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OUR FILE NUMBER:

006484.00020
181139V2

December 17, 2008

**VIA FACSIMILE TO (530)745-3080
AND FIRST CLASS MAIL**

Placer County Planning Commission
Placer County Planning Department
3091 County Center Drive Suite 140
Auburn, CA 95603

Re: Center Unified School District Comments on Riolo Vineyards Project

Dear Planning Commission Members:

We are writing this letter on behalf of the Center Unified School District ("District") with respect to the Riolo Vineyards Project.

It will be helpful to the District to have an agreement with PFE Investors ("Developer") as required by section 3.13 of the draft Placer County Development Agreement with Developer under consideration by the Planning Commission on December 18, 2008. While the District and the Developer have been negotiating for some time, the District is disappointed that it has not already been able to reach an agreement to alleviate the anticipated effects of the Riolo Vineyards Project upon the District and its students. We are optimistic that the parties will be able to reach an agreement soon. This is especially important because the Developer's payment of developer fees will not be adequate to serve the District's needs.

The District staff currently anticipates that the building of four hundred fifty (450) homes within the Riolo Project will trigger the need for the building of the Rex Fortune Elementary School. This school is needed to serve students from Riolo Vineyards and portions of Placer Vineyards. Without the new school, the District could be faced with alternatives such as double sessions or year-round schools. A negative public response from the community at large to either alternative would be likely.

1. Utilities along PFE Road. The District needs utilities, primarily sewer and water, brought up PFE Road so that the District can connect to these utilities at its Rex Fortune Elementary School which is adjacent to the Wilson Riles Site on PFE Road. Without the accessibility to these connections, the Rex Fortune Elementary School could not be built.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Placer County Planning Commission

December 17, 2008

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2. Utility Site. The District is required by contract to provide Sacramento Municipal Utility District ("SMUD") with a utility site at Wilson Riles Middle School site or purchase a new utility site acceptable to SMUD. The utility site reserved in the Riolo Vineyards could serve as such an alternative site. Because the District may not have the funds available to purchase the Riolo Vineyards utility site, it could be forced to provide a site at Wilson Riles Middle School. In this case, the Developer and future homeowners would be affected because the Wilson Riles Middle School Site would not be able to accommodate as many students. Students from the proposed project area may need to go to a school other than the nearby school. This will cause additional traffic and inconvenience to the students and their families living in the Riolo Vineyards Development and adversely affect the entire community.

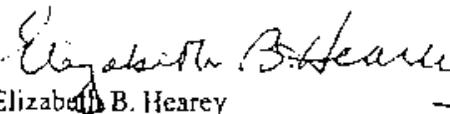
3. Traffic Signal. A traffic signal is needed at the exit from Riolo Vineyards on PFE Road across from the Rex Fortune Elementary School or if there is no exit from Riolo Vineyards across from Rex Fortune Elementary School, at the exit point nearest to Rex Fortune Elementary School on PFE Road together with any necessary signage. This is a safety issue for students crossing a busy road. When development occurs and a street from Riolo Vineyards to PFE Road is built within three hundred (300) feet of the Rex Fortune Elementary School site, a regular signal (stoplight) should be required of the Developer.

4. PFE/Watt Intersection Improvements. The County is requiring that the Developer obtain property for a right-of-way on Watt Avenue for street improvements, and the developer has requested such a conveyance from the District. The District intends to work closely with the Developer and the County with regard to this request. The District needs to consider the effects this would have on its school site, for example, whether the traffic would make the site unsuitable for continued use as a school site. In addition, it is important to note that the conveyance of school property cannot be accomplished by a simple agreement. The District must also meet the statutory requirements for the sale of property for this purpose.

We look forward to working together with the County and the Developer on all of these issues.

Very truly yours,

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO

By 
Elizabeth B. Hearey

EBH/hc

cc: Ann Baker, Placer County Planner (via email - abaker@placer.ca.gov)

497

Before the Board of Directors
Placer County
Flood Control and Water Conservation District

RESOLUTION NO. 95-3

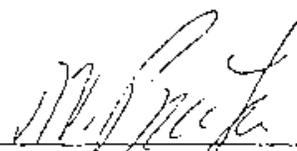
In the matter of:

A RESOLUTION ENDORSING A POLICY TO RESTRICT DEVELOPMENT WITHIN
FLOODPLAINS IN PLACER COUNTY

The following RESOLUTION was duly passed by the Board of Directors of the Placer County
Flood Control and Water Conservation District at a regular meeting held AUGUST 14, 1995
by the following vote:

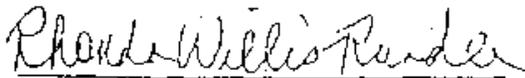
Ayes: Directors: Barbeiro, Bloomfield, Graham, Lee, Rompala, Santucci, and Yorde.

Signed and approved by me after its passage.



Chairman, Board of Directors

Attest:
Clerk of said Board



Rhonda Willis-Rundle

WHEREAS, development within designated floodplains of the major streams of Placer County
places both life and property at great risk during flood events; and,

WHEREAS, development within such floodplains also risks creating downstream impacts
through loss of water storage thereby causing increased water levels and/or accelerating stream
velocities and exposing local areas to erosion and downstream areas to greater sedimentation;
and,

WHEREAS, development within floodplains endangers environmental and other values such as
wetland loss and wildlife habitat; and,

WHEREAS, our ability to accurately predict 100 year flows is very tenuous given our limited
base of historical information for precipitation and streamflow for our major streams;

RESOLUTION NO. 95-3

Page Two
August 14, 1995

NOW THEREFORE LET IT BE RESOLVED that the Board of Directors of the Placer County Flood Control and Water Conservation District does hereby adopt the following policy and by such action requests that each and every member agency of the District endorse a similar or more restrictive policy:

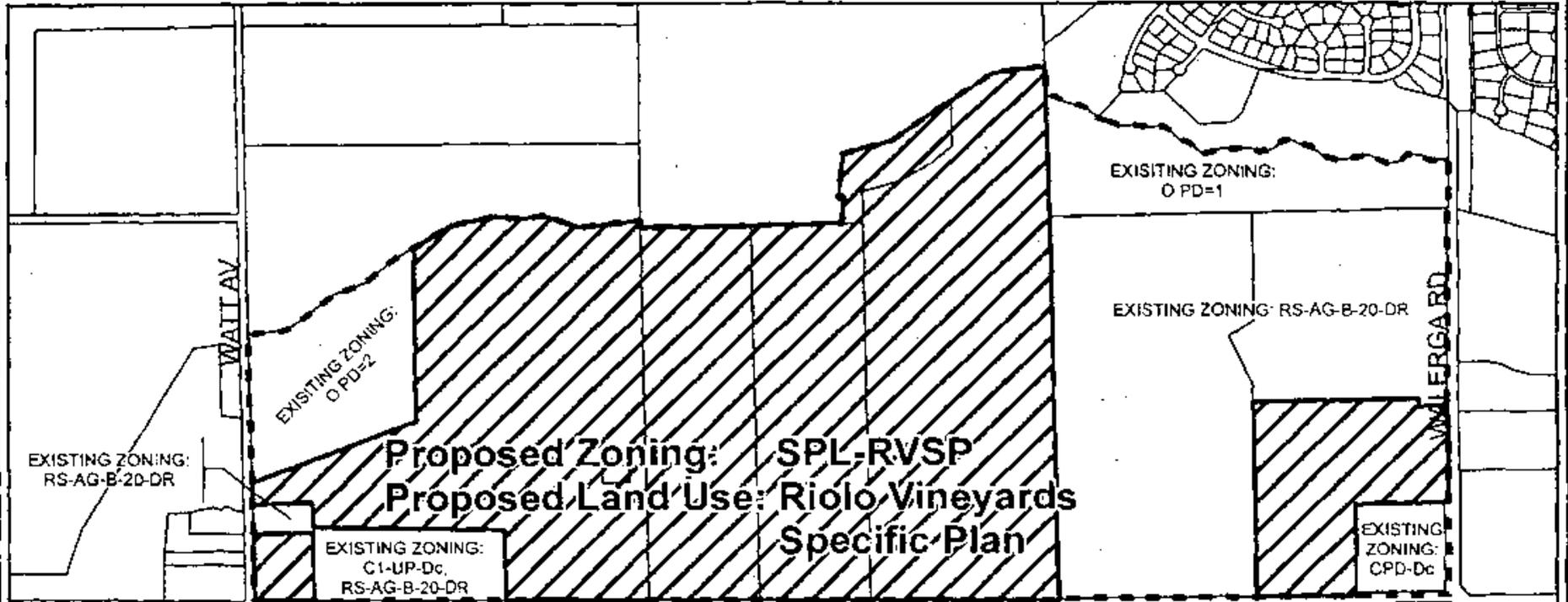
It is hereby recommended that in general no new land development entitlements be allowed to build or fill within the future, unmitigated 100 year floodplain of major streams in Placer County.

Exceptions to the policy would be permitted under reasonable circumstances such as:

- Greater public benefits are obtained. (An example of this would be development of a park area or public road. Development of the floodplain for typical residential/commercial/industrial purposes would not be considered appropriate.)
- The risk associated with a minor change can be mitigated acceptably.
- The risk associated with a minor change is virtually undetectable, even on a cumulative basis.

Res95-3

RIOLO VINEYARDS SPECIFIC PLAN COMMUNITY PLAN AMENDMENT AND REZONE FOR PFE INVESTORS INCORPORATED



Legend

-  AREA SUBJECT TO REZONING
APN:
023-200-023-000, 023-200-031-000, 023-200-051-000,
023-200-052-000, 023-200-053-000, 023-200-055-000,
023-200-056-000, 023-221-006-000

-  RIOLO VINEYARD SPECIFIC PLAN BOUNDARY AND
AREA SUBJECT TO DRY CREEK / WEST PLACER COMMUNITY
PLAN AMENDMENT FOR RVSP



VICINITY MAP

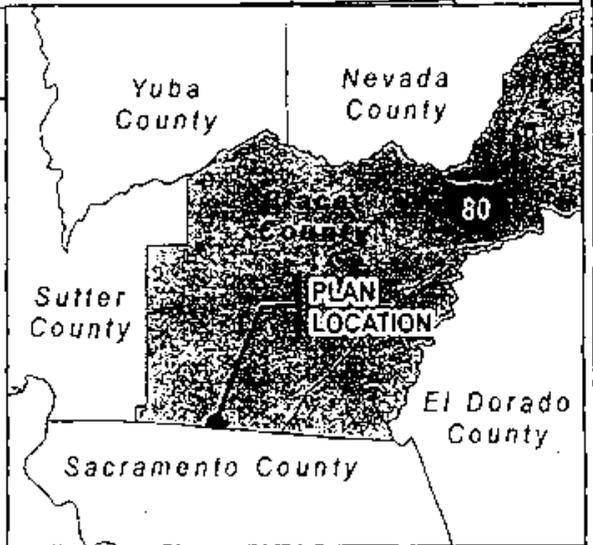


EXHIBIT 10
500



Community Development
311 Vernon Street
Roseville, California 95678 2649

December 1, 2008

Maywan Krach
Placer County Community Development Resource Agency
3091 County Center Drive
Auburn, CA 95603

Via: *Email and Regular Mail*

cdraecs@placer.ca.gov
Page 1 of 2

Subject: Riolo Vineyard Specific Plan – FEIR Comments

Dear Ms. Krach:

The City of Roseville provided comment on the Riolo Vineyard Draft EIR via letter dated March 10, 2008 (identified as comment letter 5 in the Riolo Vineyard final EIR). The City has now completed review of the final EIR and notes the following two concerns relative to final EIR responses in the areas of water supply and fire protection services as discussed below.

Water Supply

Final EIR Response 5-1: This response indicates Cal-Am, as the water service provider, "is currently designing storage facilities that are intended to be constructed in 2008 with completion and operation in 2009." These storage facilities will reduce the instantaneous flow required to service the project from PCWA deliveries through the City's water distribution system. The City has contacted Cal-Am regarding the schedule above and has learned the stated schedule has slipped and may not be completed in the time frame indicated in the County's response. Because the County does not have control over the timing of which Cal-Am will construct facilities, the City requests Mitigation Measure 14-1b be amended as shown below (with addition of the underlined sentence).

Prior to approval of any small lot tentative subdivision map, the County shall comply with Government Code Section 66473.7 or make a factual showing or impose conditions similar to those required by Section 66473.7, as appropriate to the size of the subdivision. Prior to the recordation of any final subdivision map or prior to County approval of any similar approval or entitlement required for nonresidential uses, the Applicant shall obtain a written certification from the water service provider that either existing services are available or that needed improvements will be in place prior to occupancy. The written certification shall also include confirmation that sufficient wheeling capacity remains within the 10-mgd wheeling agreement between the PCWA and the City of Roseville to service the entitlement under review.

This additional language will ensure that PCWA's 10MGD wheeling capacity through City of Roseville transmission facilities is not exceeded.

Mitigation Monitoring and Reporting Program (MMRP): The MMRP circulated with the final EIR omits all EIR Chapter 14 mitigation measures. These measures, including the City's proposed modification to measure 14-1b, should be added to the final MMRP prior to Board approval.

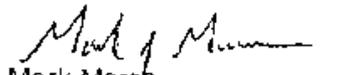
Fire Protection Services

Facilities and Equipment: According to the final EIR, fire protection services will be maintained according to County standards by requiring the project to contribute funds to add "additional fire protection staff to maintain required staffing ratios". No specificity is provided regarding how this will be accomplished. Roseville Fire believes that beyond staffing, additional facilities and equipment will also be required for Placer County Fire/CAL FIRE to deliver the "urban" level fire protection services described in the EIR. The plan relies on existing fire protection infrastructure (stations and equipment), as well as future fire protection services planned within the Placer Vineyards Specific Plan. The Riolo Vineyards Specific Plan EIR should include contingency mitigation measures to limit development within the plan area in the event that planned fire facilities and equipment within the Placer Vineyards Specific Plan are not constructed in a timely manner. Absent such assurance, response times are likely to exceed County standards.

Improper Reliance on Mutual Aid: Additionally, the draft EIR implies that the first-in engine will come from the existing fire station on Cook Riolo Road and that a second engine, if needed, will come from the City of Roseville (Policy 6 discussion draft EIR page 14-40). Currently, the project area land use is primarily rural. The Roseville Fire Department has an automatic aid agreement with Placer County, in which Roseville Fire provides a fire engine and/or grass unit on an initial fire response for much of the project area. Roseville Fire would also respond to mutual aid requests. The current demand for service from the City of Roseville is insignificant given the area served is rural. As the Riolo Vineyards project begins to build-out it is likely that Roseville Fire will experience an increase in requests for Roseville resources, especially during the initial phase of construction. Roseville Fire believes that any significant grass or structure fire will require far more resources than anticipated in the EIR analysis. Roseville Fire's existing automatic aid agreement with Placer County Fire/CAL FIRE is predicated on the existing rural conditions within this area. It will be unacceptable and unreasonable to expect the City of Roseville to augment County fire protection services beyond what is currently provided under the existing mutual aid agreement. As such, the City will expect to renegotiate existing automatic and mutual aid agreements as development increases in the County. Roseville Fire is interested in discussing this issue with the County in an effort to find a mutually agreeable solution.

Thank you for your consideration of our comments. If you have any questions on this matter, please do not hesitate to contact me at 916-774-5334.

Sincerely,


Mark Morse
Environmental Coordinator



County of Placer
WEST PLACER MUNICIPAL ADVISORY COUNCIL
P.O. BOX 1466
ROSEVILLE, CA 95678

September 16, 2008

Placer County Planning Department
Director Michael Johnson
3091 County Center Drive, Ste. 140
Auburn, Ca. 95603

Ref: Riolo Vineyards Specific Plan (RVSP)

Dear Mr. Johnson:

The West Placer Municipal Advisory Council, at a regular meeting on Thursday, September 11, 2008, voted 3-0 to decline support of the proposed Riolo Vineyards Specific Plan (RVSP) as presented due to the project not meeting the Dry Creek Community Plan setback/no sound wall requirements, the density proposed, concern over proposed fill in the flood plain, concern over insufficient park areas as well as those parks presented being placed in the flood plain, and the density provided to non-participating parcels differs from the clarified densities allowable in the community plan.

If there are questions related to this action please feel free to contact me or any West Placer MAC member for clarification.

Sincerely,

Barry Stillman, Chairman
West Placer Municipal Advisory Council

Cc: Anne Baker, Principal Planner
MAC members

BS/dh

503

EXHIBIT 12

**Brigit S.
Barnes &
Associates,
Inc.**

A Law Corporation

Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.



*Land Use and
Environmental
Paralegal*
Jacquelyn Jarvis

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3262 Pehrson Road
Suite 200
Loomis, CA 95650
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FAX (916) 660-9554
Website
andlawbybarnes.com

February 9, 2009

*Via Facsimile [Fax: 530-889-4009]
and Hand Delivered*

County of Placer, Board of Supervisors
175 Fulweiler Avenue
Auburn, CA 95603

Attn: Hon. F.C. "Rocky" Rockholm, District 1, Board Chair
Hon. Robert Weygandt, District 2
Hon. Jim Holmes, District 3
Hon. Kirk Uhler, District 4, Vice Chair
Hon. Jennifer Montgomery, District 5

Re: Riolo Vineyards Specific Plan Project (PSPA T20050186)
Comments on FEIR (PEIR T20050185)
SCH#2005092041
Our Clients: Frisvold/Carollo
Our File No: 2485
Clients' Parcel No: 023-200-057

Dear Respected Supervisors:

This office was very recently retained to assist Russ and George Carollo and the Frisvold family in their attempts to correct the environmental and specific plan documentation previously submitted which indicates their approval and consent of the design plans for the Riolo Vineyards Specific Plan Project, and subsidiary documents ("RVSP Project" or "Project"). On behalf of our clients, we hereby submit the following comments on the Final Environmental Impact Report ("EIR"), Public Facility Financing Plan, and Development Agreement.

As set forth in the Staff Report at p. 5, ownership within the RVSP Project area includes the Applicant, Bryte Gardens Associates, LTD./PFE Investors, which controls just under 2/3 of the project site, and "non-participating" properties, including the Frisvold, Singh, Lund, Park Avra, and Elliott parcels. The RVSP EIR is described as providing project-level analyses for the Applicant, and program-level analyses for the remaining non-participating properties. The non-participating properties comprise more than 1/3 of the entire Project area. As such, the EIR, by definition, cannot be said to have fully analyzed the true nature and extent of the Project's impacts if it has only conducted a project-level analysis on 2/3 of the Project area. This half-hearted attempt to identify and disclose environmental impacts relating to the RVSP Project resulted in numerous significant or potentially significant impacts, even after mitigation -- no less than twelve (12), including seven (7) impacts deemed Significant and Unavoidable ("SUT"), requiring a Statement of Overriding Considerations. While Frisvold

- | | | | | |
|--------------------|---|------------------------|---|---------------|
| Asset Preservation | • | Commercial Real Estate | • | Environmental |
| General Business | • | Real Estate Financing | • | Litigation |

EXHIBIT 13
504

does not contest the programmatic nature of the general discussion of the SUIs identified, we must point out that the Statement of Overriding Considerations is wholly deficient in its review of these impacts and its determination that the economic and social benefits identified by the EIR consultant and applicant are sufficient legally to adopt the EIR in its current state.

Compounding the problem further is the fact that the EIR leaves a considerable amount of analysis to future study and future mitigation plan development by both the Applicant and non-participants alike, as set forth in detail below. This type of deferred analysis and mitigation is strictly prohibited under CEQA.

As will be shown, the EIR fails, in that it calls for:

1. The preparation of future studies to determine what impacts the project will have on the environment;
2. The future development of mitigation implementation and monitoring plans to address impacts;
3. The future identification of and participation in off-site mitigation;
4. The future identification and acquisition of maintenance easements; and
5. "Fair share" contributions, whatever that is intended to mean, with respect to the Finance Plan and Development Agreement without incorporating the approvals of the non-participating owners in the Finance Plan. Thus the Plan, including payments and completion of infrastructure which is essential mitigation, is not sufficiently certain to be relied upon in the EIR.

* * * *

1. Future studies of impacts are not adequate mitigation under CEQA. As such, the RVSP EIR impermissibly allows for Mitigation Measures 6-1b (future delineation of wetlands impacted by off-site infrastructure improvements), 6-3a (future survey for special-status plant species and habitat), 6-4a (future survey for special-status vernal pool fairy shrimp and habitat), 6-6a (future survey for the western pond turtle and habitat), 6-8a (future survey for special-status bat species and habitat), 6-9a (future survey for American Badger and den habitat), 6-11a (future survey for Burrowing Owls), 6-12a (future survey for Nesting Raptors), 6-17a (future survey for Elderberry Shrubs), 6-18a (future delineation of on-site wetlands), 7-1b (future subsurface testing for important archeological or historical resources), 11-2b (future noise analyses and measurements according to County standards and requirements), 12-5a (prepare a future geotechnical report for all elements of proposed

development), 13-2a (prepare project-specific drainage report), 13-2b (evaluate downstream off-site drainage facilities), 13-4b (prepare site-specific BMP plan), and 15-2c (future Preliminary Endangerment [Health Risk] Assessment per DTSC protocols), affecting all properties previously and currently farmed. See San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal.App.3d 584, 590-591; Laurel Heights v. Regents of University of California (Laurel Heights) (1988) 47 Cal.3d 376, 400-403; Citizens of Goleta Valley v. Board of Supervisors (Goleta) (1988) 197 Cal.App.3d 1167, 1178-7.

2. Mitigation requiring future plan development is also insufficient under CEQA. As such, the RVSP EIR impermissibly allows for Mitigation Measures 6-1a (future preparation of jurisdictional wetland mitigation implementation and monitoring plan), 6-6a (future preparation of mitigation and monitoring plan for western pond turtle and habitat), 6-8a (future preparation of mitigation plan for special-status bat species and habitat), 6-9a (future preparation of mitigation plan for American Badger and den habitat), 6-10a (future preparation of mitigation plan for Swainson's Hawk foraging habitat), 6-17b (future preparation of mitigation plan for Elderberry Shrubs), 7-1c (future preparation and adoption of a data recovery plan for important archeological or historical resources), 7-3a (future preparation of plan to manage and salvage paleontological resources), 12-3d (future preparation of stormwater pollution prevention plan), and 9-1a (future preparation of construction traffic management plan). In San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670, the court held that simply requiring a project applicant to obtain a management plan and then comply with the recommendations in the management plan was an improper deferral of mitigation. See also Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 793. Future preparation of a mitigation plan is not allowed. At this time, without adequate description, the County cannot evaluate the adequacy of the proposed mitigation or fee program. San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal.App.3d 584, 590-591.

3. Requiring future identification of and participation in off-site mitigation violates CEQA since appropriate sites have not been identified, much less evaluated. As such, the EIR impermissibly allows for Mitigation Measures 6-4a (participation in a bank or non-bank location for off-site mitigation of Special Status Branchiopods), 6-10a (purchase of mitigation credits for off-site mitigation of Swainson's Hawk foraging habitat), 6-11a (purchase of mitigation credits for off-site Burrowing Owl habitat), and 6-17b (purchase of mitigation credits for off-site mitigation of Elderberry Shrubs). See Laurel Heights v. Regents of University of California (Laurel Heights) (1988) 47 Cal.3d 376, 400-403; Citizens of Goleta Valley v. Board of Supervisors (Goleta) (1988) 197 Cal.App.3d 1167, 1178-79.

4. Mitigation requiring future acquisition and maintenance of easements from non-participants is impermissibly speculative under CEQA. In this case, the Board must

understand the nature of the three-headed hydra it is considering. The EIR relies on mitigation, sometimes unidentified, which requires obtaining easements from the non-participating owners. However, the Applicant has no power to compel such easements. The only party with such power is Placer County, through its power of eminent domain. Yet Placer County eschews direct participation in enforcement of any of the obligations which must come from the non-participating owners [see Development Agreement, §2.8, 3.17]. For example, Mitigation Measure MM 13-4c requires that vegetation be established and maintained for effective performance of impervious surface storm drainage Best Management Practices. Maintenance of BMP facilities is required to be provided by the project owner for each future construction project within the Specific Plan area. Final maps are required to show easements to be created and offered for dedication to the County for maintenance and access to these facilities. Because the stormwater pollution prevention and site-specific BMP plans have yet to be developed for the Project Applicant's portion of the development, it is possible that easements may be required from non-participating owners within the Specific Plan area. The Applicant cannot provide any assurance or guarantee that they will be successful in acquiring these easements. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the appellate court concluded that because the success of mitigation was uncertain, the county could not have reasonably determined that significant effects would not occur. This deferral of environmental assessment until after project approval violated CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action.

5. The commitment to pay fees without any evidence that the mitigation will actually occur is likewise inadequate. The RVSP Project EIR impermissibly allows for this type of mitigation. For example, the DEIR states at p. 9-48, that the "Applicant proposes to make a fair share payment, together with similar fair share payments from other projects, toward constructing the following improvement." No additional information is provided. See *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140, citing *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728. In *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, the Court of Appeal held that bare recitation that a project would pay "fair share" fees towards highway improvements was too speculative to be deemed an adequate mitigation measure. *Id.*, at pp. 1193-1194. The Court of Appeal ruled that to be sufficient under CEQA, a "fair share" mitigation fee measure must (1) specify the actual dollar amount based on current or projected construction costs; (2) specify the improvement projects for which the fair share will be used; (3) if the fair share contribution is a percentage of costs which are not yet known, then specify the percentage of costs; and (4) make the fees part of a reasonable enforceable plan or program which is sufficiently tied to actual mitigation of traffic impacts at issue. There is no evidence in the RVSP Project EIR of the amount of money represented by "fair share," no evidence as to how the "fair share" will be calculated, no evidence that the amount of "fair share" funding will be adequate to construct the

infrastructure which comprises the mitigation measures, and no evidence that any other party or entity will contribute amounts towards their unspecified "fair shares" which are sufficient to construct the infrastructure which comprises the mitigation measures. Therefore, the following mitigation measures are also inadequate under CEQA: MM 5-4a (payment of fair share fee to compensation/relocation assistance associated with Watt Avenue improvements), 5-6a (payment of fair share fee to compensation/relocation assistance on program-level parcels), 9-2a (payment of in lieu fee for construction of Walerga Road frontage improvements), 9-2b (payment of fair share fee to widen Walerga Road from the Dry Creek Bridge to Baseline Road), 9-3a (payment of fair share fee to widen intersections of Locust Road and Baseline Road, Watt Avenue and Baseline Road, and Walerga Road and Baseline Road), 9-3b (payment of fair share fee to widen intersections of Watt Avenue and PFE Road, and Walerga Road and PFE Road), 9-8a (payment of fair share fee to widen SR 65 from Blue Oaks Boulevard to SR 65), 9-9a (payment of fair share fee to construct an interchange to replace the SR 70/99 and Riego Road intersection), 9-11a (payment of fair share fee to widen the intersections of Locust Road and Baseline Road, and Walerga Road and Baseline Road), 9-11b (payment of fair share fee to widen the intersections of Watt Avenue and PFE Road, and Walerga Road and PFE Road), 9-16a (payment of fair share fee to widen SR 65 to six lanes from Blue Oaks Boulevard to I-80), 9-17a (payment of fair share fee to construct an interchange at the intersection of SR 70/99 with Riego Road), 9-19a (payment of fair share fee to widen PFE Road to four lanes from Watt Avenue to Walerga Road), and 9-20a (payment of fair share fee to widen the intersection of Walerga Road and PFE Road, signaling the intersection of Cook Riolo Road and PFE Road, and signaling the intersection of "East" Road and PFE Road). None of these "fair share" requirements meet the specific informational standard discussed above in *Anderson, supra*.

Furthermore, we have not located any "nexus" or "rough proportionality" study completed pursuant to the constitutional principles established by *Nollan/Dolan*, and thus any fair share contribution would be secured under the terms of the Development Agreement. The proposed Development Agreement is specific only as to three (3) of the above-referenced transportation improvements, in that it sets forth an actual per-unit fee to be paid. However, the EIR must set out in detail how the imposition of fees will assure that the traffic mitigation will result, which it does not, and therefore it violates CEQA. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140.

The failure to provide enough information to permit informed decision-making is fatal. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in a manner required by law. *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 118. Because so much of the mitigation relied upon remains to be fleshed out, the EIR should be redrafted and recirculated when all mitigation plans are completed. Otherwise, the EIR violates CEQA by segmenting this

project into stages of approval. *CEQA Guidelines Section 15003(h); Bozung v. LAFCO (1975) 13 Cal.3d 263, 283.*

FINDINGS/STATEMENT OF OVERRIDING CONSIDERATIONS

In general, the EIR supports the conclusion that -- given the acknowledged number of Significant and Unavoidable impacts which would require a Statement of Overriding Consideration -- this Specific Plan benefits no one except the PFE Developer Investors, to the detriment of the environmental impacts for the region at large and other property owners contained within the Specific Plan area, including the Frisvold property owners.

As acknowledged in the DEIR at pp. 2-4 through 2-6 and Table 2-2 (pp. 2-8 through 2-40), the RVSP Project will have the following Potentially Significant and/or Significant and Unavoidable Impacts:

- Permanent loss of Farmland (SUT)
- Williamson Act Contract cancellation (SUT)¹
- General and Community Plan inconsistencies
- Visual impacts
- Traffic
- Transit
- Short-term criteria Air Pollutant emissions
- AQ impacts, PM10, RG and NOX short-term and long-term (SUT)
- Inconsistency with Placer County Air Quality Attainment Plan (SUT)
- Greenhouse Gas contributions to global warming (SUT)
- Short-term noise (SUT)
- Transportation noise (SUT)
- Cumulative SUTs include: loss of Farmland, vegetation and wildlife habitat, change in landscape character (rural to urban), ambient night sky illumination, unacceptable LOS along six (6) roadway segments and/or intersections, regional criteria pollutant emissions, noise and flooding due to increase in surface drainage.

An agency may not approve or carry out a project for which an EIR has been completed if the EIR identifies one or more significant environmental effects of the project, unless the agency makes one or more of the following findings *required by Pub. Res. Code § 21081*:

¹ The Frisvold property owners have decided not to cancel their Williamson Act Contract, and withdraw their cancellation request. See attached letter dated February 6, 2009 from Brigit S. Barnes to Christine Turner, Placer County Agricultural Commissioner.

- (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effects of the project as identified in the EIR;
- (2) These changes or alterations are within the responsibility and jurisdiction of another public agency, and the changes have been adopted by this other agency, or can and should be adopted by this other agency; and
- (3) Specific economic, social, legal, technological, or other considerations, including consideration for the provision of employment opportunities for highly trained workers, made infeasible the mitigation measures or project alternatives identified in the EIR.

As set forth above, the RVSP Project will cause a substantial number of significant impacts, not the least of which is long-term air quality impacts. The RVSP Project is located within the Sacramento Federal Nonattainment area, which has been designated as being in nonattainment of the state ozone standards and serious nonattainment of the federal 8-hour ozone standard. Maximum concentrations in excess of the California ambient standards for PM10 have also been recorded at both the North Highlands and Roseville monitoring stations. *DEIR, at p. 10-5*. The EIR acknowledges that the RVSP Project is inconsistent with the Placer County Air Quality Attainment Plan. *Impact 10-6, DEIR at p. 10-23*. Furthermore, the DEIR fails to analyze the indirect health effects from air pollution as required under *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219.

When an agency such as Placer County approves a project with significant environmental effects that will neither be avoided nor substantially lessened, it must adopt a Statement of Overrides. *14 Cal. Code Regs §15043*. The agency *must set forth the reasons for its action based on the Final EIR and other information in the record*. And it is in this context that the EIR is completely deficient. The explanations for the Overrides to be found at pp. 124-126 of the Findings Resolution are generic statements that the RVSP encourages distinctive attractive communities, offers housing choices and opportunities, provides for compact development, supports a variety of transportation choices, facilitates construction of new public facilities, and capitalizes on existing infrastructure investments. A review of the Population, Employment and Housing analysis provides no discussion with respect to the particular benefits of the Project that would justify a proposed override based on housing opportunities. *See DEIR, at Chapter 5*. While RVSP may in fact provide services which can be seen as moving in these laudable directions, such a generic statement is not sufficient. *See Sierra Club v. Contra Costa County* (1992) *10 Cal. App.4th 1212, 1223* [statement of overriding considerations should be treated like findings and must be supported by substantial evidence in the record]. Since many of the goals (for example, facilitate

construction of new public facilities, etc.) depend on fee programs which the EIR acknowledges have not been developed at this time, such basis for the statement cannot logically be supported by this record. In a situation where the record is flooded with plans to identify mitigation and fees to pay for the mitigation in the future, the record cannot support factual premises that would underlie this Board's determination that the Project's benefits outweigh its admitted adverse impacts.

Although an agency's policy judgment will be given credence by a reviewing court, the types of reasons for upholding a Statement of Overrides is not present here, largely because the design and funding of such mitigation measures is tentative at the time of this consideration. For example, Statements of Overrides have survived judicial scrutiny where the record showed implementation of economic development overroze rezoning several industrial sites; or concurrent implementation of a redevelopment plan supported demolition of a historic structure; or application of already existing growth management policies. Placer County cannot make such findings here.

Although a Statement of Overriding Considerations represents an agency's policy judgment, a statement is legally inadequate if it does not accurately reflect the significant impacts disclosed by the EIR, and mischaracterizes the relative benefits of the project. *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 Cal.App.4th 683, 717. None of the benefits relied upon in the Statement are presently available, and will only be derived in the future if all the property identified in the RVSP is developed in accordance with the plan and pays its "fair share". According to the Finance Plan and Development Agreement, the County asserts that it will not enforce the demands for reimbursement of land contribution against the non-participating owners, much less the other parties whose participation is needed. Thus, the basis for the Overrides -- the social and economic benefits -- are not supported by the overall record.

Based on the foregoing, the Board clearly cannot make a decision finally certifying the Environmental Impact Report for this Project, but should continue this matter until recirculation and adequate public and agency review requirements have been made.

ADDITIONAL/NEW INFORMATION REQUIRING RECIRCULATION

On November 25, 2008, the Board of Supervisors authorized a Contract Amendment to the Planning Services Agreement with Hausrath Economics Group for the preparation of an additional Fiscal Analysis for the RVSP Project, to respond to comments and to assist in the preparation of an urban services plan for the Project. This Board is being asked to accept the Urban Services Plan prepared for this Project. *Staff Report, at p. 1*. The Staff Report states that the Urban Services Plan has been provided to the Board for review and consideration. *Staff Report, at p. 20*. It does not appear that this additional study has been provided for

public review – even though it directly relates and supposedly responds to comments raised regarding impacts from the RVSP Project. As such, the new information must be included in the EIR, and the EIR recirculated in accordance with CEQA Guideline §15088.5(a). CEQA Guideline §15088.5(a) requires a lead agency to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under CEQA Guideline §15087, but before certification. As used in this section, the term "information" can include changes in the project or environmental setting, as well as additional data or other information. See also *Public Resources Code §21092.1*; *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 1112. The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it. *Save our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131; *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822.

INCONSISTENCY WITH THE PLACER COUNTY GENERAL PLAN

As acknowledged in the DEIR at Appendix D2, pp. 5, 9, 13, 14, 15, and 55, the RVSP Project is inconsistent with the following Placer County General Plan Goals/Policies: Agricultural Land Use Policy No. 1.H.6.; Development Form and Design Policy No. 1.O.1.; Streets & Highways Policy Nos. 3.A.7., 3.A.8., and 3.A.12.; and Land Use Conflicts Policy No. 7.B.1.

The general plan has been aptly described as the "constitution for all future developments" within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan. The consistency doctrine has been described as the "linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural etc. ("Future") v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336; *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994. The proposed project, therefore, is valid only to the extent that it is consistent with the County's General Plan. A project is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment. It must be compatible with the objectives, policies, and general land uses and programs specified in the general plan. *Future, supra*, at 1336; *Corona-Norco, supra*, at 994.

The inconsistency argument also applies to the Dry Creek/West Placer Community Plan, which is set forth in detail below.

INCONSISTENCY WITH THE DRY CREEK/WEST PLACER COMMUNITY PLAN

As acknowledged in the DEIR at Appendix D1, pp. 4, 7, 11, 12, 20, 21, 34, 43, and 44, the RVSP project is inconsistent with the following Dry Creek/West Placer Community Plan Goals/Policies: Land Use Policy Nos. 2, 25, and LDR Description; Flood Control Policy Nos. 4 and 5; Natural Resources Policy No. 14; and Transportation/Circulation (Roads & Trails/Goal 11) Policy Nos. 6 and 9. Policy No. 6 requires a minimum right-of-way for PFE Road of 120 feet. Staff has expressed concern that permitting the amendment allowing for a PFE Road width reduction from 120 feet to 64 feet is inconsistent with the community vision, and eliminates an amenity associated with the Dry Creek West Placer Community. *See Staff Report at p. 14.* It should also be noted that the West Placer MAC opposes the amendments to the LDR Description (*Staff Report, at p. 15*) and Policies 4 and 5 (*Staff Report, at p. 18*).

RESPONSES TO COMMENTS

The EIR fails to adequately address the concerns raised in substantive comment letters received from the City of Roseville and other state and local agencies. For example, the City of Roseville commented on its concerns with fire protection services and emergency response times. *See FEIR, Comment Letter 5.* First, the EIR failed to provide a meaningful analysis and discussion of these potential impacts. *See DEIR, Section 14.1.6.2 at pp. 14-21.* Courts have held that an agency failed to proceed as required by law because the EIR's discussion and analysis of a mandatory EIR topic was so cursory it clearly did not comply with the requirements of CEQA. *El Dorado Union High School District v. City of Placerville (1983) 144 Cal.App.3d 123, 13.* The EIR simply states that the Project intends to rely on both the Placer County Fire Department/CDF and the City of Roseville Fire Department for fire and emergency services, while paying impact fees to a program designed to provide for the future construction of fire protection facilities in the unincorporated southwest Placer County Region. Both agencies agree that the population served by this Project would call for an urban level of service, and the City of Roseville has suggested that the RVSP area be self-sufficient for at least the first alarm assignment. The EIR's Response "noted" the City's comments, and reiterated that the developer will contribute impact fees toward future facilities. *See FEIR, Response to Comment Letter 5, at pp. 3-37 to 3-38.* As of the date of this letter, we are informed that both agencies have taken the position that the FEIR's Responses to Comments in this regard have not adequately addressed this critically important impact.

An adequate EIR must respond to specific suggestions for mitigating a significant environmental impact (such as the City of Roseville's suggestion discussed above) unless the suggested mitigation is facially infeasible. *Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1029.*

Adequate responses to comments on the Draft EIR are of particular importance when significant environmental issues are raised in comments submitted by experts or by agencies, (such as Fire Departments), with recognized specialized expertise. Santa Clarita Org. for Planning the Environment v. County of Los Angeles (2003) 106 Cal.App.4th 715, 131. The response must be detailed and must provide a reasoned good faith analysis. 14 Cal. Code Regs. §15088(c). The responses to comments must state reasons for rejecting suggestions and comments on major environmental issues. Conclusory statements unsupported by factual information are not an adequate response. *Id.*; Cleary v. County of Stanislaus (1981) 118 Cal.App.3d 348. The need for a reasoned, factual response is particularly acute when critical comments have been made by other agencies or experts. People v. County of Kern (1976) 62 Cal.App.3d 761, 722; Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1367.

PUBLIC FACILITIES & FINANCING PLAN AND DEVELOPMENT AGREEMENT ISSUES

The economics for development of the Frisvold property have been put on its head. Therefore, at this time, Frisvold has no intention in participating in the non-existent benefits of the Specific Plan, or the Finance Plan. Frisvold's property is referenced in the Finance Plan and the DEIR as follows:

Excerpt from DEIR, at p. 3-74: For development of the Frisvold parcel with Medium-Density Residential uses as proposed, County approval of the cancellation of the existing Williamson Act contract would be required as well as the adoption of the Specific Plan and the above described amendments to the *Placer County General Plan* and *Dry Creek/West Placer Community Plan*. The Frisvold parcel will be included in the hearing bodies' consideration of the adoption of the Specific Plan and above described amendments to the *Placer County General Plan* and *Dry Creek/West Placer Community Plan*. The only other discretionary approval that will be considered by the hearing bodies for the Frisvold parcel is the following:

1. Williamson Act contract cancellation

Excerpt from DEIR, at p. 4-19: One property owner in the Plan Area is enrolled in this program. The Frisvolds, who own a 15-acre parcel (APN 023-200-057) adjacent to PFE Road currently under a Williamson Act contract, filed a Notice of Non-Renewal with Placer County on February 10, 2006. A request to cancel the contract was filed with Placer County on September 11, 2007. As stated above, that request has been withdrawn because of the adverse financial effects payment of cancellation costs will have on the Frisvold family. The Frisvold property is identified as K in the RVSP thus the last identified developer. Given the financial state such future development may be at least ten years in the future.

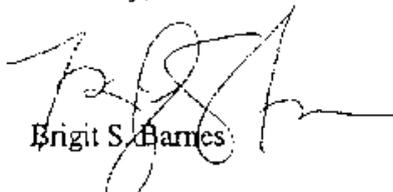
Although Placer County asserts at various places in the Finance Plan that it is not adopting

the Plan or PFE's proposed calculus for requiring reimbursement from the owners, the Development Agreement, at 4.2.4 and 4.2.5, states that the County can force reimbursement of infrastructure costs from Frisvold to JTS. If Frisvold applies for entitlements without having come to a voluntary agreement with JTS, or whoever the beneficiary is under the Development Agreement at that time, the County will use its best efforts to determine cost calculation methodology or allocation. Such a gentleman's agreement between Placer County and PFE -- that any future application will not be processed without the calculations of reimbursements, and of course the necessary easement commitment for the RVSP, for example along PFE Road -- amounts to a de facto taking, since the agency demanding the easements and collecting the money for the benefit of PFE are one and the same.

As an alternative, if the intent of the Plan is to bind all owners, such owners must become active participants in the commitments implicit in the Plan, and participate in approvals for all mitigation related documents.

We request that this Board continue the hearing and recirculate the RVSP Project EIR for the reasons herein stated.

Sincerely,



Brigit S. Barnes

Enclosure:

February 6, 2009 letter from Brigit S. Barnes to Christine Turner

cc: Clients [via email]
Scott Finley, Esq., Placer County Counsel [via email]
Kevin Kemper, Esq., for Bryte/PFE Investors [via email]

Carollo/BOS Letter re EIR

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February 10, 2009

Placer County Board of Supervisors
175 Fulweiler Avenue
Auburn, CA 95603

Re: Riolo Vineyard Specific Plan – Response to Comment Letter of
Brigit Barnes of February 9, 2009.

Dear Chairman Rockholm and Members of the Board:

At approximately 6:45 PM on Monday, February 10, we received by email a copy of a letter from attorney Brigit Barnes, providing written comments on the Final EIR for the Riolo Vineyards Specific Plan. We believe that this letter was distributed to the County at the same time, approximately 16 hours prior to the scheduled 11:00 AM hearing on this project before the Board. We appreciate that in the short time this circumstance has allowed, there is little opportunity to absorb the comments, or to respond. Nevertheless, we are concerned that the comments from Ms. Barnes misrepresent the analysis and conclusions in the Final EIR, and suggest without merit that the document is legally flawed under the requirements of the California Environmental Quality Act ("CEQA").

In response, we wish to submit the following responses, to inform both the Board of Supervisors and the public record prior to the hearing today. For ease of reference, the original text of Ms. Barnes letter is presented, with our responses below:

Dear Respected Supervisors:

This office was very recently retained to assist Russ and George Carollo and the Frisvold family in their attempts to correct the environmental and specific plan documentation previously submitted which indicates their approval and consent of the design plans for the Riolo Vineyards Specific Plan Project, and subsidiary documents ("RVSP Project" or "Project"). On behalf of our clients, we hereby submit the following comments on the Final Environmental Impact Report ("EIR"), Public Facility Financing Plan, and Development Agreement.

As set forth in the Staff Report at p. 5, ownership within the RVSP Project area includes the Applicant, Bryte Gardens Associates, LTD./PFE Investors, which controls just under 2/3 of the project site, and "non-participating" properties, including the Frisvold, Singh, Lund, Park Avra, and Elliott parcels. The RVSP EIR is described as providing project-

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level analyses for the Applicant, and program-level analyses for the remaining non-participating properties. The non-participating properties comprise more than 1/3 of the entire Project area. As such, the EIR, by definition, cannot be said to have fully analyzed the true nature and extent of the Project's impacts if it has only conducted a project-level analysis on 2/3 of the Project area.

The Draft EIR does not purport to analyze development on the designated Program Level parcels (which include the Frisvold parcel) at a "project" level. The distinction between Project- and Program Level parcels for the purpose of analysis is explained in detail in the beginning of the EIR (at Page 1-2) and elsewhere in the document. Section 15168 of the CEQA Guidelines addresses the use of a Program EIR for situations where there exists a "series of actions that can be characterized as one large project, and are related either:

1. Geographically,
2. As logical parts in the chain of contemplated actions,
3. In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or
4. As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways

The relationship of the non-participating properties within the context of the Specific Plan satisfies of all the above criteria, warranting the use of a Program EIR for the Specific Plan as provided by Guidelines §15168. In addition to the request for a Specific Plan, PFE Investors has submitted project applications to the County, and thus the EIR provides a project-level analysis of this development. The owners of the Frisvold parcel have not submitted a development application for their property, or prepared any development plan for review, and thus cannot be considered by the County for project-level review. This situation was explained in detail to the Frisvold group in a March 20, 2007 letter from Michael Johnson. The single application the County has received from the Frisvold group to date – Cancellation of the Williamson Act Contract – was withdrawn by the Frisvolds on February 6, 2009.

This half-hearted attempt to identify and disclose environmental impacts relating to the RVSP Project resulted in numerous significant or potentially significant impacts, even after mitigation -- no less than twelve (12), including seven (7) impacts deemed Significant and Unavoidable ("SUI"), requiring a Statement of Overriding Considerations. While Frisvold does not contest the programmatic nature of the general discussion of the SUIs identified, we must point out that the Statement of Overriding Considerations is wholly deficient in its review of these impacts and its determination that the economic and social benefits identified by the EIR consultant and applicant are sufficient legally to adopt the EIR in its current state.

With the apparent 2/6 withdrawal of the Frisvolds' request for Williamson Act Contract Cancellation, the number of Significant and Unavoidable Impacts identified in the EIR has been reduced by one. As described below, the County's proposed Statement of Overriding Considerations adequately justifies the

approval of the Specific Plan and related entitlements, notwithstanding these significant and unavoidable impacts, as consistent with CEQA Guidelines §15093.

Compounding the problem further is the fact that the EIR leaves a considerable amount of analysis to future study and future mitigation plan development by both the Applicant and non-participants alike, as set forth in detail below. This type of deferred analysis and mitigation is strictly prohibited under CEQA.

In keeping with the nature of a Program Level EIR document under CEQA Guidelines §15168, the EIR recognizes that additional environmental review may be necessary for non-participating parcels, when specific developments plans are prepared and submitted to the County as part of an application process. It is envisioned that this subsequent environmental review will involve an analysis of whether the development proposal in question is within the assumptions of the Specific Plan. See CEQA Guidelines §15168(c) and (d), and Page 8-2 of the Specific Plan.

1. Future studies of impacts are not adequate mitigation under CEQA. As such, the RVSP EIR impermissibly allows for Mitigation Measures 6-1b (future delineation of wetlands impacted by off-site infrastructure improvements), 6-3a (future survey for special status plant species and habitat), 6-4a (future survey for special-status vernal pool fairy shrimp and habitat), 6-6a (future survey for the western pond turtle and habitat), 6-8a (future survey for special-status bat species and habitat), 6-9a (future survey for American Badger and den habitat), 6-11a (future survey for Burrowing Owls), 6-12a (future survey for Nesting Raptors), 6-17a (future survey for Elderberry Shrubs), 6-18a (future delineation of on-site wetlands), 7-1b (future subsurface testing for important archeological or historical resources), 11-2b (future noise analyses and measurements according to County standards and requirements), 12-5a (prepare a future geotechnical report for all elements of proposed development), 13-2a (prepare project-specific drainage report), 13-2b (evaluate downstream off-site drainage facilities), 13-4b (prepare site-specific BMP plan), and 15-2c (future Preliminary Endangerment [Health Risk] Assessment per DTSC protocols), affecting all properties previously and currently farmed. See *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 590-591; *Laurel Heights v. Regents of University of California (Laurel Heights)* (1988) 47 Cal.3d 376, 400-403; *Citizens of Goleta Valley v. Board of Supervisors (Goleta)* (1988) 197 Cal.App.3d 1167, 1178-7

CEQA requires that Environmental Impact Reports determine the level of significance of impacts to environmental resources and to identify appropriate mitigation approaches. Requiring the development of detailed mitigation plans at a later date, which would be subject to review and approval by other state and federal regulatory agencies, is standard and not inconsistent with CEQA Guidelines (Section 15126.4[a][1][b]). This is not considered deferral and does not render the present CEQA analysis inadequate or incomplete as performance standards are proposed within each of the appropriate mitigations.

Mitigation Measure 6-1b requires the Applicant to obtain a verified delineation of off-site wetlands that would be impacted by infrastructure outside the boundaries of the Specific Plan. As explained on Page 6-8 of the Draft EIR, most of the off-

site wetlands were delineated based upon aerial interpretation and observation from off-site roads, since legal access to off-site private property was not available to the consultant team. In this regard, the analysis of the EIR represents the best available information regarding potential impacts. See CEQA Guidelines §§15144 and 15151. Off-site wetland delineations cannot be verified by the Corps absent the legal consent of the underlying property owner, which would be obtained prior to construction of necessary public infrastructure.

Mitigation Measure 6-3a requires focused special status plant surveys for Program-level parcels where surveys have not yet been performed. Page 6-60 of the EIR describes that plant surveys were performed on the Frisvold parcel and submitted to the County by the Frisvold group. This study has not been peer-reviewed by the County or the EIR consultant, because the Frisvolds have not filed an application with the County, or entered into a contract with the County for this work to be performed.

Mitigation Measure 6-4a requires a survey for special status branchiopods, applicable to parcels where such surveys have not been performed. Branchiopod surveys (wet and dry season) were performed on the Applicant's parcels, which indicated non-presence of these species. Off-site parcels were not surveyed, due to lack of legal access, and thus presence of branchiopods was assumed, in accordance with US Fish and Wildlife Service protocols. This is a conservative, worst-case scenario, and mitigation for impacts to branchiopod species will be provided whether the species are present in off-site wetland features or not.

Mitigation Measure 6-6a, 6-8a, 6-9a, 6-11a and 6-12a requires pre-construction surveys for the presence of Western Pond Turtles, special status bat species, American Badgers, burrowing owls, and nesting raptors, respectively. As indicated on Page 6-19 of the EIR, none of these species were found in surveys performed on the Applicant's parcels. We are unaware of any CEQA authority for the proposition that a pre-construction survey requirement is an improper "deferral of mitigation" where previous surveys did not locate the species in question, and the language of the mitigation measure requires additional specified measures to be taken in the event that subsequent presence of the species in question is identified. There is no deferral of mitigation. Under CEQA, courts have been clear on this issue:

"[F]or the kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process, the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." See *Defend the Bay v. City of Irvine* (2004) 119 Cal.App4th 1261

Mitigation Measure 6-17 requires focused surveys for the presence of elderberry shrubs providing potential habitat for the endangered Valley Elderberry Longhorn Beetle. This measure is applicable to Program-level parcels only, as protocol VELB surveys have already been performed on the Applicant's parcels, as described on Page 6-15, where no suitable VELB habitat shrubs were found. Page 6-56 notes that a VELB survey was performed by the Frisvolds, and summarizes this report (no suitable habitat).

Mitigation Measure 6-18a requires Corps verification of a wetlands delineation prior to development on Program-level parcels, where delineations have not yet been performed. The EIR indicates on Page 6-8 that wetland delineations for the Applicant's parcels were verified by the Corps in 2006. As described on Page 6-57 of the EIR, this measure does not apply to the Frisvold parcel, since a Corp-verified delineation has been completed by the Frisvolds. As described by the EIR on Page 6-57, no wetland habitat is present on the Frisvold property.

Mitigation Measure 7-1b (subsurface testing for archeological resources) would be performed only where such resources would be impacted by construction activity, and then only where avoidance or protection through soil capping is infeasible. See Mitigation Measure 7-1a. Until improvement plans for project construction are prepared and approved by the County, it is impossible to know whether and to what extent sensitive resources would be impacted by project development. Mitigation Measures 7-1a through 7-1c address all potential eventualities.

With respect to Mitigation Measure 11-2b, the EIR recognizes that at a single location along PFE Road, the County's thresholds for exterior noise may be exceeded even with the construction of a standard 6-foot soundwall at the existing grade. Mitigation Measure 11-2b simply requires the Applicant to address this potential impact through design, and to subject the proposed design to additional review by an acoustical analyst. In any event, the County's noise threshold will not be exceeded, once appropriate noise attenuation features are designed, approved, and implemented. This is described in detail on Pages 11-30 and 11-31 of the EIR. See *Laurel Heights Improvement Assn v. Regents of the Univ. of Cal.*, (1988), 47 Cal.3d 376, which upheld a mitigation measure for noise impacts that required evaluation of specific noise control techniques to ensure compliance with noise performance standards once designed.

Mitigation Measure 12-5a requires preparation of a site-specific geotechnical report to address soil conditions within the Plan Area as development occurs. As described in the EIR, a Preliminary Geotechnical Engineering Report was prepared in 2003 for the Plan Area, which generally describes soils conditions present on-site. Mitigation Measure 12-5a requires County certification of the completion of treatment measures in instances where soils conditions warrant this. This is a standard development condition, not a "deferral of mitigation." Courts under CEQA have concluded that an agency may rely on future studies to define how a mitigation measure will be designed and implemented. Such an approach is appropriate, for instance, when the results of later field studies will

be used to tailor mitigation measures to fit actual environmental conditions. See *National Parks and Conserv. Assn. v. County of Riverside*, (1999), 71 Cal.App.4th 1341, 1366.

Mitigation Measure 13-2a requires preparation of a subdivision-specific drainage report, in conjunction with submittal of improvement plans. The EIR did not defer mitigation but rather identified the appropriate time during the development review process when the various mitigation measures of this project would be implemented. The drainage characteristics of the Specific Plan as a whole, under pre- and post-project conditions, are the subject of a comprehensive drainage analysis that is summarized in the EIR. See Impacts 13-2 and 13-3 and related discussion. As to this precise issue, the Court in *Endangered Habitats League v. County of Orange*, (1995) 131 Cal. App.4th 777 offered the following:

"Endangered Habitats contends mitigation of impacts on the drainage system is deferred because a study to determine the project's effect on existing drainage facilities is postponed. But the EIR states that impacts on hydrology and drainage are less than significant before mitigation, as well as after it, so we cannot see how waiting for this study makes any difference."

Mitigation Measure 13-4b requires the preparation of subdivision-specific BMP plans for treatment of runoff at the improvement plan stage. This measure recognizes that the precise nature of the appropriate BMP measures will vary, depending upon the improvements in question and their location. This measure identifies a series of potential BMP options, and sets forth a performance standard that must be achieved for each set of improvement plans approved by the County. See page 13-44 of the EIR. This approach to mitigation for impacts to runoff was specifically upheld by the Court in *Endangered Habitat League v. County of Orange* (2005) 131 Cal.App.4th 777.

Measure 15-2c applies to soils within the Plan Area that were historically used for orchard and/or vineyard purposes, or as dump sites for debris. As the EIR discloses on Page 15-12, all former dumpsites on the Applicant's property have been identified and all debris and contaminated material has been removed and properly disposed. With respect to former orchard and vineyard areas on the Applicant's parcels proposed for residential development, a protocol-level analysis to determine the presence of residual pesticides was performed in 2007. These studies indicated a slightly elevated level of pesticide contamination, which the EIR identified as having a low potential for human health risk. Prior to grading, Mitigation Measure 15-2c requires completion of a Preliminary Endangerment Assessment in accordance with Department of Toxic Substances Control to evaluate human health risk associated with this condition, and identifies that the DTSC may impose additional project-specific requirements as appropriate. This satisfies CEQA requirements for effective mitigation. See *Sacramento Old City Assn v. City Council*, (1991), 229 Cal.App.3d 1021 (upholding the future preparation of a transportation mitigation plan as adequate mitigation where commitment to achieving mitigation goals was evident).

2. Mitigation requiring future plan development is also insufficient under CEQA. As such, the RVSP EIR impermissibly allows for Mitigation Measures 6-1a (future preparation of jurisdictional wetland mitigation implementation and monitoring plan), 6-6a (future preparation of mitigation and monitoring plan for western pond turtle and habitat), 6-8a (future preparation of mitigation plan for special-status bat species and habitat), 6-9a (future preparation of mitigation plan for American Badger and den habitat), 6-10a (future preparation of mitigation plan for Swainson's Hawk foraging habitat), 6-17b (future preparation of mitigation plan for Elderberry Shrubs), 7-ic (future preparation and adoption of a data recovery plan for important archeological or historical resources), 7-3a (future preparation of plan to manage and salvage paleontological resources), 12-3d (future preparation of stormwater pollution prevention plan), and 9-1a (future preparation of construction traffic management plan). In San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670, the court held that simply requiring a project applicant to obtain a management plan and then comply with the recommendations in the management plan was an improper deferral of mitigation. See also Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 793. Future preparation of a mitigation plan is not allowed. At this time, without adequate description, the County cannot evaluate the adequacy of the proposed mitigation or fee program. San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal.App.3d 584, 590-591.

Refer to Responses above regarding alleged deferral of mitigation. As indicated above, the EIR is consistent with CEQA requirements for adequate and enforceable mitigation

3. Requiring future identification of and participation in off-site mitigation violates CEQA since appropriate sites have not been identified, much less evaluated. As such, the EIR impermissibly allows for Mitigation Measures 6-4a (participation in a bank or non-bank location for off-site mitigation of Special Status Branchiopods), 6-1a (purchase of mitigation credits for off-site mitigation of Swainson's Hawk foraging habitat), 6-11a (purchase of mitigation credits for off-site Burrowing Owl habitat), and 6-17b (purchase of mitigation credits for off-site mitigation of Elderberry Shrubs). See Laurel Heights v. Regents of University of California (Laurel Heights) (1988) 47 Cal 3d 376, 400-403; Citizens of Goleta Valley v. Board of Supervisors (Goleta) (1988) 197 Cal App.3d 1167, 1178-79.

Participation in mitigation banks to address impacts to protected habitat resources and species is well acknowledged as proper mitigation under CEQA. Under CEQA Guidelines §15370(e), mitigation includes "compensating for the impact by replacing or providing substitute resources or environments." Placer County has adopted such measures in the Placer Vineyards and Regional University EIRs, and in many others. The Laurel Heights decision cited by Ms. Barnes addresses the development of a research facility at a University of California campus, does not involve species issues, and in no way stands for the proposition that participation in mitigation bank is inadequate mitigation under CEQA. The Goleta decision addresses analysis of alternatives, and like Laurel Heights, does not address species issues or the use of mitigation banks for CEQA purposes.

4. Mitigation requiring future acquisition and maintenance of easements from non

participants is impermissibly speculative under CEQA. In this case, the Board must understand the nature of the three-headed hydra it is considering. The EIR relies on mitigation, sometimes unidentified, which requires obtaining easements from the non-participating owners. However, the Applicant has no power to compel such easements. The only party with such power is Placer County, through its power of eminent domain. Yet Placer County eschews direct participation in enforcement of any of the obligations which must come from the non-participating owners [see Development Agreement, §2.8, 3.17]. For example, Mitigation Measure MM 13-4c requires that vegetation be established and maintained for effective performance of impervious surface storm drainage Best Management Practices. Maintenance of BMP facilities is required to be provided by the project owner for each future construction project within the Specific Plan area. Final maps are required to show easements to be created and offered for dedication to the County for maintenance and access to these facilities. Because the stormwater pollution prevention and site-specific BMP plans have yet to be developed for the Project Applicant's portion of the development, it is possible that easements may be required from non-participating owners within the Specific Plan area. The Applicant cannot provide any assurance or guarantee that they will be successful in acquiring these easements. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the appellate court concluded that because the success of mitigation was uncertain, the county could not have reasonably determined that significant effects would not occur. This deferral of environmental assessment until after project approval violated CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action.

Ms. Barnes comment letter fails to indicate any specific instance in which mitigation measures in the EIR require the acquisition of easements from non-participating property owners. Roadway sections identified in the Specific Plan are consistent with the provisions of the Dry Creek West Placer Community Plan, with the exception of PFE Road, where County Staff supports a reduction in the width of the center median from 20 feet to six feet. This revision will have a positive effect on the right-of-way dedication requirements of property owners within the Specific Plan, including the Frisvold Group. The Frisvold group should also understand that dedication of right-of-way is not a "mitigation measure" for the benefit of other property owners, but rather an obligation of development. As with the Applicant, the Frisvolds will be required to grant right-of-way along PFE Road and construct lane improvements, as both the Community Plan and Specific Plan similarly identify.

With respect to maintenance of BMP, the commenter is correct that easements must be shown on the Final Map, but the Final Map in question is the map governing the Applicant's property. Maintenance of drainage facilities on the Applicant's property will not require the Frisvold group to grant an easement on their property. Reference to the analysis in the EIR reveals that drainage from the vast majority of the site drains to the north, to Dry Creek. The High Density Residential parcel in the southwest corner of the site, along with a portion of the Frisvold property, drains to the south through an existing culvert. The Applicant's property may accept drainage from the Frisvold property – it is not the other way around. See EIR Page 13-7 and Figure 13-4, which depicts drainage under post-project conditions.

5. The commitment to pay fees without any evidence that the mitigation will actually occur is likewise inadequate. The RVSP Project EIR impermissibly allows for this type of mitigation. For example, the DEIR states at p. 9-48, that the "Applicant proposes to make a fair share payment, together with similar fair share payments from other projects, toward constructing the following improvement." No additional information is provided. See *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140, citing *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728. In *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, the Court of Appeal held that bare recitation that a project would pay "fair share" fees towards highway improvements was too speculative to be deemed an adequate mitigation measure. *Id.*, at pp. 1193-1194.

The item referenced by the comment is the improvement of the intersection of Walerga Road and Baseline Road, to add a second left turn lane east- and west-bound. Contrary to the comment, however, the EIR does not conclude that payment of a fair of the cost of this improvement is "adequate mitigation." Instead, the EIR recognizes that notwithstanding the contributions from Specific Plan developers toward this improvement, impacts would be significant and unavoidable until this improvement is constructed. As indicated by the EIR, contribution of a fair share would take place through participation in adopted fee programs.

The Court of Appeal ruled that to be sufficient under CEQA, a "fair share" mitigation fee measure must (1) specify the actual dollar amount based on current or projected construction costs; (2) specify the improvement projects for which the fair share will be used; (3) if the fair share contribution is a percentage of costs which are not yet known, then specify the percentage of costs; and (4) make the fees part of a reasonable enforceable plan or program which is sufficiently tied to actual mitigation of traffic impacts at issue. There is no evidence in the RVSP Project EIR of the amount of money represented by "fair share," no evidence as to how the "fair share" will be calculated, no evidence that the amount of "fair share" funding will be adequate to construct the infrastructure which comprises the mitigation measures, and no evidence that any other party or entity will contribute amounts towards their unspecified "fair shares" which are sufficient to construct the infrastructure which comprises the mitigation measures.

The Dry Creek CIP Program identifies the construction cost estimate for each roadway improvement funded through the program, and establishes fair share contribution on a per-unit basis. This satisfies the legal requirements specified above. Participation by the project in applicable fee programs is required not only as an identified Mitigation Measure, but also as a provision of the Development Agreement. Participation in an established Capital Improvement Program is adequate as mitigation under CEQA. The *Save our Peninsula Committee* decision cited by Ms. Barnes makes this abundantly clear. See also *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342.

Therefore, the following mitigation measures are also inadequate under CEQA: MM 5-4a (payment of fair share fee to compensation/relocation assistance associated with Watt Avenue improvements), 5-6a (payment of fair share fee to compensation/relocation assistance on program-level parcels), 9-2a (payment of in lieu fee for construction of Walerga Road frontage improvements), 9-2b (payment of fair share fee to widen Walerga

Road from the Dry Creek Bridge to Baseline Road), 9-3a (payment of fair share fee to widen intersections of Locust Road and Baseline Road, Watt Avenue and Baseline Road, and Walerga Road and Baseline Road), 9-3b (payment of fair share fee to widen intersections of Watt Avenue and PFE Road, and Walerga Road and PFE Road), 9-8a (payment of fair share fee to widen SR 65 from Blue Oaks Boulevard to SR 65), 9-9a (payment of fair share fee to construct an interchange to replace the SR 70/99 and Riego Road intersection), 9-11a (payment of fair share fee to widen the intersections of Locust Road and Baseline Road, and Walerga Road and Baseline Road), 9-11b (payment of fair share fee to widen the intersections of Watt Avenue and PFE Road, and Walerga Road and PFE Road), 9-16a (payment of fair share fee to widen SR 65 to six lanes from Blue Oaks Boulevard to I-80), 9-17a (payment of fair share fee to construct an interchange at the intersection of SR 70/99 with Riego Road), 9-19a (payment of fair share fee to widen PFE Road to four lanes from Watt Avenue to Walerga Road), and 9-20a (payment of fair share fee to widen the intersection of Walerga Road and PFE Road, signaling the intersection of Cook Riolo Road and PFE Road, and signaling the intersection of "East" Road and PFE Road). None of these "fair share" requirements meet the specific informational standard discussed above in *Anderson, supra*.

See Responses above regarding CIP participation as constituting adequate mitigation for CEQA purposes. With respect to significant impacts on SR-65, the project will make a fair share contribution through payment of SPRTA fees, though the EIR recognizes that impacts would be significant and unavoidable until additional lane facilities are completed. The EIR further describes that widening of I-80 from Watt Avenue to Riverside Avenue is not identified as an element of any adopted fee program, and that improvements to add lanes may not be feasible. As a result, impacts are regarded as significant and unavoidable, due to the fact that the project would add trips to a facility operating at a substandard level of service. See, for example, Page 9-53 of the EIR.

Furthermore, we have not located any "nexus" or "rough proportionality" study completed pursuant to the constitutional principles established by *Nollan/Dolan*, and thus any fair share contribution would be secured under the terms of the Development Agreement. The proposed Development Agreement is specific only as to three (3) of the above-referenced transportation improvements, in that it sets forth an actual per-unit fee to be paid. However, the EIR must set out in detail how the imposition of fees will assure that the traffic mitigation will result, which it does not, and therefore it violates CEQA. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal App.3d 692, 727; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99 140.

See Comments above regarding payment of CIP fees as mitigation. As pertains to adopted fee programs, the required nexus has been demonstrated according to the requirements of AB 1600. The EIR does not claim that payment of CIP fees by the Riolo Vineyard Specific Plan alone will result in the construction of all the improvements in the CIP, and recognizes that in some cases, impacts would be significant and unavoidable in the short term until improvements are completed by the County.

The failure to provide enough information to permit informed decision-making is fatal. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in a manner required by law. *Save Our Peninsula Committee v.*

Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 118 Because so much of the mitigation relied upon remains to be fleshed out, the EIR should be redrafted and recirculated when all mitigation plans are completed. Otherwise, the EIR violates CEQA by segmenting this project into stages of approval. *CEQA Guidelines Section 15003(h), Bozung v. LAFCO (1975) 13 Cal.3d 263, 283.*

See Responses above.

FINDINGS/STATEMENT OF OVERRIDING CONSIDERATIONS

In general, the ER supports the conclusion that -- given the acknowledged number of Significant and Unavoidable impacts which would require a Statement of Overriding Consideration -- this Specific Plan benefits no one except the PFE Developer Investors, to the detriment of the environmental impacts for the region at large and other property owners contained within the Specific Plan area, including the Frisvold property owners. As acknowledged in the DEIR at pp. 2-4 through 2-6 and Table 2-2 (pp. 2-8 through 2-40), the RVSP Project will have the following Potentially Significant and/or Significant and Unavoidable Impacts:

- Permanent loss of Farmland (SUI)
- Williamson Act Contract cancellation (SUI)
- General and Community Plan inconsistencies
- Visual impacts
- Traffic
- Transit
- Short-term criteria Air Pollutant emissions
- AQ impacts, PM10, RG and NOX short-term and long-term (SUI)
- Inconsistency with Placer County Air Quality Attainment Plan (SUI)
- Greenhouse Gas contributions to global warming (SUI)
- Short-term noise (SUI)
- Transportation noise (SUI)
- Cumulative SUIs include: loss of Farmland, vegetation and wildlife habitat, change in landscape character (rural to urban), ambient night sky illumination, unacceptable LOS along six (6) roadway segments and/or intersections, regional criteria pollutant emissions, noise and flooding due to increase in surface drainage.

CEQA does not impose a numerical limit for the number of significant and unavoidable impacts that can result from an approved project, provided that the appropriate findings are made in the context of a Statement of Overriding Considerations. By way of comparison, the Placer Vineyards Specific Plan EIR identified 67 significant and unavoidable impacts. For Regional University, 56 significant and unavoidable impacts were identified. As described above, the Frisvold group has eliminated the potential for the significant and unavoidable impact associated with cancellation of the Williamson Act Contract, which was addressed in the EIR at their initial request.

As set forth above, the RVSP Project will cause a substantial number of significant impacts, not the least of which is long-term air quality impacts. The RVSP Project is located within the Sacramento Federal Nonattainment area, which has been designated as being in nonattainment of the state ozone standards and serious nonattainment of the federal 8-hour ozone standard. Maximum concentrations in excess of the California

ambient standards for PM10 have also been recorded at both the North Highlands and Roseville monitoring stations. DEIR, at p. 10-5. The EIR acknowledges that the RVSP Project is inconsistent with the Placer County Air Quality Attainment Plan. Impact 10-6, DEIR at p.10-23.

These impacts are acknowledged in the EIR and subject to a proposed Statement of Overriding Considerations. Inconsistency with the Placer County AQAP is concluded on the basis of exceedence of daily emissions thresholds, even after the application of all feasible mitigation. The comment does not dispute that conclusion.

Furthermore, the DEIR fails to analyze the indirect health effects from air pollution as required under *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4t 1184, 1219.

The Comment does not describe the nature of an indirect health effect, for which analysis has not been performed. The health effects of criteria pollutant emissions are described generally in the EIR at Pages 10-2 through 10-6. The Comment does not allege that development within the Specific Plan will have a greater or different effect on human health than would occur as a result of residential development in general.

When an agency such as Placer County approves a project with significant environmental effects that will neither be avoided nor substantially lessened, it must adopt a Statement of Overrides. 14 Cal. Code Regs §15045. The agency must set forth the reasons for its action based on the Final EIR and other information in the record. And it is in this context that the EIR is completely deficient. The explanations for the Overrides to be found at pp. 124-126 of the Findings Resolution are generic statements that the RVSP encourages distinctive attractive communities, offers housing choices and opportunities, provides for compact development, supports a variety of transportation choices, facilitates construction of new public facilities, and capitalizes on existing infrastructure investments.

The depth of detail in the proposed Statement of Overriding Considerations is adequate for CEQA purposes, in that the reasoning behind each and every project benefit is described for the benefit of the decisionmakers and the public alike. Section 15093 of the CEQA Guidelines does not require that the Statement of Overriding Considerations be supported only by the content of the EIR, but rather "by substantial evidence in the record." This includes the Specific Plan, the Development Agreement, the Finance Plan, and the EIR, among other sources of public information. Nevertheless, the EIR contains ample documentation of the objectives and benefits of the project. It is also observed that each of the benefits of the Project identified in the Statement of Overriding Consideration independently serve as sufficient justification for approval of the Project, notwithstanding its significant and unavoidable impacts. The fact that the Commenter may question certain benefits of the Project, or place a different value upon them than the County, does not invalidate the Statement of Overriding Considerations from a legal perspective. See *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671.

A review of the Population, Employment and Housing analysis provides no discussion with respect to the particular benefits of the Project that would justify a proposed override based on housing opportunities. See DEIR, at Chapter 5.

The Specific Plan will provide 933 residential units in Placer County, ten percent of which would be designated as affordable housing per County requirements. See Page 3-8 of the Specific Plan. This basis aspect of the Project is described throughout the EIR, and particularly in Chapter 5.

While RVSP may in fact provide services which can be seen as moving in these laudable directions, such a generic statement is not sufficient. See *Sierra Club v. Contra Costa County* (1992) 10 Cal. App.4th 1212, 1223 [statement of overriding considerations should be treated like findings and must be supported by substantial evidence in the record]. Since many of the goals (for example, facilitate construction of new public facilities, etc.) depend on fee programs which the EIR acknowledges have not been developed at this time, such basis for the statement cannot logically be supported by this record. In a situation where the record is flooded with plans to identify mitigation and fees to pay for the mitigation in the future, the record cannot support factual premises that would underlie this Board's determination that the Project's benefits outweigh its admitted adverse impacts.

The infrastructure construction obligations of the Specific Plan are well-defined in the EIR, as well as in the Development Agreement and the Finance Plan. In many cases, public infrastructure will be constructed by the Applicant that will provide a substantial benefit to the property of others, including the Frisvold property, by facilitating development potential. Many of the benefitting properties, both inside and outside of the Specific Plan, would not be able to develop as envisioned under the Community Plan unless and until the Applicant constructs a sewer lift station and force main, roadway facilities, and drainage improvements. The Applicant will construct an extensive recreational trail corridor along Dry Creek. These benefits and others are clearly identified in the proposed Statement of Overriding Considerations.

Although an agency's policy judgment will be given credence by a reviewing court, the types of reasons for upholding a Statement of Overrides is not present here, largely because the design and funding of such mitigation measures is tentative at the time of this consideration. For example, Statements of Overrides have survived judicial scrutiny where the record showed implementation of economic development overrode rezoning several industrial sites; or concurrent implementation of a redevelopment plan supported demolition of a historic structure; or application of already existing growth management policies. Placer County cannot make such findings here.

See Responses above regarding the adequacy of the proposed Statement of Overriding Considerations.

Although a Statement of Overriding Considerations represents an agency's policy judgment, a statement is legally inadequate if it does not accurately reflect the significant impacts disclosed by the EIR, and mischaracterizes the relative benefits of the project. *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 Cal.App.4th 683, 717. None of the benefits relied upon in the Statement are presently available, and will only be derived in the future if all the property identified in the RVSP is developed in accordance

with the plan and pays its "fair share".

The significant and unavoidable impacts of the Project are clearly defined as part of the Statement of Overriding Considerations set forth in the proposed Findings. The Commenter is correct – the benefits of the Specific Plan will only be realized upon development of the project. The opposite scenario is analyzed in the EIR as well, as the No Project Alternative. This is particularly true as it relates to non-participating property owners, who are expected to rely upon the Applicant to fund and construct substantial infrastructure necessary to serve all development within the Specific Plan. As identified in the Finance Plan and the Development Agreement, the Applicant is not requesting (and the County is not requiring) non-participating owners to fund their fair share of costs prior to development approval on their respective parcels

According to the Finance Plan and Development Agreement, the County asserts that it will not enforce the demands for reimbursement of land contribution against the non-participating owners, much less the other parties whose participation is needed. Thus, the basis for the Overrides -- the social and economic benefits -- are not supported by the overall record.

The benefits associated with development of the Applicant's parcels will occur regardless of whether non-participating property owners develop their parcels as well. It is recognized that full attainment of the benefits of the Specific Plan requires full development as envisioned.

Based on the foregoing, the Board clearly cannot make a decision finally certifying the Environmental Impact Report for this Project, but should continue this matter until recirculation and adequate public and agency review requirements have been made.

We urge the Board of Supervisors to consider and take action upon the requested approvals for the Riolo Vineyard Project at the February 10 public hearing. As detailed in the Findings and in the Final EIR, ample public opportunity for comment and participation in the administrative process has been provided in accordance with CEQA requirements. The Commenter did not participate in this process, and elected to submit a comment letter to the County approximately 16 hours prior to the designated time of hearing.

ADDITIONAL/NEW INFORMATION REQUIRING RECIRCULATION

On November 25, 2008, the Board of Supervisors authorized a Contract Amendment to the Planning Services Agreement with Hausrath Economics Group for the preparation of an additional Fiscal Analysis for the RVSP Project, to respond to comments and to assist in the preparation of an urban services plan for the Project. This Board is being asked to accept the Urban Services Plan prepared for this Project. Staff Report, at p. 1. The Staff Report states that the Urban Services Plan has been provided to the Board for review and consideration. Staff Report at p. 20. It does not appear that this additional study has been provided for public review — even though it directly relates and supposedly responds to comments raised regarding impacts from the RVSP Project. As such, the new information must be included in the EIR, and the EIR recirculated in accordance with CEQA Guideline § 15088.5(a). CEQA Guideline § 15088.5(a) requires a lead agency to

recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under CEQA Guideline §15087, but before certification. As used in this section, the term "information" can include changes in the project or environmental setting, as well as additional data or other information. See also *Public Resources Code §21092.1; Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal. 4th 1112. The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it. *Save our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131; *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822

Under CEQA Guidelines §15088.5, new information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. The Riolo Vineyard Urban Services Plan does not contain any information that relates to a substantial adverse environmental effect of the project. The completion of this document and its release, do not create a need to recirculate the EIR for additional public review. Apart from raising this as a legal issue, the Commenter does not suggest otherwise.

INCONSISTENCY WITH THE PLACER COUNTY GENERAL PLAN

As acknowledged in the DEIR at Appendix D2, pp. 5, 9, 13, 14, 15, and 55, the RVSP Project is inconsistent with the following Placer County General Plan Goals/Policies, Agricultural Land Use Policy No. 1.H.6.; Development Form and Design Policy No. 1.0.1.; Streets & Highways Policy Nos. 3.A.7., 3.A.8., and 3.A. 12.; and Land Use Conflicts Policy No. 7.B.1.

This Comment accurately summarizes the conclusions of Appendix D-2 of the EIR, but omits all other relevant information presented in the EIR. The Placer County General Plan designates the Riolo Vineyard Specific Plan area as a part of the Dry Creek/West Placer Community Plan. No change to the General Plan land use designations are proposed for the project site. The General Plan policy amendments also have been proposed and approved by the Board of Supervisors for the Placer Vineyards Specific Plan and/or Regional University Specific Plan projects and address modifications to General Plan policy language that are necessary to allow the County to process and approve a Specific Plan. The amendments address a number of issues, including land use buffers between urban land uses and existing agricultural lands, Level of Service (LOS) standards for specific plans, and references to project-specific design guidelines. With the approval of the requested policy amendments to the Placer County General Plan (as have already been approved for the Placer Vineyards and Regional University Specific Plans), the proposed Riolo Vineyard Specific Plan will be consistent with the General Plan.

The general plan has been aptly described as the "constitution for all future

developments" within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan. The consistency doctrine has been described as the "linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural etc. ("Future") v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336; *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4t 985, 994. The proposed project, therefore, is valid only to the extent that it is consistent with the County's General Plan. A project is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment. It must be compatible with the objectives, policies, and general land uses and programs specified in the general plan. *Future, supra*, at 1336; *Corona-Norco, supra*, at 994.

See Responses above.

INCONSISTENCY WITH THE DRY CREEK WEST PLACER COMMUNITY PLAN

As acknowledged in the DEIR at Appendix D1, pp. 4, 7, 11, 12, 20, 21, 34, 43, and 44, the RVSP project is inconsistent with the following Dry Creek/West Placer Community Plan Goals/Policies: Land Use Policy Nos. 2, 25, and LDR Description; Flood Control Policy Nos. 4 and 5; Natural Resources Policy No. 14; and Transportation/Circulation (Roads & Trails/Goal 11) Policy Nos. 6 and 9. Policy No. 6 requires a minimum right-of-way for PFE Road of 120 feet. Staff has expressed concern that permitting the amendment allowing for a PFE Road width reduction from 120 feet to 64 feet is inconsistent with the community vision, and eliminates an amenity associated with the Dry Creek West Placer Community.

The proposed amendments to the Community Plan include policy amendments that allow for the approval of a Specific Plan, similar to the General Plan amendments. These include the need for agricultural land use buffers and Level of Service standards for roadways. The County has previously approved these amendments in conjunction with the Placer Vineyards and/or Regional University Specific Plans. The EIR makes this clear, on page 4-35. A number of Community Plan amendments are unique to the Riolo Vineyard Specific Plan. The project specific amendments include one amendment relating to the right-of-way for PFE Road and one addressing the minimum lot sizes permitted, and four amendments pertaining to development in the floodplain.

Community Plan Policy 6 requires a minimum right-of-way for PFE Road of 120 feet. The Applicant has requested an amendment to that policy to permit a Specific Plan project to develop alternative standards. In this case, the proposed amendment reflects two changes to the road cross-section that require the amendment. First, the Community Plan envisioned that PFE Road would include a 20-foot-wide landscaped median. The RVSP proposes a six-foot paved median as an alternative. County staff is in support of this proposed amendment, for the reasons given in the Board's Staff Report.

See Staff Report at p. 14. It should also be noted that the West Placer MAC opposes the amendments to the LDR Description (Staff Report, at p. 15) and Policies 4 and 5 (Staff Report, at p.18).

The recommendations of the Dry Creek MAC concerning the Project are detailed in the Staff Report to the Board, and were previously described to the Planning Commission. On December 18, 2008, the Planning Commission recommended approval of the Project by a 4-2 vote. It should be noted that the MAC did not draw any conclusions regarding the adequacy of the EIR as an informational document.

RESPONSES TO COMMENTS

The EIR fails to adequately address the concerns raised in substantive comment letters received from the City of Roseville and other state and local agencies. For example, the City of Roseville commented on its concerns with fire protection services and emergency response times. See FEIR, Comment Letter 5. First, the EIR failed to provide a meaningful analysis and discussion of these potential impacts. See DEIR, Section 14.1 6.2 at pp. 14-2].

The Comments of the City of Roseville on the Draft EIR are addressed in the Final EIR. Without additional information from the Commenter as to how the Responses to Comments are not "meaningful," further response is impossible.

Courts have held that an agency failed to proceed as required by law because the EIR's discussion and analysis of a mandatory FIR topic was so cursory it clearly did not comply with the requirements of CEQA. *El Dorado Union High School District v. City of Placerville* (1983) 144 Cal.App.3d 123, 13. The EIR simply states that the Project intends to rely on both the Placer County Fire Department/CDF and the City of Roseville Fire Department for fire and emergency services, while paying impact fees to a program designed to provide for the future construction of fire protection facilities in the unincorporated southwest Placer County Region. Both agencies agree that the population served by this Project would call for an urban level of service, and the City of Roseville has suggested that the RVSP area be self-sufficient for at least the first alarm assignment. The EIR's Response "noted" the City's comments, and reiterated that the developer will contribute impact fees toward future facilities. See FEIR, Response to Comment Letter 5, at pp. 3-37 to 3-38. As of the date of this letter, we are informed that both agencies have taken the position that the FEIR's Responses to Comments in this regard have not adequately addressed this critically important impact.

As identified in the Staff Report, Mitigation Measure 14-1b has been changed to reflect the additional language added by the City of Roseville in their comments. This is also addressed in the Development Agreement. At Roseville's request, the Placer County Fire Department is attending meetings with Roseville's fire district to discuss mutual aid. We assume that if the City of Roseville were dissatisfied with the responses to their issues taken by the County, representatives of the City would comment directly.

An adequate EIR must respond to specific suggestions for mitigating a significant environmental impact (such as the City of Roseville's suggestion discussed above) unless the suggested mitigation is facially infeasible. *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.

Adequate responses to comments on the Draft ER are of particular importance when significant environmental issues are raised in comments submitted by experts or by

agencies, (such as Fire Departments), with recognized specialized expertise. Santa Clarita Org. for Planning the Environment v. County of Los Angeles (2003) 106 Cal.App.4th 715, 131. The response must be detailed and must provide a reasoned good faith analysis. 14 Cal. Code Regs. §15088(c). The responses to comments must state reasons for rejecting suggestions and comments on major environmental issues. Conclusory statements unsupported by factual information are not an adequate response. Id.; Cleary v. County of Stanislaus (1981) 118 Cal.App.3d 348. The need for a reasoned, factual response is particularly acute when critical comments have been made by other agencies or experts. People v. County of Kern (1976) 62 Cal.App.3d 761, 722; Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1367.

See Responses above.

PUBLIC FACILITIES & FINANCING PLAN AND DEVELOPMENT AGREEMENT ISSUES

The economics for development of the Frisvold property have been put on its head. Therefore, at this time, Frisvold has no intention in participating in the non-existent benefits of the Specific Plan, or the Finance Plan. Frisvold's property is referenced in the Finance Plan and the DEIR as follows:

Excerpt from DEIR, at p. 3-74: For development of the Frisvold parcel with Medium-Density Residential uses as proposed, County approval of the cancellation of the existing Williamson Act contract would be required as well as the adoption of the Specific Plan and the above described amendments to the Placer County General Plan and Dry Creek/West Placer Community Plan. The Frisvold parcel will be included in the hearing bodies' consideration of the adoption of the Specific Plan and above described amendments to the Placer County General Plan and Dry Creek/West Placer Community Plan. The only other discretionary approval that will be considered by the hearing bodies for the Frisvold parcel is the following:

1. Williamson Act contract cancellation

Excerpt from DEIR, at p. 4-19: One property owner in the Plan Area is enrolled in this program. The Frisvolds, who own a 15-acre parcel (APN 023-200-057) adjacent to PFE Road currently under a Williamson Act contract, filed a Notice of Non-Renewal with Placer County on February 10, 2006. A request to cancel the contract was filed with Placer County on September 11, 2007.

As stated above, that request has been withdrawn because of the adverse financial effects payment of cancellation costs will have on the Frisvold family. The Frisvold property is identified as K in the RVSP thus the last identified developer. Given the financial state such future development may be at least ten years in the future.

The above comments do not address the adequacy of the EIR under the requirements of CEQA. Nevertheless, it should be stated that the EIR contains a substantial amount of specific information regarding conditions on the Frisvold parcel, which was included at their request and their insistence. See, e.g., Letter from Marcus Lo Duca dated June 25, 2007. This is the case notwithstanding the fact that the Frisvold group has not submitted a development application, or

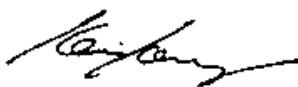
entered into an agreement with the County to process the technical studies they have submitted. In January 2008, URS Corporation presented the County and the Applicant with a revised scope of work, which included approximately \$3,500 to include the Frisvoid studies in the EIR. This amount has been paid by the Applicant to the County.

Although Placer County asserts at various places in the Finance Plan that it is not adopting the Plan or PFE's proposed calculus for requiring reimbursement from the owners, the Development Agreement, at 4.2.4 and 4.2.5, states that the County can force reimbursement of infrastructure costs from Frisvoid to JTS. If Frisvoid applies for entitlements without having come to a voluntary agreement with JTS, or whoever the beneficiary is under the Development Agreement at that time, the County will use its best efforts to determine cost calculation methodology or allocation. Such a gentleman's agreement between Placer County and PFE -- that any future application will not be processed without the calculations of reimbursements, and of course the necessary easement commitment for the RVSP, for example along PFE Road -- amounts to a de facto taking, since the agency demanding the easements and collecting the money for the benefit of PFE are one and the same.

The position of the Applicant regarding the appropriate reimbursement allocation for planning and infrastructure costs has been presented to the Frisvoid group, and will be presented to the Board on the record at the February 10 hearing.

We appreciate the efforts of the Board and County Staff to review these comments and our responses prior to the hearing, and look forward to addressing these matters further.

Very truly yours,



Kevin M. Kemper

cc: Michael Johnson, Planning Director
Scott Finley, Deputy County Counsel
Ann Baker, Planning Department
Rob Aragon, PFE Investors, LLC