

(Related: DR-R18-0001)

File Number: DR-A18-0002

Receipt No.: 4289

Date Received: 09/6/18

Amount: \$ 239.<sup>00</sup>

**APPEAL FORM**

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Rebecca Eno

ADDRESS 3844 Yellowstone Ln. El Dorado Hills CA 95702

DAYTIME TELEPHONE 408-466-4367

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT \_\_\_\_\_

ADDRESS \_\_\_\_\_

DAYTIME TELEPHONE \_\_\_\_\_

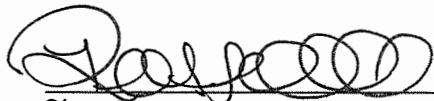
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APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

Resident's appeal to the B.O.S. regarding the Planning Commission's approval of DR-R18-0001/Saratoga Retail Phase 2 on August 23, 2018, Notice of Determination executed on August 28, 2018. Collectively, affected residents contend DR-R18-0001/Saratoga Retail Phase 2 ("Subject Project") fails to comply with county law, namely specific design ordinances and regulations adopted by the Board of Supervisors. Further a fair argument can be made that the Subject Project, as designed will have a significant negative impact on the environment thus requiring under CEQA regulations a full EIR. This appeal incorporates herein the attached letter/prior public comment/public record

DATE OF ACTION BEING APPEALED as though fully set forth herein. 8/23/2018

  
Signature

9/6/18  
Date

September 6, 2018

2018 SEP -6 AM 10: 12

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**HAND DELIVERED**

BOARD OF SUPERVISORS  
EL DORADO COUNTY, CA

**Re: DR-R18-0001/SARATOGA RETAIL PHASE 2 APPEAL**

Dear Board of Supervisors:

On behalf of affected residents, and pursuant to El Dorado County Ordinance No. 130.52.090, this appeal is respectfully submitted for consideration to the Board of Supervisors. Specifically, this appeal requests that the August 23, 2018, approval by the Planning Commission of DR-R18-0001/SARATOGA RETAIL, PHASE 2 (hereinafter "Subject Project") be set aside on the following grounds: 1) the Subject Project does not comply with established County law; 2) a fair argument can be made that the project will have a substantial adverse effect on the environment rendering the negative mitigated declaration invalid; 3) the findings issued by the planning department include misrepresentations of fact that preclude the adoption of the same as the basis for approval; and 4) state and local notice requirements were not complied with by the Planning Department depriving residents of their rights and an opportunity to be heard in advance of the August 23, 2018 hearing. Therefore, and in reliance upon the contentions contained herein, residents collectively, and respectfully request the Board of Supervisors reverse the Planning Commission's approval of the Subject Project, and issue a decision formally denying the Subject Project as submitted with prejudice.

This appeal is based upon, and incorporates as though fully alleged, public comments submitted in opposition of the Subject Project dating from the original application in 2009 through present day; the public record both published online and any/all such documentation to be produced subject to a pending public records request, and the substantial evidence and documentation submitted in advance of the public hearings for the Subject Project<sup>1</sup>.

**1. The Subject Project, as Designed Does Not Comply with County Law, and Therefore Must be Denied.**

In 2015, the Board of Supervisors adopted *Community Design Standards for Parking and Loading*. These standards and regulations supersede county ordinances related to the same subject matter, and projects, including design revisions must comply with these

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<sup>1</sup> For convenience, a copy of residents' public comment dated August 16, 2018, is attached as **Exhibit A**, this documentation is provided to summarize a significant number of the arguments against the Subject Project, but is not an exhaustive list of the grounds available to deny the Subject Project. Additional copies of the substantial evidence submitted in support thereof can be provided upon request.

standards/regulations before approval can be granted by the originating jurisdictional authority<sup>2</sup>. The Subject Project fails to comply with a minimum of three (3) such regulations contained within the Community Design Standards, specifically applicable to Drive-Through Facilities. The most striking and egregious failure pertains to regulation H.2., which reads as follows:

**Ingress to and egress from a drive-through facility shall be prohibited from driveway(s) directly facing a residential zone.**

The H.2., compliance failure was submitted to the Planning Department and Commission, as a basis for denial in public comment well in advance of the August 23, 2018, hearing. This submission obviously garnered attention of the Planning Department who, then, scrambled to provide revised Findings only minutes before the August 23, 2018. This public notice failure on the part of the Planning Department is another ground for appeal that is discussed in more detail below.

In the revised Findings, the Planning Department states the following: “The ingress to the drive-through facility will have vehicles facing El Dorado Hills Boulevard and commercial development across the street. The egress from the drive-through facility will have exiting vehicles facing proposed building 2 and the existing Walgreens. The headlights from the vehicles using the drive-through facility will not be facing residential zones.” This finding in particular is horribly misleading and should be set aside on the basis that the same is an incoherent rambling that fails *intentionally* to address the clear unambiguous language of the regulation itself.

The findings of a public agency that a project is consistent with the general plan, ordinances or regulations must be reversed if based on evidence that no reasonable person could have reached the same conclusion. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1<sup>st</sup> Dist. 1993) 23 Cal.Rptr. 2d 182.) According to Webster’s Dictionary the definition of **driveway** is as follows: “**a private road giving access from a public way to a building on abutting grounds**”. Of particular note, the County Ordinances and regulations do not provide an alternate definition of driveway. The Subject Project has four driveways providing ingress and egress to each and every building on the subject lot, including the proposed drive-through facility.



<sup>2</sup> Pursuant to El Dorado County Ordinance No. 130-52-030, original jurisdictional review of any design review application/revision for a project visible from Highway 50 vests solely in the Planning Commission.

As depicted above, each and every driveway for the Subject Project, including the two already in existence directly face a residential zone. Again, the driveway of a drive-through facility by common definition is a private road giving access from a public way. The only public way is Saratoga Way, accordingly, the only driveways subject to the provision H.2., are the driveways in existence and proposed that will abut Saratoga Way. By the very nature of the lot at issue in this matter, compliance with H.2., is impossible unless the design is revised to provide driveway access exclusive to the public way of El Dorado Hills Boulevard. It is presumed that such a revision would prove impractical as the portion of El Dorado Hills Boulevard immediately adjacent to the Subject Project serves as a single lane entry to the Highway 50.

In 2009, during Phase 1 of the Subject Project, administrative relief was provided to allow for a drive-through to be attached to Walgreens. The administrative relief was conditioned exclusively on the affirmative representations from the owner that the entire project would be non-tourist serving. Changing the very nature of the use places the existing drive-through in jeopardy as the administrative relief is rendered null and void in light of the proposed revisions transitioning this project into a tourist serving facility.

In accordance with this County's laws, a design revision must comply with the Design Standards adopted by the Board of Supervisors. If compliance is not possible, then the applicant can move for administrative relief. Conversely, failure on the part of the Planning Department, and subsequently the Planning Commission to adhere to the laws of this County sets a terrible precedent. Laws, properly adopted, must be followed. The Subject Project does not comply with the Design Standards of this County, the most egregious example of which is detailed above. Therefore, and in accordance with the well-established laws of this County, this Subject Project must be denied.

## **2. The Subject Project is Not Entitled to a Ministerial Exception to CEQA Review and Compliance.**

As detailed in the original 2009 findings and staff reports, the lot at issue in this matter is uniquely shaped and as such, cannot accommodate parking and traffic circulation in compliance with county ordinances and design standards. Accordingly, the County in 2009, provided administrative relief from County regulations/laws on the exclusive grounds that the subject lot be used for non-tourist serving facilities. In 2017, in direct conflict with the administrative relief conditions, the owner of the Subject Project, submitted a design revision that changed the use of the remaining facilities to tourist serving fast food drive-through facilities. The Planning Commission denied the revision application in January 2018, on the grounds that the project as designed did not comply with County regulations. Despite revisions, the current iteration of the owner's design revision **STILL DOES NOT COMPLY WITH COUNTY ORDINANCES AND DESIGN STANDARDS.**

When the design proposed **does not** comply with adopted county design standards, a complete CEQA impact review is required. (County Ordinance No. 130-52-030.)

**The Commission** shall have the review authority of original jurisdiction for those projects that are adjacent to or visible from designated State Scenic Highway Corridors... The approval of a design review permit is a ministerial project

pursuant to CEQA, **when in compliance with adopted design standards**. The design review process shall be limited to consideration of compliance with established standards, provided that the use proposed for the project site is an allowed use within the zone. [Emphasis added] County Ordinance No. 130-52-030.

California Code of Regulations §15183, provides an exemption from CEQA review for projects that are consistent with the community plan, general plan, zoning and ordinances. However, this ministerial review exception is not triggered if the proposed project does not comply with County ordinances, and further, the exception is not as broad as alleged by the owner's counsel. Pursuant to 14 CCR §15183, additional environmental review is required when there are project specific significant impacts which are peculiar to the project or site. In 2009, the Planning Department found in its staff report and findings that the project site is unique and required administrative relief because compliance with County laws and regulations was impossible. Nothing has changed since 2009, and the 6000 square foot reduction in commercial space did not alleviate the circulation problems detailed in the 2009 findings and reports. The Subject Project is not exempt from further environmental review, as was established in 2009 with the original submittal.

**3. A Fair Argument Exists That the Subject Project Will Significantly and Negatively Impact the Environment, Thereby a Full Environmental Impact Report is Necessary.**

In the alternative, if the Subject Project is not denied with prejudice, residents move the Board of Supervisors to set aside the approval of the project and order a full environmental impact report be conducted. This appeal incorporates the arguments and substantial evidence attached as Exhibit A as though fully set forth herein.

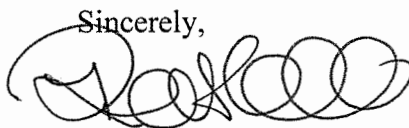
**4. The Planning Departments Untimely Production of Its Revised Findings Violates State and County Notice Requirements.**

State and County law requires the public have an opportunity to be heard in advance of a decision that vests with original jurisdictional review in the planning commission. The Planning Department released CEQA documentation to the public less than two-weeks before the August 23, 2018, hearing. Further, staff reports and findings were issued mere days before the hearing. Then, during the hearing the department made copies of Revised Findings, and this four (4) page document was not published to the public at large on the web-site or through publication. The lack of notice from the Planning Department deprived the public of a fundamental right to be heard on issues of significant importance to many of us that will have to live with the impact of the project for years if not decades. The departure and failure to comply with well-established state and local notice requirements is one of the many grounds to deny this project, and is submitted upon appeal as the matter could not be properly addressed in advance of the August 23, 2018 hearing.

## CONCLUSION

Residents previously provided the Planning Department and Commission with more than enough evidence and grounds to outright deny any project proposed on the subject lot that includes a tourist serving Drive-Through. The Design Standards, adopted for the protection of the residents of this county must be adhered to by the owner of the proposed project, and most importantly by the County itself. Failure to apply the limited number of Design Standards specifically adopted for drive-through facilities to the Subject Project will set a horrible and inexcusable precedent that jeopardizes the health and well-being of the residents the Standards were adopted to protect. For these reasons, and those contained in the incorporated documentation, affected residents respectfully submit this appeal and request that the Subject Project and any subsequent iterations that include a tourist serving Drive-Through facility be denied with prejudice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca Eno', with a large, stylized initial 'R'.

REBECCA ENO

To: EL Dorado County Planning Commission; Board Of Supervisors  
From: Concerned Residents (Brooke & Wes Washburn; Kim Camom, Rebecca and Justin Eno, Hilary Krogh, Brandy Dollis, Karen Anda)  
CC: El Dorado County Planning Department  
Date: 8/13/2018  
Re: DR-R18-0001/Saratoga Retail Phase 2- Request to Deny Application or in the Alternative Require an EIR

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To effectively summarize the substantial and overwhelming evidence submitted in opposition to the application referenced above, residents who all reside in adjacent villages submit this public comment collectively for consideration in advance of the upcoming hearing before the El Dorado Planning Commission on **August 23, 2018**.

Request: In reliance upon the evidence and arguments detailed below, this memorandum respectfully requests that the design review revision, commonly referred to as Saratoga Retail – Phase 2 (DR-R 18-0001), be denied with prejudice, or in the alternative that the project be stayed until a full EIR is conducted.

**Summary of Pertinent Facts:**

On January 22, 2009, the El Dorado County Planning Department and Commission published findings and a staff report that were the basis for approval of a commercial development commonly referred to as “Saratoga Retail.” In the findings, the County stated on multiple occasions that the unique shape of the lot being developed would not allow the owner to comply with various county ordinances.

The Planning Commission should be aware that as a result of the Saratoga Way realignment project undertaken by El Dorado County, an odd shaped parcel was created. The applicant has adapted the project to this odd shape, but unique circulation issues exist with respect to the site’s ability to handle large vehicles due to the narrow width of the parcel in certain locations. **As a result of the parcel’s limitations, a number of administrative relief findings have been requested.** (See, January 22, 2009, Staff Report, P. 2.)

There were a number of administrative relief findings granted to the owner of the Saratoga Retail project. Said relief was granted as to the entire project, not a single phase, and was exclusively conditioned upon affirmative representations from the owner that the project would NEVER be a tourist serving Retail Center. These representations regarding the type of establishments that would occupy the Retail Center are crucial because, as stated by the Planning Department in 2009, the odd shape of the parcel would not allow for proper traffic and parking circulation.

Again, based on the assurances that the Retail Center would not be tourist serving, In 2009, the County waived requirements for parking, drop-off, and loading for a commercial development. The specific parking relief granted to the owner was not limited to Phase I of the development, and further does not extend to new phases, if the use is changed to a tourist serving facility.

Thus eight (8) RV parking spaces would be required for the proposed restaurant uses. The project does not include recreational parking spaces. However, the project exceeds the County requirements and would be sufficient to serve the **proposed commercial use given that the project is not a regional retail center, nor is it a tourist serving facility, and it is unlikely that it would draw recreational vehicles to the site.** Administrative relief findings from the strict compliance with the provisions for commercial use have been made and are included in the Findings for Approval, Attachment 2. (See, January 22, 2009, Staff Report, P. 2.)

The owner decided to develop the approved design in phases, and built the first of three proposed retail facilities in 2009, a Walgreens. Then, in 2017, the owner submitted a Design Review Revision that sought to add two (2) drive-through facilities in lieu of building the previously approved retail facilities to house boutique shops and restaurants. The owner's blatant departure from the promises made to secure administrative relief in the first instance captured the attention of the community and resulted in a significant movement to oppose the revision.

The county and its residents adopted clear design ordinances and regulations that must be followed to mitigate future problems related to capacity, safety, traffic, etc. In 2009, the proposed commercial use for the odd parcel could not comply with the existing regulations, and therefore a compromise was achieved through administrative relief. This relief did not absolve the owner from ever complying with County regulations should the "use" change. In fact, quite the opposite was clearly the intent of the relief. The County conditioned the approval of the project, provided the use would **never** be tourist serving. Why? Logic follows, with a tourist serving facility, all of the potential problems with traffic, safety and parking the original laws were designed to negate become amplified, to an unacceptable level of significant negative impact on the residents of this county and local community.

The Planning Commission denied the proposed Saratoga Retail – Phase II design revision and a staff memo was issued on January 11, 2018. Then, in late spring, the owner submitted a second Design Review Revision that sought approval for two buildings, the first of which would include a drive-through restaurant.

Again, this submission from the owner is a departure from the original conditions of approval in 2009, namely it proposes a tourist serving facility in the form of a drive-



through restaurant. Accordingly, the application does not comply with the original 2009 approved project, and further as a whole the entire project does not comply with the regulations in effect in this county both in 2009 and present day.

**Analysis:**

**1. The entire Design Revision application should be denied with prejudice.**

Setting aside the legal arguments that the original permit was not properly revived<sup>1</sup>, and that the submission by the owner less than 12 months after a denial (El Dorado County Ordinance Sections 130.54.080(A); 130.54.70) was improper, this design review revision application should be denied because a drive-through will never be a conforming use for the subject parcel.

**a. Findings Issued by the Planning Department are Fatally Flawed and Should not Be Adopted by the Commission or BOA:**

As detailed above, and expressed numerous times in the prior findings by the Commission and Planning Department, the parcel at issue is odd shaped and a project cannot be designed in a manner that ever complies with the specific traffic and parking regulations adopted by the County (Sections 17.18.030.B.6; 17.18.060.16 & 18; 17.18.080.C.) The owner currently is attempting to circumvent the regulations by presenting the project in phases, this is wholly improper and should be rejected. Administrative relief was given for the entire project, not a single phase of development, and this relief cannot be applied in piecemeal. For example, Walgreens does not have a single RV parking spot. However, under the code it should have 1 spot for every 10 parking spaces. Thus, if the project is built in phases, and now the proposed use will include a *tourist* serving facility, the parking for buildings 2 and 3 must include enough RV spaces for the entire project, including phase 1 and Walgreens. The current application does not meet this requirement.

Next, and most important, the County adopted in 2015, eight (8) regulations that must be complied with when building a drive-through. (See, Community Design Standards, Parking and Loading Standards, Section H.) These conditions for approval are not overly burdensome, or ambiguous. Instead, when drafting these regulations, the intent was clear, create a buffer between drive-throughs and residential communities, and further, limit the locations wherein such facilities can be located to minimize their impact on our community. Designs are required to adhere to these conditions as evidenced by the use

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<sup>1</sup> Administrative arguments including the improper revival of an expired permit and design approval are not waived for purposes of this public comment. Residents contend that the originally approved project was for a term of 1 year, and under the county ordinances was not properly revived for purposes of a design revision application. Further, the second design revision application is untimely as it is not a significant departure from the 2017 application, and pursuant to the findings of the Planning Commission is barred for term of 12 months from resubmittal.

of “SHALL” and “PROHIBITED”. The County in adopting these ordinances left no room whatsoever for interpretation or discretionary approval.

H. Drive-Through Facilities: Sites containing these facilities **shall** be in compliance with the following circulation and traffic control standards:

**2. Ingress and egress from a drive-through facility shall be prohibited from driveway(s) directly facing a residential zone.**

3. A drive-through facility, including stacking areas for vehicles awaiting service, shall be a minimum of 50 feet from the nearest property line of any residentially zoned lot.

6. Stacking areas **shall** not block access to any parking area or space required of a business . . .

8. When a drive-through facility requires a Conditional Use Permit or is within a development that is subject to a discretionary permit, the review authority may impose a greater setback than is required under Paragraph 3 above, when it is determined necessary to mitigate the impacts from noise, air pollution, lights, or other land use conflicts. The review authority may deny any application for a drive-through facility if it finds that the facility will add to the cumulative air-quality impacts for a specified pollutant and the County is found to be in non-attainment<sup>2</sup> status of either federal or state air quality standards for that pollutant. (Community Design Standards, Parking and Loading Standards, Section H.)

The finding by the Planning Department that the Saratoga Retail – Phase II second proposed revision meets with the Parking and Loading Standards is clearly erroneous and a misstatement of fact. (See, Findings dated August 23, 2018, p. 5, section 3.4.) It is presumed the Planning Department intentionally ignored the language in the provisions above, specifically item no. 2. It is not possible for the design revision to comply with item no. 2, which is mandatory for a drive-through. This non-compliance is sufficient, on its own to deny this project with prejudice, as no amount of amendment to the design will ever rectify this non-compliance. Further, there is no room to approve a project that does not meet these minimal standards as the intention by the county in adopting the same was to require mandatory compliance.

Once enacted, a county ordinance or regulation has the same force and effect within county limits as a statute passed by the legislature has throughout the state. *Evola v. Wendt Const. Co.* (1959) 170 Cal.App.2d 21. Where the county regulation/ordinance requires a ministerial act to be done by a municipal officer or employee, and the officer neglects or refuses to do that act, the officer/employee may be compelled to respond in

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<sup>2</sup> El Dorado County is a non-attainment county.

damages to the extent of the injury arising from the officer/employees conduct. *Ellis v. City Counsel of Burlingame* (1963) 222 Cal.App.2d 490.

The above referenced standards were adopted by the Board of Supervisors, who have the power in this county to legislate and enact laws. *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550. It is the obligation of the Planning Department, and the Planning Commission to adhere to the laws enacted by the Board of Supervisors, including the regulations referenced above. Failure to properly review projects in accordance with said laws exposes the county to liability and the individual employees for intentional failures to obey the laws of this county.

In addition to the erroneous finding that the design revision complies with the County's laws (ordinances and regulations), the findings and mitigated negative declaration issued by the Planning Department states in error that the proposed project is not located near any SENSITIVE RECEPTORS. As the crow flies, a public children's park (one of the few splash parks in EDH), an elementary school, a little league baseball field, and an elderly day care center are all situated less than .4 miles from the proposed project. The County Planning Department's failure to identify and mitigate the environmental impact on these sensitive receptors is unacceptable. Children and Seniors are the most vulnerable classes of residents in our community and they deserve the upmost care, arguably beyond the minimum standards adopted by CEQA.

Accordingly, and in light of the failures of the Planning Department to properly apply the laws of this County and the State to the subject application<sup>3</sup>, the Commission and BOS should **deny this application with prejudice** and any subsequent application that contains a tourist serving drive-through facility.

**2. In the Alternative, the Commission should require an EIR be performed for the revisions proposed.**

When a fair argument can be made that a project will have significant effect on the environment, and evidence of such impact exists in the lead agency's record, the agency's decision to adopt a mitigated negative declaration will be set aside. (*Gentry v. City of Murrieta* (1995) 36 CA4th 1359. Further, a mitigated negative declaration will be set aside if there is substantial evidence in the record that the conditions attached to its adoption are insufficient to mitigate project impacts. *California Native Plant Soc'y v. County of El Dorado*, (2009) 170 CA4th 1026. The following substantial evidence demonstrates that in addition to significant impact to the environment stemming from this project, the mitigation detailed by the County in the Findings are inadequate to address the impacts or reduce the impacts to an level of insignificance. (See, *Keep Our Mountains Quite v.*

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<sup>3</sup> Residents further contend that the failure of the Planning Department to initially reject this application on the grounds that a drive-through use does not comply with the laws of this County is grounds to reject all of the findings issued by the Planning Department. It is not the job of the residents to review the findings for accuracy.

*County of Santa Clara* (2015) 236 CA4th 714 (negative declaration set aside on basis of fair argument about noise and traffic); *Rominger v. County of Colusa* (2014) 229 CA4th 690 (negative declaration's analysis of traffic impacts of subdivision of industrial land inadequate); *Mejia v. City of Los Angeles* (2005) 130 CA4th 322 (rejecting negative mitigated declaration based on evidence of possible impacts to traffic)).

A significant effect on the environment is substantial adverse change in the physical environment in the area affected by the project. The effect need not be momentous, important, or long lasting to be significant. The term "significant" covers a spectrum ranging from "not trivial" through "appreciable" to "important" and even "momentous." (See, *No Oil Inc. v. City of Los Angeles* (1974) 13 C3d 68, 83.) An agency's determination whether to classify a particular impact as significant involves the exercise of discretion. Further, it calls for careful judgment on the part of the public agency involved, based to the extent possible, on scientific and factual data. (14 Cal. Code Regs. §15064(b).) Distinguishing between substantial and insubstantial environmental effects requires that the agency make a policy decision based in part on the setting. (*WM Barr & Co. v. South Coast Air Quality Mgmt. Dist.* (2012) 207 CA4th 406, 433.)

#### Cumulative Impacts:

In any event, and pursuant to Pub. Res. Code §21083(b) and 14 Cal. Code Regs. §15065(a), an EIR must be prepared when, after an initial study, the following certain specified impacts result:

- The project has possible environmental impacts that are individually limited but cumulatively considerable. (Pub. Res. Code Pub. Res. Code §21083(b)(2);

A mandatory finding of significance is required when a project's potential impacts are cumulatively considerable. "Cumulatively considerable" is defined to mean that the increased effects of a project are considerable when viewed in connection with the effects of past, current, and probable future projects. Pub. Res. Code §21083(b)(2). Under the provisions of this mandatory finding, the environmental impacts of other projects are relevant to the extent that they provide a context for assessing the impacts of the project under review. A determination in an initial study that a project will result in impacts described in 14 Cal. Code Regs. §15065(a)(1) will ordinarily require an EIR. Adoption of a mitigated negative declaration is not appropriate unless the evidence in the record demonstrates that the mitigation measures **will reduce all impacts** to a level of insignificance. (See, *San Bernardino Valley Audubon Society c. Metropolitan Water Dist.* (1999) 71 CA4th 382.)

The evidence relied upon by the applicant for Saratoga Retail 2, including reports from the county regarding population growth are stale, and do not reflect the cumulative effect of the proposed project with other pending and approved El Dorado Hills projects, including but not limited to the Saratoga Estates, El Dorado Hills Apartments, and various

Serrano developments. Taken collectively, these proposed and approved projects will dramatically increase traffic in and around the Saratoga Retail lot. The addition of any tourist serving facility, let alone a drive-through is evidence enough, when taken cumulatively with the surrounding projects to trigger the obligation to complete a full environmental impact report.

Initial Study:

Due to the unique location of the proposed project (proximity to a highway on-ramp) an initial study evaluating any change to the originally approved plan is mandatory. Further, an initial study must consider all phases of development, implementation, and operation, including phases planned for future implementation. (14 Cal. Code Regs. §15063(a)(1).) The rule logically follows from the principles that the “whole of the action” that may result in physical change must be considered (14 Cal. Code Regs. §15378(a)) and that environmental analysis should not be deferred. (See, Pub. Res. Code §21003.1.) The application in this instance is attempting to circumvent a complete initial study of the complete environmental impacts of the entire development by submitting this revision application in phases. This is improper and does not relieve the County of its obligation to complete full and comprehensive environmental initial study.

Proposed Mitigation:

As detailed below, the mitigation proposed by the County does not comply with State and local law. Primarily, mitigating traffic using a fee program (TIM) that is not certain to address or relieve the specific impacts identified in the traffic reports is improper. *California Native Plant Soc’y v. County of El Dorado* (2009) 170 CA4th 1026. The mitigation proposed by the county for traffic is two-fold 1) adjust traffic lights based on future studies, and 2) payment into a fee based program (TIM) to expand Saratoga Way should in the future the traffic become worsened. These mitigation recommendations do not comply with CEQA.

Condition a negative declaration on another agency’s (Traffic/Transportation) future review of environmental impacts, without evidence of the likelihood of effective mitigation by the other agency is insufficient to support a determination by the lead agency that potentially significant impacts will be mitigated. *Sundstrom v. County of Mendocino* (1988) 202 CA3d 296. A negative declaration requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a negative declaration is approved. (Pub. Res. Code §21080(c)(2).) Lastly, if there is substantial evidence in the record that a fee-based mitigation program will not actually mitigate the project’s impacts, an agency cannot rely on a project’s contribution to the program to support a mitigated negative declaration. *California Native Plant Soc’y v. County of El Dorado* (2009) 170 CA4th 1026. According to the County Directors and Board of Supervisor, the current Saratoga Expansion project does not include widening the road

at the Saratoga Retail location. Thus, payment into the fee program will not specifically address the traffic created by the proposed design. Further, the TIM program does not have any concrete plans to address the traffic impacts to surrounding intersections (Arrowhead and Mammoth) and neighborhoods as described in more detail below.

For these reasons, the County's mitigation findings are wholly inadequate and do not comply with CEQA.

Public Comments Regarding Significant Impact:

The public is entitled to review and comment on a proposed mitigated negative declaration. (14 Cal. Code Regs. §§ 15072-15073.) The lead agency must consider such comments when deciding whether to approve the negative mitigated declaration (14 Cal. Code Regs. §15074(b).)

Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument that a particular project will significantly impact the environment. So may expert opinion if supported by facts, even if not based on specific observations as to the site under review. (See, *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.)

To constitute substantial evidence, statements by the public must be supported by adequate factual foundation. An adequate foundation may be established by relevant personal observations of the public. For example, neighbors' testimony about noise impacts based on past noise events constituted substantial evidence. *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 CA4th 714. **Further, an owner of adjacent property, may, based on personal observations, testify to existing traffic conditions.** *Citizens Ass'n for Sensible Dev. v. County of Inyo* (1985) 172 CA3d 151.

The residents who assisted in the preparation of this commentary collectively submit the following substantial evidence of significant impact for the County's record and consideration. All of which, either on its own, or collectively mandates that this project be stayed while a formal EIR is performed.

**A. Aesthetics: Scenic, Visual, Light and Glare Impact. The project will have a significant impact on the aesthetics of the surrounding community. Attached as Exhibit A to this commentary are copies of all supportive documentation relied upon in making this determination.**

- a. Summary of Substantial Evidence: Research supports that convenience stores and fast food restaurants located within close- proximity to a major thoroughfare are at a much higher risk of criminal activity than others. To this point, it was only a year ago that the Walgreens in the lot adjacent to the proposed site, had a truck drive through the front doors,

wrap a chain around the ATM, and attempted to drag the machine out the door.

“Corporations very often target specific demographics that equal high traffic and potential profit, while failing to properly prepare for the increased crime that invariably accompanies such site selections.”  
(J. R. Robert Security, You Want Fries with that Knuckle Sandwich?  
<http://www.jrrobertssecurity.com/fast-food-crime-prevention-2/>)

Research shows that fast food restaurants devalue nearby properties. First impressions last, and as you enter El Dorado County, the quality in La Borgia and Town Center, should be echoed within the Saratoga Retail area as well.

“We find that neighborhood context, especially access to fruit and vegetable outlets, is capitalized into, or associated with, higher housing values. Fast food and convenience store access are associated with lower housing values.”

“All neighborhood incomes types place negative value on fast food access and convenience store access.” (The price of access: capitalization of neighborhood contextual factors, Henry Shelton Brown, III and Lisa M Yarnell, Aug. 8, 2013)

A study done in the UK showed that premium restaurant brands had a positive effect on house price values, while “value” brands such as fast food, had an adverse effect on house prices. The statistics point to a decreased property value in homes located within walking distance of up to 24%.

“These places tend to cheapen a neighborhood, drive out other businesses and lower residential property values. Fast-food chains have the market power to establish themselves in a neighborhood thus depriving residential shoppers of the much-needed small retailers offering local services.

For these reasons, the industry's arguments that its restaurants raise taxes and create employment are quite simply false. They drive out local businesses, have no net effect on employment and actually lower property values. Further, they cause a flight of capital from the city. Large franchises send a large amount of profit out of the city back to corporate headquarters. Local shopkeepers, to the contrary, spend and reinvest their money right here at home.” (Fast Food? In Our Neighborhood? June 23, 1985, The Washington Post)

"[T]here are some areas in which aesthetics and economics coalesce, areas in which a discordant sight is as hard an economic fact as an annoying odor or sound. We refer not to some sensitive or exquisite preference but to concepts of congruity held so widely that they are inseparable from the enjoyment and hence the value of property.<sup>4 1</sup>"

"The first major state court decision after Berman was the Wisconsin case of *State ex rel. Saveland Park Holding Corp. v. Wieland*" which was based upon both aesthetics and the protection of property values.

The ordinance required that in order for a building permit to be issued, the city's zoning board had to find that the exterior architectural appeal and functional plan of the proposed building would not cause a substantial diminution of property values within the neighborhood.<sup>1 8</sup> The court felt that the preservation of property values was a legitimate ground for the exercise of the police power. The judgment was based on the conviction that anything that destroys property values ultimately affects the prosperity and general welfare of the community," (Aesthetic Zoning: Property Values and the Judicial Decision Process; Sheldon Elliott Steinbacht, *Missouri Law Review*, Volume 35 Issue 2, Spring 1970)

**B. Air Quality: The project will have a significant impact on the air quality of the surrounding community. Attached as Exhibit B to this commentary are copies of all supportive documentation relied upon in making this determination.**

a. Summary of Substantial Evidence: Mattingly et al, 2008, *A Model for Estimating NO<sub>x</sub> Emission Reductions after Closing Drive-Thrus*

This study demonstrates that closing a drive-through restaurant reduces local atmospheric NO<sub>x</sub> (oxides of nitrogen) concentrations by 61-67% due to the elimination of idling automobiles. Conversely, we can infer that introducing a new drive-through restaurant will increase local NO<sub>x</sub> concentrations to 250-300% of baseline levels.

Brand, 2016, *Beyond 'Dieselgate': Implications of unaccounted and future air pollutant emissions and energy use for cars in the United Kingdom*

Real-world vehicular NO<sub>x</sub> emissions may be as much as 40 times higher than those claimed by vehicle manufactures and subsequently incorporated into environmental studies. Following this revelation, public policy must reconsider relevant regulations to account for unreported pollutants. Prior regulations crafted using false information may endanger public health if uncritically observed going forward.



Jerret et al, 2014, *Traffic-related air pollution and obesity formation in children: a longitudinal, multilevel analysis*

Air pollution has been correlated with the development of obesity in children. Traffic-generated atmospheric pollutants, such as NO<sub>x</sub>, may cause inflammation which invokes further metabolic processes leading to diabetes and BMI increase. Proximity to freeways increases NO<sub>x</sub> exposure, creating an elevated baseline of contact upon which additional sources (e.g., drive-throughs) must be added.

Kondo et al, 2014, *Place-Based Stressors Associated with Industry and Air Pollution*

Residing in proximity to a source of atmospheric pollution incurs not only physical effects from the respiration of fumes, but also psychological and social effects from the stigma of being associated with a blighted area and defensive apathy as a coping mechanism against the indifference of local government inadequately handling the situation.

Nykiforuk et al, 2018, *Adoption and diffusion of zoning bylaws banning fast food drive-through services across Canadian municipalities*

Fast food drive-through service bans may play a role in promoting healthier food environments. Reasons cited for banning fast food drive-throughs in various North American municipalities include addressing air pollution, idling, and environmental concerns as well as traffic, community safety and aesthetics, and many others.

Hill et al, 2016, *An Evaluation of the Effects of Drive-Through Configurations on Air Quality at Fast Food Restaurants*

Different fast food drive-through configurations (number of lanes, number of stops, etc.) result in different automotive emissions profiles. Aggregate vehicle idle time is a major source of pollution.

Kamieniecki et al, 1991, *Intergovernmental Relations and Clean-Air Policy in Southern California*

Automotive emissions within a valley geography result in concentrated air pollution, which affect negatively property, public health, and the environment in the amount of several billion dollars per year.

- b. Critique of Proposed Mitigation: In addition to being a precursor compound to smog, NO<sub>x</sub> also contributes to ozone (O<sub>3</sub>) formation, per the AQMD website

([https://www.edcgov.us/Government/AirQualityManagement/Pages/air\\_quality\\_plans.aspx](https://www.edcgov.us/Government/AirQualityManagement/Pages/air_quality_plans.aspx)):

Ozone (O<sub>3</sub>) is a gas composed of three oxygen atoms. It is not usually emitted directly into the air. Generally ozone is created by a chemical reaction between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) in the presence of sunlight.

Furthermore, according to the same AQMD website:

The Sacramento Region is currently designated nonattainment for the following criteria pollutants: ozone and particulate matter.

The logical conclusion here is that introducing a drive-through restaurant will increase atmospheric NO<sub>x</sub> concentrations, thereby increasing ozone concentrations, which in turn drive this Region further from Ozone attainment status as established by the National Ambient Air Quality Standards (NAAQS). No mitigation has been proposed to address this.

The project proposal offers no mitigation. The research recommends a detailed study (e.g., an EIR) to accurately assess vehicle queueing patterns and wait times to estimate overall emissions from the indirect source.

- c. Sensitive Receptors: Children and seniors all within .4 miles of the proposed project and idling cars with pollutants and emissions. The same AQMD website catalogs ozone's adverse health effects:

Ozone is a strong irritant that adversely affects human health...

We disagree that there would be no impact to sensitive receptors because "there are no nearby sensitive receptors." At a minimum, the proposed introduction of an ozone-generating business in close proximity to known Sensitive Receptors (Senior residents of Versante, children waiting at schoolbus stops on Kings Canyon Drive and otherwise living in the neighborhood) warrants a full EIR to assess potential impact. The County of El Dorado Senior Day Care for the elderly with "dementia and other chronic health issues" and the Senior Center is less than a half a mile away.

- C. Greenhouse Gas Emissions. The project will have a significant impact with regard to greenhouse gas emissions into the surrounding community. Attached as Exhibit C to this commentary are copies of all supportive documentation relied upon in making this determination.**

- a. Summary of Substantial Evidence: Chick-Fila's website touts a drive-thru customer base of 90 cars, per hour, and operating from 6:30 am to 10pm (15.5 hours, 6 days a week/ 93 hours per week/4,836 per year)

"Business Insider" also published a comprehensive study demonstrating that the average "wait-time" per customer is 4 min 16 sec.

The City of Fort Collins, in cooperation with the EPA, determined that the average car- running at idle for 1 minute, produces 3.82 grams of carbon.

100 cars per hour X 15.5 hours per day (hours of operation) X 256 seconds (avg wait time) X 3.82 grams Carbon per minute, X 6 days per week X 52 weeks = 15,340 pounds of carbon, per year.

**D. Land Use & Planning: The project will have a significant impact on the land use and planning for this county, the project is not compliant with county codes and regulations. Attached as Exhibit E to this commentary are copies of all supportive documentation relied upon in making this determination.**

- a. Summary of Substantial Evidence: For the reasons identified in the sections above regarding the design's failure to comply with County Design Standards, namely section 2, failure to comply with the general plan, and other county ordinances, this project triggers a full environmental report. Evidence that a project is inconsistent with land use standards adopted to mitigate environmental impacts can support a fair argument that a project might have significant adverse effects on the environment. *Pocket Protectors v. City of Sacramento* (2004) 124 CA4th 903.

**E. Noise: The project will have a significant impact in that it will generate and exceed acceptable levels of noise disrupting the surrounding community. Attached as Exhibit F to this commentary are copies of all supportive documentation relied upon in making this determination.**

- a. Summary of Substantial Evidence: It makes no sense that the Mitigated Negative Declaration/Initial Study for DR-R18-0001 Saratoga Retail Phase 2 is currently being presented with either "No Impact" or "Less Than Significant Impact" checked in the Aesthetics and Noise areas. How is this even possible given that potentially significant impacts were identified in Aesthetics and Noise in a Mitigated Negative Declaration in 2009? In 2009, a Mitigated Negative Declaration was prepared for the approved DR 08-0003/The Shops due to the "Potentially Significant Impact" of Aesthetics, Noise, Air Quality and Transportation/Circulation.

The Saratoga Retail Phase 2 proposal will result in more traffic noise, lighting/advertising signage and non-traffic noise (e.g., drive-thru window,

more HVHC units, additional compressors for the freezers/refrigeration systems, swamp coolers for the grill hoods, outside patio noise/music, car alarms, etc.) than were identified in 2009. The outside grease disposal containers and additional trash containers, etc. are not even addressed in terms of noise and aesthetics.

The drive-through order window proposed for building 3 would likely be in operation during nighttime hours (past 10 p.m.) according to the Initial Study (page 43). For a drive-thru which is "pushed right next to a residential neighborhood" it is a "Never-ending nuisance of late-night hours." There is "extended documentation of the noise, trash, and passed out people..." "Because late-night drive-thrus don't offer bathrooms, many people simply urinate in the alley... It is more like a wild after-party with cars idling, full of occupants yelling and radios blaring and horns honking" (MINNPOST, 8/28/15). Ironically, the proposed conditions also state "Walgreens includes a 24-hour drivethrough pharmacy" when it currently is not open past 10:00 p.m.

DR08-0003/ Saratoga retail Findings for Denial (January 8, 2018) states: "Of note, the Planning Commission finds that additional information and analysis is required to address potentially significant impacts to the following areas.... b. Noise: The record does not contain sufficient information or analysis to assess potential noise impacts associated with the Project. Although a noise analysis was performed, evidence presented at the hearing raised questions concerning the need to assess potential impacts to adjacent residents in two-story homes above the sound wall."

The project continues to rely on the August 31, 2017 Noise Analysis identified as "The Habit Burger Restaurant Project Noise Assessment." It states the "HELIX Environmental Planning, Inc. (HELIX) has performed a noise assessment for the operational impacts of the proposed The Habit Burger Restaurant Project (project)." Specifically, the "Project" is being defined as "The Habit Burger" and not DR08-0003/Saratoga Retail, which should include a noise study that includes all four buildings.

Because of the Highway 50 Project, which realigned Saratoga Way, certain mitigation measures were implemented. These mitigation measures included a sound wall, dual paned windows in only the second story of a handful of the impacted residences. At no time did the noise study measure actual noise levels after the rerouting of Saratoga Way or test the effectiveness of the mitigation measures. Most residences did not receive dual pane windows including townhouse residents who are at a higher elevation than the first row of six two story townhouses. Even the single-

story homes at a higher elevation have a clear, unobstructed view of Saratoga Way.

The neighboring Crescent Ridge homes by Finders Way are not benefitting from any noise reduction measures being implemented on the new Saratoga Estates homes. The inability to mitigate noise with a sound wall for homes at a higher elevation is also discussed in the Saratoga Estates Project Draft EIR. "Thus, it is possible that a 29 foot sound wall could potentially achieve the reduction necessary. However, this level of reduction would be considered 'very difficult' by FHWA standards. The Draft EIR states that "This impact would be significant and unavoidable."

There were assurances from both the developer and staff at the June 26, 2018 Saratoga Retail Neighborhood Meeting included that the 2009 Findings would remain intact. Limiting truck deliveries between the hours of 6 a.m. and 10 a.m. only was explicitly noted as a continued requirement. However, the Conditions of Approval deletes the requirement to limit strike-through, leaving neighbors with the possibility of being awakened by truck deliveries all night. Therefore, the nighttime noise from truck deliveries was not addressed.

The staff purpose of the condition was due to mitigate conflicting pedestrian traffic and trucks. However, its origins also come from the concern about noise. At the 2009 Planning Commission Hearing, Lou Rain, District 1 took the lead to ensure that truck deliveries for all buildings should be restricted so that people would not be awakened during the night. The 2009 Planning Commission agreed to require Building 1 (Walgreens) to also have restrictions on truck deliveries.

DR08-0003/ Saratoga retail Findings for Denial (January 8, 2018) states: "Of note, the Planning Commission finds that additional information and analysis is required to address potentially significant impacts to the following areas:" ..... "The record also does not contain sufficient information or analysis of potential impacts generated by the Project's plan for product delivery, inclusive of the cumulative effect of the Project's anticipated deliveries with the existing Walgreen's product deliveries."

The Traffic Infusion on Residential Environment (TIRE) index for Mammouth Way, Arrowhead Drive and Finders Way was not identified, and therefore, there were no results to trigger a study of the impacts (e.g., noise, safety, harmful effects on human beings) within the neighborhood. A previous study (Dowling Associates, 2007) forecasted a TIRE Index of 2.9 for Arrowhead (860 cars daily) and a 3.0 for Finders (940 cars) in 2030. "The TIRE Index of 3.0 is normally used to determine that point at which a

residential street changes character and operates as a traffic facility.” “Yet, any traffic change of 0.1 or more would be noticeable to street residents. Streets with TIRE levels above the mid-range index of three are traffic - dominated while those with indexes below three are better suited for residential activities.” Dowling and Associates further stated that the analysis “Does not include traffic due to anticipated Mixed Use Center/Office Building Development in reference to reported neighborhood cut-through/diverted traffic volumes.”

**F. Transportation/Traffic: The project will have a significant impact on the traffic for the surrounding community. Attached as Exhibit H to this commentary are copies of all supportive documentation relied upon in making this determination.**

- a. Summary of Substantial Evidence: What follows below is traffic study information regarding three projects in EL Dorado Hills that will affect the traffic impact at several intersections. A very important, yet not studied, aspect is all of the traffic that will be generated when Saratoga Way is connected to Iron Point Road in Folsom. This connection will serve as a conduit for vehicles to get from El Dorado Hills to the many Broadstone Shopping Centers in Folsom in order to avoid the very heavily trafficked intersection of Scott Road / East Bidwell and Iron Point Road. Saratoga is poised to become heavily trafficked by local residents and NONE of the environmental studies addresses this traffic impact to El Dorado Hills Blvd. and Saratoga Way.

In light of the fact that there is NO information regarding the traffic effects of connecting Saratoga to Iron Point road, attached is Attachment A - “Traffic Study Analysis of Data 2018” conducted by Kim Shultz. The analysis uses the traffic data from the traffic studies submitted by the developers for the Saratoga Estates (Attachment B), the Town Center Apartments (Attachment C, Attachment D) and the new updated Saratoga Retail DR-R 18-0001 (Attachment E) and inputs the data into one Microsoft Excel spreadsheet. The purpose of this exercise is to show the varying outcomes of each projects traffic impact data in one document for comparison purposes. Ms. Shultz listed each projects study tables and subsequent results. Tables can be found in Attachment documents.

An important note is that the traffic studies for the Saratoga Estates and the Town Center Apartments that include affected intersections (namely Saratoga Way and El Dorado Hills Blvd and Latrobe Road / Town Center / Post Street) were conducted prior to the change in the updated DR-R 18-0001 with the addition of a fast food drive thru (Chik Fil A) and likely included the data from the previous DR-08-0003 which did not include a

fast food drive thru. Attachment F – “TC APTS Transportation Long Term Projects” lists the projects in their traffic study and a fast food drive thru Chik Fil A on Saratoga Way is not one of them.

Even without the consideration of the updated DR-R 18-0001 the Cumulative traffic impacts with those two residential building projects (Saratoga Estates and the Town Center Apartments) projects an unacceptable LOS F at these two intersections.

According the El Dorado County General Plan Policy TC-Xd (Attachment G), “The volume to capacity ratio of the roadway segments listed in Table TC-2 shall not exceed the ratio specified in that table.” Interpreting this to mean: Level of Service (LOS) F is unacceptable.

In addition, because the traffic studies for the two projects (Saratoga Estates and the Town Center Apartments) were conducted before the updated DR-R 18-0001 with the addition of a fast food drive thru (Chik Fil A), the projected Level of Service for the freeway on and off-ramps may also be affected and according to the California Department of Transportation’s “Guide for the Preparation of Traffic Impact Studies (Caltrans 2002),” it states, among other considerations, that, “In addition, a project impact is said to occur when the addition of project trips causes a queue on the off-ramp approach to a ramp terminal intersection to extend beyond it’s storage area and onto the freeway mainline.” Because Chik Fil A strives to deliver in the neighborhood of 100+ cars per hour during peak hours (Attachment I), combined with the LOS F data of the other two projects, the off-ramp (and on-ramps) may be affected, an EIR with an independent traffic consulting firm (a second opinion if you will) should be conducted.

In the DR-R 18-0001 Saratoga Retail, evidence is provided of Trip Generation data for three other Sacramento Area Chik Fil A’s. This data was gathered only on one day in April, April 17, 2018. Making projections of traffic impacts from only one day’s worth of data is misleading and misrepresentative of the true traffic impact that a popular fast food chain garners. Also, these Chik Fil A restaurants are not adjacent to a freeway whose very nature is to draw “eyeballs and hungry bellies” to it’s tourist serving location. The other three locations do not share the kind of visibility from the freeway that the Saratoga location engenders. According to the County of El Dorado General Plan (Attachment G) “the addition of 10 or more trips during the am peak hour or the pm peak hour” and / or the “addition of 100 or more daily trips” defines these situations as “worsening”, in the DR-R 18-0001 (Attachment E) the project proposes 2700 new daily trips! This scenario appears to be much worse.

Because of the impacts of the two aforementioned development projects, not to mention other area projects that have not been considered here, as well as the non-studied connection of Saratoga Way to Iron Point Road in Folsom, the combined traffic impact studies are resulting in conflicting data points that appear to not give an adequate accounting of the REAL traffic impact. Only a full environmental impact report that considers all the projects and their potential impact can help adequately address the transportation effects of a fast food drive thru, Chik Fil A, at the Saratoga / EDH Blvd. intersection as well as the residential roads Mammoth, Arrowhead and others.

Furthermore, each of these traffic studies was conducted by the same company, Kimley Horn, which their own data shows calculations between different projects is varying (Attachment A). Because of the critical nature of these impacts and studies it is suggested that an independent traffic agency conduct new studies to provide data and a report to either verify or not verify the Kimley Horn studies, a "second opinion" for all intents and purposes is needed.

- b. Cumulative projects: Refer to Attachment A - "Traffic Study Analysis of Data 2018" conducted by Kim Shultz. The analysis uses the traffic data from the traffic the Saratoga Estates (Attachment B), the Town Center Apartments (Attachment C, Attachment D) and the new updated Saratoga Retail DR-R 18-0001 (Attachment E) and inputs the data into one Microsoft Excel spreadsheet. The purpose of this exercise is to show the varying outcomes of each projects data in one document for comparison purposes. Ms. Shultz listed each projects study tables and subsequent results. This cumulative analysis does not include the impact of the traffic that will be generated by connecting Saratoga Way to Iron Point Road as there appears to be no information regarding this issue in any of these studies.

In Summary, the combined cumulative projects for 2035 even with the mitigation suggested says the impact will generate a LOS F for the Saratoga / EDH Blvd intersection as well as the Latrobe Road / Town Center / Post Street intersection. The traffic impact studies for Saratoga Estates and the Town Center Apartments were conducted prior to the updated study for the DR-R 18-0001 and the cumulative outcomes are still LOS F for the two intersections. Further study by an independent second agency is needed.

- c. Critique of Proposed Mitigation: The proposed mitigation of the project relies on the mitigation of two other projects that have been approved by the County of El Dorado: Saratoga Estates and the Town Center Apartments, as well as mitigation by El Dorado County's planned Capacity-Enhancing Roadway Improvements.



The proposed project relies on the mitigation of another project (Attachment C – TC APTS – LOS F Saratoga Transportation). However the mitigation for the Town Center Apartments is not scheduled to occur until sometime in the future, “Additionally, the County’s annual Intersection Needs Prioritization Process will identify if the intersection triggers a LOS impact prior to 2035. Should the LOS become unacceptable, the potential intersection improvements can be added, by the Board of Supervisors, to the CIP as funding becomes available.” IF the funding becomes available.

The Town Center Mitigation also states, “As the proposed project is not a single-family residential subdivision, the second paragraph under Policy TC-Xf is the guiding policy for mitigation of this project’s impact. Therefore, payment of Traffic Impact Mitigation (TIM) fees will satisfy the project’s fair share portion of the improvement project. Mitigation Measure C-TRANS-1 is set forth below to ensure that the project will pay TIM fees to mitigate its impact at this intersection.”

The above mitigation scenarios in insufficient and do not meet the standards adopted by CEQA. The arguments above on the failures of the County’s mitigation proposal are adopted and incorporated herein. Further, based on representations from County officials, there is no plan to expand Saratoga Way at the site of this proposed drive-through. Any expansion at this specific location would be determined on a further study performed by a different entity. This is wholly improper.

In a lawsuit the 167 Cal.App.4th 1099, Court of Appeal, Fifth District of California, *Gray v. County of Madera* (2008) the court agreed that "the EIR failed to adequately analyze the Projects impacts on traffic because it improperly deferred mitigation measures relating to traffic. We agree." To address their mitigation measure for road improvements the appellants charged among other things that "there is nothing in the mitigation measures that requires Caltrans or Madera County to actually impose impacts" furthermore the court found that "the County made no finding regarding the limitation or the feasibility of the County guaranteeing funding for roadway improvement." The court agreed. "... "the letters show intent to make improvements but no definite commitment on when the improvements will take place." "Furthermore, there is no evidence that the County has a mitigation plan in place involving the improvement or maintenance of the various local roadways because of the increased vehicle traffic. Thus, the mitigation measures relating to traffic impacts are inadequate." El Dorado County General Plan and the accompanying Measure E require:

### Policy TC-Xa3

All necessary road capacity improvements shall be fully completed to prevent cumulative traffic impacts from new development from reaching Level of Service F during peak hours upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county before any form of discretionary approval can be given to a project.

### Policy TC-Xf

At the time of approval of a tentative map for a single family residential subdivision of five or more parcels that worsens (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall condition the project to construct all road improvements necessary to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element based on existing traffic plus traffic generated from the development plus forecasted traffic growth at 10-years from project submittal.

**For all other discretionary projects that worsen (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall condition the project to construct all road improvements necessary to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element.**

High Rate of Speed: In Section 4.7 of the Saratoga Estates FEIR (Attachment J) there is yet another concerning factor, page 2-4 says that Saratoga Way will be a 45mph zone. It is not rational to assume that Park Village Residents will not only have to navigate getting onto a road that will have hundreds and hundreds of more cars, but that those cars will be traveling at a rate of speed that is likely a traffic accident scenario. This situation has also not been studied and needs to be addressed in a full environmental impact report.

Southbound right turn lane: This mitigated feature addresses only the traffic coming from El Dorado Hills Blvd. from Lassen Lane. How does this address the traffic coming from the freeway? This mitigation does not apply to the location that most of the traffic is being generated from which further implies that it won't affect the left turn traffic from EDH Blvd. onto Saratoga, or the right turn traffic from Saratoga to EDH Blvd. The feasibility that this mitigating factor be applied to the major source of traffic is non-existent and therefore this mitigating factor is very misleading and won't alleviate the LOS F traffic.

In Attachment E the DR-R 18-0001 Saratoga Retail states:

*M1. Intersection #1, El Dorado Hills Blvd @ Saratoga Way/Park Drive*

This intersection operates at acceptable LOS E during the PM peak-hour without the project, and the project results in LOS F. Consistent with the findings of the previous Saratoga Retail Phase 2 Cumulative (2035) Conditions analysis 1, the impacts at this intersection can be mitigated by off-site improvements including optimization of the Latrobe Road coordinated signal system and the restriping of the westbound Town Center Boulevard approach to include one left-through lane, and two right-turn lanes, with a permitted-overlap phase for the westbound right-turns. The El Dorado Hills Town Center Apartments project is responsible for, among other things, the lane designation and signal phasing mitigations described above. This mitigation affects an approach on a privately-owned roadway, and therefore, the improvement should be coordinated with the County and the property owner. As shown in Table 13, this mitigation measure result in the intersection operating at LOS D during the PM peak-hour. Therefore, this impact is less than significant.

M2. Intersection #4, Latrobe Road and Town Center Boulevard

This intersection operates at Los F during the PM peak-hour without the project, and the project contributes more than 10 trips. Consistent with the findings of the previous Saratoga Retail Phase 2 Cumulative (2035) Conditions analysis1, the impact at this intersection can be mitigated by optimization of the Latrobe Road coordinated signal system, along with the following improvements: the restriping of the westbound Town Center Boulevard approach to include one left-through lane, and two right-turn lanes, with a permitted-overlap phase for the westbound right- turns. The El Dorado Hills Town Center Apartments project is responsible for, among other things, the lane designation and signal phasing mitigations described above. This mitigation affects an approach on a privately- owned roadway, and therefore, the improvement should be coordinated with the County and the property owner. As shown in Table 13, this mitigation measure results in the intersection operating at LOS E during the PM peak-hour. Therefore, this impact is less than significant.

The DR-R 18-0001 is relying on traffic mitigation that may or may not happen in the near future and according to case law cited above, this is not acceptable.

Additionally, the proposed signalization mitigation may have it's own drawbacks and further study is necessary to determine if this method of

traffic control will work in this scenario of a left turn from El Dorado Hills Blvd onto Saratoga Way as well as the right turn from Saratoga Way onto El Dorado Hills Blvd. Attachment H - "Traffic Signal Synchronization in the Saturated High-Density Grid Road Network" is just one of a few research studies that indicates traffic scenarios that may or may not benefit from certain types of signalization. If area projects are relying on a type of signalization to mitigate for LOS F traffic impacts it is imperative that this method is proved reliable in this particular scenario.

For example, this particular study states, "Unfortunately, when applied in the saturated HGRN, the performance of these systems has not been satisfactory. When the network is saturated, there is no extra time and space to optimize the traffic signals. Therefore, the regional signal control systems cannot optimize the signal control parameters at the intersections, and the control systems may operate as fixed-timed control systems. In this situation, the traffic system is more fragile and prone to traffic congestion."

"Besides, the signalized intersections are densely distributed, and the accommodation space for the vehicle queues is limited. As a result, if congestion occurs at one intersection, the congestion will cause a domino effect, which may cause the regional congestion in the HGRN. Meanwhile, once it happens, the mobility in the HGRN will be difficult to restore."

It is also imperative that while adding 2700 cars per day to the existing traffic pattern, in addition to the two proposed projects traffic impacts, and the extension of Saratoga Way to Iron Point Road in Folsom, that while consideration is given to adding a fast food drive thru such as Chik Fil A, consideration must also be given to Park Village and its residents who will feel the brunt of all of these traffic impacts.

There are more traffic impact issues that this document has not addressed. Should the burden of addressing all the pertinent issues derived from a number of area projects that affect Saratoga Way and Park Village Residents fall to the community? Isn't it the planning departments responsibility to adequately and thoroughly address impacts via a proper Environmental Impact Report?

### **CONCLUSION:**

The residents responsible for this submission have worked tirelessly to present thoughtful and authenticated arguments against the proposed Saratoga Retail Project. It should not be the job of the residents to ensure the Planning Department is adhering to the laws of this County when reviewing applications and presenting findings to the Commission for

consideration. The Saratoga Retail – Phase II revision application failed initially for the same reasons that it now fails: it is non-compliant with the laws of this County. A DRIVE-THROUGH FACILITY CANNOT BE CONSTRUCTED ON THIS LOT AND MEET THE 8 SPECIFIC CONDITIONS ADOPTED BY THE COUNTY AS MANDATORY OBLIGATIONS.

Consistent application and adherence to the laws of this County is crucial. The Planning Department does not have the power to selectively choose which laws it applies to which projects. Instead the mission statement is clear, the Planning Department is tasked with ensuring that all development proposed for this County complies with all LAWS of this County.

Much has been argued about the tenant, Chick-Fil-A, and these arguments are proper and should be considered. In addition, we remind the planning department and commission that once built a drive-through becomes a permanent structure that can be occupied by a number of different tenants. This is important because, a subsequent tenant will likely be open on Sundays, and may be open 24-hours. Accordingly, any mitigation that is adopted based on the tenant occupancy of Chick-Fil-A is improper. Instead, the measure is any drive-through that may operate in that facility, including those that may increase traffic on Sundays and at peak am and pm hours.

In reliance on all of the arguments above, residents respectfully request that this Commission resolve the drive-through issue precluding further applications for this non-conforming use. Accordingly, this Commission is requested to deny the Saratoga Retail – Phase II project with prejudice. In the alternative, a full and comprehensive environmental impact report should be issued.