

EIR For Martis Valley Project Near Lake Tahoe Rejected on Four Grounds But Wildfire Evacuation Analysis Complied with CEQA

In a lengthy opinion tackling several of CEQA's hot topics, a court of appeal has rejected the EIR for the Martis Valley West project, finding its Lake Tahoe water quality analysis, GHG and traffic mitigation measures, and energy analysis inadequate. *League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer*, 75 Cal.App.5th 63 (2022). The court upheld other EIR analyses - most notably the section analyzing wildfire evacuation - as well as the county's compliance with the Timberland Productivity Act. **Background**



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Air Quality Significance Threshold Upheld Plaintiffs alleged that although the development site was outside the jurisdiction of the Tahoe Regional Planning Agency (TRPA), the EIR should have used TRPA's vehicle miles traveled (VMT) significance threshold, or the science behind it, to analyze the impact of project-induced VMT on Lake Tahoe Basin air quality. The county instead applied the thresholds recommended by the Placer County Air Pollution Control District. The court found that although TRPA was a trustee agency under CEQA and the county was required to consider TRPA's views, the county was also entitled to select its own significance threshold if it was supported by substantial evidence. The court held that -- unlike in the 2021 case of *Sierra Watch v. Placer County* -- here the county identified and applied a significance threshold that was supported by

substantial evidence. **Lake Tahoe Water Quality Setting and Impact Analysis Rejected** The court agreed with plaintiffs that the EIR did not adequately describe Lake Tahoe's existing water quality or analyze another impact of project-induced VMT: roadway abrasives and sediments sent airborne by vehicle tires and then settling into Lake Tahoe. The court held that data on this issue provided after issuance of the final EIR was too late and that "it should not be difficult" for the county to correct this error. **Greenhouse Gas Mitigation Rejected** A GHG mitigation measure required future developers within the specific plan area to demonstrate that their projects would be consistent with then-current GHG emission targets adopted by the state, "where those targets, in compliance with the rule of *Newhall Ranch*, are based on 'a substantiated linkage' between the project and statewide emission reduction goals." Because such targets did not exist and might never exist, and the final EIR did not discuss how the mitigation measure would apply if such targets were never developed, the court agreed with plaintiffs that the mitigation measure violated CEQA. **Wildfire Evacuation Analysis Upheld** Plaintiffs alleged the EIR's analysis of the project's impact on emergency response and evacuation plans during a wildfire did not adequately address congestion on State Route 267 or possibilities such as an overturned boat trailer blocking that route. The court rejected this challenge, citing the project's creation of multiple evacuation and emergency access routes, a shelter-in-place location, and a detailed project-specific emergency plan. The court noted the role of emergency responders in managing evacuation along Route 267 and CEQA's principles that an EIR cannot be expected to address every possibility and is not required to use a worst-case analysis. **Forest Resources Cumulative Impact Analysis Upheld** Plaintiffs alleged that, contrary to the EIR's conclusion, tree loss from project development would represent a cumulatively considerable contribution to tree loss that was already occurring in the county due to climate change. The court rejected this argument because tree loss under the specific plan was consistent with the county's 1994 projection of regional forest loss, which the county had found to be less-than-significant. The court declined to consider future tree loss from climate change a cumulative "project." **Congestion Mitigation Measure Rejected** The court rejected the EIR's reliance on payment of a fee toward widening of Route 267 as mitigation for the project's impacts to traffic congestion, agreeing with plaintiffs that the EIR should have considered vehicle trip reduction measures such as transit subsidies as an alternative to Route 267 widening. The court's opinion does not mention *Citizens for Positive Growth & Preservation v. City of Sacramento*, the 2019 case holding that challenges to congestion-based traffic analysis became moot under CEQA as of December 2018. **Discussion of Impacts of Route 267 Widening Upheld** Plaintiffs also alleged that the mitigation measure requiring payments toward State Route 267 widening violated CEQA because that widening project itself had not yet undergone full CEQA review. The court rejected this claim on the ground that the county had already analyzed the widening at a program level and that the widening would undergo full CEQA review "once Caltrans proceeds with the project." **Energy Analysis Rejected** The court held that an EIR's analysis of energy impacts is required to discuss whether the project could increase its reliance on renewable energy sources. **Timberland Productivity Act** Plaintiffs alleged that the county's findings supporting rezoning of the development site from Timberland Production Zone (TPZ) to "Specific Plan" did not comply with the state Timberland Productivity Act. The Act, like the Williamson Act that applies to agricultural lands, allows a property owner to designate its land for timber production and obtain tax benefits in return. To waive the Act's normal ten-year notice requirement for rezoning from TPZ and approve immediate rezoning, a jurisdiction must, among other requirements, make findings that immediate rezoning would not be inconsistent with the purposes of the Act. The court rejected plaintiffs' two challenges to the county's findings. The first was that the county could approve immediate rezoning only if it explained why waiting ten years would be inconsistent with the purposes of the Act. The second argument was that in its consideration of rezoning 662 acres of the west parcel, the county could not consider the property owner's proposal to rezone 670 acres of its east parcel back into TPZ. The court found no support in the Act for either of these proposed requirements.

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