

1 LATHAM & WATKINS LLP
James L. Arnone (Bar No. 150606)
2 Peter J. Gutierrez (Bar No. 156129)
Benjamin J. Hanelin (Bar No. 237595)
3 355 South Grand Avenue
Los Angeles, California 90071-1560
4 Telephone: +1.213.485.1234
Facsimile: +1.213.891.8763
5 Email: james.arnone@lw.com

6 KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
7 Daniel J. O'Hanlon (Bar No. 122380)
400 Capitol Mall, 27th Floor
8 Sacramento, CA 95814
Telephone: +1.916.321.4500
9 Facsimile: +1.916.321.4555
Email: dohanlon@kmtg.com

10 Attorneys for Plaintiff
11 Shorezone Property Owners Association, Inc.,
a non-profit Nevada corporation, aka
12 Tahoe Lakefront Owners' Association

13
14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16

17 SHOREZONE PROPERTY OWNERS
ASSOCIATION, INC., aka TAHOE
18 LAKEFRONT OWNERS'
ASSOCIATION,

19 Plaintiff,

20 v.

21 TAHOE REGIONAL PLANNING
22 AGENCY,

23 Defendant.
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CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiff Shorezone Property Owners Association, Inc., a non-profit
2 Nevada corporation, aka Tahoe Lakefront Owners' Association ("Association") by
3 way of this Complaint against Defendant Tahoe Regional Planning Agency
4 ("TRPA"), states as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over this action pursuant to the
7 United States Constitution (Art. 1, section 10, clause 3 [the Compact Clause]), the
8 Tahoe Regional Planning Compact (94 Statute 3233, Pub. L. No. 96-551
9 (December 19, 1980), at Art. VI(j)), and 28 U.S.C. Section 1331. In addition, the
10 Declaratory Judgments Act, 28 U.S.C. Section 2201, authorizes this Court to grant
11 the Association declaratory relief.

12 2. Venue in this Court is proper under the Tahoe Regional
13 Planning Compact ("Compact") because the action challenges an activity that does
14 not involve a specific parcel of land and because that portion of the Tahoe Basin
15 that is located in the State of California is also located within the boundaries of the
16 United States District Court for the Eastern District of California. (*Id.*, at Art.
17 VI(j)(2)(B); 28 U.S.C. § 1391(b); Local Rule 3-120(d).)

18 **INTRODUCTION**

19 3. The Compact charges TRPA with enforcing the Compact's
20 goals and declarations and the Compact's implementing rules and regulations.
21 Under the Compact and its implementing regulations, TRPA must balance varying
22 land uses around Lake Tahoe and in the Lake Tahoe region while maintaining a
23 high level of environmental quality. Lake Tahoe's shorezone is an area of intense
24 focus in the Lake Tahoe region. The shorezone is subject to multiple uses that
25 require balancing the needs of the community that enjoys the lake. For example, to
26 encourage recreation it is important to have a variety of public and private piers,
27 moorings, and boat ramps. Similarly, there are many homes and businesses that
28 ring Lake Tahoe and their right to enjoy their lakefront property is protected under

1 the Compact and by the laws of the United States, the State of California, and the
2 State of Nevada. TRPA has a duty to protect the unique natural and built
3 environment of Lake Tahoe and to harmonize these and other uses through the
4 adoption of thresholds, goals, policies, and ordinances.

5 4. The Association, like TRPA, is dedicated to preserving the
6 beauty and quality of Lake Tahoe and ensuring that there is a balanced approach to
7 the use and enjoyment of the lake's resources. Therefore, TRPA's recent adoption
8 of ordinances that do not achieve this balance and do not respect the right of
9 lakeshore landowners to enjoy the rights reserved to them under the Compact is of
10 great concern to the Association and its members. As lakeshore owners, the
11 Association's members have a strong interest in maintaining the environmental
12 resources that Lake Tahoe offers and are committed to ensuring that regulations
13 impacting Lake Tahoe and the Lake Tahoe region are balanced and fair.

14 5. On October 22, 2008, TRPA violated its duties and obligations
15 under the Compact by adopting the Amended Shorezone Ordinances
16 ("Amendments"). TRPA approved the Amendments without substantial evidence
17 and, therefore, the Amendments must be set aside. There is no substantial
18 evidence to support TRPA's findings that the Amendments, as they relate to
19 recreational access to the lake, are consistent with "the regional plan ... and with
20 applicable plans, ordinances, regulations, and standards of Federal and State
21 agencies relating to the protection, maintenance and enhancement of
22 environmental quality in the region." (Compact, at Art. VI(b).) The Amendments
23 do not balance recreational use of the lake, environmental conservation, and
24 private property rights as the Compact requires. Instead, the Amendments impose
25 significant burdens on lakefront properties without any commensurate benefit or
26 evidentiary support. Additionally, the Amendments place onerous and undefined
27 restrictions on properties with existing lakefront structures.

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1 6. For example, there is no substantial evidence supporting
2 TRPA's cap on the total number of moorings (6,316) that can be placed in Lake
3 Tahoe. TRPA set this figure without any data on how many moorings there
4 currently are at Lake Tahoe. This arbitrary number must also be set aside because
5 there is no evidence to support TRPA's finding that the cap on moorings is
6 consistent with and will not adversely affect the implementation of the goals and
7 policies set forth in TRPA's rules and regulations.

8 7. The Amendments also impose substantial new burdens on
9 repairing existing piers. Under the Amendments, non-exempt repairs to an existing
10 pier may trigger requirements that the entire shoreland property meet the
11 Amendments' rule for *new* pier construction, and even require the modification of
12 the pier to meet design and location standards. There is no evidence supporting
13 these provisions and they do not further the Compact's declaration that both
14 "public *and* private interests and investments in the region are substantial."
15 (Compact, at Art. I(a)(2); emphasis added.)

16 8. The Amendments' imposition of a \$100,000 mitigation fee to
17 construct new piers should also be voided. There is no substantial evidence
18 supporting TRPA's conclusion that there is a reasonable nexus between the
19 impacts that a new pier may have on recreation and the \$100,000 fee.

20 9. TRPA's zeal to reach a decision and adopt the Amendments
21 also resulted in it relying on and certifying an inadequate environmental impact
22 statement. The Compact requires environmental review that, among other things,
23 evaluates the direct and indirect environmental impacts of a proposed project or
24 ordinance and identifies alternatives to and mitigation measures for the proposed
25 project in addition to the project's or ordinance's potential growth-inducing
26 impacts. The environmental impact statement TRPA certified on October 22,
27 2008, did not meet the Compact's clear requirements for full environmental
28 review.

1 recreational, educational, scientific, natural public health values provided by the
2 Lake Tahoe Basin” and that “[t]here is a public interest in protecting, preserving
3 and enhancing these values for the residents of the region and for visitors to the
4 region.” (*Id.*, at Art. I(a)(5), (6).)

5 16. The Compact created TRPA and establishes its structure,
6 responsibilities, powers, and other rules and requirements. Further, the Compact
7 charges TRPA with interpreting and administering TRPA’s plans, ordinances, rules
8 and regulations “in accordance with the provisions of this compact.” (*Id.*, at Art.
9 I(c).)

10 ***B. The Compact Requires TRPA To Set Environmental Thresholds***

11 17. The Compact requires TRPA to “develop...environmental
12 threshold carrying capacities for the region” within 18 months after the effective
13 dates of the amendments to the Compact. (Compact, at Art. V(b).) An
14 environmental threshold carrying capacity is “an environmental standard necessary
15 to maintain a significant scenic, recreational, educational, scientific or natural
16 value of the region or to maintain public health and safety within the region.” (*Id.*,
17 at Art. II(i).)

18 18. TRPA has adopted thresholds for water quality, air quality,
19 scenic resources, soil conservation, fish habitat, vegetation, wildlife habitat, noise
20 and recreation.

21 ***C. The Compact Requires TRPA To Adopt A Regional Plan And Code Of***
22 ***Ordinances To Implement The Compact And Environmental Thresholds***

23 19. The Compact also requires TRPA to prepare and adopt a
24 regional plan “to harmonize the needs of the region as a whole...” (Compact, at
25 Art. V(c)) and to adopt implementing ordinances “providing opportunities for
26 orderly growth and development...” (*Id.*, at Art. I(b).) The Compact further
27 provides that TRPA’s regional plan shall be designed to meet the environmental
28 threshold carrying capacities set by TRPA. (*Ibid.*) TRPA must continuously

1 review and maintain the regional plan to ensure that it continues to meet the
2 environmental thresholds.

3 20. The regional plan “shall be a single enforceable plan” and
4 include correlated elements relating to the regulation of the Lake Tahoe region.
5 Specifically, (i) land use; (ii) transportation; (iii) conservation; (iv) recreation; and
6 (v) public facilities and services shall be addressed in the regional plan. (*Id.*, at
7 Art. V(c).)

8 21. The adoption of a regional plan is a public process and TRPA is
9 required to provide public notice and a public hearing before adopting a regional
10 plan or any amendment thereto. (Compact, at Art. V(a).)

11 22. TRPA’s regional plan is to be implemented through ordinances,
12 rules, and regulations adopted by the agency. (Compact, at Art. V(a).) The
13 Amendments at issue here are a part of the ordinances that implement the Regional
14 Plan’s Goals and Policies.

15 23. TRPA’s Code of Ordinances implements the regional plan’s
16 goals and policies. The Code of Ordinances compile nearly all of TRPA’s
17 ordinances, including the Amendments challenged here, into one document. The
18 Code of Ordinances addresses, among other things, when permits for development
19 are required, findings required for approval of projects, environmental impact
20 statements, plan area statements, land use, development density and coverage,
21 development standards, and allocations of development.

22 24. The Code of Ordinances also establishes the findings that
23 TRPA must make before adopting or amending TRPA ordinances or rules. Under
24 the Code of Ordinances TRPA must find that the “the Regional Plan and all of its
25 elements, as implemented through the Code, Rules and other TRPA plans and
26 programs, as amended, achieves and maintains the thresholds.” (Code of
27 Ordinances, at § 6.5.) TRPA must also make written findings that an ordinance “is
28 consistent with, and will not adversely affect implementation of the Regional Plan,

1 including all applicable Goals and Policies, plan area statements and maps, the
2 Code and other TRPA plans and programs.” (*Id.*, at § 6.3.A(1).)

3 ***D. The Compact Requires TRPA To Consider The Environmental Impacts Of***
4 ***Its Actions***

5 25. The Compact requires TRPA to prepare and consider a detailed
6 environmental impact statement (“EIS”) when acting upon matters that have a
7 “significant effect on the environment.” (Compact, at Art. VII(a)(2).) Before
8 taking an action that has a significant effect on the environment, which includes
9 adopting or amending a regional plan and its implementing ordinances, rules, and
10 regulations, TRPA must “[p]repare and consider a detailed environmental impact
11 statement...” (*Ibid.*) Chapter 5 of the Code of Ordinances sets forth the provisions
12 regarding environmental documentation.

13 26. Under the Compact and Chapter 5 of the Code of Ordinances,
14 the EIS must analyze various issues. These include, but are not limited to: (i)
15 potential significant environmental impacts; (ii) unavoidable significant adverse
16 impacts; (iii) alternatives; (iv) mitigation measures that ensure that TRPA’s
17 threshold standards are met; (v) the relationship between local short-term uses and
18 the maintenance and enhancement of long-term productivity; and (vi) growth
19 inducing impacts. (*Ibid.*)

20 27. Before adopting a project for which written findings are
21 required and an EIS must be prepared, TRPA shall find either that changes were
22 made to the project to reduce its significant adverse environmental impacts to a
23 less significant level, or that specific considerations make infeasible the mitigation
24 measures or project alternatives discussed in the project’s EIS. (Compact, at Art.
25 VII(d).)

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1 ***E. The 1987 Regional Plan And Chapters 50-56 Of The Code of Ordinances***
2 ***Regulate Development Within The Shorezone***

3 28. TRPA adopted the current regional plan in 1987 (“1987
4 Regional Plan”). “The [1987 Regional Plan] with all of its elements, as
5 implemented through Agency ordinances and rules and regulations, provides for
6 the achievement and maintenance of the adopted environmental threshold carrying
7 capacities (thresholds) while providing opportunities for orderly growth and
8 development.” (TRPA 1987 Regional Plan, at p. I-1.) Thus, the 1987 Regional
9 Plan sets forth the goals and policies for enacting the Compact’s aim of balancing
10 competing uses and interests in the Lake Tahoe region and, more specifically, in
11 the Lake Tahoe shorezone.

12 29. The 1987 Regional Plan (Chapters 50 through 56 of TRPA’s
13 Code of Ordinances) replaced prior ordinances implemented under the Compact.

14 30. The goals and policies for Lake Tahoe’s shorezone are
15 implemented through TRPA’s Code of Ordinances (Chapters 50 through 56). For
16 example, Chapter 51 sets forth the allowable uses and accessory structures in the
17 shorezone and lakezone. For further example, Chapter 52 regulates existing
18 structures and Chapter 54 regulates the placement of new piers, buoys, and other
19 structures along the lakeshore.

20 31. TRPA’s adoption of significant changes to the Shorezone
21 Ordinances on October 22, 2008 (i.e., the Amendments) in a piecemeal fashion,
22 without substantial evidence, and with an inadequate EIS give rise to this action.

23 ***F. TRPA’s Inappropriate Piecemealed Approach To The Amendments***

24 32. On October 22, 2008, after more than 20 years of fits and starts,
25 TRPA’s Governing Board adopted the Amendments. The Amendments to the
26 Shorezone Ordinances are scheduled to take effect on December 22, 2008.

27 33. TRPA’s multiple and piecemealed changes to the Amendments
28 did not foster or promote public participation in the decision-making process.

1 Additionally, TRPA's ever-changing assemblage of amendments to the Shorezone
2 Ordinances thwarted the public's and the Governing Board's understanding of the
3 Amendments. The result of TRPA's and the Governing Board's actions is a set of
4 amendments to the Shorezone Ordinances that must be set aside because they
5 violate the Compact, the 1987 Regional Plan, and the Code of Ordinances.

6 34. TRPA began the process of drafting amendments to the
7 Shorezone Ordinances in 1987. The 1987 Regional Plan required TRPA to study
8 the impacts of constructing and operating structures in fish habitat and spawning
9 areas. Chapter 54.3.B of the Shorezone Ordinances required TRPA to reconsider
10 the moratorium on lakeshore development by January 24, 1990. TRPA ignored
11 this deadline and has continued the moratorium and undertaken protracted studies
12 in violation of the Shorezone Ordinances.

13 35. For example, between 1989 and 1991, TRPA commissioned
14 studies to determine any impact piers might have on fish communities. For further
15 example, an inventory of shorezone structures was conducted in 1993 and 1994.
16 Relying on these fish studies and structure inventory, TRPA began to reconsider
17 the Shorezone Ordinance's location standards for shorezone structures in 1995,
18 five years after the deadline under its own Shorezone Ordinances.

19 36. Shortly thereafter, however, TRPA abandoned its effort to
20 amend the Shorezone Ordinances after it was unable to decide on the changes
21 necessary to implement the findings, declarations, policies and goals of the
22 Compact and the Code of Ordinances.

23 37. In 1996, TRPA convened the Shorezone Partnership Committee
24 to try again to revise the Shorezone Amendments. The Committee failed to reach a
25 consensus and TRPA again abandoned the amendment process.

26 38. In 1999, TRPA tried and failed again to develop amendments to
27 the Shorezone Ordinances.

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1 39. In 2004, TRPA released five different proposals for amending
2 the Shorezone Ordinances. None of the five were adopted.

3 40. In 2005, TRPA released a sixth proposal, which was also not
4 adopted.

5 41. In 2006, TRPA released a seventh proposal, which was also
6 not adopted.

7 42. In 2008, TRPA released an eighth proposed set of changes to
8 the Shorezone Ordinances, which also was not adopted.

9 ***G. TRPA Made Sudden, Major Changes To The Amendments And Refused***
10 ***To Let The Public Have Adequate Time To Review Them***

11 43. Since the 1980s, the Association, through its staff and
12 members, has actively participated in TRPA's process of developing revised
13 Shorezone Ordinances. Because TRPA made significant changes to the
14 Amendments shortly before the October 22, 2008 hearing, the Association
15 requested that the public be provided additional time to review them.

16 44. TRPA denied the Association's request and held a public
17 hearing on the Amendments on October 22, 2008. At the October 22, 2008
18 hearing, TRPA adopted the Amendments that were circulated for public review for
19 a short period of time as compared to the twenty-year process TRPA took to arrive
20 at the Amendments. Additionally, during the October 22, 2008 hearing, TRPA
21 sprung further revisions to the Amendments on the public. The major changes
22 made to the Amendments were discussed for the first time at the October 22, 2008
23 public hearing and were never subject to public review or comment.

24 ***H. The Amendments Violate The Compact And The Code Of Ordinances***

25 45. TRPA's process for amending the Shorezone Ordinances was
26 flawed. TRPA never presented the public or the Governing Board with a single
27 document setting forth the Amendments and the reasoning behind them. The end
28

1 result was the Governing Board's adoption of Amendments to the Shorezone
2 Ordinances that violate the Compact and the Code of Ordinances.

3 **The Amendments' mooring restrictions must be set aside.**

4 46. The Amendments place new, arbitrary restrictions on moorings
5 in Lake Tahoe that significantly impact recreational opportunities at the lake.
6 These restrictions are contrary to the Compact and the 1987 Regional Plan and are
7 unsupported by any evidence.

8 47. A mooring buoy is a float anchored to a lake bottom that allows
9 a boat to be secured to the lake bottom without dropping an anchor. Moorings
10 obviate the need to drop an anchor to hold a boat stationary and, therefore, avoid
11 repeated disturbances of the lake bottom. Moorings are intended for the safe long-
12 storage of a boat when not in use.

13 48. In 2002, TRPA surveyed the number of mooring buoys in Lake
14 Tahoe. The count showed that there were 4,454 total mooring buoys (3,440
15 private and 1,014 public) in Lake Tahoe at that time. The 2002 survey only
16 counted mooring buoys that had floats. Mooring blocks without floats were not
17 counted. The survey also did not count *all* moorings. Moorings are a broad
18 category of mechanisms used to secure boats, which include boat slips, boat lifts,
19 jet ski lifts, and so forth. The proposed Amendments set a cap of 6,316 mooring
20 buoys based on the 2002 survey.

21 49. In or about May 2008, TRPA changed the draft Amendments to
22 set the cap on total moorings at 6,316 without any evidence. The record contains
23 no data on how many total moorings (buoys, plus boat houses, plus boat lifts) there
24 are in Lake Tahoe. The only data TRPA has is on the total number of mooring
25 buoys that had floats attached when the 2002 survey was conducted. Nevertheless,
26 TRPA set the "cap" on total moorings at 6,316. Because this cap is not based on
27 any evidence of the number of total moorings in Lake Tahoe, it may require the
28 removal of existing moorings.

1 50. The cap on the number of moorings violates the Compact's and
2 the 1987 Regional Plan's goals and policies that promote and encourage
3 recreational uses in and around Lake Tahoe. The Compact requires TRPA to
4 maintain the significant recreational benefits and resources that Lake Tahoe and
5 the Lake Tahoe region currently provide. The Compact declares that "outdoor
6 recreational opportunities of the region" need to be preserved and that there is "a
7 need to insure an equilibrium between the region's natural endowment and its
8 manmade environment." (*Id.*, at Art. I(a)(2), (10).) TRPA's artificial and
9 unfounded limitation on the number of moorings under the Mooring Restrictions
10 does not ensure this equilibrium and ignores the Compact's mandate that Lake
11 Tahoe provide outdoor recreational opportunities.

12 51. TRPA's "cap" on the number of moorings was made without
13 any factual basis and, therefore, should be set aside. Similarly, TRPA's finding
14 that the Mooring Restrictions are consistent with, and do not adversely affect, the
15 1987 Regional Plan's implementation or the environmental thresholds is arbitrary
16 and capricious and not supported by any evidence because it unjustifiably limits
17 recreational opportunities.

18 **The Amendments unduly restrict repair, reconstructions, and**
19 **modifications to existing piers.**

20 52. The Amendments' restrictions regarding modifications to
21 existing piers violate the Compact and the required findings under the Code of
22 Ordinances are not supported by substantial evidence.

23 53. Among other uses, piers provide access from Lake Tahoe's
24 shoreline to the lake's navigable waters. Without piers, recreational activity on
25 Lake Tahoe would be restricted significantly. Overly burdensome restrictions on
26 recreation uses violate the Compact's goals and declarations and the 1987 Regional
27 Plan's policies.

28

1 54. Under the Amendments, many of Lake Tahoe’s existing piers
2 cannot be modified without a pier’s owner being required to undertake significant
3 additional changes to both the pier and shoreland structures, such as homes or
4 other structures located upland from the lake’s shoreline. TRPA’s adoption of
5 burdensome Amendments that bear no rational relationship to the potential impact
6 that repairing an existing pier may have on the environment or public access
7 constituted an abuse of discretion, was arbitrary and capricious, and was not
8 founded on substantial evidence.

9 55. Under the Amendments, the replacement of a single pier pile
10 may trigger significant new requirements for the shoreland property and existing
11 structures. Specifically, under the Amendments, any “non-exempt modification”
12 of an existing pier requires a material net environmental benefit to any
13 Environmental Threshold (excluding Recreation) and a finding of no detrimental
14 effect on any other threshold. (*See* Amendments, 54.7.B.) This requirement is
15 triggered even when the work on an existing pier does *not* result in an expansion of
16 the pier’s size or use. There is no substantial evidence that this requirement is
17 consistent with the 1987 Regional Plan, otherwise enhances Lake Tahoe’s
18 environmental quality, or furthers any of TRPA’s environmental thresholds.

19 56. Prior to the Amendments, the Shorezone Ordinances provided
20 that repairs or reconstructions could be made to existing structures. Such repairs or
21 reconstructions were deemed either exempt, qualified-exempt, or requiring a
22 relatively simple permit.

23 57. The Amendments deleted the Shorezone Ordinances’ relatively
24 simple permit requirements for non-exempt repairs to or the reconstruction of
25 existing structures. Thus, when work on existing structures is not considered
26 “exempt” or “qualified-exempt,” the existing structure is treated as a new project.
27 New projects must comply fully with the Amendments. This violates pier owners’
28 vested rights to repair and maintain their piers.

1 58. Replacing a single pier piling may also trigger the requirement
2 that a property owner bring upland structures (i.e., residences, garages, or
3 commercial buildings) into compliance with the Amendments' new scenic
4 standards. There is no evidence supporting this requirement.

5 **The Amendments' limits on pier length are arbitrary and illegally**
6 **restrict lakeshore owners' property rights.**

7 59. The Amendments' restrictions on the lengths and uses of new
8 piers are not based on substantial evidence and violate the Compact and 1987
9 Regional Plan.

10 60. The Amendments restrict the maximum length of private,
11 single-use piers to 150 feet or less and multiple-use piers to 300 feet or less. At the
12 same time, the Amendments mandate that a pier reach an elevation of 6,219.0 LTD
13 or the pier headline, whichever is closer to shore, but must do so in 150 feet for
14 single-use piers or 300 feet for multiple-use piers.

15 61. A pier is only functional if it permits the user to reach navigable
16 water. The Amendments' arbitrary and artificial restriction the length of new
17 single-use piers to 150 feet prevents private property owners from ensuring that
18 they can reach navigable waters. The lake bottom's topography is such that in
19 some areas around Lake Tahoe a 150-foot pier is not long enough to reach
20 navigable water.

21 62. A lakeshore property owner has the right to build a pier out to
22 the line of navigability, whether that pier is a single-use pier or a multi-use pier,
23 and the Amendments arbitrarily restrict that right. (*Marks v. Whitney*, 6 Cal.3d
24 251, 262-63 (1971).) TRPA cannot restrict this right under the law.

25 63. TRPA's restrictions on the length of private piers also violates
26 the Compact and 1987 Regional Plan. The restriction on pier length adversely
27 affects implementation of the 1987 Regional Plan, including all applicable goals
28 and policies, and the Code of Ordinances. TRPA's findings to the contrary are not

1 supported by substantial evidence. TRPA’s decision adopting the limit, therefore,
2 is arbitrary and capricious and violates the Compact and 1987 Regional Plan.

3 **The Amendments’ limits on the number and types of new private**
4 **piers is arbitrary.**

5 64. The Amendments limit the number of new private piers to 128.
6 There is no evidence to support this figure. TRPA’s decision to limit the number
7 of piers to 128 is, therefore, arbitrary and capricious.

8 65. The Amendments require all new piers in areas identified as
9 “scenic shoreline travel route units” that are not in attainment with the
10 environmental thresholds for scenic resources to be built to serve more than one
11 property. (Amendments, Chapter 54.3.B.1.) There is no evidence to support this
12 requirement. Multiple-use piers will have greater impacts on scenic resources than
13 single-use piers because multiple-use piers can be up to 300 feet in length and
14 wider than single-use piers. Therefore, TRPA’s decision to require all new piers to
15 be multi-use piers in lakefront areas that are not in attainment with the applicable
16 environmental threshold are arbitrary and capricious.

17 66. TRPA’s restrictions on the number of new piers and the
18 prohibition against single-use piers violates the Compact and 1987 Regional Plan.
19 The limit on the number of piers adversely affects implementation of the 1987
20 Regional Plan, including all applicable goals and policies, and the Code of
21 Ordinances. TRPA’s findings to the contrary are not supported by substantial
22 evidence. TRPA’s adoption of the limit on pier length, therefore, is arbitrary and
23 capricious and violates the Compact and 1987 Regional Plan.

24 **The Amendments’ mitigation fees are not supported by**
25 **substantial evidence.**

26 67. The Amendments set a fee schedule for private piers and buoys.
27 Those fee amounts are unsupported by evidence and there is no evidence
28

1 supporting a nexus between the Amendments' fee structure and the impacts that
2 the fees are intended to mitigate.

3 68. The Amendments establish a Lake Tahoe Public Access Fund.
4 Under this Fund, TRPA shall assess a fee for each additional private-use pier or
5 expansion of an existing pier approved on Lake Tahoe. The fee for an additional
6 or new pier is \$100,000. The fee for expanding an existing pier is \$20 per square
7 foot of additional area. Both fees shall be increased annually, if appropriate

8 69. The Amendments require TRPA to use the fees for the
9 acquisition or improvement of public access to Lake Tahoe, with an emphasis on
10 non-motorized recreational access.

11 70. For example, the Amendments assess a \$100,000 fee before a
12 new private pier can be developed. TRPA attempts to justify that high fee by
13 referring to efforts to increase public access to the lake shore. However, there is no
14 assessment of what impact, if any, a new pier might have on public access.
15 Further, TRPA imposes restrictions on piers to prevent them from impeding public
16 access. Therefore, there is no evidence that a new pier will adversely impact
17 public access at all. Absent establishing some nexus between the harm and the
18 remedy, the Amendments' \$100,000 fee is just a tax. The Compact does not give
19 TRPA the right to impose taxes.

20 71. For further example, the Amendments assess a fee for the
21 installation of new mooring buoys. Since TRPA is not empowered to tax, fees
22 must be tied to some alleged harm. The Amendments contain an extensive
23 program for mitigating the potential impact that buoys may cause. However, the
24 Amendments' buoy fees are not tied to any program designed to mitigate whatever
25 impacts buoys may have. TRPA, therefore, can spend mooring fees on anything;
26 even if there is no connection to the impact that a mooring buoy may have. Absent
27 some nexus between the harm and the remedy, the mooring fees are a tax that
28 TRPA is not empowered to impose.

1 72. TRPA adopted these new fees without any evidence supporting
2 them. There is no evidence that a new pier designed to avoid impacts on public
3 access should be burdened by a \$100,000 public access fee. There is no evidence
4 that a new buoy designed and placed in compliance with the Amendments has any
5 impact on Lake Tahoe. The Compact does not allow TRPA to tax. Therefore,
6 TRPA can only adopt these fees if there is some nexus between the fee and the
7 harm they are intended to offset.

8 73. TRPA's new fees also violate the Compact and 1987 Regional
9 Plan. The fees adversely affect implementation of the 1987 Regional Plan,
10 including all applicable goals and policies, and the Code of Ordinances. TRPA's
11 findings to the contrary are not supported by substantial evidence. TRPA's
12 adoption of the fees, therefore, is arbitrary and capricious and violates the Compact
13 and 1987 Regional Plan.

14 ***I. TRPA's Environmental Review Of The Amendments Did Not Inform The***
15 ***Governing Board Or Public Of The Amendments' Environmental Impacts***

16 74. In order to evaluate the potential environmental impacts of a
17 project, the project must be reasonably stable. Here, TRPA never arrived at a
18 stable set of amendments to the Shorezone Ordinances. Instead, TRPA conducted
19 environmental review under the Compact and formulated the Amendments
20 simultaneously. The result was a 20-year process that created six separate EISs,
21 but not one that analyzed fully the Amendments' potential environmental impacts
22 or provided the Governing Board understandable evidence so that it could
23 understand the impacts of the action it was being asked to adopt when it approved
24 the Amendments. TRPA's haphazard environmental review resulted in a complete
25 absence of intelligible information from which the Governing Board or the public
26 could reasonably understand the potential impacts of the Amendments adopted on
27 October 22, 2008. That conduct violated Article VII of the Compact and Chapter 5
28 of the Code of Ordinances.

1 75. TRPA's environmental review of the Amendments followed the
2 same disjointed path as its drafting of the Amendments did.

3 76. TRPA prepared and published the first Draft EIS ("DEIS") for
4 public comment in 1995. TRPA abandoned this 1995 DEIS after abandoning the
5 set of Amendments it analyzed.

6 77. In 1999, TRPA issued a second DEIS for public comment
7 together with a revised set of Amendments. This DEIS was also never finalized.

8 78. Five years later, in 2004, TRPA released a third DEIS. This
9 DEIS analyzed five new alternative Shorezone Ordinances Amendments. This
10 DEIS relied heavily on the DEIS produced in 1999 and was not an independent
11 document. The Association commented on the DEIS's failings and inadequacies.

12 79. TRPA released a supplement to its 2004 DEIS in July 2005.
13 This DEIS analyzed the environmental impacts of an entirely new set of proposed
14 changes to the Shorezone Ordinances. Again, the supplemental DEIS was not a
15 stand alone document that could not be understood by the public or the Governing
16 Board without reference to the documents that had preceded it by many years. The
17 July 2005 supplement to the 2004 DEIS was the last draft EIS that TRPA
18 circulated for public comment.

19 80. TRPA released a final EIS for the Amendments in 2006. The
20 final EIS again introduced and studied a new set of changes to the Shorezone
21 Ordinances. This "alternative" to the Amendments had never before been
22 presented to the public for review and comment.

23 81. In August 2008, TRPA released an addendum to the 2006 final
24 EIS. This addendum introduced another "alternative" to the Amendments. Again,
25 this "alternative" set of changes to the Shorezone Ordinances did not receive
26 critical public review.

27 82. In October 2008, TRPA released its final addendum to the 2008
28 Addendum. The October 2008 addendum also contained additional changes to the

1 amendments under consideration (i.e., “project”). Again, this document did not
2 contain a full analysis of the Amendments’ significant environmental impacts.
3 This addendum did not present a complete picture of all the Amendments’
4 environmental impacts.

5 83. Thus, as of October 2008, TRPA had separately created and
6 delivered to the public for its review a DEIS in 1999 and 2004, a supplement to the
7 2004 DEIS in 2006, a final EIS in 2006, and two addendums to the final EIS in
8 2008. Each document built on the document before it. None provided a complete
9 environmental review of the Amendments in violation of the Compact.

10 ***J. TRPA’s Environmental Review Of The Amendments Violated The***
11 ***Compact And The Code Of Ordinances***

12 84. TRPA’s piecemealed approach to environmental review
13 violated the Compact. TRPA’s EIS obfuscated significant impacts, failed to study
14 other potential impacts, and did not include mitigation measures to reduce
15 significant environmental impacts. A full review of TRPA’s environmental
16 documentation demonstrates that TRPA failed to analyze potential environmental
17 impacts and failed to mitigate impacts fully.

18 **Environmental impacts from restricting moorings are not**
19 **analyzed or mitigated.**

20 85. The Amendments’ EIS does not evaluate the direct and indirect
21 environmental impacts of the cap on moorings in Lake Tahoe.

22 86. TRPA amended the Amendments to cap all moorings, not just
23 mooring buoys, at 6,316 in May 2008. This change significantly reduces the
24 number of moorings in Lake Tahoe. Addendums to the EIS after this change did
25 not evaluate the potential environmental impacts of reducing the number of
26 available moorings. For example, the EIS did not evaluate what impacts an
27 increase in the public’s use of public launch facilities could have on the
28 environment because people no longer can keep their boats in the lake. Increased

1 traffic, waste, and higher intensity of use are all impacts that should have been
2 evaluated. For further example, the EIS did not evaluate the impacts from the need
3 for additional dry storage for boats that could no longer remain on the lake. Since
4 such impacts were not considered, the EIS also did not consider mitigation
5 measures that could reduce these impacts. Under the Compact and Chapter 5 of
6 the Code of Ordinances, therefore, the EIS was deficient.

7 **TRPA wrongly concluded that the repair, reconstruction, or**
8 **modification of piers would exceed the environmental thresholds.**

9 87. The Amendments place significant burdens on repairing
10 existing piers. Unless exempt or qualified exempt, existing piers cannot be
11 repaired, reconstructed, or modified without meeting the Amendments' new design
12 guidelines because TRPA found that these activities would cause the
13 environmental thresholds to be exceeded.

14 88. The record contains no evidence to support requiring these
15 significant modifications. The record contains no evidence that repairs,
16 reconstruction, or modifications cause the environmental thresholds to be
17 exceeded. The record also contains no evidence that any environmental impacts
18 cannot be mitigated to a less than significant level. TRPA's opposite conclusion
19 was arbitrary and capricious and not in accordance with the law.

20 **Environmental analysis of limiting pier lengths and limit on the**
21 **number of new piers is inadequate.**

22 89. The Amendments limit the length of single-use piers to 150-feet
23 from the shore and restrict new pier development to 128 piers. The Amendments
24 also require piers to reach navigable water at the lowest possible water elevation.
25 The EIS did not address the environmental impacts of these provisions.

26 90. The Amendments limit single-use piers to 150 feet in length,
27 but allow multiple-use piers to reach 300 feet in length. The EIS contains no
28 analysis supporting TRPA's decision to allow multiple-use piers to reach 300 feet

1 while restricting private use piers to 150 feet. The EIS also does not evaluate the
2 impact of many larger, multiple-use piers as compared to smaller, single-use piers.

3 91. The EIS fails to analyze the impacts from requiring that piers
4 reach navigable water at the lowest possible elevation. The result of this
5 requirement is longer piers. This is so because the Amendments direct that a pier
6 that can reach navigable water at 90 feet must be extended to 150 feet where 150
7 feet from the shore is the lowest possible elevation.

8 92. The EIS fails to analyze secondary impacts caused by
9 restricting single-use pier length to 150 feet. A 150-foot pier may not reach
10 navigable water and, therefore, be of no use to its owner. Absent piers, boat
11 owners will use public facilities and require dry-storage. The EIS contains no
12 analysis of these or any other growth-inducing impacts restricting the lengths of
13 single-use piers could have.

14 93. The EIS fails to analyze the impacts caused by requiring new
15 piers in scenic shoreline travel route units that are not in attainment with the
16 environmental thresholds for scenic resources be built to 300-feet in length. The
17 Amendments require all new piers in non-attainment areas serve multiple
18 properties. Multiple-use piers can be up to 300 feet in length. The EIS did not
19 evaluate the potential impact of longer and wider piers as opposed to shorter and
20 narrower piers in these areas.

21 94. The EIS fails to address the limit the Amendments set on the
22 development of piers for private use and around Lake Tahoe. Limiting
23 construction of new private piers to 128 piers puts additional pressure on public
24 piers and launch sites. The resulting increase in traffic, pressure on local
25 infrastructure, and parking demands were not analyzed. It follows that the EIS
26 does not evaluate any potential mitigation measures to reduce these impacts.
27 Under the Article VII of the Compact and Chapter 5 of the Code of Ordinances,
28 therefore, the EIS was deficient.

1 **Environmental impacts from public piers are not analyzed.**

2 95. The environmental impacts from public piers are not analyzed
3 and the required findings cannot be made.

4 96. The Amendments permit the development of up to ten public
5 piers around Lake Tahoe. However, the Amendments impose no length
6 restrictions on these piers. The potential environmental impacts from extremely
7 long and wide public piers was not analyzed in the EIS. Similarly, mitigation
8 measures to reduce the potential environmental impacts of public piers were not
9 analyzed or adopted.

10 97. The Compact also requires TRPA to consider the potential
11 environmental impacts from increased usage that public piers could cause. The
12 EIS did not consider the potential significant environmental impacts of ten
13 additional *public* piers on the Lake Tahoe environment or adopt mitigation
14 measures to remediate these impacts. Under the Article VII of the Compact and
15 Chapter 5 of the Code of Ordinances, therefore, the EIS was deficient.

16 **FIRST CLAIM FOR RELIEF**

17 (Declaratory Relief – Violation of the Compact, Inadequate Environmental
18 Review, and Obstruction of Property Rights)

19 98. The Association hereby incorporates by reference all
20 allegations set forth in the preceding paragraphs, as if fully set forth herein.

21 99. TRPA’s actions constitute a violation of the Compact.
22 Therefore, pursuant to the Declaratory Judgments Act, 28 U.S.C. Section 2201, the
23 Association is entitled to declaratory and equitable relief to restrain the violation.
24 The Association is entitled to a declaration declaring that TRPA has violated the
25 Compact and violated lakeshore property owners’ rights by failing to proceed in a
26 manner required by law and has abused its discretion by:

27 a. adopting amendments to the Shorezone Ordinances with
28 mooring restrictions, new pier development limits, existing pier modification

1 requirements, and development fees that violate Article V of the Compact, which
2 requires that all ordinances adopted conform with the Compact and that the
3 ordinance will not adversely affect implementation of the 1987 Regional Plan;

4 b. adopting amendments to the Shorezone Ordinances with
5 mooring restrictions, new pier development limits, existing pier modification
6 requirements, and development fees for which the findings required under Sections
7 6.3 and 6.5 of the Code Ordinances cannot be made and for which there is no
8 supporting evidence in the administrative record;

9 c. adopting an EIS that fails to comply with Article VII of
10 the Compact, which requires that TRPA prepare and consider a detailed
11 environment impact statement that considers all significant environmental impacts
12 of a project before approving the Amendments; and

13 d. adopting amendments to the Shorezone Ordinance that
14 unlawfully restrict the rights of lakeshore property owners to access navigable
15 waters from their shorezone property.

16 100. An actual and present controversy now exists between the
17 Association and TRPA in that TRPA's failure to act within the bounds and
18 provisions of the Compact and Code of Ordinances and the rule of law threatens
19 the Association's members' financial and real property interests. The Association
20 is entitled to declaratory relief to restrain these violations. Such declaration is a
21 necessary and proper exercise of the Court's power at this time under the
22 circumstances now present in order to prevent further TRPA actions in violation of
23 its clear obligations.

24 **WHEREFORE, the Shorezone Property Owners Association**
25 **prays for judgment as follows:**

26 1. For a declaration that TRPA's adoption of the amendments to
27 the Shorezone Ordinances on October 22, 2008 violates the Compact, the 1987
28 Regional Plan, and the Code of Ordinances because they restrict recreational

1 opportunities and do not respect property owners' right to access the lake's
2 navigable waters;

3 2. For a declaration that TRPA's findings under Code of
4 Ordinances Sections 6.3 and 6.5 in support of the amendments to the Shorezone
5 Ordinances adopted on October 22, 2008 are not supported by substantial
6 evidence;

7 3. For a declaration that the environmental impact statement
8 certified by the Tahoe Regional Planning Agency for the amendments to the
9 Shorezone Ordinances on October 22, 2008 violates the Compact;

10 4. For a declaration that the Amendments violate the rights of
11 lakeshore property owners to build structures permitting them to reach navigable
12 water and, therefore, enjoy the full panoply of property rights reserved under
13 federal and state law;

14 5. For an order invalidating and voiding Tahoe Regional Planning
15 Agency's October 22, 2008 certification of the Amendments' EIS and Tahoe
16 Regional Planning Agency's October 22, 2008 adoption of the Shorezone
17 Amendments.

18 6. For injunctive relief against the Tahoe Regional Planning
19 Agency restraining the Tahoe Regional Planning Agency from enforcing or
20 otherwise taking any action under the Amendments until it complies fully with the
21 Compact, 1987 Regional Plan, Code of Ordinances, and all other applicable laws
22 and requirements.

23 7. For costs of suit and reasonable attorneys' fees.
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8. For such further relief as this Court deems just and proper.

Dated: December 19, 2008

Respectfully submitted,

LATHAM & WATKINS LLP
James L. Arnone
Peter J. Gutierrez
Benjamin J. Hanelin

By /s/ Benjamin Hanelin
Benjamin J. Hanelin
Attorneys for Plaintiff Shorezone
Property Owners' Association, aka
Tahoe Lakefront Owners' Association

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