

## Scott Carey

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**From:** Val Plumwood <val.plumwood@pressmail.ch>  
**Sent:** Wednesday, November 2, 2022 8:41 PM  
**To:** Scott Carey  
**Subject:** NTRPA Governing Board Meeting — Thursday, November 3, 2022 at 2:00 PM (Public Comment)  
**Attachments:** 56-Acres\_Response to Comments.pdf; SHC § 263.4.pdf; PRC § 21084.pdf

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Dear Nevada Tahoe Regional Planning Agency Governing Board,

I am very concerned about the negative environmental declaration which underlies the 56 Acres facility and the Bijou Park/ Al Tahoe Community Plan Amendment. As I am sure you are aware, [California Public Resources Code § 21002](#) promulgates:

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.

This project's cursory "negative declaration" is patently wrong for a myriad of reasons which form an illegal pretext for the City to avoid developing and then comparing alternatives (see, *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1313 (2014)). I will establish that there is a significant effect on the environment, and then save you the time already lost from this misstep by quickly introducing a few alternatives for your consideration. You will find that most of the alternatives offer a substantial improvement.

The specific location for this facility became prematurely anchored early-on in the decision process, and then it appears that environmental justifications were pretextually back-calculated thereafter because the City perceives it had a huge sunk cost (see, *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581, 603 (2014) (holding courts will not allow an agency to supply post-hoc rationalizations for its actions, so post-decision information may not be advanced as a new rationalization)). Because project planning proceeded during the COVID-19 pandemic, public assembly, idea exchange, and criticism were heavily muted, and the city planning process did not

get to benefit from some obvious public wisdom (*cf.*, *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 518 (2010) (agencies must procedurally and substantively permit the public to play a role in the decisionmaking process and the implementation of that decision)). City residents clearly value public recreation, and it is not surprising that heavily impacting or destroying one recreation use type in exchange for another is bound to stir some serious controversy. Such a zero-sum swap in uses is not what city residents had in mind when they voted for improved recreation opportunities.

Even with the City planning having gone this far, it does not even have any real alternative locations to consider for this facility. Due to this unconscionable deficiency, you are now tasked with issuing a special use permit without having any idea what location mitigations might be available.

The City has wrongly claimed this project will not effect the Pony Express National Historic Trail (POEX NHT) because "[the trail alignment often changed from week to week, so a precise location has not been mapped in the Lake Tahoe Basin](#)." A comprehensive Environmental Assessment was performed by the National Park Service on the NHT, and specifically designated a mapped route representative of the alignment in order to preserve and protect this historic resource. **The [designated official route](#) runs through the proposed site.** The City stated an obvious falsehood as a pretext to ignore this very serious problem.

The City then goes on to wrongly state: "[there is little physical evidence of the historical Lincoln Highway in the project vicinity](#)." However, the current siting of Highway 50 is still on the original right-of-way! It makes no difference that the original roadbed has been paved over. This is the last remaining lakeside section that can help the public experience and feel what the Lincoln Highway actually felt like in the historic past.

It is precisely the fact that the Lincoln Highway and Pony Express NHT are losing their reminiscence that commands and demands their preservation. The Pony Express NHT and the Lincoln Highway's scenic overlook "associate a memorable happening in the past," and "contain outstanding qualities reminiscent of an early state of development in the region." Whereas this scenic segment critically functioned to support and service early interstate travel, it is "associat[ed] with important community functions in the past" which dictates protections according to TRPA Regional Plan [Goal C-1](#) and TRPA Code of Ordinances [§ 67.6.1](#).

The City has wrongly claimed that "[US 50 is not an officially designated state scenic highway in the project area](#)" however this is patently false. **This section of Highway 50**

**is statutorily designated a State Scenic Highway** as promulgated by [Streets and Highways Code § 263.4](#):

The state scenic highway system shall also include:

Route 37 from:

- (a) Route 251 near Nicasio to Route 101 near Novato.
- (b) Route 101 near Ignacio to Route 29 near Vallejo.

Route 39 from Route 210 near Azusa to Route 2.

Route 40 from Barstow to Needles.

Route 41 from:

- (a) Route 1 near Morro Bay to Route 101 near Atascadero.
- (b) Route 46 near Cholame to Route 33.
- (c) Route 49 near Oakhurst to Yosemite National Park.

Route 44 from Route 5 near Redding to Route 89 near Old Station.

Route 46 from:

- (a) Route 1 near Cambria to Route 101 near Paso Robles.
- (b) Route 101 near Paso Robles to Route 41 near Cholame.

Route 49 from:

- (a) Route 41 near Oakhurst to Route 120 near Moccasin.
- (b) Route 120 to Route 20 near Grass Valley.
- (c) Route 20 near Nevada City to Route 89 near Sattley.

Route 50 from Route 49 near Placerville to the Nevada state line near Lake Tahoe.

Route 57 from Route 90 to Route 60 near Industry.

Route 58 from Route 14 near Mojave to Route 15 near Barstow.

Route 68 from Monterey to Route 101 near Salinas.

Route 70 from Route 149 near Wicks Corner to Route 89 near Blairsden.

Route 71 from Route 91 near Corona to Route 83 north of Corona.

The "IS/ND" finding was patently wrong, if not outright fraudulent. The bare fact alone that this project is directly adjacent to a State Scenic Highway segment,

automatically triggers more exacting environmental review per CEQA (*see, e.g., [Public Resources Code § 21084\(c\)](#)*).

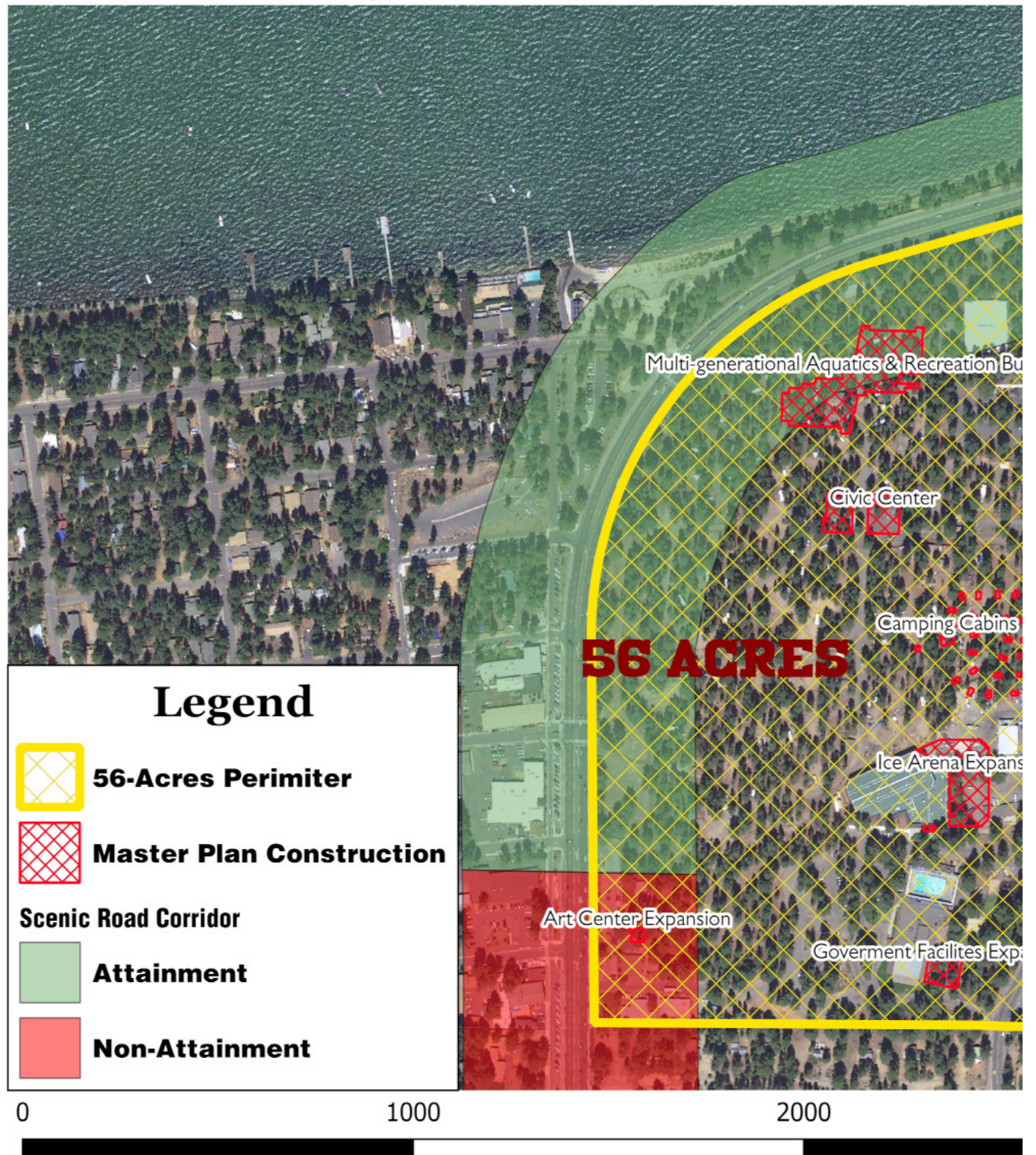
An agency's CEQA and/or NEPA decision is improper if the agency has relied on factors which the Legislature or Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The City Planners have created two nominal alternatives, but in substance, they are really the same plan. This is illegal. *See, e.g., Conservation Law Foundation v. Ross*, 374 F.Supp.3d 77, 110, 112 (2019) (in deciding whether an agency has considered all reasonable alternatives to its proposed action, as required by NEPA, the agency's objectives for its proposed action are unreasonably narrow if they compel the selection of a particular alternative).

Below is the current plan:



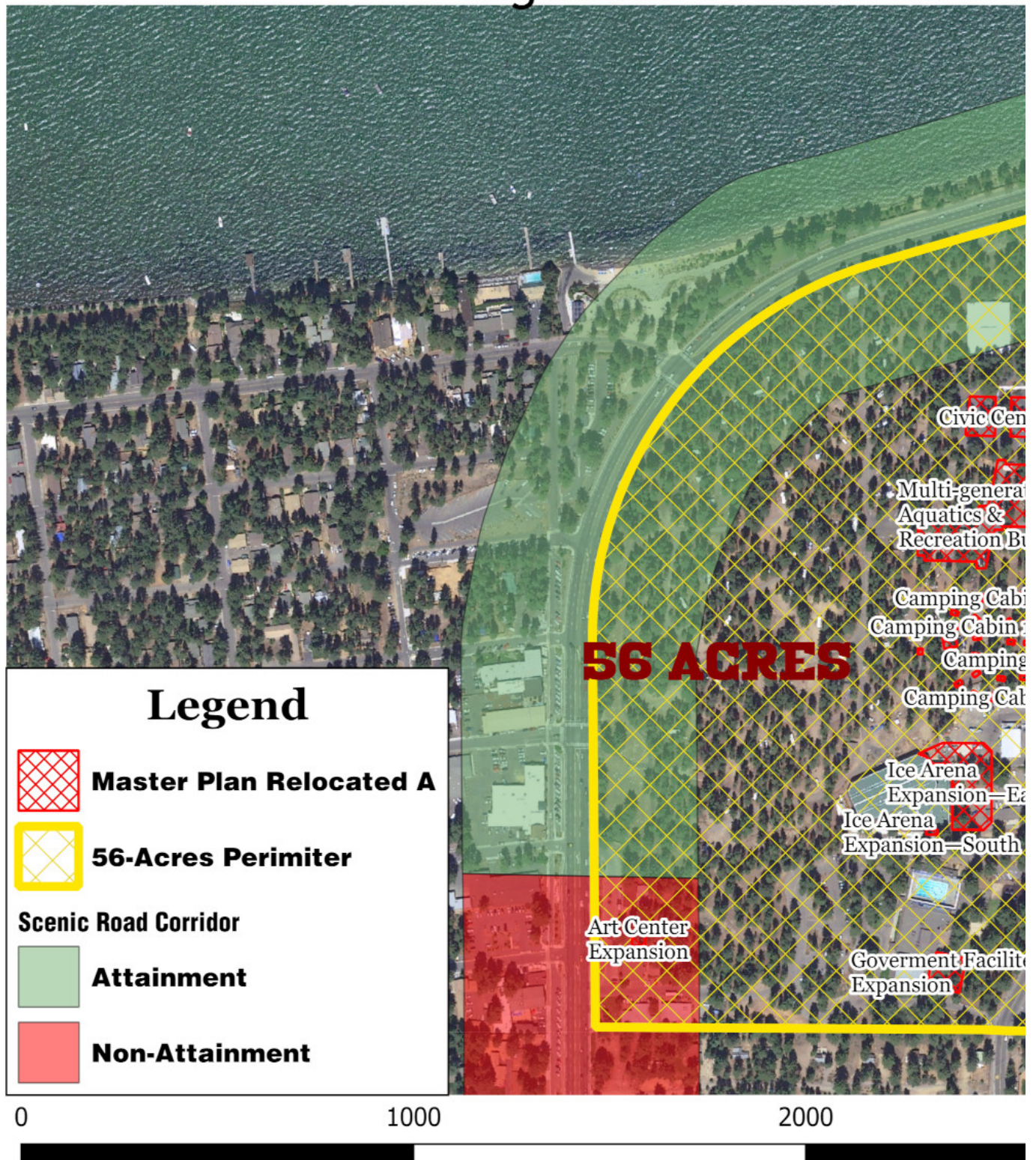
The "56-Acres" development will spoil the Highway 50 in attainment of the s



Below is a proposed example alternative #1:



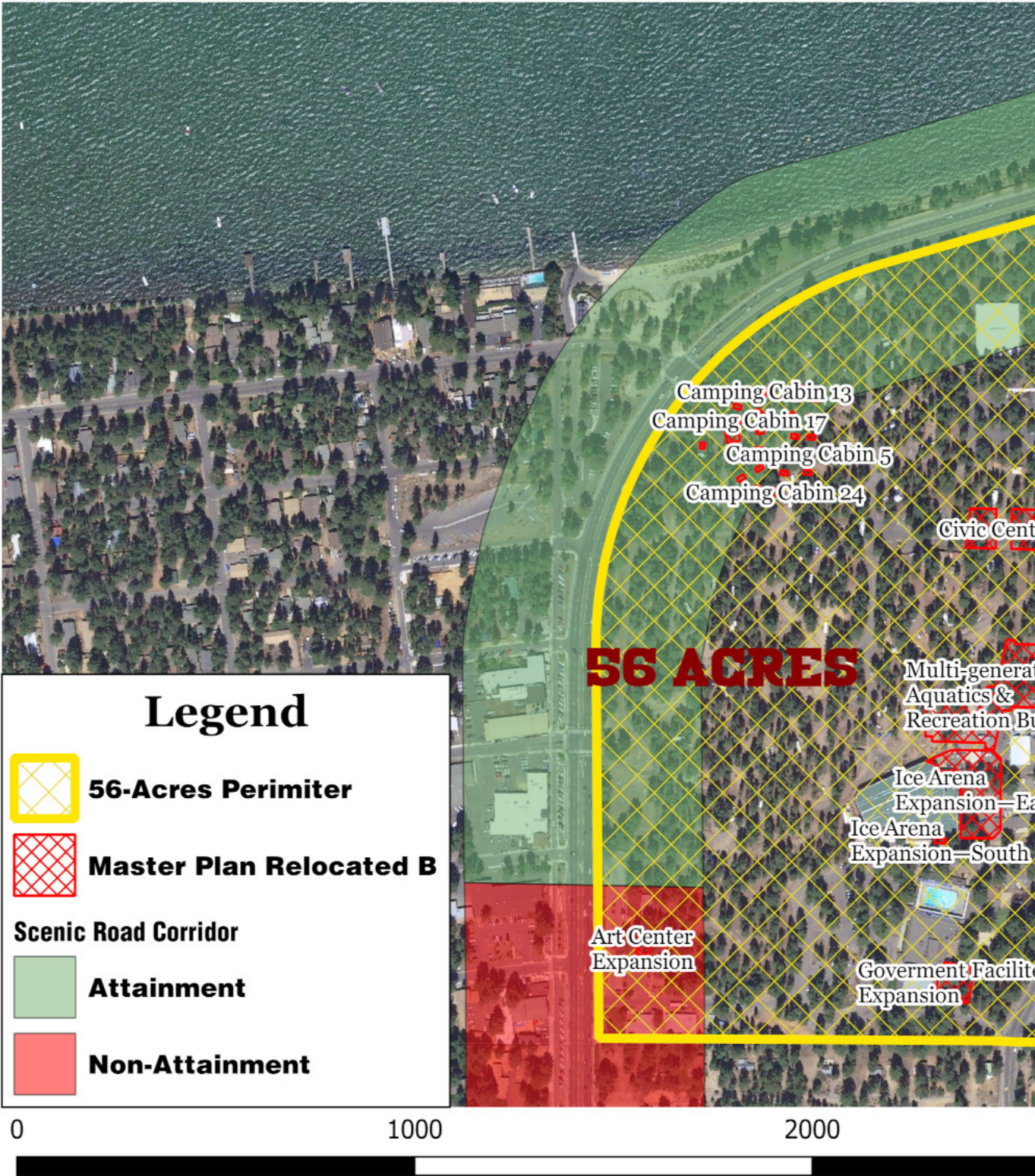
Moving the proposed aquatics center would  
significant scenic road c



Below is a proposed example alternative #2:



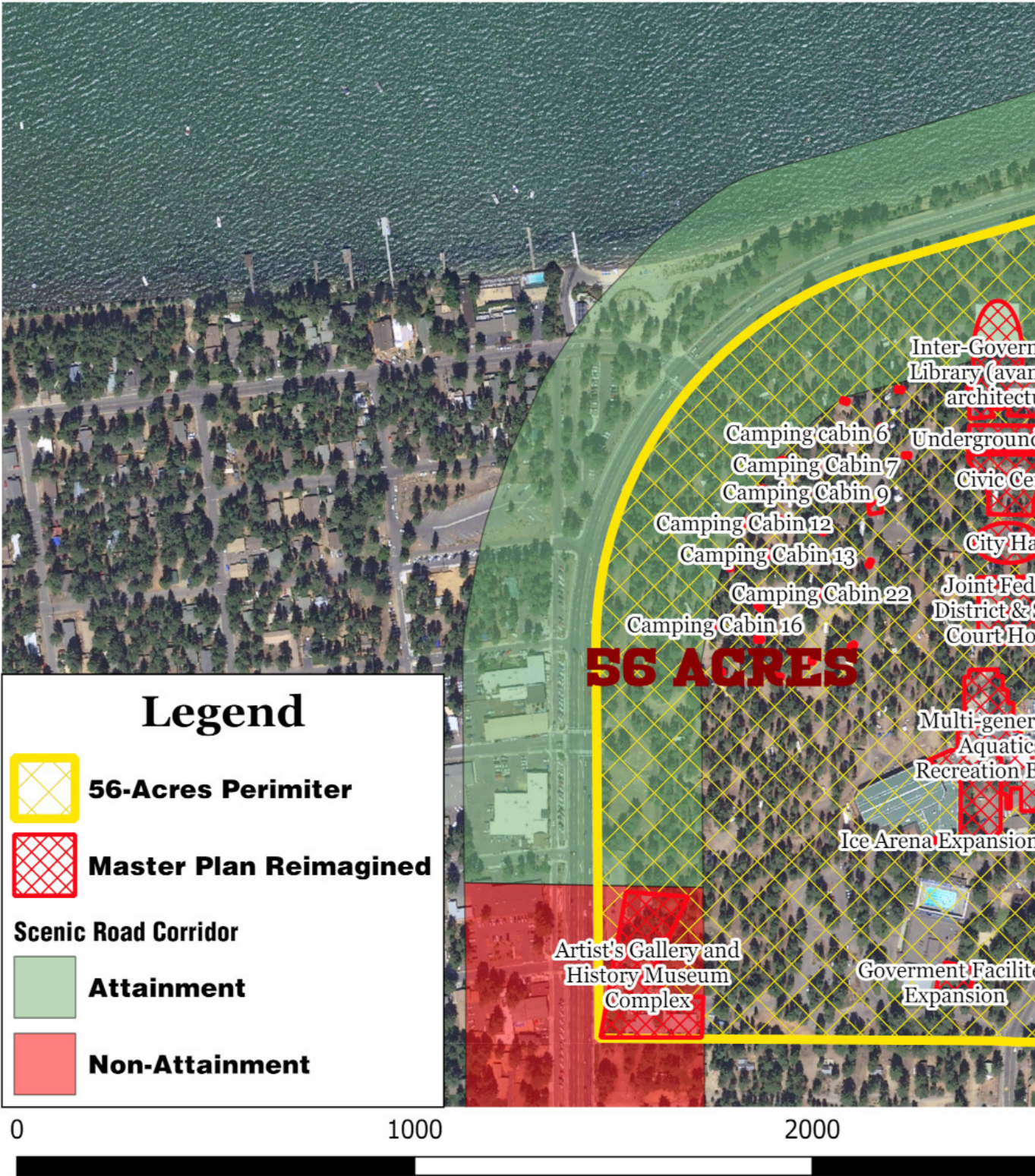
Annexing the proposed aquatics center with the ice rink would create a larger recreational complex and preserve the nationally significant area.



Below is a proposed example alternative #3:



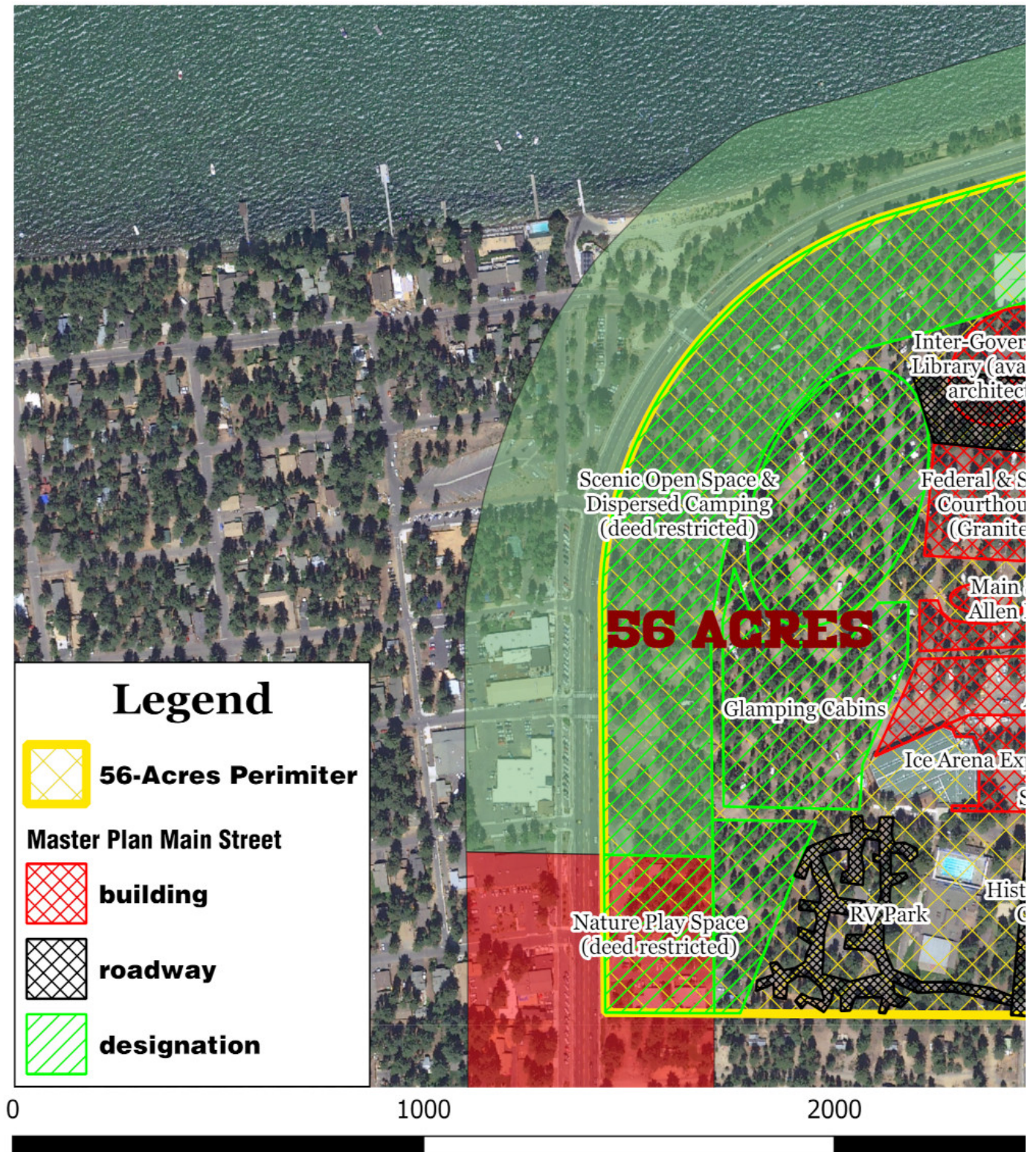
Annexing the proposed aquatics center with the ice rink would create a larger recreational complex and preserve the nationally significant



Below is a proposed example alternative #4:



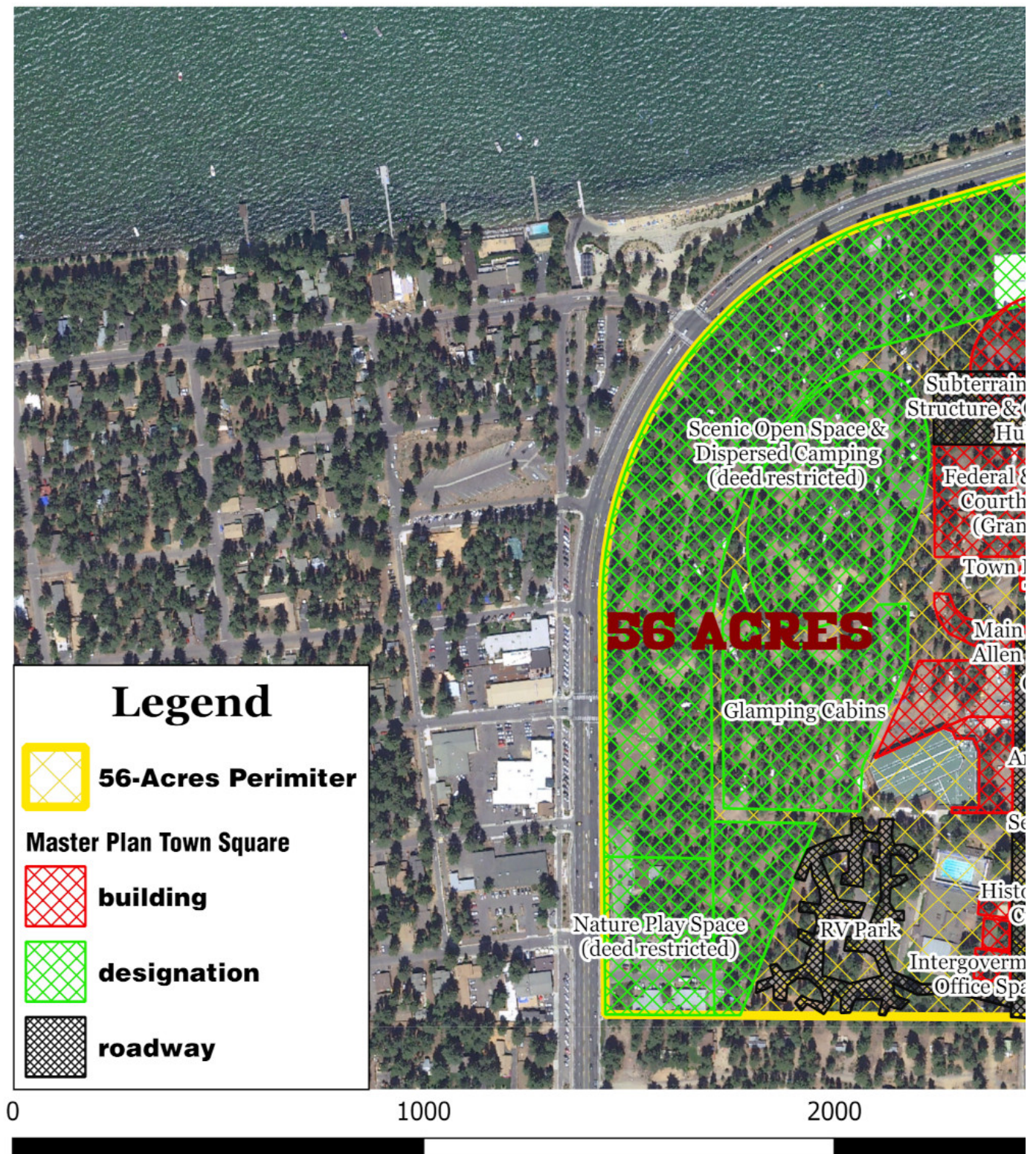
# "56-Acres" — Main Street Concept — a living



Below is a proposed example alternative #5:



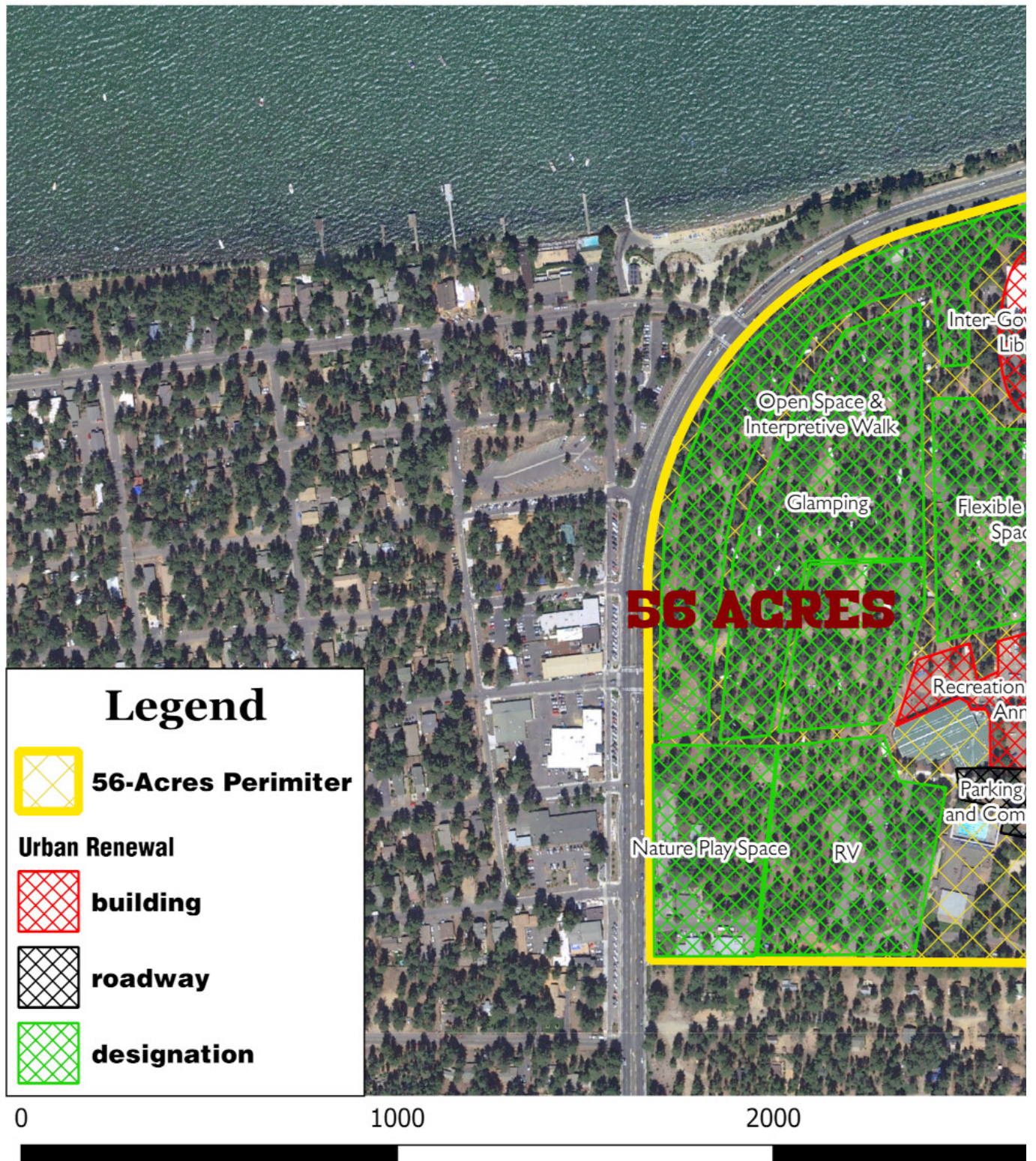
# "56-Acres" — Town Square



Below is a proposed example alternative #6:



# "56-Acres" Development Alterna



As you can see, there is a lot that could be done, and hence a lot to think about, so the current special use permit before the commission is unripe for a decision today. You must continue this hearing to a later date, until after you have examined substantive

alternative locations for this facility (*supra*, *Conservation Law Foundation v. Ross*). Almost all of the aforementioned alternatives will fully mitigate the obvious problems with the current proposed location for the indoor recreation facility.

The proposed project before you today is in fact among the worse case scenarios. Pursuant to [California Public Resources Code § 21002](#), the Planning Commission **"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."** Because in fact there are "feasible alternatives available which would substantially lessen the significant environmental effects," it must not approve the project today.

The current location of the proposed indoor water park will have a demonstrable impact on a state scenic highway, and needlessly adversely impact and destroy an outstanding and nationally valuable lakeside campground. The blighting impact is not baseless speculation, is clear from the evidence before you:



# **56 Acres Indoor Waterpark & Corridor, Demolish Outdoor Campground, an Overbearing, Noisy, Bright Nuisance to Quiet Campground**



Source: Provided by JK Architecture in 2021

Simulation of the proposed Multigenerational Center looking south from



This impact can clearly be entirely mitigated through simply placing the facility on the footprint of the existing aquatics center which is already planned for demolition anyway. The photo simulations do not even depict the **additional tree removal** for defensible space [as required by law](#) which will be further increased in the near future on account of our new pervasive summer droughts under climate change. The implementation of this facility has been is a giant bait-and-switch.

Also, please do not accept any grant or funds to relocate our city's special campground restrooms. It is imperative that the campsites remain in their current location. Please thoroughly consider all of the aforementioned compelling reason.

Thank you for your time and consideration.

Val Plumwood

*City Resident*

South Lake Tahoe, CA 96150.



**State of California**

**STREETS AND HIGHWAYS CODE**

**Section 263.4**

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263.4. The state scenic highway system shall also include:

Route 37 from:

- (a) Route 251 near Nicasio to Route 101 near Novato.
- (b) Route 101 near Ignacio to Route 29 near Vallejo.

Route 39 from Route 210 near Azusa to Route 2.

Route 40 from Barstow to Needles.

Route 41 from:

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Route 68 from Monterey to Route 101 near Salinas.

Route 70 from Route 149 near Wicks Corner to Route 89 near Blairsden.

Route 71 from Route 91 near Corona to Route 83 north of Corona.

(Amended by Stats. 1988, Ch. 106, Sec. 12. Effective May 13, 1988. Operative January 1, 1989, by Sec. 31 of Ch. 106.)

**State of California**

**PUBLIC RESOURCES CODE**

**Section 21084**

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21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) A project's greenhouse gas emissions shall not, in and of themselves, be deemed to cause an exemption adopted pursuant to subdivision (a) to be inapplicable if the project complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with Section 15183.5 of Title 14 of the California Code of Regulations.

(c) A project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall not be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(d) A project located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code shall not be exempted from this division pursuant to subdivision (a).

(e) A project that may cause a substantial adverse change in the significance of a historical resource, as specified in Section 21084.1, shall not be exempted from this division pursuant to subdivision (a).

(Amended by Stats. 2013, Ch. 76, Sec. 175. (AB 383) Effective January 1, 2014.)



Commenter	Comment	Response to Comments
Saundra Edwards	<p>Commenter objects to the proposed B/ATCP amendments and 56 Acre Park Master Plan IS/MND. The comment states that the IS/MND is deficient and does not consider impacts to the Pony Express Trail, the Lincoln Highway, the TRPA designated scenic corridor, or the California State Scenic Highway.</p> <p>The commenter states that Director of Development Services Hilary Roverud, Councilmember Middlebrook, three members of the Planning Commission and a member of the Parks and Recreation Commission have a conflict of interest.</p>	<p>The comment contends that the 56 Acre Master Plan would degrade the historical Pony Express Trail and Lincoln Highway. However, there are few historic remains of the actual Pony Express Trail because the solitary rides left little physical trace of their passage. Also, the trail alignment often changed from week to week, so a precise location has not been mapped in the Lake Tahoe Basin. It is true that numerous historic sites are associated with the trail, including within the Lake Tahoe Basin. However, none of these mapped historical sites (i.e., Friday Station, Pony Express Rider statue, and the Lincoln Highway/Lake Tahoe) are located in the project area. Similarly, there is little physical evidence of the historical Lincoln Highway in the project vicinity. The IS/MND evaluated the effects of the Master Plan on cultural and historic resources on pages 3-50 through 3-55. It determined that with mitigation incorporated, the Master Plan would have a less-than-significant impact on historic resources.</p> <p>As stated in the IS/ND under aesthetics (page 3-6), US 50 is not an officially designated state scenic highway in the project area, though it is listed as an eligible route. Nevertheless, the effects of the Master Plan on views from US 50 were evaluated, as described below.</p> <p>The IS/MND considered the effects on the TRPA-designated scenic corridor on pages 3-8 through 3-12. The analysis, which is</p>

		<p>supported by five visual simulations and an analysis consistent with TRPA's methods for evaluating effects on scenic roadway corridors, concluded that the proposed Master Plan would have less than significant impact on the scenic corridor.</p> <p>The comments alleging conflicts of interest do not address environmental issues and do not require a response under 14 Cal. Code Regs. section 15204(a). The City notes for the record that Development Services Director Hilary Roverud received formal advice from the Fair Political Practices Commission and has not participated in governmental decisions on this project. Additionally, Councilmember Middlebrook confirmed with the Fair Political Practices Commission that his income from the Tahoe Regional Planning Agency does not create a financial conflict of interest under the Political Reform Act, Government Code section 82030.</p>
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