



League to Save Lake Tahoe

February 4, 2010

Tahoe Regional Planning Agency
P.O. Box 5310
Stateline, NV 89448

Dear Mr. Landry,

Thank you for the opportunity to comment on the Boulder Bay Draft Environmental Impact Statement (DEIS). The League to Save Lake Tahoe strongly supports the appropriate redevelopment of legacy areas. However, the League has a number of concerns with the information contained in the DEIS and which need to be resolved in the Final Environmental Impact Statement in order to assess both the true impacts and benefits of the proposed project. The League believes that crucial information and analysis is either missing or flawed in the DEIS.

Furthermore we also incorporate the comments from the following organizations and individuals:

North Tahoe Preservation Alliance
Tahoe Area Sierra Club
Attorney General of California
Christina Morkner Brown, Attorney
Susan Handy, Traffic Expert
Joy Dahlgren, Traffic Expert
John Bosche, Civil Engineer
William Eadington, Director of the Institute for the study of Gambling, UNR

Transportation/Air Quality

Increasing traffic can increase pollutants that negatively affect both air and water quality in the Tahoe Basin. It is imperative that an adequate transportation analysis is performed in order to better quantify and assess the impacts to threshold standards.

Chapter 4.8, Transportation, Parking, and Circulation, has severe flaws including an inaccurate analysis of trip generations and Vehicle Miles Traveled (VMT). Defying common sense the DEIS reports that while there will be an increase from 92 hotel units to 300 units plus 59 condominiums and 14 housing units, a combined increase of gaming, commercial area, and accessory floor area from about 80,000 sq feet to about 120,000 sq feet, and an additional 158 parking spaces, that somehow trip generations and VMT will be decreased. This is a very bold conclusion and steps need to be taken to make this conclusion deserve thorough review.

The first major flaw in this chapter is the incorrect method for calculating baseline numbers for trip generation and VMTs. The baseline numbers were not derived from existing conditions at the current Biltmore site, but instead were based on the potential full capacity of the existing uses at the Biltmore. This skews the numbers to make it seem as if Alternative C is drastically reducing VMTs because the project alternatives' VMTs are not being compared to existing actual VMTs, just potential VMTs.

Although TRPA claims that existing conditions are always analyzed at potential capacity and not at current uses, the California Attorney General's Office acknowledges that this method is invalid and has been demonstrated in case law. TRPA's claim appears to be based on staff interpretation and not actual regulations. The difference between potential and actual is substantial. The existing daily trips count is 1,835 daily trips, while potential daily trips are predicted to be 5,581. Using this inaccurate number of 5,581, the DEIS claims that Alternative C actually reduces daily trips by 2,190 from potential existing conditions. The predicted number of daily trips for Alternative C is 3,892, which is actually significantly higher when compared to the existing daily trips count.

TRPA staff interpretation differs from common practice for traffic impact analyses which use actual existing conditions. CEQA 15125 (a) states, "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."

A second inadequacy in this Chapter of the DEIS is that trip generation numbers were not based on data from the Biltmore. The numbers were not derived from Casinos in Tahoe, Reno, or anywhere in Nevada for that matter. Instead data was derived from gaming space in two casinos in Illinois, one in Iowa, and one in California. Trip generations need to be based on local data and circumstances, which the DEIS fails to incorporate.

The analysis of the Biltmore at full capacity of existing uses not only defies case law, but is an extremely unrealistic potential as gaming numbers in Northern Nevada continue to decline and are not expected to regain due to competitive pressures from expanding gaming in California and throughout the country. Please see comments submitted separately by gaming expert, William Eadington on behalf of the North Tahoe Preservation Alliance.

Thirdly, the transportation analysis is unsound because it is based on a model by Fehr and Peers for a mixed use development that does not include hotel or interval ownership residential uses. Since hotel and vacation homes will be the primary use of the Boulder Bay Resort, it seems inappropriate to use this model. The internal capture rate in this study only takes into account trips between the casino, hotel, restaurants, and retail. The study does not appear to take into account the amount of external trips that will be generated by the increase in the number of guests and residents now needing to reach recreational areas, grocery stores, and other essential services. As both the internal capture rate and alternative mode reduction is based on a model not designed for hotel uses, the validity of the numbers generated remains extremely questionable.

The League is concerned about the dramatic increase in accessory floor area and how this has not been adequately taken into account in the transportation analysis. It appears as if accessory floor space is treated differently from a commercial floor area for the traffic analysis. The difference is based on the assumption that accessory floor area will not increase trips to the project. However, it remains unclear how a restaurant listed as “accessory” will bring in less guests from outside the resort compared to a restaurant listed as “commercial.” The DEIS claims that Boulder Bay will not advertise any of their accessory space uses. How will Boulder Bay be held accountable for not advertising the services used in the accessory floor area? If in the future Boulder Bay decides to convert the accessory floor area to CFA so that they can advertise to the public, will TRPA require a new traffic analysis to be performed and will that future analysis be examined with the same scrutiny and held to the same standards as the original CEP project?

Furthermore, while Boulder Bay will be offering opportunities such as additional shuttle services, the DEIS does not examine the likelihood of these practices at being successful at reducing either overall VMTs or emissions per person per mile. If the overall visitation to Boulder Bay Resort increases from current uses, but only a small percentage of guests utilize public or semi-public transportation, then effects to transportation and air quality will likely occur. Is there an irrevocable commitment for Boulder Bay to continue to utilize the shuttles or ensure that a certain amount of their guests utilize these shuttles instead of their private automobiles? If Boulder Bay discontinues the shuttle system what will be the repercussions for the developer?

The robustness and adequacy of the transportation analysis is key in allowing the Governing Board to vote for the project with complete confidence that the VMT analysis is accurate and

that there be no significant impact to the Air Quality threshold standard. An adequate transportation report is also crucial because the crux of the Tahoe Mariner Settlement Agreement is based on ensuring that no adverse impacts will occur to traffic and air quality as a result of development on the Mariner Site. The League feels that the consultants need to perform a more thorough and appropriate transportation analysis that accurately takes into account existing conditions (including current baseline VMTs) and external trips based on a model designed for mixed hotel development that includes second homes and uses data that better reflects a Tahoe area casino.

Will a more accurate and adequate transportation analysis be performed for the FEIS that addresses all the issues identified above?

The League also hereby incorporates any comments on the Boulder Bay DEIS submitted by the California Attorney General's office, traffic expert Susan Handy, traffic expert Joy Dahlgren, and gaming expert Dr. William Eadington.

Gaming Space Reductions, Commercial Floor Area, and Accessory Floor Space Additions

The DEIS is unclear and potentially misleading about the reduction of gaming space and other uses under each of the different alternative. The EIS needs to clearly state what actually exists, what is actually being proposed, and what could potentially be used in the future under each of the alternatives for gaming space, CFA and accessory space. The DEIS should also list the combined amounts of the total of all three of these areas and the total addition or reduction of these combined areas for each alternative.

From the League's estimate it appears Alternative A has a combined gaming (existing, not potential), commercial, and accessory area of around 80,000 sq feet while the proposed project, Alternative C has a combined area of around 120,000 sq feet. Does TRPA confer with these estimates and will they be published in the EIS?

The DEIS needs to better clarify within each alternative the actual existing gaming space, certified gaming space, proposed gaming space, gaming space that will be permanently retired, gaming space that will be temporally retired, and gaming space that is being retired from the Boulder Bay site but may be used elsewhere within the North Stateline area. These quantities should be illustrated so it is very clear to the reviewer the actual amount of existing gaming space being reduced as well as the amount of certified gaming area that is being *permanently* reduced.

There also needs to be clarification about the supposed reduction in CFA on the Boulder Bay site which is claimed to be 17,935 sq ft. (pg 2-22). This number supposedly comes from the 19,744 sq feet of reduced *certified* gaming area. The DEIS fails to state that the 19,774 sq feet reduction is not an *actual* reduction in gaming space, but a reduction in *certified* gaming area (some of which may not be a permanent reduction). The actual reduction in existing gaming

floor space is only 12,400 sq feet.¹ How is it possible to reduce 17,935 sq feet of something that is only 12,400 sq feet in size? The answer is that it is impossible and that really there is only a 12,400 sq foot reduction of real CFA, not 17,935 sq feet as the DEIS claims.

In regards to CFA and GFA the DEIS does not make a fair comparison of the No Project Alternative (Alt A) and the Preferred Alternative (Alt C). For instance on pg 2-22 the DEIS assigns Alt A with 56,322 sq feet of CFA which includes verified CFA and *certified (some of which is not existing)* GFA. The DEIS does not state that only 48,978 CFA (combined CFA and GFA) is in actual use. However, within the same paragraph, the DEIS claims that there is a reduction of 19,744 GFA. Yet, it is not stated within this paragraph that in fact the 19,744 will be considered *verified* CFA. Why is it that Alt A calculations includes both existing, verified, and certified CFA/GFA, but alternative C calculations only includes what will be used on the ground and not verified/certified?

Consistency Analysis

In Chapter 3 of the DEIS (Relationship to Existing Land Use Plans, Goals and Policies) Table 3.2-1 lists the consistency analysis that does not appear to be very consistent with the rest of the DEIS. For example, the DEIS states that for Alternative A and B the site will be retrofitted for the required 20 year one hour storm. However in reference to Regional Plan Goal 1 (Land Use) on page 3-3 the Table states that Alternatives A and B will be inconsistent because “Existing development at the project area includes deficient stormwater treatment, circulation, and urban design features that would not be corrected under Alternatives A and B. How can the DEIS claim that a 20 year one hour storm capture will be built in A and B but that deficient stormwater treatment will not be corrected under these alternatives?”

Table 3.2 – 1 incorrectly labels Alternative C as being consistent with Regional Plan Goal 2 and associated policies. Alternative C is not consistent with existing height regulations because it exceeds existing height limits. An amendment that may allow for a height exception does not make Alternative C consistent with *existing* TRPA Goals and Polices.

Project Benefits and CEP status

- Water Quality Benefits

Since Boulder Bay is a CEP project (for Alt C and D) and needs to “result(s) in substantial environmental benefits” (Code of Ordinances Ch. 33.3 D (3) a), the EIS needs to do a better job of explaining in a clear and quantifiable manner the differences in water quality benefits and improvements amongst the alternatives.

It is unclear in the DEIS that Boulder Bay’s contribution to EIP #732 (Brockway Residential Water Quality Improvement Project) is separate and in addition to the planned on site treatment of the 100 year one hour storm event. It would also be helpful to list the expected

¹ 12,400 square feet comes from subtracting the amount of proposed floor space for Alt C (10,000 sq ft) from the current gaming floor space at the Biltmore/Alt A (22,400 sq ft).

costs of the entire EIP project (732) and the portion of the cost that Boulder Bay will be contributing. It is our understanding that the total project cost including land cost for EIP #732 is roughly \$4 million and the Boulder Bay portion of the project will be around \$1.3 million. Is this correct? Furthermore, EIP # 114 (Washoe County Water Quality Improvement Project – Phase I/North Stateline Community Plan Lake Vista Mini Park) does not have a water quality component and therefore should not be listed as contributing to water quality benefits. Our understanding is that the land underneath EIP #114 will be used for water quality, but that it will be considered part of EIP #732. This needs to be clarified in the EIS.

There are crucial pieces of information that are missing in the water quality section of the DEIS that are needed to help decision makers and the public determine how far “above and beyond” the CEP project is reaching. As a commercial area the project is required regardless of its CEP status to maintain Best Management Practices for a 20 year one hour storm event. The project as a CEP is proposing a much larger 100 year storm design system. However, without adequate quantification of the difference between what is required and what is proposed there is no way to discern if the benefit is substantial. The 100 year storm capture appears to be rather impressive, but there needs to be a quantification of the amount of fine sediments being reduced. The 100 year storm capture may reduce fine sediment loading by a significant amount in comparison with a 20 year one hour standard or the difference may not be as dramatic as would have been hoped for. The DEIS does not quantify the average annual fine sediment load that will be reduced by any of the alternatives. This type of quantification needs to be consistent with NDEP and Lahontan TMDL requirements and should be included in the FEIS. It is imperative that the load quantification is performed for fine sediment (16 microns or less), not simply Total Suspended Sediment, as the TMDL has identified fine sediments, *not TSS*, as the major culprit of lake clarity decline. Jurisdictions will be required to quantify their fine sediment reductions, not TSS loads. These loads in the FEIS should be presented not as a percentage, but as actual numbers. Do the project applicants currently have this information or will it need to be obtained?

Also there is concern that the pre-project water quality monitoring only used six sample dates and that numerous times throughout the water quality appendix it is stated, “Loading estimates to be used with caution. Flows are grossly estimated using flow calculated from....” It has been brought to our attention that additional research has been performed previously by the Desert Research Institute and the project applicant is working with Michael Hogan and Mark Grismer to obtain additional data to better support the original results. We expect this information will be fully vetted in the FEIS.

- *Undergrounding of Utilities*

The DEIS claims that Boulder Bay’s \$600,000 contribution to the Washoe County undergrounding of utilities is a benefit for alternatives C and D, but not for alternatives A, B, and E. However, since the contribution has already been made and the work has been completed, the undergrounding should be listed as a benefit for all the alternatives. Oral communication with the consultant revealed that at the time the DEIS was being written that

the undergrounding had not yet occurred, but that the consultant agreed that it should be listed as a benefit for all alternatives now that it has been completed. Will the undergrounding of utilities be listed as a benefit in all alternatives in the FEIS?

- Coverage Reductions

According to the TRPA Code of Ordinances section 20.3 B the abandoned ROWs should not count towards the project's coverage reduction as the code states, "land coverage associated with existing linear public facilities, highways, streets and roads shall not be considered in the calculation of land coverage." However, the DEIS claims (4.2-16) that using the ROW for excess coverage mitigation is allowed under Code Section 20.5. Please identify more specifically the portion of the code that allows for the use of ROW for this purpose because after reviewing 20.5 we have not been able to see where the DEIS finds this interpretation.

If anything, Washoe County should receive jurisdictional credit for the retirement of their own roads, not the project applicant. The reduction with the Public ROW is claimed to be 15.8%. Without including the abandoned right of way what would the percent reduction be? The DEIS also claims that by including the right of way reductions that the project coverage will be 50.3%. Without using the right of way reduction what would be the coverage of this project.

Why is state owned land being considered a coverage reduction benefit for a private developer? The permanent retirement of the coverage from the ROW abandonment should be considered.

It would be helpful to include a breakdown of the Washoe County Right of Way (either current or abandoned) that is being included in the project area by acreage, square feet, existing land coverage, and land capability.

Also, although the proposed project meets the requirements for excess mitigation, it seems that a CEP project should at the very least follow the TRPA requirements for Bailey amounts and not *exceed* the 50% coverage limit. 50% is also the coverage limit for the NSCP. Also it is imperative that 4.78 acres of open space that were deed restricted as part of the Mariner site not be counted towards the overall land amount in which the coverage is calculated.

Since the coverage removed from the Crystal Bay site is not being permanently removed, the coverage reduction may only be temporarily and should not be counted as a benefit to the CEP project and the project should not receive any incentive unless it becomes permanently restricted.

- Double Counting

There is some concern that the DEIS overstates or restates some of the environmental benefits. An example of this is the SEZ restoration that was required in order to receive the TAUs (to be converted to the ERUs) from the Colony Inn Site. The DEIS repeatedly claims that there is a community benefit from the project because of the off-site SEZ restoration performed by

Boulder Bay. If Boulder Bay was not receiving TAUs or ERUs from this restoration work then it would be fair to call it an enhancement. However, because they are receiving benefits that would be given to any developer, it does not seem appropriate to list it as an additional benefit. The SEZ restoration is a *requirement* for receiving these TAUs, and therefore Boulder Bay cannot count this SEZ restoration as an added benefit of the project.

- Trails, Walkways, Bikeways

None of the trails, walkways, or bikeways appear to have any connectivity to neighboring towns or recreation areas such as Kings Beach or the Crystal Bay Lookout. Without connectivity these improvements do not appear to be much of a benefit either to decreasing dependency on the automobile or to providing recreation.

-CEP Incentives

The project is receiving incentives such as allocations because of its status as a CEP project. However, the project itself has many impacts. How does the TRPA quantify net benefit when comparing the project's impacts to the project's benefits?

What is the monetary value of all the entitlements given to the developer for being a CEP project?

Mariner Settlement Agreement

- Land use changes

The League believes that changing the settlement agreement from three single family residential units to high density condominiums conflicts with the integrity of the previous settlement agreements which restrict uses, density, and height on the 6.11 acre site. The main purpose of the original settlement agreement was to ensure that no adverse impacts would occur to either air quality or traffic from the development of the Mariner site. However, as discussed above, the DEIS transportation analysis is flawed and if performed correctly, the transportation analysis may reveal that the project as whole, as well as the portion of the project on the Mariner site, will in fact negatively impact traffic and air quality.

It is unclear from the DEIS how many units are now proposed on the Mariner site in comparison to the three units that were allowed as part of the 2001 Mariner Settlement Agreement. This information should be clearly provided in the EIS. The coverage for the three single family homes allowed in the DEIS was 48,535 sq feet. How much additional coverage is proposed to be placed on the Mariner site as proposed in Alternative C? It is imperative that the 4.78 acres of the deed restricted site is not used for coverage calculations. The remaining 1.33 acres left of the 6.11 acre site is the amount that should be used for coverage calculations.

The League is particularly concerned by the defense provided in Appendix M of the DEIS which is the project applicant's version of the history of the Tahoe Mariner Settlement Agreement. The project applicant's attorney argues that because the proposed project allows the 140 TAUS allowed in the original 1981 agreement, but does not allow for any gaming area on site, that

this coupled with the 1981 mitigation requirement (in the end a total of \$46,000) will result in a reduction of traffic from the 1981 agreement. However the attorney's argument is flawed for a number of reasons. First, in paragraph #11 of the 1996 agreement it specifically states that \$46,000 payment for air quality mitigation will only be valid for the 1996 timeshare project and "shall not be construed to exempt future projects, other than the timeshare project from compliance with TRPA mitigation requirements regarding air quality or traffic." Therefore, Boulder Bay's attorney's argument is flawed in referring to the 1981 mitigation measures because the mitigations are not transferable from the 1996 timeshare project that was abandoned to a new project. Second, the League believes that the issue is not about what was or was not allowed in 1981, but is an issue about the increase in traffic that will occur if the *current* agreement is not honored. Also it is unclear and very doubtful that mitigation measures required from 1981 agreement were actually effective measures.

The League is opposed to the portion of the proposed agreement that changes the amount of the land on the Mariner Site allowed for density calculations to 6.11 acres. This violates the intention of the open space portion of the 2001 settlement agreement and furthermore, the majority of this acreage is not in the North Stateline Community Plan.

The proposed Mariner agreement does not change height allowances. However, prior agreements (1981 and 1996) limited height on property to 40.7 feet. No other agreements increased this height, yet Alternative C proposes a 53 foot high building. Clearly this is a violation of the Tahoe Mariner Settlement.

Is there any relocation of coverage to class 1a lands on the Mariner site? Would this be a violation of the Tahoe Mariner Settlement agreement? Is this discussed in the proposed changes for agreement in Appendix M?

- Open Space

The DEIS claims that Alt C will be deed restricting 5.7 acres of open space which is more than what is required of the 4.78 acres in the Tahoe Settlement Mariner Agreement. However, while there might be more deed restricted space on the Boulder Bay site, will there actually be a smaller amount of deed restricted space on the Mariner Site itself than is required by the Agreement? How much deed restricted space will be relocated off the Mariner in each of the alternatives? The DEIS does not address the quality of the relocation of open space in relation to either the Mariner Site as well as within the Mariner Site. It also appears that the relocation within the Mariner Site is to an area that would not be very suitable for development and places the public access at a farther distance than the original location.

- CFA on Mariner Site

There is concern about some of the issues with CFA transfers and banking on the Mariner site that directly relates to the potential TAUs that Boulder Bay is seeking from a CFA to TAU conversion. First, it has come to attention that according to the provisions in the 1996 Settlement agreement (paragraph 18) that only 6,000 square feet of CFA should be allowed;

not the 12,000 square feet that is being allowed and has been proposed in Appendix M (#5). Apparently the ability to use the 12,000 square feet expired three years after the agreement in 1999.

Also, the previous owners had sold CFA to other parties who paid for the CFA but did not use all of it. It appears that the project applicant is attempting to claim this unused CFA as their own and calling it residual CFA as referred to in the January 29th, 2009 audit of the site. Is this correct? This is not allowed as the buyer is the rightful owner of the CFA, which the buyer can chose to sell or use later. Boulder Bay should not be allowed to count this as their own CFA, which they are then planning on converting to TAUs.

Community Plan Amendments and TRPA Code changes

- Height Amendment

The proposed project (Alt C) is non-conforming in that all eight buildings will exceed height restrictions. Furthermore, it appears that Building A is really three buildings which means a total of ten buildings will exceed height restrictions. Currently only one building on site is non-conforming and is allowed because of the grandfather clause. One of TRPA requirements for the redevelopment of a site is that non-conforming uses are brought into conformance. However, instead of bringing non-conforming uses into conformance, this project seeks to increase the number of buildings that are non-conforming ten-fold! All the while, the DEIS claims that this is consistent with the Regional Plan because an amendment will be made to the Regional Plan. The DEIS is flawed and should instead state that the height exceedance is not consistent with the TRPA Regional Plan.

The League is further concerned that a major height amendment is being made to the TRPA before the new Regional Plan update is completed. The CEP projects were meant to inform the Regional Plan. However, since there will not be an opportunity to discover the impacts and effects of Boulder Bay as a CEP project in a sufficient amount of time to inform the Regional Plan, it no longer makes sense to make an amendment to the Regional Plan prior to the adoption of the Regional Plan update. Under the TRPA Code of Ordinances 42 feet is the maximum allowed for a 24% slope with a roof pitch of 10:12 or greater.

Additionally, the League is concerned that this change is really a change to the Community Plan Amendment. First, the League does not feel that an amendment should be made to the Community Plan as part of the project. Instead changes to the Community Plan should be done as part of the Community Plan Update. The update for the North Stateline Community Plan is long overdue. Secondly, the DEIS does not even appear to acknowledge that making a height amendment requires an amendment to the Community Plan. Under the NSCP the maximum height limit is 38 feet.

It appears that the amendment is not designed specifically for this project, but moves outside of the project area, including areas on the other side of the highway. Is this correct? Will this

amendment allow future projects, including projects across the highway to utilize this height increase?

Furthermore, the 1981 and 1996 settlement agreement, paragraph 14 states that height will not be allowed to exceed 40.7 feet, yet Alternative C proposes a 57 foot structure on the property. Not only is the project out of compliance with the Regional Plan and NSCP, but also with one of the prior settlement agreements.

-CEQA

The North Stateline Community Plan is located in both California and Nevada. Therefore, any changes to the Community Plan should fall under CEQA requirements. Has Placer County participated in the portions of the DEIS that will impact the NSCP?

Scenic

In addition to the height issues described above, there is a larger issue with general massing and bulk of the project. In addition to height and square footage it would be helpful if the EIS contained information on the cubic volume of the project. It is our understanding that the total square footage of the buildings on site is being increased from 110,000 square feet in the No Project Alternative to 475,000 square feet in the preferred alternative. Is this correct?

The Scenic analysis shows that some portions of the project will be visible from the Lake. This seems to be a degradation of scenic quality and should decrease the shoreline score.

A shadowing and night lighting impact study needs to be performed.

Removal of the Crystal Bay Motel is proposed for scenic mitigation; yet it is not proposed to be permanently deed restricted as open space thereby allowing a project to be built on this site in future and eliminating the scenic view and mitigation.

It appears that the calculations for height in buildings in Alt C used flat roof pitches, yet the simulation shows steeper roofs. What type of roof pitch was used for these calculations and if so is there a discrepancy between the calculations and the simulations?

Is part of the scenic mitigation to include vegetation screening? The DEIS did not include a landscape plan? Will a landscape plan be included in the FEIS?

Tourist Accommodation Units

The morphing of Tourist Accommodation Units (TAU) is a serious issue throughout the Tahoe Basin and is not unique to Boulder Bay. However, Boulder Bay is still taking of advantage of this inappropriate ability to morph TAUs into whatever size suits the developer. Although Boulder Bay's morphing is slightly less egregious than other developments it is of great concern and should not be allowed.

The DEIS stands in error regarding the calculations of TAU size that makes the morphing of size appear more diminutive than it actually is. The DEIS states on 4.1-25 that “The average size of TAUs demolished within the sending parcels is approximately 325 square feet...” and the “average TAU size under C is 556 square feet.” This makes it seem as if TAUs are only being morphed on average from 325 square feet to 556 square feet. However, an important factor was left out of the computation that the DEIS used to reach the 556 square foot number for Alt C. The 42 TAUs from the Colonial Inn sending parcel will be converted to ERUs in Alternative C. ERUs are typically used as condominiums and their square footage is usually inappropriately larger than the original sending TAU. Off hand, the consultant’s best estimate for Boulder Bay ERU size was between 800 and 1000 square feet (verbal communication with Rob Brueck at December 2009 Public Workshop at the Biltmore). It is imperative that the EIS report the average size of the Boulder Bay ERUs and that these numbers are correctly inputted with other TAU data to determine the true morphing of the TAUs from the sending parcel to the receiving parcel. Furthermore, there should be a list of the exact square footage of each TAU and ERU proposed for the preferred alternative.

There are a number of TAUs that Boulder Bay will be receiving that currently do not “exist” in a physical sense as they are coming from a special projects pool or the Community Plan pool. The EIS needs to list the total amount of floor space of existing TAUs (both from on site and from the sending parcels) and compare that to the total floor space of all the proposed TAUs as well as the square footage of any ERUs that were previously TAUs.

The DEIS claims that the TAUs will use much less water and energy resources than the units removed, but is unclear under what basis this is being judged. For example is this at one to one square foot ratio or a one to one TAU ratio? Will the 1000 square foot condominium that came from the 325 square foot unit be overall more efficient? What happens when other aspects of the project such as the energy used for the melting of snow on paved areas is calculated in? Is the Boulder Bay TAU with all the amenities included such as all the accessory floor space energy and water use such as that used for a heated pool, sauna, and steam room still really more efficient than the sending TAU with all of its amenity energy usage?

Also there is some question as to the adequacy of the verification of the CFA amounts that Boulder Bay is attempting to convert to TAUs. This verification needs to be resolved before the conversion is allowed. The League also questions the validity of transferring CFA to TAUs when lots of the retail and services on site that would normally be classified as CFA is being classified as accessory space.

The conversion of CFA to TAU is a slippery slope that needs to proceed with much caution as there is a plethora of CFA throughout the Basin and a strong market for TAUs. The impacts of a CFA to TAU conversion needs to be addressed as part of the Regional Plan and should not be considered until after a thorough analysis.

Also a discrepancy between the proposed project and the NSCP is that the number of TAUs has a buildout of 565 additional TAUs, but with proposed project transfers that number will increase by 150 units to 715 TAUs.

Coverage

The DEIS is not clear in its illustration of coverage numbers, sometimes appears to be inaccurate, and could potentially be misleading. A more accurate and comprehensible explanation of coverage will greatly assist both the public and decision makers in understanding important details regarding the project.

A chart needs to be provided with a breakdown of each parcel that is proposed as part of the project, and the square footage, acreage, verified land coverage, land capability, and verified development rights for each of these parcels.

In addition, the FEIS needs to include a breakdown of the Washoe County ROW (either current or abandoned) that is being included in the project area by acreage, square feet, existing land coverage, and land capability.

According to the DEIS (pg 4.2 -21) the coverage for the project is 339,884 square feet, yet Appendix D *TRPA Land Capability, Coverage and other Commodity Verification Files* only shows 354, 332 square feet of coverage. Why does this discrepancy exist and where does is this additional 45,553 square feet derived from?

Is there relocation of coverage from disturbed lands to undisturbed lands anywhere on the project site? Please provide a chart and map demonstrating where new coverage was not previously either disturbed or covered.

Density

The overall density and capacity of the site is of concern as related to the impacts on air quality and traffic as discussed above. Increasing density allowances allows for increase capacity on the site which leads to increases in traffic and decreases in air quality.

The League is opposed to the changes in the proposed Mariner Settlement Agreement that would change the allowed land area used for density calculations to allow the areas outside of the NSCP to be allowed for density calculations. Table 4.1-2 of the DEIS notes that 12.20 acres of 16.26 project acres will be used for density calculations which excludes the 4.06 acres of the project located outside the NSCP. In Appendix M the proposed amendment states that the property on the Mariner site may be developed “up to the maximum densities permissible in Chapter 21 of the TRPA Code of Ordinances for the 6.11 acre project area.” The proposed amendment is then allowing for the area outside of the community plan to be utilized for density calculations. This change would allow a severe increase in allowable density and is contrary to the intention of the open space portion of the Settlement Agreement.

Is the project using either current or abandoned Washoe County Right of Way for density calculations?

It is our understanding that the original application used a density allowance based on Category E. This has apparently been changed. What basis was this change made and how much does it increase or decrease density allowances?

DEIS Summary Chapter Issues

The summary of alternatives that are identified in the Summary Chapter of the DEIS are not clear in addressing similarities and differences. For example Alternatives C, D, and E, all contain a list of such items as the number of hotel rooms, parking spaces, gaming floor area, etc. Much of this information is left out for Alternatives A and B and the reviewer must look throughout other places in the document to fill in the blanks. For comparison, the EIS should make sure that the same type of information is included and displayed equally for all the Alternatives in this summary section.

Furthermore, there are some issues with the presentation of gaming area in the summary chapter. Gaming area is discussed in further detail in other portions of this comment letter, but for the summary section it should be noted that the reporting of reduction in *certified* gaming floor area instead of the reduction in *existing* gaming is misleading. The EIS needs to include both the reduction in existing and certified gaming area.

Structures Housing Gaming

There are very stringent regulations concerning structures that house gaming in the Tahoe Basin. The DEIS should thoroughly evaluate the project against TRPA regulations and any other agency regulations concerning but not limited to issues regarding expansion and relocation of structures and gaming space. Although there is less gaming area within the structure, is the structure itself expanding?

Crystal Bay Motel

The DEIS needs to better clarify the role of the Crystal Bay Motel/Office property within the document. The project description (S-4) does not describe this piece of property as being part of the project yet the vicinity map shows it as part of the project. Is it part of the project?

As described in the scenic comment section above, the property will be used to enhance the scenic quality of SR 28 (page 4.5-46), by removing the structures and re-vegetating the area. However, the DEIS also states that the site could be redeveloped. If redeveloped, the scenic improvement would be lost. Has deed restriction of this property for open space been proposed and if so what were the reasons for not choosing an open space deed restriction? Are there plans to develop this property?

Furthermore, since this property is included in the calculations for density, how would it be further possible to develop this property in the future?

Destination Resort/Recreation

Boulder Bay is claiming to be a destination resort yet the resort is not located near beaches, ski resorts, or hiking trails. There is a grave concern that by increasing the number of visitors to this area that nearby areas such as Bucks Beach will be overwhelmed with visitors that it was never designed to accommodate and the impacts both to the beach and the neighborhood could be severe. This was not analyzed in the DEIS and needs to be addressed.

The Boulder Bay site does not measure in comparison to resorts such the Hyatt in Incline which has a private beach on site and the Ritz Carlton at Northstar which is a ski-in ski-out destination.

This implication is particular important to the traffic study as many guests will need to leave the resort in order to fulfill their vacations needs. Many will choose the use of their private automobile to arrive at these destinations.

The DEIS needs to acknowledge the impacts to local recreational areas and provide sufficient mitigation for these impacts.

Biological Resources

According to the DEIS, 225 trees will be removed from the property. Of particular concern is the removal of trees 25 trees that are of 24" dbh and greater. Since five of these trees are diseased it is really the 20 healthy trees ranging in size from 24" dbh to 44" dbh or greater that is of the most concern. It is important to note that ten of these healthy trees are of 30" dbh or greater. Was any effort made to make alternative designs to this project in order to preserve these large trees?

The DEIS also states (5-17) that the loss of trees occurs within "developed urban area located within the NSCP." This is not an adequate excuse for cutting down trees that are neither diseased nor a fire risk. It is extremely important that natural aspects of the environment are included not excluded in populated setting.

Noise

Expanding the number of structures with increased height can cause an increase in noise. Does the DEIS analyze how the increase in the number of buildings with excessive height will impact noise?

Water Supply

The DEIS refers to a letter sent by IVGID stating that the project will not significantly reduce water supply, but the DEIS does not evaluate the project in regards to the requirements of the Truckee River Operating Agreement (TROA). A recent letter dated 1/7/10 refers to a seller willing to sell 30.3 acre-feet of Lake Tahoe Water to Boulder Bay, LLC. However, the DEIS never quantifies the amount of water needed for the project. Furthermore, the DEIS fails to identify the numbers of guests and residents associated with each alternative and therefore, neither

decision makers nor the public have a way to evaluate what kind of water supply is truly needed for the proposed alternatives.

Wildfire Risk

The DEIS section on Fire Suppression (p. 4.12-12) does not include an evaluation of the impacts from the project to public safety in the case of catastrophic wildfire. Will impacts include putting more people or property in danger and/or make evacuations more difficult in the event of a catastrophic scenario? Is there an adequate amount of water supply for fire suppression needs?

Cumulative Impacts

The DEIS (p. 5-15) first claims that the 56 TUAs transferred from El Dorado County will simply shift the population from around the Basin. First, it is not an equal shift because 42 of these ERUs were actually only TAUs (and small ones at that) as they existed in El Dorado County. By changing from a TAU to an ERU is Boulder Bay not shifting from a tourist use to a resident use? Secondly, because there is such a drastic difference between the communities of South Lake Tahoe and Crystal Bay it is unjust to call these a simple shift. What is the shift in percentages? To explain better, what is the percentage decrease in losing 42 TAUs and 18 ERUs from South Lake Tahoe's population versus the percentage increase in adding 56 ERUs to Crystal Bay?

Regarding Air Quality, what is the cumulative amount of additional VMTs for the all proposed project on the North and West Shores (Placer and Washoe Counties)?

Regarding Scenic Quality, what are all the height amendments proposed for all the projects being planned on the North and West Shores (Placer and Washoe Counties)?

Regarding vegetation, what is the cumulative amount of trees that will be removed from the urban setting for all proposed projects on the North and West Shores (Placer and Washoe Counties)?

Regarding water supply, will there be a cumulative impact to the reduction in water supply for all proposed projects listed?

Summary

As discussed above the project may likely impact numerous thresholds including air quality, scenic, vegetation, recreation and noise.

In summary, the DEIS is insufficient in adequately addressing impacts and quantifying benefits. More thoroughness, adequacy, and clarity is needed in the EIS in order to assist decision makers in deciding whether this project will be helpful or harmful to all of Lake Tahoe's threshold standards. A more adequate EIS may reveal that the project will need to be reduced in size in order be consistent with threshold standards and the North Stateline Community Plan.

If you have any questions regarding these comments please contact the undersigned at (530) 541-5388.

Sincerely,

Nicole Gergans
Environmental Program Advocate
League to Save Lake Tahoe