



**Mail**  
PO Box 5310  
Stateline, NV 89449-5310

**Location**  
128 Market Street  
Stateline, NV 89449

**Contact**  
Phone: 775-588-4547  
Fax: 775-588-4527  
www.trpa.org

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## STAFF REPORT

Date: 10/11/2018

To: TRPA Governing Board

From: TRPA Staff

Subject: Shoreline Plan Strategic Initiative –Certification of Final Environmental Impact Statement and Adoption of Amendments to TRPA Code of Ordinance Chapters 1, 2, 10, 14, 50, 63, 66, 80, 81, 82, 83, 84, 85, 86 and 90, Article 10 of the Rules of Procedure, Shoreline Implementation Program, and Implementing Memoranda of Understanding

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### Summary and Staff Recommendation:

TRPA staff recommends that the Governing Board certify the Shoreline Plan Final Environmental Impact Statement (FEIS) and adopt the amendments to the TRPA Code of Ordinance Chapters 1, 2, 10, 14, 50, 63, 66, 80, 81, 82, 83, 84, 85, 86 and 90, Article 10 of the Rules of Procedure, the Shoreline Implementation Program and implementing Memoranda of Understanding with California State Lands Commission and enforcement agencies.

### Required Motions for Certification of the EIS:

1. To certify the Lake Tahoe Shoreline Plan Final Environmental Impact Statement (FEIS), the Governing Board must make the following motion.
  - a) A finding of technical adequacy and a motion to certify the Shoreline Plan Final Environmental Impact Statement, as provided in Attachment A

### Required Motions for Adoption of Ordinance and Rules of Procedure Amendments:

2. To adopt the Shorezone Amendment Package and the Shoreline Implementation Program, the Governing Board must make the following four motions:
  - a) A motion to make the Chapter 3 & 4 Findings contained in Attachment C
  - b) A motion to approve and adopt Ordinance 2018-\_\_\_ (Attachment E), amending Ordinance 87-9, as previously amended, for the adoption of the amendments deleting existing Shorezone Code Chapters 80-86, adopting new Shorezone Code Chapters 80-85 and amending Chapters 1, 2, 10, 14, 50, 63, 66 and 90.

- c) A motion to approve Resolution 2018-\_\_\_\_ amending Article 10 of the Rules of Procedure. (Attachment G)
- d) A motion to approve the Shoreline Implementation Program (Attachment B)

Required Motion for Adoption of Draft Memoranda of Understanding

3. A motion to adopt the following Resolutions:

- a) Resolution 2018-\_\_\_ Memorandum of Understanding between TRPA and California State Lands Commission regarding California Public Access (Attachment H)
- b) Resolution 2018-\_\_\_ Memorandum of Understanding between TRPA and California State Lands Commission regarding mooring enforcement (Attachment I)
- c) Resolution 2018-\_\_\_ Memorandum of Understanding between TRPA, Nevada Department of Wildlife, Nevada State Parks, Douglas County Sheriff Department, Washoe County Sheriff Department, Placer County Sheriff Department, City of South Lake Tahoe, and United States Coast Guard regarding watercraft enforcement (Attachment J)

In order for motion(s) to pass, an affirmative majority vote by Governing Board members, without regard to the state of representation, is required.

RPIC Recommendation

The Regional Plan Implementation Committee (RPIC) unanimously recommended certification of the Shoreline Plan Final Environmental Impact Statement (FEIS); adoption of the amendments to the TRPA Code of Ordinance Chapters 1, 2, 10, 14, 50, 63, 66, 80, 81, 82, 83, 84, 85, 86 and 90; amendments to the Rules of Procedure; adoption of the Memoranda of Understanding; and the Shoreline Implementation Program at its September 26, 2018 meeting.

APC Recommendation

At its October 10, 2018 meeting, the TRPA Advisory Planning Commission unanimously recommended certification of the Shoreline Plan Final Environmental Impact Statement (FEIS); adoption of the amendments to the TRPA Code of Ordinance Chapters 1, 2, 10, 14, 50, 63, 66, 80, 81, 82, 83, 84, 85, 86 and 90; amendments to Article 10 of the Rules of Procedure; adoption of the Memoranda of Understanding; and adoption of the Shoreline Implementation Program.

The Lake Tahoe Shoreline Plan

I. Project Description:

The Lake Tahoe Shoreline Plan will update regulations governing structures that support water-dependent recreation within the Lake Tahoe shoreline. It also includes an effective resource management strategy needed to mitigate activity associated with the Plan's new development while making progress toward and achieving environmental thresholds. While the goal of the Shoreline Plan is

to enhance the recreation experience along Lake Tahoe's shoreline, the Plan is not a comprehensive recreation plan for the shore of Lake Tahoe. It is instead the last remaining element of the 1987 regional development plan and associated development caps not updated since the 1980's. The Shoreline Plan sets the development envelope for water-dependent structures along the shoreline and does so in the context of a mix of 55% public and 45% private property fronting Lake Tahoe's shores. As such, it completes what was started in 1987: to set standards for the development of new structures—buoys, piers, marinas, and ramps that serve water-dependent recreation access to the lake and resolve where, how many, what kind, how fast, and to what design standards these new structures will be allowed.

The Shoreline Plan addresses five policy areas that focus on boating, lake access, marinas, piers, and low lake level adaptation. The geographic area for planning purposes is the defined shorezone in TRPA's Code of Ordinances, Chapter 83, Shorezone Tolerance Districts and Development Standards. The Shoreline Plan addresses the following:

- **Boating/Lake Access Structures:** Lake access structures and boat moorings including buoys, buoy fields, piers, boat lifts, ramps, and slips. The Plan addresses other structures including breakwaters, jetties, and rock crib and sheet pile piers; and includes policies on enforcement, allocation, eligibility, design and location standards and permitting for private and public facilities.
- **Marinas:** Existing and planned capacity for boating access structures at the 14 marinas located on Lake Tahoe, 12 in California and two in Nevada.
- **Motorized Boating:** Lake access for motorized-boating, such as boats, cruise boats, fishing charters, charter boats, water taxis and jet skis.
- **Non-Motorized Boating:** Lake access for non-motorized water craft, such as paddleboards and kayaks.
- **Streamlined Permitting:** Strategies for coordinating and streamlining shoreline permitting among the multiple permitting agencies.
- **Low Lake Level Adaptation:** Strategies for adapting lake access to low lake levels.
- **Green Infrastructure:** Planning for infrastructure that will support environmental goals, such as charging stations for electric boats.
- **Enforcement:** Strategies to coordinate and ensure enforcement of shoreline regulations, including the 600-foot No-Wake Zone.
- **Tolerance Districts and Permissible Uses:** The Shoreline Plan will maintain the existing tolerance districts and permissible uses.
- **Concession Operations:** Planning for consistent regulation and permitting of concessions operating in the shoreline.

- Dredging: Evaluating the scope, if any, of new dredging related to shoreline structures and providing coordination among agencies to assure adequate mitigation.
- Environmental Improvement: Including incentive programs to implement environmental improvement of existing shoreline infrastructure, particularly at marinas.

The Shoreline Plan would maintain the existing Regional Plan Goal SZ -1 and Policies SZ-1.1 through SZ 1.15 pertaining to Shorezone Development (see Regional Plan Compliance section below). Substantive Amendments are proposed to the TRPA Code of Ordinances Chapters 80-86, with minor amendments proposed to Chapters 1, 2, 10, 14, 50, 63, 66 and 90 and to Article 10 of the Rules of Procedure. The proposed code amendments are included in Attachment E. The Rules of Procedure amendments are included in Attachment G.

TRPA has prepared a Final Environmental Impact Statement for the proposed Lake Tahoe Shoreline Plan. This document meets the environmental review requirements of the TRPA Compact, Code of Ordinances, and Rules of Procedure. The document is available at: [www.shorelineplan.org](http://www.shorelineplan.org)

## II. Background:

Development along the shoreline of Lake Tahoe has been the subject of decades of study and controversy. Multiple agencies with jurisdiction over Lake Tahoe, including TRPA, U.S. Army Corps of Engineers, California State Lands Commission, and Nevada Division of State Lands, have worked together through multiple iterations of proposed shorezone ordinances, plans and environmental studies. TRPA began regulation of the shoreline in 1976 with the development of a Shorezone Plan and adoption of shorezone ordinances. The shorezone was delineated into “Tolerance” zones which reflected the distribution of shorezone resources and features of varying sensitivity and importance. Following adoption of the ordinance, California State Lands, the U.S. Army Corps of Engineers and TRPA began studying the environmental effects of shorezone development, particularly on fisheries. This ultimately led to a Regional Plan policy and revised ordinance in 1987 that prohibited new structures in fish habitat and the requirement to conduct additional studies to monitor these effects. Over time, the studies found no definitive correlation between shorezone structures and impacts to fish populations. TRPA, therefore, initiated multiple shorezone planning efforts and released environmental analyses to the public in 1995, 1999, and 2004 in an attempt to update the 1987 ordinance.

This work culminated in 2008 with the adoption of a TRPA shorezone ordinance that incorporated contemporary science and addressed most, but not all, stakeholder concerns. The EIS supporting adoption of the 2008 ordinance was challenged, and in 2010 the 9<sup>th</sup> Circuit Court of Appeals remanded the EIS back to TRPA to address deficiencies in that document. Since that time, TRPA has limited shorezone development to existing piers that do not increase boating capacity (e.g., repairs, reconstructions, modifications, and expansions). TRPA has not been accepting applications for new moorings (i.e., buoys, boatlifts, slips) since 2010 when the court’s injunction became effective.

In 2012, TRPA undertook a comprehensive update to its Regional Plan. While the Goal and Policies of the Shorezone Element remain relevant today, TRPA has yet to adopt a program and set of ordinances acceptable enough to the polarized and dissonant stakeholder interests that would implement these policies.

In 2016, TRPA launched, for the seventh time in the long history of shoreline planning, a different approach-- a collaborative process to develop a Shoreline Plan that would seek consensus across myriad stakeholder concerns, enhance recreation, and protect the 72 miles of Lake Tahoe's shores. TRPA, along with partner agencies and organizations, engaged the Consensus Building Institute (CBI), a national-class third-party mediation firm, to convene stakeholders and develop a consensus-based planning process. As part of this process, CBI and TRPA convened a Steering Committee to frame key issues, identify the approach, and develop policy recommendations. The Steering Committee is comprised of representatives from the California State Lands Commission, Lahontan Regional Water Quality Control Board, Lake Tahoe Marina Association, League to Save Lake Tahoe, Nevada Division of State Lands, Tahoe Lakefront Owner's Association, and TRPA.

TRPA also convened a Joint Fact Finding (JFF) Committee to provide widely-accepted scientific and technical input and recommendations on the best available information and science to use in the Shoreline Plan. JFF Committee tasks included identifying existing scientific studies to inform the Shoreline Plan and EIS, outlining data collection needs for the 2016 Boating Season (baseline year), identifying information gaps and the methodology to fill those gaps, providing recommendations to the Steering Committee on topics such as lifting the existing fish habitat ban, dredging, and low lake level adaption, and providing input on the proposed approach to analyzing potential environmental impacts (recreation, scenic, fisheries, etc.) in the EIS. JFF Committee meetings were open to the public, and committee composition included representation of different interests.

The Shoreline planning team developed and is carrying out a comprehensive public outreach plan to provide opportunities for public involvement in a variety of forums. The team provided information and solicited input to identify key topics and issues to be included in the Plan and addressed in the environmental analysis. TRPA facilitated public workshops in Kings Beach, CA, and in Stateline, NV, and conducted over 30 organizational briefings with interest groups such as homeowner associations, littoral property owners, realtors, chambers of commerce, and boating associations, among others. A Shoreline Plan website [www.shorelineplan.org](http://www.shorelineplan.org) was also launched that allowed full public transparency of proposals as they developed. The site discloses all Steering Committee and JFF Committee members, meeting materials, background information, project scope, policy memos, technical memos, public feedback, scientific studies, and an on-line interactive Shoreline Plan Map with GIS layers (structures, natural features, and environmental constraints) being considered to inform the Shoreline Plan and EIS. (See Attachment K, Shoreline Outreach Summary Report, for a complete description of public outreach)

Over a series of meetings, the Steering Committee presented to the TRPA RPIC the project scope, organizing principles, and a comprehensive set of policy proposals for consideration in the Shoreline Plan. RPIC considered, modified, and ultimately endorsed a set of proposals addressing water-dependent structures that provide access to Lake Tahoe, including marinas, ramps, buoys, and piers, as well as measures for low lake level adaptation. The policies endorsed by RPIC were advanced forward in the Shoreline Plan project description that was included in the Notice of Preparation (NOP) for the EIS, published on July 12, 2017. The Scoping period for the EIS was completed in August 2017. TRPA, in partnership with the Steering Committee, used the scoping comments to develop the four EIS Alternatives that were reviewed, amended, and endorsed by the RPIC in October 2017.

Following endorsement of the policy recommendations, the Watershed Company, an independent consultant with expertise in Shoreline planning, and TRPA translated the recommended policies into implementing code. Concurrently, TRPA convened a Shoreline Code Working Group, comprised of representatives from the Steering Committee and TRPA, to review and refine the proposed code

amendments. During multiple meetings, the Working Group reviewed and edited the draft code amendments and then forwarded them to the Steering Committee for review at its April 4, 2018 meeting. After providing direction on key outstanding issues related to the amendments, the Steering Committee generally endorsed a revised draft code for release and public review with the Draft EIS. These code amendments were presented to the RPIC in April 2018 prior to release with the public Draft EIS.

TRPA released the Draft EIS and code provisions to the public for a 60-day review period beginning on May 8, 2018. During the review period, TRPA presented the findings and recommended mitigation measures to the TRPA Advisory Planning Commission, Governing Board, and RPIC, and held two public workshops. During this review period, TRPA received approximately 100 comments from individuals and agencies. Following receipt of comments, TRPA met multiple times with stakeholders to develop solutions to issues raised. These suggested changes and comments were discussed with the Steering Committee over two meetings in August and September 2018 and presented to RPIC on August 23, 2018. Based on these discussions, the Steering Committee recommended some modifications to the proposed Shoreline Plan, including additional mitigation measures. These changes to the Shoreline Plan between Draft and Final EIS are described in the “Environmental Review” and “Issues and Concerns” sections below.

In total, The Shoreline Steering Committee met 40 times between 2016 and 2018 to develop policy proposals and to incorporate feedback from the public, agencies, stakeholders and responsible agencies, and RPIC. The Plan that is presented in the Final EIS represents hundreds of hours of careful consideration, negotiation and public engagement.

### III. Major Components of the Plan

The overarching goal of the Shoreline Plan is to update TRPA’s regulations applicable to shoreline structures in a manner that enhances the recreational experience along Lake Tahoe’s shores while protecting the environment and responsibly planning for future conditions. According to the Organizing Principles agreed to by the Steering Committee that guided all policy proposals and approaches, the Shoreline Plan will: 1) provide a fair and reasonable system of lake access; 2) protect and where possible, enhance the environment; and; 3) be predictable and simple to implement. General principles of the Plan also include respecting the responsibility of each of the responsible and interested agencies, preserving a quality recreation experience, ensuring public safety and safe navigation, recognizing both public and private interests, and addressing changing lake level conditions.

Piers: Currently, there are 762 piers existing on Lake Tahoe. If every private littoral parcel eligible for a single use pier built out that development, approximately 435 new piers would be added to the lakefront. The Shoreline Plan incentivizes the development of multiple-parcel piers (accessible to multiple property owners) over single-parcel piers (single owner), facilitates the fair distribution of a maximum of 128 new private piers around the lake, and includes provisions intended to ensure environmental impacts related to pier development are avoided or mitigated and thresholds attained. The Shoreline Plan proposal includes the following key provisions:

- The overall development potential would be reduced by giving priority to multiple-parcel piers (80%) over single-parcel piers (20%). Application priority would be given for new piers that serve multiple parcels or retire development potential. Those parcels that already have access to a homeowner’s association or similar pier would be eligible to apply for a multiple parcel pier but given lowest priority for permitting.

- A maximum of 128 new private pier permits would be allowed under the plan in two phases. The initial phase would meter out 96 pier permits with a maximum of 12 pier applications accepted every two years. After the initial release, three new pier allocations would be metered out for every eight parcels that retire pier development potential (including those retired during the initial phase).
- Piers would be distributed around the lake by defined quadrants and based on scenic sensitivity. New piers could potentially be placed in areas mapped as fish habitat, provided that a fish study and mitigation is developed to ensure no impacts to fisheries. The most environmentally sensitive areas of shoreline would be protected.
- Up to ten additional public piers would be allowed, each subject to site specific plan and project review that tiers off the Shoreline Plan's programmatic EIS analysis
- The maximum length of single-use piers would be 6,219' or the pierhead line, whichever is more limiting. The maximum length of multiple-use piers would be 30 feet lakeward of 6,219' or 60' lakeward of the pierhead line, whichever is more limiting. For single use piers, an additional 15' may be allowed to increase functionality during low lake level conditions. For multiple-use piers, an additional 15' may be allowed for piers serving three or more littoral parcels.
- Flexibility in pier design at marinas would be allowed based on site-specific navigation and environmental considerations. For marina piers, an additional 15' may be allowed to increase functionality during low lake level conditions.

Buoys/Moorings: Based on a complete inventory in 2016, there are approximately 10,400 total existing boat moorings on Lake Tahoe including 4,690 buoys. The Shoreline Plan's proposed mooring system will recognize existing permitted buoys, adapt to changing lake levels, and provide flexibility for marinas and public land managers. The Shoreline Plan proposal includes the following key provisions:

- TRPA would develop an allocation system to distribute a total of 2,116 additional moorings to private property owners, homeowner's associations, and marinas. An initial release of 800 mooring permits would be issued with the remaining 630 placed in a reserve pool, retaining 330 of these specifically reserved for marinas and 100 for public agency use. New moorings are considered those that do not currently have TRPA, state or federal permits.
- The mooring registration and permitting system would be phased. Initially, TRPA would focus on registering existing moorings. This would include all buoys, boat slips and boat lifts including those located in the Tahoe Keys lagoons and in marinas. TRPA would then work with all existing permittees, both approved and pending, to review and update their permits. Buoys that have state or federal permits or are pending approval by TRPA would be given priority. Thereafter, TRPA would accept applications for new moorings (those that do not have an existing state, federal, or TRPA permit). Each year, TRPA would issue up to 15% of the total new mooring permits remaining.
- All lakefront property owners could be allocated two moorings (buoys, slips, boathouse), provided setback requirements are met. Three buoys would be allowed if previously permitted or in place prior to 1972.
- Adaptation to low lake levels is allowed as follows: an additional buoy anchor or row of anchors (marinas and homeowner's association buoy fields) could be located lakeward so that buoy floats can be moved to deeper water when lake levels drop. At marinas and at facilities on public land, buoy allocations could be exchanged for slips.
- Allocation of all buoys, including the reserve pool and allocation to associations, would be revisited every five years through an adaptive management process.



Public Boat Ramps-Two additional public boat ramps could be added to the six existing for a total potential of eight lake wide. If new public ramps are proposed or existing ramps relocated, these would be permitted only in areas that have adequate depth for navigability during low lake levels.

Marinas- For decades, marinas at Lake Tahoe have had little incentive to upgrade environmentally. Even minor expansions of mooring capacity triggered costly, time-consuming, and process-intensive comprehensive Marina Master Plans. Consequently, only one master plan has been completed in 20 years, leaving a backlog of environmental improvement opportunities at the Lake's 14 marinas. The Shoreline Plan policies encourage expansions and improved access at Marinas (through marina buoy fields, slip rentals and ramps as applicable), particularly to obviate private properties adapting individually if left high and dry during periods of prolonged drought or low lake. Instead of requiring a comprehensive Marina Master Plan for nearly all expansions, marinas seeking upgrades or reconfiguration would be required to certify as a "Clean Marina", have an Aquatic Invasive Species Management Plan in place, and include other environmental improvements in the marina expansion design.

Concessions- All concessions located within the shorezone with a valid TRPA permit could continue to operate with a valid permit., New concession operations would be subject to requirements in the Shoreline Plan. Those motorized concessions operating prior to 2017 would not be required to operate out of a marina provided that fueling BMPs and other protections are implemented. All new concessions within the shorezone would be required to be associated with a permissible upland use.

Low Lake Level Adaptation- The Shoreline Plan will include strategies to adapt to changing lake levels at various defined phases as follows:

- Phase 1: 6,223 feet. This is the natural lake rim and the current legal low used in regional planning.
- Phase 2: 6,220 feet. This elevation is the historic low. During this phase, boating access would be directed to marinas and other public ramps that are operational. The plan policies would allow adaptation of marina facilities (such as pier extensions or floating structures) to the extent feasible. The Shoreline Plan provides adaptation measures to this historic low lake level.
- Phase 3: Below 6,220 feet. At this level, boating and other access may no longer be reasonably provided at the majority of facilities. Planning today for levels lower than 6,220 was deemed too speculative.

Dredging - New dredging using a non-degradation standard would only be permissible at marinas, the five essential public health and safety facilities, and the six existing public boat ramps (if increased functionality of the ramp can be demonstrated). For marinas, only new dredging to a deeper level than previously dredged would be allowed. For new dredging, the project must comply with existing state and federal standards. Dredging into areas of new expanse at marinas would be subject to TRPA's existing code standard for new dredging.

Adaptive Management - The Shoreline Plan would require review of the program under both the Threshold Evaluation process (every four years) and an eight-year pier and buoy permitting activity report. TRPA will also monitor motorized boating activity against the boating assumptions made in the water and air quality analyses of the EIS. TRPA will adaptively manage new moorings and ramps to ensure that emissions from boat will not exceed the projections made in the EIS which would cause a significant environmental effect.

#### A. Amendments to TRPA Code of Ordinances and Rules of Procedure



To implement the Shoreline Plan, substantive changes are proposed to the Shorezone provisions, Chapters 80-86, with minor changes to Chapters 1, 2, 10, 14, 50, 63, 66 and 90 and to Article 10 of the Rules of Procedure. A reference guide to the draft code amendments is included in the Code Amendment Summary Guide which includes a Policy/Code Crosswalk (Attachment F). Amendments to the Rules of Procedure are included in Attachment G. The most substantive code amendments are summarized below:

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: Marinas are no longer required to develop a master plan and can now make improvements at various scales provided they meet the development standards in Code Section 84.6. 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: Code Section 84.9 is revised to apply standards similar to state and federal requirements for new dredging at public health and safety facilities and public boat ramps. Note that these provisions have been further revised for marinas to apply TRPA's existing "beneficial to water quality" standard to new lateral expanse of dredging. Where dredging is deeper dredging in an area of previous maintenance dredging, state and federal requirements apply.

Watercraft Concessions: Under Code Section 84.10.2, 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 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: Code Section 84.3.3 allows individual buoys and buoy fields to be moved further lakeward during low water. Sections 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:

- A requirement for non-motorized navigation accommodation 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)

- Mitigation Fees are set out in 10.8.5 of the Rules of Procedure

Exempt/Qualified Exempt: Chapter 82 is revised to include exempt and qualified exempt activities, which will replace those shorezone-specific standards currently in Chapter 2 of the Code. Per RPIC direction, the amendments were based primarily on the 2010 vacated code with some revisions by the Code Working Group to ensure adequate resource protection, including the public trust easement in California.

#### IV. Environmental Analysis

##### A. Environmental Thresholds

TRPA is mandated through the Bi-State Compact to make findings that the proposed Shoreline Plan, which amends the Regional Plan, achieves and maintains the adopted environmental thresholds, including those that could be affected by shorezone development. TRPA and its partners implement projects and sponsor research on the lake, along the shoreline and in the nearshore to ensure that the scenic environment is protected, water quality and clarity is maintained, fish and wildlife are protected, and that the recreation experience is not degraded. Every four years, TRPA conducts a threshold evaluation that monitors the effectiveness of such programs and recommends adjustments accordingly. Projects within TRPA's jurisdiction are reviewed to ensure consistency with the thresholds by incorporating project modifications or mitigation measures. The Shoreline Plan programs and mitigations satisfy the Compact's standards to achieve and maintain the adopted environmental thresholds. See Attachment D to the Staff Summary.

##### B. Joint Fact Finding & Standards of Significance

The Steering Committee engaged scientists and agency experts to identify and incorporate best available science to inform policy recommendations that would protect the lake environment. This "joint fact finding" process was critical to also identify, vet, and agree on standards of significance to evaluate potential environmental impacts of the plan and to establish a baseline from which to measure impacts. Some of the key resource topics that were discussed with the Joint Fact Finding Committee include fisheries, water quality, scenic quality, boating, air quality, and adapting to climate change (low lake levels). A primary role of the JFF Committee was to also collectively consider, vet, and develop the estimates of motorized boat use incorporated into the EIS. The JFF Committee reviewed information on boating activity, including recent boat use monitoring data collected by TRPA; boater registration data; boat inspection program records; boating data collected to support the 2004 Shorezone Ordinance EIS; boat ramp launch counts; marina maintenance logs and launch records; and surveys of boat operators. Based on this information, and the specialized knowledge of JFF members, the JFF developed the boat use assumptions used in the Environmental Analysis.

The standards of significance and approach to the environmental analysis was presented to the Shoreline Steering Committee over a series of meetings in 2017 in the form of technical memos, which TRPA posted for public review on the Shoreline Plan website. The Steering Committee recommended that the science and environmental review methodology presented by the Joint Fact Finding Committee be used to analyze potential impacts of the policy proposals and to develop mitigation measures in the Environmental Impact Statement.

### C. EIS Scoping

The environmental review process began with issuance of a Notice of Preparation to inform agencies and the public that a draft EIS would be prepared for the Shoreline Plan, and to solicit views as to the scope and content of the document. The public scoping period was 36 calendar days, concluding on August 16, 2017. Scoping meetings were held at the TRPA Governing Board meeting on July 26, 2017 and at the Advisory Planning Commission meeting on August 9, 2017. The public was provided the opportunity to submit feedback during these public scoping meetings, as well as submit written comments. A total of 30 written comments were received from agencies, organizations, and individuals during the scoping period. A summary of the public feedback received both during the scoping period and prior to the scoping period was summarized in the Shoreline Plan Scoping Summary Report available on the Shoreline Plan website.

### D. Developing Environmental Alternatives

Based on comments received during the environmental scoping period, TRPA and the Steering Committee developed five alternatives that included various levels of shorezone development as follows: 1) The Proposed Shoreline Plan; 2) Maintain Existing Shorezone Regulations/No Project; 3) Prioritize Access Development; 4) Limit New Development; and 5) Expand Public Access and Reduce Development. TRPA staff presented these alternatives to the RPIC at its September 2017 meeting. Based on input and deliberation, TRPA determined that Alternative 3 did not add significantly to the range of alternatives because Alternative 2 (implementation of the existing regulations) would include large numbers of new shorezone structures that would disclose potential environmental impacts from high levels of development. Alternative 5 was also modified based on public input. After the Tahoe Sierra Club retracted its endorsement of the “non-motorized Monday” component of Alternative 5, TRPA agreed to remove it from the alternative.

TRPA subsequently revised the alternatives to the four that were analyzed in the Draft EIS. All four alternatives were developed according to the following organizing principles: (1) protect and where feasible enhance the environment, (2) provide a fair and reasonable system of access, (3) adapt to changing lake levels, (4) preserve high-quality recreation and public safety, and (5) implement predictable and consistent rules. Each of the alternatives represents a different approach to regulating the number, amount, type, location, and design of shoreline structures and associated resource management provisions, as follows:

Alternative 1 – Proposed Shoreline Plan. The goal of this alternative is to enhance the recreational experience at Lake Tahoe while protecting the environment and responsibly planning for the future. This alternative, developed through a consensus-based approach, incorporates the policies developed by the Steering Committee and was endorsed by the Regional Plan Implementation Committee (RPIC) of the TRPA Governing Board. The Shoreline Plan would meter out new private and public development over time. At buildout, it would allow for up to 2,116 new moorings (buoys, lifts or public slips), 128 new private piers, 10 new public piers, and two new public boat ramps. Some new and existing buoys could be converted to slips and vice versa at facilities open to the public (e.g., marinas).

Alternative 2 – Maintain Existing TRPA Shorezone Regulations (No Project). This alternative would retain the existing Regional Plan Shorezone Subelement Goals and Policies and TRPA Shorezone Code (Code of Ordinances Chapters 80–86). The goal of this alternative is to balance access and environmental

protection by applying the approach that was developed under the 1987 Regional Plan. This alternative would not include a numeric cap on shoreline structures but would prohibit new structures within TRPA-designated prime fish habitat. This alternative would allow more shorezone structures than any other alternative and is the only alternative that would allow new marinas. At buildout, it would potentially allow for up to 6,936 new moorings, 476 new piers, six new boat ramps, and two new marinas.

Alternative 3 – Limit New Development. The goal of this alternative is to reduce the risk of environmental impacts by limiting new shoreline development. Motorized watercraft access would be more concentrated at marinas and public facilities, and fewer structures would be authorized under this alternative than under Alternative 1 or 2. At buildout, it would allow for a total of 365 new public buoys or slips, five new public piers, and one new public boat ramp. Eighty-six new private piers would be authorized under this alternative, but they would be restricted to multiple-use piers.

Alternative 4 – Expand Public Access and Reduce Existing Development. The goal of this alternative is to expand public access, reduce existing shoreline development, and increase restoration to minimize the risk of environmental harm. This alternative would include transfer ratios that would allow some private shoreline structures to be removed and rebuilt in different locations if a project would result in a 2:1 reduction in the number of structures. At buildout, this alternative would allow 15 new public piers and no other new shoreline structures.

#### E. Draft EIS Approach and Content

The Draft EIS identified and assessed the anticipated environmental effects of implementing the Shoreline Plan alternatives, with a focus on significant and potentially significant impacts. The EIS provides a level of detail and clarity in the environmental review to allow for meaningful comment and participation by public agencies, interest groups, and the public. The Shoreline Plan is a programmatic plan for Lake Tahoe and the Region. The accompanying Shoreline Plan is a programmatic EIS that presents a general analysis of each resource area. The EIS is not intended to take the place of project-specific environmental review that will be needed to evaluate individual projects proposed following approval of the Shoreline Plan.

The EIS evaluated the outcomes of implementing the Shoreline Plan alternatives, including the effects of constructing and operating shoreline structures, resulting changes in boat use, and resource management programs. It analyzed the effect of the four Shoreline Plan alternatives in the following 13 resource areas:

- Hydrology and Water Quality
- Scenic Resources
- Fisheries and Aquatic Biological Resources
- Recreation
- Air Quality
- Greenhouse Gases and Climate Change
- Noise
- Land Use
- Soil Conservation
- Roadway Transportation and Circulation
- Terrestrial Biological Resources

- Cultural Resources
- Public Health and Safety

F. Draft EIS Findings and Mitigation Measures

Impacts from the Shoreline Plan can be distinguished between those resulting from the placement and construction of shorezone structures and those resulting from increased boating on the lake generated by those structures. The EIS evaluated the potential impacts of additional structures and additional boat use on the lake proposed under the various alternatives. Buildout under the proposed Shoreline Plan would result in a maximum of 16% additional boat use, Alternative 2 would generate 53%, Alternative 3 34% and there would be no measurable increase from Alternative 4.

The EIS identified potential impacts and mitigation measures for each of the proposed alternatives. A comprehensive list and description of impacts and mitigation measures is included in the Public Draft EIS, Executive Summary, Table ES-1 <http://shorelineplan.org/draft-environmental-impact-statement/>. With incorporation of the mitigation measures, all of the impacts were found to be less than significant, with the exception of Greenhouse Gas and Climate Changes impacts, which would remain significant and unavoidable under the proposed Shoreline Plan. Impacts and mitigation measures specific to the Shoreline Plan (Alternative 1) are summarized in the table below:

**Draft EIS Mitigation and Impacts -Shoreline Plan (Alternative 1)**

IMPACT	PROPOSED MITIGATION
<p><u>Fisheries and Aquatic Biological Resources</u> The EIS identified an increased risk of Aquatic Invasive Species spread due to an increase in boating.</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>An AIS fee increase is proposed to contribute to AIS control projects. This fee would be collected at the boat inspection stations.</p> <p>Require marinas to develop AIS management plans</p> <p>Promote the development of AIS-resistant boats</p>
<p><u>Water Quality</u> The EIS identified a significant impact related to Interference with littoral processes from new or redeveloped shoreline structures</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>Specify floating pier design standards to ensure that floating pier sections are not rigidly moored to the lake bottom</p> <p>Require littoral drift analyses and incorporate design recommendations for floating piers longer than 25 feet</p>
<p><u>Recreation</u> The EIS identified a potentially significant impact to recreation and the potential for user conflicts resulting from public piers extending beyond the 600-foot no wake zone</p>	<p>Revise the design standards for piers to either limit the length to 600 feet OR require design such that non-motorized recreationists have lateral access underneath the pier during high lake level conditions</p>

<p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	
<p><u>Scenic Resources</u> The EIS identified a significant impact from alteration of views of the shore from Lake Tahoe due to additional structures</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>Offset visible mass of buoys. Each buoy would be required to mitigate the equivalent of 83 square feet of visible mass through screening, removal or paying an in-lieu fee.</p> <p>Establish color standards for piers so that they are either matte medium to dark gray OR alternative colors that blend with the background of the project site.</p>
<p><u>Air Quality</u> The EIS identified potentially significant impacts from short term construction emissions of ROG, Nox, PM10, and PM2.5</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>Include best construction practices for emissions in the standard conditions of approval for shoreline projects. These practices include dust control, prohibition on burning vegetation, limiting idling time, and use of clean-fuel generators.</p>
<p><u>Greenhouse Gas Emissions and Climate Change</u> The EIS identified a significant impact from increased emissions associated with the construction and demolition of boating facilities and on-road motor vehicle trips to and from new boating facilities.</p> <p>The impact would be significant and unavoidable</p>	<p>Develop and implement a GHG reduction policy within 12 months of adoption of the Shoreline Plan</p>
<p><u>Noise</u> The EIS identified a significant impact from construction vibration related to pile driving</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>Require vibration reduction measures for shoreline projects. These measures include locating construction equipment away from vibration-sensitive uses, phasing ground-disturbance, and setbacks.</p>
<p><u>Wildlife</u> The EIS identified significant impacts to osprey, bald eagle, and waterfowl from construction and recreational uses.</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>Avoid construction disturbances to nesting osprey and bald eagle, install interpretive signage, and prepare and implement habitat enhancement plans or other compensatory measures for unavoidable activities within TRPA-designated disturbance zones</p>

	Conduct preconstruction surveys for waterfowl and implement a limited operating period, if necessary
<p><u>Vegetation</u> The EIS identified a significant impact to Tahoe Yellow Cress due to construction and recreation disturbance</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	Conduct preconstruction surveys, avoid potential construction impacts, and avoid potential recreation impacts to Tahoe yellow cress plants. This would be implemented by project-specific planning, design and environmental review, fencing and educational signage around known plant populations.
<p><u>Public Health and Safety</u> The EIS identified a potentially significant impact from watercraft accidents due to increased boating and navigational hazards</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	Revise the design standards for piers to either limit the length to 600 feet OR require design such that non-motorized recreationists have lateral access underneath the pier during high lake level conditions
<p><u>Cultural Resources</u> The EIS identified a potentially significant impacts to historic and archeological resources from development on properties that could contain known or unknown resources.</p> <p>The EIS also identified a potentially significant impact resulting from degradation of ethnic and cultural values</p> <p>Inclusion of the proposed mitigation would result in a less than significant impact.</p>	<p>Avoid potential effects on historic resources through site-specific identification and evaluation of historic resources and avoidance.</p> <p>Avoid potential effects on archaeological resources through site-specific evaluation and archeological surveys, and avoidance.</p>

G. Draft EIS Public Outreach

TRPA conducted extensive outreach prior to publishing the Draft EIS to ensure that the public and interested agencies had ample opportunity to review and comment on the potential impacts and mitigation proposed in the analysis. In addition to providing public notices via the Shoreline email list, Shoreline plan website, newspapers and through the Nevada and California State Clearinghouses, TRPA sent over 30,000 mailers to property owners in the Tahoe Basin. The notices included invitations to two public workshops held in north and south shores as well as two public hearings on the EIS. During the workshops, TRPA staff and members of the Shoreline Steering Committee and consultant team had the opportunity to directly interact and answer questions with the public in a more informal setting.



## H. EIS Comments

TRPA received 107 individual public comments on the Draft Environmental Impact Statement, including those received during public hearings. The most significant comments and their in-depth responses (summarized here) make up the bulk of the FEIS (Attachment A) and include:

- Master Response 1 – (The Shoreline Plan and Planning Process) FEIS 3.1.1
- Master Response 2 – (Effects on Recreation) FEIS 3.1.2
- Master Response 3 -- (Motorized Boat Use Estimates) FEIS 3.1.3
- Master Response 4 – (Watercraft Emissions) FEIS 3.1.4
- Master Response 5 – (Growth and Mitigation under the Existing Shorezone Regulations) FEIS 3.1.5
- Master Response 6 – (Monitoring and Adaptive Management of the Shoreline Plan)
- FEIS 3.1.6 – (Choice of Environmental Baseline) FEIS 3.2, Response A1-3
- Reliance on Increased Enforcement of No Wake Zone to mitigate impacts FEIS 3.1.2

TRPA has also developed an implementation program (discussed immediately below) that outlines how the permitting, enforcement, education, mitigation and monitoring programs will be funded and implemented. This program will address some of the commenters concerns and is included as an Appendix to the FEIS and as Attachment B to this staff report.

## V. Shoreline Implementation Program

In response to requests received during the comment period to provide more detail on implementation of the proposed policies, TRPA developed an implementation program that describes how permitting, enforcement, education, mitigation and monitoring programs would be funded and implemented. This document more clearly articulates how these programs would achieve the goals of the Shoreline Plan and ensure environmental protection. (See Attachment B-Implementation Program)

To develop the program, TRPA first identified the environmental effects of the plan as well as partner agencies and funding needed to implement the environmental programs that would address those effects. Necessary program elements include additional enforcement, boater education, turbidity monitoring, enhanced boat inspections, mooring permitting and enforcement, and additional AIS control. These environmental programs are necessary to ensure that potential impacts of the Shoreline Plan remain less than significant.

Once these program elements were identified, the Shoreline Steering Committee developed options for consideration, and after extensive deliberation proposed an environmental improvement and permitting program funded by fees collected from boating related structures and activities. The fees would pay for:

1. Essential environmental and permitting program elements needed to implement the Shoreline Plan; and
2. Programs identified in the environmental analysis to avoid, offset, and mitigate environmental impacts associated with the plan.

Fees would be collected at different administration points from users through annual mooring registration, as an addition to the boat sticker fee collected at the Aquatic Invasive Species boat inspection stations, and through a boat rental concession fee. These programs are described in detail in the Implementation Program and summarized below:

No Wake Zone Enforcement Program-The Shoreline Plan identifies increased boating and increases in potential user conflicts between motorized and non-motorized users. To keep these impacts less than significant, TRPA has formed a task force with other agencies around the Lake to increase patrols and enforcement of the 600-foot no wake zone, boating buffer zones and boater safety. Fees collected from annual mooring registration and boat rental concessions would allow TRPA to more than double the patrols on the Lake with an additional boat and crew. In addition, TRPA is entering into a coordination MOU with other agencies that enforce boating safety rules. The cumulative increase in enforcement presence will keep user conflicts at less than significant levels.

Mooring Enforcement Program-To assure that moorings are reduced to and maintained within the Shoreline Plan's authorized caps, TRPA is developing a state-of-the-art tracking and enforcement program for all moorings (buoys, slips, boat lifts) on Lake Tahoe, funded by annual registration fees. This includes tagging, mapping, maintenance of a multi-agency database, patrols, and working with partners to remove illegal moorings.

AIS Control Program-New moorings and structures that increase boating on the Lake may also increase the risk that aquatic invasive species could spread and threaten lake clarity and ecosystems. TRPA will collect fees not to only prevent AIS from entering the lake (the existing boat sticker fee), but to treat problem areas and reduce the spread. The additional control would be funded by annual mooring registration, boat rental concessions, and an increase in the boat sticker fees.

Enhanced Watercraft Inspection Program-TRPA will expand its inspections of boats to ensure that sewage and exhaust do not threaten the Lake. These fees would be added to the existing boat sticker for watercraft inspection.

Monitoring Program (noise, water quality)-A portion of fees collected from annual mooring registration and boat sticker fees will contribute to water quality and noise monitoring in targeted locations.

Education/Outreach- TRPA has committed to work with agency and non-profit partners to educate the public about boating regulations and the 600-foot no wake zone. This will be funded by mooring registration and boat rental concessions fees.

Scenic Quality Improvement Program- TRPA is developing a program that identifies scenic improvement projects around the lake to offset the scenic impacts of buoys. Funds collected from the buoy scenic fee would contribute to this program.

## VI. FEIS/ Plan Revisions

Following the public comment period on the EIS, a number of important concerns emerged through comments and public input. The Shoreline Steering Committee and TRPA staff discussed how to address certain concerns raised by the public, stakeholders and public agencies and if additional measures were needed to respond to public concern. In addition to addressing concerns in the implementation plan, the Steering Committee recommended that TRPA incorporate the following changes to the Shoreline Plan:

1. To further address the potential for user conflicts between motorized and non-motorized recreationists, adopt additional boating buffer zones to bring TRPA's rules into closer conformance with existing state laws regarding boating safety in California and Nevada.
  - Adopt a 200-foot buffer zone around structures consistent with CA & NV law. TRPA would work with the enforcement agencies through an MOU to ensure a cooperative approach to compliance with this as well as the 600-foot no wake zone.
  - Adopt a 100-foot buffer zone around swimmers and non-motorized recreationists.
2. To assure that the potential for boating emissions do not become significant by exceeding the modeled levels in the EIS, include a phased program for new mooring applications based on the priority system developed by the Steering Committee.
  - TRPA would permit no more than 15% of the total mooring pool per year, beginning in 2020. In the first year of the program (2019), TRPA would focus on registering existing moorings, identifying and removing those that are unauthorized, and launching the tracking and enforcement program.
  - Implement an adaptive management strategy linking monitoring of boating levels and emissions and the number of new mooring permits issued to ensure that the assumptions made in the EIS emissions modeling were not unreasonable and no significant impacts will occur.
3. Limit Public Pier Length
  - The mitigation measure proposed in the draft EIS has been revised to limit public piers to 600 feet in length. Additional length could only be granted to accommodate public health and safety facilities or waterborne transit.
4. Maintain greater reserve for public moorings
  - The public draft plan proposed reserving 300 moorings for public use with flexibility to allocate some of these to private provided 50 remain in the pool. To ensure future public needs are met, the plan has been revised to retain 100 public moorings in the reserve pool.
5. Noise Limits for Boats
  - TRPA would prohibit vessels to operate on Lake Tahoe that have an exhaust system directly to the air that generates noise which exceeds TRPA or applicable state standards. This regulation is consistent with Nevada State regulation (NRS 488.195) and State of California vehicle code (CA Harbors and Navigation Code, Section 654 A), which requires that vessels be equipped with a permanently installed, constantly operating

muffler system that effectively prevents exceedances of the maximum noise levels described above.

#### 6. Recreation Monitoring

- The plan has been revised to include recreation monitoring of visitor experience and user conflicts related to shorezone/lakezone activities. This would include beach recreation surveys, motorized/non-motorized user interaction, recreation capacity, etc. The monitoring would begin in 2019 and be coordinated with TRPA's threshold evaluation program and the development of other ongoing recreation management programs.

#### VII. Issues and Concerns:

##### A. Public Access & Recreation – Scope of Shoreline Plan

TRPA received comments from individuals and agencies requesting that the Shoreline Plan include additional measures to improve public access to the Lake and that the scope be expanded to more broadly address recreation. The scope of recreation plans, programs and activities among the wide range of recreation providers is a balance of responsibility. The act of managing any planning process that overlaps into the roles and responsibilities of other agencies is to clearly define the scope and purpose of the proposed action. While the goal of the Shoreline Plan is to enhance the recreation experience along Lake Tahoe's shoreline, the plan is not intended to be the comprehensive recreation plan for Lake Tahoe or the shoreline. It is predominantly a plan to set the development envelope for water-dependent structures along the shoreline, and to do that in the context of a mix of 55% public and 45% private property fronting the lake shore.

A myriad of other recreation plans and implementing measures already exist or are underway for Lake Tahoe. Recreation planning for the Tahoe Region is within the purview of TRPA and numerous federal, state, local, and private recreation providers. This section summarizes a few of the ways the Shoreline Plan as well as other recreation initiatives are addressing and enhancing public recreation access to the lake.

While the Shoreline Plan scope is primarily limited to location and design standards for shoreline structures, it does include provisions to benefit the public and to keep identified impacts at less than significant levels. One of the distinguishing features of the plan is its focus on improvements at marinas which provide publicly available facilities such as ramps, docks, slips, buoys, rental fleets, fueling and wastewater pumping, and viewing piers. Under the plan, marinas would have the flexibility to add capacity, improve facilities, and reconfigure to adapt to changing lake levels.

In addition to marina improvements, the Shoreline Plan will facilitate coordinated planning and improvements on the Lake through education and partnerships. These programs include the no wake zone and boater education campaign that TRPA will implement with enforcement agency partners, marinas, ramp operators and boat rental concessions. TRPA will also partner with the Lake Tahoe Water Trail to improve lake access points and provide wayfinding signage and education for

non-motorized boaters. These programs would be funded in part by boating activity through annual mooring registration and boat rental concession fees.

TRPA and California State Lands will enter into a binding agreement to ensure that the public trust easement is protected (Attachment H). The MOU between TRPA and the California State Lands Commission (CSLC) requires close coordination and decisions by State Lands when designing piers and other shoreline structures to ensure that the public can pass under, over, or around a pier. To ensure consistency in the processing of permit applications, TRPA modified its code provisions to provide design flexibility to the applicant for structures that provide CSLC access.

The Shoreline Plan is just one of a multitude of plans and programs that address access to Lake Tahoe. Public access to the Lake is provided primarily through public lands such as California and Nevada State Parks, US Forest Service, local jurisdictions' (Utility Districts and the City of South Lake Tahoe) beaches and facilities, as well as marinas and boat launches.

To better establish a baseline from which to plan public access improvements to the Lake, the California Tahoe Conservancy (CTC) prepared a Public Access Investment Plan Inventory in July 2018. This comprehensive inventory documented 65 public access points including all lake front public lands, lake view public lands, and lake front private lands that provide public access. The goal of this plan is to create a roadmap for future public access that furthers the Lake Tahoe Region's Recreation Threshold and other regional goals related to providing additional access along the shoreline and optimizes public investment over the next 5-10 years. The report took a close look at both opportunities and impediments to public access to the Lake. This plan lays the foundation for all agencies around Lake Tahoe to coordinate on further public access improvements beyond what is provided by the Shoreline Plan.

In addition to the CTC inventory, TRPA and public land agency partners began to collaboratively plan for future public access and recreation opportunities needs through The Sustainable Recreation Working Group. The goal of the working group is to "provide high-quality opportunities for outdoor recreation, while preserving and restoring the outstanding natural and cultural resources of the Lake Tahoe Basin". The working group is integrating recreation management planning across agencies and developing a basin-wide Sustainable Recreation Strategic Plan. The policy direction from the Strategic Plan will guide future recreation management at Lake Tahoe, including addressing crowding and resource issues on the Lake.

Nonetheless, in further response to the comments on the need to enhance recreation access beyond what is already provided by the proposed Plan, staff identified an existing fee charged to pier applicants. The per lineal foot fee will be increased and used to generate funds to improve public access at public places on the Lake.

#### B. Incentive-Based Environmental Improvement at Marinas

One of the primary objectives of the Shoreline Plan is to provide incentives for environmental improvement through redevelopment of shoreline structures. This incentive program is particularly important at marinas, where the former Marina Master Plan requirements served as a disincentive to environmental improvements at Tahoe's marinas. Under the Shoreline Plan revisions, marinas would be

able to redevelop at a variety of scales without being required to prepare a comprehensive marina master plan, as long as the marina project implements environmental improvements specified in the Code. This incentive-based approach to environmental improvement had to be balanced with a clear regulatory framework and guidelines in the code of ordinances. The Steering Committee and Code Working Group discussed this balance at length, responding to stakeholder concerns that some projects would not trigger sufficient environmental components and mitigation, while property owners, concession and marina operators asked for flexibility.

To address this issue, the Steering Committee formed a marina sub-committee specifically tasked with developing a feasible program that requires environmental improvement based on the type and level of project being proposed. First, the Committee determined which environmental improvements should be in place prior to any new projects at marinas. The proposal would require that an aquatic invasive species management plan and water quality BMPs be in place and that the marina be certified as a “Clean Marina.” Other environmental improvements would be required based on whether the project is considered a minor or major project, based on whether the project proposes an expansion of use or mooring capacity.

After recent consultations with the California Attorney General’s representatives, the Steering Committee proposes to refine the marina provisions of the Shoreline Plan to require greater levels of environmental improvement at lesser levels of marina expansion. The proposal would: (1) lower the mooring expansion trigger from 20 new moorings to 15 before requiring implementation of the listed environmental improvements in Code Section 84.6, (2) prioritize mooring expansion improvements based on environmental benefit, and once triggered, require implementation of specified benefits in priority list order, and (3) limit new dredging at marinas.

### C. Boating Enforcement and Non-Motorized Recreation

While the Shoreline Plan scope is not primarily a recreation management plan, the Plan addresses boating from the perspective of mitigating the effects of the boating activity that results from the new structures authorized by the Plan. The program and mitigations include regulation of boating practices, including the no wake zone, and anchoring and beaching. The Plan’s regulation of existing no wake zone and expanded no wake at Emerald Bay ensure that additional boating generated by structures proposed under the plan would not have a negative environmental effect and addresses user conflicts between motorized and non-motorized recreationists.

TRPA has responded to these concerns, first in the Shoreline Plan itself, then with substantial additional enhancements to enforcement in response to comments. First, TRPA engaged partners in developing a coordinated enforcement MOU (See Attachment J). TRPA coordinated with the Lake Tahoe Water Trail, Nevada and California State Parks, Nevada Division of Wildlife (NDOW), California Fish and Wildlife, and the US Coast Guard to discuss potential approaches. Initial discussions considered a wide range of strategies from educational signage, demarcation buoys, additional patrols and the challenges of enforcing regulations across jurisdictional boundaries and between agencies with different missions and authority. All agreed that a coordinated approach would be beneficial to reducing user conflicts and recommended including law enforcement agencies on the lake to enforce boating regulations. When all agencies with jurisdiction maintain a heightened and coordinated on-lake presence, the aggregation of enforcing all applicable rules creates a substantial increase in enforcement activity that will accelerate

boating behavior changes and reduce user conflicts to less than significant levels. This will be coupled with strong education and outreach.

TRPA added Douglas County, Washoe County, Placer County, El Dorado County, the City of South Lake Tahoe, NDOW, and the U.S. Coast Guard to the coordinated approach to enforcement of the 600 foot no wake zone. The MOU identifies areas for targeted patrols, education and enforcement. At the same time, TRPA committed to hiring an additional boat crew beginning in 2019 to aid in implementing this enforcement and education program.

Adding to the coordination MOU and in further response to comments, the Steering Committee recommended including similar standards as the states (CA and NV) for buffer zones around non-motorized recreationists and shoreline structures. Now all agencies under the MOU are coordinating education and enforcement of a widely consistent set of rules to address user conflicts on the lake between motorized and non-motorized recreationists.

The Steering Committee carefully considered commenters suggestions to expand the no wake zone and place demarcation buoys near State Parks. After many conversations with agency partners and enforcement and watershed education personnel weighing the pros and cons, the Steering Committee recommended maintaining the existing 600 foot no wake zone for its consistency and predictability. Further, the absence of reliably collected data on user conflicts means there is not a strong basis in existing data to base a regulatory change to the established 600 foot no wake zone at this time. The no wake zone coupled with enhanced education and enforcement was deemed sufficient unless future enhanced monitoring of user experience supports adaptive management. Maintaining this consistent standard will be more feasible to implement lake wide and is the first step towards an effective enforcement program. Through an adaptive management approach and recreation monitoring, California State Parks or other land managers could later pursue placing demarcation buoys in certain locations. TRPA will monitor motorized/non-motorized boating interactions through surveys and coordination with local law enforcement agencies on the lake. If data indicates an increase in adverse interactions due to boating activity attributable to the Shoreline Plan, TRPA may consider adaptively enlarging the no wake zone and/or other management measures.

The Shoreline Plan includes a strong education element to aid compliance of boating regulations. TRPA has begun this education campaign by developing a “Take Care” message on no wake zone boating behavior to be used at marina, AIS inspection sites, and other launch locations. In response to public comments, TRPA strengthened the education programs by committing a portion of education funding to the Lake Tahoe Water Trail and to providing training to boat rental concessions operators. More details on the education and enforcement campaign is included in the Implementation Program (Attachment B) and in the FEIS Response to Comments (Attachment A).

#### D. Reconstruction of Existing Structures

Significant comment was received on whether reconstructions of existing piers should be a qualified exempt activity (as proposed) or a project subject to full TRPA review and approval. After detailed discussion with the commenter, in response to the concerns raised, the Steering Committee recommends that the Shoreline Plan be revised to move full and partial reconstructions of piers from



the qualified exempt category of activities into projects. No change is being made to the Plan’s proposal to allow the reconstruction of nonconforming piers without moving towards conformance. Applicants who are replacing “in kind” will be able to keep what they have. Nonetheless, in the case of modifications and expansions, which are more likely because design standards incentivize these changes, the Plan requires movement towards conformance of existing nonconforming structures.

#### E. Shoreline Fee Programs

The Shoreline Plan addresses impacts identified in the EIS caused by boating activity and certain boating structures on Lake Tahoe. The means to address and fully mitigate certain identified impacts are proposed fee programs that generate resources necessary to reduce and maintain impacts at less than significant levels.

TRPA received comments asserting that the Shoreline Plan fee program is actually a tax prohibited by the California constitutional provision more colloquially known as Proposition 13. Proposition 13 does not preclude governments from enacting reasonable regulatory fees. See *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal4th 866 ; *California Chamber of Commerce v. Air Resources Control Board*, (2017) 10 Cal.App.5<sup>th</sup> 604. As these cases demonstrate, Proposition 13 does not preclude TRPA from adopting the proposed Shoreline Plan fee program. Governments may adopt fee programs, as proposed in the Shoreline Plan, that are reasonably tied to impacts caused by the regulated activity. TRPA has demonstrated that the Shoreline Plan fee program was developed by calculating reasonable costs to address impacts caused by boating and boating structures to be paid by those contributing to these impacts.

#### VIII. Regional Plan Compliance:

The proposed Shoreline Plan is consistent with the TRPA Regional Plan. The Regional Plan, under Chapter 4: Conservation Element, Shorezone, includes the following policies, listed below in bold, with staff response in italics, that are applicable.

##### **Policies**

**SZ-1.1: All vegetation at the interface between the backshore and foreshore zones shall remain undisturbed unless allowed by permit for uses otherwise consistent with the shorezone policies.**

*The Shoreline Plan does not alter provisions related to protection of vegetation between the backshore and foreshore and is therefore consistent with this policy.*

**SZ-1.2: Construction Activity should be set back to ensure no disturbance of the interface between high capability backshore and unstable cliff areas.**

*The Shoreline Plan does not alter provisions related to construction setbacks between high capability backshore and unstable cliff areas and is therefore consistent with this policy.*

**SZ-1.4: Class 1 capability shorezones shall be managed consistent with the goals and policies of the stream environment zone subelement.**

*The Shoreline Plan does not alter provisions related to managing stream environment zones and is therefore consistent with this policy.*

**SZ-1.5: Disturbance of Class 2 and Class 3 Capability Shorezones shall be minimized to avoid accelerated backshore erosion or cliff collapse.**

*The Shoreline Plan does not alter provisions related to disturbance of Class 2 and 3 capability shorezones and is therefore consistent with this policy.*

**SZ 1.6: Low to moderate intensity dwelling and recreational uses should be allowed in the stable and high capability backshore areas of class 4 and 5 capability shorezones.**

*The Shoreline Plan does not alter provisions related to specific uses allowed in class 4 and 5 shorezones and is therefore consistent with this policy.*

**SZ-1.7: Water dependent recreational facilities and residential buildings are acceptable uses in Class 6, 7 and 8 capability shorezones so long as such uses (1) Provide for the natural equilibrium of the Shoreline interface, 2) Do not accelerate nearshore shelf erosion, 3) Minimize disturbance of vegetation, 4) Consider visual amenities, and 5) Comply with other relevant policies of this subelement.**

*The Shoreline Plan does not alter provisions related to specific uses allowed in Class 6, 7 and 8 capability shorezones and is therefore consistent with this policy.*

**SZ-1.8: Stream channel entrances to the lake shall be maintained to allow unobstructed access of fishes to upstream spawning sites.**

*The Shoreline Plan maintains designated stream mouth protection zones and prohibits development in these locations, therefore it is consistent with this policy.*

**SZ-1.9: The agency shall regulate the placement of new piers, buoys, and other structures in the foreshore and nearshore 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 Shoreline plan will update ordinances that regulate the placement of new piers, buoys, and other structures. The program will include measures to ensure that fish habitat is protected, that structures are designed to avoid navigation hazards and interference with littoral drift. Structures permitted under the program will be reviewed to ensure that scenic thresholds are attained. The Shoreline Plan is therefore consistent with this policy.*

**SZ-1.10: Provisions should be made to allow multiple-use piers when such uses are intended to reduce the number of single-use piers existing on adjoining properties.**

*The Shoreline Plan prioritizes multiple use piers and those piers that retire development rights on adjoining properties over single-use piers and is therefore consistent with this policy.*

**SZ-1.11: The agency shall regulate the maintenance, repair, and modification of piers and other structures in the nearshore and foreshore.**

*The Shoreline Plan will update ordinances that regulate the maintenance, repair and modification of piers and other structures in the nearshore and foreshore. Therefore, it is consistent with this policy.*

**SZ-1.12: Cascade and Fallen Leaf Lakes should be evaluated and considered for low intensity uses to include restrictions on the use and size of boat motors.**

*While the Shoreline Steering Committee did not recommend additional restrictions at Cascade and Fallen Leaf Lake at this time, The Shoreline Plan does not preclude TRPA or the U.S. Forest Service from limiting the scale of projects and the use and size of boat motors at Cascade and Fallen Leaf Lakes in the future if the need arises. The Shoreline Plan is therefore consistent with this policy.*

**SZ-1.13: Allow public access to the shorezone where lawful and feasible on public lands.**

*The Shoreline Plan includes provisions to ensure that the public trust easement is protected. TRPA would review the placement of any new structures to ensure access to public lands is not impeded and is therefore consistent with this policy.*

**SZ-1.14: Private marinas shall be encouraged to provide public boat launching facilities.**

*While the Shoreline Plan does not require marinas to provide public boat launching facilities, many of the marinas already provide this service. The Shoreline Plan does encourage environmentally beneficial redevelopment of marinas, which could provide better access for the public, and is therefore consistent with this policy.*

**SZ-1.15: TRPA may designate shorezones as man-modified.**

*The Code of Ordinances provisions related to the man-modified designation will remain. The Shoreline Plan is therefore consistent with this policy.*

## IX. Environmental Review

TRPA and Ascent Environmental, the environmental consultant for the Shoreline Plan, analyzed the potential effect of the proposed project, including the Code of Ordinance Amendments. The findings of the environmental analysis are described in Section IV F above “EIS Findings and Mitigation Measures”. The Final EIS describes those changes to the program that were incorporated following the public comment period. The environmental documentation for the recommended changes and the code amendments consists of the Final Environmental Impact Statement, EIS Findings, Threshold Evaluation (Findings) and compliance measures evaluation. Per Article V and VI of the TRPA Bi-State Compact and Chapter 3: Environmental documentation of the TRPA Code of Ordinances, the environmental documentation serves to analyze whether the program and code amendments will cause environmental threshold carrying capacities to be exceeded.

Contact Information:

For questions regarding this agenda item, please contact Rebecca Cremeen at (775) 589-5214 or [rcremeen@trpa.org](mailto:rcremeen@trpa.org).

Attachments:

- A. Shoreline Plan Final EIS/Response to Comments (FEIS)  
<http://www.trpa.org/document/projects-plans/>
- B. Shoreline Implementation Program
- C. Findings Documents (FEIS, Code, Regional Plan)
- D. Threshold Indicators and Compliance Measures Table
- E. Ordinance 2018- \_\_ with proposed Code Amendments
- F. Code Amendment Summary Guide
- G. Resolution to Amend Rules of Procedure with proposed amendment
- H. California State Lands Commission Public Trust Resolution and MOU
- I. California State Lands Mooring Enforcement Resolution and MOU
- J. Enforcement Agency Resolution and MOU
- K. Public Outreach Summary Report