TAHOE REGIONAL PLANNING AGENCY

TRPA
PO Box 5310
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STAFF REPORT

Date: March 18, 2025

To: TRPA Governing Board

From: TRPA Staff

Subject: Appeal of Denial of Moody Boat Ramp/Pier Conversion and Transfer Project, 181 Yellow Jacket Road, Douglas County, Nevada; Assessor's Parcel Number (APN) 1418-10-401-004, TRPA File Number ERSP2023-1834; Appeal File Number ADMIN2025-0016

Requested Action:
To consider and act upon an appeal filed by Ernest W. Moody of a denial of an application to convert and transfer a banked boat ramp on APN 1418-34-310-013 (ref. ERSP2020-1413) to the parcel located at 181 Yellow Jacket Road, Glenbrook, Douglas County, Nevada (APN 1418-10-401-004) for the construction of a single-parcel pier.

Staff Recommendation:
Staff recommends that the Governing Board uphold the Executive Director's determination that the pier transfer is prohibited under the TRPA Code because the properties are not in the same scenic unit and the receiving parcel is in a scenic unit that is out of attainment.

Motion:

A motion to grant the appeal, which motion should fail in order to affirm the Executive Director's decision.

The motion to grant the appeal will fail unless it receives five affirmative votes from Board members representing Nevada, and nine overall.

Background:
On April 20, 2020, Lakeside Cove HOA applied for and received a permit to remove and bank a boat ramp associated with Lakeside Cove Resort ("LCR"), 1150 U.S. Highway 50, Douglas County APN 1418-34-301-013 (ref. ERSP2020-1413).

A banked boat ramp may be converted into a pier under TRPA Code section 84.5.3.F. That section provides as follows:

"**Conversion**. A legally existing private boat ramp may be converted to a pier, provided the converted boat ramp (pier) and littoral parcel receiving the pier shall comply with the applicable eligibility and development provisions for additional piers set forth in 84.4.2 and 84.4.3, respectively, of this Chapter."

On December 29, 2023, Moody submitted an application to convert the LCR banked boat ramp to a pier and transfer the pier to Moody's parcel at 181 Yellow Jacket Road, Douglas County, Nevada, APN 1418-10-401-004 ("Moody Property"). https://parcels.laketahoeinfo.org/AccelaCAPRecord/Detail/ERSP2023-1834.

On March 27, 2024, TRPA staff contacted Moody's consultant, Kevin Agan, stating as follows:

> "The banked boat ramp is located in Scenic Shoreline Travel Route 27, Lincoln Park, which is a non-attainment scenic area, and the subject site is located in Scenic Shoreline Travel Route 26, Cave Rock, which is also a non-attainment scenic area. The boat ramp conversion to a pier and transfer to the subject site is not allowed because the properties are not in the same scenic unit and the receiving parcel is in a non-attainment scenic unit (see TRPA Code, 84.5.2.F and 84.4.3.G.1 below)." Attachment E.

TRPA Code section 84.4.3.G.1 states as follows:

> "A legally existing pier may be relocated or transferred to a littoral parcel within the same Scenic Unit or to a littoral parcel within a different Scenic Unit that is in scenic attainment. *The transfer of an existing pier to a littoral parcel within another Scenic Unit that is out of attainment is prohibited*." (Emphasis added.)

On March 27, 2024, staff asked Mr. Agan if, considering the explicit prohibition in the Code, he wished to withdraw the application. The following day Mr. Agan stated that a response would be forthcoming. Attachment E.

On September 18, 2024, TRPA staff reviewed scenic score updates and determined that there was no change in the two relevant shoreline scenic units and that both units remained out of attainment. Because the receiving parcel is located in a shoreline scenic unit that is out of attainment, and because no response was received from Mr. Agan regarding whether the applicant wished to withdraw the application, on March 3, 2025, the Executive Director denied the permit application. Attachment A.

Moody filed a timely appeal of the Executive Director's denial of his application (Attachment B) and filed a Supplemental Statement of Appeal. Attachment C. In his appeal, Moody's makes five assertions: (1) the prohibition of pier transfers into a non-attainment unit is superseded by another provision of the TRPA Code, Section 84.4.3.A.6(d)(v), governing scenic mitigation for expansions of existing piers or new piers; (2) that something called a "shoreline development right" exists, and that it is different from a pier, so the Code sections governing pier transfers are inapplicable; (3) that the prohibition on transferring a pier into a non-attainment unit is "arbitrary"; (4) that Appellant's request to build a pier will "improve shoreline conditions across adjacent scenic units"; and (5) TRPA has been inconsistent in its interpretation of Code requirements for this project and failed to notify Appellant that the Code prohibited transfer into a non-attainment unit.

Discussion:
The main contentions on appeal are discussed below.

A. General Scenic Mitigation Provisions do not Supersede the Prohibition Contained in TRPA Code section 84.4.3.G.1.

Appellant argues that Section 84.4.3.A.6(d)(v) "specifically contemplates scenic mitigation for additional piers and expansions of existing piers in a different non-attainment unit, not necessarily the same non-attainment unit where the conversion or transfer is occurring." Attachment C, p. 1.

Appellant's claim that the general pier development standards contained in Section 84.4.3.A.6(d)(v) supersedes the prohibition of pier transfers into non-attainment units misreads the Code hierarchy, and the Code makes clear in Sections 84.4.3.G.2 and 5, that the general development standards are below the prohibitions of 84.4.3.G on the hierarchy. Section 84.4.3.A.6 outlines general design standards for eligible new piers or expansions, with subsection (d)(v) allowing scenic mitigation—at the lowest preference—in another non-attainment unit via offsets like vegetation restoration or structure screening. This applies only after confirming eligibility under 84.4.2. There is nothing in the Code to suggest that these general development standards would override the transfer prohibition in Section 84.4.3.G.1.

Further, these provisions harmonize: 84.4.3.G.1. acts as a threshold eligibility barrier to block transfers into non-attainment units, while 84.4.3.A.6(d)(v) governs mitigation location for otherwise-eligible projects (new/expansions). Mitigation in another non-attainment unit (at 1.5:1 offset ratio) supports gradual attainment but cannot override the outright transfer ban, as that would undermine scenic recovery goals.

Section 84.4.3.A.6(d)(v) cannot "bootstrap" eligibility for a project barred by Section 84.4.3.G.1, as the mitigation provision applies only to piers meeting prior eligibility criteria under 84.4.2 and those not subject to specific prohibitions like the 84.4.3.G.1 transfer ban into non-attainment units. Section 84.4.3.A.6(d)(v), the lowest-preference mitigation option (e.g., 1.5:1 offsets in another non-attainment unit), presupposes the project has cleared those threshold hurdles; it addresses scenic mitigation location for compliant new piers or expansions.

B. The Proposed Transfer is a Pier Transfer.

Appellant argues that the proposed transfer is not really a pier transfer, asserting the following:

"Appellant is not proposing a simple pier-to-pier transfer like what is contemplated under Section 84.4.3.G.1; rather, the Appellant proposes transferring the shoreline development right associated with the banked boat ramp. In other words, the section of Code that TRPA relied on when denying the Appellant's request does not apply to the proposed project."

The TRPA Code does not recognize a generic "shoreline development right" that can be decoupled from specific shorezone structures. Chapter 84 does not include any provision for transferring abstract

"development rights" from a banked boat ramp to create a pier, or some other structure, on another parcel. This argument is without any basis in the Code.

The LCR permit clearly stated that the *boat ramp* was banked on the parcel. Attachment D. The Code is clear in describing the process for transfer of a banked boat ramp. Code section 84.5.3.F provides that a banked "boat ramp may be converted to a pier, provided the converted boat ramp (pier) and littoral parcel receiving the pier shall comply with the applicable eligibility and development provisions for additional piers set forth in 84.4.2 and 84.4.3."

The banked boat ramp may be converted to a pier and transferred under TRPA's Code, and applicants may not evade the Code's requirements governing pier transfers by claiming that the banked boat ramp is a generic but somehow transferable right that has no basis in the Code.

C. The Applicable TRPA Code Provisions are not Arbitrary.

Appellant argues that "TRPA's policy to allow pier transfers within non-attainment units but not within adjacent units is an arbitrary restriction." Attachment C, p. 3. Appellant argues that transfers should be allowed between adjacent non-attainment units, and that the proposed project will result in a "scenic and environmental improvement." *Id*.

TRPA's Code provisions under Section 84.4.3.G are rational and threshold-driven, not irrational as Appellant claims. Section 84.4.3.G.1 categorically bans pier transfers into non-attainment scenic units to prevent any net increase in pier density or increase in visible mass within already impaired viewsheds, prioritizing basin-wide recovery. Intra-unit transfers merely relocate within the same impaired unit without altering overall density or risking cross-unit threshold dilution; inter-unit transfers, even adjacent ones, could shift impacts across boundaries, undermining localized recovery efforts and cumulative scenic modeling.

The Code's graduated restrictions rationally tier protections to achieve gradual attainment without loopholes. Adjacent non-attainment units remain distinct for threshold evaluation. Proximity does not negate risks, and Appellant's claimed "improvements" cannot override explicit prohibitions designed for programmatic compliance.

It also bears noting that the "improvements" Appellant claims, including removal of a "visibly deteriorated, non-compliant boat ramp, which detracts from the visual quality of the shoreline and contributes to shoreline erosion" (Attachment C, p. 3) have already occurred. On June 18, 2021, the LCR permit was acknowledged with a statement that the permittee had complied with all conditions of approval. Condition 2 required removal of the boat ramp and restoration of the area to natural conditions. Attachment D.

TRPA's Shoreline Plan was carefully created through input from all interested stakeholders, and the assertion that it is irrational because its programmatic approach is not to Appellant's liking is not compelling. Shoreline scenic units are distinct for purposes of Threshold evaluation and attainment, and

prohibiting pier transfers into a separate non-attainment unit is not just rational, it is the most environmentally sound approach.

D. Claims of "Shoreline Improvement" do not Supersede Code Requirements.

Appellant again discusses the fact that the LCR banked boat ramp, and the receiving pier parcel (Moody Property) are in adjacent scenic units, asserting that although they are in non-attainment, the prohibition on transfer should not apply here because of a vaguely described overall "shoreline improvement." Attachment C, pp. 4-5.

As stated above, the boat ramp has been removed and the area restored, and adjacent non-attainment units remain distinct for threshold evaluation. Proximity does not negate risks, and appellant's claimed "improvements" cannot override explicit prohibitions designed for programmatic compliance.

E. TRPA has Appropriately Applied the Code in this Case.

Appellant asserts that in October of 2021, "Appellant took the first formal step toward realizing this beneficial shoreline improvement project by submitting a request to transfer the entitlement associated with the banked boat ramp to the Appellant's parcel for future conversion to a pier." Attachment C, p. 5. As staff noted in its response, there is no provision in the TRPA Code that allows for the transfer of a banked boat ramp to another parcel *for banking*. TRPA staff was clear on December 13, 2021, that the LCR banked boat ramp could only be transferred with an application for a pier on the receiving parcel. Attachment C, Exhibit B.

Appellant claims that TRPA "reversed" its position, but there is no evidence of any reversal. The process under the Code is to apply for development of the pier on the receiving parcel with the transfer application, as clearly described by staff in December of 2021. Attachment C, Exhibit B.

Appellant's final claim is that at no time before the denial of the application did TRPA staff raise any concern regarding attainment status. Attachment C, p. 5. This claim is simply untrue.

The Appellant, by his own account, first approached TRPA in 2021 seeking to transfer the banked LRC boat ramp to the Moody Property and bank it there. Staff responded that a pier project must be proposed on the receiving parcel. Appellant then submitted his application for the transfer and pier project on December 29, 2023. On March 27, 2024, staff explained in an email to Mr. Agan that the project could not be approved as proposed as it was explicitly prohibited by the Code because the receiving parcel is in a non-attainment unit and asked if the applicant would like to withdraw the application. Attachment E. The next day, Mr. Agan replied, saying "[s]tay tuned for a response....." *Id*. Mr. Agan did not provide any additional response to the email.

There has not been any misunderstanding or reversal of positions. There is no mechanism in the TRPA Code for transferring a boat ramp or a pier onto another parcel to be banked, and a project application on the receiving parcel is required. Finally, a *year before* the application was denied, staff explained that

a permit could not be approved because the receiving parcel is in a non-attainment unit, and Appellant's consultant agreed to respond, but did not.

The Code has been consistently and appropriately applied and explained by TRPA staff, and Appellant has failed to show otherwise. The appeal should be denied and the decision of the Executive Director to deny the application, TRPA No. ERSP2023-1834, should be affirmed.

Contact Information:
For questions regarding this agenda item, please contact Marsha Burch, Associate Counsel, at (775) 589-5338 or mburch@trpa.gov, or Brandy McMahon, Principal Planner, at (775) 589-5274 or bmcmahon@trpa.gov.

To submit a written public comment, email publiccomment@trpa.gov with the appropriate agenda item in the subject line. Written comments received by 4 p.m. the day before a scheduled public meeting will be distributed and posted to the TRPA website before the meeting begins. TRPA does not guarantee written comments received after 4 p.m. the day before a meeting will be distributed and posted in time for the meeting.

Attachments:
A. Executive Director's Denial of ERSP2023-1834
B. Notice of Appeal
C. Statement of Appeal
D. ERSP2020-1413
E. March 27, 2024, email correspondence

Attachment A

Executive Director's Denial of ERSP2023-1834

TAHOE REGIONAL PLANNING AGENCY

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March 3, 2025

Kevin Agan
Agan Consulting Corporation
P.O. Box 9180
Incline Village, NV 89450

Sent via email to: kevin@aganconsulting.com

DENIAL OF MOODY BOATRAMP/PIER CONVERSION AND TRANSFER PROJECT, 181 YELLOW JACKET ROAD, DOUGLAS COUNTY, NEVADA; ASSESSOR'S PARCEL NUMBERS (APN) 1418-10-401-004, TRPA FILE NUMBER ERSP2023-1834

Dear Mr. Agan,

On February 21, 2024, I was assigned a project application submitted by you that includes a request to transfer a banked boat ramp on APN 1418-34-310-013 (ref. ERSP2020-1413) to the parcel located at 181 Yellow Jacket Road, Glenbrook, Douglas County, Nevada (APN 1418-10-401-004) and conversion to a single-parcel pier. The banked boat ramp is located in Scenic Shoreline Travel Route 27, Lincoln Park, which is a non-attainment scenic area, and the subject site (location of the proposed single-parcel pier) is located in Scenic Shoreline Travel Route 26, Cave Rock, which is also a non-attainment scenic area.

As you are aware, on March 27, 2024, I sent you an email letting you know that the boat ramp conversion to a pier and transfer to the subject site is prohibited under the Tahoe Regional Planning Agency (TRPA) Code because the properties are not in the same scenic unit and the receiving parcel is in a non-attainment scenic unit (refer to TRPA Code, Sections 84.5.3.F and 84.4.3.G.1). In the email, I asked if you would like to withdraw the application.

On March 28, 2024, you sent a response to my email that said "Stay tuned for a response……"

Since you have not submitted a request to withdraw the application and the proposed project application cannot be approved pursuant to TRPA Code, Sections 84.5.3.F and 84.4.3.G.1, the Agency is denying the above referenced application.

If you should wish to appeal this decision, you must file a complete appeal application within 21 days from the date of this letter.

Sincerely,

Brandy McMahon

Brandy McMahon, AICP
Principal Planner

cc Ernest W. Moody, Trustee
175 East Reno Avenue, Suite C6
Las Vegas, NV 89119

Attachment B

Notice of Appeal

WOMBLE BOND DICKINSON

March 24, 2025

Womble Bond Dickinson (US) LLP
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Brandy McMahon
Principal Planner
Tahoe Regional Planning Agency
128 Market Street
Stateline, NV 89449

VIA E-MAIL (BMCMAHON@TRPA.GOV)

RE: Appeal of Denial of Moody Boat Ramp/Pier Conversion and Transfer Project, 181 Yellow Jacket Road, Douglas County, Nevada; Assessor's Parcel Number (APN) 1418-10-401-004, TRPA File Number ERSP2023-1834.

Garrett D. Gordon
Partner
Admitted in Nevada
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Dear Ms. McMahon:

This firm represents Ernest W. Moody, Trustee of the Moody Revocable Trust, owner and applicant ("Appellant") in the above-referenced TRPA File Number. We are in receipt of your denial letter dated March 3, 2025 and submit this timely appeal. The Tahoe Regional Planning Agency ("TRPA") has denied the request for a boat ramp/pier conversion and transfer project to convert a banked boat ramp to a single-parcel pier and transfer it to the Appellant's parcel located at 181 Yellow Jacket Road on Douglas County, Nevada APN 1418-10-401-004. TRPA asserts that the conversion and transfer are prohibited because the properties are not in the same scenic unit, and the receiving parcel is in a non-attainment scenic unit.

However, upon reviewing TRPA Code Section 84.4.3.A.6(d)(v), we assert that there is a code discrepancy and argue that the project should be permitted. TRPA Code Section 84.4.3.A.6(d)(v) contemplates scenic mitigation for additional piers and expansions of existing piers in a *different* non-attainment unit, not necessarily the same non-attainment unit where the conversion or transfer is occurring. Since Section 84.4.3.A.6(d)(v) allows for scenic mitigation for piers in different non-attainment units, the denial of the project solely based on the current location of the boat ramp is out of attainment and the location of the receiving parcel for the converted, proposed new pier is also out of attainment presents a fundamental discrepancy within the TRPA Code.

Further, this discrepancy with Section 84.4.3.A.6(d)(v) reflects that the scenic benefits from the proposed conversion and transfer should be evaluated in a broader context of TRPA's scenic objectives rather than solely focusing on the attainment statuses of the parcels. First, the benefit of removing a legal, non-conforming boat ramp. TRPA is encouraging the removal of such non-conforming boat ramps along Lake Tahoe. Removing these ramps is recognized by TRPA as providing significant scenic benefits to the area. The existing boat ramp is inconsistent with TRPA's overarching goals of restoring and preserving

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the scenic integrity of the Lake Tahoe Basin. By converting the boat ramp into a pier, the Appellant would eliminate a non-conforming structure that currently disrupts the scenic landscape.

Second, installing the pier will provide significant visual enhancement to the non-attainment unit that the receiving parcel is in, and from a visual perspective, the adjacent scenic unit as well which is effectively part of the same scenic unit when viewed from TRPA's scenic database. The installation of a pier will better align with the scenic objectives of TRPA. Because the pier will blend more naturally with the shoreline, it will offer a more aesthetically pleasing view from both the water and the surrounding land. Since the adjacent scenic unit is also out of attainment, this improvement would directly support TRPA's scenic objectives. This should be recognized as a valid reason for approving the project, as it demonstrates its potential to improve the area's visual appeal.

Lastly, the proposed pier will contribute to shoreline stabilization. Typically, a pier contributes less to shoreline erosion, is less disturbing to vegetation and natural habitats and has a lower ecological impact than a boat ramp. Therefore, the proposed project is not only a better choice for scenic quality but is also better for ensuring long-term shoreline stability and lower environmental impacts. Based on the foregoing, we respectfully request that TRPA reconsider its denial and approve the proposed conversion and transfer project, recognizing both the discrepancy within TRPA's code and the broader benefits the proposed project provides to Lake Tahoe's scenic quality and shoreline stabilization.

Sincerely,

Womble Bond Dickinson (US) LLP

Garrett D. Gordon

Garrett D. Gordon

Attachment C

Statement of Appeal

WOMBLE BOND DICKINSON

April 23, 2025

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VIA E-MAIL (GSTMICHEL@TRPA.GOV; BCMAHON@TRPA.GOV)

Garrett D. Gordon
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RE: Supplemental Written Statement to Support Appeal of Denial of Moody Boat Ramp/Pier Conversion and Transfer Project, 181 Yellow Jacket Road, Douglas County, Nevada; Assessor's Parcel Number (APN) 1418-10-401-004, TRPA File No. ERSP2023-1834.

Dear Ms. McMahon:

As you know, this firm represents Ernest W. Moody, Trustee of the Moody Revocable Trust, owner and applicant ("Appellant") in the above-referenced TRPA File Number. We are submitting this written statement to supplement our appeal filed to the Tahoe Regional Planning Agency ("TRPA") on March 24, 2025. On March 3, 2025, TRPA denied the Appellant's application to transfer a shoreline entitlement right associated with a banked boat ramp to the Appellant's parcel located at 181 Yellow Jacket Road on Douglas County, Nevada APN 1418-10-401-004 and to subsequently construct a single-parcel pier on the Appellant's parcel (the "Project"). TRPA asserts that the denial was because the boat ramp site is out of attainment, as is the receiving parcel, and that the Project, therefore, does not comply with TRPA Code (the "Code").

We acknowledge that Code Section 84.3.G.1 addresses attainment requirements in relation to the transfer of an existing pier; however, we believe that there is a fundamental discrepancy in Code Section 84.4.3.A.6(d)(v), which specifically contemplates scenic mitigation for additional piers and expansions of existing piers in a *different* non-attainment unit, not necessarily the same non-attainment unit where the conversion or transfer is occurring. The language of Code Section 84.4.3.A.6(d)(v) demonstrates that non-attainment status is not a categorical barrier to scenic development in non-attainment areas, provided the proposed project results in scenic enhancement. This section of Code also reflects TRPA's understanding that scenic enhancement within non-attainment areas is possible through mitigation measures. The Appellant proposes such scenic enhancement with this Project, which includes the following key components:

1. Enhance the scenic quality of the boat ramp parcel by removing a non-functional and deteriorating boat ramp structure that currently contributes to shoreline erosion and transfer the eligible shoreline development right from the boat ramp parcel to the Appellant's parcel.

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2. A phased review process that allows for the subsequent application for a new compliant pier structure on the Appellant's parcel following the removal of the non-conforming boat ramp and transfer of the shoreline development right.

I. TRPA's Mistakenly Relied on TRPA Code Section 84.4.3.G.1 to Deny the Project.

TRPA's denial of the Project relied on TRPA's reading of Code Section 84.4.3.G.1, which governs the relocation and transfer of *existing piers*. TRPA's reliance on this section of the Code fails to distinguish between transferring a functioning pier versus the transfer of a shoreline development right, which is then followed by a separate request for new pier construction. Currently, the boat ramp is a pre-existing, non-compliant, banked structure, not an active pier. The Appellant is not proposing a simple pier-to-pier transfer like what is contemplated under Section 84.4.3.G.1; rather, the Appellant proposes transferring the shoreline development right associated with the banked boat ramp. In other words, the section of Code that TRPA relied on when denying the Appellant's request does not apply to the proposed project.

The shoreline structure at issue is *not a pier*. It is a *banked boat ramp*, no longer in active use, in a state of functional decline, and contributing to shoreline erosion and scenic degradation. Therefore, the premise of TRPA's denial—that this is a pier-to-pier transfer that is prohibited under Section 84.4.3.G.1—misapplies the Code. Additionally, rigidly applying this transfer restriction in this context would discourage property owners from improving degraded shoreline conditions simply because both properties happen to be within non-attainment areas. This creates a disincentive to rehabilitate the shoreline, which is contrary to TRPA's own goals and policies. The critical distinction here is that the Appellant is requesting to transfer the shoreline development right that is currently associated with the boat ramp parcel to the Appellant's parcel, where a new pier would be constructed; the Appellant is not requesting to transfer an existing pier. We, therefore, request that TRPA reverse its original denial of the Project and approve the transfer of the eligible shoreline development right to the Appellant's parcel and the subsequent pier construction.

Additionally, Code Section 84.5.3.F states, "a legally existing private boat ramp may be converted to a pier, provided the converted boat ramp (pier) and littoral parcel receiving the pier shall comply with the ***applicable*** eligibility and development provisions for additional piers set forth in 84.4.2 and 84.4.3. As demonstrated in the tables below, in accordance with Code Section 84.5.3.F, the Project meets all ***applicable*** eligibility and development provisions set forth in 84.4.2 and 84.4.3 as outlined in the tables below.

TRPA Section 84.4.2	Does Project Comply?
84.4.2.A	Complies
84.4.2.B	Does Not Apply to Project
84.4.2.C	Does Not Apply to Project

TRPA Section 84.4.3	Does Project Comply?
84.4.3A.1	Does Not Apply to Project
84.4.3.A.2	Does Not Apply to Project

84.4.3.A.3	Does Not Apply to Project
84.4.3.A.4	Complies
84.4.3.A.5	Complies
84.4.3.A.6	Complies with 84.4.4.3.A.6.d(v)
84.4.3.A.7	Does Not Apply to Project
84.4.3.A.8	Complies
84.4.3.A.9	Does Not Apply to Project
84.4.3.A.10	Complies
84.4.3.A.11	Complies
84.4.3.A.12	Complies
84.4.3.B	Complies
84.4.3.C	Does Not Apply to Project
84.4.3.D	Does Not Apply to Project
84.4.3.E	Does Not Apply to Project
84.4.3.F	Does Not Apply to Project
84.4.3.G	Does Not Apply to Project

II. TRPA's Policy to Allow Pier Transfers Within Non-Attainment Units but Not Within Adjacent Units is an Arbitrary Restriction.

If TRPA insists on applying Code Section 84.4.3.G.1 to this Project despite the discussion in Section I above, then the Appellant insists that TRPA provide a rational justification for denying the Appellant's Project despite allowing a transfer within the same non-attainment scenic unit—but not allowing one between directly adjacent non-attainment units—when the latter will result in scenic and environmental improvement.

Section 84.4.3.G.1 expressly permits the transfer of piers within the same scenic unit, even when that unit is in non-attainment. Yet, TRPA asserts that a transfer between adjacent non-attainment is categorically prohibited, even when that transfer of a shoreline development right facilitates shoreline stabilization, which results in measurable scenic enhancement in both scenic units. This explicit permission in Section 84.4.3.G.1 implies a TRPA policy: inter-unit transfers are allowable regardless of scenic impact mitigations or improvements. In the case of this Project, the proposed transfer of the shoreline development right and eventual development of the pier structure include environmental and scenic mitigation measures—a visibly deteriorated, non-compliant boat ramp, which detracts from the visual quality of the shoreline and contributes to shoreline erosion will be removed, and a Code compliant, low-impact pier will be constructed which presents an opportunity for any required environmental site remediation and/or scenic enhancements that may be required for a project of this nature. TRPA's objection due to the boat ramp parcel and the pier parcel being in adjacent scenic units has no rational policy basis. In fact, adjacency enhances the logic of allowing the Appellant's proposed mitigation efforts to serve *both* areas. The Appellant proposes improvements to scenic quality that are cumulative and regional and will benefit both scenic units.

If TRPA's code permits scenic enhancement and mitigation measures between non-attainment units, as stated in Section 84.4.3.A.6(d)(v), then by logical extension, transfers between parcels in adjacent non-attainment units that are accompanied by such enhancements and mitigations measures should also be permitted. The reality of adjacent non-attainment units is that the environmental and visual impacts that are contributing to the non-attainment status are continuous across scenic unit boundaries. Additionally, the new parcels that are the subject of this Project are within the same hydrological area.[1] The Project proposes removing a non-conforming, obsolete structure, transferring the eligible shoreline development right associated with that structure, and constructing a code-compliant pier, all of which will improve shoreline erosion, scenic quality, and environmental health of both adjacent scenic units. This Project can help progress these adjacent scenic units toward threshold attainment.

TRPA's categorical denial of this Project despite its proposed scenic and environmental benefits for two scenic units creates an arbitrary policy distinction—transfers are allowed within a non-attainment unit but not between adjacent ones, even though the Project proposes restoring and enhancing the scenic quality and environment of two scenic units which advances TRPA's mission to "to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe region."[2]

III. Appellant's Request to Build a Pier on Appellant's Parcel Will Improve Shoreline Conditions Across Adjacent Scenic Units.

We respectfully request TRPA's approval of a transfer of the eligible shoreline development right from the boat ramp parcel to the Appellant's parcel, where both parcels are currently located in directly adjacent TRPA-designated non-attainment scenic units. While we recognize TRPA's policy behind prohibiting transferring of pier structures between parcels that are out of attainment is so as not to undermine the environmental or compliance concerns and goals that are addressed by TRPA's goals, objectives, and use of the "attainment system," we believe that this transfer request not only non-harmful in the short term and the long term, it also aligns with TRPA's overarching goals for shoreline stabilization, scenic enhancement, and environmental improvement.

First, this request is for transferring a permissible shoreline development right, with the transfer having zero immediate environmental impact. Second, the affected scenic non-attainment units are *abutting and congruent*, meaning they share similar scenic conditions and other environmental and shoreline characteristics. Our understanding of TRPA's scenic attainment status system is that if TRPA determines a parcel is out of attainment, the parcel is not meeting one or more scenic thresholds. However, because the two parcels are in abutting/adjacent scenic units, this transfer does not shift a shoreline development into a radically different or more sensitive area. As both parcels are located in the same hydrological area, the transfer of this development right also does not introduce any new hydrological impacts, nor does it add a new development to a fundamentally different or more vulnerable watershed.

The Appellant's transfer of this shoreline entitlement will remove a non-conforming structure that provided lake access to multiple homeowners and will allow for the construction of a conforming, low-

[1] https://gis.trpa.org/mapmaker/?data_id=dataSource_1-18e012c2ebb-layer-9%3A7.
[2] https://www.trpa.gov/wp-content/uploads/Adopted-Regional-Plan.pdf.

impact, single-use shoreline structure. Consequently, this type of shoreline entitlement transfer will ultimately allow the conversion of a non-compliant shoreline entitlement to be converted to a permissible and compliant shoreline entitlement that complies with not only current TRPA code design and mitigation criteria, but also federal and state requirements. Furthermore, the current entitlement transfer allows the accomplishment of the agency goals, policies, and provisions for a preferred resultant outcome as it relates to the agency's objectives.

Additionally, the resultant pier structure on the Appellant's property offers an opportunity for any required environmental site remediation and/or scenic enhancements that may be required for a project of this nature to demonstrate further that no significant harm or degradation will occur from the resultant pier project. The proposed pier project is an open pile design and fully compliant with TRPA design and project/scenic mitigation requirements. One existing buoy is being exchanged for a boatlift in compliance with Code. Therefore, no net increase in mooring capacity is proposed.

IV. TRPA Has Been Inconsistent in its Interpretation of Code Requirements for this Project and Never Notified Appellant of Non-Attainment Status Prohibition.

As part of the basis for this appeal, we respectfully submit that TRPA's denial is inconsistent with the agency's prior communications regarding this Project. In October 2021, the Appellant took the first formal step toward realizing this beneficial shoreline improvement project by submitting a request to transfer the entitlement associated with the banked boat ramp to the Appellant's parcel for future conversion to a pier. As demonstrated in the highlighted portion of the email correspondence attached hereto as **Exhibit "A,"** the Appellant's initial request was specifically limited to the transfer and banking of the boat ramp entitlement, not a request for a pier conversion at that time.

Before the October 2021 submission, the Appellant's land use consultant regularly communicated with TRPA staff to confirm procedural requirements for the entitlement transfer and banking. The Appellant submitted the entitlement transfer request consistent with TRPA's established process of transferring entitlements. Additionally, because there was no definitive pier design or proposal in place at that time, a fact that TRPA was aware of, submitting a pier project request was impossible. This mutual understanding between TRPA and the Appellant formed the basis of the Appellant's October 2021 application. However, in December 2021, TRPA staff sent correspondence, attached hereto as **Exhibit "B"** to the land use consultant reversing TRPA's established position for transferring entitlements, stating that the Appellant would now be required to submit a pier project application and satisfy all findings associated with a pier transfer. This sudden change in TRPA's position imposed new procedural burdens that were not previously disclosed. It also placed the Appellant in a significantly disadvantaged position after they had already relied on earlier guidance in good faith.

Crucially, nowhere in this December 2021 correspondence from TRPA was there any mention of the scenic attainment status of either the sending or receiving parcel as a prohibitive factor for the transfer or conversion of the entitlement. In fact, throughout the entire communication history between the Appellant's land use consultant, our Firm, and TRPA staff—before and after the October 2021 submission—no concern regarding attainment status was ever raised by TRPA staff. It was not until the formal denial of the revised application, submitted over two years later and after extensive effort and

coordination with TRPA that TRPA cited scenic attainment as the basis for the rejection. To reiterate, the first and only mention of attainment-related concerns appears only in connection with the current denial, which now rests on a Code interpretation that was not disclosed or applied at any prior stage of this application's processing.

This is particularly troubling in light of the significant time, effort, and financial resources the Appellant has invested over multiple years to advance this Project responsibly, consistent with both the letter and spirit of the Code. TRPA has been aware of the Appellant's intentions since at least 2021 and has been an active participant in related discussions. At no point during these years of engagement did TRPA raise the concern that scenic non-attainment would pose an insurmountable obstacle or that it would later serve as the principal rationale for denial.

This inconsistent interpretation and application of established TRPA processes and lack of clear, timely notice from TRPA regarding critical regulatory barriers—especially now when those barriers are being used as the primary justification for denial—undermine both the fairness of the review process and the integrity of the entitlement transfer framework that has long been established by TRPA. It is patently unreasonable for TRPA to permit an applicant to move forward with substantial planning, incur financial and procedural burdens, and only at the denial stage reveal a foundational eligibility criterion that allegedly disqualifies the applicant's project.

V. Conclusion

Based on the foregoing, the Appellant respectfully requests that TRPA reverse the denial and approve the Project. The Appellant further reserves all rights to assert additional claims, arguments, and interpretations under TRPA Code in its entirety and incorporated by reference herein,[3] including but not limited to those that may arise based on further review of the administrative record, future TRPA determinations, discussions or determinations made during the Governing Board hearing or subsequent judicial review. The Appellant also reserves the right to provide any supplemental materials or information to support this appeal before the Governing Board hearing and during the Governing Board hearing.

Lastly, on behalf of the Appellant, we respectfully request a meeting with TRPA staff and legal counsel to see if an amicable resolution can be reached prior to any Governing Board hearing or litigation.

Sincerely,

Womble Bond Dickinson (US) LLP

Garrett D. Gordon

Garrett D. Gordon

[3] https://www.trpa.gov/wp-content/uploads/TRPA-Code-of-Ordinances.pdf.

EXHIBIT A

Kevin M Agan / Agan Consulting Corporation

From: Kevin M Agan / Agan Consulting Corporation
Sent: Wednesday, November 3, 2021 7:56 AM
To: Good, Tiffany (tgood@trpa.org)
Cc: ACC Main Office; Jepson, Wendy (wjepson@trpa.org)
Subject: Aging TRPA Residential & Shorezone Permit Action Matters

Importance: High

FOR REFERENCE

Tiffany,

We know you are slammed and appreciate what you have been doing to date. Nevertheless, we are checking in on your ETA of the following applications/permit actions:

- **ERSP2018-0681** Phelps Residential Application Withdrawal Request
- **ERSP2021-0102** Tahoe Sierra Estates Beach Replenishment Permit (Filed 02/12/21)
- **ERSP2021-0465** JSN Legacy (Lager) Pier Rehabilitation Permit (Filed 04/20/21). Why is this permit application being reflected as incomplete in Accela?
- **ERSP2021-0804** Cedar Isle Enterprises Boatramp Removal/Banking Permit (Filed 06/03/21)
- **ERSP2021-1630** Big Water View Boatramp Removal/Banking Permit (Filed 10/08/21)
- **SSTR2021-1279** Lakeside Cove HOA to Moody Boatramp Entitlement Transfer to Pier Conversion Permit (Filed 10/08/21)

Let me know as soon as you can so we can a calendar the sequential processes we are addressing with other agencies and permittees. Thank you.

Sincerely Yours,

Kevin M. Agan, Principal Consultant
AGAN CONSULTING CORPORATION

Physical Address:
120 Country Club Drive, Suite 19
Incline Village, NV 89451

Mailing Address:
Post Office Box 9180
Incline Village, NV 89450

Contact:
Voice: (775) 832-9300
Facsimile: (775) 832-9301
www.aganconsulting.com

AGENDA ITEM NO. 7.A

EXHIBIT B

action taken (or not taken) in reliance on it is unauthorized and may be unlawful. Any attached work product is considered proprietary to Agan Consulting Corporation. If you are not an addressee, please inform the sender immediately.

From: Kevin M Agan / Agan Consulting Corporation
Sent: Monday, December 20, 2021 2:12 PM
To: Good, Tiffany (tgood@trpa.org) <tgood@trpa.org>
Cc: ACC Main Office <office@aganconsulting.com>; Jepson, Wendy (wjepson@trpa.org) <wjepson@trpa.org>
Subject: Boatramp Entitlement Transfer Status (TRPA File No. SSTR2021-1279)
Importance: High

Tiffany,

As a follow up and to be consistent with other TRPA entitlement transfer processes (i.e. development right transfer from one parcel to another), we request and believe it consistent and logical to allow the transfer to proceed and not make it the responsibility of a undefined project on the receiving parcel hold up this transfer filing.

To keep the transfer process simple and straightforward, it is encouraged to confirm (which we have prior to filing) the eligible parcel can receive this entitlement which is consistent with the TRPA development right transfer process, thus not holding up a process for a yet undefined project. Consequently, the TRPA pier entitlement transfer permit can have certain conditions that it does not imply or assure agency approval of a specified pier project, similar to other TRPA entitlement transfer permits.

As we know a pier project is cumbersome process and takes a lengthy period of time whereas an entitlement transfer permit does not unless the affected parties are burdened to process a project to be approved with the transfer request.

Please consider we are just requesting this entitlement transfer and/or banking process to be consistent with other TRPA transfer processes and streamlined to minimize resources on both sides of the counter.

We are at the ready to assist in facilitating this process and more than willing to provide proposed conditional transfer permit language if necessary.

Sincerely Yours,

Kevin M. Agan, Principal Consultant
AGAN CONSULTING CORPORATION

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120 Country Club Drive, Suite 19
Incline Village, NV 89451

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From: Tiffany Good <tgood@trpa.gov>
Sent: Monday, December 13, 2021 6:05 PM
To: Kevin M Agan / Agan Consulting Corporation <kevin@aganconsulting.com>
Cc: Wendy Jepson <wJepson@trpa.gov>
Subject: SSTR2021-1279

Hi Kevin,

I thought we talked about the boat ramp to pier conversion/transfer needing to come in as a pier project? It looks like from the application filed for 1418-34-301-013, you want to transfer the entitlement and bank it on the receiving parcel. But in order for you to make the findings associated with a pier transfer, you need to demonstrate compliance of the reconstructed pier with the design and development standards as well as the scenic quality standards. You can't make these findings without a proposed project on the receiving parcel. And I do recall having this conversation with you earlier this year. As a result, I've made SSTR2021-1279 incomplete. Please let me know if you have correspondence indicating a different determination. I will also speak to current planning about it so that we are all on the same page.

Thanks,

Tiffany Good
Principal Planner
Permitting Program Manager
Current Planning
Direct Line: 775.589.5283
tgood@trpa.org

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Attachment D

ERSP2020-1413

TAHOE REGIONAL PLANNING AGENCY

Mail
PO Box 5310
Stateline, NV 89449-5310

Location
128 Market Street
Stateline, NV 89449

Contact
Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.org

PERMIT

PROJECT DESCRIPTION: Banking of an Existing Boat Ramp APN 1418-34-310-013

PERMITTEE(S): Lakeside Cove HOA File # ERSP2020-1413
Frederick J. Weiner, President

COUNTY/LOCATION: Douglas County / 1150 U.S. Highway 50

Having made the findings required by Agency ordinances and rules, TRPA approved the banking project on December 17th, 2020, subject to the special conditions found in this permit.

This banking permit shall expire on December 17th, 2023, without further notice. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

TRPA Executive Director/Designee — Date 12/17/2020

PERMITTEE'S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee(s) ~~AGENT~~ Date 12/24/20

PERMIT CONTINUED ON NEXT PAGE

APN 1418-34-310-013
FILE NO. ERSP2020-1413

Security Posted: N/A

TRPA ACKNOWLEDGEMENT: The permittee has complied with all conditions of approval as of this date.

Tiffany Good Digitally signed by Tiffany Good DN: cn=Tiffany Good, o=TRPA, ou, email=tgood@trpa.org, c=US Date: 2021.06.18 12:08:24 -07'00'

TRPA Executive Director/Designee

6/18/2021
Date

SPECIAL CONDITIONS

1. The applicant proposes to bank the boat ramp associated with Lakeside Cove Resort, 1150 U.S. Highway 50, Douglas County APN 1418-34-301-013.

2. The project includes removing the concrete associated with the boat ramp lakeward of the High Water Line of Lake Tahoe, 6,229.1, and restoring the area to natural conditions as applicable. Temporary Best Management Practices (BMPs) will be installed as applicable for concrete removal. No land coverage will be created or relocated as part of this project. Completion of this project will not result in a BMP Certificate.

3. Prior to banking, the following conditions of approval must be satisfied:

   A. The concrete boat ramp must be removed, and any areas landward of the High Water Line of Lake Tahoe (HWL), 6,229.1, shall be fully restored in accordance with the revegetation standards in Sections 36.7 and 60.1.8 of the TRPA Code of ordinances. The boat ramp will not be considered banked until areas landward of the HWL is restored.

   B. Determination of successful restoration will be made by TRPA staff pursuant to a site visit or review of photos submitted by the applicant.

   C. The permittee shall acknowledge this permit.

4. The permittee understands that this permit is not a conceptual approval of any future projects.

5. To the maximum extent allowable by law, the Permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board, its Planning Commission, its agents, and its employees (collectively, TRPA) from and against any and all suits, losses, damages, injuries, liabilities, and claims by any person (a) for any injury (including death) or damage to person or property or (b) to set aside, attack, void, modify, amend, or annul any actions of TRPA. The foregoing indemnity obligation applies, without limitation, to any and all suits, losses, damages, injuries, liabilities, and claims by any person from any cause whatsoever arising out of or in connection with either directly or indirectly, and in whole or in part (1) the processing, conditioning, issuance, or implementation of this permit; (2) any failure to comply with all applicable laws and regulations;

or (3) the design, installation, or operation of any improvements, regardless of whether the actions or omissions are alleged to be caused by TRPA or Permittee.

Included within the Permittee's indemnity obligation set forth herein, the Permittee agrees to pay all fees of TRPA's attorneys and all other costs and expenses of defenses as they are incurred, including reimbursement of TRPA as necessary for any and all costs and/or fees incurred by TRPA for actions arising directly or indirectly from issuance or implementation of this permit. TRPA will have the sole and exclusive control (including the right to be represented by attorneys of TRPA's choosing) over the defense of any claims against TRPA and over this settlement, compromise or other disposition. Permittee shall also pay all costs, including attorneys' fees, incurred by TRPA to enforce this indemnification agreement. If any judgment is rendered against TRPA in any action subject to this indemnification, the Permittee shall, at its expense, satisfy and discharge the same.

END OF PERMIT

Attachment E

March 27, 2024, email correspondence

Outlook

Re: TRPA File # ERSP2023-1834; Moody Single-Parcel Pier Project

From Kevin M Agan / Agan Consulting Corporation <kevin@aganconsulting.com>
Date Thu 3/28/2024 10:08 AM
To Brandy McMahon <bmcmahon@trpa.gov>
Cc ACC Main Office <office@aganconsulting.com>

Brandy,

Stay tuned for a response.....

Sincerely Yours,

Kevin M. Agan, Principal Consultant
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From: Brandy McMahon <bmcmahon@trpa.gov>
Sent: Wednesday, March 27, 2024 9:43:21 AM
To: Kevin M Agan / Agan Consulting Corporation <kevin@aganconsulting.com>
Subject: TRPA File # ERSP2023-1834; Moody Single-Parcel Pier Project

Dear Kevin,

I started reviewing the above referenced application, which includes a request to transfer a banked boat ramp on APN 1418-34-310-013 (ref. ERSP2020-1413) to the parcel located at 181 Yellow Jacket Road, Glenbrook, Douglas County, Nevada (APN 1418-10-401-004) and conversion to a single-parcel pier. The banked boat ramp is located in Scenic Shoreline Travel Route 27, Lincoln Park, which is a non-attainment scenic area, and the subject site is located in Scenic Shoreline Travel Route 26, Cave Rock, which is also a non-attainment scenic area. The boat

AGENDA ITEM NO. V.A

ramp conversion to a pier and transfer to the subject site is not allowed because the properties are not in the same scenic unit and the receiving parcel is in a non-attainment scenic unit (see TRPA Code, 84.5.2.F and 84.4.3.G.1 below).

TRPA Code, 84.5.3. F. Conversion.

A legally existing private boat ramp may be converted to a pier, provided the converted boat ramp (pier) and littoral parcel receiving the pier shall comply with the applicable eligibility and development provisions for additional piers set forth in 84.4.2 and 84.4.3, respectively, of this Chapter.

TRPA Code, 84.4.3.G

Relocation and Transfer of Existing Piers. Subject to the following provisions, a legally existing pier may be replaced with a pier in a different location on the same parcel (pier relocation) or with a pier on a different parcel (pier transfer):

1. A legally existing pier may be relocated or transferred to a littoral parcel within the same Scenic Unit or to a littoral parcel within a different Scenic Unit that is in scenic attainment. The transfer of an existing pier to a littoral parcel within another Scenic Unit that is out of attainment is prohibited.

2. A relocated or transferred pier shall conform with the applicable development standards for an additional pier set forth in subsection 84.4.3.

3. Boat lifts transferred to a different parcel as part of a pier transfer shall not be subject to the maximum number of mooring structures per parcel as set forth in subsection 84.3.2.A.

4. Both littoral parcels involved in a pier transfer (sending and receiving) shall comply with the requirements for Scenic Quality set forth in subsection 84.4.3.A.4.

5. A littoral parcel to which an existing pier is relocated or transferred (receiving parcel) shall comply with the eligibility requirements for an additional pier set forth in subsection 84.4.2.

6. A pier relocation or transfer to a less visually sensitive area, including away from a stream inlet listed in subsection 84.4.3.A.1, shall be eligible for one or more of the following:

    a. Application of development standards for a multiple-use residential pier serving two littoral parcels, as set forth in 84.4.3.C of this Section; or

    b. Additional allowable upland visible mass equal to the visible mass of the relocated or transferred pier, consistent with subsection 84.4.3.A.6, Scenic Mitigation, to be used wholly by either the sending or receiving parcel.

7. The following are required components of a pier relocation or transfer project application:

    a. The legally existing pier shall be fully removed from the sending parcel;

    b. The area of the former legally existing pier shall be restored; and

    c. For pier transfer, a deed restriction shall be placed on the sending parcel to extinguish future pier development potential.

AGENDA ITEM NO. 7.A

Would you like to withdraw the application?

Sincerely,

Brandy McMahon, AICP
Principal Planner
Permitting & Compliance Department
(775) 589-5274
bmcmahon@trpa.gov

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Parcel and permit information can be found at LTInfo.org.

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AGENDA ITEM NO. 7.A