County of El Dorado

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April 6, 2010

Via Personal Delivery

Honorable Mayor and City Council
Attention: City Clerk
South Lake Tahoe City Council
1901 Airport Road
South Lake Tahoe, CA 96150

Re: *Objections to Adoption of Redevelopment Plan*
Proposed Redevelopment Project Area No. 2

Dear Mayor Lovell and Council Members:

The Board of Supervisors has asked me to submit these comments objecting to the proposed Redevelopment Plan for the South Tahoe Redevelopment Project Area No. 2 and to the certification of the Environmental Impact Report.

In early 2010, the County requested that the City and Redevelopment Agency staff present the proposed redevelopment plan to the El Dorado County Board of Supervisors. Unfortunately, David Jinkens, City Manager and Executive Director of the South Tahoe Redevelopment Agency cancelled the presentation and City staff was not willing to reschedule.

Since that time, El Dorado County staff requested that the City and Agency postpone their joint hearing to allow staff from both agencies time to meet and discuss the County's concerns with the proposed Plan. Unfortunately, Agency staff did not postpone the hearing. As a result, the County must respectfully request that the City not adopt the Redevelopment Plan or certify the Environmental Impact Report at this time. Furthermore, the County requests that the Council direct City and Redevelopment Agency staff to meet with the County to discuss its concerns.

While the County does not wish to unnecessarily impede the City's planning and development goals in the proposed Project Area, the documentation prepared by the Redevelopment Agency does not provide sufficient evidence that the proposed Project Area is blighted, as defined by California State Community Redevelopment Law (CRL). While this letter must be submitted to

preserve the County's position on the matter, we look forward to meeting with you and attempting to resolve our differences.

We base our objections on the following:

- The Agency's reports do not establish adequate evidence to support a finding of physical or economic blight in the proposed Project Area. The Field Reconnaissance that the Agency relies on for all of its blight findings was not legally adequate and therefore does not provide substantial evidence of blight as required under the CRL.
- The objections submitted by the County provide, we believe, evidence that blight, as defined by the CRL, does not exist in the Project Area.
- The Agency improperly claims that regulation by the Tahoe Regional Planning Agency is a blighting influence in the proposed Project Area.
- In the Lukins area, documents from the California Public Utilities Commission and the Water Company itself show a plan for remedying water flow problems without resorting to the extraordinary remedy of redevelopment.
- It is inappropriate to use public redevelopment funds to improve a privately held utility such as the Lukins Brothers Water Company.
- A determination of economic blight cannot be made by comparing existing uses with potential alternative uses, however desirable the alternative uses might be. The issue is whether the existing uses are viable. The Agency's reports have not established that properties are not being used in a viable manner. Property values within the project area are growing at a pace that exceeds the City as a whole and El Dorado County as a whole.
- Evidence of sales tax "leakage" to shopping districts outside the city does not demonstrate that the proposed Project Area is predominated by blight.
- Vacancy rates in the proposed Project are not significantly higher than vacancy rates for the City as a whole.
- Five parcels from the unincorporated area have been improperly included in the proposed Project Area. These areas are outside the jurisdiction of the City and the Redevelopment Agency. (Health & Safety Code, § 33002.)
- Non-contiguous areas are included for the purpose of securing tax increment and no other legitimate purpose.
- The Airport area is not blighted, and in fact, improvements to the runway were recently completed and staff is confident of securing federal funds for other airport needs. The Agency fails to demonstrate that the Airport suffers from physical or economic blight.
- Crime in the proposed Project Area is not shown to be a serious threat to the public safety and welfare as required under the CRL.
- The projections for AB 1290 statutory pass through amounts, required pursuant to Health and Safety Code section 33607.5, are incorrect according to the County Administrator's staff.
- The proposed Project Area does not exhibit the dire and desperate conditions of a blighted area and it is not a serious burden on the City.
- The County was not provided with a copy of the draft EIR, as required pursuant to Health and Safety Code section 33333.3.

- The EIR does not evaluate the impact that the County's loss of property tax dollars could have on public services provided by the County or the cumulative impact that Redevelopment Plan No. 2, together with the City's existing redevelopment project, would have on the services provided by the County.
- The project description in the EIR is improper based on the inclusion of unincorporated parcels.

Additionally, there is evidence that the primary purpose of forming the proposed project area is not to address blight conditions, but simply to capture tax increment, which will have a detrimental effect on the County and other agencies. (Health & Safety Code, § 33321.)

County staff estimates that, even with statutory pass-through payments, the County is likely to lose between $4,660,176 and $16,953,025 in property tax increment over the life of the proposed Redevelopment Project, depending on the success of the Project. This loss of tax increment would put a severe strain on the County's ability to provide needed public health and safety programs throughout the region.

The CRL is a powerful and extreme tool to be used only when extraordinarily serious problems cannot be remedied by use of regulatory authority and available financing methods. The proposed Project area does not meet the requirements of the law and will serve only to disrupt viable businesses and put an undue burden on the rest of the community.

For the reasons cited above and set forth in the detailed objections attached hereto and incorporated herein, the County objects to the formation of the Proposed Redevelopment Project Area No. 2 and urges the City not to adopt this plan.[1] Furthermore, the unincorporated areas should be removed, as well as the non-contiguous areas, and the airport. Finally, the tax increment tables should be corrected to reflect the correct AB 1290 statutory pass-through amounts.

Sincerely,

Gayle Erbe-Hamlin

Gayle Erbe-Hamlin
Chief Adminstrative Officer, El Dorado County

Cc: Board of Supervisors, El Dorado County
Louis B. Green, County Counsel, El Dorado County
Nancy C. Miller, Miller, Owen & Trost

[1] In addition to the detailed objections and exhibits attached hereto, the County reserves the right to provide documentation to support these objections.

County of El Dorado
Objections to the Adoption of the
Proposed Redevelopment Project Area No. 2

County of El Dorado's Summary of Objections to the Adoption of the Proposed Redevelopment Project Area No. 2

The County of El Dorado has reviewed the Report to the City Council dated March 16, 2010. Based on this review, review of the documents cited in the Report to Council, and a survey of the proposed Project Area, the County of El Dorado objects to adoption of the Redevelopment Plan for the Proposed Redevelopment Project Area No. 2 for the following reasons:

1. The Agency's reports do not establish adequate evidence to support a finding of physical or economic blight as defined by California State Community Redevelopment Law (CRL). The Field Reconnaissance that the Agency relies on for all of its blight findings was not legally adequate and therefore does not provide substantial evidence of blight as required under the CRL.

2. The Agency improperly claims that regulation by the Tahoe Regional Planning Agency (TRPA) is a blighting influence in the proposed Project Area.

3. In the Lukins area, documents from the California Public Utilities Commission and the Water Company itself show a plan for remedying water flow problems without resorting to the extraordinary remedy of redevelopment.

4. A determination of economic blight cannot be made by comparing existing uses with potential alternative uses, however desirable the alternative uses might be. The issue is whether the existing uses are viable. The Agency's Report to Council does not establish that properties are not being used in a viable manner. Property values within the project area are growing at a pace that exceeds the City as a whole and El Dorado County as a whole.

5. Evidence of sales tax "leakage" to districts outside the City does not demonstrate that the proposed Project Area is predominated by blight.

6. Vacancy rates in the Proposed Project are not significantly higher than vacancy rates for the City as a whole.

7. Five parcels from the unincorporated area have been improperly included in the proposed Project Area. These areas are outside the jurisdiction of the City and the Redevelopment Agency. (Health & Safety Code, § 33002.)

8. Non-contiguous areas of the Project Area are neither blighted nor necessary for effective redevelopment, and have been included for the purpose of obtaining the allocation of incremental property tax revenues without other substantial justification for their inclusion.

9. The Airport area is not blighted, and in fact, improvements to the runway were recently completed and staff is confident of securing federal funds for other airport needs. The Report provides no evidence that the Airport suffers from physical or economic blight and has improperly included it in the proposed Redevelopment Area.

10. Crime in the proposed Project Area is not shown to be a serious threat to the public safety and welfare as required under the CRL.

11. The projections for AB 1290 statutory pass through amounts, required pursuant to Health and Safety Code section 33607.5, are incorrect according to the County.[2]

12. The proposed Project Area does not exhibit the dire and desperate conditions of a blighted area and it is not a serious burden on the City and new development in the Project Area can reasonably be expected to occur by private enterprise acting alone or by the City of South Lake Tahoe's use of financing alternatives other than tax increment financing.

12. Redevelopment of the Proposed Project Area is not necessary to effectuate the public purposes and policy of the CRL.

13. Lands and buildings which are not detrimental to the public health, safety, or welfare, or necessary for the effective redevelopment of the area of which they are part, have been included for the purpose of obtaining the allocation of tax increment revenues without other substantial justification for their inclusion.

14. Creating another Redevelopment Project in the South Tahoe area will place an undue burden on the entire County by redirecting government resources disproportionately to the Project Area rather than alleviating the burden that a truly blighted area would have on the city.

15. Proposed projects will not alleviate blight conditions. Since there is no blight in the proposed Project Area as defined under the CRL, there are no blight conditions to alleviate. Therefore, any proposed projects will not alleviate blight.

16. The County was not provided with a copy of the draft EIR, as required pursuant to Health and Safety Code section 33333.3.

17. The EIR does not evaluate the impact that the County's loss of property tax dollars could have on public services provided by the County or the cumulative impact that Redevelopment Plan No. 2, together with the City's existing redevelopment project, would have on the services provided by the County.

18. The project description in the EIR is improper based on the inclusion of unincorporated parcels.

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[2] See Table 13 in the Agency's Preliminary Report. In this table, the combined value of the "Statutory Payments" columns is inconsistent with the "Escalated Prior Year Value" and "Tax Increment" columns. The County's calculations result in higher pass through amounts under Tier 2 and Tier 3 than the payments depicted in Table 13. (See Exhibit 1, Tax Increment Tables, El Dorado County; Health & Safety Code, § 33607.5.)

19. The City failed to give notice of the Redevelopment Plan, as required by the CRL, and did not consult with County until late in the redevelopment process, and only after such consultation was requested by the County. (Health & Safety Code, § 33328.)

The statements made in the Report, along with the lack of any evidence of blight, support only one conclusion: The City is making an inappropriate attempt to take future tax increment revenues from other entities, including the County, that rely on these funds to provide vital community services. The courts have clearly condemned this reason for establishing a redevelopment project, stating "The CRL is not simply a vehicle for cash-strapped municipalities to finance community improvements."

Specific, detailed objections that support and amplify each of these general objections are presented below. The detailed objections include an analysis of information contained in various documents prepared and/or utilized by the Redevelopment Agency, as well as other data and documents gathered by County staff. These documents are hereby incorporated by reference as part of the County's objections. They include the Redevelopment Agency's Report to the City Council, the Agency's Draft Preliminary Report, the Draft Redevelopment Plan for Project Area No. 2, the Draft Preliminary Plan, the Environmental Impact Report (EIR), the Lake Tahoe Airport CLUP, the Airport Settlement Agreement and Master Plan, Field Reconnaissance Data (on CD-ROM), Crime statistics, the City's 2005 Retail Market Analysis, South "Y" Industrial Tract Community Plan, Bijou/Al Tahoe Community Plan, Tahoe Valley Community Plan, any documents referred to by the City in its Report to Council, and various other informational documents, letters, and newsletters referenced below.

Discussion of Legal Requirements

The CRL defines "blighted area" in Health and Safety Code section 33030 and 33031, as follows:

33030. (a) It is found and declared that there exist in many communities blighted areas that constitute physical and economic liabilities, requiring redevelopment in the interest of the health, safety, and general welfare of the people of these communities and of the state.

(b) A blighted area is one that contains both of the following:

(1) An area that is predominantly urbanized, as that term is defined in Section 33320.1, and is an area in which the combination of conditions set forth in Section 33031 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

(2) An area that is characterized by one or more conditions set forth in any paragraph of subdivision (a) of Section 33031 and one or more conditions set forth in any paragraph of subdivision (b) of Section 33031.

(c) A blighted area that contains the conditions described in subdivision (b) may also be characterized by the existence of inadequate public improvements or inadequate water or sewer utilities.

33031. (a) This subdivision describes physical conditions that cause blight:

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities.

(2) Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards.

(3) Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area.

(4) The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.

(b) This subdivision describes economic conditions that cause blight:

(1) Depreciated or stagnant property values.

(2) Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).

(3) Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.

(4) A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.

(5) Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.

(6) An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems.

(7) A high crime rate that constitutes a serious threat to the public safety and welfare.

The conditions of blight, as defined by the CRL, constitute physical and economic liabilities, requiring redevelopment in the interest of the health, safety, and general welfare of the people of these communities and of the state. The effects and evidence of blight are set forth in section 33035 of the CRL:

33035. It is further found and declared that:

(a) The existence of blighted areas characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the State.

(b) Such blighted areas present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of police power.

(c) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution, and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire, and accident protection and other public services and facilities.

(d) This menace is becoming increasingly direct and substantial in its significance and effect.

(e) The benefits which will result from the remedying of such conditions and the redevelopment of blighted areas will accrue to all the inhabitants and property owners of the communities in which they exist.

In summary, under the CRL an area is blighted if: (1) the area is characterized by one or more of the physical conditions and economic conditions specified in section 33031 to cause blight; (2) these conditions must be so prevalent and substantial that they cause a reduction of, or lack of proper utilization of the area; (3) this reduction or lack of proper utilization must exist to such an extent that it constitutes a serious physical and economic burden on the community (i.e., the

entire City); and (4) this burden must be one that cannot be resolved by the private sector or governmental action, or both, without redevelopment.

A finding of blight cannot be based on the potential to redevelop an area for higher and better uses. The existing uses must be characterized by one or more factors of physical and economic blight, which in turn must result in a serious burden on the entire community which cannot be resolved by the private sector or governmental action, or both, without redevelopment.

To demonstrate physical blight, the Agency must do more than a field survey. It must show physical blight using objective criteria. It also must show that non-blighted properties included in the Project Area are necessary to the redevelopment of the area. Further, it must show that the physical and economic blighting factors cause a burden on the City that cannot reasonably be expected to be remedied by private enterprise acting alone or with governmental action. The Agency has failed to meet this burden.

With regard to economic blight, the mere fact that an area could be redeveloped with more economically productive uses is not evidence of blight. A finding of economic blight can be justified only when certain conditions are prevalent throughout the proposed project area. Those conditions include: depreciated or stagnant property values or impaired investments; abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots; lack of necessary commercial facilities normally found in neighborhoods; residential overcrowding or an excess of bars, liquor stores, or adult businesses; and/or high crime rates that constitute a serious threat to public safety and welfare. A finding of economic blight can be justified only when one or more of the blight factors as presented in the CRL are present.

In the Report to Council, the "Methodology for Gathering Data on Physical and Economic Conditions as Described in the Report to Council" is Inadequate

Section 3.0 of the Report to the City Council sets forth the methodology used to gather and analyze data used in the City's Preliminary Report and the Report to City Council. Section 3.0 states that the survey methodology for determining the existence and prevalence of blight was primarily visual inspections conducted from public right-of-way, driveways, and parking lots. The surveyors were "cautious about entering onto private property and *did not enter into the interiors of buildings*." (Report to City Council, page 19 [emphasis added].) During the visual inspection, the surveyors took notes referred to as Field Reconnaissance Data in the Report to Council. (See Exhibit 2, Field Reconnaissance, CD-ROM.)

The courts have criticized the use of "windshield surveys" because the "may not result in 'substantial evidence supporting the statutorily required elements of a blighted area.'" (*Gonzales v. City of Santa Ana* (1993) 12 Cal.App.4th 1335.) That is precisely the problem here. The Report gives no additional tangible evidence that physical conditions of any specific buildings has rendered them unsafe to live or work in as required by the CRL.

The Description of the Physical and Economic Conditions Provided in the Report to Council does not Demonstrate Blight in the Project Area

Section 6.0 of the Report to the City Council, titled "Description of the Physical and Economic Conditions in the Project Area," cites the following conditions as causes of blight in the Project Area:

- Tahoe Regional Planning Agency's restrictive governmental policies
- Development Costs and Building Season
- Financial Status of the City
- Forestry and Conservation Land

Tahoe Regional Planning Agency's Policies Cannot be Classified as a Cause of Blight

On page 27, the Report alleges that the restrictive policies of the Tahoe Regional Planning Agency (TRPA) have contributed to blight in the Project Area by limiting development. These regulations include limits on the amount of surface area that can be covered with impermeable surfaces, water quality restrictions, density restrictions, and costly fees.

TRPA is charged with protecting Lake Tahoe from environmental degradation. (Gov. Code, §§ 67000 *et. seq.*) The preservation of the lake is key to maintaining tourism, which is the main component of the City's economy. (Exhibit 3, Retail Market Analysis, RRC Associates (Dec 2005), page 16.) TRPA's regulations are meant to preserve the clarity of the region's most valuable asset – Lake Tahoe. Those same regulations cannot be classified as a cause of blight.

Furthermore, TRPA is in the process of revising its Regional Plan. The current Draft Plan Update, dated December 2009, reflects that the City of South Lake Tahoe has up to 34,000 square feet of allocated commercial floor area available for distribution to projects. This not only demonstrates that TRPA's current regulations are not valid as a basis for a finding of blight, but that they are not as restrictive as the Report alleges. The permitted land coverage percentage on multi-residential parcels and commercial facilities on existing developed parcels can be up to 50% with eligible coverage transfers, not 30% as alleged in the Report. (Exhibit 4, *Draft Land Use Element*, TRPA (Dec 2009).) Furthermore, under the various land use plan alternatives being considered, additional height and density bonuses could be available, as well as additional allocations and potential increases in the permitted land coverage ratios. (Exhibit 4, *Draft Land Use Element,* TRPA (Dec 2009).)

In addition, implementation of this Redevelopment Plan would do nothing to alter the application of TRPA's regulations in the covered area.

Finally, all communities in the Tahoe basin are subject to TRPA's oversight. (Gov. Code, § 67021.) There is nothing unique about the Project Area and TRPA regulations that justify such a finding of blight by the City.

Development Costs and the Short Building Season are not Blighting Influences

Page 28 of the Report states: TRPA's fees for improvements are up to $5,000, in addition to mitigation fees. By way of example, the Report suggests that TRPA fees can be up to $7,000 fo a 2,000 square foot home. The Report alleges that these fees make improvements too costly, and prevent investment in the Project Area.

These fees, however, when compared to fees in the rest of El Dorado County and the state of California, should not be seen as a barrier to investment that is unique to South Lake Tahoe. In other parts of El Dorado County, and California, it is common to pay mitigation fees for environmental impacts. Comparative Data for each district in El Dorado County demonstrates that TRPA's fees are not a barrier to investment. The average fees for a new 2,200 square foot home in El Dorado Hills are $54,621. The average fees for a new 1,200 square foot home in the unincorporated area of Placerville are $24,576. The average fees for a new 2,600 square foot home in South Lake Tahoe, however, are only $25,800, including TRPA's fees. (Exhibit 5, Permit Fee Distribution Charts, El Dorado County (February 2010).)

As this data demonstrates, the total fees for a single family home in El Dorado Hills are more than double the amount of the fees in South Lake Tahoe. Similarly, according to staff in the planning department of the City of Sacramento, the fees for a new single family home in the City are approximately $30,000.[3] In most areas of northern California, such fees for new development are normal.

The Current Financial Status of the City does not Support a Finding of Blight

Like most municipalities in the country, the City of South Lake Tahoe has been forced to restrain spending to balance its budget.

As stated on page 29 of the Report to support a finding of blight, the Agency asserts that, "projected general fund revenues are growing more slowly than expenses, which may place a strain on future budgets unless new revenues are generated. The current state of the economy is also having a negative impact on the City's financial situation. In addition, there are a number of potential threats to the City's budget due to problems with the State budget and potential federal cutbacks."

These financial concerns are not unique to the City, nor are they evidence of blight. (See Health & Safety Code, §§ 33030, 33031.) They do, however, evidence that the City's primary purpose in proposing a new Redevelopment Plan is to secure additional tax increment for the City. This

[3] According to planning staff for the City of Sacramento, Sacramento is in the process of developing a transportation nexus study. In furtherance of this study, the City of Sacramento has recently reviewed the fees associated with single family home construction in developments in the Sacramento area. City staff has found that fees in North Natomas are approximately $74,000; in West Sacramento - $71,000; in Folsom - $61,000; in Elk Grove - $90,500.

is an improper use of the extraordinary powers of redevelopment. (Health & Safety Code, § 33321.)

This improper purpose of using redevelopment as a funding tool is also apparent in the "Shorelines" newsletter, dated January 2009. This publication by the Redevelopment Agency states that the purpose of a Redevelopment Project Area is to serve as "a funding mechanism for areas that need improvements" by "keeping local tax dollars in the community." (Exhibit 6, City of Lake Tahoe Redevelopment and Housing, *Shorelines Newsletter* (Jan 2009). The newsletter goes on to state that keeping tax dollars local "is especially helpful to the community when the economy is struggling." (Exhibit 6, City of Lake Tahoe Redevelopment and Housing, *Shorelines Newsletter* (Jan 2009).

In an effort to capture as much additional tax increment as possible, the proposed Project Area includes nearly all retail, commercial, and industrial areas in the City, except for the retail areas already included in the redevelopment plan for the Stateline area. (Report to Council, p. 30.) Retail sales in the proposed Project Area account for nearly 70% of the retail sales in the City. (Exhibit 3, Retail Market Analysis, RRC Associates (Dec 2005), p.30.) Based on the Retail Market Analysis, and the improperly conducted Field Reconnaissance relied upon by the City, there is no evidence that the retail, commercial, and industrial areas in the proposed Project Area are blighted.

Existing uses are productive and economically viable based upon property assessed valuation, and low vacancy rates. (See page 25 of this letter). These properties have been unjustifiably included for the purpose of obtaining the allocation of property tax increment, and to enable private developers to receive unwarranted subsidies at the expense of affected local taxing agencies, as well as the rest of the City of South Lake Tahoe.

<u>Sales Tax Revenue "Leakage" to Areas Outside the Project Area is not an Adequate Basis for a Finding of Blight</u>

Citing a Retail Market Analysis performed in 2005, the Report also reflects that declining sales revenue in the proposed Project Area is due to improvements made in the Stateline redevelopment area and increased shopping choices in Carson Valley, Reno, and Sacramento. (Report to Council., p. 30.) These improvements have resulted in sales tax "leakage." "Leakage" is defined as retail shopping by South Lake Tahoe residents in areas outside of South Lake Tahoe. (Exhibit 3, Retail Market Analysis, RRC Associates (2005), p.5.) Despite assertions in the Report, "leakage" is not a blighting influence or evidence of blight under the CRL. (See Health & Safety Code, § 33031 (b) (defining the conditions of economic blight without reference to sales tax revenue.)

Further, the Retail Market Analysis shows that much of the current City sales tax is being captured by the City in its current redevelopment project area. (Exhibit 3, Retail Market

Analysis, RRC Associates (2005), p. 5.)[4] The Report alleges that redevelopment of the proposed Project Area would allow the City to capture a portion of the retail sales tax revenue that is currently leaking out. (Exhibit 3, Retail Market Analysis, RRC Associates (2005), p. 5.) [5] While this may be true, the recapture of sales tax "leakage" is not a basis for a finding of blight.

Finally, the City must demonstrate that sales taxes have declined to such an extent that the proposed project area is a burden on the community. The Agency provides no sales tax data to support this finding. In fact, sales tax data demonstrates that declining sales tax revenues are not unique to the proposed Project Area. Sales tax revenue has declined state-wide.

Sales tax data shows that gross receipts in the unincorporated areas of El Dorado County declined by 16.23% in 2009. Similarly, the gross receipts in the City of South Lake Tahoe declined 17.02%. (See Exhibit 7, El Dorado County Sales Tax Allocation Tables, HDL Companies (generated March 16, 2010).) These percentages demonstrate that there is virtually no statistical difference between the City and the region as a whole. Thus, relying on sales tax data is not adequate evidence that the proposed Project Area is a burden on the community. (See Health & Safety Code, § 33031 (b) (defining the conditions of economic blight without reference to sales tax revenue.)

<u>The Agency's Reliance on the 2005 Retail Market Analysis is Misplaced</u>

The City relies upon this Retail Market Analysis to support a finding of blight despite the fact that it was "not intended nor designed to fully explore and document the need for quality upgrades or modifications to the specific retail mix." (Exhibit 3, Retail Market Analysis, RRC Associates (Dec 2005), p. 2.) The primary purpose of the analysis was to answer the narrower question of "what, if any, demand exists for additional retail-related square footage within the community." (Exhibit 3, Retail Market Analysis, RRC Associates (Dec 2005), p. 2.) And although the analysis concludes that demand does exist for additional retail space,[6] this does not support a finding of blight. (Exhibit 3, Retail Market Analysis, RRC Associates (Dec 2005), p. 2.)

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[4] At page 5, the Retail Market Analysis states: "Fortunately, the outflow of local spending is mitigated substantially by the retail spending of visitors and second homeowners. Overall, of the $376 million in total retail spending in 2004 within South Lake Tahoe, 51 percent, or $191 million, was attributed to visitors and second homeowners. Visitors had particularly higher spending contributions in the areas of apparel (86 percent share of sales), eating and drinking places (69 percent), and "other" retail (72 percent)."

[5] "This leakage estimate is key in deriving the market demand for additional retail square footage within the City of South Lake Tahoe. Approximately $22 million of the $219 million in total leakage could be absorbed assuming retail vacancy rates improved to 5 percent from the existing 10 percent, and assuming that (through physical and other improvements) average sales per square foot could be increased by 5 percent." (Exhibit 3, Retail Market Analysis, RRC Associates (2005), p. 5.)

[6] At page 2, the Retail Market Analysis states: "There does exist documentable demand for additional retail space over the next planning period."

Finally a city cannot expect to capture all retail sales within its boundaries. The fact that such leakage occurs is common in all cities and may not be relied upon to support a finding of blight.

Under the CRL, the primary reason for selecting a project area is that the area currently suffers from blight. The fact that new shopping areas might allow the City to retain more sales tax dollars is irrelevant. Under the CRL, the City must show that the existing businesses are not economically viable. Whether the uses in the area could be more profitable with the addition of new stores is irrelevant. In fact, some would argue that new stores will create more competition for existing local business, and could drive some existing stores in the proposed Project Area out of business.

The Policies of the California Tahoe Conservancy regarding Forestry and Conservation Land Cannot be Relied Upon to Support a Finding of Blight

The Report also alleges that the actions of the California Tahoe Conservancy (CTC) have contributed to blight in the area. The CTC is an independent State agency established to develop and implement programs through acquisitions and site improvements to improve water quality in Lake Tahoe, preserve scenic beauty and recreational opportunities of the region, provide public access, preserve wildlife habitat areas, and manage and restore lands to protect the natural environment. (Gov. Code, § 66905.2.) A primary function of the CTC is to identify parcels that are creating water quality problems, or could in the future, and then try to acquire them. Once the CTC acquires a property, the site is restored – unwanted buildings are demolished, asphalt is removed, and vegetation and erosion control measures are installed. (Exhibit 8, CTC, Land Coverage Programs.)

The City alleges that the checkerboard of CTC's restored parcels has hindered any large-scale development and has raised the value of land. Contrary to this statement, such preserved land supports Lake Tahoe's tourism industry and maintains the forested nature of the community. Redevelopment will not allow the City to utilize these parcels for large-scale development.

Again, like TRPA, the CTC's involvement in the Tahoe area is meant to preserve water quality in Lake Tahoe, and to preserve the beauty and recreational opportunities that bring so many tourists to Lake Tahoe each year. In light of this purpose, the Report cannot claim that the CTC is a blighting influence resulting in the need for redevelopment in South Lake Tahoe.

Under the CRL, the primary reason for selecting a project area is that it currently suffers from blight. Yet the focus of this section of the Report is alleged excessive government regulation. These regulations, however, will not change should the proposed Redevelopment Project be adopted. Furthermore, the arguments presented here have no bearing on whether the existing uses within the Project Area are economically viable. The fact that the Project Area might or might not be economical to redevelop due to government regulation is irrelevant under the CRL.

Finally, all communities in the Tahoe basin are subject to CTC's jurisdiction. (Gov. Code, § 66905.5.) There is nothing unique about the Project Area and CTC's programs that justify a finding of blight by the City.

The Physical Conditions in the Project Area, as Described in the Report to Council, do not Demonstrate Blight

Section 6.2 of the Report to the City Council titled, "Physical Conditions Described," includes the following reasons for selecting the Project Area for redevelopment:

- Inadequate Water System
- Fire Hazards
- Serious Code Violations
- Hazardous Materials
- Earthquakes, Tsunamis, and Seiche
- Serious Dilapidation and Deterioration Caused by Long-Term Neglect

While an Inadequate Water System is Present in the Lukins Area, a Plan Exists with Proposed Funding

On page 36, the Report states that 44% of the parcels in the proposed Project Area are blighted due to inadequate fire flow problems in the area served by Lukins Brothers Water Company ("Lukins Area"). While there is no question that the current water distribution system in the Lukins Area must be improved (Exhibit 10, Public Utilities Commission, Resolution W-4726; Exhibit 9, Evaluation Report on the Lukins Brothers Water Co., Brown & Caldwell (August 2006)), this is not evidence that all parcels within the Lukins Area are blighted.

Findings by the CPUC and reports prepared on behalf of Lukins' do not suggest that it is necessary to resort to the use of Redevelopment Funds to repair the Lukins' water system. As part of long-term financing of infrastructure rehabilitation for small, private water companies, the CPUC's Water Action Plan (WAP) calls for the use of Distribution System Improvement Charges (DSICs). (Exhibit 10, Public Utilities Commission, Resolution W-4726.) The revenue from any DSIC would be dedicated solely to infrastructure improvements, and would be clearly identified as a separate rate component. (Exhibit 10, Public Utilities Commission, Resolution W-4726.)

Recognizing that Lukins Brothers could not afford investments in infrastructure improvements, the CPUC granted Lukins an initial DSIC for preliminary engineering and design of such improvements. The CPUC also indicated that, after completion of the preliminary design, additional DSICs or other funding mechanisms would be needed for each phase of the project. (Exhibit 10, Public Utilities Commission, Resolution W-4726.)

Using these DSIC funds, a Draft Design Report for the rehabilitation and replacement of Lukins System was prepared by Haen engineering and c2me Engineering on May 15, 2009. This report sets forth Lukins' plan to upgrade its systems, and indicates that the existing production from Lukins' existing wells will provide fire-flows of at least 1000 gallons per minute. The report sets forth a plan for achieving higher fire-flows where necessary. There are eleven construction phases contemplated for rehabilitating Lukins' water system. (Exhibit 11, Draft Design Report: Lukins Brothers Water System Rehabilitation and Replacement, prepared by Haen engineering and c2me Engineering (May 15, 2009).)

The CPUC has also ordered Lukins to provide a 20-year System Improvement Plan (SIP) to the Division of Water and Audits within 90 days of completing preliminary engineering design. Furthermore, acknowledging that the cost of system upgrades would fall to Lukins' ratepayers, the CPUC also ordered Lukins to schedule public meetings within 15 days of completion of the Proposed SIP to discuss the proposed SIP and to determine ratepayer willingness to fund different portions of the proposed SIP. (Exhibit 12, Joint Motion to Dismiss Complaint without Prejudice, City of South Lake Tahoe and Lukins Brothers Water Co. (Nov. 12, 2008).)

Furthermore, the Report states that the Insurance Services Office (ISO) rating for the Lukins Area is nine out of ten, resulting in higher insurance costs for property owners. This ISO rating, however, is incorrect. According the Supplement to the Lukins' Draft Design Report, prepared in September 15, 2009, the ISO rating for the entire City is five out of ten. (Exhibit 13, Supplement to Lukins' Draft Design Report (dated Sept. 15, 2009), prepared by Haen Engineering and c2me Engineering; Exhibit 14, Public Utilities Commission, Resolution W-4791.)

The implementation of a Redevelopment Plan is a drastic remedy, particularly where nothing in the available CPUC documents suggest that private investment cannot fund the necessary improvements to the Lukins Brothers water system. Furthermore, it is inappropriate to use public funds to improve a private utility company's infrastructure. Using tax increment available through the redevelopment process to fund improvements to the infrastructure of a private water company will benefit the bottom line of a private company and its shareholders at the expense of other public services throughout the County.

The South Tahoe Public Utilities District (STPUD) has also filed a letter in opposition to the proposed Redevelopment Plan, submitted to the City Council April 6, 2010, and incorporated herein by this reference. As stated in STPUD's opposition, the District has concerns regarding the likely loss of property tax revenue and how this loss of revenue might affect its customers. STPUD is concerned that the growth projections made in the proposed plan are too optimistic, and that the financial impact on the District will be far more significant than projected in the Redevelopment Plan (See Exhibit 15, Letters and Articles Regarding STPUD's opposition).

<u>The Report Does Not Provide Substantial Evidence of Existing Fire Hazards are a Blighting Influence</u>

On page 37 of the Report, the City states that all property owners in the proposed Project Area are subject to the maintenance requirements of Government Code section 51182, which states that all flammable vegetation, including overhanging trees with dead or dying wood must be removed.

Because this routine maintenance is required by law, the City has the power to require property owners to remove flammable vegetation using its existing code enforcement powers. It is not necessary to resort to redevelopment to address this community concern.

Furthermore, on page 38 of the Report, the City claims that wood shake or shingle roofs pose a safety hazard not only to the structure on which they are installed, but also to other houses in the vicinity. The report speculates that none of the wood roofs in the Project Area has been treated with fireproofing. This speculation is based only on visual inspection of the roofs and the low income levels in the area. No evidence is presented concerning whether any of the wood roofs have been treated with fireproofing. Despite the lack of substantial evidence that these buildings pose a fire hazard, the Report improperly concludes that the buildings are blighted, and includes all 110 buildings in its blight matrix.

<u>The Report Does Not Provide Substantial Evidence of Serious Code Violations are a Blighting Influence</u>

At page 38, the City alleges that the Project Area has more than its proportionate share of all code violations. According to the City, 22% of code violations in the last two years have occurred in the Project Area, while the Project Area is approximately 19% of the City. These rough statistics are not evidence of blight. In fact, they suggest that the proportionate number of code violations in the Project Area is approximately the same as the proportionate number of code violations in the rest of the City.

Furthermore, there is no explanation in this section about what constitutes a serious code violation. Later sections identify serious code violations to include: all shake roofs, regardless of condition; buildings with just one broken window; and mobile homes with deck areas that are blocked by equipment or furniture. There is no evidence that the City has attempted to remedy any of these violations using its existing code enforcement powers or to investigate whether any of the buildings with shake roofs had, in fact, been treated with fireproofing. Furthermore, there is no evidence that these conditions result in a serious burden on the entire community which cannot be resolved by governmental action without redevelopment.

<u>The Report Does Not Provide Substantial Evidence of Hazardous Materials are a Blighting Influence</u>

The Report alleges that, based on building construction dates, 1,700 structures in the proposed Project Area are likely to contain asbestos, lead-based paint, or other common hazardous materials. However, there is no evidence that these materials are impairing existing uses in any

way. Asbestos and lead-based paint are only harmful if disturbed. The fact that they *may* be found in buildings of a certain age is not evidence of blight.

The Report Does Not Provide Substantial Evidence that Earthquakes, Tsunamis, and Seiche are a Blighting Influence

At page 39, the Report states that any structures build prior to 1988 are subject to significant damage as a result of an earthquake. The Report also claims that all structures in South Lake Tahoe are at risk of damage to one degree or another because of earthquakes. The Report presents no evidence that the Project Area is any more at risk from natural disasters than any other portion of the City, El Dorado County, or the entire state of California. These general statements based on the age of buildings cannot support a finding of blight in the proposed Project Area.

The Report does not Provide Substantial Evidence of Serious Dilapidation and Deterioration Caused by Long-Term Neglect

The CRL states that a building is substandard to the extent that it endangers life, limb, health, property, safety, or welfare of the public or the occupants thereof.

However, based on the "windshield survey" method relied upon by the City, the Report alleges dilapidation due to: unpermitted or poor quality construction; fire hazards; impaired building exits; damaged roofs; deteriorated secondary structures; unsafe stairs and walkways; cracked or missing windows; and large areas of chipped paint.

The Report alleges that 330 parcels are dilapidated due to unstable carports, "deteriorated" wooden shelters built over mobile homes, and room additions or patio covers "with suspect construction techniques." (Report to Council, p.42.) These terms, however, are not well-defined; it is unclear what constitutes a "deteriorated" shelter or "suspect construction techniques." And there is no discussion of how severe the problems are. However, it is clear that there was no attempt an actual inspection. Rather, the Report relies on a mere visual survey. This is by no means evidence that these parcels are characterized by blighting conditions. (*Gonzales v. City of Santa Ana* (1993) 12 Cal.App.4th 1335.)

The report alleges that fire hazards exist on 110 parcels. (Report to Council, p.42.) Again, there is no discussion of how severe the problems are. For example, there is no definition of what constitutes "excessive" dried pine needles on a roof. In photo A-39, sparse dried weeds along a fence line were said to create a "significant fire hazard," and in photo A-30, dried pine needles on a roof are depicted as a significant fire hazard. It is clear, however, that the pine needles pictured could be removed quickly and easily by the inhabitants if requested by the City's code enforcement division.

The Report alleges that impaired building exits were observed on 32 parcels housing mobile homes. (Report to Council, p.42.) These properties were said to include front doors "blocked with junk, equipment, and/or furniture." There is, however, no explanation of what constitutes a

"blocked" front door. Clearly the City has power to request removal of blocked doorways where a health and safety hazard exists. This evidence is not a characteristic of blight that the City must resort to redevelopment to cure.

The Report also alleges that deteriorated secondary structures were observed on 296 parcels. (Report to Council, p.42.) An unquantified number of these structures were detached from the main structure and included sheds and storage units, not structures that were occupied by persons. The remaining structures included attached structures, such as water heater and electrical closets. Again, these structures are unoccupied. There is no substantial evidence that these uninhabited structures endanger the life, limb, health, property, safety, or welfare of the public or occupants.

The Report alleges that two hundred and eighty-five (285) parcels were said to include unsafe stairs and walkways, including stairs with "an unusually large distance between a landing and a door, guardrails with damaged or missing balustrades, and damaged walkways." (Report to Council, p.43.) Again, there is no definition of what rises to the level of an "unusually large distance," or "damaged" guardrails, and no substantial evidence that the identified conditions endangered the life, limb, health, property, safety, or welfare of the public or occupants.

The Report also alleges that fifty-four (54) parcels were reported to have cracked windows, missing windows, or poor patch work around windows. (Report to Council, p.43.) Again, these reports were based on an inadequate survey, and there is no substantive evidence provided to support finding that any and all cracked windows endanger the life, limb, health, property, safety, or welfare of the public or occupants.

Finally, areas of chipped paint certainly cannot evidence that a building endangers life, limb, health, property, safety, or welfare of the public or occupants.

While these factors may be community concerns and are not visually attractive, they do not justify using the extraordinary powers of redevelopment. Furthermore, the discussion presented in the Report to Council is misleading for a number of reasons:

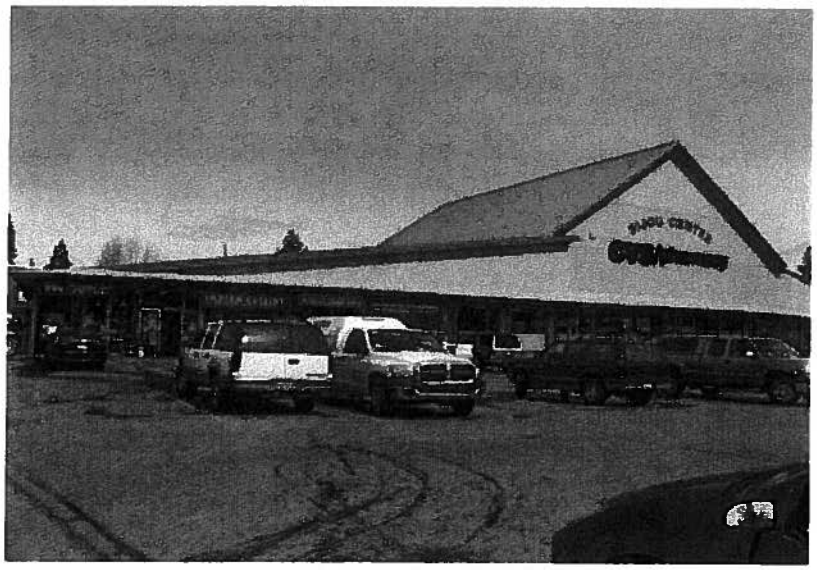
1. The Agency presents distorted information in claiming these conditions exist.
2. To the extent these conditions exist, they do not predominate in the Project Area.
3. To the extent these conditions exist, there is no evidence that they render buildings or structures unfit or unsafe to occupy.
4. To the extent these conditions exist, there is no evidence that current uses are not economically viable.
5. Most of the conditions presented in the Report are irrelevant to whether the Project Area is blighted as described in Health and Safety Code sections 33030 and 33031.

In total, the Report claims that there are 1,664 parcels (64% of the Project Area) that are unsafe or unhealthy to occupy. (Report to Council, p.61.) Pursuant to the CRL, the standard for

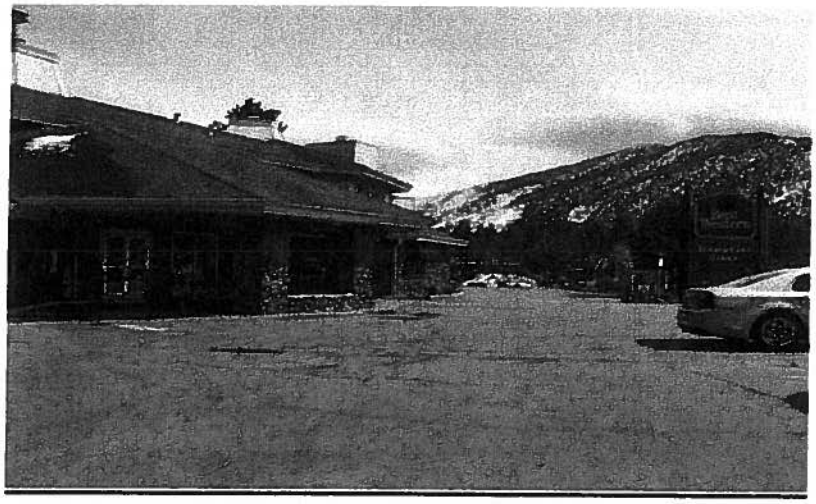
demonstrating blight is not that a building is unsafe or unhealthy – the building must endanger the life, limb, health, property, safety, or welfare of the public or occupants.

Nearly one-half of the 1,664 parcels identified are included based solely on the fact that they are within the Lukins Brothers Water district. (See Table 5, Report to Council, p.63.) All others are included based on an inadequate "windshield survey" and vague definitions of conditions that do not rise to the level of blight as defined in the CRL. (*Gonzales v. City of Santa Ana* (1993) 12 Cal.App.4th 1335.)

The County of El Dorado staff reviewed the Report and surveyed the proposed Project Area, and while they found some vacancies and older buildings, there was no evidence that the Project Area is predominated by physical or economic blight as required under the CRL. As depicted in the photos below, and in the photos included in the CD-ROM accompanying this document, County staff found a busy retail and commercial district, well-utilized commercial facilities normally found in neighborhoods, an industrial area with few vacancies, and many beautiful residences. (Exhibit 16, El Dorado County Photo Index & Images (CD-ROM).)



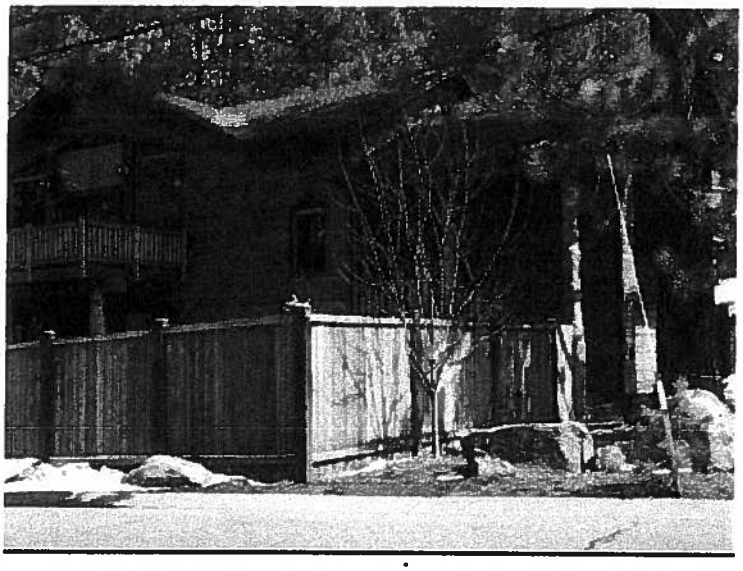
CVS Pharmacy in
Bijou Center



Best Western Timber Cove Lodge on Lake Tahoe Blvd.

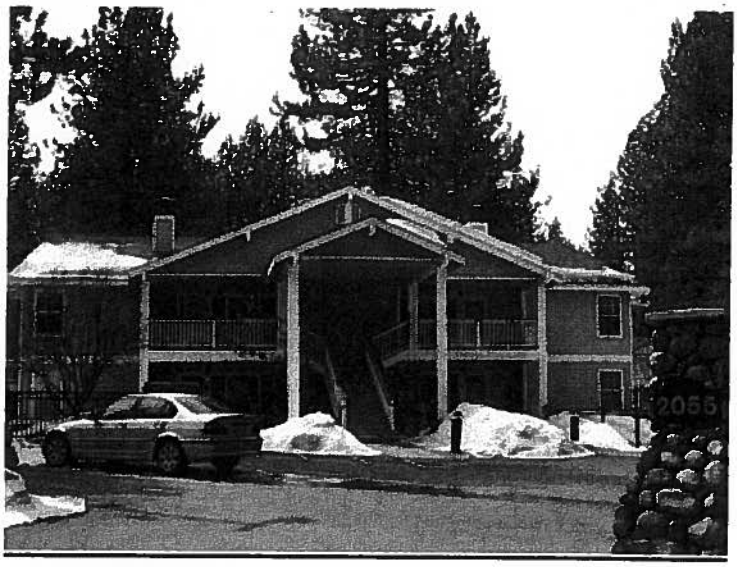
The Cork and More on Al Tahoe Blvd

Staples
On Lake Tahoe Blvd.

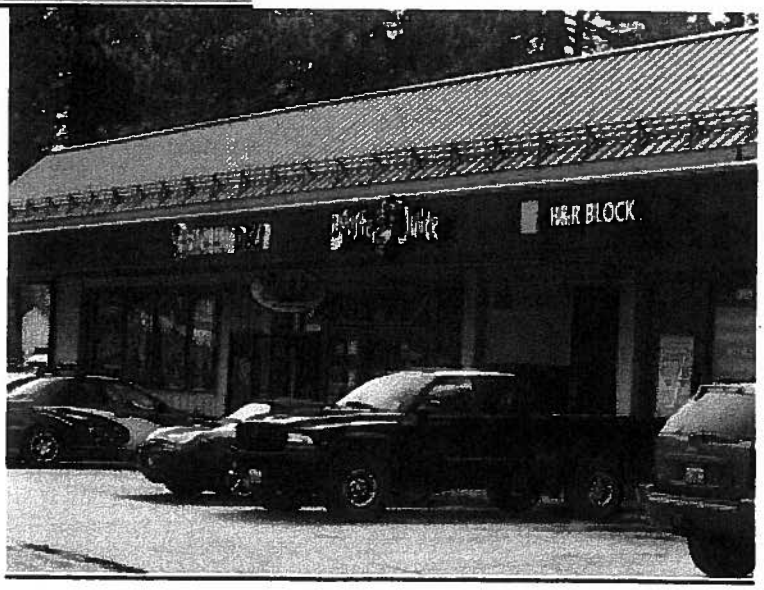


Private Home
at 12th and Patricia

Multi-family housing on 12th



Industrial Space on James Street



Shops in Raley's Shopping center at Lake Tahoe Blvd and Emerald Bay Road

The Additional Conditions of Physical Blight Set Forth in the Report to Council do Not Demonstrate Blight under the CRL.

The Report Fails to Demonstrate that Conditions Prevent or Substantially Hinder Viable Uses

The Report goes on to state that many of the conditions outlined above also constitute conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. In addition, the Report alleges that "commercial obsolescence" has been a problem in the Project Area for a long time. (Report to Council, p. 95.)

The Report cites "antiquated facades, neighboring buildings with a variety of setbacks, heights, styles, and exterior treatments, limited display areas, or motels with no obvious signs of reinvestment, and buildings constructed for specific uses" as evidence of commercial obsolescence. (Report to Council, p. 95.)

The Report further states that commercial development has clearly occurred in a piecemeal fashion, and without any coordinated effort, leaving to a variety of site layouts, curb cuts, and signage that creates "visual and functional chaos." (Report to Council, p. 95.)

The Report also sites narrow driveways, inadequate loading/docking facilities, and inadequate parking as evidence of blight. (Report to Council, p. 95.) Again, the County takes issue with the lack of specificity in the City's Report. The Report presents vague generalities without any attempt to specify or quantity losses suffered from these conditions, or to explain how these conditions prevent or substantially hinder the economically viable use of the properties. The fact that many uses in the proposed Project Area might be more profitable if their facades were updated or had a larger parking lot is irrelevant to whether current conditions prevent or substantially hinder the economically viable use of any building or lot. For instance, a lack of adequate loading areas is undoubtedly common to many businesses in urban areas, but it is hardly a condition of blight. Inadequate vehicle access, inadequate pedestrian access – again, while these may be community concerns, none of these conditions constitutes "physical blight" under the CRL because there is no evidence that these are a condition of blight.

The "piecemeal" development in commercial areas, with different heights and setbacks, is not unique to the Project Area; it is no different than other commercial areas within the City or similar areas within Cameron Park, along Missouri Flat, or Placerville. It is not evidence of blight, only evidence of less stringent development standards than may exist in some other cities.

The Report also states that inadequate parking areas force vehicles to back directly into the public right of way, creating a dangerous situation. (Report to Council, p. 95.) These statements are irrelevant unless they currently result in blight conditions as defined by the CRL. There is no evidence presented in the Report of actual dangerous conditions. The Report assumes that the existence of these conditions automatically would create an unsafe environment. However, assuming that unsafe conditions exist is not the same as providing substantial evidence that they actually exist.

A statement from *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 555, about lack of parking is also relevant here. The court said, "Substantial evidence must show the physical factors [that] actually prevent or substantially hinder an existing use or lot's economic viability. For example, many economically viable uses, particularly in urban areas, lack sufficient automobile parking. Nevertheless, such uses continue to be profitable, demonstrating [that] the lack of parking for those uses is not a factor preventing or hindering their economic viability. They possibly could be more profitable with more parking, but subdivision (a)(2) of Health and Safety Code section 33031 applies only if those uses and lots suffer economic non-viability now."

Again, the statements in the Report are irrelevant under the CRL. Under the CRL, conditions of blight must "prevent or substantially hinder the economically viable use or capacity of buildings or lots," not just "limit" investment in them. (Health & Safety Code, § 33031(a)(1).) No evidence is presented to demonstrate that these conditions prevent or substantially hinder the economically viable use or capacity of buildings or lots.

The Report Fails to Demonstrate that the Area is Blighted due to Irregular, Subdivided Lots

At page 135, the Report argues that commercial uses in the Project Area are impaired by irregular parcels. The Report claims that the result is minimal setbacks with cramped parking lots and an overall obsolescence. Based on this general statement, the Report alleges that 1,211 parcels in the Project Area are irregularly shaped and sized, and are therefore blighted. Irregular size or shape alone is not evidence of blight. (Health & Safety Code, § 33031(a)(4).) The City fails to demonstrate any evidence of impairment due to irregular shape or size.

Furthermore, the Report makes the subjective determination that many parts of the proposed Project Area are "not particularly attractive – or convenient – places to shop or do business. Buildings are often poorly maintained, products are difficult to see from the busy corridors, access and parking are often difficult and dangerous, signage is frequently out-of-date and inconsistent, businesses and residences appear to be randomly placed on their properties without adequate buffers, and pedestrian amenities are lacking. Again, while these conditions may be of concern to the City, they are irrelevant because they are not blight factors under the CRL. (Health & Safety Code, § 33031.)

In addition, since the Redevelopment Plan does not anticipate the use of eminent domain, adoption of the Redevelopment Plan would do nothing to alter the size or shape of the parcels in the Project Area.

The Description of Economic Conditions Provided in the Report to Council does not Demonstrate Blight in the Project Area

There is no Evidence of Depreciated or Stagnant Property Values in the Project Area

In Section 6.3, the Report alleges that because the median value of single family homes has been generally declining since 2005, the proposed Project Area is economically blighted. If this were the case, the entire United States could be classified as economically blighted.

However, since 2005, the median single family home price in the Project Area increased by 32% between 2002 and 2007. (Report to Council, p.149.) The Report tries to temper this growth with the claim that, when inflation is accounted for, the value really increased by only 14%. In the remaining areas of the City, the median price of a single family home is 25% higher still. However, regardless of the median price of homes outside the Project Area, property values have clearly been on the rise and cannot be characterized as stagnant, much less depreciating.

The City also alleges that commercial property sales declined in the Project Area between 2002 and 2007, while it continued to increase in the remainder of the City. (Report to Council, p. 150.)

Contrary to the City's allegations from 2005 through 2009, property values overall have continued to rise, despite the general decline in property values statewide. From 2005 to 2009, property values in the proposed Redevelopment Area grew by 19%. This growth rate was comparable to the growth rate of 21% for the County as a whole. Further, property tax valuation growth for the proposed Redevelopment Area actually exceeded the overall growth rate for the City. (Exhibit 17, Comparison Data Regarding Assessed Property Values, El Dorado County Assessor (March 2010).)

<u>There is No Evidence of High Business Vacancy Rates in the Project Area</u>

At page 154, the Report states that there are only 21 vacant commercial or industrial units in the entire Project Area. While the Report does not provide any information that allows the reader to determine what percentage of businesses are vacant, according to the Retail Market Analysis relied upon by the City, retail vacancy rates were only 10% in the Project Area. (Exhibit 3, Retail Market Analysis, RRC Associates, December 2005.)[7]

Based on this data, there is no evidence to support the Report's claim that vacancy rates in the proposed Project Area are high. The Report tries to suggest that the existence of any vacant commercial units indicates blight, however, this is not the legal standard. (Report to Council, p. 154.) Under the CRL, the City must demonstrate that the Project Area suffers from "abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings." (Health & Safety Code, § 33031(b)(3).) The City has failed to provide substantial evidence of any of these conditions.

[7] The Retail Market Analysis also states that retail vacancy rates could be improved from 10 percent to 5 percent if $22 million of the $219 million in total "leakage" could be absorbed and the average sales per square foot could be increased by 5%.

The Report also tries to suggest that the vacancy rate is high when compared to the rate in the rest of the City, stating that "there are 27 vacant commercial or industrial units in the City. Of those, 21 (78%) are located in the Project Area." (Report to Council, p. 154.) While 78% sounds like a large percentage, this is due to the fact that nearly all of the commercial areas in the City are in the proposed Project Area except for the areas that are already included in the City's other redevelopment area near Stateline.

Crime Rates do Not Demonstrate a Serious Threat to Public Safety and Welfare

The CRL defines economic conditions that cause blight to include "a high crime rate that constitutes a serious threat to public safety and welfare." (Health & Safety Code, § 33031(b)(7).) Again, the Report fails to provide substantial evidence of economic blight.

The Report states that the Project Area has more 59% more crimes than other parts of the City with a similar mix of business and residential properties, including 28% more FBI Part 1 crimes. (Report to Council, p. 160.) Comparing crime rates between the Project Area and other parts of the City, however, does not provide evidence that the area suffers from a high crime rate that constitutes a serious threat to public safety and welfare.

As evidence of crime, the Report includes several pictures of graffiti. (Report to Council, pp. 161-162.) Graffiti, however, is not a crime that constitutes a serious threat to public safety and welfare. The Report fails to provide data on the number of crimes committed in the Project Area. It also omits any information on what types of crimes are included in the statistics provided.

Furthermore, data found through several online sources indicates that the overall crime rate in South Lake Tahoe tends to be lower than the national average. Statistically speaking, the City's comparison to other areas in the City does not demonstrate a crime rate that constitutes a serious threat to public safety and welfare. (See Exhibit 18, Crime Rate data.)

Public Improvements are Not Inadequate, and Do Not Support a Finding of Blight

As evidence of inadequate public improvements, the Report again points to needed sidewalk improvements and water deficiencies. As explained above, these conditions do not support a finding of blight.

The Report Improperly Includes the Airport Planning Area, which is Not Blighted and Not Necessary for Inclusion in the Project Area

The Report also alleges that public improvements are needed at the Airport and use the alleged lack of these improvements as indications of blight, citing the need for upgrades to the terminal, reconstruction of the ramp area, various new buildings, and rehabilitation of several existing

buildings. The Report, however, recognizes that many of these improvements are already paid for, such as the runway, or will be federally funded. (Report to Council, p. 163.) In addition to these improvements, the Report suggests that a portion of the airport land could be transformed into industrial or other uses.

The Report ignores the fact that significant improvements were made to the Airport between 2007 and 2009, including the reconstruction of the runway, the realignment of the Upper Truckee River within the airport property, and a tree trimming/removal project that restored the meadow on the airport property. In addition, a private owner has recently improved the Fixed Base Operator that provides fuel and services to transient aircraft.

Millions of dollars have been spent to improve the Airport. Furthermore, as stated in the April 2009 Lake Tahoe Airport Newsletter, the next step planned is the reconstruction of the aircraft parking ramp, which will likely be funded with federal grant funds. (Exhibit 19, *Lake in the Sky Airport Newsletter*, City of South Lake Tahoe, April 2009.) Based on these recent renovations the Airport is not an "inadequate public improvement" pursuant to the CRL. Because the Airport is not blighted, its inclusion in the proposed Project Area is inappropriate.
At page 37, the Report to Council also alleges that the Lake Tahoe Airport is inadequate as it was not built to accommodate modern emergency response vehicles and aircraft. The Report alleges that many improvements to the airport are needed to protect the Project Area and the City as a whole. This directly contradicts an article in the April 2009 Airport Newsletter which celebrated the public safety value of the airport, as evidenced during the Angora Fire in June of 2007, when seventeen fire fighting aircraft operated from the airport to reduce the potential destruction and save lives. (Exhibit 19, *Lake in the Sky Airport Newsletter*, City of South Lake Tahoe, April 2009.)

Furthermore, as set forth in the Airport Settlement Agreement and Master Plan, incorporated herein in its entirety by this reference, restrictions on flight levels and passenger levels that have previously limited the Airport's operations will be lessened by 2012, and Airport operations will significantly increase, making the airport more profitable. (Exhibit 20, Excerpt from Airport Settlement Agreement and Master Plan.)

Unincorporated Area Parcels have Been Improperly Included in the Proposed Project Area

Not all Parcels in the Project Area are Necessary for Effective Redevelopment

At page 177, the Report to Council acknowledges that certain parcels were included in the Project Area that do not meet the statutory definition of blight. The Report claims that these parcels are included because they are necessary because their exclusion would add an undue burden on the Agency to plan for and implement its redevelopment programs effectively, or to provide for low-income housing.

The Report makes the broad assertion that these parcels must be included because they are adjacent to blighted parcels, and because their exclusion would jeopardize the City's

improvement plans. (Report to Council, p.177.) However, the Report fails to explain how the exclusion of these parcels would jeopardize any plans for improvements.

Relying on improperly collected survey data, and relying on a number of conditions that are clearly irrelevant to blight, the Report fails to demonstrate that the proposed Project Area is blighted, as defined under the CRL. The Report also fails to demonstrate that the lands, buildings, or improvements in the Project Area are detrimental or inimical to the public health, safety, or welfare. To the extent that some individual buildings or sites in the Project Area might be found to detrimentally affect the public health, safety, or welfare, there is no evidence that such conditions predominate and injuriously affect the entire area. The Report fails to show why land, buildings, or improvements that are not detrimental to the public health, safety, or welfare should be included for effective redevelopment.

Merely citing all-purpose, conclusory statements which could apply to any property anywhere is insufficient to justify the inclusion of non-blighted property in a redevelopment project area. Lands, buildings, and improvements that are not blighted are no necessary for the effective redevelopment of the Project Area, and have been included without substantial justification.

Non-Contiguous Areas are Improperly Included in the Project Area

Non-blighted, noncontiguous areas may only be included in a project area if they are being used predominantly for either the relocation of owners or tenants from other noncontiguous areas or low- and moderate-income housing. (Health & Safety Code, § 33320.2.)

As stated above, relying on improperly collected survey data, and relying on a number of conditions that are clearly irrelevant to blight, the Report fails to demonstrate that the proposed Project Area is blighted, as defined under the CRL. The Report also fails to demonstrate that the lands, buildings, or improvements in the Project Area are detrimental or inimical to the public health, safety, or welfare. To the extent that some individual buildings or sites in the Project Area might be found to detrimentally affect the public health, safety, or welfare, there is no evidence that such conditions predominate and injuriously affect the entire area.

Having failed to demonstrate that any of the sub-areas in the Project Area are blighted as defined by the CRL, and failing to explain how each sub-area is needed for effective redevelopment, we must conclude that the non-contiguous areas are not necessary for effective redevelopment and are included only for the purpose of obtaining tax increment. As such, the non-contiguous areas must be excluded from the proposed Project Area.

The Project Area Improperly Includes Parcels Outside the City Boundary

A redevelopment agency is "an agency of the state for the local performance of governmental or proprietary functions within limited boundaries." (*Kehoe v. City of Berkeley* (1977) 67 Cal. App. 3d 666, 673.) The jurisdiction of any redevelopment agency is the jurisdiction of the "community." The jurisdiction of a "community" is defined under the CRL as coterminous with the city's boundaries. (Health & Safety Code, § 33002.)

According to the County Assessor's office, five parcels have been included in the proposed Project Area, despite the fact that they are not included in the incorporated City. (*See* Exhibit 21, South Lake Tahoe RDA Boundary Map, El Dorado County (Jan. 2010).) According to the data from the County Assessor, these five parcels are worth $504,778. Because these parcels are outside the jurisdiction of the City and the Redevelopment Agency, they should be eliminated from the proposed Project Area.

Redevelopment of the Project Area is Not Necessary to Effectuate the Public Purposes and Policy of the CRL.

Purposes and Policy for Redevelopment

The policies and purposes for redevelopment are stated in a number of Health and Safety Code sections including sections 33030, 33035, 33037, and 33039. Under the CRL, the "community" for the proposed Project Area is the City of South Tahoe.

Reasons why Redevelopment of the Project Area is not necessary to effectuate the public purposes and policy of the Redevelopment Law.

1. There is no substantial evidence that the Project Area is blighted as required by CRL section 33030 and 33031, and as described in section 33035.

The Report shows that any problems in the Project Area are minor and do not constitute blight. Such problems as insufficient parking are typically associated with a thriving and growing community.

2. There is no substantial evidence that the Project Area constitutes a serious physical and economic burden on the community, as described in CRL section 33030(b)(1).
There is no substantial evidence that conditions in the Project Area affect the surrounding community. There is no information to show that any of the areas within the Project Area is a serious physical and economic burden on the community. As previously stated, commercial, retail, and industrial vacancy rates are comparable to those in the City as a whole, and property values overall have been increasing.

There is no substantial evidence that the Project Area is blighted causing physical and economic liabilities that require redevelopment for the health, safety, and general welfare of the people of the City, as described in CRL section 33030(a). No specific data is presented to substantiate any serious health or safety problems in the Project Area.

3. There is no evidence that the Project Area constitutes a serious and growing menace, injurious and inimical to the public health, safety, and welfare of the people of the City of South Tahoe as described in CRL section 33035(a).

The issues raised in the Project area do not demonstrate that the Project Area is predominated by blight, and they certainly do not pose a "growing menace" which is "injurious and inimical" to the public health, safety, and welfare in the Project Area or the City.

4. There is no evidence that the Project Area has blight that presents difficulties and handicaps which are beyond remedy and control solely by using the City's regulatory processes, as specified in CRL 33035(b).
As previously stated, there are no blight conditions that predominate in the Project Area. It appears from the Report that most of the problems in the Project Area stem from the City's poor planning, flawed licensing and permitting practices, and failure to enforce its municipal codes. Adoption of the Redevelopment Plan will do nothing to improve the code enforcement activities, and the City can undertake code enforcement now without having to establish a redevelopment project.

5. There is no evidence that the Project Area contains blight that contributes substantially and increasingly to the problems of, and necessitates excessive and disproportionate expenditures for, crime prevention, correction, prosecution, punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire, and other public services and facilities, as described in CRL section 33035(c).

No evidence is presented to indicate that the costs for public safety activities or other public services are disproportionate in the Project Area.

6. There is no evidence that redevelopment of the Project Area is required to protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of the city by remedying injurious conditions as described in CRL section 33037.

As discussed previously, the Project Area is not blighted. New development in the Project Area will likely occur when the economy recovers, and will continue as a result of private and public sector activities without the need for redevelopment under the CRL.

7. There is no evidence that the Project Area contains blight that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

Again, there is no evidence of blight that predominates the Project Area.

<u>Conclusion</u>

Adoption and implementation of the Redevelopment Plan for the proposed Project Area is inconsistent with the policy and purposes of the CRL. There is no substantial evidence to support a finding that redevelopment of the Project Area is necessary to effectuate the public purposes and policies for redevelopment as set forth in the CRL.

Objections to the Certification of the Environmental Impact Report

The County of El Dorado has reviewed the Final Environmental Impact Report (EIR), dated March 10, 2010. Based on this review, the County objects to the certification of the EIR for the following reasons:

1) The City did not send a copy of the draft EIR to the County as required;

2) The Project Description in the EIR is improper, as it includes five parcels that are not within the City's boundaries and are therefore outside the jurisdiction of the Agency.

3) The EIR does not evaluate the impact that the County's loss of property tax dollars could have on public services provided by the County; and

4) The EIR does not analyze the cumulative impact that Redevelopment Plan No. 2, together with the City's existing redevelopment project, would have on the services provided by the County.

As an affected taxing agency, the County should have received a notice of preparation and a copy of the draft EIR from the City. (Health & Safety Code, § 33333.3.) The City, however, did not provide the required copy of the draft EIR to the County for review. The County did not receive the draft EIR until the statutory comment period had closed. In light of this delay, the County requested that the City extend the comment period to allow the County an opportunity to submit comments, but the City declined. Having been deprived of the opportunity to comment on the draft EIR, the County must now object to its certification.

The County's first substantive objection relates to the project description included in the EIR. The California Environmental Quality Act (CEQA) requires that the project description in the EIR contain the precise location and boundaries of the proposed project. (Cal. Code Regs, tit. 14, § 15124.) This information must also be shown on a detailed map.

The boundaries shown in the proposed Project Area Map are incorrect. According to the County Assessor's office, the proposed Project Area improperly includes five parcels in the proposed Project Area, despite the fact that the parcels are not included in the incorporated City. (*See* Exhibit 21, South Lake Tahoe RDA Boundary Map, El Dorado County (Jan. 2010).) As a result,

the project description is fatally flawed and must be corrected before the EIR can be certified.

Furthermore, under CEQA, an EIR must examine the significant environmental impacts of a project. The significant environmental impacts of a project include: (1) direct impacts to the environment; (2) reasonably foreseeable indirect impacts; and (3) cumulative impacts. (Cal. Code Regs, tit. 14, § 15064 (d).) Cumulative impacts are the project's incremental impacts when added to other projects. (Cal. Code Regs, tit. 14, § 15130.)

Contrary to the requirements of CEQA, the EIR for Redevelopment Area No. 2 fails to evaluate the impact that the loss of tax revenue will have on services provided by the County of El Dorado.

The EIR also fails to analyze the cumulative impact of two redevelopment project areas in the City that, together, include virtually all of the retail, commercial, and industrial businesses in the City. Without an analysis of the cumulative impact that these projects will have on the tax revenue available to El Dorado County for providing essential services, the program EIR is legally invalid.

<u>The Proposed Redevelopment Area will have a Significant Environmental Impact on the County Services Available</u>

While CEQA does not require the analysis of social and economic impacts of a project (14 CCR § 15064 (e)), "if the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205 ("*Bakersfield*").)

In *Bakersfield*, the court applied this principle, finding that an EIR must analyze whether a new shopping center would start an economic chain reaction that would lead to business closures and the physical deterioration of the existing shopping area. (*Id.*, at 1207.) The *Bakersfield* court held that "when there is evidence suggesting that the economic and social effects ... ultimately could result in urban decay or deterioration, then the lead agency is obligated to assess this indirect impact." (*Id.*)

Similarly, the EIR for Redevelopment Area No. 2 is inadequate, as it did not analyze whether a new redevelopment project would start an economic chain reaction that would lead to the suspension of County services and the deterioration of the County's service area. The City is obligated to assess whether the reduction in tax increment available to the County of El Dorado will have a significant impact on the services available to El Dorado County residents.

<u>The Cumulative Impacts of Two Redevelopment Areas are Significant</u>

In addition to evaluating whether Redevelopment Area No. 2 will have a significant impact on the services available in the unincorporated County, the City must analyze the cumulative impact

of Redevelopment Area No. 2, together with the it's existing redevelopment area. (See *Bakersfield*, 124 Cal.App.4th at 1216.)

A cumulative impact is an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. (Cal. Code Regs, tit. 14, § 15130 (a)(1).)

There is no question that the City's existing redevelopment area results in impacts that are "related" to the impacts of the proposed Project. (See *Bakersfield*, 124 Cal.App.4th at 1215 (finding that two shopping centers would compete with one another and had regional anchor stores, and were therefore "related").) Both redevelopment areas are in South Lake Tahoe and both result in the diversion of tax increment funds from El Dorado County, thereby reducing the funding available for the provision of services and utilities in the unincorporated County. The projects are closely related geographically, connected by Highway 50. Between the two projects, nearly all of the retail, commercial, and industrial businesses in the City are included in a redevelopment area.

As stated in *Bakersfield*, where two projects are closely related and may have several cumulatively significant adverse impacts, CEQA compels assessment and disclosure of the combined environmental effects. (*Bakersfield*, 124 Cal.App.4th at 1216.) The City had an affirmative duty to analyze the impact that Redevelopment Area No. 2 would have on the funding available for services in El Dorado County and the resulting impacts on utilities and other services provided in the region. Without such an analysis, the EIR is legally inadequate and should not be certified.