April 23, 2025

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

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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

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

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

Contact:
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Facsimile: (775) 832-9301
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AGENDA ITEM NO. 7A

EXHIBIT B

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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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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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