a structure is “safe.” Admittedly, conditions unique to the particular location could make further investigation appropriate. Here, for example, it might be the case that, as speculated, the hotel somehow blocks access of others. On the other hand, arguing that SR-120 is not a good evacuation route for all the uses approved along it, is a general policy argument well beyond what is properly before the County. The Project is approval of a permit for a hotel.

Under CEQA, if new facilities are required due to the Project and other projects expected to be approved, then the impact of building the facilities needs to be considered. However, this is not the case here. More development will require more resources. That development will generate more revenue to provide the resources. Nothing indicates the Project will in itself or cumulatively with other projects require the construction of new buildings. The complaint that response is slow and should be faster is merely a complaint. The remedy for such a complaint is found in other processes, not this single permit application.

The County May Rely on the Expertise of Public Officials in Addressing the Evacuation Issues

In connection with the FEIR, many commentators, notably SMW, expressed dissatisfaction with the response to concerns raised about emergency evacuation. For example, SMW claims the FEIR “fails to analyze the Project's cumulative impacts [on evacuation].” But this is false. The FEIR collects all the current and existing projects and determined how many vehicles might be evacuated. The numbers were conservative with, in the case of Terra Vi, each room and every employee having a vehicle that needed to leave\(^4\). The information was then reviewed by the County Sheriff, the county employee with the major responsibility for such evacuations.\(^5\) The Sheriff determined that evacuation was unlikely to be a problem. The FEIR explains that fire evacuations are generally phased over time and not a mad rush. Moreover, the Sheriffs’ Department has the ability to control traffic flow and adjust as the situation develops. The complaint about this response seems to be that merely relying on the Sheriff’s experience (having gone through other evacuations) or expertise (being responsible for traffic in such emergencies) was enough to rely on. This is not correct. CEQA contemplates that the

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\(^4\) See FEIR Tables 5-1 and 5-2.

\(^5\) See FEIR pp. 5-11 – 5-16.
Ms. Yaley  
Re: Terra Vi Lodge Yosemite SDP18-003, Draft EIR  
December 10, 2020  
Page 12  

Supervisors will rely on the experience and expertise of others. The Supervisors are not required to second guess the considered judgment of other public officials. 

The County May Rely on Existing Safety Regulations in Addressing the Safety of Water Use and Waste Disposal  

Several comments worry that the existing regulations and standards that will govern water usage, particularly waste treatment, might turn out to be insufficient. We need not reiterate the points made above that the County need not reevaluate all existing safety regulations in the EIR. Some of the comments make a slightly different point. They argue that the mitigation measures are insufficient because they are not fully designed and described in the DEIR. The suggestion is that this is an illegal “deferral” of the mitigation. This is simply wrong from a legal point of view. The mitigation is not deferred simply because reliance is placed on future public officials doing their job. 

Water quality and waste treatment are subject to extensive regulation to assure safety of the people using the system and to avoid contamination of the water supply of others. This is not an improper “deferral”. In fact, a case cited by SMW, Sacramento Old City Assn. v. City Council of Sacramento (1991) 229 Cal.App.3d 1011, 1036-1039 specifically approves such actions. 

The case law was discussed in detail just last year. Citing Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884, 887-888 the court stated: “... compliance with the building code, which was intended to promote structural safety in the event of an earthquake, as well as other regulatory provisions provided substantial evidence that the mitigation measures would reduce seismic impacts to a less than significant level. (Id. at pp. 903-904, 124 Cal.Rptr.3d 755). Thus, ‘a condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance.’” Covington v. Great Basin Unified Air Pollution Control Dist. (2019) 43 Cal.App.5th 867, 875–877  

Likewise, the Supreme Court in Sierra Club v. County of Fresno (2018) 6 Cal.5th 502, 525, 241 Cal.Rptr.3d 508, held that routine permit conditions that were part of the project’s mitigation and monitoring program were valid and enforceable mitigation measures upon which the County could rely. (Id. at p. 526). 

In short, the County is entitled to rely on the regulatory process for water safety just as it is relying on building inspectors to make sure the hotel will not fall down. 

The County May Not Overrule State Law on Access to Groundwater  

As an overlying landowner Terra Vi has the right to take the amount of water that it reasonably needs for beneficial purposes. City of Pasadena v. City of Alhambra, 33 Cal. 2d 908 (1949); California Water Service Co. v. Edward Sidebotham & Son, Inc., 224 Cal. App. 2d 715, 725 (1964). The comments seem to imply that were Terra Vi to have an impact on adjoining property owners, the solution would be to deny Terra Vi approval. Water rights do not work that
way. A discussion of California water rights is beyond what is needed here. It suffices to point out that in a situation where subsurface water uses conflict, nothing in California law provides a veto by existing users. Overlying water rights are not lost by lack of use. *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*, 3 Cal. 2d 489, 525, 530 (1935). If it were true that the Terra Vi’s use conflicts with those of others (it doesn’t) the solution must be in allocating the uses among the various users and adjudicating their rights. It is not clear that the County has the authority to do such an allocation or adjudication even were such conflict in use to be found.

We do not believe the County has the authority to deny the permit due to a conflict in water use. First, Terra Vi undertook the tests recommended by the appropriate state agencies to determine whether the Project would adversely impact other wells. The tests clearly showed it would not. Second, insofar as we can determine, the Project meets every regulation relating to water supply. Unless some specific regulation is being violated the permit should be issued. Creating unique, novel rules for the approval of Terra Vi would violate Due Process.

**The Traffic Analysis is Inapplicable to this EIR**

We have discussed the one aspect of the traffic comments, emergency evacuation, above. However, the commenters, and particularly SMW have provided extensive detailed critiques of every street, driveway and curve. All of these comments can be summarized as claims that the County Public Works Department and CalTrans will not be able to design a safe ingress and egress from the property. We will leave it to others to discuss the accuracy of these critiques. Here, we point out the following. As discussed in some detail above, the County is entitled to rely on public agencies doing their jobs to enforce safety in design and construction. If it is really true the Project cannot be safely entered or left, entrances and exits will not be built and neither will the hotel. Second, it is not clear how many of the comments related to a “potentially significant adverse environmental impact.” Not every design or safety issue is also an environmental issue.

**The Project is Consistent with the General Plan**

SMW and others comment that the current zoning is inconsistent with the General Plan. Consistency with the General Plan is required of a new subdivision or quasi-legislative land use approvals such as development agreements or a specific plan. We are not aware of any cases disallowing a project that is being built in the proper zoning and complying with all conditions of approval on the basis of a General Plan inconsistency. Such “implied rezoning” would raise serious Due Process issues. The contrary is true. The courts have recognized that perfect congruence between a set of general statements of policy and specific uses at specific locations may be impossible. As stated in *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 505:

*A project need not conform perfectly to every general plan policy to be consistent with the general plan.* (Families Unafraid to Uphold Rural etc. County v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1341, 74 Cal.Rptr.2d 1.) The rule of general plan consistency is that the project “must be ‘compatible with the objectives, policies,
general land uses, and programs specified in” the general plan. (Sequoyah Hills, supra, 23 Cal.App.4th at pp. 717-718, 29 Cal.Rptr.2d 182.) “[C]ourts accord great deference to a local governmental agency's determination of consistency with its own general plan, recognizing that ‘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. [Citations.] Because 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. 50 Cal.App.5th 467, 505 [emphasis added].

In connection with the FEIR, SMW cites various provisions of the General Plan calling for emergency planning. This is then turned into a requirement that every emergency planning contingency needs to be addressed before any project and be approved. This just is not how a General Plan works. A General Plan is designed to allow the public agency to develop its own methods and responses to the goals described. It was never conceived as a “gotcha” to make routine development in approved zoning problematic or impossible. In short, Project approval cannot be denied on the basis of General Plan inconsistency.

**Conclusion**

This letter does not attempt to be a complete response to all comments, or even all legal comments. Many other problems, both legal and factual, will be addressed, if necessary, later in the process. The central point of this letter is that the County’s review must be limited to the County’s authority.

Terra Vi strives to be the most environmentally conscious destination in the area. Its location was carefully chosen to be consistent with the local environment and the local regulations. The DEIR review process must recognize the limited nature to the County’s discretion in evaluating the project. We respectfully request the County approve the Project.

Very truly yours,

CLAREMONT LAND GROUP

MARK C. ALLEN III
Hi Quincy,

In response to a series of emails and in preparation for tomorrow's call, I wanted to provide some information that hopefully will prove useful.

The first attachment, "TC Response Area Calls 17-20" is a map of the response areas we use for dispatching fire resources. The attachment shows the total number of calls from January 1, 2017 through December 8, 2020. Over 70% of incidents along the upper 120 corridor are medical aids. CAL FIRE Battalion 6 - Groveland Battalion - has some of the most significant fire history in the Tuolumne Calaveras Unit (map included).

As a reminder, this only includes incidents that came through the San Andreas ECC and does not include incidents handled solely through the USFS (most of this land east of response area N5 is their DPA for wildland fires).

The response areas that are east of Groveland, that I believe Supervisor Gray is requesting information for below, and that directly include Highway 120 or adjacent to are:

**N5** - in GCSD auto aid area (130 incidents)
- **STF45A** (4 incidents) - includes Rim of the World, Lost Claim Campground
- **STF45B** (45 incidents) - includes Yosemite Ridge Resort, Buck Meadows, Smith Station, Yosemite Westgate Lodge
- **STF43** (103 incidents) - includes Evergreen Lodge, Carlon Campground, Camp Mather, Sweetwater Campground, Cherry Lake Road, Camp Tawonga
- **STF46** (113 incidents) - includes Hardin Flat Road, Rush Creek Lodge, Yosemite Lakes, Rainbow Pools

For additional reference, GCSD's district encompasses response areas N3A and N3B. The auto aid to the west includes response area N4A.

### CALL TYPES:

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<th>RESPONSE AREAS HWY 120 EAST OF GCSD BOUNDARY</th>
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<td><strong>VEGETATION FIRE</strong></td>
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<tr>
<td>N5*</td>
</tr>
<tr>
<td>STF45A</td>
</tr>
<tr>
<td>STF45B</td>
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Additional site-specific call numbers below (these are only at these specific addresses), not surrounding areas:

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<td>43</td>
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*East of Groveland

The second attachment is reflecting the response areas indicated on the first attachment and the total numbers and types of calls.

The third attachment is a map for a different project we've been working on reflecting the distribution of only TCFD jurisdiction incidents throughout the county, including automatic aid, but not including volunteers (they supplement, not supplant, 24/7 staffed engines). While the period varies slightly (Nov 2017-Nov 2020), it is a good reference for where the calls are. A reminder though, many incidents occur at the same location, and will only be indicated by a single marker. These are lat/longs that were transferred to this map.

Please don't hesitate to reach out with questions, comments, concerns.

Andrew Murphy
Assistant Chief
CAL FIRE - Tuolumne Calaveras Unit
209-419-4403
From: John Gray <JGray@co.tuolumne.ca.us>
Sent: Tuesday, December 8, 2020 5:16 AM
To: Sarah Carrillo <SCarrillo@co.tuolumne.ca.us>; Cody Nesper <CNesper@co.tuolumne.ca.us>; Christopher Schmidt <CSchmidt@co.tuolumne.ca.us>
Subject: Calls for Emergency

Would like to know The number of calls for services the last 3 years East of the GCSD. How many for fire, how many for other. Also total number of calls per year. From County ambulance the total number of calls with the number outside the district if possible. A clarification of where the boundary is for collecting the 90 dollars a year ambulance fee. Does Rush Creek have to pay the fee. And the still unanswered questions about what conditions were put on Rush Creek for Fire.
John
John

Get [Outlook for iOS](https://www.outlook.com/en-us)
Tuolumne County Response Areas South County
01/01/2017 thru 12/09/20
## RESPONSE AREA ACTIVITY REPORT

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<th>Other Fire</th>
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### Incident Graph by Response Area(s)

- Vegetation Fire: 1.8%
- Structure Fire: 0.5%
- Other Fire: 7.5%
- Haz Mat / FMS: 19.5%
- Total: 100.0%
December 11, 2020

Via E-Mail

Board of Supervisors
Tuolumne County
Administration Center
2 South Green Street, 4th Floor
Sonora, California 95370
bosm@co.tuolumne.ca.us

Re: Hearing on Appeal of Terra Vi Project

Dear Members of the Board of Supervisors:

We submit the following letter on behalf of Save Sawmill Mountain in connection with the notice and setting of the hearing for Save Sawmill Mountain’s appeal of the Terra Vi Lodge Yosemite Project (“Project”). For the reasons set forth below, we do not believe that Sawmill Mountain’s appeal should be heard based on the appeal filed by Clare Cosovich on December 3, 2020. Rather, notice of the appeal should be set based on the appeal filed today by Save Sawmill Mountain and the appeal should not be heard until the new Board of Supervisors is seated.

The County Code provides that the “any aggrieved party” may file an appeal of the Planning Commission’s decision. Tuolumne County Code of Ordinances, § 17.68.130. Although Ms. Cosovich purports to be concerned about water supply from the project, she is in fact, the fiancé of Nick Manly, a relative of the property owner. Ms. Cosovich never commented on the Terra Vi project, much less objected to the County’s review or approval of the Project. She is not an “aggrieved party” within the meaning of the Code and her appeal is specious. Because it does not constitute a valid appeal, the County should not have set the Board hearing based on its filing.

Government Code section 65090 requires the County provide 10 days’ notice of the appeal hearing. The notice sent pursuant to Government Code section 65090 must contain “a general explanation of the matter to be considered and a general description, in text or by diagram, of the location of the real property, if any, that is the
subject of the hearing.” Government Code § 65094. The purpose of this requirement is to facilitate public participation in the planning process and to ensure that members of the Board, as well as the public, have an adequate opportunity to consider the impacts of a proposed project and its consistency with state and local law. See Environmental Defense Project v. County of Sierra (2008) 158 Cal.App.4th 877. Setting the Board hearing on basis of a misleading appeal violates this principle.

Environmental Defense Project is directly analogous to the circumstances here. In that case, Sierra County provided notice of its Board of Supervisors hearing at the same time it noticed the Planning Commission hearing on the same project. As a result, the Board hearing would occur only 4 days after the Planning Commission hearing. As in this case, Sierra County was required to provide a 10 day notice of the Board of Supervisors hearing, which included “a general explanation of the matter to be considered and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.” In Environmental Defense Project, the court found that a “general explanation of the matter to be considered” could not be given if the notice of the Board hearing was sent before the Planning Commission’s recommendation on the zoning ordinance was made. In making its decision, the court emphasized the importance of public participation in the planning process and the requirement that the “public be afforded the opportunity to respond to clearly defined alternative objectives, policies and actions.” Id., quoting Government Code §65033 (emphasis in original).

Like the notice in that case, the notice for the Terra Vi project does not provide sufficient opportunity to consider that will be raised on appeal by Save Sawmill Mountain. In fact, because the Cosovich appeal was filed by someone affiliated with the project proponent, notice of that appeal cannot possibly provide adequate notice of the issues raised by subsequent, legitimate appeals by parties that actually oppose the Project. Under the Brown Act, the County must post its agenda, staff report, and any recommendations 72 hours in advance of the Board meeting, or by 2 pm on December 15. Given that the appeal period does not close until 5 pm on December 11, this leaves effectively one and a half business days to consider the issues raised by Save Sawmill Mountain. As noted in Environmental Defense Project, this short time frame undermines the public participation goals of California’s Planning and Zoning Laws.

It is clear that the County is rushing this process in an effort to get it done before the new members of the Board of Supervisors are seated. As a result, the County has made not only procedural errors, it has failed to give appropriate consideration to public concerns and the environmental impacts of the project. We urge the County to defer action on the project until the new Board members are seated. This project, as well
as the Under Canvas project, will have significant impacts on the surrounding community. The new Board, elected by the voters in Tuolumne County, should be given the opportunity to ensure the projects are in the best interests of the community and that all of their many impacts have been fully disclosed and mitigated.

Thank you for your consideration of these issues.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Ellison Folk

cc:  Via E-Mail
Taryn Vanderpan, TVanderpan@co.tuolumne.ca.us
Quincy Yaley, QYaley@co.tuolumne.ca.us
Quincy Yaley

From: John Gray
Sent: Tuesday, December 15, 2020 8:21 AM
To: Quincy Yaley
Subject: FW: Highway 120 Corridor Development.

FYI

From: Suzanne Ctibor <yosemitesu@gmail.com>
Sent: Monday, December 14, 2020 8:03 PM
To: BOS Members <bosm@co.tuolumne.ca.us>
Subject: Highway 120 Corridor Development.

To Whom it May Concern,

I would like to voice my opinion of the proposed developments on the Highway 120 corridor. I have lived in Groveland for for 44 years, a life-long resident of Tuolumne County, and a third generation native of Tuolumne County.

As far as I'm concerned, our Community 'South of the River' problems and concerns have never been a priority in the eyes of our Tuolumne County Powers that be, except for whatever is deemed a profit making development that goes into the Coffers of Tuolumne County, and does nothing for the Groveland and Big Oak Flat communities. We are basically ignored by Tuolumne County government, and always have been.

It will bring jobs to Groveland? In my 44 years of living here, and watching both Evergreen and Rush Creek become large developments, what has happened, and continues to happen, is only the lower echelons of our community are hired, for kitchen jobs or housekeeping jobs, the low paying jobs, not managerial or higher paying jobs. The high paying jobs are brought from outside.

Other concerns for both Terra Vi and Under Canvas are these:

Highway 120 is, and never has been, a road designed to handle the amount of traffic that we have now. It's a very dangerous road, ONLY two lanes, with many curves, blind corners, and tourists THAT DO NOT KNOW HOW TO DRIVE A MOUNTAIN ROAD. I invite anyone to take their life in their hands in the summer tourist season to drive this road just 3 miles to work and back. I can't even count how many times I have had to avoid a tourist passing another car on a blind corner, double yellow line.
Just last week, I was doing the speed limit of 55, and had a man pass me on a double yellow, blind corner, with a car in the opposite lane that was not visible until the last second, I had to slam on my brakes to let him in, he almost hit my vehicle and the car coming in the opposite direction. It was so close, I followed him to the local gas station and gave him a piece of my mind. It had scared him too, he was shaking, and very apologetic. Definitely not a local. These close calls happen to me on a regular basis. I'm serious. Please research the horrendous accidents and deaths on New and Old Priest Grade, and also all of the 120 Corridor.

I hate trash! There is no respect from tourists for the beauty of our area. I have picked up many bags of vomit, diapers, and yes, even used feminine products along our highway. The worst is Rainbow Pool. I have picked up countless bags of trash, and have paid for, myself, at the dump. Within a week of the high tourist season, it's all back, and even worse than the week before.
Next is the fire danger. There is no common sense for people when it comes to having a campfire, or throwing a cigarette out the window of their car. I've spent my entire adult life working in our forest.

I have put out many, many campfires burning in the forest here, in places where there is no campground, just some city folk who drive out a dirt road, set up camp, and leave an unattended campfire, and all their trash behind! Now, you are going to let a company with canvas tents, and wood stoves (!) with a pickup truck and 125 gallon water tank onsite to put out any fires? You might as well have all the male employees go out and urinate on it, that would be more effective.

Emergency Services. It is a 30 plus minute drive on a good day, with no traffic, for the nearest ambulance, and first responders. It is also over a hour and a half drive to the nearest hospital. I would not want to wait that long for myself or my family, to get urgent care, would you? A Helipad is going to help? Good luck with that, it's still not just minutes from the nearest large Trauma Center, with nearly an hour for a Helicopter trip from a Modesto Hospital and back.

Another problem in our little community is housing. It is nearly impossible to find a rental here. A lot of vacation homes that were previously rented out to individuals and families are not available, as all of them are now either AirBnBs or occupied by their owners who have moved up here to get away from cities, because, for now, they can work remotely. Where are the employees that are brought in from out of town going to live?

The EIR report is so flawed, having lived here 44 years, I know where the wildlife trails are, where they go to drink, forage, and winter. One trail leads from Yosemite along the Middle and South Forks to the Tuolumne River Canyon, nearby these proposed developments. I don't believe that there will be no impact on Wildlife from more people, more cars, more danger from wildfires, as well as other statements that were made in the report about water quality, sewage, etc. that was in the EIR.

I am so opposed to these projects, because they will seriously impact the beauty, and the non-commercialism of our area. Ours is the last entrance into Yosemite that hasn't been turned into a city with Fast Food, hotel chains, and huge resorts. Our town is a community of small gift shops, locally owned mom and pop restaurants, and hotels, with all the problems of small businesses with the pandemic, let them recover! Allowing these already rich corporations to come here, and put our small businesses even further from recovery, is absolutely ridiculous! These Corporations don't need more business, they already have enough! Terra Vi is based in Southern California, but owned by a Chinese corporation. These huge resorts, and all the I'll that goes with them, do not belong on the 120 corridor.

Please, don't turn us into Oakhurst, or Sonora! We are a tiny, close knit community, with no stoplights, and many of us would like it to stay that way. You all should consider the opinions of your constituents, and not how much money you are going to make. Why is it always about the money? For once, let's forget about dollar signs and keep Big Business out of this beautiful community. If you want these Corporations taking over, and the County needs the revenue, put them up 108, where it is already over commercialized! Please.

We still need our wild places in this part of the State of California. Let people enjoy the wildness of our beautiful home, without all this commercialization! There are many, many locals who agree with me, I am not just speaking for myself. We don't need it, and don't want it! Once you start developing these commercial places, others will follow, and impact the beauty of Groveland and the Highway 120 corridor. Please, leave one, just one, place that has charm, ambiance of the old days, and wildness, without a McDonalds or Taco Bell on every corner. It's why we live here. There aren't many places like this left.

Thank you for your consideration of the concerns of many locals, myself included.

Sincerely,
Suzanne Ctibor,
Friends and Family
Dear Supervisors,

I am writing to voice my concerns and opposition to both the Under Canvas and Terra Vi Lodge projects that are being proposed in the Sawmill Mountain and Hardin Flat areas off of Highway 120.

My family and I have been visiting this area for over 25 years and very much appreciate the preserved environment of Sawmill Mountain. We have always used a “tread lightly” approach when visiting this special part of California. As we have seen the many changes in the area over the years we believe that this fragile ecosystem will not be able to sustain these two developments as currently planned. The additional tourist population and their vehicles bring a significant increase in fire danger to an area that has already suffered immensely. The current level of emergency services in the area are not adequately prepared to take on such a large growth in visitors, leaving current residents at risk of being underserved.

Sawmill Mountain and Hardin Flats are not the proper locations for these planned developments. The lack of water and sewer services in this area should be enough reason alone to consider moving these projects closer to existing built communities where this infrastructure is already in place and is more easily expanded. As we see the continuing depletion of the natural water table in the area, these two developments will exponentially draw from an already under pressure resource. Stating that they will collect and store rainfall is not a sustainable or guaranteed solution to the lack of available water in the area.

I am also concerned with the well being of the existing businesses and lodges that currently serve the tourists. Is there really a need to add more tourist housing in the area? What will the financial ramifications be to the existing businesses once two more large developments open? I believe that there are not enough visitors to sustain all of the current and planned developments at once. This is definitely a case where more is not better. It would be a huge blight to the area if the proposed lodgings could not financially survive, leaving this magnificent gateway to Yosemite filled with abandoned hotels.

I appreciate your time in both reading my concerns and reviewing the plans for these projects with a discerning eye. The future of this sensitive environment and community should not be taken lightly.

Regards,
Eric Einwiler
Quincy Yaley

From: Heather Ryan  
Sent: Monday, December 21, 2020 9:31 AM  
To: Cody Nesper; Quincy Yaley  
Cc: Natalie Rizzi  
Subject: FW: Terra-Vi Project

Forwarding to Board Members on Bcc, this comment was submitted past the deadline.

Sincerely,

Heather Ryan
Board Clerk
Tuolumne County Board of Supervisors
Main Line: (209) 533-5521
E: HRyan@co.tuolumne.ca.us
https://www.tuolumnecounty.ca.gov

From: jen gardella <jengardella75@gmail.com>  
Sent: Saturday, December 19, 2020 2:23 PM  
To: Heather Ryan <HRyan@co.tuolumne.ca.us>  
Subject: Terra-Vi Project

The repercussions of this project are enormous!!! Everyone already has Rush Creek less than 5 miles from Sawmill Mt. Road! We long term land owners need to be heard and valued. We value our water tables, we value our privacy, we value the silence and the bright stars in a black sky! No lights or sounds or pollution!!!! We also value the first responders who will be burdened and resources stretch to the max!

WE SURVIVED THE RIM FIRE!!!!!!! WE FEAR THE REAL LIABILITIES THIS PROJECT WILL BRING.

We vote NO to Terra V!!! Not the right spot for this project.

Daniel and Jennifer Gardella  
50 YEARS  
LAND OWNERS