

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF EL DORADO
AND
THE CITY OF SOUTH LAKE TAHOE
FOR THE CONSTRUCTION OF IMPROVEMENTS AT
EL DORADO BEACH, LAKEVIEW COMMONS
(PHASE 1)**

This Memorandum of Understanding (“MOU”) is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (“County”) and the City of South Lake Tahoe (“City”), a municipal corporation. For purposes of this MOU, the County and the City are each a “Party” and are sometimes referred to as the “Parties.”

I. RECITALS

A. The Lakeview Commons Project, formerly known as the “56-Acre Project” (hereinafter “the Project”), is an existing site of approximately 56 acres located where Highway 50 meets Lake Tahoe in an area also known as the “South Lake Tahoe-El Dorado Recreation Area.” The property is currently used for public recreation and other civic activities. The property includes El Dorado Beach and Boat Ramp, the El Dorado County South Lake Tahoe Branch Library, the Lodge, South Lake Tahoe Recreation Complex, the Campground by the Lake, the Senior Center, Art Center, Historical Society Museum and Visitor Center.

B. The Project is a cooperative effort among the City of South Lake Tahoe, El Dorado County, and the California Tahoe Conservancy, with the mutual objective of enhancing public recreational opportunities in the area by promoting the ideals of sustainability, public accessibility, and cultural activity in a conceptual plan for landscape and building improvements, and creating a gathering place for the local community as well as visitors.

C. The Parties entered a Memorandum of Understanding in May of 2006 for the cooperative assessment of alternative concepts for the 56-acre area, followed by planning and design efforts supported by funding from the California Tahoe Conservancy. Under the prior Memorandum of Understanding, the City was designated as the lead entity with the primary responsibility for satisfying administrative grant requirements, with oversight by the County. The Parties jointly assumed the responsibility of day-to-day project management during the planning and design phase.

D. Project planning and design for improvements at the El Dorado Beach portion of the Project, referred to as “Phase 1: Waterfront,” have been completed pursuant to a grant by the California Tahoe Conservancy. The purpose of this MOU is to define the mutual understanding of the County and the City regarding the funding and construction of Phase 1 of the Project (hereinafter “Phase 1 Project”).

II. SCOPE OF PHASE 1 PROJECT IMPROVEMENTS

A. The Phase 1 Project will improve an existing day use recreation area in a portion of the Project located in APN 026-050-06 between US Hwy 50 and the south shore of Lake Tahoe known as El Dorado Beach. A map depicting the location of the Phase 1 Project is attached hereto, identified as "Attachment 1" and incorporated herein by reference.

B. The Parties have identified the following objectives for the Phase 1 Project:

- 1) Improve recreational characteristics through reconstruction of existing facilities to meet current building codes.
- 2) Improve environmental quality of a degraded landscape and planting areas.
- 3) Enhance the sense of community for the City and County by improving the quality of the waterfront.
- 4) Make the site ADA accessible.

C. The Phase 1 Project will involve the implementation of water quality measures and improvements to recreational features of the waterfront area in accordance with a conceptual plan as presented to the Board of Supervisors and City Council on January 29, 2008 and updated in a presentation to the Board of Supervisors on August 26, 2008 ("Phase 1 Conceptual Plan"). A map depicting the Phase 1 Project improvements is attached hereto, identified as "Attachment 2" and incorporated herein by reference. Phase 1 Project improvements shall include, but are not limited to, storm-water infiltration areas, pervious paving, stabilization of the bluff to reduce erosion at the lake edge, terraced seating areas for lake viewing, ADA accessible viewing areas, improved picnic and barbeque areas, a small building with concessions for food, a restroom, a small building for non-motorized water crafts, a cantilevered lake overlook, an upgraded Class I bike path, and a new waterfront plaza for community recreation (hereinafter "Phase 1 Project Improvements").

III. OWNERSHIP, CONDITIONS TO AGREEMENT AND LEASE AND CONDITION OF LEASE EXTENSION

A. The Phase 1 Project is located on real property owned by the County and leased by the City ("Leased Property") in accordance with a Lease of Real Property Agreement commencing on July 1, 1968 for a term of 55 years and memorialized in an Agreement dated December 12, 1972, fully executed and amended in December 1986 ("Lease Agreement"). In the event that the anticipated funding agreement has terms and conditions that conflict with this MOU and/or the Lease Agreement, the Parties agree to the extent possible to amend this MOU and/or the Lease Agreement as necessary to conform to the anticipated funding agreement(s) inclusive of California Tahoe Conservancy, and affect the intent of the parties herein. Consistent with the stated intent of the Lease Agreement, the Parties hereby agree to modify and extend the existing term

of the lease which will expire on July 1, 2023, for a period including a minimum of twenty (20) years commencing on the date a notice of completion for the Phase 1 Project is recorded by the City ("Lease Extension"). This MOU is contingent on the full execution of an amendment to the Lease Agreement accomplishing the Lease Extension. Accordingly, the Parties shall execute such amendment prior to the award of any contract for the construction or implementation of Phase 1.

B. County hereby consents to, and has entered into this MOU on the express condition that, 100% of the costs of construction of the Phase I Project Improvements are fully funded, either by grant agreements and/or City contributions, prior to award of any contract for construction, and actual construction, of the improvements. 100% of the costs of construction are defined as the engineer's estimate of the cost of construction plus a minimum 15% contingency, together with the estimated costs of construction management, and project management and administration. In no event shall County be obligated to fund, from its General Fund or any other funds, any costs associated with this MOU or the construction, operation, maintenance, repair or improvement of the Phase I Project Improvements. In the event that actual costs of the Phase I Project exceed the grant funding, as between the County and City, City shall be solely responsible for any and all additional costs.

C. Ownership of all Phase I Project Improvements shall vest in the County in accordance with the Lease Agreement and City shall remain solely responsible for the operation, maintenance, repair, and correction of defects of said improvements at no cost to the County for the term of the Lease Agreement, unless the grant agreement requires otherwise in which case the Lease Agreement shall be amended in accordance with the grant funding terms as stated hereinabove. In the event the parties do not amend the Lease Agreement to conform to the requirements of the grant agreement before award of a construction contract for the Phase 1 Project Improvements, including but not limited to the Lease Extension, this MOU shall be of no further force and effect.

IV. COOPERATIVE APPLICATION FOR FUNDING, GRANT ADMINISTRATION RESPONSIBILITIES

A. The City intends to accept funds or grants in its name allocated by the California Tahoe Conservancy for the Phase 1 Project Improvements and City shall have the responsibility to administer and comply with the requirements and obligations set forth therein including but not limited to fiscal control, accounting, record keeping, invoice and other administrative tasks.

V. CITY DUTIES AND RESPONSIBILITIES

A. The City will, in a workmanlike manner, construct or cause to be constructed to the satisfaction of the County and any funding agency such as California Tahoe Conservancy, within the time-frame required by the funding agency, all of the Phase 1 Project Improvements, and all work incidental thereto inclusive of utility location

and re-location if any, in accordance with this MOU and the ordinances, rules and regulations of the Tahoe Regional Planning Agency, the Bijou/Al Tahoe Community Plan, County of El Dorado and City of South Lake Tahoe, applicable funding agencies rules, regulations and requirements, and the Lease Agreement. City acknowledges that it has occupied the site of the Phase I Project Improvements since 1968 and is fully familiar with all of the conditions of the site. City shall be responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental permits and approvals, including but not by way of limitation NPDES and RWQCB requirements, for the Phase I Project. The costs of said compliance and implementation, and defense of any claim, challenge, administrative proceeding, or notice of violation, as between County and City, shall be solely a cost to the City and City shall hold harmless, defend, and indemnify County from any cost, fine or penalty arising therefrom.

All construction work shall be in accordance with all applicable federal, state and local rules, regulations, and ordinances including but not limited to applicable Public Contract Code requirements and bidding requirements, Labor Code requirements inclusive of prevailing wage, State licensing requirements, and bonding requirements, permitting requirements, and building code requirements. City shall be solely responsible for the day-to-day construction management, inclusive of construction engineering, inspection, surveying, and administration, of Phase I Project Improvements, shall be solely responsible to secure any and all applicable permits and approvals inclusive of environmental approvals, and shall be solely responsible for fiscal administration, and payment of funds to any third parties performing work, services or furnishing materials, in connection with the Phase I Project Improvements. As between County and City, City shall warrant the materials and workmanship on the Phase I Project Improvements and shall make such replacements and repairs as are necessary due to defects during the period of the Lease Agreement as modified to conform to funding requirements at City's sole costs and expense.

City shall have an engineer prepare record drawings ("As-Built" Drawings) describing the finished work, inclusive of all changes orders, and submit the As-Built Drawings to County upon completion of the work.

B. The City shall retain or cause to be retained for audit by the County, California Tahoe Conservancy, its agents and representatives, and any other funding or governmental agency, for a period of four (4) years from the date of final payment of construction costs, all records and accounts relating to the Phase I Project.

C. The City shall not award any contract for, shall not issue any notice to proceed for, and shall not perform any work for, the construction of all, or a portion of, the Phase I Project Improvements by and until 100% of the construction costs, as defined in Section III herein, have been allocated and secured, and all permits and approvals have been obtained. Further, City shall not allow third parties to perform any work on the Phase I Project Improvements without first executing a written agreement meeting the requirements of federal, State and local rules and regulations, all funding and grant

agreement requirements, and the intent and requirements of this MOU, and containing the following provisions:

(1) The written contract shall contain the requirement that such third party agrees, to the fullest extent allowed by law, to defend and indemnify the City, the County, and any funding agency, from all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, City or County employees and the public, or damage to property or any economic or consequential losses which are claimed to or in any way arise out of or are connected with that third party's work, services, operations or performance of the written contract, regardless of the existence or degree of fault or negligence on the part of the City, the County, the third party contractor or consultant, subcontractor(s) and employee(s) or any of these, except as expressly prescribed by statute.

(2) The written contract shall further contain a requirement that the third party contractor obtain and demonstrate proof of insurance meeting the limits set forth in Attachment 3 to this MOU, and naming the City, County and any funding agency as additional insured, and such insurance shall be the primary insurance for all losses arising from the performance of the contractor or consultant's work. Any insurance or self-insurance maintained by the County, the City, its officers, officials, employees or volunteers shall not contribute with, but shall be in excess of the third party's insurance, and further, as between the County and the City, the City's insurance shall be primary to the County and County's insurance shall not contribute with it but shall be excess to it.

D. In recognition that the construction work for the Phase I Project will take place on real property owned by County and for the purpose of protecting the County's interests, City agrees to require the construction contractor to furnish both a payment and a performance bond naming the County as obligee in the amount of 100% of the construction contract and issued by a surety admitted in the State of California and complying with all state regulations regarding such bonds. Prior to the performance of any work on the Phase I Project, City shall comply with Code of Civil Procedure section 995.311 in reviewing said contractor's bonds and insuring that this requirement is met. The performance bond shall contain an attorney's fees provision and a one year warranty period requiring the City's contractor to warrant the materials and workmanship on the Phase I Project Improvements for a period of one year from the date of City's acceptance of said improvements.

City shall defend, indemnify and hold harmless County, its officers, officials, and employees from all claims by stop notice claimants related to the construction of the Phase I Project under the payment bond.

E. In accordance with the Lease Agreement Agreement, the City shall remain solely responsible for the cost of all utility and other like services provided to the Lease Property.

F. To the fullest extent allowed by law, City shall defend, indemnify, and hold harmless the County, any funding agency, its/their officers, officials, employees agents and representatives from any and all claims, suits, losses, damages and liability, inclusive of administrative proceedings, fines and penalties, for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, City or County employees and the public, or damage to property or any economic or consequential losses which are claimed to or in any way arise out of or are connected with the Phase I Project, the design, construction, operation, maintenance, and/or repair of the Phase I Project Improvements, whether by the City, its agents and representatives or a third party, City's duties and obligations with reference to the City's assumption of the funding agreement(s), and City's performance of its responsibilities and obligations under this MOU, regardless of the existence or degree of fault or negligence on the part of the City, the County, the third party contractor or consultant, subcontractor(s) and employee(s) or any of these, except as expressly prohibited by statute.

G. If City's contractor fails to complete the construction of the Phase 1 Project Improvements, City shall take all necessary steps to enforce its contract, inclusive of enforcing the performance and payment bonds, to secure the completion of the improvements.

H. If the City fails to secure the completion of the Phase 1 Project Improvements, or otherwise terminates the Phase I Project after commencement of construction, City shall take all necessary steps to remove all obligations of the grant or other funding obtained for the project and shall restore the Leased Property to its original condition or to a safe and operable condition acceptable to the County.

VI. GENERAL TERMS AND CONDITIONS

A. This MOU will become effective upon execution by both Parties and will remain in effect for the period of time required by the grant or funding received for the Project. The insurance and indemnity obligations of the City under this MOU shall survive the expiration or termination of this MOU.

B. Prior to the commencement of work in connection with the Phase 1 Project Improvements, this MOU may be terminated for any reason by either Party upon thirty (30) days written notice. Neither Party may terminate this MOU after the award of any construction contract, notice to proceed or commencement of any work on the project.

C. This MOU may only be amended by mutual agreement in writing signed by both Parties.

D. This MOU is not intended to create or constitute any joint venture, partnership, joint powers agency, or other formal organization of any kind.

E. Nothing herein is intended to create duties or obligations to or rights in third parties not parties to this MOU. Nothing in this MOU shall be interpreted to require the City or the County to exercise its discretion in any particular way or to require the City or the County to take any future action regarding the Project.

F. Neither Party is authorized herein to act as the agent of the other.

G. Any news release, public announcement, advertisement or publicity proposed to be released by the County or the City regarding this MOU shall be subject to the approval of the other Party prior to release. The Parties agree that such approval shall not be unreasonably withheld.

H. Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested, and addressed as follows:.

County:	Bob Slater Department of Transportation Construction Division 2850 Fair Lane Court, Placerville, CA 95667 bslater@co.el-dorado.ca.us (530) 621-5918	Jim Ware, Director Department of Transportation 2850 Fair Lane Court, Placerville, CA 95667 jim.ware@co.el-dorado.ca.us (530) 621-7533
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City:	Debbie Vreeland Project Manager deb@vreelandworks.com 530.577.1777	David Jinkens City Manager 1901 Airport Rd., Ste. 203 South Lake Tahoe, CA 96150 530.542.6045
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I. Each Party represents that it has the authority to enter into this MOU and to perform the functions stated herein, and that the persons executing this MOU on their respective behalf are authorized by law, resolution or other requisite action of the Party's governing body to bind upon said party the obligations set forth herein.

J. The County officer or employee with responsibility for administering this MOU is Jim Ware, the Director of the county's Department of Transportation, or successor.

K. Any dispute resolution action arising out of this MOU, including but not limited to litigation, mediation, or arbitration shall be brought in El Dorado County, California and shall be resolved in accordance with the laws of the State of California.

L. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

M. This MOU may be executed in duplicate and counterparts and each duplicate and counterpart shall be deemed an original.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Ron Briggs, Chairman
Board of Supervisors
"County"

ATTEST:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

-- CITY OF SOUTH LAKE TAHOE --

Dated: _____

By: _____

Jerry Birdwell, Mayor
"City"

ATTEST:
Susan Alessi, City Clerk

By: _____



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Board of Supervisors
FROM: Louis B. Green, County Counsel
DATE: June 22, 2009
RE: Lakeview Commons – MOU for 56 Acre Parcel

Attached is the MOU for construction of Phase I improvements on the 56 acre parcel of land in South Lake Tahoe known as Lakeview Commons. It is substantially revised from the initial version which was provided to the Board several weeks ago. Most of the changes are to add detail that is protective of the County's interest in making sure that we are not financially responsible for the project.

We made the change requested by Supervisor Sweeney in Paragraph II.B.1), to change "reconstruction of existing uses" to "reconstruction of existing facilities to meet current building codes." We left the reference to an obligation to enter into a lease extension, but we added an enforcement clause to say that "[i]n the event the parties do not amend the Lease Agreement . . . before award of a construction contract for the Phase 1 Project Improvements, including but not limited to the Lease Extension, this MOU shall be of no further force and effect." That takes care of things if for some reason the lease extension does not get approved. We did it this way largely because the CEQA documentation had not yet been completed at the time the MOU was drafted and the lease extension would be part of the project, requiring CEQA documentation.

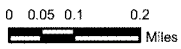
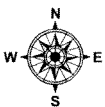
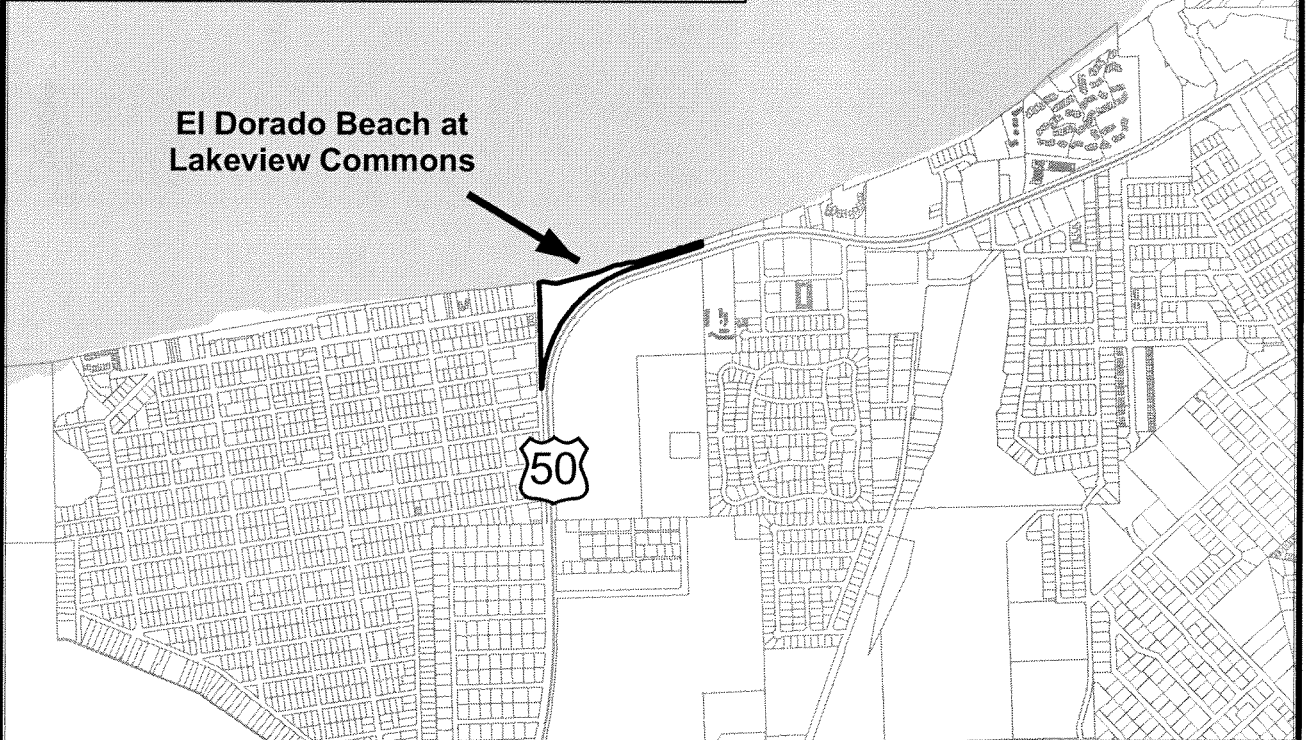
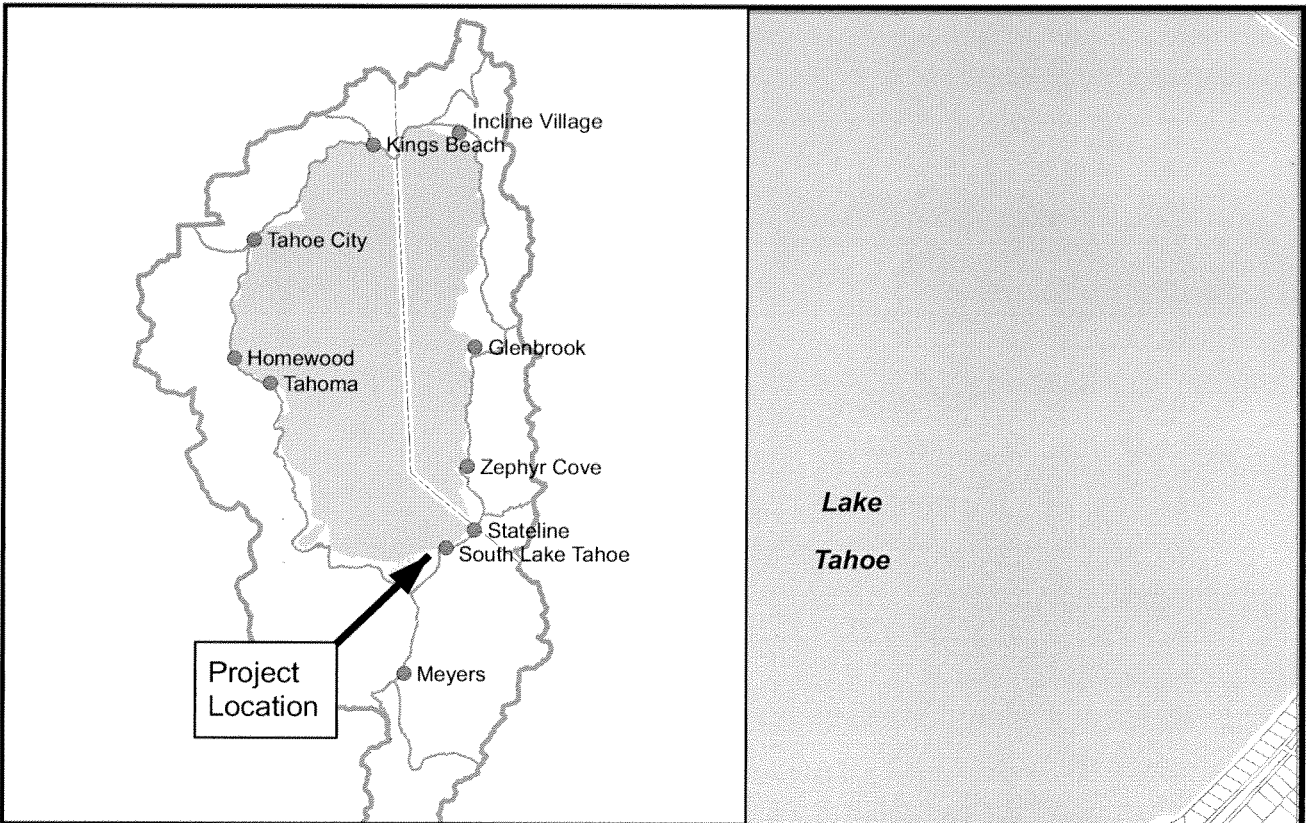
We would be pleased to answer any questions the Board might have.

Att.

cc: Chief Administrative Officer

s:\Bd of Supervisors\Agenda Transmittals & Staff Reports\56 Acre MOU trans

Attachment 1 Regional Location Map

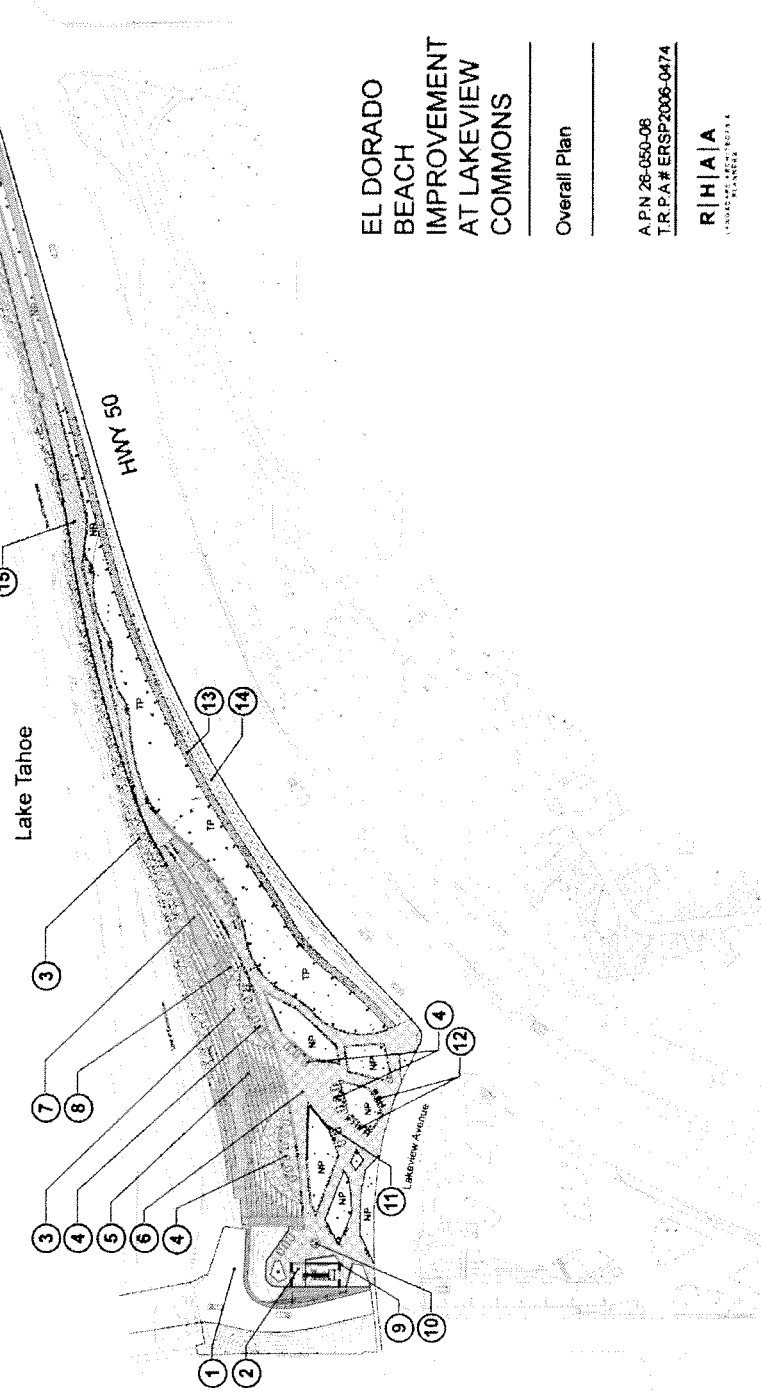


California Tahoe Conservancy
May 2009

Map for reference purposes only.
Sources: USFS; TRPA; CaSIL

- 1 Existing Boat Ramp
- 2 Concession/Restroom/Non-Motorized Boat Storage Building
- 3 Planted Rip-Rap Slope
- 4 Picnic Area
- 5 Stone Seating Terrace
- 6 Plaza
- 7 ADA Accessible Path to Beach
- 8 Planted Terrace
- 9 Water Fountain
- 10 Gas Fire-Pit Controlled by Concessionaire

- 11 Relocated Art Wall
 - 12 Bike Racks
 - 13 Class I Bike Path
 - 14 Planted Landscape Berm
 - 15 Cantilevered Walkway
 - 16 Existing Stairs and Viewing Area
- NP Native Planting
TP Turf Planting



**EL DORADO
BEACH
IMPROVEMENT
AT LAKEVIEW
COMMONS**

Overall Plan

APN 26-050-06
TR.P.A.# ERSP2006-0474

R|H|A|A
LANDSCAPE ARCHITECTS

ATTACHMENT 3

INSURANCE REQUIREMENTS FOR CONTRACTORS

Consultant/Contractor shall provide proof of a policy of insurance and documentation evidencing that Consultant/Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant/Contractor as required by law in the State of California.
- B. Commercial General Liability insurance of not less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: Premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability. This insurance can consist of a minimum \$1,000,000 primary layer of CGL and the balance as an excess/umbrella layer, but only if the Contractor provides written confirmation that the excess/umbrella layer "follows the form" of the CGL policy.
- C. Automobile Liability insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the Consultant/Contractor in performance of the contract.
- D. In the event Consultant is a licensed professional, and is performing professional services under the contract, professional liability insurance is required with a limit of liability not less than \$1,000,000.
- E. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures.
- F. The insurance will be issued by an insurance company acceptable to the City and the County, or will be provided through partial or total self-insurance likewise acceptable to both the City and the County.
- G. Consultant/Contractor shall agree that the insurance required herein shall be in effect at all times during the term of any contract for the performance of work in connection with the project. In the event said insurance coverage expires at any time or times during the term of such contract, Consultant/Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant/Contractor fails to keep in effect at all times insurance coverage as herein provided, City may, in addition to any other remedies it may have, terminate the agreement or contract upon the occurrence of such event. New certificates of insurance shall be subject to the approval of the City, and Consultant/Contractor shall agree that no work or services shall be performed prior to the giving of such approval.

- H. The certificate of insurance must include a provision stating that the insurer will not cancel the insured's coverage without 30 days prior written notice to the City and the County.
- I. The certificate of insurance must identify the County of El Dorado, the City of South Lake Tahoe, and any funding agency for the project, by name, and each of their officers, officials, employees, and volunteers, as additional insured insofar as the operations under the contract are concerned. This provision shall apply to all general and excess liability insurance policies.
- J. The Consultant/Contractor's insurance coverage shall be primary insurance as respects the City and the County, and their officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City or the County, and their officers, officials, employees or volunteers shall be excess of the Consultant/Contractor's insurance and shall not contribute with it.
- K. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, the County, and any funding agency for the project, and their respective officers, officials, employees, and volunteers; or the Consultant/Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- L. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City, the County, and any funding agency for the project, and their respective officers, officials, employees or volunteers.
- M. The insurance companies shall have no recourse against the City or the County of El Dorado, or any funding agency, or their respective officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- N. Consultant/Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of the contract.
- O. In the event Consultant/Contractor cannot provide an occurrence policy, Consultant/Contractor shall provide insurance covering claims made as a result of performance of the contract for not less than three years following completion of performance of the contract.
- P. Consultant/Contractor shall not commence performance of any contract in connection with the project unless and until compliance with each and every requirement of the insurance provisions is achieved.

Q. Failure of Consultant/Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the contract.