



June 2, 2014

**VIA ELECTRONIC MAIL**

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Re: Proposal for Resolution of Heavenly Mountain Resort Objection to Draft Record of Decision for the Lake Tahoe Basin Management Unit ("LTBMU") Forest Plan

Dear Forest Service Officials:

Thank you for meeting with Heavenly representatives and the other objectors and interested parties on May 20, 2014 to discuss Heavenly's objection to the LTBMU Forest Plan revision. We found the objection meeting to be a helpful forum to discuss our concerns with the Forest Service in a constructive way. We believe the pre-decisional administrative review process in 36 C.F.R. Part 219, Subpart B provides for a flexible approach to resolve concerns through collaboration rather than conflict.

In the spirit of collaboration demonstrated at the May 20 meeting, I write to propose a path forward for resolution of each of the three issues Heavenly raised in its January 21, 2014 objection letter. I propose that we pursue resolution through direct conversation with Nancy Gibson and the LTBMU staff and, where appropriate, with Barnie Gyant and the Region 5 Staff.

Following the discussion of each issue is a box that contains Heavenly's proposed resolution of the issue. Proposed deletions of Forest Plan language are designated with a ~~strike through~~ while additions are designated with *italics*. Heavenly believes the proposed revisions are modest and would achieve the agency's multiple-use mission while avoiding unintended ambiguity and future project-level controversy.

I. The Forest Service Should Clarify That LTBMU Forest Plan Direction Does Not Apply to Activities at Heavenly Outside the LTBMU

Heavenly appreciates and agrees with the statement in the Forest Service's May 16, 2014 Heavenly Resort Permit Objection Issues Summary ("Heavenly Objection Issues Summary") that: "the revised management plan applies only to NFS lands within the Lake Tahoe Basin

Management Unit.” As the Heavenly Objection Issues Summary explains, the scope of the Forest Plan is prescribed by the National Forest Management Act and other laws. But Heavenly continues to believe it is important for the Forest Service to clarify the geographic scope of the LTBMU Forest Plan provisions because certain Forest Plan management direction, such as SG100, could be misinterpreted to apply constraints to activities outside the LTBMU. For example, Heavenly straddles both the LTBMU and Humboldt-Toiyabe National Forest. It is important for the LTBMU Forest Plan to clarify that SG100 and other Forest Plan management direction applies only to that portion of Heavenly within the LTBMU.

**Proposed Objection Resolution**

Add the following statement to the ROD for the LTBMU Forest Plan: *Forest Plan management direction applies only to activities within the boundary of the LTBMU. For example, portions of Heavenly Mountain Resort are within the LTBMU and portions are on the Humboldt-Toiyabe National Forest. Management direction from the LTBMU Forest Plan does not apply to activities at Heavenly that are outside the boundary of the LTBMU.*

II. The Forest Service Should Delete SG100 and Replace it With a Requirement to Comply With Tahoe Regional Planning Agency Standards

SG100 adopts a limitation on new ski area operations inside existing ski area special use permit boundaries but beyond the current operational boundary. SG100 would impose a 200-acre cap on the increase of “operational footprint acres” of “ski areas and slopes.” We appreciated the opportunity to air our concerns about SG100 at the May 20 meeting. Those concerns include the fact that SG100: improperly impedes Heavenly’s existing special use permit rights; results in a *de facto* revocation of established permit rights; is arbitrary and confusing, in that there is currently not even a clear understanding of each ski area’s operational footprint and the scope of approved but not implemented projects; creates a perverse incentive to rush development; and replaces the well-defined master development planning and development process with an inflexible cap.

As we explained during the meeting, Heavenly supports smart, measured development and so conceptually supports a rational and appropriately tailored limit on future expansion. So rather than further argument on this point, Heavenly wishes to seek a common remedy to reach our shared objective of balancing development pressure caused by potential future ski area development with other management considerations in the LTBMU. The Tahoe Regional Planning Agency (“TRPA”) similarly seeks to strike that balance. The TRPA has established a growth management system applicable to all ski areas in the Tahoe Region, including Heavenly, which utilizes a carrying capacity concept in its Regional Plan. The concept, which measures

“Persons at One Time” or “PAOTs”, is reflected in both the 1987 Regional Plan and the 2012 Regional Plan Update. The system accomplished the shared objective of measured and thoughtful growth by managing the uphill lift capacity rather than imposing an acreage limitation. The system was developed through a robust process that included the Forest Service, ski areas, and other regional stakeholders. It cascades from the Regional Plan Update Goals and Policies Plan (Chapter V Recreation Goal R-3, Policy R-3.3) through the Plan Area Statements containing ski areas (Heavenly is located within Plan Areas 086 and 087), and finally the Code of Ordinances (Chapter 50, Allocation of Development, Section 50.8, Regulation of Additional Development Facilities).

Detailed implementation strategies for the PAOT system are reflected in TRPA’s *Ski Area Master Plan Guidelines* document and were developed by a collaborative working group in 1990 that included TRPA, the Forest Service, ski area representatives and other interested parties. TRPA’s PAOT system and growth management strategy remains in effect today. The system has worked successfully over many years by requiring ski areas to first prepare and implement Master Development Plans and subsequently proceed to implement additional skiing capacity in a thoughtfully-planned and measured way.

There is a track record of the Forest Service successfully incorporating the PAOT system into its land management planning. The PAOT system was incorporated in the applicable management areas containing ski areas on National Forest lands in the 1988 Forest Plan (Heavenly Valley Management Area found on pages IV-105, 106). In our view it is unnecessary and inefficient to add a second, duplicative growth management system in addition to what exists today.

**Proposed Objection Resolution**

Delete SG100(d) (Ski areas and slopes).

Replace SG100(d) with: *Development of ski areas and slopes will comply with established development standards and processes adopted by the Tahoe Regional Planning Agency.*

III. The LTBMU and Heavenly Can Cooperatively Address Whitebark Pine Issues at Heavenly by Eliminating the SRA at Heavenly and Extending the 2013 Memorandum of Understanding for the Life of Heavenly’s Permit

The Forest Plan adopts Species Refuge Areas (“SRA”) for Whitebark Pine. Forest Plan at 35-36; Map 14. The “SRA” concept is a new land use designation that Heavenly has not seen in Region 5 or Region 2. We are surprised that the LTBMU appears to be setting precedent for the Region without a more complete and comprehensive discussion of the requirements,

parameters, and Regional application of the new designation. Heavenly would appreciate it if the Forest Service could provide any citations to the portions of the regional planning handbook that pertain to the development of SRAs so that Heavenly can gain a better understanding of the purpose and nature of SRAs. As it stands now, the SRA concept is inchoate, and Heavenly is concerned that the term “refuge” implies wilderness-area style management that is plainly not appropriate inside the developed boundary of a ski area.

Heavenly and the Forest Service have worked collaboratively for over a year to establish a conservation framework for Whitebark Pine, both within Heavenly’s special use permit boundary and in the highest value habitat outside the permit boundary. These efforts culminated in Heavenly and the Forest Service signing an MOU regarding conservation efforts in 2013.<sup>1</sup> The MOU appropriately addresses Whitebark Pine conservation in a way that accommodates the unique needs of a developed ski area. I recognize that the MOU is effective until December 31, 2018, and that the Forest Service may desire longer-term assurance that Whitebark Pine will be managed appropriately at Heavenly.

To satisfy the need for longer-term management of Whitebark Pine, Heavenly proposes the following resolution to the Whitebark Pine SRA issue: (1) Heavenly and the Forest Service will agree to extend the 2013 MOU to make it coterminous with Heavenly’s ski area special use permit; and (2) the Forest Service will remove the Whitebark Pine SRA Forest Plan designation that overlaps with Heavenly’s ski area special use permit, including by amending Forest Plan Map 14. This resolution will ensure that Whitebark Pine will be effectively managed at Heavenly, provide long-term assurance to the parties, and will ensure that Whitebark Pine management is compatible with the specific needs of developed recreation at a ski area.

In addition to the proposed resolution described above, Heavenly suggests the following changes to Forest Plan Whitebark Pine management:

1. Reconsider the Name: The term “species refuge area” suggests that the area will be managed like a wilderness area or wildlife refuge, and does not reflect the type of flexible management that the Forest Plan appears to contemplate. If the Forest Service believes that maintaining a special designation within Heavenly ski area is critical, we suggest renaming the land management designation “Whitebark Pine Habitat Area,” which more appropriately reflects the purpose of the designation.
2. Acknowledge the Primacy of Existing Inter-Organizational Agreements: The Forest Plan directs the Forest Service to “[d]evelop a unit-wide whitebark pine conservation strategy.” Forest Plan at 61. The Forest Plan should require that the

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<sup>1</sup> A copy of the 2013 MOU is attached as Exhibit B to Heavenly’s January 21, 2014 Objection letter.

conservation strategy defer to and incorporate existing inter-organizational agreements that have been developed for Whitebark Pine, such as the 2013 Heavenly MOU. Inter-organizational agreements address management concerns in a level of detail that is not possible for a single unit-wide conservation strategy. And interested parties will have little incentive to enter into these types of voluntary conservation agreements if the Forest Service overrides them with a unit-wide conservation strategy.

3. Amend SG93 to Acknowledge that “Recovery” May Not be an Appropriate Objective for All SRAs: The Forest Plan includes a guideline for SRAs that requires actions to be “consistent with habitat and population recovery objectives outlined [in] conservation strategies and recovery plans.” Forest Plan at 117. But the Forest Plan EIS makes clear that the threats to Whitebark Pine are diverse. Forest Plan EIS at 3-134. Many of the threats to Whitebark Pine, such as blister rust, may impede recovery objectives under even the best managed conditions. Id. Under these conditions, a requirement that management activities be consistent with “recovery” objectives may not be feasible to achieve.
4. Utilize the Best Available Mapping Data for Whitebark Pine: The Forest Plan EIS recognizes that: “There is a high level of uncertainty regarding the abundance and distribution of whitebark pine on LTBMU.” FEIS at 3-134. The EIS further recognizes that: “Estimates of the abundance of whitebark pine on LTBMU range from approximately 1,500 acres to over 24,000 acres.” Id. Mapping of Whitebark Pine is a work in progress. Forest Plan Map 14 reflects this dearth of data and does not map Whitebark Pine in fine detail. But in conjunction with developing the 2013 MOU, Heavenly and the Forest Service have developed maps that provide a much more accurate depiction of Whitebark Pine inside the developed ski area boundary. The Forest Service should utilize this improved mapping data where it exists, rather than the inadequate mapping of Whitebark Pine depicted on Map 14.

**Proposed Objection Resolution**

Forest Plan Map 14: Remove the Whitebark Pine SRA within the Heavenly operational boundary from the list of SRAs depicted on Forest Plan Map 14.

Extend the 2013 MOU between Forest Service and Heavenly so that the MOU is coterminous with the life of Heavenly’s ski area special use permit.

Forest Plan Map 14: Utilize the best available Whitebark Pine mapping data, such as that developed by Heavenly and the Forest Service in conjunction with the



2013 MOU.

Amend Forest Plan Page 35: "~~Species Refuge~~ *Habitat Areas (SRHAs)* are defined as areas of quality habitat for ...." Make corresponding change throughout Forest Plan.

Forest Plan Page 61: Develop a ~~unit-wide~~ whitebark pine conservation strategy. *The conservation strategy must consider localized concerns and other management needs, and must defer to and incorporate existing inter-organizational agreements that have been developed for Whitebark Pine conservation.*

Forest Plan Page 117/SG93: Management actions are consistent with habitat ~~and population recovery~~ objectives outlined in conservation strategies *and consistent with the requirements of the Endangered Species Act and recovery plans.*

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Thank you for your consideration of this proposal for resolution of Heavenly's objection to the LTBMU Forest Plan. I would welcome the opportunity to discuss further with you any of the issues raised in this letter. Thank you again for the useful meeting on May 20, and I look forward to a continued productive relationship with the Forest Service.



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