

PROJECT MITIGATION AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2010, by and between BOULDER BAY, LLC (BB) and STILLWATER COVE HOMEOWNERS' ASSOCIATION (SWC).

WHEREAS, BB is seeking approval for a project known as Boulder Bay Resort before the Tahoe Regional Planning Agency (TRPA), File No. CEPP 2008-0123 and ENVR 2008-0003 and other public agencies having jurisdiction over the project (hereinafter "Project"); and

WHEREAS, the Project is located at the north shore of Lake Tahoe, Washoe County, Nevada, along Nevada State Route 28; and

WHEREAS, SWC is an association of homeowners of the Stillwater Cove Development located directly across State Route 28 from a portion of the Project; and

WHEREAS, the development, construction and operation of the Project impacts upon the Stillwater Cove Development; and

WHEREAS, BB is seeking to obtain the consent and support of SWC for the Project which SWC is willing to give under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

1. Traffic Calming Measures. At the time of the construction of the first phase of the Project, BB will install the traffic calming measures along State Route 28 as set forth in Exhibit A attached hereto.
2. Noise Attenuation. BB agrees to seek approval of and construct a temporary sound wall or some other form of sound barrier during construction of a height and material acceptable to SWC along the SWC property line adjacent to State Route 28 or at such other location on SWC property as designated by SWC. BB agrees to seek the approval of the Tahoe Regional Planning Agency ("TRPA") to construct a permanent sound wall of a height and material acceptable to SWC at a location acceptable to SWC. BB further agrees to seek the approval of the Nevada Department of Transportation ("NDOT") to install and maintain sound attenuation pavement overlay along State Route 28 adjacent to the SWC development. All proposed improvements discussed above are subject to the rules and approval by the TRPA, Washoe County and NDOT. In the event that an application for the

above improvements is diligently pursued by BB but denied by the responsible agency, BB shall be deemed compliant with this covenant.

3. Public Park on Mariner Site. As part of the Project, BB proposes to develop a public park on that portion of its Project commonly known as the Mariner Site as depicted on Exhibit B. The park shall be a public park and shall be a passive, open-space facility that would not allow for large public gatherings, concerts or other activities that could create a noise nuisance or annoyance to any resident of the Stillwater Cove Development. Any lighting within the park shall be dark sky lighting with shields to insure no light spillage on the SWC property. It is the intent of BB and SWC that the proposed park be a quiet, open-space retreat area containing benches and a meandering trail. In connection with the proposed public park, BB agrees to enter into a recorded deed restriction with SWC which shall limit the use and intensity of the park in the manner set forth in this paragraph. This deed restriction shall also restrict the other use of the Mariner Property as set forth in paragraph 6. The deed restriction shall be in the form set forth on Exhibit C attached hereto. The deed restriction shall be recorded after BB has received the first Building Permit for the Project from Washoe County.
4. Construction Staging Areas. It is the intent of BB and SWC to compress the construction schedule while minimizing impact to the surrounding roadways, residences and businesses. During construction, BB will conduct biweekly project superintendant meetings to update SWC on upcoming construction activities and address open issues or questions. At the request of SWC, BB will attend the annual meeting of SWC and present a status report on the Project. Prior to the commencement of construction of any phase of the Project, BB will delineate construction staging areas for each phase. Prior to staging or storage on the Mariner Property, BB shall meet and confer with SWC relating to the extent and timing of such staging and storage. Except as otherwise agreed by SWC, any storage and staging on the Mariner Property shall be limited to the areas depicted on Exhibit F. Any such staging areas shall be visually screened from the Stillwater Cove Development and the existing landscaping and trees on the Mariner Property not within the staging area shall be preserved to the extent possible and maintained throughout the construction of the Project. BB will use best efforts to design staging plans that minimize visual and noise impacts on SWC. The staging areas shall include noise attenuation, restricted hours of operation, night lighting prohibition provisions, the prohibition of an on-site batch plant, and limitation of the location and storage of construction materials. For large concrete pours such as building foundations, BB may apply to TRPA for approval to complete nighttime work. By shifting the large

pours to the nighttime slow moving trucks will be removed from the roadways during the busy daytime hours. BB will use best efforts to keep nighttime work to a minimum. Prior notice of nighttime work will be given to SWC. The full extent of these construction, operation and staging limitations will be established by TRPA within the language of the conditional permit.

5. Financial Surety. BB will instruct its lender to provide evidence of construction financing and will represent that loan documents have been executed and construction funds approved and are available prior to the commencement of each phase of development of the Project. The financial assurance must demonstrate a sufficient amount of funding available to complete the proposed phase of the Project and shall include a representation that the funds are sufficient to complete the particular phase of work. BB agrees that once a phase of construction of the Project has commenced, BB will complete that phase.
6. Development of the Mariner Site. The parties acknowledge that the Mariner Site is currently subject to a deed restriction which limits the development of the Mariner Site to three residential structures. As part of the Project, BB proposes to construct a portion of its hotel and wellness center on the Mariner Site together with one four-story structure consisting of 24 condominium units in the location generally depicted on Exhibit B, attached hereto and incorporated herein by reference. In connection with the development of the condominium units, BB agrees to increase the set back of the building the maximum distance as reasonably feasible from State Route 28 and no less than 60 ft from the edge for State Route 28. BB agrees to landscape the park access road leading from State Route 28 which shall include large trees to shield the view of the condominium structure, as well as enhanced landscaping in front of each structure consistent with the visual simulations depicted in Exhibit D. The intent of this provision is to insure that the condominium units will not be visible from any unit within the Stillwater Cove Development. BB agrees to maintain and replace such landscaping and screening.
7. Development of Crystal Bay Motel Site. As part of the Project, the existing Crystal Bay Motel is to be removed and the density transferred to the Project. With the removal of the existing motel, the development and landscaping of the site shall be consistent with Exhibit E attached hereto and incorporated by reference.. SWC reserves all rights to object to, contest or otherwise dispute any future development of the Crystal Bay Motel Site. BB will request that TRPA revise the proposed Special Height Ordinance language to restrict the allowance of height in excess of TRPA rules to the mountainside of State Route 28. In the

event that TRPA does not revise the language of the ordinance, BB agrees that the Special Height Ordinance will not be applied to the Crystal Bay Motel site.

8. Conditions of Approval. The parties agree that this Agreement shall be submitted to the TRPA and all other governmental agencies having jurisdiction over the Project with a request that the terms and conditions of this Agreement be incorporated into the Conditions of Approval for the Project and become a part of the terms and conditions of any entitlement including Special Use Permits, Tentative Maps, Planned Unit Developments, Development Agreements or other approvals relating to the Project. Notwithstanding whether the terms and conditions of this Agreement are incorporated into the Conditions of the Project, this Agreement may be independently enforced by the parties.
9. Project Support. SWC agrees to provide written support for the Project and, upon advance request of BB of at least ten days, to have a representative of SWC appear at any public hearings and to provide testimony of support for the Project.
10. Entire Agreement. This Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Except as otherwise expressly set forth in this Agreement, any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
11. Notices. Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopy (if confirmed in a writing sent by registered or certified mail, postage prepaid, return receipt requested or by reputable overnight delivery service), by registered or certified mail, postage prepaid, return receipt requested or by reputable overnight delivery service, addressed as follows:

To BB: Brian Helm
Boulder Bay, LLC
PO Box 307
22 Hwy. 28, Suite 101
Crystal Bay, NV 89402

With Copy to: Lewis S. Feldman
Feldman Shaw LP
182 Highway 50
PO Box 1249
Zephyr Cove, NV 89448

To SWC: President
Stillwater Cove Homeowners Association
PO Box 1335
120 Hwy. 28
Crystal Bay, NV 89402

With Copy to: John Frankovich
McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, NV 89501

Any party may change its address for notice by written notice given to the other in the manner provided in this paragraph 13. Any such communication, notice or demand shall be deemed to have been duly given or served on the next business day after actual delivery to the address specified.

12. Interpretation. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section or paragraph headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. The Agreement shall be interpreted as if both parties prepared this Agreement.
13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and any lawsuit to enforce the terms of this Agreement shall be brought in the Second Judicial District in and for the County of Washoe.
14. Injunctive Relief. The parties acknowledge that in the event of a breach of this Agreement, monetary damages will be difficult to determine and injunctive relief is an available remedy.

15. Attorneys' Fees. If any action is brought by either party against the other party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs, charges and disbursements incurred in connection with the prosecution or defense of such action.
16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors and assigns.
17. The Parties agree to execute a Memorandum of Agreement in recordable form that may be recorded by either party.

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first written above.

BOULDER BAY, LLC

STILLWATER COVE HOMEOWNERS'
ASSOCIATION

By: _____

By: _____

Its _____

Its President

By: _____

Its Secretary

EXHIBIT A

TRAFFIC CALMING MEASURES

EXHIBIT A

Traffic Calming Measures

All proposed Traffic Calming Measures are subject to the rules and approval by the TRPA, Washoe County and NDOT. In the event that an application for the improvements below is diligently pursued by BB but denied by the responsible agency, BB shall be deemed compliant with this covenant. Traffic calming measures to be installed by BB include the following:

1. At least two solar controlled speed identification panels, one on either side of the entrance to Stillwater Cove at a location acceptable to NDOT and Washoe County.
2. A middle turn lane channelization extending 150 feet on either side of the entrance to Stillwater Cove.
3. Surface improvements to State Route 28 including sound attenuation paving.
4. Removal of parallel parking along State Route 28 in the area immediately across from the entrance to Stillwater Cove and extending in the easterly direction to the end of the Project.
5. BB will cause these traffic calming measures to be maintained.

EXHIBIT B

DESCRIPTION OF MARINER PROPERTY

AND

SITE PLAN

EXHIBIT B

The land referred to in this Commitment is situated in the County of Washoe, State of Nevada and is described as follows:
All that certain property situate in Section 19, Township 16 North, Range 18 East, M.D.M., Washoe County, Nevada, more particularly described as follows:

PARCEL 1:

A portion of Parcels 1, 2 & 3 as described in Document No. 2710630, Washoe County, Official Records, more particularly described as follows:

Commencing at the Southwest corner of Lot 4 of said Section 19; thence along the Southerly line of said Section 19 South 89°11'12" East 374.17 feet to the Point of Beginning of this description; thence along a line parallel to the Westerly right of way line of Nevada State Highway 28 North 1°30'26" East 498.06 feet; thence South 89°47'22" East 10.00 feet; thence North 7°45'25" East 98.13 feet; thence North 80°17'12" East 184.56 feet to said right of way line and the beginning of a non-tangent curve to the left having a radius of 2040.00 feet to which point a radial line bears North 86°06'35" West; thence Southerly 84.85 feet along said curve through a central angle of 2°22'59"; thence South 1°30'26" West 543.96 feet to the Southerly line of said Section 19; thence along said Southerly line North 89°47'22" West 51.76 feet to the South 1/4 corner of said Section 19; thence along the Southerly line of said Section 19 North 89°11'12" West 148.21 feet to the Point of Beginning.

PARCEL 2:

A portion of Parcel 3 as described in Document No. 2710630, Washoe County Official Records, more particularly described as follows:
Commencing at the Southwest corner of Lot 4 of said Section 19; thence along the Southerly line of said Section 19 South 89°11'12" East 522.38 feet to the South 1/4 corner of said Section 19; thence along said Southerly line South 89°47'22" East 51.76 feet to the Westerly right of way line of Nevada State Highway 28; thence along said right of way line North 1°30'26" East 543.96 feet to the beginning of a tangent curve to the right having a radius of 2040.00 feet; thence Northerly 84.85 feet along said curve through a central angle of 2°22'59" to the Point of Beginning of this description; thence leaving said right of way line South 80°17'12" West 184.56 feet; thence North 7°45'25" East 21.87 feet; thence North 11°00'19" East 110.00 feet; thence South 89°47'22" East 167.00 feet to the Westerly right of way line of Nevada State Highway 28 and the beginning of a non-tangent curve to the left having a radius of 2040.00 feet to which point a radial line bears North 83°20'55" West; thence Southerly 98.31 feet along said curve through a central angle of 2°45'40" to the Point of Beginning.

PARCEL 3:

A portion of Parcels 3 & 4 as described in Document No. 2710630, Washoe County Official Records, more particularly described as follows: Commencing at the Southwest corner of Lot 4 of said Section 19; thence along the Southerly line of said Section 19 South 89°11'12" East 522.38 feet to the South 1/4 corner of said Section 19; thence along said Southerly line South 89°47'22" East 51.76 feet to the Westerly right of way line of Nevada State Highway 28; thence along said right of way line North 1°30'26" East 543.96 feet to the beginning of a

tangent curve to the right having a radius of 2040.00 feet; thence Northerly 183.16 feet along said curve through a central angle of 5°08'39" to the Point of Beginning of this description; thence leaving said right of way line North 89°47'22" West 167.00 feet; thence North 5°04'17" East 90.00 feet; thence South 89°47'22" East 90.00 feet; thence North 51°12'18" East 61.88 feet; thence South 89°47'22" East 39.97 feet to the right of way line of Nevada State Highway 28 and the beginning of a non-tangent curve to the left having a radius of 2040.00 feet to which point a radial line bears North 79°41'51" West; thence Southerly 130.00 feet along said curve through a central angle of 3°39'04" to the Point of Beginning.

PARCEL 4:

A portion of Parcels 2, 3 & 4 as described in Document No. 2710630, Washoe County Official Records, more particularly described as follows:

Commencing at the Southwest corner of Lot 4 of said Section 19; thence along the Southerly line of said Section 19 South 89°11'12" East 374.17 feet; thence along a line parallel to the Westerly right of way line of Nevada State Highway 28 North 1°30'26" East 498.06 feet to the Point of Beginning of this description, said point being the beginning of a tangent curve to the right having a radius of 2352.94 feet; thence Northerly 563.30 feet along said curve through a central angle of 13°43'00"; thence North 15°13'26" East 293.28 feet to a point on the 1/16 line of said Section 19; thence along said 1/16 line South 89°53'44" East 198.45 feet to the Westerly right of way line of Nevada State Highway 28; thence along said right of way line South 15°13'26" West 324.36 feet to the point marked by a concrete monument and the beginning of a tangent curve to the left having a radius of 2040.00 feet; thence Southerly 175.22 feet along said curve through a central angle of 4°55'17"; thence leaving said right of way line North 89°47'22" West 39.97 feet; thence South 51°12'18" West 61.88 feet; thence North 89°47'22" West 90.00 feet; thence South 5°04'17" West 90.00 feet; thence South 11°00'19" West 110.00 feet; thence South 7°45'25" West 120.00 feet; thence North 89°47'22" West 10.00 feet to the Point of Beginning.

The above described Parcels 1, 2, 3 and 4 are also designated Parcels 1, 2, 3 and 4 on Record of Survey No. 4509 for Sierra Park, LLC, filed December 11, 2004 as File No. 3146107.

The above metes and bounds description appeared previously in that certain document recorded December 21, 2004 as Document No. 3146106 of Official Records.

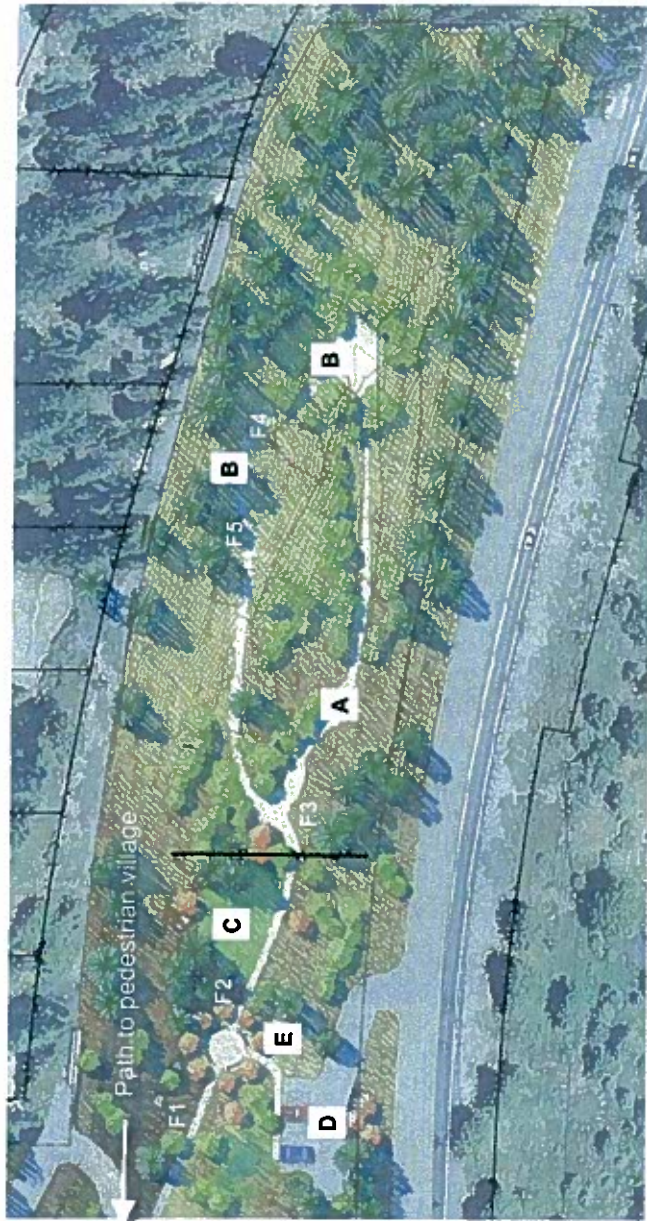
EXHIBIT B



BOULDER BAY – TAHOE MARINER PARK

OPEN SPACE/PARK AMENITIES

- A. Walking trails – 1/5 miles
- B. Bench Seating Areas – 2 TREX benches
- C. Picnic tables – 3 TREX tables
- D. Public parking – 6 spaces
- E. ADA access path
- F. Historical interpretive trail – Kiosks 1) Crystal Bay; 2) Incline Village; 3) Lake Tahoe; 4) Flume Trail; 5) Thunderbird;



PARK AREA

| | |
|----------------------|------------------|
| 1. Park - Level Area | 1.5 acres |
| 2. Park - Trail Area | 1.2 acres |
| 3. <u>Open Space</u> | <u>1.2 acres</u> |
| 4. Total Area | 3.9 acres |

VEGETATION

Native grasses
Native evergreen and deciduous trees



ENVIRONMENT

180-degree views of Lake Tahoe from level area and trails
Buffered from residential areas
Landscaped berm along Hwy 28 minimizes road visibility and noise

BOULDER BAY – ALTERNATIVE C SITE PLAN



EXHIBIT C

DEED RESTRICTION

Recording Requested By:

When Recorded Mail To:

Parcel Nos.

DEED RESTRICTION

THIS DEED RESTRICTION is placed on that certain parcel of real property located in Washoe County, Nevada, and as more fully described in Exhibit 1, attached hereto and incorporated herein by reference (hereinafter "Property"), by Boulder Bay, LLC, a limited liability company, as the owner of the Property (hereinafter "Owner") for the benefit of the Stillwater Cove Homeowners' Association (SWC) and the property described in Exhibit 2 (hereinafter "Benefited Property").

RECITALS

WHEREAS, Boulder Bay, LLC is the owner of the Property; and

WHEREAS, a proposed development on the Property and adjacent property commonly known as Boulder Bay Resort has been approved by the Tahoe Regional Planning Agency (TRPA) in Case No. CEPP 2008-0123 and ENVR 2008-0003 (hereinafter "Project"); and

WHEREAS, the Project has received its final approvals from the TRPA and other related agencies having jurisdiction over the Project; and

WHEREAS, Owner proposes to improve the Property in the manner described and depicted on Exhibit 3, attached hereto and incorporated herein by reference; and

WHEREAS, Owner, by this Deed Restriction, intends to restrict the use of the Property to the uses and development described in Exhibit 3 for the benefit of SWC and the Benefited Property; and

NOW THEREFORE, the Property is hereby encumbered and restricted as follows:

1. The Property shall be developed and improved including without limitation uses, densities, height, set backs, design and location in substantial compliance with Exhibit 3 attached hereto.
2. No other uses or densities shall be allowed on the Property.
3. This Deed Restriction shall be a burden on the Property and a benefit to the Benefited Property and runs with the land for the benefit of SWC and may not be amended or modified without express written approval of a recorded Amendment executed by Owner or its successors and assigns and SWC or its successors and assigns.
4. This Deed Restriction is binding upon the Property and the Owner and its successors and assigns including, without limitation, all future owners of the Property.

DATED this _____ day of _____, 2010

BOULDER BAY, LLC

By: _____

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2010, by _____ as _____ of Boulder Bay, LLC.

NOTARY PUBLIC

EXHIBIT 1

DESCRIPTION OF MARINER PROPERTY

EXHIBIT 1

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The above described Parcels 1, 2, 3 and 4 are also designated Parcels 1, 2, 3 and 4 on Record of Survey No. 4509 for Sierra Park, LLC, filed December 11, 2004 as File No. 3146107.

The above metes and bounds description appeared previously in that certain document recorded December 21, 2004 as Document No. 3146106 of Official Records.

EXHIBIT 2

PROPERTY DESCRIPTION OF STILLWATER COVE DEVELOPMENT

EXHIBIT 2

PROPERTY DESCRIPTION OF STILLWATER COVE DEVELOPMENT

All real property within the boundaries shown on that certain subdivision plat entitled "Amended Official Plat: Stillwater Cove, A Condominium, filed in the office of the Recorder of the County of Washoe, State of Nevada, on June 13, 1980, File No. 677636 (hereinafter the "Map").

EXHIBIT 3

APPROVED SITE PLAN FOR MARINER PROPERTY AND RELATED RESTRICTIONS

EXHIBIT 3

FINAL TO BE ATTACHED UPON PROJECT APPROVAL

TRPA PROJECT APPROVAL

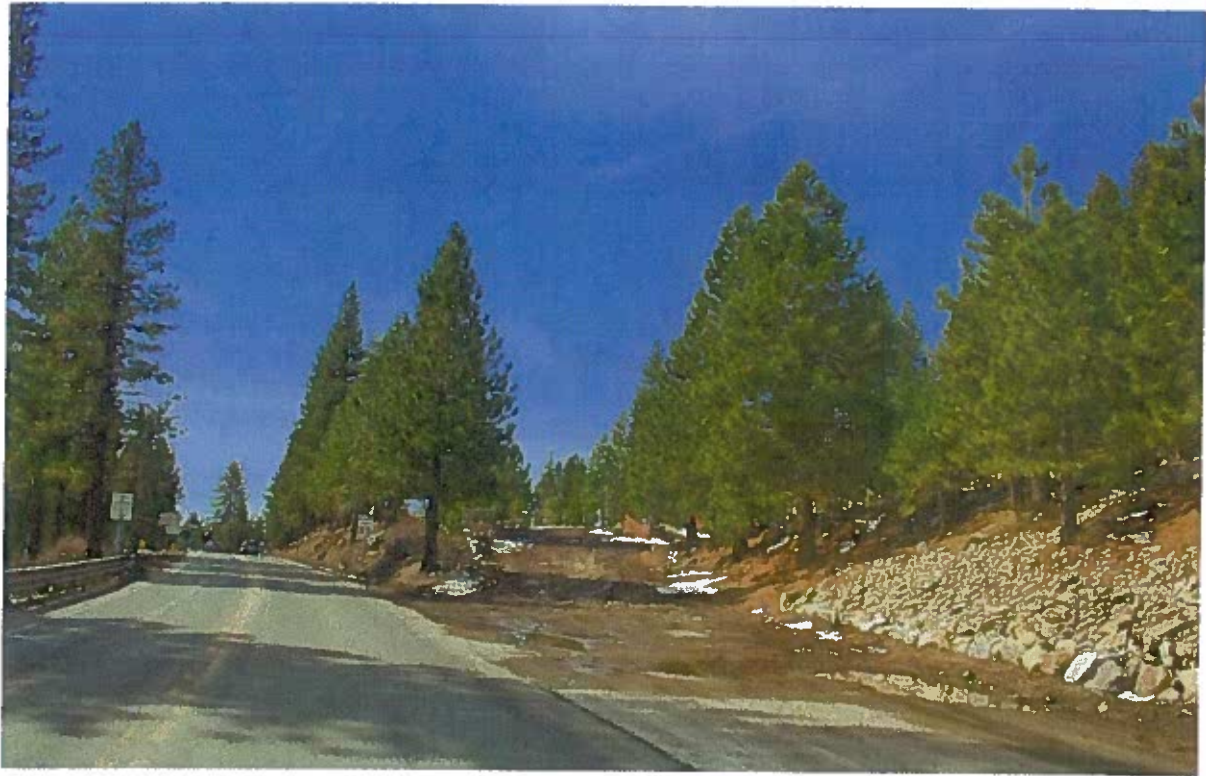
APPROVED SITE PLAN

CONDITIONS OF PERMIT ACKNOWLEDGMENT

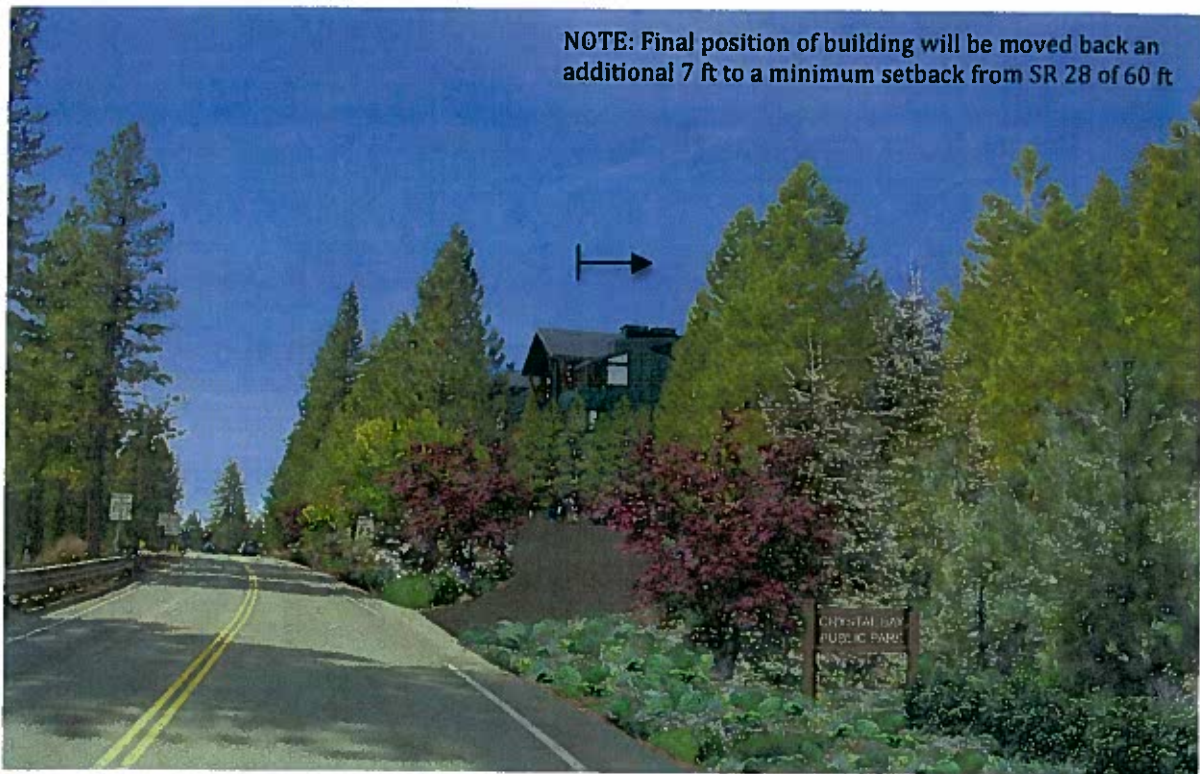
EXHIBIT D

VISUAL SIMULATIONS

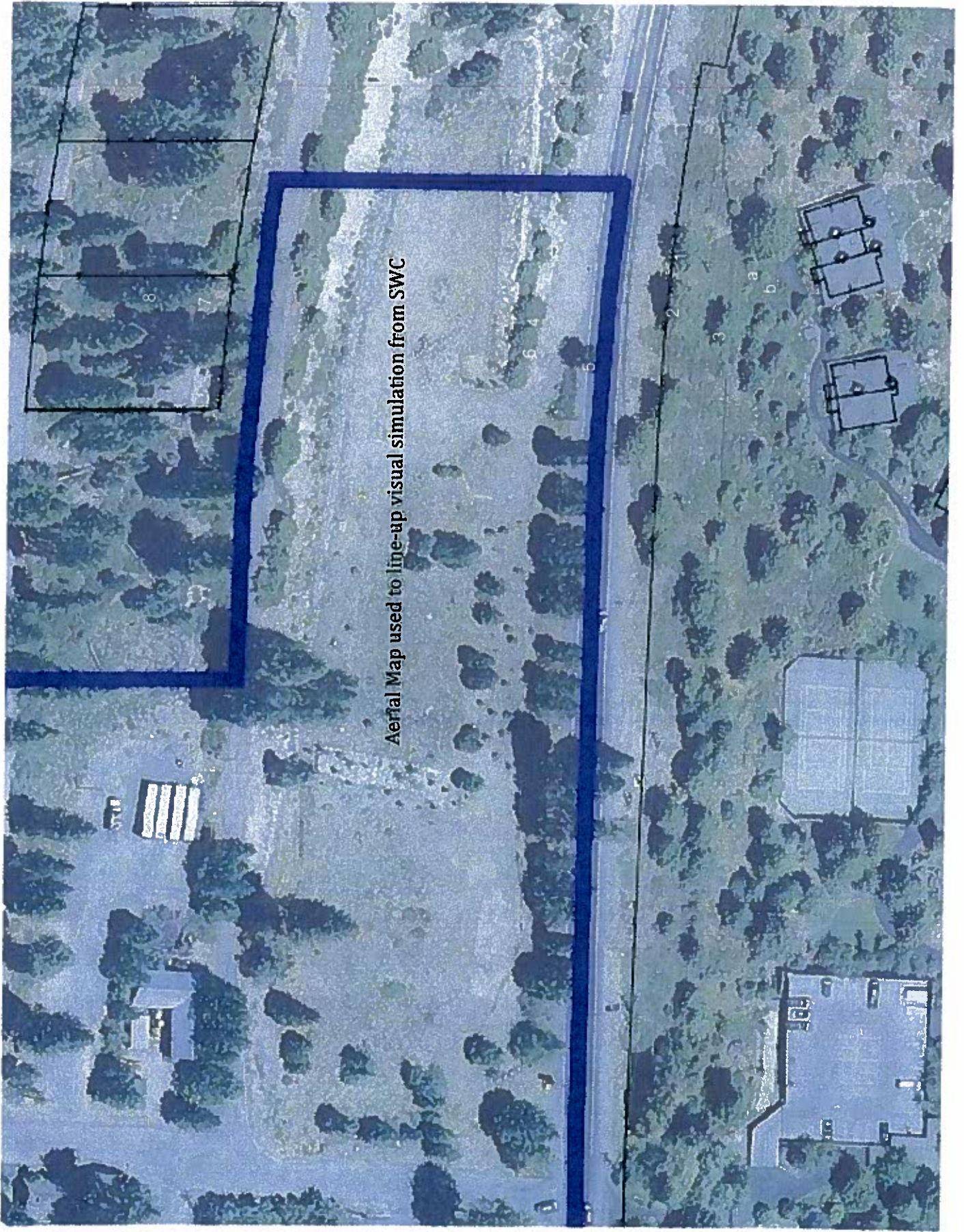
EXHIBIT D



Existing Conditions

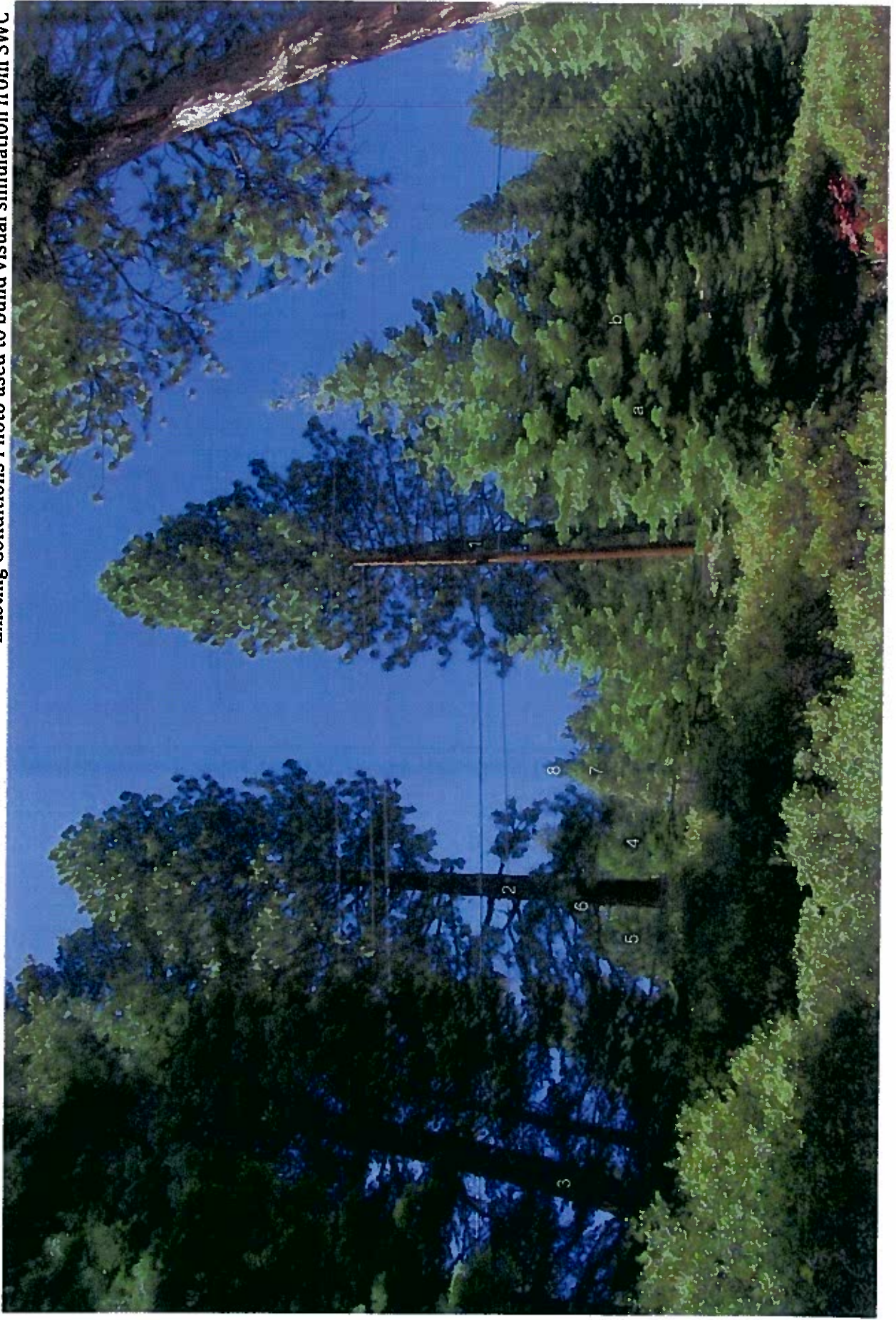


Proposed Conditions



Aerial Map used to line-up visual simulation from SWC

Existing Conditions Photo used to build visual simulation from SWC



Proposed site plan overlay used to build visual simulation from SWC

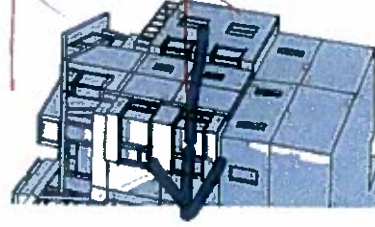


CAD overlay process used to build visual simulation from SWC (NOTE white poles are for reference purposes only to confirm position of trees



Trees are thicker on left, should block bldg

View of potential building



Slope to continue

Slope in fire ground

Stillwater Cave Unit 45B

Final visual simulation from SWC
(NOTE white poles are for reference purposes only to confirm position of trees)

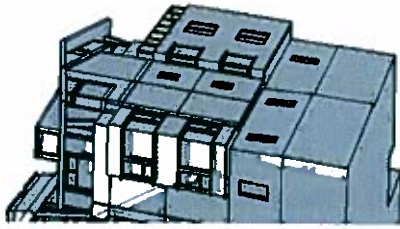


EXHIBIT E

EXHIBIT E



BOULDER BAY – CRYSTAL BAY OFFICE BUILDING AND MOTEL SITE

AREA

APN 123-042-01 0.79 acres

CRYSTAL BAY MOTEL RESTORATION

- A. Removal of the Crystal Motel and transfer of 19 TAU and 1 ERU
- B. Landscaping and revegetation of motel site
- C. Crystal Bay Office Building preserved
- D. Parking area for office building preserved
- E. Stormwater BMPs installed

HEIGHT

Additional height will not be allowed or proposed for the Crystal Bay Office Building and Motel site (APN 123-042-01)
Allowable height is defined by the current TRPA Code of Ordinances Chapter 22 – Table A

VEGETATION

- Native grasses
- Native evergreen and deciduous trees

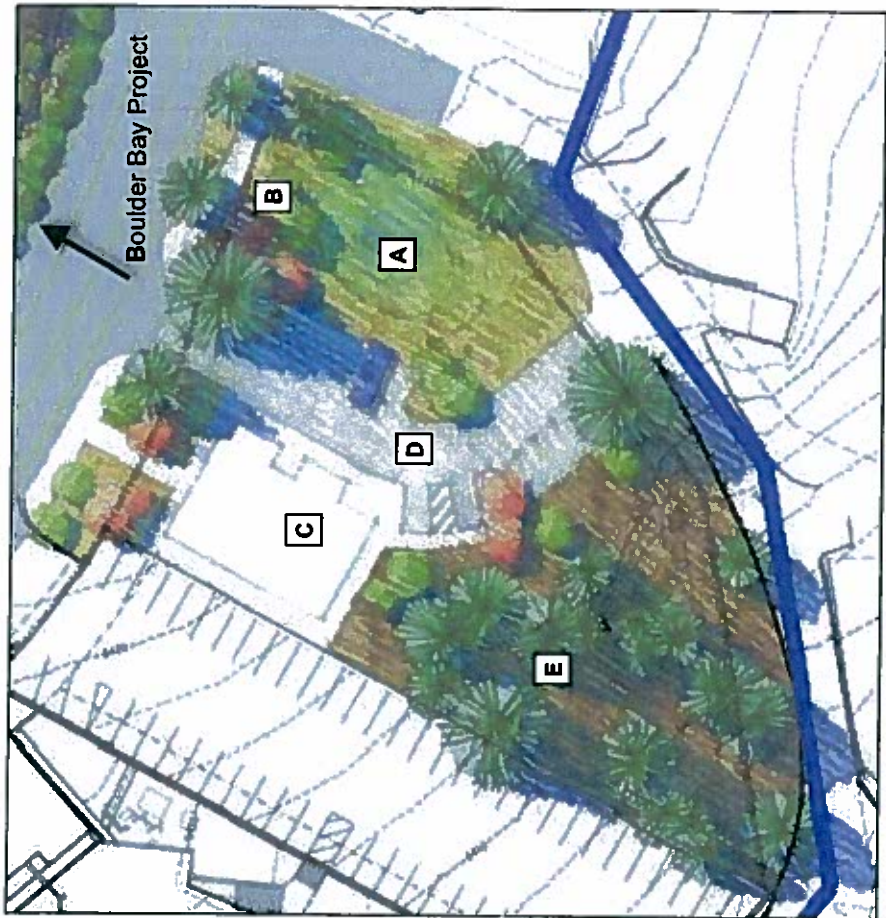


EXHIBIT F

CONSTRUCTION STAGING AREA

EXHIBIT F



BOULDER BAY – CONSTRUCTION STAGING AREA

TAHOE MARINER SITE

- A. Area of the Tahoe Mariner site available for staging and storage (minimum 40 ft setback from SR 28)
- B. Construction sound wall

