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Yuba County Board of Supervisors
915 8th Street, Suite 109
Marysville, CA 95901

RE: Yuba Highlands Environmental Impact Report

Dear Chairman Stocker and Members of the Board of Supervisors:

We have only recently had the opportunity to review the Environmental Impact Report (EIR) for the Yuba Highlands project, which we understand the Board of Supervisors will be considering on May 15, 2007. We are submitting these comments because the EIR completely ignores impacts from greenhouse gas emissions and improperly defers analysis and mitigation of significant effects on other natural resources in violation of the California Environmental Quality Act (CEQA). We urge the Board to reject the EIR until these deficiencies are corrected.

The Attorney General of the State of California submits these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (*See* Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

Introduction

The Yuba Highlands project is a particularly egregious example of sprawl. It is proposed for a very rural area with no public transit and no existing infrastructure, and would be adjacent to Beale Air Force Base and the State's Spenceville Wildlife and Recreation Area. The main employers, in the Lincoln-Roseville area, are almost 50 miles away on existing roads; if the developer obtains approval to improve the gravel roads that run through the Spenceville Wildlife Area, the distance would be 30 miles, still a considerable commute. The Sacramento Area Council of Governments, which specializes in modeling travel behavior resulting from land uses, estimates that developing Yuba Highlands will result in 25,000 automobile trips per day throughout the county. Many of these trips will be lengthy commute trips, yet the EIR fails to quantify the impacts of or propose any significant mitigation for the resulting greenhouse gas emissions. In addition, the EIR fails to identify or adequately mitigate (1) air quality impacts on

the Nevada City area, which is non-attainment for ozone; (2) impacts on the Spenceville Wildlife Area and endangered and threatened species; and (3) impacts of supplying water to the development. For all these reasons the EIR fails to comply with CEQA.

The Attorney General recognizes that much of Yuba County's undeveloped land is either in a flood plain or supporting agriculture, and that this project avoids the problems of flooding and destroying farmland. Our point here is that the EIR, as written, is inadequate as a matter of law, and should not be certified unless the project's impacts are adequately mitigated, as required by CEQA.

The EIR fails to adequately analyze or mitigate impacts on air quality

The EIR, criticized by several commentators for severely underestimating travel trips and impacts, itself projects that the development will result in 1870 commute trips per day, to and from the major employment center in the Lincoln-Roseville area. In spite of the tremendous number of vehicle trips that the project will generate, the EIR fails to adequately analyze the emissions from the project and their impacts.

Greenhouse Gas Emissions

Under CEQA, Public Resources Code § 21000, et seq., the EIR must consider the Yuba Highlands project's global warming impacts. The project could result in significant increases in emissions of greenhouse gases that cause global warming, and any increase in such emissions will make it more difficult for the state to achieve the greenhouse gas reductions required by Assembly Bill 32. The EIR must evaluate the global warming impacts of the project and discuss feasible alternatives and mitigation measures to avoid or reduce those impacts.

The Intergovernmental Panel on Climate Change of the United Nations recently published its finding that overwhelming evidence establishes that global warming is occurring and is caused by human activity. ("Climate Change 2007: The Physical Science Basis, Summary For Policymakers" (Fourth Assessment Report of the IPCC, February 2007).) The California Climate Change Center has reported on the impacts global warming is expected to cause in the state, including substantial loss of snow-pack, a substantially increased risk of large wildfires, and reductions in the quality and quantity of agricultural products. (Amy Lynd Luers, Daniel R. Cayan et. al, *Our Changing Climate: Assessing the Risks to California* (July 2006) at pp. 2, 10.)

On June 1, 2005, Governor Schwarzenegger issued Executive Order S-3-05. The Order recognized California's vulnerability to global warming and the need to implement mitigation measures to limit the impacts to the State. The Order also set greenhouse gas emission reduction targets for California. A year later the Governor signed AB 32, the California Global Warming

Solutions Act of 2006, codified at Health and Safety Code section 38500, et seq. AB 32 recognizes the serious threats global warming poses to California and requires California to reduce its greenhouse gas emissions to 1990 levels by 2020. (Cal. Health & Saf. Code, §§ 38501, 38550.) The legislation also encourages entities to voluntarily reduce greenhouse gas emissions prior to 2012 by offering credits for early voluntary reductions. (*Id.*, §§ 38562(b)(3), 38563.)

CEQA requires that all aspects of potential environmental damage from a project be examined, disclosed, and mitigated to the extent feasible. It requires the governmental decision-maker to make a reasonable effort to gather information, identify mitigation opportunities, and adopt mitigation measures where feasible. The CEQA Guidelines provide that "[a]n EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable. . . . '[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, § 15130(a).) Although a project may only contribute a minor amount to a large problem, agencies are still required to analyze whether the project's contribution is considered significant in light of the nature of the larger problem. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) Thus, where a project's direct and indirect greenhouse gas-related effects, considered in the context of the existing and projected cumulative effects, may interfere with California's ability to achieve the greenhouse gas reduction requirements of the California Global Warming Solutions Act, the project's global warming-related impacts should be considered cumulatively significant.

Accordingly, the EIR must describe the existing level of greenhouse gas emissions in the county, and the estimated increased greenhouse gas emissions associated with the Yuba Highlands project. The EIR must then evaluate feasible alternatives and adopt mitigation measures that would avoid or reduce the development's greenhouse gas emissions. The existing EIR does none of these things. Instead, the EIR requires the developer to submit an "emissions reduction plan" prior to groundbreaking. There are several major problems with this plan. First, it only requires a reduction in "emissions," without designating the types of emissions that need to be reduced. The offsite mitigation strategies, for example, are specifically targeted at reductions in NOx and particulates. There is no requirement that CO2 and other greenhouse gases be reduced. Second, many of the measures are beyond the control of the developer to implement, such as telecommute programs, alternative work schedules, and employees working at a satellite work center. Third, other measures, such as promoting bicycle trips within the development, are good ideas but will have only a minor impact on reducing the project's emissions. Fourth, the measures are too vague. The plan, for example, requires the developer to develop a "transit services plan" but the does not contain standards or specific mitigation measures.

The EIR does include some energy-efficiency features that would reduce greenhouse gas emissions to a small degree. The measures include requirements such as planting trees, installing Energy Star roofing materials, installing energy efficient appliances, and prohibiting gas powered landscape maintenance equipment within the development. While a good start, the measures are insufficient to offset even a fraction of the greenhouse gas emissions the project will generate.

While no state agency has issued guidelines for carrying out AB 32, the absence of specific guidelines does not excuse CEQA compliance. In determining specific mitigation actions for the EIR, the County could look to a number of communities that are beginning to formulate strategies to reduce greenhouse gas emissions. There are a growing number of resources available to help guide Yuba County in calculating and mitigating the emissions. The Attorney General's Office would be happy to identify some of those resources if the County is interested.

Other Air Quality Impacts

Nevada County, two miles downwind of the project, has not attained the federal ozone standard. According to the Northern Sierra Air Quality Management District, the Yuba Highlands project will increase locally emitted ozone precursors by 18 percent. This is significant for Nevada County because its nonattainment results from pollution being transported from upwind areas. If Nevada County fails to attain the federal ozone standard by the target date of 2014, it is subject to serious federal sanctions under the Clean Air Act, including the cutoff of highway funds and the imposition of stricter standards for stationary sources.

The EIR proposes that before ground can be broken, the Feather River Air Quality Management District must approve an "emissions reductions plan." While the requirements of the plan sound good in theory, they are neither practical nor legally adequate under CEQA, as discussed above.

The EIR fails to adequately analyze or mitigate impacts on biological resources

Yuba Highlands is adjacent to the Spenceville Wildlife and Recreation Area (Spenceville) managed by the Department of Fish and Game. Spenceville is a 11,000- acre blue oak woodland, home to over 230 fish and wildlife species, including species listed as threatened or endangered. As suggested by its name, Spenceville serves two purposes, protection of wildlife

and human recreation; there are a number of hiking trails and even limited hunting is permitted. The recreational use of the area is light, however, and regulated by DFG.

The proposed development will potentially affect Spenceville in a number of ways. First, there will be only a 450-foot buffer separating houses from the wildlife area; second, the development will be constructed in the middle of two separate parts of the wildlife area; and third, the project proposes to "improve" the narrow gravel roads that traverse the wildlife area to serve as the main commuter routes into the Lincoln-Roseville area. The EIR fails to adequately analyze or mitigate the impacts that are likely to result from siting a large development adjacent to the wildlife area (increased human use of the area, lighting, noise, domestic pets), fragmenting the wildlife area (interruption of wildlife mobility), and developing the roads through the wildlife area (species mortality and displacement from road construction and vastly increased traffic). In addition, the EIR fails to meaningfully address the impacts the development will have on habitat or species on the development site. The surveys of on-site species were conducted during the wrong time of the year, resulting in an inadequate baseline of species that may be affected. The EIR improperly defers most of these analyses to future project-specific EIR's.

The EIR defers evaluating significant mitigation on the ground that the EIR is "only" a Program EIR and that mitigation will be required at later stages. It is appropriate to use a Program EIR to consider broad environmental issues at an early stage of the planning process (CEQA Guidelines, § 15168). The use of a Program EIR, however, does not excuse an agency from identifying and mitigating significant environmental impacts a project is expected to cause. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.) An agency is permitted to defer analysis of certain details of long-term projects to the future, but it must consider all reasonably foreseeable consequences of approving a project. (*Laurel Heights Improvement Assn v. Regents of University of California* (1988) 47 Cal.3d 376, 399.)

Here, the EIR fails to assess the reasonably foreseeable impacts of the project and improperly defers assessing reasonably foreseeable impacts on the Spenceville Wildlife Area and the area's biological resources. For example, the EIR has mapped out residential, commercial, and open space areas, and has determined the number of houses for each neighborhood, but has based these decisions on incomplete biological surveys done at the wrong time of the year. The EIR states that some additional surveys will be done in the future. But without knowing whether sensitive habitat or species exist on site, the Board is not able to make an informed decision about the appropriate location of areas to be developed. Also, all assessment and mitigation of impacts of widening the roads through the Spenceville Wildlife Area has been deferred until the roads are constructed. The Board cannot make a reasoned judgment whether to approve the paving of the roads unless the EIR discloses the impacts of that decision. And if the roads through Spenceville are not improved, commuters will have to travel even farther to the Lincoln-Roseville area, resulting in more greenhouse gas emissions and other pollutants. The Board thus

needs to know what the impacts are of improving and not improving the roads.

The EIR fails to adequately analyze and mitigate impacts from supplying water to the project

The EIR maintains that the project is entitled to groundwater from the Yuba Goldfields well field, near the Yuba River. Even if Yuba Highlands can secure this water supply, which is uncertain, the EIR fails to discuss any impacts from using the groundwater. There are indications that the well field is hydraulically connected to the Yuba River. If the two are connected, pumping groundwater will draw down the river. The EIR acknowledges that it is unknown whether using groundwater will affect the Yuba River but assures the Board and the public that those impacts will be studied later, in an EIR on the well field. The California Supreme Court has specifically forbidden EIR's from deferring this type of analysis. It recently held that an EIR must address the reasonably foreseeable impacts of supplying water to a project and cannot put off the analysis to a future EIR, which is exactly what the EIR proposes to do here. (*Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412; *Stanislaus Natural Heritage Project v. County of Stanislaus*, *supra*, 48 Cal.App.4th 182.)

Thank you for the opportunity to submit these comments. We respectfully request the Board to refuse to certify the EIR until it has been re-drafted to eliminate the deficiencies described above and then recirculated for public comment.

Sincerely,

LISA TRANKLEY
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General