

## STAFF REPORT

Date: August 18, 2021

To: TRPA Governing Board

From: TRPA Staff

Subject: Appeal of Stock/Johannessen Single Parcel Pier Permit, 5568 North Lake Boulevard, Placer County, California; Assessor's Parcel Number 116-220-049; TRPA File Number ERSP2020-0074; TRPA Appeal File Number ADMIN2021-0014

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### Requested Action:

To consider and act upon an appeal filed by the Harrosh family of a Hearings Officer-issued permit to Stock/Johannessen for a single parcel pier.

### Staff Recommendation:

Staff recommends that the Governing Board deny the appeal and affirm the decision of the Hearings Officer to issue the pier permit as it meets all requirements of the TRPA Code of Ordinances and all findings may be made.

### Motion:

1. A motion to grant the appeal, which motion should fail to affirm the Hearings Officer's determination.

To deny the appeal, the Governing Board should vote "no." The motion to grant the appeal will fail unless it receives five affirmative votes from California and nine overall.

### Background:

On April 29, 2021, the TRPA Hearing Officer granted the Johannessen's single parcel pier application and issued Permit No. 2020-0074 (see Attachment A). The pier meets all design and location criteria in the TRPA Code of Ordinances ("Code"). In this appeal, the Harroshes contend, notwithstanding the Code requirements, this pier's particular proposed location gives rise to unique impacts sufficient to deny the application. See Statement of Appeal, attached as Attachment B. The Johannessens dispute all the Harroshes' contentions. See Opposition to Statement of Appeal, attached as Attachment C. Each issue area is summarized below. All file documents for this project may be viewed here: [Harrosh Appeal of Johannessen Single Parcel Pier Permit](#)

Distance between Piers: The Harroshes contend that the proximity of the Johannessen proposed pier and boat lift to their own pier creates an unsafe boating situation. Entry to the Harroshes' boatlift is from the side closest to the Johannessens – instead of being accessed directly in front of the pier. See Opposition, Attachment C, at 8. The Harroshes currently use the area in front of the Johannessens' property to maneuver their boat into their boatlift. With the addition of the proposed pier and boatlift,

the Harroshes will have less space to execute this turn, approximately 70 feet. The Harroshes argue this distance is too short and renders their boating unsafe.

However, as summarized in the Johannessens' Opposition, TRPA sought input on navigation safety of the proposed pier from both the U.S. Coast Guard and the U.S. Army Corp of Engineers ("USACE") and received no objections. In addition, TRPA received an email from (1) Jennifer Thomason, Senior Project Manager, USACE, to Johannessens' representative, stating she had "reviewed the plans [for the Johannessens pier project] and do not have any immediate concerns regarding navigation or public safety as it pertains to the Corps scope" (see Attachment G) and, (2) Chief Colt Fairchild, Officer in Charge at the Lake Tahoe Coast Guard Station, noting that there is sufficient distance between structures to safely navigate. See Attachment H. Moreover, the permit is conditioned on obtaining all permits from other responsible agencies, including the USACE. See Permit, Attachment A, at 5 (Special Condition 5). Thus, the USACE permit for this pier project will ensure that pier location presents no threat to navigability and is compatible with public safety. As a result of the forgoing, the Hearings Officer could have reasonably found that the conditional permit will result in (1) a structure that is compatible with nearby structures and uses under Code Section 80.3.2(C), and (2) protects the public safety according to the determination of the appropriate agency under Section 80.3.2(G).

Fish Habitat/Tahoe Yellow Cress/Water Quality: The Harroshes contend suitable spawning habitat exists near the pier site that maybe adversely affected by the pier. TRPA's fish habitat map, however, delineates the area as "feed and cover" habitat and site visits confirm the lack of spawning gravels. See Opposition at 9. Similarly, the Harroshes' claim regarding lack of adequate Tahoe Yellow Cress (TYC) surveys is directly contradicted by not only existing site maps and surveys but also pre-construction TYC protocols. See Permit, Attachment A, at 4 (Special Condition 3.C); Opposition, Attachment C, at 9. Third, the Harroshes offer no factual support for their speculation that prop wash will adversely affect water quality in this location. In short, the Hearings Officer's findings under Article V(g) of the Compact were reasonable.

The Harroshes also argue that TRPA was required to prepare a full Environmental Impact Statement ("EIS") under Article VII of the Compact because of these above described "significant environmental impact." Statement of Appeal, Attachment B, at 2. The Harroshes argue that the "Environmental Assessment" prepared by the Johannessens' consultant did not meet TRPA requirements (e.g., did not include an analysis of alternatives). *Id.* The "Environmental Assessment" prepared by the Johannessens' consultant is not, and was not intended to be, an Environmental Assessment as that term is used in TRPA's regulations. Therefore no "alternatives analysis" or other such requirements needed to be included. TRPA prepared an Initial Environmental Checklist (IEC) for this project and it forms the basis for the Hearings Officer's determination there will be no unmitigated impacts from this project. See Attachment I. As shown above, the Harroshes present no evidence of a significant adverse effect that requires preparation of an EIS.

Scenic: The Johannessen pier meets all scenic requirements under the recently adopted Shoreline Plan. Nevertheless, the Harroshes contend that the adopted scenic system does not adequately address scenic impacts arising from increased density of piers along the shoreline. Statement of Appeal, Attachment B, at 2. This argument is misplaced for several reasons. TRPA addressed this concern during the review and adoption of the 2018 Shoreline Plan by replacing a density standard with an overall cap on the number of new piers, a cap on the number of new piers in any particular jurisdiction, and set back requirements from both side property lines as well as other existing piers. TRPA analyzed the adequacy of this system in the Shoreline EIS and found no adverse cumulative impacts would occur. The

time to challenge that finding has long since passed. See Opposition, Attachment C, at 10. The Harroshes' burden in this appeal, therefore, is to show that the addition of **this** pier will cause an impact not otherwise contemplated in the Shorezone EIS and at such a magnitude to cause a threshold impact. As demonstrated in the Johannessen's Opposition, the Harroshes fail to present evidence that undermines the Hearings Officer's findings regarding scenic impacts. See Opposition, Attachment C, at 10-11.

Additional Pier length: TRPA Code Section 84.4.3(B)(2) provides additional length of not more than 15 feet if it is needed for functionality of the pier and the lake bottom slopes sufficiently so the extra length does in fact provide additional boating opportunity. The Hearings Officer determined that both findings could be made and granted 12 feet 3 inches of extra length to extend the pier to the pierhead line (i.e., to the same depth as the nearby piers, including the Harroshes). The Harroshes argue extra length is only available if the pier is entirely nonfunctional and the additional depth attained renders it functional. See Statement of Appeal, Attachment B, at 2-3. As demonstrated in the Johannessen's Opposition, the depth at pier end without the additional length is 2-3 feet at highwater and the lake bottom is rocky rendering boating unsafe. Opposition, Attachment C, at 11. The additional length is required to obtain sufficient depth for safe boating at the end of the pier. Id. These facts adequately support the Hearings Officer's award of the extra length.

Access to an HOA Pier: Under Code Section 84.4.2.5, property owners with access to a multiple use pier, such as an HOA pier, are only eligible for a multiple parcel pier (to promote the reduction of shorezone development potential). Here, the Johannessens received a permit for a single parcel as the Hearings Officer determined that they did not have access to an HOA pier within the meaning of the Code. The Harroshes contend the Hearings Officer erred because the Johannessens are potentially eligible to join the Agate Bay Swim and Pier Club ("Club"), which has a pier, and therefore, may only qualify for a multiparcel pier. Statement of Appeal, Attachment B, at 3. The Johannessens respond that the Club is a voluntary association whose membership opportunity does not arise from a title obligation and is therefore not an HOA within the meaning of the Code provision. Opposition, Attachment C, at 13; see also Greg Gatto Letter dated September 1, 2020, attached hereto as Attachment D. Staff agrees with the Johannessens' analysis. The Club is not a homeowners' association, it is a club whose membership is limited to a subset of eligible parcels and does not inure to the title of the Johannessen's property. The Hearings Officer therefore correctly granted the Johannessen's single-parcel pier application.

Public Trust: The Harroshes contend that the Public Trust doctrine requires TRPA deny this application because of impacts to public trust values (water quality, public safety, navigation). Statement of Appeal, Attachment B, at 3. As discussed above, the pier and associated boating does not represent a water quality or public navigational hazard as it sits within the pierhead line. As for public access laterally, the Johannessens worked with the California agency responsible for Public Trust implementation, California State Lands Commission, and Special Condition 8 of the permit (Attachment A) implements their agreement. In addition, the Johannessens must obtain a lease agreement from California State Lands prior to building the pier and that agency can add conditions necessary to protect public trust values. See generally Opposition, Attachment C, at 12-13. The Hearings Officer's action therefore did not violate the California Public Trust.

Hearings Officer Meeting: Finally, the Harroshes allege that the Hearings Officer public hearing on this item lacked sufficient notice and opportunities for all interested parties to meaningfully participate. Statement of Appeal, Attachment B, at 3. TRPA provided adequate notice of the Hearings Officer's April 1<sup>st</sup>, 2021 and April 29<sup>th</sup>, 2021 meeting. See Notices of Meeting, attached as Attachment E. In fact, the

item was continued 30 days in order to facilitate more conversation between the parties. See Continuance Request, attached as Attachment F. The Harroshes fail to explain how these notices failed to alert them on the meeting as they submitted multiple comment letters and appeared and participated at the meeting when the item was heard on April 29<sup>th</sup>, 2021. Similarly, the Harroshes do not explain how “interested neighbors” could not participate when some of them did appear and provide public comment. Since the notice was proper and all who attended were permitted an opportunity to comment, no procedural errors occurred.

In sum, the appeal should be denied and the decision of the Hearings Officer to issue Permit No. 2020-0074 should be affirmed.

Contact Information: For questions regarding this agenda item, please contact John Marshall, General Counsel, at (775) 303-4882 or [jmarshall@trpa.gov](mailto:jmarshall@trpa.gov), or Brandy McMahon, Local Government Coordinator, at (775) 589-5274 or [bmcmahon@trpa.gov](mailto:bmcmahon@trpa.gov).

Attachments:

- A. Conditional Permit No. 2020-0074
- B. Statement of Appeal, dated June 17, 2021
- C. Opposition to Statement of Appeal, dated July 12, 2021
- D. Greg Gatto Letter, dated September 1, 2020
- E. Notices of April 1, 2021 and April 29, 2021 Hearings Officer Meetings
- F. Continuance Request re: Proposed Stock/Johannessen New Single-Parcel Pier Project Hearing dated March 31, 2021
- G. USACE email re navigability, dated April 22, 2021
- H. Coast Guard email re navigability, dated March 30, 2021
- I. Initial Environmental Checklist

Attachment A

Conditional Permit No. ERSP2020-0074



**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.gov](http://www.trpa.gov)

April 29, 2021

Virginia K. Stock and George F. Johannessen  
1320 Monument Street  
Pacific Palisades, CA 90272

**STOCK/JOHANNESSEN NEW SINGLE-PARCEL PIER, 5568 NORTH LAKE BOULEVARD, PLACER COUNTY, CALIFORNIA, ASSESSOR'S PARCEL NUMBER (APN) 116-220-049, TRPA FILE NUMBER ERS2020-0074**

Dear Ms. Stock and Mr. Johannessen:

Enclosed please find the Tahoe Regional Planning Agency (TRPA) permit and attachments for the project referenced above. If you accept and agree to comply with the Permit conditions as stated, please make a copy of the permit, sign the "Permittee's Acceptance" block on the first page the Permit, and return the signed copy to TRPA within twenty-one (21) calendar days of issuance. Should the permittee fail to return the signed permit within twenty-one (21) calendar days of issuance, the permit will be subject to nullification. Please note that signing the permit does not of itself constitute acknowledgement of the permit, but rather acceptance of the conditions of the permit.

TRPA will acknowledge the original permit only after all standard and special conditions of approval have been satisfied. Please e-mail me a written response explaining how the special conditions of approval are being addressed and final plans for electronic stamping. Pursuant to Rule 11.2 of the TRPA Rules of Procedure, this permit may be appealed within twenty-one (21) days of the date of this correspondence.

Thank you very much for your attention to this matter. If you have any questions, feel free to contact me at (775) 589-5274 or [bmcMahon@trpa.gov](mailto:bmcMahon@trpa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Brandy McMahon".

Brandy McMahon, AICP  
Local Government Coordinator

Enclosures

cc: Ogilvy Consulting, Land Use and Development Strategies  
P.O. Box 6315  
Tahoe City, CA 96145



**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.gov

PERMIT

PROJECT DESCRIPTION: Stock/Johannessen New Single-Parcel Pier APN: 116-220-049  
PERMITTEES: Virginia Stock & George Johannessen/Wyatt Ogilvy FILE #: ERSP2020-0074  
COUNTY/LOCATION: Placer County/5568 North Lake Blvd.

Having made the findings required by Agency ordinances and rules, the TRPA Hearings Officer approved the project on April 29, 2021, subject to the standard conditions of approval attached hereto (Attachment S) and the special conditions found in this permit.

This permit shall expire on April 29, 2024, without further notice unless the construction has commenced prior to this date and diligently pursued thereafter. Commencement of construction consists of pouring concrete for a foundation and does not include grading, installation of utilities or landscaping. Diligent pursuit is defined as completion of the project within the approved construction schedule. 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.

NO DEMOLITION, CONSTRUCTION OR GRADING SHALL COMMENCE UNTIL:

- (1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE(S) HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;
- (2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT;
- (3) THE PERMITTEE OBTAINS APPROPRIATE COUNTY PERMIT. TRPA'S ACKNOWLEDGEMENT MAY BE NECESSARY TO OBTAIN A COUNTY PERMIT. THE COUNTY PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS; AND
- (4) A TRPA PRE-GRADING INSPECTION HAS BEEN CONDUCTED WITH THE PROPERTY OWNER AND/OR THE CONTRACTOR.

*Brandy McMahon*

4/29/2021

TRPA Executive Director/Designee

Date

PERMITTEES' 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) \_\_\_\_\_ Date \_\_\_\_\_



Score from 24 to 26. A Contrast Rating score of 26 allows for 1,365 square feet of visible area. The total existing visible area is 373 leaving 992 square feet of potential visible mass for the property. To meet the mitigation requirement, the applicant will subtract 564 square feet of potential visible area from the remaining allowable visible area of 992 square feet, resulting in a total of 428 of remaining allowable visible area after the pier project is completed.

2. The Standard Conditions of Approval listed in Attachment S shall apply to this permit.
3. Prior to permit acknowledgement, the following conditions of approval must be satisfied:
  - A. The site plan for the project area shall be revised to include the following:
    1. Indicate where the 6.5 square feet of fish habitat mitigation will be placed. Note that fish habitat mitigation shall be consistent with TRPA Code, Section 84.11.2.C, for permanent disturbance in feed/cover habitat.
    2. Include a plan notation that indicates pile driving operations and other piling installation methods (i.e. pinning, etc.) shall require the installation of caissons for turbidity control upon the discretion of the TRPA inspector upon a pre-grade inspection. A floating fine mesh fabric screen or other material approved by TRPA shall be installed underneath the pier decking to capture any fallen materials during pier demolition and reconstruction. The floating screen and caissons may be removed upon project completion and after a satisfactory inspection by TRPA to ensure that all suspended materials have settled.
    3. A notation that no new buoys are authorized as a part of this project, and that one existing mooring buoy will be converted into a boatlift. Note on the plans the location of the buoy to be retired in exchange for the boatlift.
    4. Include the location of temporary Best Management Practices (BMPs), if necessary, for access pathways from the upland to the pier.
    5. The pier must be matte medium to dark grey in color. The applicant shall provide a color sample for approval by TRPA.
    6. Delineate the location of the turbidity curtain and include allowance for barge access.
  - B. The permittee shall submit a construction completion schedule to TRPA.
  - C. The permittee shall conduct a Tahoe Yellow Cress (TYC) survey for the subject property. Surveys shall be conducted during the growing season of June 15th through September 30<sup>th</sup> prior to commencement of proposed work. If TYC or TYC habitat are present, the permittee shall submit a TYC avoidance and protection plan to TRPA prior to acknowledgement of this permit.
  - D. The permittee shall provide a Spill Prevention Plan for the use of any hazardous materials or equipment (i.e., fuel, epoxy glue, other volatile substances, welding and

torch equipment, etc.), for construction activities occurring from a barge and/or amphibious vehicle and within the lake. The Plan shall require absorbent sheets/pads to be retained on the barge at all times. A contact list of all emergency response agencies shall be available at the project site at all times during construction.

- E. The project security required under Standard Condition A.3 of Attachment S shall be \$10,000. Please see Attachment J, Security Procedures, for appropriate methods of posting the security and for calculation of the required security administration fee.
  - F. Pursuant to Section 10.8.5.E.4.a.i of the TRPA Rules of Procedure, the permittee shall submit a shorezone mitigation fee of \$5,712.60 for the construction of 95 feet and 2.5 inches of new pier as measured from the High Water Elevation (assessed at \$60.00 per linear foot).
  - G. A total of 78.5 square feet of new coverage in the backshore is required to provide access to the pier. The permittee shall transfer 118 square feet (ratio of 1.5 to 1) of Land Capability District (LCD0 Class 1b restoration credits to provide minimum access to the pier in accordance with TRPA Code Sections, 85.5.4, 85.5.1.E, and 30.5.3; 64.5. All coverage transfers must be in compliance with Chapter 30 of the TRPA Code of Ordinances and the TRPA Rules of Procedure.
  - H. The permittee shall e-mail a final set of plans to TRPA for electronic stamping
4. The permittee must receive a final for the project (ref. TRPA File #ERSP2020-0371) to reconfigure decks, remove unauthorized coverage, install BMPs, and paint the house a TRPA approved color (Munsell Hue 2.5Y – Value 6/Chroma 2) before the permittee may receive a final for this pier project.
  5. It is the permittee’s responsibility to receive authorization and obtain any necessary permits from other responsible agencies for the proposed project.
  6. The existing stairs in the backshore shall be removed and restored as part of this project.
  7. No pier demolition or construction shall occur between May 1 and October 1 (spawning season) unless prior approval is obtained from the California Department of Fish and Wildlife, the U.S. Army Corps of Engineers, or the U.S. Fish and Wildlife Service.
  8. Public access and appropriate signage indicating public access that meets the requirements of the California State Lands Commission and TRPA Code, Section 84.4.3, shall be maintained in the public trust easement.
  9. Disturbance of lakebed materials shall be the minimum necessary. The removal of rock materials from Lake Tahoe is prohibited. Gravel, cobble, or small boulders shall not be disturbed or removed to leave exposed sandy areas before, during, or after construction.
  10. Best practical control technology shall be employed to prevent earthen materials to be re-suspended as a result of construction activities and from being transported to adjacent lake waters.

11. The discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin is prohibited. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal.
12. Any normal construction activity creating noise in excess of the TRPA noise standards shall be considered exempt from said standards provided all such work is conducted between the hours of 8:00 A.M. and 6:30 P.M.
13. To the maximum extent allowable by law, the Permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board (including individual members), its Planning Commission (including individual members), 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, administrative appeal, 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 their 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

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## **ATTACHMENT S**

# **STANDARD CONDITIONS OF APPROVAL FOR SHOREZONE PROJECTS**

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### **I. CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION**

The following conditions shall be satisfied prior to commencement of any construction activity within the project area, including, but not limited to, filling, dredging, grading, excavation, clearing of trees, and other activities associated with construction. Failure to satisfy these conditions of approval prior to commencement of construction activity shall be grounds for revocation of the permit.

NOTE: TRPA reviews and approves projects as required under Tahoe Regional Planning Agency (TRPA) Rules, Regulations, and Ordinances only. TRPA does not review and shall not be responsible for any elements contained in the plans (i.e., structural, electrical, mechanical, etc.) which are not required for review under said Rules, Regulations, and Ordinances.

- A. The permittee shall submit final construction drawings and plans showing revegetation, slope stabilization, and drainage improvements. Revegetation, slope stabilization, and drainage improvement plans shall be designed in conformance with the TRPA Best Management Practices (BMP) Handbook.
- 1) Revegetation plans shall show areas to be revegetated, specifications for revegetation, and temporary fencing for vegetation protection. Only native species adaptable to the Lake Tahoe Basin shall be used for landscaping or revegetation. A list of acceptable species is available from TRPA.
  - 2) Slope stabilization plans shall show all methods of stabilization to be used to stabilize all existing and proposed cut and fill slopes and areas otherwise denuded of vegetation. Said plans shall also show temporary and permanent erosion control devices, temporary sediment barriers, and measures to be taken for dust control.
  - 3) Drainage plans shall show all drainage facilities for all existing and proposed impervious surfaces and utility trenches. Drainage facilities shall be designed to be capable of retaining runoff waters for a 20-year, 1-hour storm event. Calculations demonstrating the proposed facilities' retention capabilities may be required. Whenever possible, utilities shall occupy common trenches to minimize site disturbance.
- B. A security shall be posted with TRPA to ensure compliance with the conditions of the permit. In most cases, the security shall be determined by TRPA and will typically be equal to 110% of the estimated costs of the revegetation, drainage improvements, slope stabilization plans, and other conditions of approval. For further information on acceptable types of securities, see Attachment J.
- C. The permittee shall submit all required air quality, water quality, excess coverage, and shorezone mitigation fees.
- D. Prior to any activity commencing, the permittee shall contact TRPA at least 48 hours in advance and arrange for a pre-grading inspection to verify that all the temporary erosion and water quality control measures and protective fencing for vegetation are in place and installed properly.
- E. The applicant shall identify temporary disposal sites, if any, and permanent disposal sites for all dredged material, including appropriate authorization from property owners.

- F. All existing disturbed areas and areas disturbed as a result of construction activity authorized by the permit, or otherwise occurring on the subject project during the time period when the permit is valid, shall be revegetated using only those species contained on TRPA's list of acceptable species. All required vegetation shall be completed by completion of the project.
- G. The permittee shall return a signed copy of the permit form stating that the permit was received and that the permit is understood, and the contents accepted prior to any activity or grading occurring within the project area. Plans shall not be stamped approved without TRPA receiving a copy of the signed permit.
- H. It is the permittee's obligation to locate all subsurface facilities and/or utilities prior to any grading, dredging or other subsurface activity. The permittee is responsible for contacting the Northern Underground Service Alert (USA, usually known as USA DIGS 1-800-227-2600) prior to commencement of any activity on the site.

## II. CONSTRUCTION-RELATED CONDITIONS

The following conditions shall apply to construction activity on the site:

### A. General Construction Requirements

- 1) The TRPA permit and the final construction drawings shall be present on site from the time construction commences until the final TRPA site inspection.
- 2) Prior to commencement of construction, the applicant shall submit a construction completion schedule to TRPA. Construction shall be completed by the date set forth in the approved construction schedule. Extensions of the schedule may be granted provided the request is made in writing and the application fee submitted prior to the expiration of the completion schedule. An additional security may be required to be posted to ensure completion or abatement of the project. To approve the extension, TRPA must make either of the following findings:
  - i. The project was diligently pursued, as defined in Subparagraph 2.2.4.C of the TRPA Code of Ordinances, during each building season (May 1 - October 15) since commencement of construction.
  - ii. That events beyond the control of the permittee, which may include, but are not limited to, engineering problems, labor disputes, natural disasters, or weather problems have prevented diligent pursuit of the project.
- 3) The permittee shall allow TRPA to enter and inspect the site at any time to determine compliance with the permit.
- 4) No construction methods shall be utilized that will degrade the water of Lake Tahoe or other lakes within the Lake Tahoe Basin.
- 5) Violation of any of the conditions of approval shall be grounds for revocation of the permit. Failure to commence construction within the approval period shown on the permit face shall result in the expiration of the permit, ***without notice***, by operation of law, on the date shown on the permit face.
- 6) This approval is based on the permittee's representation that all plans and information contained in the subject application are true and correct. Should any information or representation submitted in connection with the project application be incorrect or untrue, TRPA may rescind this approval or take other appropriate action.
- 7) Information contained in special reports prepared for the project, including, but not limited to, visual analysis and substrate reports, are considered conditions of project approval, except when noted in the Special Conditions of Approval.

- 8) Any normal construction activities creating noise in excess of TRPA noise standards shall be considered exempt from said standards provided all such work is conducted between the hours of 8:00 am and 6:30 pm.
- 9) For projects with an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), the mitigation measures contained in the document are considered conditions of project approval, except when noted in the Special Conditions of Approval. Final plans shall be designed to include all EA/EIS mitigation measures. Where discrepancies exist between the final plans and the EA/EIS, the mitigation measures outlined in the EA/EIS shall take precedence, unless specifically noted *in writing* by TRPA.

B. Grading and Site Disturbance Activities

- 1) There shall be no grading, filling, clearing of vegetation, or other disturbance of soil on site between October 15 and May 1 of each year.
- 2) There shall be no grading, filling, clearing of vegetation, or other disturbance of the soil during inclement weather and during the resulting period of time when the site is covered with snow or is saturated, muddy or unstable.
- 3) No rocks or other natural materials shall be relocated, including rock removal by blasting, that are not indicated on the approved plans without first obtaining TRPA approval.
- 4) All material obtained from excavation work shall be contained within the foundations, retaining walls, or by a similar means approved by TRPA, or the excavated material shall be disposed of at a site approved by TRPA.
- 5) Soil and construction materials shall not be tracked off-site. Grading operations shall cease in the event a danger of violating this condition exists. The site shall be cleaned and the road right-of-way shall be swept clean when necessary.
- 6) The length of open trenches (excluding foundations) shall not exceed 50 feet at the end of each working day, unless approved by TRPA.
- 7) Loose soil mounds or surfaces shall be protected from wind and water erosions by being appropriately covered or contained when active construction is not occurring.
- 8) All excavated material shall be stored upslope from excavated areas. No material shall be stored in stream environment zones, backshore, or other saturated areas.
- 9) No grading, filling, clearing of vegetation, operation of equipment, or disturbance of the soil shall take place in areas where any historic or prehistoric ruins or monuments or objects of antiquity are present or could be damaged by grading. If any historic or prehistoric ruins or monuments or objects of antiquity are discovered, all grading, filling, clearing of vegetation, operation of equipment, or disturbance of the soil shall immediately cease and shall not recommence until a recovery plan is approved by TRPA.
- 10) Maximum excavation depth shall not exceed five feet, unless otherwise approved by TRPA.
- 11) If groundwater is encountered during construction, cease work and contact TRPA immediately to discuss possible changes in design or dewatering options.
- 12) Gravel, cobble, or small boulders shall not be disturbed or removed to leave exposed sandy areas before, during, or after construction. Only the boulders designated on the site plan to be moved shall be moved to an appropriate location.
- 13) Disturbance of the lake bed materials shall be kept to the minimum necessary for project construction.

C. Winterization

- 1) All construction sites shall be winterized no later than October 15 of each year as follows:
  - i. Inactive winter sites shall contain erosion and drainage improvements necessary to prevent discharge from the site including, but not limited to:
    - (a) Installation of temporary erosion controls
    - (b) installation of temporary protective fencing of vegetation
    - (c) Stabilization of all disturbed areas
    - (d) Cleanup and removal of all construction slash and debris
    - (e) Installation of permanent mechanical stabilization and drainage improvements, where feasible
    - (f) Removal of all spoil piles
  - ii. Active winter sites shall comply with the following:
    - (a) Installation of all permanent mechanical erosion control devices, including paving of all driveway and parking areas
    - (b) Installation of all permanent drainage improvements
    - (c) Parking of vehicles, equipment, and storage of materials shall be restricted to paved areas
- 2) Work shall be performed in such a manner that the project can be winterized within 24 hours.

D. Construction Equipment

- 1) Equipment of a size and type that will do the least amount of damage to the environment shall be used. Cleaning of equipment, including cement mixers, is not permitted unless approved *in writing* by TRPA.
- 2) Vehicles or heavy equipment shall not be allowed in stream environment zones, backshore, or other saturated areas unless specifically authorized by TRPA. All vehicles and heavy equipment shall be confined to the area within the vegetative protection fencing unless specifically authorized by TRPA.
- 3) Idling time for all diesel-powered equipment shall not exceed 5 minutes.
- 4) Construction vehicles leaving the site shall be cleaned to prevent dust, silt, mud, and dirt from being released or tracked off-site.
- 5) Existing power sources or clean-fuel generators rather than temporary diesel power generators shall be used whenever feasible.

E. Vegetation Protection

- 1) All trees and natural vegetation which are to remain shall be fenced for protection. Scarring of trees shall be avoided. Scarred trees shall be repaired with tree seal.
- 2) Fencing specified shall be at least 48 inches high and shall be constructed of metal posts and either orange construction fencing or metal mesh fencing also at least 48 inches high (Section 33.6.1). Job sites with violations of the fencing standards will be required to re-fence the job site with a high gauge metal fencing.

- 3) No material or equipment shall enter or be placed in the areas protected by fencing or outside the construction areas without prior approval from TRPA. Fences shall not be moved without prior approval (Section 33.6).
- 4) To reduce soil disturbance and damage to vegetation, the area of disturbance during the construction of a structure shall be limited to the area between the footprint of the building and the public road. For the remainder of the site the disturbance areas shall not exceed 12 feet from the footprint of the structure, parking area or cut/fill slope. The approved plans should show the fencing and approved exceptions (Section 36.2).

F. Best Management Practices

- 1) Construction activities shall comply with the BMP Handbook.
- 2) Temporary and permanent BMPs shall be installed in accordance with the approved plans. Temporary and permanent BMPs may be field fit by the Environmental Compliance Inspector where appropriate.
- 3) At all times during construction, environmental protection and erosion control devices shall be maintained in a functioning state. Such devices include, but are not limited to, sediment barriers, dust control devices, and vegetative protection.
- 4) Required BMPs (slope stabilization, infiltration facilities, revegetation, etc.) shown on the approved plans have been determined from representations submitted by the applicant and not confirmed by field inspection. Modification of the required BMPs necessary to correct inadequacies may be added at the time of the pre-grade inspection and shall be incorporated into the TRPA permit and site plans as additional conditions of approval.

G. Air Quality

- 1) Fugitive dust shall not exceed 40 percent opacity and not go beyond the property boundary or into waters of the region at any time during project construction.
- 2) No open burning of removed vegetation shall occur during infrastructure improvements.
- 3) Water shall be applied as needed to prevent dust impacts from extending off-site. Operational water truck(s) shall be on-site, as required, to control fugitive dust.

H. Noise and Vibration

- 1) All construction equipment, including vibration-inducing impact equipment, on construction sites shall be operated as far away from vibration-sensitive uses as reasonably possible.
- 2) Earthmoving and ground-disturbing operations shall be phased so as not to occur simultaneously in areas close to sensitive uses, to the extent feasible. The total vibration level produced could be significantly less if each vibration source is operated at separate times.
- 3) To prevent structural damage, minimum setback requirements for different types of ground vibration-producing activities (e.g. pile driving) for the purpose of preventing damage to nearby structures shall be established based on the proposed pile driving activities and locations, once determined. Factors to be considered include the specific nature of the vibration activity (e.g. type and duration of pile driving), local soils conditions, and the fragility / resiliency of the nearby structures. Established setback requirements (i.e. 55 feet) can be breached if a project-specific, site specific analysis is conducted by a qualified geotechnical engineer or ground vibration specialist that indicates that no structural damage would occur at nearby buildings or structures or provides further recommendations (e.g. alternative pile driving methods, site monitoring requirements) to avoid damaging nearby structures.

I. Archaeological Resources

- 1) If evidence of any prehistoric or historic-era subsurface archaeological features or deposits are discovered during construction-related earth-moving activities (e.g. ceramic shard, trash scatters, lithic scatters), all ground-disturbing activity in the area of the discovery shall be halted and the appropriate jurisdiction and TRPA shall be notified immediately. A qualified archaeologist shall be retained to assess the significance of the find. If the find is a prehistoric archaeological site, the appropriate Native American group shall be notified.
- 2) If the archaeologist determines that the find does not meet NRHP, NVSHRP, or CRHR standards of significance, as applicable, for cultural resources, construction may proceed.
- 3) If the archaeologist determines that further information is needed to evaluate significance, a data recovery plan shall be prepared.
- 4) If the find is determined to be significant by the qualified archaeologist (i.e. because the find is determined to constitute either an historical resource or a unique archaeological resource), the archaeologist shall work with the project applicant to avoid disturbance to the resources, and if complete avoidance is not feasible in light of project design, economics, logistics, and other factors, follow accepted professional standards in recording any find including submittal of the recordation forms required by the applicable SHPO and location information to the appropriate information center.

J. Buoys

- 1) Buoys shall comply with the construction specifications set forth in the California Waterway Marking System or as otherwise recommended by the US Army Corps of Engineers or Coast Guard.

K. Pier Construction

- 1) No pier demolition or construction shall occur between May 1 and October 1 (spawning season) unless prior approval is obtained from the California Department of Fish and Wildlife or Nevada Department of Wildlife and TRPA.
- 2) Best practical control technology shall be employed to prevent earthen materials to be resuspended as a result of pier construction and from being transported to adjacent lake waters. The permittee shall install a turbidity screen around the entire project site (in the water) prior to construction. This screen may be removed upon project completion only upon satisfactory inspection by TRPA to ensure that all suspended materials have settled.

**III. CONDITIONS TO BE SATISFIED PRIOR TO COMPLETION OF THE PROJECT:**

- A. Rehabilitation and cleanup of the site following construction shall include, but not be limited to, removal of all construction waste and debris.
- B. Upon completion of the project, as a condition of the release of the security, TRPA shall conduct a final site inspection to verify that all required improvements and revegetation are properly installed and that all conditions of the permit have been satisfied.
- C. Replanting of all exposed surfaces, as shown on the revegetation and slope stabilization plans, shall be completed within one year following the commencement of construction, unless the approved construction schedule establishes otherwise.
- D. Revegetation of compacted dirt areas not to be surfaced shall be in accordance with guidelines established in Chapter 4 of the Best Management Practices Handbook.

**IV. ONGOING CONDITIONS**

The following ongoing conditions shall apply for the life of project:

A. Operational Requirements

- 1) All Best Management Practices shall be maintained in perpetuity to ensure effectiveness which may require BMPs to be periodically reinstalled or replaced.
- 2) No naturally occurring vegetation shall be manipulated or disturbed except in accordance with Chapter 30. No planting of new vegetation, or manipulation of naturally occurring vegetation, shall be permitted in the shorezone, unless such activities comply with the standards in Chapter 30.
- 3) Indigenous vegetation, appropriate to the backshore shall not be removed or damaged in the backshore, unless otherwise authorized under TRPA permit pursuant to Section 85.5 or Subsection 61.3.3 of the Code of Ordinances. Landscaping installed for the purpose of scenic quality may be maintained pursuant to Subsection 61.3.3.
- 4) All shorezone structures shall maintain compliance with the project description and approved plans associated with the permit. Any modifications, including demolition, expansion, relocation, and reconstruction, may require further TRPA review and approval pursuant to Code of Ordinances Chapters 80-85.
- 5) The use of wood preservatives on wood in contact with the water is prohibited and extreme care shall be taken to ensure that wood preservatives are not introduced into Lake Tahoe. Spray painting and the use of tributyltin is prohibited.
- 6) No containers of fuel, paint, or other hazardous materials shall be stored in the lakezone or shorezone.

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## **ATTACHMENT J SECURITY PROCEDURES**

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### **I. SECURITY REQUIREMENTS**

As a condition of project approval, permittees may be required to post a security with TRPA to ensure compliance with conditions of project approval. The amount of the required security will be specified in the special conditions of your permit but in most cases the amount will be equal to 110% of the estimated costs of installation of required water quality Best Management Practices (revegetation, slope stabilization, drainage improvements). An additional or alternate security may be required to ensure compliance with other specific conditions of approval. All securities must be for the amount specified in the permit and be valid for an indefinite amount of time. When conditions of approval are complied with (including completion of revegetation), the owner may request a final inspection with the TRPA Compliance Team (online inspection request form available at [www.trpa.gov](http://www.trpa.gov)).

### **II. SECURITY ADMINISTRATION FEES**

All securities posted require a non-refundable administration fee. The administration fee will be charged based on the current fee listed in the [TRPA Filing Fee Schedule](#) (#109) at the time the fee is paid.

### **III. ACCEPTABLE TYPES OF SECURITIES**

TRPA is unable to accept credit card payments for securities. If a security is paid by credit card, the amount will be refunded and returned with a check in the mail, and another appropriate security shall be posted.

#### **A. CHECK**

If paying with a physical check it must have an identifying name and address. Please send by mail or drop off at the TRPA office with the required amount (including security administration fee) and application file number.

#### **B. ELECTRONIC CHECK**

Electronic checks can be used to pay fees online with your checking account. If choosing this payment method, please coordinate with your Planner to have the fees available to pay through the online Citizen Access portal.

#### **C. CERTIFICATE OF DEPOSIT (CD)**

The CD should read: "Purchased by owner/permittee and then made payable to TRPA." "Made payable to owner/permittee and TRPA" is only acceptable if endorsed by the owner/permittee. CDs made out to "Owner/permittee or TRPA" cannot be accepted. The CD must have an open maturity date or be automatically renewable. The following information must be included on the CD: Owner's name, mailing address, Assessor parcel Number. Interest earned on the account may be payable to the holder. (see example, page 4)

**D. LETTER OF CREDIT**

The security must be in the owner’s name, irrevocable for an indefinite period of time, and documented by a letter or statement from a bank showing the following information: Owner’s name and mailing address, assessor parcel number of the project, the amount of the letter of credit, and documentation required by the bank. The letter or statement must clearly state that TRPA is a beneficiary of the credit amount. (see example, page 6)

**E. ASSIGNMENT OF A PERSONAL SAVINGS ACCOUNT**

Must consist of the actual savings passbook and a separate notice of assignment. The notice of assignment must include the owner’s name and mailing address, account number, assessor’s parcel number of the project, ad the amount of assignment. (see example, page 5)

**F. FAITHFUL PERFORMANCE BOND**

This option is only allowed for securities greater than \$10,000 and must be in TRPA’s name. The bond must have the insurance company, bond number, owner of security or principle’s name and mailing address, the assessor’s parcel number of the project, and the amount. The oblige, TRPA, must be clearly identified. The bond must be valid for an indefinite amount of time. Please contact TRPA for an example of how to set up a bond.

**IV. PAYING FEES ONLINE WITH MULTIPLE PAYMENT TYPES**

When multiple fees are due at acknowledgement (i.e., security, mitigation fees, administrative fees, inspection fees) the applicant has the option to pay fees other than the security with a credit card. To split your payment method, you must pay in two separate transactions. The security shall be paid first with an electronic check. The reminder of the fees will then be totaled and available for payment by credit card. Coordinate with your Planner to get each set of fees active at the appropriate time.

**V. PAYING SECURITY THROUGH ONLINE CITIZEN ACCESS PORTAL**

For a tutorial on how to create an Accela Citizen Access account visit: [www.trpa.gov/apply-online/](http://www.trpa.gov/apply-online/) and start with step 5.

Once logged into the Accela Citizen Access database follow this process:

- 1. Search for application (if having difficulty, try entering parcel number only and hit search)



**General Search**

El Dorado xxx-xxx-xx; Placer xxx-xxx-xxx; Washoe xxx-xxx-xx; Douglas xxxx-xx-xxx-xxx

Parcel Number:  please include dashes ? File Number:

Street No.:  From - To Street Name:  ? Direction:  ? Street Type:  ?

City:  State:  Zip:

2. Locate the correct file and click 'Pay Fees Due'.



3. When under payment options, select "Pay with Bank Account." Reminder: securities cannot be paid by credit card.

**Payment Options**

Amount to be charged: \$944.00

Pay with Credit Card

Pay with Bank Account

**VI. EXAMPLES OF NON-CASH SECURITIES**

See following pages

**SAMPLE CERTIFICATE OF DEPOSIT**

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**TIME DEPOSIT**

BRANCH \_\_\_\_\_ No. \_\_\_\_\_  
PURCHASED BY Owner/Permittee \_\_\_\_\_  
PAYABLE TO TAHOE REGIONAL PLANNING AGENCY \_\_\_\_\_

DATE \_\_\_\_\_  
RATE \_\_\_\_\_ YIELD \_\_\_\_\_  
\$ AMOUNT \_\_\_\_\_  
TERM \_\_\_\_\_  
ACCOUNT # \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

The publication(s) you receive contains the terms and condition of this account. This time deposit will be reinvested automatically for the same term upon maturity or on the effect date of a deposit or withdrawal made during the grace period. (The grace period is two business days for terms of 89 days or less; ten calendar days for terms of 90 days or more beginning on the maturity date.) The new interest rate will be the interest rate in effect on the date your funds are reinvested.

\*Interest compounded daily. Yield assumes deposit and interest remain in the account for a year at the same interest rate.

**IMPORTANT INFORMATION**

If you withdraw all or part of your deposit before it matures a substantial interest penalty will be imposed. A personal time deposit evidenced by this receipt is **NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE FEDERAL RESERVE BOARD.**

FD-162 5-89

NOT NEGOTIABLE

Bank of America NT& SA • Member FDIC

**SAMPLE ASSIGNMENT OF PERSONAL SAVINGS ACCOUNT**

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MUST BE ON BANK LETTERHEAD WHICH INCLUDES BANK ADDRESS & PHONE NUMBER

NOTICE OF ASSIGNMENT TO ACCOMMODATE SAVINGS ACCOUNT PASSBOOK

NOTICE OF ASSIGNMENT

[Name of Owner(s)] hereinafter called Assignor, does (do) hereby assign and set over to the Tahoe Regional Planning Agency (TRPA), all right, title, and interest of whatever nature, of Assignor, in and to the insured account of the Assignor in the name [Name of Bank/Savings & Loan] evidenced by an account in the amount of \$ \_\_\_\_\_ numbered \_\_\_\_\_ which is delivered to the TRPA herewithin. Assignor agrees that this assignment carried with it the right in the insurance of the account by the Federal Savings and Loan Insurance Corporation/Federal Deposit Insurance Corporation, and includes the right of the TRPA to redeem, collect, and withdraw the full amount of such account at any time WITHOUT NOTICE TO THE ASSIGNOR. This assignment is given as security liability for:

Assurance that the owner will comply with the TRPA permit conditions as required by the TRPA Code of Ordinances, Section 8.8. the amount is set aside solely for that purpose and is available on demand to the TRPA if the conditions are not satisfied. Please advise the office when the assignment can be released.

Assignor hereby notified the above-named institution of this agreement. Assignor hereby certifies that he/she/they agree that the above-referenced account will be renewed in its full amount if performance of the above-referenced conditions have not been certified by the Agency prior to the maturity date of the subject account.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Assignor \_\_\_\_\_ Assignor \_\_\_\_\_

Owner's Name \_\_\_\_\_

Account Number \_\_\_\_\_

APN \_\_\_\_\_

Amount of Assignment \_\_\_\_\_

Bank Acknowledgement \_\_\_\_\_

**SAMPLE LETTER OF CREDIT**

MUST BE ON BANK LETTERHEAD WHICH INCLUDES BANK ADDRESS & PHONE NUMBER

Date \_\_\_\_\_

Tahoe Regional Planning Agency (TRPA)  
P.O. Box 5310  
Stateline, BV 89449

Assessor's Parcel Number \_\_\_\_\_

At the request for the account of (owner/permit name and mailing address), we hereby open in your favor our irrevocable Letter of Credit No. \_\_\_\_\_ in the aggregate amount of \$ \_\_\_\_\_ available by your draft drawn on us at sight when accompanied by the following documents:

1. Your signed certification executed by a TRPA official stating that (owner/Permitee) has not completed revegetation, slope stabilization, and/or drainage improvements as per file \_\_\_\_\_ entered into with TRPA.
2. This original Letter of Credit

The irrevocable Standby Letter of Credit expires on \_\_\_\_\_. However, it is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for successive one-year periods from the present and all future expiration dates hereof unless 60 days prior to any such date (Name of Bank) shall notify the TRPA *in writing by certified mail, return receipt requested*, at the above address that (Name of Bank) elects not to consider this Letter of Credit renewed for any such additional period. Upon receipt of such notice, you may draw on us hereunder by means of your draft on us a sight for the full amount of this Letter of Credit, accompanied by your name above noted signed certification.

Sincerely,

Name of Bank

By: \_\_\_\_\_

By: \_\_\_\_\_

**SAMPLE LETTER OF HOLD ON PERSONAL SAVINGS**

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MUST BE ON BANK LETTERHEAD WHICH INCLUDES BANK ADDRESS & PHONE NUMBER

Date \_\_\_\_\_

Tahoe Regional Planning Agency (TRPA)  
P.O. Box 5310  
Stateline, BV 89449

Assessor's Parcel Number \_\_\_\_\_

This letter is to advise you that (Owner's name and mailing address) has authorized (Name of Bank/Savings & Loan) to place a hold on account \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ for an indefinite period of time.

The hold on the account is assurance that the owner will comply with TRPA permit conditions as required by the TRPA Code of Ordinances, Section 8.8. This amount is set aside solely for that purpose and is available on demand to the TRPA if conditions are not satisfied. Please advise this office when the hold on account can be released.

Sincerely,

Name of Bank/Savings & loan

By: \_\_\_\_\_

Attachment B

Statement of Appeal, dated June 17, 2021

## 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.

Attachment C

Opposition to Statement of Appeal, dated July 12, 2021



GREG GATTO  
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greg@sierralanduselaw.com  
www.sierralanduselaw.com

July 12, 2021

**VIA EMAIL**

Tahoe Regional Planning Agency  
Governing Board  
c/o John Marshall, General Counsel  
128 Market Street  
Stateline, NV 89449

**Re: Opposition to Statement of Appeal of Stock/Johannessen New Single-Parcel Pier - Appeal File Number ADMIN2021-0014; TRPA Project File Number ERSP2020-0074**

Dear Honorable Members of the Governing Board and Mr. Marshall:

This Opposition to the Harrosh family (“Appellants”) Statement of Appeal is respectfully submitted on behalf of George “Chip” Johannessen and Virginia Stock Johannessen (the “Johannessens”), owners of the property located at 5568 North Lake Blvd. (the “Property”), and applicants for a new single parcel pier, TRPA Project File Number ERSP2020-0074 (the “Project”).<sup>1</sup>

On July 18, 2019, the Johannessens won the proverbial lottery, and were one of only five parcels awarded a new single parcel pier allocation for the 2019-2020 pier allocation period. Immediately upon receipt of this news, the Johannessens undertook extensive measures to prepare an application for submittal of a new pier that would conform to the Shoreline Plan requirements regarding placement of structures within the shorezone. These measures included detailed analysis of shorezone standards through their land use consultant Wyatt Ogilvy, site review for compliance with previous permit conditions, bathymetric surveying, biological reconnaissance and evaluation, and preparation of an Environmental Assessment. Ultimately a design configuration that fulfills TRPA’s Code of Ordinances’ (the “Code”) stringent design standards, meets all required findings for new piers, avoids environmental impacts, provides for navigational safety, and allows for pier functionality was selected and submitted to TRPA.

The comprehensive process that resulted in the final design for the Johannessen pier is precisely what was envisioned by the Governing Board when it adopted the Shoreline Plan. One of the organizing principles of the Shoreline Plan is to “implement predictable and consistent rules.” (Shoreline Plan Draft EIS (“DEIS”), p. 4-20.) To that end, the Shoreline Plan adopted design standards for single-use piers to ensure new piers would adequately serve their users while being

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<sup>1</sup> The Johannessens hereby incorporate by reference the complete administrative record of proceedings in this matter.



Tahoe Regional Planning Agency  
Governing Board  
c/o John Marshall, General Counsel  
July 12, 2021  
Page 2

sufficiently protective of scenic and safety standards. (*Ibid.*) By adhering to, and in some cases exceeding these standards, the Johannessen pier Project exemplifies appropriate and proper implementation of the Shoreline Plan. The Hearings Officer recognized this in approving the Project, despite Appellants' protestations that they would be inconvenienced if a new pier was built at this site.

The Hearings Officer's decision in approving the pier is supported by substantial evidence, is consistent with the TRPA Code and Compact, and fosters the policies outlined in the Shoreline Plan. Accordingly, the Johannessens respectfully request that the Board uphold the Hearings Officer's approval and deny Appellants' appeal.

## **I. Background Facts**

### **A. Adoption of Shoreline Plan and Certification of EIS.**

The Shoreline Plan lifted a longstanding moratorium on new shorezone structures at Lake Tahoe, setting caps and regulations for new structures such as piers, moorings, and public boat ramps. The Plan was the result of years of studies, litigation, stakeholder meetings, public hearings, and finally consensus with the adoption of the Plan in October 2018.

The Shoreline Plan was developed with five organizing principles: (1) protect and where feasible enhance the environment; (2) provide a fair and reasonable system of access; (3) adapt to changing lake levels; (4) preserve quality recreation and public safety; and (5) implement predictable and consistent rules. (DEIS, p. 4-20.) With these principles in mind, the Shoreline Plan meticulously analyzed proposed standards for new shorezone structures to insure that, with adherence to these standards, environmental impacts could be avoided, and the Compact's thresholds attained and maintained. The Shoreline Plan regulations include standards for eligibility, placement, and design of new piers. Ultimately, the Shoreline Plan allowed for up to 128 new private piers, to be allocated in a lottery held every two years.

### **B. Johannessens Awarded New Single-Parcel Pier Allocation.**

On July 18, 2019, the Johannessens were awarded one of five new single parcel pier allocations for the 2019-2020 pier allocation period. They immediately commissioned multiple experts to assist in the siting, permitting, and design of the potential new pier. As part of this work, the Johannessens commissioned an Environmental Assessment by Dr. Stanford Loeb, dated December 10, 2019 (the "EA"), to evaluate the Project's potential impacts to fisheries and fish habitat, littoral sediment drift, and Tahoe Yellow Cress. Based on the Project site and pier design, the EA concluded that "the construction of a new single-family pier will have no



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negative impact on the water quality, littoral sediment transport, fisheries, and fish habitat of Lake Tahoe,” and “[t]herefore, the project will have no adverse environmental impacts on the environment of Lake Tahoe at this specific location.” (EA, p. 23.)

### **C. Johannessens’ Outreach.**

After completing the design and analysis of potential environmental impacts of the Project, the Johannessens prepared an application for the new pier, which was filed on January 13, 2020. On June 5, 2020, Appellants contacted TRPA requesting copies of the pier plans, which were provided.

After learning that Appellants had potential concerns regarding the Project, Mr. Johannessen contacted Appellant Sam Harrosh to see if he was available to meet onsite to discuss the pier design. At that time, Mr. Johannessen explained the logic behind the pier siting and design, how it was intended to function in the rocky area, and how the Johannessens had attempted to balance the location of the pier between the adjacent piers to the north and south of the Property.

On March 17 and 18, 2021, the Johannessens reached out to Appellants and other neighbors to inform them of the then scheduled April 1, 2021 Hearings Officer meeting, and offering the services of their land use consultant to answer any questions or concerns. Appellants did not take the Johannessens up on their offer.

It was not until three days prior to the scheduled Hearings Officer meeting that counsel for Appellants contacted counsel for the Johannessens to request a continuance of the April 1 meeting. The Johannessens agreed to continue the hearing to April 29, 2021, to listen to the concerns of Appellants and see if a compromise solution could be reached.

Discussions with Appellants ensued, and a site visit was attended between the parties and their respective consultants and counsel, but ultimately no compromise could be reached.

### **D. Appellants’ Non-Conforming Pier.**

Appellants’ primary concerns with the Project result from the fact that their current pier is nonconforming in several respects to TRPA’s Code, and therefore, the addition of a new pier may require them to slightly modify their approach when entering their pier.

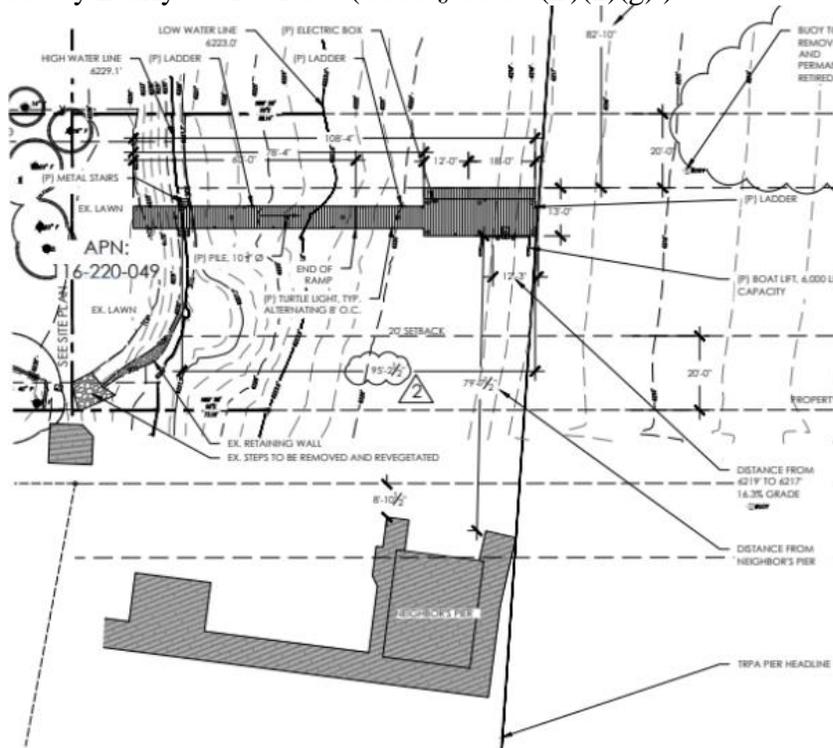
As shown in the picture below, Appellants’ pier contains a non-conforming superstructure, which, by Appellants’ design, requires Appellants to access from the north side of their pier.



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Further, as depicted in the diagram below, Appellants' pier encroaches into the 20-foot setback required by the Code by nearly twelve feet. (Code § 84.4.3(B)(2)(g).)



Despite this non-conforming encroachment, the Johannessens were able to design their pier consistent with TRPA's standards, and provide nearly double the minimum 40-foot setback between piers required by the Code. (Code § 84.4.3(B)(2)(h).) This provides the Appellants with ample room to maneuver into their nonconforming pier.



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### **E. The TRPA Hearings Officer Approves the Project.**

On April 29, 2021, the TRPA Hearings Officer held a meeting to consider the Project. While Appellants' Statement of Appeal contends that "insufficient time was allowed by the Hearings Officer to make all the points we intended," collectively, Appellants, their consultant, and their legal counsel presented testimony for approximately thirty minutes, and the Hearings Officer acknowledged that he reviewed Appellants' presentation twice even prior to the meeting.<sup>2</sup>

Considering the testimony presented by Appellants, and the presentation by staff and the Johannessens, and based on substantial evidence in the record, the Hearings Officer approved the Project as proposed and made the findings required under the Code of Ordinances.

### **II. Standard of Review**

While appeals of denials of a project are reviewed *de novo* by the Governing Board (TRPA Rules of Procedure § 11.5), an approval by the Hearings Officer is subject to the substantial evidence standard of review. (*See* TRPA Compact art. VI(b).) Under the substantial evidence standard, the Hearings Officer's substantive factual conclusions are accorded great deference, and reasonable doubts are resolved in favor of the administrative finding and decision. (*See Sierra Club v. Tahoe Reg'l Planning Agency*, 916 F.Supp.2d 1098, 1108 (E.D. Cal. 2013); *see also Sierra Club v. Tahoe Reg'l Planning Agency*, 840 F.3d 1106, 1119 (9th Cir. 2016).)

The Statement of Appeal erroneously contends that on an appeal it is the applicant's burden to establish that substantial evidence supports the findings required under the TRPA Compact and Code of Ordinances. This contention reverses the respective burdens of the parties. In general, when challenging approval of a project, it is the appellant's burden to demonstrate that there is not sufficient evidence in the record to justify the agency's action. (*See Citizens for a Megaplex-Free Alameda v. City of Alameda*, 149 Cal.App.4th 91, 112-13 (2007).) As with all substantial evidence challenges, an appellant challenging an agency's findings for insufficient evidence "must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal." (*Tracy First v. City of Tracy*, 177 Cal.App.4th 912, 934-35 (2009).)

Not only does the Statement of Appeal fail to demonstrate why all the evidence supporting the Hearings Officer's decision is insufficient, but it blatantly misrepresents the evidence in the record supporting such decision. For example, the Statement of Appeal claims that the "area was never evaluated for Tahoe Yellow Cress during multiple surveys." Yet, the Environmental

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<sup>2</sup> The log-in instructions for Hearings Officer meetings provides that "[i]ndividuals and groups will have three minutes of public comment time," meaning Appellants were allotted ten-times the amount of time ordinarily provided for public comment.



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Assessment unambiguously declares that “[d]uring the site visit to the project location, the shoreline was evaluated for the presence of this plant and evaluation of whether there was suitable habitat for the plant. No specimens of the plant were found at this specific location.” (EA, p. 21.)

Because the Hearings Officer’s decision is supported by substantial evidence, it should be upheld by the Governing Board.

### **III. Argument**

#### **A. The Findings Made by The Hearings Officer are Legally Adequate and Supported by Substantial Evidence.**

Findings required in support of a project approval must be in writing, supported by substantial evidence, and accompanied by a brief statement of the facts and rationales upon which they are based. (Code § 4.3.) The findings made by the Hearings Officer satisfy the standards required under TRPA’s Code, and accordingly, should be sustained by the Board.

##### *a. The Johannessens’ Pier is Compatible With Proximate Shorezone and Lakezone Structures and Uses.*

Code section 80.3.2(C) requires projects proposed in the shorezone be compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel. The Johannessens proposed pier meets all required standards for new shorezone structures, does not impact the ability of Appellants to utilize their pier, and is compatible with all other shorezone and lakezone uses in the area.

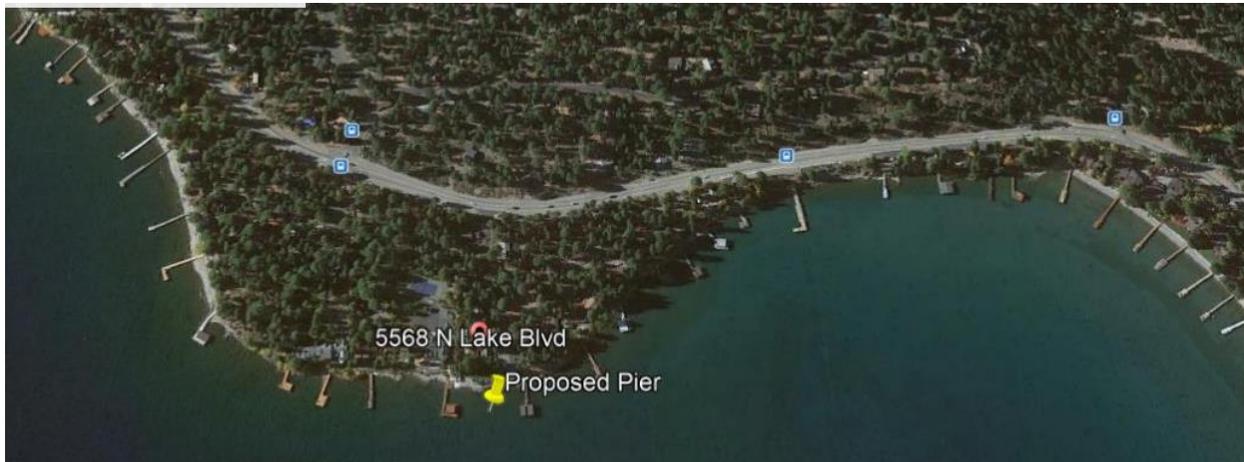
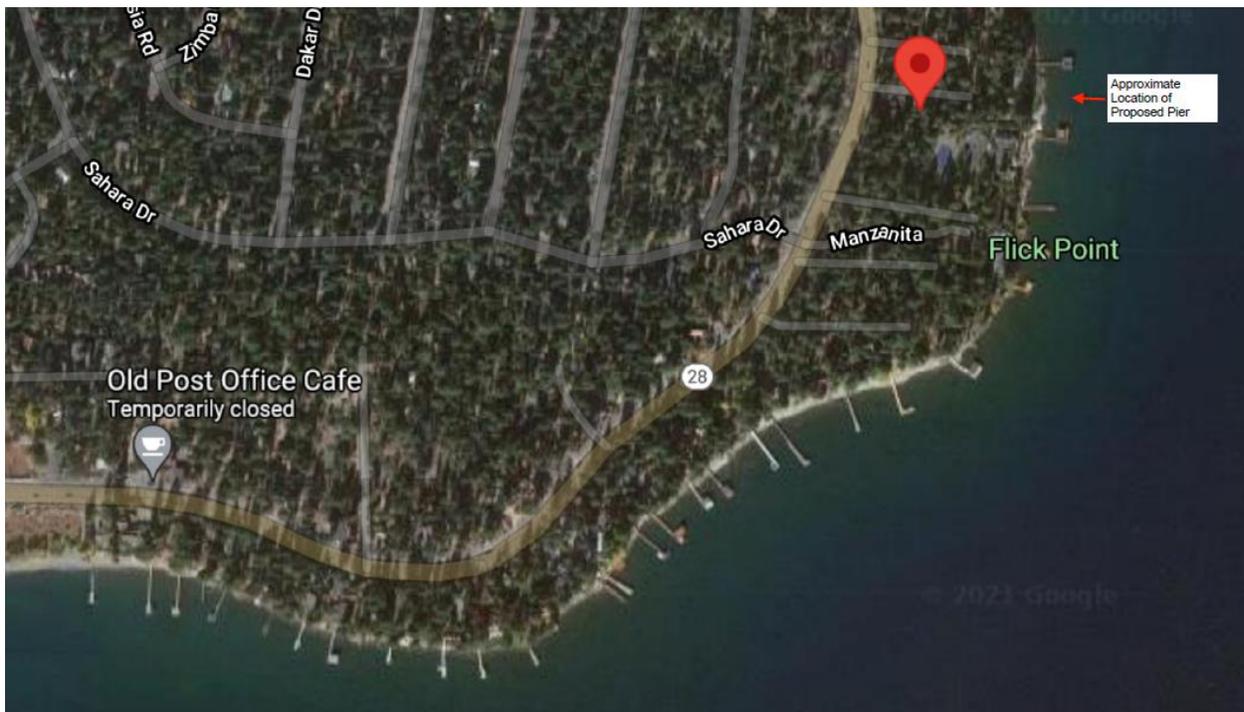
The Shoreline Plan adopted standards regarding placement and eligibility of structures within the shorezone, which would ensure that all new shorezone structures are consistent with permissible uses. (DEIS pp. 4-19 - 4-20.) The DEIS prepared for the Shoreline Plan concluded that structures built in compliance with the Shoreline Plan standards would have a less-than significant impact in relation to compatibility with established land uses. (*Ibid.*) The Johannessen pier meets or exceeds the minimum standards required under the Shoreline Plan (including the required setback between piers), and there are no other unique circumstances in this area that would otherwise render the Johannessen pier incompatible with Appellants’ nonconforming pier.

Appellants appear to conflate “compatibility” with “convenience.” Appellants may no longer be able to access their pier over one of many routes that they have previously utilized, but that in no



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way renders the Johannessen pier incompatible with existing shorezone uses. Indeed, a simple canvass of piers within the general area of the Johannessens' proposed pier reveals a multitude of piers that are sited much closer to each other than the nearly eighty-foot setback proposed between the Johannessens' and Appellants' piers.

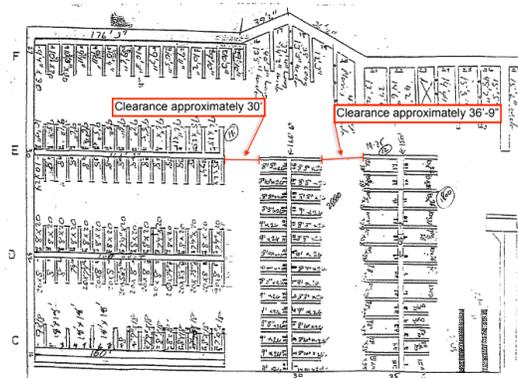




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The width of rows between slips in the Tahoe City Marina provides further evidence of compatibility. As depicted below, rows in the Tahoe City Marina range from approximately 36 feet nine inches to 30 feet. The distance between the Johannessens' proposed pier and Appellants' nonconforming pier is more than double that width and provides ample room for safe maneuvering.

### TAHOE CITY MARINA - NAVIGATION



Any inconvenience Appellants complain of is solely a result of their existing nonconforming pier, which projects into the pier setbacks and contains a superstructure that does not allow for watercraft to enter the pier from a straight approach. Despite the claim of inconvenience, Appellants played a video for the Hearings Officer demonstrating that they can easily navigate into their pier utilizing a route that would avoid the Johannessen pier, even when their watercraft is travelling at a high rate of speed. There simply is no incompatibility with the Johannessens' proposed pier and Appellants existing pier or any surrounding shorezone/lakezone uses.

- b. Agencies With Jurisdiction Over Navigable Waters in the Basin Have Determined the Johannessens' Pier Will Not Adversely Impact Navigation or Create a Threat to Public Safety.*

Code section 80.3.2(G) states that for any shorezone project, "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." (Emphasis added.) This finding vests the determination of impacts to navigation and public safety on agencies with jurisdiction over navigability, not to neighboring property owners. To make this



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finding, TRPA presents shorezone projects to a Shoreline Review Committee comprised of various agencies with jurisdiction over Lake Tahoe, including the California State Lands Commission, the US Army Corps of Engineers, and the US Coast Guard.

The Shoreline Review Committee reviewed the Project on two separate occasions and had no concerns regarding navigability or public safety. Staff and the applicant also separately reached out to both the US Army Corps and Coast Guard for specific comment on the Project, and both responded that they had no concerns regarding navigability. These facts alone are sufficient to uphold the Hearings Officer's finding.

Moreover, the Shoreline Plan EIS analyzed safety and navigational impacts associated with permitting new piers and found that clustering private piers actually reduces navigational impacts. The Shoreline Plan EIS ultimately determined that "new private piers constructed within the required setbacks and within the pierhead line rarely constitute a navigational hazard." (DEIS p. 15-18.) Accordingly, the proposed pier will not adversely impact navigation or create a threat to public safety.

*c. The Project Area Does Not Contain Spawning Habitat.*

The Statement of Appeal falsely claims that there are fish spawning gravels in the area of the proposed project, and that the Project will therefore interfere with fish spawning. As explained below, there is no gravel substratum present in this littoral zone area, and therefore, there is no spawning habitat that would be impacted by the Project.

Fish habitat that is dominated by cobbles and boulders is considered "feed and cover" while "spawning habitat" is defined as those areas where the substrate is predominantly comprised of very small cobbles or gravel, or any combination thereof. (EA, p. 9.) The Shoreline Plan EIS explains that spawning habitats are composed of relatively small diameter gravel substrates (between 2 and 64 millimeters). (Shoreline Plan DEIS, p. 5-16.) TRPA mapping of the fish habitat within the area shows that the Project site is categorized as feed and cover habitat, and not spawning habitat. Reconnaissance of the area and review of relevant scientific literature confirmed that Project site is unsuitable for fish spawning, and that construction of a pier will not be detrimental to the fishery or fish habitat at this specific location. (EA, p. 18.) Therefore, the Project will not interfere with fish spawning.

**B. The Proposed Project is Consistent with Article 5(g) of the TRPA Compact.**

The Statement of Appeal broadly and baldly claims that findings under the TRPA Compact (Article 5(g)) cannot be made, yet provides only two examples where Appellants believe the



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Project is deficient.<sup>3</sup> Appellants claim is based on a perversion of the record, “that this area was never evaluated for Tahoe Yellow Cress during multiple surveys,” and that “it appears that areas suitable for fish spawning are indeed present.”

As referenced above, as part of the Environmental Assessment for the property, the site was specifically evaluated for the presence and suitable habitat of Tahoe yellow cress (“TYC”). (EA, p. 21.) No specimens were found onsite, and the Environmental Assessment concluded that the overall habitat in the vicinity of the proposed Project is not suitable for TYC. (*Ibid.*) Multiple surveys within the proximate vicinity were also previously conducted, and no specimens of TYC were ever found in this general area. (*Ibid.*) Subsequently, an inspection was conducted by TRPA staff on June 15, 2020, and no specimens were identified. Further, condition 3.C. of the Project approval requires the Johannessens to conduct a TYC survey prior to commencement of any proposed work during the growing season, and if any TYC or TYC habitat is found during the survey, the Johannessens must submit a TYC avoidance and protection plan for TRPA’s approval prior to any work. The Johannessens filed for this inspection again in 2021 and the results from that inspection are pending.

Additionally, as discussed above, the Project site contains no fish spawning habitat. The findings required by Compact Article 5(g), as implemented through the Code, have all been made and are supported by substantial evidence.

**C. An EIS Is Not Required, and Appellants’ Challenge to the Visual Mass Portion of the Code of Ordinances is Barred by The Statute of Limitations.**

Appellants claim that an environmental impact statement (“EIS”) should have been prepared for the Project because the visual mass portion of the Code evaluation system does not provide for adequate evaluation of scenic impacts. The Compact only requires preparation of an EIS when a project may have a significant effect on the environment. (TRPA Compact art. VII(a); Code § 3.7.) The proposed Project has no possibility of any significant impacts, and therefore an EIS is not required.

While Appellants acknowledge that the proposed pier meets existing scenic standards, they believe those standards are “wholly inadequate to maintaining the thresholds and the goals of the regional plan.” Potential scenic impacts resulting from adoption of the Shoreline Plan and

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<sup>3</sup> The Compact itself does not set forth findings that must be made in order to approve a project. Rather, it requires TRPA to adopt ordinances prescribing specific written findings that relate to environmental protection, insure that the project under review will not adversely affect implementation of the regional plan, and will not cause the adopted environmental threshold carrying capacities of the region to be exceeded. These findings, contained in Chapter 4 of the TRPA Code of Ordinances, were made by the Hearings Officer.



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related Code provisions were fully evaluated and mitigated as part of the Shoreline Plan EIS. Appellants attempt to challenge that process through the appeal of this Project, more than two and a half years after adoption of the Shoreline Plan and certification of the EIS, is barred by the Compact's sixty-day statute of limitations. (Compact, art. VI(j)(4).)

#### **D. Additional Length is Necessary for the Functionality of the Pier.**

Code Section 84.4.3(B)(2) allows piers to extend lakeward of elevation 6,219 feet if (i) the project applicant demonstrates that the additional length is necessary for the functionality of the pier, and (ii) the average grade of the lake bottom beneath the additional pier length is a minimum of three percent.

The proposed pier will extend to the pierhead line, 12 feet 3 inches past elevation 6,219 feet. The average grade of the lake bottom beneath the additional pier length is 16.3 percent.

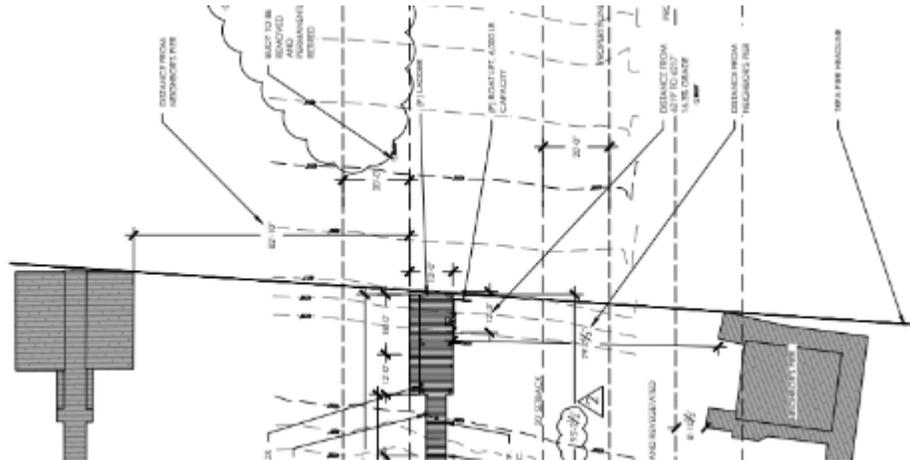
Due to the rocky substrate of Flick Point and adverse navigation conditions at periods of low water, the additional length is necessary for the functionality of the pier. The United States Coast Guard has expressed concern regarding navigability in this area under drought conditions. Declarations submitted by the Johannessens to the Hearings Officer also evidence Appellants' recognition that additional pier length is necessary for navigating this rocky area. The declarations outline an event where the Appellants retained a contractor to remove rocks from the lake bottom on the approach to Appellants' boat slips and transport them closer to shore in front of the Johannessens' house.

Without the additional pier length, portions of the pierhead would be located at an approximate lake bottom elevation between 6221' and 6220', giving only two to three feet of draft, and making these portions of the pierhead unusable even under normal to high water conditions. This situation would only be further exacerbated under drought conditions, especially given the rocky shoreline at this area.

As shown below, the proposed pier length is commensurate with the length of Appellants' pier and the pier immediately to the north, as well as other piers in the area that extend to the pier headline because of the rocky lakebed in the area.



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### **E. Potential Impacts to the Public Trust Were Reviewed, Considered, and Addressed By TRPA and California State Lands Commission.**

The California State Lands Commission (“CSLC”) is responsible for administering the Public Trust on the California side of Lake Tahoe, which entails oversight of the public’s rights pertaining to, but not limited to, commerce, navigation, fishing, recreation, and ecological



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preservation. CSLC is responsible for the leasing of State sovereign lands lakeward of the low-water elevation of Lake Tahoe for Public Trust consistent uses and for administering the Public Trust easement between the low and high-water elevation for public access to and along Lake Tahoe on the California side.

As part of the adoption of the Shoreline Plan, TRPA and CSLC required the adoption of an MOU that details a process to coordinate review of applications for new and modified piers and other structures that could be placed in the Public Trust easement in California. (Shoreline Plan FEIS p. 4-37.) As part of that process, TRPA facilitates monthly Shoreline Review Committee (SRC) meetings for agencies with permitting jurisdiction along the shoreline and within Lake Tahoe to coordinate the permitting of projects. During the October 2020 Shoreline Review Committee meeting, CSLC staff requested public access and appropriate signage be incorporated into the pier design in the Public Trust easement. To accommodate these comments, the Project approval includes a condition requiring public access and appropriate signage indicating public access that meets the requirements of the CSLC be incorporated into the final pier design. (Permit ERSP2020-0074 Condition No. 8.)

With incorporation of Condition No. 8, CSLC, the state agency vested with authority to administer the Public Trust, determined the Project would not have any impacts to the Public Trust.

#### **F. The Johannessen Property Does Not Have Access to a Homeowners Association Pier.**

The Johannessens extensively addressed the specious contention that they have access to a homeowners association pier in a September 1, 2020 letter that is a part of the record before the Governing Board. As the letter explains, and as TRPA staff and the Hearings Officer concurred, the Johannessen property is not a member of a homeowner's association as defined by law and past TRPA precedent. There are two required features of a homeowners association: (i) membership must be mandatory; and (ii) there must be some kind of common area appurtenant to a lot owner's separate interest.

The Agate Bay Pier and Swim Club does not satisfy either of these requirements. It is a voluntary recreational club, and there is no appurtenant right to use the pier associated with the Johannessen ownership of its parcel. In testimony before the Hearings Officer, Appellant Michael Harrosh himself admitted that the existence of the Agate Bay Pier and Swim Club does not preclude eligibility for the Johannessens' pier "because it's not an HOA, because it's a club, that qualifies them to get a pier." (Hearings Officer Testimony of Michael Harrosh, 1:04:12 – 1:04:17.) As Michael Harrosh recognized, and the Hearings Officer correctly concluded, the



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Agate Bay Pier and Swim Club is not a homeowners association, and the Johannessens do not have access to a homeowners association pier as defined under Code section 84.4.2.5.

**G. TRPA Committed No Procedural Errors in Approving the Project.**

Appellants complain of a variety of procedural errors, with no evidence to support their contentions. Proper notice was provided, and Appellants were given ample opportunity to provide argument to the Hearings Officer. Appellants have not demonstrated any procedural errors or prejudice arising therefrom that would nullify the decision of the Hearings Officer.

Based on the foregoing, Appellants respectfully request that the Board uphold the determination of the Hearings Officer approving the Project.

Respectfully,

Greg Gatto

Attachment D

Greg Gatto Letter, dated September 1, 2020



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September 1, 2020

**VIA EMAIL ONLY**

Brandy McMahon, Local Government Coordinator  
Tahoe Regional Planning Agency  
PO Box 5310  
Stateline, NV 89449

**Re: Response to July 10, 2020 Comment Letter re Johannessen Pier Project (TRPA  
File No. PREC20190477)**

Dear Ms. McMahon:

This firm represents George “Chip” Johannessen and Virginia Stock, owners of the littoral property located at 5568 North Lake Boulevard, Carnelian Bay, California, APN 116-220-049 (the “Johannessen Parcel”). The Johannessen Parcel is the subject of an application for a new single use pier, TRPA File No. PREC20190477 (the “Pier Application”).

We recently received a copy of a comment letter from Janice Crosetti-Titmus, dated July 10, 2020 (the “Comment Letter”), objecting to the Pier Application on a number of unfounded grounds. This letter responds to the baseless contention that the Johannessen Parcel is within the jurisdiction of the “Agate Bay Homeowners Association,” a non-existent entity.<sup>1</sup>

As explained below, the Johannessen Parcel does not have access to an existing “homeowners association pier”, as described in TRPA Code of Ordinances (the “Code”) section 84.4.2.A.5. While there is a nearby pier and swim club with limited membership offerings to the surrounding neighborhoods, the club is not a homeowners association and the Johannessen Parcel has no property rights in the club, is not entitled to membership in the club solely by virtue of being within the club’s service area, and has no right to access or use the club’s facilities. The expansive use of the term “homeowners association” in the Comment Letter is not supported by the plain language of the Code, existing law, or prior TRPA precedent, and would lead to absurd results. Accordingly, we respectfully request that TRPA find that the Johannessen Parcel does not have access to an existing homeowners associations pier pursuant to Code section 84.4.2.A.5.

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<sup>1</sup> The remainder of the contentions in the Comment Letter are addressed in separate correspondence from Ogilvy Consulting.



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## I. Background Facts

### A. Agate Pier and Swim Club.

The Comment Letter misleadingly refers to the “Agate Bay Homeowners Association.” There is no Agate Bay Homeowners Association. There is, however, a recreational pier and swim club, the Agate Bay Pier and Swim Club (the “Club”), that has limited membership offerings available for purchase to the surrounding neighborhoods, akin to a neighborhood swim and racquet club.

Membership in the Club is governed by the Club Bylaws, a true and correct copy of which are attached hereto as **Exhibit A**.<sup>2</sup> To be eligible to apply for membership in the Club, a property must be within the Club’s service area, which includes ten separate neighborhood subdivisions in the vicinity of Agate Bay. (Club Bylaws §§ 1.2.9, 1.4.) Per Section 1.5 of the Club Bylaws, membership in the Association is limited to a maximum of 250 members, and upon reaching the 250-member threshold “no new Members will be accepted into the Association and no additional rights to use the Agate Bay Pier and Swim Club facilities shall be granted”.

The Club has two tiers of membership. Tier One members have rights to use the Club’s pool and tennis court facilities. Tier Two members have rights to use the pool, tennis court, and the Club’s pier. (Club Bylaws § 1.2.6.)

On July 30, 2020, Mr. Sean Gray of Agate Bay Properties was contacted by Mr. Johannessen, and on August 13, 2020 he was contacted by this firm regarding membership in the Club.<sup>3</sup> Mr. Gray stated that the Club’s service area extends to approximately 580 properties within the broader Agate Bay area. However, the Club currently only offers 236 memberships, of which, only 188 memberships are Tier Two, and entitled to use the pier. Less than 1/3 of the 580 properties in the geographic area are even eligible for pier membership at any given time. The limited offering of memberships (only 188 entitled to use the pier) is confirmed in the minutes of the Club’s June 22, 2019 minutes of the annual membership meeting, a true and correct copy of which is attached hereto as **Exhibit B**. Mr. Gray stated that the only way to gain access to the Club’s pier is to purchase a membership from one of the existing 188 Tier Two members. As of July 30, 2020, no Tier Two memberships were listed for sale, and turnover of memberships is rare. This year only two Tier Two memberships were transferred, for \$58,000 and \$56,000.

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<sup>2</sup> Notably, there is no declaration of covenants, conditions, and restrictions that runs with and binds any real property that is within the Club’s service area.

<sup>3</sup> Mr. Gray runs a property management and real estate sales company in Agate Bay, and brokers transfers for membership in the Club.



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## **B. The Johannessen Parcel Has No Appurtenant Rights to Access the Club's Pier.**

The Johannessen Parcel is a littoral parcel located on the shoreline of Lake Tahoe in Agate Bay. A true and correct copy of the preliminary title report for the Johannessen Parcel is attached hereto as **Exhibit C**, and the deed to the Johannessen Parcel is attached hereto as **Exhibit D**.

The deed to the Johannessen Parcel does not grant any rights appurtenant to any homeowner association common area, nor does it confer membership in an association. Nor are there any homeowner association CC&Rs encumbering the Johannessen Parcel.<sup>4</sup> Indeed, there is nothing in the Johannessen Parcel's title report linking it in any way to the Club. It is indisputable that the Johannessen Parcel is not a part of any homeowners association and there are no rights of access to the Club's pier appurtenant to the Johannessen Parcel.

## **II. Standard for Interpretation of TRPA's Code of Ordinances**

The goal of statutory construction is to ascertain and effectuate the intent of the Legislature. *White v. Ultramar, Inc.*, 21 Cal.4th 563, 572 (1999); *Hsu v. Abbata*, 9 Cal.4th 863, 871 (1995). "The words of the statute provide the most reliable indication of legislative intent." *Pacific Gas & Electric Co. v. County of Stanislaus*, 16 Cal.4th 1143, 1152 (1997). The words themselves must be given effect because "it will be assumed that the Legislature knew what it was saying and meant what it said." *Hutchins v. Waters*, 51 Cal.App.3d 69, 72 (1975). Words should be interpreted to make them workable and reasonable, in accord with common sense and justice, and avoid an absurd result. *Halbert's Lumber v. Lucky Stores*, 6 Cal.App.4th 1233, 1239 (1992). Per TRPA Code section 90.1.5, when words are otherwise undefined, non-technical words and phrases shall be construed according to the common and approved usage of the language, and technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning. When the statute unambiguously addresses the question at issue, the statute's clear directive controls. *California v. Tahoe Regional Planning Agency*, 766 F.2d 1308, 1313 (9th Cir. 1985).

If the legislative purpose and intent cannot be ascertained from the ordinary and proper meaning of the statutory language itself, the statute may then be read in light of its historical background in an attempt to ascertain the most reasonable interpretation of the measure. *In re Ryan's Estate*, 21 Cal.2d 498 (1943); *Delaney v. Baker*, 20 Cal.4th 23, 29-30 (1999).

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<sup>4</sup> Exception 12 in the preliminary title report lists a 1940 deed restriction, a true and correct copy of which is attached hereto as **Exhibit E**. That deed restriction does not contain a homeowners association declaration of covenants, or rights to any common area, but rather, simple restrictions on the use of the Johannessen Parcel.



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In interpreting TRPA's land use ordinances, the Ninth Circuit has opined that "[a]mbiguities are normally resolved in favor of the landowner." *League to Save Lake Tahoe v. Crystal Enterprises*, 685 F.2d 1142, 1145 (9th Cir. 1982).

### **III. The Johannessen Parcel Does Not Have Access to An Existing Homeowners Association Pier.**

#### **A. The Agate Pier and Swim Club is Not a Homeowners Association.**

The Comment Letter references Code section 84.4.2.A.5, relating to a littoral parcel's eligibility for a pier, which states:

If the private littoral parcel has access to an existing homeowners association pier, the parcel shall only be eligible for an additional multiple-parcel pier and subject to the deed restriction requirements set forth in subsection 84.4.4.E.2. A multiple-parcel pier authorized under this provision and serving only one residence is limited to the single-parcel pier design standards.

(Emphasis added.)

The Code's use of the term "homeowners association" must be interpreted in light of the term's use in common and legal parlance.

In California, homeowners associations are associated with common interest developments governed by the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000 et seq.). The Davis-Stirling Act applies whenever a separate interest in real property is coupled with an interest in the common area or membership in a homeowners association, and membership in the association is mandatory by virtue of ownership of the separate interest. *Mount Olympus Prop. Owners Ass'n v Shpirt*, 59 Cal.App.4th 885, 895-96 (1997); Civil Code § 4200.

The distinguishing feature of a homeowners association in California is that it must have some kind of common area appurtenant to a lot owner's separate interest. In *Committee to Save Beverly Highlands Homes Ass'n v Beverly Highlands Homes Ass'n*, 92 Cal.App.4th 1247 (2001), the court held a community was not a homeowners association subject to the Davis-Stirling Act even though the development had an association, the association's declaration imposed certain use restrictions on the lots, and the declaration required the association to maintain open space lots. The court found no mutual or reciprocal easement rights that were appurtenant to the separate interests as to the open space lots, and therefore, that the association was not a homeowners association governed by the Davis-Stirling Act.



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Similarly, in Nevada, a homeowners association is subject to the Nevada Uniform Common-Interest Ownership Act when, by virtue of a person's ownership of a unit, the person is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in the association's declaration. NRS §§ 116.021, 116.3101(c).

Finally, California Revenue and Tax Code section 23701t(d) defines the term "homeowners' association" as "a condominium management association, a residential real estate management association, a time-share association, and a cooperative housing corporation."

In this case, the Agate Pier and Swim Club functions as a mere recreational facilities club, and not a homeowners association. Membership is not automatic or mandatory upon purchase of property within the Club's service area. No appurtenant property rights in the Club's property are conferred to parcels within the Club's service area. Mere ownership of property within the Club's service area does not entitle one to membership in the Club, access to the Club facilities, or any voting rights within the Club. Nor does the club manage any residential real estate.<sup>5</sup>

In order to join the Club and have access to the Club's pier, the owners of the Johannessen Parcel would be required to find one of the 188 Tier Two members in the Club willing to sell their membership interest, purchase the membership interest for a substantial sum, and then have the transfer approved by the Club. The legal structure of the Club is that of an exclusive country club or other high-end recreational facility, and not of a homeowners association. Consequently, Code section 84.4.2.A.5 should not apply to the Johannessen Parcel.

**B. "Access" to a Homeowners Association Pier Requires an Appurtenant Property Right and Membership Interest That Run with the Property.**

While TRPA has not yet had the need to interpret the scope of a "homeowners association" under Code section 84.4.2.A.5, two decisions based on this Code section's predecessor evidence the intent that Code section 84.4.2.A.5 does not apply to the Club.

Prior to adoption of the new Shorezone Ordinance, former TRPA Code section 54.8.A(3) limited a littoral parcel's ability to develop or expand a single-use pier when the parcel was served by multiple-use facilities. That section provided in pertinent part:

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<sup>5</sup> The Articles of Incorporation for the Club, true and correct copies of which are attached hereto as **Exhibit F**, state that the purpose of the Club is to "own and operate and maintain for the benefit of its members, the real property and recreational facilities known as the Agate Pier and Swim Club .... [t]he property of this corporation is irrevocably dedicated to recreational facilities...."



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No facility shall be approved which is intended for the use of one individual or family and guests if the following circumstances apply:

- (1) Proposed Residential Development: Where the littoral parcel is part of a residential land development which is being developed for use by, or sale or lease, to more than one person or family;
- (2) Existing Residential Development: Where the littoral parcel is held in common ownership, by owners of parcels within a residential land development, or by an association representing them or by a person for use of such owners; or
- (3) Littoral Property Owners Within An Area Of Common Ownership: Where individual lots fronting the shoreline are within a residential land development served by multiple use facilities, such as described in Subparagraphs (1) and (2) above.

The prior restriction on new single-use facilities when a multiple-use facility served a property was invoked in the case of the McCall Pier Expansion, TRPA File No. 200834. A true and correct copy of the staff report for the McCall Pier Expansion, without attachments, is attached hereto as **Exhibit G**. The McCall case involved an application to expand an existing single-use pier. TRPA found that “as a consequence of his ownership of the subject property,” Mr. McCall was a member in the Elk Point Country Club homeowner’s association, an association in “which all property owners in the Elk Point subdivision are members.” (McCall Staff Report, pp. 3, 5.) The lease controlling use of the marina expressly provided that “all property owners in the Elk Point Subdivision have Lake access from, and thereby are ‘served’ by, the Elk Point marina.” (McCall Staff Report, p. 3.) Mr. McCall’s mere ownership in a littoral parcel within the Elk Point subdivision granted him the right of membership in the association, and with it, the right to utilize the association’s marina and boat ramp.

Contrary to the homeowners association involved in the McCall matter, the mere ownership of the Johannessen Parcel does not grant Johannessen any rights of membership in the Club, nor do the owners of the Johannessen Parcel have any rights to access the Club’s pier. The Club plainly does not meet the criteria applied in the McCall matter relating to service by a homeowners association pier.

In another case interpreting former Code section 54.8.A(3), *Glenbrook Homeowners v. Tahoe Regional Planning Agency*, 425 F.3d 611 (9th Cir. 2005), TRPA required a property owner to obtain a decision from a court that, as of the date of TRPA’s final approval of the permit, the owners of the parcels did not have a legal right to use a homeowners’ association pier independent of actions by the association. In that case, the court found that because there was no



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deed or other instrument granting the right to use the pier as an appurtenance to the parcels at issue, the condition was satisfied, and the parcels were therefore not served by a multi-use facility.

In this case, as in the *Glenbrook* action, there is no property interest tying the right to access the Club's pier to ownership of the Johannessen Parcel. Because there is no deed or other document conferring rights to use of the Club pier that runs with the land, as in the *Glenbrook* matter, the Johannessen Parcel does not have access to or a right to use a homeowners association pier.

**C. Finding That the Johannessen Parcel Has Access to an Existing Homeowners Association Pier Would Lead to Absurd Results.**

If TRPA were to find both that the Club is a "homeowners association" and that the Johannessen Parcel has "access" to the Club's pier, it would lead to absurd results and a morass of legal entanglements. For example, any existing multiple use pier owner or association of owners that opposed new single use piers in their area could draft their own Bylaws creating a broad service area of parcels "eligible" for membership in the association, yet make the number of actual memberships offered so restrictive, or the price to purchase so high, that "new" membership would be infeasible. Only by tying pier access to an appurtenant property right, as TRPA has done in the past, can such an absurdity be avoided.

Based on the foregoing, we respectfully request that TRPA find that the Johannessen Parcel does not have access to an existing homeowners association pier under Code section 84.4.2.A.5.

I declare under penalty of perjury that this Response and all information submitted herewith is true and accurate to the best of my knowledge.

Respectfully,

Greg Gatto  
Cc: John Marshall, TRPA General Counsel

Exhibits

## **EXHIBIT LIST**

- Exhibit A** Bylaws of Agate Pier and Swim Club, Inc.
- Exhibit B** Agate Pier and Swim Club, Inc. - Minutes of the Annual Membership Meeting June 22, 2019
- Exhibit C** Preliminary Title Report – 5568 North Lake Blvd., Placer County APN 116-220-049
- Exhibit D** Grant Deed
- Exhibit E** Deed Restrictions
- Exhibit F** Amended and Restated Articles of Incorporation of Agate Pier and Swim Club, Inc.
- Exhibit G** TRPA Staff Summary – McCall Pier Expansion – File No. 200834

# EXHIBIT A

**BYLAWS  
OF  
AGATE PIER AND SWIM CLUB, INC.**

**ARTICLE 1. PLAN OF ASSOCIATION MEMBERSHIP**

**Section 1. Name/Offices.**

The name of this California nonprofit mutual benefit corporation is AGATE PIER AND SWIM CLUB, INC. (“the Association”). The principal office of the Association shall be located in Placer County, California and the Board may at any time establish other offices at any place or places where the corporation is qualified to conduct its activities.

**Section 1.2 Definitions.**

The following definitions shall be applicable to these Bylaws:

- 1.2.1 “Articles of Incorporation” means the Articles of Incorporation of the Association as the same may be duly amended from time to time.
- 1.2.2 “Association” means the Agate Pier and Swim Club, Inc. a California nonprofit corporation and its successors and assigns.
- 1.2.3 “Board” or “Board of Directors” may be used interchangeable herein and shall mean the Board of Directors of the Association as the same may, from time to time, be constituted.
- 1.2.4 “Bylaws” means these Bylaws, including any amendments or additions hereto.
- 1.2.5 “Sun Club” or “Swim Club” means the real property, and all improvements thereon, within the Properties, owned or to be owned by the Association for the common use and enjoyment of the Owners as is described in these Bylaws.
- 1.2.6 “Member” or “Association Member” means every person or entity that holds a member ship in the Association. Each Member shall be an Owner of a Lot within the Properties. TIER ONE Members are those members who have the right to use the pool facility and tennis courts. TIER ONE Members are those members who have voting rights to those matters relating to the pool facility and tennis courts. TIER TWO Members are those members who have the right to use the pool facility and tennis courts and pier. TIER TWO Members are those members who have voting rights to those matters relating to the pool facility and tennis courts and pier.

**BYLAWS OF AGATE PIER AND SWIM CLUB, INC.**

1.2.7 “Owner” means the record owner, whether one or more persons or entities, of a Lot which is part of the Agate Bay Subdivisions, the “Properties”, as further described in these Bylaws, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Owner shall also include a contract vendee in possession of a Lot under a real property installment sales contract.

1.2.8 The term “person” means and includes a natural person, corporation, partnership, limited liability company, association, or other entity as the case may be and the context may require.

1.2.9 “Properties” means the following subdivisions located in the unincorporated area of the County of Placer:

Agate Bay Shore Map of Record, Book E, Page 16

Agate Bay View Map of Record, Book E, Page 20

Agate Bay Heights Map of Record, Book E, Page 94

Agate Bay Uplands-North Map of Record, Book F, Page 51

Agate Bay Uplands Map of Record, Book G, Page 42

Agate Bay Uplands-South Map of Record, Book H, Page 47

Agate Bay Vista-Unit No. 1 Map of Record, Book H, Page 65

Agate Bay Vista-Unit No. 2 Map of Record, Book I, Page 14

Agate Bay Vista-Unit No. 3 Map of Record, Book I, Page 55

Agate Bay Pines-Unit No. 1 Map of Record, Book K, Page 8

1.2.10 “Rules and Regulations” or like words means the Association Rules, as described in these Bylaws, as may from time to time be adopted by the Association or its Board.

**Section 1.3**      **Purposes**

The purposes of the Association is to own, operate and maintain for the benefit of its Members the real property and recreational facilities know as the Agate Pier and Swim Club, Inc. located in Agate Bay, Placer County, California, and to engage in any lawful act or activity for which a non-profit corporation may be organized under California law.

**Section 1.4**      **Eligibility of Members**

Only the Owner of a Lot within the Properties shall be eligible for membership in the Association. Memberships shall be transferable between Lots within the Properties, but no more than one membership shall be held by the Owner of any one such lot unless such ownership is acquired between December 31, 1999 and January 15, 2000. Neither a

## BYLAWS OF AGATE PIER AND SWIM CLUB, INC.

Membership, nor any right or privilege thereof, may be assigned, loan, encumbered, or transferred in any manner to any party other than a qualified Owner. Fractional Membership between Properties is prohibited.

Use of the Sun Club facilities shall be limited to Members, their family, guests and invitees in strict compliance with the Association's Rules and Regulations. Failure to pay assessments, or any breach of the Rules and Regulations determined to be cause under Section 1.7, below, shall be cause for the suspension or termination of all Member privileges.

Every Owner of a Lot with the Properties who becomes a member of the Association in the manner provided for in these Bylaws, and maintains such membership in good standing, shall have all rights and obligations of membership, which membership requires ownership of a lot with the Properties.

### **Section 1.5**      **Limitations on Membership**

As the Sun Club facilities have physical limitations on the number of persons that they can accommodate safely and comfortably, membership in the Association shall be limited to a maximum of 250 Owners within the Properties. Unless authorized by the membership, if membership reaches the maximum of 250 Owners, no new Members will be accepted into the Association and no additional rights to use the Agate Bay Pier and Swim Club facilities shall be granted by the Association.

### **Section 1.6**      **Dues, Fees and Assessments**

Each Member shall pay, within the time and on the conditions set by the Board, the dues, fees and assessments of the types and in the amounts as fixed from time to time by the Board. Regular and Special Assessments shall be equal for all members except that when TIER ONE and TIER TWO are formed at the time of the purchase of the pier, Regular and Special Assessments shall be attributed to each group's use, respectively (see 1.2.6, above).

### **Section 1.7**      **Termination and Suspension of Membership**

1.7.1      **Causes of Termination.** A membership shall terminate on occurrence of any of the following events:

1.7.1.1      Resignation of the Member, on reasonable notice to the Corporation.

1.7.1.2      Failure of the Member to pay dues, fees, or assessments, as set by the Board, within thirty (30) days after they become due and payable;

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- 1.7.1.3 Occurrence of any event which renders the Member ineligible for membership, or failure to satisfy membership qualifications; or
- 1.7.1.4 Expulsion of the Member under Section 1.7.3 of these Bylaws based upon the good faith determination by the Board, or a committee authorized by the Board to make such determination, that the Member has failed in a material and serious degree to observe the rules of conduct of the Corporation, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Corporation.
- 1.7.2 **Suspension of Membership.** A Member may be suspended, under Section 1.7.3 of these Bylaws, based upon the good faith determination by the Board, or a committee authorized by the Board to make such a determination, that the Member has failed in a material and serious degree to observe the Corporation's rules of conduct, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Association. A person whose membership is suspended shall not be a Member during the period of suspension.
- 1.7.3 **Procedure for Expulsion or Suspension.** If grounds appear to exist for expulsion or suspension of a Member under Section 1.7.1 or 1.7.2 of these Bylaws, the procedure set forth below shall be followed.
  - 1.7.3.1 The Member shall be given fifteen (15) days prior notice of the proposed expulsion or suspension and the reasons for the proposed expulsion or suspension. Notice shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be sent by first class or registered mail to the Member's last address, as shown on the Association's records.
  - 1.7.3.2 The Member shall be given an opportunity to be heard, either orally or in writing, at least five (5) days before the effective date of the proposed expulsion or suspension. The hearing shall be held, or the written statement considered, by the Board or a committee authorized by the Board to determine whether the expulsion or suspension should take place.

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- 1.7.3.3 The Board or committee shall decide whether or not the Member should be suspended, expelled, or sanctioned in some other way. Suspension shall be for a fixed period, not to exceed 180 days. Any decision of the Board, committee or person shall be final.
- 1.7.3.4 Any action challenging an expulsion, suspension or termination of membership, including a claim alleging defective notice must be commenced within one (1) year after the date of expulsion, suspension or termination.

Neither an expelled nor a suspended Member shall be entitled to a refund of any assessment paid to the Association. Any expelled or suspended Member shall be responsible for payment of all assessments accruing through the date of expulsion. A suspended Member shall remain obligated to pay all Association assessments payable by a Member under these Bylaws.

### **Section 1.8**      **Transfer of Membership**

A Member in good standing and not in violation of the Bylaws or Rules and Regulations may transfer his membership to another Owner. It is the transferees responsibility to apply to management of the Association for the transfer of the membership 30 days before the contemplated transfer and identify the mailing address of the transferor and transferee. It is the duty of the Association to take reasonable actions to assure that the transferee is not in violation of the Bylaws or Rules and Regulations, and after such investigation, grant or deny the transfer. The Association shall not be required to give notice to any party of the transfer of any memberships.

The Board may by resolution impose transfer fees or other conditions on the transferor and/or transferee as it deems fit, provided those fees and conditions are the same for similarly situated Members.

Upon a Member s death (or dissolution in the case of an entity), the membership shall not cease, but shall pass to the heirs or other successor(s) of the member, provided such heirs or successors, or that Members personal representative, maintain the membership in good standing.

A Membership may be transferred by a Member in good standing to a trust or other entity, provided that the transferring Member has majority control of the Transferee. Such transfer shall be effective upon written notice thereof being received by the Association and the payment of any applicable transfer fee.

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ARTICLE 2. VOTING, QUORUM, PROXIES

**Section 2.1**      **Voting.**

2.1.1      **Voting Members.** Until the purchase of the pier, the Association shall have one class of voting membership. Any Memberships purchased during the 15 day period after December 31, 1999, shall have an additional vote to its regular Member vote until said membership is transferred to another owner. After the purchase of the pier, TIER ONE Members shall vote on those matters that affect the pool facility and tennis courts and TIER TWO Members shall vote on those matters that affect the pool facility and the tennis courts and the pier. When more than one person holds an ownership interest in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot (except those additional memberships purchased during the 15 day period beginning December 31, 1999).

2.1.2      **Record Date.** Subject to the provisions of the California Nonprofit Corporation Law, Members entitled to vote at any meeting of Members shall be Members in good standing as of the record date determined under this section of these Bylaws. For purposes of determining the Members entitled to notice of any meeting, entitled to vote at meeting, entitled to vote by written ballot, or entitled to exercise any rights with respect to any lawful action, the Board may, in advance, fix a record date. The record date so fixed:

2.1.2.1      For notice of a meeting shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting;

2.1.2.2      For voting at a meeting shall not be more than sixty (60) days before the date of the meeting;

2.1.2.3      For voting by written or e-mail ballot shall not be more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

2.1.2.4      For any other action shall not be more than sixty (60) days before that action.

If not otherwise fixed by the Board, the record date for determining Members Entitled (1) to receive notice of a meeting of Members shall be the

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next business day preceding the day on which notice was given or, if notice is waived, the next business day preceding the day on which the meeting is held, and (2) to vote at the meeting shall be the day on which the meeting is held. If not otherwise fixed by the Board, the record date for determining those Members entitled to vote by written or e-mail ballot shall be the day on which the first written ballot is mailed, e-mailed or solicited and the record date for determining Members entitled to exercise any rights with respect to any other lawful action shall be on the date on which the Board adopts the resolution relating to that action, or the sixtieth (60) day before the date of the action, whichever is later. A person holding a membership at the close of business on the record date shall be a Member of record.

### **Section 2.2**      **Majority of Members.**

Any provision in these Bylaws calling for approval by a “majority of Members” or majority of the voting power for action to be taken by the Association, shall require the vote or written assent of fifty-one percent (51%) of the voting power of the membership.

### **Section 2.3**      **Quorum: Action by Members.**

Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members holding twenty percent (20%) of the votes in accordance with Section 2.1 of this Article 2, shall constitute a quorum. Except as otherwise required by applicable law, the Articles or these Bylaws, the vote of a majority of a quorum of Members present in person or by proxy shall be effective for action to be taken by the membership.

The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, even if enough Members have withdrawn to leave less than a quorum, if any action taken (other than adjournment) is approved by a least a majority of the Members required to constitute a quorum. Any meeting of Members, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the Members represented at the meeting, either in person or by proxy. No meeting may be adjourned for more than forty-five (45) days. When a meeting of Members is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Association may transact any business that might have been transacted at the original meeting. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each Member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

### **Section 2.4**      **Proxies.**

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Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting. A holder of a proxy need not be a Member of the Association. The proxy may be revoked at any time by written notice of the Member to the Secretary. A proxy shall state the name of the person authorized to exercise the proxy, the length of time it is valid, and direct that the vote be cast in accordance with the Member's specification of a choice, when a choice is specified. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic, e-mail or facsimile transmission or otherwise) by the Member or the Member's attorney in fact. Any form of proxy distributed to ten or more Members shall afford an opportunity on the proxy to specify a choice between approval and disapproval of each matter or group of related matters and shall provide, subject to reasonable specified conditions, that when the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with that specification. In any election of directors, any form of proxy that a Member marks "withhold", or otherwise marks in a manner indicating that authority to vote for election of directors is withheld, shall not be voted either for or against the election of a director.

Any proxy covering matters for which a vote of the Members is required, including amendments of the Articles of Incorporation or Bylaws changing proxy rights; certain other amendments of the Articles of Incorporation; removal of directors without cause; filling vacancies on the Board of Directors; the sale, lease, exchange, conveyance, transfer, or other disposition of all or substantially all of the Association's activities; the principal terms of a merger or the amendment of a merger agreement; or the election to dissolve the Association, shall not be valid unless the proxy sets forth the general nature of the matter to be voted on and, with respect to any election of directors, the proxy lists those who have been nominated at the time the notice of the vote is given to the Members.

A validly executed proxy shall continue in full force and effect until (a) revoked by the Member executing it, before the vote is cast under that proxy, (i) by a writing delivered to the Association stating that the proxy is revoked, or (ii) as to any meeting by that Member's personal attendance and voting at the meeting; or (b) written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote under that proxy is counted, provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy unless otherwise provided in the proxy, except that the maximum term of a proxy shall be three (3) years from the date of execution. A proxy may not be irrevocable. A proxy shall automatically terminate upon the Member's transfer of title to the Lot to which the membership entitled to vote is appurtenant, or otherwise losing his or her status as a Member.

### **Section 2.5**      **Election of Directors.**

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- 2.5.1 Nominations From the Floor. If there is a meeting of Members to elect directors, any Member present at the meeting in person or by proxy may place names in nomination. The Board may nominate and endorse nominees.
- 2.5.2 Solicitation of Votes. The Board shall formulate procedures that allow a reasonable opportunity for a nominee to communicate to Members the nominee's qualifications and the reasons for the nominee's candidacy, a reasonable opportunity for the nominee to solicit votes, and a reasonable opportunity for all Members to choose among the nominees.
- 2.5.3 Use of Corporate Funds to Support Nominee. No corporate funds may be expended to support a nominee for director after more people have been nominated for director than can be elected.

### ARTICLE 3. ADMINISTRATION

#### **Section 3.1 Meetings of Members.**

- 3.1.1 Place of Meeting. Meetings of the Members shall be held at any place within or outside California designated by the Board or by written consent of all Members entitled to vote at the meeting, given before or after the meeting. In the absence of any such designation, meetings of Members shall be held at a location within the Properties, or as near thereto as is practical in the discretion of the Board.
- 3.1.2 Annual Meeting. The annual meeting of Members shall be held on Sunday during the week of the Fourth of July each year, unless the Board fixes another date or time and so notifies Members as provided in Section 3.1.4.3 of these Bylaws.
- 3.1.3 Special Meeting.
- 3.1.3.1 Person Authorized to Call. A special meeting of the Members for any lawful purpose may be called at any time by the Board or by the President or Vice President, or by five percent (5%) or more of the Members.

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3.1.3.2 **Calling Meetings.** A special meeting called by any person (other than the Board) entitled to call a meeting shall be called by written request, specifying the general nature of the business proposed to be transacted and submitted to the President or any Vice President or the Secretary of the Association. The office receiving the request shall cause notice to be given promptly to the Members entitled to vote, in accordance with Section 3.1.4.3 of these Bylaws, stating that a meeting will be held at a specified time and date fixed by the Board, provided, however, that the meeting shall be at least thirty-five (35) but no more than ninety (90) days after the receipt of the request. If the notice is not given within twenty (20) days after the request is received, the person or persons requesting the meeting may give the notice. Nothing in this section shall be construed as limiting, fixing, or affecting the time at which a meeting of Members may be held when the meeting is called by the Board.

3.1.3.3 **Proper Business of Special Meeting.** No business, other than the business the general nature of which was set forth in the notice of the meeting, may be transacted at a special meeting.

### 3.1.4 **Notice Requirements for Meetings of Members.**

3.1.4.1 **General Notice Requirement.** Whenever Members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each Member entitled to vote at that meeting. The notice shall specify the place, date, and hour of the meeting, and (1) for a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) for the annual meeting, those matters that the Board, at the time notice is given, intends to present for action by the Members, but any proper matter may be presented at the meeting.

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- 3.1.4.2 Notice of Certain Agenda Items. Approval by the Members of any of the following proposals, other than by unanimous approval by those entitled to vote, is valid only if the notice or written waiver of notice states the general nature of proposal or proposals: (1) removing a director without cause; (2) filling vacancies on the Board; (3) amending the Articles of Incorporation; or (4) electing to wind up and dissolve the Association.
- 3.1.4.3 Manner of Giving Notice. Notice of any meeting of Members shall be in writing and shall be given at least ten (10) but no more than ninety (90) days before the meeting date. The notice shall be given either personally or by first class, registered, or certified mail, e-mail or by other means of written communication, charges pre-paid, and shall be addressed to each Member entitled to vote, at the address of that Member appearing on the books of the Association or at the address given by the Member to the Association for purposes of notice. If no address appears on the Association books and no address has been so given, notice shall be deemed to have been given if either (1) notice is sent to the Member by first class mail or e-mail or other written communication to the Association's principal office or (2) notice is published at least once in a newspaper of general circulation in the County in which the principal office is located.
- 3.1.5 Waiver of Notice or Consent by Absent Members.

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- 3.1.5.1 Written Waiver or Consent. The transactions of any meeting of Members, however called or noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (1) a quorum is present either in person or by proxy, and (2) either before or after the meeting, each Member entitled to vote, not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice, consent, or approval need not specify either the business to be transacted or the purpose of any meeting of Members, except that if action is taken or proposed to be taken for approval of any of those matters specified in Section 3.1.4.2, the waiver of notice, consent or approval shall state the general nature of the proposal. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.
- 3.1.5.2 Waiver by Attendance. A Member s attendance at a meeting shall also constitute a waiver of notice of and presence at the meeting, unless the Member objects at the meeting that the meeting was not lawfully called or convened. Also attendance at the meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

**Section 3.2**      **Compliance with Law.**

All meetings of the Association shall be held in accordance with Chapter 5 of Part 3, Division 2 of Title 1 and Section 7613 of the Corporations Code and in accordance with Robert s Rules of Order or such other parliamentary procedure as the Board may adopt. The Board President shall decide parliamentary procedure unless overruled by a majority of the Board.

**Section 3.3**      **Adjourned Meetings.**

If any meeting cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may not transact any business except to adjourn the meeting to a time not less than five (5) days nor more than one hundred twenty (120) days from the time the original meeting was called. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

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**Section 3.4**      **Action Without a Meeting.**

Any action which may be taken by the vote of Association Members at a regular or special meeting, except the election of Board Members, may be taken without a meeting if the Board distributes a written ballot to every Member entitled to vote on the matter. Such ballot shall set forth in the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Board.

Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Ballots shall be delivered to Association Members in the same manner as provided for delivery of notice of meetings in Section 3.1.4.3 of these Bylaws. All such ballots shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, shall state the percentage of approvals necessary to pass the measure submitted. The ballot must specify the time by which it must be received in order to be counted.

Approval by written ballot shall be valid only when (a) the number of votes cast by ballot (including those ballots that are marked "withhold" or otherwise indicate that authority to vote is withheld) within the time specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and (b) the number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot without a meeting.

A written ballot may not be revoked. All written ballots shall be filed with the Secretary of the Association and maintained in the Associations records for at least three (3) years.

**Section 3.5**      **Fiscal Year.**

Unless modified by resolution of the Board, the fiscal year of the Association shall be the calendar year.

**ARTICLE 4. BOARD OF DIRECTORS**

**Section 4.1**      **General Powers.**

## BYLAWS OF AGATE PIER AND SWIM CLUB, INC.

Subject to the provisions of applicable law and of the Articles or Bylaws regarding actions that require approval of the Members, the Association's activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board.

### **Section 4.2**      **Specific Powers and Duties.**

The Board shall have the power and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or these Bylaws directed to be exercised and done by the Members. The powers of the Board shall include, but are not limited to, the following:

- (a) Enforcement and carrying out of the provisions of the Articles, Bylaws, Rules and Regulations, and other agreements.
- (b) Payment of taxes and special assessments which are or would become a lien on the Swim Club, or any portion thereof.
- (c) Contracting and paying for fire, casualty, comprehensive general liability, directors and officers liability, and other insurance insuring the Association, its property and the Board.
- (d) Contracting and paying for improvements, repairs, replacements, maintenance, gardening, utilities, materials and supplies, and other goods and services relating to the Sun Club, and employment of personnel necessary for the operation of the Sun Club, including legal and accounting services.
- (e) Delegation of its powers to committees, officers or employees of the Association as expressly authorized in these Bylaws.
- (f) Preparation of budgets and financial statements as prescribed in Section 4.14 of this Article 4.
- (g) Formulation, adoption, publishing and enforcement of Rules and Regulations governing the use of the Swim Club, and the personal conduct of the Members and their guests thereon.
- (h) Imposition of fines and suspension of voting rights for non-payment of assessment or other breaches of these Bylaws, or the Association's Rules, after notice and hearing which are required by other provisions hereof.
- (i) Payment for reconstruction of any portion of portions of the Swim Club damaged or destroyed which are to be rebuilt by the Association.
- (j) Borrow money and incur indebtedness on behalf of the Association.

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- (k) Levying of assessments as provided in these Bylaws.
- (l) Election of officers of the Board.
- (m) Filling of vacancies on the Board except for a vacancy created by the removal of a Board Member as provided in Section 4.7 of this Article 4.

**Section 4.3 Management of Association Activities.**

The Board may employ for the Association a management agent at a compensation established by the Board to perform such duties and services as the Board shall authorize. Any management agreement shall provide for termination by either party without cause and without payment of a termination fee, upon thirty (30) days written notice, and shall have a term not exceeding one year, renewable by agreement of the parties for successive one-year periods.

**Section 4.4 Authorized Number and Qualifications.**

The Board of Directors shall consist of at least three (3) but no more than seven (7) directors until changed by amendment to these Bylaws. The exact number of directors, within those limits, and the term of each director's position (which shall not be for less than one (1) year or more than three (3) years) shall be fixed by a resolution adopted by the Board of Directors. Director's terms may be fixed to provide for staggered elections, so as to provide continuity of management of the Association. The qualifications for directors are that each must be an Owner of a Lot in the Properties, as defined in these Bylaws, and a Member of the Association in good standing or an adult family member of such an owner. No person serving on the Board may be an "interested person". An interested person is (a) any person compensated by the Association for services rendered to it within the previous twelve (12) months, whether as an employee, independent contractor, or otherwise; and (b) any brother, sister, descendent, spouse, brother-in-law, sister-in-law, son-in-law or daughter-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the Association. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. Any outgoing director may stand for re-election at the end of his allocated term as set forth herein.

**Section 4.5 Election and Term of Office.**

The first election for all positions on the Board shall be at the first meeting of Members and thereafter at each annual meeting of Members, but if such annual meeting is not held or Board Members are not elected thereat, the Board Members may be elected at a special meeting held for that purpose. Voting for the Board shall be by secret written ballot.

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**Section 4.6**      **Vacancies.**

Vacancies in the Board caused by any reason other than removal of a Board Member by a vote of the Association shall be filled by vote of the majority of the remaining Board Members, and each person so elected shall be a Board Member until a successor is elected at the next annual or special meeting of the Association.

**Section 4.7**      **Removal of Board Members.**

At any regular or special meeting of Association Members duly called, any one or more of the Board Members may be removed with or without cause by a majority of the Association Members, and successor may then and there be elected to fill the vacancy thus created. Any Board Member whose removal has been proposed by the Association Members shall be given an opportunity to be heard at the meeting. Unless the entire Board is removed from office by the vote of Members of the Association, an individual Board Member shall be removed prior to the expiration of his term of office if the votes cast against removal would be sufficient to elect the Board Member if voted at an election at which the same total number of votes were cast and the entire number of Board Members authorized at the time of the most recent election of the Board Member were then being elected.

**Section 4.8**      **Resignations.**

Except as provided below, any director may resign by giving written notice to the President or Secretary. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a director's resignation is effective at a later time, the Board may elect a successor to take office as of the date when the resignation becomes effective. No director may resign if the Association would be left without at least two (2) duly elected directors.

**Section 4.9**      **Regular and Special Meetings.**

Regular meetings of the Board may be held at such time and place within the Properties, or at such other location as shall be determined from time to time, by a majority of the Board Members, but at least one such meeting shall be held each calendar year. Any meeting may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another. All such directors shall be deemed to be present in person at such a meeting. Immediately after each annual meeting of Members, the Board shall hold a regular meeting for purposes of organization, election of officers, and transaction of other business. Notice of this meeting is not required.

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Special meetings of the Board may be called by written notice signed by the President, or by the Secretary, or by any two Members of the Board other than the President. The notice of a special meeting shall state the time, place and purpose of the meeting.

Notice of the time and place of special meetings shall be given to each director by one of the following methods: (a) by personal delivery of written notice; (b) by first class mail, postage prepaid; (c) by telephone, either directly to the director or to a person at the director's office who would reasonably be expected to communicate that notice promptly to the director; or (d) by telegram, charges prepaid, or (e) by facsimile transmission. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited in the United States mails at least twenty (20) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph or facsimile, shall be delivered, telephoned or given at least fifteen (15) days before the time set for the meeting. The notice shall state the time of the meeting, and the place if the place is other than the principal office of the Association. It need not specify the purpose of the meeting.

### **Section 4.10**      **Open Meetings and Notice to Members.**

Regular and special meetings of the Board shall be open to all Association Members; provided that Association Members, other than the Board Members, may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board; provided further, however, that upon the vote of a majority of a quorum of the Board, the Board may adjourn and reconvene in closed session to discuss and vote upon personnel matters, confidential contract negotiations, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

### **Section 4.11**      **Action Without Meetings.**

The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors, providing that the consent of any director who has a material financial interest in a transaction to which the Association is a party and who is an "interested director" as defined in Section 7233 of the California Corporations Code, shall not be required for approval of the transaction. Any action so approved shall have the same effect as though taken at a meeting of the directors. All such consents shall be filed with the minutes of the proceedings of the Board.

### **Section 4.12**      **Quorum.**

At all meetings of the Board, a majority of the authorized and duly elected Board Members shall constitute a quorum for the transaction of business, and the acts of the majority of the Board Members present at a meeting at which a quorum is present shall be the acts of

## BYLAWS OF AGATE PIER AND SWIM CLUB, INC.

the Board. If at any meetings of the Board there is less than a quorum present, the majority of those present may adjourn the meeting to a time certain. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted provided a quorum is present.

### **Section 4.13 Fidelity Bonds.**

The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

### **Section 4.14 Budgets and Financial Statements**

In April of each calendar year (or earlier), the Board shall cause to be prepared and distributed to all members budgets for the current year and a comparison of the current years budget to the prior year. Also distributed shall be the income statement and balance sheet compiled for the filing of the Association s prior year s income tax return. Also distributed shall be the balances of any money accounts held by the Association (including banking and savings) as of the date nearest the distribution of the information to the Membership.

## ARTICLE 5. OFFICERS

### **Section 5.1 Designation.**

The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Chief Financial Officer, who may also be know as the Treasurer, all of whom shall be Board Members. One Board Member may hold the dual offices of Vice President and Chief Financial Officer. The Board may appoint an Assistant Secretary, and such other assistants as in its judgment may be necessary, and such other officers need not be Board Members.

### **Section 5.2 Election and Removal of Officers.**

The principal officers of the Association shall be elected by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the Members of the Board, any officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of the Board called for such purpose. Vacancies caused by resignation shall be filled by appointment by the President until an election is held by the Board.

### **Section 5.3 President.**

The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. He or she shall have all of

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the general powers and duties which are usually vested in the office of president of an incorporated association including but not limited to the power to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

### **Section 5.4**      **Vice President.**

The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other Member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated by the Board. If there is more than one Vice President, the Vice President with Board seniority shall act pursuant to this paragraph.

### **Section 5.5**      **Secretary.**

The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he or she shall have charge of such books and papers as the Board may direct; and he or she shall, in general, perform all the duties incident to the office of Secretary. The Secretary shall also be responsible for maintaining the membership register of the Association. The Secretary shall give, or cause to be given, notice of all meetings of Members, of the Board and of committees of the Board required by these Bylaws to be given. The Secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

### **Section 5.6**      **Chief Financial Officer.**

The Chief Financial Officer (who may be called "Treasurer") shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. Such books shall be open to inspection by any Member of the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may from time to time be designated by the Board, and shall disburse the funds of the Association as may be ordered by the Board. The Chief Financial Officer shall send or cause to be given to the Members and directors such as financial statements and reports as are required to be given by law, by these Bylaws, or by the Board. If required by the Board, the Chief Financial Officer shall give the Association a bond in the amount and with the surety or sureties specified by the Board for faithful performance of duties of the office and for restoration to the Association of all of its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement or removal from office.

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Unless another Board Member is designated by the President, the Chief Financial Officer has responsibility for the Association's insurance coverage.

### **Section 5.7**      **Execution of Documents.**

The Board may authorize any officer or officers to enter into any contract or execute any document in the name of and on behalf of the Association; and unless so authorized by the Board, no officer or other person shall have any power or authority to bind the Association or to pledge its credit or to render it liable for any debt or obligation. In the absence of such specific designation, the President, or any four (4) Directors, shall have the authority to execute any contract or agreement in the name of the Association.

## ARTICLE 6. INDEMNIFICATION

To the fullest extent permitted by law, the Association shall indemnify its directors, officers, employees, and other persons described in Section 7237(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in that Section, and including an action by or in the right of the Association, by reason of the fact that the person is or was a person described in that Section. "Expenses", as used in these Bylaws, shall have the same meaning as in Section 7237(a) of the California Corporations Code. On written request to the Board by any person seeking indemnification under Section 7237(b) or Section 7237(c) of the California Corporations Code, the Board shall promptly determine under Section 7237(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the Board shall promptly call a meeting of Members. At the meeting, the Members shall determine under Section 7237(e) whether the applicable standard of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the Members present at the meeting in person or by proxy shall authorize indemnification.

The Association shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees and other agents, against any liability asserted against or incurred by any officer, director, employee or agent in such capacity or arising out of the officers, directors, employees or agents status as such.

## ARTICLE 7. MEMBER'S INSPECTION RIGHTS

### **Section 7.1**      **Membership Records.**

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Subject to Division 2, Part 3, Chapter 13, Article 3 (commencing at Section 8330) of the California Corporations Code and unless the Association provides a reasonable alternative as provided below, any Member may do either or both of the following for a purpose reasonably related to the Member's interest as a Member:

(a) Inspect and copy the records of Members' names, addresses, and voting rights during usual business hours on five (5) days prior written demand on the Association which demand must state the purpose for which the inspection rights are requested; or

(b) Obtain from the Secretary of the Association, on written demand and tender of a reasonable charge, as list of names, addresses and voting rights of Members who are entitled to vote for the election of directors as of the most recent record date for which that list has been compiled, or as of the date, after the date of demand, specified by the Member. The demand shall state the purpose for which the list is requested. The Secretary shall make this list available to the Member on or before the later of ten (10) days after (i) the demand is received or (ii) the date specified in the demand as the date as of which the list is to be compiled.

The Association may, within ten (10) business days after receiving a demand under this Section, make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the membership list. Any rejection of this offer must state the reasons that the proposed alternative does not meet the proper purpose of the demand. If the Association reasonably believes that the information will be used for a purpose other than one reasonably related to a person's interest as a Member, or if it provides a reasonable alternative under this Section, it may petition the Superior Court of Placer County for an order setting aside the demand. Any inspection and copying under this Section may be made in person or by the member's agent or attorney. The right of inspection includes the right to copy and make extracts.

### **Section 7.2**      **Accounting Records and Minutes.**

On written demand on the Association, any Member may inspect, copy, and make extracts of the accounting books and records and the corporate minutes at a reasonable time for a purpose reasonably related to the Member's interest as a Member. The written demand must state the items to be inspected and the Member's interest therein. The Board shall set forth in writing its rules and policies regarding the review mentioned in this section.

## ARTICLE 8. ASSESSMENTS

### **Section 8.1**      **Owners Personal Obligation for Assessments.**

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All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Owner (and each of them if a Lot has multiple owners) at the time the Assessment was levied. Each Owner who acquires title to a Lot shall be personally liable only for assessments attributable to the lot which become due and payable after the date such Owner acquires title, unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

### **Section 8.2 Remedies Available to the Association to Collect Assessments.**

In the event of a default in payment of any assessment, the Association, in its name but acting for and on behalf of all other owners, may initiate legal action, in addition to any other remedy provide herein or by law, to recover a money judgment or judgments for unpaid assessments, costs and attorneys' fees.

### **Section 8.3 Regular Assessments.**

The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year. However, the Board shall have the power, in extraordinary circumstances, to adjust the amount of Regular Assessments due to circumstances not taken into account in preparation of the annual budget, or to, in the alternative, impose a Special Assessment. Regular Assessments shall be paid either in a lump sum, or in installment payments, under a plan approved by the Board. Assessment billing shall be sent to all Members or a schedule determined by the Board and payment shall be due within thirty (30) days after the date of such billing.

### **Section 8.4 Special Assessments.**

If, at any time, the Regular Assessment for any fiscal year is insufficient in the amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations. The Board may also levy Special Assessments for additional capital improvements with the Swim Club. However, no Special Assessment as described herein which exceeds in the aggregate the sum of forty thousand dollars (\$40,000) for the fiscal year in which the Special Assessment is levied may be made without the vote or written assent of the Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined below. An emergency situation shall be any of the following:

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- 8.4.1 An extraordinary expense required by an order of a court;
- 8.4.2 An extraordinary expense necessary to repair or maintain the Swim Club or any portion thereof where a threat to personal safety is discovered; and
- 8.4.3 An extraordinary expense necessary to repair or maintain the Swim Club which could not have been reasonable foreseen by the Board in preparing and distributing the budget.

**Section 8.5** **Special Individual Assessments.**

8.5.1 **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with these Bylaws, the Board may impose Special Individual Assessments against an Owner in any of the circumstances described below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the same notice and hearing rights to which an Owner is entitled pursuant to Article 1, Section 1.7 of these Bylaws, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's governing documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

8.5.2 **Damage to Swim Club Facilities.** In the event that any damage to, or destruction of, any portion of the Swim Club or its facilities is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner and a Special Individual Assessment. Once a Special Individual Assessment has been levied against an Owner, such Special Individual Assessment shall be recorded on the Association's Assessment Roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment. A Special Individual Assessment shall be enforceable in the same manner as other Assessments, as set forth in Article 8 of these Bylaws.

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8.5.3 Usage Fees: Whereas unusual wear is occasioned on the assets of the Club by members who rent their homes to tenants and whereas unusual administrative tasks are required as a result of these rentals, the Board of Directors may assess rental usage fees against members and said rental usage fees shall be in addition to the regular dues paid by members. Usage fees shall be set by management subject to review and approval by the Board of Directors.

**Section 8.6 Delinquent Assessments.**

The Board shall establish the schedule of billing and due dates for payment of each Assessment made by it under the provisions of these Bylaws. Each Assessment payment obligation shall be delinquent if not received by the Secretary of the Association within thirty (30) days after the date of the Assessment billing. Commencing with the date the Assessment payment becomes delinquent, such payment shall bear interest at the maximum rate allowed by law from and after the delinquent date until the same is paid. In addition to the accrual of interest, the Board is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessment.

**ARTICLE 9. ATTORNEYS' FEES**

In any action brought for enforcement, damages, or declaratory relief with respect to any provision of these Bylaws, the prevailing party shall be entitled to attorneys' fees in such amount as may be ordered by the Court.

**ARTICLE 10. AMENDMENTS**

**Section 10.1 Amendment by Board.**

10.1.1 Membership Rights Limitations. Subject to the rights of Members under these Bylaws, the Board may adopt, amend or repeal the Bylaws unless the action would:

- 10.1.1.1 Materially and adversely affect the Member s rights as to voting, dissolution, redemption or transfer;
- 10.1.1.2 Increase or decrease the number of Members authorized in total or for any class;
- 10.1.1.3 Effect an exchange, reclassification, or cancellation of all or part of the membership; or
- 10.1.1.4 Authorize a new class of membership.

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- 10.1.2 High Vote Requirement. If any provision of these Bylaws requires the vote of a larger proportion of the Board than otherwise required by law, such provision may not be altered, amended or repealed except by that greater vote.
- 10.1.3 Members Approval Required. Without approval of the Members, the Board may not adopt, amend, or repeal any Bylaw that would:
- 10.1.3.1 Increase or extend the term of directors;
  - 10.1.3.2 Allow any director to hold office by designation or selection rather than by election by the Members;
  - 10.1.3.3 Increase the quorum for Members meetings;
  - 10.1.3.4 Repeal, restrict, create, expand or otherwise exchange proxy fights; or
  - 10.1.3.5 Authorize cumulative voting.

**Section 10.2** **Amendment by Members.**

New Bylaws may be adopted or these Bylaws may be amended or repealed by approval of the Members.

CERTIFICATE OF THE SECRETARY

I certify that I am the duly elected and acting Secretary of the Agate Pier and Swim Club, Inc., a California Nonprofit Corporation, that the above Bylaws, consisting of 24 pages, are the Bylaws of this Association as adopted by the Board of Directors on February 15, 2000 with amendments adopted March 11, 2011, July 28, 2011, March 9, 2013 and June 3, 2020 and that they have not been amended or modified since that date.

Executed on June 3, 2020 at Carnelian Bay, California.

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Secretary  
Tony Miller

# EXHIBIT B

**AGATE PIER AND SWIM CLUB INC.**  
Minutes of the Annual Membership Meeting  
June 22, 2019

The Annual Membership Meeting was held June 22, 2019 at the Club pool facility. Present were 78 Members & Proxies, Directors Bob Lyman, Bill Schuppel, Harry Lindner, Tony Miller, Jeff Peterson and Manager Roddy Svendsen. Directors Marianne Bouza and Mike Buckley were absent.

President Lyman called the Annual membership meeting to order at 11:04AM.

Following the pledge of allegiance, Secretary Miller confirmed there was a quorum of members and validated proxies present to conduct club business.

President Lyman opened the meeting with the following information:

- Thanks to Manager Svendsen and Staff for another successful season opening, facilities look fantastic!
- Encouraged all Members to run for the Board and be vocal on issues deemed important to the Club.

**Treasurer Report**

Treasurer Lindner reported 2018 Tier One revenue was \$155,000 and expenses were \$156,000. Cash reserves decreased \$9,000.

**Manager Report**

Manager Svendsen introduced the 2019 Staff:

- John & Galen (Assistant Managers)
- Emma, Eloise, Jessica, Michelle, Bailey & Dana (Pool & Pier)
- Based on Staff availability, the Pool snack bar will be open Monday, Wednesday, Friday, Saturday and Sunday this season.

Manager Svendsen reported on the operations of the pool and tennis courts:

- Employee recruitment concerns & contingency planning
  - o Since May 1<sup>st</sup>, 6 employees failed to honor prior commitments. Manager Svendsen was able to re-recruit employees with near full staffing on hand for the 2019 season
  - o Staffing forecasts show continued recruiting difficulty in the Tahoe Basin due to the high cost/low availability of housing. As a contingency plan, Manager Svendsen polled members in attendance on the priority of staffing specific positions at the club. Consensus so far:
    - Lifeguard
    - Buoy Person
    - Gate Staff
    - Snack Bar

## Annual Membership Meeting - June 22, 2019

- Member discussion and Q&A about the priority of positions, staff recruiting, liability concerns, renter behavior and the desire to maintain a priority for members.
- Encouraged membership to take an active role in recruiting
  - Minimum age for staff is 16 (required for lifeguard certification)
  - Manager Svendsen actively recruits local schools and community
  - Member incentives (i.e., reduced/free dues) are being considered for successful candidate recruitment
- Another record (and late) snow year
- Broken pipe in the spa room repaired
- Bathroom light repaired
- 2 dead/diseased trees have been removed, 3 more planned for the end of the season
- Auto-chlorinator has been installed at the pool and is working properly (dramatically reduces staff need to handle chemicals)
- Lounge chair replacement at the pool is now complete
- A new Defibrillator is now onsite at the pool. The unit is very user friendly and staff has been trained.
- Health inspection completed and passed
- Manager Svendsen conducted an extensive recap/discussion and Q&A of the new Renter Daily Use Fee
  - Club has 48 Tier 1 members who pay \$525 dues annually
  - Club has 188 Tier 2 members who pay \$700 dues annually
  - Total 236 members
  - 58-60 members (25%) rent (9-15 full time rentals)
  - Approximately 6,000 people use the pool facilities annually
    - Roughly 50% members - 50% renters
  - Review of issues regarding renter behavior
    - Poor treatment/abuse of employees
    - 95% of issues are non-member issues
  - Recap of membership survey to review options to renter abuse problem
  - Recap of email ballot to membership on recommended options
  - Recap of written ballot to membership on recommended options
  - Over 70% of membership approved Renter Daily Use fee

### **2019 Nominating Committee Report**

President Lyman reported 3 Board positions are expiring this year and all have agreed to stand for reelection:

- Director Jeff Peterson
- Director Mike Buckley
- Director Tony Miller

2 Members have agreed to run for the Board:

- Member Bill Hehr
- Member Rich Dean

President Lyman introduced the candidates and gave each the opportunity to address the membership in attendance.

President Lyman reported Director Bill Schuppel is the 2019 Inspector of Elections.

## Annual Membership Meeting - June 22, 2019

President Lyman called for any nominations from members present. Hearing none, President Lyman closed nominations for the 2019 election.

President Lyman called for a meeting recess; Member ballots were collected and processed by the Inspector of Elections with appropriate oversight. President Lyman reconvened the meeting and reported a quorum of ballots were counted with the following results:

- Director Mike Buckley re-elected for 2019-2022 term
- Director Tony Miller re-elected for 2019-2022 term
- Member Rich Dean elected for the 2019-2022 term

President Lyman congratulated and thanked all members for their participation and encouraged all members to consider future service on the Board.

Tier One meeting was properly adjourned.

### **Tier 2 Meeting**

President Lyman called the Tier Two meeting to order.

### **Treasurer Report**

Treasurer Lindner reported 2018 Tier Two revenue was \$97,000 and expenses were \$77,000. Cash reserves increased \$20,000.

### **Manager Report**

Manager Svendsen reported on pier operations:

- Successful pier opening – annual buoy inspection required 18 chains to be replaced
- Shore Zone Ordinance and Buoy Permitting has been tightening, buoy availability may be reduced in the future. The Board and Management are working diligently to protect our buoy field
- The pier was re-stained
- Rafter/arbor extensions on the pier gate structure will be cut-off/repared at the end of the season
- Lake level is again at record high this year – member safety was highlighted and encouraged while on the pier and boarding/exiting boats.

### **Questions and Comments**

Annual Membership Meeting - June 22, 2019

President Lyman opened the meeting for member questions or comments.

- Question/discussion about before/after hour availability of pier.
  - o Can an automated process be established (for Member's only) that wouldn't require after-hour support from Management?
- Member comment on appreciation for Club Management and Board efforts on behalf of the membership.

The Annual Meeting was appropriately adjourned at 1:01 PM.

Respectfully submitted,

Tony Miller  
Secretary  
Agate Pier and Swim Club

# EXHIBIT C



# Fidelity National Title Company OF CALIFORNIA

**ISSUING OFFICE:** 11050 Olson Dr., Suite 200 • Rancho Cordova, CA 95670

**FOR SETTLEMENT INQUIRIES, CONTACT:** Fidelity National Title Company of California - Tahoe City  
495 N. Lake Blvd., St. 273 / P.O. Box 6988 • Tahoe City, CA 96145-6988  
530 581-0542 • FAX 530 581-0939

February 13, 2013



1152 3 AT 0.994  
George Johannessen  
1320 Monument St  
Pacific Palisades CA 90272-2543

Order No.: 12-1101511-JV

Property Address: 5568 North Lake Boulevard, Carnelian Bay, CA 96140  
Seller/Borrower: Marie McCarthy  
Buyer: Virginia K. Stock

We appreciate the opportunity of being of service to you. Please call us immediately if you have any questions or concerns.

Sincerely,

Fidelity National Title Company of California

Escrow Contact:  
Rhonda Evans  
530 581-0542  
rhonda.evans@fnf.com

Title Contact:  
Jeff VanValer  
916-853-7600  
jvanvaler@fnf.com

(lodb)



# Fidelity National Title Insurance Company

POLICY NO.: CAFNT0931-0931-0003-0001101511-FNTIC-2012-01-O

## CLTA STANDARD COVERAGE POLICY OF TITLE INSURANCE

*SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:*

1. *Title to the estate or interest described in Schedule A being vested other than as stated therein;*
2. *Any defect in or lien or encumbrance on the title;*
3. *Unmarketability of the title;*
4. *Lack of a right of access to and from the land;*

*and, in addition, as to an insured lender only:*

5. *The invalidity or unenforceability of the lien of the insured mortgage upon the title;*
6. *The priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority;*
7. *The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.*

*The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.*

*IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.*

*M. E. Sheper*  
Countersigned

**Fidelity National Title Insurance Company**  
 BY *[Signature]* President  
 ATTEST *[Signature]* Secretary



**SCHEDULE A**

Policy No.: CAFNT0931-0931-0003-0001101511-FNTIC-2012-01-O

Amount of Insurance: \$ 3,015,000.00  
Premium: \$ 3,972.00

Date of Policy: December 21, 2012 at 01:12 PM

1. Name of Insured:  
**Virginia K. Stock and George Johannessen**
2. The estate or interest in the land which is covered by this policy is:  
A FEE as to Parcel(s) One;  
AN EASEMENT more fully described below as to Parcel(s) Two
3. Title to the estate or interest in the land is vested in:  
Virginia K. Stock, a married woman as her sole and separate property as to an undivided 60% interest and George Johannessen and Virginia K. Stock, husband and wife as community property as to an undivided 40% interest as tenants in common
4. The land referred to in this policy is described as follows:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED**

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CARNELIAN BAY, COUNTY OF PLACER, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

A PORTION OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 17 EAST, MDB&M., DESCRIBED AS FOLLOWS:

BEGINNING AT A STEEL ROD 1/2 INCH IN DIAMETER ON THE EASTERLY LINE OF STATE HIGHWAY 28; WHENCE AN IRON PIPE 3/4 INCH IN DIAMETER AT THE SOUTHEAST CORNER OF LOT 14, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED "AGATE BAY SHORES SUBDIVISION", FILED MAY 6, 1947 IN BOOK "E" OF MAPS, AT PAGE 16, IN THE OFFICE OF THE RECORDER OF PLACER COUNTY, CALIFORNIA, BEARS NORTH 2 DEGREES 31 MINUTES 50 SECONDS EAST 190.19 FEET; THENCE LEAVING SAID EASTERLY LINE OF SAID HIGHWAY NORTH 89 DEGREES 58 MINUTES EAST 235.30 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 02 MINUTES EAST 80.00 FEET; THENCE NORTH 89 DEGREES 58 MINUTES EAST 285 FEET, MORE OR LESS, TO THE ORDINARY LOW WATER LINE OF LAKE TAHOE; THENCE NORTHERLY ALONG SAID LOW WATER LINE 80 FEET MORE OR LESS, TO A POINT ON A LINE FROM WHICH THE TRUE POINT OF BEGINNING BEARS SOUTH 89 DEGREES 58 MINUTES WEST; THENCE SOUTH 89 DEGREES 58 MINUTES WEST 285 FEET, MORE OR LESS TO THE TRUE POINT OF BEGINNING.

**PARCEL TWO:**

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES OVER THAT PORTION OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 17 EAST, MDB&M., DESCRIBED AS FOLLOWS:

BEGINNING AT A STEEL ROD 1/2 INCH IN DIAMETER ON THE EASTERLY LINE OF STATE HIGHWAY 28, WHENCE AN IRON PIPE 3/4 INCH IN DIAMETER AT THE SOUTHWEST CORNER OF LOT 15, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED "AGATE BAY SHORES SUBDIVISION", FILED MAY 6, 1947 IN BOOK "E" OF MAPS AT PAGE 16 IN THE OFFICE OF THE RECORDER OF PLACER COUNTY, CALIFORNIA, BEARS NORTH 2 DEGREES 31 MINUTES 50 SECONDS EAST 190.19 FEET; THENCE LEAVING SAID EASTERLY LINE OF SAID HIGHWAY NORTH 89 DEGREES 58 MINUTES EAST 236.30 FEET; THENCE SOUTH 0 DEGREES 02 MINUTES EAST 15 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES WEST 125 FEET; THENCE SOUTH 0 DEGREES 02 MINUTES EAST 5 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES WEST 112 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE AFOREMENTIONED HIGHWAY; THENCE NORTHERLY ALONG EASTERLY LINE BEGINNING.

APN: 116-220-049

**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

**PART I**

All matters set forth in paragraphs 1 through 6 inclusive on the cover of this policy under the caption Part I of Schedule B.

**PART II**

1. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
2. **The fact that said land is within the boundaries of the Mello-Roos Community Facilities District(s)**. The annual assessments, if any, are collected with the county property taxes. Failure to pay said taxes prior to the delinquency date may result in the above assessment being removed from the county tax roll and subjected to Accelerated Judicial Bond Foreclosure. Inquiry should be made with said District for possible stripped assessments and prior delinquencies:  
  
North Tahoe Public Utility District CFD No 94-1
3. **Taxes and assessments** levied by the North Tahoe Public Utility District.
4. **Taxes and assessments** levied by the Tahoe-Truckee Sanitation Agency and Tahoe-Truckee Sanitation District.
5. **Water rights, claims or title to water**, whether or not disclosed by the public records.
6. **Claims or rights** of the public, the State of California, and the United States of America to any portion of said land which is claimed to have been at any time below the highest water line of Lake Tahoe.
7. **Any change** in the location of the high water line of Lake Tahoe due to the right of the United States of America to raise and lower the level of Lake Tahoe.

- 8. Any adverse claim** based upon the assertion that:
- a. Said land or any part thereof is now or at any time has been below the highest of the high watermarks of Laker Tahoe, in the event the boundary of said Lake has been artificially raised or is now or at any time has been below the high watermark, if said Lake is in its natural state.
  - b. Some portion of said land has been created by artificial means or has accreted to such portion so created.
  - c. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Lake Tahoe, or has been formed by accretion to any such portion.
- 9. Any rights** in favor of the public which may exist on said land if said land or portions thereof are or were at any time used by the public.
- 10. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.
- |             |   |
|-------------|---|
| Granted to: | United State of America   |
| Purpose:    | Telegraph and telephone lines                                   |
| Recorded:   | December 20, 1911, Book 133 of Deeds, Page 162,                 |
| Affects:    | The exact location of said easement is not disclosed of record. |
- 11. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.
- |             |   |
|-------------|---|
| Granted to: | The Pacific Telephone and Telegraph Company                     |
| Purpose:    | Pole lines  |
| Recorded:   | October 19, 1928, Book 262, Page 94, of Official Records        |
| Affects:    | The exact location of said easement is not disclosed of record. |
- 12. Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.
- |           |   |
|-----------|---|
| Recorded: | September 16, 1940, Book 412, Page 208, of Official Records |
|-----------|---|
- 13. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.
- |             |  |
|-------------|--|
| Granted to: | North Tahoe Public Utility District                        |
| Purpose:    | Sewer lines  |
| Recorded:   | October 23, 1970, Book 1319, Page 244, of Official Records |
| Affects:    | Westerly portion of said land                              |

- 14. **Matters** contained in that certain document entitled "Agreement Regarding the Location of a Building on Easement" dated May 8, 1992, executed by and between Deborah Henn and the North Tahoe Public Utility District recorded August 11, 1992, Instrument No. 92-061238, of Official Records.

Reference is hereby made to said document for full particulars.

**END OF SCHEDULE B**

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "insured lender": the owner of an insured mortgage.

(d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.

(e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(f) "land": the land described, or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

(i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE

(a) **After Acquisition of Title by Insured Lender.** If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured lender who acquires all of any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title by an Insured.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from an insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) **Amount of Insurance.** The amount of insurance after the acquisition or after the conveyance by an insured lender shall in neither event exceed the least of:

(i) the amount of insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest

thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

An insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to that insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by an insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any

other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder; and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

#### 5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

#### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

##### (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured

mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefore.

Upon the exercise by the Company of the option provided for in paragraph a(i), all liability and obligations to the insured under this policy, other than to make the payment required in that paragraph, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

Upon the exercise by the Company of the option provided for in paragraph a(ii) the Company's obligation to an insured Lender under this policy for the claimed loss or damage, other than the payment required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

##### (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or b(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

#### 7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy to an insured lender shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured lender has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The liability of the Company under this policy to an insured owner of the estate or interest in the land described in Schedule A shall not exceed the least of:

(i) the Amount of the Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(d) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

#### 8. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations

with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, or, if applicable, to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable to an insured lender for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

#### 9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

#### 10. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

#### 11. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

#### 12. SUBROGATION UPON PAYMENT OR SETTLEMENT

##### (a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant

in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated (i) as to an insured owner, to all rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss; and (ii) as to an insured lender, to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of an insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(c) The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the

rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of an insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

**13. ARBITRATION**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, and Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. SEVERABILITY**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**16. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

Fidelity National Title Insurance Company  
P.O. Box 45023  
Jacksonville, FL 32232-5023  
Attn: Claims Department

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

**PART I**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

# EXHIBIT D

**RECORDING REQUESTED BY:**  
Fidelity National Title Company of California  
Escrow No.: 12-1101511-RE  
Locate No.: CAFNT0931-0931-0003-0001101511  
Title No.: 12-1101511-JV

**When Recorded Mail Document  
and Tax Statement To:**  
Stock/Johannessen  
1320 Monument Street  
Pacific Palisades, CA 90272

APN: 116-220-049

SPACE ABOVE THIS LINE FOR RECORDER'S  
USE

**GRANT DEED**

The undersigned grantor(s) declare(s)  
Documentary transfer tax is \$3,316.50

DEED SIGNED IN COUNTERPART

[ x ] computed on full value of property conveyed, or  
[ x ] computed on full value less value of liens or encumbrances remaining at time of sale,  
Unincorporated Area of Carnelian Bay,

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,** Marie McCarthy, an unmarried woman and Michael McCarthy, an unmarried man

hereby **GRANT(S)** to Virginia K. Stock, a married woman as her sole and separate property as to an undivided 60% interest and George Johannessen and Virginia K. Stock, husband and wife as community property as to an undivided 40% interest as tenants in common

the following described real property in the unincorporated area of Carnelian Bay, County of Placer, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: December 14, 2012

State of California  
County of San Luis Obispo

On DECEMBER 19, 2012

TERRY HESCHKE, before me,  
(here insert name and title of the officer), Notary Public  
MARIE MCCARTHY personally appeared

  
Marie McCarthy

Michael McCarthy

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Terry Heschke (Seal)



FD-213 (Rev 12/07)  
(grant) (10-03) (Rev. 07-11)

**MAIL TAX STATEMENTS AS DIRECTED ABOVE**

GRANT DEED

**RECORDING REQUESTED BY:**

Fidelity National Title Company of California  
Escrow No.: 12-1101511-RE  
Locate No.: CAFNT0931-0931-0003-0001101511  
Title No.: 12-1101511-JV

**When Recorded Mail Document  
and Tax Statement To:**

Stock/Johannessen  
1320 Monument Street  
Pacific Palisades, CA 90272

APN: 116-220-049

SPACE ABOVE THIS LINE FOR RECORDER'S  
USE

**GRANT DEED**

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$3,976.50 DEED SIGNED IN COUNTERPART

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area of Carnelian Bay,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Marie McCarthy, an unmarried woman and Michael McCarthy, an unmarried man

hereby GRANT(S) to Virginia K. Stock, a married woman as her sole and separate property as to an undivided 60% interest and George Johannessen and Virginia K. Stock, husband and wife as community property as to an undivided 40% interest as tenants in common

the following described real property in the unincorporated area of Carnelian Bay, County of Placer, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: December 18<sup>th</sup> 2012  
State of ~~California~~ <sup>Ohio</sup> Delaware  
County of \_\_\_\_\_

On December 18<sup>th</sup>, 2012 before me,  
Michael J. Burri, Notary Public  
(here insert name and title of the officer), personally appeared  
Michael McCarthy, exclusively

\_\_\_\_\_  
Marie McCarthy  
Michael McCarthy  
\_\_\_\_\_  
Michael McCarthy

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Ohio that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



MICHAEL J BURRI  
Notary Public, State of Ohio  
My Commission Expires 10-05-2014

**MAIL TAX STATEMENTS AS DIRECTED ABOVE**

FD-213 (Rev 12/07)  
(grant) (10-03) (Rev. 07-11)

GRANT DEED

Escrow No.: 12-1101511-RE  
Locate No.: CAFNT0931-0931-0003-0001101511  
Title No.: 12-1101511-JV

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CARNELIAN BAY, COUNTY OF PLACER, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### PARCEL ONE:

A PORTION OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 17 EAST, MDB&M., DESCRIBED AS FOLLOWS:

BEGINNING AT A STEEL ROD 1/2 INCH IN DIAMETER ON THE EASTERLY LINE OF STATE HIGHWAY 28; WHENCE AN IRON PIPE 3/4 INCH IN DIAMETER AT THE SOUTHEAST CORNER OF LOT 14, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED "AGATE BAY SHORES SUBDIVISION", FILED MAY 6, 1947 IN BOOK "E" OF MAPS, AT PAGE 16, IN THE OFFICE OF THE RECORDER OF PLACER COUNTY, CALIFORNIA, BEARS NORTH 2 DEGREES 31 MINUTES 50 SECONDS EAST 190.19 FEET; THENCE LEAVING SAID EASTERLY LINE OF SAID HIGHWAY NORTH 89 DEGREES 58 MINUTES EAST 235.30 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 02 MINUTES EAST 80.00 FEET; THENCE NORTH 89 DEGREES 58 MINUTES EAST 285 FEET, MORE OR LESS, TO THE ORDINARY LOW WATER LINE OF LAKE TAHOE; THENCE NORTHERLY ALONG SAID LOW WATER LINE 80 FEET MORE OR LESS, TO A POINT ON A LINE FROM WHICH THE TRUE POINT OF BEGINNING BEARS SOUTH 89 DEGREES 58 MINUTES WEST; THENCE SOUTH 89 DEGREES 58 MINUTES WEST 285 FEET, MORE OR LESS TO THE TRUE POINT OF BEGINNING.

### PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES OVER THAT PORTION OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 17 EAST, MDB&M., DESCRIBED AS FOLLOWS:

BEGINNING AT A STEEL ROD 1/2 INCH IN DIAMETER ON THE EASTERLY LINE OF STATE HIGHWAY 28, WHENCE AN IRON PIPE 3/4 INCH IN DIAMETER AT THE SOUTHWEST CORNER OF LOT 15, AS SAID LOT IS SHOWN UPON THAT CERTAIN MAP ENTITLED "AGATE BAY SHORES SUBDIVISION", FILED MAY 6, 1947 IN BOOK "E" OF MAPS AT PAGE 16 IN THE OFFICE OF THE RECORDER OF PLACER COUNTY, CALIFORNIA, BEARS NORTH 2 DEGREES 31 MINUTES 50 SECONDS EAST 190.19 FEET; THENCE LEAVING SAID EASTERLY LINE OF SAID HIGHWAY NORTH 89 DEGREES 58 MINUTES EAST 236.30 FEET; THENCE SOUTH 0 DEGREES 02 MINUTES EAST 15 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES WEST 125 FEET; THENCE SOUTH 0 DEGREES 02 MINUTES EAST 5 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES WEST 112 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE AFOREMENTIONED HIGHWAY; THENCE NORTHERLY ALONG EASTERLY LINE BEGINNING.

APN: 116-220-049

# EXHIBIT E

OR 412

4040

GRANT DIXIE  
(Joint Tenancy)

For value received GARDON AND TAYLOR LUMBER AND FLAMING COMPANY, a Nevada corporation, to A.J. HOOD and ELIZABETH C. HOOD, his wife, as JOINT TENANTS, as their right of survivorship, as tenants in common all that real property situated in the County of PLACER, State of California, described as follows:

Part of the Southeast Quarter of Section 15 Township 16 North, Range 17 East. Beginning at a 12 inch pipe on the bank of Lake Tahoe, from which point the meander corner on the shore of Lake Tahoe between Sections 15 and 22 Township 16 North, Range 17 East, MDBM bears South 13° 01' West 211.39 feet and running thence parallel to the South line of Section 15 and 200 feet therefrom South 89° 58' West 563.61 feet to East line of State Highway, from which point a concrete monument at South end of tangent bears South 246° 04' West 51.81 feet; thence along East line of State Highway North 246° 04' East 366.90 feet to concrete monument; thence on a curve to the left with a radius of 780 feet in an arc subtended by the chord North 13° 01' West 272.65 feet; thence parallel to South line of Section 15 and 800 feet distant therefrom North 89° 58' East 533.79 feet to 1 inch pipe on bank of Lake Tahoe; thence North 89° 58' East 100 feet more or less to the low water line of Lake Tahoe; thence along low water line of Lake Tahoe Southwesterly 610 feet more or less to a point North 89° 58' East from the point of beginning; thence South 89° 58' West 100 feet more or less to the point of beginning.

This deed is made and accepted subject to the following express restrictions:

1. That the premises shall be used and occupied only for residential purposes.
2. No bill boards or commercial signs shall be maintained on the said premises.
3. No person of African or Mongolian descent, or any person other than of the Caucasian race shall use, or occupy (except when employed as domestic help by the owner or occupant) said premises or any part thereof.
4. No alcoholic, vinous, malt or intoxicating liquor of any kind shall ever be manufactured, given away, or exposed for sale, or disposed of as a beverage in any place of public resort upon the said premises or any part thereof. No saloon or place for the sale or giving away of liquor for sale, or disposing of alcoholic, vinous, malt, or intoxicating liquor of any kind to be consumed upon or near the said premises shall ever be built, erected, occupied, used or maintained upon said premises or any part thereof.
5. No building shall be erected closer than ten feet to any side line of the property, and there shall be installed and maintained with any building erected on said premises an appropriate type of septic tank for the disposal of sewage.

It is understood that the restrictions contained herein are for the benefit of the property herein described and for the benefit of the balance of that portion of Section 15 T:16 N:17 E MDBM now owned by the grantor and lying between Lake Tahoe and the State Highway and the portion of said Section 15 now owned by the grantor and lying along and adjacent to the State Highway on the Northernly and Westernly side thereof for a depth of 300 feet from said Highway. Similar restrictions will be applied to any and all parcels sold in said areas.

IN WITNESS WHEREOF, said corporation has executed these presents by its officers as above authorized, this 3rd day of SEPTEMBER, 1940.

GARDON AND TAYLOR LUMBER AND FLAMING COMPANY  
By Duncan A McLeod  
President  
By S.C. BIGLOW  
Secretary

STATE OF NEVADA }  
COUNTY OF ORMSBY } ss  
On September 6-1940, before me

OR 412

incident and the Secretary of the corporation that executed the within instrument, and also known to me to be the persons who executed it on behalf of such corporation and acknowledged to me that such corporation executed the same.

E.W. MILLER Notary Public in and for the County of Ormsby State of Nevada

(SEAL) My Commission expires May 15-1941  
RECORDED AT THE REQUEST OF PLACER COUNTY TITLE CO. SEP 16 1940 at 1 min. past 11 o'clock A.M. PLACER COUNTY RECORDS.

BARAH E HEBB NO....RECORDED

4046  
D E E D

For value received ELEANOR M. BATEY and ROBERT BATEY, her husband, GRANT to RUSSELL V. KRAUS and MARION S. KRAUS, his wife, as joint tenants, all that real property situated in the County of PLACER, State of California, described as follows: A portion of Lot Three(3) Block Eighteen(18) Tahoe Pines, and more particularly described as commencing at the point of intersection of Lots Three(3) and four(4) of said block with the Westernly line of Walnut Avenue and running thence westerly along the Northernly line of said Lot Three(3) one hundred twenty feet(120'); thence southerly at a right angle 62.5 feet, thence easterly at a right angle 120 feet; thence northerly at a right angle 62.5 feet to the point of commencement, as said Lot 3 and Block 18 of Tahoe Pines are shown on that certain map of said "Tahoe Pines" filed in the office of the Recorder of Placer County, California on February 6, 1910 and of record in Book "C" of Maps No. 1, page 12.

WITNESS our hands SEPTEMBER 12th, 1940  
ELEANOR M. BATEY  
ROBERT BATEY

STATE OF CALIFORNIA }  
County of Placer } ss

On September 12-1940, before me, EVELYN W. BLISS, a Notary Public in and for said County and State, personally appeared ELEANOR M. BATEY and ROBERT BATEY, her husband, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

EVELYN W. BLISS Notary Public in and for the County of Placer, State of California (SEAL)

My Commission expires March 25-1943  
FILED FOR RECORD AT REQUEST OF PLACER COUNTY TITLE CO. SEP 16 1940 at 1 min. past 3 o'clock P.M. PLACER COUNTY RECORDS.

BARAH E HEBB NO....RECORDED

# EXHIBIT F

2049771 A0597126

**FILED**  
In the office of the Secretary of State  
of the State of California

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF  
AGATE PIER AND SWIM CLUB, INC.

MAY 21 2003

The undersigned, the President and Secretary, respectively, of the corporation, hereby certify as follows:

*Kevin Shelley*  
KEVIN SHELLEY, Secretary of State

The Articles of Incorporation of the corporation are hereby amended and restated in full as set forth below:

I

The name of this corporation is AGATE PIER AND SWIM CLUB, INC.

II

This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

III

The specific purpose of this corporation is to own and operate and maintain for the benefit of its members, the real property and recreational facilities known as the Agate Pier and Swim Club located in Agate Bay, Placer County, California. The property of this corporation is irrevocably dedicated to recreational facilities and no part of the net income or assets of the organization shall inure to the benefit of any director, officer or member thereof or to the benefit of any private person.

IV

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

These Amended and Restated Articles of Incorporation have been approved by the Board of Directors and a majority of the members of the corporation at a meeting duly noticed and held on July 5, 2001.

Under penalty of perjury, the undersigned each declares that the contents hereinabove is true and correct to his own knowledge.

5/9/03  
(Date)  
Executed in San Diego, California

By: *Sanford Borenstein*  
Sanford Borenstein, President

5/13/03  
(Date)  
Executed in San Jose, California

By: *Joe Milioto*  
Joe Milioto, Secretary

**BILL LOCKYER**  
*Attorney-General*

*State of California*  
**DEPARTMENT OF JUSTICE**



455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

Public: 415-703-5500  
Telephone: 415-703-1120  
Facsimile: 415-703-5480  
E-Mail: [belinda.johns@doj.ca.gov](mailto:belinda.johns@doj.ca.gov)

April 17, 2003

**VIA MAIL AND FACSIMILE**

Elizabeth M. Collins, Esq.  
Law Offices of Dean R. Headley  
P.O.Box 7755  
Tahoe City, CA 96145

RE: Agate Pier and Swim Club, Inc.

Dear Ms. Collins:

This will acknowledge receipt of your March 27, 2003 letter and attachments regarding amendment of the Articles of Incorporation of the captioned entity to change its status from public benefit to mutual benefit corporation. This letter was received in this office on Wednesday, April 2, 2003. While your letter requested expedited action, as you are aware, Corporations Code section 5813.5 requires that, if a public benefit corporation seeking to change its status has assets, that change must be approved by the Attorney General in advance. The minimum notice requirement is generally at least twenty (20) days. Because these transactions must be reviewed by an auditor, provision of notice on April 2 did not allow sufficient time to meet your April 4 deadline.

It appears that all income received by the captioned entity was derived from membership sources only. Amendment of the Articles of Incorporation of Agate Pier and Swim Club, Inc. for the purpose of changing its status to mutual benefit corporation is approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Belinda J. Johns", written over the typed name.

BELINDA J. JOHNS  
Supervising Deputy Attorney General

For **BILL LOCKYER**  
Attorney General

# EXHIBIT G

# TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court  
Elk Point, Nevada  
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## TAHOE REGIONAL PLANNING AGENCY STAFF SUMMARY

**Project Name:** McCall Pier Expansion

**Application Type:** Shorezone

**Applicant:** George McCall

**Applicant's Representative:** Paul Kaleta, Basin Strategies and Robert Ernst, Esq.

**Agency Staff:** Elizabeth Harrison, Associate Environmental Specialist and Jordan Kahn, Assistant Agency Counsel

**Location:** 458 Lakeview, Elk Point, Douglas County, Nevada ("McCall Property")

**Assessor's Parcel Numbers (APNs) / File Number:** 05-241-09/ 200834

**Project Description:** The applicant is proposing to expand an existing shorezone structure that extends five feet lakeward of the high water line of Lake Tahoe (elevation 6229.1). The area offshore from the shorezone structure has been verified as prime fish habitat, targeted for restoration. The existing shorezone structure is approximately 90 square feet in area (measured lakeward from the highwater elevation 6229.1). The proposed expansion is a six foot wide floating pier with a total of six piles and includes no accessory structures. The proposed pier is approximately 444 square feet in area (measured lakeward from the highwater elevation 6229.1), and extends 74 feet in length beyond the highwater elevation 6229.1. See Site Plan and Elevation Drawings, attached as Exhibits A and B.

**Staff Recommendation:** Staff recommends denial of the subject application for the following independent reasons:

1. Sections 54.8.A and 52.3.G(2)(b) of the TRPA Code of Ordinances ("Code") prohibit new piers and expansion of existing single-use piers when the subject parcel is located within a residential land development served by multiple use facilities. The McCall Property is located within a residential development (Elk Point Subdivision) that is served by an existing marina. The marina is privately operated as a multiple-use facility under lease to the Elk Point Yacht Club ("EPYC") and provides all members of the Elk Point Country Club ("EPCC") with Lake access. Since the McCall property is served by a multiple-use facility, Section 54.8.A prohibits the proposed pier project.
2. The Elk Point Marina Master Plan, part of the TRPA Regional Plan, prohibits new piers and expansions of existing shorezone structures. The 1992 Master Plan authorized an expansion of the existing marina from 40 to 91 boat slips. The Master Plan conditioned the slip expansion on the prohibition of new or expanded piers within the Elk Point Subdivision. Under TRPA's Regional Plan, McCall is not eligible for a new pier or pier expansion.

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**AGENDA ITEM VIII.E**

LEGAL COMMITTEE ITEM NO. 3 &  
AGENDA ITEM NO. VIII. A.

**Site Description:** The McCall Property is approximately 7,043 square feet in size and is developed with a single-family residence. An existing shorezone structure on the parcel extends five feet beyond highwater elevation (6229.1). The project site is in an area mapped and verified as prime fish habitat targeted for restoration (Feed and Escape/Cover). The area of the proposed pier expansion has evidently been cleared of rocks. Adjacent land uses include residential development. A buoy is located offshore from the McCall Property and Mr. McCall's representatives have indicated their desire to obtain TRPA authorization for this buoy (to be addressed at a later date).

**Issues:** This project as proposed is a deviation of development standards in that it involves the expansion of a structure located in prime fish habitat targeted for restoration. Therefore, the project requires Governing Board review in accordance with Chapter 4, Appendix A, of the TRPA Code of Ordinances. The primary issues associated with this project are:

**1. TRPA Lacks the Authority to Approve the Pier Expansion**

**A. Limitations On Single-Use Facilities When Served By Multiple-Use Facilities**

**(i). TRPA's Regulations Prohibit the Proposed Pier Expansion.**

TRPA's Goals and Policies express a preference for limiting single-use piers through the encouragement of multiple-use facilities. (Conservation Element, Shorezone Subelement, Goal # 1, Policy # 10). Consequently, the TRPA Code contains regulations intended to reduce shorezone development potential where littoral parcels are served by multiple use facilities. Subsection 54.8.A of the TRPA Code provides as follows:

**54.8.A. Limitations On Single-Use Facilities When Served By Multiple-Use Facilities:** No facility shall be approved which is intended for the use of one individual or family and guests if the following circumstances apply:

- (1) Proposed Residential Development:** Where the littoral parcel is part of a residential land development which is being developed for use by, or sale or lease, to more than one person or family;
- (2) Existing Residential Development:** Where the littoral parcel is held in common ownership by owners of parcels within a residential land development, or by an association representing them, or by a person for use of such owners; or
- (3) Littoral Property Owners Within An Area Of Common Ownership:** Where individual lots fronting the shoreline are within a residential land development served by multiple-use facilities, such as described in Subparagraphs (1) and (2) above.

The McCall Property is located within a residential development (Elk Point subdivision) that is served by an existing marina. The marina is privately operated as a multiple-use facility by the EPYC, a subset of the EPCC to which all property owners in the Elk Point subdivision are members. The 1963 lease agreement between EPCC and EPYC expressly provides that all property owners in the Elk Point Subdivision have Lake access from, and are thereby "served" by, the Elk Point marina.<sup>1</sup> Littoral parcel owners in the Elk Point Subdivision are therefore prohibited from expanding existing single use piers ("facilities") pursuant to TRPA Code Section 54.8.A(3).

Further, the TRPA Code requires that certain findings be made in order to approve pier expansions. Subsection 52.3.G(2)(b) of the TRPA Code mandates that an approvable pier expansion "decreases the extent to which the structure does not comply with the development standards and/or improves the ability to attain or maintain the thresholds." This finding cannot be made with respect to the proposed pier expansion because the McCall Property is served by the Elk Point Marina, a multiple use facility.

(ii) Prior Agency Actions Support Staff's Recommendation.

In 1991, Agency Counsel Jeffrey Blanck rendered a legal opinion concluding that expansions of existing shorezone structures located within the Elk Point Subdivision could not be permitted by TRPA (see Memorandum dated April 9, 1990, attached as Exhibit C). This document contains the following statement:

*I have reviewed the lease given to me by the Elk Point Country Club Incorporated, which is a homeowner's association. This lease states that the homeowner's association does own the property comprising the marina and they chose to enter into a long-term lease with the Elk Point Yacht Club. Therefore, I determine that this marina facility will be for the benefit of all homeowners in the area and is a multiple use facility. This means that, under the Code, the individual owners cannot do any improvements or expansion because they are subject to this multiple use.*

Michael Jager, a littoral parcel owner in the Elk Point Subdivision and member of the EPCC, applied to TRPA for an expansion of an existing pier in 1995. Based on the 1991 legal opinion, TRPA staff informed Mr. Jager that his application "cannot be approved" pursuant to TRPA Code Section 54.8.A(3) (see letter dated June 19, 1995 attached as Exhibit D). Mr. Jager withdrew his application shortly thereafter.

In 1997, Roger Primm applied to TRPA for an expansion of an existing single use pier on his littoral parcel in the Elk Point Subdivision. Again, TRPA denied the application based on the prohibition on such projects for parcels served by

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<sup>1</sup> According to the lease, EPYC is to implement rules for the use and operation of the Elk Point marina. "Said rules shall, among other things, make provision for the use of said harbor's boat launching facility by members of the ELKPOINT COUNTRY CLUB who are not members of the ELK POINT YACHT CLUB . . . ." Lease Agreement between EPCC and EPYC, executed May 1, 1963, Paragraph 14.

existing multiple use facilities (see letter dated July 1, 1997, attached as Exhibit E). The 1997 Primm denial was based on two legal opinions, the 1991 Blanck determination previously discussed and a 1997 determination rendered by then Agency Counsel Rachelle Nicolle (see letter dated May 5, 1997, attached as Exhibit F hereto). In response to the issue of whether the prohibition applies to pier expansions as well as new piers, Ms. Nicolle states unequivocally:

*TRPA has consistently interpreted Section 52.3.G(2)(b) and 54.8A of the TRPA Code of Ordinances to prohibit an expansion of a pier in an area served by multiple-use facilities . . . . As a result, such a project cannot be approved and no expansion of the Primm pier is allowed under TRPA's current Code. This long-standing position is reflected in the attached memo written by Jeff Blanck. TRPA has consistently relied upon this prohibition when evaluating the impacts of the Shorezone Cumulative Impacts Analysis EIS and when evaluating the impacts on the Elk Point Marina Master Plan. [Emphasis added].*

Thus, the 1997 legal opinion and the 1991 determination explain that pier expansion on littoral parcels in the Elk Point Subdivision is prohibited by TRPA Code Subsection 52.3.G(2)b. As explained by Ms. Nicolle, this finding cannot be made where an existing pier is in a residential subdivision served by a multiple use facility. She explains:

*TRPA has held that the expansion of a pier that is located in an area served by multiple-use facilities cannot be approved under the first alternative in Section 52.3.G(2)(b). This is because the expanded pier will operate to increase the pier's non-conformity with current development standards. . . . TRPA has also determined that a pier expansion in an area served by multiple-use facilities cannot be authorized under the second alternative finding in Section 52.3.G (2)(b), since such a pier cannot be expanded without hampering the ability to attain or maintain the environmental thresholds.*

(Mr. Primm appealed the staff denial to the Governing Board in September 1997. While this appeal was pending, it appears that Ms. Nicolle changed her position and determined that the Primm property could indeed apply for a pier extension. Because Ms. Nicolle apparently based her reversal on the Elks Point Marina Master Plan, staff will address the precedential effect of her position under Section 1.B below.)

(iii) The Size of McCall's Boat, the Present Lack of a Slip, or Previous Staff Oversights do not Exempt McCall from TRPA's Multiple-use Restrictions.

Mr. McCall asserts that the Code's multiple-use restrictions do not apply to him for several reasons. Mr. McCall claims that he is not "served" by the marina because he does not presently have a slip in the marina and the marina's 23-foot limitation on its boat ramp precludes use of his 29-foot boat. Neither of these self-imposed circumstances exempts Mr. McCall from the multiple-use restrictions.

First, whether Mr. McCall has access to the 40 current slips is irrelevant to whether the marina's boat ramp "serves" his parcel. Since Mr. McCall has access to the ramp and the ramp is a multiple-use facility, Section 54.8.A precludes development of any single-use facilities on McCall's property.

Mr. McCall also seeks to avoid TRPA's multiple-use prohibition because his boat is too large to launch from the boat ramp or be berthed in a slip at the Elk Point Marina. See letter from Basin Strategies dated January 15, 2002, attached as Exhibit G. According to Mr. McCall, his 29 foot boat is too large for the Elk Point boat ramp and slips, which can accommodate boats of 23 and approximately 16 feet in size, respectively. Property owners cannot, and should not, be able to avoid applicable regulations by purchasing vessels larger than can be accommodated in available multiple use facilities when the size limitations of those facilities are reasonable.

In addition, Mr. McCall, or his predecessor-in interest, voluntarily relinquished the ability to use a slip. Mr. McCall, as a consequence of his ownership of the subject property, is a member of the EPCC. In 1963, the EPCC leased the marina to EPYC, an action which took unanimous EPCC vote (i.e. McCall or his predecessor's assent). Under the current lease arrangement, the marina's 40 slips are allocated to EPYC members. Mr. McCall is not a member of the EPYC. The lease expires in 2008 and the possibility remains that even without marina expansion non-EPYC members, such as Mr. McCall, will be able to obtain slips in the marina after that time. Further, EPCC members who are not members of EPYC are currently challenging the lease arrangement in state court and, if they prevail, slips may be available in the marina prior to 2008.<sup>2</sup>

As with boat size, property owners should not be able to avoid application of the Section 54.8.A by voluntarily restricting their access to multiple-use facilities. As is readily evident, a contrary position would render Section 54.8.A meaningless. For example, a subgroup of littoral homeowners served by a multiple-use facility may dislike the lottery system for a buoy field (e.g. the one at Dollar Point). Under Mr. McCall's theory, the littoral owners could voluntarily withdraw from the association and then each would be entitled to a new pier. TRPA has never interpreted the restriction of Section 54.8.A to be so easily circumvented.

Finally, Mr. McCall alleges that TRPA has in the past approved the expansion of single-use shorezone structures on properties with access to multiple-use facilities. Staff has verified four such instances, all outside of the Elk Point Subdivision: Crabtree, APN 098-191-027; Straube, APN 016-211-012; Blessing, APN 085-222-005; Chester, APN 003-180-036. Chester involved a

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<sup>2</sup> Presently several members of the EPCC who are not members of the EPYC are challenging the legality of the 1963 EPCC-EPYC lease agreement in state court. Litigation is underway and a trial is expected in late 2002. If the plaintiffs prevail, the relief will be to invalidate the agreement and have the marina be operated by the EPCC on behalf of all property owners in Elk Point. In this scenario, EPCC will likely have to employ an allocation system for slips to accommodate its members, such as a staggered season or lottery.

misinterpretation of the multiple use ordinance where staff at the time mistakenly believed that the addition of a boat lift did not constitute an expansion. In the remaining situations, staff unknowingly permitted expansions of structures on properties with access to multiple-use facilities; the applicants in those instances did not provide staff with relevant information and the multiple-use issue was not discovered during staff's review. Although applicants have an independent obligation to provide the Agency with all information necessary to review proposals for consistency with TRPA regulations,<sup>3</sup> staff will upgrade the shorezone application materials to require disclosure of whether the subject parcel is part of a residential development with a multiple use facility. Occasional, unknowing misapplication of the multiple use ordinances do not reflect a conscious policy or otherwise require TRPA to disregard the multiple use ordinance applicable to the McCall Property.

In conclusion, Mr. McCall's lack of a present slip in the Elk Point Marina, the size of Mr. McCall's boat, and previous oversights by TRPA staff do not exempt the McCall Property from the applicable multiple use ordinances.

**B. Expansion of the Elk Point Marina as Authorized in the Master Plan**

In 1990, the EPCC applied to the TRPA to enlarge the marina, an existing multiple use facility. As documented in the July 11, 1990, Advisory Planning Commission (APC) meeting minutes, TRPA staff states:

*The marina was originally intended to serve the entire Elk Point Community; however, the facility does not have enough slips to accommodate a boat for each homeowner. The home owners have requested that the harbor be expanded to provide room for additional slips.*

On March 25, 1992, the TRPA Governing Board amended the Regional Plan to include the Elk Point Harbor Master Plan. Among other additions, this Master Plan authorized an expansion of the existing 40-slip marina to accommodate 91 boat slips. The expansion would result in a slip or functioning pier for every property owner within the EPCC.

The Governing Board's adopting of the Master Plan was based in part on explicit representations that within the subdivision no new piers could be built and existing piers could not be expanded. The Master Plan states:

*This facility as expanded fits the TRPA definition for a Multi-Use Facility. This designation carries implications for littoral parcels. Essentially, TRPA would consider that this harbor expansion meets the boat access*

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<sup>3</sup> One of the misapplications of the multiple use ordinance brought to TRPA's attention (Straube approved at staff-level in January 2002) was submitted by Basin Strategies, Mr. McCall's consultant. No information concerning access to multiple use facilities was forthcoming on the Straube application and the issue was not discovered by the staff member reviewing the project. With the McCall application, the twelve year old Elk Point multiple use issue was not initially addressed by the applicant. The issue was discovered during staff's review and information was submitted by only in response to staff's concerns.

*needs for the subdivision and would deny expansion of existing piers or construction of new piers or buoys. [Emphasis added].*

Although the Master Plan was adopted in 1992, the marina has yet to be expanded. Mr. McCall argues that the prohibition on pier expansions provided for in the Master Plan only becomes applicable upon the actual build-out of the marina. TRPA staff disagrees. When the Regional Plan was amended to include the Master Plan, TRPA considered an Environmental Assessment describing the impacts of the marina expansion against the existing baseline conditions. It was not contemplated that littoral parcels could expand piers between Master Plan adoption and project implementation. Such a reading of the Master Plan would require a supplemental analysis and defeats the purpose of the master planning process. In amending the Regional Plan, the Governing Board understood – based on an express representation – that piers in Elk Point could not be expanded as of the time of adoption.

Mr. McCall next contends that even if the Master Plan applies, it specifically excludes certain lakefront property owners (see letter dated January 15, 2002, attached as Exhibit G). Staff again disagrees. After reviewing the Master Plan and its supporting documents, all but five of the littoral parcel owners in the Elk Point Subdivision were intended to have slips in the marina as contemplated in the Master Plan. The intent was to exclude from the Master Plan those littoral parcels that did not need slips in the expanded marina (i.e. those with functioning piers).

When TRPA adopted the Master Plan in 1992, an Errata sheet was included that references five existing piers in the Elk Point Subdivision (see Exhibit H). TRPA's 1991 shorezone aerial photographs clearly show only five shorezone structures that functioned as a pier by extending substantially beyond the highwater line into Lake Tahoe. The shorezone structure on the McCall Property was not one of the five functioning piers (see Exhibit I). Staff also consulted with Sue Rae Irelan, a consultant who helped develop the Master Plan in 1990. She stated that structures identified in the Master Plan as existing piers were obvious piers that could be walked on, provided boating access and that allowed for loading and unloading of passengers. Considering this information, aerial photographs, and the fact that the McCall structure extends only five feet beyond the highwater mark, staff concludes that the shorezone structure located on the McCall property was not one of the five structures identified by the Master Plan. Therefore the Master Plan and its Environmental Assessment anticipated the McCall Property would not have a functioning pier but instead would receive a slip in the expanded marina.

Mr. McCall also asserts his structure was one of the five piers excluded from the Master Plan through the use of 1970 aerial photographs. While it is difficult to ascertain from the photograph whether the McCall Property had an existing structure in 1970, the determination is irrelevant because the reconstruction of historically existing structures is not a vested right. The five structures excluded from the Master Plan were structures existing at the time of its drafting (1990) and are evident in TRPA's 1991 photographs.

As noted above, former TRPA Agency Counsel Rochelle Nicolle apparently determined in 1997 that, contrary to her earlier position, a littoral owner (Primm) in Elks Point Subdivision could apply for a pier consistent with the Master Plan. The planner notes from the Primm file, attached as Exhibit J, state: "RJ determined this parcel can apply for [a] pier extension and is legally existing." No document in TRPA's files describes Ms. Nicolle's rationale for her shift in position.

TRPA's present Agency Counsel disagrees with Ms. Nicolle's reversal of position. In conversation with Ms. Nicolle, it appears she based her change of heart on the fact that the Master Plan exempts existing "piers." Under TRPA's definition, a pier can include any structure that extends over high water, regardless of whether it could actually function as a pier for boat access purposes. Ms. Nicolle apparently construed the "piers" in the Master Plan as anything that met the TRPA definition. That position, however, is inconsistent with the purposes of the Master Plan and the singling out of five piers in the Errata. As explained above, the Master Plan calculated the number of slips in the expanded marina by totaling up the number of homeowners (both littoral and otherwise), subtracting the five littoral owners with functioning piers, and adding a few slips for guests. But for those five existing functioning piers, the Master Plan did not contemplate any additional functional piers. Under Ms. Nicolle's latest position, any littoral owner with a structure that extended beyond highwater (significantly more than five in the Elk Point Subdivision) could expand it into a functioning pier, a result contrary to the intent of the Master Plan.

The proper application of TRPA regulations is to deny Mr. McCall's pier expansion request. This position – consistent with the 1990 legal opinion, 1995 application withdrawal, and 1997 denial based on Ms. Nicole's original position – advances TRPA's policy of restricting shorezone development where properties are served by multiple-use facilities and a common sense interpretation of the 1992 Master Plan.

Finally, Mr. McCall contends that the Master Plan's prohibition on expanding piers in Elk Point should not apply because the marina expansion is a "dead issue" (see letter from Basin Strategies dated January 15, 2002, attached as Exhibit G). TRPA staff disagrees, as a May 30, 2002 letter from EPCC attorney Deborah Palmer indicates to the contrary. The marina expansion application is pending with TRPA and Ms. Palmer explains that upon adoption of the forthcoming shorezone ordinances, the EPCC would "probably like to sit down with TRPA staff again, to finalize this application for presentation to the TRPA Board for approval."

2. Recognition of the Existing Shorezone Structure as a Pier:

The area offshore of the existing shorezone structure is located in prime fish habitat (feed and/or escape cover habitat targeted for restoration). New structures in areas identified as prime fish habitat are prohibited by Subsection 54.4.A (4) of the TRPA Code. However, expansions of existing structures within fish habitat may be approved provided that all requisite findings are made. To expand an existing structure in prime

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fish habitat, the applicant must demonstrate that the structure is a legally existing pier and make required serviceability findings. Although the McCall structure technically meets TRPA's pier definition, staff has concerns about the ability to make the serviceability findings. A final determination has not been made because staff is recommending denial on other grounds.

A. Definition of a Pier:

The existing shorezone structure extends approximately five feet beyond the highwater elevation 6229.1 as measured on the surveyed site plan completed March 22, 2001. A previous survey completed in September 17, 1997 identified the highwater elevation farther lakeward than the March 22, 2001 survey. This is significant due to TRPA's definition of a pier. This definition found in Chapter 2 of the TRPA Code of Ordinances reads:

*A fixed or floating platform or structure extending from the backshore to beyond the line marking the high water elevation of a lake.*

Further clarification of the discrepancy in the highwater elevation was requested from the surveyor. The surveyor provided a methodology used in calculating the highwater line (see Attachment K). He explained that the September 17, 1997 survey was prepared in order to submit an application to rebuild the residence and therefore he concentrated his topographical survey on the upland portion of the parcel and not on the shorezone. He further explained that the discrepancies in the survey exist due to the following two reasons:

*1)The actual level of Lake Tahoe had receded 1.63' in the 3.5 years between surveys, allowing us to locate the water front in more detail, 2) The additional detail allowed us to more accurately define the approximate "high water line."*

Staff is satisfied that the surveyor used sound methodology in recalculating the highwater elevation based on more accurate information. In applying TRPA's pier definition to the March 22, 2001 surveyed site plan, the existing shorezone structure technically qualifies as a pier.

Comments from other shorezone agencies, however, cast doubt on whether the McCall structure qualifies as a pier. Using its own definition, the Nevada Division of State Lands (NDSL) has concluded that the existing structure is a deck located upland of the highwater elevation 6229.1 (Lake Tahoe Datum) and not a pier (see Attachment L). The U.S. Army Corps of Engineers (ACE) similarly "determined that the existing [McCall] structure is located above the high water mark of Lake Tahoe. As such, no permit was required from our office" (see Attachment M). It should be noted that the ACE determination was based on a site visit and not a survey. These comments do not affect TRPA's application of its own definition, but support staff's position that the McCall structure was intended to have a slip in the expanded marina authorized in the Master Plan.

B. Serviceability Findings:

In addition to recognizing a structure as a legal existing pier, staff must also be able to make serviceability findings pursuant to Subsection 52.3.G of the Code in order to approve an expansion of a pier. Unserviceable is defined by Subsection 52.2.D of the Code as:

Unserviceable shall be defined as a structure that can no longer serve the function for which it was designed...

To make the serviceability findings found in Subsection 52.3.G(2), the applicant must demonstrate that the structure has not been unserviceable for more than five years. Staff reviewed the end-of-month lake elevation data provided by the Federal Water Master for the past 30 years, and noted that there is only one month within the past thirty years in which the lake elevation was measured at or above the highwater elevation (6229.1). Mr. McCall's representative has expressed to staff that the existing deck is in water only in times when the lake is at highwater elevation (6229.1 Lake Tahoe Datum). The water lines evident on the rocks below the structure support this statement. In addition, the photographs submitted to staff by the applicant's representatives show that even when the lake elevation is at highwater elevation, in order to bring a boat up to the structure, one must ground the boat into the lake sediment amongst the surrounding boulders.

There are many deck structures that exist along steep areas of the Lake Tahoe shoreline that were built and function to provide pedestrian access to Lake Tahoe. And while some of these decks technically meet TRPA's definition of a pier (found in Chapter 2 of the Code) because they extend beyond the highwater line of Lake Tahoe, the assertion that these structures function as piers and that the boating activity generally associated with a pier exists, is extremely questionable. The structure on the McCall Property proposed to be expanded is severely restricted in most times from boating activities due to the large rocks in the vicinity of the structure and the limited periods of time when the structure actually extends over standing water.

Despite these concerns, TRPA staff is not recommending denial of the McCall pier expansion application based on the serviceability findings. Rather, these concerns support staff's position that the McCall property was intended to have access to a slip in the marina expansion authorized by the Master Plan (i.e. the McCall structure is not one of the five referenced "piers").

3. Tahoe Yellow Cress:

At the site visit conducted on September 18, 2001, it was discovered that a Tahoe Yellow Cress (TYC) (*Rorippa Subumbellata*) plant was on the beach to the west of the proposed pier. The construction of the proposed pier has the potential to damage this plant and its habitat. A Draft Conservation Strategy for TYC has been prepared by TRPA and other partnering agencies in the Tahoe Basin, to protect this rare, endemic plant. If the multiple use and Master Plan issues could be resolved satisfactorily, a specific analysis of the impacts to the plant and its habitat would be required. In

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addition, the property owner would be required to provide sufficient means to protect the plant during and after construction through the submittal of a revised TYC Management Plan specific for this site. The existence of the plant on the subject property is not a basis for denial of the proposed project.

4. Scenic:

The proposed project is visible from Scenic Shoreline Unit Number 29, Zephyr Cove. The shoreline travel route rating for this unit is 9, which is in attainment with the established scenic thresholds. However, the 1996 and the 2001 Scenic Threshold Ratings identified this unit as being "at risk" of falling out of scenic attainment due in part to the addition of larger piers and boatlifts which create new distractions and threaten the man-made feature elements of the scenic ratings system. During a site visit to the subject property, staff noted that the existing breakwater would help screen the proposed pier from some views on the Lake. Nevertheless, it is anticipated that scenic mitigation would be required to offset the potential impacts of the proposed pier (although the floating design may have less scenic impacts than an ordinary pier). The scenic impact from the project is not a basis for denial of the proposed project.

Staff Analysis:

- A. Environmental Documentation: TRPA staff has completed an Initial Environmental Checklist (IEC). TRPA staff also evaluated the Elk Point Marina Environmental Assessment (EA) for the Elk Point Marina Master Plan, completed in July of 1990. The environmental documents indicate that the project may result or contribute to unmitigated environmental impacts by proposing a project that is inconsistent with TRPA regulations, the Elk Point Marina Master Plan and its accompanying Environmental Assessment. The completed IEC, the Elk Point Marina Master Plan and its accompanying EA will be made available at the Governing Board hearing and at TRPA.
- B. Plan Area Statement: The project is located within Plan Area Statement Number 69, Elk Point. The Land Use Classification is Residential, and the Management Strategy is Mitigation. TRPA staff has reviewed the plan area statement and has determined that the project is consistent with the applicable planning statement, planning considerations and special policies. The existing use, single family dwelling, is an allowed use, and in terms of land use, piers are allowed as accessory structures.
- C. Land Coverage: The land capability districts of the project area include classes 1b, 1a and 4. The total project area is 7,043 square feet. The total existing land coverage on-site is 1,920 square feet.
- D. Shorezone Tolerance District: The subject parcel is located within Shorezone Tolerance District 2. The project complies with the shorezone tolerance district development standards provided the applicant modifies the submitted plans to include a stabilized access path to the pier and stabilize the area where the existing structure is proposed to be removed.
- E. Required Findings: The following is a list of the required findings as set forth in Chapters 6, 50 and 52 of the TRPA Code of Ordinances. Following each finding, agency staff has briefly summarized the evidence on which the finding can or cannot be made.

1. Chapter 6 Findings:

- a. The project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code, and other TRPA plans and programs.

**This finding cannot be made.** The TRPA Code of Ordinances prohibits the development of single-use shorezone facilities in residential developments served by existing multiple-use facilities. As discussed previously, two prior TRPA legal determinations have been made by former TRPA Agency Counsel that prohibit expansions of existing structures that are served by existing multiple-use facilities pursuant to TRPA Code Subsection 52.3.G(2)(b). Therefore, it can be concluded that this project would adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code, and other TRPA plans and programs.

- (1) Land Use: Single-family dwellings are listed as an allowed primary use within the Elk Point Plan Area Statement. The proposed project involves the expansion of an allowed accessory structure and is consistent with the Land Use Element of the Regional Plan. Surrounding land uses consist of residential properties. The proposed project will not alter any land use patterns.
- (2) Transportation: The proposed pier expansion will be used by the property owners and their guests and, as such, will not result in an increase of daily vehicle trip ends (dvte) to the subject parcel or vehicle miles traveled (VMT).
- (3) Conservation: Expansion of the proposed pier is not consistent with the shorezone subelement of the Conservation Element of the Regional Plan Regional Plan. This subelement refers to the minimizing of disturbance to fish habitat by centralizing activity through the development of multiple-use facilities. This proposed project is to expand a single-use shorezone structure located in the backshore of Lake Tahoe within a subdivision where multiple-use facilities currently exist.

The area offshore of the existing shorezone structure is located in prime fish habitat (feed and/or escape cover habitat targeted for restoration). New structures in areas identified as prime fish habitat are prohibited by Subsection 54.4.A(4) of the TRPA Code of Ordinances. However, TRPA can allow expansions of existing structures within fish habitat for when the required findings can be made. A final determination regarding potential impacts to fish habitat was not made because staff is recommending denial on other grounds.

- (4) **Recreation:** This project does not involve public recreation facilities or uses and is not expected to adversely impact any existing public recreation facilities or activities.
- (5) **Public Service Facilities:** This project does not require any additions to public services or facilities.
- (6) **Implementation:** The proposed project does not require any allocations of development.

b. **The project will not cause the environmental threshold carrying capacities to be exceeded.**

**This finding cannot be made.** TRPA's current policies and Code language for shorezone development were drafted as a means of attaining TRPA's Environmental Threshold Carrying Capacities. The TRPA Code prohibits the new construction or expansion of single-use shorezone structures for parcels having access to multiple-use facilities or parcels that are located in areas of prime fish habitat. Therefore, calculations of maximum shorezone development build-out associated with the attainment of the TRPA Environmental Threshold Carrying Capacities would not include parcels located within an area served by multiple-use facilities. A new pier on the subject parcel would not be consistent with the environmental carrying capacities adopted because it is located in prime fish habitat and also is served by multiple-use facilities. As stated by former TRPA Agency Counsel Rachelle J. Nicolle in her legal opinion attached as Exhibit F:

*TRPA has consistently relied upon this prohibition when evaluating the impacts of the Shorezone Cumulative Impacts Analysis EIS and when evaluating the impacts on the Elk Point Marina Master Plan.*

c. **Wherever federal, state or local air and water quality standards applicable for the region, whichever are strictest, must be attained and maintained pursuant to Article V(g) of the TRPA Compact, the project meets or exceeds such standards.**

The basis for this finding is provided on the checklist entitled "Project Review Conformance Checklist and Article V(g) Findings" in accordance with Chapter 6, Subsection 6.3.B of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the applicable air and water quality standards. A copy of the completed checklist will be made available at the Governing Board hearing and at the TRPA.

2. Shorezone Findings (Chapter 50):

- a. The proposed project will not adversely impact: (1) littoral processes; (2) fish spawning; (3) backshore stability; and (4) on-shore wildlife habitat, including wildfowl nesting areas.

The proposed project will not have an impact on littoral processes because the proposed project does not involve a structure that is less than 90 percent open. The proposed project is not located in an area mapped or verified as spawning habitat and will not adversely impact fish spawning. The existing backshore is in stable condition, however the removal of the existing structure will require that the backshore be stabilized. The proposed project is not located within an area that is mapped as on-shore wildlife habitat nor has the site been shown to be a waterfowl nesting area.

- b. There are sufficient accessory facilities to accommodate the project.

The project area is developed with a single-family residence and contains sufficient facilities to accommodate the project. The pier will only be used by the property owners and their guests.

- c. The project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modification of such existing uses or structures will be undertaken to assure compatibility.

The project is compatible with existing lake and shorezone uses and structures in the vicinity. The surrounding uses consist of residential properties and will not be adversely affected by this project.

- d. The use proposed in the foreshore or nearshore is water-dependent.

The pier expansion is to be located in the foreshore and nearshore of Lake Tahoe and is, by its nature, water-dependent.

- e. Measures will be taken to prevent spills or discharges of hazardous materials.

TRPA prohibits the use of spray painting and the use of tributyltin (TBT). Also, TRPA typically applies conditions of approval that prohibit the discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin. All surplus construction waste materials are required to be removed from the project and deposited only at approved points of disposal. No containers of fuel, paint, or other hazardous materials would be allowed to be stored on the pier.

- f. Construction and access techniques will be used to minimize disturbance to ground and vegetation.

The applicant would not be permitted to store construction materials on the beach. Permanent disturbance to ground and vegetation is also prohibited. Pile driving and construction staging would be accomplished from the Lake by a barge.

- g. The project will not adversely impact navigation or create a threat to public safety as determined by those agencies with jurisdiction over a lake's navigable waters.

The proposed pier will not extend further lakeward into Lake Tahoe than nearby shorezone structures. The U.S. Army Corps of Engineers must also review this project for navigational safety. The U.S. Army Corps of Engineers have completed a preliminary review of the project and did not identify any adverse impacts to navigation.

- h. TRPA has solicited comments from those public agencies having jurisdiction over the nearshore and foreshore and all such comments received were considered by TRPA prior to action being taken on this project.

This project must receive approval from the Nevada Division of State Lands (NDSL) and the U.S. Army Corps of Engineers (ACE). Comments from these agencies were solicited as part of the review of this project. Previous permits have not been issued by either the NDSL or the ACE for a pier at the subject parcel. Therefore, a pier proposal at this location would be treated by both agencies as a new structure.

4. Chapter 52 - Repairs/Modifications to Existing Structures:

**This finding cannot be made.** Subsection 52.3G(2) of the TRPA Code requires that the following finding be made before an existing pier can be expanded:

The expansion decreases the extent to which the structure does not comply with the development standards and/or improves the ability to attain or maintain the environmental thresholds;

This finding applies because the existing structure on the McCall Property technically qualifies as a pier. Former TRPA Legal Counsel Rochelle J. Nicolle specifically concluded that the Subsection 52.3G(2)(b) finding could not be made for an expansion of an existing pier in the Elk Point Subdivision:

*TRPA has held that the expansion of a pier that is located in an area served by multiple-use facilities cannot be approved under the first alternative in Section 52.3.G(2)(b). This is because the expanded pier will operate to increase the pier's non-conformity with current development standards. The current development standards in Section 54.8.A prohibit pier facilities on littoral parcels that are served by multiple-*

*use facilities. . . . TRPA has also determined that a pier expansion in an area served by multiple-use facilities cannot be authorized under the second alternative finding in Section 52.3.G (2)(b), since such a pier cannot be expanded without hampering the ability to attain or maintain the environmental thresholds.*

For the reasons set forth in this staff summary, TRPA legal counsel concurs that the single-use pier expansion sought by Mr. McCall will violate development standards and will frustrate attainment/ maintenance of the thresholds.

- F. **Required Actions:** Agency staff recommends that the Governing Board deny the proposed project by making the following motions based on this staff summary and evidence contained in the record:
- I. A motion based on this staff summary, for the findings contained in Section E above, and a finding of no significant environmental effect, which motion should fail. (To make the findings for approval of the project, a 5/9 vote is required – five in the affirmative from Nevada.)
  - II. A motion to approve the proposed pier based on this staff summary, which motion should fail. (To approve the project, a 5/9 vote is required – five in the affirmative from Nevada.)

This item will begin with a brief presentation by staff. If you have any questions regarding the proposed project, please call Elizabeth Harrison at (775) 588-4547 x 269.

**Attachments:**

- A. Site Plan Map
- B. Elevation Drawings
- C. Memorandum from Jeff Blanck, TRPA Agency Counsel, dated April 9, 1990
- D. Letter from Jim Lawrence, TRPA Associate Planner, dated June 19, 1995
- E. Letter from Jim Lawrence, TRPA Associate Planner, dated July 1, 1997
- F. Letter from Rochelle J. Nicolle, TRPA Agency Counsel, dated May 5, 1997
- G. Letter from Basin Strategies dated January 15, 2002
- H. Elk Point Marina Master Plan Errata
- I. Aerial photograph of Elk Point
- J. Primm Pier File planner notes dated October, 1997 by Jim Lawrence
- K. Survey methodology
- L. Letter from the Nevada Division of State Lands dated September 18, 2001
- M. Letter from the U.S. Army Corps of Engineers dated December 17, 2001

**Note:** These exhibits will not appear in the TRPA Governing Board packet. Each Governing Board member will receive a separate package including every exhibit. Members of the public wishing to view these exhibits should contact Louise Whittington, Compliance Division Executive Assistant, at (775) 588-4547 extension 267.

Attachment E

Notices of April 1, 2021 and April 29, 2021 Hearings Officer Meeting

**NOTICE OF APPLICATION AND PUBLIC HEARING  
TAHOE REGIONAL PLANNING AGENCY HEARINGS OFFICER  
THURSDAY, APRIL 1, 2021 2:00pm  
VIRTUAL MEETING**

Dear Property Owner:

This is to notify you that the project described below has been scheduled for the above-noticed public hearing:

**Project Description:** A new single-parcel pier is proposed for the parcel located at 5568 North Lake Boulevard, Carnelian Bay, Placer County, California. The proposed pier would extend approximately 108 feet from the shoreline (95 feet and 2.5 inches from the High Water Elevation) to the pierhead line, with a pier head of 30 feet in length and 10 feet in width, in addition to a 3-foot adjustable catwalk. A 6,000-pound boatlift is proposed to be located on the south side of the pierhead. One of the two buoys located on the site will be retired in exchange for the boatlift.

**Location of Subject Property:** 5568 North Lake Blvd., Placer County, California

**Assessor's Parcel/File Number:** 116-220-049/ ERSP2020-0074

**Applicants:** Virginia Stock and George Johannessen

The April 1st Hearings Officer meeting will take place online using the platform GoToWebinar. Any interested member of the public will be able to participate and observe the meeting remotely without coming to a physical location. The staff summary for this project will be available for review at [www.trpa.gov](http://www.trpa.gov) seven (7) calendar days prior to the meeting. The application and plans have been uploaded and are available on <https://parcels.laketahoeinfo.org>. Interested persons may provide comments and input to the Hearings Officer prior to the meeting and day of the meeting. Prior to the meeting submit comments by mail to TRPA, P.O. Box 5310, Stateline, Nevada 89449, or by email to [bmcmahon@trpa.org](mailto:bmcmahon@trpa.org). If written comments are not received prior to the date of the meeting, then they will not be considered. Provide comments during the meeting by using the GoToWebinar App. For more detailed instructions on how to connect and participate visit [www.trpa.gov](http://www.trpa.gov) and view the materials for the above mentioned meeting date. If you are unable to access any of the GoToWebinar apps on your computer, smartphone, or tablet on the meeting date, and you would like to make a comment at the Hearings Officer meeting, TRPA can pre-register you for the webinar and provide you with dial-in instructions and a unique PIN that will identify you. Please contact TRPA admin staff at [virtualmeetinghelp@trpa.org](mailto:virtualmeetinghelp@trpa.org) or call (775) 588-4547.

This matter may be continued to another meeting without additional notice.

If you have questions or concerns about accessing this information, please contact Brandy McMahon, AICP, Local Government Coordinator, at the contact (775) 589-5274 or [bmcmahon@trpa.org](mailto:bmcmahon@trpa.org).

By: *Brandy McMahon*

Date: 3/18/2021

---

Brandy McMahon, AICP  
Local Government Coordinator  
Tahoe Regional Planning Agency  
P.O. Box 5310  
Stateline, Nevada 89449-5310  
(775) 589-5274  
[bcmahon@trpa.org](mailto:bcmahon@trpa.org)



Attachment F

Continuance Request re: Proposed Stock/Johannessen New Single-Parcel Pier Project Hearing, dated  
March 31, 2021

## Katherine Hangeland

---

**From:** Wyatt Ogilvy <wyatt@ogilvylanduse.com>  
**Sent:** Wednesday, March 31, 2021 2:37 PM  
**To:** Gregg Lien  
**Cc:** Brandy McMahon; Greg Gatto; Sandra Fetterolf  
**Subject:** Re: Continuance Request - Stock/Johannessen Pier (ERSP2020-0074)

Brandy,

Thanks for the clarification, Gregg must have pulled some jedi mind trick on me! We would like to continue the item to the April 29th hearing.

Wyatt Ogilvy  
Ogilvy Consulting | Land Use & Development Strategies

Phone: (530) 583-5800 | Fax: (530) 583-5858  
US Mail: Post Office Box 6315 | Tahoe City, CA 96145  
Office/Delivery: 850 North Lake Blvd., Suite 17 | Tahoe City, CA 96145-6315

On Mar 31, 2021, at 2:19 PM, Gregg Lien <[lakelaw@sierratahoe.net](mailto:lakelaw@sierratahoe.net)> wrote:

Hi Brandy,

May 29th sounds fine (hah!) - - but we had agreed to the 29th of April. Also please let us know if the hearing will be held in any event to take public testimony and formally continue this item, or whether the HO meeting will simply be cancelled entirely, as it is the only item on the agenda. Best, Gregg

Law Office of Gregg R. Lien  
P.O. Box 7442  
Tahoe City, CA 96145  
530.583.8500  
530.308.9199 cell

### Confidentiality Notice

The information contained in this e-mail and any accompanying attachments, all of which may be confidential or privileged, is intended only for use by the person or entity to whom it is addressed. If you are not the intended recipient, any unauthorized use, disclosure or copying of this e-mail and its contents is strictly prohibited and may be unlawful. If you are not the intended recipient, please immediately notify the sender by return e-mail and delete the original message and all copies from your system. We cannot guarantee that attorney client confidential communications are secure against intrusions through corporate, governmental, and/or private hacking and or interference. We do not consent to any such activity, and no waiver can be implied even if such activities are suspected. Thank you.

On Mar 31, 2021, at 2:10 PM, Brandy McMahon <[bcmcmahon@trpa.gov](mailto:bcmcmahon@trpa.gov)> wrote:

Hi Wyatt,

Did you mean April 29<sup>th</sup>? If yes, could you send me an updated e-mail?

Thanks,

Brandy McMahon, AICP  
Local Government Coordinator  
Current Planning Division  
Tahoe Regional Planning Agency  
P.O. Box 5310, Stateline, NV 89449  
(775) 589-5274  
[bcmcmahon@trpa.gov](mailto:bcmcmahon@trpa.gov)

---

**From:** Wyatt Ogilvy <[wyatt@ogilvylanduse.com](mailto:wyatt@ogilvylanduse.com)>  
**Sent:** Wednesday, March 31, 2021 2:02 PM  
**To:** Brandy McMahon <[bcmcmahon@trpa.gov](mailto:bcmcmahon@trpa.gov)>  
**Cc:** Greg Gatto <[greg@sierralanduselaw.com](mailto:greg@sierralanduselaw.com)>; Gregg Lien <[lakelaw@sierratahoe.net](mailto:lakelaw@sierratahoe.net)>  
**Subject:** Continuance Request - Stock/Johannessen Pier (ERSP2020-0074)

Brandy,

In accordance with our call, we are writing to request that the above referenced item be continued to the May 29th Hearing's Officer agenda. This time will allow for our continued dialogue with the neighbors and their counsel regarding details of the proposed project and if there are solutions to address their stated concerns.

Thank you for your continued efforts in the review of this application. Please let me know if you or TRPA staff have any questions.

Sincerely,

Wyatt Ogilvy  
Ogilvy Consulting | Land Use & Development Strategies

Phone: (530) 583-5800 | Fax: (530) 583-5858  
US Mail: Post Office Box 6315 | Tahoe City, CA 96145  
Office/Delivery: 850 North Lake Blvd., Suite 17 | Tahoe City, CA 96145-6315

Attachment G

US Army Corps of Engineers email re navigability, dated April 22, 2021

## Katherine Hangeland

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**Subject:** RE: 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

---

**From:** Greg Gatto <[greg@sierralanduselaw.com](mailto:greg@sierralanduselaw.com)>

**Sent:** Thursday, April 22, 2021 2:55 PM

**To:** Brandy McMahon <[bcmahon@trpa.gov](mailto:bcmahon@trpa.gov)>

**Cc:** Wyatt Ogilvy <[wyatt@ogilvylanduse.com](mailto:wyatt@ogilvylanduse.com)>

**Subject:** FW: 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

Brandy, please see below correspondence from the Corps confirming they have no concerns regarding navigation or public safety related to the Johannessen pier project.

Thank You,  
Greg

---

**From:** Thomason, Jennifer C CIV USARMY CESPCK (USA) <[Jennifer.C.Thomason@usace.army.mil](mailto:Jennifer.C.Thomason@usace.army.mil)>

**Sent:** Thursday, April 22, 2021 2:50 PM

**To:** Greg Gatto <[greg@sierralanduselaw.com](mailto:greg@sierralanduselaw.com)>

**Cc:** Wyatt Ogilvy <[wyatt@ogilvylanduse.com](mailto:wyatt@ogilvylanduse.com)>

**Subject:** RE: 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

Hi Greg,

I have reviewed the plans and do not have any immediate concerns regarding navigation or public safety as it pertains to the Corps' scope.

As we discussed, a permit from our office will be required. There are two permitting options for new piers on Lake Tahoe:

Option 1: Regional General Permit (RGP) 3, Boat Docks and Associated Structures. Information regarding the limits and limitations for size and distance from other structures can all be found within the text of this permit, located here:

<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/gp/RGP3/2019%20RGP%203%20-%20Full%20Text.pdf?ver=2019-08-22-194945-897>. This permit has its own pre-construction notification (PCN) form located here: <https://www.spk.usace.army.mil/Portals/12/documents/regulatory/gp/RGP3/2019%20RGP%203%20-%20Attachment%20A%20-%20Pre%20Construction%20Notification%20Checklist.pdf?ver=2019-08-22-194943-427>.

Please be advised that if there are other activities associated with the construction (e.g. fish habitat mitigation, boulder relocations, etc.) then additional permits may be needed to ensure that all project aspects are authorized.

Option 2: Letter of Permission for Minor Activities. This permit would be required if the proposed project does not meet the size limitations for the RGP 3. The procedures for this permit can be found here:

<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/201100025-NV-LOP-Final-PN.pdf>. For these types of projects on Lake Tahoe the following steps in these procedures are exempt: all of Section A and Sections B(3) and B(12). Generally B(13) will not be required but can depend on the extent of all project activities. Further, no hardcopies of any reports are required.

No matter which type of permit will be needed, a cultural resources report sufficient for us to coordinate with the State Historic Preservation Office will be required. The information required to be contained in this report can be found here: [https://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL\\_2014-03-24\\_Section-106-Guidelines.pdf](https://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf) and will need to include a viewshed analysis for the proposed pier.

Please let me know if you have any additional questions.

Thank you,

Jennifer C. Thomason  
Senior Project Manager  
Nevada-Utah Regulatory Section  
300 Booth Street, Room 3050  
Reno, Nevada 89509

Ph: 775-784-5304  
Cell: 775-686-9622- Primary number during COVID-19 Response

Regular Schedule Tuesday-Friday

\*\*\*In response to COVID-19, Regulatory Division staff are teleworking from home or other approved location. We will do our best to administer the Regulatory Program in an effective and efficient manner. Priority will be given to health and safety activities and essential infrastructure. Action on your permit application or other request may be delayed during this emergency. We appreciate your patience over the next several weeks.\*\*\*

Let us know how we're doing. Please complete the survey at:  
<https://regulatory.ops.usace.army.mil/customer-service-survey/>

---

**From:** Greg Gatto <[greg@sierralanduselaw.com](mailto:greg@sierralanduselaw.com)>  
**Sent:** Thursday, April 22, 2021 2:07 PM  
**To:** Thomason, Jennifer C CIV USARMY CESPK (USA) <[Jennifer.C.Thomason@usace.army.mil](mailto:Jennifer.C.Thomason@usace.army.mil)>  
**Cc:** Wyatt Ogilvy <[wyatt@ogilvylanduse.com](mailto:wyatt@ogilvylanduse.com)>  
**Subject:** [Non-DoD Source] 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

Ms. Thomason:

Following up on the voice message I left you, I represent the Johannessens, owners of Tahoe lakefront property located at 5568 North Lake Blvd., Placer County, California. The Johannessen's received an allocation from TRPA for a new single-parcel pier as a result of the single-parcel pier lottery, and the application for the new pier is being considered by the TRPA Hearings Officer at a meeting on April 29, 2021. In advance of that hearing, we were hoping that the United States Army Corps would be able to review the attached plans for the pier and confirm that, from the Corps' perspective, the new pier will not adversely impact navigation or create a threat to public safety. Both TRPA staff and the United States Coast Guard have determined that the pier will not adversely impact navigation or create a threat to public safety.

We've also attached a bathymetric survey of the project site and the TRPA staff report, if either of those will be helpful for your review. Thank you very much for your consideration and please do not hesitate to contact me with any questions or if you need additional information at (530) 205-6503.

Thank You,  
Greg

**Greg C. Gatto**

**Law Office of Greg Gatto**

PO Box 85 | Calpine, CA 96124 | Direct: (530) 205-6503

[greg@sierralanduselaw.com](mailto:greg@sierralanduselaw.com) | [www.sierralanduselaw.com](http://www.sierralanduselaw.com)

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

Attachment H

Coast Guard email re navigability, dated March 30, 2021

## Katherine Hangeland

---

**From:** Fairchild, Colt T BMC <Colt.T.Fairchild@uscg.mil>  
**Sent:** Tuesday, March 30, 2021 1:39 PM  
**To:** Brandy McMahan  
**Cc:** Robinson, William; Fairchild, Colt T BMC  
**Subject:** RE: information on pier TRPA FILE # PREC2019-0477, APN 116-220-049

Good afternoon,

I can only speak from my point of view regarding the navigation of my unit vessels in the area. At Coast Guard Station Lake Tahoe, my 30' vessels would be able to navigate in the area based on the proposed plans below. However, this could change based on drought conditions on Lake Tahoe, due to operational draft of my vessels. Let me know if you need anything else.

Thank you,

V/r,

Chief Colt Fairchild  
Officer in Charge  
CG Station Lake Tahoe  
(c) 563-663-4422 (preferred)

---

**From:** Robinson, William <William.A.Robinson@uscg.mil>  
**Sent:** Tuesday, March 30, 2021 8:16 AM  
**To:** Fairchild, Colt T BMC <Colt.T.Fairchild@uscg.mil>  
**Cc:** 'bmcmahan@trpa.gov' <bmcmahan@trpa.gov>  
**Subject:** FW: information on pier TRPA FILE # PREC2019-0477, APN 116-220-049

Good morning Chief,

See below and attached. Hoping you and your crew can lend the TRPA folks a hand here...in these situations, local units are better positioned for this type of analysis. Thanks in advance for your assistance!

Will

William Robinson  
Civil Engineering Unit Oakland  
Environmental Management  
1301 Clay Street, Suite 700N  
Oakland, CA

 o: 510-637-5563

 c: 510-205-4721

 [William.A.Robinson@uscg.mil](mailto:William.A.Robinson@uscg.mil)

**From:** Brandy McMahon <[bcmcmahon@trpa.gov](mailto:bcmcmahon@trpa.gov)>

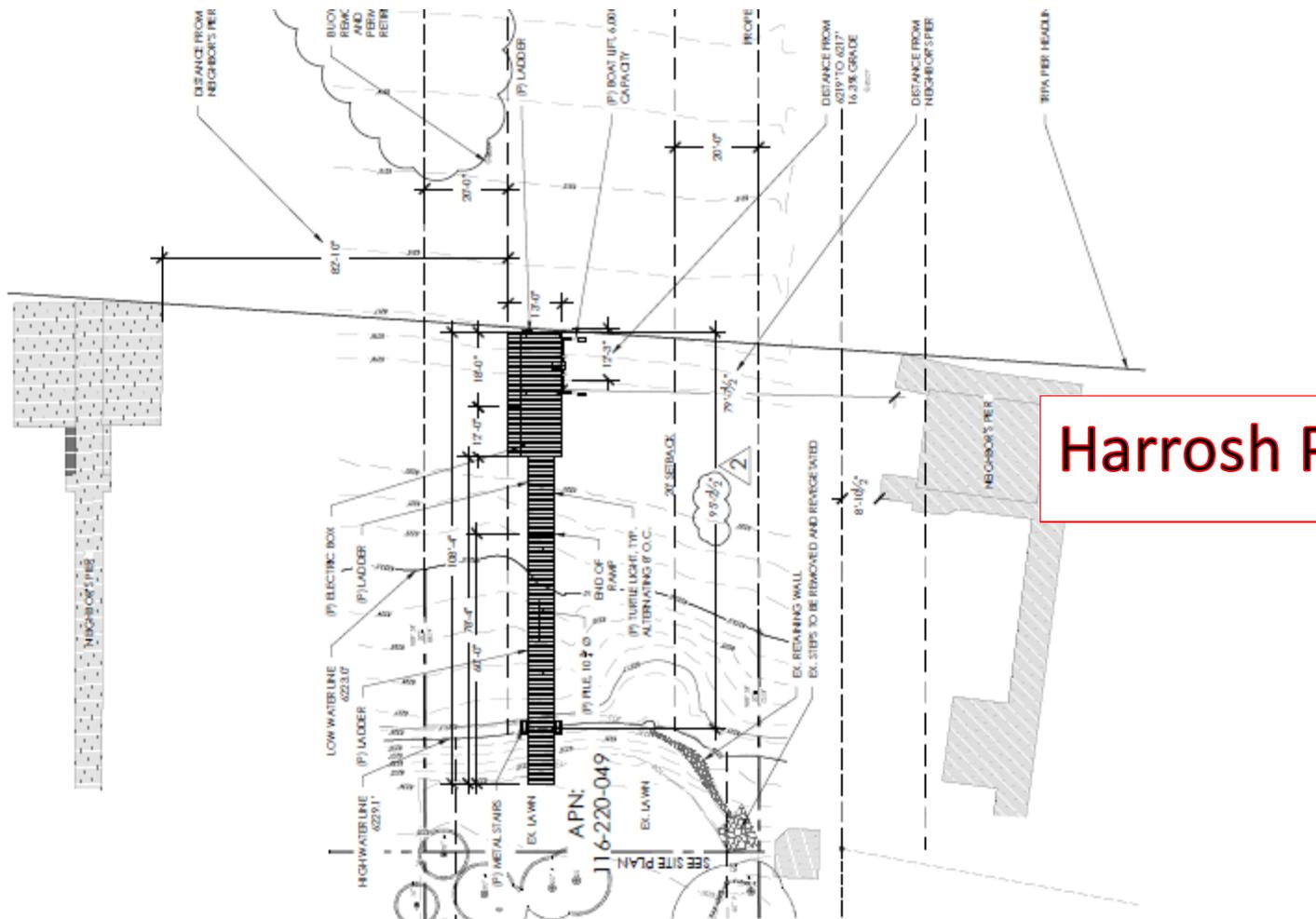
**Sent:** Monday, March 29, 2021 9:47 AM

**To:** Robinson, William <[William.A.Robinson@uscg.mil](mailto:William.A.Robinson@uscg.mil)>

**Subject:** [Non-DoD Source] FW: information on pier TRPA FILE # PREC2019-0477, APN 116-220-049

Dear Will,

Tiffany Good recommended I reach out to you regarding navigation concerns being raised by a neighbor (see below) that may result if a new single-parcel pier is built by their neighbors on Lake Tahoe. The proposed new single-parcel pier is going to the TRPA Hearings Officer this Thursday. The neighbors (Harrosh) think the new pier will impact access to their pier because they will not have sufficient room to turn their 30' boat into their pier (see below). They want the proposed pier moved farther away from their pier. The pier is currently located right at the 20' setback from the property boundary so moving the pier farther away is not an option. Mr. and Mrs. Harrosh also asked if the boatlift could be moved to the other side of the pier. We are hoping someone from the Coast Guard could take a look at the plans (attached and below) and let us know if there is a navigation issue. We appreciate the help.





Sincerely,

Brandy McMahon, AICP  
Local Government Coordinator  
Current Planning Division  
Tahoe Regional Planning Agency  
P.O. Box 5310, Stateline, NV 89449  
(775) 589-5274  
[bcmahon@trpa.org](mailto:bcmahon@trpa.org)

---

**From:** Sam and Sue Harrosh <[sharrosh@hotmail.com](mailto:sharrosh@hotmail.com)>  
**Sent:** Thursday, March 25, 2021 1:02 PM  
**To:** Brandy McMahon <[bcmahon@trpa.gov](mailto:bcmahon@trpa.gov)>  
**Subject:** Fw: information on pier TRPA FILE # PREC2019-0477, APN 116-220-049

Brandy,

I just went over the blue print drawing for the proposed pier. There is 102 feet of open water from the Pestana Pier and 58 feet of water between the new pier and the access opening of our pier. ( 38 feet from our property line). The Pestana pier is between their two parcels so their property line is 20 feet from the proposed pier, but there is 80 more feet to the pier (102 feet of water between piers). The Pestana pier is set up to drive straight in directly from the lake. Driving in a 30-foot boat into our side pier opening with the Johannessen's pier in the path will be very tricky and dangerous. When you go out on the lake and see the proportions for clearance it is very clear how dangerous this could be.

That makes for a lot of boat congestion for our area as we access our pier on the side. Also the Titmus home and strip is their access to the lake for their boats.

We will be in touch concerning the webinar on April 1. We will probably have an attorney present to present our objections and concerns.

Suzanne Harrosh  
Samuel Harrosh

We are also looking into the real difference between an HOA and a club like Agate Bay Pier in terms of the law about allowing or not allowing single family piers being built. This seems like such an arbitrary distinction that perhaps should be challenged legally.

---

**From:** Sam and Sue Harrosh <[sharrosh@hotmail.com](mailto:sharrosh@hotmail.com)>  
**Sent:** Thursday, March 25, 2021 10:28 AM  
**To:** Lynne Harrosh <[lynneharrosh@me.com](mailto:lynneharrosh@me.com)>; Michael Harrosh <[mikeharrosh@gmail.com](mailto:mikeharrosh@gmail.com)>  
**Cc:** Aaron Harrosh <[aharrosh@executive-mgt.com](mailto:aharrosh@executive-mgt.com)>  
**Subject:** Fw: information on pier TRPA FILE # PREC2019-0477, APN 116-220-049

---

**From:** Sam and Sue Harrosh <[sharrosh@hotmail.com](mailto:sharrosh@hotmail.com)>  
**Sent:** Friday, February 5, 2021 9:03 AM  
**To:** Brandy McMahon <[bmcMahon@trpa.org](mailto:bmcMahon@trpa.org)>  
**Subject:** Re: information on pier TRPA FILE # PREC2019-0477, APN 116-220-049

Thank you for your reply.

Sam & Sue

---

**From:** Brandy McMahon <[bmcMahon@trpa.org](mailto:bmcMahon@trpa.org)>  
**Sent:** Tuesday, February 2, 2021 2:48 PM  
**To:** Sam and Sue Harrosh <[sharrosh@hotmail.com](mailto:sharrosh@hotmail.com)>

Attachment I

Initial Environmental Checklist



OFFICE  
128 Market St.  
Stateline, NV  
Phone: (775) 588-4547  
Fax: (775) 588-4527

MAIL  
PO Box 5310  
Stateline, NV 89449 5310  
www.trpa.org  
trpa@trpa.org

HOURS  
Mon, Wed, Thurs, Fri  
9 am-12 pm/1 pm-4 pm  
Closed Tuesday  
New Applications Until 3:00 pm

Print Form

**INITIAL ENVIRONMENTAL CHECKLIST  
FOR DETERMINATION OF ENVIRONMENTAL IMPACT**

I. Assessor's Parcel Number (APN)/Project Location		116-220-049	
Project Name	Stock-Johannessen - New Pier Project	County/City	Placer

**Brief Description of Project:**

See enclosed project description document.

The following questionnaire will be completed by the applicant based on evidence submitted with the application. All "Yes" and "No, With Mitigation" answers will require further written comments. Use the blank boxes to add any additional information. If more space is required for additional information, please attach separate sheets and reference the question number and letter.

**II. ENVIRONMENTAL IMPACTS:**

**1. Land**

Will the proposal result in:

a. Compaction or covering of the soil beyond the limits allowed in the land capability or Individual Parcel Evaluation System (IPES)?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. A change in the topography or ground surface relief features of site inconsistent with the natural surrounding conditions?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Unstable soil conditions during or after completion of the proposal?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Changes in the undisturbed soil or native geologic substructures or grading in excess of 5 feet?

- Yes       No  
 No, With Mitigation       Data Insufficient

e. The continuation of or increase in wind or water erosion of soils, either on or off the site?

- Yes       No  
 No, With Mitigation       Data Insufficient

f. Changes in deposition or erosion of beach sand, or changes in siltation, deposition or erosion, including natural littoral processes, which may modify the channel of a river or stream or the bed of a lake?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

g. Exposure of people or property to geologic hazards such as earthquakes, landslides, backshore erosion, avalanches, mud slides, ground failure, or similar hazards?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

**2. Air Quality**

Will the proposal result in:

a. Substantial air pollutant emissions?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

b. Deterioration of ambient (existing) air quality?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

c. The creation of objectionable odors?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

d. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

e. Increased use of diesel fuel?

- Yes       No  
 No, With Mitigation       Data Insufficient

### 3. Water Quality

Will the proposal result in:

a. Changes in currents, or the course or direction of water movements?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff so that a 20 yr. 1 hr. storm runoff (approximately 1 inch per hour) cannot be contained on the site?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Alterations to the course or flow of 100-yearflood waters?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Change in the amount of surface water in any water body?

- Yes       No  
 No, With Mitigation       Data Insufficient

e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?

**Temporary BMP's shall be employed during pier construction in order to limit potential discharge.**

- Yes       No  
 No, With Mitigation       Data Insufficient

f. Alteration of the direction or rate of flow of ground water?

- Yes       No  
 No, With Mitigation       Data Insufficient

g. Change in the quantity of groundwater, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?

- Yes       No  
 No, With Mitigation       Data Insufficient

h. Substantial reduction in the amount of water otherwise available for public water supplies?

- Yes       No  
 No, With Mitigation       Data Insufficient

i. Exposure of people or property to water related hazards such as flooding and/or wave action from 100-year storm occurrence or seiches?

- Yes       No  
 No, With Mitigation       Data Insufficient

j. The potential discharge of contaminants to the groundwater or any alteration of groundwater quality?

- Yes       No  
 No, With Mitigation       Data Insufficient

k. Is the project located within 600 feet of a drinking water source?

- Yes       No  
 No, With Mitigation       Data Insufficient

#### 4. Vegetation

Will the proposal result in:

- a. Removal of native vegetation in excess of the area utilized for the actual development permitted by the land capability/IPES system?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- b. Removal of riparian vegetation or other vegetation associated with critical wildlife habitat, either through direct removal or indirect lowering of the groundwater table?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- c. Introduction of new vegetation that will require excessive fertilizer or water, or will provide a barrier to the normal replenishment of existing species?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- d. Change in the diversity or distribution of species, or number of any species of plants (including trees, shrubs, grass, crops, micro flora and aquatic plants)?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- e. Reduction of the numbers of any unique, rare or endangered species of plants?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

f. Removal of stream bank and/or backshore vegetation, including woody vegetation such as willows?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

g. Removal of any native live, dead or dying trees 30 inches or greater in diameter at breast height (dbh) within TRPA's Conservation or Recreation land use classifications?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

h. A change in the natural functioning of an old growth ecosystem?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

**5. Wildlife**

Will the proposal result in:

a. Change in the diversity or distribution of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects, mammals, amphibians or microfauna)?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

b. Reduction of the number of any unique, rare or endangered species of animals?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Deterioration of existing fish or wildlife habitat quantity or quality?

- Yes       No  
 No, With Mitigation       Data Insufficient

**6. Noise**

Will the proposal result in:

a. Increases in existing Community Noise Equivalency Levels (CNEL) beyond those permitted in the applicable Plan Area Statement, Community Plan or Master Plan?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Exposure of people to severe noise levels?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Single event noise levels greater than those set forth in the TRPA Noise Environmental Threshold?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. The placement of residential or tourist accommodation uses in areas where the existing CNEL exceeds 60 dBA or is otherwise incompatible?

- Yes       No  
 No, With Mitigation       Data Insufficient

e. The placement of uses that would generate an incompatible noise level in close proximity to existing residential or tourist accommodation uses?

- Yes       No  
 No, With Mitigation       Data Insufficient

f. Exposure of existing structures to levels of ground vibration that could result in structural damage?

- Yes       No  
 No, With Mitigation       Data Insufficient

**7. Light and Glare**

Will the proposal:

a. Include new or modified sources of exterior lighting?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Create new illumination which is more substantial than other lighting, if any, within the surrounding area?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Cause light from exterior sources to be cast off -site or onto public lands?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Create new sources of glare through the siting of the improvements or through the use of reflective materials?

- Yes       No  
 No, With Mitigation       Data Insufficient

**8. Land Use**

Will the proposal:

a. Include uses which are not listed as permissible uses in the applicable Plan Area Statement, adopted Community Plan, or Master Plan?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Expand or intensify an existing non-conforming use?

- Yes       No  
 No, With Mitigation       Data Insufficient

**9. Natural Resources**

Will the proposal result in:

a. A substantial increase in the rate of use of any natural resources?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Substantial depletion of any non-renewable natural resource?

- Yes       No  
 No, With Mitigation       Data Insufficient

**10. Risk of Upset**

Will the proposal:

a. Involve a risk of an explosion or the release of hazardous substances including, but not limited to, oil, pesticides, chemicals, or radiation in the event of an accident or upset conditions?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Involve possible interference with an emergency evacuation plan?

- Yes       No  
 No, With Mitigation       Data Insufficient

**11. Population**

Will the proposal:

- a. Alter the location, distribution, density, or growth rate of the human population planned for the Region?

- Yes       No  
 No, With Mitigation       Data Insufficient

- b. Include or result in the temporary or permanent displacement of residents?

- Yes       No  
 No, With Mitigation       Data Insufficient

**12. Housing**

Will the proposal:

- a. Affect existing housing, or create a demand for additional housing?

To determine if the proposal will affect existing housing or create a demand for additional housing, please answer the following questions:

- (1) Will the proposal decrease the amount of housing in the Tahoe Region?

- Yes       No  
 No, With Mitigation       Data Insufficient

- (2) Will the proposal decrease the amount of housing in the Tahoe Region historically or currently being rented at rates affordable by lower and very-low-income households?

- Yes       No  
 No, With Mitigation       Data Insufficient

Number of Existing Dwelling Units: 1

Number of Proposed Dwelling Units: 1

b. Will the proposal result in the loss of housing for lower-income and very-low-income households?

- Yes       No  
 No, With Mitigation       Data Insufficient

**13. Transportation/Circulation**

Will the proposal result in:

a. Generation of 100 or more new Daily Vehicle Trip Ends (DVTE)?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Changes to existing parking facilities, or demand for new parking?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Substantial impact upon existing transportation systems, including highway, transit, bicycle or pedestrian facilities?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Alterations to present patterns of circulation or movement of people and/or goods?

- Yes       No  
 No, With Mitigation       Data Insufficient

e. Alterations to waterborne, rail or air traffic?

- Yes       No  
 No, With Mitigation       Data Insufficient

f. Increase in traffic hazards to motor vehicles, bicyclists, or pedestrians?

- Yes       No  
 No, With Mitigation       Data Insufficient

**14. Public Services**

Will the proposal have an unplanned effect upon, or result in a need for new or altered governmental services in any of the following areas?

a. Fire protection?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Police protection?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Schools?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Parks or other recreational facilities?

- Yes       No  
 No, With Mitigation       Data Insufficient

e. Maintenance of public facilities, including roads?

- Yes       No  
 No, With Mitigation       Data Insufficient

f. Other governmental services?

- Yes       No  
 No, With Mitigation       Data Insufficient

**15. Energy**

Will the proposal result in:

a. Use of substantial amounts of fuel or energy?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?

- Yes       No  
 No, With Mitigation       Data Insufficient

**16. Utilities**

Except for planned improvements, will the proposal result in a need for new systems, or substantial alterations to the following utilities:

a. Power or natural gas?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Communication systems?

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Utilize additional water which amount will exceed the maximum permitted capacity of the service provider?

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Utilize additional sewage treatment capacity which amount will exceed the maximum permitted capacity of the sewage treatment provider?

- Yes       No  
 No, With Mitigation       Data Insufficient

e. Storm water drainage?

- Yes       No  
 No, With Mitigation       Data Insufficient

f. Solid waste and disposal?

- Yes       No  
 No, With Mitigation       Data Insufficient

**17. Human Health**

Will the proposal result in:

a. Creation of any health hazard or potential health hazard (excluding mental health)?

- Yes       No  
 No, With Mitigation       Data Insufficient

b. Exposure of people to potential health hazards?

- Yes       No  
 No, With Mitigation       Data Insufficient

**18. Scenic Resources/Community Design**

Will the proposal:

- a. Be visible from any state or federal highway, Pioneer Trail or from Lake Tahoe?

<b>Lake Tahoe</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- b. Be visible from any public recreation area or TRPA designated bicycle trail?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- c. Block or modify an existing view of Lake Tahoe or other scenic vista seen from a public road or other public area?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- d. Be inconsistent with the height and design standards required by the applicable ordinance or Community Plan?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

- e. Be inconsistent with the TRPA Scenic Quality Improvement Program (SQIP) or Design Review Guidelines?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

**19. Recreation**

Does the proposal:

a. Create additional demand for recreation facilities?

- Yes
- No
- No, With Mitigation
- Data Insufficient

b. Create additional recreation capacity?

- Yes
- No
- No, With Mitigation
- Data Insufficient

c. Have the potential to create conflicts between recreation uses, either existing or proposed?

- Yes
- No
- No, With Mitigation
- Data Insufficient

d. Result in a decrease or loss of public access to any lake, waterway, or public lands?

- Yes
- No
- No, With Mitigation
- Data Insufficient

**20. Archaeological/Historical**

a. Will the proposal result in an alteration of or adverse physical or aesthetic effect to a significant archaeological or historical site, structure, object or building?

- Yes
- No
- No, With Mitigation
- Data Insufficient

b. Is the proposed project located on a property with any known cultural, historical, and/or archaeological resources, including resources on TRPA or other regulatory official maps or records?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

c. Is the property associated with any historically significant events and/or sites or persons?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

d. Does the proposal have the potential to cause a physical change which would affect unique ethnic cultural values?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

e. Will the proposal restrict historic or pre-historic religious or sacred uses within the potential impact area?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

**21. Findings of Significance.**

a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California or Nevada history or prehistory?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input type="checkbox"/> No, With Mitigation	<input type="checkbox"/> Data Insufficient

b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time, while long-term impacts will endure well into the future.)

- Yes       No  
 No, With Mitigation       Data Insufficient

c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant?)

- Yes       No  
 No, With Mitigation       Data Insufficient

d. Does the project have environmental impacts which will cause substantial adverse effects on human being, either directly or indirectly?

- Yes       No  
 No, With Mitigation       Data Insufficient

**DECLARATION:**

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Signature: (Original signature required.)

Wynne A. Elzy At Placer Date: 1/6/2020  
Person Preparing Application County

**Applicant Written Comments:** (Attach additional sheets if necessary)

Print Form

**FOR OFFICE USE ONLY**

Date Received: \_\_\_\_\_ By: \_\_\_\_\_

Determination:

On the basis of this evaluation:

- a. The proposed project could not have a significant effect on the environment and a finding of no significant effect shall be prepared in accordance with TRPA's Rules of Procedure.

\_\_\_\_\_  Yes  No

- b. The proposed project could have a significant effect on the environment, but due to the listed mitigation measures which have been added to the project, could have no significant effect on the environment and a mitigated finding of no significant effect shall be prepared in accordance with TRPA's Rules and Procedures.

\_\_\_\_\_  Yes  No

- c. The proposed project may have a significant effect on the environment and an environmental impact statement shall be prepared in accordance with Chapter 3 of the TRPA Code of Ordinances and the Rules of Procedure.

\_\_\_\_\_  Yes  No

\_\_\_\_\_  
Signature of Evaluator Date: \_\_\_\_\_

\_\_\_\_\_  
Title of Evaluator