

# Sierra Club Lake Group

PO Box 1011 Kelseyville, CA 95451

September 8, 2009

Planning Commissioners Gary Briggs, Michael Van Der Boon, Clelia Baur, Cliff Swetnam, and Gil Schoux  
255 N. Forbes Street  
Lakeport, CA 95453

RE: Cristallago EIR certification and project approvals

Dear Commissioners:

The Sierra Club believes that the analyses contained in the Cristallago Final Environmental Impact Report (FEIR) are grossly deficient in several respects, and that certification would violate both CEQA standards and the Commission's responsibility to provide a complete evaluation of the project's environmental impacts to the Board of Supervisors. We therefore recommend that you select Action B among the alternatives listed in the Staff Report (page 19), and "direct staff to prepare revisions to the Final EIR prior to certification." The people of Lake County deserve nothing less.

Aside from specific analytical defects, the adequacy of the FEIR is undermined by structural patterns that serve to dismiss, discount, and ignore the substance of comments received on the Draft EIR (DEIR). Repeatedly, the lack of substantive responsiveness to comments is concealed by repetitive verbiage, not only by copying and pasting large blocks of text from one "response" to another, but actually *within* a response to the same letter. Frequently a commenter's reasoned objection to a conclusion in the DEIR is met by a simple restatement of that conclusion rather than an equally reasoned argument supporting its validity. Essential studies on central issues such as air quality, water supply, and drainage are deferred until an unspecified later date—with the requirement to conduct these investigations presented as mitigations. The net result is that the FEIR does not now contain the information needed for a valid judgment of the project's true impacts.

Significant project changes introduced between the DEIR and FEIR are concealed by placing detailed descriptions in improbable locations. For example, the proposal to irrigate the golf course with reclaimed wastewater met with numerous objections and has been abandoned (or more precisely, deferred). The golf course is now to be watered straight out of the Lake—a proposal that creates a new set of problems and will undoubtedly meet some strong objections from the public. References to this new proposal are found throughout the FEIR, but for some strange reason the detailed discussion is contained in the response to Comment Letter #3 from County Water Resources Engineer Tom Smythe, even though his queries do not directly address golf course irrigation issues at all.

Most egregious of all, comments debating findings of consistency with the Lake County General Plan and other fundamental policy documents are consistently dismissed on the grounds that consistency decisions belong to the Board of Supervisors, thus disregarding the fact that the assessments presented in the FEIR will guide the Board in reaching its conclusion on these subjects.

Several specific issues are detailed below.

## *Wetlands and Water quality*

Letter #1 from Peck Ha on behalf of the Army Corps of Engineers (ACOE) states:

To ascertain the extent of waters on the project site, the applicant should prepare a wetland delineation . . . and submit it to this office for verification. . . . The range of alternatives considered for this project should include alternatives that avoid impacts to wetlands or other

waters of the United States. Every effort should be made to avoid project features which require the discharge of dredged or fill material into waters of the United States.

This straightforward declaration by a responsible agency met the response, “Wetland studies are still underway”—even though it is impossible to evaluate the project’s impact upon waters of the United States until those studies have been completed.

Letter #29 from Anne Olsen of the Regional Water Quality Control Board (RWQCB) reiterates the need for a permit from ACOE), and also a Water Quality Certification from the Regional Board. She goes on to list guidelines involving avoidance, minimization, and mitigation, but instead of receiving an examination of “permit needs and guideline requirements” as requested is told that the developer and County will consult with ACOE and RWQCB later on. These considerations need to be evaluated *now*, during the course of this programmatic EIR, rather than postponed till some undetermined future date.

Another letter from the RWQCB (Letter #5, Kim Schwab) is similarly unequivocal:

Using “waters of the State” such as Eachus Lake and 5.5 acre pond is not considered a BMP for the purpose of dissipating storm water flows or attenuating water quality impacts from urbanization as a pollution prevention control. The basic concept is to prevent impacts to natural waterways. This is not an acceptable design strategy

This concern is dismissed by the statement that a Storm Water Pollution Prevention Plan (SWPPP) will be prepared later, even though RWQCB (another responsible agency) is already aware of this intention and nonetheless maintains that the outlined proposal is unacceptable. In any case the SWPPP should also be evaluated in the context of the EIR.

Schwab’s letter goes on to list ten Low Impact Development (LID) practices, with a recommendation that they be incorporated into project design. Although the FEIR repeatedly supports the developers’ asserted intention of following Green Building practices, no attempt is made to evaluate the project in the context of these recommended LID practices, or to incorporate them in the mitigations, other than to state that one (“vegetated bioswales”) is planned. Additional Best Management Practices (BMPs) to mitigate potential impacts of storm water runoff and a Hydromodification Management Plan (HMP) are also dismissed with the remark that the comment “does not state a specific question” so needs no further evaluation.

This extremely valuable letter (potentially, if not actually) concludes “we look forward to receiving a response to these comments and the updated DEIR which incorporates these designs and planning principles,” but no attempt to update the DEIR in response was made.

Letter #23c (Andrew Britton for the City of Lakeport) expresses similar concerns:

The DEIR indicates that downstream water quality impacts are potentially very significant particularly the potential impacts associated with the intense use of fertilizers (nitrogen) for the proposed golf course. The resort/residential development will also release significant amounts of non-point source pollutants according to the DEIR.

The City is concerned that the proposed project could result in downstream water quality impacts, particularly impacts to Clear Lake, which could affect the City of Lakeport including its citizens and lake-oriented businesses. The City suggests that a comprehensive drainage plan for the entire project be prepared prior to project approval.

#### *Cultural Resources.*

In Letter #4, Dr. John Parker, a fully qualified archeologist with long experience in the region, details his reasoning for believing that several unidentified archeological sites are located within the project area.

Due to the small “sample” nature of the Cristallago archaeological inspection, we do not know the locations or significance of the archaeological resources within the project area. Therefore, it is impossible to discuss potential impacts or mitigation alternatives needed to address those

resources. Based on CEQA law, this EIR cannot be certified as complete until . . . all archaeological resources have been identified.

The response reduces his professional judgment of high probability to “a slight possibility that additional archaeological deposits exist within the study area” and says that if anything is discovered later it will be appropriately handled—ignoring the practical difficulties of “discovering” an archaeological resource in the course of large-scale grading with heavy earthmoving equipment, circumstances in which artifacts are likely to be destroyed before they are noticed.

#### *Oak Woodlands.*

Elimination of 95 acres of oak woodlands is acknowledged to be a “significant and unavoidable” impact. Aside from raising serious questions about greenhouse gas (GHG) emissions, Letter #8 from the California Oak Foundation concludes that the only appropriate mitigation for this substantial woodland loss would be to require the purchase of a conservation easement on an equivalent 95 acres of woodland elsewhere in Lake County. As elsewhere in the FEIR, this recommendation from a respected conservation organization with particular expertise in this subject is dismissed with the statement that it will be “forwarded to the decision-making bodies for their consideration”.

We also contend that this loss of oak woodlands is inconsistent with General Plan Policy (“the County shall support the conservation and management of oak woodland communities and their habitats”). Efforts to preserve “heritage” oaks on the site, and placement of a conservation easement on the 84 remaining woodland acres do not fully (or even mostly) compensate for the loss of 53 percent of the site’s woodlands. Similarly, the acknowledged inconsistency with Lakeport Area Plan policy (“encourage new subdivisions to cluster lots outside of oak woodlands”) also applies to the corollary policy to “preserve and maintain native trees in new development projects.”

#### *Golf course irrigation.*

As mentioned, the project now proposes to draw 500-600 acre feet of water directly from Clear Lake to irrigate the golf course, rather than attempting to divert treated wastewater for that purpose. It is stated that this raw water could be supplied from the 2500 acre foot allocation that Community Services Area 21 (CSA 21) has contracted with the Yolo Flood Control and Water Conservation District (YFCWCD), without making any attempt to examine the appropriateness of using a guaranteed domestic water source for recreational purposes, especially in the context of the disproportionate scale of golf course irrigation requirements compared to those of the rest of the project. This very important change in the nature of the proposal itself hasn’t even been incorporated consistently into the FEIR. Page II-64: “Sewer effluent will be used to irrigate the golf course . . . the water used at the golf course (which would make up approximately 57% of the total site water usage) would be recycled/reclaimed water.” Page II-75: “Sewer effluent will be used to irrigate the golf course, which is a potential long-range aspect of the project.”

In case of prolonged drought, conservation efforts would be demanded of residents and resort operators but *not* from golf course operations, an unacceptable inequity and one that would rightly draw the strongest public criticism. The only response made to this comment was to assert that golf course operators maximize water conservation strategies at all times for financial reasons, and therefore no additional drought management plan would be needed.

#### *Air Quality*

Aside from considerations related to GHG emissions, Letter #11 from Lake County Air Quality Management District (LCAQMD) director Doug Gearhart details

several significant impacts that are inadequately reviewed [including] vehicle emissions and construction emissions. These sources may be significant as a result of the project, and claims that vehicle emissions may not be new emissions but can be considered ‘redistributed’ emissions is questionable given the number of resort units and golf activities planned for this project. . . . This project has potential to contribute substantially to the air quality violation as well as create health related impacts over the 15-20 year build out. If grading activities or construction

activities continue for multiple years, potential exposure to naturally occurring asbestos is increased for project residences, employees, and neighboring areas. Implementation of a Asbestos Dust Mitigation Plan is a regulatory requirement, not a mitigation measure. . . .This evaluation fails to evaluate construction related emissions, and potential impacts.

#### *Green House Gas Emissions.*

LCAQMD director Gearhart also states that “the evaluation of the proposed project using the 2006 proposed early action measures for GHG is inappropriate. The project should be evaluated for the increase in GHGs produced as a result of the project and construction activities.”

Response 11-5 provides a detailed GHG evaluation, including a table (page II-72) listing recommended mitigation strategies and assessing the project in this context. Various green building and energy use proposals are considered consistent with those strategies, but not the central planning elements needed to combat global warning:

- Implement land use strategies to encourage jobs/housing proximity, encourage compact, mixed-use projects. Not Consistent.
- Encourage infill, redevelopment, and higher density: Not Consistent
- Encourage walking, bicycling, and public transit: Not consistent
- Encourage integration of housing with retail services and civic amenities: Not Consistent

“Smart Land Use” is intended to minimize GHG by encouraging proximity between housing and jobs, transit-oriented development, and high-density residential uses along transit corridors. As indicated above, this project is not consistent with those objectives. Far from representing infill, Cristallago is a sprawling development at the fringe of the community, whose residents will have to drive for miles in order to obtain anything beyond the most rudimentary goods and services. Furthermore aside from the 15 (15!) staff members occupying the rental apartments in the Village area every one of the Cristallago employees will have to commute to the site. Contrary to the conclusion in the FEIR, by its very nature this project is certain to increase GHG emissions, and thus undermine the responsibility that Lake County assumed in becoming a Cool County in 2007, when we pledged to reach a goal of 80 percent GHG reduction by 2050.

#### *Traffic*

On behalf of the Department of Public Works, Todd Mansell states (Letter #16)

My comments are limited at this point as I believe the Transportation/Traffic analysis is grossly inadequate in addressing the traffic impacts to the local roadway network. This section analyzes a small handful of intersections in the immediate vicinity of the project and fails to include numerous roadway segments and intersections that will be impacted as a result of this development.

These concerns are repeated in Comment 23-b (Mark Brannigan for the city of Lakeport)

In general the City is concerned that the traffic generated by this project will have a noticeable impact on streets within the City limits as it is likely that residents will travel into the City for services which are not offered in the project community. These services could include items such as school, shopping, work, court and social services, the arts and entertainment to name a few. These potential impacts are not addressed or even acknowledged within the DEIR document as the scope of its analysis terminates at the intersection of Park Way and Lakeshore Blvd.

Without making an attempt to evaluate impacts to traffic (*and* parking) in downtown Lakeport, or to the Highway 29/11th St, Highway 29/Lakeport Blvd, and Highway 29/Highway 20 intersections it is impossible to address appropriate mitigations.

The Sierra Club also continues to doubt that “the project would not be expected to increase levels of traffic at the airport,” and does not find repetition of a questionable conclusion (“it is not anticipated that the project would result in a substantial increase in private airplane traffic”) an adequate response to our request for an evaluation.

### *Light and glare*

Numerous commenters have expressed their astonishment at the implausible conclusion that 650 houses and a large resort would not inevitably create a new source of substantial light or glare, or that minor design features—planting some trees, installing low-intensity light fixtures—would mitigate these effects below a significant level, especially since the project site will be highly visible from Highway 29 with “significant and unavoidable” visual impacts.

The response to these concerns has been to assert that the new light sources would not “adversely affect day or nighttime views in the area” a conclusion more appropriate to an urban area where artificial light sources are ubiquitous than to a sparsely populated countryside now characterized by profound darkness. The FEIR also makes it plain that concern about “glare” (again expressed by several commenters) is misplaced: evidently the only aspect of glare worth considering is whether it would “shine directly into the eyes of drivers.”

### *Noise*

Several commenters have also remarked on the inevitable increase in noise levels associated with the project, which the EIR acknowledges but declares to be “temporary.” This assessment must be evaluated in the context of the proposed phased development of the project, which mean that this “temporary” noise can be expected to continue off and on for twenty years—a whole generation. Aside from the continuing annoyance to surrounding neighbors and eventual project residents, the ongoing construction noise could lessen the economic viability of the resort component.

### *Hazards*

These consultants apparently don't know that rattlesnakes are dangerous. The unusual abundance of rattlesnakes on this site was been mentioned repeatedly, but never addressed in the DEIR. When the Sierra Club raised this issue (again) in DEIR comments, the response was “This comment does not list any specific biological or potentially hazardous impacts”.

Although unlike rattlesnakes wildfire is recognized as a hazard, the FEIR proposes to defer risk evaluation to a later date. The two residential areas in the steep, densely vegetated western part of the site are both accessed by long dead-end streets, with the houses strung out along the roadway and backed by wooded and brushy terrain: a prescription for catastrophe. *Now* —not later—is the time to evaluate these dangers, and to impose appropriate mitigations possibly involving substantial changes in fundamental project layout.

### *Water supply*

It is acknowledged from the beginning that substantial capacity expansion is needed to service this project, or to allow development within the North Lakeport Community Growth Boundaries on the east side of Highway 29. Response 15-2 to comments received from Special Districts Administrator Mark Dellinger purport to lay out the circumstances allowing this expansion, but on examination it is apparent that this framework is dependent on a number of *future* agreements involving not only the developers and CSA 21 but also outside agencies such as Yolo County Flood Control and Water Conservation District (YCFCWCD). We contend that the financial and physical details of these complex agreements must be included in this programmatic EIR, so that their plausibility can be evaluated in the course of environmental analysis and project approval. Water supply is far too important to be worked out later.

We also continue to assert that projected growth assumptions in North Lakeport are wildly unrealistic, being modeled on an average annual 3 percent growth rate with “short-term annual growth rates of 5-10 percent or more”. Without accurate growth rate estimates it is impossible to evaluate the true fiscal impacts of the necessary water treatment upgrades in the area, because each stage of capacity expansion will have to take place as a unit, *before* any new connections are made or any hookup fees collected. If growth is markedly less rapid than these projections, the time lag between construction and eventual repayment will also be longer than anticipated, adding to the potential burden on existing CSA 21 customers and Lake County taxpayers in general.

## Land Use

As mentioned earlier in this letter, many commenters including the Sierra Club have disagreed with the conclusions in the DEIR regarding General Plan inconsistencies, and these disputes have been dismissed with the excuse that policy decisions belong to the Board of Supervisors and not to the consultants. Many details about planning inconsistencies are included in our January 8, 2009 letter commenting on the DEIR, and need not be repeated except to state that this project is in fundamental conflict with the basic principles of the 2008 Lake County General Plan. This document, our “constitution for growth,” seeks to establish clearly defined urban boundaries, and to restrict dense residential development within those limits. The Cristallago site lies outside the Community Growth Boundary for North Lakeport, and therefore is ineligible for the Suburban Residential designation needed to make it a reality.

The only possible justification for approval is found in Policy LU-6.12, which allows consideration of mixed use resort proposals with otherwise unacceptable residential density if (and only if) the *primary* scope of the project is resort commercial and the residential component *secondary and subordinate*. Cristallago, with 325 resort units compared to 665 residential units, and 67 acres zoned commercial compared to 153 acres zoned residential, obviously fails to meet that standard, as was confirmed by Planner Emily Minton at the February 19 Planning Commission hearing: “the economic analysis does find that the residential component is larger than the commercial component at this point.”

The project is also inconsistent with several key elements of Policy LU-1.1 promoting Smart Growth. Among other features this policy calls for “directing growth toward existing communities, discouraging sprawl, and encouraging infill.” Cristallago meets none of these criteria.

The Staff Report provided to the Planning Commission details additional possible General Plan inconsistencies and states unequivocally that “findings of overriding consideration cannot be made for inconsistencies with the General Plan.” In these circumstances we believe that both EIR certification and project approval are untenable.

## Alternatives.

Clearly Alternative A (No Project), which eliminates *all* project impacts to the physical environment and creates *no* incompatibilities with planning policies, is the environmentally superior choice, although we agree that Alternative B, allowing 134 residential units with no resort, commercial space, or golf course would be preferable to the project now under consideration. It is unfortunate that the Alternative suggestions presented in the Sierra Club’s July 2007 letter on the Notice of Preparation were not evaluated, since these could potentially allow development to occur on the project site in a way that is beneficial to the developers and the community, environmentally responsible, and consistent with Lake County policies. A low-impact resort, with all the visitor services provided in the current proposal *except* the golf course, could meet increasing demand for healthful recreation and eco-tourism, and accompanied by a residential component that was truly “secondary and subordinate,” could be designed to avoid oak woodlands and serpentine ridges, create a “nature preserve” in more than name only, and reduce aesthetic impacts to a genuinely less-than-significant level while using far less water, generating a minimal chemical impacts, and in many other ways providing an imaginative model for growth that fits the patterns of the future rather than those of the past.

## Recommendations for Project Approvals

Besides acting to certify the Cristallago EIR, the Planning Commission is charged with recommending approval or denial of the project to the Board of Supervisors.

As detailed in the environmental analysis, this project will inevitably create “significant and unavoidable” impacts: in Aesthetics (“scenic views and visual character”); in Biological Resources (loss of oak woodlands); and Land Use and Planning (“impacts to density compared to existing surrounding land uses”). We believe that additional significant impacts are either unavoidable or have not yet been adequately mitigated, including adverse impacts to aesthetics, biological resources, and (especially!) land use beyond those acknowledged in the EIR, and still other impacts

in the categories of climate change, agriculture, air quality, cultural resources, hazards, noise, housing, public services, traffic, and utilities.

The argument will be made that “overriding considerations” compensate for adverse environmental consequences, but the supposed benefits that Cristallago would bring to the community rests on a deeply flawed economic analysis. This evaluation, which was undertaken at a time before the real estate bubble burst, is based on a much smaller resort component and inflated assumptions about both occupancy rates and the future of the declining game of golf. Provision of marina access for project residents and resort visitors was also assumed. Removal of this access changes the viability of the project as a whole, but no reevaluation has been provided. Possibilities for job creation—inflated all along, since the overwhelming majority would be low-paid seasonal service jobs with few benefits—depend primarily on the viability of the resort component and will be greatly reduced if it fails to meet the improbably rosy projection that has been offered. Benefits from increased spending will also diminish proportionally if real estate sales don’t meet expectations, as seems probable even without the extra disclosure burdens about asbestos hazards and potential sewage spray field odors attached to Cristallago deeds. The result: a project that eviscerates our General Plan, sets devastating precedents for the rest of Lake County, distorts growth patterns in the Lakeport region, creates environmental havoc, and fails to offer the countervailing advantages that have been promised.

The Sierra Club urges the Planning Commission to turn this project down.

Yours sincerely,

A handwritten signature in black ink that reads "Victoria Brandon". The signature is written in a cursive, flowing style.

Victoria Brandon  
Chair, Sierra Club Lake Group