

*DRAFT*  
**DECISION NOTICE**  
and  
**FINDING OF NO SIGNIFICANT IMPACT**

***BURKE CREEK HIGHWAY 50 CROSSING AND REALIGNMENT  
PROJECT***

**U.S. FOREST SERVICE  
LAKE TAHOE BASIN MANAGEMENT UNIT  
DOUGLAS COUNTY, NEVADA**

**BACKGROUND**

This is a cooperative project involving multiple agencies. Activities are proposed on lands under the jurisdiction of Douglas County (County), Nevada Department of Transportation (NDOT), private (Sierra Colina and Apartments 801) and the U.S. Forest Service (USFS), Lake Tahoe Basin Management Unit (LTBMU). The Nevada Tahoe Conservation District (NTCD) is acting on the behalf of NDOT and the County, as the recipient of a Federal Erosion Control Grant for the project, administered by the USFS. NDOT is also contributing funds to the project, as well as the Nevada Division of State Lands (NDSL) and Tahoe Regional Planning Agency (TRPA).

The project area is comprised of open space, roads, commercial development and parking lots owned by USFS, NDOT, the County, Sierra Colina LLC., and Apartments 801 LLC. The USFS LTBMU administers the National Forest System lands (NFS) west of US 50. East of US 50 is commercial development owned by Apartments 801 LLC., Kahle Drive Community Center parking lots, ballfields and land owned by the County and vacant land along Burke Creek owned by Sierra Colina LLC. US 50, which runs through the project area, is owned and controlled by the NDOT. Single family residential and multi-family residential land use is found immediately to the south of the project area, on the south side of Kahle Drive. The entire project area drains to Lake Tahoe via surface drainage, mainly through Burke Creek. Stormdrain systems collect runoff from Kahle Drive, a portion of US 50 and the adjacent neighborhoods and route it to Burke Creek.

The County obtained a portion of the commercial parking lot north of the commercial complex (old Nugget Casino) located at 177 HWY 50 and adjacent to Burke Creek east of US 50 as part of the Boundary Line Adjustment (BLA) negotiated with Mr. Charles Bluth as recorded September 24, 2014 in the County recorded document numbers 0849812 through 0849815. As part of the BLA, the County also obtained easement on a portion of the parcel located at 179 HWY 50 for the construction and maintenance of Burke Creek Restoration Project. In return, Mr. Bluth obtained a portion of the parking lot located at 175 HWY 50 to the south of the commercial building and a non-exclusive parking easement for a portion of the County owned parking lot located at 181 HWY 50 (see Figure 1-3 Easements). Mr. Bluth sold the property to Apartments 801 LLC. in the spring of 2015.

NTPD and the County coordinated with the new owner of the commercial complex (Apartments 801 LLC.) to participate in the project and allow project improvements at the commercial complex. A brochure summarizing the project benefits titled Burke Creek Highway 50 Crossing and Realignment Project: Potential Area Enhancements August 2015 (Appendix A) was created and shared with Apartments LLC., but the owner was not interested in project participation by allowing improvements on the commercial complex property. The proposed improvements to Apartments 801 LLC property are depicted on the 50% design plans but removed from further design.

Federal funding for the non-NFS lands in Phase I was authorized in a Decision Memo approved on June 24, 2016.

## **DECISION**

I have reviewed the Burke Creek Highway 50 Crossing and Realignment Project Environmental Assessment (EA), the Project Record, and the Response to Comments (FONSI/DN, Appendix A).

I have decided to implement Alternative 2, the proposed action, as summarized below and described in detail in the EA (Chapter 2). My decision includes two elements. First I am approving the implementation of Phase II, below Highway 50, which is on National Forest System lands. Second, my decision authorizes the use of National Forest System lands in Phase I, west of Highway 50 under an appropriate Special Use Permit.

## **ALTERNATIVE 2 – PROPOSED ACTION**

The Proposed Action would implement the Burke Creek Highway 50 Crossing and Realignment Project Phase I and II.

Phase I is described as “above US 50”, and Phase II is described as “below US 50”. Phase I, which is entirely on state, county and/or private land, except for a small portion west of US 50 that is on NFS land, will replace existing undersized culvert at US 50 with new culvert capable of safely conveying the 50-year flow event; above US 50, the project will remove approximately 9,000 square feet of parking lot, stabilize portions of existing Burke Creek channel, and construct new stream channel and floodplain; decommission legacy roads and

trails on Sierra Colina property; install a stormwater conveyance and treatment improvements along the west side of US 50 (NFS land).

Phase II, which lies on National Forest System lands, will recontour and excavate to abandon the existing unstable Burke Creek channel and replace with geomorphically stable channel to tie into the new US 50 stream culvert outlet on NFS land. Further details of the Proposed Action are included in the EA Section 2.1.2.

## **DECISION RATIONALE**

The alternative I have selected fully meets the purpose and need for this area (EA Sec. 1.3). Initially the TAC reviewed a number of alternate approaches (EA Sec. 2.5), but through a reasoned prioritization process the TAC determined that the proposed action was the best fit when considering effectiveness and cost. Public scoping and comment did not reveal any notable alternative approaches to the proposed action. The proposed action includes a comprehensive suite of Design Features and Best Management Practices (EA Sec. 2.3) that fully mitigate any effects to less than significant (see FONSI below).

## **ALTERNATIVES CONSIDERED**

In addition to the selected alternative (Alternative 2), I also considered the no-action alternative in detail (EA Chapter 2). Under this alternative, no activities would occur to restore Burke Creek. Work on NFS lands would not be authorized in Phase I, and the USFS would not undertake restoration as described in Phase II.

## **PUBLIC INVOLVEMENT**

Public scoping commenced in February 2015 with the printing of an article in the Tahoe Tribune and a public meeting attended by the Tahoe Tribune, Mountain Resort Television, 2 representatives of the Sierra Club and two members of the public. A letter seeking stakeholder input/comment was mailed to area agencies, stakeholders and adjacent property owners along with a project description and map of proposed improvements. NTCD toured the project site with Sierra Club representatives and described project improvements and impacts. One written comment letter was received from the Sierra Club as a result of public scoping.

A technical Advisory Committee to help guide the project from analysis of existing conditions through development of 100% design plans and construction was formed from the following agency representatives:

- United State Forest Service – Lake Tahoe Basin Management Unit (LTBMU)
- Nevada Department of Transportation (NDOT)
- Nevada Division of State Lands (NDSL)

- Nevada Department of Environmental Protection (NDEP)
- Douglas County (County)
- Tahoe Regional Planning Agency (TRPA)
- U.S. Army Corps of Engineers (USACE)

On April 1, 2016 the EA was released for a 30 day comment period, which ended on May 2, 2016. Three comments were received. Two from TRPA and the other from a private party. Response to the comments is summarized in Appendix A.

### **FINDING OF NO SIGNIFICANT IMPACT**

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. **Beneficial and adverse impacts** – My finding of no significant environmental impact is not biased by the beneficial effects of the action (EA, Chapter 3). The project design which includes the Design Features and Best Management Practices described in the EA Section 2.3, and Appendix reduce any impacts resulting from implementation of this project will be less than significant.
2. **The degree to which the proposed action affects public health or safety** – There will be no significant effects on public health and safety. Appropriate signs, barriers and traffic control will be implemented during construction to prevent harm to the public. The project when completed will reduce the risk of flooding or road failure along Highway 50.
3. **Unique characteristics of the geographic area** – For the most part the project is not in a unique geographic area. However, montane meadows have been identified among the most vulnerable and impacted habitat types of the Sierra Nevada and the TRPA has identified meadow ecosystems as an important focus area for restoration efforts in the Lake Tahoe Basin. Meadows are a comparatively rare habitat in the Lake Tahoe Basin but are of great ecological importance and play a crucial role in hydrologic processes, erosion control, nutrient cycling, and habitat for many plant and animal species. This project will improve the condition of Rabe Meadow, below Highway 50, over the long-term by correcting human impact from the past and restoring a more natural hydrologic regime.
4. **The degree of controversy over environmental effects** – Public involvement with interested and affected individuals and agencies was conducted throughout the environmental analysis. Minor changes were incorporated into the final proposed

action to accommodate public or agency concerns. However, none of the three comments received during the comment period identified any controversy over the environmental effects disclosed in the EA.

5. **The degree to which the possible effects on the human environment are highly uncertain or involves unique or unknown risks** – The LTBMU and cooperating agencies have considerable experience and success with the types of activities to be implemented. The effects analysis in the EA shows that overall effects are not uncertain, and do not involve unique or unknown risk (EA, Chapter 3).
6. **The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.** The action will not establish a precedent for future actions with significant effects. No significant effects are identified (EA, Chapter 3), nor does this action influence a decision in principle about any future considerations. As described in #5 above the outcome of the actions proposed are well known.
7. **Whether the action is related to other actions with individually insignificant but cumulatively significant impacts** – There are no known significant cumulative effects among this project and other ongoing or planned projects in or adjacent to this project. The effects of other foreseeable future actions as well as past actions and ongoing actions were included in the analysis (EA, Chapter 3).
8. **The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources** – The project area has been surveyed for cultural resources. The risk of damage to cultural resources is considered to be sufficiently mitigated by the design features included in the project (EA Sec. 3.3)
9. **The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973** – The information provided for this project specific analysis on Sierra Nevada Yellow Legged Frog (SNYLF) and Lahontan Cutthroat Trout (LCT) is discussed in detail in the project’s BA/BE (EA Appendix C) and the associated project effects description in the EA are an accurate portrayal for these species at this time with the information obtained to date.
10. **Whether the action threatens a violation of Federal, State, or local law or other requirements imposed for the protection of the environment** – The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA. The action is consistent with the 1988 LTBMU Land and Resource Management Plan for the parts of

the project that occur on National Forest System lands, and meets federal law for the actions proposed for federal funding on state, county and/or private lands.

## **FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS**

### **National Forest Management Act**

The National Forest Management Act (NFMA) requires the development of long-range land and resource management plans. The LTBMU Forest Plan was approved in 1988 as required by this act. It has been amended several times, including in the Sierra Nevada Forest Plan Amendment (SNFPA) (USDA Forest Service 2004). The Forest Plan provides guidance for all natural resource management activities. The NFMA requires that all projects and activities be consistent with the Forest Plan. The Forest Plan has been reviewed in consideration of this project. A Forest Plan consistency matrix for this project was completed (Project Record Section A).

### **Endangered Species Act**

In accordance with Section 7(c) of the Endangered Species Act, the U.S. Fish and Wildlife Service (USFWS) list of endangered and threatened species that may be affected by projects in the Lake Tahoe Basin Management Area was reviewed (verified October 10, 2014) and effects on those species are analyzed in the BA/BE (EA Appendix C).

### **National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in, the National Register of Historic Places. Section 106 of the NHPA (Public Law 89.665, as amended) also requires federal agencies to afford the State Historic Preservation Officer a reasonable opportunity to comment. (Project Record Section B-3).

### **Clean Water Act (Public Law 92–500)**

All federal agencies must comply with the provisions of the Clean Water Act (CWA), which regulates forest management activities near federal waters and riparian areas. The resource protection measures associated with the Proposed Action ensure that the terms of the CWA are met, primarily prevention of pollution caused by erosion and sedimentation.

Section 404 of the CWA (33 U.S.C. 1344) regulates activities that result in the discharge of dredged or fill material into waters of the U.S., including wetlands. The US Army Corps of Engineers (USACE) has the principal authority to regulate discharges of

dredged or fill material into waters of the U.S. Under Section 404 of the CWA, a permit from the USACE for the project's impacts to waters regulated by the CWA may be required.

### **Environmental Justice (Executive Order 12898)**

Executive Order 12898 requires that all federal actions consider potentially disproportionate effects on minority and low-income communities, especially if adverse effects on environmental or human health conditions are identified. Adverse environmental or human health conditions created by any of the alternatives considered would not affect any minority or low-income neighborhood disproportionately.

The activities proposed in alternatives were based solely on the existing and desired condition of Burke Creek proposed in response to the purpose and need. In no case were the project activities identified based on the demographic makeup, occupancy, property value, income level, or any other criteria reflecting the status of adjacent non-federal land. Reviewing the location, scope, and nature of the proposed project in relationship to non-federal land, there is no evidence to suggest that any minority or low-income neighborhood would be affected disproportionately. Conversely, there is no evidence that any individual, group, or portion of the community would benefit unequally from any of the actions in the proposed alternatives.

### **Invasive Species Management, FSM 2900**

This EA covers botanical resources and invasive plants. An Invasive Plant Risk Assessment has been prepared (EA Appendix G2). The project's resource protection measures are designed to minimize risk of new invasive plant introductions (See EA Chapter 2 and Appendix A of this document).

### **Migratory Bird Treaty Act of 1918 as amended (16 USC 703-712)**

The original 1918 statute implemented the 1916 Convention between the United States and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the United States and Mexico, Japan, and the Soviet Union (now Russia). Specific provisions in the statute include the establishment of a federal prohibition, unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird." Because forest lands

provide a substantial portion of breeding habitat, land management activities within the LTBMU can have an impact on local populations.

A Migratory Bird Report (EA Appendix F) has been prepared for this project which fulfills the requirements of this act and Executive Order 13186.

### **Tahoe Regional Planning Agency**

This project will be submitted for review by TRPA consistent with the terms of the 1989 MOU between TRPA and the Forest Service. Portions of the project federally funded on private, county and state lands may require TRPA permits.

### **ADMINISTRATIVE REVIEW AND IMPLEMENTATION DATE**

This proposed decision is subject to objection pursuant to 36 CFR 218, Subparts A and B. Objections will only be accepted from those who submitted project-specific written comments during scoping or other designated comment period. Issues raised in objections must be based on previously submitted comments unless based on new information arising after the designated comment period(s).

Objections must be submitted within 45 days following the publication of a legal notice in the Tahoe Daily Tribune. The date of the legal notice is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely upon dates or timeframes provided by any other source. It is the objector's responsibility to ensure evidence of timely receipt (36 CFR 218.9).

Objections must be submitted to the reviewing officer: Randy Moore, Regional Forester, USDA Forest Service; Attn: Burke Creek Project - LTBMU; 1323 Club Drive, Vallejo, CA 94592. Phone (707) 562-8737. Objections may be submitted via mail, FAX (707-562-9229), or delivered during business hours (M-F 8:00am to 4:00pm). Electronic objections, in common (.doc, .pdf, .rtf, .txt) formats, may be submitted to: objections-pacificsouthwest-regional-office@fs.fed.us with Subject: Burke Creek Project - LTBMU. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Objections must include (36 CFR 218.8(d)): 1) name, address and telephone; 2) signature or other verification of authorship; 3) identify a single lead objector when applicable; 4) project name, Responsible Official name and title, and name of affected National Forest(s) and/or Ranger District(s); 5) reasons for, and suggested remedies to resolve, your objections; and, 6) description of the connection between your objections and your prior comments. Incorporate documents by reference only as provided for at 36 CFR 218.8(b).

## CONTACT

For additional information concerning this project, contact:

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Forest Supervisor  
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Date

Appendices:

Appendix A – Response to Comments

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## **Appendix A**

### **Response to Comments**

#### **From 30 Day Comment Period (April 1 to May 2, 2016)**

#### ***Burke Creek Highway 50 Crossing and Realignment Project***

In response to the legal notice for the 30 day comment period for the Environmental Assessment (EA), three (3) comment letters were received.

All references to the EA in this document refer to the Final EA unless otherwise noted. In the event that commenters reiterate comments made to and responded to earlier in this document, these duplicated comments are noted and reference to previous responses are provided. The comments and the Forest Service (FS) responses are as follows:

#### **Comment Letter 1 – John Grigsby**

The proposed curb and gutter, culvert, trench drain shown in Figures 2-2 and 2-3, alongside Highway 50, must be widened so that there is sufficient room on each side for a sidewalk/bike path to be constructed in the future.

**Response:** The proposed curb and gutter along US 50 is consistent with the planned transportation improvements as indicated in the Draft Tahoe Douglas Area Plan (October 2014). The Area Plan indicates that there are no planned bike lanes along either side of US 50 and a planned sidewalk on the east side of US 50. The planned sidewalk (referenced in the Area Plan) may still be installed behind the Project's proposed curb and gutter. Douglas County and NDOT are both project partners and have approved the installation of the proposed curb and gutter.

#### **Comment Letters 2 and 3 – TRPA (Shannon Friedman and Sean Tevlin)**

There is a 5-8 foot head cut in between the bike path bridge and the project area in Rabe Meadow along Burke Creek. Can the project area be extended to include this head cut?

**Response:** No. We are aware of this head cut as well as a series of smaller head cuts below the project area. While we recognize these may need treatment in the future, they are not part of the purpose and need (EA Sec. 1.3) for this project or the scope of available funding for this project. This project focuses on the portion of Burke Creek above Highway 50 and improvements to the culvert under Highway 50. The portion of the project (Phase II) is a connected action necessary to properly manage the water that will come out of the new culvert. The project is not a general rehab of the entire Rabe Meadow.

We believe it is unlikely that this head cut would affect the restored channel, at least in

the foreseeable future. The head cut would have to move through an aspen stand, drain the pond and move through a thicket of willows before it affects the restored area. This process will likely take decades.

The EA should identify why the culvert under US Highway 50 is not going to be constructed to be fish passable.

**Response:** The proposed rock cascade at the culvert outfall is the design component which limits fish passage. The existing sewer line dictates the elevation of the culvert and without substantial fill to bring up the grade below Highway 50, results in a cascade to create a fish passable culvert. The design team considered importing fill as part of Phase II to create a fish passable rock cascade but determined the design to be costly and construction of a stream channel on imported fill potentially unstable. The proposed culvert slope would allow retrofit of weirs within the culvert to allow for fish passage if the priorities changed in the future

In section 2.1.2...explain why the project will re-construct the berm on the south edge of the newly constructed floodplain.

**Response:** Berm reconstruction is necessary so as not to increase the flooding potential to the private property to the south. Berm is designed to safely contain and convey the 100 year flow of Burke Creek.

In section 2.2 Desired Condition, Scenic Resources, the parking lot removal and floodplain restoration should be identified as a scenic quality improvement.

**Response:** Section 2.2 Desired Condition, described in general the goals of the project to improve or at least not degrade the visual resources. However, we have revised the environmental consequences section to further describe the visual benefits of elements of the project, such as the removal of the parking lot (Section 3.6.2)

In section 2.3 Project Design Features and Best Management Practices, Revegetation the EA should say that invasive species will not be used in revegetation, take out the word intentionally.

**Response:** We have edited the references design feature for revegetation to clarify that no species known to be invasive would be used. There remains the remote possibility that a species thought to be appropriate and not invasive may grow in unexpected ways in a new environment.