

1 TRENT W. ORR (State Bar No. 77656)  
WENDY S. PARK (State Bar No. 237331)  
2 Earthjustice  
50 California Street, Suite 500  
3 San Francisco, CA 94111  
Tel: (415) 217-2000  
4 Fax: (415) 217-2040  
wpark@earthjustice.org; torr@earthjustice.org

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6 *Counsel for Plaintiffs Sierra Club  
and Friends of the West Shore*

7  
8 UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
9 SACRAMENTO DIVISION

10  
11 SIERRA CLUB and FRIENDS OF THE WEST ) Civ. No.  
SHORE, )  
12 )  
Plaintiffs, )  
13 ) **COMPLAINT FOR DECLARATORY**  
vs. ) **AND INJUNCTIVE RELIEF; AND**  
14 ) **RELATED PENDANT STATE LAW**  
TAHOE REGIONAL PLANNING AGENCY, ) **CLAIMS**  
15 )  
Defendant. )  
16

17  
18 **INTRODUCTION**

19 1. In 1968, California and Nevada entered into a bi-state agreement designed to protect  
20 natural resources and control development in the Lake Tahoe Basin. The agreement, the Tahoe  
21 Regional Planning Compact, created the Tahoe Regional Planning Agency (“TRPA”) to serve as the  
22 land use and environmental protection agency for the Lake Tahoe region and became effective by  
23 Congressional authorization in December 1969. But the 1969 Compact failed to provide the  
24 powerful environmental protection mechanism that it was intended to be, in part because  
25 development decisions were left to local governments around the Lake, which did not take regional  
26 environmental protection adequately into account. As a result, the states extensively amended it, and  
27 Congress authorized these amendments in December 1980. One of the most significant changes in  
28

1 the 1980 Compact (“Compact”) was its requirement that one regional body, TRPA, review and  
2 approve all projects within the region. Art. VI(b).

3         2.         The Compact recognized that “[i]ncreasing urbanization is threatening the ecological  
4 values of the region and threatening the public opportunities for use of the public lands.” Art. I(a)(5).  
5 To preserve these values, it empowered TRPA “to establish environmental threshold carrying  
6 capacities,” or “thresholds,” and “to adopt and enforce a regional plan and implementing ordinances  
7 which will achieve and maintain such [thresholds] while providing opportunities for orderly growth  
8 and development consistent with such [thresholds].” Art. I(b). Within one year of adopting  
9 thresholds, TRPA was required to adopt a regional plan that would achieve and maintain these  
10 thresholds. *Id.*, art. V(c). While that schedule was not met, in 1987, a new regional plan took effect  
11 (“1987 Plan”). This plan has since provided the framework for ensuring that all development is  
12 consistent with achieving and maintaining these thresholds. While the 1987 Plan has not actually  
13 succeeded in attaining many of these thresholds, including Lake clarity, which has steadily declined  
14 over the years, it has more or less controlled urbanization of the Tahoe Region, as the Compact  
15 intended.

16         3.         But developers and other powerful business interests in Nevada have long  
17 complained that the Compact and 1987 Plan’s land-use and environmental regulations are too  
18 restrictive. In June 2011, pressure from these interests led to passage of Nevada Senate Bill 271  
19 (“SB 271”), which requires Nevada to withdraw from the Compact in 2015, if California does not  
20 agree to certain changes in the Compact and TRPA does not adopt a new regional plan. In the  
21 meantime, beginning in 2010, TRPA undertook the “Regional Plan Update,” or “Plan Update,” to  
22 revise the 1987 Plan. This update was necessary to address thresholds that were still out of  
23 attainment, and a strengthening of the plan was long overdue. However, instead of proposing  
24 strengthening measures, TRPA proposed significant weakening of the 1987 Plan. The most  
25 controversial elements were sent to be negotiated between California, Nevada, and other  
26 stakeholders. Under the influence of SB 271 and political pressure to “save the Compact,” California  
27 agreed to much of this weakening in the resulting “Bi-State Consultation Recommendations.”  
28

1           4.       On December 12, 2012, TRPA adopted amendments to the Regional Plan, which  
2 incorporated these recommendations. Most significantly, it delegated to local governments TRPA’s  
3 project review and approval duties for projects up to 99,999 square feet in size. This delegation runs  
4 counter to the Compact’s intent to provide regional oversight of projects and violates the Compact’s  
5 clear directive that it is TRPA’s Governing Board’s duty to review and approve projects and to make  
6 findings that any project it approves complies with the Regional Plan and its rules to effectuate that  
7 Plan. *See* Compact, art. VI(b) (“No project ... may be developed in the region without obtaining the  
8 review and approval of [TRPA],” *id.*, art. II(b)); art., VI(b) (TRPA “may approve a project in the  
9 region only after making the written findings required by [the Compact].”)

10           5.       In addition, the Plan Update revises and loosens the standards by which new projects  
11 are reviewed and approved, while increasing the potential for new development throughout the  
12 region. It allows local governments to establish environmental standards that do not meet minimum  
13 regional requirements, including standards that limit how much land can be paved, or “covered,” to  
14 protect natural soil function and prevent runoff into the Lake. This unlawfully leaves it to local  
15 governments to provide the standards that TRPA should be providing and fails to ensure that such  
16 standards are at least as protective as TRPA’s. *See* Compact, art. VI(a) (requiring that TRPA’s  
17 measures to effectuate an adopted regional plan provide “a minimum standard applicable throughout  
18 the region” and that other agencies provide an “equal or higher requirement applicable to the same  
19 subject of regulation in its territory”). Further, in TRPA’s environmental review of the Plan Update,  
20 it abandoned any minimum regional standard for coverage, when it unlawfully and arbitrarily re-  
21 interpreted the threshold as setting a region-wide cap on coverage, instead of parcel-scale or  
22 watershed-scale limits, allowing increased concentrated coverage over larger areas under the Plan  
23 Update.

24           6.       The Plan Update also opens over 300 acres of undeveloped land to “resort recreation”  
25 development, expanding Tahoe’s urban boundary; allows up to 3,200 new residential units and  
26 200,000 square feet of new commercial floor area; and allows increased concentration of coverage  
27 closer to the Lake in urban core areas – up to 100% land coverage of parcels in designated  
28 “community centers” in certain instances. The Plan Update’s strategy to restore Lake Tahoe is to

1 loosen development restrictions and incentivize redevelopment in urban core areas, while removing  
2 existing development in sensitive, outlying areas, on the theory that this would enable more  
3 environmentally sensible development and land-use overall. However, this strategy and TRPA's  
4 underlying environmental analysis fail to account for the drastic increase in new, concentrated  
5 development that the Plan Update allows and the harmful impacts of that increase. At the same time,  
6 this strategy fails to ensure that compensatory removal of existing development on sensitive lands or  
7 other mitigation will, in fact, occur. Thus, TRPA's strategy for achieving the thresholds is deeply  
8 flawed and its findings that the Regional Plan, as amended, achieves and maintains the thresholds  
9 lack evidentiary support.

10 7. In sum, rather than being guided by the Compact's core purpose – to achieve and  
11 maintain environmental protection thresholds – and a proper environmental analysis of the Plan  
12 Update, TRPA allowed political considerations and ultimately the pressure for more development to  
13 dictate the Plan Update's terms. Because the Plan Update improperly delegates project review and  
14 approval to local governments, fails to require minimum regional standards, and is not supported by  
15 an adequate environmental analysis and proper threshold findings, the Plan Update is invalid, such  
16 that it must be set aside.

### 17 **JURISDICTION AND VENUE**

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

24 9. Plaintiffs bring each and every claim under the Compact as both a federal law claim  
25 and a state law claim under the Compact pursuant to Article VI(j) of the Compact.

26 10. This Court has supplemental jurisdiction over the state law claims in this action  
27 pursuant to 28 U.S.C. § 1367(a). The state claims arise out of a common nucleus of fact with the  
28 federal claims brought under the Compact.

1 11. Venue is proper in this Court pursuant to Article VI(j)(2)(B) of the Compact, because  
2 this action principally challenges the Plan Update and ordinances adopted by TRPA not involving a  
3 specific parcel of land. Venue is also proper in this Court pursuant to Article VI(j)(2)(A) of the  
4 Compact, because one part of the Plan Update is to be undertaken upon a parcel of real property in  
5 this judicial district, the proposed Heavenly California Base Resort Recreation area adjoining the  
6 Heavenly Mountain Resort in South Lake Tahoe, El Dorado County. Further, venue is proper  
7 pursuant to 28 U.S.C. § 1391(b), both because (1) a substantial part of the events or omissions giving  
8 rise to each of plaintiffs' claims occurred in this judicial district, and (2) a substantial part of  
9 property that is the subject of this action is situated in this judicial district.

10 12. Pursuant to the Eastern District of California Local Rule 120(d), intradistrict venue is  
11 proper in Sacramento, California, because the source of the violations in California is in Placer and  
12 El Dorado Counties.

13 13. Pursuant to 28 U.S.C. § 2201 *et seq.*, plaintiffs seek a declaration of rights under the  
14 laws of the United States and California. There exists now between the parties an actual, justiciable  
15 controversy in which plaintiffs are entitled to have a declaration of their rights and of defendants'  
16 obligations, and further relief, because of the facts and circumstances hereinafter set out.

17 14. This action was timely filed within 60 days of TRPA's approvals of the Plan Update.

## 18 **PARTIES**

19 15. Plaintiff SIERRA CLUB is a nationwide non-profit conservation organization formed  
20 in 1892, with a mission to explore, enjoy, and protect the wild places of the Earth, to practice and  
21 promote responsible uses of the Earth's ecosystems and resources, to educate and enlist humanity in  
22 the protection and restoration of the quality of the natural and human environment, and to use all  
23 lawful means to carry out those objectives. Sierra Club has over 580,000 members, approximately  
24 145,000 of whom reside in California and Nevada, with approximately 780 members living in the  
25 Tahoe area. For many years the Sierra Club and its members have advocated for the protection of  
26 Lake Tahoe. These advocacy efforts have included advocating for proper boat inspection protocols  
27 in place to prevent quagga and zebra mussel infestations in the Lake, downsizing lakefront  
28 development in Homewood, staving off increased development of boat facilities and motorized

1 boating on the Lake, preserving a rare stand of old growth red fir, and ensuring protection of streams  
2 in logged areas of the Basin, in furtherance of protecting air and water quality and wildlife corridors.  
3 The Sierra Club is an “aggrieved person” with standing to sue under Article VI(j)(3) of the Compact  
4 because it has appeared numerous times through authorized representatives and in writing before the  
5 TRPA in connection with hearings regarding the challenged TRPA actions.

6         16. Plaintiff FRIENDS OF THE WEST SHORE (“FOWS”) is a non-profit community  
7 organization on the West Shore of Lake Tahoe with an office in Homewood, California. It consists  
8 of over 500 supporters and residents of communities on the western shores of Lake Tahoe. FOWS  
9 has dedicated itself to efforts to preserving and enhancing the West Shore’s watersheds, wildlife,  
10 historic and cultural features and landscapes, and the rural quality of life treasured by residents of  
11 Lake Tahoe. FOWS promotes sustainable communities and policies that enhance the natural  
12 resources and beauty of the West Shore, including promoting strict compliance with the Compact  
13 and ordinances and policies designed to protect the Lake’s crystalline waters and its world-renowned  
14 landscapes and scenery. Its advocacy efforts include: working to reduce the size and impact of  
15 development projects that are inconsistent with the West Shore’s community scale and character,  
16 participating in the Regional Plan Update to promote conservation of the Region’s natural resources,  
17 and conceiving and implementing a Community Vision Process and Plan for the West Shore  
18 Communities. FOWS is an aggrieved person with standing to sue under Article VI(j)(3) of the  
19 Compact because it has appeared numerous times through authorized representatives and in writing  
20 before the TRPA in connection with hearings regarding the challenged TRPA actions.

21         17. Plaintiffs have individual members who live in the Lake Tahoe area, regularly visit  
22 Lake Tahoe, and intend to continue to use and enjoy these areas in the near future and beyond. They  
23 use and enjoy Lake Tahoe and its surrounding areas for a variety of purposes, including scientific  
24 study, hiking, cycling, photography, sightseeing, skiing, snowshoeing, wildlife observation,  
25 swimming, sailing, kayaking, canoeing, and fishing and intend to continue to do so on an ongoing  
26 basis in the future. Plaintiffs’ members derive recreational, spiritual, professional, aesthetic,  
27 educational, and other benefits and enjoyment from these activities.

1           18.     Plaintiffs and their members have a procedural interest in influencing the  
2 management of Lake Tahoe through participation in the development of a meaningful, substantive  
3 Regional Plan for the Tahoe Area and of ordinances to implement that Plan, as prescribed by the  
4 Compact, and in the preparation of comprehensive environmental analyses required by the Compact.

5           19.     The above-described interests of plaintiffs and their members have been and are  
6 suffering, and will continue to suffer, irreparable injury as a result of TRPA's adoption of the Plan  
7 Update and TRPA's failure to comply with the Compact. For example, the Plan Update will allow  
8 greater noise, visual blight, increased traffic, loss of natural soil function, and greater air and water  
9 pollution. All of these injuries will diminish plaintiffs' members' ability to enjoy recreational  
10 activities in and around the Lake. TRPA has failed to adopt minimum regional standards to avoid or  
11 reduce these impacts and failed to study and adopt adequate mitigation measures to avoid or  
12 significantly reduce these and other significant adverse impacts of the Plan Update, thus failing to  
13 prevent plaintiffs' loss of use and enjoyment of the Lake's environment caused by these impacts.

14           20.     TRPA's failure to comply with the Compact has injured plaintiffs and their members  
15 by depriving them of regional oversight of all project reviews and approvals to ensure proper  
16 compliance with the Compact and thresholds, as well as compliance with minimum regional  
17 environmental protection standards. Further, plaintiffs have been deprived of information to which  
18 they are entitled under the Compact, including information pertaining to the Plan Update's impacts  
19 on environmental resources in the planning area, reasonable alternatives to the proposed action, and  
20 mitigation measures available to address adverse environmental impacts. This lack of required  
21 public information has injured plaintiffs and their members by depriving them of a meaningful  
22 opportunity to comment on the missing information; denying them the procedural safeguards  
23 embodied in the Compact to ensure that TRPA carefully consider the environmental consequences  
24 of its proposed actions, environmentally superior alternatives to that action, and appropriate  
25 mitigation measures prior to granting any project approval; and denying them adequate assurances  
26 that the Regional Plan, as amended and implemented by the Plan Update, will achieve and maintain  
27 the environmental thresholds.

1           21. Plaintiffs were actively involved throughout the legislative process for TRPA's  
2 development of the Plan Update and preparation of the EIS. Plaintiffs participated in meetings and  
3 submitted comments to TRPA, including comments on the notice of preparation of an environmental  
4 impact statement for the Plan Update and on the draft and final environmental impact statements.  
5 Plaintiffs consistently raised concerns about TRPA's preferred alternative and its impacts on soil  
6 conservation, traffic, water quality, air quality, scenic quality, and noise levels, among other  
7 resources.

8           22. Plaintiffs' injuries will be redressed by the relief sought herein because the Plan  
9 Update would be set aside, restoring regional oversight of all projects in the region to ensure proper  
10 project review and approval in compliance with the Compact, as well as compliance with minimum  
11 regional standards that would be more protective of the region's resources than locally adopted  
12 standards. Further, a new environmental analysis of the Plan Update pursuant to the Compact should  
13 result in a project that (1) eliminates or significantly reduces the traffic, air quality, soil conservation,  
14 water quality, scenic, and noise impacts of the Plan Update, (2) adopts adequate mitigation measures  
15 for the Plan Update's significant impacts, (3) preserves the Tahoe Region's quiet, peaceful  
16 atmosphere and scenic quality, or (4) results in some combination of such measures that will  
17 mitigate the otherwise significant impacts of the project to a level of insignificance. Further, because  
18 the Regional Plan, as amended and implemented by the Code of Ordinances and Plan Update, does  
19 not achieve and maintain environmental thresholds, as required by Article V(c) of the Compact, the  
20 relief would require an amended Regional Plan that achieves and maintains the thresholds.  
21 Moreover, the relief would promote attainment of the environmental standards mandated by the  
22 Compact. All such relief would improve plaintiffs' opportunities for using and enjoying Lake Tahoe  
23 in the future.

24           23. Plaintiffs have no adequate remedy at law to address any of the foregoing injuries to  
25 their interests.

26           24. Defendant TAHOE REGIONAL PLANNING AGENCY was created and exists as a  
27 separate legal entity pursuant to Article III(a) of the Compact. The Compact confers on TRPA  
28 powers and responsibilities for land use planning and environmental protection in the Lake Tahoe



1 region. TRPA’s decision-making body is its Governing Board, comprised of a seven-member  
2 California delegation; a seven-member Nevada delegation; and one non-voting member appointed  
3 by the President of the United States. Compact, art. III(a)(1), (2); art. X(d)(3). The Governing Board  
4 is empowered and required to “adopt all necessary ordinances, rules, and regulations to effectuate  
5 the adopted regional plan.” *Id.*, art. VI(a). Agency staff, employed by the Governing Board, execute  
6 the powers and functions provided by the Compact. *Id.*, art. IV(a).

## 7 **FACTUAL BACKGROUND**

### 8 **LAKE TAHOE AND THE TAHOE REGIONAL PLANNING COMPACT**

9 25. Situated in a spectacular setting near the crest of the Sierra Nevada at an elevation of  
10 approximately 6,225 feet above sea level, Lake Tahoe is one of the most well-known and revered  
11 fresh water bodies in the United States. The geologic basin that cradles the Lake is dominated by  
12 impressive mountains, steep slopes, and erosive, nutrient-poor granitic soils, as well as volcanic  
13 rocks and soils. With a maximum depth of approximately 1,636 feet, Lake Tahoe is the eleventh  
14 deepest lake in the world and the second deepest in the United States. Most remarkably, Lake Tahoe  
15 is one of the clearest lakes in the world for its size and depth. This is due to its very low  
16 concentrations of nutrients that support the growth of algae.

17 26. Continuous, long-term monitoring and evaluation of water quality in Lake Tahoe  
18 since the early 1960s, however, has shown declining mid-lake clarity attributable to an increase in  
19 algae production and the addition of fine sediments (primarily particle sizes 20 microns or less in  
20 diameter), which reduce the transmission of light to the Lake’s bottom and scatter light. Indeed,  
21 summertime clarity – measured by the maximum depth at which a white disk is visible from the  
22 Lake’s surface – has steadily declined from 94.1 feet in 1968 to 50.4 feet in 2012, the lowest  
23 measurement ever recorded, at a rate of nearly one foot per year. The largest contributor to reduced  
24 mid-lake clarity is fine sediment pollution, which primarily originates from the Lake’s developed,  
25 urban areas and is chiefly caused by the grinding of particles on roadways, even though they cover  
26 only ten percent of the region. Paved surfaces effectively short-circuit the watershed’s natural  
27 sediment and pollutant-removal mechanisms: They prevent infiltration of stormwater or snowmelt  
28 into the soil, which instead runs off pavement, gathering fine sediments and other pollutants along

1 the way, and eventually flows into the Lake. Atmospheric deposition of nitrogen, which is believed  
2 to be largely caused by motorized vehicle exhaust, is one of the largest contributors to algae growth.

3 27. In addition to decreased water quality, the Lake Tahoe Basin has also suffered from  
4 degradation of air quality, terrestrial landscape, conditions around the Lake’s shoreline, and tributary  
5 streams due to various factors, including land disturbance through development, increasing resident  
6 and tourist populations, habitat destruction, soil erosion, road construction and maintenance, and the  
7 loss of wetlands, undisturbed land, and other areas that filter runoff.

8 28. In 1968, the states of California and Nevada entered into an interstate agreement  
9 designed to ensure the conservation of resources and control development in the Lake Tahoe Basin.  
10 The agreement, known as the Tahoe Regional Planning Compact, created TRPA to serve as the land  
11 use and environmental resource planning agency for the Lake Tahoe Region and became effective  
12 when it received the consent of Congress in December 1969. Pub. L. No. 91-148 (1969).

13 29. The 1969 Compact required TRPA to adopt a regional plan and establish minimum  
14 region-wide standards for environmental protection and to enforce those standards. 1969 Compact,  
15 art. VI(a), (b). With the exception of public works projects, it did not require TRPA’s review and  
16 approval of projects, but left such authority solely to the Region’s local governments. *Id.*, art. VI(c).  
17 Unfortunately, the 1969 Compact failed to be the powerful environmental protection mechanism that  
18 it was intended to be. *See id.*, art. I(c) (“[I]t is imperative that there be established an areawide  
19 planning agency with power to adopt and enforce a regional plan of resource conservation and  
20 orderly development, to exercise effective environmental controls and to perform other essential  
21 functions...”). As a result, Nevada and California extensively amended the 1969 Compact, and  
22 Congress consented to the changes on December 19, 1980. Pub. L. No. 96-551 (1980). The Compact  
23 also was enacted by California as a state law. Cal. Gov. Code § 66801.

24 30. These amendments included two significant changes. First, the Compact requires  
25 TRPA to develop environmental threshold carrying capacities, or “thresholds,” arts. II(i), V(b), and  
26 ensure that all planning and development in the Lake Tahoe region is consistent with achieving and  
27 maintaining the thresholds. *See id.*, art. I(b) (“[I]t is imperative that there be established a Tahoe  
28 Regional Planning Agency with the powers conferred by this compact including the power to

1 establish environmental threshold carrying capacities and to adopt and enforce a regional plan and  
2 implementing ordinances which will achieve and maintain such capacities while providing  
3 opportunities for orderly growth and development consistent with such capacities.”)

4 31. A threshold is “an environmental standard necessary to maintain a significant scenic,  
5 recreational, educational, scientific or natural value of the region or to maintain public health and  
6 safety within the region.” Compact, art. II(i). Such standards shall include, but not be limited to,  
7 “standards for air quality, water quality, soil conservation, vegetation preservation and noise.” *Id.*  
8 On August 26, 1982, by Resolution No. 82-11, TRPA adopted thresholds for the Region.

9 32. These threshold standards were not only directed at preventing further deterioration  
10 of the Region, but also aimed at restoring the Lake Tahoe Region to former conditions. Some of  
11 these standards impose “extensive substantive requirements” on TRPA “to improve environmental  
12 quality, in some cases dramatically.” *League to Save Lake Tahoe v. TRPA*, 739 F. Supp. 2d 1260,  
13 1278, 1295 (E.D. Cal. 2010).

14 33. Within one year after the adoption of the thresholds, TRPA was required to amend  
15 the regional plan “so that, at a minimum, the plan and all its elements, as implemented through  
16 agency ordinances, rules and regulations, achieves and maintains the [thresholds].” Compact, art.  
17 V(c). On April 26, 1984, TRPA adopted the 1984 Regional Plan, and the Plan was amended in  
18 September 1986 and February 1987. The 1987 Plan has since provided the framework for all land-  
19 use planning and development within the region. The Code of Ordinances (“Code”) for  
20 implementation of the Regional Plan, as required by the Compact, was adopted in May 1987.

21 34. To ensure that TRPA fulfills its core mission of achieving and maintaining the  
22 thresholds, whenever TRPA amends its Code or Regional Plan, it must make certain “threshold  
23 findings.” Specifically, section 4.5 of the Code requires that, whenever TRPA amends its Regional  
24 Plan, it must find that “the Regional Plan, as amended, achieves and maintains the thresholds.”  
25 Similarly, section 4.6 of the Code requires that, in order for TRPA to approve any amendment or  
26 adoption of the Code, it must find that “the Regional Plan and all of its elements, as implemented  
27 through the Code, Rules and other TRPA plans and programs, as amended, achieves and maintains  
28 the thresholds.”

1           35.     The second major change in the Compact was its requirement that TRPA approve all  
2 projects in the Region, with limited exceptions: “No project... may be developed in the region  
3 without obtaining the review and approval of the [TRPA] and no project may be approved unless it  
4 is found to comply with the regional plan and with the ordinances, rules and regulations enacted... to  
5 effectuate that plan.” Art. VI(b), II(b).

6           36.     The Compact requires detailed provisions for TRPA’s review and approval of  
7 projects. TRPA “may approve a project in the region only after making the written findings required  
8 by... subdivision (g) of Article V.” Art. VI(b). Those findings, to be prescribed by ordinance, “shall  
9 relate to environmental protection and shall insure that the project under review will not adversely  
10 affect implementation of the regional plan and will not cause the adopted environmental threshold  
11 carrying capacities of the region to be exceeded.” Art V(g). Code section 4.4 prescribes the specific  
12 written findings required pursuant to Article V(g) before any project is approved.

13           37.     In addition, Article VII of the Compact requires TRPA to prepare and consider a  
14 detailed Environmental Impact Statement (“EIS”) before approving or carrying out any project that  
15 has a significant effect on the environment. Art. VII(a)(2). The EIS must include, among other  
16 things, “[t]he significant environmental impacts of the proposed project,” “[a]ny significant adverse  
17 environmental effects which cannot be avoided should the project be implemented,” “[a]lternatives  
18 to the proposed project,” and “[m]itigation measures which must be implemented to assure meeting  
19 standards of the region.” Art. VII(a)(2)(A)-(D). Article VII also requires that, before approving a  
20 project, TRPA must find that changes or alterations have been required or incorporated into the  
21 project which avoid or reduce significant adverse environmental effects to a less than significant  
22 level, or that specific economic, social, or technical considerations make infeasible the mitigation  
23 measures or project alternatives discussed in the EIS. Art. VII(d)(1), (2).

24           38.     No provision in the Compact allows TRPA to delegate any of the above project  
25 review and approval duties to another agency or government.

1 **THE REGIONAL PLAN UPDATE AND ITS APPROVAL**

2 39. TRPA has an ongoing duty to ensure that the Regional Plan achieves the  
3 environmental thresholds. Its Advisory Planning Commission and Governing Board “shall  
4 continuously review and maintain the regional plan.” Compact, art. V(c).

5 40. TRPA’s maintenance of the plan is informed by its progress towards attaining the  
6 thresholds. TRPA documents its progress in threshold evaluation reports, which are conducted every  
7 five years. Code § 16.9.1. The report is required to evaluate progress towards attaining the thresholds  
8 over the preceding five-year period, including progress toward “target dates” for attainment; assess  
9 the effectiveness of compliance measures aimed at achieving and maintaining the thresholds; and  
10 recommend implementation of “supplemental compliance measures” for attaining those thresholds  
11 that have not been achieved. *Id.*

12 41. TRPA prepared threshold evaluation reports for the five-year periods ending in 1991,  
13 1996, 2001, 2006, and 2011. Those reports have documented a steady decline in water quality,  
14 continuing violations of air quality standards, a lack of progress in attaining soil conservation  
15 thresholds, an inability to attain noise thresholds, and scenic degradation. Thus, the 1987 Plan has  
16 not fulfilled the Compact’s mandate to “achieve and maintain” the thresholds.

17 42. In 2004, TRPA began an effort to revise and update the entire 1987 Plan by 2007,  
18 known as “Pathway 2007.” This was in part because the 1987 Plan was intended to serve the Region  
19 for only 20 years. *See* 1987 Regional Plan Goals & Policies at VII-10, 18 (noting “20 year life of this  
20 Plan” and projecting the costs “over 20 years to implement the Regional Plan and attain the . . .  
21 thresholds”). But TRPA did not complete a draft revised plan before 2007, and the Pathway 2007  
22 efforts were abandoned.

23 43. In 2010, TRPA began another effort to revise and update the Regional Plan, but  
24 decided to narrow its focus to only certain elements of the Plan and began developing proposed  
25 alternatives. Then, in 2011, TRPA convened a “Regional Plan Update Committee” from its  
26 Governing Board members, who were tasked with the drafting of specific draft provisions to amend  
27 the Regional Plan. The Committee met in 2011 and early 2012 to complete this effort.

1           44.     In the meantime, on March 18, 2011, Nevada Senate Bill 271 was introduced in the  
2 Nevada Legislature.

3           45.     SB 271 requires Nevada’s withdrawal from the Compact on October 1, 2015, unless  
4 the Governing Board of TRPA adopts an update to the 1987 Regional Plan and the Compact is  
5 amended. §§ 1, 25.4. Specifically, among other changes, California and Congress must amend the  
6 Compact to include a requirement that “[t]he planning commission and governing body... shall  
7 ensure that the regional plan reflects changing economic conditions and the economic effect of  
8 regulation on commerce” by this date. §§ 1, 1.5 (art. V(c)), 25.4 (a), (b). The other conditions  
9 include changes to TRPA’s voting requirements for project approval and a plaintiff’s legal burden  
10 for challenging the regional plan. § 1.5 (arts. III(g)(1), VI(j)(5)).

11           46.     Relatedly, while SB 271 does not explicitly dictate the terms of an update to the 1987  
12 Plan, it requires Nevada’s Lake Tahoe Legislative Oversight Committee to prepare a report for the  
13 Nevada Legislature, concerning “progress of the governing board of the [TRPA] toward amending  
14 or otherwise revising the regional plan... to include, without limitation:

15                   (a)     “Delegation of appropriate planning matters to local, state and federal  
16 governmental entities as may be allowed by law; and

17                   (b)     “Concurrence from the Executive Branches of State Government of the States  
18 of Nevada and California with respect to guiding principles and a schedule for amending the  
19 regional plan.” § 22.5.1(e)(1)-(2).

20           47.     SB 271 requires the report to be submitted by December 31, 2012 to the Legislative  
21 Counsel Bureau for transmission to the next session of the Nevada Legislature, scheduled to meet  
22 February through June 2013. § 22.5.2.

23           48.     SB 271 also requires the Tahoe Legislative Oversight Committee to determine  
24 whether the State of Nevada should remain a party to the Tahoe Regional Planning Compact.  
25 § 22.5.3. If the Committee determines it should, SB 271 requires the Committee to forward to the  
26 Legislative Counsel Bureau for transmission to the next session of the Nevada Legislature in 2013 a  
27 “bill draft request” for SB 271’s repeal. *Id.* However, this provision, as well as the rest of section  
28 22.5, “expires by limitation on January 1, 2013.” § 25.1.

1           49.     In short, SB 271 establishes a scheme whereby Nevada is required to withdraw from  
2 the Compact if California does not agree to certain changes in the Compact and TRPA does not  
3 adopt a new regional plan. It also offers the “carrot” of a bill request to repeal SB 271 and prevent  
4 Nevada’s withdrawal depending on TRPA’s “progress” toward amending the Regional Plan, as  
5 determined by December 31, 2012. This opportunity for a bill request expired on January 1, 2013.

6           50.     The Nevada Legislature approved SB 271, and on June 27, 2011, Nevada Governor  
7 Brian Sandoval signed the bill, enacting it into law. In reaction to this legislation, TRPA planned to  
8 have an updated regional plan approved by the end of 2012.

9           51.     On April 25, 2012, TRPA released the draft amendments to the regional plan and  
10 Code implementing these changes (collectively, “Draft Plan Update”). It also released the draft EIS  
11 studying the impacts of the proposed changes to the Plan and Code.

12           52.     The draft EIS studied five alternatives. “Alternative 3” consisted of the preferred  
13 Draft Plan Update. All alternatives (other than “no project”) proposed additional development, rather  
14 than a reduction in development from that authorized under the 1987 Plan.

15           53.     The draft EIS identified these policy objectives for a Plan Update that the alternatives  
16 should meet: “[e]ncourage property owners to transfer existing development and development rights  
17 from sensitive or outlying areas to existing community centers with the goal of restoring sensitive  
18 lands and accelerating environmental redevelopment,” “[e]liminate the regulatory barriers that have  
19 slowed the pace of redevelopment of outdated or poorly maintained structures,” and “[s]implify  
20 burdensome regulations for homeowners while achieving environmental threshold gains.” In  
21 essence, the Plan Update’s logic is that *loosening* development restrictions and encouraging  
22 intensified redevelopment will enable more environmentally sensible development projects, any  
23 negative impacts of which will also be offset by the restoration of damaged areas. Such a strategy  
24 would ostensibly improve water quality and soil conservation, as a result of the removal of existing  
25 harmful development on sensitive lands and the restoration of these lands; relocate development to  
26 less sensitive lands in urban core areas; and improve air quality, as development is transferred from  
27 outlying areas to core areas, reducing automobile dependency in favor of transit, walking, and  
28 bicycling.

1           54.     But rather than strengthen or retain measures to control the harmful effects of  
2 development, Alternative 3 included measures proposed to weaken existing controls under the 1987  
3 Plan. Most significantly, Alternative 3 proposed to delegate TRPA’s project review and approval  
4 duties to local governments for certain projects approved under an “area plan,” apparently in an  
5 effort to demonstrate “progress” towards enacting a delegation amendment, in accord with SB 271.  
6 This delegation would occur once a local government prepared and adopted an area plan providing  
7 more site-specific planning for urban core areas known as “community centers” and TRPA approved  
8 that area plan.

9           55.     Alternative 3 also weakened existing regulations regulating the amount of impervious  
10 surfaces in an area, by allowing, for example:

11                   (a)     increased and concentrated impervious coverage in community centers, up to  
12 70% coverage of a parcel, in excess of the 50% and 30% limits that had previously applied;

13                   (b)     “Comprehensive Areawide Coverage Management Programs” to be  
14 developed by local governments as part of an area plan, which could allow up to 70% coverage in a  
15 plan area, and up to 100% coverage of a parcel, in excess of TRPA’s minimum regional standards;

16                   (c)     exemptions from coverage regulations for non-motorized, public trails,  
17 including trails proposed on sensitive lands;

18                   (d)     the counting of “pervious pavement” as 75% coverage, rather than 100%  
19 coverage, as required under the 1987 Plan;

20                   (e)     allowing additional hard coverage in community centers based on the transfer  
21 of compacted dirt roads, or “soft coverage,” in outlying areas without any meaningful criteria for  
22 identifying soft coverage; and

23                   (f)     the mitigation of existing coverage that exceeds allowable limits through  
24 coverage removal anywhere in the Region, rather than in the same hydrologically related area, as  
25 required under the 1987 Plan.

26           56.     Moreover, Alternative 3 did not simply propose redevelopment within existing limits  
27 on development levels, but proposed an expansion that would allow far more development than  
28 contemplated under the 1987 Plan, including:



1 (a) 3,200 new residences and 200,000 square feet of additional commercial floor  
2 area;

3 (b) allowance of up to six residential development rights earned for every  
4 development right transferred from a developed parcel and up to 3.5 development rights earned for  
5 every right transferred from an undeveloped parcel, under a “transfer-of-development rights  
6 program” intended to incentivize the transfer of development rights from outlying, sensitive parcels  
7 to community-center parcels; and

8 (c) rezoning of unspecified undeveloped areas for new “resort recreation”  
9 development, expanding the region’s urban boundary.

10 57. The draft EIS identified various significant impacts of Alternative 3 that required  
11 mitigation, including significant land-use impacts, increased stormwater pollution, worse traffic  
12 congestion, higher noise levels, loss of sensitive lands, bulkier and taller buildings degrading scenic  
13 quality, increased air pollution (including greenhouse gases, toxic air contaminants, and particulate  
14 matter), and increased “vehicle miles traveled” (“VMT”), a measurement relevant to assessment of  
15 air quality.

16 58. Simultaneously, TRPA also released a draft “Mobility 2035: Regional Transportation  
17 Plan and Sustainable Communities Strategy” (“Regional Transportation Plan”), based on the Draft  
18 Plan Update, and a draft EIS studying its effects. The Regional Transportation Plan and its  
19 underlying studies also inform the Plan Update’s analysis and conclusions.

20 59. Also on April 25, 2012, TRPA released a draft of the 2011 Threshold Evaluation  
21 Report. Although, as a draft, it was still subject to public review and revision, the draft Report  
22 significantly informed the Plan Update and the EIS’s conclusions. The draft Report evaluated  
23 TRPA’s compliance with the thresholds over the 2007-2011 period and current environmental  
24 conditions, providing the “baseline” against which the draft EIS measured various changes contained  
25 in the proposed Plan Update. It also recommended “supplemental compliance measures” needed to  
26 achieve thresholds that had not been attained, as well as target dates for attainment. These  
27 recommendations were intended to inform changes needed to the regional plan. Further, it proposed  
28

1 changes to various threshold standards, which were incorporated into the Draft Plan Update and  
2 evaluated in the Plan Update EIS.

3 60. Altogether, the Draft Plan Update, draft Regional Transportation Plan, their  
4 respective EISs, and the draft 2011 Threshold Evaluation Report totaled over 5000 pages.

5 61. The Compact and TRPA’s Rules of Procedure provide that a draft EIS “shall be  
6 circulated for public comment for a period not less than 60 days,” art. VII(b), Rule 6.13.2, and that  
7 TRPA “may extend the comment period for good cause.” Rule 6.13.5. Given the voluminous nature  
8 of the Plan Update documents, as well as the need to review the draft 2011 Threshold Evaluation  
9 Report, plaintiffs requested the public comment period to be extended by 30 days.

10 62. TRPA denied the request, and extended the comment period by three days, until  
11 June 28, 2012, for a total comment period of 63 days. This denial was due in part to TRPA’s  
12 intention to have a Plan Update approved by December 2012.

13 63. Nonetheless, plaintiffs and other members of the public submitted extensive, detailed  
14 comments on the Plan Update, Regional Transportation Plan, draft Threshold Evaluation Report, and  
15 draft EISs. Among other things, they commented that the Plan Update improperly delegated project  
16 review and approval authority to local governments and improperly allowed local governments to  
17 develop alternative standards for coverage, in violation of the Compact. Further, plaintiffs and others  
18 noted that the draft EIS failed to use the proper standard for evaluating the region’s and Plan  
19 Update’s compliance with TRPA’s impervious coverage threshold, by assessing compliance on a  
20 regional-scale basis instead of a watershed or smaller-scale basis; failed to properly study the  
21 impacts of the Plan Update’s allowance of more concentrated coverage in community centers in  
22 closer proximity to Lake Tahoe; failed to properly study the impacts of the Plan Update’s expansion  
23 of the region’s urban boundary through the allowance of new resort recreation districts in  
24 undeveloped areas; failed to properly analyze the transfer-of-development-rights program’s  
25 feasibility and effectiveness in reducing coverage in sensitive outlying areas and reducing VMT; and  
26 failed to properly study mitigation for the Plan Update’s increased water quality, air quality, soil  
27 conservation, VMT, and noise impacts, and to adopt adequate monitoring for these impacts.

1           64. Plaintiffs also submitted extensive comments on the analyses and conclusions of the  
2 draft Threshold Evaluation Report, noting flaws in its assessment of the region’s compliance with  
3 water quality, soil conservation, VMT, ozone, and other threshold standards. In particular, plaintiffs  
4 noted that the 2011 Threshold Evaluation Report (and draft EIS) arbitrarily assessed compliance  
5 with the impervious coverage standard on a regional-scale basis rather than on a watershed or  
6 smaller-scale basis, as required by the threshold standard, and that it failed to explain or justify this  
7 change in how compliance is assessed, or even propose that the standard should be changed. Thus,  
8 where once no more than 30% of a parcel containing non-sensitive lands could be covered, the Plan  
9 Update altered this limit to allow coverage of 30% of all non-sensitive lands region-wide, which  
10 would allow more concentrated coverage over larger areas. Plaintiffs noted that a proper threshold  
11 evaluation was critical to informing the Plan Update.

12           65. Meanwhile, between May and July 2012, “Bi-State Consultation” meetings were  
13 organized to resolve “significant areas of controversy” in the Plan Update. The consultations were  
14 led by John Laird, California Secretary for Natural Resources and Leo Drozdoff, Nevada Director of  
15 Conservation and Natural Resources. Consultation participants included, from each state, a locally  
16 appointed TRPA Governing Board member, a state appointed TRPA Governing Board member, a  
17 representative of business interests, and a conservation organization representative.

18           66. On July 25, 2012, the Bi-State Consultations resulted in “Bi-State Recommendations”  
19 for items to include as part of the Plan Update. While the Recommendations proposed retaining  
20 some existing controls on development or curtailing some of the expansion allowed under the draft  
21 Plan Update, it endorsed the delegation of TRPA’s project-review and project-approval duties to  
22 local governments, the allowance of locally-adopted coverage and other development standards that  
23 would exceed regional standards, and the expansion of TRPA’s urban boundary through the creation  
24 of two new resort recreation areas on over 300 acres of private, undeveloped land –the Heavenly  
25 California Base Resort Recreation Area in South Lake Tahoe, California (56.4 acres) and the  
26 Edgewood Mountain Resort Recreation Area in Stateline, Nevada (249.5 acres).

27           67. On August 22, 2012, TRPA’s Governing Board endorsed the inclusion of the Bi-State  
28 Recommendations into the draft Plan Update.

1           68.     On October 24, 2012, TRPA released the “Final Draft Regional Plan Update,” which  
2 incorporated the Bi-State Recommendations into the Plan Update, and the final EIS. The final EIS’s  
3 response to comments did not adequately address or respond to plaintiffs’ comments and failed to  
4 remedy the defects identified in those and other public comments in the draft EIS and Plan Update. It  
5 also declined to respond to specific comments concerning the draft Threshold Evaluation Report,  
6 because it was not part of the Plan Update, although it informed the Plan Update’s analyses and  
7 conclusions. TRPA also released the final 2011 Threshold Evaluation Report, which again, failed to  
8 announce, explain, or justify its changes to the impervious coverage standard. The Report also  
9 arbitrarily reversed its conclusion that the ozone threshold was out-of-attainment, thus failing to  
10 recommend adequate measures to comply with this standard.

11           69.     On November, 15, 2012, TRPA proposed new amendments to the Regional Plan that  
12 had never been studied in the EIS. It released a draft of its Section 208 Water Quality Management  
13 Program, known as the “208 Plan,” which implements the Clean Water Act’s section 208  
14 requirements for stormwater treatment and is a component of TRPA’s regional plan. The draft 208  
15 Plan included a proposal to allow an additional recreation resort area of “comparable size” to the  
16 other proposed areas, and to exempt this third resort recreation area from the 208 Plan, including its  
17 environmental review requirements. *See* 208 Plan at § 10.2.F (“Until January 1, 2017, any  
18 amendments made by TRPA to subdivision policy as set forth in Regional Plan Goals and Policies  
19 LU 2.2 (as amended by the RPU, and excluding Attachment 2-A (list of TRPA approved  
20 subdivisions)) and Code Chapter 39 (as amended by the RPU), *other than allowing the subdivision*  
21 *of one area in addition to Heavenly and Edgewood parcels after it is added to the Resort Recreation*  
22 *designation, will require amendment of the [208 Plan].” (emphasis added). Further, the draft 208*  
23 *Plan proposed to allow, in 2017, that whenever TRPA amended its Regional Plan subdivision*  
24 *policies, the 208 Plan should be automatically amended, thereby exempting these new policies from*  
25 *the 208 Plan’s environmental review and other requirements. The proposed 208 Plan amendments*  
26 *were not studied in an EIS, or in any study supplementing the Plan Update EIS.*

27           70.     On December 12, 2012, TRPA’s Governing Board held a hearing on the 2011  
28 Threshold Evaluation Report, Plan Update, and Regional Transportation Plan. It made findings that

1 the 2011 Threshold Evaluation Report complied with section 16 of the Code and approved the  
2 Report. Next, it certified the EIS for the Plan Update, including proposed changes to the threshold  
3 standards. It then made required findings pursuant to the Compact to adopt proposed changes to the  
4 threshold standards (not including the threshold for impervious coverage, despite TRPA’s changed  
5 interpretation of this standard) and threshold findings to adopt the Plan Update under Code sections  
6 4.5 and 4.6. The Governing Board similarly certified the EIS for the Regional Transportation Plan  
7 and made findings approving the Plan pursuant to Code sections 4.5 and 4.6. Finally, it made  
8 findings for the approval of amendments to the 208 Plan and for its submission to the States of  
9 Nevada and California for approval and certification pursuant to section 208 of the Clean Water Act.

10 71. After approving the Plan Update, the Governing Board addressed an ad hoc request  
11 for its support of repeal of SB 271, but did not take it up. The Plan Update takes effect on  
12 February 11, 2013.

## 13 **CLAIMS FOR RELIEF**

### 14 **FIRST CLAIM**

#### 15 **DELEGATION OF TRPA’S PROJECT APPROVAL 16 AND REVIEW DUTIES IN VIOLATION OF COMPACT**

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

19 73. Under Compact article VI(b), “No project... may be developed in the region without  
20 obtaining the review and approval of the agency and no project may be approved unless it is found to  
21 comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to  
22 subdivision (a) to effectuate that plan.” Further, “[t]he agency may approve a project in the region  
23 only after making the written findings required by this subdivision or subdivision (g) of Article V.”  
24 Compact, art. VI(b). Article V(g) provides: “The agency shall adopt ordinances prescribing specific  
25 written findings *that the agency must make prior to approving any project in the region*. These  
26 findings shall relate to environmental protection and shall insure that the project under review will  
27 not adversely affect implementation of the regional plan and will not cause the adopted  
28

1 environmental threshold carrying capacities of the region to be exceeded.” (Emphasis added.) Code  
2 section 4.4 prescribes these findings. “Agency” means TRPA. *Id.*, art. II(b).

3 74. In addition, the Compact requires that “[t]he Tahoe Regional Planning Agency when  
4 acting upon matters that have a significant effect on the environment shall... [p]repare and consider  
5 a detailed [EIS] before deciding to approve or carry out any project.” Art. VII(a)(2).

6 75. The Plan Update violates the Compact, because among other things, it improperly  
7 delegates:

8 (a) TRPA’s duty to approve all projects to local governments that prepare an area  
9 plan approved by TRPA, by delegating approval of projects up to 99,999 square feet in size to such  
10 local governments;

11 (b) TRPA’s duty under Compact article V(g) to make written findings required  
12 for the approval of such delegated projects; and

13 (c) TRPA’s duties to prepare and consider an EIS when acting upon matters that  
14 have a significant effect on the environment.

15 76. Further, the Plan Update imposes significant barriers to appealing delegated project  
16 approvals to TRPA. Among other things, it imposes a \$1000 fee for each appeal and limits the basis  
17 for appeals to “whether the decision by a lead agency is in accordance with an approved Area Plan  
18 and its implementing ordinances consistent with the Regional Plan and Compact.” Code § 13.9.3.  
19 This fails to guarantee TRPA’s review of all projects approved by local governments.

20 77. Because TRPA improperly delegated its project review and approval duties to local  
21 governments, it failed to proceed in a manner required by law, the Plan Update is invalid as a  
22 violation of the Compact, and TRPA’s adoption of the Plan Update must be set aside.

## 23 **SECOND CLAIM**

### 24 **FAILURE OF REGIONAL PLAN TO ESTABLISH AND ENSURE** 25 **COMPLIANCE WITH MINIMUM REGIONAL STANDARDS**

26 78. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the  
27 preceding paragraphs.

1           79. Under Compact article VI(a), “[t]he governing body shall adopt all necessary  
2 ordinances, rules, and regulations to effectuate the adopted regional plan. Except as otherwise  
3 provided in this compact, every such ordinance, rule, or regulation shall establish *a minimum*  
4 *standard applicable throughout the region.*” (Emphasis added.) Further, “[a]ny political subdivision  
5 or public agency may adopt and enforce *an equal or higher requirement applicable to the same*  
6 *subject of regulation in its territory.*” Compact, art. VI(a) (emphasis added). “The regulations of the  
7 agency shall contain standards including but not limited to the following: Water purity and clarity...,  
8 soil and sedimentation control... and watershed pollution.” *Id.*

9           80. The Plan Update violates the Compact, because among other things:

10           (a) Its implementing ordinances fail to establish “a minimum standard applicable  
11 throughout the region” related to the protection of soil and water resources from impervious  
12 coverage or the amount of impervious coverage allowed within hydrologically-related areas,  
13 watersheds, or smaller-scale units such as sub-watersheds or parcels, that complies with the  
14 threshold for impervious coverage.

15           (b) The Plan Update allows local governments to develop their own standards for  
16 development, including a Comprehensive Areawide Coverage Management Program, in lieu of  
17 TRPA’s parcel-scale coverage limits for less sensitive lands, which could allow up to 100%  
18 coverage of a parcel, in excess of TRPA’s minimum standards of 30%, 50% and 70% (depending on  
19 the parcel).

20           (c) The Plan Update adopts vague and inadequate criteria for the adoption of a  
21 Comprehensive Areawide Coverage Management Program, thus failing to ensure that these criteria  
22 provide “an equal or higher requirement” for protecting soil and water resources from coverage,  
23 compared to TRPA’s regulations.

24           81. Because TRPA fails to adequately require minimum regional standards or equal or  
25 higher requirements, TRPA failed to proceed in a manner required by law, the Plan Update is invalid  
26 as a violation of the Compact, and TRPA’s adoption of the Plan Update must be set aside.

1 **THIRD CLAIM**

2 **FAILURE TO PROPERLY MAKE THRESHOLD FINDINGS**  
3 **PURSUANT TO THE COMPACT AND CODE SECTIONS 4.5 AND 4.6**

4 82. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the  
5 preceding paragraphs.

6 83. Article V of the Compact requires that “the regional plan . . . and all its elements, as  
7 implemented through agency ordinances, rules and regulations, achieves and maintains the adopted  
8 environmental threshold carrying capacities.” Art. V(c).

9 84. Pursuant to this Article, section 4.5 of the Code of Ordinances requires “findings  
10 necessary to amend the Regional Plan, including the Goals and Policies and Plan Area Statements  
11 and Maps.” To approve any amendment to the Regional Plan, TRPA must find that “the Regional  
12 Plan, as amended, achieves and maintains the thresholds.” Code § 4.5.

13 85. Section 4.6 of the Code of Ordinances requires “findings necessary to amend or adopt  
14 TRPA ordinances, rules or other TRPA plans and programs.” Under this section TRPA must find  
15 that “the Regional Plan and all of its elements, as implemented through the Code, Rules and other  
16 TRPA plans and programs, as amended, achieves and maintains the thresholds” before the agency  
17 approves any amendment or adopts any ordinance. *See* Code § 4.6.

18 86. In addition, Article V(d) of the Compact requires the Regional Plan to “provide for  
19 attaining and maintaining Federal, State, or local air and water quality standards, whichever are  
20 strictest, in the respective portions of the region for which the standards are applicable.” The  
21 thresholds for air and water quality incorporate these standards.

22 87. TRPA has failed and is failing to achieve and maintain compliance with numerous  
23 threshold standards, including various federal, state, and local air and water quality standards. Since  
24 1991, TRPA has conducted five threshold evaluations assessing the Region’s progress in achieving  
25 and maintaining the thresholds. The most recent threshold evaluation occurred in 2011. This  
26 evaluation revealed that 35 threshold indicators have not been met and the status of 59 threshold  
27 indicators is unknown, including but not limited to the following:  
28



1 (a) Water quality standards:

2 (1) The water quality standard of a winter mean Secchi disk transparency  
3 of 33.4 meters, *i.e.*, the maximum depth at which a white disk of a standard dimension can be seen  
4 from the water's surface, a measure of the clarity of Lake Tahoe, has not been attained. For 2011, the  
5 winter mean Secchi disk transparency was 25.9 meters.

6 (2) The water quality standard of annual average Secchi disk transparency  
7 of 29.7 meters, has not been attained. For 2011, the annual average Secchi disk transparency was 21  
8 meters. This is in part because of declining summertime Secchi disk transparency, which was 15.7  
9 meters in 2011, the second lowest measurement recorded at the time. In 2012, this indicator further  
10 declined to 15.4 meters, the lowest measurement on record.

11 (3) The water quality standard for annual mean phytoplankton primary  
12 productivity ("PPr"), a measure of algal productivity that relates to the clarity of Lake Tahoe, is a  
13 maximum of 52 gmC/m<sup>2</sup>/yr. This standard has not been attained, and the level of algal productivity  
14 is increasing and has increased exponentially over the past 40 years. In 2011, annual mean PPr  
15 measured 218.6 gmC/m<sup>2</sup>/yr, or 4.2 times the standard of 52 gmC/m<sup>2</sup>/yr.

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

19 (5) Because insufficient data is available, TRPA has failed to demonstrate  
20 compliance with the threshold standards for nearshore clarity, stormwater runoff discharges to  
21 surface water and groundwater (which set maximum allowable annual average concentrations for  
22 dissolved inorganic nitrogen, dissolved phosphorus, dissolved iron, grease and oil, and suspended  
23 sediment), and Fallen Leaf Lake, including Secchi depth and near-surface water temperature.

24 (b) Soil conservation: Both of the threshold requirements, which set forth  
25 maximum impervious coverage percentages for different types of soil, as well as goals for  
26 preserving and restoring stream environment zones within the Region, are not in attainment and have  
27 never been in attainment status. The restoration of over 650 acres and 550 acres of land is needed to  
28 achieve the thresholds, respectively.

1 (c) Air quality standards:

2 (1) California's 8-hour ozone standard of 0.070 ppm has been violated  
3 numerous times since 2006. As a result, the California Air Resources Board classified the Lake  
4 Tahoe Air Basin a nonattainment area. The region's compliance with this standard since 2010 is  
5 unknown due to TRPA's failure to monitor for compliance with the standard.

6 (2) The region is not in compliance with the California 24-hour air quality  
7 standard for highest concentration of inhalable particulates ("PM10"), which restricts PM10  
8 concentrations to 50 µg/m<sup>3</sup>.

9 (d) Noise: The threshold standards for noise levels setting the maximum  
10 allowable noise levels for single noise events (such as from aircraft and boats) and for background  
11 noise (or community noise) are not being met.

12 (e) Scenic resources: None of the four threshold standards for maintenance of  
13 scenic quality has been attained or has ever been in attainment status, including the standard for  
14 travel route ratings, which tracks long-term, cumulative changes to views seen from major roadways  
15 and changes to the views seen from Lake Tahoe looking to the shore, and the standard for scenic  
16 quality rating, which protects specific views of scenic features observable from major roadways and  
17 from the Lake.

18 (f) Fisheries: The threshold requirements for maintenance of fish habitat in the  
19 Lake are not in attainment and have never been in attainment status.

20 (g) Vegetation and wildlife preservation: Various threshold requirements for  
21 species preservation are not in attainment, including standards for the abundance and patterns of  
22 common vegetation; the minimum percentage of forested lands in the Region in a late seral, or old-  
23 growth, condition; and minimum numbers of population sites or minimum areas of habitat of  
24 sufficient quality for special interest species such as the northern goshawk and various waterfowl.

25 88. In addition, compliance with certain thresholds is at risk of nonattainment, or there is  
26 little confidence in these thresholds' attainment status determination. For example, TRPA has  
27 determined that the air quality standard of "vehicle miles traveled" or "VMT," which requires a 10%  
28 reduction in VMT from 1981 levels, has been met, but confidence in this determination is "low."

1 Further, because current attainment of this standard is likely due to “sagging economic conditions,”  
2 once economic conditions rebound, VMT is likely to worsen.

3 89. The Plan Update and underlying Regional Transportation Plan were not lawfully  
4 approved because TRPA could not properly find that the Regional Plan, as amended, achieves and  
5 maintains the thresholds. Code § 4.5. Further, it could not find that the Regional Plan and all of its  
6 elements, as implemented through the Code, Rules and other TRPA plans and programs, as  
7 amended, achieves and maintains the thresholds. Code § 4.6. This is so because the Regional Plan is  
8 currently not achieving and maintaining many of the thresholds and because the Plan Update and  
9 Regional Transportation Plan do not cure all of the areas of non-attainment. For example:

10 (a) The Plan Update erroneously assumes that the transfer-of-development rights  
11 program will successfully transfer existing development away from sensitive, outlying areas to  
12 community centers, because it fails to take into account that alternative and potentially cheaper ways  
13 for acquiring development rights exist, such as purchase from land banks, which currently contain  
14 over 4,200 development rights. The use of such banked development rights would not remove any  
15 existing development from sensitive areas, because such banked development rights are the result of  
16 the retirement of developments rights that has already occurred. Because this program is a key part  
17 of TRPA’s strategy to achieve and maintain the Region’s impervious coverage and stream-  
18 environment-zone thresholds, the flawed analysis results in a flawed finding that the Plan Update  
19 achieves and maintains these thresholds.

20 (b) Similarly, the Plan Update erroneously assumes that transfer incentives for the  
21 retirement of existing coverage from sensitive, outlying areas will successfully result in the transfer  
22 of such coverage to community centers, because it fails to take into account that alternative ways for  
23 acquiring coverage exist (e.g., purchase from land banks and purchase and retirement of “potential”  
24 coverage, which is not existing coverage, but hypothetical coverage a parcel might be allowed if it  
25 were developed).

26 (c) The Plan Update and Regional Transportation Plan fail to provide for  
27 adequate measures to control ozone levels, based on the unsupported basis that the Region has  
28

1 attained the ozone threshold, including California’s 8-hour ozone standard, when, in fact ozone  
2 levels are worsening.

3 (d) The Plan Update fails to provide adequate measures to control nutrient  
4 pollution, which harms nearshore clarity, because it simply relies on measures to control fine  
5 sediment pollution, which are only targeted towards improving mid-lake clarity.

6 (e) The Plan Update fails to provide for adequate monitoring of water quality and  
7 other threshold standards, as well as contingency measures to ensure that increased and concentrated  
8 development under the Plan Update does not result in worsening of existing conditions or violations  
9 of the thresholds, and thus fails to assure that water quality and other thresholds will be attained. *See*  
10 Regional Plan ME-3.1(A) (requiring “[c]ontinuous scientific monitoring of environmental conditions  
11 related to the adopted thresholds standards”).

12 90. Even for those thresholds that are in attainment, the Plan Update and underlying  
13 Regional Transportation Plan do not take into account future conditions that are likely to put them  
14 out of attainment, regardless of new development allowed under the Plan Update, and therefore do  
15 not maintain the thresholds. For example, the VMT threshold had never been attained until recent  
16 years when poor economic conditions led to fewer visitors and less vehicle traffic, but the Plan  
17 Update and Regional Transportation Plan provide no adequate strategy for maintaining the VMT  
18 threshold when economic conditions improve.

19 91. In addition, the Plan Update will actually undermine attainment of the thresholds.  
20 Specifically, the Plan Update will result in increased, concentrated development, which will result in  
21 increased noise, traffic, air pollution, water pollution, loss of soil, and scenic degradation, among  
22 other impacts, none of which have been properly studied within the EIS, nor adequately mitigated to  
23 less than significant levels or to “assure meeting standards of the region.” Compact, art.  
24 VII(a)(2)(D), (d)(1).

25 92. TRPA’s findings that the Regional Plan achieves and maintains the thresholds, and  
26 that the Regional Plan as amended and implemented by the Plan Update and Regional  
27 Transportation Plan achieves and maintains the thresholds, have no basis in the record and are  
28 arbitrary and capricious, in view of the current non-attainment of the thresholds, the significant

1 environmental impacts that will result from the Plan Update’s adoption and further undermine  
2 compliance with the thresholds, the lack of certain, enforceable, and effective mitigations for these  
3 additional impacts, and the lack of any effective strategy to achieve unattained thresholds. Thus, the  
4 Plan Update and Regional Transportation Plan are invalid as a violation of Compact article V and  
5 Code sections 4.5 and 4.6, and TRPA’s adoption of the Plan Update must be set aside.

#### 6 **FOURTH CLAIM**

##### 7 **FAILURE TO ADEQUATELY ANALYZE SIGNIFICANT IMPACTS** 8 **IN VIOLATION OF THE COMPACT**

9 93. Plaintiffs hereby reallege and incorporate all of the above paragraphs as if fully set  
10 forth herein.

11 94. The Compact requires that an EIS provide a “detailed” analysis of the significant  
12 environmental impacts of a project before a project may be approved. Compact, art. VII(a)(2)(A).  
13 This entails that an EIS take “a ‘hard look’ at the potential impacts” of a proposed action. *League to*  
14 *Save Lake Tahoe*, 739 F. Supp. 2d at 1289, quoting *Robertson v. Methow Valley Citizens Council*,  
15 490 U.S. 332, 352 (1989). “Agency action is arbitrary and capricious where the agency has ‘entirely’  
16 failed to consider an important aspect of the problem.” *Id.*, quoting *Lands Council v. McNair*, 537  
17 F.3d 981, 987 (2008).

18 95. The EIS for the Plan Update fails to adequately consider the Plan Update’s potential  
19 impacts, in violation of the Compact. For example, the EIS fails to properly evaluate and disclose:

20 (a) the Plan Update’s impacts on air quality, including VMT, because it relies on  
21 the flawed assumptions that (1) the transfer of development rights from outlying, *undeveloped*  
22 *parcels, including undevelopable parcels*, under the transfer-of-development-rights program will  
23 reduce VMT or offset the increase in VMT from new development in community centers, (2)  
24 existing development in outlying areas will actually be removed and the development rights  
25 transferred to community centers under the program, resulting in less vehicle use, despite that  
26 alternative ways of acquiring development rights exist; and (3) only VMT increases in one highway  
27 corridor in South Lake Tahoe in the summertime would result in a significant impact.

1 (b) the impacts of increased coverage, as well as concentrated coverage in  
2 community centers, on soil conservation, natural soil function (including the loss of natural  
3 infiltration), ecological balance, and water quality, including effects at the watershed-level or smaller  
4 scale and on near-shore conditions;

5 (c) the impacts of re-interpreting the threshold standard for impervious coverage,  
6 so that it applies on a region-wide basis rather than a hydrologically-related area, watershed, or  
7 smaller-scale basis, including impacts on soil conservation, natural soil function (including the loss  
8 of natural infiltration), ecological balance, and water quality; and

9 (d) the effects of rezoning over 300 acres of undeveloped land as resort recreation  
10 areas, plus an additional area of “comparable size” to these areas, including impacts on water quality  
11 resulting from the creation of new roadways in these areas and their exemption from the 208 Plan  
12 requirements.

13 96. In addition, the EIS does not properly reveal the impacts of the “No Action”  
14 alternative allowing the 1987 Plan to remain in place, compared to the adopted Plan Update, by  
15 making inconsistent assumptions about their implementation, *i.e.*, it assumes full implementation of  
16 the environmental protection measures under the Plan Update, but not for the 1987 Plan.

17 97. The above flaws in the Plan Update’s EIS also infect the Regional Transportation  
18 Plan and its underlying EIS.

19 98. Because the EISs for the Plan Update and Regional Transportation Plan failed to  
20 study their significant environmental effects, TRPA failed to proceed in a manner required by law.  
21 Further, substantial evidence does not support TRPA’s findings that the Plan Update’s and Regional  
22 Transportation Plan’s environmental effects are not significant and/or will be mitigated to less than  
23 significant levels.

#### 24 **FIFTH CLAIM**

#### 25 **FAILURE TO MITIGATE SIGNIFICANT IMPACTS** 26 **IN VIOLATION OF THE COMPACT**

27 99. Plaintiffs hereby reallege and incorporate all of the above paragraphs as if fully set  
28 forth herein.



1 (c) violate Article V of the Compact and sections 4.5 and 4.6 of the Code of  
2 Ordinances, because the Regional Plan, as amended, and implemented by the Code, as amended,  
3 fails to achieve and maintain the threshold standards, and because TRPA's findings pursuant to these  
4 sections have no basis in the record;

5 (d) violate Article VII of the Compact, because the EISs fail to comply with its  
6 legal requirements for environmental review by failing to study the entire Plan Update's and  
7 Regional Transportation Plan's effects, adequately describe significant environmental impacts,  
8 include adequate mitigation measures, study feasible alternatives, include information upon which  
9 conclusions are based, and study and consider cumulative impacts;

10 (e) violate Article VII of the Compact, because the findings that environmental  
11 impacts will be reduced to less than significant levels have no basis in the record; and

12 (f) are otherwise arbitrary, capricious, and lacking substantial evidentiary  
13 support.

14 B. For an order, including a preliminary and permanent injunction invalidating and  
15 setting aside TRPA's December 12, 2012 certifications of the EISs evaluating the Plan Update and  
16 Regional Transportation Plan and TRPA's December 12, 2012 approvals of the Plan Update, 208  
17 Plan, and Regional Transportation Plan;

18 C. For a temporary restraining order and a preliminary and permanent injunction  
19 restraining TRPA and each of its agents, employees, officers, and representatives from taking any  
20 action to implement in any way the Plan Update, 208 Plan, and Regional Transportation Plan  
21 pending full compliance with the Compact, the Regional Plan, the Code of Ordinances, and all other  
22 applicable legal requirements;

23 D. For plaintiffs' costs of suit and attorneys' fees pursuant to all applicable legal  
24 authority including, but not limited to, California Code of Civil Procedure Section 1021.5, the  
25 common law private attorney general doctrine, and any and all other provisions of law or equity; and

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

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1 DATED: February 11, 2013

Respectfully submitted,

3 /s/ Wendy S. Park  
4 TRENT W. ORR  
5 WENDY S. PARK  
6 *Counsel for Plaintiffs Sierra Club*  
7 *and Friends of the West Shore*  
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