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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900  
Las Vegas, Nevada 89101

August 23, 2021

Via U.S. Mail and Electronic Mail

Jeanne Shizuru

[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: Tahoe Regional Planning Agency  
Open Meeting Law Complaint, O.A.G. File No. 13897-368**

Dear Ms. Shizuru:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging a violation of the Open Meeting Law (“OML”) by the Tahoe Regional Planning Agency. (“TRPA”). Your Complaint alleges that the TRPA did not provide you with adequate notice of their March 25, 2020 meeting, that it did not allow sufficient public participation during the meeting, and that it improperly distributed supporting material to the Governing Board.

The OAG has statutory enforcement powers under the OML and the authority to investigation and prosecute violations of the OML.<sup>1</sup> The OAG’s investigation of the Complaint included a review of the following: the Complaint including attachments, the Response to the Complaint from Tahoe Regional Planning Agency including attachments, the Tahoe Regional Planning Compact (“Compact”), the TRPA Rules of Procedures, applicable Nevada statutes, and applicable case law.

**FACTUAL BACKGROUND**

On March 27, 2020, you filed your Complaint stating your concerns that the TRPA violated the OML. You alleged that (1) the TRPA did not

<sup>1</sup> See NRS 241.037; NRS 241.039 and NRS 241.040.

provide you with adequate notice of their March 25, 2020 meeting, (2) that it did not allow sufficient public participation during the meeting, and (3) that it improperly distributed supporting material to the Governing Board. On July 13, 2020, the TRPA responded that it was not subject to the OML as the compact which created the TRPA is based on federal law, and federal law preempts Nevada state law. The TRPA additionally asserted that it did not violate the OML.

## **DISCUSSION AND LEGAL ANALYSIS**

The Open Meeting Law governs meetings, gatherings, decisions, and actions obtained through the collective consensus of a quorum of the public body membership.<sup>2</sup>

### **1. The TRPA is Subject to the OML**

The Tahoe Regional Planning Agency was created by an Act of Congress through the ratification of the Tahoe Regional Planning Compact. The TRPA states that the Tahoe Regional Planning Compact is federal law which preempts Nevada law, including the OML.<sup>3</sup> In support of this claim, the TRPA cited to League to Save Lake Tahoe v. Tahoe Regional Planning Agency, (7 F.2d 517 (9<sup>th</sup> Cir. 1974)); Lake Tahoe Watercraft Recreation Ass'n v. Tahoe Regional Planning Agency, 24 F.Supp.2d 1062, 1068 (E.D. Cal.1998). These cases confirm that the Tahoe Regional Planning Compact constitutes federal law. The Court in Lake Tahoe Watercraft Recreation Ass'n directly addressed this issue when it stated that “To the extent that the Ordinance conflicts with state law, the Ordinance preempts state law.” Lake Tahoe Watercraft Recreation Ass'n v. Tahoe Reg'l Planning Agency, 24 F. Supp. 2d 1062, 1069 (E.D. Cal. 1998). This Court further explained that “the only exception to this rule is where a compact specifically reserves the right of the state to impose state law on the compact organization. . . . The Compact does not reserve rights of the states which have any bearing on the substance of the Ordinance.” Lake Tahoe Watercraft

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<sup>2</sup> See also *Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003) (collective process of decision making must be accomplished in public).

<sup>3</sup> Federal preempts state law when Congress has “adequately’ indicated an intent to occupy the field of regulation’ or if the state law conflicts with federal law.” O’Hara v. Teamsters Union Local # 856, 151 F.3d 1152, 1160–61 (9<sup>th</sup> Cir.1998) (citing Brown v. Hotel & Rest. Employees & Bartenders Int’l Union Local 54, 468 U.S. 491, 500–01, 104 S.Ct. 3179, 82 L.Ed.2d 373 (1984)).” Lake Tahoe Watercraft Recreation Ass'n v. Tahoe Reg'l Planning Agency, 24 F. Supp. 2d 1062, 1069 (E.D. Cal. 1998).

Recreation Ass'n v. Tahoe Reg'l Planning Agency, 24 F. Supp. 2d 1062, 1069 (E.D. Cal. 1998). In addition, the League to Save Lake Tahoe Court also stated that that an interstate compact was a “statute of the United States.” League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency, 507 F.2d 517, 522 (9th Cir. 1974).

Despite being federal law, the Compact has reserved rights of the states with regard to the OML. Article III (d) of the Tahoe Regional Planning Compact states that “All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held.” This section of the Compact clearly reserves to the State of California and the State of Nevada the right to ensure that the meeting is “open to the public.” As the Compact, requires that the greater requirement of the two states be used, the Nevada requirements must be met as they are either (a) the greater requirement of the two states’ laws, or (b) the Nevada requirements fall below the California requirements in which case the Nevada requirements must be met as well as the California requirements. The State of Nevada has codified its requirements for public meetings in NRS 241, commonly known as the OML.

## **2. The TRPA Did Not Violate the OML**

Your complaint makes three claims of violations of the OML by the TRPA: (1) proper notifications were not given, (2) the public was not sufficiently allowed to participate, and (3) supplementary information was provided to the Governing Board improperly.

### **a. Improper Notification**

In your first claim, you state that the TRPA did not provide adequate information for the public to log into the Webinar and went to live streaming audio only. You then state that this was a violation because the notification provided by the TRPA did not provide details regarding how to find or access the Webinar meeting.

The notice requirements of the OML are found in NRS 241.020, which states, in part: <sup>4</sup>

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<sup>4</sup> Due to the COVID-19 pandemic, the physical location requirement for public meetings was suspended under the Governor’s Emergency Directive 006. Under the Emergency Directive, NRS 241.020(3)(a)’s location requirement has been interpreted by the OAG as requiring information on how the public could access the virtual meeting.

3. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

- (a) The time, place and location of the meeting.
- (b) A list of the locations where the notice has been posted.
- (c) The name and contact information for the person designated by the public body from whom a member of the public may request the supporting material for the meeting described in subsection 7 and a list of the locations where the supporting material is available to the public.

The TRPA published a March 18, 2020 meeting notice which included instructions how members of the public could observe the meeting. The TRPA provided two ways to observe the meeting: via the GoToWebinar platform, or as a live-stream. Such notice satisfies the requirements of the OML, and so the TRPA did not violate the notice requirements of the OML.

### **b. Insufficient Public Participation**

In your second claim, you state that because the TRPA made a last-minute change to one-way live audio streaming the meeting and canceled the Webinar format, the public was not able to give public comment as required by the OML. The public comment requirements of the OML are found in NRS 241.020(3)(d)(3), which states:

- (3) . . . Comments by the general public must be taken:
  - (I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or
  - (II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

↳ The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No

action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

The TRPA notice included a description of how to provide public comment virtually.<sup>5</sup> Specifically, the notice stated that the parties should access [www.trpa.org](http://www.trpa.org) for instructions on how to provide public comment. In addition, during the March 25, 2020, meeting, the TRPA explained how to provide public comment during item II on its agenda. This description included where to go to make public comment on the TRPA's website. The TRPA then held public comment at the beginning of the meeting (agenda item IV) and again before the adjournment of the meeting (agenda item XIII) in accordance with NRS 241.020(3)(d)(3)(II).<sup>6</sup> Based on the significant public comment provided at the meeting, it appears the instructions provided by the TRPA were sufficient and did not hinder public access and public comment. As the public comment periods complied with the OML, the TRPA did not violate the public comment period requirements of the OML.

### **c. Improper Distribution of Supplementary Information to the Governing Board**

In your third claim, you state that the TRPA did not provide the Errata document to the public 3 days before the meeting. You further state that this was a violation because the information was not provided 3 days in advance and that the public would not know that it was posted on the website. The support materials requirements of the OML are found in NRS 241.020(9), which states:

9. Unless the supporting material must be posted at an earlier time pursuant to NRS 288.153, the governing body of a county or city whose population is 45,000 or more shall post the supporting material described in paragraph (c) of subsection 7 to its website not later than the time the material is provided to the members of the governing body or, if the supporting material is provided to the members of the governing body at a meeting,

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<sup>5</sup> The section of the OML requiring an in-person location for people to attend to be able to make public comment was suspended by the Nevada Governor's Emergency Directive 006. This Directive required public bodies to provide a means for the public to comment and to post that means on its public notice.

<sup>6</sup> The TRPA actually provided several other public comment periods in addition to those at the beginning and the end of the meeting.

not later than 24 hours after the conclusion of the meeting. Such posting is supplemental to the right of the public to request the supporting material pursuant to subsection 7. The inability of the governing body, as a result of technical problems with its website, to post supporting material pursuant to this subsection shall not be deemed to be a violation of the provisions of this chapter.

The OML does not require that supporting materials be provided to the public 3 days before the meeting.<sup>7</sup> Supporting materials need only be posted to the public body's website when the supporting materials are made available to the members of the public body. In this case, the TRPA uploaded the Errata in question the day before the meeting, at the same time it provided the supporting materials to the members of the TRPA. As this complied with the OML, the TRPA did not violate the supporting material requirements of the OML.

### **CONCLUSION**

Based on a review of the Complaint including attachments, the Response to the Complaint from the Tahoe Regional Planning Agency including attachments, the Tahoe Regional Planning Compact, the TRPA Rules of Procedures, applicable Nevada statutes, and applicable case law, the OAG has determined that the TRPA's actions did not violate the OML. As such, the OAG will be closing its file in this matter.

AARON D. FORD  
Attorney General

By: David M. Gardner  
DAVID M. GARDNER  
Senior Deputy Attorney General

CC: John L. Marshall, TRPA General Counsel

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<sup>7</sup> The notice requirement found in NRS 241.020 states that the notice must be provided three days in advance but supporting materials are not included.

Jeanna M. Shizuru  
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CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of August 2021, I served the foregoing letter by depositing a copy of the same in the United States mail, postage prepaid, and by e-mail addressed as follows:

Jeanne Shizuru

[REDACTED]  
[REDACTED]  
[REDACTED]

I served the foregoing letter by depositing a copy of the same in the United States mail, postage prepaid, addressed as follows:

John L. Marshall, TRPA General Counsel  
P.O. Box 5310  
Stateline, NV 89449-5310

/s/ Debra Turman  
An Employee of the  
Office of the Attorney General  
State of Nevada