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July 24, 2025

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VIA E-MAIL

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RE: Supplemental Written Statement to Support Appeal of Denial of Application for Existing Mooring Buoy, 225 Rubicon Avenue, Placer County, California, Assessor's Parcel Number (APN) 085-252-001, TRPA File Number BUOY2025-0665, Registration Submission Number 11309

Dear Mr. St. Michel:

As you know, this firm represents John F. Mapes, Power of Attorney for the Donna J Mapes 2013 Family 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 June 24, 2025. Under TRPA Code Section 84.3.3.D.3.b, TRPA is permitted to authorize an existing buoy for a non-littoral parcel, provided (i) The non-littoral parcel owner provides clear evidence of the existence of the buoy prior to February 10, 1972, and (ii) The non-littoral parcel owner provides a valid authorization from the applicable federal or state agency with jurisdiction at Lake Tahoe.

The Appellant has provided ample, clear evidence to support both required prongs of Section 84.3.3.D.3, including an affidavit statement by Donna Mapes, the Appellant's mother, affirming the ownership history of the buoy. Despite this evidence, TRPA contends that the Appellant has not satisfied the second prong Section 84.3.3.D.3, a conclusion we strongly disagree with. Specifically, TRPA alleges that following: (i) the Appellant has not presented evidence that buoy 11 has ever been legally associated with the Appellant's parcel and (ii) there is no evidence that any party ever received permission from an applicable state or federal agency to place the buoy. We respectfully disagree with TRPA's conclusion and provide the following responses:

1. Buoys' Legal Association with Appellant's Parcel

TRPA argues that there is no legal association between the buoy and the Appellant's non-littoral parcel. However, this view is overly narrow and dismissive of valid equitable interests, historical usage patterns, California contract law, and the evidence available from that time.

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a) Valid Contract for Sale Under California Law. We submit that a valid and enforceable contract of sale for the buoy occurred in 1971 when the Appellant's grandfather purchased the buoy from the original assignee. The essential elements of contract formation under California law—offer, acceptance, and consideration—are clearly met here. *See* Cal. Civ. Code § 1550 (West). The transaction involved a clear *offer* by the original buoy owner, Frank Draheim, to transfer ownership and a corresponding *acceptance* by Fred Anderson, the Appellant's grandfather, who provided valuable consideration in exchange. Mr. Anderson paid $300 and provided automotive repair services to Mr. Draheim in exchange for the ownership rights of the buoy, which is more than sufficient to constitute legal *consideration*. This acquisition of the buoy is supported by a valid oral contract under California law. This transaction effectively transferred ownership rights to the Appellant's parcel, and TRPA has presented no competing claim or evidence suggesting otherwise. To deny this permit on the grounds that a 1971 informal transaction was not documented in writing would ignore well-established principles of contract law.

b) The Affidavit is Competent Evidence. The affidavit that the Appellant provided to TRPA is a sworn statement from the Appellant's mother, who has firsthand knowledge of the purchase of the buoy. Under California administrative law principles, sworn affidavits and declarations are routinely accepted, especially when direct documentation no longer exists due to the age of the transaction. *See* Roberts v. Unger, 30 Cal. 676 (1866). The affidavit submitted here is first-hand, sworn testimony from someone who directly observed and participated in the events surrounding the buoy's acquisition and subsequent continuous use. TRPA has presented no evidence to contradict the affidavit. In the absence of competing claims or documentation challenging the Appellant's long-term possession and use of the buoy, the affidavit should be presumed credible as evidence that the buoy is legally associated with the Appellant's parcel and should be given substantial evidentiary weight by TRPA. TRPA cannot reasonably demand contemporaneous formal paperwork for every historical transaction involving private parties over 50 years ago.

c) Continuous, Open and Exclusive Use Since 1971. The affidavit is further corroborated by over five decades of open, continuous, and exclusive use of the buoy by the Appellant's family. That consistent historical pattern supports the credibility and reliability to the sworn statement. Furthermore, in property law, the Appellant's open, continuous, and exclusive use of the buoy gives rise to an enforceable property interest in the buoy. *See* Ranch at the Falls LLC v. O'Neal, 38 Cal.App.5th 155 (2019); *see also* Husain v. California Pacific Bank, 61 Cal.App.5th 717 (2021); Case v. Uridge,180 Cal.App.2d 1 (1960). The Appellant's family has used this buoy with full visibility, without interruption, and to the exclusion of all others for over five decades. This is not a casual or temporary use; it is a pattern of consistent exercise of a property interest, recognized by the community, unchallenged by state and federal regulators, and relied upon by multiple generations. TRPA Code does not require perfect documentation; it requires credible evidence of legal association with Appellant's parcel. Half a century of exclusive, visible use is exactly that.

d) Equitable Estoppel and Reliance. The Appellant's family purchased the buoy from the original assignee in good faith, for value, and relied upon their understanding of ownership in openly using and maintaining the buoy. Over the last five decades, no adverse claim to the buoy has

ever been made. TRPA's retrospective insistence on contemporaneous proof of the transaction imposes an unreasonable burden on the Appellant. For over 50 years, TRPA has taken no action to challenge or prohibit the Appellant's use of the buoy. The consistent inaction on TRPA's part gave rise to a reasonable belief in the legality of the continued use of the buoy. Since acquiring the buoy in 1971, the Appellant's family has used the buoy annually, maintained and incurred costs for the buoy's upkeep, and passed the use rights intergenerationally. TRPA now seeks to retroactively impose a documentation burden from the 1970s, decades after the private transaction occurred and the original parties to the transaction have passed away, after multiple generations of the Appellant's family have relied on this transaction, and after TRPA had ample opportunity to object or investigate.

2. <u>Presumptive Validity of the 1968 Buoy Presence</u>.

The buoy in question was documented to be in the lake in June 1968, according to documents filed with the California State Lands Commission ("CSLC"). This documentation was a centralized filing for *all the buoys in the area*, which included the one ultimately acquired by the Appellant's grandfather in 1971. In the affidavit provided to TRPA, we provided evidence of the 1968 filing to CSLC. While the original documentation from CLSC has not been located, documentation following this filing (provided to TRPA in the affidavit) suggests that the buoy was treated as approved, and no enforcement action was taken by CSLC or any other regulatory authority in the decades that followed. Moreover, the buoy was constructed and used continuously since that time. To our knowledge, no removal orders have been issued by TRPA, CSLC, or USACE for over 50 years.If TRPA now asserts that the Appellant must provide the original issued permit from 1968, this appears unreasonable and not the intent of the two eligibility prongs contained in the TRPA Code for non-littoral buoys.

Furthermore, TRPA's demand for the Appellant to supply the original permit and related ownership documentation above and beyond what has been provided and/or described herein is unreasonable and misplaced because at the time CSLC was not rigorously leasing or permitting buoys in the lake or one would expect there would have had some follow up agency lease/permit action or buoy enforcement action immediately after a filing of this nature. Based upon the foregoing, the Appellant is entitled to the presumption of legality and grandfathered use. Singling out this non-littoral parcel for heightened scrutiny above and beyond the simple stated TRPA Code eligibility requirements violates basic principles of agency fairness.

3. <u>The Buoy is Federally Authorized Under 33 CFR § 330.3</u>.

The buoy is federally authorized under 33 CFR § 330.3, which declared that certain activities or structures in navigable waters that were constructed before December 18, 1968 are presumed authorized under Nationwide Permits (NWPs)issued on July 19, 1977 and require no further permitting. This federal regulation directly applies to the subject buoy in question because (i) the buoy was installed in the summer of 1968 and (ii) the buoy has never been abandoned and has been in continuous and exclusive use ever since. This regulation serves as a federal grandfathering clause for structures in navigable waters of the United States, including buoys. There is no record of enforcement, challenge, or revocation of the buoy by the USACE because they provided written documentation stating this specific buoy was authorized

under their grandfather provisions. TRPA is obligated to recognize this independent federal authorization, and disregarding it would conflict with federal law and regulatory policy.

Based on the foregoing and the materials already provided to TRPA, including the affidavit, the Appellant has met the burden of proof required under TRPA Code Section 84.3.3.D.3.b(ii) by:

- Demonstrating that the buoy was located in the lake prior to December 18, 1968;
- The buoy has been federally authorized under 33 CFR § 330.3 since 1977;
- Establishing ownership through a valid contract in 1971 (prior to February 10, 1972);
- Supporting that ownership with a sworn affidavit from a competent witness, which stands as credible, substantial evidence; and
- Showing continuous, open, undisputed use of the buoy for over 50 years.

We therefore respectfully request that TRPA reverse its denial and permit the buoy in accordance with TRPA Code Section 84.3.3.D.3.b. Lastly, the Appellant further reserves all rights to assert additional claims, arguments, and interpretations under TRPA Code in its entirety and incorporated by reference herein,[1] including but not limited to those that may arise based on further review of the administrative record, results of the public records request submitted to TRPA, future TRPA determinations, discussions or determinations made during a 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 a future Governing Board hearing and during the Governing Board hearing.

Sincerely,

Womble Bond Dickinson (US) LLP

Aubrey K. Powell

Aubrey Powell

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