4 DEIS AND SDEIS COMMENTS AND RESPONSES

4.1 INTRODUCTION TO COMMENTS AND RESPONSES

Article 6.14 of the Tahoe Regional Planning Agency (TRPA) Rules of Procedure requires that “at the conclusion of the comment period, TRPA shall prepare written responses to all written comments received during the comment period, and may respond to oral or late comments.” Accordingly, this Final Environmental Impact Statement (FEIS) provides responses to all comments received during the public review period for the 2004 Draft Environmental Impact Statement (DEIS) and the 2005 Supplemental DEIS (SDEIS), as well as comments provided at the 2004, 2005, and May 2006 Governing Board and Advisory Planning Commission meetings on the Shorezone program.

Individual comment letters and responses follow the Master Responses and have been organized into two groups: the 220 letters or written comments received on the SDEIS and the 65 letters or written comments received on the DEIS. Each letter in each group is labeled as (year – letter identification number), for example letter 05-31. Each comment in each letter is also numbered (e.g., Comment 31-5 is the fifth comment in Letter 05-31).

Where comments are raised on specific elements of the analysis of Alternatives 1 through 6, those comments are addressed and revisions to the analysis; if made, are noted. Some comments suggest revisions or improvements to the various alternatives, and other comments identify concerns about the achievement of environmental goals; many of these comments have been addressed through refinement of the alternatives to arrive at Alternatives 6 and 6A. For these types of comments, the response identifies the applicable elements of Alternative 6A that address the commenter’s concern.

Section 4.2 contains master responses to common comments received during the public review periods. These are responses to comments that were raised multiple times, and they serve as a summary of information regarding issues that were identified by numerous commenters.

Section 4.3 contains a full list of individuals who commented on the SDEIS or the DEIS during the public comment period or at a public meeting on the Shorezone program. TRPA has provided responses to all relevant comments provided both in writing or orally at a TRPA public hearing.

Section 4.4 contains individual letters (and e-mails) received and a summary of each comment provided at public meetings. Responses to significant environmental issues raised in the comments follow each letter. Because the SDEIS was published most recently, responses to comments on that document are provided first, followed by those received at the 2006 Governing Board meeting and then comments on the DEIS.

4.2 MASTER RESPONSES TO COMMON COMMENTS

Several common comments were raised in multiple comment letters submitted on the DEIS, the SDEIS, and the various public meetings on the Shorezone program. To streamline this FEIS, master responses have been prepared to address these common comments, which are arranged by topic. Where an individual comment letter addresses one of these common comments, the individual response directs the reader to the appropriate master response.

Most topics for which a master response was prepared address a single issue or comment. Where multiple comments requiring master responses occur for a single topic, each comment is noted in italics, followed by the response.
MASTER RESPONSE A: ALTERNATIVE 6A

Many comments expressed concern about elements of the alternatives that were analyzed in the DEIS and SDEIS. Some commenters suggested revisions to the alternatives to improve aspects of the alternatives, reduce objectionable requirements and fees, or avoid or reduce environmental impacts. In particular, comments on the DEIS primarily identified issues and concerns relating to Alternative 2, which was presented as the Proposed Alternative in 2004; comments on the SDEIS and at the May 2006 Governing Board meeting primarily address proposed revisions to Alternative 6.

As described in Chapter 2 of this FEIS, TRPA reviewed comments and identified elements of each of the project alternatives that could be refined to address public concerns and provide an environmentally protective project. This review resulted in development of Alternative 6A. The alternative is described in detail in Chapter 2, and important elements of Alternative 6A (as compared to Alternative 6) are summarized in Table 4-1.

Alternative 6A was crafted through refinement of the previously identified alternatives; these refinements do not result in new impacts not previously analyzed, nor do they cause a substantial increase in the severity of identified impacts. The environmental analysis provided in Chapter 3 of this FEIS supports this conclusion.

MASTER RESPONSE B: BUOY PERMITTING AND RECOGNITION

Comments were received on several topics relating to buoy permitting and recognition. These topics are identified separately below and responses are provided to each. Table 2-3 in Chapter 2 provides more detailed information about the refinements to the buoy recognition program with Alternative 6A.

Public Comment: People who have owned buoys for 30+ years (predating the formation of TRPA) should not be required to go through a new process to obtain a permit.

The goal of TRPA with regard to buoy permitting and recognition is to ensure that Environmental Threshold Carrying Capacities (Thresholds) are met and environmental impacts are avoided or mitigated. With Alternative 6A, all presently existing and newly added buoys in Lake Tahoe would be required to have a valid permit from TRPA as well as the applicable state or federal agency. The process and standards for placement of new buoys remains essentially the same as described for Alternative 6: each littoral parcel 50 feet wide is eligible for two buoys, and narrower parcels are eligible for one buoy. Many comments were received regarding the recognition process for existing buoys, and the Governing Board (at its May 2006 meeting) indicated a desire to accommodate the public by providing flexibility in the standards for permitting these existing buoys. As a result, Alternative 6A includes a fully developed buoy recognition program (see Table 2-3) that provides various scenarios for permitting existing buoys for littoral, and in some circumstances, non-littoral owners.

Long-time buoy owners would not be exempt from obtaining permits or paying fees for their buoys, but could, in most circumstances, be allowed some leeway in their number and placement. In recognition that some littoral property owners met the legal requirements that were in place before 1972 to obtain a buoy permit from the applicable state or federal agency, TRPA would recognize these pre-1972 permits for up to three buoys. Property owners with existing TRPA permits would not be required to undergo a new permitting process and would be allowed to keep those buoys. To ensure boating safety, existing buoys would be brought into conformance with the location standards. A buoy recognition fee would be assessed on a case-by-case basis for applications that require a staff-level determination of permitting status.
<table>
<thead>
<tr>
<th>Project Element</th>
<th>Alternative 6</th>
<th>Alternative 6A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pier Allocation</strong></td>
<td>Limit of 230 piers: 10 public, 220 private</td>
<td>Limit of 230 piers; first 10 public piers are allocated separately from the private 10-per-year approval process; additional public piers can be allocated up to 1 per year as part of the private approval process</td>
</tr>
<tr>
<td><strong>Boat Lifts</strong></td>
<td>No boat lifts, except with scenic mitigation of the pier itself</td>
<td>Boat lift can be added in exchange for retirement of a buoy; maximum 12,000 pounds</td>
</tr>
<tr>
<td><strong>Pier Design</strong></td>
<td>Only single-pile piers allowed</td>
<td>Other design options allowed where single-pile piers are not feasible</td>
</tr>
<tr>
<td><strong>Maintenance, Repair, Rebuild of Structures</strong></td>
<td>Exempt from permitting requirements</td>
<td>Maintenance, repair, or partial in-kind replacement in the same dimensions and footprint is exempt; affecting minor amounts of structure is a qualified exempt activity; more than minor amount of structure, full replacement, or change of dimensions is considered a project (with streamlined review)</td>
</tr>
<tr>
<td><strong>Removal and Modification of Structures to Restore Littoral Processes</strong></td>
<td>Mandated removal and modification of structures that adversely affect littoral processes (determined within 2 years)</td>
<td>Eliminated from the program; the Tahoe Regional Planning Agency (TRPA) will pursue funding to study this issue</td>
</tr>
<tr>
<td><strong>Scenic Requirements</strong></td>
<td>Based on measures of visual contrast and visual magnitude (visual dominance curve)</td>
<td>Based on visible mass ratings, 25 contrast score, or visual magnitude/contrast rating; baseline scenic assessment not required for individual buoys; for projects that exceed allowable visible mass and in scenic non-attainment units, scenic mitigation is required at 1:1.5 ratio</td>
</tr>
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</table>
| **Buoy Permitting and Recognition, Buoy Fees** | Same standards for buoy permitting and recognition; mitigation fees of $5,000 for first buoy and $7,500 for second buoy | **Buoy permiting (new buoys):** Littoral parcels eligible for up to 2 buoys with 50 feet of littoral frontage, 1 buoy if less than 50 feet of littoral frontage  
**Buoy recognition (existing buoys):** Program allows recognition of existing buoys for owners of littoral parcels with buoys that have applicable state/federal agency permits or TRPA permits, owners of non-littoral parcels with buoys that have proof of existence and permission of littoral owner; some flexibility in location standards and number of buoys allowed compared to new buoys  
**Fees:** $500 application fee for first buoy, $1,000 fee for additional buoys; additional buoy recognition fee where applicable; annual permit fee $175 for each buoy (including buoy fields and buoys retired in exchange for boat lifts), with funds allocated for watercraft and buoy enforcement, water quality monitoring, Shorezone mitigation fund |
<p>| <strong>Buoy and Chain Maintenance</strong>          | Annual removal of buoys and chains required                                  | Biannual inspection of buoys and chains required, with maintenance or replacement if deemed necessary |</p>
<table>
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<tbody>
<tr>
<td><strong>ONRW Boat Pollution Reduction Program</strong></td>
<td>Boat sticker program with boat washing implemented to protect Outstanding National Resource Water (ONRW) designation of Lake Tahoe</td>
<td>Boat pollution reduction program to be implemented, which may take the form of a sticker program or other methods for improving and enforcing appropriate boat operation and equipment, boat washing stations, water quality monitoring in high-use areas; performance standards to be identified through survey conducted in summer 2006</td>
</tr>
<tr>
<td><strong>Boat Wash Stations / Exotic Aquatic Taxa Elimination Program</strong></td>
<td>Boat wash stations established to reduce importation of exotic aquatic plants and invertebrates</td>
<td>Full exotic aquatic taxa elimination program has already been established to address invasive plant and invertebrate species (e.g., Eurasian milfoil, zebra mussel); as part of ONRW boat pollution reduction program, boats washed based on visual inspection; separately funded study to be undertaken to define implementation</td>
</tr>
<tr>
<td><strong>Emerald Bay Motorized Boating Rest Day</strong></td>
<td>One boating rest day in Emerald Bay each weekend during summer (non-motorized boats excluded)</td>
<td>5-mph zone in Emerald Bay; performance standards and adaptive management measures identified to ensure that reduced speed limit effectively addresses potential for increased pollution</td>
</tr>
<tr>
<td><strong>Recruitment Threshold Fee</strong></td>
<td>$100,000 recreation threshold fee required with a pier permit</td>
<td>Lake Tahoe Public Access Fund: $100,000 fee required with a pier permit; funds used to address recreation and public access impacts of increased piers (funded activities may include taking out a pier, deed-restricting land for a pier, facilitating staff person to coordinate acquisition of public access lands on the lake, removing structures for donation of land to the U.S. Forest Service, constructing or modifying public access facilities with emphasis on nonmotorized transport, addressing backshore impacts); funds available primarily to facilitate recreation and public access goals of public agencies</td>
</tr>
<tr>
<td><strong>Prime Fish Habitat Fee</strong></td>
<td>Fee for fisheries mitigation when expanding or modifying a pier, slip, or ramp</td>
<td>Mitigation required only for pier expansion or modification projects in spawning habitat (not slips or boat ramps)</td>
</tr>
<tr>
<td><strong>Additional Fees</strong></td>
<td>Cultural resources fee, wildlife mitigation fee</td>
<td>No additional fees</td>
</tr>
</tbody>
</table>

**Public Comment:** Owners of nonlittoral parcels should be eligible for buoy permits or existing buoy recognition because the Lake is a public recreation resource.

The TRPA Code of Ordinances is structured so as to require that the project applicant for any buoy application to TRPA must be a littoral parcel owner. According to the existing Shorezone Ordinances, only littoral parcel owners are eligible to apply for permission to build structures in the Shorezone of Lake Tahoe. In addition, the State of California and the State of Nevada have different interpretations of property law governing placement of structures such as buoys in the Shorezone. For these reasons, with Alternative 6A, as with Alternative 6, only littoral parcel owners are eligible to apply for permits to install piers or buoys. This policy is consistent with existing regional, state, and federal policies and is consistently applied through all six alternatives of the Shorezone Ordinance amendments. However, TRPA, through comment letters, has been made aware of past permitting practices leading to the existence of permitted buoys in favor of non-littoral property owners. As a result, Alternative 6A has been
refined to allow a nonlittoral property owner to obtain buoy permits consistent with the rules of the state in which the buoy is placed. However, to control the number of buoys in the lake and to avoid creating additional environmental impacts, Alternative 6A allows recognition and or new placement of a maximum of 6,316 buoys.

Public Comment: The buoy fees of $5,000 (first buoy) and $7,500 (second buoy) proposed with Alternative 6 are too high, especially for long-time owners.

Alternative 6 buoy fees were calculated as a one-time source of funding to provide the means to mitigate air quality, water quality, and noise impacts of buoy placement. Based on comments obtained through the public process, TRPA has refined this approach to buoy fees in Alternative 6A. The application fee would be $500 (consistent with the current fee) for the first buoy and $1,000 for the second (or additional) buoy. (Owners of buoys with existing permits would not be required to pay the initial $500 application fee.) The application fee for the first buoy would pay for staff time to process the buoy permit application. The additional $500 for second buoys would fund startup costs for a buoy enforcement program.

In addition, a $175-per-buoy annual fee is proposed for all pre-existing and newly placed mooring buoys on Lake Tahoe. Funds raised through the annual fee would be used to finance several mitigation programs related to buoy placement: One-quarter of the fee would be used for ongoing watercraft and buoy enforcement, one-eighth would be used for water quality and air quality monitoring, and five-eights would be used for mitigation of environmental impacts related to buoy placement (primarily recreation and scenic impacts). The addition of an annual fee (which would be adjusted every 5 years to cover the increasing costs of mitigation) would serve the same purpose as the originally proposed larger up-front application fee identified with Alternative 6 that is now replaced by the $500 start-up fee and annual buoy fee. Refer to Chapter 2 and Table 4-1 for more information about the buoy recognition program as proposed in Alternative 6A.

Public Comment: Buoys already in the Lake that are not permitted may not be able to meet new distance standards proposed in the Shorezone Ordinance amendments (such as setbacks from property lines) and should be exempt from these requirements.

Alternatives 2 and 6 require that buoy placement include 25-foot setbacks from extended property lines. TRPA and other agencies require minimum distances between buoys as an important means of maintaining safe boat maneuvering distances. TRPA acknowledges, however, that the distances identified in the DEIS and SDEIS could unintentionally and unnecessarily preclude buoy placement in some areas. Instead of a firm property line setback requirement, Alternative 6A requires 50 feet of spacing between adjacent buoys, but does not require that, in every instance, a buoy be 25 feet from the property boundary. (Properties less than 50 feet wide need only meet the first requirement.) This revision allows adjacent property owners some flexibility in buoy placement. Regardless of buoy placement on adjacent parcels, however, a parcel that is less than 50 feet wide is eligible for only one new buoy. As described above, the location standards for existing buoys provide more flexibility (e.g., up to two existing buoys can remain on a parcel less than 50 feet wide), but conformance with the standards would still be required to the extent feasible.

Public Comment: Homeowners’ associations and marinas are concerned about the effect that fees and placement standards (especially the limitation that buoys may be located no more than 350 feet from shoreline [high water]) would have on their buoy fields.

Fees for buoy placement have been adjusted for Alternative 6A as described above. In general, application fees and annual fees would apply to homeowners’ associations as they would to individual property owners or groups of property owners. Multiple-use buoy fields are not limited to 350 feet from shoreline; the 350-foot limitation defines the hypothetical grid that is used to calculate the maximum number of buoys for a particular association. The actual placement of buoys may extend beyond the 350-
foot line as necessary to reach navigable water. Any substantial expansion of a marina buoy field would be required to be consistent with TRPA’s Marina Master Plan and would be required to undergo the appropriate level of environmental review.

**MASTER RESPONSE C: EMERALD BAY MOTORIZED BOATING REST DAY**

Comments relating to the proposed rest day on motorized boating in Emerald Bay primarily focused on two topics: (1) the availability of other approaches to control or reduce emission levels in the bay and (2) disagreement regarding the quality and the conclusions of the research that identified elevated emission levels.

**Public Comment:** The proposed Emerald Bay motorized boating rest day is unnecessary at this time; alternatives are available that would preclude impacts from continued and potentially increased use of Emerald Bay.

The U.S. Environmental Protection Agency (EPA) has designated Lake Tahoe as an Outstanding National Resource Water (ONRW). EPA’s antidegradation policy for water quality in ONRWs provides that “States may allow some limited activities which result in temporary and short-term changes to water quality,” but such changes should not adversely affect existing uses or alter the essential character or special use that makes the water an ONRW (USEPA, 1993). EPA interprets this provision to mean that no new or increased discharges that would result in degradation of water quality are permitted. For Lake Tahoe, the ONRW antidegradation standard requires that baseline water quality be maintained or improved compared to best-water-year baseline conditions (summer 2002).

As described in the DEIS and the SDEIS, scientific evidence, such evidence from the joint Tahoe Research Group–University of Nevada, Reno (UNR)–U.S. Geological Survey (USGS) studies (Miller et al., 2003; Allen and Reuter, 2000), suggests that hydrocarbons from fuels have reached detectable levels in Emerald Bay, compared to nondetectable amounts of these chemicals in other areas of the Lake. This increase in pollutants is likely the result of multiple causes, including an ongoing increase in the number of motorized boats and personal watercraft, stormwater runoff, and other sources. As proposed in the SDEIS, Alternative 6 would contribute to this degradation by increasing the number of moorings (piers and buoys), thereby increasing the capacity for boats on the Lake. Because of EPA’s antidegradation standard, TRPA has identified and evaluated management strategies that would not put TRPA policies in conflict with the ONRW designation. Although the Shorezone Ordinance amendments would not be solely responsible for the potential increase in boats (a 30% increase in boats is assumed as a baseline trend), the boating rest day proposed in the SDEIS for Alternative 6 was envisioned as a possible strategy to reduce boating emissions and thus meet the ONRW antidegradation standard.

Since publication of the SDEIS, however, other solutions have been proposed that would also be effective in reducing emissions in Emerald Bay and throughout the Lake. One alternative strategy, which was proposed by many commenters, is imposing a 5-mph speed limit in Emerald Bay. Data from boat engine manufacturers (some of which was provided by commenters on the SDEIS) indicate that reducing boat speed would also limit emissions from boat engines; these data are presented in Chapter 3, “Environmental Analysis of Alternative 6A.” Data show that emissions from an engine at 15 mph are substantially greater than those from an engine at 5 mph (Robinson, pers. comm., 2005 and 2006; Mercury Marine, 2005; Volvo, 2005). In response to the many comments received on this issue, and because the proposed alternative strategy would adequately address the identified environmental concerns, Alternative 6A has been refined to include this policy rather than the boating rest day as an effective way to control the accumulation of fuel-related hydrocarbons in the Emerald Bay area of the Lake.
Public Comment: The motorized boating rest day may not be effective; elevated levels of hydrocarbons may result from runoff or other sources besides motorized boats; no standard has been exceeded in the hydrocarbon measurements reported in the UNR studies.

The Tahoe in-lake monitoring program (in which the Tahoe Research Group, UNR, and USGS participate) measures hydrocarbon constituent levels. According to the UNR studies cited in the DEIS and the SDEIS (Miller et al., 2003; Allen and Reuter, 2000), these constituents have increased to measurable levels in Emerald Bay. As described above, one effect of the ONRW designation is the commitment of TRPA and other state, regional, and local agencies to maintain the high level of water quality that was present in Lake Tahoe in summer 2002—defined as the baseline level of water quality. The purpose of the boating rest day proposed in Alternative 6 is not to mitigate or prevent an identified or projected violation of a public health standard or aquatic life standard; rather, it is to maintain consistency with EPA’s antidegradation standard. The 5-mph speed limit proposed in Alternative 6A would provide an alternative means of achieving the same goal, and data from marine engine manufacturers indicate that reducing the speed limit would indeed reduce emissions sufficiently to counteract the anticipated increase in boats. While increased numbers of boats on Lake Tahoe are not solely attributable to the Shorezone Ordinance amendments, TRPA’s proposed program has identified a method of reducing the impacts of the potential increase. Refer to Master Response A and Chapter 2 of this FEIS for more information about this element of Alternative 6A, and refer to the water quality section of Chapter 3 for more information about reduced boat emissions based on speed limit.

MASTER RESPONSE D: BUOY AND CHAIN REMOVAL

Many commenters expressed that the buoy and chain removal requirement of Alternative 6 would be infeasible because of the large number of buoys that would need to be removed and the limited number of divers available to perform the work. Another concern was the disproportionate level of work that would be required to remove the buoys compared to the level of risk for boat mishaps during the winter months. Commenters offered various suggestions about alternative ways to address buoy and chain maintenance.

Based on these comments and suggestions, Alternative 6A substitutes a requirement for biannual (every 2 years) inspection of buoy and chains and a requirement for maintenance, repair, or replacement if determined to be necessary during the inspection. Proof of inspection must be submitted along with payment of the annual buoy fee. This project refinement would address the previous safety issues, avoid the potential for spills, and eliminate some of the public’s concerns with cost and difficulty of implementation. Refer to Master Response A and Chapter 2 of this FEIS for more information about this element of Alternative 6A.

MASTER RESPONSE E: BOAT STICKER PROGRAM (ONRW BOAT POLLUTION REDUCTION PROGRAM)

Comments on the boat sticker program proposed in Alternative 6 (refined in Alternative 6A as the ONRW boat pollution reduction program) focused on two areas: (1) the undefined nature of the program and (2) the contested scientific studies used to justify the need for the program.

Public Comment: The boat sticker program is too vague and undeveloped to provide effective mitigation of air and water quality impacts.

The boat sticker program presented as part of Alternative 6 was intentionally conceptual to permit TRPA staff to craft a program that would create substantial environmental benefit and allow for the inclusion of suggestions from agencies and the public. Alternative 6A presents an implementation strategy for a boat pollution reduction program to address the ONRW water quality antidegradation standard (see Master Response A and Chapter 2). A boat survey was conducted by a TRPA consultant during summer 2006 to
evaluate potential areas of water quality improvement, such as engine type and tuning for high altitude, bilge containment, sewage controls, engine noise, and boat washing to prevent the importation of exotic aquatic plant and invertebrate species. The results of this survey would be used to identify the most effective areas of focus for a boat pollution reduction program. Addressing boat emissions at the source is an effective means of reducing pollution. TRPA plans to propose a comprehensive program for review by the public and approval by the Governing Board before the 2007 boating season (see Chapter 2 for a description of elements of such a program).

Currently, detections of hydrocarbons are limited to a few areas of the lake, an improvement from conditions before two-stroke carburetors were banned. In addition, boat emissions are being reduced as newer, more efficient engines continue to be manufactured and as boats using these engines replace boats with older, more polluting engines. For these reasons, ONRW antidegradation standards are being met now, and TRPA has the present flexibility to allow some increase in boating activity while finalizing a program to mitigate potential future impacts. The final boat pollution reduction program is expected to be presented for adoption by the Governing Board with opportunity for public comment before the 2007 boating season.

The limited (10 piers per year) development capacity proposed with Alternative 6A would provide an opportunity to ensure that mitigation is effective before adverse impacts are identified. The water quality impact of approving 10 piers (i.e., adding 10 boats to the Lake) would be delayed pending actual construction of each pier (estimated to take 1–3 years from approval); however, the boat pollution reduction program would be instituted beginning in 2007.

**Public Comment:** The need for a boat sticker program is not justified; no water quality standards or public health standards are being exceeded.

All program alternatives except Alternative 5 were drafted to accommodate increases in recreation and boating, which may increase the levels of pollutants in the lake. As described in Master Response C, EPA’s ONRW antidegradation policy requires that water quality be maintained at best-water-year (summer 2002 baseline) conditions. Therefore, to help ensure that increased boating recreation does not violate the antidegradation policy, TRPA must identify a means of avoiding or mitigating the potential pollutant increase that is likely to take place over the 22-year time frame of the program. The boat pollution reduction program proposed with Alternative 6A would serve this purpose by enabling TRPA to monitor and enforce standards regarding appropriate engine types, engine emissions, and other boating features that may contribute to water quality degradation.

**Master Response F: Boat Wash Stations and Exotic Aquatic Taxa Elimination**

Concerns were raised by some commenters regarding the feasibility of implementing the boat wash stations identified in Alternative 6. In particular, people commented that the prospect of long lines at boat wash stations could reduce visitor trips to the Lake. Others raised questions about the availability of space to construct separate boat wash facilities at marinas and boat launch stations, as well as the additional cost of constructing these facilities.

With Alternative 6A and Alternative 6, boat wash stations would be one element of a full exotic aquatic taxa elimination program. The control of exotic aquatic plants and invertebrates (such as Eurasian milfoil and zebra mussels) in Lake Tahoe is an issue of great importance in maintaining the ecosystem of the Lake. By implementing a program of boat washing and visual inspections, TRPA hopes to reduce transport of these species, increase public awareness of the issue, and highlight the role of recreational visitors to the Lake in transporting exotic pests.
The primary purpose of the boat wash stations would be to combat the spread of exotic aquatic plants that may be carried into or out of the Lake on boats. Visual inspection would be the first step for all boats entering and leaving the Lake, to prevent the spread (either introduction or removal) of exotic aquatic plants. Only those boats that need washing would be directed to the boat wash facility.

All marinas are required to implement best management practices (BMPs) for water quality under current regulations, and boat wash stations are a required feature of that process. Most of the boat launch facilities around the Lake will need to bring their facilities up to current standards, including a designated boat wash area, within the next 2 years. TRPA will work with these facilities to implement this retrofit along with other required elements of the water quality BMPs. Boat wash stations would be required to be designed within the permissible coverage.

The California Department of Boating and Waterways has funds available to assist with construction of boat wash facilities (although applications must be submitted approximately 18 months in advance). If the Governing Board approves Alternative 6A, other funds to assist in constructing boat wash stations may be made available.

**MASTER RESPONSE G: PRIVATE PROPERTY RIGHTS**

Numerous comments were received regarding the ways in which TRPA’s proposed approach to the Shorezone Ordinance amendments (first with Alternative 2, then with Alternative 6) are perceived to infringe on private property rights. Comments address the purported right of lakefront property owners to own piers and buoys, the burden placed on property owners by proposed fees (including mitigation fees), and the “right to wharfage.” As explained below, implementation of the *Tahoe Regional Planning Compact* (Compact) affects aspects of property ownership in the Tahoe Basin. TRPA’s enactment of regulations such as those proposed with this program does not constitute an illegal taking or implicate a requirement to compensate affected property owners.

The goals of TRPA, as established by the Compact and the Goals and Policies in conjunction with federal and state agencies around the Tahoe Basin, are to preserve, restore, and enhance the natural and human environment of the Lake Tahoe Region. The agency fulfills these responsibilities by establishing and enforcing the Thresholds and Regional Plan, which establish environmental goals and standards for the Tahoe Basin and indirectly define the capacity of the Tahoe Region to accommodate additional land development. Thresholds have been established for air quality, water quality, soil conservation, vegetation, fisheries, wildlife, scenic resources and community design, noise, recreation, and economics.

Land use and development may adversely affect attainment of one or more Thresholds, and TRPA has the authority under the Compact and Regional Plan to regulate and place limitations on some facets of development. Construction and placement of structures in the Shorezone are elements of development that are currently regulated by TRPA; imposing permit conditions and establishing density and placement limitations are within the existing authority of the agency.

In addition, to maintain Thresholds, special efforts such as implementation of mitigation measures must be taken (consistent with existing environmental laws and regulations) to reduce impacts that result from development. Requiring a project applicant to fund mitigation necessitated by a proposed project is a standard environmental regulatory procedure. In the case of the Shorezone Ordinance amendments, for example, TRPA proposes (with Alternative 6A) to require that a property owner receiving a permit to construct a pier must mitigate the recreation and public access impacts created by that individual’s project through payment to the Lake Tahoe Public Access Fund (LTPAF). That owner must also mitigate other identified adverse environmental impacts associated with pier construction through project design features or payment of a fisheries mitigation fee (where the pier would be located in fish spawning habitat). A property owner who wishes to obtain a buoy permit would be required to mitigate the
recreation and public access impacts of buoy placement through payment of an annual fee that would support watercraft and buoy enforcement, water quality and air quality monitoring, and Shorezone related environmental improvement projects. Such a mitigation requirement is a common and accepted means of enforcing compliance with environmental standards such as those established in TRPA’s 1987 Regional Plan. (See, e.g., San Remo Hotel v. San Francisco, 125 S. Ct. 2491 [2005].)

Courts recognize the ability of government to regulate private property without having to compensate affected property owners. The U.S. Supreme Court rejected a takings challenge in Tahoe-Sierra Preservation Ass’n v. TRPA, 535 U.S. 302 (2002), finding that TRPA acted reasonably and appropriately in enacting regulations that affected property rights. Government actions automatically require compensation only in the extraordinary instance where the action deprives the property of all economically viable use (Lucas v. S. Carolina Coastal Comm’n, 505 U.S. 1003 [1992]). With respect to TRPA’s proposed regulation of the Shorezone, littoral property owners retain substantial value and use of their property. Therefore, any obligation to compensate affected property owners would result from balancing several factors: (1) the character of the government action; (2) the economic impact of the regulation; and (3) interference with investment-backed expectations (Penn Central Transp. Corp. v. New York, 438 U.S. 104, 124 [1978]). Given that (1) TRPA is regulating the placement of structures in the Shorezone in accordance with its mandate under the Compact to attain and maintain Thresholds; (2) the regulations permit construction of Shorezone structures and littoral properties would retain use and substantial value even without Shorezone structures; and (3) similar regulation of the Lake Tahoe Shorezone has been prevalent since 1972, a reviewing court would not have a basis to conclude that TRPA is constitutionally mandated to compensate affected property owners.

More specifically, a “right to wharfage” (that is, a right to access navigable water from private property), asserted by some as incidental to littoral ownership, does not preclude the regulations proposed by TRPA. As set forth by the U.S. Supreme Court in Yates v. Milwaukee (77 U.S. 479, 504 [1890]):

[W]hether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream; and among those rights are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier for his own use or for the use of the public, subject to such general rules and regulations as the legislature may see proper to impose for the protection of the rights of the public, whatever those may be. …

This riparian right is property, and is valuable, and, though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired. It is a right of which, when once vested, the owner can only be deprived in accordance with established law, and if necessary that it be taken for the public good, upon due compensation.

The law is clear that the right to reach navigable water is not absolute, but instead has limitations. The Yates decision includes statements that access may be modified or even deprived pursuant to reasonable regulation. The U.S. Supreme Court early on found that a littoral owner had no automatic rights to wharf out past the high-water mark since that area is governed by state law (Shivley v. Bowlby, 152 U.S. 1 [1894]). At the turn of the century, the California Supreme Court recognized both the general right to wharfage and the limitation to the high-water mark, because submerged lands below the high-water mark “are incapable of private occupation and ownership” (San Francisco Savings Union v. R.G.R. Petroleum and Mining Co., 144 Cal. 134, 135 [1904]).

Only in rare circumstances are littoral owners compensated when government action deprives them of their “right” to wharfage. The recognized right applies only to the area between high and low water and can be overcome through regulation. As stated by the California Supreme Court:
There is a well-recognized and established distinction between a “taking” or “damaging” for public use and the regulation of the use and enjoyment of a property right for the public benefit. The former falls within the realm of eminent domain, and the latter within the sphere of the police power. (*Gin S. Chow v. Santa Barbara*, 217 Cal. 673, 701 [1933].)

Therefore, TRPA may lawfully restrict the ability of littoral property owners from wharfing to the high-water mark provided it does so as part of a rational regulatory system such as the proposed Shorezone program in Alternative 6A. The proposed program consists of amendments to the Shorezone Ordinances that would not permit every littoral parcel to be able to wharf out (either to the high water or into Lake Tahoe). Rather, Alternative 6A proposes a system whereby permits are issued annually based on selection of the most environmentally protective pier proposals submitted each year (based on retirement of lake frontage development potential).

TRPA must, above all else, ensure attainment of the Thresholds (Compact, Art. V[g]). The Thresholds, particularly Recreation, Water Quality, and Scenic Quality, would be degraded if every littoral parcel at Lake Tahoe and other lakes in the Region added a pier. However, the Thresholds would be enhanced by the retirement of development potential from lake frontage while still allowing reasonable navigational access by littoral owners. TRPA therefore has a rational basis for enacting the proposed regulations. The proposed program is not therefore a taking of private property, and TRPA need not compensate those littoral property owners who are not permitted to construct piers on their property pursuant to the program.

**MASTER RESPONSE H: PUBLIC ACCESS AND PUBLIC TRUST**

Comments on the DEIS and SDEIS concerning the issue of public access questioned why TRPA is protecting the “public trust” area of Lake Tahoe when that responsibility belongs to the California State Lands Commission and the courts.

TRPA has the authority under the Compact and responsibility under the Regional Plan to protect and enhance public access to Lake Tahoe as an important environmental, recreational, and scenic resource, particularly as specified in the Recreation Threshold and the applicable Goals and Policies. As explained below, although a public trust area is recognized around Lake Tahoe, TRPA is not asserting independent authority with respect to the trust. Instead, TRPA is proposing a Shorezone program to implement its Thresholds, Goals and Policies that is consistent with the scope of the public trust as interpreted by other authorities.

Courts recognize that the lands between the high and low waters on the California side of Lake Tahoe are held in fee by the littoral owners subject to a public trust easement that allows for lateral public access (*Fogerty v. California*, 157 Cal.App.3d 221 [1986]; *California v. Superior Court [Fogerty]*, 29 Cal.3d 240 [1981]; *California v. Superior Court [Lyon]*, 29 Cal. 3d 210 [1981]). California agencies, primarily the State Lands Commission, are responsible for implementing the court-recognized trust. Unlike California, Nevada courts have not rendered an opinion concerning the existence of a trust between the high- and low-water marks of the Nevada side of Lake Tahoe. The Nevada State Legislature has given Lake Tahoe littoral owners fee title to the low-water mark (Nev. Rev. Stat. Section 321.595).

TRPA has responsibilities concerning access to the Shorezone independent of the existence of the public trust. The *1987 Regional Plan*, and specifically the TRPA Recreational Threshold, requires TRPA to enhance access to the Lake Tahoe Shorezone. As set forth in the Recreation Element of the TRPA Goals and Policies:

> It shall be the policy of the TRPA Governing Body in development of the Regional Plan to preserve and enhance the high quality recreational experience including preservation of high-
quality undeveloped shorezone and other natural areas. In developing the Regional Plan, the staff and Governing Body shall consider provisions for additional access, where lawful and feasible, to the shorezone and high quality undeveloped areas for low density recreational uses.

The Conservation Element of the Goals and Policies provides similar language. Goal 1, Policy 13 is titled, “Allow access to shorezone where lawful and feasible,” and explains that “Improved public access to the shorezone should be provided through public lands from expanded public ownership.” Therefore, the TRPA Regional Plan provides for TRPA to enhance recreational access opportunities along the Lake Tahoe shoreline, including the area between the high- and low-water marks.

TRPA has identified adverse impacts associated with the construction of new structures (primarily piers and buoys) in Lake Tahoe. These structures can obstruct lateral public pedestrian access in the area between high and low water. Pier structures, in particular, can limit or alter the ability of recreationists dependent on nearshore access, including swimmers, canoeists, kayakers, and top-line anglers, to navigate the nearshore area where public access is controlled or held in trust under state laws. Alternative 6A would offset these impacts consistent with the TRPA Goals and Policies through the payment of a per-pier fee to the LTPAF. As described in Chapter 2, a primary objective of this fund is to offset adverse recreational and public access impacts. The LTPAF monies will be used create additional access to the Lake Tahoe Shorezone through projects such as eliminating existing structures and facilitating acquisition of property for dedication to public access. A reasonable connection can be made between pier construction and the requirement of a fee payment such as the LTPAF fee. The amount of the fee for adding a pier is based on estimation of the costs for removing a pier from a developed parcel and restricting development on the parcel with an easement (see Appendix 3, “Lake Tahoe Public Access Fund”), which would provide equivalent replacement value for recreation and public access. TRPA is requiring the LTPAF payment in accordance with the Compact and Regional Plan; the requirement is an implementation of TRPA’s mandate under the Compact and Regional Plan insofar as it is consistent with the public trust principle of state law.

Other comments on this issue proposed providing lateral public access in high-use areas, but not everywhere around the Lake. Maintaining lateral public access around the Lake is an important element of TRPA’s mandate from the Compact and Regional Plan, particularly the Recreation Threshold and applicable Goals and Policies. All of the alternatives discussed to date, including Alternative 6A, emphasize the importance of maintaining lateral public access around the Lake. Pier design standards would require that public access along the beach be maintained; structures would be required to provide “safe and functional access” from the backshore to the nearshore and foreshore (proposed Code Section 54.5.D[6]).

Alternative 6A (as with the other alternatives described in the DEIS and SDEIS) does not distinguish between access requirements for structures in high-use areas and those in other areas. Legal lateral public access must be maintained along the Lake at all locations regardless of the level of public use. This approach has been supported in comments on the program from the California State Lands Commission, the primary agency responsible for administering the court-recognized public trust area on the California side of Lake Tahoe. Moreover, as described above, the draft Shorezone Ordinances have been written to specify that designs for pier modifications and new piers minimize the adverse impacts on lateral access. Generally, open-pile piers at or below average lake elevations do not unreasonably impede lateral access. Designs that seriously impede lateral access (e.g., rock crib piers) would not be approved.

Another group of comments requested information about the impact of increased recreation and access in the public trust area on the environment. State law requires access to the public trust land, as described above. TRPA’s mandate is to protect and enhance access to the Lake Tahoe Shorezone, including the public trust area, and all of the program alternatives would accomplish this. Alternative 6A, Alternative 6, and the other alternatives to the Shorezone Ordinance amendments do not propose changes to TRPA’s
rules about access to public trust lands, and the program does not encourage or provide increased public access to these areas. Rather, the program would protect and enhance already-existing access opportunities as an implementation of TRPA’s mandate. Increases in recreation, through the addition of boats on the lake as a result of additional pier and buoy permits being granted, have been evaluated in both the DEIS and SDEIS.

**MASTER RESPONSE I: RESOURCE PROTECTION ZONES/SHOREZONE PRESERVATION AREAS**

Several comments were received, including some by state and federal agencies, regarding the creation of resource protection zones (RPZs) around the lake. Refinements to the concept in Alternative 6A include renaming these areas as Shorezone Preservation Areas (SPAs). Comments express concern that, by designating SPAs as areas where Shorezone structures are restricted, TRPA is limiting the opportunities of other agencies to pursue their own mandates to provide recreational access to the public.

The designation of SPAs does not improperly limit the opportunities of other agencies to pursue their own mandates. Some clarification is needed about what activities are restricted within SPAs. As stated in proposed Code Section 50.4.A, TRPA would designate as SPAs large areas that warrant substantial protection from additional Shorezone development that might affect significant biological, scenic, and other natural resource values and low-impact recreation. Such protection is consistent with TRPA’s responsibilities to achieve and maintain Threshold attainment and with Goal #1 of the Conservation Element of the TRPA Goals and Policies: “Provide for the appropriate Shorezone uses of Lake Tahoe … while preserving their natural and aesthetic qualities.” The proposed removal of the current restriction on development in fish spawning habitat has elevated the need to designate areas where natural resource and low-impact recreation values should be substantially protected. It is important to note that for the most part, SPAs are identified in areas where resources already protected under TRPA Thresholds are present, and the proposed development restrictions are consistent with existing policies that protect these resources (see Figure 2-3). For example, currently, a ¼-mile buffer zone protects ospreys and a ½-mile buffer zone protects bald eagles. These existing resource protection policies would not change under the proposed program.

Alternative 6A (proposed Code Section 50.4.B) clarifies that existing structures in these areas can be maintained and expanded, and individual buoys can be added in existing buoy fields; the general rule restricting development within SPAs applies only to construction of new structures (e.g., piers and buoy fields). In addition, because of the sensitivity of natural resources, two areas of private property would be included in SPAs: Tahoe Keys and Glenbrook.

Exceptions, however, may be made for areas under another agency’s concurrent jurisdiction. For instance, shoreline protective structures and minimal pedestrian access structures (e.g., steps and boardwalks) could be allowed. In addition, to the extent now known, TRPA has excluded from SPAs those portions of the Shorezone identified by other public agencies as needed for development in their approved management plans. Furthermore, the intent of TRPA with respect to the establishment of SPAs is not to preclude other agencies from implementing their own legal mandates or resource management policies. Rather, the purpose of the SPA designation is to highlight a general rule of Shorezone protection and limited development for these areas. Therefore, in the event that future planning efforts of another public agency with jurisdiction in a designated SPA (or any other Shorezone area) identifies the need for additional plans or projects to meet its legal mandate, those plans or projects are not precluded and would be prepared in cooperation with TRPA as provided for in existing interagency Memoranda of Understanding (MOUs), would be subject to applicable environmental review and public review requirements, and would be required to demonstrate consistency with the Thresholds as required by the Regional Plan and Code.
MASTER RESPONSE J: LAND USE—ACCURACY OF BUILDOUT NUMBERS

Comments were received that asked whether the SDEIS overestimates the total number of piers that could be built and the total number of buoys that could be placed in the lake at buildout with Alternative 6. The possibility has been raised that eligibility restrictions included in the proposed amendments would reduce the number of possible pier and buoy locations below the numbers indicated in the DEIS and SDEIS.

To assess fully the environmental impacts of the program over the assumed planning time frame, it is important to identify the maximum potential for impacts. For this reason, the eligibility criteria have been applied liberally and the analyses of all alternatives (including Alternative 6A) evaluate the potential environmental impacts of full implementation for that proposed program scenario. TRPA acknowledges that it may be unlikely that every possible pier and buoy would be built, but this possibility is analyzed so that the most conservative range of environmental impacts is disclosed and understood when making the final Shorezone program decision. Even though Alternative 6A takes a different approach to approval of piers and buoys (as does Alternative 6) by considering a prescribed buildout rate over a finite planning period, the most conservative assumption of full implementation has been used for the impacts analyses of these two alternatives as well. With this approach, the environmental analysis of Alternative 6A and Alternative 6 considers an identified maximum of 230 new approved piers (up to 10 private piers each year for 22 years [2006–2027] plus up to 10 public piers), rather than evaluating a maximum capacity based on development of all eligible parcels (as calculated with Alternatives 1 through 5). Before any additional piers or buoys are authorized beyond the 230 piers and 1,862 buoys evaluated in the SDEIS and this FEIS for approval through 2027, additional environmental review and TRPA Governing Board action (through another amendment to the Shorezone Ordinances) would be necessary.

The maximum of 1,862 new permitted buoys takes into account the fact that existing nonpermitted buoys in the lake would be permitted; these buoys are not double-counted (i.e., they are counted as “existing” but not as “additional”). However, the maximum number of additional buoys was calculated based on parcel eligibility and location criteria; that number has not been adjusted down to account for the possible permanent removal of existing buoys that cannot be permitted and must be removed. The programmatic cap on the total number of buoys (6,316) may never be met because, at present, TRPA has no way to identify how many of the existing 4,454 buoys are permitted by TRPA and other agencies with jurisdiction, how many will continue to be eligible for permitting, and therefore how many will be removed under the new permitting requirements. Because of the buoy recognition program that was made part of Alternative 6A based on public input and Governing Board guidance, some pre-existing buoys that might have been removed under other alternatives will now remain in place. Even if, however, TRPA has overestimated the total maximum number of buoys, using a conservative estimate for purposes of the analysis of environmental impacts does not invalidate the analysis.

MASTER RESPONSE K: SPAWNING HABITAT MITIGATION

Some commenters expressed concern that mitigation strategies identified in the SDEIS to address environmental impacts in fish spawning habitat are unproven, and that these strategies cannot be said with certainty to mitigate environmental impacts. The structure of the mitigation program for impacts in fish spawning habitat with Alternative 6A and Alternative 6 provides an adequate level of assurance that mitigation will succeed, as explained below.

Impact 4.6.1 in Chapter 4, “Fisheries,” of the SDEIS describes several restoration techniques that may be used to mitigate impacts on spawning habitat. The identification of a variety of techniques is intended to provide enough flexibility to select the most effective approach for differing circumstances while also making use of restoration techniques that have been used successfully in other aquatic environments. As with most habitat mitigation efforts, pre- and post-project monitoring will be required to allow qualitative assessment of the effectiveness of habitat improvement and usage. This is an example of adaptive
management, allowing adjustments to be made as information about the success of results becomes available.

Proposed Code Section 54.4.F provides four options for mitigating projects in fish spawning habitat; these options provide additional mitigation detail for Impact 4.2.1 in the DEIS and Impact 4.6.1 in the SDEIS. These options include in-kind replacement of spawning gravels at a 1.5:1 ratio, restoration or enhancement of spawning habitat at 1.5:1, funding of a restoration or enhancement project at 1.5:1, and restoration of modified fish habitat areas. An important refinement to the mitigation in Alternative 6A as compared to mitigation provided in earlier alternatives is the recognition that spawning habitat cannot be created in locations where it was not previously present. This fact, which is reflected in the proposed Code and will be considered in implementation of individual Shorezone projects, undercuts the claim that mitigation to restore or create new habitat is “unproven”.

Under the “go slow” development strategy that is the basis of Alternatives 6A and 6, the level of development and the risk of adversely affecting fish spawning habitat are limited by the controlled pace of permit approval. A range of proven techniques have been identified and used in the Tahoe Region and elsewhere to restore fish spawning habitat, and the science of restoration is constantly advancing as new approaches are attempted. Because the fisheries mitigation funds would be reserved specifically for projects in spawning habitat, implementing innovative or experimental mitigation strategies allows TRPA to constantly test new techniques, monitor the results, and incorporate improvements as they become known for fish restoration. This approach allows the use, if appropriate, of restoration techniques that have been successfully used in other aquatic environments and also assists agencies to expand the number of restoration techniques available through adaptive management.

**MASTER RESPONSE L: EIP MITIGATION**

Some comments questioned whether certain mitigation fees are adequately connected to the impacts needing mitigation. Specifically, they questioned whether funds collected for specific Environmental Improvement Program (EIP) categories would be applied to those specific types of projects.

To be included in the EIP, individual projects, or categories of projects, must meet certain criteria; that is, the projects must be shown to assist in meeting specific Threshold goals. The EIP includes tracking requirements so that, after completion of a project, identified EIP measures of progress have been met. In Alternatives 1 through 5, mitigation for some categories of impacts includes payment of mitigation fees to be used in implementing EIP projects that would address Thresholds in those categories. Mitigation fees proposed in Alternatives 1 through 5 include mitigation fees for impacts on air quality, water quality, fisheries, vegetation, soil conservation, and cultural resources.

In response to public comments, the mitigation fee structure was simplified for Alternative 6, and has been reviewed again and is further simplified for Alternative 6A. The simplified fee structure has added assurances that the mitigation fee being collected has a direct and proportional nexus to the impact needing to be mitigated. Applicants proposing to construct new structures in fish spawning habitat would be required to mitigate the area of impact either by funding related individual EIP projects or by contributing funds to the fish restoration program (refer to Master Response K, “Spawning Habitat Mitigation”). New pier applications include a $100,000 fee paid into the LTPAF to address the recreation and public access impacts of these structures (refer to Chapter 2, Master Response A, “Alternative 6A, the Refined Alternative” and Master Response H, “Public Access and Public Trust”). Buoy impacts are addressed through payment of the annual buoy fee; five-eighths of this fee would be used to fund Shorezone EIP projects (for the 5,826 buoys already accounted for in the Regional Plan) and similar projects sponsored through the LTPAF (for new buoys beyond that already-anticipated level of growth).
EIP projects are funded jointly through contributions from federal and state agencies. Much of the mitigation and restoration work that needs to be accomplished in the Shorezone is on private property, and many EIP projects are remediation for past impacts rather than mitigation for future actions (as described above). Mitigation fees for private projects are the only practical means available to TRPA for collecting the private fair share of funding for these projects.

**MASTER RESPONSE M: DRINKING WATER PROTECTION**

Commenters, particularly those reviewing the DEIS, expressed concern that Alternatives 1 through 5 are not adequately protective of drinking water intake lines. Alternative 6A and Alternative 6 include a ¼-mile setback from public drinking water intakes (shown in Figure 2-1 of the SDEIS) and have provisions for increased coordination and collaboration with water purveyors in order to determine and prevent actions that are risks to drinking water sources. As indicated in Letter 05-16 from the North Tahoe Public Utility District, these revisions to the proposed program have been favorably received by the water purveyors.

**MASTER RESPONSE N: WATER QUALITY MITIGATION**

Some commenters questioned the validity of requiring mitigation for the level of water quality degradation that would result from the Shorezone program. Because water quality in Lake Tahoe is relatively good and no water quality standards or public health standards are being violated, mitigation for water quality impacts is believed by some to be unnecessary.

As explained in Master Response C, “Emerald Bay Motorized Boating Rest Day,” because of Lake Tahoe’s ONRW designation by EPA and the accompanying antidegradation standard applicable to that status, TRPA is responsible for maintaining water quality at the lake at summer 2002 levels, regardless of how those levels compare to other state or federal water quality standards. TRPA has jurisdiction over any activity that affects Water Quality Thresholds on the Lake. As such, TRPA has discretion to determine what types of mitigation are adequate to address potential degradation of Water Quality Thresholds. Currently, TRPA is able to show that water quality is improving relative to conditions in summer 2002; however, ongoing monitoring is an important means of assessing this trend and a crucial tool in studying any variation or decline in water quality to identify possible causes. In addition, boating levels (and therefore emissions of water pollutants) are anticipated to increase even without approval of one of the program alternatives for the Shorezone Ordinance amendments. Even though the projected increase in boating activity in the Region is not directly caused by the proposed Shorezone program, TRPA has the authority and is required to identify means of addressing the potential degradation.

Alternative 6A (as with Alternative 6) provides specific strategies to avoid heightened concentrations of water pollutants. Two of the strategies included in Alternative 6A are a reduction in the speed limit of motorized vehicles in Emerald Bay to reduce emissions and the creation of a lakewide boat pollution reduction program that could include elements such as certifying “Tahoe-friendly” boats and their use on Lake Tahoe. With Alternative 6A, TRPA would also maintain (as a contingency under the adaptive management process) the possibility of identifying more stringent measures if, at some future date, ongoing monitoring shows the potential for noncompliance with the ONRW antidegradation standard. Governing Board action would be required for TRPA to revisit and implement any more stringent measure, if water quality conditions indicate the need for such an action.

**MASTER RESPONSE O: ADEQUACY OF MITIGATION**

Comments expressed concern that mitigation identified in the SDEIS and DEIS may not adequately address identified impacts. In particular, comments stated that mitigation for identified impacts must be implemented in advance before any projects or impacts would be allowed to occur to ensure that the
mitigation would be adequate. Another group of comments took the position that environmental mitigation programs, such as the boat sticker program in Alternative 6, described at a general level cannot be presented as adequate mitigation for impacts unless the details of the program have been defined. Other comments were received that questioned whether adequate funding would be available to implement these measures.

The “mitigation first” assertion is unfounded and unprecedented. It is both effective and supported under the law to provide, as in Alternative 6A (as well as all other alternatives 2 through 6) mitigation through environmental protection features that will be implemented as structures are proposed and constructed. The Shorezone Ordinance amendments constitute a comprehensive program of actions, ordinances, environmental protection features, and mitigation measures designed to allow limited and defined amounts of Shorezone development while protecting environmental resources in the Lake Tahoe Region for an extended planning period. The slow rate of new development approval will provide a protective margin of environmental safety. The program has been thoroughly evaluated in the EIS, including definition of performance standards, requirements for monitoring, and establishment of adaptive management processes. This is an appropriate approach for a long-term, large-scale, policy-driven program. Requiring up-front implementation of detailed, site-specific actions is not an appropriate approach to mitigation for a regulatory program that would necessarily encompass a broad range of projects, sites, and possible changes in conditions over its effective time frame.

The adaptive management element of Alternative 6A allows for periodic evaluation of the effectiveness of the environmental protection features through a comparison of ongoing monitoring results against identified Environmental Thresholds. TRPA currently evaluates the status of attainment and maintenance of its Thresholds every 5 years; once the Shorezone Ordinance amendments are adopted, mitigation and environmental protection features implemented as part of the program would be included in the 5 year review process (along with other ongoing TRPA programs). The Threshold review for the Shorezone program would involve consideration of performance criteria, monitoring, and adaptive refinement of density and design criteria in 5-year increments until the planning horizon is reached. This adaptive approach to monitoring and mitigation would protect Thresholds and ensure that adverse environmental effects, if any, are identified and corrective measures taken before they could reach a significant level. For example, if it were determined that additional piers were to have an adverse effect on the public trust, as suggested in this comment, the adaptive management process would be used to revise the Shorezone density and design standards accordingly. If, based on ongoing monitoring, it is evident that performance standards are not being achieved, TRPA will make adjustments as necessary, including the possible deferral of additional approvals and implementation of new or modified mitigation measures.

Funding sources for the various environmental protection features have been identified for Alternative 6A (similar to Alternative 6). The primary sources of funding are the following:

- $100,000-per-pier LTPAF fee to mitigate recreation and public access impact of pier development;
- annual $175-per-buoy fee, of which 1/4 would be allocated for watercraft and buoy enforcement, 1/8 for water quality and air quality monitoring, and 5/8 for the Shorezone environmental improvement fund;
- $5,000 fisheries mitigation fee for each pier, slip, or boat ramp expansion or modification in fish spawning habitat, funding site-specific mitigation in accordance with EIP projects for impacts on fish spawning habitat.

Table 2-5 in Chapter 2 provides an explanation of all fees associated with Alternative 6A and how those fees would be used.
With respect to the specificity of mitigation, the details of mitigation at an appropriate programmatic level have been adequately defined. For example, in response to public comments, the originally proposed boat sticker program is being better defined. TRPA completed a boat survey in summer 2006 that identified the nature and extent to which boat operation may impair water quality and increase noise levels. A specific program is being crafted to address the most critical issues at the level of the individual boat as determined by the survey, and to address the antidegradation standard for an ONRW. A proposed boat pollution reduction program will be brought forward for Governing Board consideration and approval before the start of the 2007 boating season. See also Master Response E (“Boat Sticker Program”); Master Response K (“Spawning Habitat Mitigation”); and Master response L (“EIP Mitigation”).

MASTER RESPONSE P: SCENIC QUALITY—SHORELAND ORDINANCES AND LANDSCAPE CHARACTER TYPES

Some commenters expressed concern that Alternative 6 did not incorporate the Shoreland Scenic Ordinances and that the two systems (the Shorezone Ordinances and the Shoreland Scenic Ordinances) are not coordinated and may, in some instances, conflict.

Alternative 6A (and Alternative 6) integrates the Shoreland Scenic Ordinances with the Shorezone scenic system and landscape character types. Refer to Chapter 2 and Master Response A for more information about Alternative 6A. Also see Figure 2-5, which shows Shorezone character types as defined for Alternative 6A.

MASTER RESPONSE Q: SCENIC QUALITY MITIGATION AND REVIEW

Many letters pointed out the need for flexibility in pier design and scenic mitigation compared to the standards described in the DEIS and SDEIS for Alternatives 1 through 6. Concern was expressed about whether scenic mitigation would adequately compensate for the addition of a large number of new piers, particularly as described with Alternative 2 in the DEIS.

Alternative 6A was refined in response to these concerns. The scenic requirements of Alternative 6A provide more flexibility to design piers, add boat lifts, and mitigate scenic impacts. For example, mitigation is required to be on-site (that is, on the affected parcel) for the addition of a pier, with a reduction in visual mass or an increase in visual contrast; mitigation may be implemented off-site (i.e., in the adjacent shoreland area or elsewhere in the same Shorezone unit) for the addition of a boat lift. Alternative 6 and 6A remove the requirement to conduct a baseline scenic assessment to mitigate the scenic impacts of buoy placement; instead, these impacts would be mitigated through the Shorezone EIP projects and LTPAF projects funded by annual buoy fees. Refer to Chapter 2 and Master Response A for additional information about these requirements.

MASTER RESPONSE R: LIMIT TO NUMBER OF PUBLIC PIERS

With Alternative 6, as described in the SDEIS, TRPA would limit the number of public piers allocated over the implementation period to no more than 10. Many commenters, including some public agency representatives, questioned the reasoning behind this limitation in light of TRPA’s responsibility to maintain and improve public access to Lake Tahoe.

In response, Alternative 6A has been refined to allow the allocation of at least 10 public piers. The initial allocation of 10 public piers would be separate from the private (up to 10-per-year) allocation, with no limit on the number of public piers being approved per year. If and when all 10 of the allocated public piers are built, up to one public pier per year may be allocated out of the private allocation.
MASTER RESPONSE S: CHANGES TO PROPOSED CODE FROM ALTERNATIVE 2

During the public review period on the DEIS, TRPA had identified Alternative 2 as the preferred alternative and commenters reviewed the proposed Code language for the preferred program as well as the environmental document and provided suggestions on revisions and improvements to Code language. Based on public response, comments, and Governing Board direction following the DEIS, TRPA has now identified Alternative 6A as the preferred program alternative. The Code language of Alternative 2 has been revised to reflect and track to the provisions of Alternative 6A. For this reason, many of the specific comments on Alternative 2 Code language no longer apply to the program as proposed in Alternative 6A. Where possible, responses to these comments reference the new or revised proposed Code language; however, in some instances the comment no longer applies and this is stated in the response.

MASTER RESPONSE T: LAKE TAHOE PUBLIC ACCESS FUND

Questions have been received through the public review process on the SDEIS and in public meetings regarding TRPA’s basis for requiring payment of the Recreation Threshold fee, which in Alternative 6A has been renamed as the Lake Tahoe Public Access Fund (LTPAF). Some commenters have requested additional information about the fee, such as the administration and goals of the fund.

As explained in Master Response H, “Public Access and Public Trust,” TRPA has authority and responsibilities concerning access to the Shorezone independent of the existence of the public trust. The 1987 Regional Plan, and specifically the TRPA Recreational Threshold, directs TRPA to enhance access to the Lake Tahoe Shorezone. As set forth in the Recreation Element of the TRPA Goals and Policies:

It shall be the policy of the TRPA Governing Body in development of the Regional Plan to preserve and enhance the high quality recreational experience including preservation of high-quality undeveloped shorezone and other natural areas. In developing the Regional Plan, the staff and Governing Body shall consider provisions for additional access, where lawful and feasible, to the shorezone and high quality undeveloped areas for low density recreational uses.

The Conservation Element of the Goals and Policies provides similar language. Goal 1, Policy 13 is entitled, “Allow access to shorezone where lawful and feasible,” and explains that “[i]mproved public access to the shorezone should be provided through public lands from expanded public ownership.” Therefore, the TRPA Regional Plan provides for TRPA to enhance recreational access opportunities along the Lake Tahoe shoreline, including the area between the high- and low-water marks where piers (both private and public) are constructed.

TRPA has identified adverse environmental impacts associated with the construction of new structures (primarily piers and buoys) in Lake Tahoe. These structures can obstruct lateral public pedestrian access in the area between high and low water. Pier structures can limit or alter the ability of individuals to engage in forms of recreation dependent on nearshore access, including swimming, canoeing, kayaking, and top-line fishing, and to navigate the nearshore area where public access is controlled or held in trust under state laws. The LTPAF would assist TRPA in meeting the Recreation and Public Access Thresholds by providing the means to contribute financing toward significant environmental projects in conjunction with other public agencies in the Lake Tahoe Region.

Alternative 6A would require that each selected pier applicant pay a fee into the LTPAF, beginning in 2006 at $100,000, to assist TRPA in mitigating adverse impacts of piers on recreation and public access. Existing public piers that are converted to private use must also pay the required fee for new private piers. The LTPAF would be a separate fund administered by TRPA with guidance from an advisory board consisting of representatives from groups interested in protecting public access and recreation: the executive director of TRPA and a representative of the environmental community, Lakefront property
owners, the California Tahoe Conservancy, and the Nevada Department of Conservation and Natural Resources Division of State Lands. This advisory board would make annual recommendations to TRPA on projects that should receive LTPAF funding, based on priorities that would be established by the board beforehand in relation to TRPA’s recreation and public access goals. These priorities would focus on, but would not be limited to:

(a) payments to property owners to remove an unwanted pier (which would also require deed-restricting the parcel against any future piers);

(b) payments to property owners to deed-restrict parcels of land for any future piers (with such a restriction being subtracted from the total littoral length for calculation of the allowable density of a shoreline unit);

(c) funds to facilitate acquisition by cooperating public agencies (such as the U.S. Forest Service) of public access to the Lake and lands on the Lake;

(d) payments to construct or modify public access facilities, with emphasis on nonmotorized recreational access; and

(e) restoration of backshore impacts on public lands.

Except for payments identified in (a) and (b), the funds deposited in the LTPAF would be available for use only by public agencies. Because the fund would be administered by TRPA, donations to the fund (aside from the required new pier fee described below) may be accepted as tax-deductible contributions.

As described in Chapter 2, a primary objective of this fund is to offset adverse recreational and public access impacts by creating additional access to the Lake Tahoe Shorezone through devices such as eliminating existing structures and facilitating acquisition of property for dedication to public access. A reasonable connection can be made between pier construction and the requirement of a fee payment such as the LTPAF fee. The amount of the fee has been based on the actual costs to provide equivalent replacement value for recreation and public access by removing a pier from a developed parcel and restricting development on the parcel with an easement (see Appendix 4, “Lake Tahoe Public Access Fee”).

**MASTER RESPONSE U: ONRW DESIGNATION**

Comments were received, following publication of both the DEIS and SDEIS, questioning TRPA’s approach to compliance with the antidegradation standard required as a result of Lake Tahoe’s status as an ONRW by EPA. To clarify the rationale for TRPA’s approach, this response provides additional background and explanation about the ONRW designation and EPA’s water quality requirements.

**FEDERAL ANTIDEGRADATION POLICY**

Federal water quality standards were codified in 1968 and 1975 in EPA’s Water Quality Standards regulation (Title 40, Section 130.17 of the Code of Federal Regulations [40 CFR 130.7], Volume 40, page 55340-41 of the Federal Register [40 FR 55340-41]; promulgated again at 40 CFR 131.12, 48 FR 51400) and carried forward into the Clean Water Act and related standards (USEPA, 1993). Antidegradation requirements and methods for achieving those requirements are minimum conditions to be included in a state’s water quality standards. The concept of antidegradation was originally based on the legislative intent for federal water quality regulation to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters” (40 CFR 101[a]).
In Section 131.12(a), EPA has established three tiers of water quality protection within the antidegradation policy:

► Tier 1 standards protect “existing uses” and provides a minimum level of protection to all waters.

► Tier 2 standards apply to high-quality waters and require that the quality of those waters must be protected to remain at a “fishable/swimmable” level. (Some states have established a stricter interpretation of the Tier 2 antidegradation requirements to protect waters of very high quality; EPA refers to this as Tier 2½.)

► Tier 3 standards apply to waters designated as ONRWs and provide stringent regulations for water quality to ensure that the “essential character or special use that makes the water an ONRW” is protected.

EPA’s antidegradation policy for water quality in ONRWs prohibits the lowering of water quality in waters with the highest quality or are considered to have “exceptional ecological significance.” EPA interprets the antidegradation policy to mean that no new or increased discharges are permitted that would lower the water quality of ONRWs or their tributaries. The policy “permits States to allow some limited activities which result in temporary and short-term changes in the water quality of ONRW. Such activities must not permanently degrade water quality or result in water quality lower than that necessary to protect the existing uses in the ONRW.” Although EPA recognizes that this policy is broad and difficult to define, the Water Quality Standards Handbook states that “in rather broad terms, EPA’s view of temporary is weeks and months, not years” (USEPA, 1993).

**California Nondegradation Policy**

In addition to EPA’s federal antidegradation standards, each state must develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for implementing the policy through the water quality management process. Each state’s antidegradation standards must be consistent with the federal policy, although they may be more restrictive. The California State Water Resources Control Board has established standards in its Statement of Policy with Respect to Maintaining High Quality Waters in California (23 CCR 2900), also known as Resolution 68-16. The State Water Resources Control Board has determined that Resolution 68-16 incorporates the federal antidegradation policy (Order No. 86-17 and Lahontan Regional Water Quality Control Board [RWQCB] 2001).

California’s nondegradation objective applies to groundwater and surface water whose quality meets or exceeds water quality objectives. Two conditions must be met before the quality of high-quality waters may be lowered by waste discharges. First, the state must determine that lowering the quality of high-quality waters:

► will be consistent with the maximum benefit to the people of the state,

► will not unreasonably affect present and anticipated beneficial uses of such water, and

► will not result in water quality less than that prescribed in state policies (e.g., water quality objectives identified in water quality control plans).

Second, any activities that result in discharges to high-quality waters must (a) meet waste discharge requirements that will result in the best practicable treatment or control necessary to avoid pollution or nuisance, and (b) maintain the highest water quality consistent with the maximum benefit of the people of the state.
NEVADA ANTIDEGRADATION POLICY

Similar to the California State Water Resources Control Board in California, the Nevada Division of Water Resources, Department of Conservation and Natural Resources has responsibility for implementing water quality standards in Nevada (Nevada Division of Water Resources). Antidegradation requirements (NRS 445A.565) require that waters of higher quality be protected to maintain their higher quality, unless lower quality is shown to be justifiable because of economic or social considerations (normal agricultural practices are excluded from this standard). Projects that would involve new or increased sources of pollution to high-quality waters must provide the highest and best degree of waste treatment available for point sources and reasonable measures, methods of operation, or practices to prevent, eliminate, or reduce water pollution from nonpoint sources.

IMPLEMENTATION OF ANTIDEGRADATION POLICIES IN THE LAKE TAHOE BASIN

For Lake Tahoe, the ONRW antidegradation standard requires that baseline water quality be maintained or improved compared to best-water-year baseline conditions. Since the complete implementation of the ban on two-stroke carbureted boat engines (October 2001), water quality has improved with respect to hydrocarbon emissions. As a result, the baseline for measurement of water quality has been adjusted to summer 2002, approximately one year after the final phase ban went into effect.

As described in the DEIS and the SDEIS, scientific evidence, such as evidence from the joint Tahoe Research Group–UNR–USGS studies (Miller et al., 2003; Allen and Reuter, 2000), suggests that hydrocarbons from fuels have occasionally reached detectable levels in Emerald Bay, compared to nondetectable amounts of these chemicals during most monitoring events and in most other areas of the lake. This increase in pollutants is likely the result of multiple causes, including an ongoing increase in the number of motorized boats and personal watercraft, stormwater runoff, and other sources. As described in the SDEIS, Alternative 6 (and Alternative 6A as described in this FEIS) would increase the number of moorings (piers and buoys), thereby increasing the capacity for boats on the Lake. Because of the antidegradation standard, TRPA is required to identify and evaluate management strategies that would not conflict with the ONRW designation.

The ONRW boat pollution reduction program incorporated into Alternative 6A (identified in the DEIS and SDEIS as the ONRW boat sticker program) would serve this purpose. A comprehensive program that targets boat pollution sources would enable TRPA to:

- more closely monitor and enforce its existing standards regarding appropriate engine types, engine emissions, and other boating features that may contribute to water quality degradation;
- establish new standards and practices that would reduce pollutant emissions, such as required installation of bilge sponges and inspection for exotic aquatic taxa and reduced speed limits in confined areas such as Emerald Bay; and
- adjust program elements through adaptive management to focus on the most effective features as these change throughout the life of the Shorezone Ordinance program.

TRPA is establishing the focal elements of the boat pollution reduction program in accordance with the results of the 2006 summer boating survey. The Shorezone program would not be solely responsible for the anticipated increase in boats in the Tahoe Region; an increase in boats is an observed baseline trend, with or without implementation of revised Shorezone Ordinances. Therefore, the effectiveness of the boat pollution reduction program would not require quantification of emissions before and after implementation of the Shorezone Ordinance amendments. In addition, discussions between TRPA and Lahontan RWQCB indicate that the antidegradation policy does not imply an absolute ceiling on
pollutant emissions at the summer 2002 level; seasonal fluctuations are understood to occur due to Lake Tahoe being an ONRW that is also adjacent to developed urban areas that are heavily visited tourist destinations. Taking these factors into account, and accounting for the adaptive management process by which all elements of Alternative 6A would be implemented, the standard for successful performance with regard to the antidegradation policy for water quality is continued annual improvement for several constituents (hydrocarbons, sediment, PAHs) rather than a daily or short term comparison against each numerical value.

For further information about the boat pollution reduction program, refer to Master Response H. Also refer to the water quality section of Chapter 3.

4.3 LIST OF COMMENTERS

The following tables identify the public agencies, organizations, and individuals who commented on the SDEIS (Table 4-2) and DEIS (Table 4-3). The tables include comments received in writing, by email, and at public hearings. The comments are identified by a numerical combination that corresponds to their responses. Responses to comments are provided in Section 4.4.

4.4 COMMENTS AND RESPONSES TO ENVIRONMENTAL ISSUES

This section of the FEIS contains comment letters received during the 60-day public review period for the Lake Tahoe Shorezone Ordinance Amendments Project SDEIS (July 5–September 8, 2005) and the 90-day public review period for the DEIS (July 1–September 28, 2004). Public hearings were also held to receive comments on both documents. Hearings on the SDEIS were held before the TRPA Advisory Planning Commission on August 15, 2005, and the TRPA Governing Board on August 24, 2005. Hearings on the DEIS were held before the Advisory Planning Commission, and the Governing Board during the summer of 2004. In addition, a Governing Board meeting was held to address refinements to Alternative 6A on May 25, 2006, and public comments were taken. This section also contains summaries of the comments received at these public hearings.

Written, emailed, or spoken comments received on the SDEIS and DEIS and the responses to significant environmental issues contained in those comments are provided in this section. Each comment letter is reproduced in its entirety and is followed by the responses to the letter. A summary of each substantive public hearing comment and a response is provided. Where a commenter has provided multiple comments, each comment is indicated by brackets and an identifying numerical notation in the margin of the comment letter or hearing summary.

In some instances, responses to comments may warrant modification to the text of the SDEIS or DEIS. In those cases, information that is to be deleted is shown in strikethrough (strikethrough) and additions are shown in underline (underline). All of these text changes result in environmental impacts having a less-than-significant environmental effect in relation to the impacts under the original DEIS and SDEIS.