



North Tahoe Citizen Action Alliance

October 25, 2010

TRPA Board of Governors

Dear Sir:

Comments on the Environmental Assessment For the North Lake Tahoe Preliminary Redevelopment Plan Areas Based on Federal Judge Lawrence Karlton's Decision on Shorezone Amendments

"California protects Lake Tahoe under the most stringent of the three tiers, as an 'Outstanding National Resource Water' ('ONRW'). This designation 'prohibits any degradation of existing water quality standards with a limited exception for short-term or temporary changes in quality.'"¹ The applicability of this standard is not disputed, only whether or not the Amendments will result in degradation of water quality.

"TRPA opposes this claim (plaintiff's claim that the Amendments will cause decreases in water quality) solely by arguing that the Amendments will not result in degradation of water quality." But this argument was not sufficiently proven, and "the deficiencies in the record...demonstrate that TRPA acted arbitrarily and capriciously in adopting the Amendments in the face of the ONRW designation."²

Two key lessons from Judge Karlton's decision are that (1) physical expansion (urbanization) can only occur within the existing context of threshold achievement, and (2) whatever is asserted or claimed by TRPA, local jurisdictions, or their selected and paid consultants does not make it a truthful statement. An elaborate narrative promising progress in achieving thresholds is not sufficient. There is a higher standard that requires accurate premises, sound evidence, and a rational connection to the conclusion.

The TRPA Board is in a very difficult position from the perspective of trying to balance environmental responsibilities for Lake Tahoe with pressures for economic development. These two forces may appear to be on an equal setting, requiring equal consideration, in most areas of the U.S. But most areas are not designated ONRW Tier 3. The environmental imperative of Lake Tahoe, achieving and maintaining thresholds, is the fundamental context from which viable economic development must arise. Any re-development model must account for this context not try to ignore or change it. The means of altering the 1987 Regional Plan to enact new Basinwide "development concepts" is through amendments.

¹ Federal Judge Karlton's decision on Shorezone Amendments, September 16, 2010, p.64

² Ibid, p.65

*Amendments to TRPA's ordinances "face a higher burden than individual projects" and are "subject to a higher standard" which require a finding (in addition to the standard project findings) that "the Regional Plan...as implemented through the Code... as amended, achieves and maintains the thresholds."*³

Environmental Assessment – North Tahoe Redevelopment

The Environmental Assessment (EA) for the North Lake Tahoe Preliminary Redevelopment Area Plans (NLTPRAP) is another environmental document (narrative) failing to adequately support the "development concepts" originating in the Community Enhancement Program (CEP) and embedded in the preferred alternative of the Regional Plan Update. Chapter 15 of the current Regional Plan must be amended to override the prohibition of redevelopment area boundaries outside of adopted Community Plan areas. There is a sound rationale for limiting redevelopment areas to approved Community Plan Areas, especially on the North and West shores, but this rationale is ignored in the EA.

This EA is dated in May 2010, prior to Judge Karlton's decision on the Shorezone Plan, and again demonstrates a pattern of errors and misunderstandings by the TRPA in approving environmental documents involving amendments to the Regional Plan.

Development Concepts versus Facts Found

The EA states that since "the North Lake Tahoe Preliminary Redevelopment Area Plans do not identify any specific redevelopment activities or projects or proposed development allocations, the EA evaluates potential reuse of existing development based on the development concepts set forth in the Area Plans."⁴

Are not these the same "development concepts" already implemented through the CEP's, Domus, and the Kings Beach Commercial Core Improvement Project (KBCCIP)? These concepts reflect a "new urbanism" vision described as high-density, mixed use, compact development demonstrated by the South Shore Casino Core Redevelopment projects (i.e. Embassy Suites, Heavenly Village, and the stalled Convention Center) under the existing Regional Plan. As implemented at South Shore total units were reduced from what previously existed, and the commercial element (of the mixed-use concept) depended on business from the 5000 adjacent hotel rooms. The North Shore does not share these circumstances.

The TRPA and Placer County have both promoted and financially supported this same vision for the North Shore since 2005 in accordance with a mutual support agreement. This EA and the proposed amendment to TRPA Codes and Ordinances is another step in codifying these "development concepts" for redevelopment on the North Shore. The first step was Amendments adopted in approving the KBCCIP alternative to reduce Highway 28 capacity for installation of single-lane roundabouts.

³ Ibid, p.12

⁴ Environmental Assessment for North Lake Tahoe Redevelopment Area Plans, August 31, 2010, page 1

Does the EA actually evaluate development based on these “concepts”? The quantitative data to establish baseline conditions (traffic counts, CFA, TAU’s, RU’s) is readily available. The quantitative data exists for the proposed CEP projects in Kings Beach, Boulder Bay, Domus, and the traffic implications from the lane reduction of the KBCCIP.

Instead, the EA states, “this (EA) analysis is based on a qualitative analysis of potential impacts on environmental resources and TRPA thresholds...”⁵ TRPA chose to ignore all quantitative data for existing conditions, approved projects, and proposed CEP projects which are all based on the same “development concepts.” How can environmental impacts be adequately assessed with a qualitative analysis from within the narrative itself. It becomes advocacy rather than objective, fact based analysis.

*This does not meet the bar of a “hard look” requiring “analytical data” that would “articulate a rational connection between facts found and the conclusions reached.”*⁶

The qualitative analysis presented in the EA fails on numerous accounts. These include compliance with NEPA requirements, an accurate description of the local context for this development concept or vision (especially how the North Shore differs from the South Shore model of redevelopment), use of generalizations and hyperbole to justify need for a total reconstruction of Kings Beach, failing to connect the “development concepts” with the existing Community Plans, lack of any economic feasibility assessment, failure to use available quantitative data, and failure to articulate how the proposed amendment to the TRPA Codes will achieve and maintain thresholds.

False Assumptions Yield False Conclusions

The EA employs hypothetical assumptions to draw conclusions that there are no significant environmental impacts. Under Air Quality the EA states “Assuming that Basin-wide VMT, vehicle trip and traffic volumes continue to decline, the site specific increases in traffic from redevelopment made possible by the Proposed Action would not be considered significant and associated air quality impacts would not be considered significant.”⁷ This same rationale is repeated for noise impacts and in the Transportation and Circulation section.

The conclusion follows, “Thus, implementation of the proposed NLTPRAP is expected to result in a reduction of vehicle trip ends from 2010 levels. Therefore, the increased traffic volumes and vehicle miles travelled would be offset by reductions in total trips by increasing the use of non-auto transportation modes and reducing trip length by increasing density in the urban core areas.”⁸ The non-auto transportation modes are sidewalks, bike trails, Trolley service, and waterborne transit. Is the assertion that these alternative modes will entirely offset the increased trips from physical expansion of proposed CEP’s, and as Highway 28’s capacity is reduced 34% for single-lane roundabouts? That assertion is counter-intuitive, self-contradictory, and must be supported by proof to have any validity.

⁵ Ibid, p.26

⁶ Judge Karlton’s Shorezone Plan decision, p.44

⁷ Environmental Assessment for North Lake Tahoe Preliminary Redevelopment Area Plans, p.28

⁸ Ibid, p.35

These conclusions are not supported by any quantifiable data, ignore the reality of approved and pending projects, and do not “*articulate a rational connection between facts found and the conclusions reached.*”⁹

How can TRPA justify the assumption that vehicle trips will continue the decline from 1986 peak levels? How can TRPA justify that vehicle trips drop so low that the high-density, mixed use model will have no impacts? TRPA’s approval of the KBCCIP (as the “backbone” of the New Regional Plan embraces the same development concepts) has alarming and controversial data about congestion. But the reality of traffic consequences, which may render the Final EIS/EIR completely false, have not occurred.

Meanwhile, several other projects consistent with the new urbanism “development concepts” will cause physical expansion, i.e. Boulder Bay and the Kings Beach CEP’s. For Boulder Bay to remove 120 units and build 360 units does not correspond to the reduction of TAU’s for South Shore Redevelopment projects. Then to claim it will reduce traffic is a testament to how EIS’s can manipulate data.

Achieving and Maintaining Thresholds

*“TRPA misunderstands the nature of the obligation to achieve and maintain thresholds. It is not enough to show that the Amendments do not make the problem worse. TRPA must ensure that the ordinances, as amended, implement the Regional Plan in a way that will actually achieve the thresholds.”*¹⁰

Under Air Quality, the EA states as a premise “The proposed North Lake Tahoe Preliminary Redevelopment Area Plans also propose assistance in meeting the TRPA environmental thresholds through the support of the TRPA EIP, which would include such improvements as bike trails and sidewalks, expansion of North Shore Trolley service, replacement of TART vehicles, transit operating funds and development facilities to support water borne transit.”¹¹

Is this the same kind of conditional Placer County “support” expressed by Board Chairman Holmes at the TRPA Board reconsideration hearing (for the KBCCIP, 2008) that the Board must either approve the lane reduction to Highway 28 in Kings Beach or there would be no project at all? Apparently so, as the EA states under the No Action Alternative, “This would likely limit the extent and success of redevelopment and improvement of infrastructure and the timing of TRPA EIP projects.”¹²

These political pressures from Placer County can no longer compromise decisions by the TRPA to achieve and maintain thresholds. The TRPA staff has masked the contradiction of reducing State Highway capacity through Kings Beach while enabling physical expansion on the North

⁹ Judge Karlton’s Shorezone decision, p.9

¹⁰ Ibid, p.11

¹¹ Environmental Assessment for North Lake Tahoe Preliminary Redevelopment Area Plans, p.27

¹² Ibid, p.25

Shore. Both these actions put the TRPA Board in an untenable position of being unable to credibly achieve and maintain thresholds.

Placer County and other local jurisdictions favor “development concepts” that will maximize their return on property taxes and sales taxes in accordance with their policies. But this is not the purpose of the TRPA according to the Compact. Redevelopment on the North and West shores likely requires modest physical expansion. To systemize excessive expansion (Boulder Bay and Homewood) relative to existing conditions for the sake of generating private sector EIP money does not prove or guarantee anything.

“TRPA cannot blindly assume that money will solve its problems.”¹³

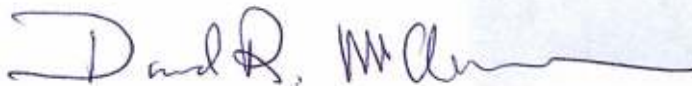
Conclusion

This EA should be the last “pre-Karlton decision” environmental document that fails to take the “hard look” using truthful and accurate premises supported by sound evidence that leads to a rational conclusion. No longer can the TRPA staff subvert the Compact with half-truths and misapplied re-development concepts to satisfy local jurisdictions seeking their financial self-interests.

Our concern is the cost of public funds wasted on inadequate environmental documents and pursuit of ungrounded development concepts.

Ignoring the facts and devising false assumptions leads to false conclusions that cannot escape the ultimate standard of proving the claims of “achieving and maintaining environmental thresholds”. We urge the TRPA Board members, as stewards of our National treasure, to exercise due diligence, and restore the public trust.

Very Truly Yours,
NORTH TAHOE CITIZEN ACTION ALLIANCE

A handwritten signature in blue ink, appearing to read "David R. McClure", is written over a light blue rectangular background.

David McClure
Vice President

¹³ Judge Karlton’s decision, p.44