



**COUNTY OF PLACER**  
**Community Development Resource Agency**

John Marin, Agency Director

**PLANNING**

Michael J. Johnson, AICP  
Director of Planning

**MEMORANDUM**

**DATE:** October 20, 2008

**TO:** Honorable Board of Supervisors

**FROM:** Michael Johnson, Director of Planning

**SUBJECT:** **Third-Party Appeal – Planning Commission Approval of a Conditional Use Permit and Minor Land Division and the Certification of the Environmental Document for the Sandy Beach / Tahoe Vista Partners Project**

**REQUESTED ACTION**

The Board of Supervisors is being asked to consider an appeal of a Planning Commission approval of a Minor Land Division for the subdivision of the 6.9-acre site into three parcels, and approval of a Conditional Use Permit for the development of 39 Tourist Accommodation Units (TAUs), a clubhouse/administration building, six affordable/employee housing units, improvements to the existing main two-story commercial building and State Route 28 frontage improvements. Staff recommends that the Board deny the appeal and uphold the Planning Commission approval.

**BACKGROUND**

Project History

Prior to 1990, both the project parcel (APN 117-071-029) and the approximately 1.72-acre Sandy Beach lakefront parcel (APN 117-072-014), located south of State Route 28 and directly across from the project parcel, were owned by a single property owner. The original Sandy Beach Campground (known as Sandy Beach Resort) included tourist-oriented structures and related development on the two parcels. The existing commercial buildings have served as a hotel, post office, general store, gas station, and auto repair shop since the late 1920's.

In 1933, the Sandy Beach Resort, including 12 cabins and a small utility house, became operational and offered summertime accommodations. Four cabins were added to the resort in the 1940's. These cabins were associated with the main hotel and the Sandy Beach Campground area on the project parcel north of State Route 28 (i.e., this project site). The hotel included a grocery store and a restaurant that provided meals for camping, hotel, and cabin guests of the resort. One of the original 12 cabins (known as the "Manager's Cabin") was relocated from the lakefront parcel to the project parcel; this cabin is currently located just behind the existing main commercial building.

In May 1990, the California Tahoe Conservancy (Conservancy) acquired the Sandy Beach lakefront parcel from the current property owners with the intent of restoring the lakefront parcel to its natural state for public open space purposes.

The project was originally proposed with 45 Tourist Accommodation Units and 10 affordable housing units (identified as Alternative A in the EA/EIR). After receiving public comments, the applicant modified the project proposal to reduce the overall density of the project to 39 TAUs and six affordable housing units. The intent of the reduced scale proposal was to reduce the identified environmental impacts and address issues raised by the public.

#### Planning Commission Consideration

On July 10, 2008, the Planning Commission considered the Minor Land Division, Conditional Use Permit, Environmental Impact Report and Mitigated Negative Declaration (for the Minor Land Division) for the project. After a presentation by Placer County staff and the applicant, two members of the public spoke during the public hearing who were opposed to the project. In general, the public comments/concerns fell into the following categories:

- Request for a public hearing to be held at Lake Tahoe with adequate notice.
- Inadequate public comment period to respond to Final EIR comments.
- Inadequate Parking.
- EIR alternatives are not significantly different, specific to Alternative E.
- Cumulative impacts are not adequately addressed and should consider all proposed projects within the Tahoe Vista area.
- Impacts to infrastructure.
- Use of the 1996 Tahoe Vista Community Plan.
- Payment of mitigation fees and allocation of those fees, including the replacement of campsites.
- Evaluation of TAUs as it relates to density and community character.

After reviewing a written petition and receiving public testimony, the Planning Commission considered continuing the public hearing to a Planning Commission hearing held in Tahoe. However, after much deliberation, the Planning Commission voted to deny the request for a continuance to a Tahoe hearing and instead determined it was appropriate for the project to be considered in Auburn.

After extensive internal discussion, the Planning Commission adopted a motion (6:0, with the District 1 seat being vacant) to approve the project as proposed with minor modifications to the conditions of approval. Specifically, the Planning Commission certified the Environmental Impact Report for the project, approved the Conditional Use Permit, the Minor Land Division, and adopted a Mitigated Negative Declaration for the Minor Land Division.

### **LETTER OF APPEAL**

On July 21, 2008, Mark Earl Haas filed a third-party appeal challenging the Planning Commission's approval of the Tahoe Vista Partners, LLC, Interval Ownership Development Project. (A copy of the appeal is attached as Exhibit B.) The appeal raises the following issues:

1. The appellant asserts that the Planning Commission public hearing for the project should have been heard in Tahoe where the project is located.
2. The appellant believes that there was a potential for a Commissioner to have a conflict of interest.
3. The appellant states that there were limited opportunities for the public to comment on the project.
4. The appellant asserts that the project was improperly noticed.
5. The appellant asserts that there was inadequate time to comment on the EIR.
6. The appellant states that there were conflicting and confusing meeting agendas for the public hearings of the project.
7. The appellant believes that the County is trying to circumvent CEQA and the public process.
8. The appellant asserts that the new information introduced into the Final EIR was not adequately analyzed.
9. The appellant states that the mitigation measures for defensible space may not be feasible or compliant with the defensible space requirements of the North Tahoe Fire Department.
10. The appellant states that the bike trail was not adequately evaluated.
11. The appellant asserts that the County Zoning Code does not adequately address parking, specifically for fractional developments.
12. The appellant states that the proposal of shared parking is not adequately analyzed.
13. The appellant questions the existing restaurant operations.

14. The appellant asserts that the EIR alternatives are not significantly different.
15. The appellant believes that Alternative E does not offer significantly greater benefits than any of the other alternatives identified.
16. The appellant asserts that the cumulative impacts were not adequately analyzed.
17. The appellant states that the significant impacts on infrastructure were not addressed.
18. The appellant asserts that the use of the 1996 Tahoe Vista Community Plan, which has not been updated since 1996, is inadequate.
19. The appellant states that the EIR does not adequately evaluate or identify the Tourist Accommodation Units (TAUs).
20. The appellant asserts that the density and community character of the project was not adequately considered.
21. The appellant states that the payment of fees is not adequate mitigation to the impacts the project will impose on the Community.
22. The appellant questions the Planning Commission's decision to modify the campground replacement mitigation and asserts that the Commission's modification be reverted to its original condition.
23. The appellant states that there is conflicting data regarding population and occupancy of the proposed project.
24. The appellant asserts that the purposes of the project objectives are not adequately addressed in the EIR.

## **RESPONSE TO APPEAL LETTER**

The following are specific responses to each issue raised by the appellant.

### Issue 1 – Request for Local Public Hearing

At the Planning Commission, the Commissioners received public comment requesting that the July 10, 2008 public hearing be continued to a hearing held in Lake Tahoe.

After extensive deliberation, the Planning Commission unanimously concluded that it was in fact appropriate to conduct the public hearing in Auburn. In reaching this decision, the Planning Commission made note of the many meetings/hearings held in Tahoe specifically to consider this project, as well as the multiple opportunities the public had over the past five years to provide comments on the project and its environmental document. It should be noted that the appeal hearing to be held before the Board of Supervisors is scheduled to be held in the Tahoe area.

### Issue 2 – Commissioners Conflict of Interest

The appellant believes a Planning Commissioner had a potential conflict of interest because: a) the Commissioner is an alternate on the TRPA Governing Board, b) a member of the Placer County Planning Commission and c) a member of the Tahoe Conservancy Board.

The Planning Commissioner heard the Sandy Beach project first at the July 10, 2008 Planning Commission public hearing of which he disclosed his relationships. While the Planning Commissioner in question does in fact sit on the Planning Commission and represents the County on the TRPA Governing Board, the Planning Commissioner had not previously participated in any public hearing on this project, either as a Planning Commissioner or as a TRPA Board member. Accordingly, when the Commissioner deliberated on this project at the July 10, 2008 Planning Commission meeting, that was the first time that he had participated in a deliberation on this project. Accordingly, there was no conflict of interest, and it was appropriate for the Commissioner to participate in the deliberation on this project. It should be noted that when this project was considered by the TRPA Governing Board at its July 23, 2008 meeting, the Commissioner recused himself from the public hearing of the project and did not take action on the project as a TRPA Board member.

### Issue 3 – Limited Public Comment Period

The appellant stated that there had been limited opportunities to comment on the proposed project.

The Planning Commission did not concur that there had been limited opportunities for public participation in this project. A Notice of Preparation of an environmental document was distributed on February 21, 2006 and comments were received through March 22, 2006. Written comments were received from the Placer County Engineering and Surveying Department and the Placer County Flood Control and Water Conservation District; no written comments were received from members of the public. A Scoping Summary Report was developed that summarized the environmental issues raised during the scoping period. Public information or scoping meetings were held on:

- August 10, 2005, TRPA Advisory Planning Commission meeting: The project was presented as an information item only; however, public and Commission comments were heard.
- February 9, 2006, North Tahoe Regional Advisory Council (NTRAC) meeting: The project was presented as an information item only; however, public and Council comments were heard.
- February 28, 2006, Placer County Environmental Review Committee (ERC)/NOP Scoping meeting: This meeting constituted a formal public scoping meeting, and was conducted in accordance with Section 15082 of the State CEQA Guidelines.

A Notice of Availability of the Draft EA/EIR was distributed to the State Clearinghouse (for various State agencies), TRPA, Placer County (various departments), federal and local agencies, libraries, neighboring cities and counties, interested organizations and individuals, and neighboring land owners on January 9, 2008. The Notice of Availability was also published in the *Sierra Sun* newspaper on January 11, 2008 and the *Tahoe World* newspaper on January 16, 2008. Copies of the Draft EA/EIR were available for viewing and/or downloading from TRPA's website and the Placer County website.

Hard copies of the Draft EA/EIR were available at the following locations:

- ❖ Placer County Community Development Resource Agency
  - Main Office – 3091 County Center Drive, Suite 190, Auburn, California
  - Tahoe Office – 565 West Lake Boulevard, Tahoe City, California
  
- ❖ Tahoe Regional Planning Agency
  - Nevada Office – 128 Market Street, Stateline, Nevada
  - California Office – 3080 North Lake Boulevard, Tahoe City, California
  
- ❖ Libraries
  - Kings Beach Library – 301 Secline Drive, Kings Beach, California
  - Tahoe City Library – 740 North Lake Boulevard, Tahoe City, California

Subsequent to the close of the public review period, the project applicant hosted a community meeting on March 31, 2008 at Spindleshanks Restaurant to address public concerns. Based on input received at that meeting and in response to comments on the Draft EA/EIR, the applicant prepared a revised, reduced-scale alternative.

Section 5.4 of the TRPA Code of Ordinances requires TRPA to make EAs available for public review not less than five working days before TRPA intends to take action on a project. Pursuant to Section 21091(a) of the California Public Resources Code that specifies the minimum circulation period for Draft EIRs, the Draft EA/EIR was distributed for a 45-day public comment period. In response to public requests for an extension, TRPA and Placer County agreed to extend the public comment period for the Draft EA/EIR to 60 days. The review period began on January 9, 2008, and ended on March 10, 2008. Additionally, during the public review period, two public hearings were noticed and held as follows:

- February 13, 2008, TRPA APC meeting: Received public comment, no action was taken.
- February 14, 2008, Placer County Planning Commission meeting: Received public comment, no action was taken.

And lastly, there were two public meetings at which the Final EA/EIR and project approval was considered by the lead agencies as follows:

- July 10, 2008, Placer County Planning Commission in Auburn, California
- July 23, 2008, TRPA Governing Board in Kings Beach, California

The Minor Land Division was originally noticed for the Parcel Review Committee (PRC) meeting scheduled on June 25, 2008. The applicant requested that the item be removed from the agenda. So as not to bifurcate actions, the PRC Chairman removed the item from the agenda and referred the Tahoe Vista/Sandy Beach Minor Land Division to the Planning Commission to take action at the July 10, 2008 meeting.

The public noticing and opportunities for public comment for the project were consistent with the requirements of the public review process in accordance with CEQA. Specifically, seven meetings were held, three of which were public information or scoping meetings and two were public hearings held during the public review period of the draft EA/EIR and two public hearings which decisions were rendered.

As detailed above, at least seven public meetings have been held on this project to provide the public an opportunity to be informed of the proposed project. In addition, in response to requests from the public, the public review period for the Draft EIR was extended from 45 to 60 days. In its review of the proposed project, the Planning Commission concluded that more than ample opportunity had been provided to inform and include the public in discussions about the proposed project.

#### Issue 4 – Improper Public Notice

The appellant stated that improper notice and inadequate time was given to the public to respond to final comments in the Final EIR.

The County complied with State law with regards to public notices and public review time for the Final EIR. Public notices were mailed to property owners of record within 300 feet of the project site. A Public Hearing Notice was also published in the *Sierra Sun* newspaper. Community Development Resource Agency staff and the Departments of Public Works, Environmental Health, Air Pollution Control District and the North Tahoe Regional Advisory Council (NTRAC) were transmitted copies of the project plans and application for review and comment. Other appropriate public interest groups and citizens were sent copies of the public hearing notice.

#### Issue 5 – Inadequate Comment Period on the Final EIR

The appellant stated that there was inadequate time given to the public to respond to final comments on the Final EIR.

As noted above, the County adhered to all State and local requirements for the review of the Final EIR.

#### Issue 6 – Conflicting Public Hearings

The appellant believes that there was a conflict in arrangement of public hearings for the Conditional Use Permit, Environmental Review and the Minor Land Division.

At the June 25, 2008 Parcel Review Committee (PRC) hearing for the Minor land Division at the request of the applicant, the item was removed from the agenda to avoid a conflict with the TRPA public hearing for the Kings Beach Commercial Core Improvement Project. The PRC Chair referred the Minor Land Division to the Planning Commission to take action at the July 10, 2008 public hearing.

#### Issue 7 – Circumvention of the CEQA Review and Process

The appellant asserted that the lead agencies (i.e., Placer County and TRPA) were attempting to circumvent the public process and limit public input, and provisions of the CEQA Guidelines were not met.

The County processed the environmental review and entitlement review processes consistent with the requirements of CEQA and County Code in that the Notice of Preparation was prepared consistent with CEQA, scoping meetings were conducted, the circulation of the draft environmental documents were available to the public for review consistent with the requirements of CEQA. There was and has been no circumvention of the public review process. To the contrary, as detailed above, this project has received extensive public review.

#### Issue 8 – Analysis of New Information into the Final EIR

According to the appellant, new information was introduced into the Final EIR of which the impacts were not adequately analyzed (specific to the secondary fire access road over adjacent property with potential impacts to residents of Toyon Road).

Alternative E, which introduced the secondary fire access road, was in fact analyzed in the Final EA/EIR. The Final EA/AIR concluded that the project's impacts had in fact been reduced with the reduced-scale project proposal. Furthermore, the Planning Commission, with modification to Conditions of Approval, required the provision of landscaping adjacent to the emergency access road to further screen and provides a buffer between adjacent uses.

#### Issue 9 – Defensible Space Mitigation Measures

The appellant asserts that the mitigation measures proposed by the Planning Commission of "planting trees for screening may not be feasible or desired based on defensible space requirements of the fire department".

The Planning Commission discussed the impacts of the secondary fire access road to residents along Toyon Road and modified the condition to require additional landscaping be provided along the access road to assist in screening and to provide for a buffer between the limited activity of the secondary access road and the neighboring residents. The project will be required to comply with the regulations and requirements of the North Tahoe Fire Department for the installation of additional landscaping and defensible space.

#### Issue 10 – Evaluation of the Bike Trail

The appellant asserted that the future bike trail use of the secondary emergency access was not evaluated for impacts and should have its own environmental review.

The 2003 Lake Tahoe Regional Bicycle and Pedestrian Master Plan Final Report identifies a proposed bikeway facility along the proposed secondary access road. This trail is intended to provide access to the North Tahoe Regional Park and link to National Avenue. A draft version of the North Tahoe Public Utility District Recreation and Parks Master Plan was circulated for review and comment in May 2007. The environmental document prepared for this project has adequately addressed any environmental impacts that may result from the future bike trail.

### Issue 11 – Inadequate Project Parking

The appellant states that “although parking is in accordance with the Placer County Codes, the Codes do not adequately address parking, specifically for fractional development only motel/hotel/timeshare all lumped together.”

The design of parking facilities within the Tahoe Vista Community Plan Area are regulated by Placer County (Standards & Guidelines for Signage, Parking and Design for the Lake Tahoe Region of Placer County). The Placer County standards require the following number of parking spaces for each of the land uses associated with the proposed project:

- Tourist Accommodation Units (TAUs): 1 space per full-time administrative employee, 1 space per 2 other full-time employees, 1 space per 3 part-time employees, 1 space per unit, 1 space per 250 square feet of meeting/display area, and 1 space per 400 square feet of commercial-retail area
- Affordable/Employee Housing Units: 1 space per two beds and ½ space per bedroom, which equates to 1 space per bedroom (assuming 1 bed per bedroom)
- Restaurant: 1 space per 4 customers or seats
- Office: 1 space per 250 square feet
- Apartment 1 space per two beds and ½ space per bedroom, which equates to 1 space per bedroom (assuming 1 bed per bedroom)

The total number of parking spaces required is 92 parking spaces for the overall project. The project is proposing to provide 118 parking spaces. The Planning Commission concurred and determined that the parking provided was adequate for the project.

### Issue 12 – Adequacy of the Proposed Shared Parking

The appellant questions the adequacy of the overflow parking from the fractional owners who will also use this shared parking. Furthermore, the appellant stated that if the parking is inadequate on site, then people will park on the highway and in the restaurant spaces which will leave no parking available to the public using the beach.

The Planning Commission concluded that the parking provided is adequate for the proposed uses and there is an opportunity for shared parking between off-setting uses.

### Issue 13 – Restaurant Operations

The appellant is concerned that the EIR states that the restaurant is currently not open for lunch and questioned whether there will be a permanent deed restriction placed on the restaurant requiring it to be permanently closed for lunch.

While currently the restaurant is closed for lunch, there is nothing prohibiting the owners from opening for lunch. The shared parking between the proposed uses is an opportunity and not a requirement of the project. As mentioned previously, the project complies with the parking requirements for all proposed uses on the project site, regardless if the restaurant is open for lunch or not.

#### Issue 14 – Lack of Differences between EIR Alternatives & Issue 15 – Alternative E

The appellant stated that the appeal is “based on the fact that the Final and Draft EIR are not technically adequate to be certified and that mitigation measures are not adequate to mitigate impacts to less than significant levels. Alternative E – the developer-preferred alternative – is not substantially different than the other three Alternatives described in the document and therefore the comments that have been brought up by the community have not been adequately addressed.”

During the review of the Draft Environmental Impact Report, a number of comments were received with concerns that the alternatives analyzed in the document did not differ substantially from the originally proposed project (Alternative A), nor significantly reduce the project’s environmental impacts. Requests for additional on-site open space, fewer units, small units, and suggested use of porous pavements and other low impact development (LID) techniques to achieve maximum on-site infiltration were received. Additionally, commenters indicated that there should be an alternative with a road infrastructure that meets the North Tahoe Fire Protection District’s requirements for a fire apparatus access road.

The TRPA Code of Ordinances Section 5.3.A and Section 15126.6 of the State CEQA Guidelines require that the Draft EA/EIR describe a reasonable range of alternatives to the proposed project that could feasibly attain most of the project objectives while avoiding or substantially lessening any of the significant environmental effects of the project. As noted in the EIR, implementation of the proposed project, and its associated mitigation measures, would not result in any significant impacts to the environment.

In response to comments raised by the public, the applicant developed Alternative E which proposes a reduced number of Tourist Accommodation Units (from 45 to 39) and reduced number of affordable/employee housing units (from 10 to 6).

In summary, similar to other alternatives, Alternative E would further reduce the proposed project’s less than significant environmental impacts. As such, Alternative E does not change the Draft EA/EIR impact conclusions (less than significant), eliminate recommended mitigation measures, or require new mitigation. Therefore, the Planning Commission acted to approve the project as proposed by the applicant, confirming that recirculation of the EA/EIR was not necessary and the impacts were adequately addressed.

In conclusion, the Planning Commission disagreed with the appellant and determined that the EIR did in fact comply with CEQA and that the alternatives were sufficiently evaluated. Furthermore, the Planning Commission concluded that Alternative E did offer significant greater benefits by the reduction to the number of units proposed which in turn reduced the number of trees to be removed, lot coverage. On this basis, the Planning Commission approved the reduced-scale project.

#### Issue 16 – Inadequate Analysis of the Cumulative Impacts

The appellant asserts that the cumulative impacts of other resource topics, with the exception of traffic, such as tree removal, noise, land coverage, water quality, scenic quality, habitat removal, and demand on public services and utilities, and on-site and off-site recreation, have not been addressed in context with the other present projects, past projects, and probable future projects.

In its review of the environmental document, staff, in consultation with County Counsel, has determined that the cumulative impacts analysis in the Draft EA/EIR complies with the requirements of the State CEQA Guidelines with respect to methodology and level of detail. The document includes an analysis of cumulative impacts of the proposed project, taken together with other past, present, and probable future projects producing related impacts, as required by Section 15130 of the CEQA Guidelines and Placer County Code Section 18.20.030.

Consistent with State requirements, the discussion of cumulative impacts in the Draft EA/EIR focuses on significant and potentially significant cumulative impacts; the discussion reflects the severity of the impacts and their likelihood of occurrence. Additionally, the cumulative analysis focuses on those impacts to which the various projects would contribute, land coverage resulting in changes in runoff volume and runoff pollutant loads; increased traffic trips, related air pollutant emissions, and noise generation; massing and deterioration of scenic quality; habitat removal; and further demand for public services and utilities such as water supply, wastewater conveyance, treatment and disposal, police and fire protection, and recreation.

The Planning Commission concluded that the analysis conducted within the EIR was adequate and the project complies with the requirements of the Placer County Codes and CEQA. On this basis, the Planning Commission made the necessary findings for its decision of approval of the project.

#### Issue 17 – Impacts to Infrastructure

The appellant states that the EIR does not adequately address cumulative impacts, especially for utility requirements, and therefore should be listed as a significant impact. The appellant refers to Chapter 27.3B of the TRPA Code of Ordinances which states that all projects shall have adequate water supply systems. Additional development requiring water shall not be approved unless there is distribution and storage or pumping systems to deliver an adequate quantity and quality of water to the development for domestic consumption and fire protection. The code section also addresses fire flow requirements.

Although the appellant refers to the TRPA Code of Ordinances, in general, the project was reviewed and approved by the North Tahoe Public Utility District and the North Tahoe Fire Protection District (the agencies that will be providing services to the project) for infrastructure impacts. Neither agency has stated that there will be impacts in providing services to the project site. The applicants will be required to adhere to the requirements and regulations in place at the time of construction.

The Planning Commission reviewed the documents and concurred that the findings for support of the project could be made and the impacts to infrastructure would be reduced to a less than significant level with the incorporation of the proposed mitigation measures and associated Conditions of Approval.

#### Issue 18 – Adequacy of the Use of the Tahoe Vista Community Plan

The appellant expressed concern that the Tahoe Vista Community Plan has not been updated since 1996. Additionally, the appellant expressed the opinion that the project and fractional use was not contemplated in the Tahoe Vista Community Plan. The appellant asserts that the residential projections and TAU density was not the intent of the October 1995 EIR/EIS Draft that was prepared for the North Tahoe General Plan which included the Tahoe Vista Community Plan.

TRPA and Placer County require a project to be approved consistent with the rules in effect at the time of project approval. The Tahoe Vista Community Plan, adopted April 1996, is the current land use plan for the project site. Therefore, the Draft EA/EIR correctly evaluates all of the Alternatives for consistency with the applicable Goals and Policies of the Tahoe Vista Community Plan.

The Tahoe Vista Community Plan allows for a variety of residential, tourist accommodation units, and recreational uses. The project site is located in Tahoe Vista Special Area #1 (Tourist Area) and Special Area #2 (Commercial Core). In Special Area #1, tourist-oriented uses are encouraged and in Special Area #2, a mix of tourist and residential-serving commercial uses is encouraged. Permissible uses listed for these two areas include multi-residential units, timeshare tourist accommodations, commercial uses including eatery and drinking places, privately owned assembly and entertainment, outdoor amusements, secondary storage, and vehicle storage and parking, and recreation uses including day use areas and outdoor recreation concessions. The proposed project is consistent with the Tahoe Vista Community Plan and allowable land uses identified for Special Areas #1 and #2.

#### Issue 19 – Tourist Accommodation Units (TAUs) Evaluation

The appellant states that the impacts of the required TAUs to be transferred into the project should be analyzed.

Each of the 39 proposed TAUs would require a TAU allocation for development, either from those banked on site (eight total) or from those purchased and transferred to the property through a TRPA transfer application and corresponding deed restriction process in accordance with TRPA Code of Ordinances, Chapter 34, Section 34.4.A(1). TAUs are banked on the deed of a property until transferred. The project applicant has identified 20 TAUs that are available for transfer from the Kings Beach Community Plan Area and the remaining 11 TAUs from sources within the Tahoe Vista Community Plan Area. Specifically, the 11 TAUs from within the Tahoe Vista Community Plan Area will be purchased from the Tahoe Conservancy for the 11 TAUs that were not banked when the owners sold the Sandy Beach parcel to the Tahoe Conservancy. The project applicant has a Letter of Intent to purchase these units from the respective owners and is working towards finalizing the formal purchase agreements.

The Tahoe Vista Community Plan Area contains six Special Areas that allow different types of commercial and residential activity. TAUs is an allowed use in four of the six areas. The maximum TAU density for each TAU type and area are identified in the Tahoe Vista Community Plan and vary from 10 to 40 units per acre.

The TRPA Code of Ordinances defines Tourist Accommodation as “uses, facilities, and activities primarily pertaining to the occupation of buildings for eating, sleeping, and living on a temporary basis by persons whose permanent residence is elsewhere.” The TRPA Governing Board determined the project to be consistent with the Code of Ordinances and approved the Environmental Assessment for the project at their July 23, 2008 public hearing.

#### Issue 20 – Density and Community Character Consideration

The appellant argues that small one bedroom motels or tourist accommodation units are being converted to large three and four bedroom residential type uses called fractional ownership. It is the opinion of the appellant that the proposal is more residential in nature than motel like.

The Planning Commission and the TRPA Governing Board found the project to be appropriate and consistent with the standards and regulations of the applicable Codes.

#### Issue 21 – Adequacy of Payment of Mitigation Fees as Mitigation

The appellant has asserted that impacts should be mitigated in a physical rather than financial manner. The appellant also stated that a clear nexus between payment of mitigation fees and mitigation of impacts in the vicinity of the project needs to be identified. Specifically, there was concern that the fees paid for mitigation would not be utilized within the general vicinity or provide improvements within the area of which is being mitigated. Additionally, the appellant has requested that the Board of Supervisors overturn the Planning's Commission decision to extend the time frame to ten years and the money go to the State if not used after ten years, and return to the original mitigation of five years and divide the money between the North Tahoe Public Utility District and the State Parks.

The use of fees as a means of providing mitigation for significant impacts is provided for in the State CEQA Guidelines and in CEQA case law. The State CEQA Guidelines Section 15130(a)(3) states in part: "A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." Further, CEQA case law supports the use of fees for mitigation of impacts where the agency reasonably expects that such fees will be used for mitigation (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* [6<sup>th</sup> District 2001]). CEQA requires "a reasonable plan for mitigation" and the EIR should explain how the fee program will address the impact.

In summary, the Draft EA/EIR explains how the fees would be used to physically mitigate the project's impact. The use of these fees to mitigate the associated project impacts is considered appropriate and adequate pursuant to TRPA regulations and CEQA.

#### Issue 22 – Campground Replacement Mitigation

The appellant asserts that the intent of the Tahoe Vista Community Plan is to encourage the expansion of overnight camping facilities, not the removal. The appellant suggests that the mitigation of relocating the campsites to the North Tahoe Regional Park or State Parks property at Burton Creek is undetermined and unlikely.

The feasibility of providing off-site and in-kind campsite replacement projects were discussed with senior North Tahoe Public Utility District (NTPUD) and State Parks staff. Funding is not available at this time for the establishment of new facilities at either the NTPUD Mogilefsky Property or at Burton Creek State Park, as identified in the NTPUD Draft Recreation and Parks Master Plan and the Burton Creek State Park General Plan, respectively. Therefore, mitigation fees for the loss of 27 campsites would result in a fee of \$472,176, divided equally between the North Tahoe Public Utilities District and State Parks and earmarked for campground facility development. If after a

period of ten years following the banking of these fees, campground facility development has not progressed as envisioned, the fees could be used by North Tahoe Public Utilities District and California State Parks for other recreational facility development subject to review and approval by Placer County and the TRPA Recreation Program Manager. Examples of the use of these fees could include: construction of a restroom facility at the Sandy Beach Recreation Area; North Tahoe Regional Park improvements; National Avenue Recreation Area improvements; or other improvements that would provide additional lake access. Dependent on what is proposed the recreational facility development may be subject to review and approval by staff, the Planning Commission and/or Board of Supervisors. This condition was modified by the Planning Commission to ensure that there was an adequate time frame given to the Tahoe Vista Community for the construction of campgrounds or facility improvements be constructed with the Tahoe Vista Community Area. The Commission acted to extend the time frame from five years to ten years with the hopes that a potential project could be reviewed, processed, and begin construction within a reasonable time frame.

After much deliberation, the Planning Commission specifically modified the condition, as described above, to ensure that the monies are kept within the County and are used for campgrounds.

#### Issue 23 – Conflicting Data on Population and Occupancy

The appellant asserts that there is conflicting data regarding true population/occupancy of the proposed project within the Draft EIR, Wyndham (the marketer of the project) web site, and the civil engineer. The appellant states that the discrepancy could result in an increase of additional population of up to 84 additional persons whose impacts have not been adequately analyzed in the EIR including increased traffic, noise, impacts on infrastructure, demand for additional housing, additional water storage, etc.

The County and the EIR analyzed the project description and information submitted by the applicant. The project will be required to comply with the conditions of approval as approved by the hearing body. Any deviations from the project's approval will require an amendment to the project which will be required to return to the hearing body for an approval for the amendment to the project. The Planning Commission concluded that appropriate population numbers were used.

#### Issue 24 – Purpose of Project Objectives

The appellant has stated that the purpose of the project objectives were not adequately addressed in the EIR, specifically relating to affordable housing and the location and open space.

Comment noted. The Planning Commission concluded that the project objectives were addressed and determined that the location, size, and open space proposed were consistent with the requirements of the applicable regulations.

#### **CONCLUSION / RECOMMENDATION**

As addressed above, the Planning Commission, after receiving extensive written comments and public testimony, concluded that the findings for the project proposal could be made and unanimously voted to approve the project as submitted with minor modifications to four conditions of approval. The Planning Commission analyzed the elements of the project and determined that

the Final EIR adequately addressed the potential significant impacts and will reduce the impacts to a less than significant level.

Consistent with the action taken by the Planning Commission, staff recommends that the Board of Supervisors deny the appeal and also uphold the Planning Commission's decision to approve the Tahoe Vista Partners, LLC, Interval Ownership Development Project as set forth in the July 10, 2008 Planning Commission public hearing and reaffirm the following findings made by the Planning Commission.

**PLANNING COMMISSION APPROVED FINDINGS:**

**EIR FINDINGS**

Refer to the CEQA Findings of Fact as set forth in Exhibit G.

**Conditional Use Permit Findings**

Having considered the staff report, supporting documents and public testimony, the Planning Commission hereby finds that:

1. The proposed subdivision, together with the provisions for its design and improvements are consistent with the North Tahoe General Plan, Tahoe Vista Community Plan and Placer County General Plan, and with applicable County Zoning Ordinances.
2. The site of the project is physically suitable for the type and proposed density of the development.
3. The project, with the recommended conditions, is compatible with the Neighborhood and adequate provisions have been made for necessary public services and mitigation of potential environmental impacts.
4. The design and proposed improvements of the subdivision are not likely to cause substantial environmental damage or public health problems.
5. The proposed use is consistent with all applicable provisions of Chapters 17 and 18 of the Placer County Code.
6. The proposed use is consistent with the objectives, policies, general land uses and programs as specified in the North Tahoe General Plan, Tahoe Vista Community Plan and the Placer County General Plan.
7. The establishment, maintenance or operation of the proposed use would not be detrimental to the health, safety, and general welfare of people residing or working in the neighborhood of the proposed use, and would not be detrimental or injurious to property or improvements in the neighborhood or the general welfare of the County, in that the special agencies and districts have indicated that they will be able to serve the project, the project is compatible with the adjacent and surrounding uses and will not create an incompatibility between uses, and the project site is suitable in size and shape to accommodate the proposed project.

8. The proposed use is consistent with the character of the immediate neighborhood and would not be contrary to orderly development of the Tahoe Vista Community Plan.
9. The proposed use would not generate a volume of traffic beyond the capacity of roads providing access to the use, consistent with the applicable requirements of the North Tahoe General Plan, Tahoe Vista Community Plan and Placer County General Plan.
10. The proposed affordable/employee housing units of the project meet the requirements of Placer County Code Section 15.65.180, in that the clustered location of the units is a more residentially desirable location within the project site and have the appearance of residential uses. Because of this, the proposed location will further the potential for these units to be utilized for affordable housing opportunities.
11. The proposed six affordable/employee housing units of the project meet the requirements of Placer County Code Section 15.65.190 in that the project is complying with the minimum requirement for affordability through equivalency of an alternative proposal which will further affordable housing opportunities in the County Redevelopment areas to an equal or greater extent than compliance with the express requirements of Section 15.65.130 through 15.65.260. The alternative of six units restricted at low income affordability will satisfy the intent of the Affordable Housing Ordinance requirement of seven units providing three units at very low income affordability and four moderate income units.

#### **Tentative Parcel Map Findings**

The Planning Commission has considered the proposed Negative Declaration, the staff report and all comments thereto, and hereby adopts the Negative Declaration for the project based upon the following findings:

#### **CEQA – Negative Declaration for Parcel Map**

1. The Negative Declaration has been prepared as required by law. The project is not expected to cause any significant adverse impacts.
2. There is no substantial evidence in the record as a whole that the project may have a significant effect on the environment.
3. The Negative Declaration as adopted for the project reflects the independent judgment and analysis of Placer County, which has exercised overall control and direction of its preparation.
4. The custodian of records for the project is the Placer County Planning Director, 3091 County Center Drive, Suite 140, Auburn CA, 95603.

#### **Tentative Parcel Map**

5. The proposed map is consistent with the objectives, policies, general land uses and programs as specified in the Placer County General Plan and the Tahoe Vista Community Plan. The design and required improvements of the proposed subdivision are consistent with said plans and applicable County ordinances.

6. The site for the proposed subdivision is physically suitable for the type and proposed density of the development, and will provide an appropriate transition between low-density residential and commercial uses both on-and off-site.
7. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat, and in fact would result in far less impact than is allowed by the current zoning on this property.
8. The design of the subdivision and the type of the improvements are not likely to cause serious health problems.
9. The design of the subdivision and the type of the proposed improvements will not conflict with easements acquired by the public at large for access through, or use of property, within the proposed subdivision.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP  
Director of Planning

cc: Ogilvy Consulting c/o Wyatt Ogilvy on behalf of the Tahoe Vista Partners, LLC - Applicant  
Mark Earl Haas - Appellant

Copies Sent by Planning:

Tom Miller, County Executive Officer  
Anthony LaBouff, County Counsel  
Scott Finley, Supervising Deputy County Counsel  
John Marin, Community Development Resource Agency Director  
Paul Thompson, Deputy Planning Director  
Stacy Wydra, Senior Planner

**ATTACHMENTS:**

- Exhibit A: Site Plan-Vicinity Map
- Exhibit B: Appeal Letter
- Exhibit C: Conditions of Approval
- Exhibit D: Planning Commission Staff Report
- Exhibit E: Public Comment Letters
- Exhibit F: Mitigated Negative Declaration
- Exhibit G: Final EIR CEQA Findings of Fact

(The following documents have been provided to the Board of Supervisors under separate cover and are available for review a the Clerk of the Boards Office: Draft Environmental Impact Report, Final Environmental Impact Report).