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8 UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
9 SACRAMENTO DIVISION

10  
11 LEAGUE TO SAVE LAKE TAHOE and  
SIERRA CLUB,

12 Plaintiffs,

13 vs.

14 TAHOE REGIONAL PLANNING AGENCY,

15 Defendant.

) Civ. No.

) **COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

16  
17  
18 **INTRODUCTION**

19 1. On October 22, 2008, the Governing Board of the Tahoe Regional Planning Agency  
20 (“TRPA”) adopted the Shorezone Ordinance Amendments (“Shorezone Amendments” or  
21 “Amendments”), which allow significantly increased development along Lake Tahoe’s shores,  
22 shared between the states of California and Nevada. By enacting the Amendments, TRPA not only  
23 violated its duty to protect the Lake from environmental degradation but also its fundamental charter  
24 to restore and maintain the health and natural beauty of one of the deepest and clearest lakes in the  
25 world. The Shorezone Amendments would allow an additional 128 private piers, 10 public piers,  
26 1,862 mooring buoys, 6 new boat ramps, and 235 boat slips to be constructed within Lake Tahoe’s  
27 Shorezone, impeding public access and marring scenic views along the shore. This new  
28 development would induce a significant increase in motorized boating, resulting in increased

1 emissions of boat exhaust, including pollutants such as carbon monoxide, nitrogen oxides,  
2 particulate matter, and various hydrocarbons. In addition to degrading the Region’s air quality,  
3 many of these pollutants have caused significant damage to Lake Tahoe’s famed clarity. Fine  
4 particulate matter deposited into the Lake, for example, scatters light and inhibits its transmission to  
5 greater depths, thus reducing clarity, while the atmospheric deposition of the nutrients nitrogen and  
6 phosphorus spurs the growth of algae, which also reduces the Lake’s clarity.

7         2. Lake Tahoe’s clarity is already in peril. Urbanization of the Tahoe Region within the  
8 last half century has resulted in accelerated loading of particulate matter and nutrients into the Lake,  
9 contributing to a greater than 30% loss of clarity since 1968. The Tahoe Regional Compact  
10 (“Compact”), the agreement between California and Nevada setting forth TRPA’s powers and duties  
11 in planning for the Region, requires TRPA to establish environmental threshold carrying  
12 capacities—standards to protect water quality, air quality, and the other resources that make up  
13 Tahoe’s renowned environment—and to implement a regional plan that achieves and maintains the  
14 threshold standards. Pursuant to these standards, TRPA is required to achieve the same level of  
15 clarity that existed in 1967-1971. However, in every evaluation of its achievement of the  
16 environmental thresholds, TRPA has consistently failed to meet this standard, as well as many  
17 others.

18         3. Despite this record of failure and the fact that the Shorezone Amendments are  
19 projected to result in a further decline of the Lake’s clarity, TRPA has found that the Regional Plan  
20 and all of its elements, as implemented through TRPA’s Code of Ordinances, including the  
21 Shorezone Amendments, achieves and maintains all of the thresholds. Such a finding is  
22 preposterous given that the Regional Plan currently fails to meet these thresholds and that the  
23 Shorezone Amendments are not directed towards their achievement, but will actually undermine the  
24 achievement of a variety of the threshold standards.

25         4. The only possible basis for TRPA’s findings that environmental thresholds will be  
26 achieved and maintained are supposed mitigation measures that have been incorporated into the  
27 Shorezone Amendments. Under the requirements of the Compact and the California Environmental  
28 Quality Act (“CEQA”), Cal. Pub. Res. Code §§ 21000 *et seq.*, TRPA has prepared an Environmental

1 Impact Statement (“EIS”) that purportedly analyzes the environmental impacts of the Shorezone  
2 Amendments and the proposed mitigation of those impacts. The centerpiece of TRPA’s efforts to  
3 mitigate air and water quality impacts, however, is a “Blue Boating Program,” composed of various  
4 conceptual elements lacking in definition and specifics as to how they will be implemented. For  
5 example, although increased motorized boating will result in additional emissions of 8 tons of  
6 particulate matter per year at full implementation of the Shorezone Amendments, TRPA has only  
7 vaguely referred to the future development and adoption of “pollution-control measures” and  
8 “different strategies” under the Blue Boating Program to reduce these impacts. Indeed, no plan for  
9 implementation of the Blue Boating Program is expected to be proposed until March 2009. Such ill-  
10 defined and deferred mitigation not only violates the Compact and CEQA’s requirements for  
11 sufficient specificity to allow the project’s environmental consequences to be meaningfully  
12 evaluated, but also precludes an analysis of the effectiveness of the mitigation measures. In turn, the  
13 defective analysis precludes TRPA’s findings that the Regional Plan, as amended by the Shorezone  
14 Amendments, achieves and maintains the thresholds and that the adopted mitigation measures  
15 reduce impacts to less than significant levels.

16 5. In addition to the Blue Boating Program, TRPA also relies on other mitigation  
17 measures that fail to adequately mitigate impacts of the dramatic increase in Shorezone structures.  
18 An Adaptive Management Program, intended to respond to worsening conditions in the Lake’s  
19 environment if the Blue Boating Program fails to mitigate impacts, is also ill-defined and  
20 unenforceable mitigation, in violation of the Compact and CEQA. A Fish Habitat Restoration Bank  
21 intended to mitigate the disturbance of fish spawning habitat caused by the addition of new private  
22 piers is likewise deferred mitigation and lacks adequate performance standards to ensure that  
23 mitigation will actually occur. A Lake Tahoe Public Access Fund intended to fund mitigation to  
24 offset the obstruction of public and recreational access caused by additional private piers and buoys  
25 will not provide sufficient funds for the retirement of old piers and lacks specific guidance as to how  
26 mitigation funds might be applied for other public access projects. In sum, TRPA has failed to  
27 provide adequate mitigation for the Shorezone Amendments’ impacts, including water quality, air  
28 quality, fishery, noise, and public recreational access impacts, cannot insure that the Region’s

1 standards will be met, and thus cannot rationally find that the Amendments achieve and maintain the  
2 thresholds.

3 6. Finally, the Shorezone Amendments and their failure to adequately mitigate  
4 environmental impacts also result in violations of the Clean Water Act’s Antidegradation Standard  
5 for Outstanding National Resource Waters (“ONRW”)—which both the U.S. Environmental  
6 Protection Agency and the state of California have designated the Lake. This standard prohibits  
7 permanent or long-term degradation of Lake Tahoe’s waters, which increased emissions from  
8 increased motorized boating would certainly cause.

9 7. In conclusion, TRPA’s (i) deficient findings that the Shorezone Amendments will  
10 achieve and maintain the thresholds, in violation of the Compact, (ii) inadequate description and  
11 analysis of significant impacts and mitigation measures, in violation of the Compact and CEQA, and  
12 (iii) failure to assure compliance with the ONRW standard render TRPA’s certification of the EIS  
13 and adoption of the Shorezone Amendments invalid, such that they must be set aside.

#### 14 **JURISDICTION AND VENUE**

15 8. This action arises under the Compact Clause of the United States Constitution,  
16 Article 1, section 10, clause 3; and the Tahoe Regional Planning Compact, Public Law No. 96-551,  
17 94 Statute 3233 (1980), Cal. Gov. Code § 66801, Nev. Rev. Stat. 277.200 (copy of Compact  
18 attached as Exhibit A). Jurisdiction of this Court is conferred by 28 U.S.C. § 1331 (federal  
19 question), 28 U.S.C. § 1367(a) (pendent jurisdiction over state claims), and Article VI(j) of the  
20 Compact. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the  
21 Federal Rules of Civil Procedure.

22 9. Venue is proper in this Court pursuant to Article IV(j)(2)(B) of the Compact, because  
23 the action challenged is an Ordinance adopted by the TRPA not involving a specific parcel of land.

24 10. Pursuant to 28 U.S.C. § 2201 *et seq.*, Plaintiffs seek a declaration of rights under the  
25 laws of the United States and California. There exists now between the parties hereto an actual,  
26 justiciable controversy in which Plaintiffs are entitled to have a declaration of their rights and of  
27 Defendant’s obligations, and further relief, because of the facts and circumstances hereinafter set  
28 out.

1           11.       This action was timely filed within 30 days of the TRPA Governing Board’s approval  
2 of the Shorezone Amendments.

3           12.       Plaintiffs have provided written notice of their intention to file this complaint to  
4 TRPA, pursuant to California Public Resources Code § 21167.5, and have attached a copy of the  
5 notice and proof of service to this complaint as Exhibit B.

6           13.       Plaintiffs have served the California Attorney General with a copy of their complaint,  
7 along with a notice of its filing, pursuant to California Public Resources Code § 21167.7, and have  
8 attached a copy of the notice and proof of service to this complaint as Exhibit C.

9                               **PARTIES**

10          14.       Plaintiff League to Save Lake Tahoe is a non-profit public benefit membership  
11 corporation organized under the laws of the State of California and authorized to do business in the  
12 State of California and as a foreign corporation in the State of Nevada. Its headquarters are in South  
13 Lake Tahoe, California. The League is composed of more than 4,000 individuals and families and  
14 for over 50 years has advocated for protection of the Tahoe Basin’s natural resources and the  
15 restoration of its famed clear water. Through advocacy and education programs, the League  
16 promotes restoration efforts and seeks to prevent further harm to Tahoe’s sensitive watershed. These  
17 efforts have included public campaigns for the establishment of TRPA in 1969 and the strengthening  
18 of the agency’s mandate in 1980; persuading the states of California and Nevada to terminate the  
19 practice of dumping sewage in the Lake Tahoe Basin; defeat of a plan to build a network of  
20 highways around the Lake including a bridge across the mouth of Emerald Bay; convincing the  
21 TRPA to adopt strong environmental threshold carrying capacities pursuant to the Compact;  
22 litigation that resulted in a settlement implementing a broadly supported plan to achieve and  
23 maintain those environmental threshold carrying capacities; litigation that resulted in a settlement  
24 establishing urban boundaries for the region to prevent the conversion of conservation and recreation  
25 areas to housing and commercial districts; persuading the agency to ban the use of polluting two-  
26 stroke engines on the waters of the region; and leading the highly successful effort to assure  
27 adequate and appropriate public investment in the conservation of Lake Tahoe. The League is an  
28 aggrieved person with standing to sue under Article VI(j)(3) of the Compact because it has appeared

1 through authorized representatives and in writing before the TRPA in connection with hearings  
2 regarding the challenged TRPA actions.

3 15. Plaintiff Sierra Club is a nationwide non-profit conservation organization formed in  
4 1892, with a mission to explore, enjoy, and protect the wild places of the Earth, to practice and  
5 promote responsible uses of the Earth's ecosystems and resources, to educate and enlist humanity in  
6 the protection and restoration of the quality of the natural and human environment, and to use all  
7 lawful means to carry out those objectives. Sierra Club has over 700,000 members, approximately  
8 85,000 of whom reside in California and Nevada, with approximately 850 members living in the  
9 Tahoe area. For many years the Sierra Club and its members have advocated for the protection of  
10 Lake Tahoe. These advocacy efforts have included advocating for proper boat inspection protocols  
11 in place to prevent quagga and zebra mussel infestations in the Lake, downsizing lakefront  
12 development in Homewood, preserving a rare stand of old growth red fir, and significantly reducing  
13 the footprint of development in Martis Valley, in furtherance of protecting air and water quality and  
14 wildlife corridors. The Sierra Club is an aggrieved person with standing to sue under Article  
15 VI(j)(3) of the Compact because it has appeared through authorized representatives and in writing  
16 before the TRPA in connection with hearings regarding the challenged TRPA actions.

17 16. Plaintiffs have individual members who live in the Lake Tahoe area, regularly visit  
18 Lake Tahoe, and intend to continue to use and enjoy Lake Tahoe in the near future and beyond.  
19 They visit the Lake for a variety of purposes, including scientific study, swimming, sailing,  
20 kayaking, canoeing, fishing, wildlife observation, photography, and hiking, and intend to continue to  
21 do so on an ongoing basis in the future. Plaintiffs' members derive recreational, spiritual,  
22 professional, aesthetic, educational, and other benefits and enjoyment from these activities.

23 17. Plaintiffs and their members have a procedural interest in influencing the  
24 management of Lake Tahoe through participation in the development of a meaningful, substantive  
25 Regional Plan for the Tahoe Area, amendments to the Plan, and implementing ordinances, as  
26 prescribed by the Compact, and in the development of comprehensive environmental analyses  
27 required by the Compact and CEQA.  
28

1           18.     The above-described interests of plaintiffs and their members have been and are  
2 suffering, and will continue to suffer, irreparable injury as a result of TRPA’s adoption of the  
3 Shorezone Ordinance and the agency’s failure to comply with the Compact. For example, the  
4 Ordinance allows the addition of new piers and buoys on the Lake, which will directly interfere with  
5 plaintiffs’ recreational access to the Lake, cause visual blight, and result in increased motorized  
6 boating on the Lake. Increased motorized boating will contribute to more pollution of the Lake’s  
7 environment, including both increased water and air pollution, which will contribute to further  
8 decline in the Lake’s famed clarity, higher noise levels, and unhealthier air. Increased motorized  
9 boating will also increase risks of invasion by non-native species and decrease access to non-  
10 motorized recreational activities on the Lake. All of these injuries will diminish the plaintiffs’  
11 members’ ability to enjoy non-motorized recreational activities in and around the Lake. TRPA has  
12 failed to adopt adequate mitigation measures to avoid or significantly reduce these and other  
13 significant adverse impacts of the Amendments, thus failing to prevent plaintiffs’ loss of use and  
14 enjoyment of the Lake’s environment caused by these impacts.

15           19.     TRPA’s failure to comply with the Compact and CEQA has injured plaintiffs and  
16 their members by depriving them of information to which they are entitled under both, including  
17 information pertaining to the Amendments’ impacts on environmental resources in the planning  
18 area, reasonable alternatives to the proposed action, and mitigation measures available to address  
19 adverse environmental impacts; by depriving plaintiffs and their members of a meaningful  
20 opportunity to comment on the missing information; denying them the procedural safeguards  
21 embodied in the Compact and CEQA to ensure that TRPA carefully considers the environmental  
22 consequences of its proposed action, environmentally superior alternatives to that action, and  
23 appropriate mitigation measures prior to granting any project approval; and by denying them  
24 adequate assurances that the Shorezone Amendments will achieve and maintain the environmental  
25 thresholds.

26           20.     Plaintiffs were actively involved throughout the legislative process for TRPA’s  
27 development of the Shorezone Amendments and preparation of the EIS. Plaintiffs participated in  
28 meetings, submitted comments to TRPA, and also submitted comments on the draft and final

1 environmental impact statements for the Shorezone Amendments. Plaintiffs consistently raised  
2 concerns about TRPA's preferred alternative and its impacts on water quality, air quality, scenic  
3 quality, noise levels, fisheries, and public access.

4 21. Plaintiffs' injuries will be redressed by the relief sought herein because the Shorezone  
5 Amendments would be set aside and a new environmental analysis of the Shorezone Amendments  
6 pursuant to the Compact should result in improved amendments to the Tahoe Regional Plan and  
7 Code of Ordinances that (1) eliminate or significantly reduce the number of new private piers and  
8 authorized buoys allowed, (2) adopt adequate mitigation measures for the impacts of increased  
9 motorized boating, (3) preserve the Lake's scenic quality and public access to the Lake, or (4) result  
10 in some combination of such measures that will mitigate the otherwise significant impacts of the  
11 Shorezone Amendments to a level of insignificance. Further, because the Regional Plan as amended  
12 and implemented by the Code of Ordinances and Shorezone Amendments does not achieve and  
13 maintain environmental thresholds, as required by Article V(c) of the Compact, the relief would  
14 require an amended Regional Plan that maintains and achieves the thresholds. Moreover, the relief  
15 would promote attainment of the environmental standards mandated by the Compact and compliance  
16 with the non-degradation provisions of the Clean Water Act in accord with Lake Tahoe's ONRW  
17 designation under that Act. All such relief would improve plaintiffs' opportunities for using and  
18 enjoying Lake Tahoe in the future.

19 22. Plaintiffs have no adequate remedy at law to address any of the foregoing injuries to  
20 their interests.

21 23. Defendant TRPA was created and exists as a separate legal entity pursuant to Article  
22 III(a) of the Compact. The Compact confers on TRPA powers and responsibilities for land use  
23 planning and environmental protection in the Lake Tahoe region. TRPA's decision making body is  
24 its Governing Board, comprised of a seven-member California delegation, each of whom is  
25 appointed by a certain designated state or local governmental body or state official of the State of  
26 California; a seven-member Nevada delegation, six of whom are variously appointed by certain local  
27 governmental bodies or state officials of the State of Nevada, and one of whom is appointed by the  
28 other six appointees; and one non-voting member appointed by the President of the United States.



1 Compact, Art. III(a)(1), (2); Art. X(d)(3). The Governing Board is empowered and required to  
2 “adopt all necessary ordinances, rules, and regulations to effectuate the adopted regional plan.” Art.  
3 VI(a). Agency staff employed by the Governing Board execute the powers and functions provided  
4 by the Compact. Art. IV(a). TRPA is a public agency for purposes of CEQA. *See* Cal. Pub. Res.  
5 Code § 21063.

## 6 **FACTUAL BACKGROUND**

### 7 **LAKE TAHOE AND THE TAHOE REGION**

8 24. Situated in a spectacular setting near the crest of the Sierra Nevada mountains at an  
9 elevation of approximately 6,225 feet above sea level, Lake Tahoe is one of the most well-known  
10 and revered fresh water bodies in the United States. The geologic basin that cradles the Lake is  
11 dominated by impressive mountains, steep slopes, and erosive, nutrient-poor granitic soils, as well as  
12 some volcanic rocks and soils. Most remarkably, Lake Tahoe is one of the clearest lakes in the  
13 world for its size and depth. The Lake covers 191 square miles (it is approximately 12 miles wide  
14 and 22 miles long) and has one outlet, the source of the Truckee River, which ultimately drains into  
15 Pyramid Lake, a terminal lake in Nevada. With a maximum depth of approximately 1,636 feet, Lake  
16 Tahoe is the tenth deepest lake in the world.

17 25. Lake Tahoe is classified as “oligotrophic,” meaning that it has very low  
18 concentrations of nutrients that support the growth of algae. The relative absence of algae is a  
19 primary reason for the exceptional clarity of the water. Various unique geographic and ecological  
20 factors contribute to the Lake’s oligotrophic status. The surrounding region’s shallow soils are  
21 nutrient-poor, and organic material decomposes more slowly in the region’s cool climate. Further,  
22 the quantity of nutrients discharged into the Lake is relatively small compared to the Lake’s size.

23 26. Thus, Lake Tahoe’s oligotrophic conditions have persisted over time. These  
24 conditions, however, are fragile, and accelerated algal growth can be induced by small incremental  
25 additions of nutrients to the Lake. Lake Tahoe has an exceptionally long “residence time,” with the  
26 typical drop of water residing in the Lake for approximately 700 years. As a result, nutrients that  
27 enter Lake Tahoe through inflow or other sources remain either in solution or bottom sediments.

1 The Lake therefore behaves like a sink, collecting sediments and nutrients with limited means of  
2 removal.

3 27. Continuous, long-term monitoring and evaluation of water quality in Lake Tahoe  
4 since the early 1960s has shown declining clarity attributable to an increase in algae production and  
5 the addition of fine sediments (primarily particle sizes 20 microns or less in diameter). In addition to  
6 decreased water quality, the Lake Tahoe Basin has also suffered from degradation of air quality,  
7 terrestrial landscape, and tributary streams due to various factors including land disturbance through  
8 development, increasing resident and tourist populations, habitat destruction, soil erosion, road  
9 construction and maintenance, and the loss of wetlands, undisturbed land, and other areas that filter  
10 runoff. The combination of these factors has resulted in a decline in Lake Tahoe’s famed clarity—  
11 with visibility once measured at more than 100 feet deep—at a rate of nearly one foot per year since  
12 1968.

### 13 **THE TAHOE REGIONAL PLANNING COMPACT**

14 28. In 1968, the states of California and Nevada entered into an interstate agreement  
15 designed to ensure the conservation of resources and control development in the Lake Tahoe Basin.  
16 The agreement, known as the Tahoe Regional Planning Compact, created TRPA to serve as the land  
17 use and environmental resource planning agency for the Lake Tahoe Region and became effective  
18 when it received the consent of Congress in December 1969. Pub. L. No. 91-148 (1969). When the  
19 1969 Compact failed to be the powerful environmental protection mechanism that it was intended to  
20 be, the two states extensively amended the document and Congress consented to the changes on  
21 December 19, 1980. Pub. L. No. 96-551 (1980).

22 29. The central purpose of the Compact and of TRPA is to ensure that planning and  
23 development in the Lake Tahoe region is consistent with achieving and maintaining certain  
24 environmental standards for the region. *See* Compact, Art. I(b) (“[I]t is imperative that there be  
25 established a Tahoe Regional Planning Agency with the powers conferred by this compact including  
26 the power to establish environmental threshold carrying capacities and to adopt and enforce a  
27 regional plan and implementing ordinances which will achieve and maintain such capacities while  
28 providing opportunities for orderly growth and development consistent with such capacities.”)

1           30.     The Compact requires TRPA to adopt environmental threshold carrying capacities  
2 (“threshold standards” or “thresholds”). A threshold standard is “an environmental standard  
3 necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the  
4 region or to maintain public health and safety within the region.” Compact, Art. II(i). Such  
5 standards shall include, but not be limited to, “standards for air quality, water quality, soil  
6 conservation, vegetation preservation and noise.” *Id.* In order to attain the threshold standards, the  
7 Compact requires TRPA to adopt and enforce a Regional Plan and implementing ordinances which  
8 will achieve and maintain the thresholds. Compact, Art. I (b), V(b), (c).

9           31.     On August 26, 1982, by Resolution No. 82-11, TRPA adopted thresholds for the  
10 Region. On or about April 26, 1984, TRPA adopted the 1984 Regional Plan, and the Plan was  
11 amended in September 1986 and February 1987. Another effort to revise the Regional Plan known  
12 as “Pathway 2007” was undertaken in 2001, but the revisions have not been completed or finalized,  
13 and the 1987 Regional Plan still governs the Region. The Code of Ordinances (“Code”) for  
14 implementation of the Regional Plan, as required by the Compact, was adopted in May 1987.

15           32.     Several provisions of the Compact are of particular importance in ensuring that the  
16 thresholds will be achieved and maintained in the regional planning process. First, Article V of the  
17 Compact requires that “the regional plan . . . and all its elements, as implemented through agency  
18 ordinances, rules and regulations, achieves and maintains the adopted environmental threshold  
19 carrying capacities.” Art. V(c). Section 6.5 of the Code of Ordinances thus requires that in order for  
20 TRPA to approve any amendment or adoption of the Code, TRPA must find that “the Regional Plan  
21 and all of its elements, as implemented through the Code, Rules and other TRPA plans and  
22 programs, as amended, achieves and maintains the thresholds.”

23           33.     Second, Article V(g) of the Compact requires TRPA to make certain other findings  
24 that relate to environmental protection before approving any project or activity that may  
25 substantially affect the natural resources of the region, to “insure that the project under review will  
26 not adversely affect implementation of the regional plan and will not cause the adopted  
27 environmental threshold carrying capacities of the region to be exceeded.” Chapter 6 of the Code of  
28

1 Ordinances prescribes the specific written findings required pursuant to Article V(g) before any  
2 project is approved.

3 34. Third, Article VII of the Compact requires TRPA to prepare and consider a detailed  
4 Environmental Impact Statement before approving or carrying out any project that may have a  
5 significant effect on the environment. Art. VII(a)(2). The EIS must include, among other things,  
6 “[t]he significant environmental impacts of the proposed project,” “[a]ny significant adverse  
7 environmental effects which cannot be avoided should the project be implemented,” “[a]lternatives  
8 to the proposed project,” and “[m]itigation measures which must be implemented to assure meeting  
9 standards of the region.” Art. VII(a)(2)(A)-(D). Article VII also requires that, before approving a  
10 project, TRPA must find that mitigation measures that avoid or reduce significant adverse  
11 environmental impacts to a less significant level have been incorporated into the project or that such  
12 measures are infeasible. Art. VII(d)(1), (2).

### 13 **REGULATION OF THE SHOREZONE AND THE SHOREZONE AMENDMENTS**

14 35. At issue here are amendments to the Code of Ordinances that modify TRPA’s  
15 regulation of the Shorezone. The Shorezone Amendments lift the ban on new Shorezone structures  
16 within prime fish habitat and allow for the addition of 128 private piers, 10 public piers, 1,862 buoys  
17 (over and above the 4,454 buoys currently on the lake, approximately one third to one half of which  
18 are not authorized by TRPA), 6 boat ramps, and 235 boat slips along the Lake.

19 36. The Lake Tahoe Shorezone is an environmentally complex area, where the lake meets  
20 the land at Lake Tahoe, consisting of the backshore, foreshore, and nearshore of the Lake. At a  
21 minimum, this includes the area 350 feet lakeward from the shoreline (the nearshore), the zone of  
22 lake level fluctuation (the foreshore), and the area of instability extending from the high water level  
23 to stable uplands (the backshore). The environmental resources provided by the Shorezone are  
24 significant. The Shorezone includes fish habitat, including feeding, cover, and spawning habitat, as  
25 well as habitat for many native plant species. Scenically unique, the Shorezone provides a diversity  
26 of views ranging from sandy beaches to isolated coves, rocky shorelines, and steep cliffs. The  
27 Shorezone also offers many recreational opportunities, including hiking, swimming, fishing,  
28 kayaking, canoeing, and wildlife observation.

1           37.     Development within the Shorezone, such as the addition of piers, buoys, boat ramps,  
2 boat slips, and lifts, has also allowed for other recreational opportunities, most significantly  
3 motorized boating. However, the addition of these Shorezone structures has degraded the quality of  
4 the Shorezone’s biological, scenic, and recreational resources. The Shorezone structures disturb  
5 fisheries and vegetation, create visual clutter along the shoreline, increase the risk of invasive species  
6 introduction, promote algal growth, and inhibit public access to and along the Lake. Further, the  
7 addition of new Shorezone structures has led to increased motorized boating on the Lake, which, in  
8 turn, has contributed to impacts upon water quality, air quality, and noise levels, due to emissions  
9 and noise produced by boat motors.

10           38.     Regulation of the Shorezone is thus essential to the achievement and maintenance of  
11 the Tahoe Region’s environmental thresholds. The Compact requires TRPA to plan and regulate the  
12 Shorezone in the Lake Tahoe Region. *See* Compact, Arts. V & VI. These regulations are embodied  
13 in TRPA’s “Goals and Policies,” which include a “Shorezone Subelement”; Chapters 50-56 of the  
14 Code of Ordinances; and certain Plan Area Statements.

15           39.     The Shorezone Amendments arose out of TRPA’s duty to reconsider a moratorium on  
16 development within prime fish habitat. When the Code of Ordinances was adopted in 1987, Chapter  
17 54 of the Code included prohibitions on the placement of new piers, mooring buoys, boat ramps, and  
18 floating docks and platforms in prime fish habitat, *i.e.*, feeding, cover, and spawning habitat. It also  
19 prohibited the addition of such structures within 200 feet of certain stream mouths serving as fish  
20 habitat and migratory routes around the Lake. Further, Chapter 54 directed TRPA to (1) conduct  
21 studies by 1989 to assess the impacts of Shorezone structures on fish habitat and spawning areas in  
22 Lake Tahoe and the mouths of tributaries (“fish studies”) and (2) after completion of the studies, to  
23 reconsider by 1990 the location standards for piers, boat ramps, mooring buoys, and floating docks  
24 and platforms.

25           40.     Thereafter, TRPA conducted the fish studies and an inventory of existing Shorezone  
26 structures. In 1994, based on the outcome of the fish studies, TRPA began reconsidering location  
27 standards for Shorezone structures. The reconsideration of location standards led TRPA to develop  
28 and issue its first draft EIS in 1995 (“1995 DEIS”) concerning the cumulative impacts of various

1 potential future “conceptual” development scenarios. As a result of controversy regarding the 1995  
2 DEIS, this EIS was never finalized.

3 41. In April 1999, a second DEIS was released for public comment (“1999 DEIS”). The  
4 1999 DEIS analyzed proposed amendments to the Shorezone Ordinances that would allow increased  
5 development within the Shorezone. Again, as a result of controversy regarding these amendments,  
6 the 1999 EIS was never finalized.

7 42. In 2004, TRPA drafted revised proposed amendments to the Shorezone Ordinances  
8 and released a third DEIS to evaluate the revisions (“2004 DEIS”). The 1999 DEIS served as a basis  
9 for the analysis in the 2004 DEIS. The 2004 DEIS considered five alternatives, including a proposed  
10 project alternative that eliminated almost all prohibitions on the location of structures in prime fish  
11 habitat and allowed a significant increase of additional structures within the Shorezone. The 2004  
12 DEIS was circulated for a 90-day public review period.

13 43. In response to the public comment received, TRPA developed a sixth alternative  
14 (“Alternative 6”) and drafted and released in July 2005 a supplemental draft EIS (“SDEIS”) to  
15 address the new alternative. According to the SDEIS, Alternative 6 was “designed as a ‘self-  
16 mitigating’ approach to amending the Code in that its provisions would incorporate environmental  
17 considerations and require little additional mitigation.” The “upfront” mitigation included limiting  
18 additional development in the Shorezone through 2028 to 220 private piers and 10 public piers, with  
19 a maximum of 10 private piers allocated each year. Additional buoys would also be limited to 1,862  
20 buoys over the planning period. Alternative 6 also first introduced the broad mitigation elements of  
21 (1) some type of boat inspection and sticker program, the revenue from which would be intended to  
22 fund water quality monitoring and anti-pollution education programs; (2) an adaptive management  
23 program intended to respond to changing conditions if yet-to-be-defined performance standards were  
24 not met; and (3) a \$100,000 mitigation fee for each new private pier, the revenue from which would  
25 be intended to fund improvements to recreational access in an unspecified manner. The SDEIS was  
26 circulated for a 60-day public review period.

27 44. In response to public comments regarding Alternative 6, in November 2006, TRPA  
28 released a Final EIS (“FEIS”) which included a modified version of Alternative 6, known as

1 Alternative 6A. Alternative 6A included the same development limits as Alternative 6 and further  
2 described or modified the mitigation measures in Alternative 6. In addition, it included mitigation  
3 for pier expansions or modifications in fish spawning habitats. The proposed amendments were  
4 revised to track Alternative 6A. TRPA allowed a 60-day comment period for the FEIS and the  
5 proposed ordinances as revised.

6 45. In January 2007, the TRPA released a 62-page document titled “Supplemental  
7 Information on Lake Tahoe Shorezone Proposed Program” that provided an explanation of the  
8 TRPA’s previous emissions and air quality analysis, further description of contemplated mitigation  
9 measures, and for the first time included supposed performance measures for the mitigation  
10 programs. No comment period was held for this document.

11 46. After receiving public comment regarding Alternative 6A, in August 2008, TRPA  
12 released an Addendum to the FEIS (“AFEIS”). The AFEIS described a seventh “Preferred  
13 Alternative” that reduced the total maximum number of piers allowed to 138 piers and reduced the  
14 allocation rate to 5 private piers per year. The Preferred Alternative incorporated many elements of  
15 the previous alternatives, or modified versions, including:

- 16 (a) Lifting the ban on additional Shorezone development in prime fish habitat.
- 17 (b) Permitting a maximum of 1,862 new buoys in the Lake, in addition to the  
18 existing 4,454 buoys (between a third and half of which are unauthorized).
- 19 (c) Permitting the addition of a maximum of 6 new boat ramps and 235 boat slips.
- 20 (d) Requiring the implementation of an unformulated “Blue Boating Program,”  
21 including a self-certification and registration program with undefined requirements, intended to  
22 mitigate air quality, water quality, and noise impacts.
- 23 (e) Requiring the adoption of an Adaptive Management Program, intended to  
24 mitigate all of the potential significant effects of the proposed project by developing and  
25 implementing corrective actions if other mitigation measures did not meet yet-to-be-defined  
26 performance standards.
- 27 (f) Establishing the Lake Tahoe Public Access Fund, intended to mitigate  
28 recreational, scenic, and public access impacts in some unspecified manner through funds generated

1 from a \$100,000-per-private-pier fee.

2 (g) Providing for some type of fish spawning habitat mitigation bank.

3 (h) Including a 7-mph speed limit for Emerald Bay.

4 47. The proposed amendments were once again revised to conform to the Preferred  
5 Alternative.

6 48. At this juncture the “Final EIS” consisted of the 2004 DEIS, the 2005 SDEIS, the  
7 2006 FEIS, and the 2008 AFEIS. Collectively, these documents acknowledged significant  
8 environmental impacts of the Preferred Alternative:

9 49. First, the EIS recognized that the Preferred Alternative would result in an incremental  
10 increase of 2849.4 boat trips per year, resulting in 294,895 boat trips per year at full implementation  
11 (when all new ramps will have been constructed), or 62,686 boat trips more than the baseline. Total  
12 boat launches per year would increase from 54,809 launches to 70,796 launches per year at full  
13 implementation, or 15,987 boat launches more than the baseline.

14 50. Second, the Final EIS recognized that the additional boat trips and boat launches  
15 induced by the new Shorezone structures would result in increased boat emissions contributing to  
16 overall nutrient loading and increasing algal productivity. This would decrease water clarity and  
17 create turbidity in the littoral zone in violation of clarity thresholds. At full buildout the induced  
18 boat traffic would produce *additional* emissions of:

- 19 • 177 tons of hydrocarbons and 92 pounds of polycyclic aromatic hydrocarbons  
20 (“PAHs”) per year from increased operation of motorized watercraft;
- 21 • 318 tons of nitrogen oxides (“NOx”) per year from increased operation of motorized  
22 watercraft (although not yet quantified through research, some portion of these NOx  
23 emissions may deposit to Lake Tahoe, increasing nitrogen in the Lake);
- 24 • 8.2 tons of particulate matter (“PM”) per year from increased motorized watercraft  
25 use (as with NOx, some portion of this PM may contribute to particulates in Lake  
26 Tahoe, reducing lake clarity); and



- Airborne particulates (including phosphorus and nitrogen) created by increased land vehicle use resulting from the growth in shorezone activities and use (not quantified in the Final EIS).

51. These new discharges could potentially violate EPA’s nondegradation standard for Lake Tahoe, state drinking water quality standards, and TRPA’s water quality thresholds.

52. Third, the Final EIS concluded that the Preferred Alternative would result in increased boat emissions contributing to degradation of the Region’s air quality. On top of current baseline level emissions, at full buildout, the AFEIS estimates this would include *additional* motorized watercraft emissions of 318 tons of NO<sub>x</sub>, 177 tons of hydrocarbons (“HCs”), 400 tons of carbon monoxide (“CO”), and 8.2 tons of PM per year. Further, because NO<sub>x</sub> and HCs are precursors to ozone, the increases in these emissions could lead to elevated ozone levels. Because TRPA’s ozone threshold standards are exceeded every year, and the Basin has violated California’s 8-hour ozone standard in recent years, increases in NO<sub>x</sub> and HCs would create a significant environmental impact, exacerbating the already excessive ozone levels. Similarly, because the CO standard and California’s Particulate Matter 10 microns or less (“PM10”) standard have been exceeded in recent years, increases in CO and PM would also create a significant environmental impact.

53. Other significant environmental impacts of the Preferred Alternative included:

(a) Increased noise levels caused by increased motorized boating and increased land vehicle traffic accessing public facilities, which degrade the enjoyment of the Lake’s serene environment;

(b) The disturbance of fish spawning habitat caused by the construction of new Shorezone structures in such habitat;

(c) Reduced recreational access caused by construction of new Shorezone structures, including reduced lateral Shorezone pedestrian access, obstacles to nearshore navigation and swimming, and barriers to top-line fishing areas in fish habitat; and

(d) The degradation of scenic quality caused by increased visual clutter along the shoreline, including within visually sensitive areas.

1           54.       The Final EIS, however, concluded that, because “upfront” mitigation measures had  
2 been incorporated into the Preferred Alternative, all of the significant impacts would be reduced to  
3 less than significant levels.

4           55.       On October 22, 2008, the Governing Board of the TRPA held a public hearing on  
5 whether to certify the Final EIS for the Shorezone Amendments and adopt the Amendments. The  
6 Final EIS consisted of the 2004 DEIS, the 2005 SDEIS, the 2006 FEIS, and the 2008 AFEIS. After  
7 hearing public comment, the Governing Board made additional changes to the Shorezone  
8 Amendments, which reduced protections for public access along the Lake by eliminating or severely  
9 limiting review of whether new Shorezone development projects would interfere with public access.  
10 An 8-6 majority of TRPA’s Governing Board certified the Final EIS, adopted threshold-related and  
11 EIS findings pursuant to the Compact and Chapters 5 and 6 of the Code, and adopted the  
12 Amendments.

## 13   **CLAIMS FOR RELIEF**

### 14   **FIRST CLAIM**

#### 15   **FAILURE OF REGIONAL PLAN TO COMPLY WITH** 16   **ENVIRONMENTAL THRESHOLDS**

17           56.       Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the  
18 preceding paragraphs.

19           57.       The Regional Plan, and any amendment to the Regional Plan, must achieve and  
20 maintain the environmental threshold carrying capacities of the region. Compact, Art. V(c), V(g);  
21 Code §§ 6.4, 6.5.

22           58.       Article V of the Compact requires that “the regional plan . . . and all its elements, as  
23 implemented through agency ordinances, rules and regulations, achieves and maintains the adopted  
24 environmental threshold carrying capacities.” Art. V(c). Pursuant to this Article, section 6.5 of the  
25 Code of Ordinances requires “Findings Necessary To Amend Or Adopt TRPA Ordinances, Rules Or  
26 Other TRPA Plans And Programs.” This section requires that in order for TRPA to approve any  
27 amendment or adoption of ordinances, TRPA must find that “the Regional Plan and all of its  
28

1 elements, as implemented through the Code, Rules and other TRPA plans and programs, as  
2 amended, achieves and maintains the thresholds.” *See* Code § 6.5.

3 59. In addition, Article V(d) requires the Regional Plan to “provide for attaining and  
4 maintaining Federal, State, or local air and water quality standards, whichever are strictest, in the  
5 respective portions of the region for which the standards are applicable.” The thresholds for air and  
6 water quality incorporate these standards.

7 60. TRPA has failed and is failing to achieve and maintain compliance with numerous  
8 threshold standards, including various federal, state, and local air and water quality standards. Since  
9 1991, TRPA has conducted four threshold evaluations assessing the Region’s progress in achieving  
10 and maintaining the thresholds. The most recent threshold evaluation occurred in 2006. This  
11 evaluation reveals that 27 of 36 threshold indicators are not in attainment status, including but not  
12 limited to the following:

13 (a) Water quality standards. Six of seven standards are not in attainment and  
14 have never been in attainment status:

15 (1) The water quality standard of a winter mean Secchi disk transparency  
16 of 33.4 meters, *i.e.*, the maximum depth at which a white disk can be seen from the water’s surface,  
17 a measure of the clarity of Lake Tahoe, is not being attained. For 2006, the winter mean Secchi disk  
18 transparency was 23.43 meters, and the clarity of Lake Tahoe has been declining and continues to  
19 decline at an average rate of almost one foot per year.

20 (2) The water quality standard for annual mean phytoplankton primary  
21 productivity (“PPr”), a measure of algal productivity that relates to the clarity of Lake Tahoe, is a  
22 maximum of 52 gmC/m<sup>2</sup>/yr. This standard is not being attained, and the level of algal productivity  
23 is increasing and continues to increase. In 2006, annual mean PPr measured 205.5 gmC/m<sup>2</sup>/yr, or  
24 nearly four times the standard of 52 gmC/m<sup>2</sup>/yr.

25 (3) The water quality standards for discharges to surface water, which set  
26 maximum allowable annual average concentrations for dissolved inorganic nitrogen, dissolved  
27 phosphorus, dissolved iron, grease and oil, and suspended sediment have not been met.

28 (4) The water quality standards for discharges to groundwater, which set

1 maximum concentrations of nutrients, including nitrogen, phosphate, iron, grease and oil, and  
2 suspended sediment, have not been met.

3 (5) The water quality standards for the tributaries feeding into Lake  
4 Tahoe, which set maximum allowable concentrations for dissolved inorganic nitrogen, dissolved  
5 phosphorus, dissolved iron, and suspended sediment, have not been achieved.

6 (6) TRPA has failed to demonstrate compliance with the threshold  
7 standards for water quality for Fallen Leaf Lake, including Secchi depth and near-surface water  
8 temperature.

9 (b) Air quality standards. Six of eight air quality standards are not in attainment  
10 status, including:

11 (1) The requirement of maintenance of carbon monoxide concentrations in  
12 the air at or below 6.0 parts per million (“ppm”) averaged over eight hours is not being achieved.

13 (2) The threshold standard that ozone concentrations in the air shall not  
14 meet or exceed a 1-hour standard of 0.08 ppm is not being achieved, and the Region has exceeded  
15 TRPA’s standard for ozone for every threshold report to date. Additionally, the Region has recently  
16 exceeded California’s 8-hour ozone standard of 0.070 ppm several times.

17 (3) The region is not in compliance with the California 24-hour air quality  
18 standard for inhalable particulates (PM 10) that particulate matter concentrations shall not exceed  
19 50µg/m<sup>3</sup>.

20 (4) The threshold requirement that vehicle miles of travel (“VMT”) be  
21 reduced by ten percent from the 1981 base year value is not being achieved. The Region has  
22 exceeded TRPA’s standard for VMT for every threshold report to date.

23 (c) Noise: The threshold standards for noise levels setting the maximum  
24 allowable noise levels for single noise events (such as from land vehicles and boats) and for  
25 background noise (or community noise) are not being met.

26 (d) Scenic resources: None of the four threshold standards for maintenance of  
27 scenic quality is being attained or has ever been in attainment status, including the standard for travel  
28 route ratings, which tracks long-term, cumulative changes to views seen from major roadways and

1 changes to the views seen from Lake Tahoe looking to the shore, and the standard for scenic quality  
2 rating, which protects specific views of scenic features observable from major roadways and from  
3 the Lake.

4 (e) Fisheries: The threshold requirements for maintenance of fish habitat in the  
5 Lake is not in attainment and has never been in attainment status.

6 (f) Vegetation and wildlife preservation: Four of six threshold requirements for  
7 species preservation are not in attainment, including standards for the abundance, species richness,  
8 and patterns of common vegetation; the minimum percentage of forested lands in the Region in a  
9 late seral, or old-growth, condition; minimum numbers of population sites and minimum radii of  
10 disturbance-free zones for special interest species such as the bald eagle; and a non-degradation  
11 standard and preservation and restoration goals for riparian habitat.

12 (g) Soil conservation: Both of the threshold requirements, which set forth  
13 maximum impervious coverage percentages for different types of land, as well as goals for  
14 preserving and restoring stream environment zones within the Region, are not in attainment and have  
15 never been in attainment status.

16 (h) The attainment status of several threshold standards is unknown, including the  
17 standards for wood smoke (air quality), atmospheric nutrient loading (air quality), fish stream habitat  
18 (fishery), and single event aircraft noise.

19 61. The Shorezone Amendments cannot be lawfully approved because TRPA cannot  
20 properly find that the Regional Plan and all of its elements, as implemented through the Code, Rules  
21 and other TRPA plans and programs, as amended by the Shorezone Amendments, achieves and  
22 maintains the thresholds. Code § 6.5. This is so because the Regional Plan is currently not  
23 achieving and maintaining the vast majority of the thresholds and because the Shorezone  
24 Amendments are not directed towards curing, nor do they cure, all of the areas of non-attainment.

25 62. In addition, TRPA cannot properly find that the Regional Plan as amended achieves  
26 and maintains the thresholds, because the Shorezone Amendments will actually undermine their  
27 attainment. Specifically:

28 (a) The Shorezone Amendments fail to assure compliance with water quality

1 thresholds, including winter mean Secchi disk transparency and PPr thresholds, by allowing  
2 additional Shorezone structures, including at least twice the number of buoys historically allowed in  
3 the Lake, inducing increased motorized boating and land vehicle trips, contributing to overall  
4 nutrient loading, and increasing algal productivity. In addition, the Shorezone Amendments allow  
5 dredging to occur within the Lake, which disturbs substrate and thus creates littoral turbidity and  
6 reduces water clarity and quality.

7 (b) The Shorezone Amendments fail to assure compliance with air quality  
8 thresholds, including carbon monoxide and ozone thresholds, by inducing increased motorized  
9 boating and land vehicle trips, contributing increased emissions of air pollutants or their precursors.

10 (c) The Shorezone Amendments fail to assure compliance with noise thresholds  
11 by inducing increased motorized boating and land vehicle trips, contributing to increased noise  
12 levels.

13 (d) The Shorezone Amendments fail to assure compliance with recreational  
14 thresholds, by allowing additional Shorezone structures to be placed in the lake, thus reducing lateral  
15 shorezone pedestrian access, creating obstacles to nearshore navigation and swimming, and creating  
16 barriers to top-line fishing areas in fish habitat.

17 (e) The Shorezone Amendments fail to assure compliance with scenic quality  
18 thresholds by allowing additional Shorezone structures to be placed in the lake, thereby increasing  
19 visual clutter along the shoreline, including within visually sensitive areas.

20 (f) The Shorezone Amendments fail to assure compliance with fisheries  
21 thresholds by allowing additional Shorezone structures to be placed in the lake, contributing to  
22 disturbance of fish spawning habitat. In addition, the Shorezone Amendments allow dredging to  
23 occur within the Lake, which disturbs substrate and thus harms fish habitat.

24 63. Moreover, because the “upfront” mitigation measures incorporated into the  
25 Shorezone Amendments are unformulated and undefined, not fully enforceable, and will not actually  
26 result in mitigation, the Regional Plan as amended and implemented by the Shorezone Amendments  
27 cannot be properly found to achieve and maintain the thresholds.



1 project to cumulative accounts measuring thresholds compliance, to confirm that any resource  
2 capability utilized by the project is within the amount of the remaining capacity available under the  
3 thresholds, to confirm that the project will not prevent attainment of any adopted target date or  
4 interim target, and to identify an adequate means, including setting a baseline status, by which  
5 mitigation measures will be evaluated.

6 68. TRPA’s findings that the Shorezone Amendments (a) are consistent with, and will not  
7 adversely affect implementation of, the Regional Plan, (b) will not cause the environmental  
8 thresholds to be exceeded, and (c) meet or exceed the strictest applicable Federal, State, or local air  
9 and water quality standards have no basis in the record and are arbitrary and capricious, in view of  
10 the significant environmental impacts that will result from adoption of the Shorezone Amendments  
11 and undermine compliance with the thresholds, and the lack of certain, enforceable, and effective  
12 mitigations for these additional impacts. Further, TRPA failed to make the findings required by  
13 Code of Ordinances section 6.3.B, including identification of each of the impacts of the project and  
14 its effect on attainment of adopted targets and environmental thresholds and thus has failed to  
15 proceed in a manner required by law. Thus, the Shorezone Amendments are invalid as a violation of  
16 the Compact and the Code, and TRPA’s adoption of the Shorezone Amendments must be set aside.

17 **THIRD CLAIM**

18 **FAILURE TO MITIGATE ENVIRONMENTAL IMPACTS ADEQUATELY**  
19 **UNDER THE COMPACT AND CEQA**

20 **A. Background on CEQA, NEPA, and the Compact**

21 69. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the  
22 preceding paragraphs.

23 70. The sufficiency of an EIS prepared by TRPA is governed and guided by three  
24 different bodies of law: Article VII of the Compact, which requires the preparation of an EIS before  
25 deciding to approve or carry out a project that may substantially affect the region’s natural resources;  
26 the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, which, although not  
27 directly applicable to TRPA, because it is not a federal agency, nevertheless has guided courts in  
28 interpreting the Compact’s EIS requirements, *Committee for Reasonable Regulation of Lake Tahoe*,



1 365 F. Supp.2d 1146, 1156 (D. Nev. 2005); and CEQA, which requires the preparation of an  
2 “Environmental Impact Report” before approval of any project “that may have a significant effect  
3 on the environment,” Cal. Pub. Res. Code § 21100, and which applies to TRPA’s decisions affecting  
4 the state of California, *see, e.g., California Dep’t of Transp. v. City of South Lake Tahoe*, 466 F.  
5 Supp. 527, 537 (E.D. Cal. 1978). Both the Compact and CEQA require “detailed” analysis of the  
6 significant environmental impacts of a project, before a project may be approved. Compact, Art.  
7 VII; Cal. Pub. Res. Code § 21100(b). Under the Compact an EIS must include mitigation measures  
8 “which must be implemented to assure meeting standards of the Region.” Art. VII(a)(2)(D). In  
9 addition, before approving a project for which an EIS was prepared, the agency must make the  
10 following findings for each significant effect: “(1) Changes or alterations have been required in or  
11 incorporated into such project which avoid or reduce the significant adverse environmental effects to  
12 a less significant level; or (2) Specific considerations, such as economic, social or technical, make  
13 infeasible the mitigation measures or project alternatives discussed in the [EIS] on the project.” Art.  
14 VII(d)(1)-(2); Code § 5.8D.

15 71. Similarly, CEQA requires a “detailed statement” of “[m]itigation measures proposed  
16 to minimize significant effects on the environment,” Cal. Pub. Res. Code § 21100, and that public  
17 agencies, prior to project approval, make one of the following findings with respect to each  
18 significant effect: “(1) Changes or alterations have been required in, or incorporated into, the project  
19 which mitigate or avoid the significant effects on the environment. (2) Those changes or alterations  
20 are within the responsibility and jurisdiction of another public agency and have been, or can and  
21 should be, adopted by that other agency. (3) Specific economic, legal, social, technological, or other  
22 considerations . . . make infeasible the mitigation measures or alternatives identified in the  
23 environmental impact report.” Cal. Pub. Res. Code § 21081.

24 72. The Compact and CEQA, therefore, both impose substantive requirements on a  
25 project to provide for the mitigation of significant environmental effects. As a consequence,  
26 “[f]ormulation of mitigation measures should not be deferred until some future time.” Cal. Admin.  
27 Code tit. 14 (“CEQA Guidelines”), § 15126.4(a)(1)(B). Only under very limited conditions is  
28 deferral appropriate under CEQA: if the agency (i) commits to mitigation, (ii) lists the alternatives to

1 be considered, analyzed, and possibly incorporated in the mitigation plan, (iii) articulates specific  
2 performance criteria for the deferred mitigation, and (iv) explains why it is not reasonably practical  
3 or feasible to provide a more complete analysis of the mitigation before project approval. *See San*  
4 *Joaquin Raptor Rescue Ctr. v. Cty. of Merced*, 149 Cal.App.4<sup>th</sup> 645, 670 (5<sup>th</sup> Dist. 2007). In  
5 addition, mitigation must be “fully enforceable.” Cal. Pub. Res. Code § 21081.6(b); CEQA  
6 Guidelines § 15126.4(a)(2).

7 73. Further, an EIS must contain a detailed discussion of possible mitigation measures  
8 and be sufficiently detailed to ensure that environmental consequences have been fairly evaluated.  
9 The discussion of mitigation measures serves important informational functions. The discussion  
10 ensures that TRPA and the public can properly evaluate the severity of a project’s adverse  
11 environmental effects. For example, environmental effects that can be fully remedied by small  
12 public expenditures are not as serious as those that can only be slightly mitigated by much greater  
13 expenditures. The discussion of mitigation measures thus guarantees that the agency has fully  
14 considered a project’s environmental consequences.

15 74. An EIS, therefore, should “analyze[] the mitigation measures in detail or explain[]  
16 how effective the measures would be.” *Northwest Indian Cemetery Protective Ass’n*, 795 F.2d 688,  
17 697 (9th Cir. 1985) (interpreting NEPA), *rev’d on other grounds*. “A mere listing of mitigation  
18 measures,” *id.*, or “broad generalizations and vague references to mitigation measures” is legally  
19 inadequate, *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1381 (9th  
20 Cir. 1998) (interpreting NEPA).

21 **B. Inadequate Discussion of Significant Environmental Impacts**

22 75. The EIS fails to adequately discuss various significant environmental impacts. First,  
23 the AFEIS estimates that the Preferred Alternative will result in 294,895 boat trips per year at full  
24 implementation. However, previously the TRPA estimated that Alternative 6A would result in  
25 312,753 trips per year at full implementation. The EIS fails to account for the disparity of almost  
26 18,000 boat trips. Although Alternative 6A allowed more piers than the Preferred Alternative and  
27 thus would be expected to induce more boat trips than the Preferred Alternative, this difference does  
28 not sufficiently account for the disparity in the two figures. The failure to explain this disparity

1 undermines the reliability of the EIS's analysis of water quality, air quality, and noise impacts and  
2 fails to fully inform the public of the environmental impacts of the Shorezone Amendments.

3 76. Second, the EIS fails to consistently describe and quantify the amount of various  
4 emissions that will result from the Preferred Alternative. For example, in one section of the AFEIS,  
5 the AFEIS estimates that the Preferred Alternative will result in an additional 4 tons of PM per year  
6 at full buildout. However, in another section, the AFEIS estimates that the Preferred Alternative will  
7 result in twice this amount of PM emissions. The failure to consistently describe and quantify the  
8 amount of emissions that will result from the Preferred Alternative is a failure to inform the public  
9 fully and accurately of the environmental impacts of the Shorezone Amendments.

10 77. Third, the EIS fails to adequately discuss the impacts that increased land vehicle  
11 traffic induced by the addition of new Shorezone structures such as piers and buoys will have on air  
12 quality and water quality, because it fails to quantify the increased emissions that will result from  
13 this increased vehicle traffic. The failure to quantify these impacts fails to fully inform the public of  
14 the environmental impacts of the Shorezone Amendments.

15 78. Fourth, the EIS fails to adequately discuss the impacts that the addition of 1,862  
16 buoys will have on non-motorized recreational access to the Shorezone. The increased placement of  
17 buoys in the Lake will allow more boats to moor in the Lake, which in turn, will obstruct access to  
18 the Shorezone for activities such as kayaking, canoeing, swimming, and fishing. The failure to  
19 describe these impacts upon non-motorized recreational access fails to fully inform the public of the  
20 environmental impacts of the Shorezone Amendments. Moreover, the EIS fails to discuss the  
21 impacts of making the existing 4,454 buoys in the Lake the baseline upon which to add an additional  
22 1,862 buoys. By TRPA's own rough estimate, between a third and a half of the existing buoys are  
23 unauthorized and thus illegally placed. However, given that the Shorezone Amendments treat the  
24 unauthorized buoys as contributing to the base number above which additional buoys can be added,  
25 the EIS should more accurately quantify the actual number of illegal buoys, analyze the number of  
26 boat trips these induce, and reveal the adverse impacts of those trips and all other adverse impacts of  
27 grandfathering in the number of existing illegal buoys. Further, because neither the EIS nor the  
28 Shorezone Amendments specifically identify how these illegal buoys will be removed, or adequately

1 describe an enforcement program for their removal, the number of new buoys that could actually be  
2 permitted in addition to the existing authorized buoys is approximately 3300 to 4000 buoys (one-  
3 third to one-half of 4,454 plus 1,862). The EIS fails to assess the impacts of this potential surge in  
4 the number of buoys. The failure to describe these buoys' impacts upon water quality, air quality,  
5 noise, non-motorized recreational access, and scenic quality fails to fully inform the public of the  
6 environmental impacts of the Shorezone Amendments.

7 79. In conclusion, the EIS fails to proceed in a manner required by law by failing to  
8 adequately describe and analyze the significant environmental effects of the Shorezone  
9 Amendments, in violation of the Compact and CEQA. Further, the failure to adequately describe  
10 and analyze these impacts precludes adequate mitigation for these impacts or an adequate  
11 assessment of whether these impacts have been sufficiently mitigated, in violation of the Compact  
12 and CEQA.

### 13 **C. Inadequate Mitigation of Water Quality Impacts**

14 80. Despite the projected significant impacts on water quality, the EIS fails to include  
15 mitigation measures that will assure meeting water quality standards for the region and concludes  
16 without factual basis that the mitigation measures proposed would effectively reduce impacts.

#### 17 **1. Blue Boating Program**

18 81. The EIS claims that a Blue Boating Program ("BBP") will mitigate water quality  
19 impacts of the Shorezone Amendments. The BBP is an as-yet-unformulated boat certification and  
20 registration program that contemplates the promotion of clean boating habits through several  
21 elements that are still only conceptual in nature. These concepts are: a self-certification and  
22 registration process resulting in a boat sticker indicating *self-certification* in clean boating practices;  
23 boat sticker fees based on a graduated fee schedule that would be designed to promote use of cleaner  
24 engines; unspecified mitigation and cleanup efforts that would be funded through boat sticker fees;  
25 unformulated engine tuning requirements intended to minimize engine emissions; unspecified clean  
26 bilge water requirements; a program that would be designed to prevent direct discharge of sewage  
27 into the Lake; a program that would be designed to prevent exotic species invasion; an unformulated  
28 water quality monitoring program; and an unformulated enforcement program. At the time of

1 adoption of the Shorezone Amendments, however, the BBP was not in place, and an implementation  
2 plan did not exist. No such plan is even anticipated to be considered for adoption until March 2009.

3 82. TRPA has unlawfully approved the Shorezone Amendments in reliance upon the  
4 BBP to mitigate otherwise significant impacts. TRPA has improperly deferred formulation of the  
5 BBP and details of how it will be implemented until after project approval. Moreover, deferral of  
6 this critical mitigation is improper because TRPA has failed to: (i) commit to certain and enforceable  
7 mitigation, (ii) list alternatives to be considered, analyzed, and possibly incorporated in the  
8 mitigation plan, (iii) articulate specific performance criteria for the deferred mitigation, and (iv)  
9 explain why it is not reasonably practical or feasible to provide a more complete analysis of the  
10 mitigation before approval of the project. For example, the EIS fails to identify specific pollution  
11 controls or cleanup efforts that would be funded or adopted under the BBP and which pollutants  
12 would be targeted; alternative pollution control strategies to be considered, analyzed, and possibly  
13 incorporated into the program; and specific performance criteria for the pollution control strategies  
14 to be adopted. In consequence, TRPA lacks any rational basis to conclude that the Shorezone  
15 Amendments' significant impacts would be reduced to less than significant levels by the BBP.

16 83. Where the EIS identifies "performance standards," (i) these are merely legal  
17 requirements that TRPA is already bound to comply with, such as TRPA's thresholds, many of  
18 which are already not in attainment, and offer no concrete means of attaining compliance with these  
19 existing requirements, or (ii) the standards are not specific and not expressed in objective,  
20 quantitative terms. For example, the BBP's water quality "Performance Standard/Baseline/  
21 Threshold for Action" is expressed as:

- 22 • Maintenance of the [Clean Water Act's] Outstanding National Resource Water  
23 (ONRW) Antidegradation Policy: Prohibits lowering of water quality. No new or  
24 increased discharges that impair long-term water quality.
- 25 • Maintenance of TRPA numerical standards, surface discharge, and management  
26 standards; TRPA 208 Plan standards; Goals and Policies; Code of Ordinances; and  
27 Plan Area Statements.
- 28 • Maintenance of Nevada and California discharge and water quality standards.

1 Given that the EIS reveals that the increased motorized boating that will result from the Shorezone  
2 Amendments will have significant water quality impacts, stating that unformulated mitigation  
3 measures must maintain existing legal requirements for water quality (requirements that are not  
4 currently being maintained even without the added adverse impacts of the Amendments) provides no  
5 basis for the conclusion that these impacts will be mitigated to insignificance. Indeed, referring to  
6 the so-called performance standards as “thresholds for action” plainly contemplates that existing  
7 legal requirements would need to be violated (and thus significant impacts would occur) *before* any  
8 action to address water quality problems would be undertaken.

9       84. Because the formulation of the BBP has been improperly deferred, it is impossible for  
10 the EIS to analyze its effectiveness as mitigation, quantify or analyze the degree to which the  
11 program would reduce impacts to a less than significant level, and determine whether it would assure  
12 meeting the thresholds. For example, because the EIS fails to set forth reduction targets for  
13 particulate matter and to specify how reductions will be attained and how much those measures will  
14 cost, the effectiveness of such measures cannot be assessed. Further, the EIS fails to adequately  
15 analyze the effectiveness of even broad conceptual elements that will be incorporated into the  
16 Program. For example, the EIS does not discuss the effectiveness of boater self-certification  
17 programs in reducing boating pollution, such as by discussing the effectiveness of such programs at  
18 other lakes. Thus, TRPA’s conclusion that the BBP will assure meeting water quality standards of  
19 the region and reduce otherwise significant water quality impacts is arbitrary and capricious and  
20 lacking in any basis in the record.

## 21                   **2. Adaptive Management Program**

22       85. The Shorezone Amendments require TRPA to “implement an adaptive management  
23 program to periodically evaluate the success of the standards and mitigation programs applicable to  
24 the shorezone and to determine whether adjustments to those standards or programs are necessary to  
25 fully mitigate the environmental impacts of new shorezone development.” Code § 54.16. This  
26 program “shall collect and utilize data obtained pursuant to the mitigation monitoring program for  
27 the Shorezone Ordinance Amendments.” Code § 54.16A. The EIS claims that the Adaptive  
28

1 Management Program would mitigate significant impacts by “allow[ing] rapid response to changing  
2 conditions, should water quality conditions fail to improve at the anticipated rate.” AFEIS at 4-5

3 86. The Adaptive Management Program does not assure that standards for the Shorezone  
4 will be met because its formulation has been improperly deferred. Because the BBP has not been  
5 formulated in any detail, it is impossible to know what standards and programs the Adaptive  
6 Management Program will evaluate and how the Program will evaluate their success. Indeed, an  
7 implementation plan for the Adaptive Management Program is not expected to be considered until  
8 March 2009, when the implementation plan for the BBP will also be proposed. Code § 54.16.

9 87. In addition, the “mitigation” the Adaptive Management Program would supposedly  
10 provide is not enforceable. No triggers for corrective action are specified. At the same time, the  
11 Adaptive Management Program only requires TRPA to make *recommendations* to its Governing  
12 Board for corrective action if performance standards are not met, Code § 54.16C, which the Board is  
13 under no obligation to adopt. Further, the Adaptive Management Program does not require any  
14 corrective actions to be taken until the year 2012. *See* Code § 54.16D(1). This program simply does  
15 not compel any timely corrective actions and thus cannot be reasonably relied upon to mitigate the  
16 impacts of new development under the Shorezone Amendments. Thus, TRPA’s conclusion that the  
17 Adaptive Management Program will assure meeting water quality standards of the region and reduce  
18 otherwise significant water quality impacts to a level of insignificance is arbitrary and capricious and  
19 lacking in any basis in the record.

### 20 3. Enforcement of Emerald Bay speed limit and no-wake zone

21 88. The EIS states that a 7-mph speed limit in Emerald Bay, coupled with enforcement of  
22 a 600-foot no-wake zone (an existing regulation intended to reduce noise impacts), will mitigate  
23 elevated PAH levels and other emissions caused by increased motorized boating. However, the EIS  
24 offers no analysis of the emission reductions attributable to either the 7-mph speed limit or the 600-  
25 foot no-wake zone requirement. TRPA’s conclusion that these measures will reduce otherwise  
26 significant water quality impacts to insignificance is arbitrary and capricious and lacking in any basis  
27 in the record.

1                   **4. No mitigation provided for increased land vehicle traffic**

2           89. The EIS recognizes that additional Shorezone structures will induce increased land  
3 vehicle traffic in the Region, by providing for increased opportunities for motorized boating and thus  
4 increased vehicle trips to the Lake. However, the EIS fails to quantify the impacts of increased land  
5 vehicle traffic on water quality and fails to provide for mitigation measures that would reduce these  
6 impacts to less than significant levels.

7           90. In conclusion, TRPA has failed to proceed in a manner required by law by improperly  
8 deferring formulation of mitigation measures, providing insufficiently detailed discussion of  
9 mitigation, and failing to provide for enforceable mitigation, in violation of the Compact and CEQA.  
10 Thus, TRPA has also failed to include mitigation measures that assure meeting water quality  
11 standards of the Region, and TRPA’s finding that changes or alterations have been required in or  
12 incorporated into the project which avoid or reduce water quality impacts to a less significant level is  
13 arbitrary, capricious, and unsupported in the record, in violation of the Compact and CEQA.

14                   **D. Inadequate Mitigation of Air Quality Impacts**

15           91. Despite the projected significant impacts on air quality, the EIS fails to include  
16 mitigation measures that will assure meeting air quality standards for the region and concludes  
17 without factual basis that the mitigation measures proposed would effectively reduce impacts.

18           92. The EIS claims that the BBP will mitigate air quality impacts through implementation  
19 of the boat certification and registration program or “another appropriate type of pollution reduction  
20 program to help achieve the antidegradation standard.” As described in ¶¶ 81-84 above, TRPA has  
21 improperly deferred formulation of the BBP and the means by which it will be implemented until  
22 after project approval. Further, the EIS fails to specifically identify other types of pollution  
23 reduction programs that might be relied upon or air quality performance standards that these must  
24 meet. Because the formulation of the mitigation measures has been improperly deferred, it is  
25 impossible for the EIS to analyze their effectiveness or quantify or analyze the degree to which the  
26 program will reduce impacts to a less than significant level, and in consequence, the EIS fails to  
27 perform any such analysis.



1           93.     The EIS also relies upon the Adaptive Management Program to reduce air quality  
2 impacts to less than significant levels. However, as set forth in ¶¶ 85-87 above, the Program is  
3 neither enforceable nor certain of effect and thus cannot be reasonably relied upon to mitigate the  
4 impacts of new development under the Shorezone Amendments. Moreover, neither the EIS nor the  
5 Ordinance specify how air quality monitoring will occur as part of the Adaptive Management  
6 Program, including what indicators will be sampled, the locations and frequency of monitoring, and  
7 the estimated cost of the monitoring program.

8           94.     The EIS states that enforcement of a 7-mph speed limit in Emerald Bay and increased  
9 enforcement of a 600-foot no wake zone will mitigate air quality impacts caused by increased  
10 motorized boating. However, the EIS offers no analysis of the emission reductions attributable to  
11 either the 7-mph speed limit or the 600-foot no-wake zone requirement. TRPA's conclusion that  
12 these measures will reduce otherwise significant air quality impacts is arbitrary and capricious and  
13 lacking in any basis in the record.

14           95.     The EIS also fails to quantify the impacts of increased land vehicle traffic on air  
15 quality and fails to provide for mitigation measures that would reduce these impacts to less than  
16 significant levels.

17           96.     In conclusion, TRPA has failed to proceed in a manner required by law by improperly  
18 deferring formulation of air quality mitigation measures, providing insufficiently detailed discussion  
19 of mitigation, and failing to provide for enforceable mitigation, in violation of the Compact and  
20 CEQA. Thus, TRPA has also failed to include mitigation measures that assure meeting air quality  
21 standards of the Region, and TRPA's finding that changes or alterations have been required in or  
22 incorporated into the project which avoid or reduce air quality impacts to a less significant level is  
23 arbitrary, capricious, and unsupported in the record, in violation of the Compact and CEQA.

24           **E.     Inadequate Mitigation of Public Access and Recreational Access Impacts**

25           97.     Despite the projected significant impacts on public and recreational access, the EIS  
26 fails to include mitigation measures that will assure meeting recreational standards for the region and  
27 concludes without factual basis that the mitigation measures proposed would effectively reduce  
28 impacts.

1           98.     In order to reduce recreational impacts from the construction of 128 new private  
2 piers, the Preferred Alternative would establish a Lake Tahoe Public Access Fund (“LTPAF”). This  
3 program would require payment of a \$100,000 fee for a new private pier and a \$20-per-additional-  
4 square-foot fee for expansions.

5           99.     The EIS states that “the LTPAF would provide funding for projects that specifically  
6 focus on improving recreation and public access in the Tahoe Region. The fund would be  
7 administered by TRPA based on input from an advisory board comprising representatives of a cross-  
8 section of interested groups and agencies.” AFEIS at 3-19. Funding priorities would include: “(a)  
9 funds to facilitate acquisition by public agencies of public access to the Lake and lands on the Lake;  
10 (b) funds to construct or modify public access facilities, with emphasis on non-motorized  
11 recreational access; and (c) funds provided to other projects that demonstrably improve public  
12 recreational access to the Lake and on the Lake.” AFEIS at 3-19 to 3-20. The Shorezone  
13 Amendments provide that the fees can be used to fund either “acquisition” or “improvement of  
14 public access to Lake Tahoe (with priority to non-motorized recreational access)” and provides for  
15 annual fee increases based on the consumer price index for the Region. Code § 54.13A.

16           100.    Thus, one type of mitigation contemplated by the LTPAF is offsetting the impacts of  
17 the addition of a new pier with the acquisition and retirement of an old pier. The EIS’s conclusion  
18 that the \$100,000-per-private-pier fee will be sufficient to mitigate the adverse impacts of the  
19 addition of one pier is unsupported by the record. The fee is based upon the removal costs of a pier  
20 rather than the real estate market value of acquiring a pier, which greatly exceeds the removal costs.  
21 No evidence supports the assumption that lakefront owners will retire a pier for removal costs  
22 instead of the real estate market value. In addition, no evidence supports basing periodic fee  
23 increases on adjustments in the consumer price index, instead of on changes in real estate market  
24 values. Moreover, no standards govern the types, locations, and sizes of acquisitions required to  
25 assure adequate mitigation of a new private pier. Thus, there is no rational basis to conclude that the  
26 LTPAF would adequately provide for the direct mitigation of a new pier by the retirement and  
27 removal of an existing pier, or by some other acquisition.

1           101. Another mitigation contemplated by the LTPAF is funding “improvement to public  
2 access,” with priority given to non-motorized recreational access. Neither the EIS nor the Shorezone  
3 Amendments provide adequate guidance or standards as to how the LTPAF funds would be applied,  
4 including the types of public access facilities that may be funded, or what kinds of recreational  
5 access improvements must be achieved by an LTPAF-funded project. For example, the EIS states  
6 that the performance standards for the LTPAF are that it should maintain “adequate” lateral passage  
7 of pedestrians along the Shorezone, but it does not explain what constitutes adequate lateral passage.  
8 Given the lack of standards as to how the LTPAF funds would be applied, the record does not  
9 support that the LTPAF will actually mitigate recreational access impacts of newly constructed piers  
10 to a level of insignificance.

11           102. In addition, the Shorezone Amendments fail to recognize the significant impacts that  
12 an additional 1,862 buoys (and the unauthorized portion of the 4,454 buoys existing on the Lake)  
13 will have upon non-motorized recreational access to the Shorezone and provide no mitigation for  
14 these impacts. The LTPAF also fails to adequately address these impacts, because it lacks guidance  
15 or standards as to how the LTPAF funds would be applied.

16           103. In conclusion, TRPA has failed to include mitigation measures that assure meeting  
17 recreational standards of the Region, and TRPA’s finding that changes or alterations have been  
18 required in or incorporated into the project which avoid or reduce public access and recreational  
19 access impacts to a less than significant level is arbitrary, capricious, and unsupported in the record,  
20 in violation of the Compact and CEQA.

21           **F. Inadequate Mitigation of Noise Impacts**

22           104. Despite the projected significant impacts on noise, the EIS fails to include mitigation  
23 measures that will assure meeting noise standards for the region and concludes without factual basis  
24 that the mitigation measures proposed would effectively reduce noise impacts.

25           105. The EIS claims that the BBP will mitigate noise impacts through implementation of a  
26 boat certification and registration program and through enforcement of engine standards. The EIS  
27 improperly defers formulation of these programs and how they will be implemented until after  
28 project approval, such as by failing to specify how engine standards will be enforced. Further, the

1 EIS does not identify performance criteria that the BBP must meet for noise control. Because the  
2 formulation of the mitigation measures has been improperly deferred, it is impossible for the EIS to  
3 analyze their effectiveness, and the EIS fails to adequately perform such an analysis.

4 106. The EIS also relies upon the Adaptive Management Program to reduce noise impacts  
5 to less than significant levels. However, as set forth in ¶¶ 85-87 above, the Program is neither  
6 enforceable nor certain of effect and thus cannot be reasonably relied upon to mitigate the impacts of  
7 new development under the Shorezone Amendments. Moreover, neither the EIS nor the Ordinance  
8 specify how noise monitoring will occur as part of the Adaptive Management Program, including  
9 what indicators will be sampled, the locations and frequency of monitoring, and the estimated cost of  
10 the monitoring program.

11 107. In addition, the EIS claims that enforcement of existing noise regulations, the 600-  
12 foot no-wake zone, and a 7-mph speed limit in Emerald Bay would reduce noise impacts to less than  
13 significant levels. Even if enforcement of existing single-event noise regulations could mitigate the  
14 noise impacts of the Amendments, they are not being adequately enforced to address existing noise  
15 problems, and no concrete enforcement plan has been formulated to ensure enforcement regarding  
16 the Amendments' noise impacts. Moreover, enforcement of existing noise regulations alone will not  
17 mitigate the combined and cumulative effects of increased noise produced by the additional 62,686  
18 boat trips per year. TRPA's conclusion that these measures will reduce otherwise significant noise  
19 impacts is arbitrary and capricious and lacking in any basis in the record.

20 108. The EIS also claims that the LTPAF will mitigate noise impacts by funding projects  
21 that mitigate new piers and thus consequent increases in noise associated with piers. However, as  
22 set forth in ¶¶ 101-102 above, given the lack of standards as to how the LTPAF funds would be  
23 applied, the record does not support that the LTPAF will actually mitigate noise impacts of increased  
24 number of piers to a level of insignificance.

25 109. In conclusion, TRPA has failed to proceed in a manner required by law by improperly  
26 deferring formulation of noise mitigation measures, providing insufficiently detailed discussion of  
27 mitigation, and failing to provide for enforceable mitigation, in violation of the Compact and CEQA.  
28 Thus, TRPA has also failed to include mitigation measures that assure meeting noise standards of the

1 Region, and TRPA’s finding that changes or alterations have been required in or incorporated into  
2 the project which avoid or reduce noise impacts to a less significant level is arbitrary, capricious, and  
3 unsupported in the record, in violation of the Compact and CEQA.

4 **G. Inadequate Mitigation of Fishery Impacts**

5 110. Despite the projected impacts on fisheries, the EIS fails to include mitigation  
6 measures that will assure meeting fishery standards of the region and assumes without factual basis  
7 that the mitigation measures proposed would effectively reduce impacts when that conclusion is  
8 unsupported.

9 111. The EIS states that the Preferred Alternative would require mitigation of impacts on  
10 fisheries through the purchase of credits from a fish spawning habitat mitigation bank, and/or  
11 through individual on-site restoration. A project “located in, and adversely affecting, spawning  
12 habitat” cannot be approved “until the Fish Habitat Restoration Bank . . . is fully functioning or  
13 individual on or off-site project mitigation is completed and deemed fully functioning as determined  
14 by TRPA or an external scientific peer review.” Code § 54.4F(8). Before a project is constructed,  
15 mitigation using on-site mitigation must be “determined to be successful by TRPA or a third party  
16 scientific peer review.” *Id.* § 54.4F(4). Further, mitigation bank credits will not be available “unless  
17 and until, at a minimum, the restoration project has been constructed and is fully functioning, and  
18 TRPA or a third party scientific peer review has determined that the restoration is successful.” *Id.* at  
19 § 54.4F(7)(b).

20 112. The EIS improperly defers formulation of the mitigation bank program. The EIS  
21 does not describe the process for development and implementation of the mitigation bank program,  
22 how the success of the mitigation bank or on-site restoration techniques will be monitored, and the  
23 sources of funding for implementation. Moreover, the EIS does not specify performance standards  
24 that the restoration bank or on-site restoration must meet in order to be determined “fully  
25 functioning” or “successful.”

26 113. In conclusion, TRPA has failed to proceed in a manner required by law by improperly  
27 deferring formulation of fishery mitigation measures, in violation of the Compact and CEQA. Thus,  
28 TRPA has also failed to include mitigation measures that assure meeting fishery standards of the

1 Region, and TRPA’s finding that changes or alterations have been required in or incorporated into  
2 the project which avoid or reduce fishery impacts to a less significant level is arbitrary, capricious,  
3 and unsupported in the record, in violation of the Compact and CEQA.

4 **FOURTH CLAIM**

5 **VIOLATION OF THE CLEAN WATER ACT**

6 114. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the  
7 preceding paragraphs.

8 115. Lake Tahoe has received the “Outstanding National Resource Waters” designation  
9 under the Clean Water Act, the highest quality for a water body recognized under the Act, and one of  
10 only three such designated waters in the western United States. Pursuant to such designation, the  
11 Lake is afforded the Act’s highest level of protection and is subject to an anti-degradation policy that  
12 strictly prohibits any permanent or long-term degradation of existing water quality. *See* 40 C.F.R. §  
13 131.12(a)(3); 48 Fed. Reg. 51,400, 51,403 (Nov. 8, 1983).

14 116. TRPA must “provide for attaining and maintaining Federal, State, or local air and  
15 water quality standards, whichever are strictest, in the respective portions of the region for which the  
16 standards are applicable.” Compact, Art. V(d). As the area-wide planning agency under section 208  
17 of the CWA, 33 U.S.C § 1288, TRPA has agreed to protect Lake Tahoe under its designation as an  
18 ONRW.

19 117. The Shorezone Amendments violate the ONRW non-degradation policy. The EIS  
20 recognizes that increased operation of motorized boats and fueling activities induced by additional  
21 Shorezone structures would contribute to additional petroleum emissions into the Lake, in violation  
22 of the ONRW non-degradation policy. The EIS also recognizes that increased trips to public  
23 facilities by automobiles and operation of motorized boats would contribute to overall nutrient  
24 loading, increasing algal productivity, and decreased water clarity, in violation of the ONRW non-  
25 degradation policy.

26 118. The EIS fails to include mitigation measures that will assure meeting water quality  
27 standards of the region and concludes without factual basis that the mitigation measures proposed  
28 would effectively reduce impacts. The EIS relies upon the BBP and Adaptive Management Program

1 to mitigate water quality impacts, without providing sufficient detail as to what these programs  
2 would entail, specifying performance standards, providing for enforceability, and analyzing their  
3 effectiveness. Further, TRPA's conclusion that enforcement of the 600-foot no-wake zone and the  
4 imposition of a 7-mile speed limit in Emerald Bay will reduce otherwise significant water quality  
5 impacts to an insignificant level is arbitrary and capricious and lacking in any basis in the record.  
6 Thus, substantial evidence does not support the conclusion that the Shorezone Amendments will not  
7 result in the degradation of Lake Tahoe's water quality in violation of the ONRW policy. Instead,  
8 the record confirms that the Shorezone Amendments will result in such unlawful degradation of the  
9 Lake's water quality.

### 10 **REQUEST FOR RELIEF**

11 WHEREFORE, plaintiffs pray for relief against TRPA as follows:

12 A. For declarations that the decision by TRPA to certify the EIS and adopt the  
13 Shorezone Amendments:

14 (a) violates Article V of the Compact and section 6.5 of the Code of Ordinances,  
15 because the Regional Plan as amended and implemented by the Shorezone Amendments fails to  
16 achieve and maintain the threshold standards;

17 (b) violates section 6.3A of the Code of Ordinances because TRPA's other  
18 threshold-related findings pursuant to this section have no basis in the record;

19 (c) violates section 6.3B of the Code of the Ordinances, because TRPA fails to  
20 make the findings required by this section;

21 (d) violates Article VII of the Compact and Chapter 5 of the Code of Ordinances,  
22 because the EIS fails to comply with their legal requirements for environmental review by failing to  
23 adequately describe significant environmental impacts and to include adequate mitigation measures,  
24 and because the purported findings that environmental impacts will be reduced to less than  
25 significant levels have no basis in the record;

26 (e) violates CEQA, because the EIS fails to comply with its legal requirements  
27 for environmental review by failing to adequately describe significant environmental impacts and to  
28 include adequate mitigation measures, and because the purported findings that environmental

1 impacts will be reduced to less than significant levels have no basis in the record; and

2 (f) violates the Clean Water Act and the ONRW non-degradation policy, because  
3 the Shorezone Amendments will result in long-term or permanent degradation of Lake Tahoe's  
4 water quality.

5 B. For an order invalidating and setting aside TRPA's October 22, 2008 certification of  
6 the EIS evaluating the Shorezone Amendments and TRPA's October 22, 2008 approval of the  
7 Shorezone Amendments.

8 C. For a temporary restraining order and a preliminary and permanent injunction  
9 restraining TRPA and its agents, employees, officers, and representatives from taking any action to  
10 implement in any way the Shorezone Amendments pending full compliance with the Compact, the  
11 Regional Plan, the Code of Ordinances, and all other applicable legal requirements.

12 D. For plaintiffs' costs of suit and attorneys' fees pursuant to all applicable legal  
13 authority.

14 E. For such other and further relief as this Court may deem just and proper.  
15

16 DATED: November 21, 2008

Respectfully submitted,

17  
18 /s/ Trent W. Orr  
19 TRENT W. ORR  
WENDY S. PARK

20 *Counsel for Plaintiffs*  
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