California Tahoe Conservancy
Agenda Item 11
September 15, 2011

BIJOU EROSION CONTROL PROJECT, PHASE ONE

Summary: Staff recommends authorization of:

- an acquisition grant of up to $688,526 to the City of South Lake Tahoe (City) for the Bijou Erosion Control Project, Phase One (Project);
- long-term license agreements with the City for improvements and maintenance on seven Conservancy parcels in support of the Project; and
- amendment of an existing Conservancy conservation easement (the Conservation Easement) as necessary to facilitate the City's acquisition and exercise of easement rights for installation of a subsurface drainage culvert and related subsurface improvements on the affected parcel.

Location: A 47-acre subwatershed within the City of South Lake Tahoe, referred to as the Bijou Commercial Core (Attachment 1). The project area includes properties south of the Commercial Core managed by U.S. Forest Service, Lake Tahoe Basin Management Unit. The easements proposed for acquisition with Conservancy grant funds are located in the Bijou Commercial Core (El Dorado County APNs 027-020-15, 027-020-17, 027-350-24, and 027-371-15). License agreements are proposed for seven Conservancy parcels within the project area (El Dorado County APNs 025-051-29, 025-401-03, 025-402-12, 025-402-13, 025-405-07, 025-405-08, and 025-405-09). The parcel proposed for the conservation easement amendment is located in the Commercial Core, north of the Bijou Center, between Bal Bijou Road and Lake Tahoe (El Dorado County APN 027-371-15).

Fiscal Summary: The proposed Conservancy grant is for up to $688,526, including monies appropriated under Propositions 12, 40, 50, and 84. The proposed license agreements do not involve any expenditure or receipt of funds by the Conservancy. Other fiscal impacts are limited to staff time (Conservancy and Attorney General's office), recording and filing fees, and administrative expenses.

Recommended Action: Adopt Resolution 11-09-05 (Attachment 3).

Background

In 2004, the City initiated planning work to assess and develop solutions for erosion and stormwater quality problems in the 1,300-acre Bijou Creek Watershed. In 2007, the City completed its watershed-scale assessment, which identified erosion control needs, prioritized treatment areas, and which recommended several independent capital improvement projects in the watershed to be pursued under the Environmental Improvement Program (EIP).

The City subsequently completed additional planning and design documents to develop project alternatives. Based on these analyses, the Bijou Commercial Core area was identified as having the most significant water quality problems in the watershed and deemed the highest priority area for improvements. The primary water quality concerns in the Commercial Core result from the densely-developed and highly-impervious commercial areas, and the heavily-used roadways and associated traction abrasives. These land uses generate stormwater with high concentrations of pollutant loads, and the stormwater from this area is currently conveyed without treatment directly to Lake Tahoe (Lake) via an obsolete and undersized culvert system. Monitoring data from the Bijou outfall have consistently shown some of the highest pollutant concentrations observed around the entire Lake.

In order to construct the Project improvements, the City must acquire easements across several private properties. One of the needed easements would allow for installation of an underground drainage culvert, which will provide the new area-wide drainage system's main outfall to Lake Tahoe. The acquisition and use of this easement by the City would affect El Dorado APN 027-371-15 (the Conservation Easement Parcel) on which the Conservancy owns a Conservation Easement. In order that the easement rights being acquired by the City, and the City's installation of subsurface improvements on the site, do not cause any breach of or interference with the Conservancy's Conservation Easement, a formal agreement is needed between the Conservancy and the fee owner of the Conservation Easement Parcel, amending and clarifying the Conservation Easement.

Staff recommends that the above amendment be carried out concurrently with the resolution of an ongoing dispute between the Conservancy and the fee owner, through legal action and/or settlement, relating to commercial wedding activities which have been permitted on site by the fee owner, contrary to the terms of the Conservation Easement and without the Conservancy's consent. Settlement would be authorized by separate Conservancy Board action, and would provide, at a minimum, for the

following: (1) the surface of the land to be restored to, and maintained in, its natural condition; (2) limits on the nature and frequency of such wedding activities, with no expansion of the estimated current level of use; (3) limits on the duration of any arrangement for the continuation of such activities; and (4) appropriate compensation to the Conservancy.

Project Description

The Project proposes to address the highest-priority water quality problems in the Bijou Creek Watershed by constructing a comprehensive regional stormwater treatment system to pre-treat and pump runoff generated in the Commercial Core to an upstream location in the watershed for infiltration. This advanced treatment strategy was selected due to the lack of suitable land to support traditional treatment opportunities in the lower watershed (i.e., passive detention and infiltration basins), and also because of its superior ability to remove fine sediment from the stormwater runoff. Load reductions achieved through this project will significantly contribute to reductions in the stormwater pollution load entering the Lake from the project area, thereby contributing to the City's efforts in achieving its Total Maximum Daily Load reduction objectives.

The regional treatment system will collect and treat comingled public and private stormwater runoff. As such, the City is seeking funds from both public and private entities for construction and long-term operation and maintenance. Private properties financially contributing to the system will receive their Best Management Practices certificates from the Tahoe Regional Planning Agency (TRPA), a regulatory obligation of all private properties in the Lake Tahoe Basin.

The Project also proposes to replace the existing old and deteriorated pipes that convey Bijou Creek and urban stormwater runoff underneath the Bijou Center and U.S. Highway 50. The existing pipes are undersized and severely corroded, and are unable to convey flood flows. The Project proposes to replace the degraded pipes with a double box culvert capable of conveying the 10-year flood flow under average Lake level conditions as required by the El Dorado County drainage manual. The new culvert will extend from the north end of the Bijou Golf Course to the Lake near Bal Bijou Road. Replacement of the existing pipes will allow for separation of the dirty stormwater runoff originating in the Commercial Core from the relatively clean flows exiting Bijou Meadow, thereby improving the function of the proposed regional stormwater treatment system.

The City must enter into license agreements with the Conservancy for the construction of improvements associated with the Project using seven Conservancy parcels. The Conservancy acquired these parcels under the Conservancy's Environmentally Sensitive Lands Acquisition Program. These proposed improvements will consist of an underground storm drain system and associated structures to convey overflow from the infiltration basins to the Bijou Meadow. Conservancy staff proposes the following El Dorado County APNs for license agreements: 025-051-29, 025-401-03, 025-402-12, 025-402-13, 025-405-07, 025-405-08, and 025-405-09.

Construction of the Project will require that the City obtain easements for the proposed pipe alignment, as no recorded rights currently exist for the existing pipe. The City also will need to acquire easements for several proposed treatment features that must be constructed on privately-owned parcels due to site constraints. The City requested an acquisition grant from the Conservancy to provide the funding needed for escrow fees, easement acquisitions, and related City staff time. If granted, this funding will play a crucial role in allowing the City to finalize all necessary property rights to construct the Project. The following El Dorado County APNs are proposed for easement acquisition: 027-020-15, 027-020-17, 027-350-24, and 027-371-15 (Attachment 2).

One of the drainage easements required for the Project is located on the Conservation Easement Parcel (El Dorado County APN 027-371-15). In 1986, the Conservancy, acting under its Environmentally Sensitive Lands Program, acquired a Conservation Easement over this parcel. Like other Conservancy conservation easements, the Conservation Easement does not allow the excavation or alteration of the surface of the land, or construction of underground improvements. Thus, in order for the City to acquire and utilize the needed rights for underground drainage improvements, it is necessary that the Conservancy modify the terms of the Conservation Easement. Accordingly, staff is requesting authority to amend the Conservation Easement to permit limited subsurface improvements to be installed by the City. Following installation of the underground culvert and related improvements, the City will restore the surface of the parcel to a natural condition, pursuant to a mutually agreed-upon landscaping plan. In summary, the proposed amendment will provide essential support for the Project and for the City's overall efforts to improve water quality in the Bijou Creek Watershed, while protecting the Conservancy's original purposes and objectives in acquiring the Conservation Easement.

Project Budget

Funding for the Project prior to this request has been provided by the following entities:

Agency	Amount
California Tahoe Conservancy (planning)	$1,600,000
U.S. Forest Service, Lake Tahoe Basin Management (planning)	500,000
Tahoe Regional Planning Agency (planning)	6,000
California Department of Water Resources (monitoring)	228,000
Federal Highway Administration (FHWA) via California Department of Transportation (Caltrans) (construction)	4,735,000
U.S. Forest Service, Lake Tahoe Basin Management (construction)	5,197,000
Tahoe Regional Planning Agency (acquisition)	395,000
Total	**$12,661,000**

Conservancy funding for the acquisitions would come from the City's jurisdictional allocation authorized by the Board in the 2008-2009 Soil Erosion Control Grants Program Announcement and Guidelines. The Project is listed as the State Treasurer's Office approved Project #9766 under Proposition 50; the Conservancy would fund this Project from allocated and available bond funds from that source. The Conservancy also has approved funding from Propositions 12, 40, and 84 for EIP Implementation and Stormwater Grants to use on this Project if necessary.

The budget for the Conservancy acquisition grant is as follows:

Budget Category	Budget
Acquisitions, escrow fees, and other related expenses	$640,000
Administration	48,526
Total	**$688,526**

Project Schedule

All parties associated with the Project are pursuing an aggressive project schedule to ensure the full use of the Federal Highway Administration funding. Caltrans staff has confirmed that the Project must be ready to bid and approved by Caltrans by June of 2012 in order to utilize the FHWA funding it is contributing to this project.

The schedule for the acquisition grant is as follows:

Activity	**Date**
Finalize acquisition needs	September 2011
Conservancy review of preliminary title reports and appraisals	October 2011
Negotiations and agreement of sales	November 2011
Conservancy approval of transaction documents	December 2011
Close of escrow	March 2012

Project Evaluation

In September 2008, the Board authorized the release of the Soil Erosion Control Grants Program Announcement and Guidelines for the 2008-2009 Grants Program. The Announcement and Guidelines requested applications from local jurisdictions for the highest priority erosion control projects that are listed in the EIP. Given the decreased amount of funding available in the 2008-2009 grants round, funds were to be distributed equally to the three local jurisdictions - El Dorado County, Placer County, and the City of South Lake Tahoe - for their previously-identified highest priority projects. Applications for these highest priority projects were received and evaluated in accordance with the Conservancy's evaluation criteria detailed in the Announcement and Guidelines.

The City applied for the requested acquisition funds in 2008, and the Project scored well. It was, and is, considered the highest priority erosion control project within the City's jurisdiction. The award of acquisition funds, however, could not occur until the City completed its required review and compliance with the California Environmental Quality Act (CEQA). CEQA compliance by the City is now complete, and staff recommends granting the acquisition funds at this time.

The proposed license agreements, which would give the City rights of use and access on Conservancy-owned parcels, including the right to construct improvements in support of the Conservancy-funded erosion control project, are consistent with the Conservancy's adopted Special Uses Guidelines and the Conservancy's Soil Erosion Control Program Guidelines. Conservancy staff will have the opportunity to review and comment on the design plans, including the underground overflow pipe system on seven Conservancy parcels, prior to the Project's construction. The license agreements will contain standard language requiring the City to provide insurance, performance bonds, and indemnification, as well as restoration of any damage to the Conservancy

parcels. Furthermore, the City will be required to maintain the improvements for 20 years after installation.

The proposed amendment of the Conservancy conservation easement, for the project-related purposes described above, will preserve the existing natural and scenic qualities of the Conservation Easement Parcel, with no significant adverse impacts, and, staff believes, is consistent with the Conservancy's adopted Environmentally Sensitive Lands Program and the purposes of the original easement acquisition by the Conservancy. Staff members from the City and the Conservancy have been working to assure that the proposed improvements will be designed in a manner that does not diminish the natural resource values of the Property and will achieve water quality and other resource objectives in a manner that is both cost-effective and compatible with other environmental objectives. A landscape plan for the post-project restoration of the Conservation Easement Parcel, strictly limited to native vegetation and other natural features consistent with the Conservation Easement, has been developed by the City in consultation with the Conservancy with the intent of promote and protect the scenic values of the site and the shore of the Lake.

The Project supports regional planning and resource management objectives in the Lake Tahoe Basin and is being pursued in accordance with the EIP. The City has been coordinating its efforts with Caltrans, which has obligated up to $4,735,000 towards this comprehensive erosion control project. The water quality improvements for U.S. Highway 50 were designed by Caltrans to integrate with the City's plans. This coordination effort is providing improvements that will meet the goals of multiple agencies and programs involved in the EIP.

The City will be required to comply with all regulatory requirements established by the TRPA and other agencies, and to obtain all necessary permits prior to commencing work.

Project Implementation

If the requested resolution is adopted, staff will take the following steps, upon determining that all prerequisites have been met in order to carry out the intent of this and related Conservancy Board authorizations:

(1) Enter into a standard acquisition grant agreement with the City, to cover acquisition-related expenses in connection with the Project;

(2) Enter into license agreements with the City to allow for project implementation, including installation and maintenance of improvements on the seven Conservancy parcels identified above; and
(3) Amend the Conservation Easement on El Dorado County APN 027-371-15, as described above.

Consistency with the Conservancy's Enabling Legislation

Implementation of this project and the actions described above are consistent with the Conservancy's enabling legislation. Specifically, Government Code sections 66905.2 and 66907.7 authorize the Conservancy to award grants to local public agencies, state agencies, federal agencies, federally recognized Indian tribes, the Tahoe Transportation District, and nonprofit organizations for purposes consistent with its mission which includes soil erosion control projects. Government Code section 66907.10 authorizes the Conservancy to improve and develop acquired lands for a variety of purposes, including protection of the natural environment. Government Code section 66907.8 authorizes the Conservancy to lease, rent, sell, exchange, or otherwise transfer any interest in real property or interest therein to local public agencies, individuals, corporate entities, or partnerships for management purposes. Under Government Code section 66907.9, the Conservancy is authorized to initiate, negotiate, and participate in agreements for the management of land under its ownership or control with local public agencies, state agencies, federal agencies, nonprofit organizations, individuals, corporate entities, or partnerships, and to enter into any other agreements authorized by state or federal law.

Compliance with the California Environmental Quality Act

The City of South Lake Tahoe, acting as the Lead Agency, prepared an Initial Study (IS) and Mitigated Negative Declaration (MND) for this project in compliance with CEQA. The City adopted the MND on August 11, 2011, and a Notice of Determination (NOD) was filed on August 12, 2011. On September 7, 2011, the Conservancy prepared an Addendum to the MND.

A copy of the IS and MND and the Addendum, including any public comments and responses, has been provided to the Board on CD (Attachment 4) and is available for public review at the Conservancy office, 1061 Third Street, South Lake Tahoe, CA 96150.

Staff has reviewed the IS/MND and Addendum and related documents and believes that the improvements and activities proposed are adequately analyzed in the

document. The Conservancy finds that no substantial changes are proposed in the project, and no unsubstantial changes have occurred with respect to the circumstances under which the project is undertaken that would involve any new significant effects or significantly increase the severity of any previously identified impacts. As a result, no new mitigation measures are needed to find that the project, as mitigated, would have no significant environmental impacts. Descriptions of mitigation measures are on Pages ii-iii of the MND.

Staff recommends the Conservancy Board review the MND and make the findings as set forth in the attached resolution. If the Board considers and concurs with the MND and authorizes the actions described above, staff will file a NOD with the State Clearinghouse pursuant to CEQA Guidelines, section 15096 (Attachment 5).

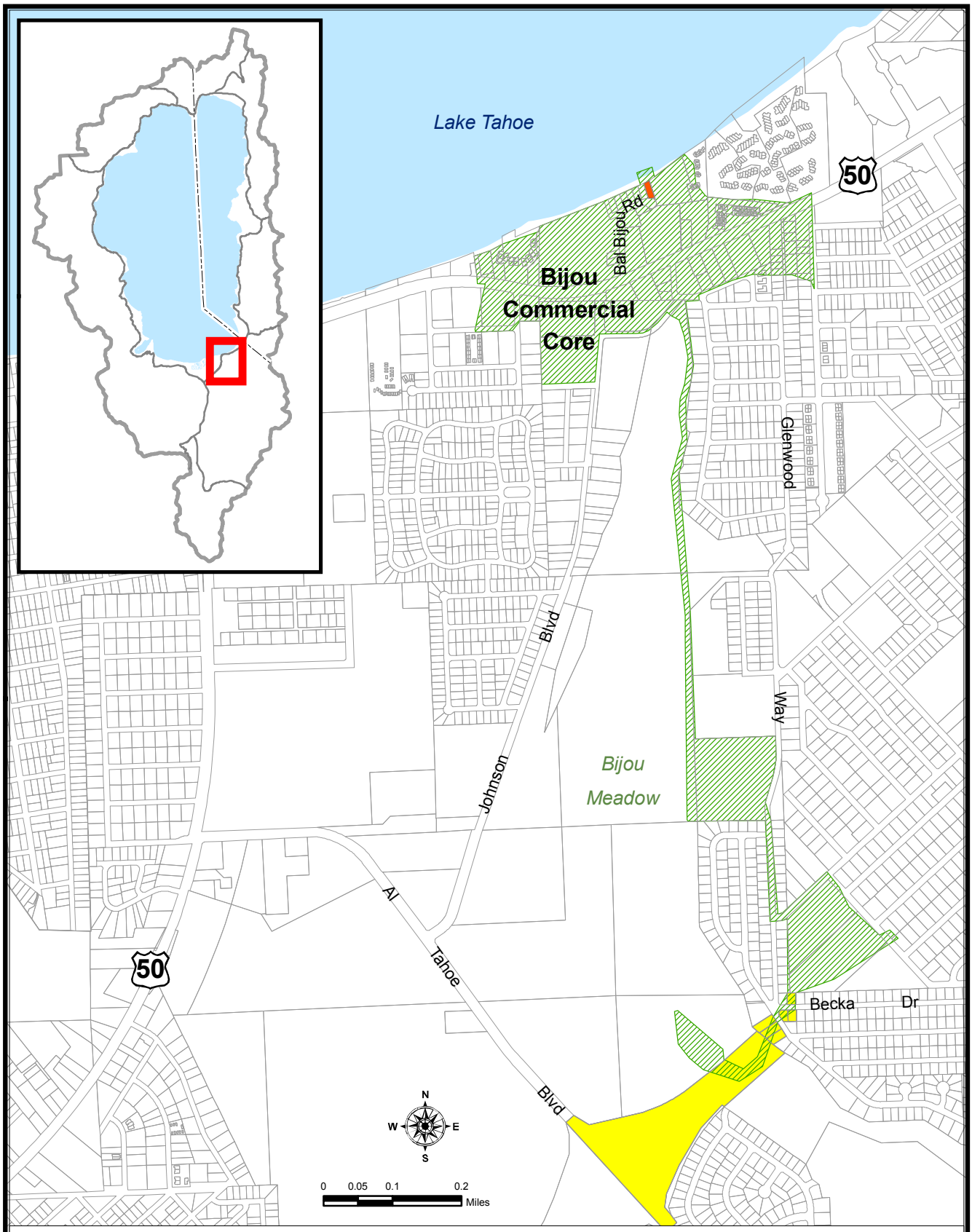
List of Attachments:

Attachment 1: Project Location Map
Attachment 2: Easement Location Map
Attachment 3: Resolution 11-09-05
Attachment 4: El Dorado County Initial Study and Mitigated Negative Declaration (on CD)
Attachment 5: Conservancy Notice of Determination

Conservancy Staff Contact:

Stuart Roll:	(530) 543-6031 sroll@tahoe.ca.gov
John Gussman:	(510) 684-4629

ATTACHMENT 1
Project Location Map



Project Area

Conservancy Conservation Easement

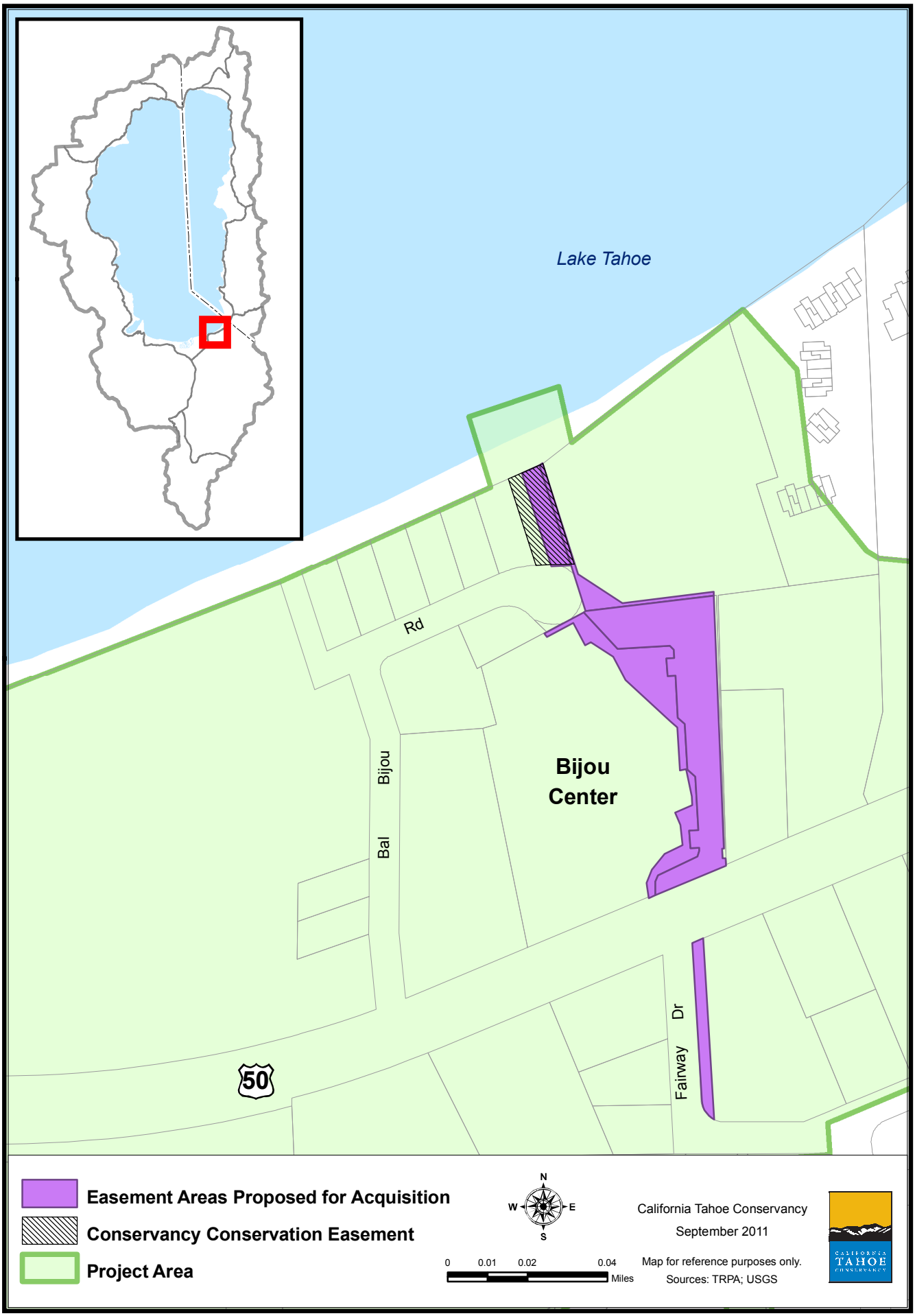
Conservancy Parcels Proposed for License Agreements

California Tahoe Conservancy
September 2011

Map for reference purposes only.
Sources: TRPA; USGS

ATTACHMENT 2

Easement Location Map



ATTACHMENT 3

California Tahoe Conservancy
Resolution
11-09-05
Adopted: September 15, 2011

BIJOU EROSION CONTROL PROJECT, PHASE ONE

Staff recommends that the Conservancy make the following finding based on the accompanying staff report pursuant to Public Resources Code Section 21000 et seq.:

"The California Tahoe Conservancy has considered the environmental impacts of the proposed project as described in the initial Study/Mitigated Negative Declaration (IS/MND) and related documents certified by the City of South Lake Tahoe. On September 7, 2011 the Conservancy prepared an Addendum. The Conservancy reviewed the IS/MND and related documents and finds that the improvements proposed have been adequately analyzed in the IS/MND and Addendum. The Conservancy finds that no substantial changes are proposed in the project, and no substantial changes have occurred with respect to the circumstances under which the project is undertaken that would involve any new significant environmental effects or that would significantly increase the severity of any previously identified impacts. Furthermore, since the City's certification of the Mitigated Negative Declaration, there are no changes regarding the project that would require new or different mitigation measures. The potential significant adverse effects will be mitigated by the mitigation measures, and the Conservancy adopts these mitigation measures as conditions of the project. Accordingly, the Conservancy finds that the Mitigated Negative Declaration is adequate for compliance with CEQA for the award of an acquisition grant, execution of license agreements, and modification of a conservation easement, and directs staff to file a Notice of Determination for this project with the State Clearinghouse."

Staff further recommends the Conservancy adopt the following resolution pursuant to Government Code Sections 66905.2, 66907.7, 66907.8, 66907.9, and 66907.10:

"The California Tahoe Conservancy hereby authorizes staff to take the following actions with respect to implementation of the Bijou Erosion Control Project, Phase One:

(1) to disburse up to 688,526 dollars ($688,526) as an acquisition grant to the City of South Lake Tahoe (City) for the acquisition of easements on El Dorado County Assessor Parcel Numbers 027-020-15, 027-020-17, 027-350-24, and 027-371-15;

(2) to enter into long-term license agreements with City of South Lake Tahoe to permit the construction and maintenance of water quality improvements on El Dorado County Assessor Parcel Numbers 025-051-29, 025-401-03, 025-402-12, 025-402-13, 025-405-07, 025-405-08, and 025-405-09;

(3) to amend an existing conservation easement held by the Conservancy on El Dorado County Assessor Parcel Number 027-371-15, to facilitate the City's acquisition and exercise of easement rights for the construction, maintenance, and repair by City of an underground drainage culvert and associated improvements as necessary in order to carry out the Project; and

(4) to take all other necessary steps consistent with the accompanying staff recommendation.

I hereby certify that the foregoing is a true and correct copy of the resolution duly and regularly adopted by the California Tahoe Conservancy at a meeting thereof held on the 15th day of September 2011.

In WITNESS THEREOF, I have hereunto set my hand this 15th day of September 2011.

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Patrick Wright
Executive Director

ATTACHMENT 4

BIJOU EROSION CONTROL PROJECT, PHASE ONE

City of South Lake Tahoe
Initial Study
Mitigated Negative Declaration

On CD

ATTACHMENT 5

NOTICE OF DETERMINATION

TO:	Office of Planning and Research 1400 10th Street, Room 121 Sacramento, CA. 95814	FROM:	California Tahoe Conservancy 1061 Third Street South Lake Tahoe, CA. 96150

Subject:
Filing of Notice of Determination in compliance with section 21108 of the Public Resources Code.

Project Title:
Bijou Erosion Control Project, Phase 1- Award of Acquisition Grant and Long-Term License Agreement with the City of South Lake Tahoe.

State Clearinghouse Number:	***Contact Person:***	***Telephone Number:***
2011062012	Stuart Roll	(530) 543-6031

Project Location:
Conservancy-owned El Dorado County Assessor Parcel Numbers 025-051-29, 025-401-03, 025-402-12, 025-402-13, 025-405-07, 025-405-08, and 025-405-09; 027-020-15, 027-020-17, 027-350-24, and 027-371-15.

Project Description:
The project proposes to acquire easements, construct, maintain, and improve stormwater facilities, and implement erosion control practices for the Bijou Erosion Control Project, Phase One as identified in the Lake Tahoe Environmental Improvement Program.

This is to advise that the California Tahoe Conservancy, acting as a responsible agency, has approved the above-described project on September 15, 2011 and has made the following determinations:

1. The project will not have a significant effect on the environment.

2. A Mitigated Negative Declaration for the project was prepared and approved by The City of South Lake Tahoe on August 11, 2011, and a Notice of Determination was filed on August 12, 2011. The Notice of Determination, Mitigated Negative Declaration, and record of project approval may be examined at the City of South Lake Tahoe at 1051 Tata Lane, South Lake Tahoe, California 96150. The California Tahoe Conservancy previously reviewed and considered the Mitigated Negative Declaration prepared by The City of South Lake Tahoe prior to project approval.

3. Mitigation measures were made a condition of project approvals by The City of South Lake Tahoe and the California Tahoe Conservancy.

4. The Conservancy finds that no substantial changes are proposed in the project, and no

substantial changes have occurred with respect to the circumstances under which the project is considered that would affect any potentially significant environmental effects. Furthermore, there are no changes regarding the project that would require new or different mitigation measures.

Fish and Game Fees: City paid $2,094 on 8/12/11

Date Received for Filing:

Patrick Wright
Executive Director