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19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA  
21 SACRAMENTO DIVISION

22 SIERRA CLUB and FRIENDS OF THE WEST )  
23 SHORE, )

24 Plaintiffs, )

25 v. )

26 TAHOE REGIONAL PLANNING AGENCY, )

27 Defendant. )

Civil Case No.: 2:13-CV-00267-JAM-EFB

28 **TAHOE REGIONAL PLANNING  
AGENCY'S STATEMENT OF  
UNDISPUTED FACTS**

Date: March 5, 2014

Time: 9:30 AM

Place: 14 Floor – Room 6 (JAM)

Judge: John A. Mendez

1 Pursuant to LR 56-260(a), Defendant TAHOE REGIONAL PLANNING AGENCY (“TRPA”)  
2 hereby submits the following Statement of Undisputed Facts in Support of its Cross-Motion for  
3 Summary Judgment on all claims in Plaintiffs Complaint (ECF No. 1), filed concurrently with this  
4 motion. Documents included in the Administrative Record are cited as “AR[page number].”<sup>1</sup>

5 **INTRODUCTION**

6 1. On December 12, 2012, the Tahoe Regional Planning Agency (“TRPA”) Governing  
7 Board (“Board”) certified the Final Environmental Impact Statement (“EIS”) for its Regional Plan  
8 Update (“RPU”) and approved the RPU by a 12-1 vote. (AR27299-302.)

9 2. The RPU is part of a comprehensive, integrated approach to accelerate attainment of all  
10 TRPA’s adopted threshold standards, while also achieving other goals, such as greenhouse gas  
11 (“GHG”) emissions reduction targets required by California Senate Bill 375 (2008). (AR11473-76  
12 [Draft EIS]; 26774-75 [Findings].) Other, key components include TRPA’s adoption of a Regional  
13 Transportation Plan (“RTP”) and incorporation of Lake Tahoe’s Total Maximum Daily Load  
14 (“TMDL”). (*Id.*, see also AR 11549-51, 5067.) The Governing Board determined these plans are  
15 expected to provide a wide array of environmental benefits. (AR26666-72.)

16 3. The RPU maintains the growth control system from the Regional Plan adopted by TRPA  
17 in 1987, as amended (“1987 Plan”), and sets limits on the amount of new development that may be  
18 allocated over the next twenty years. (AR11546.) The RPU cuts the rate of growth by approximately  
19 half when compared with the rate of development that occurred under the 1987 Plan. (AR992, 8528.)  
20 The RPU includes the remaining allocations from the 1987 Regional Plan plus 2,600 new residential  
21 allocations, 600 new residential bonus units (to provide incentives for transfers of residential  
22 development out of sensitive land), and 200,000 new square feet of commercial floor area (“CFA”), all  
23 with various limits on use and other restrictions. The RPU cuts the maximum number of residential  
24

25 \_\_\_\_\_  
26 <sup>1</sup> / Because this is a record-review case, there are no material facts in dispute. The ordinary standards  
27 for summary judgment are therefore not implicated. Instead, the Court must determine whether either  
28 party is entitled to judgment as a matter of law based on the evidence in the administrative record.  
*Sierra Club v. Tahoe Reg'l Planning Agency*, 916 F.Supp.2d 1098, 1107 (E.D. Cal. 2013).

1 allocations released each year under the 1987 Plan from 294 to 130. (AR8528.)

2 4. The RPU is expected to reduce GHG emissions by over seven percent per capita.  
3 (AR11832.) The EIS determined that the RPU provided the most GHG-efficient combination of land  
4 use and transportation strategies, so its adoption would provide the maximum feasible extent of GHG  
5 emission reduction for the region's transportation sector. The RPU results in a net reduction in total  
6 mobile-source GHG emissions associated with light-duty vehicles in the California-portion of the Basin  
7 in both 2020 and 2035 compared to 2005 levels, despite an increase in population. The RPU meets and  
8 exceeds the GHG per capita reduction targets of 7 percent below 2005 levels by 2020 and 5 percent  
9 below 2005 levels by 2035 required by SB 375. Because the RPU exceeds both of the applicable SB  
10 375 targets, TRPA's RTP qualifies as a Sustainable Communities Strategy ("SCS"). The RPU results in  
11 the greatest reduction in GHG per capita of the five alternatives considered in the EIS. In addition, the  
12 RPU will fulfill the 2020 component of the AB 32 Scoping Plan as it relates to local government and  
13 land use planning. (AR11831-32.)

14 5. The RPU reduces vehicle miles traveled ("VMT"), traffic, noise and associated air  
15 pollution more than any other RPU alternative and results in 10,000 fewer VMT than the no action  
16 alternative (which would include no additional new development allocations), and ties new  
17 development to measured VMT levels. (AR 992, 11751, 3343-47, 5130, 26684, 26639-41, 26662,  
18 26692.)

19 6. The RPU reduces pollutant loading by including TMDL requirements in Area Plans,  
20 accelerates compliance with "Best Management Practices" ("BMP") requirements, and promotes  
21 redevelopment that will meet strict water quality standards. (AR26251-57.)

22 7. The RPU is expected to improve scenic quality and community character by promoting  
23 redevelopment consistent with strict standards for pre-TRPA non-conforming structures. (AR11983.)

24 8. The RPU will permanently restore or protect over 1,200 privately owned parcels in  
25 sensitive land or outlying areas. (AR12878-81.) New incentives for the transfer of development rights  
26 ("TDR") are projected to permanently protect or restore over 1,200 private sensitive/outlying parcels  
27 without relying on limited public funding. (*Id.*)

1           9.       The RPU will result in less coverage than the 1987 Plan, particularly by removing  
2 coverage in sensitive lands. (AR11879.) The RPU will significantly increase coverage removal in  
3 sensitive lands (23 – 35 acres projected from transfers alone), accelerate excess coverage mitigation  
4 programs, and results in less new coverage than all other RPU alternatives except the no-action  
5 alternative. (*Id.*; AR11894-95.)

6           10.       The RPU process included hundreds of meetings and hearings, and input from thousands  
7 of stakeholders, including local, state and federal agencies. (AR5087-88; 26559-60, 26592, 26718; *see*  
8 *also* SUF Nos. 93-103.)

9           11.       Plaintiffs, including Friends of the West Shore, suggested the Board consider an  
10 Alternative [] in the RPU process for an “environmental conservation alternative.” (AR21438, 22090-  
11 92 [discussion of conservation community input to alternatives assessed in EIS]; 22272-24 [RPU  
12 scheduling memo].) TRPA also delayed the RPU process close to a year to accept additional comments  
13 at the request of the Plaintiffs and associated groups, and added a new alternative based almost entirely  
14 on their comments. (AR11573, 11580-89.)

15           12.       In order to address divisive issues surrounding the RPU, TRPA created a Regional Plan  
16 Update Committee (“RPUC”) of the Governing Board, and the states created a Bi-State Consultation  
17 Group, to make recommendations to the full Governing Board. (AR5088.) The RPUC held at least 15  
18 lengthy meetings at which business, governmental and environmental stakeholders participated,  
19 including Plaintiffs in this case. (*Id.* [“...the formation of a Regional Plan Update Committee to solicit  
20 additional public and agency input on the alternatives under consideration. The Regional Plan Update  
21 Committee held 15 full day public meetings in late 2011 and early 2012, where they reviewed and  
22 accepted public input on every Policy in the Regional Plan, along with the implementing  
23 ordinances.”].)

24           13.       TRPA developed the RPU based on public input and incorporated the recommendations  
25 of the RPUC and Bi-State Consultation Group for additional water quality protections, among other  
26 environmental improvements. (AR5085, 26635, 26645, 26657; *see also* SUF No.96-100, 151.)

27           14.       Ultimately, both States, every local government entity in the region, and virtually all  
28

1 stakeholders save Plaintiffs endorsed the final RPU. (AR2, 26661, 27247-87, *see also* Joint Amicus  
2 Curiae Brief of the California Resources Agency and the Nevada Department of Conservation and  
3 Natural Resources (ECF No. 30); Amicus Brief of City of South Lake Tahoe, California, El Dorado  
4 County, California, Placer County, California, Douglas County, Nevada, Washoe County, Nevada, and  
5 Carson City, Nevada, a Consolidated Municipality (ECF No. 32); Joint Amicus Curiae Brief of the  
6 Lake Tahoe Community College, South Shore Chamber of Commerce, North Lake Tahoe Chamber of  
7 Commerce, Sierra Nevada Association of Realtors, Incline Village Board of Realtors, Lake Tahoe  
8 Visitors Authority, Tahoe Douglas Visitors Authority, South Tahoe Alliance of Resorts, and Barton  
9 Health in Support of Tahoe Regional Planning Agency (ECF No. 34).)

## 10 **FACTUAL BACKGROUND**

### 11 ***A. General Background and History of Lake Tahoe***

12 15. The Lake Tahoe Region is located on the California-Nevada border between the Sierra  
13 Nevada Crest and the Carson Range. The region encompasses the Lake Tahoe Basin along with  
14 additional areas near the Lake's outlet at Tahoe City. Approximately two-thirds of the region is in  
15 California and one-third in Nevada. In total, the region comprises about 501 square miles  
16 (approximately 325,000 acres) including the waters of Lake Tahoe, which measures 191 square miles  
17 (123,000 acres). Located within the California portion of the region is the incorporated City of South  
18 Lake Tahoe and portions of El Dorado County and Placer County. The Nevada portion of the region  
19 includes parts of Washoe County, Douglas County, and the rural area of Carson City. Lake Tahoe is the  
20 dominant natural feature of the region and is the primary focus of local environmental regulation to  
21 protect and restore its exceptional water clarity. (AR496-97, 11471.)

22 16. Lake Tahoe and its surrounding natural landscapes are cherished because they provide  
23 for extraordinary recreation and scenic experiences. The Lake itself is one of the largest and deepest in  
24 the world and the unique water clarity and stunning natural landscape has drawn people to its shores for  
25 centuries. (AR15.) Lake Tahoe and its surroundings were several times considered for designation as a  
26 national park, but rejected because of the mosaic of private land uses within the region and the history  
27 of land disturbances dating back to the 1800's including logging, grazing, and mining. (AR32829,  
28

1 32823-46.)

2 17. Private development in the region started in the late 1800s by wealthy vacationers  
3 seeking respite from the nearby cities. (AR32804.) Between 1900 and 1960, Lake Tahoe became a  
4 recreation destination. Following World War II and improvements in automobile transportation  
5 infrastructure, Nevada casinos and small recreation retreats were developed to better accommodate a  
6 more mobile and affluent society. (AR15.) The economic momentum of the 1960 Winter Olympics at  
7 Squaw Valley spawned a significant uncontrolled expansion of development at Tahoe; including the  
8 completion of the Tahoe Keys subdivision that was responsible for the fragmentation of a significant  
9 freshwater marsh system critical for filtering sediment and nutrients from entering Lake Tahoe. (AR15,  
10 32809.) Legalized gaming in Nevada brought more development pressure. (AR32805.) This  
11 development directed stormwater runoff into Lake Tahoe and adversely effected water quality,  
12 including Tahoe's clarity. (AR134.)

13 18. By the mid-1900s, development pressures built to the point where there were plans to  
14 expand the population of the region to 750,000 (more than ten times the current population) with a 4-  
15 lane highway ringing the Lake and a bridge spanning Emerald Bay. (AR32821, 53716.) Early scientific  
16 inquiry warned that unless protective measures were taken, the famed clarity of the second largest lake  
17 in the world at or above this elevation (6225 feet above sea level), the eleventh deepest in world, and  
18 one of the purest clearest large lakes on the planet with 39 trillion gallons (enough to cover California  
19 with 14.5 inches of water), would be lost and the Lake would be unable to recover. (AR46, 106448.)

20 ***B. History of TRPA, the Compact, and Regional Plan***

21 19. Late in the 1960s, rapid development and a lack of regulatory standards spurred the  
22 governors of California and Nevada to enter into the first bi-state, federally ratified agreement, the  
23 Tahoe Regional Planning Compact ("Compact"), resulting in the creation of the Tahoe Regional  
24 Planning Agency ("TRPA") in 1969. (AR15, 32811.)

25 20. TRPA was created as the nation's first bi-state regional environmental authority, a one  
26 of a kind organization working at the crossroad of private and public interests that lie at the heart of  
27 caring for Lake Tahoe and the region. (AR15, 32811.) This represented a significant shift in planning  
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1 because it recognized the need to look at planning at a regional scale to address emerging land use,  
2 transportation, and conservation problems in the region. (AR32822.)

3 21. The 1969 Compact directives were later found to be insufficient in protecting Lake  
4 Tahoe’s ecosystem. Therefore, in 1980, the Compact was revised and charged TRPA with leading the  
5 cooperative effort to preserve, restore, and enhance the unique natural and human environment of the  
6 Lake Tahoe Region. (AR15.)

7 22. The revised Compact directed TRPA to adopt environmental quality standards known as  
8 Environmental Threshold Carrying Capacities (or “Threshold Standards”) to focus environmental  
9 quality objectives and to address the impacts resulting from urban development and different land uses  
10 through the implementation of a regional land use plan. (AR16.) It also directed TRPA to adopt and  
11 enforce a regional plan that will “achieve and maintain” the Threshold Standards while “providing  
12 opportunities for orderly growth and development” consistent with the thresholds. (Compact, art. II(b),  
13 AR498, 504, 11471.)

14 23. TRPA adopted the Environmental Threshold Carrying Capacities in 1982. (AR32823,  
15 15432-37.) The Threshold Standards set environmental quality targets to protect and maintain the  
16 unique natural values of the Tahoe Region while still providing for orderly growth and development  
17 consistent with those standards. (AR16.) The adopting Resolution, 82-11, acknowledged that attaining  
18 thresholds would be achieved only over time. (AR15432-37.)

19 24. Threshold Standards are hierarchically organized. (AR50.) At the top of the hierarchy,  
20 are the nine Threshold Categories: water quality, soil conservation, air quality, vegetation preservation,  
21 wildlife, fisheries, noise, recreation, and scenic resources. Each threshold category includes multiple  
22 Indicator Reporting Categories or indicator themes as reflected in TRPA Resolution 82-11. Each  
23 Indicator Reporting Category includes one to several standards. For each standard there is an associated  
24 indicator because, according to the Code of Ordinances (TRPA 1987, as amended in 2012), Section  
25 16.4, “TRPA shall adopt sufficient indicators for each threshold and [local, state, and federal air and  
26 water quality] standard so that, evaluated separately or in combination, the indicators will accurately  
27 measure, on a continuing basis, the status of attainment or maintenance of the threshold [standard] or  
28

1 [local, state, and federal air and water quality] standard.” Each type of standard has different  
2 implications for how standard “attainment” is assessed. (AR50-51)

3 25. While the established Threshold Standards define the capacity of the natural  
4 environment and set specific environmental performance standards related to land, they do not define  
5 the maximum buildout, densities, permitted uses, or other land use criteria for the manmade  
6 environment; this is the function of the Regional Plan. (AR508.)

7 26. As required by the 1980 Compact, TRPA adopted the Tahoe Area Regional Plan in  
8 1987. The 1987 Plan implemented a broad suite of policies, ordinances, and land use zoning  
9 requirements and controls designed to guide the region toward achievement and maintenance of  
10 adopted Threshold Standards. (AR16 [TER], 11544 [DEIS].)

11 27. The Governing Board findings explain that the 1987 Plan was adopted to address  
12 circumstances in the Tahoe Region that differ from today’s most pressing needs. By the 1980s, the  
13 region had experienced decades of rapid development and was threatened by continuing, largely  
14 uncontrolled growth. The economy was thriving, but the environment was suffering. More than half of  
15 the region’s marshes and wetlands had been developed and the region had not fully coalesced around  
16 the fact that the 1960’s plans for a population of 750,000 people would never be realized. Lake Tahoe’s  
17 water clarity was declining by about one foot per year. In response, the 1980 TRPA Compact was  
18 adopted to stop threats of uncontrolled growth and to address looming environmental threats, requiring  
19 that development be managed in accordance with updated environmental standards while allowing  
20 orderly development consistent with those new standards. A top priority for the initial Regional Plan in  
21 the 1980s was therefore both limiting and controlling the rate of new development that would be  
22 allowed at Lake Tahoe. (AR26779-80.) The RPU EIS explained that TRPA adopted the 1987 Plan  
23 based on the premise that “By protecting environmental quality, it was thought that socioeconomic  
24 conditions would be improved and sustained because the region’s economy and community were  
25 highly dependent on visitor and resident outdoor experience and quality of life.” (AR16 [TER], 11544  
26 [DEIS].)

27 28. The 1987 Regional Plan achieved and maintained environmental thresholds primarily  
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1 through growth control, development regulations, and voluntary private property acquisition by public  
2 land conservancies. (AR501.) Growth control measures in the 1987 Plan were extensively litigated and  
3 ultimately upheld as lawful. The 1987 Plan established a “carrying capacity” for development in the  
4 region that was dramatically lower than what previous plans had envisioned, premised on growth caps  
5 for all types of land uses. A system of transferrable development rights and land coverage regulations  
6 was adopted within constraints of the region’s carrying capacity. (AR501.) Concurrently, aggressive  
7 but voluntary property acquisition programs were instituted. State and federal land management  
8 agencies acquired over 8,500 private parcels and retired the associated development rights between  
9 1987 and 2011. The 1987 Regional Plan and the programs it established substantially reduced the rate  
10 of environment decline. (AR502.)

11 29. The 1987 Plan also mapped out a matrix of the regulatory, restoration, programmatic,  
12 and monitoring elements necessary to achieve and maintain Water Quality Threshold Standards over  
13 time, including:

- 14 • Limiting new development allowed in the region;
- 15 • Limiting the amount of impervious land coverage allowed in the region;
- 16 • Setting discharge standards and infiltration requirements for stormwater treatment to control  
17 water quality impacts associated with new development;
- 18 • Requiring all new development to reduce erosion and stormwater runoff through the installation  
19 of Best Management Practices (BMPs);
- 20 • Regulating preservation and restoration of stream environment zones (“SEZs”);
- 21 • Prohibiting the discharge of wastewater, toxic waste, and solid waste; and
- 22 • Managing the use of fertilizer in SEZs.

23 (AR26678-26679 [Findings].) The 1987 also mandated the review of Threshold Standards every five  
24 years. (AR15.)

25 30. Through its Regional Plan, TRPA established a wide ranging growth control system  
26 with all development capacity capped, prohibition of new subdivisions of land, metering the rate of  
27 allocation of residential development rights, and maintenance of an urban growth boundary.

28 (AR12866, 22571.) Development was further constrained by coverage limits, land capability classes  
for different soil types, and prohibitions of development on sensitive lands. (AR22571; *see also* SUF  
Nos. 31-34.)

31. The 1987 Plan addressed water quality primarily through regulating coverage and

1 parcel-scale BMPs. The 1987 Plan thus placed strict coverage limits on each parcel in the Basin,  
2 depending on its Bailey classification (see SUF No. 32), while allowing most “excess” coverage from  
3 legacy development to remain in place, regardless of its classification. The theory was that coverage  
4 limits, applied on a parcel-by-parcel basis throughout the region, would, taken as a whole, achieve  
5 water quality threshold standards. (AR11861-62.)

6 32. The Coverage Threshold Standard for Lake Tahoe is based on Robert Bailey’s 1974  
7 land capability classification system for the Lake Tahoe Basin (“Bailey System”) and is used to guide  
8 land use planning, policy formulation related to the impacts of development on soil erosion, and  
9 permitting of development. (AR11861.) The Bailey System, developed shortly after the Compact was  
10 adopted, assigned units of land throughout the Basin to one of nine land capability classes (1a, 1b, 1c,  
11 2, 3, 4, 5, 6, and 7), that reflect the amount of development sites can support without experiencing soil  
12 or water quality degradation. (AR186, 11861-62.) Factors used in the Bailey System for determining  
13 land capability classes included tolerance for developed use, slope percent, relative erosion potential,  
14 runoff potential, and disturbance hazards. (*Id.*) Each land capability class was assigned an allowable  
15 percentage of impervious cover, ranging from 1 percent for sensitive lands in classes 1a, 1b, 1c, and 2,  
16 to 30 percent for higher tolerance lands in classes 6 and 7. The Coverage Standard requires compliance  
17 with Bailey’s allowable impervious cover limits set for each land capability class. (*Id.*)

18 33. Under the 1987 Plan, coverage was regulated as a proxy for water quality protection  
19 because it was easy to measure on a parcel and there is an indirect relationship between land coverage  
20 and water quality. (AR27441, 27444-45, 11891.) Coverage was based on a 1974 mapping and soil  
21 classification system using the best scientific data available at the time. While impervious surface is  
22 used as a proxy for water quality protection under Bailey, there is no specific scientific link between the  
23 percentages of impervious surface on a parcel to clarity gains in the Lake. (*See* AR128158-128161,  
24 5091.) Not until the TMDL were specific incremental water quality gains scientifically linked to an  
25 environmental cause, fine sediment particle reductions rather than coverage alone, which had been used  
26 until the TMDL as the best available indirect regulatory control.

27 34. In addition, to complement the Bailey system, the Individual Parcel Evaluation System  
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1 (“IPES”) was developed for vacant single-family lots. (AR11565; *see* AR1036-65 [Code, § 53].) The  
2 IPES system is similar to the Bailey system, except that it permits additional development in some  
3 sensitive areas in conjunction with retirement of sensitive parcels and other water quality improvements  
4 in the vicinity. (AR11565; *see also* AR1036-65, 11631.)

5 35. The Clean Water Act (CWA) passed in 1972. (AR32822.) The CWA dictated  
6 environmental initiatives to improve water quality nationwide, with emphasis starting in the years  
7 immediately after its passage on sewage treatment and treatment of hazardous and toxic waste.  
8 (AR149736.) The CWA required Wastewater Treatment Plants (WWPTs) be brought up to CWA  
9 standards. (33 U.S.C. § 1314(d)(1); *see also* AR35631.)

10 36. Starting in the 1970s, TRPA responded to the initial CWA initiatives. The primary  
11 concern then was uncontrolled algae and nutrient discharges to Lake. (AR32812.) Thus, TRPA banned  
12 septic systems, and decided to regulate sewage treatment and discharges by requiring sewage treatment  
13 system upgrades and export of treated sewage out of the Basin. (*See* AR32809, 11543-44.) In the  
14 1980s, the CWA emphasis began to shift toward stormwater regulation and focused on preventing  
15 pollutant runoff into water bodies from stormwater flows. In recognition of the shifting federal  
16 policies, in the late 1980s TRPA followed suit and began to focus on regulating BMPs. TRPA  
17 prioritized erosion control for water quality purposes in the 1987 Regional Plan by making BMPs a  
18 condition of project approval. (AR55402, 55407.)

19 37. Starting in the early 1990s, “Threshold Evaluation Reports” (“TERs”) and other studies  
20 made it clear that the strategy of regulation and land acquisition alone would not be enough to  
21 successfully achieve and maintain Threshold Standards. In 1991, TRPA issued the first TER. The 1991  
22 TER indicated that the Basin showed little movement toward improving the Lake’s water quality.  
23 (AR143729 [declining water quality, but rate of decline slowing].) The environmental impact of legacy  
24 development that was constructed prior to the initial Regional Plan continued to adversely impact the  
25 region and the basin showed little movement toward improving the Lake’s water quality. (AR502, 16.)

26 38. The 1991 TER concluded that, in addition to regulation, TRPA also had to address aging  
27 public infrastructure (e.g., roads) and legacy development. (AR11544-45, 143758 [“Threshold  
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1 standards and applicable state standards for Lake Tahoe’s water clarity and algal productivity are not  
2 being attained, and will not be attained for many years...To attain and maintain the threshold standards  
3 for Lake Tahoe, TRPA should: strengthen its program of application of Best Management Practices  
4 (BMPs); update, expand, and implement the Capital Improvements Program for erosion and runoff  
5 control and the Stream Environment Zone Restoration Program...”]; 143784 [“The Tahoe Region does  
6 not attain the threshold standard for ozone...To attain and maintain the threshold standard, TRPA  
7 should implement the control measures of the draft Regional Transportation Plan – Air Quality  
8 Plan...”]; 143790 [“The Tahoe Region has not attained the threshold management standard calling for a  
9 seven percent reduction in winter evening traffic volumes on the U.S. 50 corridor. However, traffic  
10 modeling conducted for the update of the integrated Regional Transportation Plan – Air Quality Plan  
11 indicates that, in the vicinity of the Stateline-California air quality monitor, traffic volumes will be  
12 reduced by 62 percent upon completion of the Loop Road system...TRPA should implement the  
13 provisions of the Regional Transportation Plan, specifically the improvements to the Loop Road  
14 system.”]; AR143836 [“The Region is in the stability phase of market growth in a destination resort.  
15 Future economic expansion will require a better Tahoe ‘product.’ Dampeners on visitation include a  
16 lack of high quality visitor accommodations, strip development, sprawl, uncoordinated recreation  
17 opportunities, and traffic congestion.”].)

18 39. Capital investment of large sums was required to show real water quality improvement.  
19 (AR55403.)

20 40. Under the 1987 Plan, BMPs were initially only required as a condition of permits for  
21 new construction, and in so doing, TRPA began implementation of its “Low Impact Development”  
22 program when it coupled BMPs with Bailey and IPES coverage limits. In response to the 1991 TER,  
23 TRPA enacted a mandatory BMP retrofit program in 1992. (AR55402, 55407.)

24 41. The assumption at the time the BMP Retrofit Program was implemented (driven by the  
25 CWA stormwater mandate, as opposed to science) was that every drop of water on every parcel needed  
26 to be treated to the infiltration standard of the 20-year/1-hour design storm event in order to protect the  
27 Lake against stormwater pollution. (AR55402.) Parcel-by-parcel BMP implementation became the  
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1 early regulatory solution and assumed each of the approximately 47,000 parcels was an independent  
2 stormwater management system. (AR55402-03.) With experience, TRPA soon realized weaknesses  
3 and inefficiencies in the parcel-by-parcel approach. For example, on some parcels BMP  
4 implementation was infeasible due to technical constraints such as high groundwater or lack of  
5 connectivity. Also, with over 43,000 parcels in the region, the sheer scope of parcels was a substantial  
6 barrier to success. In the early years, TRPA struggled with early resistance to public awareness, the lack  
7 of public acceptance, or the high cost of compliance. (AR55403.) As described in the EIS, “The task of  
8 educating and then moving nearly 44,000 property owners to action was a significant challenge for  
9 TRPA as it contemplated the best path forward in the early 1990s. Budget constraints made the task  
10 even more daunting. The absence of funding plagued the viability of the Stormwater Management  
11 Program throughout the 1990s, until the advent of the Environmental Improvement Program and until  
12 TRPA secured additional grant funds.” (AR9084.)

13 42. To address legacy impacts, TRPA also launched the Environmental Improvement  
14 Program (“EIP”), following a Presidential Summit, in 1997. The EIP secured public and private  
15 funding for on-the-ground implementation of erosion control measures, riparian area restoration,  
16 transportation, forest health, and other environmentally beneficial programs and projects. (AR16, 502.)

17 43. The BMP program is included in the EIP, but the EIP for water quality is not limited to  
18 the Stormwater Program and BMP implementation. (AR49974-50073, 49992.) The EIP includes  
19 environmental restoration programs ranging across all threshold categories. (AR26665.) The EIP  
20 identifies over 700 projects needed to meet and maintain the environmental thresholds, including  
21 program to retire land coverage and improve public infrastructure. (*Id.*)

22 44. Water Quality has long been a point of emphasis and priority for funding of the EIP.  
23 The Stormwater (or BMP) Program is the largest program within the water quality focus area of the  
24 EIP. It has received more than half of the EIP funding through Southern Nevada Public Land  
25 Management Act (“SNPLMA”). (AR94291, 49982, 49980 [SNPLMA funding].) Water quality focus  
26 areas for the partnership are not just stormwater management, but also Watershed Restoration,  
27 Sensitive Species protection, aquatic invasive species (“AIS”) prevention and control, and overlaps into  
28

1 air quality protection. (AR94289-92.) For example, when TRPA implements activities for fine  
2 sediment reduction, like street sweepers and bike trails to reduce the reliance on the auto, the activities  
3 have multiple benefits. (AR49982.)

4 45. Since its launch in 1997, the EIP has been one of the most comprehensive, large-scale  
5 environmental restoration efforts in the nation, with broad bipartisan, multi-sector support and diverse  
6 public-private partnerships for Lake Tahoe's conservation. (AR16, 502, 94289-92.) More than 50 EIP  
7 partner agencies coordinate through TRPA to implement the programs and projects of the EIP. The  
8 EIP has produced a massive 1.7 billion dollar investment in stormwater management infrastructure,  
9 wetland restorations, and other beneficial projects. In 2000, the Lake Tahoe Restoration Act authorized  
10 \$300 million for EIP implementation. (AR49980.) Resource Conservation Districts ("RCDs") is an  
11 EIP partner agency implementing, among other water quality programs, private parcel-scale BMPs  
12 focused on residential dwellings. TRPA has taken the lead to focus on BMP implementation for multi-  
13 family dwellings and commercial areas. (AR55404-55405.) The EIP remains a key program under the  
14 RPU to achieve and maintain Threshold Standards. (AR94289-92, 49974-50073.)

15 46. The 1987 Regional Plan has largely achieved its intended purpose. With nearly 18,000  
16 vacant private parcels with development rights at the time, the 1987 Plan tightly controlled what could  
17 be built on vacant land. In response, growth has been managed and decidedly slowed, new development  
18 has been designed to be more environmentally compatible, sensitive lands have been protected and over  
19 8,000 development rights have been retired. The Tahoe Region is now virtually at full build-out, with  
20 less than 10 percent of the region's development rights remaining. (AR11544 [DEIS].)

21 47. While the 1987 Regional Plan was successful at controlling and limiting new  
22 development, most of the development within the region was constructed prior to the 1987 Plan. Much  
23 of this earlier "legacy" development was not designed in a manner that considered environmental  
24 impacts, and this has been shown to be a major factor limiting the attainment of multiple threshold  
25 standards. For example, older development is known to be a major source of pollutants that degrade  
26 water quality. Many of the regulations under which new development was constructed also provided a  
27 strong disincentive for property owners to make significant upgrades or redevelop existing older  
28

1 developments in a more environmentally compatible way. (AR11544-11545 [DEIS].)

2 48. Through the EIP and other programs, trends towards threshold attainment improved  
3 measurably, but thresholds for water quality and other resources were still not being attained. (AR502.)  
4 Between 1987 and 2010, TRPA adopted amendments to the 1987 Regional Plan to incorporate best  
5 available science and to promote environmentally beneficial projects and programs. (AR16 [TER],  
6 11544 [DEIS].) Recently, this Court found that the 1987 Regional Plan as amended will achieve and  
7 maintain the adopted environmental thresholds. *See Sierra Club v. Tahoe Reg'l Planning Agency*, 916  
8 F. Supp. 2d 1098, 1144-1146 (E.D. Cal. 2013).<sup>2</sup>

9 49.

10 **C. Regional and Water Quality Framework Changes Following Adoption of 1987 Plan**

11 **WATER QUALITY FRAMEWORK CHANGES – LAKE TAHOE TOTAL MAXIMUM DAILY**  
12 **LOAD**

13 50. Since the 1987 Plan was adopted, the water quality framework has changed and  
14 coverage restrictions and parcel-scale BMPs are no longer the primary water quality controls.  
(AR26251-57.)

15 51. In the 2000s, extensive studies for the Lake Tahoe Total Maximum Daily Load (TMDL)  
16 provided more detailed information related to water quality. (AR502.) The States of California and  
17 Nevada, the designated authorities for developing and administering the Lake Tahoe TMDL, worked  
18 collaboratively and closely with public agencies and other stakeholders to produce a plan to reduce the  
19

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20 <sup>2</sup> Res judicata precludes Plaintiffs from arguing the 1987 Plan, without the RPU amendments, does not  
21 maintain and achieve thresholds. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*,  
22 322 F.3d 1064, 1077 (9th Cir. 2003) (Under the doctrine of res judicata “a final judgment on the merits  
23 bars further claims by parties or their privies based on the same cause of action.”). Approximately a  
24 year before adoption of the RPU, TRPA approved amendments to its Regional Plan and Code for the  
25 Homewood Ski Area Revitalization Project. *Sierra Club*, 916 F.Supp.2d at 1107. Plaintiffs argued that  
26 substantial evidence did not support TRPA’s threshold findings that the Regional Plan, as amended,  
27 would maintain and attain air quality thresholds. *Id.* at p. 1144-1146. This Court rejected Plaintiffs’  
28 claims stating: the “EIP, the CEP, and the Regional Plan amendments” are part of TRPA’s “course of  
action to ensure that the Regional Plan is implemented in a way that achieves and maintains the  
thresholds. Accordingly, the court finds that substantial evidence supports TRPA’s findings that the  
Regional Plan and all of its elements will achieve and maintain the air quality thresholds.” *Id.* at p.  
1146.

1 amount of fine sediment and nutrients entering the Lake. After ten years and ten million dollars of  
2 study, the Lake Tahoe TMDL was approved by California, Nevada, and the Federal Environmental  
3 Protection Agency (“EPA”) in 2011. (AR5097, 26673.)

4 52. A TMDL is, in essence, a water quality restoration plan required by the CWA to ensure  
5 the achievement of water quality standards in impaired water bodies. (AR108052, 106437.) The Lake  
6 Tahoe Watershed Assessment explains that “The federal Clean Water Act requires states to develop  
7 TMDLs for impaired waterbodies. In concept, TMDLs are best viewed as watershed attainment  
8 strategies to ensure that water quality standards are attained. It is most likely that TMDLs, along with  
9 the state mandated TMDL implementation program will be critical in water quality plans, regulatory  
10 programs, and remedial plans and monitoring at Lake Tahoe.” (AR33075; *see also* AR53023 [BMP  
11 Handbook: The Lake Tahoe TMDL quantifies the source and amount of fine sediment and nutrient  
12 loading from various land-uses and outlines an implementation plan to achieve an annual average  
13 Secchi depth of 29.7 meters as required by existing water quality standards.”]; 26789.)

14 53. TMDL requirements are found in CWA Section 303(d). Through five steps, the  
15 pollution sources and loads are determined for the specific water body at issue, their overall effect on  
16 the water body is assessed, pollutant loads are allocated for each source so that the water body will  
17 attain the applicable water quality standards, and implementation plans are developed that describe the  
18 approach and activities required to ensure that the allocations are met. (AR26788.)

19 54. The Tahoe TMDL identifies major pollution sources for Lake Tahoe—fine sediment,  
20 phosphorus, and nitrogen—and establishes a 65-year plan to attain the adopted Threshold Standard for  
21 Lake clarity. (AR3311, 5097, 107884 [focus of Lake Tahoe TMDL is on “controlling both inorganic  
22 particles and nutrients to Lake Tahoe.”].) The Lake Tahoe TMDL identified options for reducing  
23 pollutant inputs of fine sediment particles and nitrogen and phosphorus to Lake Tahoe from the four  
24 largest pollutant sources: urban upland runoff, atmospheric deposition, forested upland runoff, and  
25 stream channel erosion. The Lake Tahoe TMDL identifies the amount of each pollutant entering the  
26 lake from these sources, the reductions needed, the reduction opportunities that are available, and the  
27 implementation plan to achieve these reductions. The Lake Tahoe TMDL modeling data recognizes  
28

1 opportunities to achieve water quality gain in four pollutant source categories – urban upland (72  
2 percent), atmosphere (16 percent), forest upland (9 percent), and stream channel (3 percent) – with the  
3 greatest gain available through improvements in the urban upland source category. The Lake Tahoe  
4 TMDL concludes that by reducing fine sediment, nitrogen, and phosphorus loads in these four  
5 categories, it will take approximately 65 years to meet the deep water transparency standard (annual  
6 average Secchi depth of 29.7 meters). (AR26673-75.)

7 55. Based on the pollution source analysis, the TMDL outlines a strategy to restore water  
8 quality in a cost effective manner focusing on comprehensive catchment-based (i.e., small watershed or  
9 sub-watershed) load reduction plans that address fine sediments, phosphorus and nitrogen. The TMDL  
10 prohibits increased pollutant loading at the watershed scale. (AR5102, 5098 [“The TMDL  
11 implementation strategy focuses on comprehensive load reduction plans, to be implemented by each of  
12 seven jurisdictions that address fine sediments, phosphorus, and nitrogen at the catchment or  
13 sub-watershed scale.”].)

14 56. The Lake Tahoe TMDL includes five-year targets to achieve water quality thresholds.  
15 (AR11926; *see also* AR106425-804.) TMDL monitoring, inspection and reporting requirements create  
16 an intensive program for monitoring and implementation of stormwater/BMP controls, public private.  
17 (*See* AR107423-40.) It requires steady documented pollutant reduction and includes enforcement  
18 mechanisms to ensure that goals are met. (*Id.*, AR11697-98.) While the two states have primary  
19 responsibility for the enforcement of the TMDL, TRPA coordinates with and supports this  
20 enforcement. For example, Code Section 13.8.2 provides: “In addition, TMDL regulatory agencies  
21 shall, through the TMDL adaptive management system, provide TRPA annual progress reports and  
22 analysis, copies of all MOAs and [National Pollutant Discharge Elimination System (NPDES)] permits,  
23 and notifications of all breaches or violations of MOAs and NPDES permits.” (AR 801.)

24 57. TMDL is regulated by the two states and is implemented primarily through local  
25 government jurisdictions and state transportation agencies under CWA NPDES permits or Memoranda  
26 of Agreement (“MOAs”) with state regulatory agencies. (AR3312, 5098.) The TMDL requires  
27 implementing jurisdictions to complete load reduction plans, which for local governments are called  
28

1 Stormwater Load Reduction Plans (“SLRPs”) and Pollution Load Reduction Plans (“PLRPs”). PLRPs  
2 and SLRPs must identify catchments (i.e., sub-watersheds) and their respective pollutant loading to  
3 Lake Tahoe. Overall, the TMDL focuses on the quality of stormwater entering Lake Tahoe rather than  
4 the quality of stormwater leaving each parcel. The TMDL also utilizes a load-based standard applied at  
5 the catchment or sub-watershed level, which can be monitored and measured. (AR3312.)

6 58. The TMDL includes PLRPs and SLRPs to accelerate BMP implementation and require  
7 additional measures, beyond erosion controls, through all programs of the EIP to meet Water Quality  
8 Threshold Standards through a variety of measures (e.g., erosion control, SEZ restoration, wood stove  
9 replacement, decommissioning forest roads, street sweeping). (AR106506 [“The [LRWQCB] and  
10 [Nevada Division of Environmental Protection (“NDEP”) will require municipal jurisdictions and both  
11 state highway departments to prepare, submit, and implement pollutant load reduction plans (or  
12 equivalent) to describe how load reduction milestones will be met. Load reduction plans will provide  
13 the [LRWQCB] and NDEP reasonable assurance that planned implementation actions and strategies  
14 will reduce sediment particle, total nitrogen, and total phosphorus loads consistent with the TMDL  
15 allocation schedule.”]; 548 [TRPA RPU states that “Areas targeted for accelerated BMP  
16 implementation should occur in coordination with [] government Pollution/Stormwater Load Reduction  
17 Plans.”].)

18 59. The Lahontan Regional Water Quality Control Board (“LRWQCB”) has issued NPDES  
19 permits to each California jurisdiction. The NDEP is implementing the TMDL through Memoranda of  
20 Agreement (“MOAs”) with agencies in Nevada. (AR3312.)

21 60. The California NPDES permit requires that: “In accordance with the Basin Plan,  
22 Permittees must ensure that changes in land use, impervious coverage, or operations and maintenance  
23 practices do not increase a catchment’s average annual baseline pollutant load.” (AR107419.) The  
24 permit also requires that: “Permittees shall operate and maintain storm water collection, conveyance,  
25 and treatment facilities to ensure, at a minimum, that the baseline pollutant loading specified in Table  
26 IV.B.1 does not increase.” (AR107419.)

27 61. The TMDL is regulated and administered differently than the early BMP program.  
28

1 Where the early BMP program was a product of top-down regulation by one regulatory agency, TRPA,  
2 the TMDL uses a different model for implementation. The TMDL is regulated by and administered by  
3 Nevada and California and their respective water quality agencies, as opposed to being primarily  
4 regulated by TRPA. (AR26674.)

5 62. TRPA is not the lead regulator under the TMDL program and has therefore been careful  
6 not to duplicate the state's role. (AR3313-14, 5067.) Rather, TRPA's role is to incentivize TMDL  
7 implementation using land use incentives such as release of building allocations, increasing building  
8 height limits, and commercial floor area (CFA) bonuses. (AR106500)

9 63. Both the LRWQCB and NDEP will provide TRPA with data on load reduction plans,  
10 clarity crediting programs, and progress toward meeting load reduction targets on an annual basis.  
11 (AR26674.)

12 64. The TMDL is not a one-size-fits-all program like the BMP program. (AR5098, 11697.)  
13 Under the TMDL, each local jurisdiction has the flexibility to set its own strategies in its own local plans  
14 to achieve the state's load reduction targets. (AR5104 ["In practice, the Lake Tahoe TMDL requires  
15 local jurisdictions to complete load reduction plans that identify catchments (i.e., sub-watersheds) and  
16 their respective pollutant loading to Lake Tahoe."], 5098 ["Local jurisdictions would have flexibility in  
17 designing the system that applies to each sub-watershed."].)

18 65. Areas of concentrated impervious land coverage, such as commercial land uses with  
19 extensive streets, parking areas, and rooftops, may need intensive application of advanced pollutant  
20 control measures, while land uses with dispersed impervious land coverage will likely need less  
21 advanced treatments. Enhanced operations and maintenance of roadways and associated pollutant  
22 controls are important elements in the implementation strategies to reduce pollutants from urban runoff  
23 discharges. A representative list of practices and treatment options that responsible parties might use to  
24 achieve the Lake Tahoe TMDL in 65 years includes:

- 25 • Stabilize and re-vegetate road shoulders
- 26 • Vacuum-sweep streets (in heavily sanded areas)
- 27 • Upgrade/enhance fertilizer / turf management practices to reduce nutrient application
- 28 • Remove impervious land coverage (increase infiltration)

- Redirect runoff for additional treatment
- Install and maintain infiltration trenches
- Install and maintain prefabricated infiltration systems
- Install and maintain detention basins
- Install and maintain sand filters
- Apply advanced deicing strategies (to reduce or eliminate abrasive application)
- Upgrade/increase/enhance infrastructure operation and maintenance
- Control retail fertilizer sales within the Basin
- Recommend landscaping practices that reduce nutrient mobilization
- Install and maintain wet basins / infiltration basins
- Install and maintain constructed wetlands
- Install and maintain media filters in stormwater vaults
- Pump stormwater to more suitable treatment locations

9 (AR26676.)

10 66. The science developed through the TMDL represented both a substantive and procedural  
11 shift whereby TRPA's top-down regulatory prescription on each parcel shifted to a performance  
12 standard approach with more flexible implementation strategies where local jurisdictions, as  
13 implementers, work with an array of partners to achieve the targets. (AR5097-98 ["Overall, the TMDL  
14 focuses on the quality of stormwater entering Lake Tahoe rather than the quality of stormwater leaving  
15 each parcel."]; see also AR47 [2011 TER: "The design, implementation, and maintenance of area-wide  
16 (subdivision scale and larger) stormwater treatment facilities and infrastructure would achieve  
17 treatment of private property runoff more comprehensively, quickly, and efficiently, than the past  
18 parcel-by-parcel approach has allowed."].)

19 67. Based on the TMDL studies, TRPA's practice of requiring water quality improvements  
20 at the parcel-level could be refined to prioritize BMP implementation in areas that achieve the greatest  
21 load reduction, thereby restoring Lake Tahoe's water quality more rapidly and in a more cost effective  
22 manner. (AR26253.) In addition to requiring local jurisdictions to implement Load Reduction Plans,  
23 the TMDL also utilizes a load based standard applied at the catchment level, which can be monitored  
24 and measured effectively. (*Id.*)

25 68. These reductions are scientifically linked to incremental gains in the water clarity  
26 threshold standard and the scientific basis for improving Lake Tahoe clarity by an additional 10 feet  
27 over the next 20 years. (AR106471.) The studies that formed the basis for the TMDL found that fine

1 sediments, rather than suspended algae, were the largest contributor (70 percent) to clarity loss and that  
2 the majority of fine sediments came from the developed urban uplands (72 percent). (AR106473, *see*  
3 *also* AR11920.)

4 69. The adoption of the TMDL called into question the assumed necessity to treat every  
5 drop of water on every parcel with uniform parcel-based treatment prescription under the BMP Retrofit  
6 Program. (AR5098 [“The updated Regional Plan would broaden the current focus on parcel-level  
7 regulations to reflect the TMDL strategy of comprehensive catchment-based load reduction plans for  
8 fine sediments, phosphorus, and nitrogen.”].) Parcel owners must still contribute to BMP solutions, but  
9 the prescription may differ under more flexible area-wide solutions that could be developed to achieve  
10 TMDL load reductions for each catchment. Local jurisdictions would have flexibility in designing the  
11 system that applies to each sub-watershed. (AR5098.)

12 70. TMDL and other implementation strategies assure maintenance of BMPs, either on a  
13 parcel or areas-wide scale consistent with both the TMDL and TRPA regulatory approaches. (AR55408  
14 [Accelerated BMP Implementation Strategy].) “Lake Tahoe Region jurisdictions use Lake Tahoe  
15 TMDL tools including a BMP Rapid Assessment Methodology (“RAM”) and a Road RAM to assess  
16 relative conditions of BMPs and roadways within the public right-of-way. These tools assist local  
17 jurisdiction staff to prioritize and target maintenance activities on a regular basis to maintain pollutant  
18 load reduction targets set forth in the Lake Tahoe TMDL.” (AR126934.)

19 **REGIONAL CHANGES AND CHANGES IN SOCIOECONOMIC CONDITIONS**

20 71. The vast majority of the built environment and infrastructure existing today was built  
21 before TRPA came into existence and before there were strong environmental standards established to  
22 protect the Lake. The effects of that legacy of human impacts in the late 1800s and early 1900s and of  
23 development before TRPA existed are still being addressed today. (AR11543-11544.) TRPA was  
24 successful at addressing impacts from new development, redevelopment, roadways, and other public  
25 lands, but private redevelopment (especially non-conforming private development built before TRPA  
26 or Regional Plan existed) lagged. (AR11544-11546, 7119.)

27 72. TRPA’s land acquisition policies were also successful. Ninety percent of the Basin  
28

1 (watershed) is now in public ownership and generally foreclosed from development, up from 70  
2 percent 30 years ago as a result of hundreds of millions in federal and state public monies dedicated to  
3 land acquisition and conservation programs. (AR377 [“In 1983, less than 70 percent of the Tahoe Basin  
4 was in public ownership”], 206 [“Today, approximately 85 percent of the land in the Basin is managed  
5 by the U.S. Forest Service, Nevada Division of State Lands, the California Department of Parks and  
6 Recreation, and the California Tahoe Conservancy.”].) On the other hand, only about 10 percent of the  
7 land base is privately held (AR46, 377), reflected in almost 47,000 private parcels with development  
8 capacity as limited by growth constraints (AR11631-11634), and is held across six local government  
9 jurisdictions, two states, the federal government and a wide range of local General Improvement  
10 Districts and Public Utility Districts. The complexities of the governance mosaic alone create  
11 challenges in implementation.

12 73. Socio-economic conditions have deteriorated. (AR26226.) Today, the permanent  
13 population at Tahoe is 7 percent, or 54,000, of the 1960s development plans, and less than the  
14 permanent population in 2000. (AR8811-8812.)

15 74. The region endures above-average unemployment rates, a shortage of affordable  
16 housing, high poverty levels, lower housing occupancy, and public school closings. The region has  
17 seen a 35 percent decrease in enrollment over previous decade and three schools have closed. (AR8813,  
18 12090-91, 8811-17, 20636 [“School enrollment has declined in every Basin community since 2000.”].)  
19 Gaming in the region is also declining. (AR53719-20.)

20 75. This has had a negative impact on the environment because people are forced to drive  
21 more with 87 percent of workers on north shore and 62 percent on south shore commuting from outside  
22 the region, including 49 percent of all workers commuting more than 50 miles. (AR26226, 12090,  
23 80896-935.)

24 76. Public funding for the region plummeted, which further highlighted the need to leverage  
25 private investment to continue environmental gains. (AR20665-66 [“Business related tax revenues are  
26 flat or declining, even without the impact of the current recession.”], 20665 [“Business retention is low  
27 and gaming is shrinking as an economic driver.”]; AR99233 [additional \$2.45 billion in public/private  
28

1 funding for EIP--\$700 million of which has been committed. Federal government has committed \$131  
2 million of its \$654 million share.)

3 77. These trends impact the environment – largely by making the system unsustainable for  
4 people to invest in environmental improvements or to live, work and enjoy recreation and tourism in  
5 the region. As workers and residents abandon the region, as land use policies continue to favor the  
6 separation of uses, and as visitors continue to lack transportation choices that could reduce auto use,  
7 negative environmental impacts result. (AR26666.)

8 *D. The RPU Maintains Strict Controls on Growth While Facilitating Necessary Changes*

9 **2011 THRESHOLD EVALUATION REPORT**

10 78. TRPA’s preparation of the 2011 TER informed the RPU. (AR26903, 5288.) The 2011  
11 TER represented the most rigorous, objective and transparent evaluation of the status and trends of  
12 Threshold Standards ever completed. For the first time the TER was reviewed by an independent panel  
13 of scientific experts who found that the 2011 TER was technically sound and a significant improvement  
14 over previous TERs. (AR14, 16.)

15 79. TRPA addressed 151 environmental standards and found that 62 percent of measured  
16 indicators were in attainment, with others trending towards improvement. (AR16-18.)

17 80. Notably, the peer review urges a landscape perspective, stepping back to consider and  
18 apply the results on a larger scale. (AR14.) The 2011 TER is a vast assemblage of data that offers a  
19 snapshot of the environmental health of Tahoe Region and evaluates the implementation and  
20 effectiveness of the 1987 Regional Plan. This fifth Report in a series since 1991 is produced by TRPA  
21 in collaboration with partner agencies and research institutions every five years. (AR14, 16.)

22 81. Thresholds establish the environmental standards for the region and, as such, indirectly  
23 define the capacity of the region to accommodate additional development. The TER provides the basis  
24 and rationale for the establishment and assessment of progress on thresholds while the Regional Plan  
25 and implementing ordinances define the actual threshold attainment strategies and potential for new  
26 development consistent with the constraints imposed by the thresholds. (AR500.)

27 82. Overall, the Report found the Regional Plan, through the partnerships of many federal,  
28

1 state, local and private organizations, has made progress on improving environmental quality. (AR17.)  
2 Regarding water quality, the 2011 TER indicated that the rate of Lake Tahoe annual clarity decline has  
3 slowed over the last decade. The winter clarity threshold indicator met the interim target of 78.7 feet  
4 (2011 measured 84.9 feet) and is trending toward attainment of 109.5 feet. Trends in stream water  
5 quality indicated that conditions have not declined over time. However, summer lake clarity and  
6 nearshore conditions are highlighted as major areas of concern. (AR17, 385-86, 132.) Although  
7 summer clarity is an area of concern, the threshold standard considers average annual mid-lake clarity,  
8 not just during the summer. (AR149-54.) The average measure fluctuates widely from year to year, but  
9 the trend over time is that the standard is improving significantly and loss of clarity has flattened.  
10 (AR149-54.)

11 83. There are numerous causes that contribute to summer clarity declines including  
12 chemical changes due to invasive species and ambient temperature increases due to climate change.  
13 (AR107884.) Development may have an effect on summer clarity, but there is not enough evidence to  
14 conclude that summer clarity declines are directly caused or correlated to development. (AR107884.)  
15 Although scientists have identified potential factors that contribute to nearshore conditions including  
16 nitrogen deposition and tributary runoff, none of the factors have been scientifically attributed to  
17 causation of nearshore conditions. (AR20, 224-25.) Indeed, scientists have stated that more targeted  
18 monitoring is necessary to understand nearshore condition causation and to target additional  
19 management actions if any, which at this time are unknown or uncertain. (AR155019, 280, 431.)  
20 Scientists have, however, concluded that all actions taken to implement the TMDL are expected to  
21 benefit nearshore conditions because all water must flow through the nearshore before reaching mid-  
22 lake. (AR386.)

23 84. The year leading up to the RPU adoption had the best results in a decade for water  
24 quality, with the loss of lake clarity flattening after some 400 environmental restoration projects within  
25 TRPA's EIP have been implemented using the combined commitments and investments in  
26 conservation by the federal government, two states (California and Nevada), 6 local jurisdictions that  
27 border the Lake, and the private sector that owns 10 percent of the land area within the Lake Tahoe  
28

1 Watershed. (AR107878-955.)

2 85. Regarding soil conservation, an analysis of impervious cover (land coverage) showed  
3 that seven of nine indicators were in attainment with threshold targets, however, sensitive wetlands and  
4 very steep lands are “over-covered” which can negatively affect water quality and other resources.  
5 (AR17, 184-204.) Coverage was monitored on the basin-scale and implemented on the parcel-scale as  
6 required by the Threshold Standard and the TMDL measures loading at the watershed/catchment level.  
7 Detailed tracking of coverage at the watershed/catchment level is no longer necessary as a result of the  
8 TMDL and is not required by the thresholds. (AR5091, 27445 [Bailey], 107419 [CA TMDL NPDES  
9 Permit].)

10 86. Regarding SEZs (also land capability class 1b under the Bailey System), the TER  
11 determined 50 percent of the target had been achieved and designated the Threshold Standard status as  
12 “considerably worse than target.” (AR 202.) The TER noted that an additional 554 acres is needed to  
13 achieve the SEZ Threshold Standard. (*Id.*) The TER recommended that TRPA continue to support the  
14 restoration of degraded SEZ lands, and review policies to further incentivize the transfer of coverage  
15 from SEZ to higher capability lands. (AR204.)

16 87. Regarding air quality, the 2011 TER indicated that the Tahoe Basin has made air quality  
17 gains over the last five years. The majority of air quality indicators in the Lake Tahoe Basin were at or  
18 better than attainment with adopted standards. The Report shows that indicators for carbon monoxide  
19 and vehicle-miles-traveled moved from non-attainment into attainment. (AR17, 74-131.)

20 88. 8-hour ozone monitoring is one of the 151 environmental standards and is 1 of 4 ozone  
21 measures, which is reported with air quality monitoring results across the Basin. (AR16, 18, 92.) Air  
22 quality monitoring sites vary and change with time due to budgets, land use permissions expiring, and  
23 recommendations from scientists to change in order to optimize locations. Factors outside the Basin  
24 heavily influence air quality in the Basin. Improving emission standards for motor vehicles, boats, etc.  
25 are generally improving air quality notwithstanding any in-basin activities. (AR17, 30.)

26 89. Ozone standards are in attainment and improving nationally and regionally. (AR155772  
27 [National].) TRPA measures ozone with four standards and monitoring indicates that the Tahoe Air  
28

1 Basin is in or near attainment with Federal, State and TRPA Standards for ozone. (AR94-101)

2 Moreover, RPU programs will further reduce ozone precursors. (AR26683-26685, 11788-89.)

3 90. Regarding scenic resources, the Tahoe Basin made gains in scenic quality over the last  
4 five years. Overall, compliance with scenic quality standards is at 93 percent with an improving trend  
5 in scenic quality for the built environment. Developed areas along roadways and Lake Tahoe's  
6 shoreline (i.e. legacy pre-TRPA development) continue to be the locations where scenic improvements  
7 are needed. (AR17, 318-341.)

8 91. Other threshold areas including wildlife, vegetation, recreation, fisheries and noise were  
9 generally in attainment, had specific areas where improvement was needed, or included standards  
10 where TRPA has little practical ability to enforce, which were recommended for revision. (See AR17-  
11 18, 205, 274, 291, 342, 372.)

12 92. The TER was peer-reviewed by an independent panel of scientific experts coordinated  
13 by the Tahoe Science Consortium; the peer-review panel concluded that the report was "technically  
14 sound and provides a credible basis to support ongoing TRPA policy-making. (AR16.) The Governing  
15 Board issued the TER in December 2012, by a vote of 13-1, after multiple public hearings and after  
16 adopting findings that the TER was supported by substantial evidence, including the peer-review  
17 panel's recommendations. (AR26574 [Resolution 2012-17]; 26576-79 [TER Findings]; 27298-99  
18 [Minutes].)

19 **REGIONAL PLAN UPDATE PROCESS**

20 93. The RPU process was an unprecedented inclusive and transparent process. TRPA  
21 devoted nearly 10 years to the RPU process and input has been received from numerous state and  
22 federal agencies and thousands of people. (AR5087.)

23 94. TRPA initiated the "Pathway Forum" in 2005. The Pathway forum was an inclusive  
24 public and stakeholder process to facilitate discussions on a wide range of topics related to the Regional  
25 Plan and to coordinate the Regional Plan with the LRWQCB Basin Plan and the USFS Forest Plan.  
26 (AR11553, 115974-77.) From 2006 to 2008 TRPA undertook a place-based planning initiative to  
27 include additional public and stakeholder input on RPU. Approximately 2,500 individuals provided  
28

1 direct input through Pathway and Place-based Planning. (AR11553, 115975.) TRPA also conducted  
2 additional polls and outreach to solicit additional public input, with a total of more than 5,000 people  
3 providing input. (AR155836.) In July 2007, TRPA adopted a Regional Vision summary to help guide  
4 the process. (AR114990-5321.)

5 95. From 2009 to 2011 the TRPA Governing Board initiated a priority setting process where  
6 the Governing Board reviewed topic by topic fact sheets, received hundreds of written comments, and  
7 TRPA staff conducted over 180 individual meetings with individual stakeholders. (AR11553.)

8 96. In January 2011, the Governing Board directed TRPA staff to focus the RPU on the  
9 region's most pressing issues: accelerated attainment of threshold standards; protection against  
10 emerging threats, such as wildfire and invasive species; and responses to statutory requirements with  
11 which the region or portions of the region must comply. By focusing on these high-priority issues, a  
12 reasonable range of feasible alternatives could be developed and evaluated in the EIS, and the  
13 Governing Board could render a decision and implement the updated Regional Plan within a reasonable  
14 timeframe. (AR11473, 22272-74, 22292, 11554.) Between July 2011 and April 2012 TRPA prepared  
15 the Draft RPU through a public process at RPUC meetings. The RPUC conducted 15 full-day public  
16 meetings to review proposed amendments line by line, with revisions and compromise language  
17 developed with public input during meetings and 89 percent of topics endorsed unanimously.  
18 (AR155837, 11554, 5088.)

19 97. RPUC and the Governing Board reviewed and endorsed the Bi-State recommendations  
20 (AR26064, 25927, 22686-718.) and incorporated bi-state recommendations into final draft plan.  
21 (AR7103 [list of technical working group members].)

22 98. TRPA also began the process of preparing the draft Environmental Impact Statement  
23 (EIS) for the RPU. The EIS was prepared in accordance with Article VII of the Tahoe Regional  
24 Planning Compact, Chapter 3 of the Code, and Article VI of the TRPA Rules of Procedure. The  
25 environmental review process for the RPU EIS began with efforts to gather information to establish the  
26 breadth, or scope, of environmental review. (AR11472.)

27 99. A notice of preparation was issued on September 5, 2007, to inform agencies and the  
28

1 public that an EIS would be prepared for the RPU and to solicit views of agencies and the public  
2 regarding the scope and content of the EIS. (AR11472.) TRPA also facilitated a variety of public  
3 outreach efforts to develop the RPU alternatives and the EIS scope. Between 2005 and 2008, some  
4 2,500 individuals and organizations participated in the Pathway Forum and Place-based Planning, two  
5 comprehensive public participation efforts, providing valuable input to the TRPA Governing Board and  
6 staff. TRPA also engaged stakeholders and the public through additional meetings of the Governing  
7 Board in 2009 and 2010. In addition, throughout 2010, TRPA received hundreds of written comments  
8 and conducted more than 180 meetings with interested parties to identify additional issues and specific  
9 amendments that could be considered in the RPU alternatives. (AR11472.)

10 100. On April 25, 2012, TRPA distributed a Draft Regional Plan and Draft Environmental  
11 Impact Statement (Draft EIS) to public agencies and the general public. The Draft EIS evaluated five  
12 alternatives, each representing different approaches to and/or combinations of land use planning  
13 framework, development potential, and environmental regulations and incentives. The Draft Regional  
14 Plan was proposed and analyzed as Alternative 3. The objective of the environmental process was to  
15 identify and assess the anticipated environmental effects of implementing each of the Regional Plan  
16 Update alternatives, with a focus on significant and potentially significant environmental impacts.  
17 (AR11547.) The Draft EIS analyzed the environmental effects of RPU alternatives, each representing  
18 different approaches to and/or combinations of land use planning framework, development potential  
19 and environmental regulations and incentives. The Final Draft Plan is a modified version of Alternative  
20 3 (Draft Plan) that was developed by the RPUC of the TRPA Governing Board. In preparing the Draft  
21 Plan, the RPUC conducted a page-by-page review of the existing Regional Plan and various  
22 amendment proposals at a series of 15 full-day public meetings between October 2011 and March  
23 2012. The RPUC endorsed 89 percent of the provisions in the Draft Plan by a unanimous vote. The  
24 other 11 percent were advanced by a non-unanimous vote of the RPUC. (AR5057.)

25 101. The Draft EIS was distributed for a 60-day public comment period. During the review  
26 period written comments were received from public agencies, organizations, and individuals. Also, oral  
27 comments were received at a series of public meetings and hearings. (AR3783.)

1 102. The Final EIS and Final Draft RPU were released on October 24, 2012. The Final Draft  
2 Plan and FEIS were subsequently considered at three separate Board and Advisory Planning  
3 Commission (“APC”) meetings. (AR26168, 26219, 26529-30.) Additional RPUC meetings were  
4 conducted to refine plan in response to additional comments (AR26458, 26892, *see also* 26463-526.)  
5 Staff responded to Tahoe Area Sierra Club and other comments until the day of adoption. (AR26898.)

6 103. The Governing Board certified the Final EIS, by a vote of 12-1, after multiple public  
7 hearings and after adopting findings that the EIS was supported by substantial evidence. (26584-95  
8 [FEIS Findings]; 27299-27300 [Minutes].)

### 9 **REGIONAL PLAN UPDATE**

10 104. Article V(c) of the Compact directs TRPA to “continuously review and maintain the  
11 regional plan.”

12 105. The 2012 PRU was the first major update since the adoption of 1987 Plan. The RPU is a  
13 suite of proposed new and revised policies addressing the most critical planning and environmental  
14 issues facing the region. The RPU maintains both regulatory and implementation programs that have  
15 proven effective in protecting Lake Tahoe’s environment; thus, TRPA’s regional growth control  
16 regulatory system, strict environmental development standards, and inter-agency partnerships for  
17 capital investment and implementation (such as the EIP) remain in place. (AR11589-603, 5053.)

18 106. The RPU uses multiple strategies targeting environmental improvements to accelerate  
19 achieving and maintaining threshold standards in the region. (AR5053, 26664-72.) The RPU includes  
20 targeted amendments to promote sensitive land restoration, to support redevelopment, and to increase  
21 the availability of multi-modal transportation facilities. The amendments facilitate transferring existing  
22 development from outlying, fragile areas into walkable Centers (“Centers” is a collective term for  
23 Community Centers, Town Centers, Regional Centers, and the High Density Tourist District [AR5103],  
24 where redevelopment can occur in an environmentally sensitive manner. The plan provides incentives  
25 so that private capital can be harnessed to speed this transformation. (*Id.*, 26234.) The RPU was,  
26 therefore, designed to achieve a broad scope of objectives. (AR26664-72; 5053.)

27 107. The RPU also modernizes TRPA’s procedures based on contemporary planning  
28

1 principles, current science, and the latest federal, state, and local standards with which applicable areas  
2 of the region must comply. (AR26665.)

3 108. In adopting the RPU, the Governing Board explained the “focus of the RPU is therefore  
4 to adopt updated strategies needed to achieve TRPA’s Threshold Standards by further reducing existing  
5 sources of pollution and encouraging beneficial changes in the historic land use patterns and pre-  
6 existing legacy development that are contributing to continuing environmental detriments – and to do  
7 so in a way that supports a healthy economy and social fabric. Adding to the challenge, governments  
8 and public agencies at all levels are facing budget shortfalls and the rate of public funding for  
9 environmental investment and restoration faces serious declines. The RPU continues to include a  
10 variety of both public and private strategies to improve environmental conditions - but with increased  
11 emphasis on privately funded efforts and public-private partnerships. These additional and updated  
12 strategies focus on redevelopment incentives to convert the most environmentally impactful legacy  
13 development into modern, environmentally beneficial, visually attractive, walkable and bikeable  
14 communities.” (AR26666; *see also* 11545, 11670-82.)

15 109. Growth controls from the 1987 Regional Plan remain in place. Under the RPU, very  
16 limited new growth is authorized and water quality restoration and protection strategies are  
17 strengthened. (AR26234-40.) The RPU maintains a system that has been successful at reducing the  
18 rate of urban development and halted additional urban development on sensitive wetlands. (AR387-  
19 388, 406-407, 44310 [“...from 1987 to 2002 the annualized rate of land converted to development  
20 decreased to 82% of the 1969-1987 annualized rates. This rate decrease is likely strongly related to the  
21 pursuit of threshold attainment as well as other regulatory limits on development.”], 423.)

22 110. Under the RPU, no new development rights or tourist units are created and no new  
23 subdivisions are allowed. There are no significant changes to IPES and other fundamental growth  
24 controls. (AR26234-40.) There are also no changes in total allowable coverage, only refinements to  
25 transfer provisions to direct coverage away from sensitive lands to attain thresholds. (AR26246-49.)  
26 The rate of allocations is reduced from 294 per year to 130 per year under the updated plan. (AR8528.)  
27 Although 600 bonus units are created, they can only be used for one of the environmental improvement  
28

1 incentive programs referenced in chapter 52 and only in Centers. (AR26237.) The possibility of  
2 additional CFA only exists if existing supplies are used. Added CFA allows in-basin support facilities  
3 for residences (groceries, restaurants, etc.) and should reduce the high levels of commuting outside the  
4 basin for everyday commercial services. (AR26237.) The RPU also created resort recreation areas to  
5 reduce vehicle trips by placing visitors near recreation facilities, and act as a sink for transfer of  
6 existing development (the only kind possible for use in these areas). (AR2644-5.) The RPU also  
7 updates Land Use maps to revise recreation and conservation district boundaries resulting in an  
8 approximately 100:1 increase in Conservation Areas compared to Recreation. (AR11591 [map showing  
9 management designations throughout the basin].)

10 111. The RPU will also reduce sprawl, vehicle miles traveled, air pollution, and new  
11 coverage by directing a much higher proportion of new development to already developed Centers.  
12 (AR11734.) For example, the Transfer of Development Rights (“TDR”) program (a cap and trade  
13 system for units of use) keeps growth caps and redirects new development away from sensitive and  
14 outlying areas. (AR11672-73.) It reduces total coverage by directing existing and new development to  
15 already developed and covered areas and therefore reduces vehicle miles traveled, GHG, other air  
16 pollution by directing new future and existing development away from outlying areas. (AR11672-73.)

17 112. Under the RPU, coverage is governed by a separate and additive transfer system.  
18 (AR11564-11567.) This system maintains existing coverage caps region-wide and by Bailey Land  
19 Capability District. (AR26246-49.) It revises transfer ratios to promote transfers out of sensitive land  
20 (1:1 ratio when transferring from sensitive land, up to 2:1 ratio if transferring from non-sensitive).  
21 (AR880.)

22 113. The RPU also revises maximum transferred coverage limits (from 50 percent to 70  
23 percent) only for already developed parcels, on non-sensitive land, in a small number of designated  
24 Centers. (AR880, 878-879.) This new limit makes transferred coverage limits the same as existing  
25 limits for undeveloped parcels and removes the unintended incentive favoring raw land development  
26 that was in the 1987 Plan. (AR880.). The policy also provides capacity for transfers of existing  
27 grandfathered pre-TRPA coverage off of sensitive lands and onto high capability lands with BMPs.

1 (AR882.) The August 2012 Tahoe Basin Impervious Surface Coverage Study found that:  
2 “Concentrating development and limiting the development footprint has the potential to reduce per  
3 capita and basin-wide environmental impact.” (AR128193.)

4 114. The coverage limitations in the 1987 Plan (and to a lesser extent the height and density  
5 limits) rendered the majority of existing, legacy non-residential development non-conforming. Because  
6 TRPA has no “closer conformance” clause for non-conforming development, these regulations  
7 effectively prevented environmentally-beneficial improvements to existing development. The RPU  
8 includes targeted changes to these regulations in local areas in order to accelerate necessary  
9 improvements via redevelopment. (AR25719-61; *see also* AR128158 [“[c]omplexity and subjectivity  
10 related to coverage policies results in inconsistent determinations from planners, which creates  
11 uncertainty and contributes to project delays and additional costs.”].)

12 115. The RPU promotes redevelopment of pre-TRPA non-conforming development to bring  
13 it into conformance with water quality, scenic, coverage, energy efficiency, and other requirements  
14 which has socioeconomic benefits in addition to environmental benefits. (AR2640-44.) The RPU  
15 revises coverage limits to allow redevelopment of pre-TRPA properties in select non-sensitive lands in  
16 the most intensively developed areas. (AR128193, AR25795-25829.) The RPU allows limited height  
17 and density increases in most intensively developed Centers to allow for transfer of development and  
18 allow existing non-conforming developments to redevelop. (AR128193.) Evidence from existing  
19 projects demonstrate that environmental conditions improve significantly after redevelopment, even  
20 when increased development allowances (e.g., redevelopment plans, Community Enhancement  
21 Projects) are permitted. (*Id.*; AR20)

22 116. The RPU authorizes the creation of a streamlined Area Planning system (“Area Plans”)  
23 for communities and land management agencies in the Lake Tahoe region. (AR788-804 [Code § 13.0 et  
24 seq.].) Throughout the RPU process, TRPA received many comments that the permitting process was  
25 duplicative, unpredictable, and deterred improvement projects. TRPA amended its Regional Plan to  
26 introduce Area Plans, an option to simplify the existing, overlaid complex system by creating one  
27 flexible regulatory plan containing both regional and local land use policy. (AR26230.)

1           117. Area Plans, created through Chapter 13 of TRPA’s Code, also allow TRPA and local  
2 government to expand the types of projects for which TRPA delegates permitting authority to local,  
3 state, federal and tribal governments in the Tahoe region. (AR788-804 [Code § 13.0 et seq.]) Before  
4 such a delegation can occur, however, TRPA must review the Area Plans, complete the necessary  
5 environmental documentation under Compact Article VII, provide opportunities for public comment,  
6 and make specific findings that the Area Plan is consistent with TRPA’s Regional Plan and will  
7 “achieve and maintain” thresholds. (*Id.*; *see also* AR11478.) If these findings can be made, TRPA may  
8 then delegate to the government agency an increased range of projects for review and approval.  
9 (AR796-99 [Code § 13.6].) A project approved under such delegated authority can nonetheless be  
10 appealed directly to TRPA’s Governing Board. (AR803-804 [Code § 13.9].) Furthermore, the Code  
11 imposes constant and rigorous monitoring by TRPA of the delegated permitting authority, including  
12 annual reporting and re-certification and thorough reevaluations of the Area Plans every four years.  
13 (AR801-803 [Code, § 13.8]; *see also* AR11590.) Through this system, TRPA assures local plans meet  
14 and are implemented according to TRPA’s regional standards as conditions of local delegation. This  
15 process eliminates unnecessary bureaucracy and waste by allowing a single local review and approval  
16 of the type of environmentally sensitive redevelopment necessary to achieve and maintain thresholds.  
17 (*Id.*; *see also* 26230-40.)

18           118. The RPU needed to be consistent with and support the 2011 Lake Tahoe TMDL and  
19 TMDL science established a heightened need to focus on urban uplands. (AR26251-57, 5098 [“The  
20 States prioritized load reduction plans for urban upland areas because urban stormwater runoff is the  
21 largest source of pollution and urban uplands (pre-existing development and roads) provide the largest  
22 opportunity for improvement.”].) TRPA looked to the TMDL Final Report in defining its role to  
23 ensure that it would complement the state program, rather than duplicate it. (AR106499-106504, 5067.)

24           119. The RPU, therefore, integrates the TMDL to incorporate new science and a new science  
25 –based regulatory approach to achieve water quality thresholds using regulatory enforcement and  
26 monitoring components. (AR5098-5100.) Under this approach, every parcel in the region is no longer  
27 treated the same. Rather, the RPU incorporates direct measures of pollutant loading instead of solely  
28

1 relying on indirect approaches like coverage regulation and regulating the number of parcels with  
2 BMPs. (AR5098-99.)

3 120. The Final EIS explains “The updated Regional Plan broadens the current focus on  
4 parcel-level regulations to reflect the TMDL strategy of comprehensive catchment-based load reduction  
5 plans for fine sediments, phosphorus, and nitrogen. Parcel owners must still contribute to BMP  
6 solutions, but the prescription may differ under more flexible area-wide solutions that could be  
7 developed to achieve TMDL load reductions for each catchment. Local jurisdictions have greater  
8 flexibility in designing the system that applies to each sub-watershed.” (AR3312.)

9 121. The RPU updates Regional Plan strategies, consistent with the TMDL, to accelerate  
10 achievement of TRPA’s Threshold Standards by further reducing existing sources of pollution and  
11 encouraging beneficial changes in the historic land use patterns and pre-existing legacy development  
12 that are contributing to continuing environmental detriments. (AR26666.)

13 122. In particular, the RPU incorporates the TMDL’s science-based regulatory approach and  
14 requirements to achieve Water Quality Threshold Standards. The Board found the following RPU  
15 amendments would reduce pollutant loads consistent with the TMDL and other regulatory requirements  
16 by:

- 17 • Expedite redevelopment of non-conforming properties and accelerate transfers of development  
out of sensitive areas.
- 18 • Tighten land coverage limitations within 300 feet of Lake Tahoe.
- 19 • Reform the land coverage program to accelerate land coverage reduction and land coverage  
transfers from sensitive lands.
- 20 • Award residential bonus units in Centers for removing and retiring excess land coverage.
- 21 • Designate two stream restoration plan areas in the Upper Truckee River watershed
- 22 • Other Transportation Goals and Policies: walkable mixed-use Centers, enhanced pedestrian and  
bicycle network, and transit enhancements to reduce dependency on the automobile, which in  
turn reduces atmospheric deposition of nitrogen and entrained road dust.
- 23 • Area-wide water quality treatment facilities and funding mechanisms may be implemented in  
lieu of certain site specific BMPs.
- 24 • Phase out the sale and use of chemical phosphorus fertilizer for lawns by 2017.

25 (AR 26667 [Findings].)

26 123. The RPU also includes modifications that require additional coordination between  
TRPA and the TMDL regulatory agencies, including:

- 27 • New provisions for Area Plan recertification every four years;

- Clarify and modify water quality policy language, water quality reporting requirements and criteria for BMPs on constrained sites to improve consistency with the TMDL; and
- Initiate a Governing Board-stakeholder workgroup to review BMP compliance options.

(AR26257.)

124. The RPU supports pollutant load reductions from each Lake Tahoe TMDL source category. (AR26679-80 [Threshold Findings].)

125. The RPU leverages each state's enforcement programs to increase compliance. (*Id.*)

126. The policies also include additional allocations in order to allow development where environmentally appropriate. (AR11545 [DEIS])

127. The RPU was also required to address California SB 375 (2008) and establishes a required a Sustainable Communities Strategy ("SCS") linking land use and transportation policies to reduce GHG emissions per capita by 7 percent by 2020 and 5 percent by 2035 (AR11809). California SB 575 (2009) requires that the TRPA Regional Plan serve as the SCS for the region. (AR11548-9, 11805-09, 11698-11699, 11709.)

128. The RPU includes a robust monitoring and adaptive management system to assess the effectiveness of RP programs at multiple scales, and to adjust policies and programs if needed to attain and maintain thresholds. After adoption of the 2012 Regional Plan, a regular four-year cycle of plan evaluations and updates will occur. Regular four year updates will maintain consistency with the federally mandated transportation planning cycle for the Tahoe Metropolitan Planning Organization ("TMPO") and will facilitate amendments based on the status of plan implementation, progress towards attainment and maintenance of thresholds, updated science and other new information. (AR502.)

129. TRPA oversees multi-Agency, multi-sector monitoring program for thresholds, 151 standards in 9 resource categories at annual cost of approximately 3 million dollars. (AR429.)

130. Status and trends are required to be reported every 4 years with adaptive management requirements. (AR26233.) Starting with 2011 this includes an independent scientific peer-review. (AR16.) For any thresholds not in attainment, each Threshold Evaluation Report recommends compliance measures where existing TRPA and external approaches do not ensure attainment and maintenance of thresholds. (*See* AR815-21 [Code, § 16,].) The TER was driver for proposed policy

1 changes in the RPU, and each TER is the basis for adjusting policy approaches or specific programs  
2 over time in response to current data and effectiveness of existing policies and programs. The RPU also  
3 added an additional adaptive management process that limits allocations of new commodities based on  
4 VMT and traffic level of service (“LOS”) monitoring to ensure continued attainment of transportation  
5 and air quality standards. (AR992 [Code, § 50.4.3], 5140.) Further adaptive management is possible  
6 through annual review all local jurisdiction Area Plans for conformance with adopted TMDL load  
7 reduction plans (which provide a science-based strategy and timeline to achieve water quality  
8 standards). (AR802-803 [Code, § 13.8.5;].) If Area Plans are not meeting TMDL targets, TRPA can  
9 revoke permit delegation, and take other steps necessary to achieve targets. (AR802 [Code, §  
10 13.8.4.C].)

11 131. TRPA also requires annual reporting on EIP Performance Measures, tracking of RPU  
12 development commodities used and retired such as coverage, and other annual reports (BMP  
13 Compliance, etc.). (AR099300 [“To effectively manage and implement the EIP, these groups will focus  
14 on: ...Developing a comprehensive set of performance measures to evaluation progress toward meeting  
15 EIP goals.” and “EIP Annual Report – This report will include...an evaluation of progress in meeting  
16 performance standards for all elements of the program.”]; 7480 [new requirement for preliminary list of  
17 work priorities based on various documents, including annual EIP program report]; AR820-21 (reports  
18 on attainment and maintenance of thresholds and standards); 998-1001 [“[i]nitiate a Governing Board-  
19 stakeholder workgroup to review BMP compliance options.” New residential allocations authorized by  
20 RPU are distributed to local jurisdictions annually based on the results of annual monitoring and  
21 reporting.”].) This ensures that new development only occurs in concert with environmental  
22 improvements.

23 132. TRPA also provides project-scale compliance monitoring and enforcement. Each  
24 permitted project is inspected generally three or more times during construction to ensure compliance  
25 with environmental requirements. (Code, § 5.3; AR735-40.) TRPA has a variety of ways to enforce  
26 compliance, including cease and desist orders, monetary fines, required remedial action plans, or  
27 judicial relief (Code, §§ 5.4 - 5.12; AR736-740.)

1 133. The Governing Board adopted Ordinance 2012-04 approving the RPU after multiple  
2 public hearings and after adopting extensive findings supporting its determination that “the Regional  
3 Plan, as amended, and as implemented by the Code of Ordinances, as amended, achieves and maintains  
4 the adopted thresholds.” (AR26630-26704 [RPU Amendments Adoption Findings]; 27301-27302  
5 [Minutes].)

6 **ARGUMENT**

7 **I. TRPA Rationally Concluded the RPU Will Not Significantly Affect Water Quality and the  
8 Regional Plan Will Achieve and Maintain Water Quality Threshold Standards.**

9 **A. TRPA Expressly Analyzed Impacts From Concentrating Coverage in Centers and Found  
10 the Effect to Beneficial.**

11 134. Coverage policy changes are part of an integrated approach to achieve water quality  
12 standards as well as achieve other required Thresholds and compliance with SB 375. (AR542.) The  
13 Regional Plan includes two Indicator Reporting Categories in the Soil Conservation Thresholds,  
14 impervious cover (or Coverage) and stream environment zones (SEZ). (AR184, 11859.) The RPU  
15 includes numerous incentives to accelerate attainment of both Soil Conservation Thresholds, but  
16 specifically targets the SEZ Threshold Standard due to its current status and importance in meeting  
17 numerous other thresholds. (AR26801.)

18 135. While the RPU retains the established land capability system, as recommended by the  
19 TER, several targeted amendments accelerate attainment of the soils, water quality and other thresholds  
20 by encouraging the use of less impactful types of land coverage, incentivizing the installation of water  
21 quality BMPs, promoting land coverage reductions and relocation of land coverage to less sensitive  
22 lands, and facilitating environmentally beneficial redevelopment. (AR26801; 204 [TER].) The EIS  
23 analyzed these targeted amendments as to each alternative and determined there would no significant  
24 adverse impacts under any of the alternatives. (AR11875-97.)

25 136. These changes were evaluated in the EIS. The EIS evaluated the potential cumulative  
26 impacts from “reasonably foreseeable plans, programs and projects” and as to water quality determined  
27 that the PRU’s policies and programs to reduce pollutant loading in surface water, groundwater, and  
28 stormwater runoff and would not contribute to significant cumulative impacts to water quality.

1 (AR12177-82; *see also* AR11589-603 [RPU description], 11670-82 [description of expected  
2 development under RPU], 5059-72, 12161-62 [EIS assumes full build-out].)

3 137. The EIS (and TER) determined the location and extent of existing coverage from aerial  
4 data and satellite images and included detailed information based on coverage estimate methods and  
5 assumptions. (AR11875; *see also* 12975-89.) The EIS describes the changes to existing coverage  
6 requirements that would occur based on the RPU amendments. (AR11891.) The EIS explains that the  
7 RPU amendments' incentives for coverage transfers and redevelopment on high-capability developed  
8 parcels in Centers would increase coverage in these target areas, as compared to 1987 Regional Plan.  
9 (AR11897.) The EIS further explains that additional coverage allowed on higher capability lands within  
10 Centers would be directly offset by coverage transferred, resulting in an overall reduction of coverage  
11 in the region and, importantly, a reduction of coverage from SEZs and other sensitive lands. (*Id.*)

12 138. The EIS noted that the RPU provides incentives to transfer coverage, existing  
13 development, and development rights from sensitive lands into Centers. (AR11944-48, 11953-55.)  
14 While this transfer will result in increased coverage on non-sensitive lands within Centers, it will also  
15 result in corresponding decrease in coverage (with associated beneficial effects of increased natural  
16 filtration on restored sensitive lands) elsewhere in that same area. (AR11953.) The EIS concluded that  
17 this shift of coverage from "low capability" to "high capability" lands (that is, from areas that are more  
18 sensitive to those that are less so) was a "beneficial impact" because, as is relevant to the TMDL, it  
19 would decrease the volume of stormwater runoff and the "load" of pollutants discharged in stormwater  
20 runoff. (AR11945.)

21 139. The EIS concluded based on the RPU land coverage policies that any future  
22 development that would result in additional coverage would be limited such that total coverage in the  
23 region as established by the Bailey System is not exceeded or that existing excess coverage is reduced.  
24 (AR11897.) The EIS further concluded that the RPU policies and implementation measures to reduce  
25 coverage from sensitive lands and incentivize redevelopment within Centers would provide the greatest  
26 incentives for the concentration of coverage within targeted community areas and would also result in  
27 the greatest reduction in SEZ coverage. (*Id.*)

1 140. The Final EIS provides additional analysis of changes in pollutant loading that could  
2 result from additional concentrated development. (AR5103-5104.) The Final EIS explained that “in  
3 response to concerns regarding the localized water quality impacts of further concentrating  
4 development within ... [C]enters, TRPA [] prepared an additional analysis to estimate the relative  
5 changes in pollutant loading that could occur within ... [C]enters as a result of proposed policies.”  
6 (AR5104.)

7 141. “A stormwater modeling simulation was prepared using the Pollutant Load Reduction  
8 Model (PLRM). The PLRM is a publicly available, long-term, continuous simulation model developed  
9 for use with the TMDL to evaluate and compare alternatives for stormwater quality improvement  
10 projects in the Tahoe Region. The PLRM is the primary tool used by jurisdictions in the region to  
11 support Lake Tahoe TMDL estimates of baseline pollutant loading and pollutant load reduction  
12 planning. The model incorporates data on land use types, impervious coverage, and BMP  
13 implementation to generate estimates of fine sediment, nitrogen, and phosphorus loading and  
14 stormwater runoff.” (AR5103.)

15 142. The PLRM “provided estimates of existing and future pollutant loading from areas  
16 designated as “Centers” in the Final Draft Plan. The analysis incorporated parcel-level data on land use,  
17 existing coverage, and current BMP compliance to generate estimates of existing loading from Centers.  
18 To evaluate a worst-case scenario, the model assumed that all parcels within Centers with commercial,  
19 tourist accommodation, and residential land uses would maximize their allowable coverage as a result  
20 of policies that incentivize additional concentrated development. The model assumed that all parcels  
21 that added coverage would comply with BMP requirements.” (AR5103; *see also* AR6479-6490  
22 [Appendix C describing detailed methods and assumptions used in the PLRM simulation].)

23 143. The EIS summarized the results of PLRM modeling. (*Id.*; *see also* AR6479-89  
24 [appendix].) As explained in the Final EIS, “The modeling results show that even if policies that  
25 incentivize concentrated development achieved the maximum allowable coverage in all Centers, the  
26 result would be a decrease in pollutant loading from Centers as a result of implementing required water  
27 quality regulations. These estimates of changes in pollutant loading from land use policies that  
28

1 concentrate development provide additional evidence affirming that the analysis and significance  
2 determination presented in the Draft EIS is appropriate and most likely conservative.” (AR5103.)

3 144. The PLRM confirms that localized adverse water quality impacts from concentrating  
4 coverage at Centers will not occur. (AR6479-6490; *see also* 5103-04.) The PLRM analysis of coverage  
5 impacts is doubly conservative. At the same time it looked at the maximum potential for increased  
6 development at the “receiving site,” it’s omission of the benefits of transferring development from  
7 more “sensitive sending” sites vastly understated the beneficial effect of likely future decreases in  
8 coverage from other elements of the RPU. In addition, the analysis did not incorporate coverage  
9 reductions that would occur through the excess coverage mitigation program and continued coverage  
10 reductions resulting from the EIP. (AR5103.)

11 145. The Final EIS concludes “This additional analysis provides further evidence affirming  
12 that the analysis presented in the Draft EIS is accurate and is most likely conservative; actual changes  
13 in pollutant loading may be beneficial rather than less than significant as presented in the Draft EIS.  
14 This information also substantiates the broader Regional Plan strategy to attain and maintain water  
15 quality thresholds through transferring development from sensitive lands, concentrating it in Centers,  
16 and incentivizing redevelopment consistent with environmental standards. As demonstrated in the EIS,  
17 these policies would have beneficial effects on water quality at the sites restored or protected through  
18 transfers of development, as well as at the sites where concentration of development and associated  
19 redevelopment occur.” (AR5104.)

20 146. The EIS explained parcel-by-parcel analysis was neither feasible nor necessary; such  
21 analysis will instead occur in the context of specific Area Plans and development proposals. (AR5089-  
22 96 [parcel-level analysis infeasible because of the many assumptions that it would require]; *see also*  
23 AR 11550 [EIS “does not address impacts at the level of proposed land use development or public  
24 works projects....”].) “Such environmental analyses would occur after the RPU process concludes and  
25 in response to proposals for implementing programs or specific development or public works projects.”  
26 (AR11550.)

27 147. Under TRPA’s Code, maximum coverage limits on already developed non-sensitive  
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1 lands in Centers can be increased only if TRPA approves an Area Plan. (AR790-91 [Code, § 30.4.2.B.1  
2 [allowing increased transferred coverage limits in Centers only with a conforming Area Plan].) TRPA  
3 can approve an Area Plan only after local-scale analysis has been performed, and the analysis shows the  
4 plan reduces pollutant loading from the area. (AR5090, 5096.)

5 148. The RPU does not rely solely on coverage limits to protect water quality. The RPU also  
6 incorporates TMDL load reduction projects, parcel-scale BMP implementation, and associated  
7 maintenance requirements. (AR11953-55, 5101-04.) In particular, “[t]he Lake Tahoe TMDL requires  
8 local jurisdictions to complete load reduction plans that identify catchments (i.e., sub-watersheds) and  
9 their respective pollutant loading to Lake Tahoe and achieve specific reductions in pollutant loading  
10 from each catchment.” (AR 5102.) Local agencies must then reduce and maintain pollutant loads within  
11 each sub-watershed. (AR106507; *see also* AR106506 [Lake Clarity Crediting program adopted as part  
12 of TMDL “provides a system of tools and methods to consistently estimate, track and report pollutant  
13 load reductions at a catchment, or subwatershed, scale.”], 106534-37 [TMDL requires tributary stream  
14 and in-lake monitoring to measure cumulative effects], 107419.)

15 149. The TMDL Report also concludes that actions taken to improve mid-lake clarity under  
16 the TMDL will also benefit nearshore conditions (AR106457 [“The nearshore is affected by surface  
17 loading either as direct discharge, tributary inflow, and groundwater loading. Watershed runoff must  
18 first pass through the nearshore area on route to the deeper waters.”]; 106459 [“[LRWQCB] and NDEP  
19 staff believe that actions to improve the transparency may have positive effects on the nearshore  
20 conditions.”].)

21 150. The EIS also makes clear the TMDL plays a pivotal role in ensuring that encouraging  
22 density in Centers will not have a significant impact on soil or water quality. (See, e.g., AR 11906,  
23 11918-19, 11924-27, 11919, 11942-43, 11953, 5097-5104.) The TMDL will “prevent [] local  
24 jurisdictions from permitting projects that would result in the type of local-scale water quality impacts.”  
25 (AR5102.)

26 151. In response to comments from the California Attorney General and others, TRPA also  
27 substantially modified the proposed RPU amendments in ways that narrowed the scope of proposed  
28

1 changes to coverage policies, including: (1) Maintaining 1987 Plan’s prohibition of coverage transfer  
2 between Hydrologically Related Areas (“HRAs”); (2) Restricting direct off-site excess coverage  
3 mitigation across HRA boundaries to more sensitive land; (3) Reducing allowable coverage on parcels  
4 within 300 feet of Lake Tahoe high watermark; and (4) Reducing maximum allowable coverage within  
5 300 feet of Lake Tahoe high watermark under comprehensive coverage management plans. (AR5089,  
6 5306.) As the Final EIS explained, these modifications provided additional environmental protections  
7 and would result in reduced potential for environmental impacts compared to analysis in the Draft EIS.  
8 (*Id.*; *see also* AR5057-72.) These changes were recommended by a cabinet-level bi-State working  
9 group, consisting of stakeholders from state and local government, environmental organizations and  
10 business members, to address the concerns of the States of California and Nevada. (*See* California  
11 Nevada Amicus brief, ECF No. 30-1 at p. 4.) Collectively, these revisions served to ensure that local  
12 water quality impacts would not occur. (AR5057.)

13         152. TRPA adopted an additional water quality threshold to address nearshore conditions as  
14 part of the RPU, and adopted specific policies, such as the phase out of phosphorous fertilizer,  
15 specifically to address nearshore conditions. (AR26670, 26672.)

16         153. TRPA concluded the additional incremental coverage allowed by the RPU (less than one  
17 percent increase over existing coverage) would not adversely affect water quality after adoption of  
18 unrelated mitigation measures. (AR26654.)

19         154. The TMDL EIS analyzed implementation of TMDL under buildout scenarios much  
20 more significant than what is allowed under the Regional Plan. (AR11953, 106543-44.) This showed  
21 that implementation of the TMDL would achieve water quality thresholds even if substantially more  
22 coverage was allowed and RPU policies to reduce coverage in sensitive lands and increase BMP  
23 compliance were not implemented. (*Id.*)

24         155. The 2012 Tahoe Basin Impervious Surface Coverage Study found that “Concentrating  
25 development and limiting the development footprint has the potential to reduce per capita and basin-  
26 wide environmental impact. (AR128193.) This study’s findings determined that: “Stormwater  
27 treatment, coverage removal and private property BMP implementation are complimentary and needed  
28

1 to achieve policy objectives. Needs for change: Stormwater treatment technology is less expensive and  
2 replaces the need for coverage restrictions.” (AR128154.) Therefore, the RPU no longer relies on the  
3 1970s approach to water quality or treats every parcel the same. Instead, it incorporates direct measures  
4 of pollutant loading rather than solely relying on indirect approaches like coverage regulation and the  
5 number of parcels with BMPs. (AR5098, 11697-11698.) Moreover, consistent with the TMDL  
6 program, the RPU highlights the ability to leverage State enforcement programs to increase compliance  
7 with water quality requirements. (AR5012.) Scientific review of soil conservation revealed the need to  
8 focus on reducing coverage in Bailey land capability 1b (SEZs) because other land capability districts  
9 are doing much better. (AR31, 42, 190.)

10 156. TRPA found that the Regional Plan as amended by the RPU will achieve and maintain  
11 Water Quality Thresholds Standards over time. (AR 26673-83.)

12 ***B. TRPA Properly Relied on the Panoply of Stormwater Regulations, Including the Tahoe***  
13 ***TMDL, in its Water Quality Threshold Findings.***

14 157. BMPs are one part of the Regional Plan’s comprehensive water quality protection and  
15 restoration regulatory program, which includes the EIP’s water quality programs that facilitate  
16 implementation of BMPs. (AR26678-80.)

17 158. Chapter 60 of the Code sets forth requirements for implementation of the Regional  
18 Plan’s Water Quality Goals and Policies. (AR1073-89.) These requirements include, among other  
19 things, the installation of temporary and permanent BMPs for the protection or restoration of water  
20 quality and attainment of minimum discharge standards. (*Id.*) The Code requires installing BMPs as  
21 described in TRPA’s BMP Handbook (AR126808-7540), or equivalent practices approved by TRPA,  
22 on all public and privately owned lands within the Basin. (AR1085 [Code, § 60.4.2].) The RPU  
23 amendments do not alter these requirements, except to require installing and maintaining water quality  
24 BMPs consistent with the “defensible space” requirements of fire agencies. (AR1089, 14489-92; *see*  
25 *also* 5205-06.) The EIS addressed this change and concluded it would not result in any significant  
26 impacts. (AR11936.)

27 159. BMPs are defined as “alternative structural and non-structural practices proven effective  
28

1 in erosion control and management of surface runoff.” (AR127521 [TRPA 2012 BMP Handbook].)  
2 “BMPs manage waste and hazardous material and are effective at preventing oil, fertilizers, and other  
3 hazardous wastes from entering public storm drains, native soil, surface water, and groundwater”  
4 (AR126841 [BMP Handbook]). In its BMP Handbook, TRPA identifies BMPs that combat pollution  
5 created by at least 10 different sources—sediment, fine sediment, nutrients (nitrogen and phosphorus),  
6 pH acidity, micro-organisms, pesticides and herbicides, heavy metals, gross pollutants (litter and  
7 debris), surfactants (grease, oils, detergents, and shampoos), and increased water temperature.  
8 (AR126838-40 [chart]). “Infiltrating runoff allows rain or snowmelt to flow into permeable areas and  
9 enter the soil profile. Infiltration allows much of the runoff to return to the soil, which reduces runoff  
10 volumes, treats light pollutant concentrations, and replenishes groundwater. Infiltration allows light  
11 pollutants to settle into the soil where they are naturally mitigated. Even when runoff continues after  
12 infiltration of a design storm, the overall pollutant load into the nearest water body is still reduced.”  
13 (AR126841 [BMP Handbook].)

14 160. BMPs are existing “management controls” under the Code for the protection or  
15 restoration of water quality for attainment of minimum discharge standards; they are not “mitigation  
16 measures.” (AR11915, 11929.) BMPs, unlike mitigation measures, must be installed regardless of any  
17 potential water quality impacts. (AR1085.)

18 161. BMPs are required of all properties to reduce the impacts of development on water  
19 quality. Properties must capture and infiltrate the equivalent volume of runoff of a 20 year, 1-hour  
20 storm and stabilize sediment sources on site. TRPA’s BMP requirements are outline in Chapter 60 of  
21 the TRPA Code of Ordinances (§60.4, page 60-13 to 60-17 [AR1085-89]). The public can also find  
22 BMP information on the Stormwater Management Program Website ([www.tahoebmp.org](http://www.tahoebmp.org)) and in the  
23 BMP Handbook (<http://www.tahoebmp.org/bmphandbook.aspx>).

24 162. As one of many of restoration programs implemented through the EIP, the BMP Retrofit  
25 Program is a unique and innovative strategy that protects Lake Tahoe’s water quality from the impacts  
26 of stormwater pollution. (AR9084.) The BMP Retrofit Program is a rigorous nonpoint source pollution  
27 control program designed to advance water quality Threshold Standards. (AR9084.) The BMP Retrofit  
28

1 Program is codified in the TRPA Code or Ordinances. (AR1086-1087 [Code, § 60.4.4.]) The BMP  
2 Retrofit Program requires all existing past development to retrofit the site with water quality BMPs.  
3 (*Id.*, AR 5205.) This differed notably from other locations nationwide where only BMPs on new  
4 construction were required. (AR9084)

5 163. TRPA distinguishes between BMP Retrofits and BMPs for new development or  
6 redevelopment--both of which are implemented on public and private properties. (AR126842 [BMP  
7 Handbook].) Unlike TRPA's BMP retrofit program for existing properties, new development allowed  
8 under the RPU, including any concentrated coverage in Centers, must install and maintain BMPs as a  
9 condition of project approval. (AR1085-89 [Code, § 6.4], 5101, 5181, 5205, 11946.) These projects are  
10 also required to provide security deposits. (AR737 [Code, § 5.9.2: "a security shall be posted in an  
11 amount equal to 110 percent of the cost of the approved BMPs and other erosion control and water  
12 quality improvements required as a condition of approval".]) TRPA also inspects these properties to  
13 ensure BMPs are properly implemented. (AR738 [Code, § 5.9.4].)

14 164. In addition to the erosion control and stormwater runoff benefits from implementing  
15 required BMPs, under the Code all new development is required to offset the impact of additional  
16 coverage by (1) paying water quality mitigation fees, or (2) implementing an offsite water quality  
17 control project. (*See* AR1080-82 [Code, § 60.2].)

18 165. The EIS concluded that providing incentives to redevelop properties that lack BMPs will  
19 likely result in water quality benefits, but under no circumstances would such redevelopment be  
20 permitted to increase sediment loading. (AR11950-51 [impacts completely offset], 11953 [RPU same  
21 as Alternatives 2].)

22 166. Studies in the record demonstrate there is a significant difference between properties that  
23 have installed BMPs compared to those that have not. Data shows, for example, that commercial  
24 properties without BMPs discharge pollutant loads that are five times higher than those from similar  
25 properties with structural BMPs — that is, structural BMPs reduce pollutant loads by 80 percent.  
26 (AR128167-68.) Data shows that a commercial property without BMPs discharges pollutant loads that  
27 are 5 times higher than those from similar commercial property with structural BMPs. (AR128167-68.)  
28

1 167. As stated in the EIS, “New science associated with the TMDL had revealed that high  
2 pollutant loads are generated from older developments without adequate BMPs and that  
3 environmentally-beneficial redevelopment and associated improvements in the quality of urban runoff  
4 could be facilitated with adoption of a new Regional Plan.” (AR5087.)

5 168. TMDL studies conclude additional BMP implementation will improve water quality.  
6 (AR106508 [TMDL Final Report lists implementation actions in forested uplands that will help meet  
7 Clarity Challenge load reductions by year 15 and TMDL in 65 years; includes “install and maintain  
8 (annually) full unpaved roadway BMPs,” “implement forest treatments with low pressure and other  
9 innovative ground-based equipment and standard BMPs,” “Install and maintain advanced BMP  
10 measures to increase infiltration and reduce runoff from landings, ski runs, trails, and paved and  
11 unpaved roads in forested areas.”].)

12 169. Implementation and enforcement of BMPs are currently being pursued and  
13 accomplished at an accelerated rate. (AR9085.) As of December 2011, 14,714 of 43,470 parcels in the  
14 Tahoe Region have received a BMP Certificate. This equates to 56 percent compliance in Nevada, 25  
15 percent compliance in California, and total region-wide compliance of 34 percent. Notably, TRPA has  
16 issued approximately half of all 14,714 certificates over the last four years as a result of an accelerated  
17 implementation program. (*Id.*)

18 170. TRPA uses grant funding to focus compliance efforts on the most sensitive areas, which  
19 has resulted in significantly higher compliance rates. (AR5189, 55403-04.)

20 171. As described in the EIS, “as of December 2011, the TRPA Stormwater Management  
21 Program has initiated accelerated implementation starting with nearly 350 commercial and large multi-  
22 family properties and 1,000 single family properties within the Tahoe Region. Overall, this  
23 enforcement program has been successful in increasing BMP compliance rates, with approximately 30  
24 percent of targeted properties achieving BMP compliance, typically within one to three years after  
25 receiving an official notice from TRPA. In addition, 40 percent of targeted single family properties and  
26 63 percent of commercial and multi-family parcels are actively working with TRPA and Resource  
27 Conservation District partners to achieve BMP compliance. The high rate of cooperation from  
28

1 commercial and multi-family property owners is attributed to an extensive outreach campaign to  
2 educate property owners along with TRPA’s policy to work with property owners to set realistic  
3 implementation goals which include project phasing. TRPA staff members have prioritized compliance  
4 of commercial properties over residential because of the more significant water quality impacts from  
5 commercial sites. When a property owner fails to meet interim project deadlines and/or fails to  
6 communicate with Stormwater Management Team staff, they are no longer considered to be diligently  
7 pursuing compliance and may be subject to monetary penalties or other enforcement actions pursuant to  
8 TRPA Rules of Procedure.” (AR9087, 55409.)

9 172. TMDL and other implementation strategies assure maintenance of BMPs, either on a  
10 parcel or areas-wide scale consistent with both the TMDL and TRPA regulatory approaches.  
11 (AR55408, 55402-09.)

12 173. The TMDL identifies BMPs as one of several key strategies to attain pollutant load  
13 reduction goals on a catchment scale. (AR9086.) BMP implementation results in the following annual  
14 reduction of pollutant loads identified by the TMDL: over 232,000 tons of total suspended solids; over  
15 4,900 tons of nitrogen; and over 1,300 tons of phosphorus. (AR55403.)

16 174. While the TMDL identifies BMPs as an important method for achieving pollutant load  
17 reduction goals, additional measures are provided to ensure required load reductions are met.  
18 (AR106505-06.)

19 175. The RPU commits TRPA to continue to implement its BMP compliance programs for  
20 both existing and new development. (AR11960, 5205-06, 5659.) In fact, the RPU amended its Code to  
21 make maintenance of BMPs a mandatory condition of approval. (AR5659.) As a result, TRPA expects  
22 that over time all 43,470 parcels in the Basin will receive BMP certificates. (*See generally* AR1073-  
23 89.)

24 176. BMP maintenance is mandatory. (AR1089 [Code, § 60.4.9 (“BMPs shall be maintained  
25 to ensure their continued effectiveness.”)], 127376 (“Owners of developed properties must ensure  
26 BMPs remain functional and effective to retain their BMP Certificate and comply with the TRPA Code  
27 of Ordinances.”].) TRPA also audits local agencies to make sure that required BMP inspections occur.

1 (AR 801-02 [Code, §§ 13.8.2, 13.8.3].)

2 177. Under the RPU, TRPA will incorporate inspection and maintenance logs for commercial  
3 and large residential properties. (AR 126934 [“When a project is permitted, a BMP inspection and  
4 maintenance plan will be required under the Special Conditions of the permit.”]; *see also* AR35204-11  
5 [TRPA Contractors’ Manual for performing maintenance].)

6 178. The RPU allows and encourages area-wide water quality treatment programs that, when  
7 combined with parcel-scale BMPs, make construction, maintenance, and reporting more efficient. (AR  
8 5189-90.) The EIS explains area-wide treatment solutions, together with parcel-scale BMPs, have been  
9 implemented successfully under current TRPA policy. (AR11960.)

10 179. The RPU expands the authority to install area-wide treatment facilities if that approach  
11 is shown to “meet or exceed existing water quality requirements.” (AR5188-90.) For larger projects in  
12 ... [C]enters, area-wide water quality treatment facilities are expected to be more cost effective because  
13 they allow for greater flexibility in siting and designing treatment systems. (*Id.*) The policy is also  
14 expected to lead to more efficient maintenance practices, as compared to maintaining BMPs on many  
15 smaller, scattered individual parcels. (*Id.*)

16 180. The BMP Handbook, updated with and made part of the RPU, incorporates new  
17 information from the TMDL and other studies, and provides guidance for the effective implementation  
18 and maintenance of BMPs for new and existing development. (See, e.g., AR126832.)

19 181. The BMP Handbook now recognizes that parcels are heterogeneous in terms of  
20 stormwater management, and that the 1987 Plan’s uniform approach will not work on every parcel.  
21 (AR126808-127540.) For this reason, the RPU prioritizes stormwater pollutant load reductions in areas  
22 with the greatest potential for reductions, thereby accelerating improvements in water quality in a more  
23 cost-effective manner. (AR26253.)

24 182. The TMDL includes provisions that mandate water quality improvements (including the  
25 installation of BMPS) and provide safeguards to ensure that projects will not result in localized water  
26 quality impacts. (AR5101-02; *see also* 107428-29 [California NPDES Permit].)

27 183. By imposing a load reduction target on each local agency, the TMDL provides each  
28

1 agency with the incentive to prioritize maintenance to meet its target. (AR126934-35.)

2 184. The RPU will increase installation and maintenance of BMPs, and thus improve current  
3 conditions. (AR5188-90, 11894.) As the EIS explained: “Existing regulations would still apply to  
4 transferred coverage, requiring a verification of land capability to ensure that transferred coverage does  
5 not exceed the maximum allowable coverage at the project level (TRPA Code Chapter 30). Water  
6 quality BMPs are also required to be installed on any transferred coverage. As of 2011, only 35 percent  
7 of existing developed parcels had Water Quality BMP certifications (TRPA 2011). It would be  
8 reasonable to assume that at least 65 percent of transfers of existing coverage would result in the  
9 removal of coverage without BMPs and the placement of coverage with BMPs. As such, an increase in  
10 the rate and volume of coverage transferred would likely result in an increase in the rate of water  
11 quality BMP implementation and an increase in the total amount and proportion of coverage with  
12 BMPs.” (AR11888; *see also* AR5181.)

13 185. RPU policies would also reduce fine sediment loading by increasing the potential for  
14 funding water quality operations and maintenance. (AR11936)

15 186. The EIS explains that it was “reasonable for TRPA (and the two States in the TMDL) to  
16 rely upon the implementation and maintenance of BMPs to address water quality impacts.” (AR5190.)  
17 As stated in TRPA’s Findings, “The Lake Tahoe TMDL represents a centerpiece of the joint effort to  
18 achieve and maintain water quality standards applicable in the Region.” (AR26673.) “The Lake Tahoe  
19 TMDL effort represents a common and consistent plan between the States of Nevada and California to  
20 address the transparency and clarity decline within Lake Tahoe.” (AR26674.)

21 187. Governing Board found that the Regional Plan, as amended by the RPU, includes  
22 multiple requirements that, along with TRPA’s own programs (e.g., the EIP Program) and existing  
23 regulations (e.g., the TMDL), will achieve and maintain TRPA’s Water Quality Threshold Standards.  
24 (AR26673-83, 26704.)

25 **II. Substantial Evidence Supports TRPA’s Findings That the Regional Plan, as Amended by the**  
26 **RPU, Achieves and Maintains Air Quality Threshold Standards.**

27 188. Air quality in the Lake Tahoe Air Basin is improving. (AR74-128; *see also* AR91832

1 [CARB report stating, as of 2006, air quality in Lake Tahoe Air Basin (“LTAB”) had improved over  
2 previous 20 years].)

3 189. The “Air Quality Index” (AQI) developed by the U.S. EPA synthesizes data for various  
4 pollutants to determine whether overall air quality on a given day is healthy. EPA calculates the AQI  
5 for five pollutants: ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and  
6 nitrogen dioxide. The AQI uses pollutant-specific equations based on maximum recorded daily  
7 concentrations to determine the level of health concern. (AR75.)

8 190. Ozone, or O<sub>3</sub>, is one of the pollutants used to calculate the AQI. (AR75.) Ozone forms  
9 when precursor gases, such as NO<sub>x</sub>, react in sunlight. (AR11772.) The main source of NO<sub>x</sub> emissions is  
10 vehicle exhaust. (AR11773-74, 5239.) The Federal government, California and Nevada have all  
11 adopted ozone standards. (AR11762-63.)

12 191. From 2007 to 2011 (the most recent review period), the number of days rated “good”  
13 increased from 319 to 361 days, and the number of days rated “moderate” correspondingly decreased  
14 from 46 to 4 days. (AR75.) None has been rated “Unhealthy” or “Hazardous” and, since 2008, none has  
15 been rated “Unhealthy for Sensitive Groups.” (*Id.*)

16 192. The Compact states that the Regional Plan shall provide for attaining and maintaining  
17 federal, state, or local air quality standards, whichever are strictest, in the respective portions of the  
18 region for which the standards are applicable. (AR11757.) The TER and RPU reflect this commitment.  
19 (AR 77-78, 11757, 17777.) EPA, ARB, and TRPA use monitoring data (presented in Section 3.4.3,  
20 Affected Environment) to designate areas according to attainment status for criteria air pollutants  
21 established by the agencies. The purpose of these designations is to identify those areas with air quality  
22 problems and thereby initiate planning efforts for improvement. The three basic designation categories  
23 are “nonattainment,” “attainment,” and “unclassified.” “Unclassified” is used in areas that cannot be  
24 classified on the basis of available information as meeting or not meeting the standards. (AR11759.)

25 193. TRPA threshold standards address carbon monoxide (CO), ozone, regional and sub-  
26 regional visibility, and nitrate deposition. Numerical standards have been established for each of these  
27 parameters, and management standards have been developed that are intended to assist in attaining the  
28

1 threshold standards. The management standards include reducing particulate matter, maintaining levels  
2 of oxides of nitrogen (NO<sub>x</sub>), reducing traffic volumes on U.S. Highway 50 (US 50), and reducing  
3 VMT. (AR11757.)

4 194. TRPA relies on four data sets – “Threshold Indicators” – to determine whether air  
5 quality meets Threshold Standards and state/federal standards included in the ozone indicator reporting  
6 category: (1) the highest 1-hour average concentration, (2) the highest 8-hour average concentration, (3)  
7 the 3-year average of the fourth highest average concentration, and (4) oxides of nitrogen (NO<sub>x</sub>)  
8 emissions in tons per day. TRPA looks at each of the four indicators to determine whether the LTAB is  
9 in attainment with individual ozone standards (threshold or state/federal standards), and at the  
10 indicators in the aggregate to characterize overall conditions. Data dates back to at least the early  
11 1980s. (AR92-102.)

12 195. The 2011 TER analyzed the Tahoe basin’s attainment with TPRA’s Air Quality  
13 Thresholds, including the threshold for Ozone pollution. (AR74-131.) Data shows the LTAB is in  
14 attainment for all ozone standards. (AR94-101.) The 2011 TER concluded the region is “at or  
15 somewhat better than the adopted Threshold Standards.” (*Id.*) A team of expert scientists peer  
16 reviewed, and endorsed, the 2011 TER. (AR8839-948.)

17 196. Ozone was monitored at a number of locations around the Lake Tahoe Basin over the  
18 TER review period: South Lake Tahoe- Tahoe Blvd.; South Lake Tahoe-Sandy Way; South Lake  
19 Tahoe-Airport Rd.; Incline Village; and Cave Rock. In 2009, O<sub>3</sub> was monitored at the site in Incline  
20 Village by the Washoe County Air Quality Management Division, and in South Lake Tahoe on Airport  
21 Road by the California Air Resources Board. Data is collected, analyzed, and reported by the respective  
22 agency. The TER includes a graph that represents the highest monitored concentration at all sites for  
23 each year. (AR96-97.)

24 197. The Draft EIS included the results of modeling to determine the RPU’s impact on ozone  
25 levels in the LTAB. (AR11782-92, 12909-56.) The EIS estimated ozone-related emissions compared to  
26 existing conditions (2010) and in the future (2035), and concluded that regional emissions will  
27 decrease. (AR5069, 11785-92.) The EIS explained, tailpipe standards will continue to become  
28

1 increasingly stringent; the RPU will allow only limited development beyond what 1987 Plan  
2 authorized; any additional emissions due to growth will be more than offset by stricter tailpipe  
3 standards; and TRPA's programs and policies will further reduce emissions by promoting forms of  
4 transit other than cars. (*Id.*)

5 198. Under the RPU, both Reactive Organic Gases and NO<sub>x</sub> are projected to dramatically  
6 decrease, by 341.27 and 600.53 Tons Per Year (TPY), respectively. (AR11788, 12911.)

7 199. The Draft EIS included a table summarizing the attainment status for various pollutants  
8 and standards. (AR11759.) The table stated that the LTAB was "nonattainment- transitional" for the 8-  
9 hour standard, and that in 2011 the basin "somewhat worse than target." (*Id.*) The Draft TER, also  
10 released in April 2012 (AR14684), included a table stating the "ozone" standard was "non-attainment"  
11 in 2011. (AR14696.)

12 200. Additional ozone monitoring data became available after TRPA published the Draft  
13 TER and Draft EIS in April 2012. (AR11450.) In response to comment on the Draft EIS regarding  
14 additional ozone air quality monitoring data that is available for 2010, TRPA added that information as  
15 well as more recent monitoring data that became available after the Draft EIS was published for year  
16 2011. Pages 3.4-17 – 18 of the Draft EIS were revised to note that concentrations of criteria air  
17 pollutants are measured at three (rather than two) monitoring stations in the Basin: the South Lake  
18 Tahoe–Sandy Way station, the South Lake Tahoe–1901 Airport Road station, and the Incline  
19 Village–Crystal Bay station. The Final EIS noted that in general, the measurements of ambient air  
20 quality from these monitoring stations are representative of the air quality in the Basin. Table 3.4-6 in  
21 the EIS was updated to summarize the air quality data from these stations for 2008–2011. (AR 5238.)

22 201. TRPA updated the draft TER to reflect new data. (AR96-97.) The new data, included in  
23 the Final TER showed the highest concentration was 0.067 ppm in 2010 and 0.068 ppm in 2011, both  
24 below the California standard. The Final TER stated that confidence in this conclusion was "moderate,"  
25 acknowledging that, although data was limited, it was consistent with the long-term downward trend.  
26 (*Id.*) James Mahoney, PhD, the chair of the peer-review panel, testified the TER was technically  
27 sound, and provided a solid basis to support TRPA's ongoing policy making. (AR25448-49.)

1           202. The Lake Tahoe Region met the California Ozone standard for highest 8-hour average  
2 concentration in 2010 and 2011. (AR96.) As stated in the TER, “The 2011 measurement of 0.068 ppm  
3 is 3% below the CA standard of 0.070 ppm. A status determination of “at or somewhat better than  
4 target” is designated for 2011. The region was in attainment with the California standard in 1984, 2004,  
5 2005, 2010 and 2011.” (*Id.*)

6           203. The 2011 Final TER states “The status and trends of four indicators were evaluated to  
7 characterize the overall status and trends of the Ozone Indicator Reporting Category, including highest  
8 1-hour and 8-hour average O<sub>3</sub> indicators, the 3-year 4th highest 8-hour average O<sub>3</sub> indicator, and  
9 modeled oxide on nitrogen (NO<sub>x</sub>) indicator. Based on these indicators and as detailed in the Indicator  
10 Summaries below, the region overall is at or somewhat better than the adopted Threshold Standards.  
11 Overall, the Basin can be characterized as “at or somewhat better than the standard,” with “little or no  
12 change” in trend, with “moderate” confidence in the status and trend determination.” (AR92.)

13           204. The 2011 Final TER found “The long-term trend shows a gradual reduction in highest 8-  
14 hour ozone concentrations between 1984 and 2011.” (AR96.)

15           205. The Final EIS reported the 8-hour ozone standard to be in attainment. (AR5238.) The  
16 data shows a continuation of the long-term trend of declining ozone concentrations, and attainment of  
17 California’s 8-hour standard. (AR5238.)

18           206. Ozone concentrations in the Lake Tahoe Air Basin are declining. (AR96; *see also*  
19 46151, [2009 Report noting that, while 2009 peak ozone concentrations in the Lake Tahoe Air Basin  
20 were at levels that approach or slightly exceed various ambient air quality standards applicable to the  
21 Basin, “with on-going reductions in NO<sub>x</sub> emissions from the motor vehicle control programs, the ozone  
22 concentrations in the Tahoe Basin are likely to decline in response to reduced transport into the air  
23 basin and reduced generation of ozone from local sources of precursors.”].) Ozone pollution is  
24 attributable largely to motor vehicle exhaust (ozone precursors). Vehicle emission standards have  
25 become increasingly stringent over time. As precursor emissions decline, ozone concentrations go  
26 down. This trend is expected to continue. (AR11772, 11788-89; *see also* AR11800-01 [modeling  
27 indicates 78% decline in NO<sub>x</sub> emissions].)

1           207. Ozone pollution is trending downward throughout much of California. (AR70380-449.)  
2 By encouraging redevelopment in smaller, denser Centers, the RPU will accelerate this trend by  
3 encouraging people to get out of their cars and walk, bike, or use transit. (AR11670-82 [RPU provides  
4 incentives to focus development in “more compact, walkable, mixed-use communities, supported by  
5 greater density and increased height, which would facilitate maintenance of the existing ... [C]enters’  
6 character, improve access to services, and reduce automobile dependency”]; AR26683-85 [RPU  
7 programs aimed at reducing ozone].)

8           208. Ozone precursors are expected to decrease under the RPU. The Draft EIS concluded:  
9 “Based on the results of the emissions modeling presented in Table 3.4-16, emissions of ozone  
10 precursors and CO in the Basin would be expected to decrease substantially by 2035 under Alternative  
11 3 compared to existing conditions. This can be explained by the fact that (as described in “Toxic Air  
12 Contaminants” in Section 3.4.2, Regulatory Background) vehicle emissions standards would be  
13 improved substantially over the next 20 years (ARB 2012b), and limited development would be  
14 allocated beyond what was authorized in the 1987 Regional Plan under Alternative 3. Any additional  
15 population growth and associated increase in operational ozone precursor emissions in the Basin would  
16 be more than offset by more stringent vehicle emissions standards. As discussed under Alternative 2,  
17 the emissions model used in this analysis (EMFAC 2011) accounts for vehicle emissions control  
18 measures contained in State Implementation Plans submitted to EPA, smog check programs, truck and  
19 bus emissions rules, and fuel economy standards (ARB 2012b). These regulatory programs are already  
20 in place or approved and will result in foreseeable emissions reductions in mobile-source emissions in  
21 the plan area.” (AR11788-89, *see also* 5069 [Final EIS “a net reduction in emissions of ozone  
22 precursors would occur under [the RPU].”].)

23           209. As stated in the Final EIS, “[c]oncentrations of criteria air pollutants are measured at  
24 three monitoring stations in the LTAB: the South Lake Tahoe–Sandy Way station, the South Lake  
25 Tahoe–1901 Airport Road station, and the Incline Village–Crystal Bay station. In general, the  
26 measurements of ambient air quality from these monitoring stations are representative of the air quality  
27 in the vicinity of the study area.” (AR5238, 5247.) During years when data was available from  
28

1 monitoring stations located in both states, “little variation” was seen; the EIS explained that “[b]oth  
2 stations showed similar concentrations and number of exceedance days during 2008-2010.” (AR5352;  
3 *see also* AR3461, 90472, 102786-92, 147415.)

4 210. The TER peer review panel did not conclude that existing data was insufficient to draw  
5 conclusions on ozone attainment. (AR8857 [noting “high quality” of report].)

6 211. The TER peer panel recommended adopting more aggressive policies to reduce  
7 dependency on automobiles, stating a “more aggressive posture is appropriate for addressing ozone  
8 attainment moving forward.” (AR8903.)

9 212. TRPA based the attainment finding on “the best available information,” while  
10 acknowledging the “specialized equipment” and high operating costs of such monitoring. (AR155884;  
11 *see also* AR92968, 92970.)

12 213. The record shows ongoing efforts by TRPA and other agencies to expand the monitoring  
13 network. (AR155884 [monitoring stations installed at Stateline, Nevada and Bliss State Park by 2012],  
14 99 [new monitoring station established at Tahoe City, California in summer 2011].) The record  
15 includes data from these new stations. The data, while preliminary, shows no ozone exceedances.  
16 (AR147415; *see also* AR2190 [PCAPCD letter noting data].)

17 214. In a December 12, 2012 report to the Board, staff summarized the expansion of the  
18 monitoring network: “TRPA and partner agencies are currently monitoring air quality at six different  
19 sites in the region. TRPA’s Air Quality Threshold Standards are generally in attainment and the  
20 existing array of monitoring sites represents significantly more monitoring sites per capita than  
21 surrounding areas. TRPA commissioned an independent review of the region’s air quality monitoring  
22 network. The review recommended a total of five monitoring sites, with some consolidation and  
23 reconfiguring of monitoring equipment to more completely and efficiently monitor all relevant  
24 parameters. The Governing Board was informed of this recommendation at the November Governing  
25 Board meeting, and will consider it in future priority setting and resource allocation decisions.”  
26 (AR128337.)

27 215. The Echo Summit station recorded 8-hour ozone levels higher than those at the South  
28

1 Lake Tahoe Airport and Incline Village stations. (AR147415.) This station is not in the LTAB. (*Id.*)  
2 Echo Summit ozone monitoring data shows that readings at this station in 2000 were virtually identical  
3 to those recorded in 2012 (with higher levels in between). (AR147415.)

4 216. The Board found that the Regional Plan, as amended by the RPU, will achieve and  
5 maintain thresholds, including the thresholds for ozone. (AR26664-704.) The Board did not base its  
6 ozone threshold findings solely on the premise that the LTAB had attained the ozone threshold. The  
7 Board found that, based on increasingly stringent tail-pipe emission standards and other air pollution  
8 control measures, air quality in the LTAB had improved, and would continue to improve. (AR26683.)  
9 The Board further found that the existing Regional Plan and Code, the EIP, and other TRPA programs  
10 would attain and maintain the threshold. (AR26684.) The cited programs and policies included:

- 11 • Land Use policies providing incentives to promote mixed-use Centers as a means of  
12 reducing VMT and associated emissions.
- 13 • Provisions exempting non-motorized trail land coverage and requiring the dedication of  
14 easements for non-motorized trails.
- 15 • Policies providing incentives for removing non-compliant emission sources, and  
16 replacing them with sources that meet current standards.
- 17 • Policies requiring the development and implementation of best practices for  
18 construction-related emissions.
- 19 • Policies requiring the development of standards to reduce construction and operational  
20 GHG emissions, which will, in turn, also increase building efficiency and reduce other  
21 air pollutant emissions.
- 22 • Phased release of allocations tied to traffic monitoring to ensure that VMT will not  
23 exceed the threshold standard. (*See* AR26638.)
- 24 • Policies concerning the allocation of air quality mitigation fees.
- 25 • Policies requiring Area Plans to enhance pedestrian, bicycling, and transit opportunities.
- 26 • Water quality and transportation policies targeting NO<sub>x</sub> emissions.

27 (AR26684-85.) The Board found these policies and programs advanced the objective of “reduc[ing]  
28 dependency on the automobile by making more effective use of existing transportation modes and of  
public transit,” as directed by the Compact. (*Id.*)

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Respectfully submitted,

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