

May 19, 2022

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Re: Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Tourist Core Area Plan (TCAP) amendments

Dear Mr. Hitchcock and Ms. Self,

As a member of the 2012 Regional Plan Update (RPU) Bi-State Working Group, the League to Save Lake Tahoe (League) appreciates the opportunity to continue to work with the Tahoe Regional Planning Agency (TRPA) and the City of South Lake Tahoe (City) to implement the RPU. Effective implementation of Area Plans is critical to this ongoing effort. The League thanks the City for the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Tourist Core Area Plan (TCAP) amendments.

The League commented during the Scoping period and appreciates the “corner lot” (3828 Montreal Road) being taken out of consideration for development in response.

### **Overview**

The League does not support the current proposed TCAP amendments because they are inconsistent with City and TRPA plans and intent. The Colony Inn parcel was intended to be permanently retired and the stream environment zone (SEZ) restored. The SEZ restoration attempt failed. Rezoning the last recreation/conservation land in the TCAP area does not align with the goals and policies of the City’s General Plan or TRPA’s Regional Plan, which the IS/MND is tiered off of. Because the environmental document only includes one mitigation measure, we are recommending two additional mitigation measures:

1. Restore the SEZ to a functional level and monitor and manage it to ensure it remains functional for the life of the project.
2. Permanently protect the “corner lot” (APN 029-441-003) as Recreation or Open Space through a permanent deed restriction running with the land.

We expect these two mitigation measures to be included for the TCAP amendments and proposed project in order to be approved.

### **SEZ Impacts and Site Suitability for Development**

On March 18, 2008, the City passed a Resolution to permanently retire the Colony Inn site from future development as a condition of transferring the associated tourist accommodation units (TAUs) out of the City limits: “WHEREAS, the Colony Inn located partially Within an area identified for SEZ restoration, Once the Colony Inn is demolished, existing development will be transferred out of the SEZ and the site will be restored and permanently retired, thereby furthering the goals of the Stateline/Ski Run Community Plan and attainment of TRPA’s thresholds.”<sup>1</sup>

<sup>1</sup> March 18, 2008 City of South Lake Tahoe Staff Report and Resolution.

[http://slt.granicus.com/MetaViewer.php?view\\_id=4&clip\\_id=181&meta\\_id=15886](http://slt.granicus.com/MetaViewer.php?view_id=4&clip_id=181&meta_id=15886)

The City included a Policy in the TCAP that aligns with its Resolution and approval of TAU transfers from the Colony Inn site: “Onsite land coverage reduction will occur primarily through environmental redevelopment by providing development incentives in centers that promote the relocation and transfer of land coverage. The City will endeavor, where feasible, to reduce and avoid creating new coverage in order to benefit the objectives of the TCAP and other areas of South Tahoe.”<sup>2</sup> This language was discussed at the November 2013 TRPA Governing Board meeting, including whether or not to specifically include the Colony Inn site as a target restoration site. In the end, though a specific site was not targeted for restoration and the Colony Inn site was intended for restoration and permanent retirement as stipulated above.

*The City needs to decide whether this amendment meets the intent of the General Plan and TCAP including the goals and policies contained within it. The City’s Attorney will also need to determine whether or not a new Resolution is required to allow this Area Plan amendment.*

Between 2009 and 2013 the Colony Inn was demolished and the SEZ should have been restored, but the restoration failed. According to TRPA’s 2020 SEZ Baseline Report, the Colony Inn site (Colony Inn Meadows) restoration failed.<sup>3</sup> The SEZ only ranked a “C,” indicating an unhealthy SEZ due to a ditch running through the entire project, dewatering the meadow and leading to loss of vegetation vigor. With the proposed amendments, the coverage limit would increase from 30 percent to 70 percent, with coverage transfer on applicable lands with capability 4-7. Additional development around the SEZ where headcuts and ditches are present, significantly and irreversibly impact the SEZ which expressly violates the 2008 City Resolution and the intent of SEZ restoration. Regardless of the success of the SEZ restoration efforts, the site was to be permanently retired, in line with the City’s 2008 Resolution and enforced by TRPA’s approval of the Boulder Bay Community Enhancement Program Project EIS in 2009.<sup>4</sup>

In September, October, and November of 2013, the TRPA Regional Plan Implementation Committee (RPIC) and Governing Board had lengthy discussions internally and with the City and the public. One of the results of the discussion was the City reinforcing that it “wanted to identify [Colony Inn] as a priority site for getting the stream environment zone restoration completed.”<sup>5</sup> Other outcomes relevant to these proposed amendments are enshrined in the TCAP itself:

- “The Colony Inn which was located in SEZ lands by the intersection of Montreal Road and Heavenly Village Way was demolished and 64,800 square feet of land coverage was removed and banked, and the site stabilized. The existing tourist accommodation units removed from the site are proposed for transfer to the Boulder Bay Project in North Stateline. A condition of the Boulder Bay permit requires that the property be restored to a functioning SEZ prior to the units being transferred.” Page 3-4.
- “The Tourist Core Area Plan responds to the needed SEZ improvements: Restore the disturbed SEZ on the Colony Inn parcel located along Montreal Road.” Page 7-5.

<sup>2</sup> October 15, 2013 TCAP. Policy NCR-4.1, page 7-3. <https://www.cityofslt.us/DocumentCenter/View/3508/Final-Tourist-Core-Area-Plan?bidId=>

<sup>3</sup> December 2020 Lake Tahoe Basin SEZ Baseline Condition Assessment. Report: [https://gis.trpa.org/TahoeSEZViewer/SEZ%20baseline%20condition%20assessment\\_v8.pdf](https://gis.trpa.org/TahoeSEZViewer/SEZ%20baseline%20condition%20assessment_v8.pdf); StoryMap: <https://www.google.com/url?q=https://storymaps.arcgis.com/stories/815a21db82944f7f95ce94d76c73a19b&sa=D&source=docs&ust=1652741001866899&usg=AOvVaw2791Wlh0aSr9wKajKr5gZW>

<sup>4</sup> November 4, 2009 Boulder Bay CEP Project EIS. [https://www.trpa.gov/wp-content/uploads/documents/archive/4\\_01\\_Land\\_Use.pdf](https://www.trpa.gov/wp-content/uploads/documents/archive/4_01_Land_Use.pdf)

<sup>5</sup> October 24, 2013 Meeting Minutes from TRPA RPIC meeting. Page 19. <https://www.trpa.gov/wp-content/uploads/documents/archive/January-29-2014-Governing-Board-Packet.pdf>

In July of 2013, the League submitted comments on the TCAP in its early stages of development, including a clarifying question about the Colony Inn site. The November 2013 TRPA Governing Board meeting included responses to comments and #8 directly addresses the Colony Inn site.<sup>6</sup> While the Boulder Bay project has been long-delayed and is currently changing with new ownership of that site, TRPA's transfer rules may still apply and the intent to permanently retire the site is clear.

*TRPA Counsel will need to provide an analysis of the SEZ Restoration Credits and requirement to permanently retire and "stabilize" the site based on TRPA Code and TCAP approvals in 2013, and the final intent captured in TCAP.*

### **Recreation/Open Space**

The IS/MND for the proposed amendments tiers off of the City's 2011 General Plan and TRPA's 2012 RPU, and references the TCAP.

In the City's General Plan, the parcels that are the subject of the amendments are identified as "Conservation."<sup>7</sup> The General Plan's Conservation designation "provides for the permanent preservation of natural resources, habitat protection, watershed management, public and quasi-public uses, areas that contain public health and safety hazards such as floodways, and areas containing environmentally-sensitive features."<sup>8</sup> The parcels being considered for the amendment are the only General Plan Conservation parcels in the TCAP area, and some of the only infill/smaller lot Conservation parcels in the entire General Plan. This was done deliberately and likely linked to the discussions when Colony Inn was demolished.

In the TCAP, the parcels in question are zoned as recreation. While this questionably aligns with the intent in the General Plan, Recreation districts in the TCAP are "intended to allow a variety of recreation uses such as dispersed recreation and parks. Permissible uses include day use areas and group facilities."<sup>9</sup> The dispersed recreation use most closely aligns with the intent of the Conservation designation in the General Plan. When the TCAP was developed, the Conservation designation arguably should have translated to the Open Space designation which "is intended to preserve land in its present use that would: 1) conserve and enhance natural or scenic resources; 2) protect streams environment zones, sensitive lands, water quality or water supply; 3) promote soil and habitat conservation; 4) enhance recreation opportunities; and/or 5) preserve visual quality along highways, roads, and street corridors or scenic vistas. The land is predominantly open, undeveloped, or in a lightly developed and is suitable for any of the following: natural areas, wildlife and native plant habitat; erosion control facilities, stream environment zones, stream corridors; passive parks; and/or trails for non-motorized activities."<sup>10</sup> This Open Space designation also aligns with TCAP policies NCR-2.3 and R-2.3,<sup>11</sup> which would be very difficult or impossible to implement or achieve if the proposed amendments are approved.

<sup>6</sup> November 20, 2013 Response to Comments on the TCAP. Response #8, Page 4. [https://www.trpa.gov/wp-content/uploads/documents/archive/6\\_FINAL\\_Attachment-E\\_Responses-to-Comments.pdf](https://www.trpa.gov/wp-content/uploads/documents/archive/6_FINAL_Attachment-E_Responses-to-Comments.pdf)

<sup>7</sup> October 15, 2013 TCAP. Figure 2-2.

<sup>8</sup> May 17, 2011 City of South Lake Tahoe General Plan. Land Use Element, page LU-3.

[https://www.cityofslt.us/DocumentCenter/View/5639/SLTGPU\\_PD\\_2-LandUse\\_Final\\_2011-05-17?bidId=](https://www.cityofslt.us/DocumentCenter/View/5639/SLTGPU_PD_2-LandUse_Final_2011-05-17?bidId=)

<sup>9</sup> October 15, 2013 TCAP. Page 5-6.

<sup>10</sup> *Ibid.*

<sup>11</sup> TCAP Policy NCR-2.3: Encourage the use and access to designated open space for passive recreation uses when they conform to resource restrictions

TCAP Policy R-2.3: Encourage landscaped, small passive parks in and around the Tourist Core

TRPA's Regional Plan (RPU) was updated in 2012, between the adoption of the City's General Plan and the TCAP. The IS/MND, in section 1.8, selected a few TRPA- specific and -referenced goals and policies that this project *may* support but the ones it may conflict with are not included which does not allow a fair assessment of the pros and cons of the proposed project. These include, but are not limited to ROS-2.9, ROS-2.10, ROS-2.11, Land Use Element Goal 1 Policies 2 and 3, Soils Goal 1 Policy 7, Open Space Goal 1, and Stream Environment Standard SC-2.

To comply with the City's and TRPA's land use designations and goals and policies related to open space and recreation, the "corner parcel" at 3828 Montreal Road (APN 029-441-003) needs to be permanently retired as Recreation or Open Space through a deed restriction on the parcel. This would include the access easement associated with the Colony Inn to the Van Sickle access road.

### **Summary and Recommendations**

For this IS/MND to tier off of the City's General Plan and TRPA's Regional Plan, the amendments analyzed must be consistent with those plans. The proposed amendments are not consistent with the land use designations or the majority of the relevant goals and policies in the documents being tiered off of, which sets a dangerous precedent. In addition to the inconsistency, the impacts to recreation, public services, biological resources, land use/planning, population/housing, and overall cumulative impacts have been underestimated, ignored, or not mitigated to less than significant. We recommend three mitigation measures that could put the amendments into conformance with the General Plan and Regional Plan:

1. To mitigate for recreation and public service impacts: enhance the existing mitigation which is Putting up a fence to block access directly to Van Sickle, the future Greenway path, and existing SEZ. Based on the map provided as Figure 2-2 on page 16 of the IS/MND, the fencing needs to go around the entire property and could include tying into the substation fencing. It would be easy to leave the property and get around the fencing as depicted from buildings 7, 8, and 10, pretty easy from building 9, and not difficult from all buildings.
2. To mitigate impacts to biological resources and land/use planning (SEZs): create a new mitigation measure, enforced through a permit condition or deed restriction, requiring the SEZ on the parcel(s) to be restored to a functional state and monitored and maintained for the life of the project.
3. To mitigate for conflicts with land use/planning, impacts on population/housing, and cumulative impacts<sup>12</sup>: create a new mitigation measure, enforced through a permanent deed restriction running with the land, permanently designating the "corner parcel" (3828 Montreal Road, APN 029-441-003) as Recreation or Open Space under the relevant TCAP definition.

Finally, mitigation monitoring reporting requirements and schedule need to be developed before approving the amendments,<sup>13</sup> taking into account the updated and new mitigation measures we recommend.

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<sup>12</sup> Pursuant to § 15370 of the CEQA Guidelines, mitigation includes: (a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) **Compensating for the impact by replacing or providing substitute resources or environments.**

<sup>13</sup> CEQA § 21081.6.: Upon approving a project for which a MND is adopted, the Lead Agency must also adopt a mitigation monitoring or reporting program.

**Based on City and TRPA Counsel determination, and any new mitigation measures proposed, the League will consider accepting development of Colony Inn site and the “back parcel” as long as the SEZ is restored and permanently monitored; and the “corner lot” is permanently retired with a deed restriction.**

Thank you for the opportunity to provide these comments. Please do not hesitate to contact us to discuss our recommendations and we hope to see an updated IS/MND with additional mitigation measures in order to comply with CEQA and TRPA environmental review, goals, and policies.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darcie', with a long horizontal flourish extending to the right.

Darcie Goodman Collins, PhD  
CEO League to Save Lake Tahoe