

Appendix B

Comment Letter Attachments

**Letter A1: California Attorney General
Proposed Revisions to
Section 84.6.2(B)(3)(1) of the Final Draft
Amended Shorezone Ordinances**

ATTACHMENT A

Attachment A

From Ch. 84.6.2 (B)(3): **Major Projects.** Major projects may be approved if TRPA makes the following findings:

a. All requirements for minor projects as set forth in subsection (1) are met; and

b. The following environmental improvements have been completed at the marina:

(vi) Provision of facilities related to boater education of 600-foot no wake zone, boater safety, and clean boating practices, and early implementation at California marinas of SB 941;

(ii) Installation of stormwater BMPs that treat runoff volumes above existing TRPA and, if in California, Lahontan RWCQB requirements, provided that the proposed BMPs are, at a minimum, proportional to the proposed project impacts; and

(iii) Provision of dedicated access for non-motorized boaters; and

c. One or more of the following environmental improvements has been completed at the marina or is included in the proposed major project:

(i) Demonstration of water flow improvements, if applicable;

(ii) Reduction of aquatic invasive species habitat conditions;

(iii) Reduced need for dredging;

(iv) Provision of a boating rental and operations fleet that meets or exceeds the most current EPA and/or CARB standards;

(v) Access improvements pursuant to the Americans with Disabilities Act;

~~(vi) Provision of facilities related to boater education of 600-foot no wake zone, boater safety, and clean boating practices;~~

(vii) Provision of public access to marina fueling and/or pump-out stations;

~~(viii) Installation of stormwater BMPs that treat runoff volumes above existing TRPA and, if in California, Lahontan RWCQB requirements, provided that the proposed BMPs are, at a minimum, proportional to the proposed project impacts;~~

(ix) Provision of additional scenic improvements, such as screening of storage racks;

(x) Provision of existing boat ramps for public use. If a ramp is not functional for motorized boating due to low lake level conditions, provide access for non-motorized boaters;

~~(xi) Provision of dedicated access for non-motorized boaters;~~

(xii) Provision of non-motorized boat storage for public;

(xiii) Installation of an electric charging station for cars;

(xiv) Reduction of on-site coverage; or

(xv) Implementation of a green infrastructure project.

c. For a major project that proposes expansion of use by 20 or more mooring structures, all applicable improvements listed in subsection (2)(b) above shall be required before the major project can commence. For a major project that proposed expansion of use by less than 20 mooring structures, the greater the number of moorings proposed the greater the number of applicable improvements listed in subsection (2)(b) above shall be required before the major project can commence.

Letter A2, California State Lands Commission, Attachments

PROPOSED AMENDMENTS TO SHOREZONE PROVISIONS IN THE TRPA CODE OF ORDINANCES



MAY 8, 2018

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AGENDA ITEM NO. V.A

Code Amendment Reference Guide

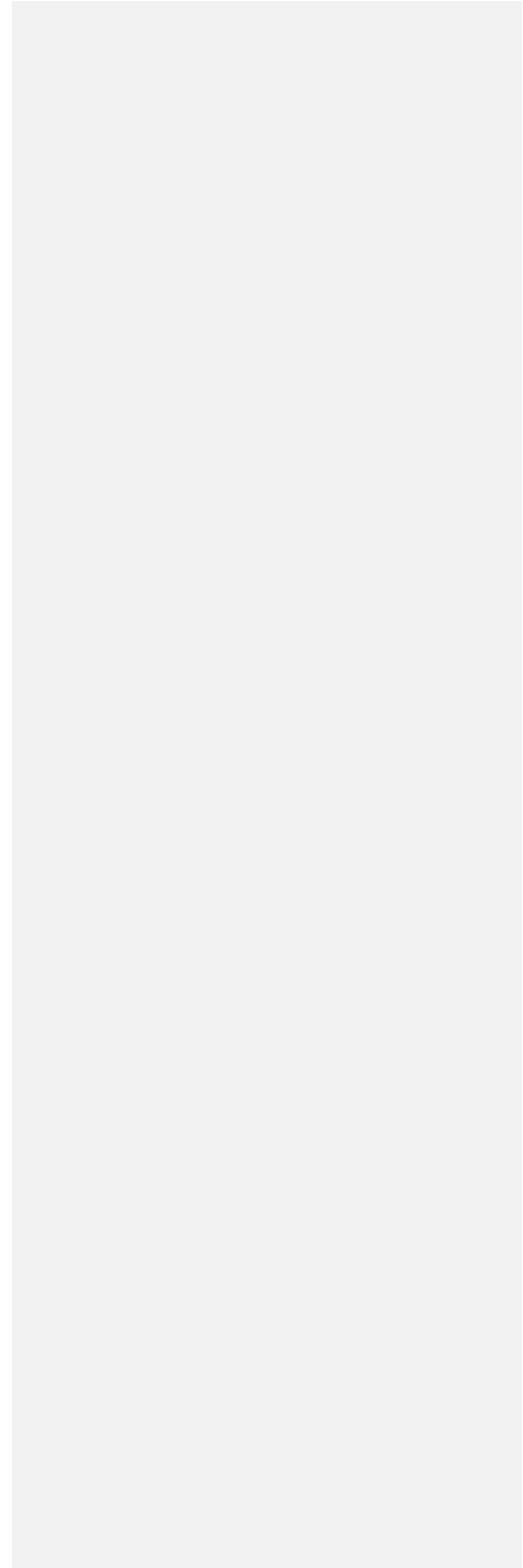
The proposed Lake Tahoe Shoreline Plan updates regulations focused on structures to support water-dependent recreation within the Lake Tahoe shoreline and effective resource management to ensure environmental threshold attainment. The proposed amendments to the Tahoe Regional Planning Agency (TRPA) Code of Ordinances implement the policies proposed under Alternative 1 analyzed in the Draft Shoreline Plan Environmental Impact Statement (DEIS).

A reference guide to compare existing code provisions to those proposed is included in Table 1, *Code Chapter Organization and Content* and Table 2, *Policy-Code Crosswalk*. The majority of the provisions contained in Shorezone Chapters 80-85 have been revised and reorganized and these amended chapters are provided in full at the end of this document. Amendments proposed to provisions in remaining chapters are shown in Table 3, *Proposed Amendments to Chapters 2, 10, 14, 50, 63, 66, and 90*.

The existing TRPA Code of Ordinances can be reviewed at:

<http://www.trpa.org/regional-plan/code-of-ordinances/>

Current Code	
CH. 80: Review of Projects in the Shorezone	
CH. 81: Permissible Uses and Structures in the Shorezone and Lakezone	
CH. 82: Existing Structures	
CH. 83: Shorezone Tolerance Districts and Development Standards	
CH. 84: Development Standards Lakeward of High Water	
CH. 85: Development Standards in the Backshore	
CH. 86: Mitigation Fee Requirements	



Other Chapters		
Current		
CH. 2: Applicab		
CH. 10: TRPA Regional Plan		
CH. 14: Specific and		
CH. 50: Allocation of		
CH. 63: Fish Resources		
CH. 66: Scenic Quality		
CH. 90: Definitions		



Description of Substantive Amendments in Chapters 80-85

Mooring Allocation, Permitting and Development Standards: Section 84.3 of the draft Code sets allocation and permitting rules for new buoys and other moorings. Development standards are differentiated between buoys within or outside of buoy fields, and by individual parcel, homeowner's associations, and marinas. Provisions are included to allow adaptation for low lake level.

Pier Allocation, Permitting and Development Standards: Section 84.4 of the Code creates a phased program to permit new piers. Allocation of piers is distributed by geographic quadrant. Development standards are differentiated between multiple use and single use piers, with priority given to those piers that retire future pier development rights.

Marinas: The requirement for a marina master plan has been removed and replaced with Section 84.6 that provides specific marina development standards. Provisions are made for low lake adaptation and flexibility in design. Environmental improvements are required at marinas based on the scale of the project and increase in capacity.

Dredging: Section 84.9 was revised to apply standards similar to state and federal requirements for new dredging in marinas, public health and safety facilities and public boat ramps.

Watercraft Concessions: Under Section 84.10.2 of the revised ordinance, all existing concessions would be required to come under permit with TRPA; temporary permits would no longer be issued for yearly operations. Motorized boat rentals would only allow be permitted at marinas, with boats required to be moored on permitted buoys or buoy strings. Storage racks would be allowed for non-motorized concessions provided they meet screening requirements.

Low Lake Level Adaptation: Section 84.3.3 allows individual buoys and buoy fields to be moved further lakeward during low water. Section 84.6.2 and 84.9.3 gives marinas the flexibility to use temporary pier extensions and buoy anchors during low lake level conditions.

Mitigation Requirements: The Shoreline Plan EIS identifies mitigation measures needed to ensure that the program would not result in significant environmental impacts. Mitigation measures incorporated into the code include the following:

- A requirement for non-motorized navigation around public piers longer than 600 feet (Section 84.4.3.D)
- Littoral drift analyses for piers with floating sections longer than 25 ft (Section 84.4.3.A.9)
- An aquatic invasive species management plan requirement for all marinas (Section 84.6.2.B)
- Scenic mitigation for buoys (Section 84.3.3.C)
- Color standards for piers (Section 84.4.3.A.5)

Exempt/Qualified Exempt: Chapter 82 was revised to include exempt and qualified exempt activities, which will replace those shorezone-specific standards currently in Chapter 2 of the code.

Table 2 Policy-Code Crosswalk

Policy Recommendation		
MOORINGS		
Mooring Applicability		
Moorings per Littoral Parcel		
Mooring of Motorized Boats		
Boat Slips		
Mooring Conversion		
Marine Railways		
BUOYS84.784.3.3 Mooring Buoys includes eligibility and		
Buoys - Enforcement		
Buoy Allocation		
Buoy Permitting		
Buoys not withi		
Legally Existing		
Buoy Fields (including marinas)		



Private Harbors	NA	84.3.3(F) Low Lake Level Adaptation. Allows additional permanent anchor blocks to accommodate low water conditions or inaccessibility.
Buoys associated with Concessions	Current definition 81.5.14	Definition in 81.5.14 amended. Concessions section included in 84.10.2
PIERS	84.5	84.4 Piers. Includes: Applicability, Eligibility, Development Standards, Allocation and Permitting
Piers-Applicability	NA	84.4.3(A)(7) Fish Habitat Mitigation refers to Mitigation section 84.11
Private Pier Distribution	NA	84.4.4 Allocation and Permitting
Pier Definitions	90	Definitions added/revised in CH. 90
Pierhead line	84.5.1.D, 10.3.1	Revised language added to CH. 90 as well as 10.3.1.E.
General -Pier	84.5	84.4.3 Development Standards
Incentives for Multiple - Use Pier	NA	84.4.3(C) Additional Standards for Multiple-Use Piers
Eligibility Restrictions	Littoral Parcel definition in CH. 90	84.4.2 Eligibility
Public Water Intakes	81.5.13, 81.3.1, 81.4	Added: 84.4.3(A)(3)
Allocation and Distribution of Potential New Piers	NA	84.4.4 Allocation and Permitting
Prioritization	NA	84.4.4(C)(2) Permit Review Priority for Multiple-Parcel Piers; also addressed in 84.4.3(F) Expansion or Modification of Existing Piers.
Scenic BMPs	CH. 66	Reference to Ch 66 and requirement for Scenic BMPs added to 84.4.3(A)(4) under General Standards. Included cross reference to Level 3 in Chapter 66.
Multiple Use Design Standards	84.9	84.4.3(C) Additional Standards for Multiple-Use Piers
Single Use Design Standards	84.5	84.4.3(B) Additional Standards for Single-Use Piers; Chapter 90 updated w/revised definitions
Public Piers	84.9 Multiple Use Facilities	84.4.3(D) Additional Standards for Public Piers
Commercial and Tourist Accommodation Piers	84.9 Multiple Use Facilities	84.4.3(E) Additional Standards for Commercial and Tourist Accommodation Piers

Pier Relocation and Transfer	CH. 84 Location standards	84.4.3(G) Relocation and Transfer of Existing Piers. Definitions added to Chapter 90.
Pier Conversion	84.5.1.C	Added in Boat Ramps section, 84.5.3(F) covers conversion of an existing boat ramp to a pier.
Expansion of Existing Piers	CH. 84	84.4.3(F) Expansion and Modification of Existing Piers. Also included section in Marinas for extension of existing piers.
Modification of Existing Piers	CH. 82	84.4.3(F) Expansion and Modification of Existing Piers
Mitigation	<p>CH. 86 Mitigation Fee Requirements-based on fisheries</p> <p>Fees and mitigation are currently described in partial permitting program- see website application materials: http://www.trpa.org/permitting/permit-applications/</p> <p>Scenic Mitigation requirements included in Ch. 66</p>	<p>Chapter 86 deleted</p> <p>Chapter 84.11 Mitigation added/moved based on original Section 84.4, Fish Habitat and Spawning Study; applies generally to all projects undertaken in fish habitat.</p> <p>84.4.3(A)(7) Fish Habitat Mitigation. References also in 84.5.3(B) for boat ramps.</p> <p>Included cross reference to Level 3 in Chapter 66.</p>
Floating (Swim Platforms) BOAT RAMPS	CH. 90 definition for Floating Docks or Platforms	<p>84.8.1 Floating Platforms. No change made to Chapter 90 (none necessary).</p> <p>New Section 84.5 Boat Ramps</p> <p>84.6.3(D) –Boat ramp section added for marinas.</p>
Boat Ramps	84.6 and Marina Master Plan Guidelines	<p>84.5.3 Development Standards; largely taken from vacated code.</p> <p>84.5.4 Allocation</p>

MARINAS

Revised Section 84.6 Marinas: Applicability, Eligibility, Development and Use Standards, Permitting

Marina applicability	Marina Master Plan Guidelines and 84.13 Referenced in other location of the TRPA Code 14.4, 39.2, 66.3	Reference removed in 14.4. Reference modified in 39.2.3.L. Noted in "Applicability" under Section 84.6.1 84.6.2 Eligibility. Defines minor and major marina projects. Furthermore, subsection B, Required Findings, outlines necessary and optional environmental improvements for marina projects. No more requirement for master plan guidelines. 66.3.6 Ok as reference to marina master plan as some marinas may be operating under an existing or may propose a marina master plan
Marina definitions	NA, Marina Master Plan Guidelines	Definition in 81.5.6 revised based on definition in master plan guidelines



Dredging	84.15.3 and CH. 4, 2-5-5	84.9 Filling and Dredging – Applicability, Eligibility, Development Standards
Overnight Anchoring	NA	84.10.1(A) Overnight Anchoring – in Other Activities and Uses. Existing sections in 84.17 Motorized Watercraft included under new 84.10 Other Activities and Uses
No Wake Zone	84.17	84.10.1(C) No Wake Zones. Per consolidated policy document, no wake zone maintained at 600 feet from waterline; Emerald Bay zone added.
Concessions	81.3.2	84.10.2 Water Oriented Outdoor Recreation Concessions: Applicability, Eligibility, Development and Use Standards
Non-motorized boating	NA	84.10.2(C)(2) under Development and Use Standards for concessions. 84.6.2(B)(3) – list of major project requirement to include environmental improvements. This includes items related to non-motorized boating (ix), (x), and (xi)
Personal Watercraft	NA	Definition added to Chapter 90
Other Structures	84.12	From consolidated policy doc and reference to 84.12, this is about jetties/breakwaters/etc. Added to new section 84.7 Shoreline Protection: 84.7.2(A) Eligibility.

Low Lake Level Adaptation	84.5.1	84.3.3(F) – applies to buoys 84.5.3(D) and (E) – applies to boat ramps 84.6.2(A) – applies to mooring structures in marinas 84.9.3(B) – applies to dredging Low lake level adaptation not provided for piers in consolidated policy document.
Direct Access towards Marinas and other Public Ramps	NA	84.6.2 Eligibility
Tolerance Districts and Permissible Uses	CH. 83	No changes made
Public Trust Easement in CA	NA	Statement added in 84.4.4(F), MOU Requirement in Piers section
Tahoe Keys	NA	See statements of clarification made in 84.2.1, Applicability.
Green Infrastructure	NA	Added as an example environmental improvement for marinas – 84.6.2(B)(3)(b)(xv).
Environmental Improvement	NA	84.6.2 Eligibility. Defines minor and major marina projects. Furthermore, subsection B, Required Findings, outlines necessary and optional environmental improvements for marina projects. Emphasis placed on including additional environmental improvements depending upon project scale.
Structural Repair	82.3	Definitions of minor and major structural repair moved to CH. 90 and updated.
Fish Habitat	82.4.5, 84.4, 10.3.1, 63.3.1	Removed from CH. 82. 84.4 replaced with new mitigation section 84.11. Edit made to Section 63.3.1. Update 10.3.1 map to include official title of updated TRPA fish habitat layer
Mitigation fees	86.3, 4, 5	Chapter 86 removed; New mitigation Section 84.11 does not reference fees.

Commented [A1]: Recommend statement to be added in 80.3.2.H. referencing the proposed MOU.

Permissible Uses- Reference to Area		
Mitigation Fees		
Maps		
Allocation of Development		
Exempt and Qualified MISC. RECOMMENDATIONS Definitions		
Construction in Shorezone		
Tour Boats/Commercial Vessels		

Table 3-Proposed Amendments to Chapters 2, 10,14,

Code Section		
2.3 Exempt Activities (Shorezone)		
10.3.1. A Regional Plan Map Layers		
14.4 Eligible and Required Plans		
50.11 Allocation of Shorezone Structures		

		84.3 Mooring Structures
		84.4.Piers
63.3.1 Fish Resources-Lake Habitat	63.3.1.E The physical alteration of the substrate in areas of prime fish habitat is prohibited unless approved by TRPA.	63.3.1.E The physical alteration of the substrate in areas of prime fish habitat is prohibited unless approved by TRPA. shall be mitigated.
66.3.3.C Levels of Scenic Mitigation	Level 3 All projects on existing visible structures in the shoreland altering or increasing the lakefront façade area 20 percent or less and the result is 1,500 square feet or less of lakefront façade or non-repair projects on structures adjacent and lakeward of the shoreland. The mitigation requirements for this level shall be the implementation of scenic BMPs in the shoreland. The BMPs shall bring the project area into conformance with a minimum contrast rating score of 21 except where:	Level 3 All projects on existing visible structures in the shoreland altering or increasing the lakefront façade area 20 percent or less and the result is 1,500 square feet or less of lakefront façade or non-repair projects on structures adjacent and lakeward of the shoreland, including pier structures per subsection 84.4.3(A)(4). The mitigation requirements for this level shall be the implementation of scenic BMPs in the shoreland. The BMPs shall bring the project area into conformance with a minimum contrast rating score of 21 except where:
66.3.6 Marina Master Plans	Marina Master Plans In developing and approving marina master plans pursuant to Chapter 14: <i>Specific and Master Plans</i> , the applicant shall use the contrast rating/visual magnitude system outlined in Appendix H, Visual Assessment Tool, of the Design Review Guidelines or an equal or superior method of evaluating scenic impacts. All significant scenic impacts shall be identified in the environmental document using an approved scenic impact analysis methodology and mitigation measures shall be proposed and incorporated into the master plan to ensure consistency with attainment and maintenance of environmental thresholds.	Marina Master Plans and Projects In developing and approving marina master plans pursuant to Chapter 14: <i>Specific and Master Plans</i> , and projects within marinas the applicant shall use the contrast rating/visual magnitude system outlined in Appendix H, Visual Assessment Tool, of the Design Review Guidelines or an equal or superior method of evaluating scenic impacts. All significant scenic impacts shall be identified in the environmental document using an approved scenic impact analysis methodology and mitigation measures shall be proposed and incorporated into the master plan or project to ensure consistency with attainment and maintenance of environmental thresholds.

Average Peak Use		
Beach Replenishment		
Berth		
Boat Launching Facility		
Boat Slip		
Catwalk		
Commercial Boating		
Essential Public Health and		
Expansion		

Littoral Parcel	A parcel of land adjoining or abutting the high water elevation of a lake	A parcel of land with fee ownership extending waterward to the high water mark.
Marina	NA	Marina See subsection 81.5.6.
Mooring	NA	Mooring A place where a watercraft is held fast with cables, lines, or anchors.
Non-contiguous parcels	NA	Non-contiguous parcels Parcels that are not adjacent parcels and whose boundaries do not touch.
Personal Watercraft	NA	Personal Watercraft Watercraft less than 13 feet in length designed to be operated by a person or persons sitting, standing, or kneeling on the craft rather than within the confines of a hull, and with a maximum capacity of three (3) people.
Pier	A fixed or floating structure extending from the backshore to beyond the line marking the high water elevation of a lake.	A fixed or floating structure intended as a landing or temporary mooring for watercraft and either extending from the backshore to at least 10 feet beyond the line marking the high water elevation of a lake, or extending into Lake Tahoe to a depth of 6,226.1 feet Lake Tahoe Datum, or a functionally similar depth on other lakes in the Region.
Pier, Multiple-parcel	NA	Pier, Multiple-parcel A pier that retires pier development potential through deed restriction on one or more littoral parcels. A multiple-parcel pier may be built to either single- or multiple-use pier development standards.
Pier, Multiple-use	NA	Pier, Multiple-use A pier that serves more than one parcel.
Pier, Single-parcel	NA	Pier, Single-parcel Also referred to as a single-use pier. A pier that serves one littoral parcel, and that retires no development potential as part of a pier application process.
Pier Relocation	NA	Pier Relocation The replacement of an existing pier with a new pier in a different location on the same parcel.
Pier Transfer	NA	Pier Transfer The replacement of an existing pier with a new pier on a different parcel.

	NA	Pierhead Line A line established on the adopted shorezone maps of TRPA and digitized for all areas around Lake Tahoe.
Pump-out Facilities	NA	Pump-out Facilities Pump-out facilities consist of the equipment needed to pump or otherwise receive and transfer contents of vessel holding tanks into a sewage retention and/or disposal system approved by the permitting organizations.
Revetment	NA	Revetment Sloping structure armored with stone or other material through which water may pass.
Stacked Storage	NA	Stacked Storage Stacked storage refers to boats that are stored ashore, on racks or other structures either outdoors or inside a storage building, that can be retrieved for launching on demand or by reservation.
Tour Boat Operation	NA	Tour Boat Operation Commercial use of a vessel rated by the U.S. Coast Guard for more than 30 passengers, where such passengers board and unboard at a single site.
Unserviceable	NA	Unserviceable Unserviceable shall be defined as a structure that can no longer serve the function for which it was designed. In calculating the time period that a structure has been unserviceable, the period of time shall not be counted when TRPA was restrained from accepting applications for repairs to structures in the shorezone due to the preliminary injunction filed on August 9, 1984 in the matter of State of California/ League to Save Lake Tahoe v. TRPA.



TRPA

Code of Ordinances

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Shorezone

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CHAPTER 80: REVIEW OF PROJECTS IN THE SHOREZONE AND LAKEZONE

80.1. PURPOSE

The Shorezone Subelement, Conservation Element of the Goals and Policies identifies special qualities, including physical, biological and visual, that shall be considered when reviewing a project in the shorezone or lakezone. In accordance with those policies, this chapter sets forth findings that must be made by TRPA prior to approving a project in the shorezone or lakezone.

80.2. APPLICABILITY

All projects and activities in lagoons or the shorezone or lakezone of any lake in the Region shall comply with the provisions of this chapter.

80.3. REQUIRED FINDINGS

80.3.1. Findings Required for Lakezone, Shorezone, and Lagoon Projects. No project or activity within the lakezone, shorezone, or lagoon of lakes in the Region, shall be approved unless TRPA makes all the applicable findings listed below.

80.3.2. Findings for All Projects.

- A. General Environmental Findings.** TRPA must analyze and make the required environmental findings pursuant to Chapter 3, *Environmental Documentation*. In addition, such environmental findings must demonstrate that the project will not adversely impact:
1. Littoral processes;
 2. Fish spawning;
 3. Backshore stability; or
 4. On-shore wildlife habitat, including wildfowl nesting areas.
- B. Accessory Facilities.** TRPA must find that there are sufficient accessory facilities to accommodate the project.
- 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

Commented [A2]: CSLC Suggests that impacts to access is a consideration TRPA should continue to make. The impacts on the CA side may be mitigated via the CSLC-TRPA MOU. Access both to the shore and along the shore, is an important component of shorezone planning.

CHAPTER 80: REVIEW OF PROJECTS IN THE SHOREZONE AND LAKEZONE
80.3 Required Findings

littoral parcel; or that modifications of such existing uses or structures will be undertaken to assure compatibility.

- D. **Water Dependent Use.** TRPA must find that the proposed use in the lakezone, nearshore, foreshore, or lagoon is water-dependent.
- E. **Hazardous Materials.** TRPA must find that measures will be taken to prevent spill or discharges of hazardous materials.
- F. **Construction.** Construction and access techniques will be used to minimize disturbance to the ground and vegetation.
- 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.
- H. **Other Agency Comments.** TRPA must find that it has solicited comments from those public agencies having applicable jurisdiction over the lakezone, shorezone, and lagoon, and that all comments received from such agencies were considered prior to taking action on the project.

Commented [A3]: CSLC suggests that reducing or eliminating conflicts between motorized and non-motorized craft is a key component of navigation and safety.

Commented [A4]: CSLC suggests this section reference the CSLC – TRPA MOU.

80.3.3. Additional Findings for Special Use Projects.

- A. The project, and the related use, is of such a nature, scale, density, intensity, and type to be appropriate for the project area, and the surrounding area.
- B. The project, and the related use, will not injure or disturb the health, safety, environmental quality, enjoyment of property, or general welfare of the persons or property in the neighborhood, or in the Region.
- C. The project, and the related use, will not change the character of the neighborhood, detrimentally affect or alter the purpose of any applicable plan area statement, community, redevelopment, specific, or master plan.

80.3.4. Additional Findings for Public Outdoor Recreation Facilities Creating Coverage or Permanent Disturbance in the Backshore.

- A. The project is a necessary part of a public agency's long range plans for public outdoor recreation.
- B. The project is consistent with the recreational element of the goals and policies.
- C. The project, by its very nature, must be sited in the backshore.
- D. There is no feasible alternative that avoids or reduces the amount of land coverage or disturbance proposed in the backshore.

CHAPTER 80: REVIEW OF PROJECTS IN THE SHOREZONE AND LAKEZONE
80.4 General Standards for Shorezone Projects

80.3.5. Additional Findings for Public Service Facilities Creating Coverage or Permanent Disturbance in the Backshore.

- A. The project is necessary for public health, safety, or environmental protection.
- B. There is no reasonable alternative that avoids or reduces the amount of land coverage or disturbance in the backshore.

80.3.6. Additional Findings for Coverage or Disturbance in the Backshore Created to Allow Access to Structures or Uses in the Nearshore or the Foreshore. The amount of land coverage is the minimum that is necessary when all Thresholds are taken into consideration to provide access to an approved or an existing structure or use located in the nearshore or foreshore.

80.4. GENERAL STANDARDS FOR SHOREZONE PROJECTS

In addition to applicable requirements elsewhere in Chapters 80 through 86, projects in the shorezone shall meet the following standards.

80.4.1. Vegetation. 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.

80.4.2. Special Project Conditions. Any special project conditions of approval shall be guided by the unique characteristics of the project area, and the nature of the backshore (utilizing Policies 1 and 2, Goal #1 of the Shorezone Subelement, Conservation Element of the Goals and Policies), as well as the following objectives:

- A. The protection of significant vistas.
- B. The preservation of the site and shorezone from environmental harm during and after construction.
- C. Protection of views of adjoining development.
- D. Providing sufficient space for proper infiltration of runoff and nutrient uptake through natural processes.

80.4.3. Backshore Coverage and Land Disturbance.

- A. No additional coverage or permanent land disturbance shall occur in the backshore unless it is for an authorized shorezone permissible use or accessory structure.
- B. The impacts from authorized coverage and disturbance must be mitigated through the application of BMPs, and the restoration at the rate of 1.5 times the backshore area covered or permanently disturbed by the project. Said restoration shall be in-

Commented [A5]: CSLC suggest the General Standard "Public Access" used in the vacated 2008 ordinances should remain in some form. Some possible language is:

Public Access:

(1) Prior to the approval of any new, expansion, or reconstruction project in the shorezone of the State of California TRPA shall consult with California State Lands Commission, as required in subsection 80.3.2.H, to determine whether the project may adversely impact legal public access.

(2) Nothing in this Section shall be construed as creating a public trust easement between high and low water within the State of Nevada or otherwise affecting the sovereignty of either the State of Nevada or California on the public trust issue.

CHAPTER 80: REVIEW OF PROJECTS IN THE SHOREZONE AND LAKEZONE
80.4 General Standards for Shorezone Projects

kind in the backshore and shall comply with the restoration standards in Chapter 30.

- C. The allowable base land coverage in the backshore is one percent (1%). However, it shall only be utilized outside of the backshore portion of the parcel unless it is for an authorized shorezone permissible use or accessory structure.
- D. No erosion control projects that create coverage or permanent disturbance in the backshore shall be permitted unless:
 - 1. The project, program, or facility is necessary for environmental protection; and
 - 2. There is no reasonable alternative that avoids or reduces the extent of encroachment in the backshore.

80.4.4. Projects in Fish Habitat. All projects undertaken in areas identified as, and adversely affecting, "Spawning Habitat" or "Feeding and/or Escape Cover Habitat" on TRPA's Prime Fish Habitat Map, as of the effective date of the ordinance adopting this Chapter, as amended or areas meeting the applicable definition for "Spawning Habitat" or possessing similar characteristics for "feeding and/or escape cover habitat" shall comply with the provisions for mitigation set forth in Section 84.11 of Chapter 84.

80.4.5. Topline Fishing. No projects shall be permitted if such project shall create significant adverse impacts to topline fishing access that cannot be mitigated. TRPA shall make this determination in consultation with California Fish and Game and Nevada Division of Wildlife.

80.4.6. Projects that May Impact Historical/Cultural Resources. Projects that may impact historical/cultural resources shall comply with the mitigation, construction and survey measures in Chapter 29. Where appropriate, TRPA shall require signage to educate the public that explains the importance of the historical/cultural resources and the sensitivity to disturbances. However, in lieu of the above, at mapped historical Washoe Indian resource sites, TRPA shall, in coordination with the Washoe Tribe, provide educational materials to property owners aimed at encouraging protection of the resources associated with the sites. Adequate setbacks from TRPA's designated, mapped, or eligible (pursuant to Chapter 29) historic sites, including submerged sites, shall be established in consultation with an qualified archaeologist, and if a Washoe site, the Washoe tribe.

80.4.7. Recreation Projects. All projects classified as recreation use shall be required to submit an operating plan or equivalent document demonstrating that spatial conflicts with other recreational uses will not be significant as a result of the project. TRPA shall ensure that shorezone recreational projects are designed to avoid overuse and to avoid conflicts between recreation users.

80.4.8. Projects that May Impact Sensitive or Uncommon Plants. Projects that have the potential to detrimentally impact sensitive or uncommon plants shall comply with

**CHAPTER 80: REVIEW OF PROJECTS IN THE SHOREZONE AND
LAKEZONE 80.4 General Standards for Shorezone Projects**

the mitigation, construction, and survey measures listed in Chapter 61, Section 61.3.6, and the Tahoe Yellow Cress Conservation Strategy. Where appropriate, TRPA will require interpretive signs to educate the public, designated trails through high-use areas, and/or fenced enclosures to protect vulnerable plant populations.

- 80.4.9. Review of Support Facilities.** Whenever review of a structure, use, or activity is required by the terms of this chapter, such review shall encompass the structures, uses, and activities in the backshore, nearshore, foreshore, and on the adjacent littoral parcel to ensure adequacy of all facilities related to the structure, use, or activity.

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CHAPTER 81: PERMISSIBLE USES AND STRUCTURES IN THE SHOREZONE AND LAKEZONE

81.1. PURPOSE

This chapter sets forth the allowable uses and accessory structures in the shorezone and lakezone. The concept of "use" includes any activity within the Region, whether related to land, water, air or other resources of the Region. The primary uses are classified as "allowed," "special," and "nonconforming." The applicability of such classification to a parcel is determined by reference to the applicable plan area statement and map, community plan, redevelopment plan, and specific or master plan. Generic primary uses and accessory structures for the shorezone and lakezone are set forth in Section 81.4. Provisions applicable to continuing existing uses in the shorezone and lakezone are set forth in Section 81.6.

81.2. APPLICABILITY

All existing and proposed uses within the shorezone, lakezone, and lagoons within the Region shall be identified as one or more of the primary uses listed in this chapter, except for parcels that are undeveloped or unimproved. Such parcels shall be considered vacant parcels. Vacant parcels are entitled to apply for a use pursuant to the provisions of this Code. Dispersed water-oriented outdoor recreational uses, as described in subsection 81.4.3, are considered an established primary use on littoral parcels.

81.3. CLASSIFICATION OF USES AND STRUCTURES

Primary uses are classified as "allowed (A)," "special (S)," and "nonconforming." Any use that is not an allowed use, a special use, or a nonconforming use as defined in this section is prohibited, with the exception of temporary uses, structures, and activities authorized pursuant to Chapter 22.

81.3.1. Allowed Uses

Uses listed in applicable plan area statements, community plans, redevelopment plans, specific or master plans or subsection 81.4.1 as "allowed" ("A") are appropriate uses for the specified area, and projects and activities pursuant to such uses may be permitted. Allowed uses are assumed to be compatible with the direction of the Regional Plan and surrounding uses.

81.3.2. Special Uses

Uses listed in applicable plan area statements, community plans, redevelopment plans, specific or master plans or subsection 81.4.1 as "special" ("S"), may be found to be appropriate uses for the specified area, and projects and activities pursuant to such uses may be permitted. To allow a special use, TRPA shall conduct a public hearing in according to the procedures in TRPA's Rules of Procedure. Before issuing an approval, TRPA shall make the following findings:

CHAPTER 81: PERMISSIBLE USES AND STRUCTURES IN THE SHOREZONE AND LAKEZONE
81.4 Permissible Uses AND ACCESSORY STRUCTURES

- A. The project, to which the use pertains, is of such a nature, scale, density, intensity, and type to be an appropriate use for the parcel on which, and surrounding area in which, it will be located.
- B. The project, to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or in the region.
- C. The applicant has taken reasonable steps to protect the land, water, and air resources of both the applicant's property and that of surrounding property owners.
- D. The project, to which the use pertains, will not change the character of the neighborhood, detrimentally affect or alter the purpose of the applicable plan area statement, community, redevelopment, specific, or master plan as the case may be.

81.3.3. Nonconforming Uses

Uses legally commenced prior to the effective date of the ordinance adopting this Chapter, which would be prohibited if new, are nonconforming uses and may be continued, subject to the provisions of Section 81.6. Existing development in a special use category for which the findings in subsection 81.3.2 have not been or cannot be made shall be nonconforming uses. Nonconforming structures are addressed in Chapter 82. Uses legally commenced prior to the effective date of the ordinance adopting this Chapter, which would be prohibited if new, are nonconforming uses and may be continued, subject to the provisions of Section 81.6. Existing development in a special use category for which the findings in subsection 81.3.2 have not been or cannot be made shall be nonconforming uses. Nonconforming structures are addressed in Chapter 82.

81.3.4. Prohibited Uses

Proposed uses not listed in applicable plan area statements, community plans, redevelopment plans, specific or master plans, or subsection 81.4.1 are prohibited. Proposed special uses for which the findings in subsection 81.3.2 cannot be made shall be prohibited uses.

Commented [A6]: 81.3.3.- "uses legally commenced" should be clearly defined in definitions.

Chapter 81 has several subsections referring to "legally commenced use" versus a structure placed without permit. In the past, the distinction between the two was problematic predominately for non-littoral owners who put structures in the lake without authorization.

81.4. PERMISSIBLE USES AND ACCESSORY STRUCTURES

This section identifies the permissible uses in the shorezone and lakezone. Each permissible use is defined in Section 81.5. Any use not listed in Section 81.4 is prohibited. Plan area statements, and community, specific, master, and redevelopment plans establish whether uses are allowed (A) or special (S) in all areas except the lakezone. Subsection 81.4.1 establishes whether uses are allowed (A) or special (S) in the lakezone.

81.4.1. Permissible Uses in the Lakezone

The following list identifies the permissible uses in the lakezone:

- A. Safety and navigational facilities (A).
- B. Salvage operations (S).
- C. Seaplane operations (S).
- D. Tour boat operations (S).

Commented [A7]: Accessory Storage: Restore a subsection for "Accessory Storage" similar to the vacated 2008 code Chapter 51 (Permissible Uses and Structures, Accessory Storage) prohibiting placement and storage beneath or alongside shorezone structures that are not integral to the structure. The storage of paddle boards, kayaks and beach toys adjacent to or under piers can impact the public's lateral access/navigation along the shorezone from going under a pier.

This becomes problematic because CSLC's review for impacts to access is limited to the structure. Storage of accessories could completely negate the access features, thus creating a significant impact.

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AGENDA ITEM NO. V.A

CHAPTER 81: PERMISSIBLE USES AND STRUCTURES IN THE SHOREZONE AND LAKEZONE
81.4 Permissible Uses AND ACCESSORY STRUCTURES

- E. Waterborne transit (A).
- F. Water intake lines (A).

81.4.2. Permissible Uses in the Shorezone

The following list identifies the permissible uses in the shorezone:

- A. Beach recreation.
- B. Boat launching facilities.
- C. Construction equipment storage.
- D. Marinas.
- E. Safety and navigational facilities.
- F. Salvage operations.
- G. Seaplane operations.
- H. Tour boat operation.
- I. Waterborne transit.
- J. Water-oriented outdoor recreation concessions.

81.4.3. Permissible Uses in the Shorezone and Lakezone

Dispersed water-oriented outdoor recreational uses which do not require developed facilities, and which occur in the shorezone or on lakes, such as recreational boating, windsurfing, ballooning, swimming, skin diving, snorkeling, sunbathing, and fishing are allowed uses in the shorezone and lakezone. Rental of equipment and services related to such uses are included in water oriented outdoor recreation concessions. Commercial boating, parasailing, fish habitat restoration, and scientific study projects are special uses in the shorezone and lakezone. Uses resulting from construction of the following structures or facilities are allowed uses in the shorezone and lakezone:

- A. Shoreline protective structures and other erosion control and environmentally oriented projects and facilities in accordance with subsection 85.5.3.
- B. Public service facilities in accordance with subsection 85.5.2.
- C. Public outdoor recreation facilities in accordance with subsection 85.5.1.
- D. Access to the foreshore in accordance with subsection 85.5.4.

81.4.4. Accessory Structures

Commented [A8]: Accessory Structures D. Fences: CSLC would object to the placement or maintenance of a fence below HWL in almost every circumstance.

TRPA must make a finding that the proposed use of the Shorezone or Lakezone must be water dependent. CSLC does not agree that a fence is water dependent. In particular, section 84.7 (Shoreline Protective Structures) describes a standard for fences below HWL.

CHAPTER 81: PERMISSIBLE USES AND STRUCTURES IN THE SHOREZONE AND
LAKEZONE 81.5 Use Definitions

Accessory structures shall be regulated pursuant to the regulations applicable to the primary use upon which they are dependent in accordance with Chapter 21: *Permissible Uses*. The following structures may be permitted in the shorezone as an allowed (A) or special (S) use only if they are accessory to an existing, allowed use located on the same or adjoining littoral parcel. Structures not listed in this section are prohibited. Shoreline protective structures and water intake lines may be permitted independently of a primary use on the littoral parcel:

- A. Boat ramps.
- B. Breakwaters or jetties.
- C. Buoys.
- D. Fences.
- E. Floating docks and platforms.
- F. Piers.
- G. Shoreline protective structures.
- H. Water intake lines.
- I. Storage racks for non-motorized watercraft.

81.5. USE DEFINITIONS

The following uses are defined as set forth below:

81.5.1. Beach Recreation

Recreational use of a beach, supported by developed facilities such as sanitation facilities, parking, picnic sites, piers, boat ramps, floating docks and platforms and mooring buoys.

81.5.2. Boat Launching Facilities

Recreational establishments which provide boat launching, parking and short term trailer storage for the general public. Long-term storage, mooring, and maintenance of boats are included under "marinas."

81.5.3. Commercial Boating

Commercial use of pleasure craft or other vessel on a body of water.

81.5.4. Construction Equipment Operation

The operation of equipment, such as barges, pile drivers, and amphibious vehicles, for the purpose of repairing or constructing structures located in the shorezone.

81.5.5. Construction Equipment Storage

Commented [A9]: It is recommended that this definition be expanded for clarification to include a reference to both private and public recreational use of a beach. Section 81 is very condensed from the 2008 vacated code (prior code section 51). Suggested language for 81.5.1.: "Recreational use of a beach, supported by developed public and private facilities such as residential facilities, sanitary facilities, etc..."

CHAPTER 81: PERMISSIBLE USES AND STRUCTURES IN THE SHOREZONE AND LAKEZONE
81.5 Use Definitions

The storage of equipment, such as barges, pile drivers, and amphibious vehicles, used for the repair or construction of structures located in the shorezone. Construction equipment storage does not include stock piling of materials, except when the equipment is stored on or within other construction equipment.

81.5.6. Marinas

Establishments providing water-oriented services, such as yachting and rowing clubs; boat rentals; storage and launching facilities; sport fishing activities; excursion boat and sightseeing facilities; and other marina-related activities, including, but not limited to, fuel sales and boat and engine repair. Marinas contain water-oriented facilities and structures that are regulated and defined in Chapter 84. Condominiums, hotels, restaurants, and other such uses with accessory water-oriented multiple-use facilities are not considered marinas. Outside storage or display is included as part of the marina use.

81.5.7. Recreational Boating

Noncommercial use of pleasure craft on a body of water, including regattas and speedboat races.

81.5.8. Safety and Navigation Facilities

Structures in the shorezone or lakezone whose purpose is the protection of the public health, safety, and general welfare, such as navigational buoys, lighthouses, scientific monitoring devices, and radio communication devices.

81.5.9. Salvage Operations

The act of bringing a vessel, or its cargo to the water's surface.

81.5.10. Seaplane Operations

Use of a permanent facility for the landing and take-off of aircraft on a body of water. Includes the fueling, maintenance, and storage of such aircraft.

81.5.11. Tour Boat Operation

Commercial use of a vessel rated by the U.S. Coast Guard for more than 30 passengers, where such passengers board and unboard at a single site.

81.5.12. Waterborne Transit

Commercial use of a vessel rated by the U.S. Coast Guard for more than 30 passengers, where such passengers board and unboard at different sites.

81.5.13. Water-Intake Lines

Pipelines and accessory structures, located within a body of water, whose purpose is to draw in and transport water to the backshore or beyond.

81.5.14. Water-Oriented Outdoor Recreation Concessions

Water-oriented outdoor recreation uses, such as food and beverage facilities at public beaches; fishing guide services; parasailing; recreation equipment rental (e.g., boats, wind surfing and beach equipment); but not including, boat slips, boat and engine repair or the sale of fuel.

81.6. EXISTING USES

Existing uses in the shorezone or lakezone shall be regulated as follows:

81.6.1. Right to Continue Existing Uses

Uses legally commenced prior to the effective date of ordinance adopting this Chapter, are recognized as existing uses and may be continued, except as otherwise set forth in subparagraphs 81.6.1.A and 81.6.1.B. Continuation of an existing use includes a change in ownership, tenancy, or management, where the nature and character of the existing use remains substantially unchanged. Short-term or seasonal uses existing pursuant to legally issued TRPA permits may continue only for the duration of the permits authorizing them. Neither this section nor this chapter shall be construed as a limitation upon TRPA's authority to regulate all uses, present or future, by permit, prohibition or otherwise.

Commented [A10]: Critical to have a definition of legally commenced use versus a structure placed without permit. In the past the distinction between the two was problematic predominately for non-littoral owners who put structures in lake without authorization.

A. Nonconforming Uses

If an existing nonconforming use is discontinued for a period of one year or more, any subsequent use shall comply with the use regulations set forth in the plan area statement. Discontinuance of use for periods found by TRPA to be beyond the applicant's control, such as weather caused calamity, governmental seasonal regulations and periods during which TRPA was prohibited by court order from accepting applications for repairs related to the use, shall not be counted in establishing discontinuance of use pursuant to this section.

B. Uses Subject to a Specific Program Requiring Discontinuance or Modification of the Uses

A use subject to a specific program requiring discontinuance or modification of the use shall be discontinued or modified in accordance with the requirements of such program. Such specific programs shall be further defined and adopted by ordinance.

81.6.2. Changes, Expansions, or Intensifications of Existing Uses

Expansions and intensifications of existing uses, or changes in use to the extent permitted by this chapter, are subject to the requirements for a permit set forth in Chapter 2: *Applicability of the Code of Ordinances*. Modifications, expansions and other changes to structures are governed by other provisions of the Code and also are subject to the requirements of Chapter 2.

A. Allowed Uses

CHAPTER 81: PERMISSIBLE USES AND STRUCTURES IN THE SHOREZONE AND LAKEZONE
81.6 Existing Uses

Uses identified as allowed uses may be changed, expanded, or intensified in conformance with this Code. Any change, expansion, or intensification, resulting in a special use, shall be subject to the special use requirements.

B. Special Uses

Uses identified as special uses and for which the required findings pursuant to subsection 81.3.2 have been made by TRPA, may be changed, expanded, or intensified subject to subsection 81.3.2.

C. Nonconforming Uses

Uses identified as nonconforming shall not be expanded or intensified. A nonconforming use shall not be changed unless the new use conforms to the use regulations set forth in this Code. Expansions of structures containing a nonconforming use shall not be permitted. Modifications may be permitted only when TRPA finds that the modifications do not increase the extent of nonconformity.

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Commented [A11]: 81.6.2.C: This provision conflicts with 84.4.3.F.4. (expansion of a non-conforming pier) which would allow expansion of a boathouse (not an allowable use per code) on an otherwise non-conforming pier. Creates more non-conformity and not recommended.

CHAPTER 82: EXISTING STRUCTURES AND EXEMPT ACTIVITIES

82.1. PURPOSE

Policy 11, Goal #1 of the Shorezone Subelement, Conservation Element of the Goals and Policies requires that TRPA regulate the maintenance, repair, and modification of piers and other existing structures in the nearshore and foreshore. Since some existing structures do not conform to the Code standards for new structures, the policy requires that, for maintenance, repair and modification, the Code set requirements, appropriate for the situation, to correct environmental and navigational problems. This chapter sets forth standards in accordance with that policy.

82.2. APPLICABILITY

Structures legally existing in the shorezone or lagoons in the Region prior to the effective date of the ordinance adopting this Chapter, or structures legally constructed after the effective date of the ordinance adopting this Chapter, are recognized as existing structures, provided the structure has not been unserviceable beyond the time limits set forth in subsection 82.7.4. The maintenance, repair, or expansion of existing structures in the shorezone or lagoons shall comply with the provisions of this chapter.

Commented [A12]: Expansion appears out of place in E and QE section. Use of modification is dropped and reconstruction is included later. Please clarify.

82.3. GENERAL PROVISIONS

All activities in the lakezones, shorezones, and lagoons of lakes within the Region shall comply with the following:

- 82.3.1.** An activity which is not specifically exempt (pursuant to Section 82.4), qualified exempt (pursuant to Section 82.5), or a continuation of an existing use (pursuant to Section 81.6), is subject to TRPA review and approval.
- 82.3.2.** All Activities that are not a permissible use (pursuant to Section 81.4), an accessory structure (pursuant to Section 81.4.4), or an existing use (pursuant to Section 81.6) are prohibited.
- 82.3.3.** No project shall be approved unless the applicable findings can be made in compliance with Chapter 84, and no project shall be built unless the applicant pays all applicable fees.
- 82.3.4.** Any maintenance, repair or reconstruction activity pursuant to this chapter shall comply with the shorezone design standards for color and roofs contained in Section 83.11.
- 82.3.5.** An exempt or qualified exempt activity shall not create additional land coverage or relocate any existing land coverage.

82.4. EXEMPT LAKEZONE, NEARSHORE, FORESHORE, AND LAGOON ACTIVITIES

The following activities are exempt from TRPA review and approval:

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CHAPTER 82: EXISTING STRUCTURES AND EXEMPT ACTIVITIES

82.5 Qualified exempt activities

82.4.1. Ordinary maintenance and repair of an existing structure, or the demolition/removal of an existing structure less than 50-years old in a manner that does not affect or disturb the backshore, lake substrate, or Tahoe Yellow Cress habitat. This includes the replacement and repair of windows, doors, siding, roofing, decking, and electrical and mechanical equipment. To obtain possible credit for land coverage or existing development, TRPA verification is required prior to any demolition/removal. An exempt activity must meet all of the following standards:

- A. The structure is in accordance with the design standards in Chapter 83.11;
- B. Temporary construction best management practices are implemented, and all below-water construction activities occur from October 1 through April 30, if the structure is within fish spawning habitat;
- C. No discharge to the waters of the region and no disturbance of the backshore, lake substrate or Tahoe Yellow Cress habitat occurs; and
- D. The structure is legally existing with respect to TRPA requirements and has not been unserviceable for the last three years.

82.4.2. The consolidation of one or more parcels, provided that

- A. A deed restriction that permanently consolidates the parcels is recorded by the affected owners;
- B. No parcel is subdivided or has its boundaries changed (other than by the elimination of the boundary line(s) separating the consolidated parcels); and
- C. No reduction in recreational access occurs through the consolidation.

82.4.3. Water-oriented outdoor recreational (dispersed) uses that do not require the construction of permanent structures.

82.4.4. Water-oriented public service uses that are law enforcement activities that do not require the construction of permanent structures.

82.4.5. Temporary activities which do not create threshold impacts, and which comply with Subsection 2.3.6.

82.4.6. Water-oriented scientific studies and research projects that do not require the discharge of substances or the placement of structures or the disturbance of land or lake bottom in the lakezone, lagoon or shorezone of the Region.

82.4.7. Beach raking activities covered by an MOU entered into pursuant to Section 2.6.

82.4.8. Replacement of buoy floats and chains for buoys permitted by TRPA.

82.5. QUALIFIED EXEMPT ACTIVITIES

No TRPA review and approval is necessary for the following activities if the activity fully meets one or more of the categories in this section and the applicant files a properly completed

CHAPTER 82: EXISTING STRUCTURES AND EXEMPT ACTIVITIES
82.5 Qualified exempt activities

TRPA Qualified Exempt declaration form pursuant to Section 2.3.7 with TRPA at least five working days before the activity begins.

- 82.5.1.** Maintenance, repair, or reconstruction of an existing structure, or the demolition/removal of an existing structure less than 50-years old. Such activities do not include the relocation of existing structures. To obtain possible credit for land coverage or existing development, TRPA verification is required prior to any demolition/removal. Upon the discretion of the Executive Director, TRPA may require special conditions upon submittal of a Qualified Exempt declaration. A qualified exempt activity must meet all the following standards:
- A.** The activity shall not result in a change of use or an increase in the area or dimensions of the structure, including height, width, length or overall area. Any associated excavation, filling or backfilling located above the highwater line (elevation 6,229.1 Lake Tahoe Datum) elevation or the elevation of the equivalent highwater line at other lakes is completed within 48-hours, has a volume of no more than three cubic yards, and is stabilized to prevent erosion. This exemption shall not be construed to exempt a series of excavations that viewed as a whole would constitute a project.
 - B.** No excavation, grading, or filling occurs below the highwater line (elevation 6,229.1 Lake Tahoe Datum or the equivalent highwater line at other lakes). Notwithstanding this limitation, the following activities would not be considered excavation, grading, or filling:
 - 1. Driving or removing piles;
 - 2. Reconstruction or repair of rock crib structures when performed in compliance with all applicable TRPA shorezone BMPs; or,
 - 3. Repair of jetties or breakwaters when performed in compliance with all applicable TRPA shorezone BMPs.
 - C.** The structure is legally existing and has not been unserviceable for the last three years;
 - D.** The activity does not involve the replacement of vertical revetments;
 - E.** The applicant shall submit to TRPA together with the Qualified Exempt Declaration, a Certificate of Completion for water quality BMPs for the project area unless the activity constitutes an emergency repair pursuant to Rules of Procedure Article 5.20, and compliance plans for temporary or construction BMPs;
 - F.** Any impact to fish habitat from the driving or removing of piles is mitigated and any areas of fish habitat previously disturbed by removing piles is restored. In shorezone areas containing spawning gravels, construction can only occur from October 1 through April 30 unless TRPA conducts a site analysis in coordination with other appropriate agencies and finds that the proposed activity will not have a detrimental effect on the spawning habitat, spawning fish, incubating eggs, or fry.

Commented [A13]: CSLC understands that TRPA will be amending the code to include language requiring consultation with CSLC prior to reconstructions.

Commented [A14]: CSLC disfavors the rock crib piers, particularly where they block public access. Note that for the Commission to authorize rebuilding the piers, there must be a finding that the authorized structure does not unreasonably interfere with public access.

Commented [A15]: MISSING former subsection (c): "This exemption shall not be used to phase a project by breaking it into a series of qualified exempt activities where the project would otherwise require a permit". Omitting this language is unacceptable.

CHAPTER 82: EXISTING STRUCTURES AND EXEMPT ACTIVITIES
82.5 Qualified exempt activities

Such analysis and findings shall be incorporated as a Special Condition of the Qualified Exempt activity;

- G. Reconstruction of a jetty or breakwater shall not be considered a qualified exempt activity;
- H. The applicant certifies that it has contacted all appropriate public agencies or private entities, including those to ensure that any element of the activity will not affect any underground utilities. Adaptions made to promote public access after consultations with other agencies that will affect reconstructions under this provision may be included as a qualified exempt activity;
- I. Prior to Qualified Exempt Declaration submittal, the applicant shall request from TRPA or other qualified individual or entity a Tahoe Yellow Cress survey during the growing season immediately prior to the date of proposed activity if the activity will result in impacts to the shorezone landward of lake bottom elevation 6,227 feet Lake Tahoe Datum. The growing season shall be considered June 15th through September 30th. If Tahoe Yellow Cress is found, the permittee shall submit an appropriate plan (flag/avoid or mitigation) to TRPA staff upon Qualified Exempt Declaration submittal. Tahoe Yellow Cress mitigation, if necessary, shall be incorporated as a Special Condition of the Qualified Exempt activity. The applicant certifies that the activity will not adversely affect after mitigation, if necessary, Tahoe Yellow Cress or other sensitive plant species. A Qualified Exempt activity that will not impact the shorezone or backshore landward of 6,227 feet Lake Tahoe Datum shall not be required to conduct a Tahoe Yellow Cress survey; and
- J. The structure is in accordance with the design standards in Chapter 83.11 and development standards in Chapter 84 if it is to be reconstructed.

82.5.2. The demolition of structures 50 years or greater in age, provided that:

- A. The demolition meets all the requirements in subsection 82.5.1.A;
- B. The structure, improvement or facility is not designated, pending or eligible for designation, on the Historic Resource Map; and
- C. The Qualified Exempt Declaration is accompanied by the results of a TRPA historic determination.

82.5.3. The repair or replacement of an existing anchoring device for a mooring buoy authorized by a TRPA permit.

82.5.4. The repair of an existing fence that complies with the applicable standards for fences in Chapter 84.

82.5.5. The repair or reconstruction of legally existing piers, slips, floating swim platforms and shoreline protective structures in Tahoe Key lagoons.

82.5.6. A change in operation that generates less than 100 additional vehicle trips and adds less than five additional motorized watercraft, provided there is no change from one use classification to another, the resulting use is allowed by this Chapter,

Commented [A16]: This is the language TRPA agreed to modify and apply to QE Reconstructions.

Commented [A17]: Sentence was not in the April version.

Commented [A18]: This does not appear to be consistent with the Tahoe Yellow Cress (TYC) Conservation Strategy, which only exempts a TYC survey for activities lakeward of the low water line, or when TYC habitat is not present. How would this protect TYC growing landward of elevation 6,227? This doesn't cover the full habitat range of TYC, which is a listed CA endangered species protected by the CA ESA. Pursuant to the MOU signed by most agencies with jurisdiction in the shorezone of Lake Tahoe (TRPA, CSLC, etc.), these agencies are expected to follow the Conservation Strategy project review guidelines for TYC surveys, which ensures consistency for everyone. Why is the code deviating from this? This is important for pier reconstructions that involve piling removal/replacement well above elevation 6,227, that could adversely affect TYC. This is a significant deviation from the Commission's environmental review process pursuant to CEQA requirements, and indifferent to how other MOU agencies do TYC surveys for projects.

Commented [A19]: Same comment as above.

CHAPTER 82: EXISTING STRUCTURES AND EXEMPT ACTIVITIES

82.6 Loss of exemption

there is no increase in threshold impacts (e.g., noise, water quality, etc.), and the applicant pays the applicable TRPA air quality mitigation fee.

82.5.7. Placement above highwater of signs that relate to navigation, public access, or resource protection and no more than one additional sign for another purpose. All signs shall be up to 12" x 18" in size in accordance with the sign standards in Chapter 38.

82.5.8. Relocation of boulders for navigational purposes provided that the character and habitat function throughout the project area is maintained and the relocation is consistent with Chapter 67. This provision does not apply to removal or destruction of boulders.

82.5.9. Placement above highwater of racks for the storage of non-motorized watercraft by homeowner's associations, provided that screening from the lakeshore and adjacent public roadway, as applicable, is demonstrated.

Commented [A20]: Will this provision allow for placing signs for public access in the easement? Should it maybe be above the low water for this purpose?

Commented [A21R20]: Suggest adding this to provision to delineate HWL as well: "Placement at or above high water line of signs related to public access navigation, or....."

Commented [A22]: Recommend including in the last sentence of 82.5.7. " All signs shall comply with subsection 84.8.5 (Signage) and shall be up to....."

Commented [A23]: This should not be a QE activity, particularly to accommodate private structures; it has not generally ever been allowed by TRPA even with a permit. This should be limited as a public health and safety activity for navigation and/or relocated to Code section 84.9 as a type of lake bottom alteration activity. Check Chapter 90 definition for dredging.

Commented [A24]: CSLC suggest including public providers.

82.6. LOSS OF EXEMPTION

An exempt or a qualified exempt shorezone activity shall lose its exemption and be reclassified as a project if TRPA finds that the activity meets the criteria set forth in Section 2.3.8.

82.7. EXISTING STRUCTURES IN THE NEARSHORE OR FORESHORE

82.7.1. Nonconforming Structures

- A. Structures that were legally established and are used for a conforming use but are nonconforming with regard to applicable location and design standards may continue as legal nonconforming structures and may be maintained and repaired.
- B. Expansion of nonconforming structures shall be prohibited.
- C. Modification of nonconforming structures may be permitted if the modification:
 1. Results in a material net environmental benefit;
 2. Brings the structure into greater compliance with location and design standards;
 3. Does not increase the degree of nonconformance of the structure with any standard; and
 4. In the case of a structure interfering with littoral processes, materially reduces such adverse effects.

Commented [A25]: See comments in 84.4.3 regarding expansion of non-conforming pier (boat houses). This provision contradicts later provision where expansion is allowed on boat houses which are a part of a non-conforming pier.

Commented [A26]: Recommend clearly defining these terms and how they may differ from "uses legally commenced". Recommend defining in Shorezone Code or Chapter 90 as stated previously.

Commented [A27]: 82.7.B. (Existing Structures in the Nearshore and Foreshore), expansion of existing non-conforming structures is prohibited similar to code sections previous shown in previous and subsequent comments. Please clarify.

82.7.2. Compliance with Best Management Practices (BMPs)

No approval shall be granted under the provisions of subsection 82.7.1, unless the project complies with the requirements to install BMPs as set forth in Section 60.4.

82.7.3. Permit Requirement for Mooring Buoys

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CHAPTER 82: EXISTING STRUCTURES AND EXEMPT ACTIVITIES
82.8 Existing Structures in the Backshore

No mooring buoy may be placed or maintained in the waters of the Lake Tahoe Region unless it is authorized by a permit from TRPA.

82.7.4. Mooring Buoys Identification

TRPA approved mooring buoys shall display a TRPA Buoy Identification at all times.

82.8. EXISTING STRUCTURES IN THE BACKSHORE

Repair, reconstruction, modification, expansion, and relocation of existing structures located in the backshore shall be regulated in accordance with the standards set forth in Chapters 21 and 2. When a structure in the foreshore extends into the backshore, that portion of the structure in the backshore shall be regulated pursuant to Section 82.3 and Chapter 85.

CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS

83.1. PURPOSE

Policies 4, 5, 6, and 7, Goal 1 of the Shorezone Subelement, Conservation Element of the Goals and Policies establish management strategies and development restrictions with respect to the eight shorezone tolerance districts described in the 1973 Shorezone Plan for Lake Tahoe. Policy 9, Goal #1 of the Shorezone Subelement requires TRPA to regulate structures in the foreshore and nearshore to avoid interference with the attainment of scenic thresholds. Policy 15, Goal #1 of the Shorezone Subelement permits the designation of shorezones as man-modified and sets forth the findings necessary for designation. In accordance with these policies, this chapter sets forth development standards for the eight tolerance districts, standards for designating shorezones as man-modified, design standards and standards for other related matters.

83.2. APPLICABILITY

All projects and activities within the shorezone shall comply with the regulations and standards applicable within the shorezone tolerance district in which the project or activity is located.

83.3. ESTABLISHMENT AND EFFECT

There are eight shorezone tolerance districts identified along the shorelines of Lake Tahoe, Fallen Leaf Lake, and Cascade Lake. These districts are described in the 1973 Shorezone Plan for Lake Tahoe and are depicted on TRPA Shorezone Tolerance District and Land Capability Overlay Maps, pursuant to Chapter 10: *TRPA Regional Plan Maps*. The 1973 Shorezone Plan was used as a guideline in establishing the use and development standards and regulations as set forth in this chapter.

83.4. PRECISE BOUNDARIES

The location of precise boundaries of shorezone tolerance districts shall reflect the physical and other considerations that led to the classifications of the lands in the districts that the boundary lines separate. Determinations of precise boundaries on a parcel may be made by TRPA as part of a project approval without amendment to the shorezone maps consistent with the procedures for field verification in Chapter 30. Such determinations may not result in a major adjustment of the boundaries (i.e., creation of new districts, elimination of districts, etc.) that would otherwise require an amendment pursuant to Section 83.5. Boundary line determinations shall be consistent with the criteria set forth in the report entitled *Toward a Shore-Zone Plan For Lake Tahoe*, Orme, A.R., 1972.

83.5. SHOREZONE TOLERANCE DISTRICT CHALLENGE

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CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS

83.5 Shorezone Tolerance District Challenge

In the event TRPA or the owner of a littoral parcel is of the opinion the shorezone adjacent to the parcel is not properly classified pursuant to Section 83.3, either may initiate a shorezone tolerance district challenge with respect to such parcel. The person or entity initiating the challenge shall bear the cost thereof. For parcels one acre or less in size, the cost to be charged an owner initiating the challenge shall not exceed an amount prescribed by resolution of the Governing Board.

83.5.1. Team of Experts

A team of experts retained by TRPA shall evaluate the shorezone tolerance district challenge. Depending on the nature of the challenge, the team may include, as determined by TRPA, a geomorphologist, soil scientist, geologist, hydrologist, and fisheries biologist, selected by TRPA. Such persons shall be recognized as possessing special qualifications to evaluate soils, geomorphology, hydrology, fisheries, vegetation and other characteristics and related environmental factors pertinent to the subject shorezone area. TRPA shall consider data provided by experts retained by the owner, and TRPA's team of experts shall comment on the accuracy of the owner's data. No expert retained by the owner shall be a member of TRPA's team.

83.5.2. Shorezone Tolerance District Report

TRPA's team of experts shall prepare a shorezone tolerance district report analyzing the shorezone tolerance district challenge. The report shall include:

- A. A description of the parcel.
- B. Detailed information concerning topography; soil capabilities and limitations; compositional and geometric properties; surface and ground water conditions; geomorphology; vegetation characteristics and related environmental factors pertinent to the subject shorezone area.
- C. An analysis identifying limitations on use and disturbance in the shorezone due to: compositional and geometric properties; surface and subsurface hydrologic conditions; erosion hazard; littoral processes and lake bottom material composition; biological characteristics such as fish, wildlife and vegetation; and visual and aesthetic factors.
- D. Identification by a qualified expert of the shorezone tolerance district generally exhibiting the characteristics of the section of shorezone analyzed in the report.
- E. Additional information required by TRPA to properly assess the merits of the application.

83.5.3. Review of and Action on the Report

The Executive Director shall review the shorezone tolerance district report and, if it recommends no change in shorezone district, may deny the shorezone tolerance district challenge, subject to an appeal to the Governing Board. If the report recommends a change

CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS

83.5 Shorezone Tolerance District Challenge

in shorezone tolerance district, the change shall be approved or denied by the Governing Board. The challenge may be approved if the Governing Board finds that the pertinent shorezone, due to natural characteristics specifically identified, properly belongs in a shorezone tolerance district other than that in which it is presently classified.

83.5.4. Notification Procedure

An appeal of the Executive Director's denial of a shorezone tolerance district challenge and the action by the Governing Board upon a report recommending a change in shorezone tolerance shall be pursuant to notification to affected property owners in accordance with TRPA's Rules of Procedure.

83.5.5. Procedure After Action on Shorezone Tolerance District Challenge

Once TRPA has completed its action on the shorezone tolerance district challenge, it shall:

- A. Give written notification to the owners of all parcels affected by the action taken;
- B. Include the information set forth in the report prepared pursuant to subsection 83.5.2 and the action pursuant to subsection 83.5.3 in TRPA's data base for purposes of Chapter 5;
- C. Recognize the action pursuant to subsection 83.5.3 as superseding the TRPA Shorezone Tolerance District Overlays with respect to the pertinent parcel; and
- D. Affix a symbol to the shorezone tolerance district overlays denoting the action pursuant to subsection 83.5.3 as applicable to all parcels affected by the action.

83.5.6. Amendment of Shorezone Tolerance District Overlay Maps

Amendments to the tolerance district overlay maps shall be processed as amendments to the Regional Plan.

A. Minimum Land Area

Amendments to the shorezone tolerance district overlay maps shall be limited to sections of shoreline that are 400 feet or greater in length.

B. Line Adjustments

Adjustments of existing shorezone tolerance district lines, other than minor adjustments which occur under Section 83.4 shall require amendment to the shorezone tolerance district maps. Such adjustments shall not create new or eliminate existing districts; however, the adjustment may substantially affect permitted uses and apply to more than one property.

C. New Shorezone Tolerance Districts

The creation of a new shorezone tolerance district shall require amendment to the shorezone tolerance district maps. New shorezone tolerance districts shall include all the adjoining land area which exhibits the characteristics of the new district.

83.6. MAN-MODIFIED CHALLENGE

The Shorezone Tolerance District Overlay Maps may be amended for man-modified areas through an amendment of the Regional Plan in the manner set forth in this subsection. The amendment may be initiated by TRPA or the owner of the pertinent land, provided there is sufficient information demonstrating a reasonable possibility the requirements of this subsection can be met.

83.6.1. Team of Experts

A team of experts retained by TRPA shall evaluate the man-modified challenge in accordance with the requirements of subsection 83.5.1.

83.6.2. Man-Modified Report

TRPA's team of experts shall prepare a man-modified report in accordance with the requirements of subsection 83.5.2. In addition to the foregoing information, the report shall contain information showing that the area in question was modified by man's placement of fill, dredging or grading, in so substantial a fashion as to generally exhibit the characteristics of a shorezone tolerance district other than the one depicted for said land on TRPA's Shorezone Tolerance District Overlay Maps. In the case where the shorezone has been so modified that it no longer exhibits characteristics similar to any of the established tolerance districts, the report shall recommend the limitations, standards, and regulations that should be applied within the new tolerance district.

83.6.3. Criteria

An amendment to the shorezone tolerance district maps may be approved only if TRPA finds that:

- A. Further development will not exacerbate the problems caused by development in shorezones that the original tolerance rating was meant to avoid;
- B. The area no longer exhibits the characteristics of the original shorezone tolerance rating;
- C. Restoration of the area is infeasible because of factors such as the cost thereof, a more positive cost-benefit ratio would be achieved by offsite restoration, onsite restoration would cause environmental harm, restoration onsite would interfere with an existing legal use, and the area is not identified for restoration by any TRPA program;
- D. The impacts from further development will be mitigated offsite;
- E. Mitigation to offset the losses caused by modification of the area and pertinent shorezone tolerance district, shall be as follows:
 - 1. Onsite and offsite mitigation;

CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS

83.7 Shorezone Tolerance District 1

2. Pursuant to a maintenance program, including a schedule of maintenance proposed by the owner and approved by TRPA; and
 3. Collection of a security, if deemed necessary by TRPA, to guarantee mitigation; and
- F. The area in question was modified to the extent being recognized prior to February 10, 1972.

83.6.4. Review and Action

The man-modified report shall be reviewed and acted upon in accordance with subsection 83.5.3.

83.6.5. Notification Procedure

Notification procedures shall be in accordance with subsection 83.5.4.

83.6.6. Procedure After Action on Man-Modified Challenge

After action is taken on a man-modified challenge, TRPA shall comply with the provisions of subsection 83.5.5.

83.6.7. Amendment of Shorezone Tolerance District Overlay Maps

Amendment to the shorezone tolerance district overlay maps resulting from a man-modified challenge shall be in accordance with the provisions of subsection 83.5.6.

83.7. SHOREZONE TOLERANCE DISTRICT 1

Shorezone Tolerance District 1 is described and regulated as follows:

83.7.1. Nature of District

The beach that forms the shoreline in these districts is a low sandy barrier that separates the lake proper from marshes and wetlands. Generally, the shorezone is ecologically fragile and any substantial use or alteration can lead to excessive sedimentation, beach erosion, and water turbidity.

83.7.2. Development Standards

In addition to the standards set forth in Chapters 84 and 85, the following standards shall be applicable to Shorezone Tolerance District 1:

- A. Vertical access to the shoreline shall be restricted to planned footpaths which minimize the impact to the backshore.
- B. Vegetation shall not be manipulated or otherwise disturbed except when permitted under Chapter 85.

CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS

83.8 Shorezone Tolerance Districts 2 and 3

- C. No drainage or modification of backshore wetlands shall be permitted.
- D. New development in the backshore of a Shorezone Tolerance District 1 shall be regulated in accordance with the regulations in this Code for stream environment zones.
- E. Replacement of existing land coverage in the backshore of a Shorezone Tolerance District 1 shall be in accordance with the regulations for replacing existing land coverage in stream environment zones.

83.8. SHOREZONE TOLERANCE DISTRICTS 2 AND 3

Shorezone Tolerance Districts 2 and 3 are described and regulated as follows:

83.8.1. Nature of The Districts

The natures of the districts are:

A. Tolerance District 2

Tolerance District 2 is typically volcanic and morainic debris shorezones with slopes 30 percent and over and alluvial soils at nine to 30 percent slopes. Potential for disturbance in the nearshore is high as is potential for erosion and cliff collapse in the backshore.

B. Tolerance District 3

Tolerance District 3 is armored granite shorezones with slopes exceeding 30 percent. The erosion potential is high immediately above the shore, with moderate potential for disturbance in the steep nearshore zone. Removal of vegetation in the backshore may lead to mass movement and erosion.

83.8.2. Development Standards

In addition to the standards set forth in Chapters 84 and 85, the following standards shall be applicable to Shorezone Tolerance Districts 2 and 3:

- A. Permitted development or continued use may be conditioned upon installation and maintenance of vegetation to stabilize backshore areas and protect eroding areas from further destruction.
- B. Projects shall not be permitted in the backshore unless TRPA finds that such project is unlikely to accelerate or initiate backshore erosion.
- C. Access to the shoreline shall be restricted to stabilized access ways which minimize the impact to the backshore.

83.9. SHOREZONE TOLERANCE DISTRICTS 4 AND 5

Shorezone Tolerance Districts 4 and 5 are described and regulated as follows:

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CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS
83.10 Shorezone Tolerance Districts 6, 7, and 8

83.9.1. Nature of Districts

The natures of the districts are:

A. Tolerance District 4

Tolerance District 4 exhibits volcanic rock shorelines with moderate potential for erosion. The potential increases where colluvium of volcanic debris is present and stoney, sandy loams lie on 15 to 30 percent slopes; on morainic debris shorezones with high erosion potential above the shoreline; and alluvial shorezones where the shoreline is characterized by steep, crumbling cliffs with continuing erosion problems.

B. Tolerance District 5

Tolerance District 5 exhibits armored granite shorezones with 15 to 30 percent slopes with less erosion potential than similar lands in Shorezone Tolerance District 4.

83.9.2. Development Standards

In addition to the standards set forth in Chapters 84 and 85, the following standards shall be applicable to Shorezone Tolerance Districts 4 and 5:

- A. Permitted development or continued use maybe conditioned upon installation and maintenance of vegetation to stabilized backshore areas and protect existing cliffs from accelerated erosion.
- B. Projects shall not be permitted in the backshore unless TRPA finds that such project is unlikely to require the cliff area to be mechanically stabilized or that the project will not accelerate cliff crumbling, beach loss or erosion.
- C. Access to the shoreline shall be restricted to stabilized access ways which minimize the impact to the backshore.
- D. Access to buoys shall be designed to cause the least possible environmental harm to the foreshore and backshore.
- E. Access to piers, floating platforms and boat ramps shall be designed to cause the least possible alteration to the natural backshore.

83.10. SHOREZONE TOLERANCE DISTRICTS 6, 7, AND 8

Shorezone Tolerance Districts 6, 7, and 8 are described and regulated as follows:

83.10.1. Nature of Districts

The natures of the districts are:

A. Tolerance District 6

Tolerance District 6 is underlain by weathered volcanic or morainic debris with slopes of five to 15percent.

CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS

83.11 Design Standards Within the Shorezone

B. Tolerance District 7

Tolerance District 7 is comparatively level shorezone underlain by morainic and alluvial materials with slopes of zero to nine percent.

C. Tolerance District 8

Tolerance District 8 is gently sloping, armored granite shorezone with high capability for development. Shorelines are in equilibrium and potential for erosion in foreshore and nearshore is low. Backshore possesses a moderate erosion potential in some cases.

83.10.2. Development Standards

In addition to the standards set forth in Chapters 84 and 85, the standards set forth in subsection 83.9.2 for Tolerance Districts 4 and 5 shall be applicable to Tolerance Districts 6, 7, and 8. The following standards also shall apply:

- A. Vehicular access to the shoreline shall not be permitted except where TRPA finds that such access will not cause environmental harm.
- B. Boat launching facilities and marinas shall be located where the nearshore shelf is of sufficient width to enable construction and use without potential for significant shelf erosion.

83.11. DESIGN STANDARDS WITHIN THE SHOREZONE

Design standards within the shorezone are as follows:

83.11.1. Color

The color of structures, including fences, shall be compatible with its surroundings. Subdued colors in the earthtone and woodtone ranges shall be used for the primary color of the structure. Hues shall be within a range of natural colors that blend, rather than contrast, with the existing vegetation and earth hues. Earthtone colors are considered to be shades of reddish-brown, brown, tan, ochre, umber, sand, and dark green. Colors shall be medium to dark and shall meet the Munsell® Color value as set forth in Appendix G, TRPA Approved Earthtone Colors, of the Design Review Guidelines or other color systems that are equivalent to the adopted hues, values, and chromas of Appendix G. Structures in the shoreland that were constructed prior to January 1, 1950 may maintain their historic colors when doing exempt maintenance and repair.

83.11.2. Roofs

Roofs shall be composed of non-glare earthtone or wood tone materials that minimize reflectivity. Metal roofs shall be compatible with their surroundings and composed of non-glare earthtone colors. Metal roofs colors shall meet the Munsell® Color value as set forth in Appendix G, TRPA Approved Earthtone Colors, of the Design Review Guidelines that have a value and chroma of 0-4 or other color systems that are equivalent to the adopted hues, values, and chromas of Appendix G.

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CHAPTER 83: SHOREZONE TOLERANCE DISTRICTS AND DEVELOPMENT STANDARDS
83.11 Design Standards Within the Shorezone

83.11.3. Fences

Wooden fences shall be used whenever possible. If cyclone fence must be used, it shall be coated with brown or dark green vinyl, including fence poles.

DRAFT

CHAPTER 84: DEVELOPMENT STANDARDS LAKEWARD OF HIGH WATER IN THE SHOREZONE AND LAKEZONE

84.1. PURPOSE

The Shorezone Subelement, Conservation Element of the Goals and Policies requires TRPA to regulate the placement of new piers, buoys, and other structures in the nearshore and foreshore to avoid degradation of fish habitats, creation of navigation hazards, interference with littoral drift, interference with the attainment of scenic thresholds and other relevant concerns. The Goals and Policies also requires TRPA to conduct studies, as necessary, to determine potential impacts to fish habitats and apply the results of such studies and previous studies on shoreline erosion and shorezone scenic quality in determining the number of, location of, and standards of construction for facilities in the nearshore and foreshore. The Shorezone Subelement indicates that provisions should be made to allow multiple-use piers when such uses are intended to reduce the number of single use piers on adjoining properties. This chapter sets forth standards and provisions in accordance with these policies.

84.2. APPLICABILITY

- 84.2.1.** All projects and activities in the nearshore, foreshore, or in lagoons of Lake Tahoe shall comply with the standards and provisions set forth in this chapter, with the exception that the standards and provisions set forth in this chapter shall not apply to the lagoons within the Tahoe Keys Homeowners Association. Development Standards for the lagoon area within the Tahoe Keys Homeowners Association will be established in a memorandum of understanding between TRPA and the Homeowners Association.
- 84.2.2.** Whenever review of a structure, use, or activity is required pursuant to the terms of this chapter, review shall encompass the structures, uses, and activities in the backshore, nearshore, foreshore and on the adjacent littoral parcel to ensure adequacy of all facilities related to the new or expanded structure, use, or activity.
- 84.2.3. Structures and Uses in Lakes and Lagoons other than Lake Tahoe.** All projects and activities permitted by this chapter in the nearshore and foreshore of Lake Tahoe may be permitted by TRPA in other lakes and lagoons in the region pursuant to the permissible use regulations set forth in the plan area in which the project or activity is located. The location, design, and construction standards for such structures shall be determined using the standards in this chapter as guidelines.
- 84.2.4.** Structures and uses subject to this Chapter shall also be subject to all applicable regulations and required approvals by authorities other than TRPA, including state and federal agencies.

84.3. MOORING STRUCTURES

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84.3.1. Applicability

- A. The provisions of this Section apply to the construction of additional mooring structures and to the relocation and conversion of existing mooring structures.
- B. As used in this Section, mooring structures include buoys, boat slips, boat houses, and boat lifts.
- C. For the purposes of this Section, a mooring structure is considered “additional” if it is to be created pursuant to a TRPA approval issued on or after the effective date of the ordinance adopting this Chapter. The following are not “additional” mooring structures:
 - 1. The authorization of a legally existing buoy pursuant to 84.3.3(A)(3) of this Section;
 - 2. The repair, reconstruction, or replacement, in the same location on the same parcel, of a legally existing mooring structure;
 - 3. The modification or expansion, on the same parcel, of a legally existing mooring structure;
 - 4. The relocation of a legally existing mooring structure on the same parcel;
 - 5. The conversion of a legally existing mooring structure to a different mooring structure pursuant to subsection 84.3.2.E;
 - 6. Essential public health and safety facilities, as defined in Chapter 90.

Commented [A28]: CSLC understands that TRPA has agreed to require applicant to consult with and get approval from CSLC prior to reconstruction, replacement or relocation of structures below Low water.

84.3.2. General Standards

- A. **Moorings per Littoral Parcel.** Unless otherwise allowed under this Chapter, a littoral parcel not associated with a homeowner’s association or marina shall be permitted a maximum of two moorings.
- B. **Watercraft per Mooring.** Only one watercraft shall be allowed per mooring, unless otherwise allowed as a permitted concession associated with a marina per subsection 84.10.2, Concessions.
- C. **Boat houses.**
 - 1. Additional boat houses shall be prohibited.
 - 2. Legally existing boat houses are allowed to be repaired and maintained.
 - 3. Modification or expansion of legally existing boat houses may be allowed pursuant to subsection 84.4.3.
- D. **Conversion of Existing Mooring Structures.** Subject to the following conditions, certain legally existing mooring structures may be converted from one type of structure to another.

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1. Converted mooring structures shall comply with all applicable development standards for additional mooring structures in this Chapter.
2. **Allowed Conversions.**
 - a. A serviceable, legally existing marine railway may be converted to a buoy or boat lift. A boat lift converted from a marine railway pursuant to this subsection shall not be subject to the maximum number of boat lifts per single-use pier as set forth in Section 84.4.3(B)(2), not to exceed two boat lifts total per pier. The converted boat lift shall be considered an additional mooring per subsection E below. Conversion of a marine railway to a pier shall be prohibited.
 - b. A legally existing boat slip within a marina or public facility may be converted to a buoy within the same facility, and vice-versa.
 - c. A legally existing buoy may be converted to a boat lift, and vice-versa, consistent with the maximum number of mooring structures and buoys set forth in 84.3.2(A) and 84.3.3(A)(1) of this Section, respectively, and the provisions for additional boat lifts set forth in 84.3.2(E)(5) of this Section.

Commented [A29]: April version had "shall not"

E. Allocation and Permitting

1. **Maximum Number of Additional Moorings.** TRPA may permit up to a maximum of 2,116 additional moorings following the date of adoption of this Chapter.
2. **Allocation of Additional Moorings.** Of the additional moorings authorized in this Section:
 - a. 1,486 moorings shall be used for private moorings as either buoys or boat lifts.
 - b. 330 moorings shall be allocated for use by marinas as either buoys or boat slips.
 - c. 300 moorings shall be allocated for use by public agencies (for use as buoys or boat slips). The Executive Director may utilize this allocation for private applicants once the moorings available under subsection (a) are exhausted and subject to finding that sufficient capacity exists for public agency anticipated use.
3. **Phasing of Applications for Additional Private Moorings**
 - a. **Permit Review Priority.** TRPA shall give first permitting priority to those applicants with previous state or federal approvals or pending project applications with TRPA. Following completion of review for priority applicants, new project applications shall be reviewed in the order they are received.

Commented [A30]: This appears to create a horizon on public agencies' ability to get buoys in the future. We strongly feel that there should not be a time limit on agency actions, which can take considerable time. Certainly, these buoys should not be shifted to private applicants, and there are no criteria for when this is necessary other than the 1,486 have already been used.

Commented [A31]: For state and federal approvals, should consider a cutoff date, such as the date of adoption of the Shorezone Ordinance amendments. The 2008 ordinances used October 22, 2008 (adoption date) for valid state and federal approvals for permitting of existing buoys. This will keep permitting of existing buoys closer to baseline conditions and avoid a tidal wave of applications for buoy authorizations with state and federal agencies. Should perhaps even consider October 22, 2008 as the cutoff date, since buoys permitting under the 2008 ordinances are considered valid.

Commented [A32]: CSLC leases state: Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the Authorized Improvements in this Lease.

TRPA may decide to give current CSLC lessees priority, however, this was not our intent.

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- b. **Homeowners Association Buoy Fields.** From the effective date of the ordinance adopting this Chapter and continuing for five years, new buoy permits for homeowner's associations shall be subject to the following provisions:
 - (i) Only those homeowner's associations with the number of legally existing buoys totaling less than 50 percent of the total number of housing units shall be eligible for new buoys; and
 - (ii) The number of new buoys requested per year shall not exceed 20 percent of the total number of legally existing mooring structures, up to 50 percent of the total number of housing units.
4. **Allocation of New Boat Slips**
 - a. New private boat slips shall be prohibited.
 - b. TRPA may permit new boat slips in lieu of new buoys for marinas and public agencies, subject to the buoy allocation provisions set forth in (A)(1) of this subsection.
5. **Additional Boat Lifts.** TRPA may permit additional boat lifts subject to the total number of moorings allowed in subsection 84.3.2, and the pier development standards in subsection 84.4.3.
6. **Adaptive Management.** Following release of the 2021 Threshold Evaluation Report, TRPA shall review and revise as necessary the allocation of moorings as set forth in this Section. The review of allocation does not include adjustments to the maximum number of additional moorings identified in subsection A.1 above. Subsequent reviews, pursuant to subsection A.1 above, shall occur every eight (8) years thereafter.

84.3.3. Mooring Buoys

In addition to the general standards in 84.3.2 of this Section, mooring buoys are subject to the following standards:

- A. **Removal or Relocation.** The removal of buoy anchors or the relocation of buoy anchors shall follow best management practices.
- B. **Location.** The placement of a mooring buoy shall be prohibited within 200 feet of the stream inlets of the creeks and rivers listed in section 84.4.3.A.1.

Commented [A33]: Is there any standard for how HOAs with more than 50% are treated? Assuming they do not have a current permit, would the additional buoys be treated as "new buoys?" If they already have permits, will they be allowed to keep these non-conforming buoys?

Will the buoy field have to be located in front of parcels the HOA owns? What happens if the littoral parcels are privately owned by HOA members and those parcels have their own buoys? (Tahoe Sierra Estates).

Commented [A34]: There's no substance here to guide this adaptive management. Insert language like, "best ensure conformance with the Shorezone Sub-element, Conservation Element, Goals and Policies"?

Otherwise it seems like updates to the mooring allocations could be completely arbitrary.

- C. Scenic Mitigation.** Each additional buoys shall mitigate a minimum of 83 square feet of visible mass according to the following provisions;
1. In Visually Dominated Areas, as identified on the official TRPA Shoreline Conditions Map, the scenic mitigation ratio shall be 1:1.5;
 2. In Visually Modified Areas, as identified on the official TRPA Shoreline Conditions Map, the scenic mitigation ratio shall be 1:2.0;
 3. In Visually Sensitive Areas, as identified on the official TRPA Shoreline Conditions Map, the scenic mitigation ratio shall be 1:3.0;
 4. The location of scenic mitigation shall occur in the following order of decreasing preference:
 - a. On the littoral parcel and within the shorezone;
 - b. On the littoral parcel and within the upland area;
 - c. On a different littoral parcel within the same unit and within the shorezone;
 - d. On a different littoral parcel within the same unit and within the upland; and
 - e. In a different non-attainment unit.
 5. Alternative to providing on-site or off-site scenic mitigation, an applicant may opt to provide an in-lieu fee as directed by TRPA.
- D. Mooring Buoys Not Associated with a Buoy Field.**
1. **Eligibility.** Private, single-family littoral parcels shall be eligible for mooring buoys according to the following provisions:
 - a. Littoral parcels shall be eligible for a maximum of two mooring buoys per parcel, provided the development standards in subsection (C.2) are met.
 - b. For constricted parcels that are unable to meet the development standards in subsection (C.2), below, TRPA may adjust the spacing requirement from adjacent littoral parcel boundaries on a case-by-case basis.
 - c. Where parcel boundary projection lines within a cove environment prevents a littoral parcel from meeting the spacing requirement from adjacent littoral parcel boundaries per subsection (C.2) below, TRPA may adjust the projection lines on a case-by-case basis to allow up to one mooring buoy on the affected parcel.
 2. **Development Standards.** Mooring buoys not associated with a permitted buoy field shall be located:

Commented [A35]: In the vacated 2010 code, there was a process for consultation with other regulatory agencies before drawing projection lines. This new language has cut out that process. Also, the 2010 code had a requirement that such lines be drawn "in equitable fashion" and that qualifier is also now omitted.

- a. At least 50 feet from another mooring buoy;
 - b. No greater than 600 feet lakeward from elevation 6,220 feet Lake Tahoe Datum, as measured horizontally, or no farther lakeward than elevation 6,210 feet Lake Tahoe Datum, whichever is less; and
 - c. At least 20 feet from adjacent littoral parcel projection line boundaries.
3. **Existing Buoys.** TRPA may authorize existing mooring buoys offshore of a littoral or non-littoral parcel according to the following provisions, notwithstanding the actual number of buoys present offshore of the subject parcel:
- a. TRPA may authorize a maximum of two existing buoys for a littoral parcel with less than 50 linear feet of lake frontage, or three existing buoys for a littoral parcel with 50 linear feet or more of lake frontage; provided:
 - (i) The littoral parcel owner provides a valid buoy permit issued by a federal or state agency with appropriate jurisdiction prior to the date of adoption of this Chapter; or
 - (ii) The littoral parcel owner provides clear evidence of the existence of the buoy(s) prior to February 10, 1972.
 - b. TRPA may authorize a maximum of one existing buoy for a non-littoral parcel, provided:
 - (i) The non-littoral parcel owner provides clear evidence of the existence of the buoy prior to February 10, 1972; or
 - (ii) The non-littoral parcel owner provides a valid authorization from the applicable California or Nevada state agency with jurisdiction at Lake Tahoe.
 - c. Existing buoys shall comply with the development standards in A.2 of this subsection, above, unless TRPA concludes that relocation would create unnecessary additional environmental impacts; that the existing buoy is at least 50 feet from any other buoy or structure; and that the existing buoy does not unreasonably interfere with potential buoy locations on adjacent littoral parcels.
- E. **Buoy Fields.**
1. **Eligibility.**
 - a. No additional buoy fields or the expansion of an existing buoy field for a homeowners association shall be permitted by TRPA. This includes any change in use which increases the development potential of a parcel.

Commented [A36]: In order for safe navigation, the anchor would need to be placed so that the boat swing does not go beyond the 600-foot no wake zone. This is a navigation and safety issue that would require lights on boats beyond 600 feet. Provision needs to address this hazard.

Commented [A37]: What is an existing buoy? Is this previously permitted, or simply already in the water? The criteria for 3 buoys is 50 feet of frontage and a permit OR a photograph? At the very least, this should be a permit AND a clear evidence. Will photos constitute clear evidence? Why not limit this to receipts for purchase or installation predating 1972?

Commented [A38]: Is there any restriction for what non-littoral means? Do they have to own any property near the lake? In the county?

Commented [A39]: Many of the existing buoys owned by non-littoral owners are adjacent to littoral parcels and we know these non-littoral owners can prove their buoys have existed prior to February 10, 1972. However, the code states a littoral parcel can have a maximum of 2-3 moorings (in one place, it says 2, but there appear to be multiple exceptions to this cap). We know of a few littoral parcels that have their own 2 buoys plus several buoys owned by "non-littoral" owners. If TRPA issues permits to non-littoral owners, how do they decide what non-littoral owner gets a permit if there is a max per littoral parcel?

Commented [A40]: This provision needs to say AND not OR. This change opens the door and is not what was in the 2008 code.

Here is what was adopted then vacated in 2008 which we strongly prefer:

For persons who are not littoral parcels owners, TRPA may authorize a maximum of one buoy, if:
(a) that person or predecessor in interest received an approval prior to February 10, 1972 for placement of buoys from either a state or federal agency with appropriate jurisdiction. In the event the pre-1972 buoy approval is from a federal agency, the person must obtain approval for the buoy from the appropriate state agency prior to consideration by TRPA for approval under this section; or,
(b) clear evidence establishes that that person or a predecessor in interest placed the buoy in Lake Tahoe without authorization prior to February 10, 1972 and has subsequently obtained approval from the appropriate state agency.

Commented [A41]: As above, there should be some explanation about how TRPA will mediate between HOAs and littoral owners when both have buoys in front of the same property.

Commented [A42]: How does this relate to the statement above that buoy fields can be expanded if they are less than 50%? This appears to mean no more buoys for HOAs. Are all of the private buoys being allocated to single family properties?

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- b. The total number of homeowners association mooring structures, including buoys within buoy fields, shall not exceed the total number of residential units served by the association.
 - c. The total number of buoys allowed within a buoy field shall not exceed the buoy field capacity within the area defined by the lake frontage, not including side setbacks, multiplied by 300 feet. The capacity within the calculated buoy field area shall be limited by a 50-foot grid spacing pattern.
2. **Development Standards.** The following provisions apply to additional buoys in legally existing buoy fields. TRPA may allow deviation from these standards based on site-specific conditions, including neighboring uses and structures; State agency compliance; Coast Guard consultation; navigation; substrate, including obstacles; or bathymetry. Buoy fields in marinas are also subject to the provisions of 84.6.3.D of this Chapter.
- a. Buoys within a buoy field shall be located at least 50 feet from all legally existing buoys (50-foot grid spacing);
 - b. Buoys within a buoy field shall be located no greater than 600 feet lakeward from elevation 6,220 feet Lake Tahoe Datum, as measured horizontally; and
 - c. Buoys within a buoy field shall be located at least 20 feet from adjacent littoral parcel projection lines boundaries.
- F. **Low Lake Level Adaptation.** TRPA may authorize additional permanent anchor blocks to accommodate low water levels or when harbors are inaccessible due to sediment accumulation, according to the following provisions:
- 1. **Mooring Buoys not within a Buoy Field.** TRPA may authorize one additional anchor block per littoral parcel, for a maximum of three anchor blocks per littoral parcel. The additional anchor block shall be located lakeward of other additional or legally existing buoys to the extent practicable and shall comply with the development standards in A.2 of this subsection.
 - 2. **Buoy Fields.** TRPA may authorize up to one additional row of anchor blocks within an existing buoy field. The additional anchor blocks shall be located lakeward of other additional or legally existing buoys to the extent practicable and shall comply with the development standards in (B)(2) of this subsection.
 - 3. **Buoys Associated with Private Harbors.** TRPA may authorize additional anchor blocks outside of private harbors, as part of an existing buoy field or in exchange for boat slips, for up to two seasons.
 - 4. For a given littoral parcel, buoy field, or private harbor, the total number of mooring buoys attached to anchor blocks shall not exceed the number of

Commented [A43]: Terms “low lake level” and “low water levels” are being used without definition.

mooring buoys permitted by TRPA for the littoral parcel, buoy field, or private harbor.

- G. State and Federal Standards.** In addition to the provisions of this Section, buoys shall comply with the construction specifications set forth in the California Waterway Marking System or as otherwise recommended by the U. S. Army Corps of Engineers or Coast Guard.

84.4. PIERS

84.4.1. Applicability

- A. The provisions of this Section apply, exclusive of marinas, to the construction of additional piers and to the relocation, transfer, modification, or expansion of existing piers. Piers within marinas shall be subject to Section 84.6, Marinas.
- B. Single-use piers, single-parcel piers, multiple-use piers, and multiple-parcel piers shall be defined here as in Chapter 90.
- C. For the purposes of this Section, a pier is considered “additional” if it is to be created pursuant to a TRPA approval issued on or after the effective date of the ordinance adopting this Chapter. The following are not “additional” piers when considering the allocation of additional piers per Section 84.4.4:
 - 1. The repair, reconstruction, or replacement, on the same parcel, of an existing pier;
 - 2. The modification or expansion, on the same parcel, of an existing pier;
 - 3. The relocation or transfer of an existing pier, and
 - 4. The conversion of a boat ramp to a pier, as set forth in Section 84.5, Boat Ramps.

84.4.2. Eligibility

- A. A private littoral parcel shall be eligible for an additional pier provided the following requirements are met:
 - 1. No pier exists on the parcel at the time of project application;
 - 2. Pier development potential on the parcel is not restricted via a deed restriction pursuant to 84.4.4(E) of this Section, or other restrictive policy or covenant;
 - 3. The parcel is not located in a Shorezone Preservation Area;

4. All applicable development standards set forth in 84.4.3 of this Section shall be met; and
 5. If the private littoral parcel has access to an existing homeowner's association pier, the parcel shall be eligible for an additional multiple-parcel pier only and subject to the deed restriction requirements set forth in 84.4.4(E)(2) of this Section.
- B. A littoral parcel owned by a public entity shall be eligible for a new pier provided the requirements set forth in (A) of this subsection are met, with the exception that requirement (A)(3) may be waived subject to environmental review.
- C. A commercial or tourist accommodation use located on a littoral parcel shall be eligible for an additional pier provided the associated upland includes a commercial use and the requirements set forth in (A) of this subsection are met.

84.4.3. Development Standards

A. General Standards

1. The placement of a pier shall be prohibited within 200 feet of the stream inlets of the following creeks and rivers:
 - a. Third Creek;
 - b. Incline Creek;
 - c. Wood Creek;
 - d. Slaughterhouse Creek;
 - e. Upper Truckee River;
 - f. Taylor Creek;
 - g. Tallac Creek;
 - h. Cascade Creek;
 - i. Eagle Creek;
 - j. Lake Tahoe Tributary at Mouth of Paradise Flat;
 - k. Lonely Gulch Creek;
 - l. Meeks Creek;
 - m. General Creek;
 - n. McKinney Creek;
 - o. Quail Creek;
 - p. Madden Creek;
 - q. Blackwood Creek;
 - r. Ward Creek;
 - s. Truckee River;
 - t. Dollar Creek;
 - u. Watson Creek;
 - v. Griff Creek;
 - w. Baldy Creek; and
 - x. Snow Creek.

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2. Within Visually Sensitive Areas, the placement of a pier other than a multiple-parcel pier shall be prohibited.
3. For an additional pier located within one-quarter mile of a public drinking water intake, TRPA shall notify and consult with the appropriate water purveyor(s) as part of the application process.
4. In accordance with the provisions set forth in Chapter 66 for Scenic Quality Review in the Shoreland, a project application for an additional pier shall meet the following requirements:
 - a. The project area shall initially score a minimum of 21 points based on the Contrast Rating System; and
 - b. No later than six months following project application submittal, the project area shall score a minimum of 25 points based on the Contrast Rating System, unless the project applicant demonstrates that a score of 25 points is infeasible.
5. **Pier color.** All new or expanded piers shall be matte medium to dark grey. TRPA may require alternate colors depending on the background view of the project site.
6. **Scenic Mitigation.** Additional piers and expansions of existing piers shall mitigate additional visible mass according to the following provisions;
 - a. In Visually Dominated Areas, as identified on the official TRPA Shoreline Conditions Map, the scenic mitigation ratio shall be 1:1.5;
 - b. In Visually Modified Areas, as identified on the official TRPA Shoreline Conditions Map, the scenic mitigation ratio shall be 1:2.0;
 - c. In Visually Sensitive Areas, as identified on the official TRPA Shoreline Conditions Map, the scenic mitigation ratio shall be 1:3.0;
 - d. The location of scenic mitigation shall occur in the following order of decreasing preference:
 - (i) On the littoral parcel and within the shorezone;
 - (ii) On the littoral parcel and within the upland area;
 - (iii) On a different littoral parcel within the same unit and within the shorezone;
 - (iv) On a different littoral parcel within the same unit and within the upland; and
 - (v) In a different non-attainment unit.
 - e. **Scenic Credits.** Scenic Credits are defined as the difference between the existing visible mass and the proposed visible mass associated with shorezone structures. Banking of scenic credits may be allowed subject to the following provisions:

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- (i) Scenic credits may be used to offset additional visible mass only for projects in the same Scenic Unit; and
 - (ii) Scenic credits may only be used on the parcel on which scenic improvement is achieved.
- 7. **Fish Habitat Mitigation.** Pier construction in spawning habitat shall comply with the mitigation requirements in Section 84.11, Mitigation.
- 8. **Lighting on Private Piers.** Lighting on additional private use piers shall be directed downward and only onto the pier deck, and shall not exceed two feet in height above the deck. Lighting shall be the minimum illumination necessary to ensure safety, and shall comply with all applicable standards set forth in Chapter 36, *Design Standards*. Pier lights for navigational purposes must be approved by the United States Coast Guard and the Army Corps of Engineers.
- 9. **Floating Piers.** Applications for new piers and pier extensions that include floating piers or floating portions longer than 25 feet must submit a site-specific littoral drift and wave analysis which evaluates the sediment movement along the lake bottom during low, mid, and high lake levels. The lake level condition with the greatest effect on littoral transport and backshore stability shall be used to design the floating pier section so that wave heights are not reduced by more than 50 percent and the floating pier section is no greater than 50 percent of the length of the site-specific design wavelength.
- 10. **Accessory Structures.**
 - a. Boatlifts, handrails, and other allowable accessory structures and safety devices shall not extend more than four feet above the pier deck, with the exception of flag poles.
 - b. A maximum of one flagpole is permitted on any private pier. Flag poles shall be medium or dark in color and shall have a value of 4 or less on the Munsell Color Chart. Flagpoles shall have a non-reflective finish, shall be a maximum of 20 feet high above the pier deck and have a maximum diameter at the base of 6 inches.
 - c. Allowable visible mass as set forth in subsections B and C shall include any catwalk but shall exclude the visible mass of a boat lift, watercraft on a boat lift, and other allowed accessory structures.
 - d. Visible mass used to calculate required scenic mitigation for piers as set forth in 84.4.3(A)(5) of this Section shall include all accessory structures, including boat lift and watercraft on a boat lift.
- 11. **Prohibited Structures on Piers.** Superstructures, permanent umbrellas, canopies, storage racks for non-motorized watercraft, plant containers, and furniture other than benches shall be prohibited on piers.

Commented [A44]: This does not seem to make any reference to design modification that facilitate public access (e.g. stairs or ladders). It seems important to acknowledge these accessory structures as permissible and to the extent that they may be subject to scenic requirements.

Commented [A45]: To implement the MOU, we should encourage lateral access structural components for piers, provided they are minimum visible mass necessary, and included as allowable visible mass just like catwalks.

Commented [A46]: See above comment.

12. **Signage.** In addition to the requirements set forth in 84.8.5 of this Chapter, signs on piers shall not be larger than 12 inches high by 18 inches wide by 2 inches thick, unless otherwise required to meet safety regulations. Signs shall not exceed the standard railing height and shall be mounted on railings or on the pier rim joists.

B. Additional Standards for Single-Use Piers

1. **Applicability.** The provisions of this subsection apply to:

- a. Piers on littoral parcels serving one to two residential units on the same parcel; and
- b. Piers on littoral parcels serving a single primary residence with ownership of more than one adjacent vacant littoral parcel. Such piers shall be allocated as multiple-parcel piers pursuant to 84.4.4 of this Section.

2. **Development Standards.** Piers shall be constructed consistent with the following provisions:

- a. Pier orientation shall be perpendicular to the shoreline, as feasible, according to property boundary projection lines;
- b. Piers shall extend no farther lakeward than elevation 6,219 feet Lake Tahoe Datum or the pierhead line, whichever is more limiting. Up to an additional 15 feet in length lakeward may be permitted provided:
 - (i) the project applicant demonstrates that the additional length is necessary for the functionality of the pier, and
 - (ii) average grade of the lake bottom beneath the additional pier length is a minimum of three percent;
- c. Pier width shall be a maximum of 10 feet, not including a catwalk;
- d. Allowable visible mass shall not exceed 220 square feet;
- e. Piers shall be setback a minimum of 40 feet from all other piers, as measured from the pierhead; and
- f. Piers shall be setback from each adjacent property boundary projection line by a minimum of 20 feet.
- g. To permit free circulation of water, piers shall be floating, or shall be built on an open piling foundation, but in no case shall a pier be supported on a foundation that is less than 90 percent open.
- h. Pier decks shall not extend above elevation 6,232.0 feet, Lake Tahoe Datum. Pier decks may extend up to elevation 6,234.0 feet in limited situations where TRPA finds that the additional height is necessary for safety reasons, local wave characteristics that represent a real threat to the integrity of the structure, or to provide lateral public access.

Commented [A47]: This appears to allow virtually all of the piers on the lake to expand 15 feet. There seem to be multiple impacts from this decision, including navigation and non-motorized recreation.

Commented [A48]: CSLC understands TRPA will also include similar provisions for the stairs and cover for a path around the pier on the upland in the relevant sections. On that understanding, no objection.

- i. Catwalks. One catwalk allowed, up to three feet wide and 30 feet long.
- j. Boat lifts. One boat lift allowed per single-use pier. Mitigation depends upon the capacity of the boat lift.

C. Additional Standards for Multiple-Use Piers

1. Applicability. The provisions of this subsection apply to:

- a. Piers on littoral parcels serving three or more residential units on the same parcel, including multifamily housing, condos, and homeowners associations; and
- b. Piers on littoral parcels serving two or more primary residential littoral parcels, subject to the deed restriction provisions in 84.4.4(E) of this Section.

2. Development Standards. Piers shall be constructed consistent with the following provisions:

- a. Length. The landward end of the pier catwalk may extend to elevation 6,219 feet Lake Tahoe Datum or 30 feet lakeward of the pierhead line, whichever is more limiting.
- b. Pier width shall be a maximum of 15 feet, not including catwalks.
- c. Pier orientation shall be perpendicular to the shoreline.
- d. To permit free circulation of water, piers shall be floating, or shall be built on an open piling foundation, but in no case shall a pier be supported on a foundation that is less than 90 percent open.
- e. Pier decks shall not extend above elevation 6,232.0 feet, Lake Tahoe Datum. Pier decks may extend up to elevation 6,234.0 feet in limited situations where TRPA finds that the additional height is necessary for safety reasons or that local wave characteristics represent a real threat to the integrity of the structure.
- f. Allowable visible mass shall be as follows:
 - (i) For a pier serving two primary residential littoral parcels or serving three or four residential units on the same parcel, a maximum of 400 square feet;
 - (ii) For a pier serving three primary residential littoral parcels or serving five to 20 residential units on the same parcel, a maximum of 460 square feet; and
 - (iii) For a pier serving four or more primary residential littoral parcels or serving more than 20 residential units on the same parcel, a maximum of 520 square feet.
- g. Catwalks

Commented [A49]: Multi-use piers should be subject to same additional standard regarding public lateral access as single use piers, see 84.4.3.B.2.h. above.

- (i) Allowed accessory structures include up to two catwalks, subject to the provisions of this subsection.
 - (ii) Catwalks shall be no more than three feet wide.
 - (iii) Catwalk length shall be a maximum of 30 feet for piers serving two primary residential littoral parcels, and a maximum of 45 feet for piers serving three or more primary residential littoral parcels. For a pier serving three or more residential units on the same parcel, catwalk length shall be as necessary to accommodate multiple users, but no more than 45 feet.
- h. Boat lifts
- (i) One boat lift per littoral parcel served shall be allowed, up to a maximum of four boat lifts. Mitigation depends upon the capacity of the boat lift.

D. Additional Standards for Public Piers

1. Public piers shall be designed as necessary to accommodate their intended function, subject to review by TRPA on a case-by-case basis, with the following limitations:
 - a. Pier length shall be contained within the 600-foot no-wake zone and allow for a minimum of 10 feet between the end of the pier and the no-wake zone boundary unless the pier is designed to allow non-motorized recreationists to have lateral access underneath the pier during high lake level conditions; and
 - b. Navigational buoys shall be installed to identify the location of the no-wake zone relative to the pier.
2. Permanent moorage on public piers shall be prohibited, except where permitted for commercial or tourist accommodation watercraft.

Commented [A50]: Public piers should also be subject to that same TRPA review for public lateral access.

Commented [A51]: For public piers associated with a marina, floating piers should be discouraged within 50 feet lakeward of the low water line, to allow passage of non-motorized watercraft under the pier decking and to separate non-motorized uses from motorized uses.

Commented [A52]: Every effort should be made to ensure pier length does not extend beyond the 600-foot no wake zone. Also, the 10-foot buffer between the pierhead and no wake zone may be insufficient if a boat is moored at the pierhead. Suggest increasing the buffer to 20 feet?

Commented [A53]: Should also be subject to the same lateral public access provisions as other piers.

E. Additional Standards for Commercial and Tourist Accommodation Piers

1. Commercial or tourist accommodation facilities eligible for an additional pier under 84.4.2(C) of this Section and deed restricted to be open to the public may comply with the additional standards for multiple-use piers serving four or more littoral parcels, as set forth in (C) of this subsection.
2. Commercial or tourist accommodation facilities eligible for an additional pier under 84.4.2(C) of this Section that are not deed restricted to be open to the public shall comply with the additional standards for single-use piers, as set forth in (B) of this subsection.

- F. Expansion or Modification of Existing Piers.** Subject to the following provisions, a legally existing pier may be expanded or modified. These provisions apply to legally existing piers outside of marinas; expansion or modification of legally existing piers within marinas is subject to 84.6.3(F) of this Chapter.

Commented [A54]: It is our understanding that expansions or modifications within the Public Trust easement or below low water will trigger the MOU process.

1. **Modification of a conforming pier.** An existing pier that conforms to the applicable development standards set forth in this Section may be modified if the modification results in an environmental benefit and is consistent with the applicable development standards set forth in this Section.
 2. **Modification of a non-conforming pier.** An existing pier that does not conform to the applicable development standards set forth in this Section may be modified provided all of the following conditions are met:
 - a. The modification results in a material environmental benefit;
 - b. The modification brings the structure into greater compliance with applicable development standards set forth in this Section; and
 - c. The modification does not increase the degree of nonconformance with any applicable development standard set forth in this Section.
 3. **Expansion of a conforming pier.** An existing pier that conforms to the applicable development standards set forth in this Section may be expanded to the extent allowed by the applicable development standards set forth in this Section.
 4. **Expansion of a non-conforming pier.** An existing pier that does not conform to the applicable development standards set forth in this Section shall not be expanded except if all of the following conditions are met:
 - a. The expansion is limited to an existing boat house and does not increase the extent to which the boat house is non-conforming;
 - b. The expansion shall not increase the functional capacity of the pier;
 - c. The effect of the expansion is to increase the contrast rating of the structure; and
 - d. The expansion is the minimum necessary to accomplish the scenic quality improvement set forth in (c) of this subsection.
- G. **Relocation and Transfer of Existing Piers.** Subject to the following provisions, a legally existing pier may be replaced with a pier in a different location on the same parcel (pier relocation) or with a pier on a different parcel (pier transfer):
1. A legally existing pier may be relocated or transferred to a littoral parcel within the same Scenic Unit or to a littoral parcel within a different Scenic Unit that is in scenic attainment. The transfer of an existing pier to a littoral parcel within another Scenic Unit that is out of attainment is prohibited.
 2. A relocated or transferred pier shall conform with the applicable development standards for an additional pier set forth in 84.4.3 of this Section.

Commented [A55]: Should be a "material net environmental benefit" or net material benefit.

Commented [A56]: Where is the criteria requiring a showing of a material net environmental benefit before a pier is expanded? An expansion is more impactful than a "modification" described above, so why does it appear that there is less of a required showing?

Commented [A57]: CSLC understands boat houses to be a non-conforming use. Thus, expansion of this non-conforming use should be discouraged.

3. Boat lifts transferred to a different parcel as part of a pier transfer shall not be subject to the maximum number of mooring structures per parcel as set forth in 84.3.2(A) of this Chapter.
4. Both littoral parcels involved in a pier transfer (sending and receiving) shall comply with the requirements for Scenic Quality set forth in 84.4.3(A)(4) of this Section.
5. A littoral parcel to which an existing pier is relocated or transferred (receiving parcel) shall comply with the eligibility requirements for an additional pier set forth in 84.4.2 of this Section.
6. A pier relocation or transfer to a less visually sensitive area, including away from a stream inlet listed in 84.4.3(A)(1) of this Section, shall be eligible for one or more of the following:
 - a. Application of development standards for a multiple-use residential pier serving two littoral parcels, as set forth in 84.4.3(C) of this Section; or
 - b. Additional allowable upland visible mass equal to the visible mass of the relocated or transferred pier, consistent with subsection (A)(5) of this Section, Scenic Mitigation, to be used wholly by either the sending or receiving parcel.
7. The following are required components of a pier relocation or transfer project application:
 - a. The legally existing pier shall be fully removed from the sending parcel;
 - b. The area of the former legally existing pier shall be restored; and
 - c. For pier transfer, a deed restriction shall be placed on the sending parcel to extinguish future pier development potential.

84.4.4. Allocation and Permitting

- A. **Maximum Number of Additional Piers.** TRPA may permit a maximum of 10 additional public piers and 128 additional private piers following the date of adoption of this Chapter. Of the maximum number of additional private piers, no more than 20 percent (25 piers) shall be single-parcel piers.
- B. **Permit Release Schedule**
 1. For 16 years from the effective date of the ordinance adopting this Chapter and continuing, a maximum of 12 additional piers shall be permitted every two years, pursuant to the schedule set forth in Table 84.4.4-1.
 2. If fewer than 12 additional piers are permitted in a given two-year period, remaining piers from that two-year allocation shall be available during the subsequent two-year period within their respective multi-use or single-use categories.

Table 84.4.4-1. 16-Year Release Schedule for New Private Piers

a. Implementation Years	Maximum New Private Piers		
	Total	Multiple-Parcel	Single-Parcel
1-2	12	7	5
3-4	12	8	4
5-6	12	9	3
7-8	12	11	1
8-year implementation review per 84.4.4(G)			
9-10	12	11	1
11-12	12	11	1
13-14	12	11	1
15-16	12	10	2
Total	96	78	18

3. Following the initial 16-year period defined in (1) above, TRPA may permit three additional piers for every eight littoral parcels which retired future pier development potential through new deed restrictions, up to the 128-pier maximum listed in subsection A.1.

C. Permit Review Priority

1. **Single-Parcel Piers.** If the number of applications for single-parcel piers received in a given two-year period exceeds the allocation for that two-year period as set forth in Table 84.4.4-1, single-parcel piers shall be permitted by TRPA using a lottery system.
2. **Multiple-Parcel Piers.** Applications for additional multiple-parcel piers shall be reviewed and prioritized according to the following criteria, listed in order of decreasing priority:
 - a. Number of littoral parcels for which the project retires pier development potential within the same Scenic Character Type and the same Scenic Unit as the subject parcel;
 - b. Number of littoral parcels for which the project retires pier development potential; and
 - c. Piers located in less sensitive scenic character types; Visually Dominated is less sensitive than Visually Modified which is less sensitive than Visually Sensitive scenic character type.
 - d. A proposal for an additional multiple-parcel pier on a littoral parcel with access to an existing homeowners association or similar entity multiple-use pier will be assigned lowest priority.

- D. Distribution of Additional Piers.** TRPA shall permit the 128 maximum additional private piers according to geographic divisions and the location of Visually Sensitive Areas as set forth in Table 84.4.4-2.

Table 84.4.4-2. Geographic Distribution of Additional Private Piers on Lake Tahoe.

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84.4 Piers

State	Quadrant	Maximum Additional Private Piers	
		Total	In Visually Sensitive Areas
California	Placer	58	7
	El Dorado	28	6
	Washoe	21	3
Nevada	Douglas/Carson	21	3

E. Deed Restrictions Required.

1. An additional multiple-parcel pier shall extinguish future pier development potential through deed restriction on all parcels served by the pier, including adjacent and non-adjacent parcels, with the exception of the littoral parcel on which the additional pier is permitted.
2. An additional multiple-parcel pier on a littoral parcel with access to an existing homeowners association pier on a different parcel, and serving only one residential unit, shall extinguish future potential pier development as follows:
 - a. If the subject littoral parcel is located outside of a Visually Sensitive Area, future pier development potential shall be retired from a minimum of one littoral parcel;
 - b. If the subject littoral parcel is located within a Visually Sensitive Area, future pier development potential shall be retired from a minimum of two littoral parcels, including one littoral parcel located within the same Scenic Unit as the subject littoral parcel.
3. Retirement of pier development potential pursuant to this subsection shall be established through the recordation by the owner of permanent deed restrictions or other covenants running with the land, reflecting use agreements and development limitations approved by TRPA on the affected properties.

- F. MOU Requirement.** No permits shall be issued for new pier construction, non-exempt modification, or expansion in California until TRPA has a valid agreement with the California State Lands Commission governing pier development activities within the shorezone in California. This requirement for such an agreement only governs and applies to the California side of Lake Tahoe, and in no way affects, or is intended to affect, the Nevada side of Lake Tahoe or the sovereign interests of the State of Nevada.

Commented [A58]: The MOU should apply to all structures with potential to affect public access below high water on the California side. This is particularly true where the MOU is the primary consideration in concluding the proposed codes have no impact to public access. The MOU should also be referenced as a general project finding (80.3.2.H), inclusive of pier reconstructions regardless if they remain as a Qualified Exempt activity.

- G. Adaptive Management.** Following release of the Threshold Evaluation Report, TRPA shall review and revise as necessary the allocation of piers as set forth in this Section every four (4) years under the Threshold Evaluation process as well as every eight (8) years together with a review of buoy permitting activity.

Commented [A59]: Same comments as adaptive management for buoys – needs to be tethered to something.

TRPA Code of Ordinances

84.5. BOAT RAMPS

84.5.1. Applicability

- A. The provisions of this Section apply to the construction of additional boat ramps and to the relocation, modification, or expansion of existing boat ramps, exclusive of marinas.
- B. A boat ramp is considered “additional” if it is to be created pursuant to a TRPA approval issued on or after the effective date of the ordinance adopting this Chapter. The following are not “additional” boat ramps:
 - 1. The repair, reconstruction, or replacement, on the same parcel, of an existing public boat ramp;
 - 2. The modification or expansion, on the same parcel, of an existing public boat ramp; and
 - 3. The relocation of an existing public boat ramp.

84.5.2. Eligibility.

- A. A public littoral parcel shall be eligible for a maximum of one additional boat ramp, provided:
 - 1. No boat ramp exists at the time of project application; and
 - 2. The applicant demonstrates the need for an additional boat ramp.
- B. Additional boat ramps on private littoral parcels are prohibited. Existing boat ramps on private littoral parcels may be maintained and repaired consistent with the provisions set forth in Chapters 80 and 82.

84.5.3. Development Standards

- A. **Location.** The placement of an additional boat ramp shall be prohibited within 200 feet of the stream inlets of the creeks and rivers listed in 84.4.3(A)(1) of this Chapter.
- B. **Fish Habitat.** Additional boat ramp construction in spawning habitat shall be prohibited.
- C. **Water Quality Mitigation.** A water quality mitigation plan that meets the TRPA BMP requirements and that is approved by TRPA shall be required prior to approval of an additional boat ramp.
- D. **Dimensional and Construction Standards.** Additional public boat ramps shall be constructed consistent with the following provisions:
 - 1. **Width.** Boat ramp width shall be a maximum of 24 feet;

2. **Length.** Ramp length shall be the minimum necessary to provide access, including access during periods of low water levels down to elevation 6,220 feet Lake Tahoe Datum;
3. **Gradient.** No boat ramp shall be located where the slope gradient exceeds 15 percent;
4. **Location.** Additional public boat ramps shall be located in areas exhibiting shoreline conditions, including depth and bathymetry that can accommodate access during periods of low lake levels down to elevation 6,220 feet Lake Tahoe Datum; and
5. Excavation associated with boat ramp construction shall be the minimum necessary. Unless TRPA determines it infeasible, construction shall be accomplished by placing a steel grid foundation onto piles and cross members, and by placing pre-cast concrete sections onto the grid or other equally environmentally protective method.

E. Relocation, Modification, and Expansion of Existing Boat Ramps

1. **Relocation.** A legally existing public boat ramp may be relocated to a littoral parcel better suited to accommodate low lake levels, subject to the following provisions:
 - a. The littoral parcel to which the boat ramp is relocated shall comply with the eligibility requirements for a new boat ramp set forth in 84.5.2 of this Section; and
 - b. The relocated boat ramp shall comply with the development standards for new boat ramps set forth in 84.5.3 of this Section.
2. **Expansion.** A legally existing public boat ramp may be extended lakeward in order to operate during periods of low lake levels, provided the applicant demonstrates such extension is feasible and meets the length standards set forth in subsection (D).

- F. Conversion.** A legally existing boat ramp may be converted to a pier, provided the converted boat ramp (pier) and littoral parcel receiving the pier shall comply with the applicable eligibility and development provisions for additional piers set forth in 84.4.2 and 84.4.3, respectively, of this Chapter.

84.5.4. Allocation

- A. Maximum Number of Additional Boat Ramps.** Additional private boat ramps shall be prohibited. TRPA shall permit a maximum of two (2) additional public boat ramps from the effective date of ordinance adopting this Chapter.
- B. Distribution of Additional Boat Ramps.** Additional public boat ramps shall be located in areas that promote geographic distribution of lake access, and to the

extent feasible, shall be associated with clustered development and/or transportation hubs.

84.6. MARINAS

84.6.1. Applicability. The provisions of this Section apply to the modification or expansion of existing marinas. New marinas are prohibited. Marinas with existing approved Marina Master Plans may continue to implement the Master Plans.

84.6.2. Eligibility.

A. Definition of Minor and Major Projects. A proposed modification or expansion to an existing marina not defined as exempt or qualified exempt under Chapter 82 shall be defined as a minor or major project pursuant to this subsection. Those proposed projects not addressed in this subsection shall be subject to definition as minor or major projects by TRPA staff. For the purpose of this subsection, "expansion of use" shall include the addition of new structures or the extension of existing structures.

1. A minor project shall be defined as a project that includes any of the following and does not include any element of a major project as defined in subsection (A)(2):
 - a. Reconfiguration or conversion of existing facilities without expansion of use;
 - b. Establishment of concessionaires without expansion of use;
 - c. Low lake level adaptation, including placement of additional buoy anchors in deeper water and temporary pier extensions, but not including new dredging; or
 - d. Improvements listed in subsection (B)(2)(b) of this Section.
2. A major project shall be defined as a project that includes any of the following:
 - a. Expansion of use;
 - b. New dredging;
 - c. Reconfiguration of existing facilities which results in a change or addition to existing structures without expansion of use;
 - d. Conversions of temporary pier extensions to permanent pier extensions;
 - e. Alterations which accommodate public health and safety access; or
 - f. Establishment of waterborne transit facilities.

B. Required Findings.

Commented [A60]: It might be preferable to set a standard for when a project is considered major and require an EIS. It is still possible to review on a case by case basis and require an EIS under the standard if there are other factors.

1. **Aquatic Invasive Species Management Plans.** All marinas shall prepare and implement an Aquatic Invasive Species Management Plan within three years of the effective date of the ordinance adopting this Chapter. The Management Plan shall, at a minimum:
 - a. Identify strategies to prevent the establishment of invasive macrophytes and Asian clams within the marina or where aquatic invasive species are already present, identify measures to control or eradicate the species, or reduce the potential for their spread;
 - b. Include an aquatic invasive species monitoring and early detection program within the marina and, where feasible, partner with appropriate resource management agencies or organizations; and
 - c. Include a public education component.
2. **Minor Projects.** Minor projects may be approved if TRPA makes the following findings:
 - a. The marina has an approved aquatic invasive species control plan;
 - b. The marina has a current NPDES permit with Lahontan, if applicable;
 - c. The marina has a current lease with State Lands, if applicable;
 - d. The marina has received a Clean Marina Certification recognized by TRPA; and
 - e. The marina has a BMP certificate in good standing from TRPA.
3. **Major Projects.** Major projects may be approved if TRPA makes the following findings:
 - a. All requirements for minor projects as set forth in subsection (1) are met; and
 - b. One or more of the following environmental improvements has been completed at the marina or is included in the proposed major project:
 - (i) Demonstration of water flow improvements, if applicable;
 - (ii) Reduction of aquatic invasive species habitat conditions;
 - (iii) Reduced need for dredging;
 - (iv) Provision of a boating rental and operations fleet that meets or exceeds the most current EPA and/or CARB standards;
 - (v) Access improvements pursuant to the Americans with Disabilities Act;
 - (vi) Provision of facilities related to boater education of 600-foot no wake zone, boater safety, and clean boating practices;
 - (vii) Provision of public access to marina fueling and/or pump-out stations;

Commented [A61]: Should consider a finding that marinas must demonstrate diligent pursuit for AIS management plan implementation. Should also consider a finding for fair share funding contribution for AIS control projects, rather than public money covering the full costs for AIS control projects.

Commented [A62]: Should consider a finding that encourages or provides incentive for marina facilities to be available for public use.

- (viii) Installation of stormwater BMPs that treat runoff volumes above existing TRPA and, if in California, Lahontan RWCQB requirements, provided that the proposed BMPs are, at a minimum, proportional to the proposed project impacts;
 - (ix) Provision of additional scenic improvements, such as screening of storage racks;
 - (x) Provision of existing boat ramps for public use. If a ramp is not functional for motorized boating due to low lake level conditions, provide access for non-motorized boaters;
 - (xi) Provision of dedicated access for non-motorized boaters;
 - (xii) Provision of non-motorized boat storage for public;
 - (xiii) Installation of an electric charging station for cars;
 - (xiv) Reduction of on-site coverage; or
 - (xv) Implementation of a green infrastructure project.
- c. For a major project that proposes expansion of use by 20 or more mooring structures, all applicable improvements listed in subsection (2)(b) above shall be required. For a major project that proposed expansion of use by less than 20 mooring structures, the greater the number of moorings proposed the greater the number of applicable improvements listed in subsection (2)(b) above shall be required.
- C. **Accessory Uses.** Accessory uses in marinas shall be as defined in Chapter 90, *Definitions*. Examples of accessory uses related to marinas include: marine sales and repairs, parking lots, maintenance facilities, employee facilities, secondary residence, water-oriented outdoor recreation concessions such as fishing guide services; parasailing; and recreation equipment rental; bars and restaurants, water-oriented services such as rowing clubs; boat rentals; storage and launching facilities; sport fishing activities; excursion boat and sightseeing facilities; and other marina-related activities, including but not limited to fuel sales and boat and engine repair.

84.6.3. Development and Use Standards

A. General Standards.

1. **Support Facilities.** Any expansion of marina moorage capacity shall provide the following facilities and conditions:
 - a. Public restrooms, fueling facilities, trash receptacles, and pump-out facilities for boat sewage.
 - b. Boat washing facilities connected to a sewer system or an acceptable alternate.

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- c. Gas pumping facilities that include emergency and standard shut-off systems to avoid gas leakage to the lake.
 - d. Adequate parking or active transportation measures to accommodate all uses and activities associated with a marina.
 - e. Water treatment system for lake waters contained within a marina enclosure;
 - f. Driveways and launching ramps shall be kept clean. Any petroleum products, chemicals, or soil removed from such surfaces shall be intercepted to avoid runoff into the lake;
 - g. Marina lighting shall be adequate for safety and security while avoiding glare. Low level light fixtures shall be used;
 - h. Fire extinguishers at intervals specified by local regulations or no more than 200 feet along main walkways. Cabinets for storage of such chemicals shall be painted red for easy identification;
 - i. Piers at marinas shall not be used for permanent moorage; and
 - j. Piers at marinas shall be subject to the provisions for Scenic Mitigation set forth in 84.4.3(A)(5) of this Chapter.
 - 2. **Commercial Facilities.** All commercial and tour boat facilities shall be located at a marina facility.
 - 3. **Fueling Facilities.** Fueling facilities shall only occur within a marina.
 - 4. **Temporary Access during Low Lake Levels.** Temporary floating structures that provide lake access for boats shall be allowed during periods of lake levels below elevation 6,225 feet Lake Tahoe Datum, provided that such structures be removed following a period of six consecutive months of lake levels above elevation 6,225 feet Lake Tahoe Datum.
- B. Applicable Development Standards for Shorezone Structures and Uses.**
- 1. In addition to the provisions of this Section, marinas shall be subject to all applicable provisions for specific shorezone structures and uses set forth in the following Sections of this Chapter:
 - a. Mooring Structures (Section 84.3);
 - b. Shoreline Protection (Section 84.7);
 - c. Other Structures (Section 84.8);
 - d. Filling and Dredging (Section 84.9);
 - e. Other Activities and Uses (Section 84.10); and
 - f. Mitigation (Section 84.11).
 - 2. Unless otherwise specified in this Section, marinas shall not be subject to the provisions for Piers set forth in Section 84.4 or the provisions for Boat Ramps set forth in Section 84.5 of this Chapter.

- C. Mooring Structures.** In addition to the provisions set forth in Section 84.3, **Mooring Structures**, the following provisions apply to mooring structures in marinas.
1. Relocation or conversion of existing mooring structures or construction of new mooring structures in marinas may be designed and operated to accommodate access during periods of low lake levels down to elevation 6,220 feet Lake Tahoe Datum.
 2. **Boat Slips.** Boat slips in marinas shall be subject to the following provisions:
 - a. Support pilings shall be constructed of metal or concrete;
 - b. Decks shall be non-skid or similar surface;
 - c. Main walkway piers should be a minimum of six feet wide to allow the use of carts and allow passing room; and
 - d. Floating finger piers should be a minimum of two feet wide, with additional width provided for fixed finger piers and those supporting double-wide boat slips.
- D. Boat Ramps.**
1. Additional boat ramps shall be prohibited at marinas.
 2. Existing marina boat ramps may be reconstructed, relocated, or modified according to the following provisions:
 - a. Marina boat ramps may be relocated on the same parcel if the relocation is determined to improve water access during periods of low lake levels, all impacts are mitigated to the maximum extent, and the development standards listed in subsection 84.6.3.A are met; and
 - b. Marina boat ramps may be extended lakeward in order to operate during periods of low lake levels, provided the applicant demonstrates such extension is feasible and shall be the minimum necessary to provide reasonable access, down to elevation 6,220 feet Lake Tahoe Datum.
- E. Piers.**
1. **Additional Piers.** Additional piers at marinas shall be subject to the development standards for multiple-use piers serving more than 20 residential parcels, as set forth in Section 84.4.3(C)(2)(b-f) of this Chapter.
 2. **Permanent Extension of Existing Piers.** Permanent lakeward extension of existing piers at marinas may be permitted, subject to the following provisions:
 - a. The pier shall serve the public;
 - b. The proposed pier extension shall not have detrimental impacts to navigation;

- c. All impacts associated with pier extension shall be mitigated;
- d. An existing marina pier may be extended 15 feet lakeward if the substrate slope within the additional length is a minimum of three percent. Additional extensions may be allowed if the average substrate slope in the area being extended is a minimum of three percent; and
- e. The total length of the pier shall not exceed 1,000 feet.

84.6.4. Permitting

- A. Phasing Plan.** As applicable and to the extent feasible, applications for major marina projects shall include a phasing plan for comprehensive marina improvements, including both short- and long-term environmental improvements, low lake level adaptation strategies, and plans for additional capacity.
- B. Monitoring Information Requirements.** Monitoring of water quality, current patterns and intensities, wind patterns, shore alterations, and any other conditions which may be altered by the proposed marina project may be required by TRPA for a reasonable period after completion of project construction. Remedial measures shall be required to mitigate adverse impacts, when necessary.

84.7. SHORELINE PROTECTION

84.7.1. Shoreline Protective Structures

- A. Eligibility.** Shoreline protective structures, as defined in Chapter 90, may be approved by TRPA to prevent erosion in the backshore if TRPA makes the following findings:
 - 1. Structures in the backshore or environmental threshold values will be enhanced by the construction and maintenance of the protective structures;
 - 2. The protection of structures in the backshore or the enhancement of environmental threshold values more than offset the adverse environmental effects of the construction and maintenance of the shore line protective structures;
 - 3. Each protective structure has been designed to be sloping and permeable; provided, however, that this finding is not necessary if TRPA concurrently makes the findings required under subsection (B) below; and
 - 4. Each protective structure has been designed so that backshore erosion on adjacent properties will not be accelerated as a result of the erection of the protective structure.
- B. Development Standards**
 - 1. Sloping permeable revetments are the preferred design for shoreline protective structures. Bulk heads, gabions, and other vertical revetments

Commented [A63]: Projects below high water should be subject to the MOU. Otherwise, there should be some finding that the protective structure does not obstruct lateral access in the foreshore.

shall not be permitted unless, in addition to the findings required under subsection (A) above, TRPA finds that;

- a. A sloping permeable revetment is not feasible; and
 - b. The alternative structure will not cause significant erosion or modification of the foreshore.
2. Where a shoreline protective structure is necessary, it shall be of sufficient strength and depth to prevent movement of backfill materials into lake waters; and
 3. Shoreline protective structures shall be constructed of natural materials to blend with the surrounding backshore or, if man-made materials are necessary, will be of earthtone colors.

84.7.2. Jetties, Breakwaters, Rock Cribs, and Fences

- A. Eligibility.** New breakwaters, jetties, rock cribs, and other similar structures shall be prohibited unless conducted as a component of a permitted environmental improvement project, including an environmental improvement associated with a marina project.
- B. Development Standards.**
 1. Except as provided in (2) of this subsection, jetties and breakwaters shall have openings which allow adequate free circulation of water and sediment.
 2. No jetty or breakwater shall be a solid or nearly solid structure unless the applicant demonstrates that the structure will not interfere with littoral processes, cause shoreline erosion, or harm water quality or clarity and:
 - a. The structure is a necessary part of an approved marina project; or
 - b. The structure is necessary to protect the safety of persons using a public boat launching facility.
 3. The size, number, and locations of openings shall be sufficient to avoid interference with littoral drift, shoreline erosion, harm to underlying land, and harm to water quality and clarity.
 4. Fences in the nearshore or foreshore shall be at least 90 percent open and shall be maintained to be kept free of debris.
 5. Rock and other material for construction of structures permitted under this subsection shall not be obtained within the shorezone or lakezone in the Region.

84.8. OTHER STRUCTURES

84.8.1. Floating Platforms

A. Eligibility

1. A maximum of one floating platform may be permitted per littoral parcel in lieu of a mooring buoy.

B. Development and Use Standards

1. The placement of a new floating platform is prohibited within 200 feet of the stream inlets of creeks and rivers listed in subsection 84.4.3(A)(1).
2. Floating platforms shall not extend beyond lake bottom elevation 6,219.0 feet, Lake Tahoe Datum, or beyond the pierhead line, whichever is more limiting.
3. Floating platforms shall be located at least 20 feet from adjacent littoral parcel projection line boundaries and no closer than 50 feet from another mooring buoy.
4. A floating platform shall be attached to a permanent anchor block.
5. Floating platforms shall not exceed an area of 100 square feet, and shall be a maximum of 10 feet wide by 10 feet long.
6. Floating platforms shall not project more than three feet above the water surface.
7. Anchoring, tethering, or otherwise attaching a floating platform to the backshore or further landward shall be prohibited.
8. Superstructures shall not be permitted on floating platforms.
9. Mooring of motorized watercraft to floating platforms shall be prohibited.

84.8.2. Safety and Navigation Devices. Essential Public Safety Facilities within the Shorezone provide lake access and egress for public safety and emergency response.

- A. New safety and navigational structures may be permitted only upon the recommendation of the Army Corps of Engineers or the U.S. Coast Guard.
- B. One Essential Public Safety Facilities in the Shorezone may be designated within each of El Dorado, Placer, Washoe, and Douglas Counties, and one for the U.S. Coast Guard.
- C. Essential Public Safety Facilities in the Shorezone shall comply with the location, design and construction standards set forth in subsections 84.4.2, 84.4.3(A), and 84.4.3(C) for piers, subsections 84.5.2(A) and 84.5.3 for boat ramps, subsection 84.3.3(A) for mooring buoys, and subsection 84.8.1 for floating platforms; except

that a facility recognized by TRPA as an Essential Public Safety Facility pursuant to this subsection may deviate from location, design and construction standards set forth in the following subparagraphs, when necessary for functionality: 84.4.2(A), 84.4.3(C)(2)(b), 84.4.3(C)(2)(c), 84.5.2(A), 84.5.3(D)(1), 84.3.3(A)(1)(a), 84.3.3.A.2(b), 84.8.1(A)(1), 84.8.1(B)(2), 84.8.1(B)(5).

- D. If an Essential Public Safety Facility ceases to be used for public service, any portion of the structure allowed to deviate from general location, design or construction standards pursuant to this subsection must be removed or brought into conformance with development standards.

84.8.3. Retaining Walls and Erosion Control. Retaining walls and erosion control structures within the shorezone or along the backshore-upland boundary shall comply with the following provisions.

- A. Retaining walls and erosion control structures shall be constructed with natural stone arranged in a natural pattern without hard outlines or straight edges, and shall be laid back at a natural angle of repose. Vertical walls and all other materials shall be prohibited except in the case of emergency where no practical alternative exists, as determined by TRPA.
- B. All walls shall include vegetation that shall be planted in accordance with the TRPA Design Review Guidelines.

84.8.4. Fences.

- A. Fences shall be 90 percent open, and shall be maintained free of debris.
- B. Fences shall not be placed lakeward of the highwater line, unless TRPA determines that such a location is necessary:
1. To protect the health or safety of the general public or to prevent trespass on private property from adjacent areas of public access in the shorezone, but only if a TRPA-approved signage plan has proven ineffective to prevent trespass to protect public health and safety and provided such fence is approved by agencies having jurisdiction; or
 2. To protect sensitive species or identified cultural resources.
- C. Any fence approved below the highwater line shall be designed so that it can be retracted or telescoped landward. Such a fence must be telescoped landward whenever lake levels rise in order to prevent it from extending into the Lake.
- D. A fence extending below the highwater line that was legally existing prior to the effective date of the ordinance adopting this Chapter may be repaired or replaced provided the fence telescopes landward, or is modified to so telescope, and is telescoped landward whenever necessary in order to prevent the fence from extending into the Lake.

Commented [A64]: CSLC would strongly object to a fence below high water in almost every situation. CSLC opposes including "preventing trespass on private property" as a justification.

US ACOE does not permit or grandfather structures that impede navigation below the high water line.

Placement of fences below HWL is also problematic for consistency with Chapter 80 Project Findings, Section 80.3.2: must be water dependent; littoral processes and navigation during high water years, etc. This could present conflicts with TRPA and our lessees in the future.

84.8.5. Signage. Signs in the shorezone shall comply with Chapter 38. Signs that may discourage the use of public access areas are prohibited.

84.8.6. Access Structures. Structures or projects in the backshore that provide access to the nearshore or foreshore shall be sized no larger than necessary to provide safe and functional access and shall meet all applicable mitigation requirements. When feasible, access structures shall be built at grade level.

84.9. FILLING AND DREDGING

84.9.1. Applicability. The provisions of this Section apply to filling and dredging in the shorezone and lakezone. Excavation and grading in the backshore is subject to the provisions of Chapter 33, *Grading and Construction*.

84.9.2. Eligibility

- A. There shall be no fill placed in the lakezone or shorezone, except as otherwise associated with approved bypass dredging, shoreline protective structures, or beach replenishment projects, or otherwise found by TRPA to be beneficial to existing shorezone conditions or water quality and clarity.
- B. New dredging shall be permitted in association with the following facilities only where previous approved uses exist, provided all environmental impacts shall be mitigated:
 - 1. Legally existing marinas;
 - 2. Essential public health and safety facilities; and
 - 3. Public boat ramps, provided the applicant demonstrates that new dredging shall increase the functionality of the boat ramp.
- C. Maintenance dredging shall be allowed according to the following provisions:
 - 1. The maintenance dredging is located in a facility that has been previously legally dredged;
 - 2. The applicant demonstrates that dredging is necessary to maintain an existing use; and
 - 3. The maintenance dredging is limited to the previously dredged footprint.

84.9.3. Development Standards

- A. **Maintenance Dredging.** Maintenance dredging shall comply with TRPA's approved dredging BMPs and shall include the installation of all upland BMPs pursuant to Chapter 60, *Resource Management and Protection*.
- B. **Low Lake Level Adaptation.** In lieu of dredging at marinas, temporary floating structures that provide for boat access may be permitted during periods of low lake levels as set forth in 84.6.3(G) of this Chapter.

Commented [A65]: This continues to be an area of concern as a component of the plan. We don't object to the style in which it is drafted, so much as the basic concept.

Commented [A66]: This section should apply to all lake bottom alteration activities, including trenching (excavation/fill) and armoring of utility lines and public/private water intake lines. Any provisions for boulder relocation should also be included here.

CHAPTER 84: DEVELOPMENT STANDARDS LAKEWARD OF HIGH WATER IN THE SHOREZONE AND LAKEZONE
84.10 Other Activities and Uses

- C. **Artificial Beach Replenishment.** If beaches are to be artificially replenished, only non-organic, chemically, and biologically inert material shall be used. The preferred method of beach replenishment is bypass dredging.
- D. **Disposal of Dredged Material.** Where dredging, other than bypass dredging, is permitted, spoil materials shall not be deposited in the lakezone or shorezone, in wetlands, or within the 100-year floodplain of any tributary to a lake except as provided under 84.9.2(A) of this Section, but shall be deposited in an approved upland location.
- E. **Prohibition of Siltation of Spawning Habitat.** No dredging, filling, or other project may be permitted which results in the permanent siltation of spawning habitat. Disturbances shall not occur between May 1 and September 30. Temporary siltation associated with construction activities may be permitted provided that the spawning area disturbed is subsequently restored within 60 days or before May 1 when the spawning season begins, whichever is sooner.
- F. **Additional Requirements.** New fill and dredging in the shorezone or lakezone shall comply with federal, state, and regional requirements for ensuring protection of Lake Tahoe's water quality and clarity and Outstanding National Resource Water designation, including but not limited to the U.S. Army Corps of Engineers federal standards for new dredging and applicable state permit requirements under sections 404 and 401, respectively, of the Clean Water Act.

84.10. OTHER ACTIVITIES AND USES

- 84.10.1. **Watercraft.** The operation of watercraft shall be subject to the following standards except that operation of watercraft for the protection of public health and safety shall be exempt from the provisions of this Section.
 - A. **Overnight Anchoring.** Watercraft which remain in the shorezone or lakezone overnight shall be moored to legally existing buoys, boatlifts, boat slips, or other legally existing watercraft storage facilities. The following types of overnight mooring, including anchoring, are exempt from this provision:
 - 1. Mooring of construction watercraft in active use for TRPA-authorized construction activities;
 - 2. Mooring of public service watercraft for public health and safety purposes; and
 - 3. Mooring of private watercraft up to 72 hours within a two-week period.
 - B. **Beaching of Motorized Watercraft.** Beaching of motorized watercraft in spawning habitat, as identified by TRPA fish habitat maps, is prohibited during the spawning season.

- C. No Wake Zones.** The following No Wake Zones and associated standards are established:
1. The creation of a wake or speeds in excess of five MPH by motorized watercraft within 600 feet of the waterline of Lake Tahoe shall be prohibited.
 2. Within Emerald Bay, all areas are designated as a no wake zone. The creation of a wake or speeds in excess of five (5) MPH by motorized watercraft within Emerald Bay is prohibited, except that tour boats may be permitted to use speeds up to seven (7) MPH.
- D. Prohibition of Motorized Watercraft on the Tributaries of the Region.** The operation of a motorized watercraft on the tributaries of the Region, exclusive of other lakes in the Region, shall be prohibited. The prohibition shall commence at a line across the mouth of the tributary representing an extension of the existing water line across the mouth.

84.10.2. Water Oriented Outdoor Recreation Concessions

A. Applicability

1. The provisions of this subsection apply only to those concessions located and/or operated within the shorezone and lakezone.
2. Unless otherwise specified under this subsection, the provisions of this subsection apply to non-motorized and motorized boating concessions.

B. Eligibility

1. New concessions may be allowed only as an accessory to a permitted upland commercial or public facility or use, provided the applicant demonstrates that upland parking availability for the use is not constrained, and that the function of the concession requires a shorezone location. TRPA permits shall specify the number and type of watercraft(s) and structure(s) authorized in support of a permitted concession.
2. New motorized boat concessions may be allowed only within an existing marina.
3. TRPA shall only issue permits for permanent concessions.

C. Development and Use Standards

1. Concessions shall comply with all applicable TRPA BMPs, including fueling BMPs, as well as applicable local health and safety regulations and permit requirements.
2. Storage racks for non-motorized watercraft shall be allowed as accessory structures. Racks shall be located above high water unless infeasible, and shall be designed and operated to maximize lake access.

3. Concessions and accessory structures, including storage racks, shall comply with the provisions for Scenic Quality as set forth in Chapter 66. Required mitigation shall use the Visual Magnitude System outlined in Appendix H, Visual Assessment Tool, of the Design Review Guidelines.
4. **Moorings.** Concessions providing watercraft moorings shall comply with the following provisions:
 - a. Concessions shall moor on legally permitted mooring structures;
 - b. Unless otherwise allowed under this subsection, only one watercraft shall be moored per buoy or slip;
 - c. Concessions shall comply with the provisions for mooring structures set forth in Section 84.3 of this Chapter, including the allocation of new moorings, with the exception that boat concessions associated with a marina may be allowed one watercraft string storing no more than 12 personal watercraft.

84.10.3. Man-made Lagoons and Artificial Islands. Construction of man-made lagoons connected to any lake in the Region and artificial islands is prohibited.

84.11. MITIGATION

84.11.1. Applicability

This section applies to projects undertaken in areas identified as, and adversely affecting, "Spawning Habitat" or "Feeding and/or Escape Cover Habitat" as designated on the TRPA Prime Fish Habitat Map, as of the effective date of the ordinance adopting this Chapter, as amended, or areas meeting the applicable definition for "Spawning Habitat" or possessing similar characteristics for "feeding and/or escape cover" habitat.

84.11.2. Mitigation Required

- A. All projects located in spawning habitat as verified by TRPA and that have the potential to detrimentally impact spawning fish, spawning gravels, the incubating eggs, or the emerging fry shall be subject to a case-by-case review by TRPA and the appropriate Fish and Wildlife Agency regarding the applicability of the October 1 through April 30 construction window and to determine whether project impacts can be mitigated.
- B. As a condition for project approval, all permanent impacts to substrate in designated spawning habitat areas associated with new or expanded structures shall be mitigated at a ratio of 1.5 to 1 using one of the following methods, or a combination thereof, as determined appropriate by TRPA:
 1. Replacement "in-kind" with similar spawning gravels where gravels previously existed. Such replacement shall replace the equal or greater function and value either on-site or off-site.

2. Construction of complementary habitat adjoining the remaining spawning gravels on-site, where it can be demonstrated that the complementary habitat will restore or enhance the spawning habitat by substantially increasing its function and value.
- C. In addition to the mitigation obligation set forth in (B) of this Section, any impacts to existing feeding and/or escape cover habitat shall be fully mitigated.
- D. Mitigation required pursuant to this Section shall include implementation and funding of an approved monitoring and remedial action program that will ensure the effectiveness of the mitigation.

Commented [A67]: Previously this included a requirement that mitigation be reviewed either by TRPA or a third party peer review, and deemed successful before it is used.

CHAPTER 85: DEVELOPMENT STANDARDS IN THE BACKSHORE

85.1. PURPOSE

Policies 1 and 2, Goal #1 of the Shorezone Subelement, Conservation Element of the Goals and Policies, establish limitations on disturbance to vegetation and construction activity within the backshore. Policy 1 recognizes that the existing vegetation in the backshore; (1) is the last naturally occurring measure for stabilizing soils and absorbing nutrients in runoff from upland areas; (2) prevents accelerated shoreline erosion due to wave action; (3) reduces the need for engineered structures to stabilize eroding cliffs; (4) is an important element of wildlife and fish habitats occurring in the shorezone; and (5) provides screening of development adjacent to the backshore. Policy 1 generally defines the backshore as the zone that includes backshore cliffs and other unstable lands influenced, in part or in total, by littoral or wave processes. In addition, Policy 2 requires that buildings be set back from the backshore to minimize the risk of accelerated erosion, cliff collapse, or slumping. This chapter sets forth standards and regulations in accordance with these policies.

85.2. APPLICABILITY

In addition to the provisions of Chapter 84 all projects and activities located within the backshore shall comply with the standards and regulations set forth in this chapter.

85.3. LIMITS OF BACKSHORE

The limits of the backshore shall be established using the following criteria, whichever establishes the wider backshore. The lakeward limit of the backshore shall be at the high water elevation.

85.3.1. Wave Run-Up

The area of wave run-up, plus ten feet;

85.3.2. Instability

The area of instability, plus ten feet. The area of instability shall be established pursuant to the following procedures;

- A. The area of instability shall be measured landward from the high water line a horizontal distance equal to 1.5 times the height of the bluff located adjacent to the shoreline. The height of the bluff shall be the difference between the high water elevation and the elevation of the top of the bluff; or
- B. The area of instability as identified in a report submitted by the applicant and prepared by a licensed geological, geotechnical or soils engineer or engineering geologist. The area of instability established under this provision may be greater or less than such area established under subparagraph A, above.

85.4. ALLOWABLE LAND COVERAGE

The allowable base land coverage in the backshore shall be one percent. The allowable base land coverage in the backshore may be combined with the allowable base land coverage for the remainder of the littoral parcel to establish a total allowable base land coverage for the parcel. A portion of the total allowable base land coverage may be used to allow construction in the backshore in accordance with Section 85.5.

85.5. PROHIBITION OF NEW LAND COVERAGE

Additional land coverage or other permanent land disturbance shall not be permitted in the backshore, except as follows:

85.5.1. Public Outdoor Recreation

Land coverage and land disturbance may be permitted in the backshore for public outdoor recreation facilities if TRPA finds that:

- A. The project is a necessary part of a public agency's long range plans for public outdoor recreation;
- B. The project is consistent with the Recreation Element of the Goals and Policies;
- C. The project, by its very nature, must be sited in the backshore;
- D. There is no feasible alternative which avoids or reduces the amount of land coverage or disturbance proposed in the backshore; and
- E. The impacts of the coverage and disturbance are mitigated to the extent feasible through means including, but not limited to, the following:
 1. Application of BMPs; and
 2. Restoration in accordance with subsection 30.5.3 of land in the backshore or a stream environment zone in the amount of 1.5 times the area of land in the backshore covered or disturbed for the project beyond that permitted in Section 85.4.

85.5.2. Public Service

Land coverage and land disturbance may be permitted in the backshore for public service facilities if TRPA finds that:

- A. The project is necessary for public health, safety or environmental protection;
- B. There is no reasonable alternative which avoids or reduces the amount of land coverage or disturbance in the backshore; and
- C. The impacts of coverage and disturbance are mitigated in the manner prescribed in subparagraph 85.5.1.E.

85.5.3. Erosion Control and Similar Projects

CHAPTER 85: DEVELOPMENT STANDARDS IN THE BACKSHORE
85.6 Replacement of Excess Land Coverage

Land coverage and land disturbance may be permitted in the backshore for erosion control projects, habitat restoration projects, forest management programs, wetland rehabilitation projects, stream environment zone restoration projects and similar projects, programs, and facilities if TRPA finds that:

- A. The project, program, or facility is necessary for environmental protection; and
- B. There is no reasonable alternative, which avoids or reduces the extent of encroachment in the backshore.

85.5.4. Access to Structures or Uses in The Nearshore or Foreshore

Land coverage and land disturbance may be permitted in the backshore to provide access to an approved or legally existing structure or use located in the nearshore or foreshore, provided TRPA finds that the amount of land coverage proposed is the minimum necessary to provide access to the structure or use and the impacts of coverage and disturbance are mitigated in the manner prescribed in subparagraph 85.5.1.E. Land coverage and land disturbance associated with an approved or legally existing pier, boat ramp, or other shorezone structure may be permitted in the backshore provided TRPA finds that the amount of land coverage proposed is the minimum necessary for the structure.

85.6. REPLACEMENT OF EXCESS LAND COVERAGE

The replacement or modification of existing, excess land coverage in the backshore shall be in accordance with Chapter 30: *Land Coverage*.

85.7. VEGETATION

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. Landscaping installed for the purpose of scenic quality may be maintained pursuant to subsection 61.3.3. Species used in the backshore for revegetation or landscaping shall be those listed on the TRPA-approved plant list as species appropriate for the backshore type and site conditions (e.g. barrier beach, sedimentary bluff).

85.8. PROJECT REVIEW

In imposing special conditions of approval on projects in the backshore, TRPA shall be guided by an appraisal of the nature of the backshore, as set forth in Section 85.1 and 67.3, in relation to the unique characteristics of the project area and shall consider the following objectives

- 85.8.1.** The protection of significant vistas;
- 85.8.2.** Minimizing the visual impact of the proposed project on the shorezone and area surrounding the project;
- 85.8.3.** The preservation of the site and shorezone from environmental harm both during and after construction;

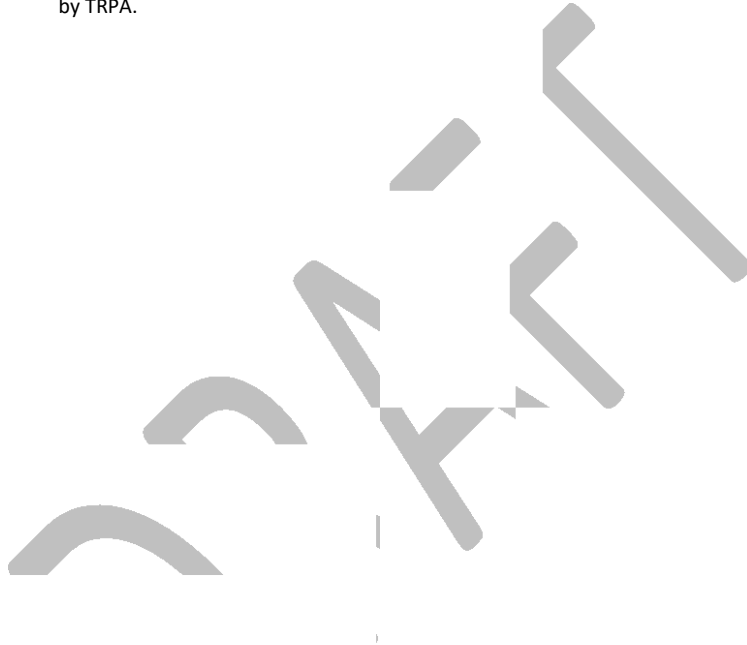
CHAPTER 85: DEVELOPMENT STANDARDS IN THE BACKSHORE
85.9 Man-Modified Backshore

85.8.4. Protection of views of adjoining development; and

85.8.5. Providing sufficient space for proper infiltration of runoff and nutrient uptake through natural processes.

85.9. MAN-MODIFIED BACKSHORE

Areas recognized by TRPA as man-modified pursuant to subsection 83.5.2 shall be regulated in accordance with the recommendations contained in the man-modified report approved by TRPA.





**TAHOE
REGIONAL
PLANNING
AGENCY**

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MEMORANDUM

Date: May 15, 2018

To: TRPA Regional Plan Implementation Committee

From: TRPA Staff

Subject: Summary of Upcoming Topics for Regional Plan Implementation Committee Consideration

Requested Action: This item is for informational purposes only and no action is required.

Background: This report provides a summary of topics anticipated to come before the Regional Plan Implementation Committee (RPIC) within the next three months, based on priorities established by the Governing Board and current staff resources. Because all members of RPIC are also members of the Development Rights Working Group, those meetings are also listed. All topics and dates are subject to change.

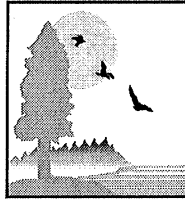
MONTH	ITEM(S)
June 2018	No RPIC items are scheduled at this point in time
July 2018	Shoreline Public Draft EIS
August 2018	Thresholds Update: Vegetation Development Rights Working Group meeting is scheduled

Contact Information: If you have any questions, please contact John Hester, Chief Operating Officer, at (775) 589-5219, [or jhester@trpa.org](mailto:jhester@trpa.org).

AGENDA ITEM NO. VI.A

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, *Executive Officer*

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August 16, 2017

File Ref: SCH # 2017072020

Rebecca Cremeen
Tahoe Regional Planning Agency
P.O. Box 5310
Stateline, NV 89449

Subject: Notice of Preparation (NOP) for an Environmental Impact Statement (EIS) for the Shoreline Plan, El Dorado, Placer, Douglas, and Washoe Counties, and Carson City

Dear Ms. Cremeen:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for an EIS for the proposed Shoreline Plan (Project), which is being prepared by the Tahoe Regional Planning Agency (TRPA). The TRPA, as the public agency proposing to carry out the Project, is the lead agency pursuant to Articles 4 and 6 of the TRPA Rules of Procedure. The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all state ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine, which requires the state to protect the public's interest in these lands.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited

to waterborne commerce, navigation, fisheries, recreation, public access, habitat preservation, and open space.

The State of California owns the bed of Lake Tahoe below the elevation of 6,223 feet Lake Tahoe Datum (LTD), and protects and advocates for the public's interests and rights in the state-owned Public Trust easement located between elevations 6,228.75 feet and 6,223 feet LTD (the high and low-water marks respectively) (*State of California v. Superior Court (Fogerty)* (1981) 29 Cal.3d 240; *Fogerty v. The State of California* (1986) 187 Cal.App.3d 244). The Commission has leasing authority over the bed of Lake Tahoe waterward of elevation 6,223 feet LTD, including commercial and recreational structures. The Commission's leasing authority is contained in Public Resources Code, Division 6, Part 2, sections 6216; 6301; 6501.1; and 6503.5, along with regulations found in California Code of Regulations, title 2, section 2000 et seq.

Project Description

TRPA's proposed update to the shorezone ordinance chapters of its Code of Ordinances is subject to the preparation of an EIS. The ordinance update process has been labeled the Shoreline Plan. The shorezone ordinances govern the regulation of development standards, permissible uses, and mitigation programs for the shorezone and lakezone of Lake Tahoe, on both the California and Nevada sides of the lake. Pursuant to the Project Description, Commission staff understands that the Shoreline Plan will include five policy areas that focus on boating, public access, marinas, piers, and low lake level adaptation.

Environmental Review

Commission staff requests that TRPA consider the following comments when preparing the EIS.

Alternatives

1. The NOP states that the EIS will evaluate a reasonable range of project alternatives, including the Proposed Alternative (the Project) and a No Project Alternative, which is essentially a continuation of the 1987 Regional Plan. The NOP further notes the EIS will evaluate two to three additional alternatives that either avoid or mitigate impacts to environmental thresholds. Commission staff encourages TRPA to include a reduced development alternative as one of the alternatives fully evaluated in the EIS.

Recreation and Public Access

2. Reduced Automobile Dependence for Public Access: During the peak summer recreation season (Peak Season), primarily between July 4 and Labor Day weekend, one of the greatest challenges for public access to Lake Tahoe's beaches and shoreline is limited parking supply, which also limits recreation uses that may be automobile dependent (stand-up paddleboards, kayaks, canoes, etc.). During the Peak Season, public demand for automobile access to Lake Tahoe's shoreline will always exceed available parking capacity; therefore, other measures must be

explored to enhance public access to the lake that are not automobile dependent. Commission staff encourages TRPA to explore such measures and to consider support facilities that accomplish this goal as permissible uses.

Secured storage units for non-motorized watercraft (paddle boards, kayaks, etc.) provide an opportunity for local residents to access nearby public access sites by walking or riding a bike, and enjoy non-motorized watercraft uses without use of an automobile for watercraft transport. Watercraft storage units could also generate revenue from public use. Watercraft storage units would also benefit the Tahoe Keepers Program for prevention of aquatic invasive species, by promoting use of watercraft that is only used in Lake Tahoe.

3. Lateral Access: Those structures on the California side of the lake that extend below elevation 6,228.75 LTD and across the Public Trust easement onto lands subject to the Commission's leasing jurisdiction should provide for lateral passage of the public over, under, or around such structures, particularly piers. Through negotiations with the applicant or lessee, this requirement can take the form of stairs, ladders, or other design features for piers, or upland access around the pier. Signage is sometimes used to direct upland public access around a pier. In addition, lessees are not allowed to store any personal items within the Public Trust easement that may impair the public uses of access, navigation, fishing, swimming, and lake-related recreational uses.

TRPA ordinances lakeward of the high-water mark must allow for these design features on piers and other structures sited within the Public Trust easement, including placement of signs to direct lateral public access. For Chapter 84 of the Code of Ordinances, Development Standards Lakeward of High Water Line, TRPA is encouraged to consider the inclusion of these types of design features as permissible accessory structures for piers. For Chapter 85, Development Standards in the Backshore (or other appropriate Code chapter), the placement of signs must also be allowed to direct lateral public access. Other Code considerations include coordination with scenic assessment requirements, and qualified exempt and exempt activities. TRPA is encouraged to work with Commission staff to develop Code language for these uses. With minimum visible mass necessary, Commission staff encourages these uses to be exempt from scenic assessment requirements. If necessary, a maximum visible mass threshold could be developed for exemption from scenic assessment requirements. Similar to other types of signs that are allowed by TRPA Code in the foreshore and backshore as an exempt activity (e.g., Tahoe yellow cross protection signs, etc.), signs of appropriate size and color for lateral public access should also be allowed as an exempt or qualified exempt activity.

In addition to allowing accessory structures to facilitate public access on the California side of the Lake, TRPA must also ensure that structures do not adversely affect public access on Public Trust lands on the California side of the Lake. Further, the U.S. District Court ruled that the EIS for the 2008 Shorezone Ordinances did not adequately explain how TRPA would ensure that new structures would not adversely affect public access, prior to authorizing a new structure. TRPA is currently working with Commission staff to develop a process for ensuring public access and

appropriate mitigation for new and existing structures located within the Public Trust easement or on Public Trust lands.

Low Lake Level Adaptation

4. Boating Facility Challenges: Climate change, in the form of prolonged drought and low lake levels, has and will continue to create many challenges for boating facilities, and for public agencies with permitting and leasing authority for boating facilities. These challenges have resulted in increased public demand for the siting of boating facilities further out in the lake, such as buoy relocations, pier extensions, boat ramp extensions, temporary structures, and requests for new dredging from marinas. The prospect of more frequent and prolonged periods of drought and low lake levels, presents TRPA with the challenge of considering further lakeward extension for multiple-use boating facilities, or to hold the line on maximum allowable distance from shoreline. This includes considering deeper dredging elevations for marinas, or to continue with maintenance dredging as the norm for marinas. In comparison with the current shorezone ordinances, the Shoreline Plan presents an opportunity for regulatory adaptation for these issues in balance with threshold maintenance and attainment. TRPA is encouraged to further evaluate these issues within the EIS.

Buoy Permitting, Registration, Enforcement, and Location Standards

5. Buoy Location Standards: Commission staff encourages TRPA to consider no placement of single use buoys, temporary buoys, or buoy anchors beyond the no wake zone (600 feet from shoreline), in order to provide for safe navigation and limit impacts to topline fishing. If marina and homeowner association buoy fields are allowed to extend beyond the no wake zone, the EIS must include mitigation measures for impacts to navigation and fishing.
6. Buoy Permitting, Registration, and Enforcement Program: In the interest of enforcement of unauthorized buoys, TRPA is encouraged to re-adopt a permitting and registration program for buoys. This is necessary for field identification and to facilitate a process for legally existing buoys. This also ensures that buoys are authorized pursuant to TRPA and Commission requirements, and are contributing funds to the Lake Tahoe Science and Lake Improvement Account. Since buoy permitting and registration provide a foundation for enforcement, the EIS must provide a legally defensible analysis to support all parameters of buoy development rights and regulations. For a defensible baseline, the analysis must start by explaining the process for determining the number of existing buoys on Lake Tahoe. The EIS must explain how this information will be used to determine maximum allocations for existing and new buoys, and for development of criteria for legally existing buoys. In consideration of all moorings and associated boating activity, a comprehensive mitigation program must be developed to offset boating impacts and to support a buoy permitting program. Specifically, the mitigation program should prioritize enforcement of unauthorized buoys as a prerequisite requirement, before the permitting and registration program is allowed to proceed with authorization for new additional buoys. There must also be a commitment for long-term enforcement of unauthorized buoys. Through the EIS analysis for buoys, TRPA is encouraged to work with all agencies that require authorization for buoys, and other relevant

stakeholders with potential to contribute resources and funding assistance, to develop alternative approaches for buoy enforcement for a long-term, lake wide enforcement program. The EIS analysis for these parameters will serve as the foundation to support a successful permitting, registration, and enforcement program for buoys.

New Pier Allocations

7. Prioritization of Multiple Use and Public Piers: Commission staff encourages TRPA to develop a competitive allocation process for new piers that incentivizes multiple use piers over single use piers; in particular, multiple use piers that allow public use. The 2008 Shorezone Ordinances required applications for new piers to be scored and ranked based on the greatest level of reduced development potential and retirement of linear lake frontage for new pier development. This created a competitive application process that allowed multiple use pier applications to out-compete applications for single use piers, for selection with annual application processing. Commission staff encourages a process that prioritizes multiple-use piers over single-use piers. This type of allocation process would serve to reduce the development potential for new piers on lakefront properties and associated impediments with public access and uses on Public Trust lands, and increase public access to Lake Tahoe. Some amount of new pier allocations must also be reserved exclusively for public use piers.

Thank you for the opportunity to comment on the NOP for the Shoreline Plan EIS. As a trustee agency, Commission staff requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the EIS is being prepared.

Please refer questions concerning environmental review to Jason Ramos, Senior Environmental Scientist, at (916) 574-1814 or via e-mail at Jason.Ramos@slc.ca.gov. For questions concerning Commission land management and leasing jurisdiction, please contact Ninette Lee, Regional Land Manager, at (916) 574-1869 or via e-mail at Ninette.Lee@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
J. Lucchesi, Commission
J. Ramos, Commission
N. Lee, Commission
W. Crunk, Commission
J. TuckerMohl, Dept. of Justice.

**Letter 01: TRPA Regional Implementation
Plan Committee Meeting Minutes
Feldman McLaughlin Thiel LLP Proposed
EIP Incentive Program Language**

[View this email in your browser](#)



Submit Your Final Comments
on the Draft Environmental Impact Statement (EIS)
by 5pm TODAY

You can review and submit a comment on the Draft

Environmental Impact Statement (EIS) [here](#).

The public's feedback is an important part of the planning process and your deadline to submit comments is fast approaching.

The public comment period ends today at 5pm PST. Get your comments in ASAP while you still can.



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**Letter 012: Tahoe Lakefront Owners'
Association Shoreline Plan
Environmental Impact Statement
Notice of Preparation Comments**

EXHIBIT 2



TAHOE LAKEFRONT OWNERS' ASSOCIATION

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August 18, 2017

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Re: Comments re Notice of Preparation of a Draft Environmental Impact
Statement for the Lake Tahoe Shoreline Plan

Dear Ms. Cremeen:

The Tahoe Lakefront Owners' Association ("TLOA" or "Association") submits these comments in response to the Tahoe Regional Planning Agency's ("TRPA") Notice of Preparation ("NOP") of a Draft Environmental Impact Statement ("EIS") for the Lake Tahoe Shoreline Plan.

Introduction

TLOA's members have a direct and immediate stake in preserving Lake Tahoe's beauty and environmental resource values, which are an essential element of the lakefront property they own and care for. On their behalf, TLOA is dedicated to protecting uses of private shoreline property and to preserving and enhancing the quality of Lake Tahoe. TLOA looks forward to working with TRPA to ensure that the EIS for the Shoreline Plan meaningfully informs the public and TRPA decision-makers of its environmental consequences, of alternative approaches to achieving TRPA's objectives with lesser environmental impacts, and of mitigation to reduce environmental impacts of implementing the Shoreline Plan. As part of this process, TLOA looks forward to collaborating with TRPA and other stakeholders to create a Shoreline Plan that will preserve the beauty of Lake Tahoe while also allowing for a responsible level of shoreline use and development.

Updating the existing goals, policies and regulations regulating the shoreline has been a significant challenge, and is long overdue. As the NOP notes, TRPA has been trying to update those regulations for decades. TLOA has participated in this process for decades, including many meetings, comment letters, and even litigation. TLOA is hopeful that TRPA will at last succeed in adopting a balanced Shoreline Plan that will garner support from a broad range of interests, and withstand challenge.

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TLOA Supports the Proposed Alternative

TLOA commends TRPA for establishing a collaborative process to develop a Shoreline Plan. TLOA has participated in that process as a member of the Steering Committee. As the NOP explains, the Steering Committee developed the set of policy recommendations that are included in the Proposed Alternative. Those policy recommendations reflect an effort to balance among legitimate, sometimes competing, interests. There is still work to be done, and important details must be worked out. For example, owners of private structures must be treated fairly in terms of eligibility, permitting, and mitigation requirements as compared to structures serving the public. But TLOA supports the current, broad outline of the Proposed Alternative.

No Action Is Unacceptable

For an EIS, TRPA must of course include a No Action Alternative, to provide a basis of comparison for the action alternatives. TLOA understands the TRPA is proposing action, and for good reason. No action is not acceptable here. No action would mean keeping the existing regulations, including a ban on new structures in fish habitat which has been proven to be an invalid reason. Important environmental improvements would continue to be stalled with no action, halting necessary achievement of TRPA's Thresholds. There is an urgent need to change the status quo.

Additional Alternatives

As explained above, TLOA supports the Proposed Alternative developed by the Steering Committee, and consistent with that position is not proposing alternatives. However, for purposes of comparison and analysis, TRPA should consider some variation to the Proposed Alternative. The additional alternatives considered should include one or more that allow for more structures and fewer constraints on new or remodeled structures than are included in the Proposed Alternative. TLOA is not advocating for wide open development, but rather opportunities for additional single-use piers, and moorings for other boating uses such as utility boat lifts and smaller buoys for personal watercraft, dinghies, and smaller boats for tendering to mooring buoys.

Additional Alternatives Must Respect Property Rights

TLOA understands that private property is subject to reasonable regulation. However, some parties may propose that TRPA consider and adopt regulations in the Shoreline Plan that severely and unreasonably restricts property rights, especially on the California side of the lake. TLOA therefore briefly summarizes below some of the property law principles pertinent to the shoreline.

First, littoral property owners hold a right to "wharf out," and this valuable property right cannot be taken without just compensation. Any proposed limits or conditions upon private piers must account for this property right. In *Marks v. Whitney*, 6 Cal.3d 251, 262-63 (1971) the California Supreme Court reaffirmed the right of a littoral upland owner to access to navigable water across tidelands, from every part of his frontage. It summarized these rights as follows:

A littoral owner has been held to have the right to build a pier out to the line of navigability; a right to accretion; a right to navigation (the latter right being held in common with the general public) [citations omitted]; and a right of access from every part of his frontage across the foreshore (citations omitted).

Marks, 6 Cal.3d at 263. In *Marks*, the court reversed a trial court judgment that would have enjoined the shore owner's exercise of these rights. Commenters who urge TRPA to deny any new private piers on the theory that Lake Tahoe is owned by the public apparently fail to understand the legal rights of littoral property owners. Just over half the shoreline is privately owned, and one consequence of that private ownership is the existence of wharfing rights on Lake Tahoe.

Second, the *Fogerty* line of cases in California confirms that existing structures are protected from removal without compensation, and that the public trust easement on the California shore between low and high water is limited to those rights established by prescriptive use. In *State of California v. Superior Court (Fogerty)*, 29 Cal.3d 240 (1981) ("*Fogerty I*") the California Supreme Court held that a public trust easement exists between high and low water on the California side of the lake. However, the court emphasized that:

These plaintiffs may use the shorezone for any purposes which are not incompatible with the public trust. Landowners who have previously constructed docks, piers and other structures in the shorezone may continue to use those facilities unless the state determines, in accordance with applicable law, that their continued existence is inconsistent with the reasonable needs of the trust. In that event, both statute and case law require that plaintiffs be compensated for the improvements they have constructed in the shorezone. [Citations omitted.]

Fogerty I at 249.

In later proceedings, the Court of Appeal explained that the public uses allowed by the easement at Lake Tahoe are limited to those established by prescription. *Fogerty v. State of California*, 187 Cal.App.3d 224 (1986) ("*Fogerty II*"). The court explained: "[w]e do not read *Fogerty* as establishing some new theory by which the state acquires rights in private property. Indeed, what the court said in *Fogerty* was precisely the opposite---that the state's rights were obtained under the long-established doctrine of prescription." *Fogerty II* at 235-36. The Court of Appeal held that the high water mark should be set based upon the actual incursion of high water, and concluded based on the five consecutive years of highest water levels that the high water mark was 6,228.27 feet above sea level, Lake Tahoe datum. *Id.* at 238-39. Under *Fogerty II* determining what uses are allowed by the public trust easement at Lake Tahoe requires a showing of prescription, and can only be determined on a case by case basis.

Third, TRPA has no authority to define property rights under state law, including rights of access, and TRPA should not adopt shoreline regulations that presuppose how the public trust easement applies on the California shore. Nothing in the Compact empowers TRPA to define the scope of private or public property rights. In particular, the Compact grants TRPA no authority to declare or decide the scope of the public trust easement on the California shore, to decide what uses are or are not consistent with the public trust, or to enforce the public trust through permit terms or conditions. For example, TRPA has no authority to determine that the public has a right to lateral access across privately owned land, or to balance such a trust use against competing public trust uses.

In sum, TRPA may well be asked to consider alternatives that would disregard private property rights. It should decline to give detailed consideration to such alternatives. TRPA is required by the Compact to balance the natural and built environments, and to provide for reasonable use and development for all uses around the Lake.

Environmental Impacts

To the extent the Shoreline Plan seeks to increase lateral access along the shoreline, it must analyze and disclose the impacts that will result. For example, privately owned beaches do not have facilities for trash collection or public bathrooms. Nor are privately owned beaches regularly patrolled by park rangers or law enforcement personnel. Accelerated soil erosion and trampling of sensitive and endangered plants along the shoreline must be considered and properly analyzed. Trespass, vandalism, and theft are pervasive along the shoreline. Threats to private property and actual impacts resulting from the Plan must be acknowledged and addressed. Policies to encourage and facilitate increased public use of such areas will result in adverse environmental impacts, and require mitigation.

Conclusion

We thank you for the opportunity to provide these comments. We look forward to working with TRPA to completing the process to achieve long-needed update to TRPA's goals, policies and regulations regarding the shoreline.

Very truly yours,

Jan Brisco
Executive Director
Tahoe Lakefront Owners' Association