



October 10, 2008

Governing Board
Tahoe Regional Planning Agency
P.O. Box 5310
Stateline, NV 89448
Sent via email to Project Contact: Theresa Avance (tavance@trpa.org)

Re: Draft Environmental Impact Statement (EIS) for the Sierra Colina Village Project

Dear members of the Governing Board,

Thank you for the opportunity to provide comments on the Draft Environmental Impact Statement for the Sierra Colina Village Project. The League to Save Lake Tahoe has a number of concerns regarding the integrity of the Draft EIS especially the evaluation of traffic, noise, water quality and wildlife impacts. Land use issues are also of concern and must be fully evaluated. A conservation alternative needs to be considered and compared with the alternatives currently presented. It is imperative that the Draft EIS reflects an objective analysis of all impacts, and classifications and all findings must be supported with concrete evidence. We also hereby incorporate comments submitted by the Tahoe Area Sierra Club.

Land Use

The most glaring, immitigable impact that the Sierra Colina Village proposes is turning raw, undeveloped land into thousands of square feet of impermeable coverage in the form of a new subdivision. Land that has already been disturbed and developed is currently available, therefore, the development of this land would unnecessarily impact the environment. Using land elsewhere in the region that has already been impacted and developed could provide an opportunity to make real environmental improvements, reduce sprawl, create economic assets and reduce blight. Although the development of the Sierra Colina Village project is technically categorized as "urban" under the Plan Area Statement, the site is essentially raw, undeveloped land containing both coniferous forest and montane riparian aspen forest that supports a variety of wildlife species.

In 1972, this land was categorized as conservation land under the Plan Area Statement (TRPA staff). When development is transferred by transferring building allocations, it should be transferred from sensitive lands to less sensitive lands. However, the Sierra Colina Village is planning to use at least two building allocations transferred from high capability land to a site containing low capability land including considerable slopes. Further, one of the stipulations of the rezoning of the PAS from conservation to residential was that the project was not to be eligible for bonus units. The applicant is requesting that TRPA issue 9 bonus units for the project (page 2-10) despite these restrictions.

Although this project is not eligible for bonus units, 38 units will use ERU's (Existing Residential Units of Use) from deed restricted affordable housing units under the bonus unit substitution section of TRPA code, or issued from special projects (DEIS pages 2-9—2-10). The DEIS doesn't specify which ERU's are coming from bonus units and which ERU's are coming from "special projects." This project is not eligible for bonus units according to stipulations imposed when the Plan Area Statement was changed from conservation to multi-residential (PAS 073, Special Policies section, #3). One question of concern is why more information is not available on these "special projects"?

Additional TRPA regulations point to the inappropriateness of this project. The Design Development Working Group Meeting Minutes from August 1, 2000, included in Appendix I of the DEIS, state that a purpose of amendments to the 1987 Regional Plan and the 208 Water Quality Plan and their relation to the Two Step Subdivision Process is to avoid new road networks. The Sierra Colina project will be creating 4 new Linear Public Facilities, including one road. During the September 22, 1999 TRPA Governing Board Meeting Minutes Mr. Waldie pointed out that, "the purpose of precluding lot and block subdivisions in the Basin was to prevent the subdivision of large areas like this and the creation of road networks to serve those areas" in reference to a similar project proposed on this site. The Sierra Colina project proposes a new road to serve the new houses. Additionally, the Linear Public Facilities are argued to act as public facilities so as not to be counted as coverage for the project. Since the road that serves the subdivision only goes in and around the new houses to be built, this road really only serves the new residents of these houses. This road would not act as a thoroughfare for any other traffic, therefore, it should be counted as coverage for the overall proposed Sierra Colina project.

As stated above, four Linear Public Facilities (LFPs) are being proposed in this project. These three bike paths and one road must be deed restricted for public use for the applicant to, one, not claim the coverage to be counted and, two, to claim that they will be used for public use. The DEIS states that 27,545 square feet of coverage for LFP 1 will not be counted as coverage for the project (DEIS 2-25). The DEIS does not specify that these LFP's will be deed restricted for public use even though they are claiming that they will be built for public use. Without deed-restricting the LFPs the developer can choose to gate the subdivision and, in effect, fence in the bike paths and road from public use.

Another purpose of the creation of the two-step subdivision process was to promote development on "high capability (non sensitive) lands; redirecting development to more suitable areas" and avoid developing raw, sensitive lands. The Sierra Colina land contains 1a, 1b, 1c, 2, 4, 5, and 6 land capabilities including 2.44 acres of SEZ, all of which is raw, undeveloped land. Although some of the land has a high capability, the purpose of the two-step subdivision process was to restrict development to previously developed areas and fill in areas that were already developed so that areas of development in the basin were not expanded. In this case, development is scattered around the Sierra Colina proposed area, which fronts and backs 60 acres of Forest Service land. Much of the residential and commercial areas in the area are also surrounded by Forest Service land. Therefore, this project should not qualify as infill.

Biological Resources

Using raw land to construct a new subdivision means the replacement of wildlife habitat with pavement, houses and people. The biological resources were not sufficiently evaluated in the DEIS and numerous flaws have been found in the biological resources sections. The Scoping Document claims that "the analysis of direct and indirect impacts will include potential effects to sensitive biological resources located on adjacent Forest Service land (e.g., wet meadow, Burke Creek, migratory wildlife corridors, and sensitive species habitat)" (page 6). There is no mention or discussion of this analysis to the direct and indirect impacts on surrounding biological resources. For example, there is no mention of the goshawk habitat and buffer zones (TRPA) which show this forested area well within the 0.5 mile radius buffer zone of historic goshawk nesting sites.

It is clearly apparent that the biological resources were inadequately evaluated in the Draft EIS, especially in evaluating the project site and surroundings for goshawks and goshawk habitat. Although the potential effects on

common raptors, including goshawks, has been found to be “less than significant” in the DEIS, their diminishing habitat should be protected in order to attain TRPA wildlife thresholds. Although the habitat is currently considered “marginal” due to the smaller sized trees, these trees will grow to a more suitable size for nesting habitat in the future. Undeveloped montane riparian aspen forests in such relative proximity to the lake are limited wildlife habitats that need to remain undeveloped to provide nesting areas for goshawks and other wildlife species.

Goshawks have historically existed in this area and will be impacted by this development. The survey conducted by Wildlife Resource Consultants included in the DEIS was inadequate and consisted of only two days of surveying in 2006 and 2 days of broadcast surveying in 2007. Statistically, this survey does not yield enough data to indicate whether or not goshawks were present in the area. Further, this type of survey would only detect breeding goshawks. Broadcast surveying has been found to be effective with only a sufficient amount of data points. Watson et al. (1999) surveyed known nesting sites and to record 109 detections, 439 station visits and 210 trials had to be conducted. Of the detections, only 68% were vocalizations. In Watson’s study, 4 of the 40 known nests, 10%, were not detected at all through this methodology. A quarter of the Wildlife Resource Consultants survey included in the DEIS was conducted at the end of the goshawk breeding season, which is from March 15th to August 15th (source: California Dept. of Fish and Game), when many of the goshawks may have finished breeding.

Contrary to USFS guidelines for the surveying of goshawks, which Wilderness Resource Consultants used as a guide, recent studies have found that sites that are good for foraging have not always been found to be good for reproduction (Beier et al., 2008). Habitat quality is not always an effective indicator of population performance (Lawler et al., 2004). In other words, the determinations used to qualify habitat are not always effective indicators of the presence or health of the goshawk population.

Although focus on dense forest has been established to determine the quality of the goshawk habitat in the Draft EIS’s site evaluation, Daw and DeStafano (2001) found that a mix of high foliage nesting areas with more open foraging habitats, providing a variety of prey, are important for goshawk populations. The study also found that nesting areas necessitated open, wet areas nearby as well as dry openings. The Sierra Colina site possesses these suitable characteristics and the habitat value should be more fully assessed.

The forested land that the Sierra Colina site is part of, including the Forest Service land in surrounding areas where goshawks live, has already been reduced. Selas (2008) found that establishing a buffer zone around nest sites would not be sufficient to maintain populations if the portion of mature forests is reduced. Eliminating foraging and nesting area on the Sierra Colina site not only affects the site itself, but will affect goshawks in the surrounding forests, by reducing the total area for foraging and nesting. The number and quality of prey positively correlates to breeding densities (Selas, 2008), therefore the effects of the Sierra Colina development will echo through populations of goshawks in the surrounding forested area. Wildlife Resource Consultants were hired to conduct a survey of goshawks because of the site’s proximity to the goshawk protected activity center (PAC). The Sierra Colina project encroaches on nearby habitat: the goshawk protected activity center, which should be buffered.

The TRPA code itself states that, “Perching sites and nesting trees of goshawks . . . as shown on the TRPA Regional Plan Overlay Maps shall not be physically disturbed in any manner nor shall the habitat in the disturbance zone be manipulated in any manner unless such manipulation is necessary to enhance the quality of the habitat. The threshold applies not only to the number of known population sites, but also apply to the disturbance and influence zone buffers to sites found in the future.” The disturbance zones for goshawks are 0.5 mile radius around each nest site (TRPA Code: Section 78.3A). TRPA staff has pointed out that although these protections have been set up for goshawk populations, TRPA Code Section 78.3E states that this protection does not apply to situations where “special interest, threatened, endangered or rare species choose to live in close proximity to existing developed parcels”. According to TRPA staff interpretation, since this parcel has been re-zoned to “multi-residential,” the goshawk buffer zone of 0.5 miles no longer applies to it. This is a TRPA staff interpretation of the code, not the code itself. The code does not specify what “close proximity” is. Any of the goshawks that live near

the Sierra Colina site are not choosing to live near the “developed area” until the project is constructed. The Sierra Colina parcel is still undeveloped, forested habitat that is being used by wildlife, regardless of its zoning.

The DEIS does not include all available sources on the presence of goshawks in the area which is misleading. Wildlife Resource Consultants, hired by the developer, cited a conversation with Mr. Sanchez, a wildlife biologist at the Forest Service, and notes that one of his survey’s resulted in no evidence of goshawks in the area, but the DEIS and accompanying letter from Wildlife Resource Consultants does not include any data from this or any other survey conducted by the Forest Service. Why isn’t documentation of other goshawk surveys included in the DEIS?

The integrity of the analysis of the presence of goshawks is further weakened by the fact that the developer directly hired Wildlife Resource Consultants to evaluate the goshawk habitat. The private company, Wildlife Resource Consultants, were hired to serve the needs of the developer, not to provide an objective, scientific evaluation of goshawk habitat.

Other sections of the biological resources section of the DEIS contains information that was collected by private parties serving the needs of the developer. The DEIS states that “a list of species observed during a reconnaissance survey of the site conducted in May 2007 was submitted to EDAW by Gary Deghi of Huffman-Broadway Group, Inc.” Was Gary Deghi of Huffman-Broadway Group, Inc. also hired directly by the developer? Where is this survey data and was this study peer reviewed? Were any of the Wildlife Resource Consultants surveys or studies peer reviewed? According to the TRPA rules of procedure in reference to the EIS: “The document must reflect the independent judgment of TRPA. TRPA is responsible for the scope, adequacy and objectivity of the environmental document” (6.10, (c)).

The evaluation of goshawks within the Biological Resources section of the DEIS is illustrative of the flaws within the entire Draft EIS. The statement: “The EDAW reconnaissance survey for the wildlife resources was conducted in September 2006, outside the breeding season for most wildlife that use the project site and when most species are either absent or relatively undetectable” (4.4-11) is also telling of the quality and completeness of the DEIS.

During the Scoping Document comment period the League to Save Lake Tahoe submitted a comment letter addressed to Theresa Avance of TRPA suggesting to “address how the pre-existing studies and data paid for by the developer on the Sierra Colina parcel will be peer reviewed and on what basis will pre-existing information be used for the environmental document” (Carl Young, November 15, 2006).

Traffic

Although the Draft EIS states that the Daily Vehicle Trip Generation will lead to a “less than significant” impact, the daily trips generated will reach 475, which is above the 200 underlined as having a significant impact under the TRPA Thresholds. To offset the impact, Sierra Colina will “pay [a] fee or implement in-lieu improvements, ” (4.14-12). The Draft EIS states that the net result will be a “less than significant” impact. Since TRPA regional and cumulative mitigation measures have not proven to be effective and onsite mitigation is unlikely to occur, total net impacts would remain significant.

The significant environmental impact at intersections (Impact 14.4.1-2) is being mitigated by creating an exclusive left turn lane and an exclusive right-hand turn lane on Lake Village Drive and by constructing a left-turn acceleration lane on Highway 50. The project applicant proposes to restripe the road to reduce traffic congestion without increasing the amount of pavement. The effect this will have on the behavior of drivers is questionable since traffic laws currently allow drivers to pass on the right of cars to make right-hand turns as long as their tires are still on pavement. The length of these added turn lanes has not been stated and may only allow a few cars to pass to turn, where heavy congestion will lead to long lines of cars and associated impacts to the air quality threshold. This project will significantly increase traffic with no real mitigations.

Private automobile traffic has a tremendous impact on air and water quality in the Basin. Increased car traffic diminishes the quality of scenery, creates noise and discourages alternative modes of transportation. Since transportation standards in the basin have not been met, it is clear that further negative environmental impacts will make it more difficult to meet these goals. TRPA should only consider projects that include improvements to the current transportation situation and lead to the attainment of the TRPA air and noise thresholds, rather than consider projects that degrade air quality and increase traffic.

Instead of promoting alternative transportation, the project's Impact 4.14.1-5 makes bicycling unsafe in an area on U.S. 50 where riders would have to ride against traffic. This has been noted as a potentially significant impact, and mitigation plans are not outlined sufficiently. The Draft Environmental Impact Statement states possible mitigations to extend a sidewalk, which can accommodate pedestrians, but would not be practical for bicycle or mixed pedestrian/bicycle use (Mitigation Measure 4.14.1-5D). This proposed action goes precisely against the directive of the Compact to "reduce dependency on the automobile."

Construction traffic for Sierra Colina, which is anticipated to be a significant impact, will lead to excessive noise, in addition to increased air pollution, not only from construction vehicles, but also from traffic congestion resulting from entering and exiting construction vehicles. Water quality is also of concern because increased vehicle traffic will lead to more fine sediments running off of these roads into the relatively nearby lake. Atmospheric deposition resulting from increased vehicle emissions will also impact Lake Tahoe's water quality.

Noise

Increased traffic noise and other noise resulting from the increase of residents in the area are anticipated to be significant (Impact 4.9.1-4). Previous environmental documentation noted the need for rubberized pavement to decrease traffic noise, which indicates that traffic noise levels may be higher than the 2008 Draft EIS cites and mitigations outlined may not be sufficient.

Water Quality

In 1972, much of the Sierra Colina site was classified with 1a and 4 land capabilities (TRPA). These land capabilities were verified in 1996, but were reclassified to 1b, 1a, 1c, 4, 5 and 6 in 1998. What were the motivations for the reclassification of land capabilities on this site? Much of this site has a slope of 8% to 35%. Construction of the development will exacerbate erosion and run off that these steeper slopes are already vulnerable to. Soils downstream of this impervious coverage will also be negatively affected. Until TRPA thresholds are attained for water quality, new subdivisions should not even be considered, as urban run-off is known to have the most detrimental impact on lake clarity than any other source.

To provide more specific examples of how this project will affect lake clarity, exposed soils during the construction phase of the Sierra Colina may lead to significant erosion and runoff of sediments and construction pollutants into the nearby Burke Creek and Lake Tahoe. The increased impervious surface coverage of 85,307 feet will lead to increased storm-water runoff. Increased car traffic on streets leading to the new homes and their impact on water quality was not sufficiently evaluated in the Draft EIS.

According to the LTBMU Cumulative Watershed Effects Analysis and the environmental documentation for the Roundhill Fuels Reduction project, which includes this area, the Burke Creek watershed has already been calculated to be over 100% for impact risk ratio, with most impacts coming from currently existing impervious coverage. Adding more impervious coverage would further impact this already damaged watershed.

Burke Creek is currently located in a narrow length of raw land between a residential neighborhood and commercial development. To further develop this area would confine the stream area even further, surrounding it with even more impervious coverage and creating a conduit to Burke Creek for urban runoff from developed, upslope areas.

Surface water is not the only environmental concern needing sufficient evaluation within the DEIS. Ground water should also be sufficiently evaluated and the Scoping Document states that the DEIS will evaluate potential changes to groundwater quality (page 7). With abundant impervious surface coverage, will groundwater re-charged be affected? The DEIS does not evaluate this. The Draft EIS gives an extremely broad evaluation of groundwater, describing aquifers in the Basin and Range (4.7-18). This provides no relevant information about the specific site. The Basin and Range stretches from the Sierra to the other side of Nevada. The DEIS effectively does not evaluate the affects of the project on groundwater.

Cultural Resources

Although the Draft EIS finds that none of the cultural resources found at the site are significant under the TRPA code, the prehistoric site SCT-2 was not evaluated due to the assumption that it would not be disturbed because it is located in a protected stream environment zone. Due to the large scale of the construction project, and the increase in human population at the location once the project is finished, it is likely that the site will be impacted. The importance of the artifact should be evaluated to determine if there is a need to protect the entire site.

In 1999 a similar project, proposed by Welze/South Shore Estates on this parcel, called for the conveyance of 5 acres to the Washoe Tribe of Nevada and California and agreements had actually been met between the developer and the Washoe Tribe for the conveyance as well as other protections of resources. There is no mention of this in the DEIS. The Post Contact Ethnographic Period issues concerning the parties involved during talks of the 1999 proposed project are not mentioned in the 2008 DEIS. This indicates that the archeological resources have not been fully evaluated in the Sierra Colina Village DEIS.

Although the Draft EIS finds that none of the cultural resources have *individual* significance, the number of cultural resources within this small proximity indicates that the combined presence is significant. The site should be evaluated further to determine if any other artifacts or human remains are present. Disturbing them during construction may lead to a significant impact on archeological resources. The site should be more thoroughly evaluated to ensure artifacts and remains are undisturbed. Depending on the parties involved in the construction, instead of a Washoe archeological representative, to properly report findings during construction will not guarantee the protection of the artifacts. In 1999 the TRPA staff requested that an archeologist was present during certain gradings during project construction. This need is not mentioned in the Sierra Colina DEIS.

LEED Green Building

Although the Sierra Colina Village DEIS asserts that it will be striving for LEED Platinum Certification, the applicant is disguising the project as an environmentally beneficial one, when it is actually very damaging toward the environment. The LEED Homes Rating system requires that the project “avoid development on environmentally sensitive sites” and “minimize the environmental impact of land development practices.” This project fails these prerequisites. The proposed project will be constructed within 100 feet of land with the land capability of 1a land class.

Although this project is a new subdivision, the DEIS asserts that it will seek to attain LEED certification through the LEED Homes Rating System. This project should be examined under the LEED for Neighborhood Development Community standards. Under the LEED for Neighborhood Development Communities ratings the Sierra Colina Project would fail under the most important criteria: that the development is constructed on a previously developed site. This LEED program seeks to avoid situations where developments, “consume and fragment farmland, forests and wildlife habitat; degrade water quality through destruction of wetlands and increased stormwater runoff; and pollute the air with increased automobile travel” which is exactly what this project will be doing (Source: U.S. Green Building Council LEED website).

The LEED Neighborhood Development Communities program lists the protection of threatened species as a top goal, including avoiding, “fragmentation and loss of habitat”. Additionally, “LEED encourages compact development patterns and the selection of sites that are within or adjacent to existing development to minimize habitat fragmentation and also help preserve areas for recreation” (Source: U.S. Green Building Council LEED website). This project will pose a significant impact to wildlife corridors (Impact 4.4.1-6A), which blatantly conflicts with the goals of the LEED certification program for these types of developments.

Further, the DEIS claims that the project site location is “urban infill.” This is a misleading classification concealing the fact that the site is raw, undeveloped land, which was previously classified as conservation land, and as previously stated, fronts and back 60 acres of forest service land. Additional measures that are being proposed may seem, on the surface, to benefit the environment, but are essentially misleading selling points to decision makers and buyers in a market where being “green” is now very popular. The DEIS concludes its section on the applicant’s intention to attain LEED certification by stating, “ The Sierra Colina Village Project would be a unique LEED for Homes project that could serve as a model project for green building and spotlight Lake Tahoe as a leader in sustainable home building.” Should we be allowing such a detrimental project to act as a “model” for “environmentally beneficial” homes when this project paves over natural habitats with homes built from “environmentally preferable” materials, and energy efficient appliances? What kind of precedent will this be setting?

The Need to Include a Conservation Alternative

The need for the DEIS to include a conservation alternative is clear because this DEIS disguises the proposed alternative as environmentally beneficial when it is actually very detrimental. In 1990 the Forest Service attempted to buy this parcel. In 2000 the Trust for Public Land attempted to buy this parcel. In 2005 the Forest Service again attempted to buy this parcel. SNPLMA funds have already been allocated for the restoration of Burke Creek. Previous agreement had been reached for 5 acres of culturally significant land to be conveyed to the Washoe Tribe for protection. The ecological value of this site is high because it includes a tributary to Lake Tahoe, is raw, undeveloped land in close proximity to the lake and contains important wildlife resources. Instead of further detriment, restoration of this land is needed and is a reasonable alternative to be included in the DEIS.

Sincerely,

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