

## **APPENDIX DD**

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Advisory Planning Commission Hearing Transcript

September 10, 2008

TAHOE REGIONAL PLANNING AGENCY  
ADVISORY PLANNING COMMISSION  
128 Market Street  
Stateline, Nevada

Application of:  
SIERRA COLINA, LLC

TRANSCRIPT OF PROCEEDINGS  
PUBLIC COMMENT ON DRAFT EIS  
WEDNESDAY, SEPTEMBER 10, 2008  
9:30 A.M.

Reported by:

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STATELINE, NEVADA, WEDNESDAY, SEPTEMBER 10,  
2008

9:30 A.M.

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CHAIRMAN TOLHURST: Call the meeting  
of the APC to order.

Do we have any changes to the agenda?

MR. SINGLAUB: No changes, Mr.  
Chairman.

CHAIRMAN TOLHURST: I guess we ought  
to have the roll call.

(The roll was called, general public  
comment was heard, and the minutes were  
approved. These matters were not  
transcribed.)

CHAIRMAN TOLHURST: Okay. First item  
on the public hearing will be public comment  
on the Draft Environmental Impact Statement  
for the Sierra Colina project. And this is a  
no action item. So it is a public, we are to  
provide comments to staff and we will have a  
public comment period after the APC has their  
chance to comment on the Sierra Colina  
project.

MS. AVANCE: Good morning. I'm  
Theresa Avance, senior planner with TRPA.  
This project is Item BA5 and starts with page

1 of your project.

This is the Sierra Colina Draft Environmental Impact Statement public comment period. We are in a 60-day public comment period. This is the second of two public comment hearings. The environmental document is to evaluate environmental impacts of the proposed project and alternatives. This is for TRPA environmental review only. It is not affected by NEPA or CEQA.

The TRPA is to receive comments on the merits of the draft document. There is no action or recommendation proposed at this time. The final environmental document will be presented to the APC and Governing Board at a later date for action. And final project approvals will be presented if and after the EIS has been certified.

And I am going to hand this over to Sydney Coatsworth of EDAW to give us an overview of the document.

MS. COATSWORTH: Good morning, Mr. Chairman and members of the Commission. I'm Sydney Coatsworth with EDAW, environmental consultant to TRPA and preparers of the EIS for the Sierra Colina project.

As Theresa mentioned, we are still in

the 60-day public comment period. So there is no action today. We are happy to answer clarifying questions. We do have some members of the technical team here. But the real intent is to have a one-way flow of questions and comments so the EIS team can take those away and prepare the final EIS.

We have a court reporter here to capture the comments verbatim, and complete transcripts of this hearing and the prior hearing will be included with the final EIS. I have a brief presentation on the project and the findings of the EIS.

Okay. The Sierra Colina Village site is 18 acres in size. It is located right here, not far from this location. The site is bounded by Highway 50 on the west, by Lake Village Drive and Echo Drive on the north, by Forest Service lands to the east, and by a commercial area to the south, including the Kahle Community Center, Burger King, UPS commercial center.

The site is currently undeveloped; consists of Jeffrey pine forest with Burke Creek and its associated SEZ that skirts the southern boundary of the parcel.

Okay. The project identified as

Alternative 1 in the EIS proposes 50 residential units. Forty-one of these would be market rate homes and nine would be moderate income deed restricted homes. The unit type would be a mix of duplex and single family homes.

The project is located in Plan Area Statement 73, special area 1. And the project would require a Plan Area Statement amendment to be eligible for the multiple, multi-residential housing program. This program would provide incentives for the applicant to implement environmental improvements and to build moderate income or affordable housing by awarding bonus units.

Okay. The project includes many beneficial features including three pedestrian and bike trails, one new public roadway. It would designate 10.7 acres of the 18-acre site as permanent open space. It would include undergrounding of utility lines through the project site. It proposes a storm water management approach that exceeds current code requirements.

The project includes also active participation in two important EIP projects. One is the restoration of Burke Creek. The

other is Lake Village Drive where currently poor quality runoff from upstream impervious surfaces flows on to the project site. The project is going for LEED certification, LEED platinum, the highest LEED certification possible.

Okay. Here is the site plan for Alternative 1, the proposed project. Let me find the cursor here. Here is Lake Village Drive. The new public roadway would run through the center of the project site right here. These are the proposed bike trails with the proposed bridge over Burke Creek in this location.

This purple designates the development area here with 29 separate buildings. Twenty-one of those would be townhouse-style duplex buildings, plus eight single family homes.

The green area is the area proposed for open space. And the blue line down here is the center line of Burke Creek.

The undergrounding of the utility line would occur in this location here.

In accordance with TRPA requirements, the EIS evaluated a range of alternatives at an equal level of detail. Those include a

single family estate, a reduced density alternative with 37 market rate homes, an increased density alternative that proposes 42 market rate homes and 12 moderate income deed restricted homes; and, of course, a no project alternative as required.

In terms of the environmental process so far, a notice of preparation for an EIS was released in October of 2006. Three scoping meetings were held in the fall of 2006 to solicit input on the issues and content of the EIS.

Those were before this body, before the TRPA Governing Board, and then an evening scoping meeting to accommodate members of the public.

The primary scoping issues included concerns about new development on a currently undeveloped site, drainage and water quality, potential impacts to Burke Creek and its SEZ, impacts to biological resources, archeological resources and scenic resources.

The EIS is a full scope document and assesses in detail all of these 12 environmental issue areas, plus cumulative analysis of each of these issues in a separate chapter.

Now, just to highlight a couple of the key environmental issues evaluated. A key issue, of course, was water quality. The EIS found potentially significant impacts related to short-term erosion and sedimentation during construction and long-term quality impacts from impervious surfaces where there currently are none, and urban runoff.

The EIS found that these will be mitigated through the implementation of temporary and permanent BMPs, including the applicant's proposed storm water management approach that will exceed code requirements. Highlights of this approach include storm water facilities that are proposed to have twice the minimum storage capacity; collection and extra treatment of higher pollutant runoff, for example from roadways and driveways; treatment of snow melt prior to detention; and conservative estimates in terms of capacity and percolation rates of the storm water facilities.

The EIS found significant impacts to the SEZ from construction of the bike trail bridge over Burke Creek and from degradation, also found degradation of wildlife habitat and migration corridors from proximity of the

development to the SEZ. And applicable to a lot of construction, from potential for introduction and spread of invasive weed species.

And mitigation for these impacts include redesign or modification of the bridge to avoid the SEZ or minimize disturbance; enhancement of over an acre of SEZ through conifer removal, erosion control and restoration of some trail areas that traverse the site, and also some weed management practices.

There was initial concern at the project outset that there were goshawks nesting on the site, but the site has been monitored for the past three years and it appears that this is no longer the case.

The site has, much of the region is known to have been used by the Washo and a cultural resources investigation led to the discovery of two prehistoric sites and some isolated artifacts. These resources were thoroughly studied and determined not to qualify as historic resources under the code. And a letter of concurrence with these findings was received from the Nevada SHPO and also from the Washo.

Notwithstanding, it's typical to still include or make the call that there are potentially significant cultural resources impacts because you can always unearth something or find something during construction. So the mitigation is recommended to address that particular condition.

Scenic resources were also a concern. The development would be visible from Scenic Roadway Travel Unit 31. The EIS found that some of the design elements of the project would mitigate scenic impacts including height limits, landscaping, color choices and architectural features. We have some pre and post-project renderings to show you here.

This is existing conditions from Rabe Meadow. It's difficult to see, but obviously the highway occurs right in this area. This is the pre-project condition. And here is a rendering of post-project with the buildings appearing there in the trees. One more time --

MR. SINGLAUB: Harmon, can you turn the light off up there so people can see this? Thank you.

That may help.

MS. COATSWORTH: Thank you.

Pre-project, post-project rendering. And one more view from a different location from U.S. 50, looking at the site. You can make out the fencing along the project boundary, but here is pre-project and the post-project condition. One more time, pre to post.

There were concerns about traffic impacts from the project. The project would generate approximately 475 average daily trips. Forty-eight of those would be peak hour trips. Though the trip generation in and of itself was not determined to be significant, the applicant would be required to pay the air quality mitigation fee for any new trips. That would fund regional and cumulative measures. Or TRPA could find that the bike trail construction would satisfy that requirement, but that is not finalized yet.

The EIS also found that the increased traffic would affect the operation of the intersection of Lake Village Drive at Highway 50. This impact would be mitigated through restriping to define a designated left-turn lane from Lake Village Drive on to U.S. 50 and also an acceleration lane on U.S. 50.

It's also expected that TRPA will be

able to make findings that the project meets the criteria for transit-oriented development, which require close proximity to transit, walkable distances to services, and development at specific densities.

So as an overview, mitigation was required in each of these issue areas in the EIS.

Now, this chart has a lot of information and maybe it's difficult to see, but it's meant to succinctly convey differences among the alternatives, including coverage, the total number of homes, number of moderate and market rate homes, open space preservation, bike trails, LEED certification, and enhanced storm water treatment. And I would be happy to provide you with a copy of this chart.

Finally, in terms of next steps, the Draft EIS is still circulating for 60 days, concluding October 13th, during which time written comments will be accepted. Public hearing was held before the Governing Board on August 28, and of course today is the second of two public hearings. Written responses to all comments, including oral comments, will be prepared as part of the final EIS for

consideration by TRPA.

And additional public hearings will be held, as Theresa indicated, prior to certification and project action.

And that concludes my presentation. Thanks. I'm happy to take any questions.

VICE-CHAIR JAMIN: Could you please show where the nine moderate income residential units would be located?

MS. COATSWORTH: They would all be in the townhouse-style units. Let me go back here. They are not clustered together. It is thoroughly mixed. The single family units are interspersed with the townhouse units.

So I would be hard pressed to tell you exactly which units would be -- let me go back here.

You can see the larger building footprints here are those townhouse-style units. The smaller are the single family homes. They are all thoroughly mixed in the development.

VICE-CHAIR JAMIN: Thank you.

MR. RILEY: Yes. Could you tell me the egress of the roadway that you are putting into the project? Where it starts and where it ends?

MS. COATSWORTH: This public loop road -- cursor difficulties.

This loop road is the public road that would loop through the project and would begin and end on Lake Village Drive.

MR. RILEY: Okay.

MR. UPTON: Roughly where are the project boundaries?

MR. SINGLAUB: Can you turn the microphone on, John, so you're on the record?

MR. UPTON: You said there's 10 acres of open space out of the 18. So, are the project boundaries off that map? Or are those the map --

MS. COATSWORTH: Yeah, this whole piece is considered the project site. The 18 acres is depicted here. The 10.7 acres is the total green area.

MR. UPTON: The moderate income units will be for sale?

MS. COATSWORTH: Yes.

MR. UPTON: But the sale price obviously will have to be subsidized by keeping it at whatever the formula level is?

MR. SINGLAUB: They are deed restricted, too, in that formula.

MR. UPTON: Deed restricted into that

range.

MR. SINGLAUB: Under the formula.

CHAIRMAN TOLHURST: Any other questions?

MR. KUCHNICKI: Yeah. I saw that the water quality mitigation measures that you are proposing, the latest TMDL findings suggest that innovative and advanced practices are needed to make a dent in the loss of clarity.

I'm wondering, could you clarify which of those are innovative or advanced practices?

MS. COATSWORTH: We have Brent -- innovative and advanced practices from the water quality?

MR. WOLFF: Yes. Hi, I'm Brent Wolff with Northwest Hydraulic Consultants. I wrote the storm water management plan for Alternative 1 and also worked quite a bit on the TMDL -- on the source category group, the pollutant reduction opportunity report.

The advanced technologies, Jason, would be some water filtration vaults sized to meet the peak flow from a 20-year one-hour storm for all surfaces associated with cars. The public road and all the driveways would have storm water filtration before detention. That's the best available technology we are

going to employ.

MR. KUCHNICKI: Great. You might want to stay up here; I've got a couple questions on the water quality.

But you know, with our TMDL analysis, we conducted that based on existing conditions. And so I think, you know, it's imperative to demonstrate that if this development were to be approved that it was going to be no loading. You know? And so it seems to me that monitoring would be an essential part of this project.

Do you have a monitoring plan developed or proposed?

MR. WOLFF: We do not have monitoring proposed for post-development at this point right now. Storm water management approach is estimated to achieve a very high level of water quality, but we don't have in there that this development will need to be monitored per se to meet some standard.

MS. COATSWORTH: Is there -- there may be a monitoring program proposed as part of the Burke Creek EIP program, though. I'm not sure if that relates.

MR. KUCHNICKI: I'm not familiar. I guess that would be a comment, is that I would

encourage that a monitoring be conducted because, you know, the TMDL analysis also did an analysis on coverage and did show that coverage is significant, adding coverage is significant.

So you know, we don't really know the effectiveness of these control measures. We might have a good idea, but we don't really know. So in order to prove, show that, I think that monitoring would be called for.

And to kind of tie this all back together, one thing that you may want to consider in terms of advanced practices, there's a unique opportunity potentially that exists with the next round of SNIPLMA Science Funding. A theme area is going to be monitoring innovative controls and using natural meadow systems to treat storm water.

And so, since Rabe Meadow is right across the way, I think that would be a potential thing that you could look at is, you know, sending the storm water over there and doing some monitoring on that type of advanced practice.

MR. WOLFF: The majority of the storm water would go to Rabe Meadow, but the storm water management approach does not propose for

it to be used for treatment. The treatment vaults in the storage prior to discharge to Rabe Meadow would provide the high level of treatment.

So we didn't propose that because it's kind of a research topic and so we wanted to stick with at least the practices that we know would perform well.

MR. KUCHNICKI: Well, the problem is that the research, the research practices opportunities on advanced controls, unless you have a project such as this to implement these types of controls, it's going to be limited in our data. You know, so you almost essentially need a demonstration project, you know.

Largely it's experimental. I'm not saying it would work or wouldn't work, but we need to experiment and find that out, which controls work and which don't.

MR. SINGLAUB: We certainly would be happy to work with NDEP if you would like to fund such a project.

MR. KUCHNICKI: What I'm saying is the SNIPLMA is --

MR. SINGLAUB: That's not the project proponent's position to be doing that kind of thing, but I think that's good for what we are

looking at when we get to those science proposals. Kind of off topic, I guess.

MR. KUCHNICKI: Sorry. One other thing I noticed in the DEIS is that there is no discussion for -- NDEP did a nice job on the Bureau of Water Quality planning, but I think there should probably be some discussion on obtaining storm water permits under the storm water regulations. I didn't find that in there.

CHAIRMAN TOLHURST: Laurie?

MS. KEMPER: While Brent is still around, as much as I usually agree with Jason on most of his comments, I just wanted to clarify a couple things. I guess I agree with a lot of what Jason said. I think that we are, our TMDL is showing that subdivisions and roads and development create water quality problems. And we are proposing that we need a 55 percent reduction from the current load to reach our clarity standard. That number may go up.

And we don't expect any of the retrofit projects -- there will be some retrofit projects that can get us to zero load, but we are really talking about employing innovative technology to reduce

sediment loading, not eliminate it.

Even with innovative technology, I think Jason is right, the goal should be zero. The goal should be zero. There may be enough land on this parcel to do that. But just increasing the volume of a pond by two or putting in a filter or whatever, it may be fine for a retrofit project because you are showing a reduction, but I think that there's a higher standard on new development. So I just wanted to make that clear.

And I wouldn't, I would not support any project that used the meadow for treatment because we may need that for treatment of some existing development upstream or, you know, downstream or whatever. You know, so this project by itself ought to be able to do better than average and we can't really allow for a new -- we just can't allow a new increase. So we can't accept a new load.

So I don't know, you know, Brent doesn't have to answer that today, but I would expect this environmental document to look at the impact of storm water. And there's, you know, at least in the summary actions you talk about LEED and I didn't hear the words "low impact development," but I want to let folks

know that even that term and there's a lot of new information out there to develop in a low impact way, you know, keep in mind that there's the word "low" in front of impact. It's not "no."

And so I, it's just a difficult thing to support in the Tahoe Basin new development when we have not been able to retrofit the existing development and to recognize that there is no, you know, it's very difficult to show no impact. You might be able to do it and that's what this EIS should attempt to do, is a no impact, not a, you know, less than significant or small or something like that.

And then my other question, and I'm sorry, I came in late and missed the staff presentation. I'm still confused why we are looking at a new subdivision in the Tahoe Basin because this looks like a new subdivision to me. It looks like a new road and individual housing. So if somebody can clarify that, Joanne or whatever, I'm not sure why we are looking at a new subdivision.

I thought we had -- it might be something that I read this morning, that our plan had a prohibition. I thought TRPA's did, too.

MR. BARRETT: Okay. The TRPA plan states as a goal no new subdivisions. So you would think that. But then we have "except." So we allow you to have it for cemeteries, and then at the bottom we have it for planned unit developments.

And basically the logic was to transfer development off those bad places to good places to allow multifamily housing or high density housing in the right places. We have an exception to do that, and that's in essence what they are planning on doing.

MS. KEMPER: Then there's still, I mean even within that, it's a matter of, you know, no discharge -- I guess that's the other part, where we have this kind of no discharge standard. So it's not showing that you comply with the effluent and runoff standards or anything like that. The existing codes say no discharge of sediment. So I would kind of go back to that.

MR. SINGLAUB: And I think it's not only no discharge, but the degraded stream on this property, they are, we are seeing improvements to that. So that we are even doing over and above. I think that's the important message here. We are not only doing

the no discharge, but we're doing improvements, preventing erosion, part of the EIP, the whole stream through here.

Some of you may know, where the property disappears off the south end of the map is the Burger King parking lot. They are talking about moving the parking lot back, working together with all the property owners, including the Forest Service across the west side of the highway on the BMP project, which is a significant contribution.

CHAIRMAN TOLHURST: Jennifer?

MS. MERCHANT: I have a question for you, Sydney, on the transportation slide. The 48 peak-hour vehicle trips that you mentioned, are those inclusive of the offset provided by the bike trail? Or will that bike trail provide an additional reduction in the vehicle trips?

MS. COATSWORTH: That's a great question. Because it's difficult to quantify the kind of reduction that you are going to get from the bike trails, the EIS took the conservative tack and the 48 are considered new peak hour trips.

MS. MERCHANT: Okay. So the answer is no?

MS. COATSWORTH: What was the question?

Yes, we didn't discount for the bike trails.

MS. MERCHANT: Okay, great. All right. So yeah. Thank you.

MR. DONOHUE: Mr. Chairman? I'm curious, I know there are a number of social trails throughout that parcel. Is there just a no net gain in terms of the proposed bike paths with the mitigation that you are proposing to do on those social trails?

MS. COATSWORTH: That's, similarly that's a difficult thing to quantify. There is expected that with the links that these bike trails will have to surrounding bike trails that it will improve the situation.

The social trails that you mentioned do provide recreation, of course, but they are erosion problems and some of the mitigation is to restore those trails; and through barriers and through surface treatment to attempt to remove those trails, and focus people instead on designated trails.

MR. DONOHUE: Right. So you haven't tried to determine how many square feet there are on the social trails versus the proposed

new trail system?

MS. COATSWORTH: No, not that kind of quantification attempt. Mostly to provide those linkages to surrounding trails.

MR. DONOHUE: Okay. I have a question for Brent, if I may, Mr. Chairman.

Brent, I'm curious how you are proposing to handle the off-site storm water that currently comes on to the property, as part of that storm water management plan? Coming off Lake Village? I know there's a substantial amount that comes down from the middle school.

MR. WOLFF: Yeah, that question actually can be handled better by Jason Drew. We'll let Jason answer that one.

MR. DREW: Hello. My name is Jason Drew. I'm with Nichols Consulting Engineers. We are the engineer for Douglas County for the Lake Village Phase II EIP project, which encompasses Lake Village Drive and Echo Drive from Highway 50 all the way up to the middle school.

Right now I think, Charlie, what you're talking about, there's a culvert outfall on to the Sierra Colina property in this vicinity right here.

And as a part of the EIP project, that culvert is going to be removed because right now there's no legal documentation allowing the county to discharge to this private parcel. So that culvert as a part of the EIP project will be removed and it's going to be treated as a part of the proposed design for the EIP project for the road.

Does that answer your question?

MR. DONOHUE: Yes, that answers my question. May I continue? I have a few other ones.

Sydney, on page 210 you talk about the residential units and the average size of the homes, but that average land coverage is substantially different from the average size of the homes.

Is that because that determination includes the 10 acres of open space provided? Or can you just clarify why that's --

MS. COATSWORTH: I might have to look that up and accept your comment and either get back to you later in this meeting or in responses to comments.

MR. DONOHUE: Okay.

MR. SINGLAUB: Just as a reminder, Mr. Chairman, the purpose of this meeting is to

get public comment. If there are concerns that the APC has, for them to be analyzing later, those would be really great.

But the technical team is not all here on this project. That will be coming when we bring it back for approval. Thank you.

MS. AVANCE: Charlie, may I ask that you either restate the question or put it in writing so we get that right?

MR. DONOHUE: Sure. I'm curious about the chart that Sydney put up related to the base allowable coverage where it was 13 percent across the board. Was that based on the 18 acres? Or is it based on eight? Because that would probably be the difference between your home size and land coverage size. But I'll put it in writing, all right?

MS. COATSWORTH: All right, great.

CHAIRMAN TOLHURST: This is like Jeopardy. State it in the form of a question.

MR. DONOHUE: I'll put it in writing.

MS. COATSWORTH: What is complete coverage?

MR. GOLDBERG: My comment is regarding fire and defensible space. So I suggest as we move forward on that to consider, since we asked homeowners to do their own defensible

space is a large -- either the individual or part of a homeowners association, but ongoing defensible space program so that fuels reduction is considered and the fire department doesn't have to come back in ten years and ask that.

And then also the building standards, look at the California Building Standards 7A when constructing, even though it's in Nevada.

MS. COATSWORTH: Thank you.

CHAIRMAN TOLHURST: Your comments are now for both agencies? Have we made that transition? You're representing both agencies?

MR. SINGLAUB: No. We never got to that item on the Governing Board's agenda.

CHAIRMAN TOLHURST: We'll take it.

MR. GOLDBERG: Yes, absolutely.

CHAIRMAN TOLHURST: Temporarily, anyway.

Any other questions for Sydney or comments?

(There is no response.)

CHAIRMAN TOLHURST: I'll open it up to public hearing. Anyone wishing to make comments on the Sierra Colina Village, please come forward.

Just a reminder, this isn't the final approval. This is just comments for the Environmental Impact Statement.

MS. THAW: Good morning, members of the APC. My name is Melissa Thaw. I'm with the League to Save Lake Tahoe.

The preferred alternatives' impacts on traffic, noise, water quality and wildlife are significant with incorrect classifications supported by inadequate evidence. The insufficient evaluation of goshawk habitat is an especially demonstrative example of the weakness of this EIS. An additional conservation alternative needs to be prepared to sufficiently give perspective to the alternatives currently being presented.

To appear environmentally beneficial, this project attempts to include some superficially beneficial aspects such as LEED certification, some restoration of Burke Creek, and designated open space. Although this project contemplates or proposes LEED certification, some restoration of Burke Creek, fuel reduction efforts and designated open space, these only detract from the enormous size and major impacts that the project creates.

Restoration of the area should occur regardless of the construction of any commercial residential development project and SNIPLMA funds have already been specifically allocated to Burke Creek for restoration. A conservation alternative is needed to put into perspective the environmental improvements that Alternative 1 proposes. The potential exists to choose a conservation alternative that will provide restoration of the damaged watershed and surrounding forest to return the site to its healthiest natural state.

This land was originally classified as conservation land with unbuildable capabilities and then was reclassified as urban with buildable land capabilities for development. What were the justifications for these reclassifications?

One purpose of the amendments to the 1987 Regional Plan and the 208 Water Quality Plan in relation to the two-step subdivision process was to prevent new road networks. The Sierra Colina will be creating four new linear public facilities including one road. Additionally the amendments were to promote development on high capability non-sensitive lands, redirecting development to more

suitable areas and avoid developing sensitive lands.

The project site contains less than .01 percent existing coverage. One hundred percent of the project will be constructed on raw land. Fifteen percent of the entire project site will become impervious coverage and will fragment the remaining forest. 26,889 feet of coverage will need to be transferred beyond what is currently allowable to become pavement.

The project site and nearby residential and commercial areas are surrounded by acres of Forest Service land. Considerable traffic impacts include 475 new daily trips, which is above the 200 underlined as significant. The proposed mitigation fee in lieu of improvements means that direct onsite mitigation is unlikely to occur.

Increased traffic and residential noise is anticipated to be considerable. The previous Draft EIS noted the need for rubberized pavement to decrease traffic noise, indicating that traffic noise levels may be higher than the 2008 Draft EIS and mitigations outlined and the mitigations outlined will not be sufficient.

Increased traffic also impacts water quality. According to the Lake Tahoe Basin management unit cumulative watershed effects analysis and the environmental documentation for the Round Hill fuels reduction project, the Burke Creek watershed has been calculated to have an impact risk ratio of over 100 percent, with most damage coming from currently existing impervious coverage. Adding more coverage will further harm this already damaged watershed.

Finally, wildlife mitigations essentially include enhancement of riparian area. No enhancement can replace lost habitat. Goshawks have historically existed in this area. A survey conducted by wildlife resource consultants consists of only two days of broadcast surveying, which leads to too few data points to be statistically valid. This survey method detects only breeding goshawks, while half of the data was collected at the end the breeding season.

Recent studies have found that the mix of high foliage nesting areas, dry open foraging areas, and wet areas such as the site provides are suitable characteristics for goshawk habitats.

CHAIRMAN TOLHURST: Thank you.

MS. QUASHNICK: All right. Good morning. I'm Jennifer Quashnick, and although last time I spoke for the Sierra Club, today I'm going to be leaving that to Michael Donohoe. So I'm speaking as a resident.

I want to reiterate some things I mentioned at the last hearing. First is a process issue. I have this visual with me. This time I brought the whole thing. But I think this is important because not only this project but we have a lot of EISs coming up in the near future and the process really needs to accommodate the ability of the public to review it.

This DEIS was provided two weeks before the first hearing on the adequacy of this DEIS. I don't know anyone who can actually read this DEIS in two weeks, barring maybe no sleep and a lot of caffeine, and four weeks before this hearing today. Again, we have a lot of projects going on right now. I don't know how many people in this room again have read this and actually thought about it and processed how adequate it would be.

So we would like to point this out and ask that in the future when the TRPA wants to

hear from the public on the adequacy of a document, let's do it towards the end of the 60-day comment period so the public has adequate time to actually read it and think about it.

So we will be providing more detailed comments on the adequacy at the end of the 60-day period. But I would like to make that request for the future.

Another thing, the DEIS fails to include the most recently available information on the Burke Creek watershed. The League touched on it. The US Forest Service did the Round Hills fuels reduction EA this past spring and found that the watershed, the risk was 147 percent, representing an already affected watershed. And where additional impervious coverage in the watershed such as the proposed project could lead to adverse environmental impacts.

That said, this DEIS must include this information and explain how, contrary to the Forest Service findings, adding impervious coverage will improve this watershed as claimed.

We also heard at the Governing Board that new information had been collected

recently -- oh, gosh, I'm sorry. I don't have the name here. But there was also new measurements taken through 2007 up through 2008, and I asked that TRPA go back to the minutes from the Governing Board meeting and also include that data.

Also the TRPA staff put out white papers for the Regional Plan update workshop in March. One of those related to land coverage. And the white paper talked about how the Regional Plan is going to have to reduce impervious coverage if we are to meet our thresholds. Again we agree with staff's assessment in those papers and question why a project that would add almost 117,000 square feet of coverage on currently undeveloped raw land would be considered given staff's documented need to reduce coverage in the Basin.

Also, like Laurie and Jason got us talking about this morning, again increasing land coverage increases loading to the Lake. So again the DEIS needs to talk about how all these other findings are wrong in the case of this project based on the findings that are being claimed.

Next I ask TRPA to consider

Alternative 5, no action; and include as Alternative 6 the conservation purchase of the entire parcel. I believe what a land management agency would do to conserve the property is narrow enough that it could be predicted in the EIS and analyzed as an alternative.

Another question that I have that I didn't raise last time, it looks like for the proposed project, the linear public facility three, the access road, is being counted as a public facility and as a result the coverage is not counted against the development. And the reason for this is that it's being called a key pedestrian route between the north and south end of the parcel.

By my read of this, there's no sidewalk, there's no bike trail, there's nothing to accommodate pedestrians and bikers on this access road. So I question how it can be a key pedestrian route when it doesn't have anything for pedestrians. I personally don't like walking along in between cars on a roadway.

On a final note, we heard this morning the suggestion that the Burke Creek EIP project will help mitigate runoff from this

new development. To me that's using public tax dollars to fund new private development. I just think that's unacceptable.

I agree with Laurie and Jason that new development must create zero impact, but really at this point what we know now, new development needs to be creating a net to benefit, a net reduction. Less than significant, obviously inappropriate. Even zero impact, inappropriate at this point in time.

Thank you.

CHAIRMAN TOLHURST: Just a reminder, the close of the comment period is October 13. Cut down on the caffeine. You've still got 33 days.

Anyone else wish to comment on this item?

MR. DONOHOE: Good morning, Mr. Chairman, members of the APC, members of TRPA staff, and members of the public.

My name is Michael Donohoe. I'm conservation cochair for the Tahoe Area Sierra Club Group.

If you were to judge an EIS by the number of pages or by its weight, as you just saw, this Draft EIS would raise to the top of

the list. Goodness gracious, it is huge. But it's quality, not volume, that I'm interested in. And this Draft EIS falls short right from the start.

Where is the context? The history? Why is it not stated that this sensitive 18-acre stream-side parcel on raw land -- raw land, remember. Raw land that for thousands of years has protected this lake and kept it clear and removed the nutrients and the fine sediments.

UNIDENTIFIED AUDIENCE MEMBER: Right.

MR. DONOHOE: Why is it not stated that this parcel used to be designated a conservation district and that this parcel is so sensitive that the Forest Service tried to buy it? The first time they tried to buy it was in 1990. They were unsuccessful; a private developer outbid them. They again tried to buy it as recently as March 21st, 2005.

Forest Service cannot buy land under Burton Santini by law unless it is a sensitive parcel.

Isn't an EIS supposed to surface all of these kinds of facts and not just the ones that support the project proponent's proposal?

Why then do we not know from the outset that on September 22nd, 1999, the TRPA Governing Board rejected a much smaller 26-unit subdivision on this very same 18-acre parcel?

And that Tahoe's premiere scientist, Dr. Charles Goldman, got up and testified that he was, quote, negative on the ability to effectively mitigate large subdivisions and, quote, concluded that we have to be extraordinarily careful about subdivisions and that he would like to essentially, quote, not see subdivisions continue to spring up in the basin. That's on page 30 and 31 in the minutes of that meeting on the following Governing Board packet in October 1999.

Here we have a subdivision being proposed today that is twice the size of the one that was rejected nine years ago. Why this cherry picking of the facts? And why does the EIS not highlight the testimony of the other scientists and experts that testified in 1999? For example, a geomorphologist, Dr. Scott Stine. He concluded -- and this again is from the minutes -- that the project, like past and future ones involving subdivision of land and resultant construction of large amounts of

impermeable surfaces, was going to substantially increase the movement of sediment towards Lake Tahoe.

In addition he said, and this is kind of interesting -- this isn't often talked about. He said that every stream channel had not only a river of water, but a little stream of air going down it all the time. And that with the uncovering of land and the removal of vegetation and the construction of houses, dust and fine sediment were generated which then could travel long distances down that corridor and into Lake Tahoe.

Does the EIS sufficiently deal with this phenomenon? I think not.

Two other experts testified about the two-step process that is being used by TRPA, in my opinion, to sidestep the 208 plan's prohibition on new subdivisions in Lake Tahoe. Dan Siegel from the California AG's office said that the subdivision that was proposed in 1999 was not consistent with the 208 plan. And Dr. Robert Twist who helped develop TRPA's first 20-year Regional Plan was, quote, surprised to be back arguing against the subdivision process. Dr. Twist urged the Board to deny projects of this kind and also

to retire the two-step subdivision process.

You may not be familiar with that process. Some of you probably are. But it's a process whereby to get around some of the prohibitions, the project is first approved for multifamily, and then five minutes later it is approved for subdivision.

And Dr. Twist said that, at least don't do anything further with this two-step process until a thorough planning review could be done. That thorough planning review was started, but it was never completed. Some of the people in this room were involved in that. Dan Siegel came down for it. Sierra Club was involved, other groups.

Pages 3-1 and 3-2 of the EIS put on rose-colored glasses with regard to this topic and they make it look like continuing with the two-step process has no individual and cumulative negative environmental impacts. Subdivisions have negative impacts.

You have to go no further than the second page of the EIS summary to see that the EIS is more of a sales job for the proposed project than an objective surfacing of the facts. If you have a copy of that, take a look at the top of page 2. It says that the

proposed project includes construction of 50 residential units, as you saw on the Board on the screen. That's true.

But then it also says roadway improvements, utility and infrastructure improvements, et cetera. What do they mean roadway improvements? Utility improvements? This is raw land. They are proposing to build new roadways, new driveways, new sewer lines.

This is not an improvement project. This is an increase in the very kind of impermeable surface, impermeable urban coverage that the latest TMDL science is telling us is the major cause of Tahoe's clarity loss. We are thinking of adding more of that? Why doesn't the TMDL research play a major role in this EIS? Or maybe I was wrong about an EIS surfacing the facts so that TRPA can make science-based decisions about what is best for the lake.

Could it be that the purpose of an EIS is not for facts, but project justification? If you turn to page 3-21 you will see one of the more blatant examples of this. The EIS claims that the applicants were not able to locate a conservation lawyer -- a conservation buyer for the entire parcel. Really? A

wealthy local businessman I know had a group of investors lined up to buy this parcel and hold it until the U.S. Forest Service or Nevada State Lands could buy it back from them. He told me he was totally frustrated in his efforts because the owners refused to even set an asking price.

But perhaps the most disturbing thing about this EIS is what is missing. As Jennifer Quashnick noted and also the League, the Forest Service recently conducted a study of the Burke Creek watershed. It showed that the watershed is covered, over-covered and is at risk. Where is the inclusion of this Forest Service study?

This is EIS 101, folks. If this is missing, what else is missing? Cherry picking is an activity best left to the orchard. Thank you.

CHAIRMAN TOLHURST: Anyone else wishing to comment on this project? Your last chance.

(There is no response.)

CHAIRMAN TOLHURST: Seeing none, I'll close the public hearing and bring it back. Any further questions or comments from the APC? Allen?

MR. BREUCH: Real quick, just a question for Douglas County and Theresa. The number of units, is this coming out of allocations through the county or is this going to be transferred in? Just curious.

MR. ZUCKERMAN: The Douglas County allocation system is only based on parcels that are inside the Carson Valley part of Douglas County. Anything that's on the other side of the Tahoe rim is in TRPA and we have separate allocations through TRPA, but it's not part of our allocation system.

MR. BREUCH: Okay.

MS. AVANCE: Sorry. At this point it's a combination of the two. They have residential units available, they have development rights available, and they also have some allocations from Douglas County already issued to this project since it has been in. It's still -- I'm not sure right now what is going to play out with that, but I know that the residential units are available without the allocations.

MR. BREUCH: Okay. Thank you.

CHAIRMAN TOLHURST: Anyone else?

MR. LeFEVRE: I just have a quick process question. The comments that you are

now taking, how do those then show up in the next version as a response to comments? Do you go in and modify the document?

MS. COATSWORTH: We will be preparing a responses to comments document that will be a supplement to the draft.

MR. LeFEVRE: From the comments today?

MS. COATSWORTH: From the comments today and all written comments.

MR. SINGLAUB: And there may be changes to the document?

MS. COATSWORTH: Right, yes, and these comments and responses could prompt changes that will also be summarized in the strike out and underlining.

MR. LeFEVRE: Okay.

CHAIRMAN TOLHURST: Laurie?

MS. KEMPER: Yes, this is kind of a process check, too. I don't know if you can explain this, the code allowing planned unit developments and the way things have been kind of modified. And I know our code talks a little bit, our basic plan mentions looking at subdivisions -- there is a way to do exceptions and that you can allow subdivisions certain times if it sort of meets the intent of the other portions of the code and a lot of

the planned unit developments I have seen on the California side have been on much smaller parcels. They have been redevelopment in a lot of cases or they have been a smaller, just a smaller parcel surrounded by a bunch of commercial use.

That's, you know, on the North Shore or something like that where you have a lot of existing residential or tourist accommodation units. And the actual planned unit development, you know, looks, is more compact, I guess. There's not such a long roadway section. It's more like a large parking lot or something like that.

So this one has a different, just a different sense to it because you are building a roadway, you are building these big linear facilities like a bike path. It doesn't seem to meet the intent of the code in terms of that kind of infill.

You mentioned that the code has this exception language in there about planned unit developments related to moving residential allocations from a more sensitive area to a less sensitive area. And I recognize there's some high capability land on this parcel and they are not moving the development into a

sensitive land class per se, but it would seem that the EIS ought to consider some other alternatives.

So I guess I have a couple questions. One is, the first question is just: Does this development really meet the intent of the Regional Plan and the code when looked at, you know, in its sort of entirety about transferring land in, or allocations in from another site. And maybe you can answer that.

Then I have a second question about what we can ask for in terms of alternatives, too.

MR. BARRETT: The history on that again was in general we did the new plan. No new subdivisions. We had a big tack, at that time about 18,000 lots to be dealt with, bought up, built on. There's no logic: No more lot and block subdivisions. That's what most people know.

We have an exception. I use PUD as a term, but technically the goals and policy document says condominiums. The logic was that we were going to allow transfer of development, forget about the subdivision rule. If we allowed something to be built, we should -- does it matter who owns it? Could

you subdivide it? It would definitely help the transfer of the economics work out.

And we used the word "condominium." And I could probably say it in this room and most people -- maybe half of you would think townhouse, you know, towers, compact development like you were talking about. And the Attorney General that Michael talked about had that vision.

But if you go out to Uppaway or something similar to what is shown up here, there's actually condominium developments where you get a building envelope, but the open space is all held in common ownership. That is a condominium. That's normally what we call a PUD type of development.

On the other side people said no, that's what I thought. And it was pointed out by Michael, we have had several attempts to develop this parcel. And there was debate over: What did that mean? And when you look at the 208 plan, it says condominiums. No, condominiums mean townhouse-looking structures, not the detached single families.

Incline basically took this to the extreme of building what looks like a single family subdivision all on little building

envelopes with common open space. I know the League and AG did not like that. We have had numerous debates, numerous workshops trying to sort this out.

And so at this point it is not officially resolved what this gray area of condominium is. And from one point of view the proposal out there would meet, you know, the technical requirements. Other people say well, that's not the intent. And that's the debate the APC is in and you could possibly ask for some form or alternative that showed a very compact development. Anyway, this is where we are today.

MS. KEMPER: Okay.

MR. BARRETT: Probably one little side thing that was pointed out in the history because I have to plead somewhat guilty to this rezoning. That the old plan, the TRPA plan from the '70s, this was zoned tourist commercial. It was right next to the Burger King and the condominium, right next to a school. But the capability on our maps showed it to be bad capability.

When we were doing the community planning, that team looked at this. The proponents, the Rabe estate owned this

property and said no, we've done a challenge and there's some good capability on this land.

And for that, TRPA said okay, based on the team's input and all the input, we'll rezone this. We basically want it to be a transfer receiving site and we want it to be kind of like TOD development, set back with requirements that they are having to meet.

So that's why it changed. And I'm not saying that's good or bad. I'm just saying that's why it changed and that's what the applicant is dealing with today.

So anyway, there's a series of events. Michael is probably right, a better history in the EIS would be good for everybody to at least understand the events that got us there. It's got a long history. That's true.

MR. ZUCKERMAN: Mr. Chairman? I would like to rephrase the first part of Laurie's question and ask the applicant to come up and address it as to just how suitable is the project in terms of meeting the code in transferring entitlements from an area of lower capability to higher?

MS. AVANCE: I'll attempt to answer that one. The environmental -- I'm sorry, what is the term? Help me. Units, thank you.

Residential units of use that would be transferred to this site are from a known restoration site on Kahle Drive, just down the street from the Beach Club, up from the Beach Club where the ponds restoration was. Those old apartments were the site of the units to be transferred.

MR. ZUCKERMAN: Okay. I would also like to, as Douglas County representative to the APC, just tell the members and the public a bit about the history of this project that has been brought to us.

Last year we drafted a moderate income housing program through a memorandum of agreement with TRPA. This project is attempting to be the first project to take advantage of the moderate income housing agreement.

It is a little different from the moderate housing that we allow in Douglas County. For a project to qualify for mod in Douglas County we only allow 110 percent of median family income. Given the expensive living in the Basin, we upped that number to 120 percent. It allows for a density bonus if a certain percentage of the applicant's units are going to be dedicated and deed restricted

to affordable housing.

So that took a lot of effort. I wanted to thank TRPA. I think they carried the ball a little bit, more than I did on that; and also the applicant who did a lot of the work drafting the agreement.

We had spoken earlier in the process about mixing the moderate units in so there wouldn't be like a little mini ghetto in the project, but actually all of the moderate units would be invisible to the naked eye because they would be mixed throughout the project. And the applicant chose to go ahead and take our advice and do that.

I'm hoping that will be a harbinger of things to come in terms of the applicant's willingness to take some good ideas and move forward with them.

We talked about using NTCD's pilot program to use biological means to capture the finest of fine sediments in their basins. The applicant showed interest in doing that. I hope they follow that interest to maybe a pilot project with NTCD to use the algae screen that I think Doug Martin showed at APC.

We also spoke about ways to construct trails through the flood zone. And I hope the

applicant comes up with a creative solution to do that because in the end Douglas County is going to be responsible for approving this project or denying this project as a planned development. It is going to have to go in front of our Planning Commission and Board of Commissioners, and they really are going to have to look at some of the items that we pointed out to them in terms of flood zone development. Douglas County is very careful about allowing development in the flood zone and very sensitive to FEMA requirements.

So I would say that it's been so far a good relationship that we have had with the developer of this project. And we found them to be pretty responsive to the environmental, transportation, and affordable housing goals that we have in our master plan.

CHAIRMAN TOLHURST: Laurie, were you finished with your comments?

MS. KEMPER: Hmm, no. I guess the other comment or question I had, and this is just to put out there in terms of alternatives because it seems like there were -- we are going to have to discuss some other ideas on alternatives.

I like the idea, Gabby, that you

talked about, the possibility of them analyzing a more compact development. I know they have a less dense development with 37 units, but I would be interested in an alternative that looks at a more compact, with basically less roadway and less linear infrastructure and looking at the need for the bike path or how best to site that to link up with existing bike trails.

The other one that was brought up by some of the public today was about a conservation alternative and looking at having that land, you know, be acquired. I don't know how reasonable that is, but I always, whenever I think about things that don't make sense to me -- John, you talked about this, you know. There's a private property owner who owns this land and they are proposing to do something with it.

You know, I always go back to the Tahoe Research Group's project, which still kind of blows my mind that when they were trying to build a research facility at the fish hatchery site and they were looking at all these environmental benefits including tearing up the campground and SEZ and improving the SEZ and using the land they

owned to build a facility, they were asked in their EIS to look at alternatives that did not include the land that they owned. They looked at several locations within California and ended up purchasing and acquiring land or working out an agreement to build their site in Nevada, which still I don't quite get. You know, how a California institution ended up being sort of forced into Nevada, but which causes me other problems I won't go into right now.

But anyway, just in terms of trying to treat people the same, I'm just wondering, you know, it may seem unreasonable to the applicant in terms of alternatives, but when -- and I understand, you know, Harmon's need to try to use these units that have been produced out of the Kahle Drive SEZ site, that we need some multifamily housing and we have these units.

But it would seem that this project ought to be looking at other available land and, you know, stuff that currently either has been developed or is under some sort of disturbance regime or just less sensitive land. And I don't know, I realize this is late in the game and probably should have been

brought up during scoping, but it just begs the question. I know that based on all the comments that we get we are going to have to decide if we want them to go look at hybrid alternatives or another couple alternatives or even an alternative that involves not this piece of land.

MR. SINGLAUB: Just a process check. This is not scoping.

MS. KEMPER: Right, I understand.

MR. SINGLAUB: We decided already what the alternative, range of alternatives would be on this; and that it was sufficient to meet our requirements in the code.

So to ask for additional alternatives at this point would mean they would have to come back with another draft and those kinds of things. So I would be reluctant to do it and would rather instead address some of these things in the final specifically.

CHAIRMAN TOLHURST: Jason?

MR. KUCHNICKI: Just going off of that, I was wondering, was the conservation easement alternative, was that brought up during scoping at all?

MS. KEMPER: We must have both been gone during scoping.

MS. COATSWORTH: This is an issue that has been brought up. It was brought up early in the project. And the applicant did pursue, and those are documented here, conservation alternatives. And Garrett Villanueva spoke before the Governing Board at this hearing saying it was not a priority piece of land and there were no plans to acquire it.

MR. SINGLAUB: Garrett Villanueva from the Forest Service said it is not an acquisition priority for the Forest Service. And certainly within the public marketplace, if the Trust for Public Lands or somebody wants to come in and negotiate, they are welcome to do so.

CHAIRMAN TOLHURST: Charlie?

MR. DONOHUE: Thank you, Mr. Chairman. Based on Harmon's comments, in the addendum, can you talk about the history of the Kahle parcels where these residential units are coming from? Because of the fact that that was, the water quality project that went on down there was severely impacted by the fact that residential affordable moderate units had to go back on to that parcel because the applicant at that time associated with that parcel could find no other location.

So I'm really kind of interested in what is the balance of units that were allowed to go back on by -- the Governing Board substantially changed the size and configuration of an EIP project, and now I'm hearing that there are actually more residential units associated with that parcel that are out there floating around that are going to be transferred up to this one.

If I can get some kind of numbers on that and maybe I can work with you, Theresa, I'm curious about that.

MS. AVANCE: We can talk later and get that clarified.

MR. DONOHUE: Sure, okay.

CHAIRMAN TOLHURST: Any other comments?

MR. ZUCKERMAN: I just have one more question for the applicant. How would you address the item that the member of the public brought up about not counting the coverage on the linear public facility that is the roadway that serves the project?

MS. AVANCE: The linear public facilities will be dedicated as public rights. So it's actually extracted from the project area as a whole. The available coverage

associated specifically within the boundaries of those facilities is the base allowable, and additional coverage will be transferred in accordance with our allowable transfer proceedings in Chapter 20 of the Code.

It's kind of like a two-step process like subdivisions.

MR. ZUCKERMAN: Okay. So from TRPA staff's perspective it's a legitimate definition to call a roadway a linear public facility, whether it has pedestrian and bicycle facilities on it or not?

MR. BARRETT: When we lay out subdivisions and whatever, we always have this problem, oh, there's easements, there's roadways. And we use this concept of linear public facilities. And we realized that in the Bailey system generally in a narrow right-of-way you are not going to have the Bailey coverages there or you're going to have very wide right-of-ways.

So when there's existing easements, we say yes, that's an existing easement and you are allowed to transfer coverage in to meet your needs.

TRPA has the ability under our linear facilities to make determinations that

basically these are to serve properties other than them. I guess the bike trail or the pedestrian path is for other developments and access through. And that we will allow transfer coverage to happen.

MR. ZUCKERMAN: Okay. I just wanted to understand how TRPA treats that because it's very different, obviously, in terms of coverage. We don't really care about coverage in Douglas County. For our code, it doesn't include anything that has to do with that.

We would be more concerned with just making sure there's pedestrian and bicycle access. I can tell you when the PD comes in for approval in Douglas County, they would have to ask for a variance to provide a public roadway that doesn't have sidewalks and bicycle facilities attached to it.

Now, they can justify the variance request by saying that there are off-street trails that serve the same purpose and go in the same areas. But again, I just wanted to understand how you guys calculate your coverage.

MR. BARRETT: You need further explanation on that? Basically, linear facilities -- sidewalks, roads -- count, when

you do a site plan, that counts as coverage.

The thing that's important to a developer is for those facilities, if they serve other properties, we can allow transfer coverage in. So in essence, you get more coverage on your site than you would normally be allowed. And I assume in this designation that's what is happening.

MR. ZUCKERMAN: Okay, got it. Thank you.

CHAIRMAN TOLHURST: Any other comments? Questions?

MR. LeFEVRE: Mr. Chairman? It's probably already been said, but I think it would be appropriate that the applicant expand on the alternative that was eliminated, 3.7.2, which is the conservation purchase of the entire parcel to give a little bit more breadth and history of that tract.

I know the Forest Service has a letter in the record here that describes our position on it and maybe some of that could be brought forward.

CHAIRMAN TOLHURST: Any other questions? This was the associated comments for the public and APC. The comment period closes October 13.

Do we have an ETA of when the final might be coming back for final discussion?

MS. AVANCE: That would entirely depend on the scope and nature of the comments.

CHAIRMAN TOLHURST: Okay. Thank you. I think we will take a five-minute break before we move on.

(The meeting concluded at 11:00 o'clock a.m.)

STATE OF NEVADA            )  
                                  )  ss.  
COUNTY OF DOUGLAS        )

I, KAREN YATES, a Notary Public for the County of Douglas, State of Nevada, do hereby certify:

That on Wednesday, September 10, 2008, I was personally present and took verbatim stenotype notes of the Advisory Planning Commission of the Tahoe Regional Planning Agency, 128 Market Street, Stateline, Nevada, and thereafter transcribed the same into printed text as herein appears;

That the foregoing transcript, pages 1 through 53, is a full, true and correct transcription of my stenotype notes of said hearing.

**DATED at Minden, Nevada, this 15th day of September, 2008.**

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KAREN YATES, CRR  
Nevada CCR No. 195