



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

July 9, 2018

Dear Ms. Creeman:

The League to Save Lake Tahoe (the “League”) appreciates the opportunity to review the Draft Environmental Impact Statement (“DEIS”) for the Shoreline Plan (the “Plan”) advanced by the Tahoe Regional Planning Agency (“TRPA”). As members of both the Shoreline Steering and Joint Fact Finding committees, the League appreciates the extensive work, dedication and transparency that has gone into developing the Plan. The League values the opportunity to participate in all stages of this process, particularly in providing comment on this draft environmental analysis. Many of our concerns and comments have been addressed prior to the release of the DEIS and we extend our gratitude to the Shoreline Plan team at Ascent Environmental Inc. for their work in incorporating our suggestions in this analysis.

The League is dedicated to protecting and restoring the environmental health, sustainability and scenic beauty of the Lake Tahoe Basin. In connection with our mission, we advocate for the implementation of policies contained within regional land use and planning documents, including, without limitation, the Bi-State Compact (the “Compact”) and the 2012 Regional Plan Update (the “Regional Plan”). This letter requests the inclusion of additional mitigation measures and enforcement mechanisms that advance the goals and policies in the proposed preferred alternative identified in the DEIS. Additionally, we request the inclusion of a requirement that Memorandums of Understanding (“MOU”) regarding enforcement be executed as a condition of approval of this Plan, or at a minimum, as a requirement for the first release of allocations.

We understand that the Plan is intended only to update policies that regulate access to the Lake through regulations that relate to structures and allocations. Our comments are therefore limited to a discussion of the resulting impacts of these policies and do not address the broader impacts of boating to the Lake.

1. The Final Environmental Impact Statement Should Incorporate Additional Mitigation Measures to Address Impacts to Recreation, Tahoe Yellow Cress and Increased Vehicle Trips and Vehicle Miles Traveled.

At complete buildout, Alternative 1 (the “Preferred Alternative”) would allow for up to 2,116 new moorings, 128 new private piers, ten new public piers and two public boat ramps.¹ The Preferred

¹ DEIS, p. ES-2

Alternative also includes allowances for conversion of buoys to slips and vice versa at facilities open to the public.² The analysis of the potential impacts resulting from some of these measures is insufficient. The Final Environmental Impact Statement (“FEIS”) must consider additional mitigation measures to address these impacts.

a. Additional Analysis is Required for the Plan’s Impacts to Recreation and Potential User Conflicts.

The FEIS must include a discussion of direct and indirect effects and their significance, and possible conflicts between the proposed action and objectives of federal, regional, state and local land-use plans, policies and controls.³ Here, the overarching goal of the Plan is to “enhance the recreational experience at Lake Tahoe while protecting the environment and responsibly planning for the future.”⁴ To this end, the DEIS attempts to describe the impacts associated with the conflict between users by specifically addressing: (1) whether the Plan will have the potential to create conflicts between recreation uses, either existing or proposed; and (2) whether the Plan will result in a decrease in the quality of the user’s recreational experience. However, the DEIS’s analysis fails to fully consider the effects associated with these two conflicts.

The DEIS concludes that the increase in motorized recreation is “not substantial enough to be noticeable by recreation users” and that no substantial increase in conflict between motorized watercraft and non-motorized recreationists outside no-wake zones will result from implementation of the Plan.⁵ Further, although the DEIS recognizes that the Plan will likely result in an additional burden to non-motorized users who will need to travel laterally around long piers and buoy fields, it summarily concludes that new buoys will not create additional conflicts between non-motorized recreationists and motorized watercraft.⁶

This analysis is insufficient because it fails to consider both direct and indirect impacts of the Preferred Alternative. First, it fails to consider that the concentration of new structures, and therefore new uses, will be near the shore and in no-wake zones. Additionally, the addition of new structures could ostensibly lead to increased conflicts outside of no-wake zones and generally more crowded conditions within no-wake zones. In fact, the addition of new buoys and piers will likely result in an increase in boats traveling within no-wake zones. Nonmotorized users will be forced out of the current 600-foot no-wake zone, likely resulting in additional user conflicts. Because this analysis does not consider all of the direct and indirect effects resulting from implementation of the Preferred Alternative, the FEIS should include additional analysis regarding these potential effects.

² See DEIS p. 2-27, Table 2.2, fn.2 (buoys and slips may be exchanged on a 1:1 basis at marinas or by public agencies); DEIS p.18-3 (all alternatives allow exchanges between different mooring types).

³ 40 C.F.R. § 1502.16 (a)-(d)(18).

⁴ DEIS p. ES-2

⁵ Impact 8-1, DEIS p. 8-13.

⁶ DEIS p. 8-13

b. Additional Mitigation Measures Should be Considered for the Plan's Impacts to Recreation and Potential User Conflicts.

As part of its preparation of an environmental impact statement, the National Environmental Policy Act (“NEPA”) requires an agency to include appropriate mitigation measures not already included in the proposed action or alternatives.⁷ Here, a 600-foot no-wake zone is codified as an existing rule in Lake Tahoe.⁸ Therefore, Mitigation Measure 8-1a (regarding maintaining non-motorized navigation within the no-wake zone) is already included as part of the Preferred Alternative and does not constitute appropriate mitigation.

To properly mitigate these impacts, we support the Preferred Alternative’s extension of the no-wake zone to all of Emerald Bay. Additionally, we propose increasing the no-wake zone in front of priority areas to 1,200 feet lakeward from the waterline of the Lake. These priority areas are shown on Exhibit 8-7 to the DEIS and include portions of the Lake adjacent to Sand Harbor and the surrounding Lake Tahoe Nevada State Park, D.L. Bliss State Park and Sugar Pine Point State Park.⁹ Additionally, we request implementing a 200-foot moving no-wake zone around all non-motorized watercraft as mitigation for the Preferred Alternative.¹⁰ We request further clarification on what this mitigation would entail; specifically, whether it would apply only to specific non-motorized recreationists (e.g., swimmers and downed water skiers) or to a moving 200-foot buffer surrounding all motorized vehicles at all times. Finally, we urge TRPA to require an education plan to be funded at least in part by the boat launch fee as described in the DEIS.¹¹ The fee should be in place prior to adoption of the FEIS or issuance of the first permit under the adopted Plan.

c. The FEIS Should Include Additional Mitigation Measures Regarding Impacts to Tahoe Yellow Cress.

Tahoe Yellow Cress (“TYC”) is listed as “critically-endangered” in Nevada and “endangered” in California.¹² Likely impacts to TYC from the Preferred Alternative primarily result from the construction of piers, boat ramps and marinas, and from recreational users. The DEIS acknowledges this is a concern, noting:

Over the long term, the additional recreation capacity for motorized watercraft, non-motorized watercraft, anglers, swimmers, and beachgoers could increase the frequency of recreationists within occupied TYC habitat, which could result in additional trampling, degradation, or loss of existing TYC, and adversely affect current or future TYC habitat suitability.¹³

While the DEIS recommends a variety of mitigation measures to address this impact, the League encourages TRPA to adopt more robust actions to preserve TYC under the Preferred Alternative. Under existing California and Nevada law, any incidental “take” of individual TYC plants during construction

⁷ 40 C.F.R. § 1502.14 (2018).

⁸ TRPA Code of Ordinances § 84.17.1

⁹ See DEIS p. 8-19 (referring to Alternative 4).

¹⁰ The DEIS contemplates this mitigation measure for part of Alternative 2 (See DEIS p. 8-24). The DEIS confirms that this is the current practice of Nevada State Parks but does not refer to the relevant policy.

¹¹ DEIS p. 2-36-37.

¹² DEIS p. 14-13.

¹³ Impact 14-2, DEIS p.14-23.

projects in “areas known to support TYC occurrences” is prohibited without an incidental take permit from California Department of Fish and Wildlife¹⁴ or a special permit from the Nevada State Forester Firewarden, respectively.¹⁵ As it may not be feasible to avoid constructing a project under the Preferred Alternative within these limitations, we recommend the inclusion of a requirement in any incidental take permit issued to replant two TYC stems for every single TYC stem removed.

We also request the inclusion of clear mitigation for the increased “frequency of recreationists within occupied TYC habitat.”¹⁶ The DEIS currently provides no mitigation for increased beach disturbance beyond the fencing and signage for groups or “clusters” of TYC. Even with the addition of fencing and signage, “take” of TYC will occur through increased recreation activity, particularly in lower-density occurrences of TYC where fencing is not installed. To mitigate these broad potential impacts, the Preferred Alternative should require a planting effort in areas of lower disturbance but high habitat suitability. An effort to plant TYC in other locations could mitigate the trampling and loss of TYC habitat from the increased recreation associated with this plan.

d. Mitigation Measures Regarding Increases to Daily Vehicle Trips and VMT are Insufficient.

The Compact directs TRPA to adopt environmental threshold carrying capacities (“Thresholds”) to protect the values of the region.¹⁷ The adopted vehicle miles traveled (“VMT”) Threshold Standard mandates the reduction of regional daily VMT in the Basin by ten (10) percent of the 1981 base year values, for a value of 2,030,938 for a peak summer day.¹⁸ The most recent estimate of VMTs for the Lake Tahoe Basin was 1,937,070 for a peak summer day in 2014.¹⁹ The Preferred Alternative would result in a total of 2,179,752 VMT,²⁰ exceeding TRPA’s VMT Threshold Standard by 148,814 VMT.

TRPA’s Code of Ordinances defines a significant increase in daily vehicle trips as “[a]n increase of more than 200 daily vehicle trips.”²¹ This standard is omitted from the significance criteria described in section 13.4.2.²² The trip generation analysis in the DEIS indicates that the Preferred Alternative would result in an increase of 632 daily vehicle trips. Under TRPA’s own rules, this increase is significant.

Effective mitigation measures are essential for TRPA to make the findings mandated by the Compact. Despite this, the only mitigation measure offered by the DEIS to address this impact is a program for the phased release of land use allocations, followed by monitoring and forecasting of actual roadway traffic counts and VMT.²³ This measure, which is also codified as TRPA Code of Ordinances Section 50.4.3, provides that:

New development allocations will be authorized for release by the TRPA Governing Board every four years, beginning with the approval of the Regional Plan in 2012. Approval of the

¹⁴ Fish & G. Code § 2081 (b); Cal. Code Regs., tit. 14, §§ 783.2-783.8.

¹⁵ NV Rev Stat § 527.270 (1969).

¹⁶ DEIS pp. ES-25, 14-23, 17-19.

¹⁷ Tahoe Reg’l Planning Compact, Pub. L. No. 96-551, Art. 5 § (b).

¹⁸ TRPA, 2015 Threshold Evaluation Report (Dec. 2016) p.3.60.

¹⁹ Lake Tahoe Info. Vehicle Miles Traveled (Threshold Dashboard), *available at* <https://laketahoeinfo.org/Indicator/Detail/67/Overview>.

²⁰ DEIS, p.13-14.

²¹ TRPA Code of Ordinances § 65.2.3(G).

²² DEIS, p.13-11

²³ DEIS p.13-14.

release of allocations is contingent upon demonstrating, through modeling and the use of actual traffic counts, that the VMT Threshold Standard will be maintained over the subsequent four year period.²⁴

On May 24, 2017, the TRPA Governing Board released residential allocations to the local jurisdictions. As the base year for the Threshold evaluation was 2014, TRPA's own code required TRPA to demonstrate, through modeling and the use of actual traffic counts, that the VMT Threshold Standard would be maintained through 2018 prior to releasing these allocations. The staff summary included no four-year (2018) forecast.

Because TRPA has not complied with Section 50.4.3's requirements, TRPA may not continue to properly rely on this as mitigation to fulfill its statutory obligations under the Compact. The League renews its request for effective mitigation and incorporates the following formal written comments by reference herein: (1) US 50 Community Revitalization Project DEIR comment letter dated July 7, 2017; (2) Meyers Area Plan letter dated October 2, 2017; (3) Douglas County Events Center Scoping Notice letter dated February 5, 2018. Examples of such mitigation may include public or private transit alternatives to access new piers and marinas, parking management (i.e., limitation to upland parking) to incentivize alternative modes of transportation and impact fees that support increased transit options. Therefore, the existing mitigation offered by the DEIS is insufficient, and the FEIS must include effective mitigation for the increase in VMT and daily vehicle trips resulting from the Preferred Alternative.

2. The Final Environmental Impact Statement Should Include Additional Enforcement Mechanisms.

The League, along with the Tahoe Lakefront Owners Association ("TLOA") and other stakeholders, has repeatedly expressed serious concerns regarding the failure to enforce shoreline regulations, including, without limitation, illegal and/or nonconforming buoys, noise enforcement and enforcement of the no-wake zone. The League understands that resources are limited and that TRPA may lack authority to issue citations for no-wake zone violations or to remove illegal buoys; to address this hurdle, TRPA has been working with the appropriate jurisdictions and agencies to ensure the adoption of relevant Memorandums of Understanding ("MOU") to facilitate enforcement. We request that these MOUs be signed as a condition of approval of this Plan or, at a minimum, as a requirement for the first release of allocations.

3. Conclusion.

The Shoreline Plan is an important step towards enhancing the recreational experience along Lake Tahoe's shores while protecting the environment and responsibly planning for the future. As a member of both the Steering Committee and the Joint Fact-Finding Committee we have appreciated the opportunity to address many of our concerns throughout the extensive process of the past few years. The Shoreline Plan incorporates incentives for building multi-use piers, improving marina environmental practices and additional enforcement. However, mitigation measures offered by the DEIS to address user conflict, increased daily trip generation and increased VMT, and protect TYC are insufficient. The League welcomes the opportunity to continue discussing meaningful mitigation measures with TRPA staff, including, without limitation, 200-foot moving no-wake zone, replanting of

²⁴ TRPA Code of Ordinances § 50.4.3.

TYC, contributions to improved public and private transit service and parking management. We also request an enforcement plan that identifies MOUs and is in place prior to the adoption of the FEIS or issuance of the first permit under the Shoreline Plan. The League appreciates the opportunity to comment on these items.

Sincerely,

A handwritten signature in black ink, appearing to read "Darcie", with a long horizontal flourish extending to the right.

Darcie Goodman Collins, PhD
Chief Executive Officer
League to Save Lake Tahoe