

1 EUGENE S. WILSON, ESQ. (107104)
2 Law Office of Eugene Wilson
3 3502 Tanager Avenue
4 Davis, California 95616-7531
5 Phone: 530-756-6141
6 Facsimile: 530-756-5930

7 Attorney for California Clean Energy Committee

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

DEC 21 2016

JAKE CHATTERS
EXECUTIVE OFFICER & CLERK
By: C. Lester, Deputy

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

10 CALIFORNIA CLEAN ENERGY)
11 COMMITTEE, a California nonprofit)
12 corporation,)

13 Petitioner,)

14 v.)

15 COUNTY OF PLACER, a political)
16 subdivision of the State of California; and)
17 DOES 1-50, inclusive,)

18 Respondents.)

19 KILA TAHOE, LLC, a limited liability)
20 company; and DOES 51-100, inclusive,)

21 Real Parties in Interest.)

CASE NUMBER **SCV 0038805**

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF PURSUANT TO THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

[CEQA ACTION]

22 Petitioner California Clean Energy Committee (CCEC), by and through its attorney,
23 alleges as follows:

24 GENERAL ALLEGATIONS

25 1. Respondent County of Placer is a political subdivision of the State of California. The
26 project described herein is the Placer County Tahoe Basin Area Plan (Area Plan or project), which is
27 intended to constitute the general plan for the portion of Placer County that is located within the
28 Lake Tahoe Basin (project area) pursuant to Government Code section 65300. The project area

1 consists of approximately 72.1 square miles and includes the unincorporated communities of
2 California North Stateline, Kings Beach, Tahoe Vista, Carnelian Bay, Dollar Point, Tahoe City,
3 Sunnyside, Homewood, and Tahoma.

4 2. Placer County is the primary agency responsible under California law for the Area
5 Plan and as such is the lead agency under the California Environmental Quality Act (CEQA)
6 responsible for preparing the environmental impact report for the Area Plan, addressing the existing
7 environmental conditions in the project area, analyzing the impact of the Area Plan on existing
8 environmental conditions, discussing alternatives to the Area Plan, and identifying and designing
9 mitigation for the significant environmental impacts resulting from the Area Plan.

10 3. The Area Plan contains a complete program of updated policies, implementing
11 regulations, a land use diagram, and a zoning map. The Area Plan is intended to implement the Lake
12 Tahoe Regional Plan, adopted by the Tahoe Regional Planning Agency (TRPA) in December, 2012.
13 A key objective of the Area Plan is to promote environmentally-beneficial redevelopment and
14 revitalization within the town centers of Kings Beach and Tahoe City and to preserve the character
15 of established residential areas outside the town centers. To that end the plan offers incentives to
16 encourage redevelopment within the town centers in exchange for environmental benefits such as
17 improved storm water control, public transit facilities, and restoration of stream environment zones.

18 4. The Area Plan identifies two "opportunity sites" for future environmental
19 redevelopment, one in Kings Beach and one in Tahoe City. The Kings Beach Center is a conceptual
20 plan for a 4-acre mixed-use project to be located on parcels owned by Placer County along the south
21 side of North Lake Tahoe Boulevard. The redevelopment site in Tahoe City is the Tahoe City Lodge
22 project, which has been proposed by Kila Tahoe, LLC, a private developer. That project entails
23 redevelopment of the old Henrikson site with a 118-unit lodge and renovation of the clubhouse
24 building at the Tahoe City Golf Course.

25 5. CCEC is a nonprofit corporation incorporated in 2008 under the laws of the State of
26 California maintaining its principal place of business in the City of Davis, California. The
27 corporation advocates on behalf of the general public throughout the State of California for energy
28 conservation, the development of clean energy resources, reduced greenhouse gas emissions,

1 sustainable transportation, smart growth, and related conservation issues.

2 6. CCEC has been advocating on behalf of the general public for environmental
3 conservation in the Tahoe Basin since 2011. In December, 2015, CCEC prevailed before the Third
4 District Court of Appeal over the County of Placer in CEQA litigation over Placer County's failure
5 to analyze the wildfire evacuation impacts resulting from the Homewood Mountain Resort Ski Area
6 Master Plan.

7 7. Forty-five individuals in the Lake Tahoe North Shore area have joined CCEC's
8 request that the Placer County Board of Supervisors require robust energy conservation, improved
9 traffic mitigation, and environmental stewardship in the Tahoe Basin Area Plan. The Committee's
10 supporters will be directly and adversely impacted by the implementation of the Area Plan and by
11 the failure of the final environmental impact report to adequately evaluate the environmental impacts
12 of the proposed project and the county's failure to propose feasible mitigation as required pursuant to
13 CEQA. Petitioner brings this action as a representative of the general public that will be affected by
14 the project.

15 8. Kila Tahoe, LLC (Kila) is a limited liability company, and it is the project applicant
16 and owner of the site for the Tahoe City Lodge project. Although a combined EIR was prepared, the
17 Tahoe City Lodge project was the subject of a separate, stand-alone project application and was
18 approved by the Board of Supervisors through a separate set of actions from the Area Plan. The
19 subject of this proceeding is the Area Plan.

20 9. Without a representative organization such as CCEC, it would be impractical and
21 uneconomic for individual members of the public to enforce CEQA with respect to the project
22 discussed herein. Without a representative action such as this one, the violations of CEQA described
23 in this petition would remain immune from judicial review. No governmental agency is prepared to
24 evaluate these environmental issues or to enforce the public rights that are at stake.

25 10. Venue for this action is proper in this court because the environmental impacts of the
26 actions alleged herein will cause direct and substantial impacts within Placer County and because the
27 principal office of the respondent agency is situated within Placer County.

28 11. Concurrently herewith petitioner is filing a declaration of prior service by mail upon

1 Placer County of written notice of intent to commence this action in compliance with the
2 requirements of Public Resources Code section 21167.5.

3 12. Petitioner is further filing and serving herewith its notice of election to prepare the
4 administrative record in this matter pursuant to Public Resources Code section 21167.6.

5 13. The true names and capacities of the respondents and real parties in interest sued
6 herein under California Code of Civil Procedure section 474 as Does 1 through 100, inclusive, are
7 presently unknown to petitioner. Does 1 through 100 include agents of the county, state, and federal
8 government who are responsible in some manner for the conduct described herein and real parties in
9 interest presently unknown to the petitioner who claim some legal or equitable interest in the project
10 who petitioner therefore sues by such fictitious names. Petitioner will amend this petition to include
11 these Doe respondents' true names and capacities when they are ascertained. Each of the fictitiously-
12 named respondents is responsible in some manner for the conduct alleged herein.

13 14. Petitioner's action herein will result in the enforcement of important rights affecting
14 the public interest and confer substantial benefits on the general public. The necessity and financial
15 burden of private enforcement justify an award of attorney fees pursuant to Code of Civil Procedure
16 section 1021.5.

17
18 PROCEDURAL BACKGROUND

19 15. The county published a Draft Environmental Impact Report/Environmental Impact
20 Statement along with a Public Review Draft Area Plan on June 15, 2016, and provided a 60-day
21 public review period. CCEC submitted extensive written comments on the Area Plan and the draft
22 EIR on August 15, 2016. On November 4, 2016, the county released the Final Environmental
23 Impact Report/Environmental Impact Statement (EIR), which consisted of a series of amendments to
24 the draft EIR, copies of comment letters and responses, and a mitigation monitoring and reporting
25 program. On December 1, 2016, CCEC submitted written comments on the final EIR along with
26 supporting documents and supporting petitions signed by local residents.

27 16. On December 6, 2016, the Placer County Board of Supervisors held a public hearing
28 on the project and received testimony from the public. At that time the Board took action to approve

1 the project by a vote of 5 to 0 including the following actions:

- 2 a. Adopted a resolution certifying the Placer County Tahoe Basin Area Plan and Tahoe
3 City Lodge Project Final Environmental Impact Report and Errata, adopting Findings
4 of Fact and Statement of Overriding Considerations, adopting a Mitigation
5 Monitoring Reporting Program and Errata, and adopting a Statement of Overriding
6 Considerations;
- 7 b. Adopted a resolution approving the Placer County Tahoe Basin Area Plan, dated
8 November, 2016, and errata;
- 9 c. Adopted an ordinance to approve the Tahoe Basin Area Plan Implementing
10 Regulations and Errata; and
- 11 d. Adopted an ordinance to rezone properties within the Tahoe Basin Area Plan.

12 17. A Notice of Determination for the project was filed and posted by the County Clerk
13 of Placer County on December 6, 2016.

14 18. Despite the extensive comments received, the county prepared and relied on an EIR
15 that falls well below the minimum legal standards. If the respondent agencies are allowed to
16 proceed with the project, irreparable harm will result to the environment and the public. No
17 adequate remedy, other than that prayed for herein, exists by which the rights of the petitioner and
18 the class it represents may be protected.

19 19. Petitioner has exhausted all administrative remedies by submitting written comments
20 on the project requesting compliance with CEQA and a full and adequate environmental review. All
21 issues raised in this petition were raised with the respondent agencies by CCEC or by other members
22 of the public or public agencies prior to the certification of the EIR. Respondent has made its final
23 decision. This petition is timely filed in accordance with Public Resources Code section 21167 and
24 CEQA Guidelines section 15112.

25 26 GREENHOUSE GAS MITIGATION

27 20. Climate Impact. The final EIR concluded that the proposed Area Plan would not
28 meet California greenhouse gas (GHG) reduction goals for 2020 under Health & Safety Code §§

1 38500 et seq. and further that the Area Plan did not provide a trajectory to meet California's 2030
2 and 2050 climate targets under Executive Order B-30-15 or Executive Order S-3-05. (DEIR at 12-5,
3 12-6, 12-19.) Consequently, the County concluded that the GHG emissions impact of the project
4 would be significant.

5 21. Climate Mitigation. The County described and adopted Mitigation Measure 12-1 to
6 address the climate impacts of the Area Plan. Measure 12-1 would require new construction to
7 implement, if feasible, some of the measures listed 12-1 or mitigation provided by the Placer County
8 Air Pollution Control District in Appendix F-1 of the district's CEQA Handbook. Measure 12-1
9 further proposes, as feasible, to "initiate a funding program to apply these measures to existing
10 facilities within the Plan Area." (DEIR at 2-34.) In response to CCEC's written comments, County
11 staff introduced at the December 6 hearing, and the Board of Supervisors then adopted, a document
12 entitled "Errata," which amended Mitigation Measure 12-1--

13 a. Measure 12-1 was amended to require that, if feasible, the mitigation would reduce
14 GHG emissions "to achieve goals promulgated by the California Air Resources Board
15 (ARB) to reduce GHG emissions to 40 percent below 1990 levels by 2030, and other,
16 as-yet unknown future regulations."

17 b. Measure 12-1 was further amended by adding the GHG mitigation measures
18 proposed by CCEC to the previously-proposed list along with the statement that these
19 would be deemed "additional measures that may be implemented to demonstrate
20 compliance with applicable GHG emissions targets."

21 (DEIR 2-34.) The Board of Supervisors went on to find that Measure 12-1 would not meet
22 California's GHG reduction goals and that no additional feasible mitigation measures had been
23 identified to address the impact. (Findings at 20.) According to the findings, measure 12-1 would
24 reduce GHG emissions but the climate impact would remain significant and unavoidable because
25 "the extent of this additional reduction depends on market conditions, available technology, and
26 general participation rates, and does not guarantee that Area Plan emissions would meet California
27 GHG reduction goals." (*Ibid.*)

28 22. Exhaustion. In its correspondence of August 15, 2016, CCEC informed the County in

1 detail concerning multiple recognized measures that the County could implement to reduce the
2 significant impacts of the Area Plan including developing bicycle system infrastructure, diverting
3 organic waste from the landfill, purchasing carbon offsets, adopting a car-free vacation program,
4 encouraging the use of ground-source heat pumps, requiring Energy Star® compliance, solar energy,
5 subsidizing transit, transportation demand management, parking reform, and workforce housing. On
6 December 1, 2016, CCEC provided the County additional information concerning mitigation options
7 and informed the County that its GHG mitigation was ineffective and unenforceable. CCEC insisted
8 that the County "describe feasible mitigation measures that are available to avoid or substantially
9 lessen the greenhouse gas impacts of the project" and objected to the County's failure to identify and
10 adopt specific programs to mitigate climate impacts.

11 23. Failure to Describe and Focus on Feasible Mitigation. Mitigation Measure 12-1, as
12 adopted, deferred all determination of what would constitute feasible mitigation for the Area Plan's
13 climate impacts. Measure 12-1 provides that new construction will be required to implement
14 "feasible" measures, but it does not identify what constitutes feasible mitigation. The EIR does not
15 determine whether any of the measures suggested are feasible or not. The California Legislature has
16 determined that climate change poses a serious threat to California. When Placer County determined
17 that the Area Plan would have a significant climate impact, that determination triggered a mandatory
18 duty under the statute for the County to "describe feasible mitigation measures" to avoid or minimize
19 the project's significant contribution to climate change. (Pub. Resources Code, § 21002; Cal. Code
20 Regs., tit. 14, § 15126.4(a).) The County failed to describe and failed to focus on feasible mitigation
21 for climate impacts of the Area Plan and in so doing failed to comply with the information disclosure
22 provisions of CEQA.

23 24. Failure to Discuss Mitigation. The CEQA Guidelines require that appropriate
24 mitigation measures "shall be discussed when relevant." (Cal. Code Regs., tit. 14, §
25 15126.4(a)(1)(B).) In particular they require that "energy conservation measures . . . shall be
26 discussed when relevant." (*Ibid.*) The CEQA Guidelines also require that "[w]here several measures
27 are available to mitigate an impact, each should be discussed and the basis for selecting a particular
28 measure should be identified." (Cal. Code Regs., tit. 14, § 15126.4(a)(1)(B).) The County listed a

1 number of possible measures to mitigate the climate impacts, many of which were energy
2 conservation measures. However, the County failed to analyze or discuss the measures. The EIR
3 contained no discussion of the nature of the listed measures. There is no discussion of how the
4 measures would be implemented. There was no discussion of the relative efficiency of the different
5 measures. There is no discussion of the cost of the measures. There was no discussion of ancillary
6 benefits such as reducing air quality emissions or economic development. There was no discussion
7 of the maturity of the technologies. There was no discussion of social or legal obstacles that might
8 arise in implementing them. The additional mitigation recommended by CCEC was dumped into the
9 list of mitigation to be considered at a later date without discussion. Then the County simply
10 concluded that the extent of the emission reduction was unknown and that the impact was therefore
11 significant and could not be mitigated. That process does not meet the requirement of CEQA that
12 mitigation measures be discussed. Moreover, it does not represent a good faith effort by the County
13 to find out and disclose all that it reasonable could. (Cal. Code Regs., tit. 14, § 15145.) A lead
14 agency commits a prejudicial abuse of discretion under CEQA when it omits information from an
15 EIR that precludes informed decision-making and public participation. (Pub. Resources Code, §
16 21005(a).) The County violated the information disclosure provisions of CEQA and prejudicially
17 abused its discretion by failing to discuss the climate mitigation and by failing to identify the reasons
18 for selecting any particular measure.

19 25. Public Excluded from Mitigation Discussion. The County's process effectively
20 excluded the public from the discussion concerning feasible climate mitigation. The County
21 deferred that discussion to a closed-door meeting that it would conduct with the developer at a later
22 date. The developer would then present its proposal to County staff in the absence of the public.
23 The County thereby avoids the need to support its decision on the feasibility of mitigation with
24 substantial evidence, eliminates public oversight, and avoids the potential of judicial review. The
25 public was excluded from the vital discussion about what would constitute feasible mitigation for
26 climate impacts. Such a process is unlawful under CEQA and constitutes a prejudicial abuse of
27 discretion.

28 26. Failure to Determine Climate Impact of Project. In addition to being denied the right

1 to participate in the debate over feasible climate mitigation, the general public and elected officials
2 were deprived of crucial information concerning the climate impacts of the Area Plan. No
3 decisionmaker or member of the public was ever informed what the ultimate climate impacts of the
4 project, as approved, are expected to be. The County concluded that the extent of mitigation that
5 would result was unknown. The County made no effort to provide information concerning the
6 efficacy of the proposed mitigation. Consequently the EIR did not provide decisionmakers with
7 sufficient analysis to intelligently consider the environmental consequences of the project. (Pub.
8 Resources Code, § 21005(a); Cal. Code Regs., tit. 14, § 15151.) The core purposes of CEQA--
9 public transparency, public involvement, informed decisionmakers, and requiring feasible and
10 enforceable mitigation--were utterly circumvented. The County failed to proceed in the manner
11 required by law and prejudicially abused its discretion.

12 27. Speculative and Unenforceable Mitigation. The County cannot be compelled to
13 mitigate the climate impacts of the Area Plan under measure 12-1 as adopted. As adopted by the
14 County, measure 12-1 is too vague and speculative to be effectively enforced and the County. The
15 County failed to commit to any reduction in GHG emissions. Although the variety of strategies
16 listed in measure 12-1 could become mitigation, the County has expressly not determined whether
17 the measures are feasible. "Feasible" under CEQA means capable of being accomplished in a
18 successful manner within a reasonable period of time, taking into account economic, environmental,
19 legal, social and technological factors. Feasibility encompasses "desirability" based on a balancing
20 of the relevant factors. The County points out in its resolution certifying the final EIR that the lead
21 agency may conclude that mitigation is "impracticable or undesirable from a policy standpoint" and
22 reject it as infeasible for that reason. (Findings at 14.) The CEQA Findings of Fact expressly
23 conclude that the extent of mitigation to be provided by measure 12-1 is unknown, that the
24 mitigation would vary under differing future conditions, and that it was not determined whether
25 future targets would be met. (Findings at 20.) The County has not committed to implementing any
26 level of mitigation under Measure 12-1, and it could exercise its discretion to find any or all of
27 measure 12-1 infeasible. Consequently, the measure is unenforceable. The County has abused its
28 discretion by failing to identify enforceable mitigation for climate impacts. ((Pub. Resources Code, §

1 21002; Cal. Code Regs., tit. 14, § 15126.4(a).)

2 28. Existing Facilities Plan. Measure 12-1 provides for initiating a program to apply
3 GHG-reduction measures to existing facilities if it is feasible to do so. The entire explanation of this
4 program consists of the words, "Also, initiate a funding program to apply these measures to existing
5 facilities within the plan area as feasible." This does not describe feasible mitigation because it
6 remains unknown whether the County believes this to be feasible mitigation. Further, the County is
7 under no time limit and can wait indefinitely to implement the program. The EIR contains no
8 discussion of what this measure would be. There is no evidence to support the County's finding that
9 this measure would reduce GHG emissions.

10 29. No Justification for Deferred Formulation of Mitigation. Measure 12-1 defers the
11 formulation of mitigation by providing a list of "recommended measures" that would apply to new
12 construction under the Area Plan if deemed "feasible." There was no justification for the County
13 deferring the formulation of the climate mitigation. Numerous mitigation measures were available
14 which the County failed to analyze and failed to adopt. There is no evidence that formulating the
15 means of mitigating climate impacts was infeasible or impractical. The formulation of mitigation
16 measures should not be deferred to some future time if it is practical to formulate mitigation during
17 the planning process. (Cal. Code Regs., tit. 14, § 15126.4(a)(1)(B).)

18 30. Unsupported and Unknown Performance Standard. Measure 12-1 provides that new
19 construction would be required to implement feasible GHG mitigation sufficient to achieve the goals
20 promulgated by the California Air Resources Board (CARB) to reduce GHG emissions to 40 percent
21 below 1990 levels by 2030 and "other as-yet unknown future regulations." That provision does not
22 constitute a "performance standard" under CEQA. First, the EIR concluded that the impact was
23 significant because the Area Plan would not meet either the 2030 or the 2050 state targets, yet the
24 mitigation is limited only to meeting the 2030 target. The performance standard has been designed
25 so that feasible mitigation would be abandoned before emissions had been reduced to less than
26 significant. Second, projects under the Area Plan are not required to attain 40 percent below 1990
27 unless that degree of mitigation is deemed feasible. There is no commitment to achieve 40 percent
28 below 1990 levels and consequently there is no performance standard. The degree of mitigation is

1 subject to the future discretion of County staff. Third, 40 percent below 1990 does not constitute a
2 "performance standard" under CEQA because it leaves the degree of mitigation subject to change by
3 "other as-yet unknown future regulations." What future regulations would apply and what they
4 would require is unknown. The level of performance is open-ended and therefore does not constitute
5 a performance standard under CEQA. Fourth, there is no substantial evidence that using a statewide
6 standard of 40 percent below 1990 levels would mitigate the climate impacts of new projects in the
7 Tahoe Basin. CARB's 2030 statewide target has no relation to what should be required from
8 individual new construction projects in the Tahoe Basin to mitigate climate change impacts. The
9 County has abused its discretion by adopting an unsupported, undefined, speculative, arbitrary and
10 capricious standard for climate mitigation.

11 31. Failure to Find Mitigation Addressed to Be Feasible or Infeasible. When a lead
12 agency identifies mitigation for a significant environmental impact in the final EIR and then rejects
13 that mitigation, CEQA requires that the agency make a finding that identifies the mitigation
14 measures that are infeasible, explains why those measures were deemed infeasible, and supports that
15 determination with substantial evidence. (Cal. Code Regs., tit. 14, § 15091(a), (b), (c).) The
16 County's procedure was to avoid that responsibility by listing all the potential climate mitigation,
17 both feasible and infeasible, in a single measure and then deferring to some unknown date the
18 determination of which of those measures is feasible and which is not. CEQA requires the lead
19 agency to determine whether or not mitigation measures listed in the EIR are feasible. Moreover,
20 the County's ultimate finding that the GHG impacts are unavoidable is unsupported and speculative
21 because nothing demonstrates that these measures cannot feasibly reduce the climate impacts of the
22 project to less than significant.

23 24 BICYCLE SYSTEM INFRASTRUCTURE

25 32. Mitigation by Building Cycling Infrastructure. The Tahoe Regional Planning Agency
26 (TRPA) bicycle infrastructure plan--"Linking Tahoe: Active Transportation Plan" (Active
27 Transportation Plan)--identifies numerous unfunded bicycle projects in the plan area that are
28 intended to reduce vehicle miles traveled (VMT) in the Basin. Similarly, the Lake Tahoe Region

1 Bicycle and Pedestrian Plan (LTRBPP) points out that vehicle miles travelled and GHG emissions
2 can be reduced by implementing bicycle facilities. Construction of the full bike/pedestrian network
3 under the LTRBPP is expected to reduce VMT by 8,500 miles per day in summer saving
4 approximately 1,400 metric tons of CO2 emissions per year. The LTRBPP recommends that
5 funding for bicycle improvements in the region "include bicycle and pedestrian projects in local
6 traffic impact/mitigation fee programs."

7 33. Exhaustion. Through its comment letters, CCEC notified the County that GHG
8 impacts should be mitigated by committing funding to some of the numerous bicycle infrastructure
9 projects that have been designed for North Lake Tahoe that would increase bicycle usage and offset
10 the Area Plan's GHG emissions. The County responded by asserting that the County's Capital
11 Improvement Program (CIP) for the Tahoe Region Benefit District includes funding for bicycle
12 network improvements. That was misleading. The CIP is almost exclusively devoted to roadway
13 expansion. The major bicycle infrastructure expansion projects that are awaiting funding in the
14 project area are not referenced in the CIP. Second, the County responded that the Tahoe Regional
15 Planning Agency (TRPA) bicycle infrastructure plan--"Linking Tahoe: Active Transportation Plan"
16 (Active Transportation Plan)--would provide funding necessary to construct the bicycle
17 infrastructure. That was also misleading. The Active Transportation Plan is only a plan and the
18 bicycle improvements identified in it are almost entirely unfunded.

19 34. CEQA Requirements. The County prejudicially abused its discretion by failing to
20 describe and adopt feasible mitigation for the significant GHG, air quality, and transportation
21 impacts of the Area Plan. CEQA prohibits public agencies from approving projects as proposed if
22 there are feasible alternatives or mitigation measures available that would substantially lessen the
23 significant environmental effects of the project. (Pub. Resources Code, § 21002.) The EIR failed to
24 describe feasible mitigation that would minimize the significant transportation and GHG impacts of
25 the project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1).) The County's finding that no additional
26 feasible mitigation measures had been identified was misleading and was not supported by
27 substantial evidence. The findings fail to describe the specific reasons for rejecting the identified
28 mitigation measures.

1
2 CAR-FREE VACATIONS

3 35. Car-Free Vacations. CCEC advised the County to mitigate transportation and GHG
4 impacts by implementing a cooperative program to promote car-free vacations. A significant portion
5 of vehicle trips in the North Tahoe area are the result of tourist visits. CCEC recommend adopting a
6 "Car-Free Tahoe" marketing program modeled on the successful Car-Free Santa Barbara program.
7 Such a program would involve a cooperative marketing program set up with resorts, lodging,
8 restaurants, and outdoor activity vendors around the Tahoe Basin who would offer specials to car-
9 free travelers. A web site would be set up that markets car-free ways to enjoy North Lake Tahoe.
10 Visitors could access Lake Tahoe by comfortable and energy-efficient Amtrak, which provides
11 regular passenger rail service to Truckee. Every tourist that elects to travel by Amtrak does not
12 bring a car to Tahoe and eliminates virtually all of her GHG emissions, air quality impacts, and
13 transportation impacts. Being car-free is a relief to many people. Funding for the program should
14 come from a variety of sources including the private sector beneficiaries, Placer County APCD,
15 Tahoe Truckee Area Regional Transit, local organizations, TRPA, and real estate development
16 impact fees.

17 36. County Response. The County responded that car-free vacations cannot be promoted
18 until there is more bus service available. This is speculative, unsupported, and clearly erroneous.
19 Many people visit Lake Tahoe already without taking their cars. The county's position is equivalent
20 to saying that people cannot fly to a vacation at Lake Tahoe because there is not enough bus service
21 to get around at Tahoe. People who land at Reno-Tahoe International rely on taking a shuttle to
22 Lake Tahoe. Those travelers do not deem air travel to Lake Tahoe impossible because the bus
23 service at Lake Tahoe is not more frequent. They simply use a shuttle to get to and from their
24 destination. Further, not every Tahoe vacation visitor wants to drive around the region, fight traffic
25 jams, and search for parking. Many people are satisfied to stay at a resort like Squaw Valley or
26 Northstar for a few nights and do not need to travel anyplace. Many North Lake Tahoe resorts are
27 self-contained with lodging, shopping, recreation, and dining all on site in walking distance. All that
28 is needed to make a car-free vacation is a shuttle stop at the Amtrak station and a joint-marketing

1 program.

2 37. CEQA Requirements. The County prejudicially abused its discretion by failing to
3 describe and adopt feasible mitigation for the significant GHG, air quality, and transportation
4 impacts. CEQA prohibits public agencies from approving projects as proposed if there are feasible
5 mitigation measures available that would substantially lessen the significant environmental effects of
6 the project. (Pub. Resources Code, § 21002.) The County prejudicially abused its discretion by
7 failing to describe in the EIR feasible mitigation that would minimize the significant transportation,
8 air quality, and GHG impacts of the project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1).) The
9 County's finding that no additional feasible mitigation measures had been identified was misleading
10 and not supported by substantial evidence. The findings fail to describe the specific reasons for
11 rejecting identified mitigation measures.

12 13 DIVERTING ORGANIC WASTE

14 38. CCEC Comment Letter. The final EIR reported that methane or CH₄ is a highly-
15 potent greenhouse gas that results from the anaerobic decomposition of organic substances in
16 landfills. The final EIR projects 4,378 metric tons of GHG emissions annually under the Area Plan
17 resulting from the disposition of municipal solid waste. The TRPA Sustainability Action Plan
18 recommends reducing solid waste disposal as a strategy for reducing GHG emissions. In its August
19 15, 2016, comment letter, CCEC notified the County that GHG emissions from landfilling organic
20 waste could be mitigated by implementing a "green bag" or similar program for the plan area, similar
21 to the popular green bag program operated by Tahoe Truckee Sierra Disposal (TTSD). TTSD is the
22 waste hauler for the Town of Truckee. According to the Town of Truckee, its residents purchase
23 special green bags for yard trimmings. Four green bags will be picked up for free with the regularly-
24 scheduled residential refuse service. The green bags are then sorted out of the waste at the material
25 recovery facility (MRF) and the green waste is then sent to a biomass center to generate electricity or
26 is chipped and resold as ground cover. This process reduces the amount of green waste that enters
27 the landfill, reduces the amount of organic material decomposing in the landfill, and reduces landfill
28 gas emissions.

1 39. County's Response. The County responded that it had evaluated the green bag
2 program and chosen other programs intended to capture green waste which consist of refuse
3 customers renting a special dumpster or dropping off green waste at the MRF. Under the County's
4 current program, all the green waste that residents dispose of through their regularly-scheduled waste
5 refuse trucks is mixed with the general trash and land-filled. CCEC provided the County with
6 substantial evidence showing that GHG impacts could be mitigated in a cost-effective way by simply
7 expanding the green bag program that is already operating in Truckee. The County's EIR failed to
8 describe and discuss this mitigation. The County's finding that the mitigation for climate impacts to
9 less than significant is infeasible was clearly erroneous and unsupported. The County has abused its
10 discretion by failing to comply with the information disclosure requirements of CEQA and by failing
11 to adopt feasible mitigation for the significant adverse impacts of the project. The finding that no
12 additional feasible mitigation measures have been identified is not supported by substantial
13 evidence. The findings fail to describe the specific reasons for rejecting the identified mitigation
14 measures.

15
16 FURTHER GHG MITIGATION

17 40. Further GHG Mitigation Proposed. CCEC's comment letters notified the County that
18 it should address a number of additional potentially feasible measures to mitigate the GHG impacts
19 of the project--

- 20 a. Requiring the use forestry offsets or other types of carbon offsets to mitigate GHG
21 impacts.
- 22 b. Requiring new developments to demonstrate either achieving zero net energy, as
23 defined by the California Energy Commission, or otherwise achieve near-zero energy.
- 24 c. Establishing a program that provides a \$1000 subsidy per residence that implements
25 ground source heat pumps.
- 26 d. Requiring new developments to demonstrate that each new residence developed be
27 equipped with a minimum of one single-port electric vehicle charging station.
- 28 e. Requiring contributions to fund subsidies for the purchase of zero emission vehicles

1 as defined by the California Air Resources Board.

2 f. Requiring that parking areas be equipped with electric vehicle charging stations that
3 provide charging opportunities for an appropriate percentage of vehicles.

4 41. Amendment of Measure 12-1. The County prejudicially abused its discretion by
5 failing to adopt feasible mitigation for GHG, air quality, and transportation impacts. CEQA
6 prohibits public agencies from approving projects as proposed if there are feasible alternatives or
7 mitigation measures available that would substantially lessen the significant environmental effects of
8 the project. (Pub. Resources Code, § 21002.) The County prejudicially abused its discretion by
9 failing to describe in the EIR feasible mitigation that would minimize the significant transportation,
10 air quality, and GHG impacts of the project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1).) The
11 County's finding that no additional feasible mitigation measures had been identified was misleading
12 and not supported by substantial evidence. The findings fail to describe the specific reasons for
13 rejecting identified mitigation measures.

14
15 FAILURE TO RECIRCULATE

16 42. Recirculation Required. CEQA provides recirculation is required where a new
17 mitigation measure is added to the final EIR if the measure is feasible, considerably different from
18 mitigation already evaluated, would clearly lessen the project's significant impacts, and is not
19 adopted. (Pub. Resources Code, § 21092.1; Cal. Code Regs., tit. 14, § 15088.5(a).) The County
20 added many of the mitigation measures proposed by CCEC to measure 12-1 by way of the Errata
21 document. The Errata document was never circulated to the public but it was adopted at the
22 December 6, 2016, Board of Supervisors meeting. The CCEC-sponsored measures that were
23 inserted into the Errata document were considerably different from what the County had proposed as
24 mitigation, were feasible, and would clearly lessen the project's significant impacts. The County did
25 not adopt the measures. The County added them to the final EIR with the proviso that the County
26 would decide later whether the measures were feasible and whether they would be required or not.
27 The public never received copies of the Errata. The public had no opportunity to comment on the
28 additional mitigation that was added by the Errata document. Failing to recirculate the EIR

1 constituted a failure to comply with the procedural requirements of CEQA and a prejudicial abuse of
2 discretion.

3
4 FIRST CAUSE OF ACTION

5 (Failure to Comply with CEQA)

6 43. Petitioners incorporate by reference each and every allegation set forth above.

7 44. CEQA requires that lead agencies prepare an EIR that complies with the requirements
8 of the statute. The lead agency must also provide for public review and comment on the project and
9 associated environmental documentation. An EIR must provide sufficient environmental analysis
10 such that decision-makers can intelligently consider environmental consequences when acting on the
11 proposed project.

12 45. Respondent violated CEQA by certifying an EIR for the Area Plan that is inadequate
13 and fails to comply with CEQA and approving the project on that basis. Among other things,
14 respondent:

- 15 a. Failed to describe the project setting from a regional and local perspective and failed
16 to provide a consistent and appropriate environmental baseline for analysis of the
17 project's environmental impacts;
- 18 b. Failed to adequately identify and analyze the project's significant environmental
19 impacts including but not limited to the project's impacts on transportation, forest
20 loss, and energy conservation;
- 21 c. Failed to adequately analyze the significant cumulative impacts of the project;
- 22 d. Improperly deferred impact analysis and mitigation measures;
- 23 e. Failed to discuss potentially feasible mitigation measures and alternatives; and
- 24 f. Failed to adopt and make enforceable feasible mitigation for project impacts.

25 46. As a result of the foregoing defects, respondent prejudicially abused its discretion by
26 certifying an EIR that does not comply with CEQA and by approving the Area Plan in reliance
27 thereon. Accordingly, respondent's certification of the EIR and approval of the Area Plan must be
28 set aside.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

(Inadequate Findings)

47. Petitioner hereby incorporates by reference each and every allegation set forth above.

48. CEQA requires that a lead agency’s findings for the approval of a project be supported by substantial evidence in the administrative record. CEQA further requires that a lead agency provide an explanation of how evidence in the record supports the conclusions the agency has reached.

49. Respondent violated CEQA by adopting findings that are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to the following:

- a. The determination that certain impacts would be less than significant and/or that adopted mitigation measures would avoid or lessen the project’s significant effects on the environment;
- b. The determination that certain mitigation was infeasible; and
- c. The determination that overriding economic, legal, social, technological, or other benefits of the project outweighed its significant impacts on the environment.

50. As a result of the forgoing defects, respondent prejudicially abused its discretion by adopting findings that do not comply with the requirements of CEQA and approving the Area Plan in reliance thereon. Accordingly, the agency’s certification of the EIR and approval of the Area Plan must be set aside.

THIRD CAUSE OF ACTION

(Failure to Recirculate the EIR)

51. Petitioner hereby incorporates by reference each and every allegation set forth above.

52. CEQA requires that if significant new information is added to an EIR after a draft EIR is prepared, but before certification of the final EIR, the EIR must be recirculated for public review and comment.

1 53. Comments submitted to respondent after the draft EIR was circulated provided
2 significant new information within the meaning of Public Resources Code section 21092.1 and
3 CEQA Guidelines section 15088.5 including, but not limited to, information about greenhouse gas
4 emissions, transportation, energy conservation, and feasible mitigation for project impacts.

5 54. Despite the availability of this significant new information, respondent failed to
6 recirculate the EIR, or any portion of the EIR. As a result of respondent's failure to recirculate the
7 EIR, the public and other public agencies were deprived of any meaningful opportunity to review
8 and comment on the project, its substantial adverse environmental consequences, and the new
9 information regarding other unanalyzed environmental effects of the project.

10 55. Respondent's failure to recirculate the EIR is not supported by substantial evidence
11 and represents a failure to proceed in the manner required by law.

12 WHEREFORE, petitioner respectfully requests the following relief:

13 1. A peremptory writ of mandate commanding that:

- 14 a. Respondent vacate and set aside its certification of the EIR and all related Area Plan
15 approvals including the Mitigation Monitoring and Reporting Plan, Statement of
16 Overriding Considerations and findings;
- 17 b. Respondent withdraw the notice of determination;
- 18 c. Respondent prepare and circulate a revised EIR for public review and comment that
19 is in compliance with the requirements of CEQA; and
- 20 d. Respondent suspend all activity pursuant to the certification of the EIR and the
21 related Area Plan approvals that could result in any change or alteration to the
22 physical environment until it has taken all actions necessary to comply with CEQA.

23 2. Preliminary and permanent injunctions restraining respondent, its agents, employees,
24 contractors, consultants and all persons acting in concert with them, from undertaking any
25 construction or development, issuing any approvals or permits, or taking any other action to
26 implement in any way the approval of the Area Plan without full compliance with California law;

27 3. A declaration of the rights and duties of the parties hereto, including but not limited to
28 a declaratory judgment that prior to undertaking any action to carry out any aspect of the project,


1 respondent must prepare, circulate, and adopt a revised EIR in accordance with the requirements of
2 CEQA;

3 4. Petitioner's costs of suit and reasonable attorney fees; and

4 5. Such other relief as the court deems just and proper.

5 Dated: December 20, 2016

6
7 LAW OFFICE OF EUGENE WILSON


8 
9 Eugene S. Wilson, Esq.
10 Attorney for the California Clean Energy
11 Committee
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I am an officer of petitioner, California Clean Energy Committee, and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true of my personal knowledge except as to matters stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was signed on December 20, 2016, at Davis, California.


Eugene S. Wilson