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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LEAGUE TO SAVE LAKE TAHOE, a)
California non-profit corporation,)
)
Plaintiff,)
)
v.)
)
TAHOE REGIONAL PLANNING AGENCY,)
a separate legal entity created by bi-state)
compact approved by the United States)
Congress; SIERRA COLINA, LLC, a Nevada)
limited liability corporation; and QMO, LLC,)
a Delaware limited liability corporation,)
)
Defendants.)
_____)

3:09-cv-478-RCJ-RAM

ORDER

Currently before the Court are Sierra Colina Defendants’ Motion for Summary Judgment (#37); Plaintiff’s Motion for Summary Judgment (#38); Plaintiff’s Motion for Permanent Injunction (#41); Defendant Tahoe Regional Planning Agency’s (“TRPA”) Motion for Summary Judgment (#42); and Tyrone Polastri’s Motion for Leave to File an Amicus Curiae Brief (#58). The Court heard oral argument on August 1, 2011.

JURISDICTION & STANDING

The Court has federal jurisdiction to hear this case pursuant to 28 U.S.C. § 1331. See *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d 1072, 1075 (9th Cir. 1976) (holding that questions concerning the interpretation and application of the Tahoe Regional Planning Agency’s ordinances present federal questions under 28 U.S.C. § 1331(a)). The Court finds that Plaintiff League to Save Lake Tahoe (“Plaintiff” or “League”) has associational standing to bring this lawsuit. See *Comm. for Reasonable Regulation of Lake Tahoe v. Tahoe Regional*

1 *Planning Agency*, 365 F.Supp.2d 1146, 1161-62, 1164 n.11 (D. Nev. 2005) (finding that the
2 Committee had associational standing to challenge whether the Tahoe Regional Planning
3 Agency was required to prepare an environmental impact statement under its Code of
4 Ordinances and its Compact); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61,
5 112 S.Ct. 2130, 2136-37, 119 L.Ed.2d 351 (1992); (*see* Nason Decl. (#44); Donohoe Decl.
6 (#45)).

7 **BACKGROUND**

8 **I. Complaint**

9 On August 21, 2009, Plaintiff filed a complaint for declaratory and injunctive relief
10 against Defendants Tahoe Regional Planning Agency (“TRPA”) and Sierra Colina, LLC, Sierra
11 Colina Village, LLC, and QMO, LLC (collectively “Sierra Colina Defendants”). (Compl. (#1) at
12 1). Plaintiff brought this action to challenge the TRPA’s June 24, 2009, approval of the Sierra
13 Colina Village Project (“Project”). (*Id.* at 3).

14 Plaintiff alleged three causes of action in its complaint. (*Id.* at 16-22). In the first cause
15 of action, Plaintiff alleged that the TRPA abused its discretion and failed to proceed in manner
16 required by law when it approved the Project and the provision that found that the Project’s
17 access road was a Linear Public Facility (“LPF”) despite the fact that the road did not comply
18 with the LPF definition in the TRPA Code of Ordinances. (*Id.* at 19). Plaintiff challenges the
19 designation of LPF 3. In the second cause of action, Plaintiff alleged that the TRPA abused
20 its discretion and failed to proceed in a manner required by law when it approved the Project
21 because at least three of the four elements required by TRPA Code § 20.3.B(4) had not been
22 satisfied. (*Id.* at 22). In the third cause of action, if this Court remanded the action, Plaintiff
23 sought a writ of certiorari, pursuant to NRS § 34.020, to be issued against the TRPA directing
24 the TRPA to deny the Project as proposed. (*Id.* at 22-23). Plaintiff sought the following relief:
25 (a) issuance of a preliminary and permanent injunction prohibiting the Sierra Colina
26 Defendants from taking any action in furtherance of the Project; (b) issuance of a declaratory
27 order setting aside and directing the TRPA to set aside all Project approvals and permits at
28 issue in the action; (c) issuance of a declaratory order that the TRPA’s decision to approve the

1 Project violated the TRPA Code because the TRPA abused its discretion by approving the
2 Project's access road as a LPF and by approving the transfer of land coverage for the access
3 road under TRPA Code § 20.3.B(4); (d) issuance of a peremptory writ of certiorari ordering the
4 TRPA to set aside the Project approvals, permits, and environmental impact statement ("EIS")
5 at issue in this action; and (e) award costs. (*Id.* at 23).

6 **II. Tahoe Regional Planning Compact**

7 In 1968, the Nevada and California State Legislatures adopted the Tahoe Regional
8 Planning Compact ("Compact"), which Congress approved in 1969. (See TRPA's Mot. for
9 Summ. J. (#42) at 9). In 1980, the Nevada and California State Legislatures, with the approval
10 of Congress, adopted an extensive amendment to the Compact, whose purpose was "to
11 encourage the wise use and conservation of the waters of Lake Tahoe and of the resources
12 of the area around said lake." (See Compact (#39-2) at 3).¹ The Compact established the
13 TRPA and coffered the agency with the power "to establish environmental threshold carrying
14 capacities and to adopt and enforce a regional plan and implement[] ordinances which [would]
15 achieve and maintain such capacities while providing opportunities for orderly growth and
16 development consistent with such capacities." (*Id.* at 4).

17 The TRPA has established environmental thresholds for the Region's air, water, soil,
18 scenic, recreational, and other resources, has adopted a Regional Plan, and has implemented
19 ordinances to achieve and maintain the thresholds. (*Id.*). The Compact recognized that in
20 order to preserve the scenic beauty and outdoor recreational opportunities of the Region the
21 TRPA needed to insure an equilibrium between the Region's natural endowment and its
22 manmade environment. (*Id.*). The TRPA may only approve projects that it finds comply with
23 the Regional Plan, ordinances, rules, and regulations, and only after it makes certain written
24 findings based on substantial evidence in the record. (*Id.* at 12).

25
26 ¹ Plaintiff filed a request for judicial notice and attached relevant sections of the TRPA
27 Code of Ordinances, the Tahoe Regional Planning Compact ("Compact"), and the TRPA
28 Water Quality Management Plan. (First Request for Judicial Notice (#39)). The Court grants
judicial notice of these documents. See *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (the court may take judicial notice of the records of state agencies and other undisputed matters of public record under Fed. R. Evid. 201).

1 With respect to the Project at issue in this case, the TRPA's 19-member Advisory
2 Planning Commission ("APC"), which advises the TRPA Governing Board on technical and
3 scientific issues, voted 18 to 1 to recommend that the Governing Board certify the Sierra
4 Colina Village Project Final Environmental Impact Statement ("FEIS") as technically adequate
5 and voted unanimously to recommend that the Governing Board find that the Project's
6 environmental impacts had been reduced to a less than significant level. (Administrative
7 Record ("AR") 3334, 3496-3503). The 15-member Governing Board (including one non-voting
8 Presidential appointee) voted 12 to 1 to certify the FEIS and 11 to 2 to approve the LPF and
9 multi-family dwelling projects. (*Id.* at 4458-59, 4508-12). Prior to TRPA's approvals, the
10 Douglas County Board of Commissioners unanimously approved a development agreement
11 with Sierra Colina committing to transfer over 21,000 square feet of publicly-owned land
12 coverage from the adjacent Kahle Park and Community Center ("Kahle Park") to the Property
13 to assist in the creation of the LPFs, including LPF 3. (*Id.* at 9680, 9686-9716).

14 **III. Sierra Colina Project**

15 Sierra Colina is an 18-acre parcel located in the urban area of Stateline, Nevada. (*Id.*
16 at 5096, 5100, 6771, 7341). The parcel is bound by U.S. Highway 50 to the west; Lake Village
17 Drive/Echo Drive to the north; a U.S. Forest Service parcel to the east; and Kahle Park to the
18 south. (*Id.* at 4544). Sierra Colina is also located in close proximity to a mix of other office,
19 commercial, retail, and County administration and recreational facilities, including the adjacent
20 commercial Lake Village Professional Building and the 326-home Lake Village subdivision to
21 the north, Kingsbury Middle School to the northeast, and Shady Lane commercial industrial
22 center to the southeast. (*Id.* at 4544, 4657, 4678, 4834, 6771).

23 The prior owners of the Project property attempted to develop a residential project on
24 the parcel; however, after commencing work on the EIS the owners went into Chapter 11
25 bankruptcy. On April 27, 2005, Sierra Colina's owners purchased the property from the trustee
26 sale. (*Id.* at 6893). Shortly after acquiring the property, Sierra Colina's owners began a
27 year-long dialogue with the stakeholders in the community (including the League) to determine
28 local residents' visions for future use of the parcel. (*Id.* at 4212-15, 4651, 8861-65). In April

1 2006, Sierra Colina submitted applications to TRPA proposing to develop the “Sierra Colina
2 Village.” (*Id.* at 246-51).

3 The Project involves the construction of 50 Leadership in Energy and Environmental
4 Design (“LEED”)-certified homes, nine of which will be deed-restricted for moderate income
5 households, a network of LPFs, undergrounding of overhead utility lines, restoration of the
6 unauthorized road and trails traversing the Property including the removal of all 1,900 square
7 feet of existing coverage within the Burke Creek stream environmental zone (“SEZ”), and
8 dedication of 10.7 acres of land to Douglas County for the permanent preservation of open
9 space and public recreational access. (*Id.* at 4838, 4841-42, 4870, 4880, 4886). All portions
10 of the SEZ located on the Property are within the 10.7 acres of open space. (*Id.* at 4836,
11 4986).

12 The Project also involves an advanced storm water treatment system including shared,
13 but privately-funded, facilities for treatment of on-site private and off-site public runoff. (*Id.* at
14 4841, 4870, 4876, 4878). The Project’s storm water management system exceeds current
15 regulatory requirements for the discharge of storm water. (*Id.* at 4583, 5070, 5080).
16 Implementation of the Project’s storm water system will reduce pollutant loads to Lake Tahoe
17 compared to existing conditions. (*Id.* at 3735, 4583, 4597, 6753-55, 6898).

18 TRPA staff initially determined that the Project could have significant effects on the
19 environment and, therefore, in August 2006, TRPA retained an environmental consulting firm
20 to prepare an EIS for Sierra Colina. (*Id.* at 4714-7207). TRPA solicited comments on the
21 scope and contents of the EIS and held informal and formal scoping meetings in October and
22 November 2006. (*Id.* at 4726). In August 2008, after nearly two years of study and analysis
23 of the Project’s potential impacts, TRPA released a Draft EIS which considered five
24 alternatives, including a no-project alternative and the approved Project. (*Id.* at 4714, 4716).
25 TRPA provided a 60-day public review and comment period and held two public hearings
26 before its Governing Board and APC to solicit comments on the Draft EIS. (*Id.* at 6644). In
27 April 2009, TRPA released the FEIS for the Project which included responses to comments
28 received on the Draft EIS and appropriate revisions to the Draft EIS. (*Id.* at 6644-45).

1 The FEIS reported that all Project impacts to resources of the Basin, including air
2 quality, water quality and soils, were less than significant, or that implementation of the
3 recommended mitigation measures would reduce Project impacts to less than significant
4 levels. (*Id.* at 3678-79, 3684-90, 7309-12). Moreover, the FEIS disclosed that, as a result of
5 the 10.7 acre open space dedication and implementation of LPFs 2-5, the Project would have
6 beneficial recreational impact. (*Id.* at 5205, 6870). The FEIS concluded that the Project would
7 be developed within the allowable coverage limitations and would include improved drainage,
8 temporary and permanent best management practices, sufficient vehicular site access,
9 emergency access, sufficient parking, undergrounding of a utility line resulting in scenic
10 improvements, building designs that complied with TRPA scenic thresholds, building heights
11 that were consistent with TRPA height standards, native landscaping, and compatible lighting.
12 (*Id.* at 5109). The FEIS concluded that the Project and all of its components were consistent
13 with the Water Quality Management Plan, the Plan Area Statements (“PAS”) 73, the TRPA
14 Code of Ordinances, the Goals and Policies of the TRPA Regional Plan, and all other
15 applicable regulations and land use policies. (*Id.* at 5087-88, 5122-23).

16 The FEIS determined that LPF 3 met TRPA’s definition of “linear public facilities.” (*Id.*
17 at 4834, 4838, 4857, 4861, 5101, 5110). LPF 3 was a roadway that was linear in nature,
18 would be available to the general public, and would accommodate vehicle, pedestrian, and
19 bicycle travel. (*Id.* at 6741). The FEIS concluded that LPF 3 was the minimum necessary for
20 adequate access and that no other proposed alternatives would reduce land coverage while
21 providing an equal level of public and environmental benefit. (*Id.* at 6667, 6743). The FEIS
22 also concluded that the Sierra Colina Project would have beneficial impacts to:

- 23 • water quality, by “reduc[ing] pollutant loads for fine sediment particles by 52%,
24 for total suspended solids by 70%, and for all other pollutants of concern to lake
25 clarity (i.e. phosphorus and nitrogen) by between 28% and 49% relative to the
26 pre-project condition” (*Id.* at 3230-31, 4597, 6753-55, 6898, 9678);
- 27 • the riparian zone, by reducing existing disturbance to Burke Creek SEZ and
28 protecting a portion of the creek from future development (*Id.* at 4984, 4989,
4992);
- traffic, by reducing delay, improving level of service at the Lake Village
Drive/U.S. 50 intersection, and improving bicycle and pedestrian trails (*Id.* at

1 5257-61);

- 2 • scenic views, by undergrounding electrical lines on the site (*id.* at 3647-48,
3 5109); and
4 • recreation, by creating a 10.7-acre open space area and a network of public
5 trails to fill a gap in the County's pedestrian and bicycle network (*id.* at 4728,
6 4880-81, 9948).

7 The FEIS also explained that the network of public trails provided by the Project would:

- 8 • contribute to the regional network of pedestrian/bicycle routes (*id.* at 5112,
9 5263);
10 • reduce dependency on the automobile (*id.* at 5263, 6669);
11 • create public pedestrian and bicycle access to area neighborhoods, businesses,
12 public services and recreational facilities (*id.* at 5111-12);
13 • reduce vehicular traffic and vehicle-miles-travelled by getting residents and
14 visitors out of cars and onto maintained trails (*id.*);
15 • enhance safety of non-vehicular transit between Stateline and Round Hill (*id.*);
16 and
17 • reduce disturbance to the SEZ (*id.*).

18 On June 24, 2009, after extensive public testimony and discussions among its members
19 and staff, the TRPA Governing Board reviewed the conclusions of the FEIS, found that the
20 FEIS was in compliance procedurally and substantively with the Compact, Code, and TRPA
21 Rules of Procedure and certified the FEIS. (*id.* at 4452-59, 4698, 7309-12).

22 **IV. LPF Network**

23 A critical missing link in Douglas County's trail system is the connection of the existing
24 Round Hill bike path, which serves the commercial and dense residential areas one mile north
25 of the Property to the surrounding facilities. (*id.* at 4105, 4108, 4857-58, 4161, 9948). The
26 County recognized that access through the private Sierra Colina parcel was necessary to
27 complete this linkage and proposed to Sierra Colina that the LPF Network, consisting of LPFs
28 2 through 5, be included as an element of the Project. (*id.* at 4465-66, 4425). The LPF
Network which connects Round Hill to the surrounding facilities is the result of collaboration
between Douglas County and Sierra Colina, and the County agreed in the development
agreement to share in the cost of the LPF Network by transferring over 21,000 square feet of

1 publicly-owned coverage to the Project for construction of the LPFs. (*Id.* at 4105, 4425, 4857-
2 58, 4861, 9689, 9693-94).

3 The Property contains a portion of an existing LPF, Lake Village/Echo Drive (“LPF 1”).
4 (*Id.* at 4857, 5208). The Project’s LPF Network includes three pedestrian/bicycle paths (“LPFs
5 2, 4, and 5”) and one shared roadway (“LPF 3”). (*Id.* at 4857, 5098, 5208-09). LPFs 2
6 through 5 will be created by recorded public easements on the Property and serve the general
7 public as well as residents of Sierra Colina. (*Id.* at 3705-08, 4857, 4861, 5110).

8 LPF 1 is the existing Lake Village/Echo Drive, a 1.14-acre area which is located within
9 the 18-acre Property. (*Id.* at 4857, 5208). LPF 1 is a 60-foot wide recorded right-of-way
10 maintained by Douglas County which connects U.S. Highway 50 to Kingsbury Middle School
11 and provides access to the Lake Village Professional Building and Lake Village. (*Id.*).

12 LPFs 2, 4, and 5 consist of 8-foot wide pedestrian/bicycle paths. (*Id.* at 4858, 5208).
13 LPF 2 provides a connection between Kahle Park and the existing Round Hill bike path that
14 connects Round Hill to Kingsbury Middle School and to a lower Kingsbury residential
15 subdivision. (*Id.* at 4859, 5208). LPF 5 includes an elevated bridge over Burke Creek and
16 connects LPF 3 to Kahle Park. (*Id.*). LPF 4 connects LPFs 2 and 5 to U.S. Highway 50 via
17 LPF 3. (*Id.*). LPFs 2 and 5 are for the exclusive use of pedestrians and bicyclists. (*Id.* at
18 7353-54). In addition to pedestrian and bike access, LPF 4 provides an alternate means of
19 vehicular access to and through the Property in the event of an emergency. (*Id.*). However,
20 LPF 4, based on its size, can only accommodate smaller emergency vehicles such as police
21 cars but not fire engines. (*Id.* at 4268).

22 LPF 3 consists of a 20-foot by approximately 1,120-foot shared roadway. (*Id.* at 4861,
23 7355-56). LPF 3 provides public access for pedestrians and bicyclists to other LPFs including
24 Lake Village/Echo Drive (LPF 1) and the roadway serving Kahle Park and Kingsbury Grade
25 (LPFs 4 and 5). LPF 3 also serves as the residential access road for Sierra Colina and
26 provides access to the dedicated 10.7 acres of open space, both for the public and for
27 operation and maintenance by Douglas County. (*Id.* at 5110-11, 9696).

28

1 **V. Coverage Requirements**

2 Maximum land coverage (base allowable plus transferred) for LPFs is limited to the
3 minimum amount necessary to achieve their public purpose. LPFs 2-5 require 31,657 square
4 feet of coverage which will be achieved through a combination of base allowable and
5 transferred coverage. (*Id.* at 4882, 7353). No additional coverage is required for LPF 1. (*Id.*
6 at 4857). Base allowable coverage for the LPFs is 6,055 square feet, 4,517 square feet which
7 is attributable to LPF 3. (*Id.* at 4882, 7353). The remaining 25,602 square feet of coverage
8 needed for the LPFs will be transferred to the Property. (*Id.* at 4884). Douglas County will
9 transfer over 21,000 square feet of publicly-owned coverage to support construction of the LPF
10 Network because it “would link the public trail and off road transportation system in the vicinity
11 of the development, which would provide transportation and recreation benefits and improve
12 public safety for pedestrians and cyclists.” (*Id.* at 9686, 9693-94).

13 Douglas County’s contribution of coverage to the LPF Network enables Defendant
14 Sierra Colina, LLC, to construct nine income-restricted homes, pursue LEED certification for
15 all 50 homes, dedicate 10.7 acres to the County for open space, restore the Burke Creek SEZ,
16 fund and construct a treatment facility for public runoff, and provide public access through the
17 Property. (*Id.* at 4207). Absent the public-private partnership in the LPFs, the proposed
18 shared roadway (LPF 3) would be private drive. LPFs 4 and 5 would not be constructed, the
19 residences would be gated with no public access through the site, and the proposed nine
20 moderate-income deed-restricted homes would become market rate homes. (*Id.* at 4862).

21 The total size of the Property is 18 acres. (*Id.* at 4625, 4834). Approximately two-thirds
22 of the Property, or 10.7 acres, is being transferred to Douglas County and dedicated for
23 permanent open space. (*Id.* at 4626, 4842). Of the remaining 7.3 acres, 1.14 acres consists
24 of the existing Lake Village/Echo Drive (LPF 1). (*Id.* at 4625, 4857). The new development
25 is confined to an approximately 6.2-acre site, or one-third of the Property. (*Id.* at 4626).

26 Sixty-three percent of the 6.2-acre project site will consist of a vegetated common area,
27 while the residential buildings, patios, entry-ways and private drives will occupy approximately
28 37% of the 6.2-acre site. (*Id.*). Although the Property consists of 18 acres, land coverage for

1 the residential development, including patios and driveways, is limited to approximately 2.3
2 acres, or 13% of the Property. TRPA has determined that the multi-family dwelling project,
3 which excludes the lands underlying LPFs 2 through 5, is entitled to 87,571 square feet of
4 coverage but only utilizes 85,307 square feet, leaving 2,264 square feet of unused base
5 allowable, or potential, coverage. (*Id.* at 4884).

6 LPFs 2, 3, 4, and 5 will occupy 0.73 acre, or 4% of the 18-acre Property. (*Id.* at 4625).
7 Of the 0.73 acre, the disputed LPF 3 comprises 0.53 acres (23,012 square feet) or 2.93% of
8 the Property. (*Id.* at 4882). Together, the multi-family dwelling project and LPF projects will
9 cover approximately 14% of the Property. (*Id.* at 7327).

10 **VI. TRPA Findings & the FEIS**

11 By certifying the FEIS, the TRPA made the following findings with respect to the Project.
12 The Project was consistent with restoring, maintaining, and improving the quality of the Lake
13 Tahoe Region for visitors and residents of the region because the Project would be built to
14 TRPA design codes and in accordance with the land use regulations set for the project area.
15 (*Id.* at 5098). Additionally, the Project would include a 10.7 acre open space easement and
16 land conveyance to a public entity and involve the construction of three pedestrian/bicycle
17 paths and one shared roadway (the LPF Network) for public use. (*Id.*).

18 The Project also sought a balance between economic health and the environment
19 because the Project provided housing to Basin employees that may otherwise commute from
20 outside the Basin. (*Id.*). Additionally, the Project provided for moderate-income, deed-
21 restricted work force housing that would be available to local resident families earning not
22 more than 120% of the median income in Douglas County. (*Id.*). The Project was also
23 consistent with the planning area statement, which provided that the “area should continue to
24 be a medium density residential area, maintaining the existing character of the neighborhood.”
25 (*Id.*). The community needed reasonably priced homes for its local, middle income workforce
26 of nurses, teachers, firefighters, deputy sheriffs, and others. (*Id.* at 5123). There were zero
27 deed-restricted moderate income homes in Douglas County within the Lake Tahoe Basin.
28 (*Id.*).

1 The Project was consistent with the Goals and Policies of the TRPA Plan because the
2 Project promoted the infill of development on high capability lands, redirected development
3 to more suitable areas, and avoided the creation of new street networks. (*Id.* at 5098-5100).
4 The Project gave all persons the opportunity to use and enjoy the region's natural resources
5 and amenities by virtue of the conveyance of 10.7 acres of the Project parcel to the public
6 entity for public use and open space. (*Id.* at 5105). The space would be protected in
7 perpetuity from development by a deed restriction or easement. (*Id.*). The LPF Network would
8 be included in the land conveyance and would be intended for public use and access, as
9 would the rest of the open space on the parcel. (*Id.*). The parcel was intended to be held as
10 a permanent open space by the receiving public entity. (*Id.*).

11 The Project would also have a less than significant impact on the scenic quality ratings
12 established by the TRPA environmental thresholds. (*Id.* at 5108). The Project would also
13 remove, restore and re-vegetate 1,900 square feet of TRPA-verified existing coverage in the
14 SEZ on the Project parcel. (*Id.* at 5116). The voluntary conveyance of the 10.7 acres to the
15 public entity would include 2.4 acres of SEZ (including the portion of Burke Creek on the
16 parcel). (*Id.* at 5117). The remaining 8.3 acres of the conveyance was a Jeffrey pine common
17 forest which would provide a natural buffer to protect the 2.4 acres of SEZ from disturbance
18 associated with surrounding land uses. (*Id.*). Through the deed-restriction and public
19 ownership of the conveyed land, the Sierra Colina SEZ (including the portion of Burke Creek
20 located therein) would be protected in perpetuity from future development for the benefit of the
21 public and of the environment. (*Id.*). Additionally, the project applicant's continued
22 cooperation with Douglas County would reduce runoff and erosion impacts to the site as well
23 as surrounding areas associated with runoff from Lake Village Drive. (*Id.* at 5121).

24 The Project was consistent with the TRPA's policy of providing for the in-fill of existing
25 areas, making use of existing transportation facilities, and promoting the use of alternative
26 transportation modes. (*Id.* at 5110). Specifically, the LPF Network, including LPF 3, would
27 connect Kahle Park to the Class I bicycle trail east of the Project site and to U.S. Highway 50
28 and the commercial center southwest of the Project site. (*Id.*). The paths would be available

1 for use by future residents and the general public. (*Id.*). Additionally, LPF 3, as a shared
2 roadway between public pedestrians and bicyclists and the residents and visitors of the
3 Project, was designed to minimize impacts on public transportation, adjacent roadways,
4 intersections, and bicycle/pedestrian facilities. (*Id.*). LPF 3 was also consistent with the
5 TRPA's goals and policies of developing and encouraging the use of pedestrian and bicycle
6 facilities as a safe and viable alternative to automobile use and the high priority of constructing
7 pedestrian and bicycle facilities in urbanized areas of the region where reductions in
8 congestion would result. (*Id.* at 5110-11). The LPF Network would connect and facilitate
9 future connections to nearby land uses and/or other public use pathways. (*Id.* at 5111). The
10 LPF Network also provided bicycle and pedestrian linkages between residential and
11 nonresidential areas. (*Id.*). The LPF Network was beneficial to the region because it reduced
12 vehicle motor transmissions by getting residents and visitors out of cars and onto maintained
13 trails; enhanced public safety between Stateline and Round Hill via safe, non-vehicular transit;
14 and created pedestrian and bicycle access for residents, employees, and visitors from area
15 neighborhoods, businesses, public services, and recreational facilities. (*Id.* at 5112). The
16 Project would require the transfer of coverage for the site to develop the LPFs, but any land
17 coverage transfer would be consistent with TRPA regulations. (*Id.* at 5115). The Project was
18 also consistent with the goal of providing bike trails to provide alternatives for travel in
19 conjunction with transportation systems because the LPF Network would connect with and
20 provide future opportunities for connection with nearby roadways and public use trails in the
21 area. (*Id.* at 5119).

22 The Project would promote energy conservation programs and the development of
23 alternative energy sources to lessen dependence on scarce and high-cost energy supplies by
24 specifically seeking to achieve a LEED rating from the U.S. Green Building Council. (*Id.* at
25 5118). LEED certification required advanced energy and resources saving technology to be
26 implemented into the building design. (*Id.*). The Project would use environmentally preferable
27 materials and the latest recycled technically and would utilize efficient advanced framing
28 techniques that would reduce waste from framing. (*Id.*). The Project was also an Energy Star

1 Partner and was committed to obtaining Energy Star certification for all of its residential units.
2 (*Id.* at 5119). Energy Star qualified homes were independently verified to ensure that they met
3 strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency. (*Id.*).
4 Energy Star homes were significantly more energy efficient than standard homes because
5 they incorporated a variety of energy-efficient features, including effective insulation, high
6 performance windows, tight construction and ducts, efficient heating and cooling equipment
7 and Energy Star qualified lighting and appliances, all of which contributed to lower energy
8 demand and reduced air pollution. (*Id.*).

9 The Project was consistent with the Goals and Policies of the Regional Plan and any
10 environmental impact was considered less than significant. (*Id.* at 5120-21, 5124). The
11 Project was consistent with applicable land use plans and policies as well as the Goals and
12 Policies of the Regional Plan and would not contribute to any potential cumulative land use
13 impacts. (*Id.* at 5123).

14 LEGAL STANDARD

15 I. Tahoe Regional Planning Compact

16 Article VI(j) of the Compact provides provisions for any “[!]legal actions arising out of or
17 alleging a violation of the provisions of this compact, of the regional plan or of an ordinance
18 or regulation of the agency or of a permit or a condition of a permit issued by the agency.”
19 (Compact (#39-2) at 12, 16). Article VI(j)(5) of the Compact provides that for any legal action
20 which challenges an adjudicatory act or decision of the agency to approve or disapprove a
21 project

22 the scope of judicial inquiry shall extend only to whether there was prejudicial
23 abuse of discretion. Prejudicial abuse is established if the agency has not
24 proceeded in a manner required by law or if the act or decision of the agency
25 was not supported by substantial evidence in light of the whole record. In
making such a determination the court shall not exercise its independent
judgment on evidence but shall only determine whether the act or decision was
supported by substantial evidence in light of the whole regard.

26 (*Id.* at 17).

27 Substantial evidence is “less than a preponderance, but more than a scintilla of
28 evidence.” *Comm. for Reasonable Regulation of Lake Tahoe v. Tahoe Reg’l Planning*

1 Agency, 311 F. Supp. 2d 972, 989 (D. Nev. 2004) (internal quotations omitted). “In making
2 this determination, a court views the entire record to see if it contains such relevant evidence
3 as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (internal
4 quotations omitted). In reviewing the findings of the TRPA, “it is not the function of the Court
5 to weigh the considerable amount of conflicting evidence received by the administrative
6 bodies,” but instead the Court’s “primary function in reviewing the agency’s findings is to
7 determine whether there was substantial evidence to support them.” *Cal. Tahoe Regional*
8 *Planning Agency v. Harrah’s Corp.*, 509 F.Supp. 753, 758 (D. Nev. 1981). The fact that the
9 Court may “draw two inconsistent conclusions from the record does not prevent the
10 administrative agency’s finding from being supported by substantial evidence.” *Good*
11 *Samaritan Hosp., Corvallis v. Mathews*, 609 F.2d 949, 955 (9th Cir. 1979).

12 **II. Summary Judgment Standard**

13 Pursuant to Fed.R.Civ.P. 56, a court will grant summary judgment “if the movant shows
14 that there is no genuine dispute as to any material fact and the movant is entitled to judgment
15 as a matter of law.” Fed.R.Civ.P. 56(a). Material facts are “facts that might affect the outcome
16 of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106
17 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A material fact is “genuine” if the evidence is such
18 that a reasonable jury could return a verdict for the nonmoving party. *Id.*

19 The moving party bears the initial burden of identifying the portions of the pleadings and
20 evidence that the party believes to demonstrate the absence of any genuine issue of material
21 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265
22 (1986). A party asserting that a fact cannot be or is genuinely disputed must support the
23 assertion by “citing to particular parts of materials in the record, including depositions,
24 documents, electronically stored information, affidavits or declarations, stipulations (including
25 those made for purposes of the motion only), admissions, interrogatory answers, or other
26 materials” or “showing that the materials cited do not establish the absence or presence of a
27 genuine dispute, or that an adverse party cannot produce admissible evidence to support the
28 fact.” Fed. R. Civ. P. 56(c)(1)(A)-(B). Once the moving party has properly supported the

1 motion, the burden shifts to the nonmoving party to come forward with specific facts showing
2 that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
3 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986).

4 DISCUSSION

5 I. Motions for Summary Judgment

6 A. Plaintiff's Motion for Summary Judgment (#38)

7 Plaintiff moves for summary judgment on all three causes of action. (Pl.'s Mot. for
8 Summ. J. (#38) at 5). Plaintiff argues that the administrative record demonstrates that the
9 primary purpose of LPF 3 is to serve the Project's residents and their guests' need to drive
10 their cars to their individual homes. (*Id.* at 20). Plaintiff argues LPF 3 is not designed for
11 pedestrians/bicycles because, if it was, the path would only be 8-feet wide. (*Id.*). Plaintiff
12 asserts that even if the interior pedestrian/bicycle paths, LPFs 4 and 5, were not built, the
13 developer would still build the access road. (*Id.* at 21). Plaintiff contends that, assuming
14 *arguendo*, that the primary purpose of the access road was to serve other people besides the
15 Project's residents, TRPA's approval of LPF 3 was unlawful because the coverage attributed
16 to the access road and its biking/pedestrian use was not the minimum amount of coverage
17 necessary for that claimed public purpose, which is 8-feet. (*Id.* at 25). Plaintiff asserts that
18 because only 8-feet is necessary to allow for pedestrian/bicycle traffic, the TRPA could not
19 rationally find that 22-feet, the entire width of the road designed for cars, was necessary for
20 pedestrian/bicycle use. (*Id.* at 26). Plaintiff argues that the TRPA's findings do not support
21 a finding that the road is required to provide access to property other than that owned by the
22 applicant. (*Id.* at 29). Plaintiff asserts that there were at least two feasible alternatives that
23 would have reduced coverage including reducing the Project size and creating a separate
24 pedestrian/bicycle path. (*Id.* at 29-30).

25 Defendants filed oppositions and Plaintiff filed a reply. (See Sierra Colina Def.'s Opp'n
26 to Mot. for Summ. J. (#47); TRPA's Opp'n to Mot. for Summ. J. (#49); Pl.'s Reply to Mot. for
27 Summ. J. (#56)).

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B. Sierra Colina Defendants' Motion for Summary Judgment (#37)

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Sierra Colina Defendants move for summary judgment on all counts. (See Sierra Colina Mot. for Summ. J. (#37) at 19). They assert that, under the plain meaning of the TRPA Code, LPF 3 is a linear public facility. (*Id.* at 20). They contend that substantial evidence supports the TRPA's decision to include the entire 20-foot roadway width in the LPF 3 because LPF 3 is a Class III shared-use bicycle and pedestrian route. (*Id.* at 22-23). They argue that the 20-foot wide LPF 3 is required for public safety and emergency responders. (*Id.* at 23-24). They assert that the LPF Network, including LPFs 2, 3, 4, and 5, facilitate public and quasi-public activities pertaining to transportation, health, and welfare by creating non-vehicular links between commercial, residential, and recreational facilities; providing an emergency ingress and egress; reducing wildfire hazards, and protecting the Burke Creek SEZ. (*Id.* at 20, 25-27). They contend that substantial evidence supports the TRPA's coverage transfer findings made pursuant to TRPA Code § 20.3.B(4). (*Id.* at 27). With respect to the "no feasible alternative" prong, Sierra Colina Defendants argue that TRPA considered Plaintiff's alternatives during the administrative process and rejected them based on substantial evidence. (*Id.* at 28-29). They assert that the Code focuses on whether there is a feasible LPF alternative not whether there is a feasible project alternative. (*Id.* at 29). They argue that the unusual configuration for the LPF Network is that it provides a critical connection through private property to other pedestrian/bicycle connections. (*Id.* at 32-33). They assert that Plaintiff improperly focuses on who will be primarily served by the roadway instead of who will be primarily served by LPF 3 and improperly focuses on who will primarily be served by LPF 3 in isolation instead of considering who will primarily be served by the LPF Network. (*Id.* at 33). They assert that the TRPA was only required to make the four findings in TRPA Code § 20.3.B(4) and that no additional findings are required. (*Id.* at 35).

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Plaintiff filed an opposition and Defendants filed a joint reply. (See Pl.'s Opp'n to Sierra Colina Mot. for Summ. J. (#48, 54); Joint Reply (#55)).

C. TRPA's Motion for Summary Judgment (#42)

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The TRPA moves for summary judgment on all counts. (TRPA Mot. for Summ. J. (#42))

1 at 21). The TRPA argues that LPF 3 is a linear public facility as a matter of law based on the
2 Code's plain meaning because it pertains to transportation by accommodating vehicle,
3 pedestrian, and bicycle travel; pertains to health and welfare because it provides an
4 emergency ingress and egress, access for fuels reduction, fire reduction, and environmental
5 benefits; and serves both the public and the residents of Sierra Colina. (*Id.* at 22). The TRPA
6 asserts that the Code does not prohibit an LPF from serving private users as long as it also
7 serves public or quasi-public uses. (*Id.* at 23). The TRPA contends that 20-feet is the
8 minimum width permissible under Code § 24.2E for pedestrian, bicycle, and vehicle use. (*Id.*
9 at 24). The TRPA asserts that substantial evidence in the record supports its finding that LPF
10 3 is a linear public facility of adequate size to serve its public purpose and that its finding is
11 consistent with precedent. (*Id.* at 24-25). The TRPA argues that substantial evidence
12 supports its findings to permit the transfer of land coverage for LPF 3. (*Id.* at 26-34). The
13 TRPA contends that substantial evidence demonstrates that permitting a transfer of land
14 coverage will not adversely impact water quality. (*Id.* at 34-35).

15 Plaintiff filed an opposition and Defendants' filed a joint reply. (See Pl.'s Opp'n to TRPA
16 Mot. for Summ. J. (#48, 54); Joint Reply (#55)).

17 **D. Analysis**

18 In this case, there are two issues before the Court: (1) whether substantial evidence
19 supports the TRPA's finding that the 20-foot wide roadway is a Linear Public Facility as
20 defined by TRPA Code of Ordinances § 2.2 and (2) whether substantial evidence supports the
21 TRPA's finding that the roadway, designated as LPF 3, qualifies for a transfer of land coverage
22 pursuant to TRPA Code of Ordinances § 20.3.B(4). (See Compl. (#1) at 16-22; TRPA's Mot.
23 for Summ. J. (#42) at 9).

24 **i. Claim 1: Linear Public Facilities**

25 The TRPA Code of Ordinances ("Code")² § 2.2 defines the term "Linear Public
26 Facilities" as "[p]ublic service facilities which are linear in nature such as roads, streets, trails,

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28 ² The full TRPA Code of Ordinances is located on the TRPA website at <http://www.trpa.org/default.aspx?tabindex=2&tabid=172>.

1 utility transmission and distribution facilities and other similar right-of-ways. Also includes
2 accessory uses to such facilities, including without limitation pump houses, lift stations, and
3 access right-of-ways.” (Code (#39-1) at 18). Code § 2.2 defines “public service” as “public
4 or quasi-public uses or activities pertaining to communication, transportation, utilities,
5 government, religion, public assembly, education, health and welfare, or cultural and civic
6 support. It does not include such uses or activities that are primarily involved in commercial
7 enterprises.” (*Id.* at 25).

8 As an initial matter, Plaintiff does not challenge the factual findings made by the TRPA
9 in the FEIS but instead only challenges the application of those findings to the Code. The
10 TRPA certified the FEIS on June 24, 2009. (AR 4452-59). The FEIS and supporting exhibits
11 support the TRPA’s finding that LPF 3 is a linear public facility under Code § 2.2 for the
12 following reasons. First, LPF 3 is linear in nature because it is a road. (*Id.* at 6741).

13 Second, the road has public transportation uses. Specifically, LPF 3 provides for public
14 transportation uses because it provides pedestrian walkways and bike paths for both the
15 general public and the residents of the Sierra Colina Village. (*Id.* at 4861). LPF 3 serves as
16 a pedestrian walkway, access road, and bike path that would serve the public and residents
17 by connecting “the residential and commercial areas of the north of the [project] to the
18 recreational, residential, commercial, governmental, and other community resources south and
19 west of the [project]. (*Id.*). Additionally, an LPF map demonstrates that LPF 3 connects LPF
20 1 to LPFs 4 and 5, thus, demonstrating that LPF 3 serves a public purpose to connect the
21 public pedestrian/bike users of LPF 1 to the pedestrian/bike pathways located on LPFs 4 and
22 5. (*Id.* at 5206). The FEIS also states that the LPFs would be used by “substantial numbers
23 of surrounding residents, workers, and visitors for transportation and recreation.” (*Id.* at 4861).
24 Those potential users include: “(i) residents of the adjacent 325-home Lake Village
25 subdivision, (ii) staff of and visitors to the adjacent Lake Village Professional Building, (iii)
26 students at the Kingsbury Middle School, (iv) residents of the Round Hill, lower and
27 mid-Kingsbury and lower Kahle residential areas; and (v) employees, visitors and residents
28 traveling between Nevada Beach and the Round Hill residential and commercial centers on

1 the one hand, and the Lake Village subdivision, Stateline urban core and Kahle Park areas
2 on the other hand.” (*Id.*).

3 Third, LPF 3 has public health and welfare uses because it provides a fire truck ingress
4 and egress from Lake Village Drive. (*Id.* at 5107). The record demonstrates that “only in the
5 case of emergency, LPFs 3 and 4 may be used as an emergency egress for the general public
6 from Lake Village Drive/Echo Drive areas, or as an emergency ingress for emergency vehicles
7 where access is otherwise severely constrained or inaccessible.” (*Id.* at 7353). The project
8 applicant would “work with area emergency services (fire, ambulance, or police) to prepare a
9 plan to determine when and how use of this emergency access would be triggered.” (*Id.*).

10 Additionally, LPF 3 provides a connection to LPF 4 and 5 which will reduce the
11 pedestrian/bike traffic on U.S. Highway 50. (*Id.* at 6743). The FEIS notes that pedestrians
12 and/or bicycle riders have been struck by motor vehicles and injured or killed while using
13 Highway 50 to travel between Stateline and both the Round Hill commercial and residential
14 area and the Elks Point Road/Nevada Beach area. (*Id.* at 6743 n.2).

15 As such, the record demonstrates that substantial evidence supports the TRPA’s
16 classification of LPF 3 as a linear public facility. Accordingly, the Court denies Plaintiff’s
17 motion for summary judgment (#38) on the first cause of action and grants Defendants’
18 motions for summary judgment (#37, 42).

19 **ii. Claim 2: Land Coverage**

20 Code § 2.2 defines “land coverage” as a “man-made structure, improvement or
21 covering, . . . that prevents normal precipitation from directly reaching the surface of the land
22 underlying the structure, improvement or covering. Such structures, improvements and
23 coverings include but are not limited to roofs, decks, surfaces that are paved with asphalt,
24 concrete or stone, roads, streets, sidewalks, driveways, parking lots, tennis courts, patios.”
25 (Code (#39-1) at 17). Land coverage also includes “lands so used . . . for such uses as for
26 the parking of cars and heavy and repeated pedestrian traffic that the soil is compacted so as
27 to prevent substantial infiltration.” (*Id.* at 17-18).

28 Code § 20.3 provides land coverage limitations such that “[n]o person shall create land

1 coverage in excess of the limitations set forth in this chapter.” (*Id.* at 48). Code § 20.3.A
2 explains base land coverage requirements. (*See id.* at 49). Code § 20.3.B provides that land
3 coverage may be transferred to a parcel and explains which parcels and uses are eligible for
4 transfer of land coverage. (*Id.* at 50). This section of the Code sets the maximum limits for
5 the aggregate base coverage and coverage transferred. (*Id.*). With respect to linear public
6 facilities and public health and safety facilities, Code § 20.3.B(4) provides the following:

7 The maximum land coverage (base coverage plus transferred coverage) for
8 linear public facilities and public health and safety facilities is limited to the
9 minimum amount needed to achieve their public purpose. Such transfer may
10 be permitted, provided TRPA makes the following findings:

- 11 (a) The project is on the list of additional public service facilities if required
12 pursuant to Section 33.5;
- 13 (b) There is no feasible alternative that would reduce land coverage;
- 14 (c) The project because of its unusual configuration or service requirement,
15 requires special consideration; and
- 16 (d) The facility primarily serves the needs of persons other than those who
17 are, or will be, residents of the lands in question, or the owners of the
18 land in question.

19 (*Id.* at 52). Code § 2.2 defines “feasible” as “[c]apable of being accomplished in a successful
20 manner within a reasonable period of time, taking into account economic, environmental, legal,
21 social, and technological factors. (*Id.* at 12).

22 First, Plaintiff does not dispute Defendants’ contention that the TRPA no longer requires
23 or maintains a list of additional public service facilities, pursuant to Code § 20.3.B(4)(a). (*See*
24 *Sierra Colina Defs’ Mot. for Summ. J. (#37)* at 28; *TRPA’s Mot. for Summ. J. (#42)* at 29).
25 Additionally, the record demonstrates that the TRPA no longer requires or maintains a list of
26 additional public facilities. (AR 3719, 7354). As such, this prong is not at issue.

27 Second, Plaintiff asserts that there were two feasible alternatives, including (1) reducing
28 the entire project by 18%, and (2) making a separate 8-foot wide bikeway, that would be
classified as LPF 3, in addition to a 20-foot wide roadway that would not be an LPF. (Pl.’s Mot.
for Summ. J. (#38) at 30). With respect to the first alternative, the Code asks whether there
is a feasible alternative LPF not whether there is a feasible project alternative. See Code

1 § 20.3.B(4)(b). As such, the TRPA was not required to consider whether reducing the project
2 as a whole would have reduced land coverage. Additionally, the record demonstrates that the
3 TRPA did consider five project alternatives and ultimately approved Alternative 1. (See AR
4 4727-29).

5 With respect to Plaintiff's second alternative, the TRPA did consider it as an alternative
6 but found it to be not feasible based on economic and environmental factors. (*Id.* at 7354).
7 The TRPA considered adding a 4-foot sidewalk to LPF 3 based on public comments. (*Id.* at
8 8961). In response to that inquiry, Brian Shinault, an architect, drafted a letter explaining that
9 they had considered that proposal and that it was not feasible. (*Id.* at 8961-64). Specifically,
10 Shinault found that there were physical constraints to adding an additional 4-feet, including:
11 (1) the location of and boundaries between high and low land capability areas on the site; (2)
12 the topography of the parcel, and potential increased scope of excavation, cuts and fills on the
13 site; (3) the existence of rock outcroppings and site features protected under Chapter 30 of
14 the TRPA Code of Ordinances; (4) the Storm Water Management Approach designs along
15 and adjacent to LPF 3, including underground treatment vaults; and (5) the TRPA coverage
16 rules that shaped the design of the site plan for the proposed project and the finite amount of
17 onsite coverage available to the project. (*Id.* at 6742, 8961). Shinault also found that it would
18 cost \$100,000 plus to design and purchase covering for constructing a 4,400 square foot
19 sidewalk (1,100 feet long by 4 feet wide) along one side of LPF 3. (*Id.* at 8962). Additionally,
20 Shinault found that adding a 4-foot sidewalk would create physical, regulatory, and financial
21 difficulties that would eliminate other proposed project public benefits such as moderate
22 income homes. (*Id.*). Because adding a separate pedestrian/bike facility would cause the
23 above economic and environmental problems the TRPA found the alternative to be not
24 feasible. (*Id.* at 7354). Substantial evidence supports the TRPA's finding that a separate
25 pedestrian/bike facility was not a feasible alternative based on economic and environmental
26 factors.

27 Third, substantial evidence supports the TRPA's finding that the project requires special
28 consideration because of its unusual configuration in that the LPFs, including LPF 3, provides

1 a critical bike/pedestrian connection through a privately owned parcel. The TRPA found that
2 LPF 3 “provide[d] the only possible connection to LPFs 4 and 5, which provide[d] further
3 connection to and from a greater network of local recreation, residential, public service,
4 employment and commercial facilities.” (*Id.* at 7355). The TRPA found that the LPFs would
5 connect the 326 units of the Lake Village condominium project to Kahle Park, Kingsbury
6 Grade, and to nearby community services, commercial establishments and transit. (*Id.* at
7 6774). Douglas County supported LPFs 2, 3, 4, and 5 because “the Douglas County trail
8 system ha[d] never been completed” because the most desirable route for the trail to connect
9 the Roundhill/Kingsbury bike trail to the Kahle Park and Recreation Center was through the
10 privately-owned parcel now known as Sierra Colina. (*Id.* at 9676). “The County ha[d] been
11 waiting for years for a private land owner of this parcel who shared an interest in providing
12 significant public benefits by completing this missing link in [their] trail system.” (*Id.*). Thus,
13 substantial evidence supports the TRPA’s finding that the Project has an unusual configuration
14 in that the Project can connect existing bike routes throughout the area.

15 Finally, substantial evidence supports the TRPA’s finding that LPF 3, in conjunction with
16 the LPF Network as a whole, will primarily serve the needs of persons other than those who
17 are, or will be, residents of the land in question. The TRPA acknowledged that LPF 3 would
18 serve the future Sierra Colina Residents, in addition to existing Lake Village Condominium
19 residents. (*Id.* at 6742). Additionally, the TRPA recognized that based on LPF 3’s connectivity
20 to LPFs 4 and 5, LPF 3 would potentially be used by: “(i) staff and visitors to the adjacent Lake
21 Village Professional Building, (ii) users of the Kingsbury Middle School facilities, (iii) residents
22 of the Round Hill, lower and mid-Kingsbury and lower Kahle residential areas, and (iv)
23 employees, visitors and residents traveling between Nevada Beach and the Round Hill
24 residential and commercial centers, and the Lake Village subdivision, Stateline urban core and
25 Kahle Park areas.” (*Id.* at 6743). The TRPA acknowledged that LPF 3 would provide access
26 to the residents of the proposed Project, but also noted that LPF 3 would connect the
27 residential and commercial areas north of the Project site to the recreational, residential,
28 commercial, governmental, and other community resources south and west of the site. (*Id.* at

1 4861, 6743). The TRPA found that LPF 3 would serve approximately 50 homeowners living
2 on the project parcel and that residents and guests would be limited in number. (*Id.* at 4861,
3 7355). The TRPA found that the LPFs, including LPF 3, would serve the members of the
4 public at large because the LPFs functioned as a key component in connecting the area. (*Id.*
5 at 7355). The record demonstrates that there are “several thousand people” living in lower
6 Kingsbury, down Kahle Drive, in Elk Point, in Round Hill, and the Lake Village Condominium
7 area. (*Id.* at 4416).

8 On the other hand, Plaintiff points out that the only vehicle access to the Project site is
9 on LPF 3 and that LPF 3 is expected to generate 500 daily vehicle trips by residents. (*See id.*
10 at 4727, 6927). The record demonstrates that five percent of the Project residents are
11 expected to make their trips via public transportation, foot, or bike. (*Id.* at 486).

12 Although the record demonstrates that the residents of the Project will use LPF 3
13 significantly to access their homes, the record does not demonstrate that they will be the only
14 people using LPF 3. The record demonstrates that LPF 3 is the key component to connecting
15 the existing pedestrian/bike trails in the region and, thus, LPF 3 serves the needs of people
16 other than those who will be residents of the project. Additionally, Plaintiff does not dispute
17 that there are a finite number of residents associated with the Project and that there are
18 several thousand others in the surrounding community. Therefore, substantial evidence
19 supports the TRPA’s conclusion that LPF 3 primarily serves the needs of persons other than
20 those who will be residents of the Project because the surrounding community would use LPF
21 3 to connect to the other pedestrian/bike trails in the community.

22 Accordingly, substantial evidence supports the TRPA’s finding that LPF 3 satisfied the
23 transferred land coverage requirements of Code § 20.3.B(4). Therefore, the Court denies
24 Plaintiff’s motion for summary judgement (#38) on the second cause of action and grants
25 Defendants’ motions for summary judgment (#37, 42). Because Plaintiff’s third cause of action
26 is dependent upon the success of its first two causes of action, the Court denies Plaintiff’s
27 motion for summary judgment for the third cause of action and grants Defendants’ motions for
28 summary judgment in its entirety.

1 **II. Tyrone Polastri’s Motion to File an *Amicus Curiae* Brief (#58)**

2 Tyrone Polastri, founder of the Lake Tahoe Bicycle Coalition (“LTBC”) moves to file an
3 *amicus curiae* brief with this Court in support of the TRPA and the Sierra Colina Defendants.
4 (Mot. to File Amicus Curiae (#58) at 2; Amicus Brief (#58-1)). In the amicus brief, Polastri
5 states that he supports the efforts by Defendants to create public bicycle and pedestrian trails
6 through the Sierra Colina parcel. (Amicus Brief (#58-1) at 2). He quotes a letter, dated June
7 1, 2009, that he had submitted to the TRPA during a public hearing for this Project. (*Id.* at 5).
8 He asserts that, according to Sierra Colina’s environmental impact statement, if Plaintiff were
9 to prevail in this litigation the consequence would be the loss of bicycle trails on the Sierra
10 Colina parcel. (*Id.* at 6).

11 Plaintiff does not oppose the *amicus* brief but notes that some of Polastri’s brief refers
12 to matters outside of the administrative record and that the June 2009 letter is in the
13 administrative record. (Pl.’s Response (#59)).

14 “There is no inherent right to file an *amicus curiae* brief with the Court. It is left entirely
15 to the discretion of the Court.” *Long v. Coast Resorts, Inc.*, 49 F.Supp.2d 1177, 1178 (D. Nev.
16 1999). “This is true notwithstanding the fact that the parties may have consented, or do not
17 object, . . . , particularly where the applicant’s only concern is the manner in which this Court
18 will interpret the law.” *Id.* A court may grant leave to appear as an *amicus* if the information
19 offered is timely and useful. *Id.*

20 In this case, the Court grants Polastri’s motion to file an *amicus curiae* brief (#58) but
21 notes that this Court’s review of the brief is limited to the content contained in the
22 administrative record.

23 **III. Plaintiff’s Motion for Permanent Injunction (#41)**

24 Plaintiff moves for a permanent injunction on the grounds that, after the Court grants
25 its motion for summary judgment, there are no issues remaining in this case. (Mot. for
26 Permanent Injunction (#41)). Because the Court denies Plaintiff’s motion for summary
27 judgment in its entirety, the Court denies Plaintiff’s motion for permanent injunction (#41) on
28 grounds that it cannot demonstrate that it is likely to succeed on the merits.

CONCLUSION

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For the foregoing reasons, IT IS ORDERED that Sierra Colina Defendants' Motion for Summary Judgment (#37) is GRANTED in its entirety.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (#38) is DENIED in its entirety.

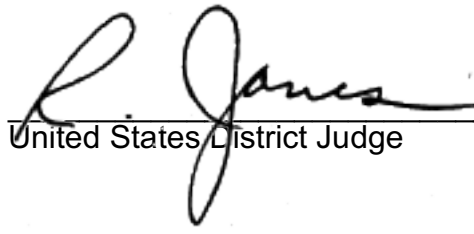
IT IS FURTHER ORDERED that Plaintiff's Motion for Permanent Injunction (#41) is DENIED.

IT IS FURTHER ORDERED that Defendant TRPA's Motion for Summary Judgment (#42) is GRANTED in its entirety.

IT IS FURTHER ORDERED that Tyrone Polastri's Motion for Leave to File an *Amicus Curiae* Brief (#58) is GRANTED.

The Clerk of the Court shall enter judgment accordingly.

DATED: This 29th day of August, 2011.


United States District Judge