

Scott Carey

From: Grace F. Thorpe <grace.thorpe@legalprivilege.ch>
Sent: Wednesday, November 2, 2022 8:46 PM
To: Scott Carey
Subject: Public Comment for NTRPA GB Meeting—Nov. 3rd 2022
Attachments: 56-Acres Alternatives.pdf; Ski Run Park.pdf; Bijou Park Creek Flooding.pdf; Bijou Park Creek Restoration Map.pdf; Halferty Construction Agreement.pdf

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Dear NTRPA Governing Board,

Please read this entire letter and ponder some of the surprising and profoundly deep questions it raises. You are about to make some profound changes that this community will be stuck with forever.

I oppose relocating the El Dorado Campground Restrooms. These restrooms are ideally situated to serve the existing campsites. If anything they should be upgraded so that our City campground makes the front of Sunset Magazine every summer:



Here is a sample interior of a luxury public campground by a Truckee design firm:



With upgrades, such as an onsite sauna facility, this can continue to be a world-class campground:



We need to make to most of our precious land resources and ensure their uses fully optimize both their attributes and our outdoor values. The current campground may have been mismanaged with an extreme lack of vision, but it should not be blighted and destroyed by the greedy, philistinish, misplacement of an indoor water park on top of these invaluable campsites. **Outdoor camping opportunities have been continuously disappearing around the basin for the last 50 years, meanwhile our national and global population only continues to grow.** Camping actually offers visitors an intimate connection with the environment, that they could not get through almost any other experience. These bonding experiences have been shown to leave strong impressions on visitors about the importance of protecting the environment long after they leave. This invaluable campground serves as an ambassador to protect the Tahoe basin. Don't kill this incredible messenger!

I also oppose the approval of both the "CEQA declaration for the Bijou/Al Tahoe Community Plan" and the project's "Special Use Permit." This is not the appropriate sitting for an indoor recreation center, and actually destroys invaluable outdoor lakeside camping. The Caldor Fire destroyed most of the El Dorado County's camping opportunities on the western slopes, making this site more important than ever. The lakefront campsites also serve a social justice purpose, because they allow inexpensive lakefront accommodations, in an area where it is often impossible to find any other places for less than \$500 dollars a night. To destroy this national public resource on behalf of local residents and lodging entrepreneurs who are already privileged enough to live here is very wrong. Please choose an alternative location.

This decision ought to be made from the [Rawlian veil of ignorance](#) also known as the [Original Position \(OP\)](#). This means you must consider which arrangements you would make for societal structures, but you must select as if you had no knowledge ahead of time what position you would end up having in that society. This choice is made from behind a "[veil of ignorance](#)," which prevents you from knowing your ethnicity, social status, gender and, crucially in [Rawls](#)' formulation, your or anyone else's idea of how to lead a good life. Ideally, this would force participants, such as you, to select principles impartially and rationally.

From the [Original Position](#), representative parties—in this case, the City Council—must balance the location of this facility against its adverse impacts by **choosing a sitting which achieves the greatest benefit of the least advantaged (the difference principle) AND attached to positions and offices open to all.**

Sitting the indoor recreation center on top of an existing **invaluable lakeside campground** and [State Scenic Corridor](#), forever deprives the entire Nation of outstanding affordable lakeside accommodations on the south shore. It also degrades the scenic view experienced by millions of visitors from all over the country each year. In comparison, sitting the facility on top of the footprint of the existing aquatics center

only disadvantages city residents for one to two years while construction occurs. This City can make a temporary partnership with the Douglas County Recreation and Aquatics Centers in the interim, and of course there is always the freshwaters of Lake Tahoe.

If you were to decide the placement of this facility, not knowing your ethnicity, social status, gender, or even any idea of how to lead a good life, you would be compelled to forgo destroying the lakeside campsites. The vast probability is that by chance you would be "originally" brought into this world born not rich, white, or having a house in Tahoe. The sad reality is that your best chance to stay here in town would be a \$50 a night campsite, not a \$500 hotel room. You would never travel hundreds or thousands miles to Tahoe just to use an indoor aquatics center which are already available in nearly every major city. Thus, **it is imperative that we protect every one of these campsites, as they provide a critical public service that cannot be replaced by an indoor water park.** An indoor water park adds little national value, but these campground sites and this scenic corridor honestly do.

Let's face it, the location and design of this project has been highly influenced by the [South Lake Tahoe Lodging Association \(SLTLA\)](#) & [LTVA](#), which have seen this facility as an elite lodging amenity opportunity. In fact, the proposed location is adjacent to a hotel owned by the SLTLA's vice president, Rich Bodine. Both the Planning Commission and the Parks & Recreation Commissions are heavily represented by the SLTLA, who have myopic tunnel vision on their narrow enterprising lodging interests, and the greater National and Global perspectives of public good are actually completely lost.

This facility should be placed upon the existing aquatics center site, or placed in another area in need of urban renewal, or placed on some of the many vacant parcels in surrounding land. This location is not too big to fail. **It is never too late to do the right thing. The existing architectural plans can be implemented nearly anywhere else.**

I oppose the City's negative CEQA declaration for the Bijou/Al Tahoe Community Plan "Amendment" as well as the "Plan" and the "Agreement." Please add this timely correspondence to the record.

The City really needs to stop suppressing public participation, speech, and abusing the environmental review process to railroad through a bunch of cheap, unremarkable, ill-planned development in our invaluable and deliberately undeveloped open spaces. It has done so this winter censoring all depictions of the [pending Loop Road meadow](#)

[development](#). In the most recent example of this behavior, the City contracted out due process of law to a developer, who egregiously bypassed the critical environmental review steps of looking at feasible alternatives for the so-called "56-Acres" as evidenced by the fact that the "[Master Plan](#)" and its "[Alternative](#)" are one of the same ([PRC. § 21002](#)). Nor would the [trite](#) "Main Street" which the plan nominally advanced therein, address any of the underlying needs of the community. Both versions have the same footprint:

The "56-Acres" development will spoil the c
Highway 50 in attainment of the sce



Worse, the City outrageously animates the patently false claim that it is hard to fill subcommittees with locals. No, it just wanted give those seats [to special interests that are already representing other causes](#). While the City was scheming with real estate interests and [shutting everybody else out](#) of [public meetings](#), a large group of locals from neighborhood groups got together, to generate some real alternatives. We then

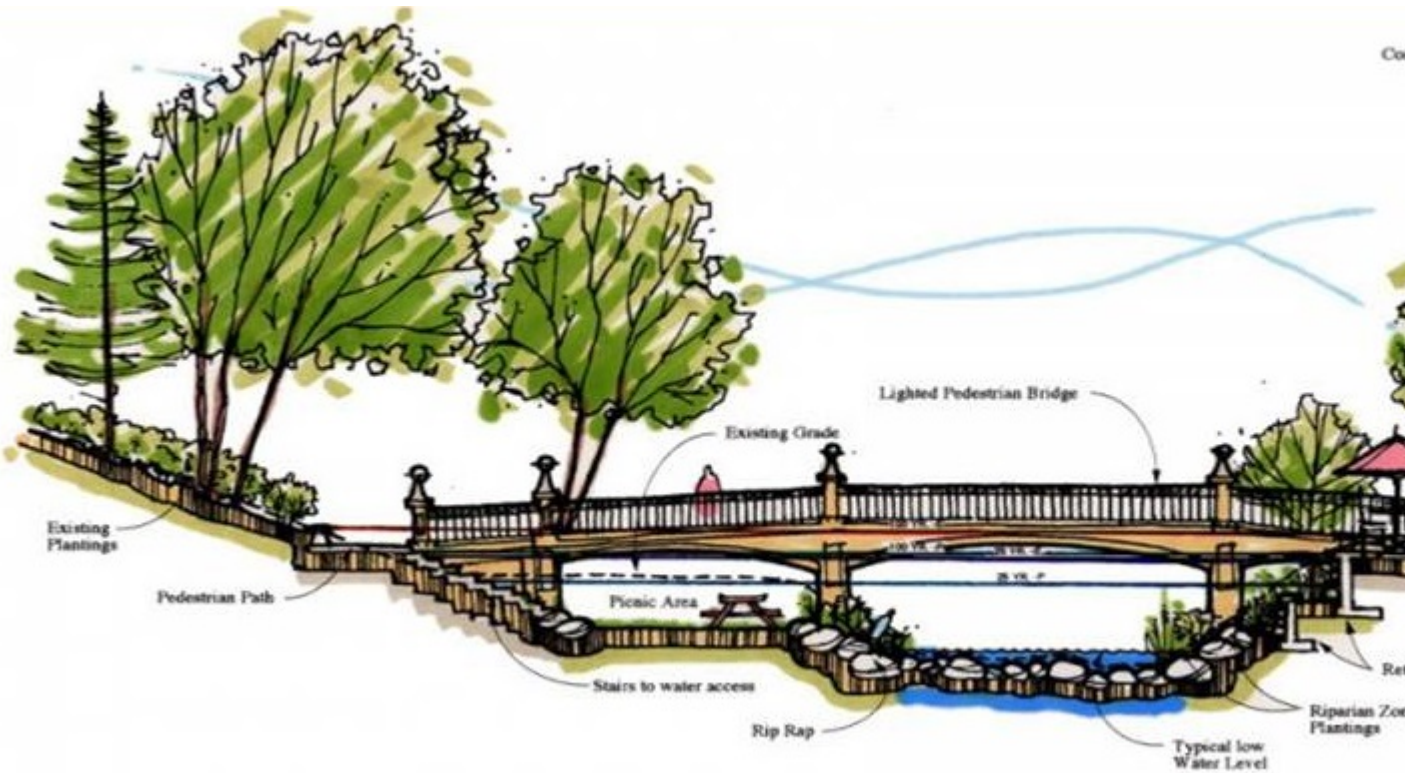
had a technical expert rush out a draft. Some of us played devil's advocate, some of us had genuine visions. We broke our brainstorm into conceptual groups and then developed those further. The fruit of these meetings has been attached as the "56-Acres Alternatives" working document and "midnight draft." Our goal is to **spark a real drawn-out conversation and lively debate about our City's future** and demonstrate a new model of **grassroots engagement** rather than giving the spoils to cronyism. Not every concept should be pursued, but we should discuss them all, and hopefully have some deep soul-searching about our impact on the environment. None of us are currently or have historically served special business interests which gives us an unbiased perception into the community's need. In the public engagement void deliberately caused by corrupt City officials, we locals now have an initiative to take the lead.

Some days I love Gavin Feiger, but does he really need to be on our Planning Commission when he is already a [board director of Teshara's South Shore Transportation Management Association](#), and a member of the **sold out—industry captured—League to "Save" Tahoe?** Darcie Collins' Prosperity Center is a front for the Tahoe Chamber/LTVA trying to put [low-income housing on our meadows](#) and Macro Cell Towers in our Scenic Areas! If a person is already serving on the board or committee of a non-governmental organization (NGO), then they should not also be on the inside making governmental decisions that [advance their special interest](#). We need **diversity** as much as we need checks-and-balances and to root-out corrupt [interest conflicts](#). Incest is the opposite of diversity.

The City [publicly pays lip-service](#) to valuing our scenic treasures, but behind the scenes, it is conspiring with [developers](#) and special real estate interests to develop the hell out of South Lake Tahoe. The City's unjustifiable failure to [take](#) the critical steps to protect our meadows is how it undermine these goals so that they are **set-up to fail**. One of the more egregious examples was the City Council's [refusal](#) to [appropriate and remove the homes built on top of Bijou Park Creek](#) in the past [year\(s\)](#), all the while publicly championing the **cesspool** behind Whole Foods which looks nothing like the park we were all promised.

[[Jason Collin said](#)] among his favorite projects over the past four years was the Bijou Park Creek Watershed Restoration Project. [He purported] that not only was the project an environmental restoration of the area, but it was also an esthetical and economic improvement with the Whole Foods center.

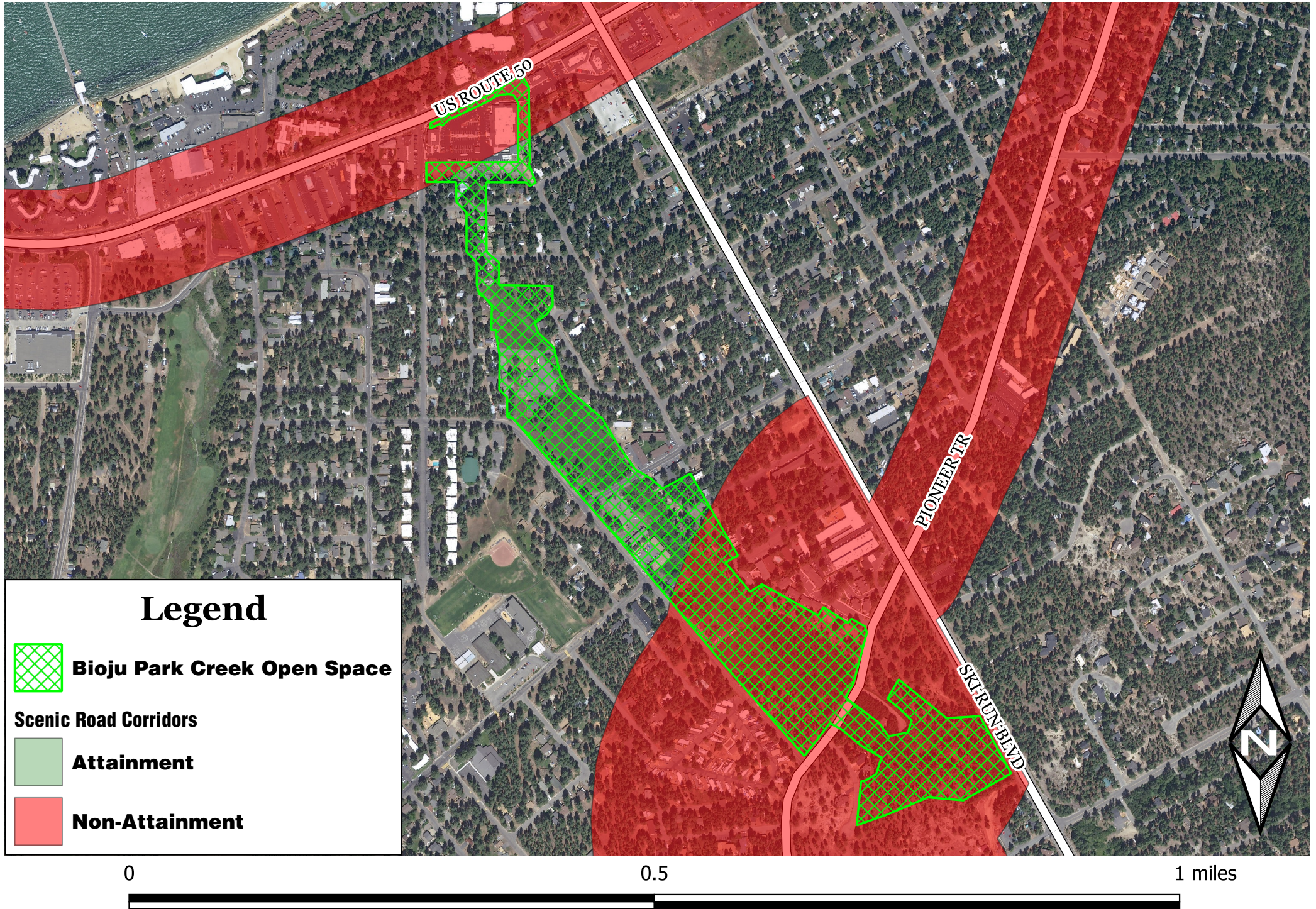
I don't know of what he could possibly be proud; the greasy **fast-food strip mall** that was actually built—by the lowest bidder with cheap, green, uncured, sap-spewing, cracking lumber—did nothing to restore the historic Bijou Park Creek and meadows. There is not even a pedestrian bridge or a Whole Foods picnic area:



Needless to say, we never got "[a design that matches the grandeur of our setting](#)." We got the very "uninspiring suburban-style development" that everybody had feared, by the same philistines that pushed through the hideous Ski Run Tower, and are now trying to destroy the El Dorado Beach Scenic Corridor. Look, you are inept, dishonest, corrupt, and now it is time for us locals to take away the keys from the City. Here is [memory lane](#).

Grace Thorpe

"Bijou Park Creek Open Space Preserve" — Ski Run Park Concept — An Active Lifestyle, Interpretive Dog Park, & Cultural Hub.



Attachment 7

January 20, 2015

Staff Report to City Council for Purchase
and Sale Agreement with Halferty
(Southwest Corner lot)



NEW BUSINESS a

OFFICE OF THE CITY ATTORNEY CITY OF SOUTH LAKE TAHOE

Thomas Watson, City Attorney
Nira Feeley Doherty, Assistant City Attorney

1901 Airport Road, Ste. 300
South Lake Tahoe, CA 96150
(530) 542-6046

www.cityofslt.us

STAFF REPORT City Council Meeting January 20, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Thomas T. Watson, City Attorney

DATE: January 20, 2015

RE: Purchase and Sale Agreement with Halferty Development Corporation for the Parcel known as South West Corner (located at the corner of Ski Run Boulevard and Lake Tahoe Boulevard)

RECOMMENDATION:

Approve purchase and sale agreement with Halferty Development Corporation for the parcel known as South West corner and authorize the Mayor to execute the required documents.

ISSUE AND DISCUSSION:


The City owns a piece of real property, located at the south west corner of Ski Run Boulevard and Lake Tahoe Boulevard, since it was purchased from the Successor Agency in 2014. After a rigorous competition between potential buyers, the Council had selected Halferty Development Corporation (HDC) as the preferred buyer of the parcel. The terms and conditions of the sale are incorporated in the sales agreement and the letter agreement regarding commercial floor area (CFA). HDC specifically will pay \$1.1 Million for the parcel and 12,000 CFA. Additionally, HDC will enter into a Design Development Agreement (DDA) to allow the City to place reasonable requirements on certain aspects of the development, which DDA is a necessary part of the attached agreement.

STRATEGIC PLAN AND BUSINESS PLAN RELEVANCE:

The Strategic Plan envisions diversifying revenues sources as part of Fiscal Sustainability. Incorporated within revenue sources is the sale of City owned property, with the expected development to improve the tax revenue base of the City. It is anticipated that the development of the South West corner will bring additional property tax and likely some sales tax from the eventual tenants.

FINANCIAL AND/OR POLICY IMPLICATIONS:

The sale of the property is above the amount paid by the City to the Successor Agency, but also takes into consideration the concurrent transaction of commodities to the purchaser.



Thomas T. Watson

Attachments:

- Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is entered into as of the 5th day of January, 2015 ("Effective Date") between **CITY OF SOUTH LAKE TAHOE** ("Seller") and **HALFERTY DEVELOPMENT COMPANY, LLC**, a Delaware limited liability company, or its assignee ("Buyer"). In consideration of the several promises and representations of the parties set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the "Property" containing approximately 1.5 acres of land located at the southwest corner of Highway 50 and Ski Run Boulevard in the City of South Lake Tahoe, County of El Dorado, State of California, also known as Assessor's Parcel Map Numbers 027-690-08 and 027-690-09, and more particularly described in Exhibit "A" attached hereto, upon the terms and conditions set forth in this Agreement.

2. Financial Terms.

- A. Purchase Price. The total "Purchase Price" shall be One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00).
- B. Deposit. Within five (5) business days after the full execution and delivery of this Agreement, Buyer shall open an escrow account ("Opening of Escrow") with the South Lake Tahoe office of Placer Title Company, Escrow Officer: Deb Landerkin ("Escrow Holder"). Within five (5) business days of Opening of Escrow, Buyer shall deliver funds (the "Deposit") in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) to Escrow Holder. Until 5:00 p.m. Pacific time on the last day of the Site Investigation Period, the Deposit shall remain refundable to Buyer if the transaction contemplated by this Agreement is not consummated for any reason whatsoever, provided that all expenses related to cancellation of the escrow are paid by Buyer. At the end of the Site Investigation Period, the Deposit shall be increased an additional Ninety Thousand and No/100 Dollars (\$90,000.00) ("Additional Deposit"), which will be non-refundable and released to Seller through Escrow. Thereafter, the Deposit, Additional Deposit, and all interest that is earned by said funds shall be credited against the Purchase Price at Close of Escrow or otherwise disbursed in accordance with the terms of this Agreement.
- C. Additional Consideration. Seller will provide 12,000 square feet of CFA at no additional cost to Buyer upon approval of the building permit, but not later than June 1, 2016. If a building permit is not issued on or before June 1, 2016, the Seller shall not be required to provide the CFA to Buyer. If at any time Buyer learns that the required CFA are no longer available, Buyer shall have the right to either (i) require Seller to re-allocate CFA from elsewhere within the City of South Lake Tahoe and grant such CFA to Buyer (all at Seller's sole cost and

expense), (ii) terminate the Agreement, with the rights and remedies available thereunder, or (iii) institute arbitration per the attached Exhibit "B" (Dispute Resolution).

- D. Cancellation of Previous Escrow. Prior to opening escrow under this Agreement and as consideration of this Agreement, Buyer agrees to cancel the previous Escrow #203-8778-DL between South Tahoe Redevelopment Successor Agency (as Seller) and Halferty Development Company, LLC (as Buyer) with Placer Title in South Lake Tahoe.
- E. Balance. The balance of the Purchase Price (after credit for the Deposit and interest accrued thereon) shall be paid by Buyer to Seller at the Close of Escrow, by cash, [title company or bank check, wire transfer or other customary means,] to an account designated by Seller.
3. Close of Escrow.
- A. Date. The conveyance of the Property and the payment of the balance of the Purchase Price ("Close of Escrow") shall take place at the office of Escrow Holder, during normal business hours, within (30) days following satisfaction of all of the conditions set forth in paragraph 4 below.
- B. Conveyance. At Close of Escrow, upon the receipt of the Purchase Price, Seller shall deliver to Buyer a Grant Deed in recordable form, conveying fee simple title to the Property, subject only to current real property taxes and those title exceptions approved by Buyer, and free of all contracts, leases and like documents, except as approved by Buyer in writing, together with a Seller-paid ALTA policy insuring such title in Buyer. Seller shall also execute and deliver to Buyer a certification, acceptable to Buyer, setting forth Seller's address, federal tax identification number and other documents necessary for the purpose of the provisions of Sections 1445 and 7701 of the Internal Revenue and Code of 1986, as amended. In addition, Seller shall execute and deliver to Buyer evidence satisfactory to Buyer that Seller is exempt from the withholding provisions of the California Revenue and Taxation Code, as amended (or comparable regulations of other jurisdictions) and that neither Buyer nor Escrow Holder is required to withhold any amounts from the Purchase Price pursuant to such provisions.
- C. Costs and Prorations. Real estate taxes, outstanding assessments that are not liens on the Property, fire and extended coverage insurance premiums, rent, utilities and operating expenses (as applicable) shall be prorated as of the date of Close of Escrow. Seller shall pay any transfer taxes and recording fees. Seller and Buyer shall each pay one-half (1/2) of any escrow fees and each party shall pay its own attorneys' fees and costs.
- D. Simultaneous Delivery; Conditions Concurrent. All documents and other items to be delivered at the Closing shall be deemed to have been delivered

simultaneously, and no delivery shall be effective until all such items have been delivered.

4. Approval Periods.

- A. Title Matters. Within twenty (20) days after the Opening of Escrow, Seller shall furnish to Buyer, at Seller's expense, a preliminary title report and binder on the Property, copies of all exceptions, conditions, covenants and restrictions affecting the Property, and a copy of all rental agreements and other evidence of the potential rights of anyone other than Seller to the Property ("Title Commitment"). The Title Commitment shall be issued by First American Title Insurance Company ("Title Company") and shall show good and marketable title in Seller.
- B. Site Investigation Period. Buyer shall have one hundred fifty (150) days following Opening of Escrow ("Site Investigation Period") to enter upon the Property and investigate whether, in Buyer's sole discretion, the Property is suitable for Buyer's intended purpose. The investigation may include, without limitation, soil and sub-soil conditions, wetland demarcations, environmental, engineering, surveys, land use and planning, utility and other studies. Any such entry shall be at Buyer's expense and risk (holding Seller harmless from any claims for injury to person or property arising from Buyer's activities on the Property), but shall not constitute a taking of possession, and Buyer shall return each test location to substantially its original condition. This investigation may also include (i) obtaining final approval by a major tenant for the development of a store on the Property and (ii) dealing with governmental bodies with authority over the Property. Within this Site Investigation Period, Buyer and Seller shall enter into a Design Development Agreement, Buyer shall have proof of funding/financing for project development and evidence of expressed interest (Letter of Intent or other) from proposed tenants. Should Buyer determine that the Property is not suitable, Buyer shall provide written notice of same to Escrow Holder within five (5) days after the end of the Site Investigation Period and the Deposit shall then be promptly returned to Buyer and this Agreement shall be terminated with no further obligations to either party.
- C. Development Approvals. If the Property needs to be rezoned, replatted, its permitted use changed or similarly redesignated or have building permits issued ("Development Approvals"), Buyer shall have one hundred twenty (120) days from the end of the Site Investigation Period to use reasonable efforts to accomplish such Development Approvals ("Development Approval Period"). Buyer shall pay all costs of Development Approvals, and Seller will cooperate (at no cost) in that effort. If Buyer is exercising due diligence in pursuing the Development Approvals, Buyer will have the right to extend the Development Approvals Period and the Close of Escrow for two (2) periods of thirty (30) days each solely to obtain these final governmental approvals by written notice to Escrow Holder and Seller no less than five (5) days prior to the expiration of the Development Approvals Period and first extension. These extensions shall not be

unreasonably withheld, provided Buyer has diligently processed Development Approvals.

5. Seller's Warranties. Seller represents and warrants, to induce Buyer to enter into the Agreement, in addition to any other representations herein, as of the date hereof and the date of Close of Escrow (and all representations and warranties shall survive the Close of Escrow) that:

- A. Seller owns good and marketable fee simple title to the Property;
- B. Seller has the authority to execute this Agreement and transfer title as stated;
- C. At Close of Escrow, title to the Property will be free and clear of all leases, liens, easements, covenants, restrictions, parties in possession and/or special encumbrances, except title exceptions permitted by Buyer;
- D. To the best of Seller's actual knowledge after investigation, the Property, including soil, sub-soil, surface and ground water, improvements and anything else on or under the Property now is and at Close of Escrow will be free of all contamination including but not limited to asbestos, hazardous waste or hazardous substances, as defined by applicable federal and state laws, and by the Resource Conservation and Recovery Act of 1976, as amended and regulations thereunder, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the California Hazardous Waste Control Act, the California Health and Safety Code, or similar and applicable laws and regulations. Seller further has neither been advised of nor received any notice regarding any contamination affecting the Property;
- E. There are no violations of any laws or regulations of applicable governmental authorities affecting the Property, nor are there any governmental or other actions or legal proceedings pending or threatened against Seller or the Property;
- F. There are no special assessments or eminent domain proceedings pending or threatened against Seller or the Property;
- G. The Property has full, free and adjacent access to and from public highways and roads and there are no facts or conditions which would result in such access being altered; and
- H. From and after the date hereof and until Close of Escrow, Seller will maintain the Property in good order and condition and not permit or commit waste thereon.

For purposes of this Agreement, whenever the phrase "to Seller's knowledge" or words of similar import are used, they shall be deemed to refer to the actual knowledge of (i) City of South Lake Tahoe, (ii) all employees or agents of Seller with supervisory responsibilities concerning the Property, and (iii) such other persons at a management or supervisory level who would, in the ordinary course of their responsibilities as employees or agents of Seller, receive notice from other agents or employees of Seller or from other persons or entities of any of the

matters described in the representations and warranties in this Agreement which are limited by the knowledge of Seller.

6. Condemnation. If, prior to Close of Escrow, any part of the Property is taken pursuant to eminent domain proceedings (or private purchase in lieu thereof), or any such proceedings commence, then Buyer may elect by written notice to Seller either to terminate this Agreement or proceed to Close of Escrow with an adjustment in the Purchase Price equal to any condemnation award or payments received or to be received by Seller. Upon any such termination pursuant to this paragraph, this Agreement shall be terminated without any rights or obligations from or to either party and the Deposit shall be promptly returned to Buyer. Notwithstanding the foregoing, there is no litigation pending or, after due and diligent inquiry, to Seller's knowledge, threatened, against Seller that arises out of the ownership of the Property or that might detrimentally affect the value, ownership, use or operation of the Property or the ability of Seller to perform its obligations under this Agreement. Seller shall notify Buyer promptly of any such litigation of which Seller becomes aware.

7. Default. If either party fails either to waive a condition or to terminate this Agreement, and because of such failure the other party wants to claim a default, the other party shall give written notice specifying the nature of the failure to the alleged defaulting party, who shall have thirty (30) days (or such time as is reasonable if the failure cannot be reasonably cured in thirty (30) days) to cure the failure. If the failure is on the part of the Seller, Buyer may terminate this Agreement, elect to cure the failure on behalf of Seller, or seek specific performance. **Buyer expressly disclaims and releases Seller from any and all consequential or reliance damages. Buyer's sole remedy is either specific performance, cure or termination of this Agreement without any damages under any circumstance.** If the failure is on the part of Buyer, Seller's exclusive remedy shall be to receive the Deposit as full liquidated damages.

IN THE EVENT THE SALE OF THE PROPERTY PURSUANT TO THIS AGREEMENT IS NOT CONSUMMATED SOLELY BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, THE DEPOSIT (TO THE EXTENT DEPOSITED INTO ESCROW BY BUYER) SHALL BE PAID TO AND/OR RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. SELLER HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

Seller's
Initials _____

Buyer's
Initials _____

8. Successors and Assigns. Buyer shall have the absolute and unconditional right at any time and from time to time to assign this Agreement to any person or entity controlled by, controlling, or under common control with, Buyer; provided, however, all other assignments

shall require the consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the provisions of the immediately preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, administrators, executors, assigns and successors in interest.

9. Assignment. Buyer shall provide Seller with a copy of any assignment within ten (10) days after the effective date of any such assignment. Thereafter, Seller shall look only to the assignee for the performance of all of Buyer's obligations under this agreement.

10. Brokers. The parties represent and warrant that Buyer is represented by Craig Woodward of Deb Howard & Co and Seller is represented by Deb Howard of Deb Howard & Co ("Brokers"). Seller agrees to pay a commission of five percent (5%) of the Purchase Price to be paid to Deb Howard & Co. through escrow, upon Close of Escrow. Other than the referenced Brokers, neither party has incurred any obligations for real estate commissions, finder's fees or any similar fees in connection with the transaction contemplated herein. If any other person asserts a claim for commission or finder's fees in connection with this transaction based upon contact or dealings with Buyer or Seller, the party through whom that person makes its claim will indemnify, hold harmless, and defend the other party from such claim and all expenses, including reasonable attorneys' fees, incurred by the other party in defending the claim. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the parties hereto to, any person or entity not a party to this Agreement.

11. Time is of the Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term and provision of this Agreement.

12. Entire Agreement. This document is the full agreement between the parties regarding the subject matter hereof and may only be altered in a writing signed by both the parties. This Agreement shall not be strictly construed for or against any party. Each party acknowledges that its independent counsel has reviewed this Agreement and agrees that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

13. Acceptance. To evidence their agreement with the foregoing and their intent to be legally bound, the parties have executed this Agreement as of the Effective Date.

[Signatures on following page.]

SELLER:

City of South Lake Tahoe

By _____

Title _____

Date _____

Notice Address:

BUYER:

Halferty Development Company, LLC
a Delaware limited liability company

By  _____
James L. Halferty, Member

Notice Address:

Halferty Development Company, LLC
199 S. Los Robles, Suite 840
Pasadena, California 91101
Attn: James L. Halferty

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF EL DORADO, CITY OF SOUTH LAKE TAHOE, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE

A PORTION OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 18 EAST, M.D.B.&M. DESCRIBED AS FOLLOWS:

PARCEL 8 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF EL DORADO, STATE OF CALIFORNIA ON MAY 1, 1996 IN BOOK 45 OF PARCEL MAPS AT PAGE 115.

A.P.N. 027-690-08-100

PARCEL TWO

A PORTION OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 18 EAST, M.D.B.&M. DESCRIBED AS FOLLOWS:

PARCEL 9 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF EL DORADO, STATE OF CALIFORNIA ON MAY 1, 1996 IN BOOK 45 OF PARCEL MAPS AT PAGE 115.

EXCEPTING THEREFROM, THAT PORTION CONVEYED IN THE GRANT DEED TO THE STATE OF CALIFORNIA, IN DOCUMENT RECORDED FEBRUARY 17, 2011, INSTRUMENT NO. 2011-8008, EL DORADO COUNTY RECORDS.

A.P.N. 027-690-09-100 AS TO THIS AND OTHER PROPERTY

EXHIBIT "B"
(Dispute Resolution)

A. JAMS. The exclusive method for resolving any and all disputes, claims or controversies arising out of or relating to this Agreement, including but not limited to a claim based on or arising from an alleged tort, shall be submitted to final and binding arbitration before JAMS/ENDISPUTE ("JAMS"), or its successors, pursuant to the United States Arbitration Act, 9 U.S.C. § 1 *et seq.* Either party to this Agreement may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with JAMS, with a copy to the other Party. Notwithstanding the amount in dispute, the arbitration will administered by and in accordance with the Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration, and conducted at a location determined by the arbiter within El Dorado County, California.

B. Selection of Arbiter. The parties hereto will cooperate with JAMS and with one another in selecting an arbiter. Within five (5) business days after a demand has been made to arbitrate any controversy, dispute or claim, the parties shall select one (1) arbiter from the commercial panel of JAMS, who shall be a retired judge with significant experience resolving disputes relating to commercial real estate. If the parties are unable or unwilling to agree on an arbiter within that time, each party shall designate an arbiter within three (3) business days thereafter. If either party fails to select an arbiter within the designated time period, then on the request of either party, JAMS shall select that arbiter. The two arbiters selected by or on behalf of the parties hereto shall designate a third arbiter within two (2) business days after their designation, who shall serve as the sole arbiter (the "Arbiter"). Subject to any reallocation in accordance with the Arbiter's decision, the Arbiter's fees in connection with any such arbitration proceeding shall initially be shared equally between the Parties.

C. Arbitration Procedural Guidelines. Discovery requests in any arbitration shall be determined by the Arbiter in light of the parties' desire to proceed informally, expeditiously and at minimal expense. The Arbiter shall give effect to statutes of limitations in determining any claim. The Arbiter shall have the right to consult experts and competent authorities regarding factual information or evidence pertaining to a determination of the matter being arbitrated, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The Arbiter shall hold a hearing, at which both parties may present evidence and cross examine witnesses, prior to the arbiter rendering a decision. The Arbiter shall apply the substantive and procedural laws of the State of California, without regard to the conflicts of law principles of such State. The Arbiter's decision and award shall be rendered in writing with counterpart copies to both parties. Judgment upon an arbitration may be entered in any court having competent jurisdiction thereof, and shall be binding, final and non-appealable.

D. Self-Executing Provision. The arbitration provision set forth in this Exhibit B shall be deemed to be self-executing and shall remain in full force and effect after the expiration or termination of this Agreement. In the event any party fails to appear at any arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding

said failure to appear. The parties hereby consent to arbitration to be held within the County of El Dorado, State of California, and irrevocably agree that all actions or proceedings relating to this Agreement shall take place in the County of El Dorado, and waive any objections that they may have based on improper venue or *forum non conveniens*. If any court or arbiter finds that any term makes this arbitration provision unenforceable for any reason, the court or arbiter shall have the power to modify such term (or if necessary delete such term) to the minimum extent necessary to make this arbitration provision enforceable to the fullest extent permitted by law.

E. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS, INCLUDING WITHOUT LIMITATION ANY RIGHT TO TRIAL BY JURY AS TO THE MAKING, EXISTENCE, VALIDITY, OR ENFORCEABILITY OF THE AGREEMENT TO ARBITRATE.

Halferty Development Company, LLC
199 South Los Robles Avenue, Suite 840
Pasadena, California 91101
(626) 405-0956

January 5, 2015

Thomas T. Watson (via electronic mail)
City Attorney
City of South Lake Tahoe
1901 Airport Road, Suite 300
South Lake Tahoe, California 96150

Re: SWC Highway 50 & Ski Run Boulevard, South Lake Tahoe, CA (the "Property")

Dear Mr. Watson:

This letter will set forth an understanding between Halferty Development Company, LLC, a Delaware limited liability company ("HDC"), and the City of South Lake Tahoe ("City") in connection with the Property, which HDC has been awarded the right to purchase by the City; based on the grant of such right, HDC and the City are negotiating a Purchase and Sale Agreement for the Property (the "PSA").

City acknowledges that HDC's contemplated use of the Property will require an allocation of commercial floor area ("CFA") from the City. This letter constitutes City's agreement to withhold from the stream zone in which the Property is located 12,000 square feet of CFA for use at the Property (the "Required CFA") until such time as drawings for the building(s) to be constructed on the Property are submitted to the City, at which time the Required CFA will be granted by the City to HDC. City further agrees that it shall not unreasonably withhold approval of the building drawings submitted by HDC. HDC agrees that it will enter into a Design Development Agreement with the City in order to facilitate agreed upon design features in the building drawings submitted by HDC.

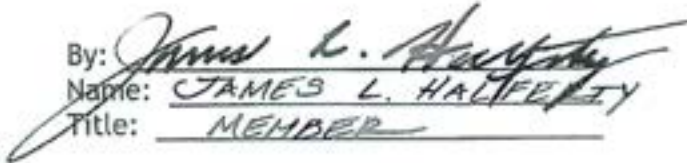
The City will provide the above referenced CFA as an express condition if HDC has obtained a building permit on or before June 1, 2016. If a building permit is not obtained on or before that date, the obligation by the City to provide CFA is null and void without recourse by HDC.

If at any time HDC learns that the Required CFA are no longer available, HDC shall have the right to either (i) require the City to re-allocate CFA from elsewhere within the City of South Lake Tahoe and grant such CFA to HDC (all at the City's sole cost and expense), (ii) terminate the PSA, with the rights and remedies available thereunder, or (iii) institute arbitration per the attached Exhibit A (Dispute Resolution).

Please have the City evidence its agreement to the foregoing by having a properly authorized representative of the City sign this letter where provided below.

Sincerely,

Halferty Development Company, LLC,
a Delaware limited liability company

By: 
Name: JAMES L. HALFERTY
Title: MEMBER

Agreed: January __, 2015

City of Lake of South Tahoe

By: _____
Name: _____
Title: _____

EXHIBIT A

Dispute Resolution

A. JAMS. The exclusive method for resolving any and all disputes, claims or controversies arising out of or relating to this letter agreement, including but not limited to a claim based on or arising from an alleged tort, shall be submitted to final and binding arbitration before JAMS/ENDISPUTE ("JAMS"), or its successors, pursuant to the United States Arbitration Act, 9 U.S.C. § 1 *et seq.* Either party to this Agreement may commence the arbitration process by filing a written demand for arbitration with JAMS, with a copy to the other Party. Notwithstanding the amount in dispute, the arbitration will be administered by and in accordance with the Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration, and conducted at a location determined by the arbiter within El Dorado County, California.

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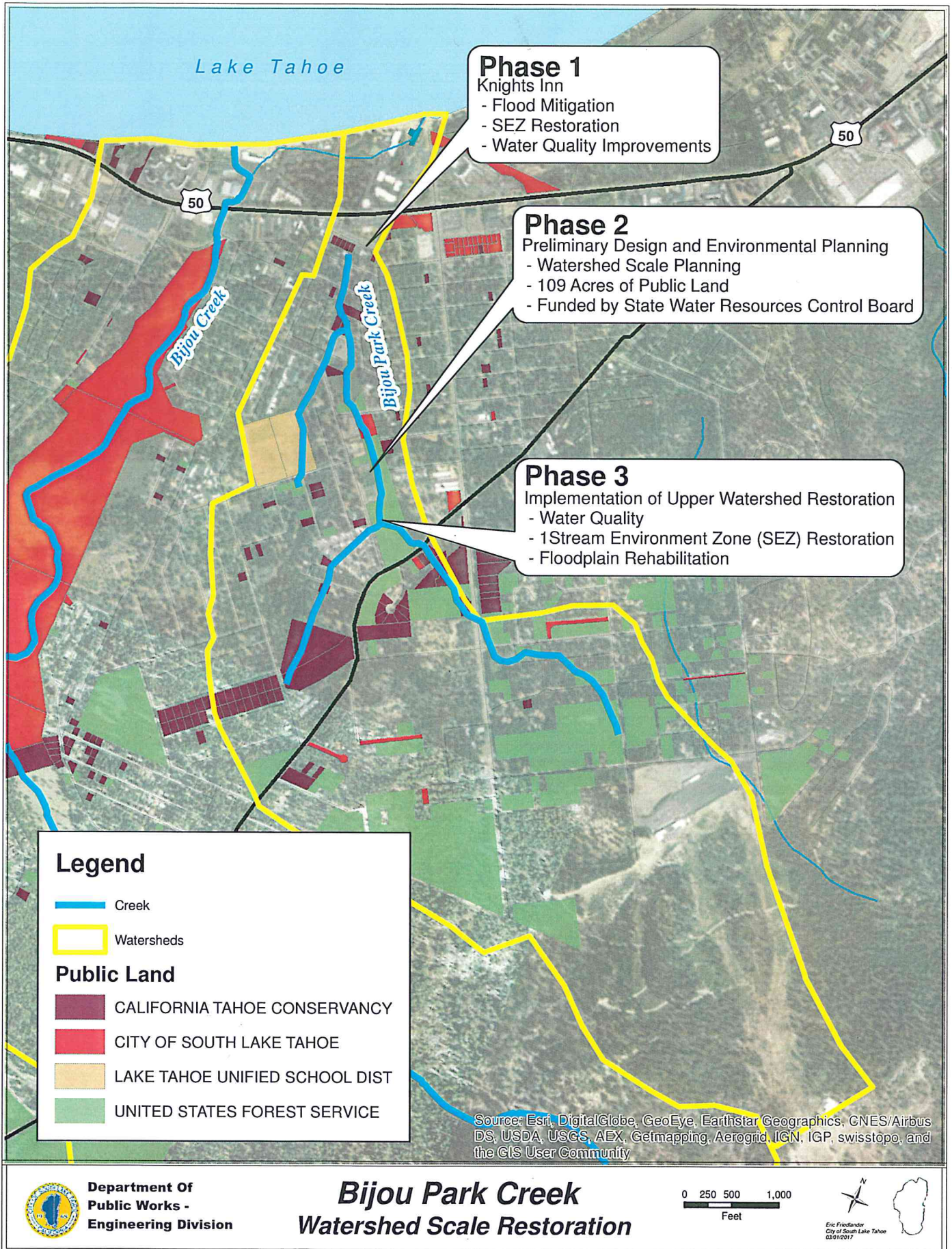
C. Arbitration Procedural Guidelines. Discovery requests in any arbitration shall be determined by the Arbiter in light of the parties' desire to proceed informally, expeditiously and at minimal expense. The Arbiter shall give effect to statutes of limitations in determining any claim. The Arbiter shall have the right to consult experts and competent authorities regarding factual information or evidence pertaining to a determination of the matter being arbitrated, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The Arbiter shall hold a hearing, at which both parties may present evidence and cross examine witnesses, prior to the arbiter rendering a decision. The Arbiter shall apply the substantive and procedural laws of the State of California, without regard to the conflicts of law principles of such State. The Arbiter's decision and award shall be rendered in writing with counterpart copies to both parties. Judgment upon an arbitration may be entered in any court having competent jurisdiction thereof, and shall be binding, final and non-appealable.

D. Self-Executing Provision. The arbitration provision set forth in this Exhibit A shall be deemed to be self-executing and shall remain in full force and effect after the expiration or termination of this Agreement. In the event any party fails to appear at any arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding said failure to appear. The parties hereby consent to arbitration to be held within the County of El Dorado, State of California, and irrevocably agree that all actions or proceedings relating to this Agreement shall take place in the County of El Dorado, and waive any objections that they may have based on improper venue or *forum non conveniens*. If any court or arbiter finds that any term makes this arbitration provision unenforceable for any reason, the court or arbiter shall have the power to modify such term (or if necessary delete such term) to the minimum extent necessary to make this arbitration provision enforceable to the fullest extent permitted by law.

E. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS, INCLUDING WITHOUT LIMITATION ANY RIGHT TO TRIAL BY JURY AS TO THE MAKING, EXISTENCE, VALIDITY, OR ENFORCEABILITY OF THE AGREEMENT TO ARBITRATE.

Attachment 4

Map of Bijou Creek Park Watershed
Restoration Project Area



Attachment 6

Winter 2017 photos

Photos

Before



Blackwood Road mobile home park flood/SEZ areas



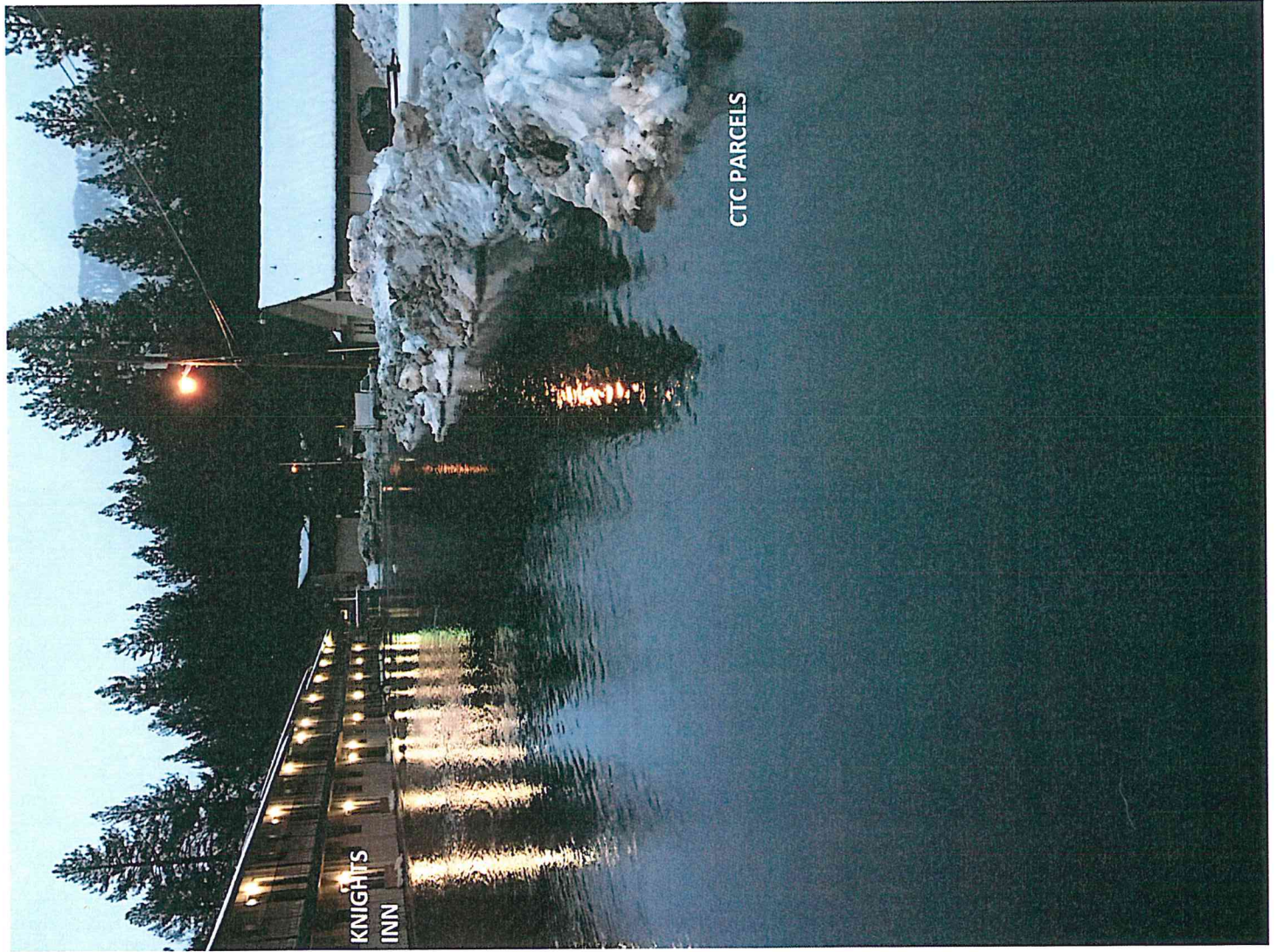
SEZ flooding on Rockwood Drive



Lloyd Avenue CTC parcels during January 8, 2017 flooding



Shirley Avenue SEZ flooding (January 9, 2017)





Bijou Park Creek Watershed Project



January 2017 Flooding



Bijou Park Creek Watershed Project



January 2017 Flooding

Feasible Alternatives or Feasible Mitigation Measures
Available which would Substantially Lessen the Significant
Environmental Effects of 56-Acres Master Plan.

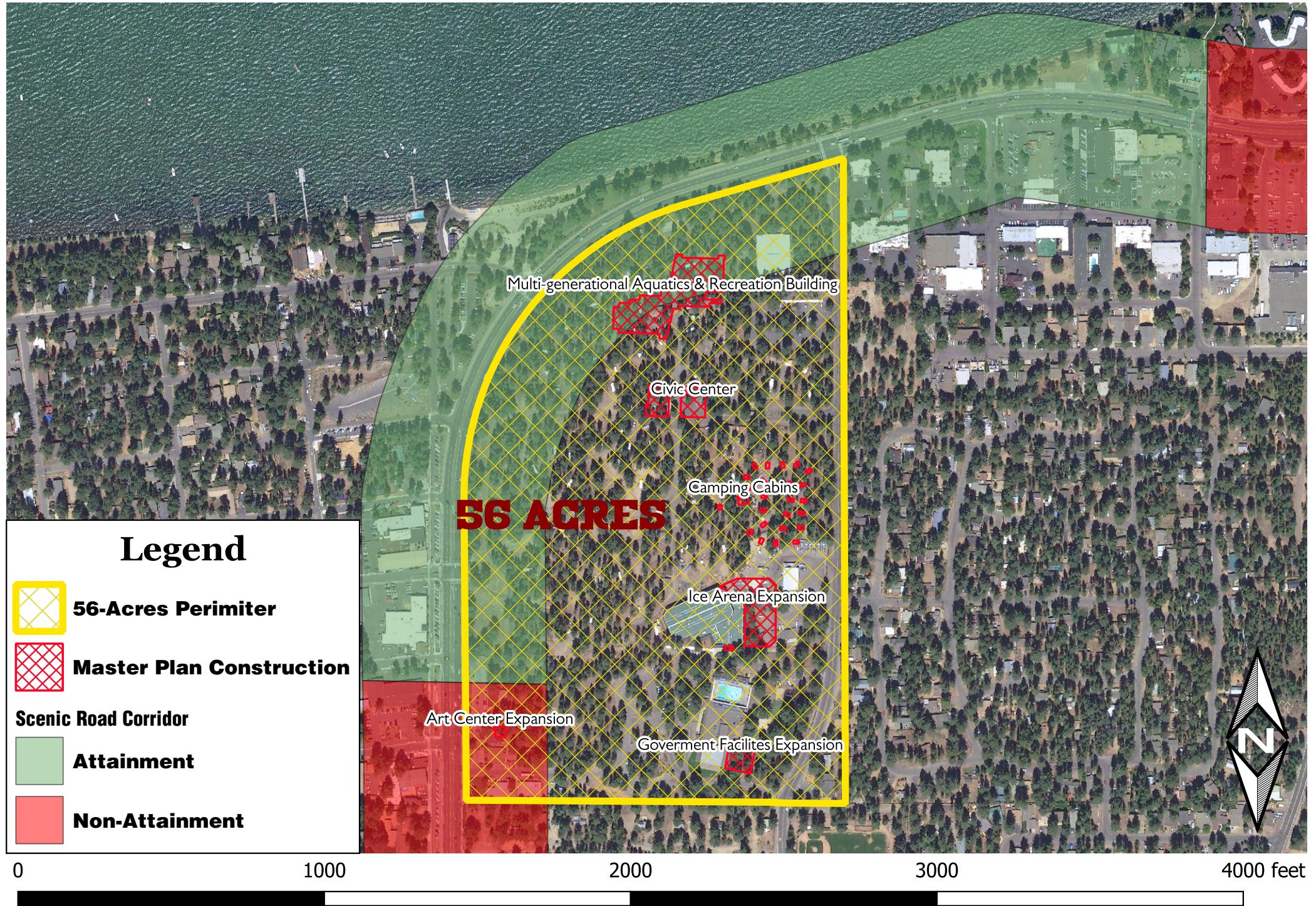
*Don't it always seem to go
That you don't know what you've got 'til it's gone?
They paved paradise
Put up a parking lot*

Pursuant to California Public Resource Code § 21002, it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by the Environmental Quality Act are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.

Contained in this document are six feasible alternatives or feasible mitigation measures which should be considered by El Dorado County and the City of South Lake Tahoe in the approval of 56-Acres¹ Master Plan.

1 The parcels identified in the titular “56-Acres” Master Plan actually sum to 52 acres.

The "56-Acres" development will spoil the only in-town segment of Highway 50 in attainment of the scenic threshold.



This is the 56-Acres Master Plan; the so-called “Alternative Master Plan” as it currently exists in substance has the same building construction footprint, sitting, and location. The lake-ward section of the forest currently heavily used for outdoor recreation would be cut-down and replaced by an indoor “Multi-generational Aquatics and Recreation Building.”

This section is within a statutory “state scenic highway” which requires “special scenic conservation treatment” adjacent to the scenic corridor (Streets and Highway Code §§ 260, 263.4). Highway 50, also known as the “Lincoln Highway” was America’s first transcontinental road, and as a federal-aid highway is part of the “National Highway System.” The highway portion that transects the sierras is an excellent candidate for the “National Scenic Byways Program” which could be a boost to the economy in federal aid monies and scenic roadway tourism (23 U.S. Code §§ 103 & 162). The highway subsection adjacent to the proposed “Multi-generational Aquatics and Recreation Building” is the only in-town portion in attainment of the scenic threshold, and offers one of the most spectacular views in the whole sierra transect. Spoliation of this corridor section is an existential threat to Highway 50 attaining status as a “National Scenic Byway,” “All-American Road,” or “America’s Byway.”²

The "56-Acres" improvements ought to increase the scenic beauty and outdoor recreation value, a criteria not met by converting a splendid natural outdoor space into an artificial indoor building. These parcels have been spared development over the last century because of their unique scenic beauty. It is hard to imagine a better use for the common good and the greatest many than as an outdoor camping area.

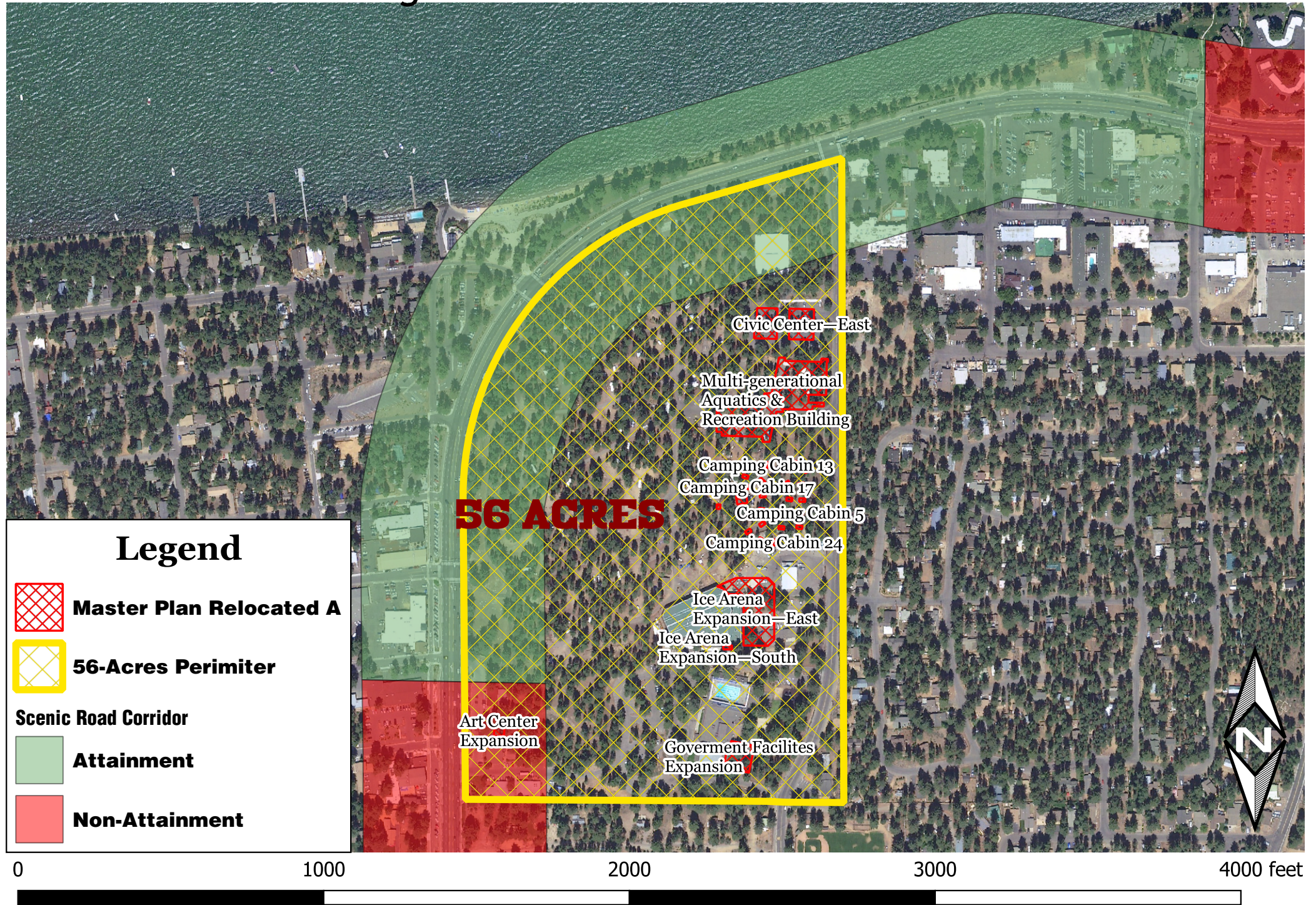
The “56-Acres Master Plan” purports to create a “Main Street” as a selling-point to address the longstanding lack of a central “downtown.” However, the design in no way resembles or even addresses in form or in function the publicly desired local’s cultural and business hub such as a “main” “street” or “square.”

Also, a library is an essential and traditional feature of a “downtown,” which has been underplayed in the current plan. The existing library is outdated, and structurally suffers from radioactive radon contamination which cannot be eliminated due to the design of its foundation. There is an opportunity being missed in the new federal infrastructure initiative that will follow the pandemic for the next decade which could bring us a new library, courthouse, and parking structure.

Hence, the best feasible alternative would enhance the “state scenic highway” corridor, while simultaneously maximizing the parcel’s scenic beauty and outdoor recreation value, while also expanding indoor library and recreational opportunities, and results in a local’s cultural and business hub, “street,” or “square.” There appears to be plenty of neglected opportunity in this regard.

2 Scenic Highways may lose their scenic status if a local government fails its protective duties under Streets and Highways Code § 262.

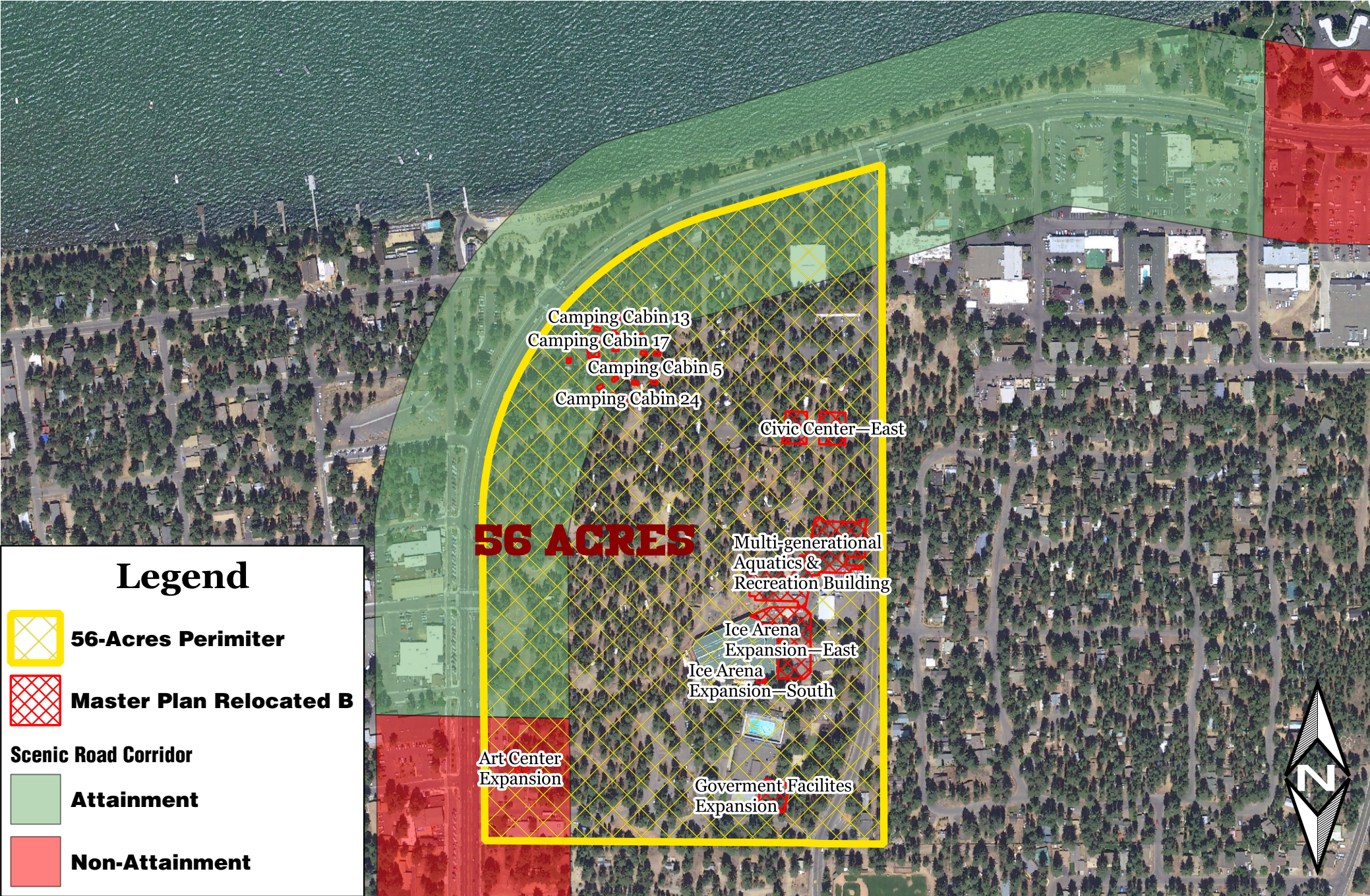
Moving the proposed aquatics center would preserve the nationally significant scenic road corridor.







The so-called “Alternative Master Plan” appears to be a thinly-veiled clone of the “Master Plan,” to rather disingenuously address the “feasible alternative” and “alternative analysis” requirements of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) where applicable. The law respects form less than substance.³

In this substantive alternative version “A” to the “Master Plan,” buildings have been relocated, while the footprint has remained the same allowing direct transfer and application of any existing architectural plans.

Annexing the proposed aquatics center with the ice rink would both create a convenient centralized recreational complex and preserve the nationally significant scenic road corridor.



Legend

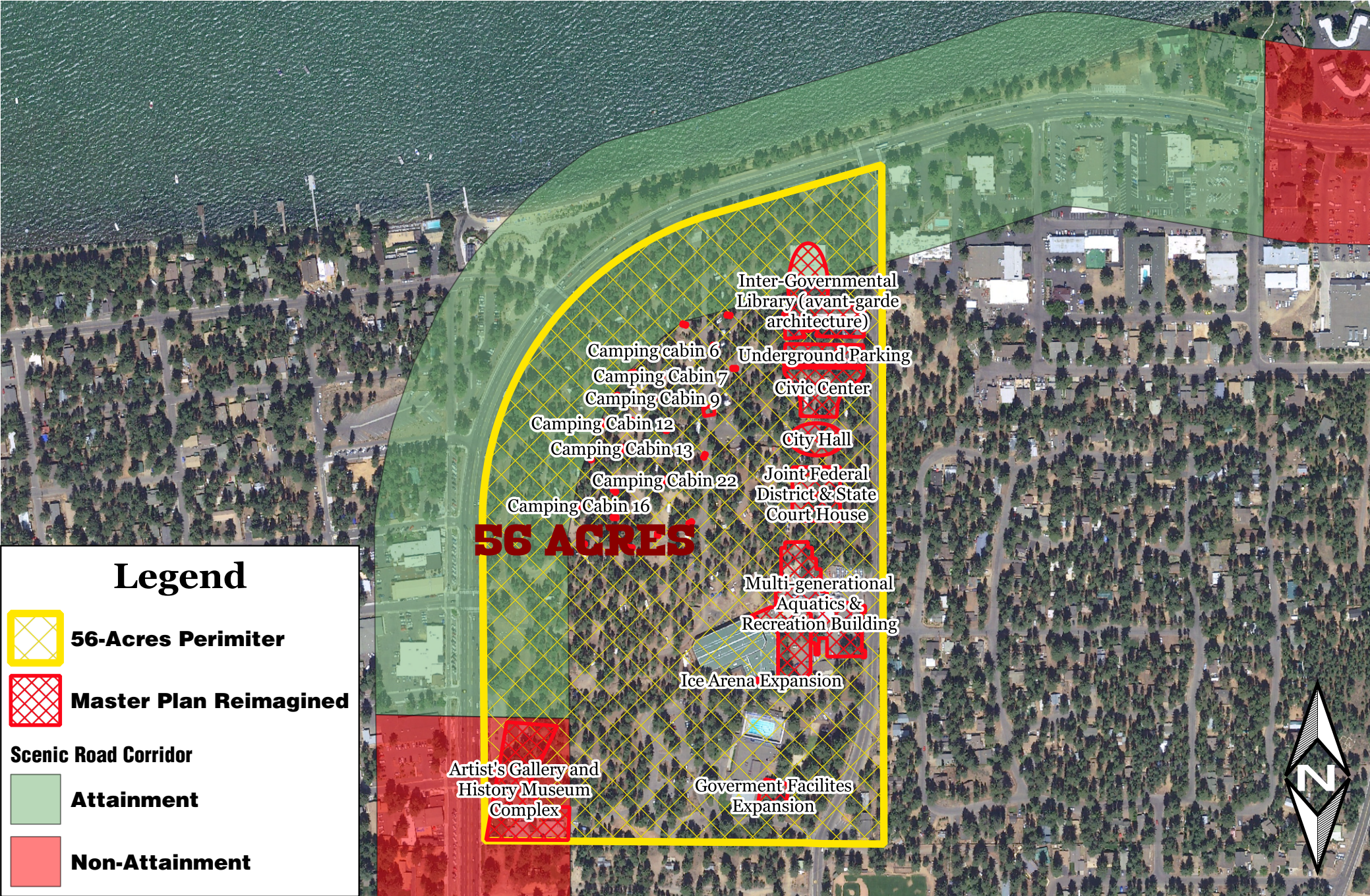
-  **56-Acres Perimeter**
-  **Master Plan Relocated B**
- Scenic Road Corridor**
 -  **Attainment**
 -  **Non-Attainment**

0 1000 2000 3000 4000 feet

In this substantive alternative version “B” to the “Master Plan,” the “Multi-generational Aquatics and Recreation Building” has been relocated next to the Ice Arena forming a true recreation complex, while the footprint has remained the same allowing direct transfer and application of any existing architectural plans.

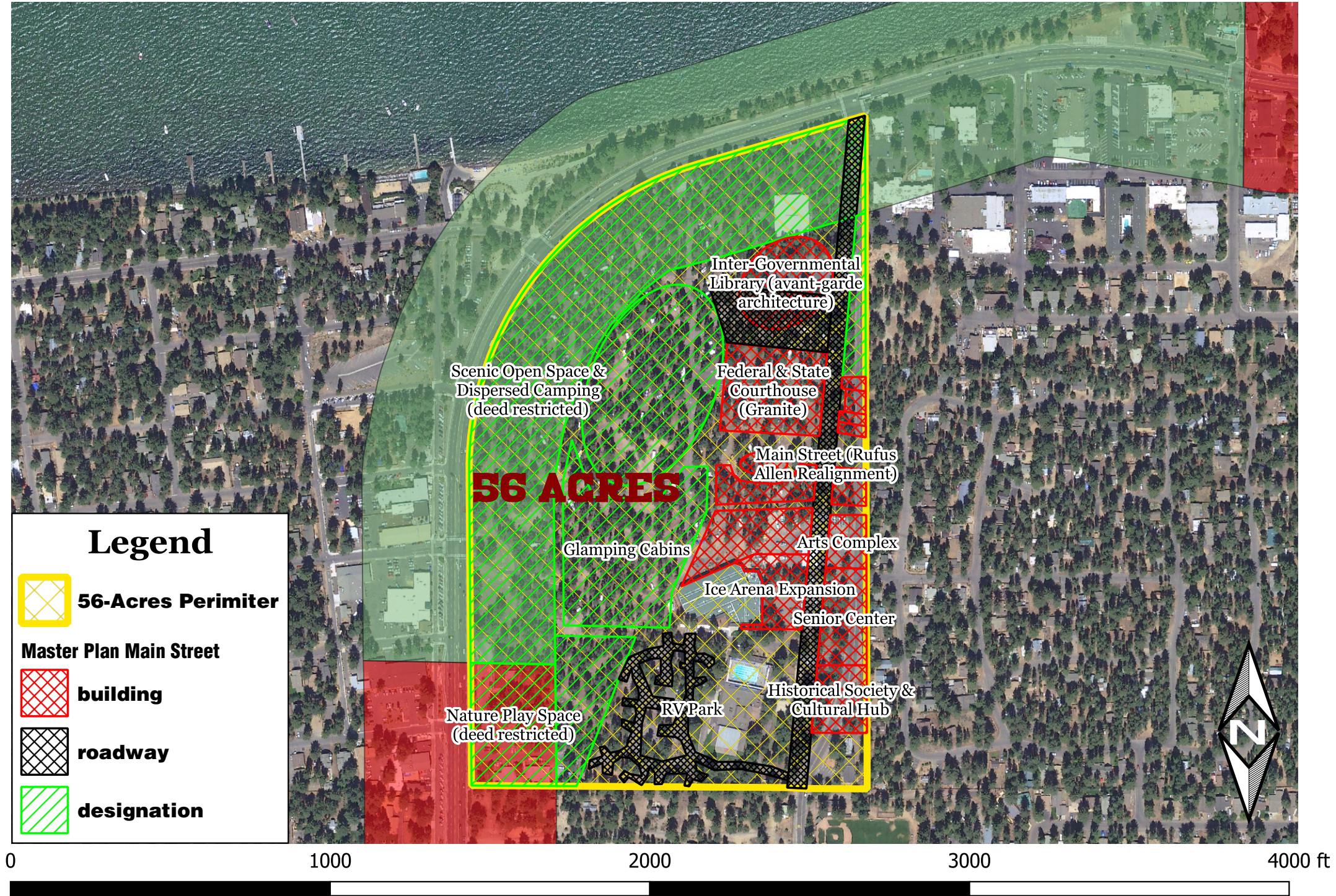
The camping cabins are imagined to be designed to add stylistic ambiance and would be restricted to light-treading disassemble-able designs with some canvass panels and a relocatable footprint or deck (*eg.*, unsunk “pillars in concrete” or removable “ground screws”). Their location is not important at this time as they would be seasonal rather than permanent structures.

Annexing the proposed aquatics center with the ice rink would both create a convenient centralized recreational complex and preserve the nationally significant scenic road corridor.



Here the “Master Plan,” has been re-imagined, with a new footprint for the “Multi-generational Aquatics and Recreation Building” which has been relocated adjacent to the Ice Arena forming a true recreation complex. The City Hall has been re-imagined as well. The scenic corridor is enhanced with an extravagant “*avant-garde*” intergovernmental library which has both a city and a county wing with distinct circulation stacks, a common reading room with a fireplace and checkout desk.

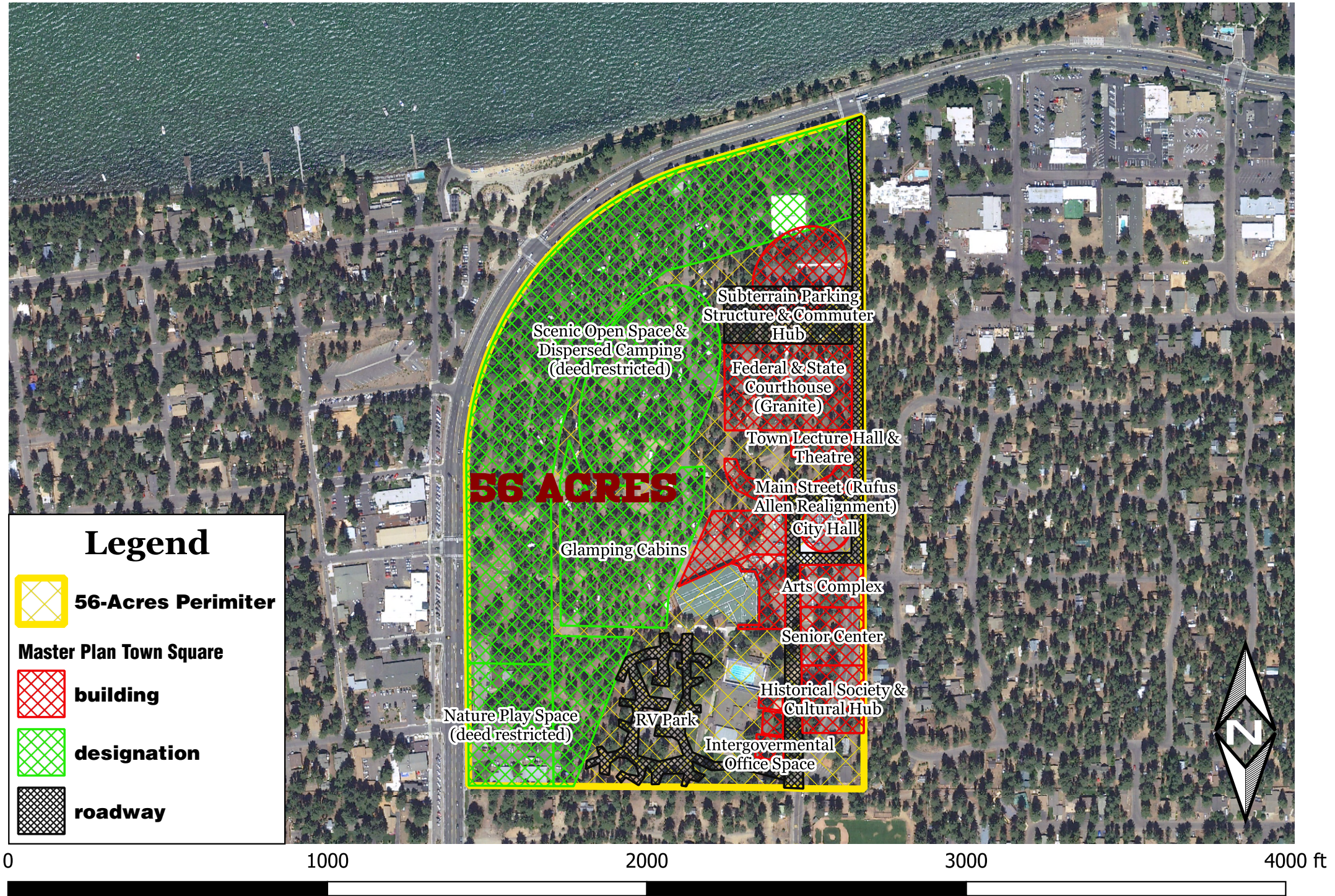
"56-Acres" — Main Street Concept — a living & working cultural hub.



This manifests the best instantiation of a “Main Street” concept that is an actual living and working cultural hub. The “main street” saves the scenic corridor from spoilation by realigning the existing road to form a bypass which would be paved with bricks or “pavers” that would give it a functional 15 mph speed limit. Some buildings would use the former Rufus Allen right-of-way, with the lakefront portion being restored to forest. All municipal departments and the courthouse would be relocated, which would “seed” a surrounding business ecosystem of law offices, environmental consultants, restaurants, and boutique venues. In the perfect 30-year ideal, “Main Street” would be anchored with an “*avant-garde*” intergovernmental library which has both a city and a county wing with distinct circulation stacks, a common reading room with a fireplace and checkout desk. A granite federal and state courthouse (satellite) would share a parking structure (infrastructure funding hack), and may even advance dreams of our status as a future county seat or the realization of a Tahoe County. A City Hall would function as the formal Council Chambers, and a “town theater” would function as a town hall, local event theater, and hold independent films. The recreation center would be truly centralized into a comprehensive state-of-the-art facility. Camping would remain along the scenic corridor, whereupon the land would be deed restricted to any further development. The senior center and historical society would be relocated into the former Rufus Allen right-of-way. There would be boutique businesses in the infill.

This alternative certainly is better on the Highway 50 scenic corridor. However, it uses more coverage and is linear and more spread out than a town square concept.

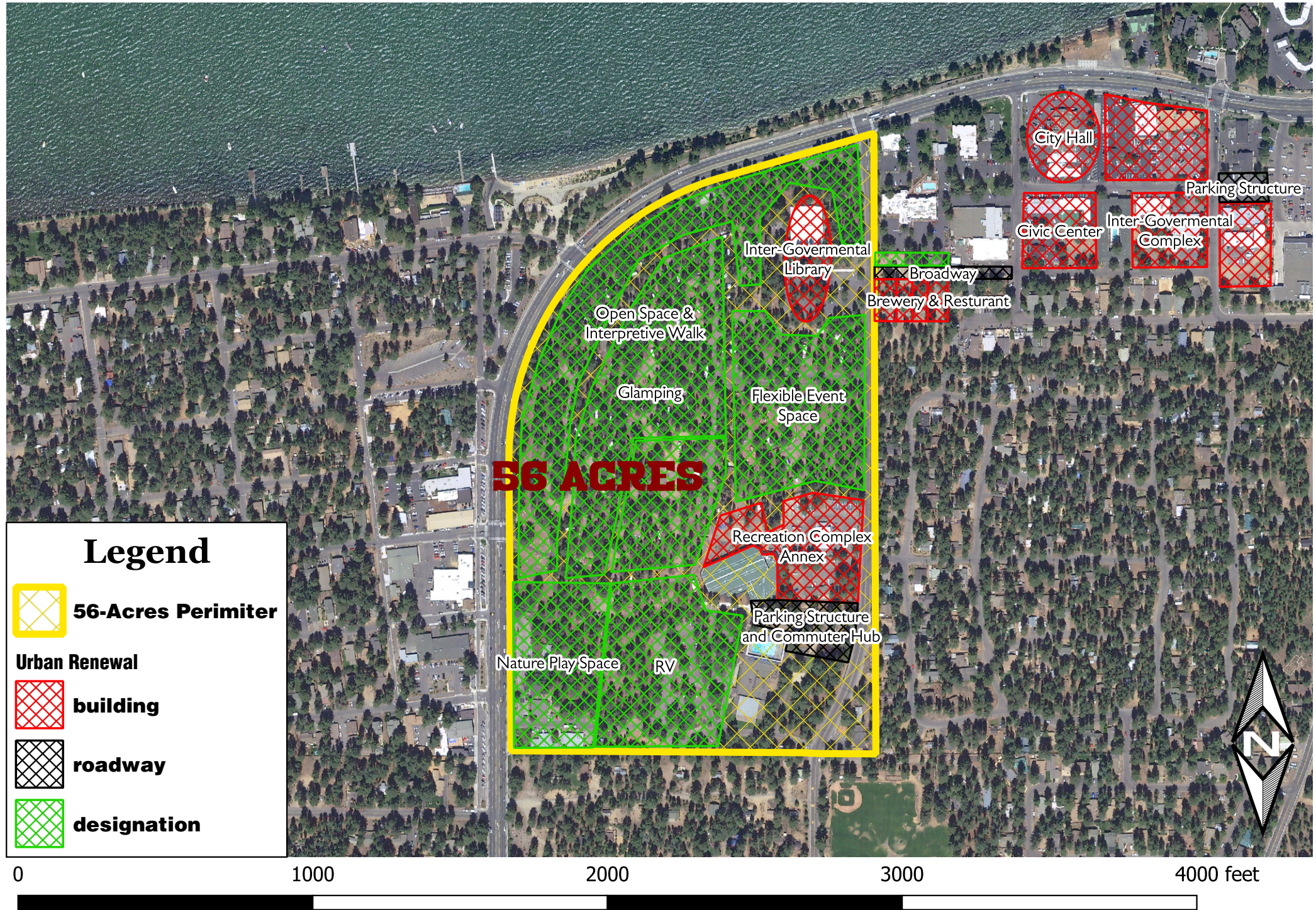
"56-Acres" — Town Square Concept



This manifests the best instantiation of a “Town Square” concept that is an actual living and working cultural hub. The “town square” saves the scenic corridor from spoilation by realigning the existing road to form a bypass which would be paved with bricks or “pavers” that would give it a functional 15 mph speed limit. Some southern buildings would use the former Rufus Allen right-of-way, with the lakefront portion using the existing roadway. All municipal departments and the courthouse would be relocated, which would “seed” a surrounding business ecosystem of law offices, environmental consultants, restaurants, and boutique venues. In the perfect 30-year ideal, the town square would be anchored with an “*avant-garde*” intergovernmental library which has both a city and a county wing with distinct circulation stacks, a common reading room with a fireplace and checkout desk. A granite federal and state courthouse (satellite) would share a parking structure (infrastructure funding hack), and may even advance dreams of our status as a future county seat or the realization of a Tahoe County. A City Hall would function as the formal Council Chambers, and a “town theater” would function as a town hall, local event theater, and hold independent films. The recreation center would be truly centralized into a comprehensive state-of-the-art facility. Camping would remain along the scenic corridor, whereupon the land would be deed restricted to any further development. The senior center and historical society would be relocated into the former Rufus Allen right-of-way. There would be boutique businesses in the infill.

This alternative certainly is better on the Highway 50 scenic corridor. However, it uses more coverage and still impacts the environment more than urban renewal of existing developed land.

"56-Acres" Development Alternative: Urban Renewal



The urban renewal alternative certainly is better on the Highway 50 scenic corridor, and has the least impact on the environment. However, the acquisition of property and the prospect of eminent domain suggests that it would have an adverse impact that might be classified as “economic, social, or other conditions.”⁴ In choosing this alternative, the public would have to agree that personal property is more expendable than the environment. Our political difficulty in choosing a difficult right over an easy wrong certainly raises ethics questions about our future path given our adverse collective impact on the environment.

4 CA Public Resources Code § 21002 *et seq.*

West's Annotated California Codes
Public Resources Code (Refs & Annos)
Division 13. Environmental Quality (Refs & Annos)
Chapter 1. Policy (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 21002

§ 21002. Approval of projects; feasible alternative or mitigation measures

Currentness

<For Executive Order N-65-20 ([2019 CA EO 65-20](#)), which alters certain deadlines and requirements for grants, funding, and reimbursement claims, due to the COVID-19 pandemic, see Historical and Statutory Notes under Government Code § 1774.>

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

Credits

(Added by Stats.1976, c. 1312, § 1. Amended by Stats.1980, c. 676, p. 1996, § 277.)

Notes of Decisions (214)

West's Ann. Cal. Pub. Res. Code § 21002, CA PUB RES § 21002
Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

End of Document

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