

## MEMORANDUM

**TO:** Rob Brueck, Hauge Brueck Associates, LLC  
**FROM:** Lew Feldman, Feldman, Shaw & McLaughlin, LLP  
**DATE:** May 15, 2009  
**RE:** Sierra Park Parcels - Settlement Agreements

---

This memorandum provides an analysis of the original Settlement Agreement concerning the Sierra Park site and the three subsequent amendments thereto.

The Sierra Park parcels have been subject to four settlement agreements (Sierra Park Settlement Agreements) between the various Sierra Park property owners and the State of California and/or TRPA since 1981. The original settlement agreement resolved a dispute over TRPA's 1978-approval of a tourist redevelopment project on the former Tahoe Mariner site. Subsequent amendments to this settlement agreement have been developed and executed to accommodate the changing needs of new property owners. The first amendment allowed the new owner of the property to satisfy the traffic mitigation requirements of the original settlement agreement by an alternative means to facilitate the sale of the Sierra Park properties. The second amendment allowed the new owner to avoid the expiration of the TRPA permit. The third amendment, which did not include the State of California, allowed the new owner of the property to again avoid expiration of the TRPA permit and develop a liquidation plan for the sale of the property and associated development rights.

Boulder Bay is proposing a fourth amendment to the Sierra Park Settlement Agreements to facilitate redevelopment of the Tahoe Biltmore as well as the former Mariner property. The proposed amendment will allow for the reduction of land coverage, elimination of building sites on scenically sensitive portions of the Sierra Park parcels, reduction in the amount of roadway necessary to serve the properties and creation of a (3.9 acre) public park with adjacent parking and ADA access.

### BACKGROUND

The property commonly referred to as "Sierra Park" or the "Tahoe Mariner site" (Property) was formerly the site of the North Shore Club, a development consisting of a casino with 5,500 sf of gaming area, 29 hotel rooms, a restaurant, offices and associated parking areas. On February 22, 1978, TRPA approved a proposed addition/modification to the North Shore Club involving demolition of the existing hotel, construction of a new 147-room hotel complex and two-story attached parking structure, and interior and exterior remodeling of the casino building (1978 Project). Additional gaming floor area was neither proposed nor approved.

In November 1978, the California Tahoe Regional Planning Agency (CTRPA) and the People of the State of California (collectively, California) filed suit in the U.S. District Court (Court) for the District of Nevada contesting TRPA's approval and the Property owner's construction of the 1978 Project (1978 Suit). California alleged TRPA had approved land coverage and height in excess of that permissible under TRPA's Land Use Ordinance (LUO) in effect at the time and failed to prepare and review an environmental impact statement (EIS) and environmental impact report (EIR) in violation of NEPA and CEQA, respectively. The complaint further alleged the 1978 Project would exacerbate existing traffic congestion and air pollution problems, create additional demands on overtaxed sewage facilities, and be out of character with the environmental constraints of the area.

Importantly, the Court denied California's motion for a temporary order to restrain construction of the 1978 Project pending the suit. The Court held that the record contained substantial evidence to support TRPA's findings and lacked any compelling evidence that TRPA had wrongly construed the relevant LUO provisions in approving the 1978 Project. Finding California had not sustained its burden of demonstrating probable success on the merits and the possibility of irreparable harm, or serious questions going to the merits of the case and a balance of hardships tipping sharply in its favor, the Court denied California's motion for a temporary restraining order.

Agreeing to resolve their differences and release all claims concerning the 1978 Project, Plaintiff California and Defendants TRPA and N.S.C., Inc. (NSC), the Property owner, entered into a Settlement Agreement on June 22, 1981 (1981 Agreement). The 1981 Agreement provided for construction of a modified 1978 Project, which involved a reduction of only seven (7) hotel units (140 instead of 147), subject to certain conditions and a requirement that N.S.C., Inc. convey to California a particular parcel of land in Placer County (Placer Parcel). The Placer Parcel, or the proceeds from the sale of the Placer Parcel, was to be used to enhance the regional transit system of the Tahoe Basin or "some other appropriate public purpose" as determined by California.

Subsequent to the execution of the 1981 Agreement, development plans for the Property changed along with the Property's ownership, and the 1981 Agreement was amended in 1984 (Amendment to Settlement Agreement; 1984 Amendment) and again in 1996 (Second Amendment to Settlement Agreement Regarding Tahoe Mariner; 1996 Amendment). The 1984 Amendment merely provided alternative means by which the regional transit system enhancement requirement of the 1981 Agreement could be met, while the 1996 Amendment provided for a reduced project of 32 timeshare units.

Following execution of the 1996 Amendment, ownership of the Property changed hands once again and, in 2001, the new owner, Crystal Bay Associates (CBA), and TRPA entered into an agreement providing that three (3) single family residences could be developed on a portion of the Property while the remainder would be preserved as open space (Agreement Between Crystal Bay Associates and the Tahoe Regional Planning Agency; 2001 Agreement). Interestingly, the California Resources Agency (the successor agency to CTRPA) and the People of the State of California, parties to the 1981 Agreement, 1984 Amendment and 1996 Amendment, were not parties to the 2001 Agreement.

Since California was not a party to the 2001 Agreement, the 1981 Agreement, as amended in 1984 and 1996, is still in effect and enforceable by California. Accordingly, to the extent

Boulder Bay's proposed project conflicts with the Sierra Park Settlement Agreements, both California's and TRPA's consent will be required to further amend the agreements.

### THE BOULDER BAY PROJECT

Boulder Bay's proposed project (Project) is consistent with the intent of the Parties to the 1981 Agreement and 1984 and 1996 Amendments, namely, to ensure no adverse impacts to traffic and air quality would result from the development on the Property. Although the number of TAUs in the Boulder Bay proposal is comparable to the 140 hotel rooms authorized in the 1981 Agreement and 1984 Amendment, the 5,500 sf of gaming area and associated traffic impacts have been eliminated.<sup>1</sup> Further, the mitigation required in the 1981 Agreement and 1984 Amendment to offset traffic impacts of the authorized North Shore Club expansion has been completed, although the expansion was never constructed. Thus, impacts to traffic and air quality from the Project will be substantially less than those contemplated in the 1981 Agreement and 1984 Amendment.

Just as the previous agreements were modified to accommodate the plans of the previous owners, as well as the other Parties to the agreements, Boulder Bay is seeking to amend the 1981 Agreement, as modified by the 1984 and 1996 Amendments, and the 2001 Agreement to facilitate its proposed project, which otherwise complies with the Regional Plan.

Boulder Bay proposes to develop the portion of the Property within the North Stateline Community Plan (NSCP) with tourist accommodation units. The density complies with the standards set forth in Chapter 21 of the TRPA Code of Ordinances and the proposed land coverage does not exceed that approved in the previous agreements. Moreover, the Project increases and consolidates the areas to be dedicated and preserved as open space/public park pursuant to the 2001 Agreement. Boulder Bay will provide signs and adequate parking to ensure the park is accessible by the public.

The proposed amendment to the Sierra Park Settlement Agreements increases the net gain to the local community by 1) reducing total land coverage, 2) increasing the amount of acreage dedicated to passive public park/open space, 3) building and maintaining the public park with private dollars, 4) relocating development from a sensitive scenic area (i.e. visible from the Lake), 5) relocating potential development from Class 1a lands to higher capability lands, 6) implementing additional public transit programs, and 7) extending left turn lanes on State Route 28 to improve traffic flow through Crystal Bay.

### PROPOSED AMENDMENTS TO THE SIERRA PARK SETTLEMENT AGREEMENTS

The specific proposed amendments to the Sierra Park Settlement Agreements are as follows:

1. The western 2.18 acres of the Property, which consists primarily of high capability Class 4 lands, may be developed with tourist accommodation units and/or residential units up to the maximum densities permissible in Chapter 21 of the TRPA Code of Ordinances for

---

<sup>1</sup> All units of use are now governed by the 1987 Regional Plan, necessitating purchase and transfer of existing development, thereby ensuring development potential within the Basin will not be increased as a result of the project.

the 6.11-acre project area, provided the eastern most 3.93-acres of the Property is dedicated to and preserved as open space/public park.

2. An additional minimum of 0.85-acres of land within the North Stateline Community Plan Area will be dedicated to and preserved as open space/public park.
3. Public access, parking and signage shall be provided for the eastern most 3.93-acres of the Property to ensure the area is accessible to the public for park purposes not inconsistent with the dedication to open space.
4. The amount of land coverage that may be placed on or transferred off the Property shall be limited to the difference between 113,000 square feet, the amount recognized as legally existing on the Property in the 1996 Amendment, and the amount for which TRPA has issued permits for transfer off of the Property at the time a development project pursuant to this agreement is approved.
5. The amount of commercial floor area that is banked and remaining on the Property and available for transfer shall be the difference between 12,000 sf of commercial floor area, the amount recognized as legally existing on the Property in the 1996 Amendment, and the amount for which TRPA has issued permits for transfer off of the Property at the time a development project pursuant to this agreement is approved.
6. The number of tourist accommodation units that is banked and remaining on the Property and available for use thereon or transfer shall be the difference between thirty-two (32), the amount recognized as legally existing on the Property in the 1996 Amendment, and the number for which TRPA has issued permits for transfer off of the Property at the time a development project pursuant to this agreement is approved.
7. Any development of the Property as permitted herein shall be subject to TRPA review and approval pursuant to the regional plan and ordinances in effect at the time of such review and approval.