



SIERRA CLUB
TAHOE AREA GROUP



July 26, 2018

To: California Department of Parks and Recreation
Sierra District
Cyndie Walck, CEQA Coordinator
P.O. Box 266
Tahoma, CA 96142

Subject: Upper Truckee River Restoration and Golf Course Reconfiguration Project, State
Clearinghouse No. 2006082150

Dear Ms. Walck,

Attached please find the joint comments of the Sierra Club Tahoe Area Group and the Center for Biological Diversity on the Draft Environmental Impact Report/Environmental Impact Statement for the Upper Truckee River Restoration and Golf Course Reconfiguration Project.

The Sierra Club has been working since 1892 to protect communities, wild places and the planet itself. It is the oldest, largest, and most influential grassroots environmental organization in the United States. Founder John Muir appears on the 2005 California State quarter.

The Sierra Club is a national nonprofit organization of over 700,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

The Sierra Club's Tahoe Area Group (TAG) is a group of the Mother Lode (California) and the Toiyabe (Nevada) chapters of the Sierra Club. TAG has over 1100 members in the Lake Tahoe Area.

The Center for Biological Diversity is a non-profit public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over one million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people of California.

Both the Center and the Sierra Club are significantly involved in a wide range of environmental policy issues throughout the state, including the state's role in managing public lands and the proper interpretation and implementation of the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*) and the National Environmental Policy Act, (42 U.S.C. section 4321 *et seq.*) In support of their missions, the Center and the Sierra Club work

to ensure that public agencies safeguard the state's public lands and adequately analyze and mitigate the environmental impacts of projects under CEQA. Accordingly, both the Center and the Sierra Club have particular interest in the issues presented in this proposed project.

Respectfully,



Lily Hays, Acting Chair
Sierra Club Tahoe Area Group

/Aruna Prabhala/

Aruna Prabhala
Center for Biological Diversity

July 26, 2018
Joint Comments
Sierra Club Tahoe Area Group
And the
Center for Biological Diversity
on the
Draft Environmental Impact Report/Environmental Impact Statement on the
Upper Truckee River Restoration and Golf Course Reconfiguration Project (EIR)

In these comments we address:

- River Restoration is a separate issue from a golf course project
- Alternative 2B is inconsistent with:
 - State Parks' statutory mandates
 - State Parks' duty to preserve California's public lands
 - State law governing the preservation of State Parks
 - State law governing State Recreation Areas
- Alternative 2B violates policies developed by State Parks
- Alternative 2B is not consistent with state policies promoting the preservation of ecological communities and wetlands
- Alternative 2B does not comply with the requirement that a general plan be prepared when new facilities are developed
- River restoration is a separate issue from a golf course project

We conclude: Only Alternatives 3 and 5 can lead to the expeditious restoration of the river. Alternative 5 is the best environmentally. Alternative 3 is the best balance of the interests. Alternative 2B would have more negative environmental impacts and is legally questionable. We question why the EIR would present only one alternative that State Parks deemed feasible at the time of issuance of the new project proposal in June 2018 rather than an array of meaningful choices.

State Parks Should not Condition River Restoration Activities Upon a Golf Course Project.

State Parks conduct in conditioning river restoration activities upon the expansion of a golf course establishes a disturbing precedent. It sends a message that important ecological restoration projects will be conditioned upon revenue generation by unrelated activities – such as golf – that either fail to promote or even contravene State Parks' statutory mandates. From the beginning, State Parks improperly fixated upon maintaining or expanding the golf course, and senior officials conceded as early as 2006 that the “No Golf Course” alternative “would **not** receive the full evaluation afforded the more feasible alternatives that

more closely match the Department's vision for the project." (EIR Volume 4 page 4-249, emphasis added)

State Parks' proposed Alternative 2B is a misguided plan to degrade public lands to accommodate a full-size golf course in the Sierra Nevada.

If State Parks approves this proposed project, it will set a precedent for State Parks to pursue other opportunities to downgrade state parks, state wildernesses, or state reserves to the state recreation area classification in order to generate revenue or placate narrow interests. Downgrading or degrading these invaluable pieces of California's natural heritage is antithetical to State Parks' mission of preserving public trust resources for the use and enjoyment by all Californians.

Alternative 2B is inconsistent with State Parks Statutory Mandates.

State Parks' attempt to downgrade state park land in Washoe Meadows State Park ("Washoe Meadows SP") to the state recreation area classification is inconsistent with State Parks' statutory mandates. Public lands designated as state parks – such as Washoe Meadows SP – are to be preserved "*in perpetuity for the people of the state.*" (Cal. Pub. Res. Code § 5019.91(b), emphasis added.) State Parks may not downgrade and degrade these lands in order to accommodate a full-size golf course for the express purpose of "revenue generation." The EIR states this revenue criterion in Volume 4 page 2-3. In addition, State Parks has chosen to claim that only Alternative 2B could meet this revenue criterion.

The Project is not consistent with State Parks' duty to Preserve California's Public Lands.

The project involves downgrading up to 134.5 acres of Washoe Meadows State Park from state park to state recreation area classification in order to expand a golf course.¹ For this land transfer, this activity violates California's policy of preserving and protecting state parks. The California Legislature has declared that "California's state parks are an essential part of California's unique heritage, and protect important natural, cultural, and historical resources of great value to all Californians." (Cal. Pub. Res. Code § 5019.91(a).) In furtherance of this public policy, State Parks has a statutory duty of preserving California's (a) extraordinary biological diversity, (b) protecting its most valued natural and cultural resources, and (c) creating opportunities for high-quality outdoor

¹ The EIR may be considered inadequate because the number of acres is not clearly specified. Volume 5 Appendix K, "Lake Valley State Recreation Area General Plan Amendment and Classification Adjustment and Washoe Meadows State Park Classification Adjustment" specified that 92.5 acres would be transferred to the recreation area. Volume 6 of the EIR has a similarly titled Appendix A. However Appendix A lists no update on the number of acres to be transferred. Volume 6, page 2-3 indicates that Alternative 2 would retain 42 **more acres within Washoe Meadows State Park** than under Alternative 2B. This then indicates Alternative 2B transfers 42 plus 92.5 acres to Lake Valley State Recreation Area.

recreation. (Cal. Pub. Res. Code § 5019.91(b).) Likewise, State Parks has a duty to “promote and regulate the use of the state park system ***in a manner that conserves the scenery, natural and historic resources.***” (Cal. Pub. Res. Code § 5001.2, emphasis added.)

Public lands are set aside as state parks in order “to protect their natural, historical, cultural, and recreational values ***in perpetuity for the people of the state.***” (Cal. Pub. Res. Code § 5019.91(b), emphasis added.) The California Legislature has further declared that state parks and state recreation areas should “be preserved and managed for the benefit and inspiration of all state residents and visitors to the state parks.” (Cal. Pub. Res. Code § 5001.)

State Parks is therefore charged with (a) protecting California’s biological diversity and natural resources by designating state parks “in perpetuity” and (b) managing these areas in a manner that conserves their natural resources. State Parks’ plan to downgrade state park land to the state recreation area classification in order to expand a golf course violates the mandate that state park lands be set aside “in perpetuity” for the people of the state. Similarly, degrading public lands to serve a small and diminishing number of golfers (Economic letter report prepared by TCW Economics, January 19, 2012 page 5, transmitted to the California Park and Recreation Commission January 25, 2012 by Washoe Meadows Community) is inconsistent with State Parks’ mandate to preserve state parks and state recreation areas for all Californians.

The Project Is Not Consistent With State Law Governing the Preservation of State Parks.

The Project is not consistent with the statutory framework governing the management of state parks and the protection of their natural, scenic, cultural, and ecological resources. The purpose of California’s state parks system is to preserve natural, scenic, and cultural values as well as “the most significant examples of ecological regions of California, ***such as the Sierra Nevada . . .***” (Cal. Pub. Res. Code § 5019.53, emphasis added.) The fens at risk of degradation by the Project undisputedly constitute a significant example of an ecological region of the Sierra Nevada. State Parks has acknowledged that the fens west of the pre-existing golf course are “characterized by a series of wetland and bog plant communities ***recognized as unique in the High Sierra.*** These bogs and wetlands contain streams which flow through the forest areas and into holes of 2’ to 3’ depth.” (EIR Volume 4, page 4-75, emphasis added.) Such fens can take hundreds or thousands of years to form (letter to Tahoe Regional Planning Agency, et al from Washoe Meadows Community dated October 6, 2006 page 10), are hotspots of biological diversity (Plant Community Characterization and Ranking of Fens in the Lake Tahoe Basin, California and Nevada, California Native Plant Society Study, June 2011, page 2), and are also home to the threatened Sierra Nevada yellowlegged frog (ibid, page 15).

State Parks is charged with managing state parks “in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established.” (Cal. Pub. Res. Code § 5019.53.) Towards this end, any improvements undertaken within state parks “shall be for the purpose of making the areas available for public enjoyment and

education ***in a manner consistent*** with the preservation of natural, scenic, cultural, and ecological values for present and future generations.” (*Ibid.*, emphasis added.) Such improvements may not involve “major modification of lands, forests, or waters.” (*Ibid.*) State Parks further is prohibited from undertaking improvements which (a) do not directly enhance the public’s enjoyment of the natural, scenic, cultural, or ecological values of the resource or (b) are “attractions in themselves.” (*Ibid.*)

The Project would violate all of these mandates: (1) installing a golf course over and adjacent to sensitive wetlands on state park land in the Sierra Nevada is not consistent with the preservation of these natural resources for present and future generations; (2) downgrading many acres of state park lands in order to accommodate an expanded golf course amounts to a “major modification of lands, forests, or waters;” (3) degradation of parkland to expand a golf course also marks the polar opposite of “enhancing” the natural, scenic, cultural, and ecological values of the fens at Washoe Meadows SP; and (4) a golf course is clearly an “attraction” in itself, and accordingly has no place on state parks land.

State law governing “expansion of existing improvements” also may prohibit the expansion of the golf course on state park land. State law prohibits the development of any “new facility” on any unit of the state park system unless it is “compatible with the classification of that unit.” (Cal. Pub. Res. Code § 5001.9.) Again, the construction of new facilities – such as an expanded golf course – is clearly not compatible with the existing classification of that unit.

State Parks’ attempt to evade these requirements by downgrading state park land is disturbing and unprecedented.

The Project Is Not Consistent With State Law Governing State Recreation Areas.

The Project violates the letter and spirit of Public Resources Code section 5019.56, which governs state recreation areas. Subdivision (a) provides that State Parks may establish state recreation areas, but sets forth mandatory requirements regarding the management of these areas. For instance, such areas “shall be selected for their having terrain ***capable of withstanding extensive human impact.*** . . .” (Cal. Pub. Res. Code § 5019.56(a), emphasis added.)

The terrain in Washoe Meadows SP that will be downgraded is not “capable of withstanding extensive human impact.” (*Ibid.*) As evidence in the record demonstrates, fens are very sensitive to anthropogenic disturbances, and anthropogenic impacts even some distance from the actual fens can impair their function. (EIR Volume 5 Appendix M, pages 2- 3) Furthermore, the California Native Plant Society concluded that “fens are among the most sensitive habitat types identified in ecological assessments of the Sierra Nevada . . . Any condition or activity that disturbs the hydrologic regime or nutrient levels of a fen, causing drying or changes in plant composition, is a threat to the function of that fen.” (Plant Community Characterization and Ranking of Fens in the Lake Tahoe Basin, California and Nevada, California Native Plant Society Study, June 2011, pages 2-3). In addition, these fragile wetland habitats and adjacent lands may not be capable of maintaining their natural functions with the extensive human

impacts associated with a golf course. Activities that can threaten fens include any resource use affecting their watershed such as trampling, logging, road building, water pumping and water pollution. Any condition or activity that disturbs the hydrologic regime or nutrient levels of a fen is a threat. Any change in the nutrient composition of the groundwater is also a threat. (Ibid, page 3). Even fens that are beginning to form should be left undisturbed and direct use is to be avoided. (Verification and Description of Fens in Washoe Meadows State Park, EL Dorado County, California, California Native Plant Society, November 2011, page 10). In short, these lands are not suitable for the state recreation area classification because they do not have “terrain capable of withstanding extensive human impact. . . .” (Cal. Pub. Res. Code § 5019.56(a).) A further discussion on this is provided by Dr. Qualls (letter to TRPA, Subject Upper Truckee River Restoration and Golf Course”, March 2012). The California Native Plant Society indicated that the “Washoe Meadows Fen is rated highly for Conservation Significance because it is fairly undisturbed, supports rare taxa, and is well protected since it is on State Park land and within a Critical Aquatic Refuge.” (Plant Community Characterization and Ranking of Fens in the Lake Tahoe Basin, California and Nevada, California Native Plant Society Study, June 2011, page 33). As such, State Parks’ plan to downgrade these lands from the state park to state recreation area classification is not consistent with section 5019.56(a).

State Parks also has not demonstrated that it properly considered the compatibility of such “improvements” with the surrounding environment. Section 5019.56 states that for improvements undertaken within state recreation units, “consideration shall be given to compatibility of design with the surrounding scenic and environmental characteristics.” State Parks did not comply with this duty. The EIR has not provided enough detail to evaluate the analysis and data related to the groundwater wells and potential mitigation measures for the significant impacts caused by construction and placement of the golf course near the fens. These negative impacts include those expected from the use of the haul road adjacent to the large fen.

The EIR has also not correctly identified the risks of transport of fertilizer nutrients from the proposed golf course planned for Washoe Meadows State Park to the Upper Truckee River.

Instead of evaluating whether a golf course was compatible with the surrounding environment, State Parks fixated upon revenue generation (the “state revenue criterion” in the EIR) to the detriment of its statutory duties. (EIR Volume 4 page 2-3).

State Parks’ governing statutes further indicate that the state recreation area classification is not appropriate for areas of significant ecological value. Section 5019.56(a) mandates that “[a]reas containing ecological, geological, scenic, or cultural resources of significant value **shall be preserved** within state wildernesses, state reserves, state parks, or natural or cultural preserves.” (Cal. Pub. Res. Code § 5019.56(a).) Read within its context – which describes the characteristics of state recreation areas – this passage confirms that areas of significant ecological value are appropriate for designation as state reserves or state parks, **not** as state recreation areas.

Section 5019.56(a) describes a non-discretionary (“shall”) mandate, thereby requiring that areas of significant ecological value be preserved. By downgrading state park land of significant ecological value to the state recreation area classification, State Parks has essentially interpreted this mandatory duty as a suggestion that can be considered and rejected.

The Project Violates Policies Developed By State Parks.

The Project is not consistent with Statements of Policy adopted by State Parks. State Parks’ 2005 California Recreation Policy declares: Recreation areas should be planned and carefully managed to provide optimum recreation opportunities **without damaging significant natural or cultural resources**. Management actions should strive to **correct problems that have the potential to damage sensitive areas and degrade resources**. (State Park & Recreation Commission Policy 1.1 2005 California Recreation Policy) This Policy accordingly prohibits State Parks from managing state recreation areas in such a manner which causes damage to significant natural or cultural resources. State Parks must instead correct – and not create – problems that may potentially damage sensitive areas. For the reasons discussed above in the preceding two items, State Parks’ conduct in developing and approving the Project contravenes this Policy.

State Parks’ Policy II.1 does give State Parks the ability to grant “nonconforming uses” to state park land in limited circumstances. (State Park & Recreation Policy II.1 Integrity of State Park System Lands). However, such actions are expressly “[subject to provisions of law,” which necessarily includes the requirement that state parks be set aside to protect their natural values “in perpetuity” (Cal. Pub. Res. Code § 5019.91) and that the state recreation area classification is not appropriate for areas of significant ecological value. (see Cal. Pub. Res. Code §§ 5019.56(a), 5019.91, 5001.2.) By the terms of its own policies, State Parks therefore lacks the authority to grant “nonconforming uses” when such uses are not consistent with these statutes.

Moreover, State Parks has a legal duty to comply with its own adopted policies. State Parks cannot “pick and choose” which policies to follow based upon its preferences or plans at any given time. This principle was articulated over sixty years ago by the U.S. Supreme Court in the *Accardi* doctrine. The doctrine generally requires agencies to comply with their own stated policies, even when those policies are more rigorous than would otherwise be required by law. (See *Alcaraz v. INS* (9th Cir. 2004) 384 F.3d 1150, 1162, citing *United States ex rel. Accardi v. Shaughnessy* (1954) 347 U.S.260.) The *Accardi* doctrine has been adopted in California. (*Amluxen v. Regents of University of California* (1975) 53 Cal.App.3d 27, 36.)

The Project Is Not Consistent With State Policies Promoting The Preservation of Ecological Communities and Wetlands

The Project contravenes state policies designed to protect ecologically sensitive areas such as the fens in Washoe Meadows SP. The State of California has

adopted a public policy of promoting the “preservation of ecological communities, native flora or fauna, important geological features, outstanding scenic values, and open-space recreational opportunities.” (*Santa Catalina Island Conservancy v. County of Los Angeles* (1981) 126 Cal.App.3d 221, 237, citing Cal. Pub. Res. Code §§ 5019.71, 5019.65, 5019.62, 5019.53 and 5811.) The California Legislature further has declared that the “remaining wetlands of this state are of increasingly critical economic, aesthetic, and scientific value to the people of California . . .” (Cal. Pub. Res. Code § 5811.)

The Project is inconsistent with these policies because it will result in the destruction – not preservation – of unique ecological communities of wetlands. And this degradation will occur on public land collectively owned by all Californians. State Parks has failed to point to any countervailing policy in favor of maintaining or expanding golf courses on public land, or of ensuring “revenue generation” on public lands. Accordingly, Parks should not ratify this disturbing and unprecedented attempt to downgrade state park land in order to accommodate the expansion of a golf course for the purposes of revenue generation.

The Project Does Not Comply With The Requirement That A General Plan Be Prepared When New Facilities Are Developed.

The Project is inconsistent with state law because State Parks is required to prepare a general plan or revise an existing plan whenever the development of “new facilities” is planned for a unit of the state parks system. (Cal. Pub. Res. Code § 5002.2(a)(1).) This provision specifically states that “prior to the development of any new facilities in any previously classified unit, [State Parks] shall prepare a general plan or revise any existing plan for the unit.” (*Idib.*) Nonetheless, the General Plan Amendment for Lake Valley State Recreation Area states that no general plan amendment is required for Washoe Meadows SP. (EIR Volume 5 Appendix K page 4) and indicates that it is not addressed in the project plan (EIR Volume 6 Appendix A page A-4 to A-6). Moreover, the EIR misleadingly states that “[b]ecause no development is anticipated for Washoe Meadows SP, State Parks has not prepared a general plan for this unit.” (Volume 1, page 2-37, see also Volume 4, pages 3-10 to 3-11.) This is incorrect because development – namely the expansion of the golf course – *is* anticipated in Washoe Meadows SP. The fact that State Parks plans to downgrade portions of Washoe Meadows SP before developing new facilities on the park does not excuse State Parks of complying with its statutory duty to prepare a general plan. State Parks should not propose this “end run” around its statutory obligations.