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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SACRAMENTO

CLOVER VALLEY FOUNDATION, et al.,
 Petitioners/Plaintiffs,

Case No. 34-2007-00002871-CU-WM-GDS

v.

RULING ON SUBMITTED MATTER

CITY OF ROCKLIN,
 Respondents/Defendants.

TOWN OF LOOMIS,
 Petitioner,

v.

CITY OF ROCKLIN et al.,
 Respondents.
 ROCKLIN 650 VENTURE et al.,
 Real Parties in Interest.

On August 27, 2007, respondent City Council of respondent City of Rocklin approved a project proposed by real parties in interest for the development of a residential subdivision on property on 662 acres in Clover Valley, in the northeast corner of Rocklin. Specifically, the Council approved a Large Lot Tentative Map subdividing the project site into 46 large lots with major streets; a Small Lot Tentative Subdivision Map subdividing the large lots into a total of 558 single-family residential lots, 82 landscape lots and related interior roadways;

1 and a number of related entitlements. The proposed project includes construction of 558
2 residential lots, a five-acre commercial area, a five-acre park and 366 acres of open space areas.

3 Concurrently, the City Council approved an environmental impact report ("EIR"),
4 analyzing the environmental effects of the Clover Valley project under the California
5 Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. Two
6 separate petitions challenging the adequacy of the EIR analyses were filed separately by
7 petitioner Town of Loomis and by petitioners Clover Valley Foundation and Sierra Club and then
8 consolidated. The respective claims of petitioners are reviewed and determined below.

9 Cultural Resources

10 The EIR discusses a total of 33 prehistoric period resources and one historic period
11 site located within the project property which are documented in studies, surveys and inventories
12 performed primarily by Peak and Associates.¹ (AR 3:696, 3:716-718, 3:725-726, 6:1355ff.)² In
13 2002, the U.S. Army Corps of Engineers ("Corps") and the State Historic Preservation Officer
14 ("SHPO") determined that the 33 documented prehistoric resources form an archaeological
15 district eligible for the National Register of Historic Places, a determination based on *A*
16 *Determination of Eligibility and Effect on Cultural Resources within the Clover Valley Lakes*
17 (*DOE*) prepared by Peak and Associates under the National Historic Preservation Act
18 (NHPA). (AR 3:716, 8:1915, 19:5026-5027, 64:17216-17218 (Exhibit A to respondents' and
19 real parties' joint supplemental opposition brief).) The Corps and SHPO concurred with the
20 determination of Peak and Associates in the *DOE* that the documented prehistoric resources
21 would be adversely affected by the construction of the Clover Valley project, and the Corps
22 initiated a process with the project developer and its archaeological consultant (i.e., real party and
23 Peak and Associates) for the development of a memorandum of understanding and a
24 management or treatment plan under section 106 of the NHPA to mitigate the adverse effects or
25 impacts of the project on the resources. (*Ibid.*) In this regard, an Historic Properties

26
27 ¹ A 34th cultural site was identified in May 2007 when a site visit was conducted with representatives of the
United Auburn Indian Community ("UAIC"). (AR 19:5000.)

28 ² References to the administrative record ("AR") include the volume number followed by a colon and the
page number(s).

1 Management Plan ("HPMP") has been drafted in consultation with respondent City, the United
2 Auburn Indian Community ("UIAC"), and the Corps, and in July 2007, it was submitted to the
3 Corps for review in the section 106 process and approval by the Corps and the SHPO.³ (AR
4 3:728, 19:5125.)

5 The EIR describes the documented cultural resources in a table which refers to each
6 prehistoric resource by an identifying number and indicates whether the resource contains
7 bedrock mortars, midden, circular-shaped depressions, human remains, projectile points, ground
8 stone, lithic tools, and obsidian debitage. (AR 3:717-718.) The EIR indicates that the project
9 site design has been revised a number of times to avoid and protect the documented cultural
10 resources from adverse project impacts, consistent with CEQA Guidelines indicating that
11 preservation in place is the preferred manner of mitigating impacts to archaeological sites and
12 may be accomplished by planning construction to avoid sites. (AR 3:728, 19:5124-5125. See
13 CEQA Guideline 15126.4(b)(3)(A, B).) Thus, the majority of the resources are located in areas
14 with open space and conservation easements and will be managed under a formal Open Space
15 Management Plan ("OSMP") which is being drafted and which will be approved in the section
16 106 process of the NHPA. (AR 1:115-117, 8:1917.) However, not all of the resources can be
17 avoided through project design. (AR 3:728.)

18 To mitigate potentially significant project impacts on the documented resources to a
19 less-than-significant level, the EIR specifies, and respondent City Council has adopted (AR 1:36-
20 37, 1:38-39), the following measures:

- 21 • Mitigation measures to reduce impacts resulting from project construction activities include
22 cultural resource sensitivity training of construction personnel by a qualified archaeologist
23 prior to issuance of a grading permit, monitoring of earth-moving activities by qualified
24 monitors, enclosing cultural resources with orange construction fencing in consultation with a

25 ³ The Corps initiated the process under section 106 of the NHPA in conjunction with real party's
26 application for a permit under section 404 of the Clean Water Act to impact waters of the United States, including
27 wetlands on the project site, in the course of constructing the project and filling Clover Valley Creek, Antelope
28 Creek and riparian areas. (AR 12:3112 (Mitigation Measure 4.81-4).) Pursuant to NHPA section 106, the Corps
must, prior to the issuance of the permit, "take into account the effect of the undertaking [i.e., project construction]
on any district, site, building, structure, or object that is included in or eligible for inclusion in the National
Register."

1 qualified archaeologist prior to issuance of a grading permit, and requiring Corps approval of
2 preliminary test results from data recovery excavations before grading activities begin in
3 eight resource sites which cannot be avoided by project construction. (AR 3:728-729,
4 12:3107-3108.)

- 5 • Mitigation measures to mitigate impacts resulting from increases in vandalism and artifact
6 collecting due to additional residences in the immediate vicinity of cultural resources include
7 preservation of cultural resources with permanent fencing designed to minimize access to the
8 resources prior to issuance of improvement plans, annual monitoring by an archaeologist in
9 compliance with the OSMP and checks throughout the year by the OSMP manager. (AR
10 3:730, 12:3109-3110.)
- 11 • Mitigation measures to protect prehistoric or historic resources or human remains
12 inadvertently discovered during construction of the project or off-site sewer line include the
13 cessation of construction within 100 feet of the discovery while a qualified archaeologist
14 evaluates whether the discovery is a historic or unique archaeological resource and makes
15 recommendations to the City regarding possible avoidance or mitigation measures. On the
16 basis of the recommendations, consultation with the Indian Community and other specified
17 criteria, the City then determines what mitigation is appropriate. Human remains are referred
18 to the Coroner, and the Native American Heritage Commission is consulted if the coroner
19 determines that the remains are of Native American descent, as required by Health and Safety
20 Code section 7050.5. (AR 3:730C-730E, 12:3110-3111.)

21 The EIR indicates that detailed information about the location and contents of each
22 documented cultural resources identified in the table and about the measures to avoid and
23 mitigate project impacts is contained in the Peak and Associates' *DOE* and the draft HPMP
24 which must be approved by the Corps and the SHPO in the process being conducted under
25 section 106 of the NHPA. (AR 3:728, 8:1915.) The EIR explains that the *DOE* and HPMP are
26 not available for public review due to concerns for the security and integrity of the cultural
27 resource sites and observes that disclosure of a detailed description of site contents and the
28 precise project impacts could result in increased trespassing and vandalism or looting even

1 without specific location information. (AR 8:1915-1917, 19: 5126.) The EIR notes that the
2 section 106 process develops highly detailed management documents -- an HPMP and/or an
3 Historic Properties Treatment Plan ("HPTP") -- using a higher standard than the CEQA review
4 process to preserve, mitigate and manage cultural resources: development of the section 106
5 management documents is overseen by cultural resource professionals of the Corps and the
6 SHPO and involves extensive impact analysis, project re-design, consultations with other
7 agencies and Native Americans, and public hearings to ensure the best possible protection and
8 preservation of the cultural resources from adverse project impacts. (*Ibid.*)

9 In response to public comments requesting disclosure of the HPMP, respondents
10 maintained that the EIR provides sufficient information about the documented cultural resources
11 for informed decisions and meaningful public comment about the mitigation of the project's
12 environmental impacts while complying with CEQA's prohibition on disclosure of sensitive
13 archaeological information and the NHPA's restriction on disclosure of information about the
14 location and character of an historic property which would risk harm to the property. (AR
15 8:1915, 19:5124-1526, 1927-1928. See CEQA Guideline 15120(d); 36 C.F.R. ,§ 800.1.) To
16 clarify or explain this response to public comments, respondents provided additional information
17 as to those cultural resources where data recovery will take place. (AR 19:5126.) The additional
18 information consists of a table containing eight redacted site descriptions from the DOE and
19 mitigation measures included in the Clover Valley HPMP and HPTP which have not yet been
20 approved by the Corps. (*Ibid.* AR 19:5134-5141.)

21 Petitioners Clover Valley Foundation and Sierra Club contend that the EIR fails to
22 adequately describe and disclose information about the cultural resources which may be impacted
23 by the project, the specific impacts to the resources and the Clover Valley archaeological district
24 as a whole, and measures to mitigate those impacts, thereby depriving the public of any
25 meaningful opportunity to intelligently and accurately assess and comment about the project
26 impacts and mitigation measures. Petitioners further contend that the EIR improperly defers
27 mitigation of project impacts on cultural resources, in violation of CEQA Guideline
28 15126.4(a)(1)(B) by relying on future federal review of a draft HPMP under section 106 of the

1 NHPA to identify and implement measures to mitigate project impacts. In petitioners' view, the
2 section 106 review process merely requires inter-agency consultation but imposes no substantive
3 performance standards for the formulation of measures to mitigate project impacts to a level of
4 insignificance.⁴

5 Contrary to petitioners' contentions, the disclosure of information in the EIR about
6 the documented cultural resources is sufficient for purposes of CEQA. Using information drawn
7 from *DOE*, the EIR identifies the characteristics establishing the cultural significance of the
8 resources, their eligibility for listing on the National Register of Historic Places and their need for
9 protection and preservation from project development. Further information about the contents
10 and location of the cultural resources would not change, and serve only to confirm, the
11 substantive import of this information and conclusions that the resources are culturally
12 significant and in need of protection from project development. Notably, the additional
13 information released by respondents about the eight cultural resources requiring data recovery
14 excavations adds narrative detail about the resources' characteristics but not new substantive
15 information which would militate against the resources' cultural significance and need for
16 preservation.⁵

17 The EIR also sufficiently identifies the adverse impacts to which development of the
18 proposed project potentially subjects the documented cultural resources: physical damage or
19 alteration to the resources which would diminish or eliminate their cultural significance,
20 including damage or destruction by project construction and by increases in vandalism and
21 artifact collecting due to additional residences in the immediate vicinity of the cultural resources.

22
23 ⁴ Petitioner contends, on the basis of a July 2007 letter from the SHPO (AR 17:4564-4565, 17:4566), that
24 the *DOE* is an inadequate survey of the historical resources on the project site and that new study must be conducted.
25 This contention is raised by petitioner in supplemental briefs filed in this proceeding, is untimely, and will not be
26 considered by the court. In any event, the SHPO's concern that the *DOE* is inadequate is appropriately addressed in
27 the EIR's responses to additional public comments. (AR 19:5126-5127. See also AR 64:17216 (letter from the
28 Corps to the SHPO in 2002, characterizing *DOE* as an "intensive cultural resources inventory".))

⁵ Thus, the information disclosed at the end of the CEQA review process about the eight cultural resources
requiring data recovery excavation did not add significant new information about a significant project impact or
feasible mitigation measure, hence did not deprive the public of a meaningful opportunity to comment about such an
impact or mitigation measure, and did not require recirculation of the EIR for public comment pursuant to Public
Resources Code section 21166 and CEQA Guideline 15088.5. The additional information about the eight cultural
resources merely clarified or amplified information in the EIR. (*Ibid.*)

1 These impacts adequately make specific the CEQA principle in Public Resources Code section
2 21084.1 and delineated in Guideline 15064.5(b): "A project that may cause a substantial adverse
3 change in the significance of an historical resource is a project that may have a significant effect
4 on the environment."

5 Finally, the EIR sufficiently specifies feasible mitigation measures to protect the
6 documented cultural resources from damage or destruction by project construction or increases in
7 vandalism. Consistent with the CEQA provisions in subdivision (b) of Public Resources Code
8 section 21083.2 and CEQA Guideline 15126.4(b)(3), reasonable efforts were made to preserve
9 the documented cultural resources in place by planning project development in locations that
10 avoid the resource sites. The project has been redesigned a number of times, substantially
11 reducing its residential units to 558, substantially increasing its open space and landscaped areas
12 to 366 acres or 59 percent of the project acreage, and incorporating the resource sites within the
13 open space protected by conservation easements. For cultural resources still located within areas
14 of project development, measures are specified to preserve the resources in place during
15 construction, including temporary fence enclosures and cultural resource sensitivity training of
16 construction personnel prior to issuance of a grading permit, and monitoring of earth-moving
17 activities by qualified monitors. And prior to issuance of improvement plans, the cultural
18 resources will be permanently preserved in place from vandalism and artifact collection with
19 permanent fencing designed to prevent vehicular and limit pedestrian access to the resources,
20 annual monitoring by an archaeologist in compliance with the OSMP, and checks throughout the
21 year by the OSMP manager. Implementation of each mitigation measure is performed and/or
22 overseen by archaeological and cultural professionals.

23 Consistent with subdivision (d) of Public Resources Code section 21083.2 and
24 Guideline 15126.4(b)(3)(C), data recovery excavations will be performed, as detailed in the
25 IIPMP, for eight cultural resources which cannot be wholly or partially preserved in place
26 because they are located where house pads and infrastructure are to be constructed. Grading
27 activities will not be permitted to begin until preliminary testing results are accepted by the
28 Corps.

1 Consistent with subdivision (i) of Public Resources Code section 21083.2, detailed
2 procedures are specified for protecting previously unknown prehistoric or historic cultural
3 resources discovered accidentally or inadvertently during project construction on-site or sewer
4 construction off-site. In the event that human remains are found, the procedures required by
5 Health and Safety Code section 7050.5 will be followed. Again, implementation of these
6 measures is performed and/or overseen by archaeological and cultural professionals.

7 In short, the EIR provides sufficiently clear, comprehensible and comprehensive
8 information to permit decisionmakers and members of the public to intelligently assess potential
9 adverse project impacts to cultural resources and the effectiveness of the specified mitigation
10 measures in avoiding or reducing the impacts to insignificance.⁶ The omission of details from
11 the *DOE* and HPMP does not preclude accurate assessment about the cultural significance of the
12 contents of the documented cultural resources, about the risk of damage and destruction posed to
13 the cultural significance of the resource contents by project construction, and about the feasibility
14 of the specified mitigation measures to preserve documented and accidentally discovered cultural
15 resources in place while recovering data from those portions of cultural resources that will be
16 damaged or destroyed by project construction. Respondents' withholding of details from the
17 *DOE* and HPMP in accordance with CEQA Guideline 15120(d) and NHPA regulations has not
18 impaired the EIR as an informational document enabling informed public participation in the
19 CEQA review process.

20 Nor does the EIR improperly defer the formulation of mitigation measures, in
21 violation of CEQA Guideline 15126.4(a)(1)(B), to future federal review and approval of a draft
22 HPMP in the process under section 106 of the NHPA. Rather than deferring mitigation to
23 finalization of the HPMP, the EIR specifies multiple measures, many of which are detailed in the
24 HMPM, to mitigate project impacts under the direction of archaeological and cultural
25

26 _____
27 ⁶ Petitioners' contention, that the EIR was required under CEQA to analyze the project's impacts on the
28 Clover Valley archaeological district as a whole and specify measures to mitigate the impacts, lacks merit. Any such
discussion in the EIR would appear to be duplicative and redundant: such a discussion would necessarily focus
exclusively on the documented cultural resources which, as the Corps and SHPO determined in 2002, form the
archaeological district.

1 professionals. Respondent City Council has adopted the mitigation measures as part of the
2 mitigation monitoring plan for the project and has conditioned project approval upon compliance
3 with the measures in addition to compliance with the HPMP and all other requirements resulting
4 from the section 106 process. (See AR 1:3, 1:119, 1:175, 1:192.) Thus, the mitigation measures
5 presently exist and are binding upon real party independent of the HPMP. In these
6 circumstances, finalization of the final HPMP will add to, not comprise, the measures to mitigate
7 project impacts and preserve the cultural resources to the extent possible.

8 Cultural Resources-Rock Wall

9 Petitioners contend that the evidence in the administrative record supports a
10 determination that rock walls on the project site are historically significant within the meaning of
11 CEQA Guideline 15064.5(a)(3). Petitioners point to statements in the record that historic,
12 mortarless, stone range walls exist on the project site and visually evoke the region's past (AR
13 3:619); that the rock walls consist of native volcanic rock and were constructed in the 1880s by
14 Chinese laborers employed by Joel Parker Whitney to control the grazing cattle and sheep on his
15 Spring Valley Ranch where the project is located (AR 7:1762); that portions of the rock wall are
16 quite substantially constructed and are in good condition, while other segments have been
17 destroyed and retain little integrity (12:3165); and that the settling of the greater project area by
18 Joel Parker Whitney in the mid to late 1880s was an important part of the history of Placer
19 County (AR 12:3166.) These statements, according to petitioners, provide substantial evidence
20 that the rock walls are "historically significant" resources under at least two of the criteria in the
21 CEQA Guidelines: the walls are "associated with events that have made a significant
22 contribution to the broad patterns of California's history" and "are associated with the lives of
23 persons important in our past." (See CEQA Guideline 15064.5(a)(3)(A, B).) In petitioners'
24 view, no evidence in the record supports the EIR's analysis that the rock walls cannot be
25 absolutely dated, cannot be tied to individual groups of importance in history, and are not eligible
26 for listing as historically significant resources on either the California Register of Historical
27 Resources or the National Register of Historic Places.

28

1 The EIR concludes that the rock walls are not historically significant resources on the
2 basis of a study performed by Peak and Associates, concluding that the walls are nonunique
3 archaeological resources not subject to listing as an historically significant resource, and a second
4 study which was performed by archaeological consultant SWCA in June 2006 in response to
5 public comments during the CEQA review process and which confirmed the conclusion of Peak
6 and Associates. (AR 8:1918, 12:3154, 19:5129.) The SWCA study specifically found that the
7 rock walls are isolated remnants of rock walls whose construction has been attributed to Chinese
8 laborers employed on the Whitney's Spring Valley Ranch between 1875 and 1880, that no
9 buildings remaining in the area reflect this heritage, and that the walls retain little or no historical
10 integrity. (AR 12: 3166-3167.) Absent historical integrity, the SWCA study concluded that the
11 walls do not meet the criteria for listing on the California or National Register as historically
12 significant resources. (AR 12:3165-3167.)

13 The SWCA study correctly applies the criteria for listing on the California and
14 National Register and provides substantial evidence that the rock walls are not historically
15 significant resources. CEQA Guideline 15064.5(a)(3) provides that a resource shall be
16 considered to be historically significant if the resource meets the criteria for listing on the
17 California Register of Historical Resources pursuant to Public Resources Code section 5024.1
18 and the implementing regulation set forth as section 4852 of title 14 of the California Code of
19 Regulations ("Regulation 4852"). These criteria include the following: (A) Is associated with
20 events that have made a significant contribution to the broad patterns of California's history and
21 cultural heritage; (B) Is associated with the lives of persons important in our past; (C) Embodies
22 the distinctive characteristics of a type, period, region, or method of construction, or represents
23 the work of an important creative individual, or possesses high artistic values; or (D) Has
24 yielded, or may be likely to yield, information important in prehistory or history.

25 Regulation 4852(c), in turn, applies these four criteria as follows: "Historical
26 resources eligible for listing in the California Register must meet one of the criteria of
27 significance described in section 4852(b) *and* retain enough of their historic character or
28 appearance to be recognizable as historical resources and to convey the reasons for their

1 significance. . . . [¶] Integrity is evaluated with regard to the retention of location, design, setting,
2 materials, workmanship, feeling, and association.” (Emphasis added. See 36 C.F.R., § 60.4 (the
3 quality of historical significance is present in structures that “posses integrity of location, design,
4 setting, materials, workmanship, feeling and association *and*” meet one of the same four criteria
5 of significance listed in CEQA Guideline 15064.5(a)(3)(A-D), subdivisions (1) through (4) of
6 Public Resources section 5024.1, and Regulation 4852(b)(1-4).)

7 As Regulation 4852 makes clear, historical significance and eligibility for listing on
8 the California Register of Historical Resources is not established solely by meeting one of the
9 four criteria in CEQA Guideline 15064.5(a)(3)(A-D). It is not enough that the rock walls may
10 meet criterion (A) insofar as their construction is attributable to Chinese laborers employed by
11 Joel Parker Whitney on his Spring Valley Ranch where the project is located, or that the rock
12 walls may meet criterion (B) insofar as the settling of the greater project area by Joel Parker
13 Whitney in the mid to late 1880s was an important part of the history of Placer County. To
14 qualify as historically significant, the rock walls must also retain their historical integrity. The
15 SWCA study concluded that the rock walls retain little to no integrity on the basis of a field
16 investigation and evaluation; rather the rock walls are partially destroyed, no buildings remaining
17 in the area reflect the Whitney ranch heritage, and the walls are only isolated remnants of ranch.
18 (See AR 12:3165-3167.) Petitioners have not presented any basis for rebutting the conclusion of
19 the EIR based on SWCA’s expert opinion, that the rock walls lack historical significance.

20 Cultural Resources-Whitney Ranch

21 Petitioners contend that the EIR failed to consider whether Whitney’s Spring Valley
22 Ranch is itself an historically significant resource under CEQA Guideline 15064.5(a)(3),
23 criterion (A) or (B), in light of Whitney’s role in settling the greater project area in the mid to late
24 1880s, an important part of the history of Placer County. (See AR 12:3163, 12:3167.) However,
25 no buildings remain in the area that reflect the ranch. The partially destroyed rock walls are the
26 only possible remnants of the ranch and they lack historical integrity. Accordingly, there is no
27 basis for concluding that the site of the ranch has any historical significance.

28 Cultural Resources-Transfer of Cultural Resource Sites to UAIC

1 Respondent City Council amended the Development Agreement between respondent
2 City and real party, obligating real party to transfer to the United Auburn Indian Community
3 ("UAIC") title to specific cultural sites of interest identified in the HPMP. (AR 2:430.)
4 Petitioner contends that the EIR fails to evaluate the potentially significant impacts of
5 transferring title these sensitive resources.

6 As respondents point out, the Development Agreement amendment simply requires a
7 transfer of title to the UAIC. Moreover, the transfer is occurring in the context of the NHPA
8 section 106 process and the development of an HPMP for preservation of the cultural resources
9 within the Clover Valley archaeological district. Accordingly, the cultural sites to be transferred
10 to the UAIC remain subject to HPMP measures to protect the cultural sites from damage or
11 destruction by project development.

12 Oak Trees

13 The EIR analyzes and mitigates the impacts of project development on oak trees
14 located on the project site in accordance with the Development Agreement that respondent City
15 of Rocklin and real parties entered in December 1997. (AR 44:11464ff., 45:11473-11474.) The
16 Development Agreement sets forth a mitigation plan for the removal of oak trees from the
17 undeveloped project site. Under this plan, real parties fulfill oak tree removal mitigation
18 requirements by granting the City open space and conservation easements for an oak tree
19 preserve and an open space trail system on the site and by constructing a bicycle/pedestrian trail
20 on the trail system. (AR 45:11473.) This creation of a preserve and trail system is accepted as
21 full mitigation for oak tree removal during project development pursuant to the Oak Tree
22 Preservation Ordinance (Rocklin Municipal Code Chapter 17.77) so long as the number of oak
23 trees which are removed does not exceed the greater of 25 percent of the project's total oak tree
24 diameter at breast height or 25 percent of the total number of oak trees on the project site. (AR
25 45:11474.) For purposes of determining whether the 25 percent limit has been exceeded, the
26 number of oak trees removed does not include the oak trees removed for the construction of
27 specified major roadways on the project site (AR 45:11474, 8:1872), and the number of oak trees
28 removed for each subsequent phase of the project must be applied against the total number of

1 oak trees on the project site rather than against the total number of oak trees involved in a
2 particular phase. (*Ibid.*)

3 Because the 1997 Development Agreement does not address the removal of trees
4 associated with the construction of a sewer line beyond the project site, the EIR separately
5 analyzes and specifies a measure to mitigate the impacts of the off-site sewer construction. (AR
6 4:757-758.) The EIR indicates that the impacts will be mitigated to a less-than-significant level
7 pursuant to the requirements of the Rocklin Oak Tree Preservation Ordinance in Rocklin
8 Municipal Code Chapter 17.77. (AR 4:757-758, 8:1925-1926, 13:3392-3393, 19:5131.) The
9 EIR notes that there will be minimal oak tree loss associated with the off-site sewer construction
10 because most of the construction will occur in existing city street rights of way. (AR 8:1926.)

11 With respect to oak trees removed for the construction of major roadways on the
12 project site and which are not counted as losses caused by the project under the 1997
13 Development Agreement, the EIR indicates that tree losses will be mitigated by the City in
14 accordance the Policy 4 of the Open Space, Conservation and Recreation Element of the City of
15 Rocklin General Plan. (AR 8:1924-1925, 44:11328.) This policy encourages the protection of
16 oak trees and other significant vegetation from destruction and is implemented through the city
17 planning review and entitlement process with requirements for significant landscaping, tree
18 planting and open space preservation. (AR 8:1925.) The EIR concludes that, notwithstanding
19 such mitigation, the impacts will be significant and unavoidable. (AR 1:40, 8:1924, 19:5131-
20 513-5132.)

21 Comprehensive inventories of the oak trees on the project site, conducted by Sierra
22 Nevada Arborists (AR 38:9769ff., 39:10065ff., 40:10360) and summarized by Stantec
23 Consulting (AR 6:1450ff.), identified a total of 28,246 existing oak trees on the site, 1,632 oak
24 trees that would be removed as a result of major roadway construction, and 5,790 oak trees that
25 would be removed as a result of other project development on site. (AR 4:767.) The EIR uses
26 these figures to calculate, pursuant to the 1997 Development Agreement, that the trees removed
27 as a result of project development, excluding the trees removed as a result of major roadway
28 construction, constitute approximately 20.5 percent of the total trees on site, in compliance with

1 the 25-percent cap on tree removal under the Development Agreement. (*Ibid.*) The EIR notes
2 that this calculation does not include trees removed from commercial areas because the summary
3 prepared by Stantec Consulting did not include trees removed from commercial areas on the
4 ground that the Oak Tree Ordinance does not typically apply to commercial land. (*Ibid.*)

5 Petitioners Clover Valley Foundation and Sierra Club contend that the EIR applies
6 four different thresholds of significance and inconsistent mitigation measures in the course of
7 analyzing the project impacts on oak trees. According to petitioners, oak tree removal from the
8 project site (other than oak tree removal resulting from major roadway construction) is
9 determined to have a less-than-significant impact pursuant to thresholds of significance and
10 mitigation measures prescribed by the 1997 Development Agreement; oak tree removal resulting
11 from major roadway construction on the project site is determined to have a significant and
12 unavoidable impact without any identified threshold of significance and mitigation measures; oak
13 tree removal resulting from off-site sewer construction is determined to have a less-than-
14 significant impact upon future or deferred mitigation pursuant to the Oak Tree Preservation
15 Ordinance; and oak tree removal resulting from development of the commercial acreage on the
16 project site is not analyzed for significance or mitigation. By using this segmented, incomplete
17 and inconsistent analysis, petitioners conclude, the EIR fails to evaluate and mitigate the
18 combined effect of the project's impacts to oak trees in accordance with CEQA requirements.

19 Contrary to petitioners' contention, a general consistency and completeness exists in
20 the EIR's analysis and mitigation of project impacts on oak trees located on the project site other
21 than major roadway areas and oak trees located off-site on the sewer alignments. Both are
22 governed by the provisions of the Oak Tree Preservation Ordinance which sets forth a process,
23 standards and guidelines for protecting and mitigating the removal of oak trees in a variety of
24 circumstances. On the one hand, the 1997 Development Agreement expressly treats the removal
25 of oak trees from the project site as removals from undeveloped property pursuant to the Oak
26 Tree Preservation Ordinance in Chapter 17.77 of the Rocklin Municipal Code and the Oak Tree
27 Preservation Guidelines adopted under section 17.77.100 of the Ordinance (AR 45:1173): the
28 mitigation plan set forth in the Development Agreement -- the establishment of open space

1 conservation easements for an Oak Tree Preserve and Open Space Trail System on the project
2 site so long as the number of trees removed does not exceed 25 percent of the total oak trees on
3 site -- duplicate a method of mitigation permitted by section 17.77.080(B)(4) of the Ordinance
4 for undeveloped property -- land dedication -- when on-site replacement of removed trees is not
5 feasible. (AR 45:1173-1174.) On the other hand, mitigation of tree removal resulting from off-
6 site sewer construction is expressly required pursuant to the Oak Tree Preservation Ordinance
7 (AR 1:40, 8:1925, 12:3112, 19:5131) and is governed by provisions of the Ordinance other than
8 those applicable to undeveloped property; the preference stated in section 17.77.070 of the
9 Ordinance for on-site mitigation through native oak tree replacement may apply instead. Such
10 application of different mitigation methods to the differing circumstances of oak tree removal
11 from the undeveloped project site and oak tree removal off the project site reflect carefully
12 reasoned legislative and executive judgments by the City as how best to achieve, in differing
13 circumstances, the protective purposes of the Ordinance and a less-than-significant impact on oak
14 trees.

15 Also contrary to petitioners' contention, oak tree removal resulting from major
16 roadway construction on the project site is analyzed in the EIR with an identified threshold of
17 significance and mitigation measures; the analysis is not in complete or inconsistent with the
18 analysis of oak tree removal resulting from private on-site project development and off-site sewer
19 construction. The applicable standards and mitigation methods are found in the provisions of the
20 City's General Plan because the mitigation of oak tree removal resulting from major roadway
21 construction is the responsibility of respondent City and the terms of the Oak Tree Preservation
22 Ordinance are inapplicable. Oak tree removal for the construction of major roadways on the
23 project site are properly analyzed and mitigated on a citywide level through the planning review
24 and entitlement process in accordance with Policy 4 of the Open Space, Conservation and
25 Recreation Element of the General Plan. (AR 8:1924-1925.) Under this analysis, the tree
26 removal for major roadways is reasonably determined to constitute a significant and unavoidable
27 loss despite mitigation in the form of landscaping, tree planting and oak tree preservation and
28 open space preservation on a citywide level. (*Ibid.*)

1 Petitioners correctly contend that the EIR's discussion of tree removal from
2 commercial areas on the project site lacks any determination regarding the significance of such
3 removal and any specification of measures to mitigate the attendant oak tree losses. However, a
4 serious doubt exists as to the accuracy of the statement in the EIR, that oak trees removed from
5 commercial areas of the project site are excluded from the mitigation calculation under the
6 Development Agreement. (See AR 4:757.) The Tree Removal Summary on which this
7 statement is based directly contradicts the statement in the EIR by including oak trees removed
8 from commercial areas in the total of 5,790 removed trees used for the mitigation calculation.
9 (AR 6:1451 ("The balance, 5,790 trees, is located within the planned residential, commercial and
10 easemnt areas.")) In addition, no mention whatsoever is made in the Development Agreement,
11 the FEIR Master Responses or the Responses to Additional Public Comments about the
12 exclusion of trees removed from commercial areas. A solitary and confusing attempt to amend
13 the statement in the DEIR (AR 8:1872) was subsequently abandoned, and the statement is not
14 included in the amendment of the paragraph in which the statement originally appeared. (See AR
15 13:3391-3393.) In these circumstances, the court concludes that the statement is erroneous and
16 that oak trees removed from commercial area are not excluded from the mitigation calculation
17 under the Development Agreement.

18 Finally, the measure specified in the EIR and adopted by respondent City for the
19 mitigation of oak tree removal resulting from off-site sewer construction does not improperly
20 defer mitigation under CEQA. The measure requires plans for mitigation in accordance with the
21 mandatory procedures and methods specified in the City's Oak Tree Preservation Ordinance
22 prior to the City's approval of off-site sewer improvement plans. (AR 1:40, 12:3112.) Thus, for
23 purposes of CEQA, there is an appropriate commitment to a measure that will satisfy specific
24 performance criteria articulated at the time of project approval. (See *Endangered Habitats*
25 *League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 794-796; *Sacramento Old City Assn. v.*
26 *City Council* (1991) 229 Cal.App.3d 1011, 1028-1030.

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1 Railroad Locomotive Diesel Emissions

2 Petitioners Clover Valley Foundation and Sierra Club contend that the EIR fails to
3 disclose, analyze or mitigate health risks created by siting residential development in areas
4 affected by diesel emissions from daily railroad operations on the nearby Union Pacific right of
5 way. In making this contention, petitioners rely on the identification of diesel exhaust
6 particulates as a toxic substance by the California Air Resources Board and the classification of
7 diesel exhaust particulates as a reasonably anticipated human carcinogen by the U.S. Department
8 of Health and Human Services.

9 In response to petitioners' contention, which was originally submitted as a comment
10 during the CEQA review of the Clover Valley project, the EIR indicates, on the basis of
11 information in a handbook published by the California Air Resources Board, that the Union
12 Pacific right of way near project residences is not a source of diesel locomotive emissions in
13 concentrations sufficient to pose a health risk. (AR 9:2157-2158.) The EIR explains that daily
14 rail traffic is limited and does not idle on the tracks near the residences in contrast to high volume
15 freeways or rail yards; the ridge of land between the residences and the train track keeps most of
16 the railroad emissions outside Clover Valley; and the residences are set back from and
17 substantially above the rail line. (AR 9:258.) The EIR concludes that the exposure of project
18 residents to diesel emissions would be minimal and that the impact of rail-line emissions on the
19 residents is deemed less than significant. (AR 9:258-259.)

20 Petitioners presents no evidence to support a fair argument that railroad locomotive
21 diesel emissions are present in sufficient concentrations near the site of project residences to pose
22 a health risk to the occupants of the residences. Thus, CEQA does not require a discussion of the
23 health risks and measures to mitigate the risks in the EIR for the project.

24 Stream Set-Back/Riparian Buffer

25 The General Plan of respondent City of Rocklin establishes an Open
26 Space/Conservation Action Plan which applies open space designations to all lands within 50
27 feet of the edge of streams, creeks and areas consisting of riparian habitat. (AR 44:11327 (Item
28 1).) This provision for a stream setback buffer area carries out the goal of the General Plan Open

1 Space, Conservation and Recreation Element to protect natural resource areas within the City, a
2 related policy of encouraging the protection of natural resources from encroachment by
3 development, and another related policy of minimizing the degradation of water quality by
4 prohibiting grading and fill within designated stream setback buffer areas. (AR 44 11328-11329
5 (Policies 1 and 19).)

6 Nature Trail Way, a part of the proposed road system for the proposed project (AR
7 3:562), would encroach into the 50-foot buffer area at two locations along Clover Valley Creek,
8 which runs through the project site. (AR 4:762, 8:1899-1900.) Respondent City Council found
9 that these two encroachments were not inconsistent with Item 1 of the Open Space/Conservation
10 Action Plan and the Goal and Policies 1 and 19 of the Open Space, Conservation and Recreation
11 Element of the General Plan. (AR 1:14, 3:592-595, 4:762-764, 8:1899-1900, 19:5121.) As
12 explained in the EIR, the City of Rocklin has historically allowed for the construction of
13 necessary roadways within the 50-foot open space buffer surrounding creeks; in addition,
14 realigning Nature Trail Way to maintain a 50-foot setback at the two locations would result in
15 additional environmental impacts, including greater hillside grading and the loss of additional
16 oak trees; thus, specific site conditions do not allow for complete adherence to the 50-foot buffer
17 standard in these two locations, and the two encroachments are environmentally superior to
18 realignment. (*Ibid.*)

19 Petitioners Clover Valley Foundation and Sierra Club contend that the encroachment
20 of Nature Trail Way at two locations within the 50-foot buffer impermissibly violates two
21 mandatory provisions of the General Plan, Item 1 of the Open Space/Conservation Action Plan
22 and the prohibition on grading within the buffer under Policy 19. In addition, petitioners contend
23 that the encroachment of Nature Trail Way at two locations would frustrate the Goal and Policies
24 1 and 19 of the Open Space, Conservation and Recreation Element.

25 Generally, a subdivision project need only be in overall agreement or harmony with
26 land use designations of the general plan. State law does not require an exact match between a
27 proposed subdivision and the applicable general plan. (*Greenebaum v. City of Los Angeles*
28 (1984) 153 Cal.App.3d 391, 406-407.) Rather, to be "consistent," the subdivision map must be

1 "compatible with the objectives, policies, general land uses, and programs specified in" the
2 applicable plan. (Gov. Code, § 66473.5; *Families Unafraid to Uphold Rural etc. County v.*
3 *Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336; *Sequoyah Hills Homeowners Assn. v.*
4 *City of Oakland* (1993) 23 Cal. App. 4th 704, 717-718.)

5 Courts accord great deference to an agency's decision of consistency with its own
6 general plan because it adopted the general plan policies in its legislative capacity and has unique
7 competence to interpret those policies when applying them in its adjudicatory capacity. (*City of*
8 *Walnut Creek v. County of Contra Costa* (1980) 101 Cal. App. 3d 1012, 1021.) In addition,
9 because policies in a general plan reflect a range of competing interests, the governmental agency
10 must be allowed to weigh and balance the plan's policies when applying them, and it has broad
11 discretion to construe its policies in light of the plan's purposes. (*Sequoyah Hills Homeowners*
12 *Assn. v. City of Oakland, supra*, 23 Cal. App. 4th at 719-720.)

13 However, a project is inconsistent with a general plan if the project conflicts with a general plan
14 policy that is fundamental, mandatory, and specific. (*Endangered Habitats League, Inc. v.*
15 *County of Orange* (2005) 131 Cal. App. 4th 782, citing *Families Unafraid to Uphold Rural etc.*
16 *County v. Board of Supervisors, supra*, 62 Cal.App.4th at pp. 1341-1342.)

17 Item 1 of the City's Open Space/Conservation Action Plan, applying open space
18 designations to all lands within 50 feet of the edge of streams, creeks and areas consisting of
19 riparian habitat, is specific and mandatory in language. However, Item 1 is in substance a land
20 use designation with which a subdivision project need only be in harmony (*Greenebaum, supra*.)

21 In addition, the encroachment of Nature Trail Way within the 50-foot buffer or
22 setback with Clover Valley Creek at two locations balances and reconciles competing policies of
23 the Open Space, Conservation and Recreation Element in an environmentally superior way. The
24 encroachments are a relatively minimal intrusions into the buffer or setback from Clover Valley
25 Creek, while a disallowance of the encroachments pursuant to Item 1 would result in additional
26 losses of oak trees in derogation of Policy 4 of the Open Space, Conservation and Recreation
27 which encourages the protection of the trees. (See *Sequoyah Hills Homeowners Assn. v. City of*
28 *Oakland* (1993) 23 Cal. App. 4th at 717-718.)

1 Finally, Policy 19, which seeks to minimize the degradation of water quality through
2 requiring implementation of techniques such as a prohibition on grading within designated
3 stream setback buffer areas, does not create a strict or mandatory prohibition on grading in buffer
4 areas. The prohibition is one of a number of techniques listed which can be used to minimize the
5 degradation of water quality. Thus the City Council may balance the benefits of employing the
6 prohibition against the increased hillside grading that would result if the two encroachments of
7 Nature Trail Way within the buffer were disallowed pursuant to Item 1 and the roadway had to
8 be realigned outside the buffer. Such balancing is within the discretion of the City Council, and
9 the balance struck by the Council is entitled to deference where, as here, the discretion is
10 exercised reasonably. (*Sequoyah Hills Homeowners Assn. v. City of Oakland, supra*, 23 Cal.
11 App. 4th at 719-720.)

12 Black Rails

13 The California black rail, a threatened species protected under the California
14 Endangered Species Act ("CESA"), has a habitat of freshwater marsh and wetlands, including
15 wetlands on the Clover Valley project site. (AR 4:748.) In analyzing the potential adverse
16 impacts to this habitat by the project, the EIR notes that several acres of wetlands will be lost due
17 to project construction, specifies a measure to mitigate this loss through replacement on a "no-
18 net-loss" basis in accordance with regulations of the United States Army Corp of Engineers and
19 the California Department of Fish and Game, and specifies an open space designation for land
20 within 50 feet of the wetlands (except for two locations along Nature Trail Way) to permanently
21 buffer the habitat from project impacts. (AR 4:759-764, 4:781.) The EIR finds, and the City
22 Council adopts a finding, that these measures will mitigate project impacts to the riparian and
23 wetland habitat on the project site to a less-than-significant level. (AR 1:3, 4:759-767, 4:781,
24 12:3112-3115.)

25 The EIR also specifies measures to protect freshwater marsh-occupying birds like the
26 black rail from temporary project construction impacts when the birds are occupying freshwater
27 marsh habitat on the project site or near construction of the off-site sewer line. Pursuant to these
28 measures, preconstruction surveys for freshwater marsh-occupying birds would be conducted, in

1 consultation with the California Department of Fish and Game, no more than 30 days prior to the
2 start of ground disturbing activities during periods of activity for the birds, and upon
3 identification of freshwater marsh-occupying birds, construction activities would be rescheduled
4 or the birds would be relocated away from those activities. (AR 4:781-782.) In the case of birds
5 protected under CESA, like the black rail, a permit to manage the birds would be obtained from
6 the California Department of Fish and Game. (*Ibid.*) The EIR determined, and respondent City
7 Council adopted findings, that these measures would reduce impacts to freshwater marsh-
8 occupying birds to a less-than-significant level. (4:781-782, 8:1919-1920, 12:3124, 19:5000,
9 19:5132-5133.)

10 Petitioners Clover Valley Foundation and Sierra Club contend that the EIR fails to
11 analyze project impacts to black rails and their habitat, fails to discuss mitigation measures to
12 reduce such project impacts, and improperly defers the formulation of mitigation until future
13 preconstruction surveys identify the presence of a black rail on the project site. These
14 contentions disregard the EIR's detailed analysis of project impacts to riparian and wetland
15 habitat on the project site and the specification of mitigation measures to protect the wetland and
16 freshwater marsh habitat of black rails from adverse project impacts even when no black rails are
17 identified as occupying the habitat during preconstruction surveys. The measures provide
18 protection for black rail habitat whether or not preconstruction surveys identify black rails.

19 Petitioners' contentions also fail to recognize that the mitigation measures to protect
20 black rails and freshwater marsh-occupying birds identified during preconstruction surveys set
21 forth mandatory procedures to be followed upon the identification of protected species like black
22 rails, including procedures pursuant to CESA. The measures do not improperly defer the
23 formulation of mitigation measures. (CEQA Guideline 15126.4(a)(1)(B).)

24 Water Supply

25 The EIR determined, and respondent City Council adopted a finding, that the
26 increased demand generated by the project for water supply and distribution or delivery
27 infrastructure would not have significant adverse environmental effects. (AR 1:66, 4:892-893.)
28 This determination and finding was based on an assessment from the Placer County Water

1 Agency in December 2005 pursuant to SB 221 and SB 610 (i.e., Government Code sections
2 65867.5, 66455.3 and 66473.7 and Water Code section 10910), that "the Agency has an adequate
3 water supply to meet the anticipated build out demands of the Clover Valley Subdivision in
4 addition to the rest of the build out demands currently anticipated within the Agency's projected
5 service area in western Placer County in normal, single dry and multiple dry years, subject to the
6 qualifications set forth below." (AR 7:1845, 1848. See 7:1841-1848.) These qualifications
7 included the Agency's completion of infrastructure during 2006, 2007 and 2008 to distribute the
8 available water supply to the project site and the timely submission of the project's application
9 for water service under the Agency's "first-come, first-served" policy for new customers. (AR
10 7:1846-1848.)

11 In concluding that an adequate supply of water exists to serve the proposed project
12 and thus impacts related to water supply are less than significant, the EIR details the existing
13 sources of water supply available to the Placer County Water Agency (AR 4:865-871, 4:892-893)
14 as well as sources of water supply to replace the existing sources in the event that they become
15 insufficient to meet project needs when the project applies for water service. (AR 4:892-893,
16 8:1940-1844.) On the basis of this discussion, the EIR concludes that the project is likely to be
17 fully served with water from existing sources of water supply available to the Agency and that
18 replacement sources are reasonably certain to become available even though numerous regulatory
19 requirements of state and federal environmental, water, and endangered species laws would have
20 to be met. (*Ibid.*) Respondent City Council's approval of the Large Lot Tentative Subdivision
21 Map for the Clover Valley subdivision reflects these conclusions by conditioning approval on the
22 provision of water service by the Placer County Water Agency and requiring the Agency to verify
23 its ability to service the subdivision by signing off on the subdivision improvement plans. (AR
24 1:94.)

25 Petitioner Town of Loomis contends that the water supply analysis in the EIR fails to
26 evaluate the environmental impacts of the water delivery infrastructure being constructed by
27 Placer County Water Agency and that the analysis fails to comply with the CEQA informational
28 requirements for water supply analyses set forth in *Vineyard Area Citizens for Responsible*

1 *Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430-432 ("*Vineyard*"). Petitioner
2 further contends that no substantial evidence in the record supports the finding that water
3 supplies will be sufficient to satisfy project demands, in violation of water supply requirements in
4 Water Code sections 10910 and 10911, subdivision (c), and Government Code section 66473.7.
5 These contentions lack merit.

6 The EIR need not evaluate the environmental impacts of the water delivery
7 infrastructure already being constructed by the Agency. These are projects of the Placer County
8 Water Agency, and the Agency rather than respondent is responsible for evaluating their impacts.

9 In accordance with the requirements of *Vineyard*, the EIR water supply analysis
10 contains a detailed discussion of the "likely" sources of water supplies to meet project needs over
11 a 20-year period and addresses "possible" replacement sources or alternatives in the event that
12 the anticipated water supplies do not materialize. (40 Cal.4th at 430-432.) The EIR analysis is
13 based on substantial evidence that the Placer County Water Agency will be able to provide water
14 service to the project during the 20-year period and that replacement sources of water to meet
15 project needs are reasonably certain to become available to the Agency during that period. (AR
16 7:1841-1848, 4:892-893, 8:1940-1844, 8:2107.) *Vineyard* does not require absolute certainty
17 that water supplies will be available.

18 The substantial evidence on which the EIR analysis is based also supports a
19 determination that respondent has obtained an assessment pursuant to Water Code section 10910,
20 verifying the availability of water supplies to the project, and a determination pursuant
21 subdivision (c) of Water Code section 10911, that the water supplies provided by the Placer
22 County Water Agency will be sufficient to satisfy project demands. Respondent complied with
23 subdivision (b) of Government Code section 66473.7 when it conditioned its approval of the
24 Large Lot Tentative Subdivision Map for the Clover Valley subdivision upon the Agency's
25 verification that it would be able to provide water service to the subdivision. (AR 1:94, 7:1848.)
26 Off-Site Sewer

27 The sewer system proposed as part of the Clover Valley project includes a on-site
28 sewer and an off-site sewer line extension connecting to a sewer line owned and operated by the

1 South Placer Municipal Utility District. (AR 4:906.) The sewer system is designed to be
2 consistent with the District's Master Plan and to serve the project as well as future growth
3 consisting of 501 residential units to the north of the project and 23 residential units to the south.
4 (AR 3:563, 4:872, 4:906.) The design for the off-site sewer line, which would be constructed by
5 the District, includes a number of alignment options for the District's construction of the off-site
6 sewer. (AR 3:563-565, 8:1877-1882.)

7 Petitioners Clover Valley Foundation and Sierra Club contend the description of the
8 off-site sewer and its various alignment options is unstable absent identification of the option to
9 be implemented. According to petitioners, such instability in the description precludes
10 meaningful review of the proposed project by members of the public. However, a review of the
11 discussion in the EIR of the off-site sewer's impacts reveals no inconsistencies or changes in the
12 description of the off-site sewer. (See AR 3:650-651, 3:667, 3:689-691, 3:730C, 3:757-758,
13 3:765-766, 3:778, 3:780-781, 3:807-808, 19:5120.) The alignment options are discussed without
14 variation in each of their description, and no lack of clarity or uncertainty in the impacts
15 discussion results.

16 Petitioners Clover Valley Foundation and Sierra Club further contend that the EIR
17 fails to disclose, analyze and mitigate the foreseeable impacts of future growth induced by the
18 sizing of the off-site sewer to serve the project as well as future residential development to the
19 south and north of the project, in violation of CEQA requirements Public Resources Code section
20 21100, subdivision (d), and CEQA Guideline 15126.2(d). Contrary to this contention, the
21 discussion of the project's growth-inducing impacts in the EIR is sufficient to meet the CEQA
22 requirements.

23 The EIR's discussion of growth-inducing impacts acknowledges that the off-site
24 sewer is growth inducing insofar as it removes an obstacle to residential development provided
25 for in the City of Rocklin's General Plan and South Placer Municipal Utility District's Master
26 Plan. (AR 4:905-906, 8:1945, 9:2151-2152.) The discussion correctly avoids any analysis of the
27 environmental impacts of such induced residential development because the EIR for the City's
28 General Plan has already analyzed the development at a programmatic level, because the induced

1 development is not part of the project being considered for approval and will require project-
2 specific review under CEQA in the event that it is proposed for approval in the future, and
3 because Guideline 15126.2(d) only requires a discussion of the ways in which the project could
4 foster growth. (*Ibid.*) Nothing in the Guideline or in case law requires more than a general
5 analysis of projected growth. (See *Napa Citizens for Honest Government v. Napa County Bd. of*
6 *Supervisors* (2001) 91 Cal.App.4th 342, 371, 372 fn. 8 (“Neither CEQA itself, nor the cases that
7 have interpreted it, require an EIR to anticipate and mitigate the effects of a particular project on
8 growth on other areas.”). Cf. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337,
9 1338 (Where project involved construction of road and utility systems on undeveloped land,
10 court held, without considering whether the future development should be evaluated as growth
11 inducing impacts of the project under CEQA Guidelines, it was “necessary to evaluate [in an
12 EIR] only the forms and extent of future development that now reasonably seem most likely to
13 result from the roadway and utility projects”).)

14 Aesthetics

15 Petitioner Town of Loomis contends that the EIR’s analysis of project impacts on
16 views from western Loomis are contradictory and conclusory. On the one hand, Impact 4.31-3
17 concludes that the alteration of views from western Loomis would be less than significant; on the
18 other hand, Impact 4.31-3 states that viewers from this area are expected to tolerate a low-to-
19 moderate level of visual change, and the project would result in a high level of change as viewed
20 from this area. (AR 8:613)

21 In response to petitioner’s comments during CEQA proceedings, the EIR clarified
22 that, even though the overall aesthetic impact of the project development is significant due to the
23 loss of existing visual resources within the project site, the development proposed by the project
24 is consistent with surrounding development and, therefore, has an aesthetic impact which is less
25 than significant. (AR 8:1905.) Thus, two separate and different aesthetic impacts are in play and
26 may appear contradictory but are not. (AR 8:1905.)

27 Petitioner further contends that the EIR fails to discuss mitigation measures to avoid
28 or reduce the impacts to views from Sierra College Boulevard and the Loomis area north of the

1 summit and across Sierra College Boulevard. (AR 3:612 (Impact 4.31-2).) The EIR explains
2 that the new roadways, future houses and landscaping of the project would be expected to bring a
3 high level of change, un-buffered, as viewed from this area, and viewers from Sierra College
4 Boulevard would experience an abrupt change in the visual character of the area. In addition, the
5 aesthetic qualities of the project site's northern ridgeline along Sierra College Boulevard as well
6 as the viewshed from the ridgeline would potentially be adversely affected. The EIR concludes
7 that these adverse effects would remain significant and unavoidable because no feasible
8 mitigation measure is available. (*Ibid.*).

9 Substantial evidence in the record establishes that the overall aesthetic impact of the
10 project development is significant and unavoidable despite efforts minimize the impact. The
11 development degrades the visual character of the project site even though efforts are made to
12 make project design consistent with the natural environment and modify building features to
13 reduce light and glare. (See AR 3: 6208:2097, 9:2306.)

14 Traffic

15 The court has reviewed the contentions of Petitioner Town of Loomis that the EIR
16 fails to adequately disclose, analyze and mitigate the project's significant impacts to
17 transportation and circulation. The court finds no merit in the contentions.

18 Petitioner contends that the traffic analysis fails to adequately address the issue of
19 emergency ingress and egress and the presence of the railroad track at Sierra Boulevard and
20 Taylor Road. The EIR's detailed response to petitioner's identical contention during the CEQA
21 review proceedings adequately addresses petitioner's concern, pointing out that that the project
22 has been designed to include numerous emergency vehicle access points that provide each
23 neighborhood area of the project with at least two points of access. (AR 8:2099-2100.) With
24 respect to the railroad track, the EIR responds that the construction of Valley View Parkway
25 through the project site will provide a new route for residents and emergency service vehicles
26 that avoids the railroad crossing at Sierra College Boulevard and Taylor Road; in addition, the
27 intersection of Sierra College Boulevard and Taylor Road is expected to operate at LOS B

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1 conditions in the p.m. peak commuter hour and not lead to undue blockage of the railroad
2 crossing. (AR 8:2100-2101.)

3 Pctitioner contends that the EIR fails to discuss whether anyone might use I-80 to
4 travel to or from the project site and whether that might have some impact on traffic within I-80.
5 The EIR did analyze project impacts on the I-80 interchange ramps at Rocklin Road and Sierra
6 College Boulevard and found that the project impact was too small to warrant inclusion in the
7 study area of the project. (AR 8:2101.) Respondents reasonably base the proposed study area
8 upon the magnitude of the traffic generated by the project and its anticipated routes. (*Ibid.*)

9 Similarly, petitioner contends that the EIR fails to analyze impacts to two
10 intersections in Loomis at I-80/Horseshoe Bar Road and King Road/Taylor Road. During CEQA
11 proceedings, respondents projected traffic increases at each of the intersections and reasonably
12 determined that the changes in traffic volumes at the intersections were small and did not warrant
13 including the intersections in the study area of the project. (AR 8:2101-2102.)

14 Pctitioner contends that the EIR fails to analyze project impacts on traffic during key
15 school travel times and does not evaluate project impacts on roads that will be used to transport
16 children to school. During CEQA proceedings, respondents indicated that their traffic consultant
17 selected the p.m. peak commuter hour for the project traffic analysis because field observations
18 and available traffic volume information show that p.m. conditions tend to have higher traffic
19 volumes than a.m. conditions. (AR 3:642, 8:2102.) This selection is reasonable and lies within
20 the expertise of respondents' traffic consultant.

21 Lastly, petitioner contends that the EIR fails to provide for the payment of a pro-rata
22 mitigation fee to the Town of Loomis for significant project impacts to the intersection of Sierra
23 College Boulevard and King Road within Loomis. By an amendment to the EIR during CEQA
24 proceedings, the EIR now provides for such a payment toward the improvement of the
25 intersection of Sierra College Boulevard and King Road once final improvement plans for the
26 intersection improvements have been completed by the constructing agency. (AR 13:3377.)
27 This mitigation fee provision is part of the Mitigation and Monitoring Plan adopted by
28 respondent City Council when it certified the EIR.

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Relief

The petitions are denied. In denying the petitions attacking the environmental review process, the Court takes no position on the fundamental wisdom of the project which is within the discretion of the approving governmental entity. Counsel for respondents is directed to prepare a judgment consistent with this ruling pursuant to rule 3.1312.

Dated: February 6, 2009



Lloyd G. Connelly

LLOYD G. CONNELLY
Judge of the Superior Court