

**STAFF REPORT**

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**CONSIDER TWO MEMORANDA OF UNDERSTANDING REGARDING  
SHOREZONE PERMITTING AND ENFORCEMENT WITH THE  
TAHOE REGIONAL PLANNING AGENCY**

**PARTIES:**

Tahoe Regional Planning Agency

State of California, acting by and through the California State Lands Commission

**BACKGROUND:**

The State, acting by and through the State Lands Commission, owns fee title to the bed of Lake Tahoe within California from the Low Water Mark (elevation of 6,223 Lake Tahoe Datum) lakeward. The State retains a dominant public trust easement that exists in the land lying between the elevations of 6,223 feet (Low Water Mark) and 6,228.75 feet (High Water Mark) Lake Tahoe Datum.<sup>1</sup>

By the 1960s threats to the environmental and recreational values of Lake Tahoe were becoming evident. In 1965 both the California and Nevada Legislatures created a Joint Study Committee to study Lake Tahoe.

The Tahoe Regional Planning Agency (TRPA) was formed in 1969 through a bi-state compact between California and Nevada and ratified by the U.S. Congress. TRPA's mission is to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region, while improving local communities, and people's interactions with Lake Tahoe's irreplaceable environment. TRPA is one of the main regulatory agencies the Commission interacts with when considering lease applications in the Lake Tahoe Basin. The other regulatory agencies are the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and the Lahontan Regional Water Quality Control Board.

TRPA adopted a Regional Plan in 1987, which included shorezone policies. These policies are implemented through the Code of Ordinances Shorezone Chapters, which regulate development within the shorezone of Lake Tahoe.

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<sup>1</sup> *People ex rel. Webb v. California Fish Co.*, (1913) 166 Cal. 576, 584; *State of California v. Superior Court (Lyon)* (1981) 29 Cal. 3d 210; *State v. Superior Court of Placer County* (1981) 29 Cal. 3d 240, 249

STAFF REPORT NO. 86 (CONT'D)

These ordinances impact the Commission's leasing at the lake because they regulate the type, density, and placement of structures on state sovereign land and within the Public Trust easement. The Shorezone Ordinances govern the number of buoys allocated to upland property owners, permit eligibility for buoys, and location and design standards for piers and all other permissible structures on sovereign land.

The 1987 Shorezone Ordinances recognized uncertainty regarding the effect of shorezone structures on fish habitat and prohibited new structures in prime fish habitat areas. The ordinances called for associated studies, which were completed by the early 1990s. Those studies concluded that piers and buoys in spawning and feed/cover habitat had limited effect on fish populations and that these effects can be mitigated.

TRPA initiated planning efforts to update the 1987 shorezone ordinances in 1995, 1999, 2004, and 2006. For a variety of reasons, none of these efforts were successful. In 2008, TRPA certified a Final Environmental Impact Statement (EIS) and adopted new shorezone ordinances. However, the EIS was challenged by environmental groups and vacated by the U.S. District Court in 2010. As a result, TRPA has been unable to update its shorezone ordinances since 1987. The moratorium on new structures in prime fish habitat has also been in place for this time, including a moratorium on all new boating facilities until new shorezone ordinances are adopted.

TRPA's lack of updated shorezone ordinances has impacted the Commission's leasing in Lake Tahoe. For many years now, TRPA has been unable to issue approvals for new piers or buoys in Lake Tahoe, leaving many structures in a regulatory limbo. Some lakefront property owners, who have been unable to get a permit from TRPA, have applied to the Commission for a lease. In the absence of clarity regarding TRPA's shorezone ordinances, these applications sometimes result in disagreements between Commission staff, TRPA staff, and the applicants as to which structures can, or should, be authorized by the Commission.

The absence of updated shorezone ordinances also reduces the Commission's ability to meaningfully address unauthorized structures on the lake in a coordinated manner with TRPA. An inventory of buoys on Lake Tahoe conducted during the summer of 2016 found 4,690 mooring buoys on the lake, with 3,698 on the California side. Commission staff estimates that 2,992 buoys are currently under lease, leaving more than 700 mooring buoys on the California side without a lease.

## STAFF REPORT NO. 86 (CONT'D)

### **CURRENT PROPOSED CODE AMENDMENTS:**

TRPA renewed efforts to update the shorezone ordinances in 2015. Commission staff has participated in this effort as a member of the Steering Committee and the Joint Fact Finding Committee. The Commission also assisted with the buoy count on the California side of the lake, which was an important step in establishing the current baseline condition for buoys.

The sovereign land of Lake Tahoe possesses great financial, scenic, ecological, and recreational value. With more than 700 leases, most authorizing multiple recreational structures (e.g., piers and buoys), Lake Tahoe is the Commission's largest concentration of private recreational leases. Accordingly, the Commission has great interest in the shorezone ordinance amendments. These amendments must balance the competing interests of development and conservation. Commission staff, in conjunction with the Attorney General's Office, has provided input throughout the amendment process to represent the State's perspective on these competing values, with a focus on improving public access in the Public Trust easement area between the high- and low- water lines on the California side of the lake.

TRPA currently plans to bring the proposed shorezone amendments and supporting documents to its board for approval on October 24, 2018. If the board approves the amendments, they become effective 60 days after the approval date.

### **MEMORANDUM OF UNDERSTANDING REGARDING SHOREZONE PERMITTING PROCESS:**

One problem the U.S. District Court identified with the 2008 shorezone ordinance EIS was that TRPA failed to demonstrate that new piers would not impact public access within the Public Trust easement area. TRPA observed that no new piers would be built unless the Commission also authorized the construction. Since the Commission considers public access impacts, TRPA contended that no new pier would be constructed in violation of the Public Trust. The Court disagreed with TRPA and observed that there was no formal relationship between the Commission and TRPA that obligated TRPA to incorporate the Commission's evaluation of Public Trust impacts into its own permitting process.<sup>2</sup>

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<sup>2</sup> "...TRPA argues that it may rely on the California State Lands Commission ("CSLC") to ensure that new piers will not violate rights of public access protected by California's public trust doctrine... TRPA contends that no new pier can be permitted in California absent CSLC's separate approval... It follows, TRPA argues, that no pier will be constructed in violation of the California public trust... one method by which TRPA could have fulfilled this duty would have been to sign a memorandum of understanding delegating authority to CSLC or otherwise formalizing a relationship between the two." *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency* (2010) 739 F. Supp. 2d 1260, 1286-1287.

STAFF REPORT NO. 86 (CONT'D)

The proposed Memorandum of Understanding (MOU) addresses this issue by formalizing the relationship between TRPA and the Commission. Incoming shorezone project applications would first go to the Commission for a determination of whether the proposed structures encroach on sovereign land or the Public Trust easement. If so, the applicant must demonstrate that their project includes a design feature that protects or enhances public access.

Negotiations between the Commission, TRPA, and the Tahoe Lakefront Owners Association have resulted in two preset design feature options that will improve lateral access along the beaches of Lake Tahoe. One option allows applicants to increase their pier deck height to elevation 6,234 feet, to allow better lateral passage under the pier. The other option allows applicants to include stairs to allow the public to pass over the pier, without the visible mass of the stairs counting against the overall allowable visible mass of the pier. Because each property is unique, the MOU includes the possibility of other options to improve public access at the site of the proposed structure, such as passage around the pier on the privately owned upland property.

The proposed MOU applies to projects that TRPA will take a permit action on and excludes exempt and qualified exempt activities, with one exception discussed below. Before TRPA can issue a permit for structures in the shorezone, the applicant must obtain a determination from the Commission as to whether the proposed project will encroach on sovereign land or the Public Trust easement area. This determination is relatively simple at Lake Tahoe because the Public Trust easement and boundaries of sovereign land are defined by elevations dictated by a court decision.<sup>3</sup> Building plans submitted by applicants include the structure's relationship to these elevations. If the project is on sovereign land and in the Public Trust easement, Commission staff will review the application to determine whether the project includes an appropriate public access accommodation to protect public access, considering the nature of the structure and the needs of the area. Once the design feature is approved by the Commission, the applicant can proceed to TRPA to begin its application process. For projects that only exist in the Public Trust easement area, the Commission will not be taking a lease approval action, but TRPA will incorporate the Commission's proposed design feature(s) into its approval.

During this revision of its codes, TRPA proposed to consider pier reconstruction, replacement, or partial reconstruction subject to a different process than other projects that would be subject to the proposed MOU.

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<sup>3</sup> *Fogerty v. State of California (Fogerty II)* 187 Cal.App.3d 224, 229 (1986).

STAFF REPORT NO. 86 (CONT'D)

TRPA's proposal to consider reconstructions as not subject to the proposed MOU impacts the Commission's leasing. Commission staff typically recommends leases for existing structures at Lake Tahoe. However, leases for existing structures without public access design features may be heavily conditioned. Staff works closely with applicants to find alternate ways to open public access, including recommending that the structure's owner allows the public to pass around the pier on privately owned upland. Commission staff does not want to miss the important opportunity to improve public access when significant portions of piers are replaced. When all or most of a structure is already being removed, the reconstructed portions can be updated to increase public access. Accordingly, staff negotiated for a provision in TRPA's proposed ordinances that requires applicants to demonstrate to TRPA that the Commission has examined the proposed plans for full or partial reconstruction on the California side of the lake and approved the public access features in the proposed plans. The proposed TRPA code provision will apply equally to structures on sovereign land and those within the Public Trust easement, giving the Commission better notice of opportunities to improve public access around the lake. Moreover, the Commission retains discretionary approval of lease applications or amendments which will be required for replacement or major modifications to structures on sovereign land.

The proposed MOU requires applicants to bring their projects to the Commission prior to obtaining a TRPA permit, if the project will impact any state interests below the high-water line, including the Public Trust easement. This will help the Commission ensure that access to Lake Tahoe continues to be open to all.

The proposed MOU also provides applicants with clarity on agency application processes. There is currently no guidance on which of the several regulatory agencies must act first. Some applicants have suffered delay or added cost when they would go to TRPA first for permit approval, only to have the Commission suggest changes to the design to accommodate public access. The applicant would then be forced to return to TRPA for a permit amendment to modify their project design. In some cases, the modifications were not allowable under TRPA's shorezone ordinances, so the applicant would then have to come back to the Commission for further project design consideration. The proposed MOU provides two preset accommodations for public access (over or under the pier) that also include specific TRPA exemptions, allowing most applicants to simply incorporate one of these design options into their original planning. The MOU also accounts for unusual circumstances where either of these options would not fit. The preset design options, along with clear direction for Commission approval before making application to TRPA, will be of great benefit to agencies and the public, through this improved coordination.

STAFF REPORT NO. 86 (CONT'D)

**MEMORANDUM OF UNDERSTANDING REGARDING ENFORCEMENT:**

The Commission's capacity to take individual enforcement actions for unauthorized structures on Lake Tahoe is limited. The Commission typically relies on local regulatory agencies to set and enforce building and development standards. Ideally, the local agencies coordinate with the Commission and require a lease for all structures on sovereign land before issuing local permits. TRPA's regulatory standstill has limited its ability to enforce compliance, resulting in the proliferation of unauthorized buoys as discussed previously.

When TRPA successfully adopts updated shorezone ordinances, it will resume permitting of existing and new boating facility structures, such as buoys, piers, and boat ramps. Active permitting will end the ambiguity about allowable structures, legitimizing those that are permitted, and clearly identifying those that are not. Commission staff will have clarity on which structures may be permitted, and applicants will have direction on which structures are allowed. By itself, this will be a tremendous advantage to bringing buoys into compliance on Lake Tahoe. Active permitting for existing and new boating facility structures will also increase rental income that funds the Lake Tahoe Science and Lake Improvement Account by getting these structures under lease with the Commission. All revenue generated from Commission leases at Lake Tahoe is deposited into the Lake Tahoe Science and Lake Improvement Account to be used for activities and projects that include, but are not limited to, aquatic invasive species prevention, providing public access to sovereign land in Lake Tahoe, and improving near-shore water quality monitoring.

TRPA will issue highly visible tags to be placed on the permitted buoys and keep Geographic Information System (GIS) data tracking the location of permitted buoys. This will end the anonymity that has provided cover for those placing illegal buoys in the lake. Commission and TRPA staff plan outreach and education efforts targeted at the few barge companies that place buoys in the lake. Once the barge companies require proof of TRPA and Commission authorization for buoys before placing them, the number of illegal buoys appearing on the lake will be minimized. Additional enforcement efforts will be aimed at other individuals and entities that place unauthorized buoys on the lake. Once the landscape of legal and illegal buoys is identified on the lake, lakefront property owners will also be better able to self-police and report illegal buoys to enforcement agencies.

Both TRPA and the Commission have authority to impose administrative penalties for unauthorized structures. The administrative process is effective where the buoy owner can be readily identified. The proposed MOU addresses those situations where the buoy owner cannot be identified. For example, there are many unauthorized buoys offshore from state parks. It is not always clear

STAFF REPORT NO. 86 (CONT'D)

who placed these buoys.

The proposed enforcement MOU will allow the Commission to act through TRPA, to tag and remove such buoys under Public Resources Code 6302.1. Both agencies will have a shared database of authorized buoys. TRPA will notify the Commission when a potentially unauthorized buoy is identified. The Commission will independently attempt to determine whether the buoy is authorized. Where appropriate, the Commission will issue a 30-day notice for removal, which TRPA will place on the buoy. After the notice period expires, TRPA will remove the buoy and impound it for the 30-day period required by Public Resources Code section 6302.1.

The proposed MOU is particularly advantageous because, as a local agency, TRPA will have more on-site presence to detect unauthorized buoys. Moreover, TRPA will be able to generate funds for the removal actions through its permitting process.

**ANALYSIS AND STAFF RECOMMENDATION:**

As outlined above, each of these Memoranda represent a significant opportunity to formalize the Commission's partnership with TRPA. In particular, the Shorezone Permitting Process MOU will ensure the Commission has the opportunity to review projects for public access for new and existing structures. This MOU will also improve the permitting and leasing process for applicants by providing clarity and direction early in the design phase.

The Enforcement MOU will create a new partnership with TRPA to remove unauthorized buoys. For many years, these unauthorized buoys have occupied public land without compensation to the people of the state, and without contributing rental income to the Lake Tahoe Science and Lake Improvement Account. Moreover, some of these buoys are improperly located, causing interference with other permitted buoys or public use and recreation.

Both Memoranda of Understanding are procedural rather than substantive. Both Memoranda operate within the Commission's current authority. Finally, both Memoranda provide a mechanism for the Commission to terminate its participation, should it be in the state's best interests to do so in the future. Staff believes the Commission's participation in these Memoranda will have positive impacts on the Commission's management of the Public Trust lands and resources around the lake and is in the best interests of the state. Therefore, Commission staff recommends the Commission approve the proposed Shorezone Permitting Process MOU and Enforcement MOU.

STAFF REPORT NO. **86** (CONT'D)

**OTHER PERTINENT INFORMATION:**

1. Authorizing the proposed Memoranda of Understanding is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction; Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways; and Strategy 3.1 of the Commission's Strategic Plan to foster, improve, and enhance relationships to engage the Legislature, public, local, state and federal agencies, legislative grantees, Commission lessees, potential applicants, non-governmental organizations and the regulated community.

2. **Authorization to Enter Memoranda of Understanding Regarding Shorezone Permitting and Enforcement:**

Commission authorization to enter the Memoranda of Understanding for shorezone permitting and for enforcement of unauthorized structures is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. **Removal of Unauthorized Structures:**

Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

**EXHIBITS:**

- A. Proposed Memorandum of Understanding Between the California State Lands Commission and the Tahoe Regional Planning Agency Regarding Shorezone Permitting Process Coordination
- B. Proposed Memorandum of Understanding Between the California State Lands Commission and the Tahoe Regional Planning Agency Regarding Enforcement of Unauthorized Buoys, Vessels, and Appurtenances on the California Side of Lake Tahoe

STAFF REPORT NO. 86 (CONT'D)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed Memoranda of Understanding with TRPA are consistent with the Public Trust needs and values at this location, are consistent with the common law Public Trust Doctrine, and are in the best interests of the State.

**CEQA FINDINGS:**

**Removal of Unauthorized Structures:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

**AUTHORIZATION:**

1. Authorize the Executive Officer or her designee to execute the Memorandum of Understanding Between the California State Lands Commission and the Tahoe Regional Planning Agency Regarding Shorezone Permitting Process Coordination, substantially in the form as set forth in Exhibit A.
2. Authorize the Executive Officer or her designee to execute the Memorandum of Understanding Between the California State Lands Commission and the Tahoe Regional Planning Agency Regarding Enforcement of Unauthorized Buoys, Vessels, and Appurtenances on the California Side of Lake Tahoe, substantially in the form as set forth in Exhibit B.

## **EXHIBIT A**

### **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 Land);

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 Land and to administer the State Easement;

WHEREAS, the State Sovereign Land 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 Land 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 XXX and CSLC approved this MOU on XXX.

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. 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 Land or the State Easement (No Jurisdiction Determination);
2. Will encroach upon or otherwise impact State Sovereign Land (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 Carrying 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.b.

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:

\_\_\_\_\_  
Date

**TAHOE REGIONAL PLANNING AGENCY**

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

\_\_\_\_\_  
Date

Approved as to form:  
TRPA General Counsel

\_\_\_\_\_  
John L. Marshall

\_\_\_\_\_  
Date

EXHIBIT B

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA STATE LANDS COMMISSION AND THE TAHOE REGIONAL PLANNING AGENCY REGARDING ENFORCEMENT OF UNAUTHORIZED BUOYS, VESSELS, AND APPURTENANCES ON THE CALIFORNIA SIDE OF LAKE TAHOE**

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 Land);

WHEREAS, the CSLC, on behalf of the State of California, has authority to issue leases for the lawful use and occupation of its State Sovereign Land;

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

WHEREAS, the placement of piers, mooring buoys and other structures on State Sovereign Land 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 recognize that although many mooring buoys have been placed on State Sovereign Land in compliance with CSLC lease requirements and TRPA permit requirements, mooring buoys have also been placed on State Sovereign Land without both CSLC

and TRPA authorization. These unauthorized buoys negatively impact Lake Tahoe's environmental, scenic, and recreational quality;

WHEREAS, CSLC has authority to remove unauthorized mooring buoys placed on State Sovereign Land (Public Resources Code section 6302.1) either itself or by acting in concert with another federal, state, or local agency operating under CSLC's direction (Public Resources Code section 6302.1, subdivision (f)(2));

WHEREAS, the TRPA has authority to enforce its regulations under Article VI of the Compact.

WHEREAS, the TRPA has available resources to implement the Parties' agreed-upon approach to addressing unauthorized buoys on the California side of Lake Tahoe;

WHEREAS, the Parties recognize that considerations of fairness and considerations of environmental, scenic, and recreational quality suggest there is a need to address unauthorized buoys in Lake Tahoe;

WHEREAS, it is in the best interests of the Parties in carrying out their respective missions as public agencies to work cooperatively to remove unauthorized buoys placed on the California side of Lake Tahoe; and

WHEREAS, the Parties seek to protect the waters of Lake Tahoe by entering into this MOU to establish the duties, authorities, and agreements of the Parties with respect to the removal of unauthorized buoys, subject to the above-mentioned laws and regulations;

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. In particular, the Parties acknowledge that this MOU does not limit CSLC's ability to act under its existing authority, but rather defines the process by which the Parties may act in concert with one another, pursuant to Public Resources Code section 6302.1, subdivision (f)(2).

**II.** The following terms are defined for purposes of this MOU:

- A. Unauthorized buoys are those buoys without a current CSLC lease or TRPA permit.
- B. Vessel shall mean a boat or other similar conveyance moored to an unauthorized buoy.

**III.** Information Management and Public Education Process.

- A. The Parties shall work together to create a shared database of buoys on the California side of Lake Tahoe that specifically identifies a given buoy's permit/lease status. The database will cross reference the TRPA permit number with the CSLC lease number, identify the buoy owner, and the location of the buoy.
- B. TRPA shall distribute highly visible tags or similar markers for authorized buoys on the California side of Lake Tahoe.
- C. The Parties shall work together to educate individuals and companies installing mooring buoys in Lake Tahoe about the requirements to first obtain authorization from CSLC and TRPA for buoys installed on State Sovereign Land, along with the penalties should they fail to do so.

**IV.** Enforcement Process

A. TRPA Initiation

1. In the event TRPA becomes aware of an unauthorized buoy on State Sovereign Land, the TRPA shall implement enforcement pursuant to this MOU by contacting CSLC and sharing all known information about the buoy.
  - a. This may include the owner, location, registration number or permit number, if any, along with any other information useful to identifying the buoy and its owner, including the vessel registration number of any vessel moored to it.

B. Notification Process

1. Within 30 days of being contacted by TRPA, the CSLC shall determine whether the identified buoy is authorized by the Commission. In the event it is unauthorized, the CSLC shall prepare a 30-day notice for TRPA or its contractors to attach to the buoy. The CSLC and TRPA shall also use reasonable means to locate the owner of the buoy. If the buoy's owner can be determined and located, the CSLC shall mail notice to the owner to remove the buoy by a date certain, at least 15 days from the date of the notice.

C. Buoy Removal

1. Pursuant to Public Resources Code 6302.1(b)(2), a buoy may be deemed abandoned at the end of the 30-day notice period and the 15-days' owner notice, if applicable. At the request of CSLC TRPA shall remove the buoy or contract to have the buoy removed by a third party.

2. TRPA shall provide a location to store buoys removed from Lake Tahoe

- a. TRPA shall have the buoy impounded for at least 30 days. During this time, the buoy owner may reclaim their property upon reimbursing TRPA for the costs of removal and storage.

**V. Authority**

- A. Nothing in this MOU alters the Parties' existing authority to independently pursue an enforcement action.

**VI. Costs**

- A. Each Party shall bear their own costs in implementation of this MOU.

**VII. Termination**

- A. This MOU may be terminated by any of the Parties upon thirty (30) days' notice in writing.

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