

only address this factor but point out that this noise will also affect the lake areas adjacent to the project, thus rendering usage of the lake less attractive to visitors and damaging the local economy by reducing the attractiveness of recreation activities.

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- **Noise from Rentals**

At the scoping session for the report, concern was raised about the possible impact of short term renters from the project creating noise. As a review of county records will show, calls from residents already report significant noise problems with part time rental users. These persons are more prone to use jacuzzis in the evening, to play radios and musical devices loudly, and otherwise to create noise from recreational activities. It is not uncommon for residents on Flicker Drive to experience problems from short-term rental users, with large numbers of vehicles and large amounts of noise from residents. The proposed report dismisses this concern by stating that the Covenants, Conditions and Restrictions for the proposed alternative project would prohibit short-term rentals. This ignores the fact that existing CC&Rs in the area already contain such prohibitions and there is no effective enforcement mechanism. The report should state that such CC&Rs have been ineffective in other instances and should propose an effective mitigation measure. Perhaps a mitigation measure could include CC&Rs not only restricting short-term rental use but also permitting those CC&Rs to be enforced by adjacent landowners or by community organizations whose membership includes adjacent landowners, together with a significant penalty for violations which could be awarded to or shared with the complaining parties. More significantly, the report should describe the fact that this increase in noise from the project could be eliminated by not expanding the present zoning to allow the project.

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- **Potential Noise from the Marina**

The draft EIR attempts to minimize the noise impact from the marina by focusing on an assumed minimal increase in the average number of boats on the lake on a per-day basis. This is deficient because it does not address the fact that most use of the lake and the marina is not on an average number of boats per day but on a weekend basis, particularly summer weekends and holiday weekends during the summer. Further, the report should be required to address the impact of having 50 boat slips in a new marina. Presumably the proponents of the project are seeking to have 50 boat slips because they anticipate at least one water vehicle per lot. The project should be evaluated as if this assumption is correct and 50 motorized water craft, or more, are added to the lake. The impact of these water craft should be evaluated not only based on the number of other water craft on the lake but based on the fact that since these watercraft are located in the marina, they will necessarily impact the adjacent areas at least twice per trip, once on leaving the marina and once on returning to it.

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A separate analysis should be required with respect to jet skis and out board motors. Especially with jet skis, the report should evaluate the factors discussed in the report "Drowning in Noise, Noise Costs of Jet Skis in America" prepared for the Noise Pollution Clearing House by Charles Kamanoff and Howard Shaw, PhD in April of 2000. The report should disclose and address in some fashion this impact, noting that the Shaw report concludes that the average jet ski imposes \$47 of noise pollution costs (using year 2000 dollars) on adjacent users of the shoreline in the course of a single use. It should be noted that the summer boating season in Big Bear, even if assumed to last only from Memorial Day through Labor Day, would include 35 or more days of weekend use per year, not counting Friday evening usage. If outboard motors, jet skis or other personal water craft are used by the owners of slips in the proposed marina, especially if there are multiple trips per day, this weekend usage could be quite significant.

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The report should be revised to address this and to evaluate the impact of noise being concentrated on the weekends, instead preferring to focus on average numbers of trips per day throughout a year. This is misleading as noted because the lake is not significantly used during the colder weather months and usage is concentrated on weekends and because a marina

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concentrates noise in one area rather than all over the lake. The report should be corrected to address and analyze this impact.

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Further, the report should address in particular some of the reasons jet ski noise is more annoying than other noise. As the "Drowning in Noise Report" and the related report from the Noise Pollution Clearing House in 2003 noted, jet ski noise is different from the noise of other water craft. For one thing, jet skis continually leave the water. They are designed to do this and minus the muffling effect of water the jet ski engine's exhaust is much louder. The "Drowning in Noise Report" estimates that when the jet ski noise is not muffled by water it is typically 50 decibels or more louder. As reported by Shaw "an airborne jet ski has the same noise impact on a listener at the water's edge as an in-water jet ski eight times closer or the same as 32 identical in-water jet skis at the same distance." Secondly, each time a jet ski re-enters the water it smashes the surface with an explosive whomp sound or a series of such sounds. As the Shaw report notes, leaving the water is central to the fun of jet skiing and even if unintentional, the short hull of a jet ski being ridden fast "on even a slightly choppy surface will lift out of the water naturally."

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Furthermore, the noise effect of a jet ski is compounded by the variable nature of its noise. Rapidly varying noise has been found to be much more annoying than the constant noise by decades of psycho-acoustic research. A variable noise commands the ear's continuous attention, making it specially bothersome and difficult to ignore. The Drowning in Noise Report from 2003 prepared by the Noise Pollution Clearing House for testimony before the Canadian Senate points out that in typical jet ski maneuvers the jet impeller has no consistent water load. As a result, the engine's speed rises and falls through a wide range from moment to moment, generating a "penetrating, whining sound, rising and falling rapidly in pitch like a dentist's drill and forcing the attention" of anyone within range. In its 2003 report, the Noise Pollution Clearing House includes a table pointing out that the impact of leaving the water frequently and constant maneuvers adds between 20 and 35 decibels to the impact of a jet ski. It concludes that an 80 decibel jet ski feels four to six times louder than an equivalent decibel output motor. In other words, it feels 15 to 30 times closer to the listener than it actually is.

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The draft EIR proposes no mitigation levels for the noise of jet skis and outboard motors entering or leaving the marina or operating close to the marina, and thereby disrupting adjacent residential owners and campers. Mitigations used in other areas such as requiring operation of water craft at a considerable distance from shore would be ineffective since the very nature of a marina requires that the water craft approach the shoreline when entering or leaving the marina. Accordingly, a suggested mitigation would be to eliminate the marina from the proposed project.

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The fact that there are existing marinas on the lake which already provide a launch area for jet skis should not be used as an excuse to avoid analyzing the impact of the proposed marina and the likely addition of outboard motors and jet skis to an area which is presently relatively quiet. Grout Bay is currently significantly used by kayakers and canoeists, in part because of its shallow depth, and these activities would be significantly disrupted by the introduction of additional motorized boats and jet skis to the area by the proposed marina from the Moon Camp project and the proposed marina from the Cluster Pines project. This environmental impact report should be re-written to analyze this impact and to disclose the number of sail boats, kayaks and canoes presently using county licensed facilities at the Dana Point marina. Reduction in the utility of Big Bear Lake and particularly Grout Bay through the introduction of vehicle noise ought to be considered, evaluated and if possible, mitigated. It should be noted that Lake Tahoe currently has an ordinance banning the use of jet skis, and that Vermont prohibits jet skis on lakes less than one-half mile wide. Since similar restrictions on Big Bear Lake might be impracticable, the report should address the impact of adding additional spaces for jet skis and additional housing lots designed to cater to the users of motorized water craft.

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Conclusions

The draft EIR is deficient in addressing noise impact primarily on stationary sources and impacted areas such as churches and schools a great distance from the project rather than focusing on the damage to immediately adjacent residential activity and recreational activity in the nearby camp grounds and on the waters of Grout Bay which are currently a significant source of use by kayakers and canoeists. Although the report concedes that construction noise would be "considered substantially disruptive to residents," (see page 4.6-14) it still states that the project would likely have a "negligible impact on the noise environment because it represents a "very low density neighborhood" in comparison to existing developments. This is deficient in that it fails to address the impact of significant construction activities during grading and completion of roads, and then the longer term impact of constructing 50 houses, and fails to note that this noise impact and activity would be concentrated significantly on the summer months, the very period when the Fawnskin area is most likely to see its part time population in residence and the period during which doors and windows are open and decks and campgrounds are used. Rather than being permitted to address construction activity as "short term" in nature, the report should address the likely impact over several building seasons, of at least three, and perhaps 5 years in duration.

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The report should also address the impact of possible renter usage and should contain a more effective mitigation measure than it currently is proposed, as recommended below. As the report concedes that noise and vibration levels "may temporarily exceed county standards" it should be required to address the fact that this "temporary" excess noise it is very likely to occur in the times of peak usage by residents, hikers, bikers, kayakers and campers over a period of several years. The conclusion that "due to the relatively short period of construction, noise impacts are anticipated to be less than significant." should be rejected and effective measures to minimize noise damage over three to five years should be required. Finally, the effect of the marina should be much more fully analyzed. The use of "average daily use of the lake" data should not be accepted but rather data from peak weekend usage should be considered and data from entering and leaving the marina added. Rather than considering a "nominal increase in daily boating numbers" the report should be required to address the impact of one or more trips per day from each of the slips in its proposed marina. Since the report has not shown any need for additional launch facilities, its impact on diverting launching activity from areas already impacted by such noise and instead focusing it in areas near residential usage should be conceded and analyzed. Although the report acknowledges that its proposed surface parking lot from the proposed marina would generate instantaneous noise from tire squeals, trash pick-up, delivery trucks, lot sweeping, door slamming, back up alarms and engine startups, it proposes that this would not have a significant impact because it believes the noise would remain primarily on site and be temporary. The report should address the fact that his "temporary" increase in noise would occur the warmer months and during the periods of peak use by residents, campers, hikers and bikers and thus analyze and acknowledge the impact of deterioration on community life and ambiance created by this proposed parking structure.

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- **Requested Additional Mitigation Measures.**

In addition to adequately addressing the increased noise to be generated by the proposed project, the report should evaluate additional mitigation measures, including:

- Establishing Covenants, Conditions and Restrictions (the CC&Rs) for the community which include effective enforcement mechanisms. All CC&R requirements should be enforceable not only by a neighborhood association [which has proved unworkable in existing mitigation programs] but by third parties. To give third parties an incentive to enforce CC&Rs designed to benefit or protect the public, these enforcement rules should include a "bounty hunter" provision providing for the successful enforcers to recover attorney fees and costs plus all or a portion of a monetary penalty to be paid by the person violating the CC&Rs.

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If private CC&Rs cannot be made perpetual, they should not be considered effective mitigation, and the project proponents should be required to

establish, up-front, a fund which provides sufficient income to pay for periodic inspection and enforcement of conditions in any approval of a project. Inspection reports should not only be provided to county and national forest officials, but made publicly available and advertised as such.



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The proposed community should include an initial assessment and an annual fee to be paid by each landowner to generate a fund to pay for an enforcement officer dedicated to this area, and/or for periodic, no less than semiannual, inspections to verify that restrictions on cutting trees, requirements to maintain open space and drainage, requirements, restrictions on marina and parking activities ,etc. are enforced. Any such restrictions should explicitly be stated as designed to benefit the public and enforceable on a third-party beneficiary basis by any member of the public.

- CC&Rs should prohibit construction on weekend periods, including 3-day weekends, perhaps beginning as early as the afternoon on Friday. These CC&R restrictions should be established in a manner that they are enforceable by persons within a designated radius of the project, such as 1,500 meters, or by community organizations representing such persons, and should provide for "bounty hunter" benefits and significant financial penalties to the offending landowner or contractor such that enforcement is more likely to be effective. Past experience has shown that homeowner associations and similar organizations are loathe to enforce their own restrictions, particularly during a period when the persons running the association may be chosen by the developer or may include landowners who wish to engage in the same noise-generating activities as the offenders. For this reason any CC&R , association rule or similar mitigations must contain an economic incentive for third party monitoring and enforcement.
- CC&Rs which prohibit temporary rental use should be enforceable by neighbors and community associations and should carry significant penalties. These penalties should be available to the complainant in the form of a 'bounty hunter' benefit, and a portion should be put into a fund to hire additional compliance officers for the county, assigned to the North Shore and Fawnskin areas. Any lesser 'restrictions" should be considered ineffective mitigation.
- The report should evaluate the reduction of noise and mitigation of noise effects which could be accomplished by eliminating the parking lot and marina.
- If the parking lot and marina are not eliminated, the report should evaluate the feasibility of limiting marina usage to minimize the impact on neighboring properties. For example, it should consider CC&Rs requiring the marina not be used before 9 a.m., and not be used after 6 pm.

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• **Additional Questions and Comments Concerning the Report**

- Why does the draft report not focus to a greater extent on noise impact on residential activities and campgrounds close to the project?
- Why does the report consider noise levels at Stanfield Cutoff or on Big Bear Boulevard relevant to analyzing the proposed project?

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