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December 5, 2022

VIA EMAIL ONLY
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Nevada County Board of Supervisors
950 Maidu Avenue
Nevada City, CA 95959-8617

Re: December 6, 2022, Nevada County BOS Meeting - Agenda Item Nos. 36 (SR 22-1605) & 37 (SR 22-1606) - Resolution of Necessity re Hirschdale Road Bridge Project

Dear Honorable Members of the Board:

This correspondence is submitted on behalf of Ron and Virginia Legg, owners of real property designated as Nevada County APNs 048-100-12 & 048-120-43, and Randy Mezger, owner of real property designated as APNs 048-240-006 & 048-240-008, which are located adjacent to the Truckee River and the Hirschdale Road bridge.

Both the Leggs and Mr. Mezger would like to extend their appreciation to staff, and particularly Mr. Patrick Perkins, for working with them to address many of their concerns with the temporary construction easements. The Leggs and Mr. Mezger have executed the easement agreements and the temporary easements themselves, and therefore, a Resolution of Necessity is no longer necessary.

While the Leggs and Mr. Mezger look forward to working with the County on the bridge reconstruction, they continue to object to the proposed stairway on the south side of the eastern abutment of the Hirschdale Road Bridge.

The County has previously claimed that the stairway is mandated pursuant to Streets and Highways Code § 991. This statute does not mandate the construction of the stairway or provision of any access to the Truckee River. What it does require is that the County prepare a study and hold a public hearing on the feasibility of providing public access to a navigable river prior to constructing a bridge.¹

The County has not prepared any feasibility study or held a public hearing to determine whether the stairway should be constructed, and until such time that it has complied with the statutory

¹ The Ninth Circuit Court of Appeals has determined that the Truckee River is not a “navigable” water of the United States under federal law. While the federal test of navigability is generally more restrictive, the Truckee River has not been determined to be “navigable” for purposes of application of state law.



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mandate, cannot commit to the stairway construction.

Similarly, the County has not completed any environmental review of the proposed stairway, even though it has admitted such review is necessary. While the County has stated that an addendum to the previously prepared mitigated negative declaration will be prepared to evaluate the impacts of the stairway, an addendum is inappropriate based on the substantial changes to the project, the circumstances surrounding the project, and new information relating to the project. (See 14 Cal. Code Regs. §§ 15162 & 15164.)

The County has identified the stairway as an integral component of its planned Recreation & Resiliency Master Plan, and thus, the impacts of the entire Plan must be analyzed under CEQA prior to approval of or commitment to the stairway. (See *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 (piecemeal review of development of infrastructure for undeveloped site resulting in negative declaration was improper, even though future developments of the site would be examined in later EIRs).)

The Leggs and Mr. Mezger again request that the County comply with the mandate of Streets and Highways Code § 991 and prepare the necessary feasibility study and appropriate CEQA review of the proposed stairway (including an analysis of the associated potential environmental impacts of the Recreation & Resiliency Master Plan as a whole) prior to committing any funds or any approvals related to the stairway. Thank you for your consideration of our comments.

Respectfully,

Greg Gatto

Cc: Patrick Perkins, PE - Principal Civil Engineer - Nevada County Department of Public Works