

**From:** [Wendy Winingham](#)  
**To:** [Brandon Criss](#); [Michael Kobseff](#); [Ed Valenzuela](#); [Ray Haupt](#); [Nancy Ogren](#)  
**Cc:** [Janine Rowe](#)  
**Subject:** FW: KCOC Comment Letters Supervisors  
**Date:** Friday, April 14, 2023 8:02:14 AM  
**Attachments:** [2022.8.16 Comment on KCOC DEIR.pdf](#)  
[2023.3.10 Comment letter KCOC.pdf](#)  
[2023.1.17 Comment on KCOC FEIR to PC.pdf](#)  
[2022.11.15 Comment on KCOC FEIR.pdf](#)

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Wendy  
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\*\*\*Effective August 9, 2021 the County Clerk's Office has moved to 311 Fourth Street, Room 201, Yreka, CA 96097\*\*\*

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**From:** [truemelinda@gmail.com](mailto:truemelinda@gmail.com) <[truemelinda@gmail.com](mailto:truemelinda@gmail.com)>  
**Sent:** Thursday, April 13, 2023 6:02 PM  
**To:** Wendy Winingham <[wendy@sisqvotes.org](mailto:wendy@sisqvotes.org)>  
**Subject:** Fwd: KCOC Comment Letters Supervisors

Greetings,

As of today, 4/13/2023, the public comments below concerning KCOC still stand.

Thank you,

Melinda Field Perlman

Begin forwarded message:

**From:** [truemelinda@gmail.com](mailto:truemelinda@gmail.com)  
**Date:** March 10, 2023 at 3:31:59 PM PST  
**To:** [wendy@sisqvotes.org](mailto:wendy@sisqvotes.org)  
**Subject:** KCOC Comment Letters Supervisors

3/10/2023

Dear Siskiyou County Board Supervisors:

Please peruse the article and two pertinent video links below. Also, you will find four attached comment letters

Thank you for time and consideration,

Melinda Field Perlman

**Paradise Lost: Inside California's Camp Fire, 60 Minutes' 2018 report**

[https://youtu.be/Y9r4h1k1\\_Zg](https://youtu.be/Y9r4h1k1_Zg)

**Fire Hazard Severity Zones**

<https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildfire-preparedness/fire-hazard-severity-zones/>

Please review this information and link from the Sacramento Bee dated January 6, 2022. Please don't allow Kidder Camp to become Kidder Resort in the wildland interface up the Kidder Creek drainage in Scott Valley.

### **Judge halts mega-resort in California wildfire zone**

Development of a \$1 billion resort and housing project in one of the state's most wildfire-prone communities has been placed on hold after a judge ruled developers didn't adequately plan for what might happen when a wildfire erupts and thousands of people have to run for their lives. The Lake County judge's ruling on the Guenoc Valley Resort could have sweeping ramifications for housing and business developments across a state where fires are growing in severity and local officials are under intense pressure to approve new building projects during a housing crisis. The ruling, under

California's powerful environmental law, also represents a major victory for opposition to new housing and business projects in areas with extreme wildfire risks.

Read more

at: <https://www.sacbee.com/news/california/fires/article257093052.html#storylink=cpy>

# MARSHA A. BURCH

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August 16, 2022

*Via Electronic Mail*

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Re: Kidder Creek Orchard Camp Zone Change (Z-14-01) and Use  
Permit (UP-11-15)  
Draft Environmental Impact Report (SCH#2016092016)

Dear Planning Commissioners and Ms. Lang:

This office represents the Keep Scott Valley Rural ("Association") with respect to the above-referenced Kidder Creek Orchard Camp Zone Change (Z-14-01) and Use Permit (UP-11-15) ("Project") and the Draft Environmental Impact Report ("DEIR"). The Association and others have submitted comments on the DEIR, the first recirculated DEIR, and the second recirculated DEIR, and these comments are meant to supplement, not replace, the comments of the Association, other members of the public, or of other experts or agencies.

After carefully reviewing the DEIR and the procedures being followed by Siskiyou County, we have concluded that it falls short of compliance with the California Environmental Quality Act ("CEQA").<sup>1</sup> The Planning Commission ("PC") agenda indicates an intent to recommend approval of the Project to the Board of Supervisors, despite the fact that the Final EIR has not been prepared, so the public and the decision makers have not been able to see whether the County has appropriately responded to concerns raised in comments submitted regarding the DEIR. The DEIR has been unorthodoxly coupled with a Mitigated Negative Declaration ("MND") and has resulted in an environmental review that simply fails to meet the requirements of CEQA and is directly inconsistent with a

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<sup>1</sup> Public Resources Code § 21000 *et seq.*

recent Third District Court of Appeals decision. Further, the proposed Statement of Overriding Considerations (“SOC”) is not supported by substantial evidence, nor are the proposed Findings. Finally, the Planning Commission does not have authority to consider and recommend Project approval where no Final EIR has been released for review.

In addition to violations of CEQA, the Project is inconsistent with the Siskiyou County General Plan and the Scott Valley Area Plan (“SVAP”), and approval of the Project would completely undermine the core objectives and policies of the SVAP. The Project’s inconsistency with the applicable general plans reveals a significant environmental impact, and is also a violation of the State Planning laws.

The remainder of this letter explains how the County’s current course of action violates CEQA’s procedural requirements and discusses some of the more glaring flaws in the impacts analysis. A full EIR is required for this Project.

**A. It is improper for the Planning Commission to recommend EIR certification and Project approval without a Final EIR**

As an initial matter, under the Siskiyou County Code, the Planning Commission has been delegated various powers, none of which include the review and consideration of Conditional Use Permits or CEQA documents. (Siskiyou County Ordinance 10-4.202.5.) According to County Ordinance 10-4.202.5, the Planning Commission shall be responsible for the approval or denial of maps, review and recommendation of involuntary mergers, processing and approval of time extensions and review and recommendations on reversions to acreage. Review and certification of environmental documents and approval of conditional use permits are duties that have not been delegated to the Planning Commission.

Even if the PC has the authority to consider the Project and the EIR and make a recommendation to the Board, the PC does not have a Final EIR to review, and so its recommendation will be based upon incomplete information. How could the PC possibly recommend certification of a CEQA document that the PC has never reviewed?

The proposed Resolution in the agenda packet includes a provision where the PC will “adopt” the Findings contained in Exhibit A-2 (and those Findings are not attached to the document available on the Project website but are included in the packet). The PC does not have the authority to adopt findings regarding the Project. Anything the PC may do with respect to the Project and the EIR will be premature because the Final EIR has not been released by the County.

**B. The combining of a Mitigated Negative Declaration and Environmental Impact Report violates CEQA**

The various versions of the Draft EIR provide a muddled picture of the County's reasoning for preparing an EIR for the Project covering just a few impact areas, while other impact areas were left unanalyzed with the intent to rely upon the unapproved, *draft* MND prepared for the Project in 2016. The Second Partial Recirculated Draft EIR ("SPRDEIR") states that after the MND was released for comment in 2016, the County prepared an EIR. (SPRDEIR, Section ES.1.) This provides an incomplete story. The First Partial Recirculated Draft EIR ("FPRDEIR") makes the same incomplete statement. (FPRDEIR, Section ES.1.)

The original DEIR describes the approach actually taken by the County, stating that the County received 233 comments on the draft Initial Study/MND ("IS/MND"), and the comments raised certain categories of environmental concern. Accordingly, the County determined that "an EIR level of analysis was required for certain impact areas." (DEIR, Section ES.3.) The DEIR provided a list of impact areas that would be included in the EIR, while "[a]ll other impact analysis areas defined in Appendix G of the CEQA Guidelines and analyzed in the 2016 Draft IS/MND will not be included in this EIR. However, all mitigation measures identified in these sections will be included as mitigation in this EIR and in the Mitigation Monitoring and Reporting Program (MMRP)." (*Id.*)

This approach leaves a number of impact areas out of the EIR, meanwhile including mitigation measures for potentially significant impacts identified in the IS/MND and cobbling it all together into one MMRP. This approach is not only confusing and misleading to the public and decision makers, but it violates the fundamental requirements of CEQA. The Third District Court of Appeals recently reiterated what is required in *Farmland Protection Alliance v. County of Yolo* (2021) 71 Cal.App.5th 300.

The Court of Appeal held that neither CEQA nor its interpretive case law authorize a "limited EIR" at the "third tier" of the CEQA review process, nor do they provide any authority for "splitting the analysis of a project's environmental impacts across two types of environmental review documents," such as the MND and the "limited EIR" ordered by the trial court in that case. Rather, once substantial evidence is presented that a project might have a significant environmental impact in *any* area, a negative declaration is inappropriate and CEQA requires the lead agency to prepare an EIR – in the Court's parlance, a "full EIR" – for the proposed project.

The Court relied in significant part on CEQA's "three-tiered" process for lead agencies as confirming its conclusion. That process is: (1) conduct preliminary review to determine whether a "project" subject to CEQA exists, and if so whether it is exempt (statutorily or categorically); (2) conduct an initial

study to identify potential impacts, and to inform the choice between a negative declaration (“ND”) (or MND) and an EIR, and then prepare an ND if there is no substantial evidence of a potential significant effect (or an MND if project plans are revised to eliminate any such potential effect with certainty); and (3) if it is determined that the project may have a significant environmental effect, prepare a full EIR, which requirement has been described as “the heart of CEQA.” (Citing *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 704-705; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.)

The Court observed that it found nothing in CEQA or the case law interpreting it “suggesting a project’s impact analysis may be divided across the second and third tiers of environmental review such that some impacts are analyzed in a mitigated negative declaration and others are analyzed in an environmental impact report.” Rather, the Court held, “if *any* aspect of the project triggers preparation of an environmental impact report, a full environmental impact report must be prepared in accordance with the definition of [an EIR in Public Resources Code] section 21061.” (Citing *San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 402 & fn. 11; *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381.) In other words, under CEQA’s “three-tiered” process, the choice between adopting a negative declaration (of some type) and preparing an EIR is a binary decision. Per the Court, “the second and third tiers of environmental review under the Act are mutually exclusive[.]”

Accordingly, the County’s approach in relegating some impact areas to an unapproved draft MND while preparing a series of confusing partial EIRs violates CEQA. A full EIR is required for the Project.

Even if the combined document approach was legal, the MND for the Project is so woefully inadequate (and was never approved), that it would not withstand judicial scrutiny. For example, the MND’s review of greenhouse gas emissions is approximately a half page long and provides none of the analyses required by CEQA. (IS/MND, p. 4.0-28.)

In 2018, California adopted comprehensive amendments to the CEQA Guidelines, which include a suite of provisions aimed at improving the analysis of greenhouse gas (“GHG”) emissions and climate change impacts in state environmental reviews. These provisions touch on both climate change mitigation and adaptation, providing more detailed guidance on topics such as assessing the significance of GHG emissions, analyzing energy impacts and efficiency, estimating vehicle emissions, and evaluating environmental risks in light of a changing and uncertain baseline. These amendments flesh out many of the provisions on climate change and energy that were first added to the CEQA Guidelines in 2010.

The draft MND for the Project failed to make any attempt to quantify the GHG emissions and made conclusions regarding the Project's impacts on statewide totals. (IS/MND, p. 4.0-28.) The new Guidelines updated factors for evaluating the significance of GHG impacts to clarify that the focus should be on the project's total contribution to climate change rather than how the emissions compare to statewide or global totals. (Guidelines § 15064.4(2)(b).)

The revised guidelines clarify that the lead agency has discretion to select a model or methodology that it considers most appropriate for estimating GHG emissions, but that it must "support its selection of a model or methodology with substantial evidence" and "explain the limitations of the particular model or methodology selected for use." (Guidelines § 15064.4(c).) No model or methodology was selected for the analysis in the draft MND, and it contains only unsupported conclusions.

Not only is the multiple document approach a violation of CEQA, the underlying analysis in the unapproved draft MND fails to meet the requirements of CEQA. A full EIR is required for the Project.

**C. The proposed Findings and Statement of Overriding Considerations are deficient**

**1. The draft CEQA Findings do not comply with CEQA**

The draft Findings for the Project (Exhibits A-1 and A-2) contain a conclusion that the Project will have no significant and unavoidable impacts, which is incorrect, but the real issue with the draft Findings is that the required CEQA Findings are not included.

The Findings do contain discussion of General Plan Consistency, but those proposed Findings fail to include sufficient factual support, nor do they reveal the analytical route taken by the agency to reach its conclusions. For example, the Project is clearly inconsistent with the SVAP, a fact that has been pointed out in a plethora of comments submitted to the County. In the draft Findings, however, the conclusions are bare, with no factual support or analysis at all. (See Exhibit A-2, p. 6.) The Findings make no attempt to explain how a year-round commercial conference center covering 580 acres and proposing 844 annual visitors is "small-scale" and compatible with the surrounding land uses.

Most of the necessary CEQA findings are missing from the draft Findings. The Findings do not certify the EIR. (Guideline § 15090.) No findings are included for potentially significant impacts that can be mitigated. (Guidelines § 15091(a)(1); and *Sacramento Old City Assn. v. City Council* (1991) 229 Cal. App. 3d 1011, 1034.) No findings are included for significant and unavoidable impacts, and there are no findings proposed to support the conclusion that mitigation of the traffic noise impacts is infeasible. (Guidelines § 15091(a)(3).)

Finally, no findings are proposed for rejection of alternatives. (*Id.*) The Findings are inadequate under CEQA and applicable California case law.

**2. The proposed Statement of Overriding Considerations contains a bare conclusion with no evidentiary support**

The proposed Statement of Overriding Considerations (“SOC”) is also deficient. The SOC discusses the significant and unavoidable noise impacts, then reviews the Project Objectives (all specific to the Project site and the applicant) and makes a generic conclusion in one sentence that the Project benefits outweigh the adverse effect. This bare conclusion fails to come close to what is required.

Overriding considerations contrast with mitigation and feasibility findings. They are “larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.” (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 847.) This does not mean, however, that an agency’s unsupported claim that the project will confer general benefits is sufficient. The asserted overriding considerations must be supported by substantial evidence in the final EIR or somewhere in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223; Guidelines § 15093(b); and *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 717 *as modified on denial of reh’g* (May 11, 2007).) The proposed SOC contains just the type of “unsupported” claims California courts have rejected.

**D. The Alternatives Analysis in the Draft EIR is improperly constrained by narrowly drawn Project Objectives**

The Project Objectives in the Draft EIR are specific to the Project site and to the applicant. The objectives are to expand the applicant’s ministry, enhance the applicant’s property with visual benefits and water features, improve the applicant’s existing operations by separating vehicle and pedestrian traffic, and create a flexible construction plan for the benefit of the applicant.

The alternatives considered included the No Project alternative, which the Draft EIR found would not meet any of the Project Objectives. Alternative 2 was the No Pond alternative, which would obviously not meet the site-specific objective of enhancing water features across the applicant’s property. Finally, the Reduced Project Development Alternative was reviewed, with the conclusion that it is the environmentally superior alternative. There is nothing in the record indicating what the County’s analysis is of the alternatives, and what the proposed findings would be. Presumably the proposed Resolution intends to recommend approval of the proposed Project and not one of the alternatives, but the record contains no analysis or conclusions supported by evidence in this regard.



This is not the first time the County has developed a set of Project Objectives that result in the proposed Project being a foregone conclusion. (*We Advocate Through Env't Review v. County of Siskiyou* (2022) 78 Cal. App. 5th 683, 692.) The Project Objectives may not be a description of the proposed Project. There are not even proposed findings to support a conclusion that any of the other alternatives are infeasible. "The purpose of an EIR is not to identify alleged alternatives that meet a few if any of the project's objectives so that these alleged alternatives may be readily eliminated." (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.) The question is not whether a mitigation measure or alternative is *acceptable* to the applicant, but whether or not it is truly infeasible. (See *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597-598.) The way that the "objectives" of the Project are described in the Draft EIR gives the applicant veto power over every mitigation measure and alternative proposed. This approach violates CEQA.

#### **E. The Impacts Analysis in the Draft EIR is insufficient**

As noted above, reliance on a draft, unapproved MND for a portion of the impacts analysis for the Project is illegal, and a full EIR is required. Additionally, the impact analysis for the select areas of impact included in the Draft EIR are largely inadequate.

For example, the noise analysis falls short of compliance with CEQA in many respects, and these deficiencies are described in detail by the comment letter submitted by Dale La Forest & Associates on August 8, 2022. One of the more egregious aspects of the noise analysis is the County's position that it does not regulate construction noise so there is no threshold for construction noise, and therefore the impact is insignificant. The County may not be interested in construction noise, but under CEQA noise is an impact that must be analyzed and mitigated.

Many comments have been submitted regarding the Project's inconsistency with the SVAP, the lack of adequate water rights for operation of the new pond, tremendous noise and traffic impacts, impacts to wildlife (particularly fish populations and deer wintering areas), light and glare, and unacknowledged cumulative impacts. There is presently no way for the public or the Planning Commissioners to know whether these comments have been adequately responded to, because the Final EIR has not been prepared.

The improper "partial" EIR fails as an environmental review of the Project, and the procedure being followed by the County is inconsistent with the delegation of authority to the PC, and inconsistent with the disclosure and procedural requirements of CEQA.

**F. The Project is inconsistent with the General Plan and the Scott Valley Area Plan**

The question of consistency between the Project and the applicable land use plans and ordinances is considered for two reasons during environmental review. First, under CEQA, a conflict between a plan or ordinance and the Project is a significant impact that must be disclosed and analyzed in the EIR. (*Pocket Protectors v. City of Sacramento* (2005) 124 Cal.App.4th 903, 929-36.) The environmental document's conclusions regarding these impacts, like those for any other impact, must be supported by substantial evidence.

Second, under the State Planning and Zoning Law, the Project may not be approved in the face of such inconsistencies. The Project requires approval of a use permit. State law clearly requires these approvals to be consistent with the County's General Plan and the SVAP. "The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) Specifically, State law bars the grant of a use permit for an activity that would be inconsistent with a general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184.) As discussed in many comments submitted to the County to date, and below, the proposed Project is clearly inconsistent with the SVAP. Thus, the County cannot legally grant the use permit for this Project.

It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." (*Napa Citizens for Honest Gov. v. Napa County* (2001) 91 Cal.App.4th 342, 379.) The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." (*Id.*) Here, the proposed Project does more than just frustrate the SVAP's goals. It is directly inconsistent with numerous provisions in the SVAP.

The proposed Project intends to turn a seasonal summer camp into a massive, year-round, commercial conference center for children and adults, accommodating intensive uses and density that will generate light/glare, noise, and traffic going well beyond any typical "recreational" use. And yet, the proposed Findings make the simple statement that it is agricultural, recreational, and open space use, so it is compatible with the SVAP. Period. No analysis, no rationale, just a conclusion.

The Project is inconsistent with many of the Policies in the SVAP, including Policy-31 stating: "Only agricultural, residential, open spaces, and small-scale commercial, industrial, recreation uses, and public or quasi-public uses may be permitted." Also, Policy-32 stating: Residential, small-scale commercial, industrial, recreational uses, and public or quasi-public uses may

only be permitted when they are clearly compatible with the surrounding and planned uses of the land.” The Draft EIR has identified noise impacts to residents, including significant impacts the County says cannot be mitigated, and yet there is an apparent willingness on the part of the County to consider approval of this proposed Project that has been acknowledged during environmental review as *clearly incompatible* with the surrounding uses.

“The consistency doctrine [is] 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 El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4<sup>th</sup> 1332, 1336.) The Project is inconsistent with the Siskiyou County General Plan and the Scott Valley Area Plan and approval would violate the State Planning and Zoning Law.

#### **D. Conclusion**

The Draft EIR should not be considered by the Planning Commission in the context of the staff recommendation that Project approval and certification of the EIR be recommended to the Board of Supervisors. The Final EIR has not even been completed.

Further, a full EIR must be prepared for the Project as required by CEQA and recently confirmed by the Third District Court of Appeal. The combined approach of a draft MND and a partial EIR violates CEQA. For these reasons, we believe the proposal should be denied, pending appropriate environmental review and a revised Project and EIR.

Sincerely,



Marsha A. Burch  
Attorney

cc: Keep Scott Valley Rural

KCOC Public Comment Letter  
3/10/2023

Greetings,

As our lawyer, Marsha Burch states in all of her correspondence to the planning commission, this incomplete, inadequate, DEIR/EIR will not pass Cequa. This expansion, referred to as a children's summer camp, in reality is a massive commercial year round conference center to be built in a rural area of great fire danger. These issues have not been adequately dealt with or mitigated.

Traffic – over 1000 cars allowed per day now.

Noise – no mitigation.

Water issues – extreme draught, fish, and neighbors wells.

Extreme fire danger – incomplete evacuation exits.

20 year build out not specific.

622 occupancy reduces only 25% of impacts.

Because of these discrepancies I recommend alternative #1 – no project alternative. The project alternative is environmentally superior to the project because it substantially lessens the projects significant and unavoidable impacts.

Melinda Field Perlman

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January 17, 2023

*Via Electronic Mail*

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Re: Kidder Creek Orchard Camp Zone Change (Z-14-01) and Use  
Permit (UP-11-15)  
Final Environmental Impact Report (SCH#2016092016)

Dear Planning Commissioners and Ms. Lang:

This office represents Keep Scott Valley Rural (“Association”) with respect to the above-referenced Kidder Creek Orchard Camp Zone Change (Z-14-01) and Use Permit (UP-11-15) (“Project”) and the Final Environmental Impact Report (“FEIR”). The Association and others have submitted previous comments and these comments are meant to supplement, not replace, the comments of the Association, other members of the public, or of other experts or agencies.

After reviewing the Staff Report prepared for the January 18, 2023, meeting, we provide the following response to the Staff Report and the FEIR.

As noted in our previous comment, the EIR for the Project falls short of compliance with the California Environmental Quality Act (“CEQA”).<sup>1</sup> The decision makers continue to ignore the fatal flaw in the environmental review for the Project, as there is no legal way an agency may combine a mitigated negative declaration (“MDN”) with an environmental impact report (“EIR”) for a single

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<sup>1</sup> Public Resources Code § 21000 *et seq.*

project. Even if this mix and match approach was allowed under CEQA, as noted in our previous comment letters, the analysis of impacts is inadequate.

In addition to violations of CEQA, the Project is inconsistent with the Siskiyou County General Plan and the Scott Valley Area Plan (“SVAP”), and these issues have also been largely ignored in the multiple staff reports for the Project.

The Staff Report attempts to address concerns raised by the Board of Supervisors regarding “Fire hazards: 4290 regulations, catastrophic fire modeling, and emergency access roads.” In doing so, the Staff Report provides little detail, and does not even refer to the analysis in the many versions of the partial EIR for the Project; this is likely because the analysis thus far has been vague and conclusory.

What the Staff Report highlights is that the environmental document does not contain any fire behavior analysis, nor any meaningful analysis of evacuation in the event of a wildfire. The “Wildfire Emergency Plan” for the Project provides some information about fuel reduction work in the area and how a fire emergency would be handled on site, but very little information about evacuation away from the site. There is no baseline information regarding fire risks, existing potential ignition sources, or estimated times for existing residents to evacuate. The Project will add hundreds of visitors and without any baseline information, the EIR simply cannot assess the impacts of the Project on increased ignition sources, time for residents *and Project visitors* to evacuate, or even any reduced fire risk from the proposed fuel reduction work. Further, the vague description of possible fuel reduction work in the future is not sufficient to support a conclusion that fire risk would be reduced in any way, as the work alluded to is not included as a mitigation measure and there is no baseline or performance standard in the EIR.

Attached to this letter is a copy of the California Attorney General’s “Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act” (“AG Guidance”). The Attorney General has made clear that public agencies approving development in fire prone areas must thoroughly analyze the wildfire impacts in the environmental document. In this case, the EIR falls well short of thorough analysis.

In 2018, CAL FIRE noted required roadway improvements, and directed the County’s attention to the “attached ‘4290 Checklist’ for specific code requirements.” (CAL FIRE letter, December 2, 2018.) The letter is in the record, but the checklist is not. As noted by CAL FIRE, the Project *is* subject to the requirements of Public Resources Code section 4290, and the County has failed to analyze the Project’s compliance with these provisions.

The partial EIR, revised multiple times, contains an analysis of wildfire impacts in the April 22, Partially Recirculated Draft EIR, beginning on page 3.2-2. The “Regulatory Framework is described to include one thing: The Uniform Fire Code. (*Id.*) The threshold of significance is identified from Appendix G of the CEQA Guidelines, essentially stating that a risk of loss, injury, or death involving wildland fires is the standard.

The document then goes on to conclude that the Project would comply with the building code, it would maintain defensible space per Public Resources Code section 4291 and would have two points of access. *One* mitigation measure is identified requiring CAL FIRE and County approval of the secondary access road, and the impact is then found to be less than significant. The analysis of cumulative impacts does not even discuss the issue of evacuation of the existing population along with hundreds of KCOC visitors in the case of a fire.

As an initial matter, the regulatory setting does not just include the Uniform Fire Code. The regulatory setting includes the Federal Emergency Management Act, the Disaster Mitigation Act (42 U.S.C. § 5121 et seq.), the National Cohesive Wildland Fire Management Strategy (2021), the regulations of the State Fire Marshall, the State Fire Regulations (Health and Safety Code § 13000 et seq.), California Public Resources Code §§ 4290 and 4291, and the applicable goals and policies from the General Plan (*see* Map 10, Policy 30.) Like many other areas of analysis, the environmental document just brushes the surface in its review of wildfire impacts.

The Attorney General states in the AG Guidance: “Wildfires, particularly those that impact developments in relatively remote locations, may impede the evacuation of communities and emergency access, making it more difficult to ensure public safety and to limit, control, or extinguish wildfires. Finally, fires in remote locations require significant fire-fighting resources and mobilization of fire-fighters from all over the State—putting a major strain on the State’s fire-fighters and the State’s budget. Put simply, bringing more people into or near flammable wildlands leads to more frequent, intense, destructive, costly, and dangerous fires.” (AG Guidance, p. 4.) The AG also notes that CEQA provides a critical process for local jurisdictions to understand how projects will exacerbate existing wildfire risks. (*Id.*, p. 6.)

KCOC will introduce several buildings and uses, as well as hundreds of visitors. The EIR does not even mention the increased ignition risk this tremendous increase in activity will bring to the area, endangering existing residents, already burdened by being in a Very High Fire Hazard Severity Zone. The increased intensity of use will also imperil the environment, and tax the already overburdened State firefighters.

The AG Guidance addresses how an environmental document should describe baseline conditions and lays out the actual threshold provided in

Appendix G of the CEQA Guidelines. (*Id.*, pp. 6-7.) The abbreviated threshold used by the County for the Project is inadequate. The AG Guidance continues with respect to appropriate thresholds, stating:

Lead agencies are encouraged to develop thresholds of significance that either identify an increase in wildfire risk as a significant impact or determine, based on substantial evidence, that some increase in the risk of wildfires is not considered a significant impact. Relevant factors should include the project's impact on ignition risk, the likelihood of fire spread, and the extent of exposure for existing and new residents based on various fire scenarios. Modeling the various scenarios enables local agencies to quantify increased wildfire risks resulting from a project adding more people to wildfire prone areas and to assess the risks according to the threshold of significance.

The AG Guidance provides three pages of information regarding how to adequately evaluate the Project's impact on evacuation and emergency access. (AG Guidance, pp. 10-13.) KCOC will add hundreds of people and cars in an area with limited access. There is no discussion or analysis of risk of ignition and evacuation. "[E]vacuation modeling and planning should be considered and developed at the time of project review and approval – when there is great flexibility to modify the project's design, density, siting, and configuration to address wildfire considerations – rather than deferred to a later stage of the development process." (*Id.*, p. 10.)

The County has not adequately evaluated evacuation. The Staff Report states that a computer simulation may be done to see if a fire starting near Cheeseville might necessitate another evacuation route to the north. The FEIR is completed, the multiple staff reports keep recommending approval, and the County is just now thinking about whether a northern evacuation route might be necessary. This haphazard evaluation of a potentially deadly risk is insufficient under CEQA. All wildfire possibilities must be modelled, evaluated, and mitigation measures (and evacuation routes) required in order to maintain public safety. The current analysis by the County does not even come close to determining evacuation times, issues regarding simultaneous emergency access and evacuation, etc., as described in the AG Guidance.

The Project will create a multitude of ignition risks and will considerably increase the population that will need to be evacuated in the event of a wildfire. A fire could come from any direction, and will likely result in power outage, and there has been no consideration of any of these issues, including the question of how water will be supplied for firefighting.

As with so much of the review for the Project, this simply falls woefully short of complying with CEQA. Approval of the Project without adequate



Siskiyou County Planning Commission  
Hailey Lang, Planning Director  
January 17, 2023  
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analysis and mitigation of fire risks would be a grave error on the part of the County, and would put lives at risk, and burden the State firefighters and the State budget.

As we have said before, a full EIR must be prepared for the Project as required by CEQA. The Final EIR remains deeply flawed and fails to meet basic legal requirements, and the recent Staff Report highlights the fact that the County has not come anywhere near an adequate assessment of the wildfire impacts of the Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Marsha A. Burch". The signature is fluid and cursive.

Marsha A. Burch  
Attorney

cc: Keep Scott Valley Rural

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November 15, 2022

*Via Electronic Mail*

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Re: Kidder Creek Orchard Camp Zone Change (Z-14-01) and Use  
Permit (UP-11-15)  
Draft Environmental Impact Report (SCH#2016092016)

Dear Planning Commissioners and Ms. Lang:

This office represents the Keep Scott Valley Rural ("Association") with respect to the above-referenced Kidder Creek Orchard Camp Zone Change (Z-14-01) and Use Permit (UP-11-15) ("Project") and the Final Environmental Impact Report ("FEIR"). The Association and others have submitted comments on the DEIR, the first recirculated DEIR, and the second recirculated DEIR, and these comments are meant to supplement, not replace, the comments of the Association, other members of the public, or of other experts or agencies.

After carefully reviewing the FEIR and the procedures being followed by Siskiyou County, we have concluded that the CEQA process for the Project continues to fall short of compliance with the California Environmental Quality Act ("CEQA").<sup>1</sup> The Planning Commission ("PC") agenda indicates an intent to approve the conditional use permit for the Project, despite the fact that the proposed Resolution states that the PC will recommend approval to the Board of Supervisors ("BOS"). The FEIR has been improperly coupled with a Mitigated Negative Declaration ("MND") and has resulted in an environmental review that simply fails to meet the requirements of CEQA and is directly inconsistent with a

<sup>1</sup> Public Resources Code § 21000 *et seq.*

recent Third District Court of Appeals decision. Further, the County has failed to prepare a Mitigation, Monitoring and Reporting Plan (“MMRP”) which is required to be approved at the time of project approval and may not be deferred to the future as the Resolution proposes. Finally, the proposed findings are largely conclusory and not supported by substantial evidence.

In addition to violations of CEQA, the Project is inconsistent with the Siskiyou County General Plan and the Scott Valley Area Plan (“SVAP”), and approval of the Project would completely undermine the core objectives and policies of the SVAP. The Project’s inconsistency with the applicable general plans reveals a significant environmental impact and is also a violation of the State Planning laws. The FEIR responses to comments also sheds light on the fact that the Project is inconsistent with federal habitat improvement plans along Kidder Creek, and no analysis at all of consistency with the Scott Valley Groundwater Sustainability Plan.

**A. The Combining of a Mitigated Negative Declaration and Environmental Impact Report violates CEQA**

On August 16, 2022, this office submitted a comment letter to the PC explaining that the use of a combination of an unapproved draft MND and a partial EIR does not meet the requirements of CEQA. The staff report for the meeting on November 16, 2022, makes no mention of this issue. At the last PC meeting the PC identified issues for the staff to investigate for the next meeting, and the questionable legality of the combination draft MND and partial EIR was not among these issues. Our letter of August 16, 2022, explains in detail why this should be an issue very much on the minds of the decision makers.

The impact areas analyzed in the MND (along with the purported mitigation measures that will be applied to the project through some unspecified mechanism) will never actually be reviewed or approved by the County. It was a draft. The County cannot seriously be asking the public or the decision makers to assume that the impact areas left out of the partial EIR may simply be left unanalyzed, with no review or approval at all.

The Third District Court of Appeal recently held that neither CEQA nor its interpretive case law authorize a “limited EIR” at the “third tier” of the CEQA review process, nor do they provide any authority for “splitting the analysis of a project’s environmental impacts across two types of environmental review documents,” such as the MND and the “limited EIR”. Rather, once substantial evidence is presented that a project might have a significant environmental impact in *any* area, a negative declaration is inappropriate and CEQA requires the lead agency to prepare an EIR – in the Court’s parlance, a “full EIR” – for the proposed project.

Not only is the multiple document approach a violation of CEQA, the underlying analysis in the unapproved draft MND fails to meet the requirements of CEQA. A full EIR is required for the Project.

**B. The Mitigation Monitoring and Reporting Program must be Approved at the Time of Project Approval**

The proposed Resolution states that the MMRP has already been prepared and then goes on to say that it will be prepared in the future. The Staff Report states that all mitigation measures will be included in the MMRP. (Staff Report, p. 9.) There does not appear to be a MMRP in the packet for the Project.

When approving an environmental document containing mitigation measures, the lead agency must adopt a mitigation monitoring and reporting program to ensure the measures falling under its responsibility are implemented. (Guidelines § 15097.) The preparation of the MMRP may not be deferred and must be approved at the time of Project approval.

**C. The proposed Findings and Statement of Overriding Considerations are Deficient**

The draft Findings have been modified somewhat since the last meeting, but still fail to comply with CEQA. The CEQA Findings state that the EIR is a “project-level EIR” prepared pursuant to CEQA Guidelines Section 15168, which is untrue. Section 15168 applies to “Program EIRs”, and the EIR for the Project is most certainly not a program EIR, it is not even a project-level EIR. According to the EIR itself, it is a “focused” EIR. Focused EIRs, evaluating a limited range of impact areas, are only allowed to be used on a subsequent project that has already been reviewed and identified in a “master EIR”. (Guidelines § 15178.)

There is no master EIR under which this Project is being reviewed. The Findings do not even cite to an applicable section of the CEQA Guidelines to explain what the County intends by preparing an EIR for the Project that leaves many of the impact areas unanalyzed and unreviewed. The PC does not even have a final MND to review for the areas of impact left out of the EIR. There is no such thing as a “limited” EIR for review of a project’s impacts.

The County claims to have prepared a “focused” EIR on the areas of impact that the draft MND indicated required more analysis. It bears noting that the fact that the Project would have even one potential significant impact triggered the requirement for a full EIR. The areas included in the EIR are agriculture (project and cumulative), hazards (project and cumulative), noise (project and cumulative), traffic (project and cumulative), and water (project and cumulative). (Staff Report, p. 9.) Thus, the mitigation measures for impacts to geology and soils, and biological and cultural resources have never been analyzed in an EIR as required.

The proposed CEQA Findings state that the “County has determined the adoption of feasible mitigation measures and alternatives **incorporated into the EIR** will reduce impacts to some extent, but in one instance the impact will not be reduced to a level that is deemed ‘less than significant’.” (Ex. A-3, p. 3, emphasis added.) None of the mitigation measures for biological resources, cultural resources, or geology and soils are included in the EIR (they appeared only in the draft MND). There is no basis in fact for this finding. This grave error is repeated in the conditions of approval for the Project. Condition 17 states that the applicant must comply with all mitigation measures “contained in the Environmental Impact Report for the Project.” (Ex. A-1, p. 3.) Coupled with the fact that the County has failed to prepare the required Mitigation, Monitoring and Reporting Program (“MMRP”) as required by CEQA, there is nothing to make the mitigation measures for impacts to biological resources, cultural resources, or geology and soils enforceable against the applicant. CEQA requires that mitigation measures be enforceable. (Guidelines § 15041.) County’s invented method of CEQA review by draft MND (never approved) followed by a partial EIR with no MMRP is so far outside the bounds of what is required by CEQA that it is shocking.

The Resolution for the Project approval is rife with inaccuracies. The first error is the statement that “an Environmental Impact Report (EIR) was prepared for the Project.” (Resolution, p. 1.) A *partial* EIR was prepared for the Project, a document that has no procedural authorization in CEQA. This finding is misleading at best.

The second inaccuracy is the statement that a Mitigation Monitoring and Reporting Program *has been* prepared. (Resolution, p. 3.) That statement is directly contradicted in the “whereas” immediately following, stating that the MMRP will be prepared at some unspecified future time. (*Id.*) This is an important detail, since the MMRP must be prepared and adopted *before* the Project is approved. (Guidelines § 15097.)

The findings rejecting the environmentally superior alternative (Alternative 3) are circular and conclusory, with no facts or analysis to support the claim that a reduced project development alternative would not meet most of the project objectives. The conclusory statement is made that “expanded occupancy is the prime reason for the Project itself.” (Ex. A-3, p. 17.) Alternative 3 would, in fact, allow for expansion, just not as much expansion as the proposed Project. There are insufficient facts to support this finding.

Finally, the consistency findings for the General Plan and the SVAP are conclusory, with almost no analysis or factual basis for the findings. The findings lack the required analytical link between the facts and the conclusions regarding consistency with the applicable plans.

### **E. The Response to Comments is Insufficient**

The County also failed to provide adequate response to comments. Of particular concern is the failure to adequately respond to the comments submitted by resource agencies. For example, the County ignored the National Marine Fisheries Service (“NMFS”) direction to coordinate with the Scott Valley Groundwater Sustainability Agency (“GSA”). In fact, the County failed to list the GSA as an interested agency, and never consulted with the GSA as required under CEQA. The County points to a study appended to the EIR, claiming that the massive increase in the size of the camp will have no impact at all on hydrological resources. The county also ignores the request by NMFS for further consultation. (FEIR, p. 2.1-14.)

The Project is inconsistent with the existing NMFS/NOAA instream and riparian habitat improvements project in violation of CEQA. (*See*, Guidelines, Appendix G.) NMFS pointed this out in their comment letter and outlined an approach that could be taken in coordination with NMFS and the GSA in order for the Project to be consistent with the plan, and the County dismissed the comment, indicating that it was not a comment on the adequacy of the EIR, and it was “noted.” (FEIR, p. 2.1-14.) NMFS reminded the County in its letter that the County has a public trust duty to ensure that a project is not permitted that may be detrimental to trust resources. County ignored this comment as well. (*Id.*)

The County dismissed the rest of NMFS’ comments by referring to the Supplemental Groundwater and Surface Water Analysis for Kidder Creek Orchard Camp (“Pearson Study”). (FEIR, p. 2.1-14 – 2.1-15.) The study did not even begin to analyze the cumulative impacts and groundwater sustainability that NMFS discussed in its comment letter. The watershed must be analyzed as a whole, and the County hired a consultant to do a study that analyzed just the KCOC water use, and the entire study was based upon the assumption that the consumptive use would only be 10% of the actual groundwater extraction, claiming that most of the water extracted would go right back into the aquifer via septic systems. (Pearson Study, p. 3.) The Study makes no mention of the fact that the central dining facility (likely to generate most of the domestic wastewater) “may require an alternative system. Depending on the wastewater flows of the central dining facility, a waste discharge permit through the North Coast RWQCB may be necessary if average flows exceed 1,500 per day.” (FEIR, p. 2.2-102.) The assumption that all the groundwater extracted at the camp will go into septic systems is incorrect. The FEIR acknowledges that an alternative wastewater treatment system may be required for the more than 1,500 gallons of wastewater per day. If this occurs, 1,500 gallons of wastewater per day will *not* be going into the KCOC septic systems.

The Pearson Study failed to consider cumulative impacts and failed to consider how the season of extraction might alter impacts (particularly in light of the fact that the study assumes almost zero water consumption because of the septic systems). NMFS made clear that the season of extraction makes a difference. This constitutes a failure to adequately respond to this important comment letter from the federal resource agency responsible for endangered species in the Kidder Creek and Scott River watershed.

The County also failed to provide an adequate response to the California Department of Fish and Wildlife ("CDFW"). CDFW pointed out that the County failed to address its comments on the IS/MND in the DEIR. The County responded by stating that the County decided to prepare a focused EIR and decided not to include biological resources in that effort. (FEIR, p. 2.1-26.) As noted in detail above, the "focused EIR" prepared by the County fails to comply with even the most basic requirements of CEQA. Choosing to omit biological resources was not a legal option, but the County forges ahead in the response to comments and agrees to throw in a couple of mitigation measures in response to the CDFW letter. (*Id.*) The County failed to adequately address CDFW's comments.

#### **D. Conclusion**

A full EIR must be prepared for the Project as required by CEQA and recently confirmed by the Third District Court of Appeal. The combined approach of a draft MND and a partial EIR violates CEQA. The proposed findings fail to meet even the most basic legal standards, and the essential step of preparing a Mitigation Monitoring and Reporting Program has not been taken. For these reasons, and reasons raised in previous comment letters, we believe the proposal should be denied, pending appropriate environmental review and a revised Project and EIR.

Sincerely,



Marsha A. Burch  
Attorney

cc: Keep Scott Valley Rural