



July 3, 2008

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

**RE: Proposed Revisions to Shorezone Program Description and Draft Code of Ordinances**

Dear TRPA staff, Madam Chair and Members of the Governing Board,

The League to Save Lake Tahoe recognizes the involvement and substantive comment provided by a multitude of agencies, organizations, Governing Board members, Lieutenant Governors of both California and Nevada, and the public to draft a Shorezone plan. Although, progress has been made in formulating an “improved” plan, numerous significant concerns have not been addressed and corrected.

**Environmental Threshold Carrying Capacities and ONRW**

Under the Clean Water Act, Lake Tahoe has special classification as an Outstanding National Resource Waters (ONRW) which affords it strict antidegradation protection, such that “no degradation is allowed in the waters designated as ONRW” and “the EPA interprets this provision to mean no new or increased discharges to ONRWs and no new or increased discharge to tributaries to ONRWs that would result in lower quality in the ONRWs.” Article 1(a)(1) of the TRPA Compact states “it is found and declared that the waters of Lake Tahoe and other resources of the region are threatened with deterioration or degeneration, which endangers the natural beauty and economic productivity of the region.” Consistent with the TRPA Compact, TRPA needs to implement “ordinances which will achieve and maintain such [environmental threshold carrying] capacities while providing opportunities for orderly growth and development consistent with such capacities.”

The proposed Shorezone plan threatens the threshold standards and the “exceptional ecological significance” of the ONRW classification, with the potential for substantial environmental impacts. In its current form, there is a lack of the necessary level of environmental impact analyses for the SEIS, Shorezone Ordinance changes, and climate change impact potential, a lack of specification and detail on how identified environmental impacts in the FEIS will be mitigated, the absence of performance measures, and a lack of scientific review requirements to confirm the effectiveness of mitigation methods. As Lake Tahoe’s extraordinary scenic beauty is

threatened, any Shorezone plan must ensure attainment and maintenance of scenic and environmental thresholds.

### **Comment Period and Need for Environmental Review**

The TRPA has stated that July 3, 2008 is the “last day to submit comments to TRPA that will be addressed in the packet of written material submitted to the Governing Board for action in August.” The League to Save Lake Tahoe objects to the short comment period for the June 18, 2008 Proposed Revision Shorezone Program and Draft Code of Ordinances document, especially considering the Governing Board approved an extension for the TRPA to further *revise and complete* the Ordinances for a August 28 or 29, 2008 vote. Some of the changes introduced in the June 18 document were substantially different than the May 2, 2008 version.

It is the League’s contention that revisions in the proposed ordinances constitute substantial changes to Alternative 6A and therefore a revised EIS is required. TRPA has prepared the FEIS in accordance with NEPA as well as CEQA regulations:

“Acknowledging that state and federal agencies in both California and Nevada would likely wish to use the EIS to adopt those portions of the ordinances over which they have jurisdiction, TRPA also prepared the DEIS—as well as the SDEIS and this FEIS—to meet the requirements of the California Environmental Quality Act (CEQA) (Pub. Res. Code Section 21000 et seq.), the State CEQA Guidelines (Cal Adm. Code Section 15000 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321 et seq., 40 C.F.R. 1500 et seq.).” [2006 FEIS, p 1-8).

Supplements to the FEIS would be required if the agency makes significant changes to the proposed action that would warrant additional environmental concern (NEPA 1502.9 (c)):

“(c) Agencies:

1. Shall prepare supplements to either draft or final environmental impact statements if:
  - (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
  - (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
2. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.
3. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.
4. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council [on Environmental Quality].”

Following the public release of the revised EIS the TRPA should provide a comment period of at least 60 days as required by the Compact (Article VII b). TRPA also prepared the FEIS in accordance with CEQA. Currently items remain in the FEIS contrary to CEQA policy including deferred mitigation (for the Blue Boating Program) and inadequate performance measures. The League requests the TRPA to bring these items into compliance with CEQA.

## **Previous Comments**

The League to Save Lake Tahoe hereby incorporates by reference all previous comments, whether oral or written, including Governing Board comments or presentations and the May 20, 2008 Shorezone Workshop Proposed Scenarios.

## **General Comments**

The Shorezone Program and Draft Code of Ordinances are unacceptable in the current form and need to include the following elements that are currently lacking from the plan:

1. All new Shorezone structures (piers, buoys, ramps, slips, etc...) should be limited on an annual basis consistent with no more than the historic average and only allowed if:
  - Programs have been implemented that fully mitigate the environmental impacts of new shorezone development and any associated watercraft impacts.
  - Monitoring stations have been placed and are operational throughout the Lake (including launch ramps and a greater density of monitoring facilities in high traffic areas, such as Emerald Bay). Ideally speaking, these need to provide real time data for review by an independent scientific entity such as the TSC.
  - Performance measures have been fully developed and specified, so that should threshold standard levels exceed a certain “trigger” level, measures are implemented on a timely basis to avoid environmental degradation.
  - The programs have been scientifically reviewed and verified on their effectiveness by an independent scientific entity, such as the Tahoe Science Consortium (TSC).
2. Visually Sensitive areas are “highly scenic or visually vulnerable landscapes exhibiting the influence of man-made modifications within an otherwise natural setting.” In addition to naturally dominated and Shorezone Preservation Areas (SPAs), Visually Sensitive areas should be prohibited from any new Shorezone structure development and furthermore, restrict existing structures within those areas to modifications that do not increase length, visible mass, etc...
3. No development should occur in fish spawning habitat until Lahontan completes a Basin Plan amendment to lift the prohibition *and* is then conducted on a limited (pilot project) basis only with significant mitigation and monitoring by an independent science entity (such as the TSC). After a scientific entity (TSC) certifies the effectiveness of mitigations in a majority of monitoring sites in each area (such as different shoreline character types, stream-mouth Protection Zones, etc...), then development may occur in those specific areas with the prescribed mitigations, or more stringent ones if necessary.
4. When impacted by shorezone development structures, the requirement for “in-kind” restorations needs to be 2:1. This applies to shorezone areas, riparian zones, and fish habitat.

5. During any phases of the Shorezone plan implementation, any Shorezone structures (piers, buoys, ramps, slips, etc.) need to be phased in depending on attainment and maintenance of any of the associated environmental thresholds. With regards to specific structures, the following also apply:
  - **Private piers.** No more than 5 per year with a strong preference for multi-use piers. No private piers should be allowed for properties served by multi-use piers such as homeowners' association piers. There should be a maximum number of piers allowed for any future development on the Lake, and not just specified for the duration of the 20 year plan.
  - **Buoys.** All unlawful buoys need to be removed in both California and Nevada. As Lahontan suggested (at least for the interim plan approach), there should be a cap on the total allowable buoys on the Lake (4454). Considering that TRPA has publicly estimated that the number of un-permitted buoys on the lake is between 1/3 and 1/2, this means that approximately between 1500 and 2200 buoys are currently unauthorized. Assuming an average of 1800 illegal buoys on Lake Tahoe, this translates to only about 2654 buoys that have been legally permitted for approximately over four decades! The TRPA proposal suggests allowing 6316 legal buoys on the Lake in the next 20 years, which is an extraordinary increase in the rate of legal buoy placement (183/yr) versus historic average (66/yr since 1972). This represents a 270% increase. At full build out, these buoys would create an additional 77,000 additional boat trips/yr along with emissions of 10 tons/yr of hydrocarbons and 18 tons/yr of NO<sub>x</sub>. This clearly represents an excessive and unprecedented rate of buoy placement, along with significant environmental impacts. Buoy fields with greater than three buoys need to undergo scenic review.
  - **Ramps.** Considering the TRPA emergency declaration and Governing Board actions to prevent the introduction of invasive species (such as quagga and zebra mussels, which are destructive both economically and environmentally) into Lake Tahoe, no new ramps should be allowed until all existing ramps are controlled during operation hours with inspectors and provide on-site or offsite boat washing stations.
  - **Breakwaters, jetties, rock crib piers, and sheet pile piers.** Although TRPA proposes a prohibition on any new structures (including transfer or relocation), any expansion (as approved through a TRPA marina master plan process) of such structures should demonstrate no adverse environmental impacts.
6. A mitigation and boat sticker program needs to be implemented without delay. This program needs a sufficient fee structure based upon engine horsepower and emission star rating, sufficient inspection capability for all access points during all hours of operation on the Lake, and enforcement regulations and capacity to ensure compliance with engine requirements and tuning, boat pollution reduction goals, bilge containment, sewage controls, noise ordinances, invasive species inspection and boat washing requirements, etc... In addition, mitigations need to offset the direct impacts of increased boat use

impacts (such as emissions and noise) associated with new Shorezone structures on the Lake, as well as increased boat use on the Lake in general. With clearly articulated performance measure conditions specified, water quality monitoring sites throughout the Lake would be used to monitor the conditions that would trigger a response to pollutant increases by restricting boat use and/or eliciting responses or changes to the program. Incentives need to be offered to encourage the use of non-motorized, non-polluting, and cleaner technology (such as hybrid, electric, wind, and solar powered boats or the use of catalytic converters which can reduce emissions by up to 2/3). The TRPA needs to advance further beyond its regulations on the two-stroke engine. Inspections for both the boat sticker program and aquatic invasive species need to be combined.

7. As a result of the significant impacts on water quality, no new dredging operations should be allowed. However, maintenance dredging should be allowed with appropriate measures to prevent adverse environmental impacts.
8. To prevent boats from sinking while attached to mooring structures during storm events, TRPA needs to develop and enforce a program so that boats are adequately covered to protect from wave inundation and/or institute a deadline for boat removal from the Lake (i.e. fall).
9. Consistent with NEPA, CEQA, and/or AB 32 requirements, the Shorezone plan needs to evaluate green house gas emissions, mitigation plans, and evaluate likely and potential climate change scenarios with regards to the thresholds. For example, research indicates that if present trends are to continue, temperatures throughout the year in the Sierras could rise significantly. Warmer temperatures will translate to higher levels of NO<sub>x</sub> from the burning of fossil fuels (especially diesel). Ozone formation results from the interaction of hydrocarbons and NO<sub>x</sub> with UV radiation from the Sun. Ground-level ozone and the resulting smog have deleterious effects on vegetative growth, photosynthetic processes, and the respiratory systems of humans, wildlife, and plants. Currently, the highest levels of ozone are observed during the summer, but with increased temperatures forecast throughout the year in decades to come, ozone levels will likely increase the most dramatically during the spring and fall, when vegetation is more susceptible to the effects of ozone exposure stress. Trees and other forest vegetation will respond to this increased exposure with stunted growth and be more vulnerable to disease, pest infestation, shallower root systems, mortality, and increase fire susceptibility.

### **Specific Comments on Draft Code of Ordinances**

The following questions or suggested corrections correspond to the Shorezone Draft Code of Ordinances:

### **Chapter 2 Definitions**

**Bouy:** Buoy is defined as “a float anchored to a lake bottom which serves as a boat mooring, a navigation guide, hazard warning, or similar use. Seasonal or event marker buoys used to mark

swim areas or identify boat race courses. The marker buoys are not used to moor watercraft.” Will navigation buoys, hazard warning buoys, seasonal buoys, or event marker buoys be part of the 6316 total buoy count or will these be counted as additional buoys? In **52.4** the document redefines *buoy* as a “mooring buoy that is either in use or capable of use to moor watercraft.” The definition in **52.4.B** for “maximum number of buoys on Lake Tahoe” includes berths in boat houses and boat lifts in the total counts. More consistent definitions are needed throughout the document.

**Charter Boat Service:** What qualifies as a support facility (refueling stations, docks, maintenance structures, toilets, sewage pumps)?

**Commercial Boating Uses:** Do sea planes qualify as “other vessel?”

**Dredging:** Define “earthen materials” (rocks, sediments, trees, etc.).

**Linear Lake Frontage:** The use the word “generally” allows for ambiguity and interpretation.

**Manipulation:** Should include any change (not just killing or damaging), any alteration, including pruning, or any other thing that will change the natural growth of the vegetation. Does this include invasive species such as Eurasian milfoil?

**Multiple-Use Facility:** “A shorezone facility, usually but not always a pier, which is available for use by a homeowners association or functionally similar private or public entity, or two or more littoral parcel owners.” What is a shorezone facility that is not a pier?

**Public Use Facilities:** Please define “open.” Does open mean that the public can use some or all of actual buoys, piers, ramps, etc...

**Water Bourne Transit:** Concerning “people and goods”. Can this be used exclusively for transport of goods? Also, “schedule” should be revised to the grammatical correct form of “scheduled.”

## **Chapter 12 TRPA Regional Plan Mapschapter Contents**

### **12.2 B (1)**

What is "other relevant information"?

## **Chapter 13 Plan Area Statements and Plan Area Maps**

### **13.5. B. 1 (b) (iii)**

Please correct spelling error: “environ mental” to “environmental.”

### **13.5. B 2 (c)**

The use of word “and” in “.....scenic quality *and* provide...” implies that all of the items mentioned will be included in the redirection of development.

## Chapter 30 Design Standards

### 30.1.A

Spelling error: please change “Kings bury” to “Kingsbury.”

### 30.5 A.(1)

The code reads “...to the greatest extent feasible.” What will determine what is feasible and who and how will this be decided?

### 30.15.C (3)

1) The first sentence should read “All projects on existing visible structures in the shoreland altering or increasing the lakefront area 20 percent or less and the result is 1,500 square feet or less of *additional* lakefront façade.

2) It seems unjust that if the cost of mitigation is too high (greater than 10 percent of the cost of project) that the public will pay the price of loss of scenic quality. It also seems unjust that the public will have to pay the price of loss of scenic quality if it is impossible to mitigate.

### 30.15. C (4) (a) (i)

It seems unjust that if the cost of mitigation is too high (greater than 20 percent of the cost of project) that the public will pay the price of loss of scenic quality. It also seems unjust that the public will have to pay the price of loss of scenic quality if it is impossible to mitigate.

## Chapter 50 The Shorezone

### 50.2.A. 4. (d)

“Access to buoys shall be designed to cause the *least possible environmental harm* to the foreshore and backshore.” *Least possible environmental harm* needs to be defined so there is no ambiguity.

### 50.2. A. 4. (e)

Again “least possible environmental harm” needs to be strictly defined.

### 50.2 A. 6. (b)

Please define the parameters of “significant” in “use without significant shelf erosion.”

### 50.4 A

Please define “*significant*” in “affecting significant biological, scenic and other natural resources values and low impact recreation.”

### 50.4. B

Any development in SPAs is very concerning. Language should be revised to read “...the plan or project...demonstrates no impacts to applicable TRPA thresholds.”

### 50.6 A

Please define “*generally*” in “Stream-mouth Protection Zones shall *generally* represent the historical meander pattern of creek and....”

## **Chapter 51 Permissible Uses and Structures in the Shorezone and Lakezone**

### **51.2.A (1)**

Please change “are assumed to be” to “must be” in “Allowed uses are assumed to be compatible with the direction of the Regional Plan and surrounding areas.”

### **51.2. E (1)**

How will the TRPA determine that use has been discontinued for a period of one year? What kind of documentation will be involved?

## **Chapter 52 Allocation of Shorezone Development**

### **52.2.**

How will the piers be allocated to other lakes in the basin?

### **52.2. C (2)**

Why was “meet the location criteria set forth in Chapter 54.5.A” removed from this section?

### **52.3. A (2)**

Please define what “other information” the TRPA may deem as appropriate.

### **52.4 B**

- 1) The impacts of 6,316 buoys, berths and boat lifts should be reconsidered because of their impacts on water quality, air quality, fisheries, noise, and scenic quality
- 2) Where will the 200 public access buoys be located? What will the usage fees be? What criteria are in place to determine the need of these?
- 3) Does the 6316 count include the number of platforms?

### **52.4. C.**

“Only littoral parcels shall be eligible to place a mooring buoy and to receive a permit for buoys from the TRPA.”

- 1) Do non-littoral property owners have access to mooring rights?
- 2) The TRPA should be the only entity permitting buoys. The language seems to leave room for non-littoral properties getting buoy permits from other agencies aside from the TRPA. If that is the case, would it be possible for the number of buoys to eventually exceed 6,316?

### **52.4. D (3)**

- 1) Who will have access to the public buoy fields?
- 2) Has it been assessed how a 50 grid will be functionally navigable by windsurfers?

### **52.4. D. (6)**

The language regarding “littoral parcels landward of homeowner association buoy fields” is incomprehensible. Please clarify how a littoral parcel can be landward of a homeowner

association buoy field. Also, please clarify why the language was changed from the previous version.

#### **52.4. E (1)**

This section conflicts with the information in 52.4.D. Section 52.4.D states that private littoral properties with less than 50 linear feet of lake frontage shall only be eligible for one buoy. The same issue applies for properties with more than 50 linear feet of lake frontage where 52.4.D states that the maximum number of buoys is 2 where 52.4.E states that they may be eligible for 3 buoys.

#### **52.4. E (1) (a)**

Please clarify if approval by a state or federal agency with appropriate jurisdiction has to occur by a certain date or if it is in perpetuity.

#### **52.4 F (1) and (2) (c)**

1) The TRPA states that they shall not issue permits for buoys that result in the total number of buoys on Lake Tahoe exceeding 4,454 until TRPA has adopted and implemented a Blue Boating Program. The number of buoys *already* exceeds 4,454 buoys at 4,477.

2) The Blue Boating Program should be proven effective in reducing pollution before any additional buoys are placed on the Lake. 52.4 F (1) should read “until TRPA has adopted and implemented a **successful** blue boating program **with monitoring results and analysis approved by the Tahoe Science Consortium.....**”

3) There is an inconsistency with 1 and 2a. 52.4 (1) states that the “TRPA *shall not issue permits for buoys* that result in the total number of buoys on Lake Tahoe exceeding 4,454 until.....” However, 2a states the TRPA will issue permits to applicants who currently do not have an existing buoy. Please fix this inconsistency.

4) What is going to be done to rectify the situation concerning the illegal buoys on the Lake? According to TRPA estimates, anywhere from 1/2 to 1/3 of buoys currently on the Lake are illegal. These should be removed before anymore permitted buoys are placed on the Lake. Why has the clause (3) been stricken from the code language? Why will there not be a fee for an illegally placed buoy?

#### **52.5. A**

Considering the issues that Lake Tahoe is currently facing concerning keeping aquatic invasive species out of Lake Tahoe, the number of additional boat ramps should be reconsidered. Six additional boat ramps will only increase the efforts that will have to be invested to make sure that infected watercraft are not entering the Lake.

#### **52.5. B (1) and (2)**

These are inconsistent because 1 states that TRPA will not authorize additional floating platforms and 2 states that the TRPA will authorize the additional floating platforms if it is in exchange for a buoy. Does this mean the lake could have 6316 floating platforms instead of 6316 buoys?

## **Chapter 53 Shorezone Project Review and Exempt Activities**

### **53.4. A (2)**

What happens if the replacement occurs in fish spawning habitat?

## **Chapter 54 Shorezone Project Findings and Development Standards**

### **54.1**

54.1 reads, “The standards in this chapter apply to all projects and activities in the Shorezone, which includes the nearshore, foreshore, and backshore and lagoon areas of Lake Tahoe and other lakes in the Region.” Please add, “In order to be applicable projects and activities must avoid degradation of fish habitats, creation of navigational hazards, interference with littoral drift, and interference with the attainment of thresholds.

### **54.3. A (5) (7) (9)**

1) (5) states that the TRPA must find that the proposed use in the lakezone, nearshore, foreshore or lagoon is water-dependent. What does water-dependent consist of? Would backshore use have to be water-dependent as well?

2) (7) states that the TRPA must find that the project will not adversely impact navigation or create a threat to public safety pursuant to the determination of agencies. However, structures within the nearshore and foreshore areas will disrupt the navigation of non-motorized watercraft, low impact recreation, and could jeopardize public safety.

### **54.4. E**

- 1) Coverage and permanent land disturbances in backshore areas should be monitored carefully, as these areas lay directly adjacent to the foreshore. Water quality is put in jeopardy when development in backshore areas takes place.
- 2) If the need for mitigation truly exists, shouldn't the rate of mitigation be larger than 1: 1.5?
- 3) The language regarding allowable base land coverage is confusing.

### **54.4. F (2) (4 a,b,c)**

- 1) Dredging should be prohibited in feeding and/or escape cover habitat. Buoys should be prohibited in “fish habitat” including spawning, feeding, and escape/cover areas.
- 2) Activities in fish habitat should not be permitted. The presumption that replacement “in-kind” will make up for degradation in natural fish habitat is appalling – as is the suggestion in (c) that the purchase of restoration credits for similar habitat function from a fully functioning fish spawning habitat could actually make up for the degradation. Impact from humans cannot be completely mitigated – there will always be permanent and residual effects. Admitting that the need for mitigation exists is the same as admitting that harm is being done to the environment. Is our need for development so great that we would go so far as to permanently disrupt environmental function?

### **54.4. I**

Recreation Projects: “All projects classified as recreation use shall be required to submit an operating plan...demonstrating that spatial conflicts with other recreational uses will not be significant...” Why is it only the recreational projects that have to submit reports concerning impacts to other recreational uses? Private piers cause disturbances and so do buoys.

**54.4. J**

Projects that impact sensitive or uncommon plants should not be permitted

**54.5 A. (1)(b)(i)(B)**

Piers should not be permitted in scenically sensitive areas.

**54.5. A. (1) (g) (i)**

Who will pay for this assessment?

**54.5. A (2) (c) (iii)**

Define “minimal.”

**54.5. A. (2) (g)**

Boat lifts will be allowed to be placed if a parcel has buoy eligibility. Does this mean that there could potentially be at least 906 boat lifts assuming that each pier owner uses a buoy eligibility to install a boat lift?

**54.5. B. (1) (c)**

- 1) What are the environmental impacts (including scenic) of moving an entire buoy forward into the lake?
- 2) What are the impacts to low impact recreation by moving buoys lakeward beyond 350 feet?

**54.5. B. (1) (e)**

How many nonconforming buoys does the TRPA expect to permit?

**54.5. B. (1) (f)**

Shorezone Preservation Areas should not contain any development – SPA’s are important for ecological, scenic, and low-impact recreation.

**54.5. C(1)(c)**

No structures should be permitted in fish habitat.

**54.5. D. 4.**

What are the environmental impacts of having to move a mooring each time the lake is at low water?

**54.10. C.**

Please define *remedial* to mean restorative

**54.11. B.**

Please define appropriate materials for beach nourishment making sure to specify materials that are not high in inorganic phosphorous and are not fine sediments.

**54.13. B. (1)**

Is there no fee for the first buoy?

**54.15 B. (3)**

The section should be revised to “unless or until (a) the Governing Board has **established and demonstrated a successful blue boating program with monitoring and environmental benefit analysis approved by the Tahoe Science Consortium....**”

**54.16. C (3)**

If mitigation strategies do not work and boat launches at peak times are limited it would be important to not just limit pier launches, but spread out the launch limitation so boats on moorings and boat lifts are equally affected. Otherwise, there may be an inequality in differences between private and public launches which would favor owners of private moorings and boat lifts.

**54.16. D.**

Suspension of Shorezone Development Approvals should be available prior to 2012.

## **Chapter 83**

Why is 25.7 placed at the end of this chapter?

### **Summary**

Please contact me at 530.541.5388 if you have any questions in regards to this letter.

Sincerely,

Carl Young  
Program Director  
League to Save Lake Tahoe