

3 APPROACH TO THE ENVIRONMENTAL ANALYSIS

3.1 PREVIOUS SHORELINE ANALYSIS

This EIS builds on decades of work to develop a comprehensive, fair, and scientifically sound approach to analyze and regulate the development of structures along Lake Tahoe’s shoreline. For more than 30 years, TRPA has worked with stakeholders and partners to address the controversial issues surrounding shoreline development. This effort has included numerous technical studies, multiple policy and stakeholder committees, and a series of EISs, the last of which was certified, but challenged and remanded back to TRPA by the Ninth Circuit Court of Appeals. A more thorough history and background of the shoreline planning process, including a description of previous efforts, a summary of involved stakeholders, and a summary of the seven alternatives considered in the most recent supplemental final EIS are provided on pages ES-1 through ES-6 of Volume IV, “Addendum to the EIS for the Lake Tahoe Shorezone Ordinance Amendments” (TRPA 2008), which are incorporated by reference into this EIS.

Each iteration of shoreline planning and environmental review clarified key issues and concerns and presented new technical information. The alternatives described in Chapter 2, “Description of Proposed Project and Alternatives,” build upon previous efforts to develop and evaluate alternatives. Similarly, the analysis in Chapters 4 through 17 builds on previous environmental analyses by incorporating elements that are applicable and technically adequate, and reconsidering assumptions and analytical approaches that no longer apply, are insufficient, or where better information is available.

3.2 PROGRAM-LEVEL ANALYSIS

The Shoreline Plan governs the long-term management of Lake Tahoe’s shoreline. Because of the broad geography and long timeframe to which the Shoreline Plan applies and the policy-oriented nature of the Plan’s guidance, the EIS is prepared at a program level: that is, it contains a general analysis of each resource area with a level of detail and degree of specificity commensurate with that of the Shoreline Plan itself. The EIS focuses on the potential effects of policies and ordinances, which—because they are to be implemented through later site-specific projects over the duration of the Plan—are inherently less precise than analyses that evaluate implementation programs or specific projects.

This EIS is not intended to take the place of project-specific environmental documentation that will be needed to evaluate individual projects proposed following approval of the Shoreline Plan. For future shoreline projects that are not otherwise exempt or qualified exempt, TRPA will review those site-specific projects to determine the appropriate level of environmental review. Specific regulations that pertain to such analyses include Article VII, “Environmental Impact Statements,” of the Tahoe Regional Planning Compact; Article V, “Project Review,” and Article VI, “Environmental Impact Statements,” of the Rules of Procedure; and Chapter 3, “Environmental Documentation,” of the TRPA Code. For shoreline projects that have the potential to result in significant effects on the environment, TRPA would—in coordination with other federal, state, or local agency with jurisdiction by law, or specialized expertise with respect to environmental impacts—conduct project-level, site-specific analysis to identify adverse effects and develop feasible mitigation measures that must be implemented to minimize any such effects.

As a separate process and prior to approving any shoreline project subject to environmental review requirements, TRPA would, in accordance with Chapter 4, “Required Findings,” of the TRPA Code, make written findings supported by substantial evidence in the record that the project is consistent with, and would not adversely affect, implementation of the Regional Plan, Goals and Policies, plan maps, code, and other plans and programs; that it would not cause threshold standards to be exceeded; and that it would meet or exceed applicable federal, state, or local air and water quality standards.

3.3 BASELINE CONDITIONS

To evaluate the impacts of a proposed action, agencies compare the impacts of that action against the environmental baseline. Federal and state authorities recognize that existing conditions will normally represent the baseline condition. “It is the environment as it is found contemporaneously with an agency’s decision to embark upon an action which may change it, not the condition in which it may have been left before, which is the benchmark from which the alteration of the status quo is to be measured in assessing the significance of such action for NEPA purposes.” *Overseas Shipholding Group, Inc., v. Skinner*, 767 F.Supp. 287, 299 (D.D.C. 1991) (quoting *Nat’l Res. Defense Council v. Vaughn*, 566 F.Supp. 1472, 1476 (D.D.C. 1983)); *City & County of San Francisco v. U.S.*, 615 F.2d 498, 501 (9th Cir. 1980) (Navy leasing of temporarily inactive shipbuilding facility did not need to analyze impacts from baseline that assumed no shipbuilding operations; Navy only needed to analyze impacts unique to the new tenant as compared to prior use). An agency has discretion as to how to determine those conditions or to deviate from this norm under appropriate circumstances. See e.g., *American Rivers v. Federal Energy Regulatory Commission*, 201 F.3d 1186, 1194 (9th Cir. 2000).

The CEQA baseline for assessing significance of impacts of any proposed project is normally the environmental condition at the time a Notice of Preparation (NOP) is issued (State CEQA Guidelines Section 15125[a]). This directive was interpreted and applied by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439 (*Neighbors for Smart Rail*). There, the court reiterated that “[t]he CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades” (*Id.*, 455). According to the court, for such a project, “existing conditions constitute the norm from which a departure must be justified—not only because the CEQA Guidelines so state, but because using existing conditions serves CEQA’s goals in important ways” (*Ibid.*). Therefore, while a lead agency has the discretion to deviate from an existing conditions baseline (in favor of a future baseline in the case of *Neighbors for Smart Rail*), “the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value.”

In *Communities for a Better Environment v. South Coast Air Quality Management District (CBE)*, the California Supreme Court concluded that a project should be compared to “actual environmental conditions existing at the time of CEQA analysis” even if actual development or activity “already exceeded that allowed under the existing regulations.” *Communities for a Better Environment v. South Coast Air Quality Management District Dist.*, 48 Cal. 4th 310, 321, 326 (Cal. 2010) (“CBE”); *Association of Irrigated Residents v. Kern County Board of Supervisors*, 17 Cal.App.5th 708, 723–731 (1017). Where the project at issue includes elements authorizing existing conditions, lead agencies are given discretion as to how to analyze those existing impacts. For example, in *Fat v. County of Sacramento (Fat)*, the state court of appeal held that the existing environment was the proper baseline under CEQA regardless of whether existing environmental conditions were the result of unpermitted activity. 97 Cal. App. 4th 1270, 1281 (Cal. Ct. App. 2002). In *Fat*, an airport expanded unlawfully from a dirt strip, one hangar, and four to five planes in 1971 to a 2,000-foot paved runway, a second 19,000-foot gravel runway, twenty-two hangars, a flight school, and an estimated 30,000 annual aircraft operations by 1992. *Id.* at 1273–1274. In 1997, a pilots’ organization applied for a conditional use permit for the airport. *Id.* at 1274. The purpose of the permit was to legalize the existing use at the airport; the permit did not include any planned expansion of the airport except for converting certain parking areas to hangars. *Id.* The court of appeal held that the “norm” is for an agency to use the actual environment as its baseline, regardless of whether the environment is the result of unpermitted activity, and that the plaintiffs had failed to demonstrate that the agency had abused its discretion by not deviating from this norm. *Id.* 1278, 1280–1281.

During the process to develop the 2008 shorezone regulations, TRPA surveys concluded approximately 4,454 buoys existed on Lake Tahoe. These buoys included those permitted by TRPA as well as buoys not permitted by TRPA that were: (1) permitted by the Nevada Division of State Lands, (2) under lease from the California State Lands Commission, (3) permitted by the U.S. Army Corps of Engineers, or (4) not permitted by any agency. The buoys not permitted by TRPA include buoys that were in Lake Tahoe before TRPA began

regulating the shorezone in 1972 and buoys placed thereafter. By using the existing conditions as the environmental baseline, TRPA included a number of unpermitted buoys on the lake during the buoy count. TRPA did so because it could not with a reasonable degree of certainty determine which, how many, or when those buoys were placed.

During litigation over the EIS for the 2008 shorezone regulations, the Ninth Circuit found that TRPA could have used existing conditions as the baseline but that it had not adequately justified its choice. As described above, several CEQA baseline cases have been decided that essentially confirm the Ninth Circuit’s reasoning that a lead agency like TRPA has discretion in choosing where to set its baseline for an EIS but should justify its choice with evidence in the record. In light of these authorities, TRPA determines here the baseline conditions and the appropriate scope of the proposed action to measure against the baseline.

For most purposes, the environmental baseline in this EIS reflects conditions in 2016, when the planning process leading to this Shoreline Plan and alternatives was initiated. Where data on the environmental conditions in 2016 is incomplete, this EIS incorporates the most recent available data as a proxy for 2016 conditions.

However, this EIS incorporates an alternative baseline condition related to the number of existing buoys on Lake Tahoe. A 2016 buoy survey conducted by TRPA identified a total of 4,690 mooring buoys on the lake (TRPA 2017), some of which are unpermitted. These unpermitted buoys consist of those which were not already established on Lake Tahoe by 1972 (the year in which TRPA was established) and have not since received a permit from TRPA or a federal or state agency with appropriate jurisdiction (i.e., U.S. Army Corps of Engineers, California State Lands Commission, or Nevada Division of State Lands). TRPA has estimated that there are 490 such buoys on Lake Tahoe. These buoys have not undergone previous environmental review and cannot be “grandfathered” into a permit because they were in place prior to 1972. These existing unpermitted buoys may or may not be eligible to receive a permit under the various Shoreline Plan alternatives. If these buoys were to receive a permit under an adopted Shoreline Plan alternative, they would count toward the maximum number of buoys analyzed in this EIS. If these buoys fail to receive a permit they would be removed through the TRPA buoy enforcement program. Consequently, TRPA has determined that these buoys should not be counted when considering the baseline scenario against which the Shoreline Plan impacts are evaluated in this environmental review. The baseline buoy count is therefore 4,200 buoys. TRPA has vetted the proposed buoy baseline through both the Shoreline Steering Committee and the Regional Plan Implementation Committee and has received endorsement from both of these committees.

3.4 BUILDOUT CONDITIONS

Because the Shoreline Plan would govern implementation and management of shorezone structures over the long term, environmental effects would occur incrementally as structures are developed and redeveloped over time. It is not meaningful to speculate on the exact characteristics, location, or timing of future projects that would be proposed pursuant to the Shoreline Plan, nor on the precise nature or degree of environmental impacts associated with such projects. This analysis makes reasonable assumptions about the environmental effects of the Shoreline Plan at the point at which those effects would be greatest: after construction of all shoreline structures that could be authorized under each alternative.

This analysis assumes that all structures that could be authorized under each alternative would be developed by the year 2040. This reflects an approximately 20-year planning horizon and it is the soonest point at which all piers authorized under the proposed Shoreline Plan (Alternative 1) could be developed based on the pier allocation provisions of that alternative. This analysis presents a “worst-case-scenario” in that it assumes that every structure that would be potentially allowable would be constructed. Factors such as site-specific constraints, property owner desires and financial considerations, and development right retirement programs, would likely result in fewer structures being constructed.

Alternatives 1, 3, and 4 include numeric limits on the number of structures that could be authorized, and the analysis assumes that all potentially authorized structures would be built. Alternative 2 does not include a numeric cap on the number of structures that could be built. Instead, the maximum number of structures would be limited by the number of parcels that meet eligibility criteria for new structures – namely those parcels that can place structures outside of prime fish habitat. To estimate maximum buildout of Alternative 2, TRPA performed a GIS analysis to identify parcels that meet eligibility criteria including being adjacent to areas of shorezone that do not include prime fish habitat based on the most recent fish habitat mapping data (Appendix A).

Because the number of shorezone structures (e.g., boat ramps and moorings) is assumed to directly affect the level of boating activity, the environmental analysis also includes levels of boating activity that correspond to buildout estimates. While precise levels of existing boating activity are not known, a reasonable estimate of boat use typically associated with each type of mooring and access point (i.e., boat ramp or marina) was prepared by the Joint Fact-Finding Committee (Appendix A). This estimate is based on boat use data collected at Lake Tahoe, including boat use monitoring by TRPA, boat inspection and registration data, boat engine-hour meter readings, and boater surveys. When the estimate of typical boat use per mooring or access point (measured in boat trips and engine-hours) is applied to the inventory of existing moorings and access points, it provides an estimate of existing boat trips and engine-hours. This estimate of boat use per mooring or access point was applied to the maximum number of structures that could be developed under each alternative to generate an estimate of boat use at buildout conditions.

3.5 CONTENTS OF ENVIRONMENTAL ANALYSIS CHAPTERS

Discussion of each technical topic is contained in Chapters 4 through 16. Chapter 17, “Cumulative Impacts,” contains a discussion of impacts in the context of other reasonably foreseeable actions in the Region that may contribute to cumulative impacts.

The issues evaluated in Chapters 4 through 17 include environmental topics potentially affected by the Shoreline Plan alternatives. Chapters 4 through 16 of this EIS are organized into the following major subsections:

- ▲ **“Introduction”** provides introductory text pertaining to each technical topic.
- ▲ **“Regulatory Setting”** presents the applicable regulatory framework and planning context for the specific technical issue.
- ▲ **“Affected Environment”** describes the existing regional conditions relevant to the specific technical issue.
- ▲ **“Environmental Consequences and Mitigation Measures”** identifies and describes the methods and assumptions used in the analysis, the criteria used to determine the significance of environmental impacts, the potentially significant effects of implementing the Shoreline Plan alternatives, and feasible mitigation measures that could reduce potentially significant impacts.

Project impacts are numbered sequentially in each chapter. An impact statement provides a summary of the impact and its level of significance for each alternative. This summary statement is followed by a more detailed discussion of each impact topic, organized by alternative, and includes the analysis, rationale, and substantial evidence upon which conclusions are based. Mitigation measures are set forth to reduce any identified potentially significant effects, and the level of significance after mitigation is described.