



July 19, 2024 (*Revised since yesterday's July 18, 2024 submittal*)

Re: Public Comment, **Agenda Item II.** - Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (Nevada Revised Statutes [NRS] 218E.555) on 7-19-24. Please make this written comment part of the record and minutes.

Dear Honorable Legislative Committee Members,

In consideration of the explanations following 1 through 7 below, I request this committee recommend to the Nevada Legislature that all future funding to the TRPA be put on hold until the following actions are taken by the TRPA Governing Board:

1. Place a moratorium on all TRPA non-exempt activities (exempt activities are listed in Section 2.3 of the TRPA Code of Ordinances), until a cumulative impact supplemental EIS to the 2012 Regional Plan is completed.
2. Place a moratorium on all TRPA non-exempt activities (exempt activities are listed in Section 2.3 of the TRPA Code of Ordinances), until the TRPA develops and adopts "thresholds of significance" for wildfire and winter peril evacuation times.
3. Suspend TRPA Code of Ordinances Sections 2.5 and 2.6, until the supplemental EIS described above is completed.
4. Eliminate the TRPA Initial Environmental Checklist (IEC) for non-exempt activities in favor of an Environmental Assessment (EA).
5. Immediately modify the TRPA Rules of Procedures and Code of Ordinances to allow the public the option of nonbinding mediation conducted under the applicable rules of the American Arbitration Association or the John S. McCain III National Center for Environmental Conflict Resolution before perusing recourse in a court of law.
<https://www.udall.gov/OurPrograms/Institute/Institute.aspx>
6. Request TRPA, NDOT and their "partners" Immediately halt the progress of the expansion of the East Shore trail until a cumulative impact EIS is conducted based on new information and changed circumstances since the March 2014 Nevada Stateline-to-Stateline Bikeway North Demonstration Project (original East Shore Trail Incline to Sand Harbor plan) and the 2019 SR-28 Shared Use Path, Parking, Safety and Environmental Improvements Project and eventual US 50 Corridor Management Plan.

7. Due to the highly controversial management under current TRPA Leadership, and the fact that the TRPA refuses to acknowledge that the NV Open Meeting Law and CA Brown Act apply to the TRPA, this committee should request the TRPA to immediately create and institute a “whistleblower” protective process to allow former, current and future employees to “blow the whistle” on instances of TRPA mismanagement or violations of the compact including applicable Federal, State and Local law and regulation violations.

EXPLANATION REGARDING REQUESTS 1 THROUGH 7 ABOVE:

It should be self-evident to this committee that the TRPA has failed to achieve and maintain harmony and equilibrium within the Lake Tahoe Basin under the Bi-State Compact. In fact, we all know in our hearts, something is dreadfully wrong with the TRPA process. This, at a time when public confidence in the TRPA is at a significant low.

Surely, the committee must be keenly aware, based on public testimony, local and worldwide news reports, recent litigation, science-based report after report, controversial approval of international destination projects, substantial increases in algae, invasive species, plastics pollution and trash, that the death march to the complete degradation of our Lake Tahoe “outstanding waters” under the US Clean Water Act, may very well be past the point of no return.

Yet, TRPA continues to ignore the unprecedented outcry from a substantial number of reasonable and subject matter resident experts, as it continues its fast-track pro-growth, pro-developer, pro-height, density, coverage and dangerous “complete streets” agendas. These, under the misleading guise of “workforce housing” and greenwashing.

This, as the TRPA continues unprecedented legal maneuvering tamping down and gaslighting genuine, legitimate, and reasonable public concern. As an example, two days ago on 7-17-24, TRPA opined that it is not subject to the NV Open Meeting Law, This despite a recent NV Attorney General (NV AG) opinion, that TRPA public body meetings fall under the NV Open Meeting Law.

As part of the next weeks upcoming TRPA Governing Board Meeting Staff report, TRPA’s counsel stated that as a matter of federal compact law, **“TRPA does not agree that the enforcement elements of state open meeting laws apply to the agency.”** This type of arrogance on the part of the TRPA further demonstrates that TRPA continues to use whatever means necessary to conduct their affairs outside the protections afforded to Nevada citizens by the NV AG OML as well as those protections that may be afforded to California citizens under the CA Brown Act.

TRPA’s current culture of adaptive management, pet non-profit “partners”, reliance on a project by project sham desktop Initial Environmental Checklist (IEC), which sidesteps adequate basin wide

cumulative effects analyses, avoidance of a cumulative Environmental Impact Statement (EIS) since the 2012 Regional Plan, a culture of regulatory capture and complete avoidance to create a basin wide population threshold based on roadway-by-roadway fire evacuation capacity is dangerous, highly controversial, and its current moving target “threshold” outcomes highly uncertain.

Therefore, for those who suggest that community members sometime fail to provide solutions to what has now become obvious mismanagement of the Lake Tahoe Basin on the part of TRPA and its “partners”, I request this committee recommend to the Nevada Legislature that all future funding to the TRPA be put on hold until the following actions are taken by the TRPA Governing Board:

Place a moratorium on all TRPA non-exempt activities (exempt activities are listed in Section 2.3 of the TRPA Code of Ordinances).

This, until a cumulative impact supplemental EIS to the 2012 Regional Plan is completed. The supplemental EIS must include a roadway-by-roadway fire evacuation capacity analysis based on the most up to date data and best available technology, and its results made publicly transparent.

Place a moratorium on all TRPA non-exempt activities (exempt activities are listed in Section 2.3 of the TRPA Code of Ordinances), until the TRPA develops and adopts thresholds of significance for wildfire and winter peril evacuation times.

Any conclusion that an increase in evacuation times is a less than significant impact should be based on a threshold of significance that reflects Lake Tahoe Basin Washoe and Douglas County communities’ proximity to the Wildland Urban Interface, as well as our significant and almost daily Nevada wind and slope environment as well as our wintertime so called demonstrated “snow-mageddon” events.

Suspend TRPA Code of Ordinances Sections 2.5 and 2.6.

Until the supplemental EIS as described above is completed, TRPA must suspend Sections 2.5 and 2.6 of the Regional Plan Code of Ordinances which currently read:

2.5 ACTIVITIES DELEGATED TO LOCAL GOVERNMENTS FOR REVIEW UNDER MEMORANDA OF UNDERSTANDING Activities delegated to a Local Government pursuant to a memorandum of understanding (MOU) shall be reviewed and approved by a local government in accordance with the TRPA Regional Plan and this Code shall therefore be exempt from separate TRPA review and approval. TRPA shall maintain a publicly available list of adopted delegation MOUs.

2.6 EXEMPT ACTIVITIES UNDER MEMORANDA OF UNDERSTANDING WITH PUBLIC AND QUASI-PUBLIC ENTITIES Activities included in memoranda of understanding (MOU) between TRPA and the public and quasi-public entities are exempt from TRPA review and approval, or subject to limited review and

approval as outlined in the individual MOU. TRPA shall maintain a publicly available list of adopted MOUs for exempt activities.

Eliminate the TRPA Initial Environmental Checklist (IEC) for non-exempt activities in favor of an Environmental Assessment (EA).

This, by modifying **all** Chapter 3 and necessary TRPA Code of Ordinances subsections and strengthening Code of Ordinance section *3.4.1. Environmental Assessment Contents*, to require a comprehensive EA over an IEC and modifying EA content requirements to include a determination as to whether or not the activity **MAY** have an individual and cumulative effect on the local and regional environment.

As just two examples, such necessary modifications could include but not be limited to modifying section 3.1.2 by simply eliminating 6 words and modifying Section 3.1.3 Findings for the Initial Environmental Checklist as follows:

3.1.2 *Based on the information submitted in the ~~IEC~~ **Environmental Assessment**, and other information known to TRPA, TRPA shall make one of the following findings and take the identified action ...*

3.1.3 *DETERMINATION OF NEED TO PREPARE ENVIRONMENTAL IMPACT STATEMENT*
Except for planning matters, ordinary administrative and operational functions of TRPA, or exempt classes of projects, TRPA shall use ~~either an initial environmental checklist or~~ an environmental assessment to determine whether an environmental impact statement shall be prepared for a project or other matter.

Immediately modify the TRPA Rules of Procedures and Code of Ordinances to allow the public the option of nonbinding mediation conducted under the applicable rules of the American Arbitration Association or the John S. McCain III National Center for Environmental Conflict Resolution before perusing recourse in a court of law.

<https://www.udall.gov/OurPrograms/Institute/Institute.aspx>

This, as demonstrated during the recently agreed to TRPA / Mountain Area Preservation litigation settlement.

This public being granted the option to litigation is long overdue. The current TRPA process forcing the public to file lawsuits is draconian and limits community transparency opportunities.

Currently, the public has no option but to file litigation against the TRPA Governing Board for a disputed TRPA action or finding, once the internal TRPA administrative steps are exhausted. This process creates a dysfunctional and combative environment, and a perception of heavy handedness, of which TRPA usually has far more resources to commit to litigation than the public. The current practice of “no option other than litigation,” promotes an immediate unnecessary and intimidating power process in favor of the TRPA. The public needs an option to litigation. The TRPA can easily modify the TRPA Rules of Procedure to accomplish this option without violating the Compact.

Suggested TRPA Rules of Procedure modification language is provided below as a demonstration of the intent of this suggestion:

Add to the TRPA Rules of Procedures:

Disputes

*Before pursuing recourse in a court of law any project applicant or any aggrieved member of the public having standing under the bi-state Compact, who may wish to first endeavor to settle a dispute in an amicable manner, may opt to use nonbinding mediation initiated and conducted under the applicable rules of the **American Arbitration Association**, or the **John S. McCain III National Center for Environmental Conflict Resolution** before perusing recourse in a court of law by petitioning the TRPA within 30 days of the disputed TRPA action or finding. The TRPA must grant such a request once received.*

Suggest modifying the **TRPA Code of ordinances Section 2.2.2 G. 3.** as follows to include this option:

3. Appeals (*Add the following denoted in Red*)

*The final action of the Executive Director or Hearings Officer may be appealed to the Governing Board pursuant to TRPA's Rules of Procedure. **Final Action** of the Governing Board **may include, as permitted within the TRPA Rules of Procedure, the option of non-binding mediation initiated and conducted under the applicable rules of the American Arbitration Association or the John S. McCain III National Center for Environmental before** appealing to a court of competent jurisdiction pursuant to Article VI(j) of the Compact.*
<https://www.udall.gov/OurPrograms/Institute/Institute.aspx>

Request TRPA, NDOT and their “partners” Immediately halt the progress of the expansion of the East Shore trail.

This until a cumulative impact EIS is conducted based on new information and changed circumstances since the March 2014 Nevada Stateline-to-Stateline Bikeway North Demonstration Project (original East Shore Trail Incline to Sand Harbor plan) and the 2019 SR-28 Shared Use Path, Parking, Safety and Environmental Improvements Project and eventual US 50 Corridor Management Plan.

Based on significant new information and changing circumstances, the original March 2014 Nevada Stateline-to-Stateline Bikeway North Demonstration Project (East Shore Trail) and original Highway SR-28 Shared Use Path, Parking and Safety Plan environmental analyses was inadequate. As one example, based on significant new data, revealed that the Chapter 4 Tables within the March 2014 Nevada Stateline-to-Stateline Bikeway North Demonstration Project are woefully understated.

Significant new information includes TRPA data collected indicating 1000 to 3000 user trips a day on the East Shore Trail and significant overuse of Sand Harbor, all of which have had and will have a further potential significant environmental effect from the planned trail expansion, further adversely affecting the fire evacuation and traffic safety of Incline Village/Crytal Bay residents and visitors, and highway 50 fire evacuation. This then, not to mention the adverse environmental impacts to the waters of Lake Tahoe from increasing direct access to the once pristine waters of the Nevada East shore, now significantly polluted with plastics, trash, human and dog waste and loss of shoreline clarity.

These adverse effects extend to significant adverse evacuation capacity impact to users of the US 50 Corridor. New information includes the designation US 50 as an “Evacuation Corridor” by Douglas County, NV.

Due to highly controversial management of the TRPA under current leadership, and the fact that the TRPA refuses to acknowledge that the NV Open Meeting Law and CA Brown Act apply to the TRPA, this committee should request the TRPA to immediately create and institute a “whistleblower” protective process to allow former, current and future employees to “blow the whistle” on instances of TRPA mismanagement or violations of the compact including applicable Federal, State and Local law and regulation violations.

END

Sincerely,
Doug Flaherty, President
Tahoe Sierra Clean Air Coalition (DBA TahoeCleanAir.org)
A Nevada 501(c)(3) Non-Profit Corporation
Incline Village, NV