



Late Distribution

10-28-13

#23

EDC COB &lt;edc.cob@edcgov.us&gt;

---

**Bass Lake Hills Specific Plan - PFFP**

1 message

**Diane Gassaway** <thegassaways@yahoo.com>

Mon, Oct 28, 2013 at 9:51 AM

Reply-To: Diane Gassaway &lt;thegassaways@yahoo.com&gt;

To: "edc.cob@edcgov.us" &lt;edc.cob@edcgov.us&gt;

Cc: "gina.paolini@edcgov.us" &lt;gina.paolini@edcgov.us&gt;

El Dorado County  
Board of Supervisors  
Agenda Item: 13-1068  
Meeting Date: October 29, 2013

Dear Supervisors:

I am a Development Agreement holder, under the original PFFP.

Under that original agreement, the developer of the first 300 homes built was to be responsible for improvements to Bass Lake Road, from Hollow Oak to US-50.

As it stands now we already have approximately 120 homes, including the Hollow Oak Subdivision, with vehicles using Hollow Oak to Bass Lake Road. This is already a dangerous situation, with vehicles trying to enter Bass Lake Road, due to the current traffic on Bass Lake Road and a 50 mph speed limit. There have already been several accidents as well as a fatality at this intersection. With the new connector road from Green Valley to Bass Lake Road, and the new development going on at Serrano Parkway and Bass Lake Road, traffic will only increase.

I would only agree to sign the new PFFP if, before any new development was allowed, a stop sign or traffic light was to be installed at the intersection of Bass Lake Road and Hollow Oak.

Sincerely,

Carl Gassaway  
3565 Hollow Oak Drive

Thomas P. Infusino, Esq.  
P.O. Box 792  
Pine Grove, CA 95665

10/28/13

Board of Supervisors  
County of El Dorado  
330 Fair Lane  
Placerville, CA 95667

**RE: I strongly recommend that you leave in place the current Bass Lake Hills Specific Plan Public Facility Finance Plan.**

Dear Supervisors:

My name is Tom Infusino, and I am submitting these comments on behalf of the Measure Y Committee. I am writing to encourage you to leave in place the existing Bass Lake Hills Specific Plan Public Facility Finance Plan. This matter is on your October 29 agenda.

My analysis below is based upon my review your Community Development Agency files that span over twenty years of activity on the BLHSP. I have practiced land use law in the Sierra Nevada foothills for over twenty years. On many occasions I have tried to help the El Dorado County Board of Supervisors avoid making fiscal and land use mistakes. I am writing again today for that very same purpose.

### **I. Summary & Recommendation**

A) I agree with the staff reports that:

- 1) The Specific Plan must be amended with or before the proposed PFFP, and this change is subject to CEQA review.
- 2) The proposed PFFP changes shift the burdens to finance and construct legally required roadways onto a cash-strapped county that has no plan that timely ensures the needed funding.
- 3) The proposed PFFP changes create an unfair competitive advantage by allowing new BLHSP builders to “jump the line” and collect immediate reimbursements from TIM Fees collected, while other TIM Fee Zone 8 developers continue to wait in line for their money, even though they have already constructed critical county roadways and have existing reimbursement agreements with the county.

Unless the County is willing to spend the time, the money, and the effort (1) to complete the CEQA documentation to amend the Specific Plan and Tentative Maps, (2) to fund a new



mechanism to ensure timely construction of connector roads between isolated BLHSP villages, and (3) to pacify the other irate TIM Fee Zone 8 developers who will have to wait longer for their reimbursements while their competitors in the BLHSP unfairly get immediate reimbursement; **I strongly recommend that the County just leave the existing PFFP in place and unchanged.**

If the landowners in the Specific Plan Area need to reallocate the financial burdens of implementing the specific plan, they can do so through agreements among themselves, on their own. Unlike the proposed PFFP, such agreements would not shift millions of dollars of financial risk onto El Dorado County residents and taxpayers. Such agreements would not make other area investors (who are successfully building homes, opening businesses, and creating jobs) the victims of unfair competition.

## **II. Analysis**

**A) Staff is correct that the Specific Plan and Tentative Map conditions of approval must be updated to reflect changes in the required infrastructure and mitigation measures.**

There is a hierarchy to land use planning. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176.) At the top of the local land use planning hierarchy is the general plan, that includes a land use designation map covering the entire county, and a set of countywide policies covering land use, circulation, housing, conservation, open space, public safety, and noise. Virtually all subordinate discretionary decisions regarding land use and public works must be consistent with the general plan. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988.) Among those subordinate decisions are specific plans, that identify in more detail the development requirements for a specific sub-region of the county. The specific plan must be consistent with the general plan. (Government Code, Sec. 65454.) For each specific plan there must be a public facility financing plan that includes "**public works projects, and financing measures**" to carry out "the uses of land ... including open space;" and the infrastructure "needed to support the land uses described in the plan." (Government Code, Sec. 65451.) Within the specific plan, there may be one or more subdivision maps that identify specific conditions for the development of subdivided lands. The subdivision maps must be consistent with the specific plan and the general plan. (Government Code, Sec. 66474.)

If the only action the Board of Supervisors needed to take was an amendment to the PFFP that merely adjusted who paid for what, that action could be exempt from CEQA review. The definition of a "project" subject to CEQA review does not include, "The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment." (See Zischke, Letter to Carpenter, 10/4/13.)



However, the proposed PFFP does far more than merely adjust who pays for what. The proposed PFFP changes actual physical components of the Bass Lake Hill Specific Plan. ("Specific Plan") In particular, it changes Bass Lake Road/Highway 50 Interchange Improvements, it changes recreational park requirements, it changes sewer infrastructure, and it changes the width of Bass Lake Road. (Paolini & Wilson, memo to BOS, 10/29/13, p. 2.) In addition, the timing of implementation of the Specific Plan is being altered. Finally, these portions of the Specific Plan that are being changed directly relate to the measures the County adopted to mitigate the impacts development under the Specific Plan. Thus, with or before the proposed PFFP is approved, the County must first amend the Specific Plan.

Prior to amendment of a Specific Plan, the County must complete any additional CEQA review. (CEQA Guidelines, sec. 15162.) For the purposes of CEQA review, the "project" analyzed is "the whole of an action," and not "each separate government approval." (CEQA Guidelines, sec. 15378, subds. (a) & (c).) Thus, all of these changes to the Specific Plan, to the PFFP, to the subdivision maps and to the development agreements are part of the one "project" to be analyzed in the updated CEQA document. (Paolini & Crawford, Memo to BOS, 8/16/13, p. 14-15.) Thus, the County must complete any necessary CEQA review and findings *prior* to any of these approvals. (CEQA Guidelines, secs. 15091 & 15092.) When changing mitigation measures in a specific plan, the lead agency must explain why the original mitigation measures are infeasible, and adopt findings of fact based upon substantial evidence. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 342.)

After or with the Specific Plan amendments, the County would then make the needed changes to the PFFP. Parties with existing subdivision maps and development agreements who wish to take advantage of the new PFFP provisions would then need to have their subdivision maps and development agreements amended accordingly. Any new subdivision maps and development agreements would be drafted to be consistent with the new PFFP.

**B) The Staff Report is correct that a Supplemental EIR is required due to significant changes in the project, new information, and changed circumstances.**

Usually, an EIR is prepared on a project, the project is approved, and no further EIR is needed. However, if a new approval is required for the project, a Supplemental EIR may be needed. A Supplemental EIR is needed if the agency finds that changes in the project, new information about the project, or changed circumstances associated with project implementation will result in new environmental impacts, substantially more severe environmental impacts, or will make additional mitigation measures feasible. (CEQA Guidelines, sec. 15162, subd. (a).)

**1) Significant changes in the project indicate that its impacts may be substantially more severe.**

**a) Changes in the park mitigation may result in a new significant impact.**



The Bass Lake Road Study Area plan representative sold the Planning Commission on the project, in part, because it would result in the actual construction of public improvements, recreational facilities. (Testimony of Croasariol, Minutes of El Dorado County Planning Commission, April 19, 1992, p. 19 [“There will be a school site, park and ride, parks, and open space.”].) The Findings of Fact for the Addendum to Bass Lake Road Study Area PEIR indicated that the recreation impact of the plan was a need for 24 acres of recreational space. That impact was mitigated to less than significant. This finding was a result of three factors. First, mitigation measure I02 called for the County to enter into an agreement with the developer to meet the park requirement. Second, the Specific Plan described recreational opportunities. Third, the Specific Plan included bike and pedestrian trails. (Resolution No. 288-95, Statement of Findings, Exhibit A, p. 8.) This Development Agreement similarly recognizes the developer’s obligation to dedicate park sites and open space as indicated in the Specific Plan. (Development Agreement, 9/20/96, pp. 10-11.)

The 2004 PFFP implemented this mitigation in two ways. First, in accord with the Specific Plan, it calls for the developers to dedicate, plan and design an 8.7 acre active sports park for the El Dorado Hills Community Service District in the specific plan area. Second it calls for developing at least one park in every village of more than 50 units, in accord with the EDHCSD Recreational Facilities Master Plan. (2004 PFFP, p. 48.)

The new PFFP only requires that developers pay fees to the EDHCSD. The EDHCSD indicates that it may not use those fees to construct the sports park in the Specific Plan Area. (Paolini & Crawford, Memo to BOS, 8/16/13, p. 4.) Similarly, the new PFFP prominently notes that the EDHCSD no longer requires “a park site to serve each 50 unit village.” Thus, it is unclear from the record how, if at all, the terms of the Specific Plan and the recreational impact mitigation will be met under the proposed PFFP.

At this time, the record lacks substantial evidence that the changes in the Specific Plan, the Financing Plan, and the conditions of approval will not result in a substantial increase in the recreational impacts of the Specific Plan. Unless substantial evidence can be produced for the record specifying how the recreational impacts of the Specific Plan will be effectively implemented by the PFFP, these substantially more severe impacts must be evaluated in an EIR Supplement.

**b) Changes in traffic mitigation will result in substantially more severe impacts.**

Regarding traffic, the findings for Program EIR and the Addendum indicate that, “Without improvements, virtually all facilities will function at unacceptable levels. To mitigate these impacts to the degree feasible, the County made the commitment that “all of the roadway and facility improvements in the Specific Plan will be constructed.” In addition the County

indicated that the developer would make interim improvements to the Bass Lake Rod/U.S. Highway 50 Interchange. (Resolution No. 288-95, Statement of Findings, Exhibit B, p. 4.)

As noted above, the Critical Mass Threshold Requirements have been removed from the proposed PFFP in favor of case by case infrastructure requirements in subdivision maps and planned developments. As staff has noted, “fee collection may not support timely construction of infrastructure.” (Paolini & Crawford, Memo to BOS, 8/16/13, p 7.) More specifically, “Situations could arise where roadways are operating at unacceptable service levels because of new development in the Specific Plan but there are not sufficient funds in the PFFP fee account to construct the necessary improvements.” (Paolini & Crawford, Memo to BOS, 8/16/13, p. 12.)

While the proposed PFFP adds a 25% mitigation fee surcharge to cover the inflation of construction costs, this is little comfort since those cost estimates have gone up over 100% since 1995. (Bass Lake Hills Specific Plan, 1995, p. 89 [\$14.7 million]; Paolini & Crawford, Memo to BOS, 8/16/13, Exhibit L [\$31.7 million].) Staff properly concludes, “[I]f the project is not constructed for 5 or 10 years, chances are that there will not be enough money to pay actual construction costs in the future due to normal inflationary increases.” (Paolini & Crawford, Memo to BOS, 8/16/13, p. 13.)

The end result of these changes is that the proposed PFFP turns adequate mitigation into inadequate mitigation. “[A] fee program is insufficient mitigation where ... a county will not have sufficient funds to mitigate effects on traffic.” (*Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4<sup>th</sup> 777.)

Finally, with regard to the interim improvements to be made to the US Highway 50/Bass Lake Road Interchange by the 300<sup>th</sup> unit the staff report notes that the proposed PFFP “eliminates these improvements completely, except for the ‘possible’ inclusion of a signal.” (Paolini & Crawford, Memo to BOS, 8/16/13, p. 9.)

Because the proposed PFFP compromises the effectiveness of the traffic mitigation, the impacts of Specific Plan traffic will be substantially more severe than previously expected. Unless the proposed PFFP can be improved to cure these mitigation problems, an EIR supplement will be necessary.

**2) Staff is correct that new information and changed circumstances suggest that the Specific Plan’s direct and cumulative impacts will be substantially more severe.**

Since the 1995 approval of the EIR and Addendum, new traffic analyses and fee program reviews have painted a substantially bleaker picture of the traffic future for El Dorado County.

In 2004, the County adopted a general plan indicating that 14 road segments would be allowed to operate at Level of Service F.



In 2006, the County was unable to fully fund the road improvements required for 20 years of growth under the 2004 General Plan. The TIM Fee program was underfunded by \$130 million. The anticipated result is that As a result, despite spending over \$840 million on road improvements over the next twenty years, people in peak period traffic on 94 of the 184 road segments in the County will experience, “severe restrictions in speed and freedom to maneuver,” “poor levels of comfort and convenience,” “frustration,” and “queued traffic traveling in a stop-and-go fashion.” (See 2004 General Plan, p. 56, description of LOS D, E, and F.)

The El Dorado County Regional Transportation Plan 2010 – 2030 estimates that the funding shortfall for roads needed through 2030 is now at \$339 million. (RTP, Chapter 13, Table 13-5, p. 15.) It is this future of congested roadways and unfunded roadways that the remaining 1359 units of the Specific Plan will be constructed in.

All the substantial evidence in the record indicates new information and changed circumstances will result in a substantial increase in the direct and cumulative impacts of the Specific Plan. Thus, an EIR supplement is needed prior to amendment of the Specific Plan, the tentative maps, the development agreements, and the PFFP.

**C) Staff is correct that the proposed PFFP would eliminate infrastructure concurrency guarantees, and risk placing additional financial burdens on a cash-strapped county that has no plan to fund those burdens.**

In 2004, the El Dorado County Board of Supervisors approved the existing PFFP in part because it provided for the construction of infrastructure by specific unit deadlines. The “Critical Mass Threshold” required specific core improvements before creation of the 300<sup>th</sup> lot. Another phase of improvements would be constructed by the 600<sup>th</sup> unit, and so on. While this placed a higher infrastructure cost on the first 300 units, if the owners of the 88 properties in the specific plan needed to readjust those burdens more equitably, they could do so among themselves, as would any development company seeking to implement a specific plan. This is fair. If the BLHSP land owners want to get the benefits of increased development capacity like any other specific plan developer, they need to timely produce the necessary infrastructure, just like any other specific plan developer.

The newly proposed PFFP provides for the incremental construction of infrastructure in and adjacent to each development as it is built. If this infrastructure does not functionally connect to others in the specific plan, **THE COUNTY** would finance the construction of the necessary connecting infrastructure, from some as yet unidentified source, and then develop another new mechanism to get reimbursement from future projects, should they ever develop. Thus, instead of the Specific Plan landowners bearing the risk of fronting the cost of common infrastructure, **THE COUNTY** (and its taxpayers and fee-payers) will front those costs and bear those risks. (Paolini & Crawford, Memo to BOS, 8/16/13, p. 12.) Given that only 99 of the 1,458 units have



developed since the BLHSP was approved in 1995, and the cost of infrastructure is estimated at \$31 million, the County's risk of not being reimbursed seems substantial. (Paolini & Crawford, Memo to BOS, 8/27/13, p. 2, Exhibit L.)

This is not the first time the Board of Supervisors has seen this sort of BLHSP PFFP. In December of 2002, the El Dorado County Board of Supervisors rejected a draft PFFP that provided for the piecemeal development of BLHSP infrastructure on a project by project basis. With 88 separate land owners across 18 villages, the Board found the prospect of incremental infrastructure development "too fragmented, making the completion of all infrastructure uncertain." They felt that the PFFP should "provide road improvements concurrent with development to avoid traffic worsening." The Board directed staff to investigate the "critical mass concept" that ultimately became the basis of the PFFP approved in 2004 and in place today. (Hunter, BOS Agenda Item Transmittal, 7/18/03, pp. 14-15; Buckley, Letter to Youmans, 6/9/03, p. 1.)

In summary, the Specific Plan land owners now want all the development rights and profits of a unified specific plan, without the concurrent unified responsibility to ensure the construction of the necessary infrastructure. This Board of Supervisors wisely rejected this notion in December 2002. The Board should do so again in October 2013.

**D) Staff is correct that the proposed PFFP creates an unfair competitive advantage by allowing new BLHSP builders to "jump the line" and collect immediate reimbursements from TIM Fees collected, while prior TIM Fee Zone 8 developers continue to wait for their money.**

Under the current Traffic Impact Mitigation Fee (TIM Fee) system, the County is divided into geographic zones. When a developer constructs a TIM Fee project that in part serves his development, and in part serves other transportation needs, that developer is entitled to compensation for the latter from the TIM fees paid by other developers in his zone. The developer seeking compensation enters into a reimbursement agreement with the County, so that he can be reimbursed for his excess expenditure within ten years. As a result, there are currently a number of developers in Zone 8 (the location of the BLHSP) who have already built TIM Fee roads, and have already entered into reimbursement agreements with the County, and are already waiting for years for their reimbursement. (Wilson, Payment Schedule - Reimbursement Agreements from the TIM Fee Program, 10/28/13.)

Under the proposed PFFP, new developers in the BLHSP would get special treatment when it comes to TIM Fee reimbursements. They would get immediate reimbursement for excess expenditures on TIM Fee roads. Meanwhile, the other developers they compete with in Zone 8, who have already constructed important county TIM Fee roadways, and who have already



entered into reimbursement agreements with the County, and are already waiting for years for their reimbursement, would continue to wait. This is unfair.

### **III. Conclusion**

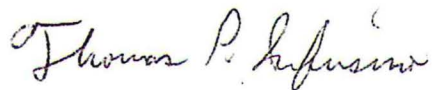
In the final analysis, the Board really has the choice between two options:

First, the Board could direct staff to begin the CEQA analysis needed to update the Specific Plan, the existing subdivision maps, the development agreements, and the PFFP.

Second, the Board could reject the proposed PFFP, and stay the course with the existing PFFP.

Either of these is a lawful option.

Sincerely,

A handwritten signature in cursive script, reading "Thomas P. Infusino".

Thomas P. Infusino