

## STATEMENT OF APPEAL

June 17, 2021

Appeal From Hearings Officer Approval of Stock/Johannessen New Single-Parcel Pier, 5568 North Lake Blvd., Placer County, California, Assessor's Parcel Number (APN) 116-220-049, TRPA File Number ERSP2020-0074, Appeal File Number ADMIN2021-0014

This Statement of Appeal is being filed pursuant to the requirements of TRPA's Rules of Procedure set forth in Article 11 and Article 14. This Statement of Appeal is being provided on behalf of the Harrosh family, as described in our previously filed Appeal Application. The Harrosh family is directly affected by this project, owns properties adjacent to the proposed project, and made strong objections at the Hearings Officer hearing. As this Statement of Appeal is being submitted after the 15<sup>th</sup> day of the month, it is our understanding that the hearing before the Governing Board cannot occur before the August Board meeting. The Rules of Procedure at Section 11.4 state that, "Statements of appeal must be submitted in writing, in final, on or before the 15<sup>th</sup> day of the previous month in order for the appeal to be calendared for the next month's Board meeting". Since this appeal cannot then be heard next month (July), the earliest it can be heard is August. As our investigation and analysis of the subject project will be ongoing for the next two months, the appellant will set forth below the grounds for our appeal as required, but we reserve our right to provide further factual studies, analysis, expert opinion and other information to the staff and the Board in advance of and at the actual hearing. In addition, the appellant incorporates by reference all materials of any kind, whether written, visual or oral, from the Hearings Officer hearing into this Statement of Appeal. This incorporation by reference also includes the comments and submissions made by other neighbors and interested parties objecting to this project (insufficient time was allowed by the Hearings Officer to make all the points we intended, and others made some of those points for us during the time allowed to them). The grounds for our appeal are as follows:

1. The project does not comply with the required findings set forth in Chapter 80 of the Code of Ordinances. Specifically, the following findings cannot be made:
  - a. **80.3.2(C): Compatibility.** TRPA must find that the project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modifications of such existing uses or structures will be undertaken to assure compatibility. The project is not compatible with existing uses and structures in the immediate vicinity. On the contrary, the project as currently configured interferes with access to adjacent uses and structures as discussed at length before the Hearings Officer.
  - b. **80.3.2(G): Navigation and Safety.** TRPA must find that the project will not adversely impact navigation or create a threat to public safety pursuant to the determination of agencies with jurisdiction over the navigable waters in the Basin. This project can and will create such a threat.
  - c. **80.3.2(A): General Environmental Findings.** There are fish spawning gravels in the area of the proposed project, especially for forage fish. The project will interfere with

fish spawning, especially when the additional impacts of boating traffic forced to rapidly reverse direction is considered with the accompanying bottom substrate interference (see further discussion below). These impacts are not adequately mitigated. The impacts are not limited to an area of 6.5 square feet as stated in the staff report.

2. The required findings created by the Compact (Article 5(g)) cannot be made. Compliance with design standards in the new Shoreline Ordinance adopted in 2018, *as applied to this project*, are insufficient to allow the required findings to be made. Mere compliance with design and the other standards in the Shoreline Ordinance are insufficient to guarantee that there will not be an adverse impact on the implementation of the regional plan, and will not cause the adopted environmental threshold carrying capacities of the region to be exceeded. The mandatory findings and requirements of Chapter 3 and 4 of the Code of Ordinances have not been sufficiently addressed. The Environmental Assessment and checklist do not adequately address the requirements of the Code and the Compact. Among other concerns, the checklist itself provides no substantial evidence of the self-serving assertions made by the applicant. The Environmental Assessment in the record does not meet the requirements of the Code. It does not meet the requirements of Code section 3.4.1. It does not evaluate project alternatives, and there are other deficiencies. It is inconsistent. For example, it does not adequately address impacts on endangered species. Figure 4, at page 8, shows that patches of silt and sand are also present along the nearshore shoreline. There is also an acknowledgement that this area was never evaluated for Tahoe Yellow Cress during multiple surveys, despite the fact that it is well known that sandy substrate is suitable habitat. The Tahoe Yellow Cress population at Tahoe thrives during low water years, and the plant is often not visible during periods of higher water levels when suitable habitat (as in the project area) is inundated. Tahoe will be headed toward much lower water levels this year due to the draught. Suitable habitat will be exposed and the area should be properly evaluated. In addition, it appears that areas suitable for fish spawning are indeed present. Previous studies have shown that piers themselves do not cause disturbance to fish spawning, but that increased prop wash and turbidity associated with small boats maneuvering in limited space does cause damage to habitat and to any fish eggs present in the area. The project will cause a significant increase in nearshore and offshore prop wash due to interference with normal navigation patterns, especially for boats accessing the Harrosh facilities. The project applicant and its representatives have not met their burden of proof in this and other respects.
3. For the reasons above, and otherwise, TRPA staff and the Hearings Officer erred in asserting that a finding of no significant effect could be made. A full Environmental Impact Statement (EIS) is required due to the unique impacts of the proposed pier at this location. By way of further example, the scenic impacts of increased density in this visually sensitive area are not analyzed or addressed beyond square footage numbers. The visual mass portion of the Code evaluation system is completely blind to the impacts of increased density where piers are located as close together as is theoretically possible (as with this project), and is wholly inadequate to maintaining the thresholds and the goals of the regional plan.
4. The Hearings Officer erred in granting additional length for the proposed pier. The Code at Section 84.4.3.B.2.(b) allows up to an additional 15 feet in length, but only if two specific findings can be made. The finding at issue is in subsection (i) which states, "The project applicant demonstrates that the additional length is necessary for the functionality of the pier...". Other than an assertion by the applicant's consultant that this is the case, there is no substantial evidence that this is true. In fact, the staff report tacitly acknowledges this fact by saying, "The additional length is being requested to *improve* the functionality of the pier..."(emphasis supplied) This is not the standard in the Code. Additional length must be

necessary for the pier to function, not make it better. Taken to its logical extreme, every pier would qualify for additional length if it takes the pier into deeper water! The appellant will present evidence that the pier is perfectly functional at elevation 6219. The intent of the Code is clear in its express wording that the standard is the pierhead line or 6219, *whichever is more limiting*. In addition, the additional length is directly related to and intertwined with the compatibility finding described in paragraph 1(a) above. The longer the pier is, the more it interferes with the safe use of the Harrosh structures and uses.

5. The project as designed will substantially interfere with common law public trust values. The public trust doctrine is applicable to TRPA as a Bi-State agency entrusted with acting in the best interests of the public. This project is located in California. The project will affect water quality (increased prop wash and turbidity, etc), public access for recreational purposes, and will also dramatically interfere with navigation. (See Compact at Article V(d), etc.) Public trust values have not been addressed, and are an independent obligation of TRPA. The majority of the California delegation to the TRPA Board are directed to “represent the public at large within the State of California”. (Compact at Article III(a)(1)(B).) In order to do so, the interests of the public in the public trust located between elevations 6223’ and 6228.75 of Lake Tahoe and the sovereign lands of California lying lakeward of elevation 6223’ must be considered. This cannot be done without reference to the public trust doctrine, which creates a stricter standard as to water quality and affects the interests of the public at large.
6. The subject parcel has access to an existing homeowners association pier, as described in the Code at Section 84.4.2.5. As such, the parcel should only be eligible for a multiple parcel pier.
7. Procedural errors and misinterpretations were made by TRPA staff and the Hearings Officer. Prejudicial errors included, but were not limited to, failure to give proper notice, inability of interested neighboring property owners to join in the virtual meeting or otherwise appear, and a consequent inability to express objections that may not be otherwise reflected in the administrative record. To the extent the concerns that would have been expressed had the interested parties been able to express them, they should be allowed to be considered whether or not such concerns or issues are specifically mentioned in this Statement of Appeal.