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**FILED**  
SUPERIOR COURT  
COUNTY OF LAKE  
JAN 04 2022

BY YB Krista D LeVier  
Yolanda Blum  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LAKE

CENTER FOR BIOLOGICAL DIVERSITY, )  
Petitioner, )

Case No. CV421152

PEOPLE OF THE STATE OF CALIFORNIA, )  
EX. REL, ATTORNEY GENERAL ROB )  
BONTA, )  
Petitioner-Intervenor, )

**RULING AND ORDER ON PETITIONS  
FOR WRIT OF MANDATE**

v. )

COUNTY OF LAKE, BOARD OF )  
SUPERVISORS OF THE COUNTY OF )  
LAKE; and DOES 1 through 20, )  
Respondents. )

LOTUSLAND INVESTMENT HOLDINGS, )  
INC.; and DOES 21 through 40, )  
Real Parties in Interest. )

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RULING AND ORDER ON PETITIONS FOR WRIT OF MANDATE

SCANNED



1 Ruling

2 I. Introduction.

3 The Court's obligation in this case is to answer the following questions:

- 4 1. Was there substantial evidence to support the County's decision?  
5 2. Did the County fail to proceed in the manner required by law?

6 (Pub. Res. Code §§ 21168, 21168.5.)

7 In answering the first question, the Court "must indulge all reasonable inferences  
8 from the evidence that would support the agency's determinations and resolve all  
9 conflicts in the evidence in favor of the agency's decision." (*Save Our Peninsula*  
10 *Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4<sup>th</sup> 99, 117.) "A  
11 court may not set aside an agency's approval of an EIR [Environmental Impact Report]  
12 on the ground that an opposite conclusion would have been equally or more reasonable."  
13 (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47  
14 Cal.3d 376, 393.)

15 In answering the second question, the Court must determine if the County  
16 substantially complied with the procedural requirements of the California Environmental  
17 Quality Act (CEQA). (Practice Under the California Environmental Quality Act (2d ed. Cal  
18 CEB) § 23.35.) While a court may find noncompliance with CEQA requirements to be a  
19 prejudicial abuse of discretion, there is no presumption that such an error is prejudicial.  
20 (Pub. Res. Code § 21005(b).) In determining whether a failure to comply with CEQA is  
21 prejudicial, a court does not determine whether a different outcome would have resulted.  
22 (Pub. Res. Code § 21005(a).)

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1 **II. Wildfire Risk.**

2 **A. Compression of Mitigation Measures Into the Project.**

3 When an EIR incorporates mitigation measures into the project description, then  
4 concludes that the project has no significant impact, the failure to separately identify  
5 significant impacts and analyze the mitigation measures violates CEQA. (*Lotus v.*  
6 *Department of Transportation* (2014) 223 Cal.App.4<sup>th</sup> 645.) This is because by doing so,  
7 an EIR “precludes both identification of potential environmental consequences arising  
8 from the project and also thoughtful analysis of the sufficiency of measures to mitigate  
9 those consequences.” (*Id.* at p. 658.)

10 *Lotus v. Department of Transportation, supra*, involved a highway construction  
11 project through an old growth redwood forest. A portion of the construction was planned  
12 to occur within the structural root zone of a number of trees. The EIR described  
13 measures that “have been incorporated into the project to avoid and minimize impacts as  
14 well as to mitigate expected impacts.” (*Id.* at p. 650.) Those measures included  
15 restorative planting and replanting, invasive plant removal, and use of an arborist and  
16 specialized equipment. In the EIR, the agency concluded that “[n]o significant  
17 environmental effects are expected as a result of this project with the implementation of  
18 the stated special construction techniques.” (*Id.* at p. 651.)

19 In concluding that the EIR violated CEQA by compressing the analysis of impacts  
20 and mitigation measures into a single issue, the Court of Appeal explained:

21 The EIR fails to indicate which or even how many protected redwoods will be  
22 impacted beyond the tolerances specified in the handbook and, by failing to  
23 indicate any significant impacts, fails to make the necessary evaluation and  
24 findings concerning the mitigation measures that are proposed. Absent a  
determination regarding the significance of the impacts to the root systems of the  
old growth redwood trees, it is impossible to determine whether mitigation

1 measures are required or to evaluate whether other more effective measures than  
2 those proposed should be considered. Should Caltrans determine that a specific  
3 tree or group of trees will be significantly impacted by proposed roadwork, that  
4 finding would trigger the need to consider a range of specifically targeted  
mitigation measures, including analysis of whether the project itself could be  
modified to lessen the impact.

5 (*Id.* at p. 656.)

6 In that case, the measures contained within the project were designed to mitigate  
7 the impacts to the health of the trees caused by the construction. The measures at issue  
8 were “plainly mitigation measures and not part of the project itself.” (*Id.* at p. 656, fn. 8.)  
9 The failure to classify those measures as mitigation measures prevented those reviewing  
10 the EIR from determining the significance of the impact the construction would have on  
11 the health of the trees. (*Id.* at pp. 656-658.)

12 In the instant case, Petitioners<sup>1</sup> argue certain design elements included in the  
13 Wildfire Prevention Plan (WPP), including those relating to relating to vegetation  
14 management and firebreaks, were misclassified as part of the Project rather than  
15 mitigation measures. Although certain actions such as vegetation management and  
16 maintenance of the firebreaks will continue well after the Project is built, those  
17 components of the WPP are properly classified as part of the Project itself. This is  
18 because those measures, unlike the measures in *Lotus v. Department of Transportation*,  
19 *supra*, are not designed to rectify the impacts to the environment caused by the Project.  
20 None of the challenged design elements are meant to repair, rehabilitate or restore the  
21 impacted environment. Instead, they are part of the design of the Project meant to avoid  
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23 <sup>1</sup> Petitioners includes Intervenor/Petitioner unless otherwise stated.

1 impacts to the environment in the first place. Accordingly, the Court concludes all of the  
2 components of the WPP, including vegetation management and maintenance of the  
3 firebreaks, are not mitigation measures improperly misclassified as Project components.  
4 Instead, they are part of the Project itself.

5 **B. Adequacy of Analysis of Wildfire Risk.**

6 Petitioners find fault with the EIR's analysis of the wildfire risk and the  
7 methodology used to analyze that risk. Although the analysis could have been more  
8 thorough and better methodologies could have been used, "challenges to the scope of an  
9 EIR's analysis, the methodology used, or the reliability or accuracy of the data underlying  
10 an analysis, must be rejected unless the agency's reasons for proceeding as it did are  
11 clearly inadequate or unsupported." (*Chico Advocates for a Responsible Economy v. City*  
12 *of Chico* (2019) 40 Cal.App.5th 839, 851.) The EIR's analysis of the Project's impacts on  
13 wildfire risk was extensive and specific to both the Project and its location. Without  
14 rehashing the evidence contained in the record, the Court concludes substantial evidence  
15 supports the County's findings regarding the Project's impact on wildfire risks, with one  
16 exception which will be discussed in the following section.

17 **C. Impacts on Emergency Evacuation Routes.**

18 In its briefing, Real Party differentiated project evacuation routes from  
19 community or area-wide evacuation routes. The Court agrees that analysis of the  
20 Project's evacuation routes are a "reverse CEQA" issue and need not be addressed in  
21 the EIR. The Project's impacts to community evacuation routes, however, must be  
22 analyzed in the EIR.

1           In *California Building Industry Assoc. v. Bay Area Air Quality Management Dist.*  
2 (2015) 62 Cal.4<sup>th</sup> 369, at issue was an agency's thresholds of significance for certain air  
3 pollutants which required project proponents to evaluate how existing air pollution would  
4 affect individuals within the proposed project. The Supreme Court concluded, "CEQA  
5 generally does not require an analysis of how existing environmental conditions will  
6 impact a projects future users or residents." (*Id.* at p. 386.) CEQA does, however, require  
7 an analysis of a "project's potentially significant *exacerbating* effects on existing  
8 environmental hazards – effects that arise because the project brings 'development and  
9 people into the area affected.'" (*Id.* at p. 388; italics in original.) The Supreme Court  
10 explained an "EIR should evaluate any potentially significant impacts of locating  
11 development in other areas susceptible to hazardous conditions (e.g., floodplains,  
12 coastlines, wildfire risk areas)." (*Ibid.*)

13           *Newton Preservation Society v. County of El Dorado* (2021) 65 Cal.App.5<sup>th</sup> 771,  
14 involved a bridge construction project where project opponents, many of whom were  
15 residents, alleged the project would have a significant impact on evacuation. The Court of  
16 Appeal held the evidence presented in that case did not "support a fair argument that the  
17 project may have a significant impact on the environment or may exacerbate existing  
18 environmental hazards." (*Id.* at p. 792.) The court determined the comments offered in  
19 opposition to the project "lacked factual foundation and failed to contradict the  
20 conclusions by agencies with expertise in wildfire evacuations with *specific* facts calling  
21 into question the underlying assumptions of their opinions as it pertained to the project's  
22 potential environmental impacts." (*Id.* at p. 791, italics in original.)

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1 Real Party is correct that analysis of community evacuation is not required unless  
2 the project might exacerbate existing environmental hazards. (Real Party in Interest  
3 Lotusland Investment Holding, Inc.'s Supplemental Brief Re: Evacuation filed November  
4 19, 2021, (Real Party's Supplemental Brief), p. 7:7-9.). Here, unlike the case in *Newton*,  
5 *supra*, there is evidence that the Project might exacerbate existing environmental  
6 hazards. As pointed out by Petitioners Center for Biological Diversity (CBD) and  
7 California Native Plant Society (CNPS), a significant number of wildfire related deaths in  
8 California occur during attempts to evacuate. (Petitioners' Opening Brief filed June 15,  
9 2021, pp, 19:26-20:4.) The hazards of a wildfire are certainly exacerbated if community  
10 residents are unable to evacuate safely due to congested evacuation routes. It is  
11 estimated that the Project will bring 4,070 residents to the area. (AR 6612.) This is a  
12 significant population increase when considering the Project is located in Lake County  
13 Census Tracts 12 and 13 which had an estimated combined population of 10,163 in  
14 2017. (AR 6608.) If a wildfire occurs, the Project's residents will need to evacuate. These  
15 people will likely compete with residents in the surrounding area for safe evacuation  
16 routes. The additional people competing for the same limited routes can cause  
17 congestion and delay in evacuation, resulting in increased wildfire related deaths. This is  
18 undoubtedly a situation where the Project, by bringing a significant number of people into  
19 the area, may significantly exacerbate existing environmental hazards; specifically,  
20 wildfires and their associated risks. Therefore, this is an issue that is required to be  
21 addressed under CEQA.

22 The County concluded the impacts to existing emergency evacuation plans would  
23 be less than significant. (AR 6746.) The evidence supporting this conclusion are  
24

1 comprised primarily of opinions from traffic engineers and fire and law enforcement  
2 personnel. (Real Party's Supplemental Brief, p. 8:2-8; AR 42594-42595; 53739-53740.)  
3 Those opinions were not based on any identifiable facts.

4       There are two problems with this evidence. First, this evidence primarily addresses  
5 the issue of whether the Project's residents could safely leave the Project in the event of  
6 a wildfire. This evidence does not focus on the issue that is required to be addressed by  
7 CEQA; whether evacuation of the residents in the nearby area would be affected by the  
8 evacuation of the Project's residents during a wildfire.

9       Second, this evidence cannot be considered substantial evidence. Substantial  
10 evidence includes "expert opinion supported by facts." (14 CCR §15384(b).)  
11 Unsubstantiated opinion does not constitute substantial evidence. (14 CCR §15384(a).)  
12 The conclusion reached by the County as it relates to emergency evacuation plans is  
13 based on unsubstantiated expert opinions. This evidence is legally insufficient to qualify  
14 as substantial evidence under CEQA.

15       Because the County's findings regarding community emergency evacuation routes  
16 are not supported by substantial evidence, the EIR does not comply with CEQA.

### 17       **III. Carbon Credit Program<sup>2</sup>.**

18       Petitioners argue the carbon credit program is ineffective as a mitigation measure  
19 because it does not include sufficient safeguards to ensure offsets are real, permanent,  
20 verifiable and enforceable. (*Golden Door Properties, LLC v. County of San Diego* (2020)  
21 50 Cal.App.5<sup>th</sup> 467, 506-507.)

22  
23 <sup>2</sup> The carbon credit program was discussed by the parties under the broader topic of climate impacts and GHG  
24 mitigation measures. Also discussed was the transportation demand management plan (TDM). The Court concludes

1 Here, the carbon credit program was added through an errata to the Final EIR  
2 after the public comment period had closed. The County explained:

3 Also we added a mitigation requiring the purchase of greenhouse gas carbon  
4 credits to offset the project's remaining greenhouse gas emissions that are above  
5 and beyond the stated thresholds in the EIR. However, the EIR's conclusion of a  
6 significant, unavoidable greenhouse gas impact would not change, given the  
7 limited supply of carbon offsets and the uncertainty regarding the availability of  
8 offset credits throughout the life of the project.

7 (AR42599.)

8 Given the timing of the addition of this measure to the EIR and the comments  
9 made by the County, unlike the mitigation measure in *Golden Door Properties, LLC, v.*  
10 *County of San Diego, supra*, the carbon credit program here was not a mitigation  
11 measure that the County relied upon in making any findings contained in the EIR. In fact,  
12 the County described the modifications to the mitigation measures contained in the  
13 Errata, which included the addition of the carbon credit program, to be minor and  
14 insignificant. (AR 7193.) To the extent this measure did not comply with CEQA, the Court  
15 determines it does not constitute prejudicial error because inclusion of the measure did  
16 not "deprive[ ] the public and decision makers of substantial relevant information about  
17 the Project's likely adverse impacts." (*Neighbors for Smart Rail v. Exposition Metro Line*  
18 *Constr. Auth.* (2013) 57 Cal.4<sup>th</sup> 439, 463.)

#### 18 **IV. Water Supply.**

19 Petitioners CBD and CNPS take issue with on an off-site groundwater well located  
20 within the Collayami Valley Groundwater Basin. Groundwater from on-site wells and  
21 surface water sources are expected to supply all of the projects water demands.  
22

23 the TDM substantially complies with CEQA. (cf. *City of Hayward v. Trustees of California State University* (2015)  
24 242 Cal.App.4<sup>th</sup> 833, 854-855.)

1 (AR6554-6556.) The off-site well would provide non-potable water if required. (AR 6689.)  
2 The County determined because of the characteristics of the basin, the potential impacts  
3 of drawing water from the well could not be determined. (AR 6558.) The County  
4 therefore imposed mitigation measure 3.9-3 which requires the applicant to provide to the  
5 County an analysis that defines a safe yield as specified in the measure. It also requires  
6 the applicant to submit annual monitoring reports and provide quarterly data for the first  
7 five years of use. (AR 6575.) It further mandates the development of a groundwater  
8 management plan should the reports show an impact to groundwater levels. (*Id.*) The  
9 County found any potential impact would be mitigated to less than substantial when  
10 considering this measure. The County's findings regarding the well are supported by  
11 substantial evidence. This mitigation measure complies with CEQA.

12 **V. Special Status Plants.**

13 Two appendices attached to the EIR<sup>3</sup> provide an in depth analysis and disclosure  
14 of special status plants. The County's findings relating to the special status plants are  
15 supported by substantial evidence. Which specific plants will be impacted cannot be  
16 determined because the exact location of the buildings on the site has not been  
17 determined. Mitigation measure MM 3.4-3 is designed to accommodate the uncertainty of  
18 the impacts on the plants. It requires pre-construction botanical surveys be conducted by  
19 a qualified biologist. If avoidance of a special-status plant is not feasible, compensatory  
20 planting or transplanting shall occur. Those plants would be subject to monitoring to  
21 ensure success of the plants<sup>4</sup>. (AR 6387-6388.) This mitigation measure complies with

22 \_\_\_\_\_  
<sup>3</sup> The appendices are labeled as BRA1 (AR2489-2926) and BRA2 (AR2927-3403).

23 <sup>4</sup> These requirements also apply to initial vegetation clearing along proposed roadways. (AR 6387.)

24

1 CEQA. (cf. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4<sup>th</sup>  
2 899, 943.)

3 **VI. Project Alternatives.**

4 “The wisdom of approving [a] project, a delicate task which requires a balancing of  
5 interests, is necessarily left to the sound discretion of the local officials and their  
6 constituents who are responsible for such decisions. The law . . . simply requires that  
7 those decisions be informed, and therefore balanced.” (*Citizens of Goleta Valley v. Board*  
8 *of Supervisors* (1990) 52 Cal.3d 553, 576.) “[F]easibility’ under CEQA encompasses  
9 ‘desirability’ to the extent that desirability is based on a reasonable balancing of the  
10 relevant economic, environmental, social, and technological factors.” (*City of Del Mar v.*  
11 *City of San Diego* (1982) 133 Cal.App.3d 401, 417.)

12 Petitioners contend the County’s finding of infeasibility of Alternative C was not  
13 supported by substantial evidence. With respect to Alternative C, the County concluded,  
14 “[G]iven that the Reduced Intensity Alternative would result in significantly fewer  
15 economic benefits, the County finds that the Reduced Intensity Alternative does not  
16 warrant approval in lieu of the Proposed Project.” Economic benefits are key goals of the  
17 project. The stated project objectives included economic growth, expanding high-end  
18 hospitality and construction employment opportunities, and increasing revenues for the  
19 County. (AR 6769.) Alternative C would restrict the overall luxury market resort and  
20 residential community appeal; reduce revenues and workforce; and reduce marketability  
21 to investors, buyers and consumers in the high-end luxury resort market. (AR 53789-

1 53791.) The evidence supports the conclusion that Alternative C would result in fewer  
2 economic benefits to the County.<sup>5</sup>

3 Intervenor suggests the County should have considered alternative locations  
4 closer to a transit stop because GHG emissions would have been reduced in such a  
5 location.<sup>6</sup> The Project consists of high-end residential, resort, and recreational facilities. It  
6 is speculative to conclude consumers of the project will travel from out of the area by  
7 public transit.

8 "It is [the petitioner]'s burden to demonstrate inadequacy of the EIR. [A petitioner]  
9 must therefore show the agency failed to satisfy its burden of identifying and analyzing  
10 one or more potentially feasible alternatives. [A petitioner] may not simply claim the  
11 agency failed to present an adequate range of alternatives and then sit back and force  
12 the agency to prove it wrong." *Mount Shasta Bioregional Ecology Center v. County of*  
13 *Siskiyou* (2012) 210 Cal.App.4th 184, 199.) Here, Intervenor "make[s] no attempt to  
14 show how such an alternative would have met most of the goals of the Project, would  
15 have been potentially feasible under the circumstances, or would have reduced overall  
16 environmental impacts of the Project." (*Ibid.*)

17 The County properly considered and rejected potential alternatives.

## 18 **VII. Recirculation of the EIR.**

19 Recirculation of an EIR is not required when the changes merely clarify, amplify  
20

21 <sup>5</sup> Intervenor's position is that Alternative C was found infeasible based on the applicant's expectation of reduced  
22 revenues. (Intervenor People of the State of California's Opening Brief filed June 15, 2021 (People's Opening Brief),  
p. 35:4-6.) This interpretation is not supported by the language of the EIR as a whole. It is the economic benefits to the  
County, not the applicant, that was the driving force behind the County rejecting Alternative C.

23 <sup>6</sup> People's Opening Brief, pp. 32:22-33:1.  
24







