

**ATTACHMENT H:**  
**Adopting Resolution for Memorandum of Understanding**  
**Between the TRPA and California State Lands Commission regarding**  
**Shorezone Permitting Process Coordination**

TAHOE REGIONAL PLANNING AGENCY  
TRPA RESOLUTION NO. 2018 –

RESOLUTION OF THE TAHOE REGIONAL PLANNING AGENCY'S GOVERNING BOARD  
TO ADOPT A MEMORANDUM OF UNDERSTANDING WITH CALIFORNIA STATE LAND COMMISSION  
REGARDING SHOREZONE PERMITTING PROCESS COORDINATION

WHEREAS, Lake Tahoe is a navigable body of water, approximately two-thirds of which is within California;

WHEREAS, the bed and banks of the California portion of Lake Tahoe are owned by the State of California up to elevation 6,223 feet Lake Tahoe Datum (LTD) (State Sovereign Lands);

WHEREAS, the California public trust easement extends from 6,223 to 6,228.75 feet LTD (State Easement);

WHEREAS, the State of California through the CSLC has authority to issue leases for the lawful use of its Sovereign Lands and to administer the State Easement;

WHEREAS, the State Sovereign Lands and the State Easement shall collectively be referred to as State Lands and Interests hereafter;

WHEREAS, the TRPA has authority to issue permits for uses and structures within the Lake Tahoe Region under the Tahoe Regional Planning Compact;

WHEREAS, the TRPA has authority to plan for the development, utilization and management of the recreational resources of the Lake Tahoe Region, including its beaches and marinas;

WHEREAS, CSLC desires to preserve and protect legal public access to and along the California side of Lake Tahoe for all lawful purposes;

WHEREAS, the TRPA desires to preserve and protect recreational opportunities at Lake Tahoe;

WHEREAS, both CSLC and TRPA have an interest in a coordinated and streamlined processing and implementation of their respective permitting authority, leasing authority and other authorities at Lake Tahoe;

WHEREAS, the placement of piers, mooring buoys and other structures on State Sovereign Lands requires a lease from the CSLC (Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b)) and a permit from the TRPA (TRPA Code of Ordinances 52.4.A);

WHEREAS, the Parties are entering into this MOU to establish the agreements of the Parties with respect to the permitting of structures and activities involving State Sovereign Lands and Interests that may affect recreational opportunities at Lake Tahoe;

WHEREAS, this MOU sets forth a process for review of applications, with each Party reserving its respective authority and responsibility and not delegating or ceding any authority or responsibility from one Party to the other;

WHEREAS, the Parties respect the sovereign interests of the state of Nevada and agree that the provisions of this MOU only govern the California side of Lake Tahoe and in no way affect the Nevada side of Lake Tahoe or the sovereign interests of the state of Nevada;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Tahoe Regional Planning Agency hereby authorizes the TRPA Executive Director to enter into the Memorandum of Understanding with the California State Land Commission regarding Shorezone Permitting Process Coordination, as reflected in Exhibit 1 of the resolution.

PASSED and ADOPTED by the Governing Board of the Tahoe Regional Planning Agency this \_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

Ayes:

Nays:

Absent:

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James Lawrence, Chair  
Tahoe Regional Planning Agency  
Governing Board

**EXHIBIT 1**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA STATE  
LANDS COMMISSION AND THE TAHOE REGIONAL PLANNING AGENCY  
REGARDING SHOREZONE PERMITTING PROCESS COORDINATION**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into this \_\_\_\_ day of \_\_\_\_, 2018 by and between the California State Lands Commission (CSLC), an agency of the State of California and the Tahoe Regional Planning Agency (TRPA), a bi-state agency created by the Tahoe Regional Planning Compact (together herein described as “the Parties”).

**RECITALS**

WHEREAS, Lake Tahoe is a navigable body of water, approximately two thirds of which is within California;

WHEREAS, the bed and banks of the California portion of Lake Tahoe are owned by the State of California up to elevation 6,223 feet Lake Tahoe Datum (LTD) (State Sovereign Lands);

WHEREAS, the California public trust easement extends from 6,223 to 6,228.75 feet LTD (State Easement);

WHEREAS, the State of California through the CSLC has authority to issue leases for the lawful use of its Sovereign Lands and to administer the State Easement;

WHEREAS, the State Sovereign Lands and the State Easement shall collectively be referred to as State Lands and Interests hereafter;

WHEREAS, the TRPA has authority to issue permits for uses and structures within the Lake Tahoe Region under the Tahoe Regional Planning Compact;

WHEREAS, the TRPA has authority to plan for the development, utilization and management of the recreational resources of the Lake Tahoe Region, including its beaches and marinas;

WHEREAS, CSLC desires to preserve and protect legal public access to and along the California side of Lake Tahoe for all lawful purposes;

WHEREAS, the TRPA desires to preserve and protect recreational opportunities at Lake Tahoe;

WHEREAS, both CSLC and TRPA have an interest in a coordinated and streamlined processing and implementation of their respective permitting authority, leasing authority and other authorities at Lake Tahoe;

WHEREAS, the placement of piers, mooring buoys and other structures on State Sovereign Lands requires a lease from the CSLC (Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b)) and a permit from the TRPA (TRPA Code of Ordinances 52.4.A);

WHEREAS, the Parties are entering into this MOU to establish the agreements of the Parties with respect to the permitting of structures and activities involving State Sovereign Lands and Interests that may affect recreational opportunities at Lake Tahoe;

WHEREAS, this MOU sets forth a process for review of applications, with each Party reserving its respective authority and responsibility and not delegating or ceding any authority or responsibility from one Party to the other;

WHEREAS, the Parties respect the sovereign interests of the state of Nevada and agree that the provisions of this MOU only govern the California side of Lake Tahoe and in no way affect the Nevada side of Lake Tahoe or the sovereign interests of the state of Nevada;

WHEREAS, TRPA approved this MOU on \_\_\_\_ and CSLC approved this MOU on \_\_\_\_.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- I.** The Parties agree to work together cooperatively to implement the terms of this MOU. Pursuant to all applicable laws of the State of California, the Tahoe Regional Planning Compact and the TRPA Regional Plan and Code of Ordinances, the Parties acknowledge that each agency retains its own legal authority and jurisdiction. Nothing in this MOU is intended to alter, amend, or exempt applicants from CSLC lease requirements, or compel CSLC to issue a lease on terms that it does not accept.
- II.** The following terms are defined for purposes of this MOU:
- A. Proposed Shorezone Improvements - Any new building, structure, improvement, or other human construction on State Lands or Interests that triggers the requirement for a permit under TRPA's Code of Ordinances except for reconstructions under TRPA Code Section 82.7. Proposed Shorezone Improvements do not include Exempt or Qualified Exempt activities under TRPA's Code of Ordinance.
- B. Design Condition - Conditions or design elements provided by CSLC that provide for legal, lateral public access as appropriate for each property, to ensure there is no unreasonable interference with legal, lateral public access. Legal, lateral public access can be provided with respect to a particular Proposed Shorezone Improvement by incorporating stairs or ladders and appropriate signage that allows the public to pass over the Proposed Shorezone Improvement, or using open piling construction with sufficient vertical clearance and signage that allows the public to pass under the Proposed Shorezone Improvement, or other public access accommodations in or adjacent to the State Easement to fulfill this requirement.

C. Eligible Design: any Proposed Shorezone Improvement that includes design elements intended to provide for legal, lateral public access that complies with TRPA's specific public access design exemptions codified in TRPA's Code of Ordinances.

D. Jurisdictional Determination - A written determination by CSLC that the Proposed Shorezone Improvement:

1. Will not encroach upon or otherwise impact State Sovereign Lands or the State Easement (No Jurisdiction Determination);
2. Will encroach upon or otherwise impact State Sovereign Lands (a Fee Ownership Determination); and/or
3. Will encroach upon or otherwise impact the State Easement (an Easement Determination).

**III.** The Parties shall coordinate with each other prior to issuing a permit, approval, or lease regarding a Proposed Shorezone Improvement through the following procedures to streamline and coordinate the review and approval of applications for Proposed Shorezone Improvements.

A. TRPA shall require any applicant for a Proposed Shorezone Improvement to obtain a Jurisdictional Determination from CSLC as part of the permit application process.

B. CSLC shall process Jurisdictional Determination requests within 45 days of receipt of materials reasonably necessary to make a Jurisdictional Determination. Depending on the Proposed Shorezone Improvement, these materials may include, but are not limited to, design plans, site and location photographs, and



survey information sufficient to locate the Proposed Shorezone Improvement in relation to the State Lands and Interests. CSLC shall provide a written Jurisdictional Determination to the applicant and TRPA. If CSLC fails to issue a Jurisdictional Determination, the applicant may elevate the matter to the executive level of both agencies. CSLC shall issue the Jurisdictional Determination within 10 days from the date of the elevation.

- 1.If the CSLC makes a No Jurisdiction Determination, no Design Conditions or CSLC lease will be required.
- 2.If the CSLC makes an Easement Determination, CSLC will not require a lease, but TRPA will include Design Conditions in the applicable TRPA permit unless the Design Conditions require modification to be consistent with TRPA's Code of Ordinances or its adopted Environmental Threshold Carry Capacities. If the Design Conditions require modification pursuant to this paragraph, TRPA and CSLC will seek input from the applicant. TRPA and CSLC will then work together to develop any limited changes required for the Design Conditions to be consistent with TRPA's Code of Ordinances and its adopted Environmental Threshold Carrying Capacities while providing for legal, lateral public access as applicable for the property. TRPA will incorporate the modified Design Conditions into any applicable permit.
- 3.If the CSLC makes a Fee Ownership Determination, CSLC will require a lease, and TRPA will include Design Conditions in the applicable TRPA permit subject to the modification process set forth in Paragraph III.B.2.b.

- C. If the CSLC has made a Fee Ownership Determination and/or an Easement Determination and no Eligible Design is proposed the CSLC will work with the applicant and TRPA to receive input and discuss the Proposed Shorezone Improvement, the public trust needs, and other local conditions to determine an appropriate Design Condition (the “Routine Process”). The CSLC will consider whether the Design Conditions contemplated are feasible and appropriate for the Proposed Shorezone Improvement, taking into consideration other TRPA regulations and ordinances.
- D. If the CSLC has made a Fee Ownership Determination and/or an Easement Determination and an Eligible Design is proposed, the CSLC will work with the applicant to receive input and discuss the Proposed Shorezone Improvement, the public trust needs, and other local conditions to determine an appropriate Design Condition (the “Streamlined Process”). The CSLC will consider whether the Design Conditions contemplated are feasible and appropriate for the proposed Shorezone Improvement, acknowledging that TRPA has effectively “pre-approved” the generic design through the Eligible Design process.
- E. Once the CSLC has made a final determination as to an appropriate Design Condition, TRPA will include the Design Condition in TRPA’s permit for the Proposed Shorezone Improvement subject to the modification process set forth in Paragraph III.B.2.
- F. If CSLC makes a Fee Ownership Determination with regard to the Proposed Shorezone Improvement, the applicant will need a lease from CSLC or an

amendment to an existing lease. It will be the intent of both Parties to engage in early coordination in order to process their respective applications concurrently.

**IV. Termination.** This MOU may be terminated by any of the Parties upon one hundred twenty (120) days' notice in writing. A Party's decision to withdraw from the MOU shall be made at a properly noticed public meeting and shall be supported by substantial evidence that the intent of the MOU is not being met. The Parties shall work in good faith to maintain this Memorandum of Understanding.

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding.

**CALIFORNIA STATE LANDS COMMISSION**

\_\_\_\_\_  
Jennifer Lucchesi  
Executive Officer

\_\_\_\_\_  
Date

Approved as to form:

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\_\_\_\_\_  
Date

**TAHOE REGIONAL PLANNING AGENCY**

\_\_\_\_\_  
Joanne S. Marchetta  
Executive Director

\_\_\_\_\_  
Date

Approved as to form:  
TRPA General Counsel

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John L. Marshall

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Date