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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SIERRA CLUB and FRIENDS OF THE WEST)
SHORE,)

Plaintiffs,)

vs.)

TAHOE REGIONAL PLANNING AGENCY,)
COUNTY OF PLACER, and BOARD OF)
SUPERVISORS OF THE COUNTY OF)
PLACER,)

Defendants,)

vs.)

HOMEWOOD VILLAGE RESORTS, LLC and)
JMA VENTURES, LLC,)

Defendants and)
Real Parties in Interest.)

Civ. No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF; AND
RELATED PENDANT STATE LAW
CLAIMS AND PETITION FOR WRIT OF
MANDATE**

INTRODUCTION

1
2 1. Plaintiffs Sierra Club and Friends of the West Shore bring suit to prevent an ill-
3 conceived, inadequately studied, and environmentally-disruptive development project from
4 threatening one of our nation’s iconic landscapes – Lake Tahoe. Famed and valued for its calm and
5 scenic character, Lake Tahoe’s west shore and especially the Homewood community are a peaceful
6 refuge to its residents and visitors, free from the pollution, traffic and the other ill effects of
7 overdevelopment elsewhere around the Lake.

8 2. The development, centered around a massive expansion of the existing Homewood
9 Mountain Resort from approximately 25,000 square feet of floor area to over 1 million square feet,
10 will bring hundreds of new homes and tourist accommodation units to an area where none currently
11 exist; exacerbate traffic created by thousands of new visitors and thereby worsen air and water
12 pollution in the Tahoe Region (“Region”), where violations of state air quality standards are on the
13 rise and the Lake’s clarity is in decline; increase noise from greater traffic and construction activity;
14 and add or replace existing buildings with taller and bulkier structures, despoiling the community’s
15 scenic and rustic character. Nonetheless, on December 6 and 14, 2011, Placer County (“County”)
16 and the Tahoe Regional Planning Agency (“TRPA”), respectively, approved the Homewood
17 Mountain Resort Ski Area Master Plan Project (“Project”).

18 3. More significantly, to accommodate the Project, TRPA approved drastic changes to
19 its Regional Plan and Code of Ordinances (“Code”) (collectively, “Homewood Amendments”),
20 which govern all land-use decisions within the Region. These amendments enable fundamental
21 changes to the character of the Homewood community. Moreover, they loosen the requirements for
22 future development in not only Homewood, but the entire basin, thereby setting the stage for
23 similarly-damaging projects elsewhere in the Region. But because TRPA lacks a coherent and
24 effective regional plan to carry out TRPA’s fundamental duties to restore and protect the Lake, the
25 Homewood Amendments were not considered in light of whether they conformed to an overall
26 effective, strategic plan for the Region as a whole, nor in light of the Region’s actual capacity to
27 absorb additional impacts. This approach put the cart before the horse.

1 4. TRPA’s fundamental mandate under the Tahoe Regional Planning Compact
2 (“Compact”), the agreement between California and Nevada setting forth TRPA’s powers and duties
3 in planning for the Region, is to “achieve and maintain” environmental threshold carrying capacities
4 or “thresholds”—standards to protect water quality, air quality, and the other resources that make up
5 Tahoe’s renowned environment—and to implement a Regional Plan that achieves and maintains the
6 threshold standards. To ensure that TRPA stays the course in meeting these standards, or corrects
7 course when necessary, whenever TRPA amends the Regional Plan, it must find that the Plan, as
8 amended, achieves and maintains the thresholds. Code § 6.4. Similarly, whenever it amends the
9 Code, it must find that the Regional Plan, as implemented by the Code, as amended, achieves and
10 maintains the thresholds. Code § 6.5.

11 5. Accordingly, in September 2010, in another legal challenge to TRPA’s Code
12 amendments regulating the Lake’s shorezone, this Court ruled that whenever TRPA amends the
13 Code, “[w]here a threshold is not in attainment,” it is not enough to show that “the problem is not
14 getting worse,” nor that “metaphorically, the ball is moving forward.” *League to Save Lake Tahoe v.*
15 *Tahoe Regional Planning Agency* 739 F. Supp. 2d 1260, 1269 (E.D. Cal. 2010). “By requiring that
16 the Regional Plan be implemented so as to ‘achieve’ rather than merely ‘approach,’ the thresholds,
17 the Compact and Ordinances require a finding that TRPA will make it to the goal.” *Id.*

18 6. In approving the Homewood Amendments, TRPA has once again failed to make
19 proper threshold findings showing how the 27 out of 36 threshold standards that are still not in
20 attainment will be achieved. In TRPA’s ongoing but unfinished efforts to update the Regional Plan,
21 TRPA has openly acknowledged that the current Plan is *incapable of ever achieving* the threshold
22 standard for the Lake’s water clarity. As if to make up for this defect, the threshold findings for the
23 Homewood Amendments state that a water quality plan that is being developed to update the
24 Regional Plan will achieve the clarity threshold, though that water quality plan has yet to be actually
25 incorporated into the Regional Plan. But TRPA cannot rely on a hypothetical “fix” to currently find
26 that the Regional Plan will achieve and maintain the thresholds.

27 7. For the remaining thresholds, TRPA primarily relies on its 2006 Threshold
28 Evaluation Report (“Report”), which proposes measures to advance the attainment of unattained

1 thresholds. But the Report does not support TRPA’s findings. With respect to the never-attained
2 ozone threshold, for example, the Report states that existing “compliance measures” relied on to
3 achieve the thresholds “were not effective enough” to attain and maintain the ozone threshold; notes
4 that TRPA should implement improvement strategies “as quickly as possible”; and recommends, but
5 does not require, various supplemental measures to promote attainment. Yet, the Report contains no
6 analysis or definition of the pollution reductions needed, what these supplemental measures should
7 specifically entail, and how effective the measures are – and thus, no assurance that the measures
8 will attain the thresholds. Nor do the threshold findings refer the reader to this information
9 elsewhere, much less show that TRPA has adopted these measures in the five years since the
10 threshold report. Not surprisingly, since the 2006 Threshold Evaluation Report, TRPA has
11 increasingly violated the ozone thresholds in recent years.

12 8. These inadequate findings are a result of TRPA’s failure to produce a coherent and
13 effective regional plan to carry out its fundamental duties to restore and protect the Lake. Indeed,
14 instead of engaging in meaningful, comprehensive planning to address these flaws, TRPA has
15 proceeded business-as-usual by continuing to approve large-scale development projects around the
16 Lake, or at best, by planning *ad hoc* without a strategic Plan for the Region as a whole. That
17 approach does not provide any assurance that TRPA “will make it to the goal.”

18 9. Compounding these deficiencies, the Environmental Impact Report and
19 Environmental Impact Study (“EIR-EIS”) prepared jointly by TRPA and the County failed to
20 properly study and mitigate the Project’s effects on traffic, air quality, water quality, noise, scenic
21 resources, groundwater, and soil conservation, in violation of the California Environmental Quality
22 Act (“CEQA”) and the Compact. Thus, the Homewood Amendments and Project stand to make
23 matters worse.

24 10. In sum, TRPA’s findings that the Homewood Amendments will achieve and maintain
25 the thresholds violate the Compact and render its adoption of the Homewood Amendments invalid.
26 These deficient findings therefore must be set aside. Further, TRPA and the County’s failure to
27 properly study the Project’s and Homewood Amendments’ environmental impacts, mitigations, and
28 alternatives, violates the Compact and CEQA and renders the certification of the EIR-EIS and

1 approval of the Project and Homewood Amendments invalid. These approvals must be set aside, as
2 well.

3 **JURISDICTION AND VENUE**

4 11. This action arises under the Compact Clause of the United States Constitution,
5 Article 1, section 10, clause 3; and the Tahoe Regional Planning Compact, Public Law No. 96-551,
6 94 Statute 3233 (1980), Cal. Gov. Code § 66801 (copy of Compact attached as Exhibit A).
7 Jurisdiction of this Court is conferred by 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1367(a)
8 (pendent jurisdiction over state claims), and Article VI(j) of the Compact. Declaratory relief is
9 available pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the Federal Rules of Civil Procedure.

10 12. This Court has supplemental jurisdiction over the state law claims in this action
11 pursuant to 28 U.S.C. §1367(a). The state claims arise out of a common nucleus of fact with the
12 federal claims brought under the Compact.

13 13. Plaintiffs bring each and every claim under the Compact as both a federal law claim
14 and a state law claim under the Compact pursuant to Article VI(j) of the Compact.

15 14. This Court has jurisdiction over the CEQA claims in this proceeding pursuant to
16 California Code of Civil Procedure section 1085 and California Public Resources Code section
17 21168.5. Alternatively, this Court has jurisdiction pursuant to California Code of Civil Procedure
18 section 1094.5 and Public Resources Code section 21168.

19 15. Venue is proper in this Court pursuant to Article VI(j)(2)(A) of the Compact, because
20 the Project is to be undertaken upon a parcel of real property in this judicial district. It is also proper
21 in this Court pursuant to Article VI(j)(2)(B) of the Compact, because this action challenges
22 ordinances adopted by TRPA not involving a specific parcel of land. Further, venue is proper
23 pursuant to 28 U.S.C. § 1391(b), both because (1) a substantial part of the events or omissions giving
24 rise to each of plaintiffs' claims occurred in this judicial district, and (2) a substantial part of
25 property that is the subject of this action is situated in this judicial district.

26 16. Pursuant to the Eastern District of California Local Rule 120(d), intradistrict venue is
27 proper in Sacramento, California because the source of the violations is located within Placer
28 County.

1 17. Pursuant to 28 U.S.C. § 2201 *et seq.*, plaintiffs seek a declaration of rights under the
2 laws of the United States and California. There exists now between the parties an actual, justiciable
3 controversy in which plaintiffs are entitled to have a declaration of their rights and of defendants'
4 obligations, and further relief, because of the facts and circumstances hereinafter set out.

5 18. This action was timely filed within 30 days of the County's and TRPA's approvals of
6 the Project.

7 19. Plaintiffs have provided written notice of their intention to file this complaint to the
8 County and TRPA, pursuant to California Public Resources Code § 21167.5, and have attached a
9 copy of the notice and proof of service to this complaint as Exhibit B.

10 20. Pursuant to Public Resources Code section 21167.6(b), Plaintiffs have elected to
11 prepare the record of proceedings in this matter for claims brought under CEQA, and are
12 simultaneously filing their notice of intent to prepare the record of proceedings with this complaint.
13 A true and correct copy of Plaintiff's Notice of Intent to Prepare Record is attached to this complaint
14 as Exhibit C.

15 **PARTIES**

16 21. Plaintiff SIERRA CLUB is a nationwide non-profit conservation organization formed
17 in 1892, with a mission to explore, enjoy, and protect the wild places of the Earth, to practice and
18 promote responsible uses of the Earth's ecosystems and resources, to educate and enlist humanity in
19 the protection and restoration of the quality of the natural and human environment, and to use all
20 lawful means to carry out those objectives. Sierra Club has over 700,000 members, approximately
21 85,000 of whom reside in California and Nevada, with approximately 850 members living in the
22 Tahoe area. For many years the Sierra Club and its members have advocated for the protection of
23 Lake Tahoe. These advocacy efforts have included advocating for proper boat inspection protocols
24 in place to prevent quagga and zebra mussel infestations in the Lake, downsizing lakefront
25 development in Homewood, preserving a rare stand of old growth red fir, and ensuring protection of
26 streams in logged areas of the Basin, in furtherance of protecting air and water quality and wildlife
27 corridors. The Sierra Club is an "aggrieved person" with standing to sue under Article VI(j)(3) of the
28

1 Compact because it has appeared through authorized representatives and in writing before the TRPA
2 in connection with hearings regarding the challenged TRPA actions.

3 22. Plaintiff FRIENDS OF THE WEST SHORE (“FOWS”) is a community organization
4 on the West Shore of Lake Tahoe with an office in Meeks Bay, California. It consists of over 500
5 supporters and residents of communities on the western shores of Lake Tahoe (“West Shore”).
6 FOWS has dedicated itself to efforts to preserving and enhancing the West Shore’s watersheds,
7 wildlife, historic and cultural features and landscapes, and the rural quality of life treasured by
8 residents of Lake Tahoe. FOWS promotes sustainable communities and policies that enhance the
9 natural resources and beauty of the West Shore, including promoting strict compliance with the
10 Compact and ordinances and policies designed to protect the Lake’s crystalline waters and its world-
11 renowned landscapes and scenery. Its advocacy efforts include: working to reduce the size and
12 impact of development projects that are inconsistent with the West Shore’s community scale and
13 character, participating in the Regional Plan update to promote conservation of the Region’s natural
14 resources, and conceiving and implementing a Community Vision Process and Plan for the West
15 Shore Communities. FOWS is an aggrieved person with standing to sue under Article VI(j)(3) of the
16 Compact because it has appeared through authorized representatives and in writing before the TRPA
17 in connection with hearings regarding the challenged TRPA actions.

18 23. Plaintiffs have individual members who live in Homewood, the West Shore, and the
19 Lake Tahoe area, regularly visit Homewood and Lake Tahoe, and intend to continue to use and
20 enjoy these areas in the near future and beyond. They use and enjoy Lake Tahoe and its surrounding
21 areas, including the area in and around Homewood, for a variety of purposes, including scientific
22 study, hiking, cycling, photography, sightseeing, wildlife observation, swimming, sailing, kayaking,
23 canoeing, and fishing and intend to continue to do so on an ongoing basis in the future. Plaintiffs’
24 members derive recreational, spiritual, professional, aesthetic, educational, and other benefits and
25 enjoyment from these activities.

26 24. Plaintiffs and their members have a procedural interest in influencing the
27 management of Lake Tahoe through participation in the development of a meaningful, substantive
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1 Regional Plan for the Tahoe Area and implementing ordinances, as prescribed by the Compact, and
2 in the development of comprehensive environmental analyses required by the Compact and CEQA.

3 25. The above-described interests of plaintiffs and their members have been and are
4 suffering, and will continue to suffer, irreparable injury as a result of TRPA's adoption of the
5 Homewood Amendments and the Project and TRPA's and the County's failure to comply with the
6 Compact and CEQA. For example, the Project and Amendments allow greater noise, visual blight,
7 increased traffic, and greater air and water pollution. All of these injuries will diminish plaintiffs'
8 members' ability to enjoy recreational activities in and around the Lake and Homewood community.
9 TRPA and the County have failed to study and adopt adequate mitigation measures to avoid or
10 significantly reduce these and other significant adverse impacts of the Amendments and Project, thus
11 failing to prevent plaintiffs' loss of use and enjoyment of the Lake's and Homewood environment
12 caused by these impacts.

13 26. TRPA's and the County's failures to comply with the Compact and CEQA have
14 injured plaintiffs and their members by depriving them of information to which they are entitled
15 under both, including information pertaining to the Project's and Homewood Amendments' impacts
16 on environmental resources in the planning area, reasonable alternatives to the proposed action, and
17 mitigation measures available to address adverse environmental impacts; by depriving plaintiffs and
18 their members of a meaningful opportunity to comment on the missing information; denying them
19 the procedural safeguards embodied in the Compact and CEQA to ensure that TRPA and the County
20 carefully consider the environmental consequences of their proposed actions, environmentally
21 superior alternatives to that action, and appropriate mitigation measures prior to granting any project
22 approval; and by denying them adequate assurances that the Regional Plan, as amended and
23 implemented by the Homewood Amendments will achieve and maintain the environmental
24 thresholds.

25 27. Plaintiffs were actively involved throughout the legislative process for TRPA's
26 development of the Homewood Amendments and Project and preparation of the EIR-EIS. Plaintiffs
27 participated in meetings, submitted comments to TRPA, and also submitted comments on the notice
28 of preparation and the draft and final environmental impact statements for the Project and

1 Amendments. Plaintiffs consistently raised concerns about TRPA's preferred alternative and its
2 impacts on traffic, water quality, air quality, scenic quality, and noise levels, among other resources.

3 28. Plaintiffs' injuries will be redressed by the relief sought herein because the
4 Amendments would be set aside and a new environmental analysis of the Project project and
5 Homewood Amendments pursuant to the Compact and CEQA should result in a project that (1)
6 eliminates or significantly reduces the traffic, air quality, water quality, scenic, and noise impacts of
7 the project, (2) adopts adequate mitigation measures for the project's significant impacts, (3)
8 preserves the Homewood community's quiet, peaceful atmosphere and scenic quality, or (4) results
9 in some combination of such measures that will mitigate the otherwise significant impacts of the
10 project to a level of insignificance. Further, because the Regional Plan, as amended and implemented
11 by the Code of Ordinances and Homewood Amendments, does not achieve and maintain
12 environmental thresholds, as required by Article V(c) of the Compact, the relief would require an
13 amended Regional Plan that maintains and achieves the thresholds. Moreover, the relief would
14 promote attainment of the environmental standards mandated by the Compact. All such relief would
15 improve plaintiffs' opportunities for using and enjoying Lake Tahoe and the Homewood community
16 in the future.

17 29. Plaintiffs have no adequate remedy at law to address any of the foregoing injuries to
18 their interests.

19 30. Defendant TAHOE REGIONAL PLANNING AGENCY was created and exists as a
20 separate legal entity pursuant to Article III(a) of the Compact. The Compact confers on TRPA
21 powers and responsibilities for land use planning and environmental protection in the Lake Tahoe
22 region. TRPA's decision-making body is its Governing Board, comprised of a seven-member
23 California delegation; a seven-member Nevada delegation; and one non-voting member appointed
24 by the President of the United States. Compact, Art. III(a)(1), (2); Art. X(d)(3). The Governing
25 Board is empowered and required to "adopt all necessary ordinances, rules, and regulations to
26 effectuate the adopted regional plan." Art. VI(a). Agency staff, employed by the Governing Board,
27 execute the powers and functions provided by the Compact. Art. IV(a). TRPA is a public agency for
28 purposes of CEQA. *See* Cal. Pub. Res. Code § 21063.

1 31. Defendant COUNTY OF PLACER (“Placer County” or collectively with other
2 County defendants, “County”) is the “lead agency” for the Project for purposes of CEQA and Public
3 Resources Code section 21067, and has principal responsibility for conducting environmental review
4 for the project and taking other actions necessary to comply with CEQA.

5 32. Defendant BOARD OF SUPERVISORS OF THE COUNTY OF PLACER (“Board
6 of Supervisors” or collectively with other County Defendants, “County”) is the governing body of
7 the County and is ultimately responsible for reviewing and approving the Project. The Board of
8 Supervisors is responsible for adoption of ordinances, resolutions, and motions that comply with all
9 applicable laws, including CEQA, and approval of land use and development projects within its
10 jurisdiction. The Board and its members are sued here in their official capacities.

11 33. Defendant HOMEWOOD VILLAGE RESORTS, LLC, is a Delaware limited liability
12 company, and the project applicant for the project. Homewood Village Resorts owns the existing
13 Homewood Mountain Resort, which the Project will expand and redevelop.

14 34. Defendant JMA VENTURES, LLC (“JMA”) is a California limited liability company
15 with its main office located at 180 Sansome, Suite 1200, San Francisco, California 94104. JMA is a
16 representative of Homewood Village Resorts and plans to develop the project. Plaintiffs are
17 informed and believe that JMA is the recipient of approvals related to the Project.

18 **FACTUAL BACKGROUND**

19 **LAKE TAHOE AND THE TAHOE REGIONAL PLANNING COMPACT**

20 35. Situated in a spectacular setting near the crest of the Sierra Nevada mountains at an
21 elevation of approximately 6,225 feet above sea level, Lake Tahoe is one of the most well-known
22 and revered fresh water bodies in the United States. The geologic basin that cradles the Lake is
23 dominated by impressive mountains, steep slopes, and erosive, nutrient-poor granitic soils, as well as
24 volcanic rocks and soils. With a maximum depth of approximately 1,636 feet, Lake Tahoe is the
25 eleventh deepest lake in the world and the second deepest in the United States. Most remarkably,
26 Lake Tahoe is one of the clearest lakes in the world for its size and depth. This is due to its very low
27 concentrations of nutrients that support the growth of algae.

1 36. Continuous, long-term monitoring and evaluation of water quality in Lake Tahoe
2 since the early 1960s, however, has shown declining clarity attributable to an increase in algae
3 production and the addition of fine sediments (primarily particle sizes 20 microns or less in
4 diameter). In addition to decreased water quality, the Lake Tahoe Basin has also suffered from
5 degradation of air quality, terrestrial landscape, and tributary streams due to various factors
6 including land disturbance through development, increasing resident and tourist populations, habitat
7 destruction, soil erosion, road construction and maintenance, and the loss of wetlands, undisturbed
8 land, and other areas that filter runoff. The combination of these factors has resulted in a decline in
9 Lake Tahoe's famed clarity at an average rate of nearly one foot per year. With visibility once
10 measured at more than 100 feet deep, this represents a more than thirty percent loss of clarity since
11 1968.

12 37. In 1968, the states of California and Nevada entered into an interstate agreement
13 designed to ensure the conservation of resources and control development in the Lake Tahoe Basin.
14 The agreement, known as the Tahoe Regional Planning Compact, created TRPA to serve as the land
15 use and environmental resource planning agency for the Lake Tahoe Region and became effective
16 when it received the consent of Congress in December 1969. Pub. L. No. 91-148 (1969). When the
17 1969 Compact failed to be the powerful environmental protection mechanism that it was intended to
18 be, the two states extensively amended the document and Congress consented to the changes on
19 December 19, 1980. Pub. L. No. 96-551 (1980). The Compact also was enacted by California as a
20 state law. Cal. Gov. Code § 66801.

21 38. The central purpose of the Compact and of TRPA is to ensure that planning and
22 development in the Lake Tahoe region is consistent with achieving and maintaining certain
23 environmental standards for the region. *See* Compact, Art. I(b) (“[I]t is imperative that there be
24 established a Tahoe Regional Planning Agency with the powers conferred by this compact including
25 the power to establish environmental threshold carrying capacities and to adopt and enforce a
26 regional plan and implementing ordinances which will achieve and maintain such capacities while
27 providing opportunities for orderly growth and development consistent with such capacities.”)

1 39. The Compact requires TRPA to adopt environmental threshold carrying capacities
2 (“threshold standards” or “thresholds”). A threshold standard is “an environmental standard
3 necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the
4 region or to maintain public health and safety within the region.” Compact, Art. II(i). Such standards
5 shall include, but not be limited to, “standards for air quality, water quality, soil conservation,
6 vegetation preservation and noise.” *Id.* Some of these standards impose “extensive substantive
7 requirements” on TRPA “to improve environmental quality, in some cases dramatically.” *League to*
8 *Save Lake Tahoe*, 739 F.Supp.2d at 1278, 1295.

9 40. In order to attain the threshold standards, the Compact requires TRPA to “adopt and
10 enforce” a Regional Plan and implementing ordinances, which will achieve and maintain the
11 thresholds. Compact, Art. I (b), V(b), (c).

12 41. On August 26, 1982, by Resolution No. 82-11, TRPA adopted thresholds for the
13 Region. On or about April 26, 1984, TRPA adopted the 1984 Regional Plan, and the Plan was
14 amended in September 1986 and February 1987. This plan was intended to serve the Region for only
15 20 years. *See Regional Plan Goals & Policies* at VII-10, 18 (noting “20 year life of this Plan,” and
16 projecting the costs “over 20 years to implement the Regional Plan and attain the . . . thresholds”).

17 42. TRPA has an ongoing duty to ensure that the Regional Plan achieves the
18 environmental thresholds and is based on current information. *See Compact*, Art. V(c) (TRPA
19 Planning Commission and Governing Board “shall continuously review and maintain the regional
20 plan.”)

21 43. An effort to revise and update the entire Regional Plan by 2007, known as “Pathway
22 2007,” was undertaken in 2004, but the revisions were never completed or finalized. TRPA has since
23 restarted a new process to update the Regional Plan, this time focusing only on discrete elements of
24 the Plan. That process is ongoing and not yet finished.

25 44. TRPA is updating the Regional Plan because the current Plan is based on outdated
26 information and is inadequate to achieve and maintain the threshold standards.

27 45. The Code of Ordinances (“Code”) for implementation of the Regional Plan, as
28 required by the Compact, was adopted in May 1987.

1 46. Several provisions of the Compact are of particular importance in ensuring that the
2 thresholds will be achieved and maintained in the regional planning process. First, Article V of the
3 Compact requires that “the regional plan . . . and all its elements, as implemented through agency
4 ordinances, rules and regulations, achieves and maintains the adopted environmental threshold
5 carrying capacities.” Art. V(c). Section 6.4 of the Code thus requires that whenever TRPA amends
6 its Regional Plan, TRPA must find that “the Regional Plan, as amended, achieves and maintains the
7 thresholds.” Similarly, section 6.5 of the Code of Ordinances requires that in order for TRPA to
8 approve any amendment or adoption of the Code, TRPA must find that “the Regional Plan and all of
9 its elements, as implemented through the Code, Rules and other TRPA plans and programs, as
10 amended, achieves and maintains the thresholds.”

11 47. Second, Article V(g) of the Compact requires TRPA to make certain other findings
12 that relate to environmental protection before approving any project or activity that may
13 substantially affect the natural resources of the region, to “insure that the project under review will
14 not adversely affect implementation of the regional plan and will not cause the adopted
15 environmental threshold carrying capacities of the region to be exceeded.” Chapter 6 of the Code of
16 Ordinances prescribes the specific written findings required pursuant to Article V(g) before any
17 project is approved.

18 48. Third, Article VII of the Compact requires TRPA to prepare and consider a detailed
19 Environmental Impact Statement before approving or carrying out any project that may have a
20 significant effect on the environment. Art. VII(a)(2). The EIS must include, among other things,
21 “[t]he significant environmental impacts of the proposed project,” “[a]ny significant adverse
22 environmental effects which cannot be avoided should the project be implemented,” “[a]lternatives
23 to the proposed project,” and “[m]itigation measures which must be implemented to assure meeting
24 standards of the region.” Art. VII(a)(2)(A)-(D). Article VII also requires that, before approving a
25 project, TRPA must find that changes or alterations have been required or incorporated into the
26 project which avoid or reduce significant adverse environmental effects to a less than significant
27 level, or that economic, social or technical considerations make infeasible the mitigation measures or
28 project alternatives discussed in the EIS. Art. VII(d)(1), (2).

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

1
2 49. Like the Compact, the California Environmental Quality Act requires the preparation
3 of an “Environmental Impact Report” before approval of any project “that may have a significant
4 effect on the environment.” Cal. Pub. Res. Code § 21100. CEQA applies to any public agencies’
5 decisions affecting the state of California, including TRPA. The preparation of an EIR is the primary
6 means of achieving California’s policy of taking all action necessary to protect, rehabilitate, and
7 enhance the environment.

8 50. Under CEQA, public agencies are required to study within the EIR the project’s
9 significant environmental effects, mitigation measures to minimize those effects, and feasible
10 alternatives to the proposed action. *Id.* § 21100(b)(1), (3), (4). Agencies should not approve projects
11 as proposed if there are feasible alternatives and feasible mitigation measures available that would
12 substantially lessen those effects. *Id.* § 21002. Thus, if the project will have a significant effect on
13 the environment, the agency may approve the project only if it finds that it has “eliminated or
14 substantially lessened all significant effects on the environment where feasible” and that any
15 unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Cal.
16 Code Regs., tit. 14, § 15092(b)(2)(A) & (B).

17 **THE HOMEWOOD COMMUNITY AND**
18 **HOMEWOOD MOUNTAIN SKI RESORT PROJECT**

19 51. Homewood lies on the west shore of Lake Tahoe, in unincorporated Placer County,
20 six miles south of Tahoe City. With 906 full-time residents, it has the second smallest population in
21 the Tahoe Basin.

22 52. The Homewood community is primarily residential with single-family homes
23 interspersed among large pine and fir trees. Homewood also contains a mix of natural landscapes,
24 relatively small-scale tourist operations, and support services such as real estate offices, restaurants
25 and marinas, and other small-scale commercial uses.

26 53. The Homewood community lacks a dense commercial core area. Vehicle, pedestrian,
27 and bicycle traffic is relatively low compared to more densely developed and heavily used tourist
28 areas on the north and south shores of Lake Tahoe.

1 54. The Project area encompasses approximately 1,253 acres on the eastern slope of the
2 Sierra Nevada Mountains, the eastern boundary of which lies approximately 300 feet from the shore
3 of Lake Tahoe. The Homewood Mountain Resort encompasses 1200 acres of the Project area and is
4 the largest tourist and recreation feature in Homewood. This area is presently used in the winter
5 exclusively for the Resort's snow skiing operations, including accessory food and beverage and
6 rental/retail uses. Summer uses include such activities as hiking and mountain biking, fishing,
7 farmers markets, concerts, and wedding receptions.

8 55. The Project area is mountainous. It contains forested slopes, existing ski trails, and, at
9 the base of the mountain, limited developed areas. The developed areas include a 7,300 square foot
10 South Base lodge, a two-story 13,943 square foot North Base lodge, maintenance structures, and two
11 parking lots providing a total of 942 parking spaces. The Mid-Mountain area, upslope from the
12 North and South Base lodges, contains a temporary white tent structure used as a warming shelter
13 during the winter ski operations, ski lift terminal, and abandoned concrete foundation, but no
14 buildings.

15 56. No residential or tourist accommodation units are on-site within the Project area.

16 57. In July 2006, Homewood Village Resorts LLC and/or JMA Ventures submitted to
17 TRPA its application for the Homewood Mountain Ski Resort Area Master Plan Project.

18 58. In April 2008, JMA Ventures applied for "bonus" development allocations under the
19 "Community Enhancement Program" ("CEP") to be used for the Project.

20 59. The CEP awards proposed development projects with "bonus development" units, or
21 "allocations" from a special pool of bonus allocations for providing an undefined "substantial
22 environmental benefit" or "mitigation in excess" of legal requirements. *See* Code § 33.3.D(3);
23 33.4.A.(3). The CEP encourages larger development projects capable of financing capital
24 improvements or other major projects intended to provide environmental benefits.

25 60. The CEP is a flawed attempt to achieve restoration of the Region and attainment of
26 the threshold standards through the promotion of more intense development and urbanization of the
27 Region. Urbanization is fundamentally incompatible with the Lake's restoration. Up to 75% of fine
28 particulate matter entering the Lake, the major contributor to Lake Tahoe's clarity decline, originates

1 from the urban watershed, although it covers only 10% of the land area. Urbanization also results in
2 increased vehicle traffic, resulting in greater noise and air pollution. *See also* Compact, Art. I(a)(5)
3 (finding that “[i]ncreasing urbanization” has threatened “the ecological values of the [Tahoe] region”
4 and “the public opportunities for use of the public lands”).

5 61. To qualify for participation in the CEP, the Project proposed the implementation of
6 anti-runoff measures above normal mitigation requirements, including removal or reduction of
7 existing land coverage by restoring it to permeable land surface. In February 2008, TRPA’s
8 Governing Board accepted the Project into the CEP.

9 62. On September 2, 2008 the County and TRPA issued a Notice of Preparation of an
10 EIR-EIS for the Project, which was circulated for 30 days for public comment.

11 63. On January 21, 2011, the Placer County Community Development Resource Agency
12 (“County Development Agency”) and TRPA jointly issued a draft Environmental Impact Report-
13 Environmental Impact Statement (“draft EIR-EIS”) for the Homewood Mountain Resort Ski Area
14 Master Plan Project, to meet the requirements of CEQA and the Compact.

15 64. The County is the lead agency responsible for preparing the EIR under CEQA.

16 65. TRPA is the lead agency responsible for preparing the EIS under the Compact. It is
17 also a responsible agency in preparing the EIR under CEQA.

18 66. The draft EIR-EIS studied the proposed Project and five other alternative projects.

19 67. The Project, called “Alternative 1” in the draft EIR-EIS, would replace ski facilities
20 in the North Base area with fourteen new structures to provide 56 residential condominiums with 20
21 fractional units, 16 townhouses, 75 traditional hotel rooms, 40 two-bedroom for sale
22 condominium/hotel units, 30 penthouse condominium units, 25,000 square feet of commercial floor
23 area, 13 affordable housing units, a four-level 272-space parking garage, a 30,000 square foot skier
24 services lodge, an outdoor amphitheater, ice skating rink, swimming pool, and miniature golf course.
25 Alternative 1 would also convert the South Base area ski facilities to a 99-unit neighborhood
26 condominium complex. The Mid-Mountain Base area would include a new 15,000 square foot day-
27 use lodge with a detached gondola terminal, a new learn-to-ski lift, an outdoor swimming facility, a
28 new snow-based vehicle maintenance facility, and two water storage tanks. In total, Alternative 1

1 proposed to add 349 residential and tourist accommodation units to the Project area where none has
2 existed before.

3 68. According to the draft EIR-EIS, the purpose of the Project is to increase mid-week lift
4 ticket sales by 400 tickets per day, during the regular ski season to ensure the viability of the ski
5 resort operations. This would result in an average of 700 skiers per day during the mid-week.

6 69. Among other things, the draft EIR-EIS revealed that Alternative 1 would generate at
7 least 1,400 vehicle trips per day during the summer; generate 8,431 additional vehicles miles of
8 travel (“VMT”) per day during the summer; generate 146-192 truck trips per day for the removal of
9 excavation material over a ten year construction phase; bring buildings up to 77-feet in height to a
10 community characterized by small-scale development; and generate significant levels of noise from
11 construction and daily operations in an area known for its peaceful and quiet character. Further, it
12 would increase population density by allowing over 1,400 overnight guests to the Project area at
13 peak occupancy and a 40% increase in year-round residents.

14 70. The draft EIR-EIS also studied a “reduced project alternative” known as Alternative
15 6, which proposed a 15% reduction in development for a total of 297 residential and tourist
16 accommodation units. The EIR-EIS claimed that neither Alternative 6, nor any proposed alternative
17 smaller than 316 units was feasible, because it would not “generate sufficient revenues to support the
18 proposed environmental and fire safety improvements and ensure the continued viability of the ski
19 operations.”

20 71. The draft EIR-EIS also revealed that to accommodate the project, various
21 amendments to TRPA’s Code of Ordinances and Regional Plan were required. These included
22 adoption of a “Ski Area Master Plan” for the project area, as an amendment to the Regional Plan;
23 Code amendments to more than double TRPA’s maximum height limits from 33.7 to 77 feet in the
24 Project area; Regional Plan Goals and Policies and Code amendments to allow the allocation of
25 tourist accommodation units (including bonus development units) to projects in a Ski Area Master
26 Plan area; a Code amendment to allow groundwater interception for below grade parking in Ski Area
27 Master Plan areas; and amendments to TRPA’s Plan Area Statements (“PAS”) to expand the urban
28 boundary of the Project area, thereby allowing commercial uses, multi-family residential dwellings,

1 transfer-of-development rights, and ski facilities, as well as increased residential density. Plan Area
2 Statements are plans that establish land-use policies for specific areas of the Region. They are
3 considered elements of the Regional Plan. These amendments to the Code, Regional Plan, Goals and
4 Policies and PAS's are herein collectively referred to as the "Homewood Amendments."

5 72. The draft EIR-EIS was circulated for a 90-day public comment period until April 21,
6 2011, during which over 1800 comments were received. Among other things, commentators noted:
7 TRPA's inability to make the required threshold findings pursuant to Code sections 6.4 and 6.5
8 based on the inadequacy of the current Regional Plan; the draft EIR-EIS's failure to properly study
9 the Project's traffic, noise, scenic and air and water quality impacts and sufficient mitigation for
10 those impacts; the EIR-EIS's unsupported claims that Alternative 6 or a smaller project that did not
11 require any Code, Regional Plan, or PAS amendments was infeasible; and the draft EIR-EIS's
12 failure to accurately account for the amount of existing land coverage that had been removed to meet
13 the conditions for a CEP project ("restoration credit"), as well as the amount of "banked coverage"
14 available for transfer or relocation to undeveloped parcels of the Project area.

15 73. On October 3, 2011, TRPA and the County issued a Notice of Availability of the final
16 EIR-EIS. The final EIR-EIS proposed a modified project, known as Alternative 1A. The
17 modifications included: in the South Base area, replacing two of the three large condominium
18 buildings with 24 chalet buildings containing two condo units each; reducing the total number of
19 condominiums in the South Base area from 99 to 95 units; and in the North Base area, switching the
20 locations of the parking garage and a multi-use building. Alternative 1A also eliminated 20 "lock-
21 off" units associated with condo units in the hotel, reducing the total number of residential and
22 tourist accommodation units provided by Alternative 1A to 325 units. Alternative 1A also required
23 adoption of the Homewood Amendments.

24 74. The Final EIR-EIS's response to comments did not adequately address plaintiffs' and
25 other commentators' concerns about the EIR-EIS's deficient analysis of the Project's environmental
26 impacts, mitigation, and feasible alternatives, as well as TRPA's inability to make adequate
27 threshold findings, in light of the inadequate Regional Plan. Further, the Final EIR-EIS did not
28 change the draft EIR-EIS's conclusion that Alternative 6 or a project smaller than Alternative 6 was

1 an infeasible alternative. It also referenced a financial analysis provided by JMA, in support of this
2 conclusion, but did not provide this analysis in the EIR-EIS or refer the reader to where it could be
3 found.

4 75. On October 18, 2011, the Placer County Planning Commission approved Alternative
5 1A, which comprises the Project; certified the EIR-EIS for the project; adopted a mitigation
6 monitoring program; made findings that because Alternative 6 or a smaller alternative did not
7 generate a sufficient rate of return to ensure the viability of the ski resort, Alternative 6 was
8 financially infeasible; found that Alternative 1A would result in significant, unavoidable impacts on
9 traffic and climate change, and that mitigation measures for these impacts were infeasible; and made
10 related findings under CEQA.

11 76. On October 26, 2011, plaintiffs appealed the County Planning Commission's
12 approval of the Project and certification of the final EIR to the Placer County Board of Supervisors.

13 77. On December 6, 2011, the County Board of Supervisors denied plaintiffs' appeal and
14 adopted the same approvals and findings previously made by the County Planning Commission. On
15 the same day, Placer County filed in the Placer County Clerk's office a Notice of Determination,
16 providing public notice of the approval of the Project and certification of the EIR-EIS.

17 78. On December 14, 2011, TRPA's Governing Board held a hearing on the Project and
18 Homewood Amendments. It made similar findings that because Alternative 6 or a smaller alternative
19 did not generate a sufficient rate of return to ensure the viability of the ski resort, Alternative 6 was
20 financially infeasible; found that Alternative 1A would result in significant, unavoidable impacts on
21 traffic and climate change, and that mitigation measures for these impacts were infeasible; and
22 certified the EIR-EIS.

23 79. The Governing Board then made required findings to approve the Homewood
24 Amendments, including the threshold findings pursuant to Code sections 6.3 and 6.4. The threshold
25 findings relied on the 2006 Threshold Evaluation Report and accompanying "compliance forms" to
26 find that for those thresholds not yet attained, existing "compliance measures" and recommended
27 "supplemental measures" identified in those forms would achieve and maintain the thresholds. But
28 the 2006 Threshold Evaluation Report notes that many compliance measures have not been effective

1 to achieve the thresholds and the effectiveness of various supplemental measures is unknown.
2 Further, in the five years since the issuance of that Report, TRPA has not adopted many of the
3 recommended supplemental measures as part of its Regional Plan, Code, or other plans and
4 programs.

5 80. The threshold findings also referenced the Total Maximum Daily Load
6 Implementation Plan for Lake Tahoe (“TMDL”) as part of its plan to achieve and maintain the water
7 quality thresholds. The TMDL was prepared by the states of California and Nevada and approved by
8 the federal Environmental Protection Agency. But as of the date of the Homewood Amendments’
9 approval, the TMDL had not yet been incorporated into the Regional Plan. Indeed, TRPA is now
10 engaged in the process of devising specific measures for incorporation into the Regional Plan,
11 including updating the Plan to be consistent with the TMDL. TRPA is not expected to complete the
12 pending update to the Regional Plan until December 2012 or later.

13 81. On December 14, 2011, TRPA adopted the Homewood Amendments, including the
14 Ski Area Master Plan for the Project area, and approved the project. The final approval only allowed
15 construction of the North Base and Mid-Mountain Base components, known as Phase I of the
16 Project, with approval of Phase II – construction of the South Base – to be voted on at a future date.

17 **CLAIMS FOR RELIEF**

18 **FIRST CLAIM**

19 **FAILURE OF REGIONAL PLAN TO ACHIEVE AND MAINTAIN THE THRESHOLDS**

20 82. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
21 preceding paragraphs.

22 83. Article V of the Compact requires that “the regional plan . . . and all its elements, as
23 implemented through agency ordinances, rules and regulations, achieves and maintains the adopted
24 environmental threshold carrying capacities.” Art. V(c).

25 84. Pursuant to this Article, section 6.4 of the Code of Ordinances requires “Findings
26 Necessary to Amend the Regional Plan, Including The Goals And Policies And Plan Area
27 Statements And Maps.” To approve any amendment to the Regional Plan, TRPA must find that “the
28 Regional Plan, as amended, achieves and maintains the thresholds.” Code § 6.4.

1 85. Section 6.5 of the Code of Ordinances requires “Findings Necessary To Amend Or
2 Adopt TRPA Ordinances, Rules Or Other TRPA Plans And Programs.” Under this section TRPA
3 must find that “the Regional Plan and all of its elements, as implemented through the Code, Rules
4 and other TRPA plans and programs, as amended, achieves and maintains the thresholds” before the
5 agency approves any amendment or adopts any ordinance. *See* Code § 6.5.

6 86. In addition, Article V(d) of the Compact requires the Regional Plan to “provide for
7 attaining and maintaining Federal, State, or local air and water quality standards, whichever are
8 strictest, in the respective portions of the region for which the standards are applicable.” The
9 thresholds for air and water quality incorporate these standards.

10 87. TRPA has failed and is failing to achieve and maintain compliance with numerous
11 threshold standards, including various federal, state, and local air and water quality standards. Since
12 1991, TRPA has conducted four threshold evaluations assessing the Region’s progress in achieving
13 and maintaining the thresholds. The most recent threshold evaluation occurred in 2006. This
14 evaluation revealed that 27 of 36 threshold indicators are not in attainment status, including but not
15 limited to the following:

16 (a) Water quality standards: Six of seven standards are not in attainment and have
17 never been in attainment status:

18 (1) The water quality standard of a winter mean Secchi disk transparency
19 of 33.4 meters, *i.e.*, the maximum depth at which a white disk can be seen from the water’s surface,
20 a measure of the clarity of Lake Tahoe, has not been attained. For 2006, the winter mean Secchi disk
21 transparency was 23.43 meters, and the clarity of Lake Tahoe has been declining and continues to
22 decline at an average rate of almost one foot per year. In 2010, a Secchi disk depth of 19.63 meters
23 was recorded, the second lowest ever recorded, resulting in a decline in 1.13 meters, or 3.7 feet, from
24 the previous year.

25 (2) The water quality standard for annual mean phytoplankton primary
26 productivity (“PPr”), a measure of algal productivity that relates to the clarity of Lake Tahoe, is a
27 maximum of 52 gmC/m²/yr. This standard has not been attained, and the level of algal productivity
28 is increasing and has increased exponentially over the past 40 years. In 2006, annual mean PPr

1 measured 205.5 gmC/m²/yr, or nearly four times the standard of 52 gmC/m²/yr.

2 (3) The water quality standards for discharges to surface water, which set
3 maximum allowable annual average concentrations for dissolved inorganic nitrogen, dissolved
4 phosphorus, dissolved iron, grease and oil, and suspended sediment have not been met.

5 (4) The water quality standards for discharges to groundwater, which set
6 maximum concentrations of nutrients, including nitrogen, phosphate, iron, grease and oil, and
7 suspended sediment, have not been met.

8 (5) The water quality standards for the tributaries feeding into Lake
9 Tahoe, which set maximum allowable concentrations for dissolved inorganic nitrogen, dissolved
10 phosphorus, dissolved iron, and suspended sediment, have not been achieved.

11 (6) TRPA has failed to demonstrate compliance with the threshold
12 standards for water quality for Fallen Leaf Lake, including Secchi depth and near-surface water
13 temperature.

14 (b) Air quality standards: Six of eight air quality standards are not in attainment
15 status, including:

16 (1) The requirement to maintain carbon monoxide concentrations in the
17 air at or below 6.0 parts per million (“ppm”) averaged over eight hours is not being achieved.

18 (2) The threshold standard that ozone concentrations in the air shall not
19 meet or exceed a one-hour standard of 0.08 ppm is not being achieved, and the Region has exceeded
20 TRPA’s standard for ozone for every threshold report to date. In addition, the Region has exceeded
21 California’s 8-hour ozone standard of 0.070 ppm numerous times since 2006. As a result, the
22 California Air Resources Board classified the Lake Tahoe Air Basin a nonattainment area.

23 (3) The region is not in compliance with the California 24-hour air quality
24 standard for inhalable particulates (“PM10”) that restricts PM10 concentrations to 50µg/m³.

25 (4) The threshold requirement that vehicle miles of travel be reduced by
26 ten percent from the 1981 base year value is not being achieved. The Region has exceeded TRPA’s
27 standard for VMT for every threshold report to date.

28

1 (c) Noise: The threshold standards for noise levels setting the maximum
2 allowable noise levels for single noise events (such as from land vehicles and boats) and for
3 background noise (or community noise) are not being met.

4 (d) Scenic resources: None of the four threshold standards for maintenance of
5 scenic quality is being attained or has ever been in attainment status, including the standard for travel
6 route ratings, which tracks long-term, cumulative changes to views seen from major roadways and
7 changes to the views seen from Lake Tahoe looking to the shore, and the standard for scenic quality
8 rating, which protects specific views of scenic features observable from major roadways and from
9 the Lake.

10 (e) Fisheries: The threshold requirements for maintenance of fish habitat in the
11 Lake is not in attainment and has never been in attainment status.

12 (f) Vegetation and wildlife preservation: Four of six threshold requirements for
13 species preservation are not in attainment, including standards for the abundance, species richness,
14 and patterns of common vegetation; the minimum percentage of forested lands in the Region in a
15 late seral, or old-growth, condition; minimum numbers of population sites and minimum radii of
16 disturbance-free zones for special interest species such as the bald eagle; and a non-degradation
17 standard and preservation and restoration goals for riparian habitat.

18 (g) Soil conservation: Both of the threshold requirements, which set forth
19 maximum impervious coverage percentages for different types of land, as well as goals for
20 preserving and restoring stream environment zones within the Region, are not in attainment and have
21 never been in attainment status.

22 (h) The attainment status of several threshold standards is unknown, including the
23 standards for wood smoke (air quality), atmospheric nutrient loading (air quality), fish stream habitat
24 (fishery), and single event aircraft noise.

25 84. In addition, many thresholds have not shown a positive trend for improvement
26 or are in decline, including the thresholds for water clarity, algal growth, soil conservation and
27 ozone. Thus, the Regional Plan is inadequate to achieve and maintain the thresholds.

28

1 88. The Homewood Amendments cannot be lawfully approved because TRPA cannot
2 properly find that the Regional Plan and all of its elements, as implemented through the Code, Rules
3 and other TRPA plans and programs, as amended by the Homewood Amendments, achieves and
4 maintains the thresholds. Code § 6.5. This is so because the Regional Plan is currently not achieving
5 and maintaining the vast majority of the thresholds, and because the Homewood Amendments are
6 not directed towards curing, nor do they cure, all of the areas of non-attainment.

7 89. Further, the Homewood Amendments will actually undermine attainment of the
8 thresholds. Specifically, the Homewood Amendments enable a project with significant impacts on
9 noise, traffic, air quality, water quality, soil conservation, and scenic resources, among others, which
10 have not been properly studied within the EIR-EIS, and which have not been adequately mitigated to
11 less than significant levels or to “assure meeting standards of the region.” Compact, Art.
12 VII(a)(2)(D), (d)(1).

13 90. In sum, TRPA’s findings that the Regional Plan achieves and maintains the
14 thresholds, and that the Regional Plan as amended and implemented by the Homewood Amendments
15 achieves and maintains the thresholds, has no basis in the record and is arbitrary and capricious, in
16 view of the current non-attainment of the thresholds, the significant environmental impacts that will
17 result from their adoption and undermine compliance with the thresholds, and the lack of certain,
18 enforceable, and effective mitigations for these additional impacts. Thus, the Homewood
19 Amendments are invalid as a violation of the Compact and the Code, and TRPA’s adoption of the
20 Homewood Amendments must be set aside.

21 **SECOND CLAIM**

22 **FAILURE TO PROPERLY MAKE THRESHOLD FINDINGS PURSUANT TO CODE**
23 **SECTIONS 6.4 AND 6.5 AND THE COMPACT**

24 91. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
25 preceding paragraphs.

26 92. In *League to Save Lake Tahoe v. TRPA*, this Court held that “for those thresholds that
27 have not been attained,” Code section 6.5 requires more than merely showing that the proposed
28 amendments will not have significant adverse impacts. *League to Save Lake Tahoe*, 739 F.Supp. 2d

1 at 1271. Code section 6.5 requires “a showing that something – whether the [proposed amendments]
2 or something else will provide the necessary improvement” for attainment. *Id.* This ruling
3 analogously applies to findings made under Code section 6.4. *See also id.* at 1269 (“Where a
4 threshold is not in attainment, a finding that the problem is not getting worse does not satisfy this
5 provision. Nor is it sufficient to find that, metaphorically, the ball is moving forward. By requiring
6 that the Regional Plan be implemented so as to “achieve,” rather than merely “approach,” the
7 thresholds, the Compact and Ordinances require a finding that TRPA will make it to the goal.”)

8 93. The threshold findings for the Homewood Amendments fail to show for those
9 thresholds that have not been attained, how the Regional Plan, Code, Homewood Amendments, or
10 other TRPA plans and program, “will provide the necessary improvement” or “make it to the goal”
11 of attainment. This is because the Regional Plan and implementing elements contain defects
12 rendering them incapable of ever achieving and maintaining certain thresholds that are not yet in
13 attainment, but the threshold findings fail to show how these defects have been corrected. These
14 defects include, but are not limited to:

15 (a) The Regional Plan is incapable of achieving the standards for clarity: TRPA’s
16 own studies to update the Plan indicate that it is based on outdated information, and thus fails to
17 target the dominant cause of Lake Tahoe’s clarity decline, fine sediment particles. *See, e.g.,* TRPA
18 Water Quality Fact Sheet (Jan. 28, 2010) (stating TRPA pollution discharge limits under Plan were
19 “never technically correlated to achieving the recovery of the transparency standard for Lake
20 Tahoe”).

21 (b) The Regional Plan cannot achieve the standard for ozone: TRPA’s 2006
22 Threshold Evaluation Report indicates that existing threshold compliance measures are ineffective to
23 achieve and maintain the ozone threshold, which has become stricter through the adoption of a new
24 California standard in 2006.

25 (c) The Regional Plan lacks any concrete guidance showing how the VMT
26 threshold will be achieved and maintained.

27 94. Further, the Regional Plan is fundamentally defective in that it lacks meaningful
28 limits on development and associated impacts; any existing limits are not based on the Region’s

1 actual capacity for new development; and such limits do not take into account the Region's current
2 conditions and best available science.

3 95. The water quality threshold findings' reliance on the TMDL to show that the
4 Regional Plan achieves and maintains the threshold for Lake clarity is misplaced. The TMDL is not
5 yet part of TRPA's Regional Plan. TRPA is in the process of updating its Plan to develop and
6 incorporate implementation measures pursuant to the TMDL, and it may adopt the TMDL and
7 specific measures pursuant to the TMDL in the future. TRPA, however, cannot rely on an
8 unincorporated plan or undeveloped measures to show that the Regional Plan achieves and maintains
9 the thresholds. Un-adopted, hypothetical measures do not commit TRPA to any course of action and
10 thus provide no assurance the thresholds will be achieved and maintained.

11 96. Moreover, the threshold findings rely on the compliance measures and supplemental
12 measures identified in the 2006 Threshold Evaluation Report to show that the Plan and Code, as
13 amended, achieve and maintain the thresholds. But those measures do not cure the areas of non-
14 attainment. Many of the existing compliance measures have not been effective, thus necessitating the
15 recommendation of "supplemental measures." However, nothing in the Report indicates the
16 effectiveness of the recommended supplemental measures in achieving the thresholds, and in many
17 instances, they are too general to assess. Indeed, in some cases, such as for the ozone threshold, the
18 Report indicates that the effectiveness of the recommended supplemental measures is unknown. The
19 threshold findings do not provide this missing information, or reference other documents that
20 provide it. Further, many recommended supplemental measures have not been adopted as elements
21 of the Regional Plan in the five years since the Report, or there is no indication that TRPA has
22 adopted them.

23 97. In sum, TRPA's findings that the Regional Plan achieves and maintains the
24 thresholds, and that the Regional Plan as amended and implemented by the Homewood Amendments
25 achieves and maintains the thresholds, has no basis in the record and is arbitrary and capricious, in
26 view of the fundamentally defective nature of the Regional Plan, TRPA's failure to show how these
27 defects will be corrected, and the threshold findings' misplaced reliance on the TMDL and 2006
28

1 Threshold Evaluation Report. Thus, the Homewood Amendments are invalid as a violation of the
2 Compact and the Code, and TRPA's adoption of the Homewood Amendments must be set aside.

3 **THIRD CLAIM**

4 **FAILURE TO PROPERLY MAKE REQUIRED FINDINGS PURSUANT TO**
5 **CODE SECTION 6.3 AND THE COMPACT**

6 98. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
7 preceding paragraphs.

8 99. Under the Compact, a project means "an activity undertaken by any person, including
9 any public agency, if the activity may substantially affect the land, water, air, space or any other
10 natural resources of the region." Art. II(h). The Homewood Mountain Resort Ski Area Master Plan
11 Project is a "project." For any project approval, the Compact and Code section 6.3A require TRPA
12 to make written findings, supported by substantial evidence in the record of review, that:

13 (a) The project is consistent with, and will not adversely affect implementation of
14 the Regional Plan, including all applicable Goals and Policies, plan area statements and maps, the
15 Code and other TRPA plans and programs. Art. V(g); Code § 6.3.A(1).

16 (b) The project will not cause exceedances of the environmental threshold
17 carrying capacity thresholds. Art. V(g); Code § 6.3.A(2).

18 (c) The project meets or exceeds applicable Federal, State, or local air and water
19 quality standards, whichever are strictest. Art. V(d); Code § 6.3.A(3).

20 100. In addition, as part of the findings required by Code §§ 6.3.A(1), (2), and (3), TRPA
21 must identify the nature, extent, and timing or rate of impacts the project will have on compliance
22 with the thresholds. Code § 6.3.B(1). TRPA is also required to "quantify any contribution of the
23 project" to "cumulative accounts" for assessing cumulative impacts in the Region, confirm that any
24 resource capability utilized by the project is within the amount of the remaining capacity available
25 under the thresholds, confirm that the project will not prevent attainment of any adopted target date
26 or interim target, and identify an adequate means, including setting a baseline status, by which
27 mitigation measures will be evaluated. Code § 6.3.B(2)-(5).

1 Regional Plan at VII-17 (“transfers of development rights . . . shall be limited to equivalent uses with
2 no increase in the parameters by which the uses are measured by this plan (e.g., floor area, units,
3 [persons at one time]”), Code § 2.2 (defining tourist accommodation unit as “[o]ne bedroom, or a
4 group of two or more rooms with a bedroom” [emphasis added]);

5 (b) The Project will transfer tourist accommodation units from an urbanized area
6 in a distant, hydrologic unit on the Lake to undeveloped areas, in violation of the Plan’s intent to
7 preserve existing urban boundaries, *see* Regional Plan at II-3 (“development permitted under this
8 Plan is generally limited to the existing urban boundaries in which uses have already been
9 established”);

10 (c) The Project relocates allegedly “soft coverage” to undeveloped parcels of the
11 Project area for use as “hard coverage” – which is less permeable and more conducive to runoff and
12 other environmental disturbances – in violation of the Regional Plan’s intent to reduce impervious
13 land coverage, *see, e.g.*, Regional Plan at II-12 (Plan “calls for policies which limit allowable
14 impervious land coverage associated with new development”); *id.* at VII-16 (“Coverage utilized as
15 mitigation for excess coverage on [development] projects shall be existing hard coverage. . . .”);
16 Code § 20.3.C(2)(b) (prohibiting transfers of soft coverage in relation to commercial or tourist
17 accommodation uses or facilities);

18 (d) The Project does not qualify for “special uses,” *i.e.*, expansion of residential,
19 commercial, tourist accommodation, or other uses in the Project area, because it is not “of such a
20 nature, scale, density, intensity and type to be an appropriate use for the parcel on which, and
21 surrounding area in which, it will be located,” and because it will “change the character of the
22 neighborhood [and] detrimentally affect or alter the purpose of the applicable [PAS],” *see* Code §
23 18.1.B;

24 (e) The Project does not fulfill any identified need, nor is it “in response to
25 demand” for expansion of recreational development, but is instead driven by the developer’s goal to
26 increase mid-week ski lift ticket sales, *see* Regional Plan at V-5;

1 (f) The Project does not “completely offset [its] water quality impacts,” because
2 the effectiveness of the stormwater treatment system relied upon to mitigate water quality impacts is
3 unproven, *see id.* at VII-17;

4 (g) The Project and EIS-EIR fail to “demonstrate[] that there is an adequate water
5 supply within an existing water right” for the project, *see id.* at VI-2;

6 (h) The increased height limits established by the Homewood Amendments do
7 not “ensure that buildings do not project above the forest canopy, ridge lines, or otherwise detract
8 from the viewshed,” and the scale of structures included in the Project are not “consistent with
9 surrounding uses,” *see id.* at II-48;

10 (i) The Project will contribute to community noise levels by at least 10 decibels
11 above maximum limits established by the PAS for the Project area, *see PAS 157* at 3;

12 (j) The Project will result in “interference with or interception of groundwater as
13 a result of excavation activities” and adequate measures have not been included to “prevent any
14 groundwater or subsurface water flow from leaving the project as surface flow,” *see Code § 64.7.B*;

15 (k) TRPA has failed to properly find that each PAS amendment expanding an
16 existing urban plan area or adding residential, tourist accommodation, commercial, or public service
17 uses to a non-urban plan area will “make the [PAS] consistent with an adopted policy or standard of
18 the Regional Plan” and that it is to “enable TRPA to make progress toward achieving one or more
19 environmental thresholds without degradation to the other thresholds,” *see Code § 13.7.D*;

20 (l) Rather than first adopt a “Community Plan” for the Project area to ensure that
21 the project conforms with the Homewood community’s needs, TRPA adopted the Homewood
22 Amendments to bypass the community planning process, *see PAS 157* at 1; and

23 (m) TRPA did not comply with the procedures for developing and approving a Ski
24 Area Master Plan, Code § 16.7.

25 105. As a result of these violations of the Regional Plan and Code, the agency has failed to
26 proceed in a manner required by law. Further, TRPA cannot properly find that “the project is
27 consistent with, and will not adversely affect implementation of the Regional Plan, including all
28 applicable Goals and Policies, plan area statements and maps, the Code and other TRPA plans and

1 programs” and its finding pursuant to section 6.3.A(1) therefore has no basis in the record. The
2 Project and Homewood Amendments are therefore invalid as a violation of the Compact, Regional
3 Plan and Code, and TRPA’s adoption of the Homewood Amendments and approval of the Project
4 must be set aside.

5 **FIFTH CLAIM**

6 **FAILURE TO MAKE ADEQUATE FINDINGS REQUIRED FOR ADDITIONAL HEIGHT
7 IN VIOLATION OF CODE §§ 22.4.G AND 22.7**

8 106. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
9 preceding paragraphs.

10 107. The Homewood Amendments will more than double maximum height limits within
11 the Project Area from 33.7 feet to 77 feet.

12 108. For the Project to qualify for this additional height, the project must meet various
13 requirements under Code §§ 22.4.G and 22.7 (as amended by the Homewood Amendments), and
14 TRPA must make findings supported by substantial evidence that these requirements have been met.
15 TRPA’s findings for additional height have no basis in the record, because TRPA has failed to show
16 that:

17 (a) the project is consistent with the CEP requirements under TRPA Resolution
18 2008-11 and the environmental improvements for special projects pursuant to Code §§ 33.3D(3), *see*
19 Code § 22.4.G;

20 (b) additional height will not (1) interfere with views to scenic resources when
21 viewed from a TRPA scenic threshold travel route, and (2) will not cause a building to extend above
22 the forest canopy, when present, or a ridgeline, when viewed from major arterials scenic turnouts,
23 public recreation areas or the waters of Lake from a distance of 300 feet, Code § 22.7; and

24 (c) the project will result in a permanent reduction of no less than 10 percent of
25 existing land coverage within the project area, Code §22.4.G.

26 109. These failures result from TRPA’s flawed study of the Project and its impacts in the
27 EIS-EIR, including, but not limited to, its deficient study of the Project’s scenic impacts and its
28

1 flawed accounting of the restoration credit available for removal of existing land coverage. Thus,
2 TRPA's findings for additional height and the Project must be set aside.

3 **SIXTH CLAIM**

4 **FAILURE TO DESCRIBE THE PROJECT ACCURATELY IN VIOLATION OF THE**
5 **COMPACT AND CEQA**

6 110. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in the
7 preceding paragraphs.

8 111. Pursuant to CEQA and its implementing guidelines, an EIR's project description must
9 contain "[a] statement of the objectives sought by the proposed project," which "should include the
10 underlying purpose of the project." Cal. Code Regs., tit. 14, § 15124(b). "A clearly written
11 statement of objectives will help the lead agency develop a reasonable range of alternatives to
12 evaluate in the EIR and will aid the decision makers in preparing findings or a statement of
13 overriding considerations, if necessary." *Id.* These requirements similarly apply to an EIS prepared
14 by TRPA under the Compact. *See* Code § 5.8.B (requiring EIS to provide description of the project);
15 *People v. City of South Lake Tahoe*, 466 F.Supp. 527, 537 (E.D. Cal. 1978) ("*City of South Lake*
16 *Tahoe*") (relying on CEQA's substantive mandates to evaluate adequacy of TRPA's environmental
17 review); *League to Save Lake Tahoe*, 739 F. Supp. 2d at 1274, 1278 (same).

18 112. The EIR-EIS fails to provide a clear and accurate description of the project, in
19 violation of CEQA and the Compact. For example, the EIR-EIS fails to describe adequately:

- 20 (a) the amphitheater's proposed use;
- 21 (b) the Project's expected summer operations;
- 22 (c) the access road upgrade between the South and North Base areas and mid-
23 mountain lodge;
- 24 (d) the location and expected use of the project's snow-making guns component;
- 25 (e) the project's alternative energy generation components that will serve the
26 Project area;
- 27 (f) the new gondola and lift's expected operations;
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1 (g) the amount of banked coverage available and the amount of restoration credit
2 claimed for existing land coverage that has been removed or restored, including roads throughout the
3 Project area, paved parking areas at the North Base area, and a gravel parking area at the North Base
4 area; and

5 (h) the amount of hard and soft coverage that the Project will add to the Project
6 area, as well as the amount of banked soft coverage that will be relocated to undeveloped parcels for
7 use as hard coverage; and

8 (i) the total square foot build-out (floor space).

9 113. Among other things, the failure to accurately describe the Project precluded the
10 development of a reasonable range of alternatives to evaluate in the EIR-EIS, as well as an adequate
11 study of the project's impacts.

12 114. Because the County and TRPA failed in the EIR-EIS to clearly and accurately
13 describe the Project's components, the County and TRPA failed to proceed in a manner required by
14 law. And, substantial evidence does not support their findings that the environmental effects are not
15 significant and/or will be mitigated to less than significant levels.

16 SEVENTH CLAIM

17 FAILURE TO ADEQUATELY ANALYZE SIGNIFICANT IMPACTS 18 IN VIOLATION OF THE COMPACT AND CEQA

19 115. Plaintiffs hereby reallege and incorporate all of the above paragraphs as if fully set
20 forth herein.

21 116. The Compact requires that an EIS provide a "detailed" analysis of the significant
22 environmental impacts of a project before a project may be approved. Compact, Art. VII(a)(2)(A).
23 In addition, CEQA, and its implementing guidelines, require that an EIR describe the proposed
24 project's significant environmental effects. Each such effect must be revealed and fully analyzed in
25 the EIR, giving due consideration to both short-and long-term effects. *See* Pub. Res. Code §§
26 21100(b), 21002.1; Cal. Code Regs., tit. 14, §§15126.2(a). Significant effect on the environment
27 refers to substantial, or potentially substantial, adverse changes in physical conditions. Pub. Res.
28 Code §§ 21060.5, 21100(d).

1 117. The EIR-EIS for the Project fails to evaluate the Project's effects adequately, in
2 violation of the Compact and CEQA. For example, the EIR-EIS fails to evaluate and disclose:

3 (a) noise impacts, based on: the improper conclusion that simply because
4 construction projects do not have to comply with Placer County and TRPA noise limitations during
5 the day, any construction noise during those times is not "significant"; an inaccurate study of the
6 actual noise levels that can be expected at adjacent residents' properties and homes, underestimating
7 the project's noise levels by 12 dBs or more; the failure to study noise levels at residences adjacent
8 to the project based on their actual distances from the project, many of which directly border the
9 construction site; and the failure to analyze the increase in operational noises from the project that
10 will occur directly across the street from local residents;

11 (b) traffic, air and water quality impacts, as a result of: the EIR-EIS's unreliable
12 traffic counts that occurred on nonpeak weekends and during nonpeak traffic periods, contrary to
13 standard traffic study methodology; the EIR-EIS's reliance on trip generation rates for
14 condominiums and hotels rather than trip generation rates for a resort hotel; and the flawed
15 conclusion that a pedestrian signal for pedestrians crossing Route 89 adjacent to the Project is not
16 warranted based on pedestrian volumes generated by the Project;

17 (c) potential impacts of 142 to 196 trucks traversing the Homewood mountainside
18 every day of the summer for an extended period of time during Phase I of the project, including, but
19 not limited to, scenic impacts from dust, water quality impacts resulting from the wear and tear of
20 existing dirt roads and creation of sediment and erosion sources, potential noise impacts from gears
21 grinding to navigate the steep mountain roads;

22 (d) fault hazard risks, based on the EIR-EIS's failure to conduct relevant
23 subsurface investigations of such risks, despite the fact that some of the South Base structures are
24 located within the mapped fault trace of a fault, and despite evidence indicating that the fault is
25 active and poses a substantial earthquake and fault rupture risk;

26 (e) scenic impacts, including but not limited to the impacts of the proposed Mid-
27 Mountain lodge and gondola on views from Lake Tahoe, the greater height of buildings allowed by
28 the Homewood Amendments in the Project area, and the bulk and mass of new buildings;

1 (f) impacts on water supply, as a result of the dramatic increase in visitors and
2 residents, as well as snow-making operations;

3 (g) impacts resulting from the addition of hard coverage in the Project area;

4 (h) impacts on groundwater, as a result of soil excavation activities; and

5 (i) impacts resulting from the Project's inconsistencies with the Regional Plan,
6 PAS's, and Code, as a result of the EIR-EIS's failure to establish a proper baseline that did not
7 include the Homewood Amendments.

8 118. Because the EIR-EIS failed to study the Project's significant environmental effects,
9 the County and TRPA failed to proceed in a manner required by law. Further, substantial evidence
10 does not support the County and TRPA's findings that the Project's environmental effects are not
11 significant and/or will be mitigated to less than significant levels.

12 EIGHTH CLAIM

13 FAILURE TO MITIGATE SIGNIFICANT IMPACTS 14 IN VIOLATION OF THE COMPACT AND CEQA

15 119. Plaintiffs hereby reallege and incorporate all of the above paragraphs as if fully set
16 forth herein.

17 120. Under the Compact, an EIS must include mitigation measures "which must be
18 implemented to assure meeting standards of the region." Art. VII(a)(2)(D). "This obligation requires,
19 at a minimum, a 'reasonably complete' discussion of mitigation measures including 'analytical data'
20 regarding whether the available measures would achieve the required result." *League to Save Lake*
21 *Tahoe*, 739 F. Supp. 2d 1260 at 1281. In addition, under CEQA, an EIR must identify feasible
22 mitigation measures in order to substantially lessen or avoid otherwise significant environmental
23 effects. Pub. Res. Code §§ 21002, 21081(a); Cal. Code Regs., tit. 14, § 15126.4(a). "Formulation of
24 mitigation measures should not be deferred until some future time." Cal. Code Regs., tit. 14, §
25 15126.4(a)(1)(B). CEQA provides that public agencies should not approve projects as proposed if
26 there are feasible alternatives or mitigation measures available to substantially lessen the significant
27 environmental impacts of the project. Pub. Res. Code §§ 21002, 21081(a). If the project is changed
28 to incorporate mitigation to mitigate or avoid significant effects on the environment, the public

1 agency shall adopt a reporting or monitoring program for the mitigation adopted. Pub. Res. Code §
2 21081.6.

3 121. The EIR-EIS failed to identify and study adequate, feasible mitigation measures and
4 adequate mitigation monitoring to reduce the Project's significant environmental impacts, including
5 but not limited to, the following:

6 (a) traffic noise impacts (by merely relying on an acoustic engineer to be retained
7 in the future to identify feasible mitigations and listing generic measures without any evidence of
8 their feasibility or effectiveness);

9 (b) the infiltration galleries' impact on groundwater (by merely describing a
10 process to gain future TRPA approval, without any description of how the infiltration gallery will
11 comply with the separation requirement or the discharge limits, leaving the public in the dark as to
12 the viability and effectiveness of any possible measures);

13 (c) impacts on traffic and air quality, including but not limited to VMT (by
14 merely providing that the developer pay a fee into a mitigation fund for unspecified and unproven
15 measures and for measures that are not geared towards alleviating traffic or air quality impacts in the
16 Project area);

17 (d) noise impacts of the expanded snowmaking guns (by failing to identify their
18 proposed locations, coupled with the measures that would be applied to reduce noise);

19 (e) impacts of greatly expanded water demand;

20 (f) the amphitheater's noise, traffic, traffic-related pollution, and scenic impacts
21 relating to night lighting; and

22 (g) impacts on parking demand, by generally referring to a review of potential
23 parking locations without any evidence that this mitigation is feasible.

24 122. Because the EIR-EIS failed to properly identify and study mitigation measures to
25 reduce the Project's significant effects, TRPA and the County failed to proceed in a manner required
26 by law, and substantial evidence does not support TRPA and the County's findings that the Project's
27 environmental effects are not significant and/or will be mitigated to less than significant levels.

28

NINTH CLAIM

**FAILURE TO STUDY A REASONABLE RANGE OF ALTERNATIVES
IN VIOLATION OF THE COMPACT AND CEQA**

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4 123. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
5 in the preceding paragraphs.

6 124. The Compact requires that an EIS study “[a]lternatives to the proposed project.”
7 Compact, Art. VII(a)(2)(C). In addition, CEQA and its implementing guidelines require that an EIR
8 describe a range of reasonable alternatives to the project that would feasibly attain most of the basic
9 objectives of the project but would avoid or substantially lessen any of the significant effects of the
10 project and evaluate the comparative merits of the alternatives. Pub. Res. Code §§ 21100(b)(4),
11 21002; Cal. Code Regs., tit. 14, § 15126.6(a). Public agencies should not approve projects as
12 proposed if there are feasible alternatives or mitigation measures available to substantially lessen the
13 significant environmental impacts of the project. Pub. Res. Code §§ 21002, 21081(a). When
14 alternatives or mitigation measures are rejected as infeasible, the findings must reveal the agency’s
15 reasons for reaching that conclusion. Cal. Code Regs., tit. 14, § 15126.6(c).

16 125. The Compact further requires that where TRPA approves a project in which changes
17 have not been incorporated to avoid or reduce significant adverse effects to a less than significant
18 level, TRPA must make a written finding that “[s]pecific considerations, such as economic, social or
19 technical, make infeasible the mitigation measures or project alternatives discussed in the [EIS].”
20 Compact, Art. VII(d)(2).

21 126. The EIR-EIS for the Project failed to consider a reasonable range of alternatives and
22 further failed to adequately support its rejection of proposed alternatives, thus precluding the
23 public’s informed consideration of alternatives, including but not limited to:

24 (a) a reduced size alternative, such as the plaintiffs’ proposal to reduce the project
25 size by 33%, based on unsubstantiated grounds that a reduced-size alternative was economically
26 infeasible;

27 (b) an alternative that did not require any Code, Regional Plan, or PAS
28 amendments; and

1 (c) Alternative 6, the least environmentally damaging alternative to the Project
2 studied in the EIR-EIS, based on the unsubstantiated finding that this alternative was economically
3 infeasible.

4 127. Because the EIR-EIS failed to properly study feasible alternatives to the Project,
5 TRPA and the County failed to proceed in a manner required by law. Furthermore, substantial
6 evidence does not support TRPA and the County's findings that a reduced size project is infeasible.

7 **TENTH CLAIM**

8 **FAILURE TO PROVIDE INFORMATION UPON WHICH CONCLUSIONS**
9 **ARE BASED IN VIOLATION OF THE COMPACT AND CEQA**

10 128. CEQA requires that an EIR provide an "analytically complete and coherent
11 explanation" of its conclusions. *See Vineyard Area Citizens for Responsible Growth v. City of*
12 *Rancho Cordova*, 40 Cal. 4th 412, 439-40 (2007). "The data in an EIR must not only be sufficient in
13 quantity, it must be presented in a manner calculated to adequately inform the public and decision
14 makers, who may not be previously familiar with the details of the project." *Id.* at 442. Moreover,
15 an EIR that does not properly incorporate or reference a separately performed analysis does not
16 adequately inform the public. *Id.* at 440-41, 443; *see also* Cal. Code Regs., tit. 14, § 15151
17 (providing that an EIR should contain "a sufficient degree of analysis to provide decision-makers
18 with information which enables them to make a decision which intelligently takes account of
19 environmental consequences"). The Compact requires the same of an EIS. *City of South Lake Tahoe*,
20 466 F. Supp. at 537 (relying on CEQA's substantive mandates to evaluate adequacy of TRPA's
21 environmental review); *League to Save Lake Tahoe*, 739 F. Supp. 2d at 1274, 1278 (same).

22 129. The EIR-EIS failed to properly inform the public and decision-makers of the basis for
23 its conclusions. These failures include, but are not limited to: the EIR-EIS's omission of a study
24 commissioned by JMA in support of its assertion that Alternative 6, or a reduced size project, would
25 be financially infeasible; and its omission of information in support of the amount of banked
26 coverage and restoration credit available for the Project.

27 130. Because the EIR-EIS failed to properly inform the public and decision-makers of the
28 basis for its conclusions, TRPA and the County failed to proceed in a manner required by law, and

1 substantial evidence does not support TRPA and the County's findings that the Project's
2 environmental effects are not significant and/or will be mitigated to less than significant levels.

3 **ELEVENTH CLAIM**

4 **FAILURE TO PROPERLY ANALYZE THE WHOLE PROJECT**
5 **IN VIOLATION OF THE COMPACT AND CEQA**

6 131. CEQA defines "project" as "the whole of an action, which has a potential for
7 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
8 physical change in the environment." Cal. Code Regs., tit. 14, §15378(a); Pub. Res. Code § 21065.
9 CEQA forbids segmenting a project into separate actions in order to avoid environmental review of
10 the "whole of the action." *Bozung v. LAFCO* 13 Cal.3d 263, 283-84 (1975). Furthermore, CEQA
11 requires the lead agency to consider the entire project at the earliest possible stage, including all
12 reasonably foreseeable phases of the project. *Laurel Heights Improvement Association v. Regents of*
13 *the University of California*, 47 Cal. 3d 376, 394 (1988). These requirements similarly apply under
14 the Compact.

15 132. The EIR-EIS approved by TRPA and the County at issue in this case fails to describe
16 all reasonably foreseeable phases of the project and their impacts, in violation of CEQA and the
17 Compact. For example, the EIR-EIS fails to adequately describe:

18 (a) the location of the secondary access road for the project's proposed
19 townhouses that was newly identified in the Final EIR-EIS and its impacts;

20 (b) the proposed off-site location in the Project area at which the Project proposes
21 to relocate the existing 3,884 square foot vehicle maintenance and storage facility and its impacts;
22 and

23 (c) the location of off-site parking sites to fulfill the project's parking needs.

24 133. Because the County and TRPA failed to study the impacts of all reasonable
25 foreseeable phases of the Project, the County and TRPA failed to proceed in a manner required by
26 law. Furthermore, substantial evidence does not support their findings that the Project's
27 environmental effects are not significant and/or will be mitigated to less than significant levels.
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TWELFTH CLAIM

**FAILURE TO STUDY AND CONSIDER CUMULATIVE IMPACTS
IN VIOLATION OF THE COMPACT AND CEQA**

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134. Plaintiffs hereby reallege and incorporate all of the above paragraphs as if fully set forth herein.

135. Under CEQA, an EIR must discuss the cumulative impacts of a project when the project's incremental effect is "cumulatively considerable." Pub. Res. Code § 21083(b)(2); Cal. Code Regs., tit. 14, § 15130(a). Cumulatively considerable "means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." Pub. Res. Code § 21083(b)(2); Cal. Code Regs., tit. 14, § 15065(a)(3). These requirements similarly apply under the Compact, and TRPA considers cumulatively considerable impacts "significant."

136. The EIR-EIS failed to properly study the Project's cumulative impacts, in connection with the effects of past, current, and probable future projects in the Region. For example, the EIR-EIS failed to study the Project's impacts in connection with other projects accepted into the CEP, leaving the public in the dark as to how those projects will collectively impact the Region's scenic resources, air quality, traffic, noise levels, water quality, recreation, and other resources.

137. Thus, the County and TRPA failed to proceed in a manner required by law. Furthermore, substantial evidence does not support their findings that the Project's environmental effects are not significant and/or will be mitigated to less than significant levels.

THIRTEENTH CLAIM

**FAILURE TO MAKE ADEQUATE FINDINGS REGARDING THE EIR-EIS
IN VIOLATION OF THE COMPACT AND CEQA**

138. Plaintiffs hereby reallege and incorporate all of the above paragraphs as if fully set forth herein.

139. TRPA violated the Compact and CEQA, and the County violated CEQA, by adopting findings that are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to, the following:

1 (a) The determination that certain impacts would be less than significant and/or
2 that adopted mitigation measures would avoid or lessen the Project's significant effects on the
3 environment, including but not limited to, significant noise impacts, traffic and parking impacts,
4 water supply impacts, air quality impacts, scenic resource impacts, water quality impacts,
5 groundwater impacts, soil conservation impacts, and fault hazard risks;

6 (b) The determination that the Project's mitigation measures reduce impacts to
7 less than significant levels despite the EIR-EIS's improper deferral of mitigation;

8 (c) The determination that alternatives to the Project and proposed mitigation
9 measures that would have avoided or lessened the significant impacts of the project were infeasible;

10 (d) The determination that overriding economic, legal, social, technological, or
11 other benefits of the Project outweighed its significant impacts on the environment, including but not
12 limited to, its impacts on traffic and climate change.

13 140. As a result of the foregoing defects, the County and TRPA abused their discretion by
14 making determinations or adopting findings that do not comply with the requirements of CEQA and
15 the Compact and approving the Project in reliance thereon. Accordingly, the County's certification
16 of the EIR-EIS and approval of the Project must be set aside.

17 **REQUEST FOR RELIEF**

18 WHEREFORE, plaintiffs pray for relief against TRPA and the County as follows:

19 A. For declarations that TRPA's certification of the EIR-EIS and adoption of the Project
20 and Homewood Amendments:

21 (a) violate Article V of the Compact and sections 6.4 and 6.5 of the Code of
22 Ordinances, because the Regional Plan as amended and as implemented by the Code and Homewood
23 Amendments fails to achieve and maintain the threshold standards, and because TRPA's findings
24 pursuant to this section have no basis in the record;

25 (b) violate section 6.3.A and 6.3.B of the Code of Ordinances because TRPA's
26 findings pursuant to this section have no basis in the record;

27 (c) violate section 6.3.B of the Code of the Ordinances, because TRPA failed to
28 make the findings required by this section;

1 (d) violate section 6.3.A(1) of the Code of Ordinances, because the Project and
2 Homewood Amendments violate various provisions of the Regional Plan and Code of Ordinances
3 and thus are not consistent with the Regional Plan and would adversely affect its implementation;

4 (e) violate sections 22.4.G and 22.7, because TRPA's findings pursuant to these
5 sections have no basis in the record;

6 (f) violate Article VII of the Compact and Chapter 5 of the Code of Ordinances,
7 because the EIR-EIS fails to comply with its legal requirements for environmental review by failing
8 to accurately describe the project, study the entire project's effects, adequately describe significant
9 environmental impacts, include adequate mitigation measures, study feasible alternatives, include
10 information upon which conclusions are based, and study and consider cumulative impacts;

11 (g) violate Article VII of the Compact and Chapter 5 of the Code of Ordinances,
12 because the purported findings that environmental impacts will be reduced to less than significant
13 levels and that economic, social, technological, or other considerations make infeasible the
14 mitigation measures and project alternatives, have no basis in the record;

15 B. For declarations that the County's and TRPA's certifications of the EIR-EIS and
16 adoption of the Project:

17 (a) violate CEQA, because the EIR-EIS fails to comply with its legal
18 requirements for environmental review by failing to accurately describe the project, study the entire
19 project's effects, adequately describe significant environmental impacts, include adequate mitigation
20 measures, study feasible alternatives, include information upon which conclusions are based, and
21 study and consider cumulative impacts; and

22 (b) violate CEQA, because the purported findings that environmental impacts will
23 be reduced to less than significant levels, that environmentally superior alternatives and mitigation
24 for significant impacts are infeasible, and that overriding economic, legal, social, technological, or
25 other benefits of the Project outweighed its significant impacts on the environment have no basis in
26 the record;

27 C. For an order, including a preliminary and permanent injunction and peremptory writ
28 of mandate, invalidating and setting aside the County's December 6, 2011 certification of the EIR-

1 EIS evaluating the Project and its approval of the Project; TRPA's December 14, 2011 certification
2 of the EIR-EIS evaluating the Homewood Amendments and Project; and TRPA's December 14,
3 2011 approval of the Homewood Amendments and Project;

4 D. For a temporary restraining order and a preliminary and permanent injunction
5 restraining the County, TRPA, JMA, Homewood Village Resorts and each of their agents,
6 employees, officers, and representatives from taking any action to implement in any way the Project
7 and Homewood Amendments pending full compliance with the Compact, the Regional Plan, the
8 Code of Ordinances, CEQA and all other applicable legal requirements;

9 E. For plaintiffs' costs of suit and attorneys' fees pursuant to all applicable legal
10 authority including, but not limited to, California Code of Civil Procedure Section 1021.5, the
11 common law private attorney general doctrine, and any and all other provisions of law or equity; and

12 F. For such other and further relief as this Court may deem just and proper.
13

14 DATED: January 5, 2011

Respectfully submitted,

16 /s/ Wendy S. Park
17 TRENT W. ORR
18 WENDY S. PARK
*Counsel for Plaintiffs Sierra Club and Friends of the
West Shore*

19 MICHAEL LOZEAU
20 *Counsel for Plaintiff Friends of the West Shore*
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VERIFICATION

I, Wendy S. Park, am an attorney for Plaintiffs Sierra Club and Friends of the West Shore in this action. I am verifying this Complaint pursuant to California Code of Civil Procedure section 446. Plaintiffs are located outside of the County of Alameda, where I have my office. I have read the foregoing Complaint. I am informed and believe that the matters in it are true and on that ground allege that the matters stated in the Complaint are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 5, 2012

/s/ Wendy S. Park
Wendy S. Park
Attorney for Plaintiffs