TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that the Advisory Planning Commission of the Tahoe Regional Planning Agency will conduct its regular meeting at 9:30 a.m. on Wednesday, August 13, 1986, in the TRPA office, 195 U.S. Highway 50, Zephyr Cove, Round Hill, Nevada. The agenda for said meeting is attached hereto and made a part of this notice.

August 4, 1986

By: William A. Morgan
Executive Director
Tahoe Regional Planning Agency
MEETING AGENDA

I CALL TO ORDER AND DETERMINATION OF QUORUM

II APPROVAL OF AGENDA

III DISPOSITION OF MINUTES

IV APPEALS

A. Albert G. Pearson, Appeal of Staff Determination of Permit Expiration for Single Family Dwelling, 800 Jennifer, Washoe County APN 125-201-11 (TRPA File #81-1140)

V PLANNING MATTERS

A. Status of Supplement to the EIS for Regional Plan Revisions, Revisions to the Regional Plan Goals and Policies, and Ordinance Adopting Regional Plan Revisions

B. Transportation Planning Status Report

C. Presentation, Administrative Draft EIS, Ski Incline Master Plan

D. Review of Proposed Outline, Code of Ordinances

E. Schedule of Ordinance Committee Meetings

F. Status of Proposed Residential Foundation Ordinance

VI REPORTS

A. Staff

B. Legal Counsel

C. Public Interest Comments

D. APC Members

VII RESOLUTIONS

VIII CORRESPONDENCE

IX PENDING MATTERS

X ADJOURNMENT
MEMORANDUM

August 5, 1986

To: Advisory Planning Commission

From: Susan Scholley, Legal Counsel

Subject: Albert G. Pearson, Appeal of Staff Determination of Permit Expiration for Single Family Dwelling, 800 Jennifer, Washoe County APN 125-201-11 TRPA File #81-1140)

The applicant, Albert G. Pearson, is appealing a staff decision that the approval for his single family residence expired. The staff decision was based on the fact that the approval expired on June 23, 1985, and on the determination that construction has not commenced and been diligently pursued.

Background:

1. Pearson received case-by-case approval for a single family residence at the June 23, 1982 Governing Board meeting.

2. Pearson paid mitigation fees and posted a security in late 1983, and received a TRPA permit which stated that the permit expired on June 23, 1985.

3. In May of 1985 Pearson began work on the project. Materials submitted by the applicant's representative are attached. The materials generally describe the work done on site (Exhibit A), the number of days worked (Exhibit B), and the Pearson permit conditions (Exhibit C).

4. In May of 1986 a TRPA staff person inspected the site. Exhibit D is a copy of his report.

5. After reviewing the materials submitted by Mr. Pearson's representative, Wayne Ford, and researching the interpretation of the phrase "commencement of construction," determination was made that the Pearson permit had expired. A copy of that letter is attached as Exhibit E.

Case Analysis:

The phrase "commencement of construction," is reasonably susceptible of more than two meanings. Arguably, "commencement of construction" could refer to preparation of drawings and financing; it could refer to physical site preparation; or it could refer to starting work on the permitted structure or
structures. "Construction" and "construct" are simple terms, but are potentially so broad that their ordinary meanings give little direction. For example,

"1. the act or art of construction. 2. a structure..."
(Random House Dictionary, 1st ed. 1978.)

"To build; erect; put together; make ready for use. To adjust and join materials, or parts of, so as to form a permanent whole. To put together constituent parts of something in their proper place and order [Citations omitted]. (Blacks Law Dictionary, 4 ed. rev. 1968)

"1. Process or art of constructing; act of building; erection; act of devising and forming; fabrication; composition; also a thing constructed; a structure." (Webster's New International Dictionary, 2nd Ed. 1959)

Therefore, it is appropriate to look to the legislative history and objectives of the 1980 compact amendments which added Article VI(p).

Legislative History:

Since California does not generally prepare records of its legislative committees or sessions, I have not requested a search of the archives for any stray notes or reports that may have survived. Nevada keeps thorough minutes and records, and since the 1980 Compact was very much a bi-state negotiation effort, the Nevada records include some California correspondence and reports.

However, a review of the Nevada legislative history turns up very little inasmuch as Article VI(p) was not a particularly controversial provision. The only pertinent remarks were made in committee meetings by Senator Joe Neal and Senator Sloan. Those remarks are attached as Exhibits 1 and 2 respectively.

There is no federal legislative history relating to Article VI(p).

About the only conclusion that can be drawn is that the legislature wanted to avoid projects being started ("laying a few bricks") and then discontinued. The addition of a diligent pursuit requirement and the discussion it engendered, seem to imply that "construction" referred to physical work and not to planning or financial commitments, but it is not clear.

Savings Clause:

Although the legislative history does not shed much light on the precise meaning of the term "construction," the language of Article VI(p) reflects a general
intent that Article VI(p) serve as a "savings clause." Saving clauses are legislative exemptions from the provisions of a new zoning ordinance.

The rights granted by an exemption are not, strictly speaking, vested rights. They are only a right to acquire vested rights by subsequent construction in accordance with the terms of the exemption provision. Usually, an exemption provision of this kind is conditioned upon construction being commenced within a specified period after the permit is issued, and its being diligently prosecuted..." (Rathkopf, Law of Planning and Zoning, §50.02.)

The similarity of Article VI(p) to a savings clause is apparent. Article VI(p) "grandfathered" in projects approved by TRPA prior to the effective date of the 1980 Compact amendments. Given the fact that most TRPA approvals, prior to the 1980 compact amendments, had no expiration dates, it is obvious that Article VI(p) was meant to close off old approvals and give them a chance to vest their approvals by commencing construction and diligently pursuing the work. Article VI(p) also clearly extended any pre-amendment approvals which might have had expiration dates and operated a savings clause for that group also.

Thus, in order to interpret "commencement of construction," we may look to the case law interpreting similar language and provisions in other jurisdictions. Since California and Nevada follow the majority rule regarding vested rights, interpretations by courts in states which also follow the majority rule would be most instructive.

A review of state court decisions reveals that the term "construction" in a savings clause has not generally been held to include site preparation (grading), or demolition of existing structures.

Illinois: "Further, we believe that the ordinary and accepted meaning of the words 'construction' or 'to construct' signifies actual activity in erecting or putting up a building...We do not believe the City,..., had in mind plaintiff's idea that any work upon the general construction project would suffice." First National Bank & Trust v. City of Rockford, 361 N.E. 2d 832, 841 (Ill. 1977)

Massachusetts: "This site preparation activity [grading and excavation] would not qualify as construction..." Murphy v. Board of Selectmen of Manchester, 298 N.E. 2d 885, 887 (Mass. 1973)

1. The majority rule is that in order to acquire a vested right, one must obtain a permit and substantially rely thereon.

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Memo to APC
Pearson, Appeal of Staff Determination
Page Four

Missouri: "Construction must be distinguished from 'demolition and site preparation'". Geneva Inv. Co. v. City of St. Louis, 87 F 2d 83 (6th Cir. 1937)

Arizona: Citing dictionary definitions of "construction," the court held that...These definitions appear sufficient to indicate that something more than mere preparatory work...is necessary to constitute "construction...Construction implies the building or erection of some object, not the mere planning or developmental work requisite therefor." State of Ariz. v. U.S. Land Co., 412 P. 2d 736 (Ariz 1966)

The majority of the cases involving interpretation of the term "construction" in a savings clause hold construction to be the act of erecting the actual structure permitted and not site preparation.

The proposed Urban Land Institute definition of "commencement of construction" is in accord:

"Commencement of Construction: Actual construction on a parcel of land in accordance with a permit issued by the [applicable jurisdiction] if the cost of the physical improvements completed constitutes at least 25 percent of the projected cost of the development or if all required foundations are completed and are not usable for any other form of development except that authorized by the issued permit." C. Siemon and W. Larsen, VESTED RIGHTS: Balancing Public and Private Development Expectations, 1982, at 76.

Vested Rights:

The consistency of Article VI(p)'s role as a savings clause with the California/Nevada concept of a vested right is also important. As stated previously, both California and Nevada follow the majority rule which requires substantial reliance on a building permit in order to justify a finding of vested rights.

The case law on what constitutes substantial reliance on a building permit is scattered and no clear rules emerge. But the requirement that the reliance be "substantial" logically restricts the finding to cases where, if only site preparation has occurred, the activity was substantial. Unless the excavation, grading, or other site preparation is unusually extensive or expensive, few single family homes would pass the substantial reliance test on the basis of the cost of grading a driveway, clearing the lot of trees, or excavation for a foundation trench.

Clark County's code definition of "construction" illustrates the basic premise:
"actual placing of construction materials in their permanent position fastened in a permanent manner..."

American Law Reports has compiled two separate annotations on the issue of vested rights and construction (69 ALR 3d 1050, 49 ALR 3d 13). The annotations serve to point out the lack of any hard rules on the level of construction required to vest the right to complete. It may be safely said that once one gets past the foundation stage and constructs walls or one or more stories, the establishment of a vested right is generally clear.

Local Ordinances:

Also to be considered is the unusual dictation by the legislature of a three year approval span. The life span of a county permit or approval is usually much shorter. A survey of some local jurisdictions follows:

Washoe County - automatic expiration of building or work authorized by permit if not commenced within 18 months.

Sparks - automatic expiration if work not commenced within 30 days and cannot be suspended or abandoned for more than 30 days.

Douglas - automatic expiration if work authorized is not substantially commenced within 180 days and work cannot be abandoned or suspended for more than 180 days. Renewal is permissible only if events beyond the permittee's control prevented the work or Tahoe grading prohibition intervened.

Carson City - automatic expiration within 1 year. Renewal permissible only if construction has progressed to completed underfloor. If not, permit allocations are automatically cancelled.

Conclusion:

Based on the research, it is believed that Article VI(p) of the Compact would not include site preparation within the term "construction." Moreover, absent some extraordinary circumstances, excavation of a foundation trench would not qualify as substantial reliance on a building permit and justify a vested rights finding. Finally, the facts of this case do not support a finding of diligent pursuit inasmuch as 5½ months after work began on the site, work had yet to commence on the actual structure.

This is apparently a case of first impression as we have not found any previous determinations of a similar nature or Board direction on the question.
TAHOE REGIONAL PLANNING AGENCY  
P. O. Box 1038  
Zephyl Cove, NV  89448

Attention: Jerry Wells

The following represents the construction time line for the Pearson project.

TRPA file number #81-1140

APN 125-201-11

A. The days that work was performed are divided out from holidays and rainy days. The rainy days are based on data from the contractor's records and NOAA, out of Reno. The records are from data collected by the National Weather Service from their station at Tahoe.

B. You will find these manuals included (please return, thank you).

C. Our current building permit is active with Washoe County.

D. The Webb project is part of this information, for it had the same type of permit. It was allowed to continue after the permit had expired at TRPA. We held doing work through the Winter and finished the next Spring. Please note that it was not a complicated project.

E. Conditions of the permit for Pearson.

F. Merl Sawyer's bid and payments made.

G. Gower's bid to do the foundation (note date done 3/25/85).

Exhibit A
CAPTIVE CREATIONS

PEARSON:

June 23, 1985


(Hand dug and Machine dug)

Oct. 15

START WORK

STOP WORK FOR WINTER

START WORK

When snow clears.
30 days to form and pour. Will finish about Christmas, 1986.

Attachment A: 24 months after start to complete May 20, 1987.

WEBB:

December 9, 1984

Sept. 20

(Machine dug)

Oct. 15

May 10 or 20.
1985-Finish project in remaining season around December, 1985.

No condition attached that can be found on the original permit.
A. MAY

May 13 - 14
Layout project/

May 15 - 17
Erosion Control Fencing, etc.

May 15, site review
Find out problem with survey.

TRPA
Corners out, not correct.

May 20 - 24
Restake lot after Foster has
reset corners. Reset fence, etc.

May 28 - 31
Line up excavation work. Merl Sawyer.
Get costs to do work.
Sign contracts and set up finances.

B. JUNE

June 4 - 7
Start clearing.

June 10 - 14
Improve 1/4 mile of road for truck

17, 20, 21
access.

24 - 28
IVGID installed gates which caused
access problems (no key).

June 17 - 20, 21
Drop trees (hand cut due to slope)

24 - 28
Drop trees for road access.

C. JULY

July 1 - 3
Remove limbs, hand-carry down to

dumpster. 1st dumpster.

July 8 - 12
Final stump clearing and removal of
brush.

Note: due to nature of soil, many things normally done by
backhoe were done by hand. See permit condition
requiring hand work where possible.

July 15 - 18
Rake lot and remove excess material.

22 - 25
Chalk out footings and their location.

29 - 31
Transet work required by contractor.
Begin to dig footings. Upper footings
dug by hand due to TRPA conditions.
D. AUGUST

August 1 - 2

Start to dig ain retaining wall.

5 - 9

Wall 5' high and 3' high.

12 - 15

Grade drive into garage.

19 - 23

Ran into problems due to Granet Rock.

26 - 29

Excavator had to order new case-hardened teeth for hoe bucket.

Note: The months of July and August Merl Sawyer had also been hired to do 15 units of foundation work at Northwood and McCourry in Incline Village. The reason for Merl being used at both sites was his experience was needed for the sewer and water systems.

Both projects required a great amount of work. Merl went back and forth between the two locations, trying to keep up work on both sites.

Our hope was to finish the Northwood project (its permits also were to expire) in time to go back to the project and do the foundation at Jennifer. We were to finish the foundation in September.

The month of September found many days where it rained. The total days that we were able to work were 12. Many of those days were spent doing the clearing of areas we had already done in August.

E. SEPTEMBER

Sept. 3 - 6

Reclear areas of footings and determine if possible to let forms

13

16, 17, 20

23-27, 30.

F. OCTOBER

Oct. 1 - 4

Due to the weather and the 15th deadline coming, we made the decision to winterize the project. The foundation contractor, Mr. Gower, did not want to have his forms in the ground all winter. We were also concerned that the concrete truck would not be able to drive on the water influenced soil (due to the excessive rain).

Attached you will find the bid from Gower concrete. You will also find a letter that indicates the discussions we had with Bob about the ability to get the truck in at this late time in the year.

It must be realized that this project does not represent the normal work associated with a home. The building site is 1/4 mile away from the...
current developed road. The access has to be managed as TRPA would want it so minimal impacts are realized in the construction process.

The current construction time line is to start forming as soon as the area is stable and the snow is out of the area. The next step will be to pour the concrete, set in place the erosion control (perminante) for the residence and the road areas. The sewer and water lines will be put in connecting the residence only after the foundation is poured. The reason for this is that the concrete trucks will have to drive over the road and to eliminate the possibility of breakage of the lines.

The work started before the three-year period had run out for the permit. We then have two years to complete the work. The work is in the process of being diligently pursued and will be so in the future. There is a very good chance that the home will be near completed by the month of November or December of this year. I know that the foundation will be finished by the end of April.

We have the right to continue what was begun. I would benefit no one in the area if left with the present excavation work already started.

Please respond in the next few days, as we would like to start work immediately and complete the project.

Please review the enclosed photos of the work that has already been done on the project.

Signed:

Wayne Ford
831-3673
P.O. Box
4775, E.V. NV
89450

Merl Sawyer
(Excavator)

D. Craig Robinson

Roy Hutchinson
### MAY

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**MEMORIAL DAY**

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**Note:** July - Aug: 2 projects being done. 15 units of art.

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**Note:** July - Aug: 2 projects being done. 15 units of art.

And - 800 Jennifer (Pearson)
### 1985 May - Oct

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D - 3
CONDITIONS: OF FEATHER PROJECT
Attachment D
2. a, b, c, completed.

2. Upon the issuance of building and grading permits, construction shall proceed in the following sequence:

a. The initial phase of the vegetation preservation and protection plan shall be completed.

b. Installation of temporary erosion protection devices.

ATTACHMENT D
(page 1 of 3 pages)

Standard Conditions of Approval
Attachment D - page two

c. Completion of rough grading including installation of mechanical stabilization devices.

d. Completion of structure foundations.

e. Final grading and installation of base for paved areas.

f. Completion of structures.

g. Paving.

h. Landscaping and revegetation.

Condition 5 we worked between these periods as quick as possible.

Condition 8, 1l,
conditions cont.

- Planting of all exposed surfaces, as per the revegetation and slope stabilization plan, shall be accomplished within the first growing season following disturbance. Planting shall be accomplished prior to the October 15 grading and land disturbance deadline.

- Trees and natural vegetation to remain on the site shall be fenced for protection. Scarring of trees shall be avoided and, if scarred, damaged trees shall be repaired with tree meal.

- All areas to be paved shall be paved prior to October 15.

- Mud shall not be tracked off the construction site or improved roads. Grading operations shall cease in the event that a danger of tracking mud offsite exists. The site shall be cleaned up and road right-of-way swept clean when necessary.

- During construction, environmental protection devices such as adequate erosion control devices, dust control and vegetation protection barriers shall be maintained.

ATTACHMENT D

(page 2 of 3 pages)

Condition 13

We started within the three year period. Our Washoe County permit has not expired. Condition 15.

Standard Conditions of Approval
Attachment D - page three

12. Rehabilitation and cleanup of the site following construction must include removal of all construction waste and debris.

13. "Approval by the Agency of any project expires 3 years after the date of final action by the Agency or the effective date of the amendments to this compact, whichever is later, unless construction is begun within that time and diligently pursued thereafter, or the use or activity has commenced. In computing the 3-year period any period of time during which the project is the subject of a legal action which delays or renders impossible the diligent pursuit of that project shall not be counted." (Compact Article VI(p)).

14. All other permits regarding the development shall comply with these conditions.

15. An approval becomes invalid if a local government permit for this project expires or will serve letters are cancelled.
Attachment A: Access and road stability caused the early shut down of project in the ability to pour concrete. (Early snow and a lot of rain.)

2. 24 months to finish once it is started.

1. At the time when the foundation inspection is requested of the local building department, the Agency must be notified and requested to inspect the site. At the time of this inspection, all drainage and slope stabilization improvements shown on the construction drawings bearing the TRPA stamp of approval shall have been properly installed in accord with the TRPA 208 Water Quality Plan and Handbook of Best Management Practices. At the time of this inspection the driveway shall have been paved.

2. Construction of the project in accord with the plans approved by the Agency shall be completed within twenty-four (24) months from the date that construction commences on the site, unless an extension is granted by the Agency. If construction is not completed within said time or an extension granted by the Agency, the TRPA permit is revoked and the applicant or his successor in interest shall immediately remove all partially completed work and return the site, as far as possible, to its original condition. If the applicant or his successor in interest fail to do so, the Agency may have the work performed at the applicant's or his successor in interest's expense, costs to constitute a lien against all the real property which is the subject of the approval. Said permit will not be revoked under the provisions of this condition within the three (3) year period in which the TRPA permit is valid as set forth under Article VII(p) of the TRPA compact.

3. This approval is conditioned upon the consent of the applicant, as indicated by his signature upon the permit issued pursuant to this approval, that the TRPA, through its duly authorized representatives or independent contractors, may enter upon the land of the applicant upon which the construction, use or activity authorized by such permit is to occur for the purposes of inspection, the construction or maintenance of those facilities necessary to comply with the TRPA 208 Plan, or as is required by these conditions of approval, and subsequent to such construction or maintenance shall be reimbursed by the applicant for the cost thereof.
Conditions: Special conditions on project "1"

It took much longer to dig foundation for we did a combination of hand digging and machine where it was not possible to hand dig.

We had a long road area to clear once we left the current dirt road.

To pour the foundation it was necessary to have a stable gravel road done. This would allow the concrete truck access. This road could not be built at the end of the season for the winter snow would require we do it over in the spring.

We did not reach a point where it was required to call Washoe County for an inspection. (prior to winter shut-down)

June 30, 1982

Wayne Ford
P. O. Box 4775
Incline Village, NV 89450

Re: Pearson Single Family Dwelling Case-by-Case Approval
APN 125-201-11
TRPA File #61-1140

Dear Wayne:

The subject application was conditionally approved by the TRPA Governing Board at the regular meeting of June 23 & 24, 1982. The following special conditions of approval have been placed on the project:

1. Foundations shall be hand dug unless a plan for limited equipment use is approved by Agency staff.

2. Utility trenches shall be in a common hand dug trench.

3. The road cut shall be mechanically stabilized.

4. Final construction drawings shall be submitted for Agency approval.
Work Schedule from May 15th- Oct 15th

A. May 15th Site review by TRPA.

Have new property line check by Foster.
adj ust to property location. Re-l ay out foundation

Start removal of trees and slag.

Start foundation excavation/mechanical- by hand

Do road development and tree removal.

Finish rough grading of foundation, remove excess dirt.

---------Many days of delay due to wet weather.
Cut off project in Sept. due to wet conditions and new road stability. Close up site for winter. To begin in May.
POOR QUALITY ORIGINAL (S) TO FOLLOW

HIGH DESERT MICROIMAGING, INC.
1225 FINANCIAL BLVD
RENO, NV 89502
(775) 359-6980
MEMORANDUM

May 14, 1986

To: File

From: Dan Greenlee

Subject: Construction Status, TRPA File #81-1140

On May 8, 1986, I met with Wayne Ford at the property site. At this time we walked the property and reviewed the situation. I subsequently return on May 13, 1986 to take photographs.

The construction site encompasses two (2) parcels. The access road is on one parcel and the excavated building footprint is just within another. Construction activity to date consists of a dirt road, approximately 150 feet in length, leading to the building footprint. This road connects to a pre-existing dirt fire road that goes to Jennifer Street. The new portion of the road has had minimal grading work done to it. It appears to have been made by simply running equipment over the surface of the land. The building footprint has been excavated, but no cement has been poured and no framing is in place. No other work was in evidence at the time of inspection.
June 30, 1986

Mr. Wayne Ford
P. O. Box 4775
Incline Village, NV 89450

Subject: Pearson Single Family Residence, APN 125-201-11, TRPA File #81-1140

Dear Mr. Ford:

After consultation with counsel, it is my determination that the approval for the above-referenced project has expired. Article VI(p) of the Tahoe Regional Planning Compact (NRS 277.200) provides that TRPA approvals expire in three years unless construction is commenced and diligently pursued thereafter.

The facts of this case do not support a finding that construction has commenced or that the project has been diligently pursued. Preparatory site work does not constitute "construction."

There are several options available to you at this time.

1. You may appeal this decision to the TRPA Governing Board. If you wish to pursue an appeal, you must file an application for such an appeal no later than ten (10) days from the date of this letter. The request must include a statement of the basis for the appeal and a $100.00 application fee.

2. You may file a civil action in a court of law in accord with Article VI(j) of the Compact.

3. You may apply to Washoe County for a 1986 allocation, although the county has indicated that all the 1986 allocations have been distributed. It is possible that some allocations may be forfeited before the end of the year and become available for reallocation. If allocations are no longer available for 1986, we expect allocations to be available after January 1, 1987 for the 1987 season, if the regional plan is adopted and implemented as currently proposed.

If you have further questions, please do not hesitate to contact us.

Sincerely,

William A. Morgan
Executive Director

cc: Mike Harper, Chief Planning Officer, Washoe County
Fred Welden explained that this page deals with voting procedure again, and the lead-off language is the same except that the number of days in the present compact is 60, the Assembly version is 90, and the California version is 180 days. He suggested using the 180 days in the introductory language, then using the Nevada provision that if no action is taken within 180 days, the project is rejected. Then the voting procedure would be a simple majority and a majority of those members in a state where the project is located.

Fred Welden explained further that the Assembly-amended version deleted the reference in line 44 to the construction being "diligently pursued." On line 45 in reference to the project being the subject of a legal action, the Assembly also deleted the phrase "the purpose of which is to prevent or modify the project." Mr. Welden felt that he could make a planning argument as well as a financial argument on either side. Senator Neal suggested that the "diligently pursued thereafter" be amended back into the bill to prevent someone from laying a few bricks at a project to meet the criteria of the 3 years and not doing anything else. Fred Welden stated that the "diligently pursued" language is typical planning language used in other areas. The Assembly deleted it because there are proposals at the Lake where there could be lawsuits filed that would attack the agency plan but not for the purpose of modifying the project. Senator Wilson asked if there is a provision that if a project is deferred by litigation, either against the project or the agency, it would extend the time allowed. Mr. Welden answered there is such a provision. Senator Wilson felt there should be a diligently pursuit requirement and the committee agreed.

On the environmental impact statement, Mr. Welden explained that he took all of the California language, except Section 2 which the ad hoc committee and this committee has been opposed to, words like "quantified environmental amenities."

Fred Welden proposed that the California language be retained, except to eliminate the additional reference to environmental threshold carrying capacities. The old language would suffice.

Fred Welden explained that the California version included the language from their California Environmental Quality Act. He had a problem with the words "public interest" on line 25. He felt it would not have to be a public consideration for a project to be approved because of the other matters.
Senator Sloan suggested amending the language in the Assembly-amended version of A.B. 503 on Page 15 by inserting "and diligently pursued thereafter" after the word "time" on line 45. He felt it was an essential requirement to prevent a person from doing a minimum amount of work after the project had been undertaken. He remarked that there is an exception for computing the time for any legal action taken, which was broader language than either the California version or the original Assembly-introduced version. Senator Jacobsen questioned the definition of "diligently pursued" and felt that it could be too broadly applied.

Senator Sloan moved to adopt Page 15 with the amendment to insert the words "diligently pursued thereafter" in line 45.

Seconded by Senator Faiss.

Yeas - (3)
Nays - Jacobsen and Glaser (2)
Absent - Lamb (1)

Motion carried.

Senator Neal stated that he would accept a motion to approve Page 16 and 17. On Page 18, Senator Sloan suggested exploring an amendment with Legislative Counsel insuring that if one state does not pay, the other state should continue to pay and have a cause of action therefrom. Senator Neal stated that the page can be approved with the special instructions to staff.

Senator Glaser moved that Pages 16, 17, and 18 be adopted with the provision for special instructions on Page 18.

Seconded by Senator Sloan.

Motion carried.

There were no objections to Page 19.

Senator Sloan moved that Page 19 be adopted.

Seconded by Senator Faiss.

Motion carried.

Senator Neal announced that he would entertain a motion to take final action on the bill. Senators Glaser and Sloan felt that the bill should be amended and sent back to the committee for the purpose of reviewing the amendments as printed.
MEMORANDUM

August 5, 1986

To: Advisory Planning Commission

From: Agency Staff

Subject: Status of Supplement to the EIS for Regional Plan Revisions, Revisions to the Regional Plan Goals and Policies, and Ordinance Adopting Regional Plan Revisions

At their July meeting, the Governing Board adopted Resolution 86-17 (attached in which the Board found the proposed Goals and Policies to be "acceptable in basic concept and sufficiently complete to allow the staff to proceed with further drafting and planning."

The Resolution also directs the staff to make necessary revisions to the Goals and Policies, and to present a completed draft to the Board for adoption by ordinance no later than their September meeting. It is the desire of the Board to adopt the principal elements of a Regional Plan package no later than the November meeting.

In Resolution 86-17, The Board identified five key areas of concern which should be resolved promptly: (1) the airport litigation, (2) shorezone issues, (3) amendments to the 208 plans, (4) details of the community plan guidelines, and (5) development of interim fee schedules. At the August APC meeting, the staff will make an oral report on the status of each of these issues.

With respect to the EIS supplement, which the APC recommended for certification at its July meeting, the staff currently plans to place it before the Board for certification in September, concurrent with their review of the adopting ordinance for the Goals and Policies.

If you have any questions on this agenda item, please contact Dave Ziegler or Gordon Barrett at (702) 588-3296.
MEMORANDUM

August 5, 1986

To: The Advisory Planning Commission

From: The Staff

Subject: Transportation Planning Status Report

The TRPA transportation planning team has been involved with several significant projects and programs during the past several months. A number of these major projects are to be completed in the next few weeks. These projects and programs which are currently underway, include the following:

1. Update of the Transportation Element of the Regional Plan (Regional Transportation Plan (RTP) updated);
2. Environmental Impact Statement (EIS) for the RTP update;
3. North Shore Transit Maintenance Facility EIS;
4. Redraft of the transportation, air quality and noise sections of the TRPA Code of Ordinances;
5. UMTA Section 3 Capital Grant application support;
6. Reasonable Further Progress Report for the Air Quality Plan;
7. Transportation Element of the Tahoe City Community Plan;
8. Administration of the Transportation Development Act (TDA); and

A report on the current status of these projects and programs will be given at the August 13, 1986 meeting of the APC. If you have any questions concerning this agenda item, please contact Leif Anderson at (702) 588-4547.
MEMORANDUM

August 5, 1986

To: Advisory Planning Commission

From: Agency Staff

Subject: Presentation, Administrative Draft EIS, Ski Incline Master Plan

For the past several months, the Incline Village General Improvement District (IVCID) has been working on a draft Ski Incline Master Plan and EIS, with oversight from the TRPA, Washoe County, and U. S. Forest Service staffs. At the August APC meeting, IVCID's contractors, led by Design Workshop, Inc., will present an administrative draft (attached) for the APC's review and comment.

The August 1 Administrative Draft EIS does not include the water quality section, which IVCID will present to the APC at the September meeting.

The presentation at the August meeting will include a videotape presentation on scenic impacts of the proposed master plan, including various visual simulation techniques. This presentation will be of particular interest to the APC.

If you have any comments on this agenda item, please contact Dave Ziegler at (702) 588-3296.
MEMORANDUM

August 5, 1986

To: The Advisory Planning Commission

From: Agency Staff

Subject: Outline and Review of Proposed TRPA Regulatory Code

The purpose of this memo is to inform the APC as to the staff's work on the TRPA regulatory code. The TRPA staff will complete a draft Code of Ordinances before September 1, 1986, for public and committee review. Conceptually, the code is considered Part III in the Regional Plan package and fits as follows in the framework:

**REGIONAL PLAN PACKAGE**

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<td>Rules and Regulations of Practice and Procedure</td>
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<td>III</td>
<td>Code of Ordinances</td>
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<td>IV</td>
<td>Plan Area Statements</td>
<td>Adopt by Plan Amendment</td>
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<td>V</td>
<td>Special Plans</td>
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<td>VI</td>
<td>Programs</td>
<td>Adopt by Resolution</td>
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<td>VII</td>
<td>Technical Guides</td>
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This framework is conceptual and is generally consistent with the proposed Goals and Policies revisions. The APC may desire to review the first chapter in the Goals and Policies Plan and comment upon the above package.

Attached is an outline of Part II and Part III which represent the regulatory portion of the Regional Plan package. Part II relates to procedures for applying regulations while Part III, relates to the regulations to be implemented. Part III, the Code of Ordinances, is scheduled to be completed in draft for distribution and review at the end of August.

Although the TRPA staff will be working on the drafts by the time of the APC meeting, the staff is interested in receiving APC comments and recommendations. Any problems that could be resolved prior to release of the draft would be helpful. It should be noted that the APC members will have further opportunities to participate in drafting the ordinances at the committee level and the APC meeting itself.

AGENDA ITEM V. D.

GMB:cs
8/5/86
TRPA CODE OF REGULATIONS

Draft 8/5/86

Part II  -  Rules and Regulations of Practice and Procedure

Article I  -  General

Article II  -  Governing Body Meetings

Article III  -  Adoption of Rules, Regulations and Policies

Article IV  -  Adoption of Plans and Ordinances

Article V  -  Project Review

Article VI  -  Enforcement

Article VII  -  Environmental Impact Statements and Other Environment Documentation

Article VIII  -  Advisory Planning Commission

Article IX  -  Conflict of Interest

Article X  -  Special Determinations

Article XI  -  Miscellaneous

Part III  -  Code of Ordinances Outline

General Provisions Ordinance

CHAPTER 1  General Introduction

1.01 Short Title
1.02 Authority
1.03 Jurisdiction
1.04 Effective Date
1.05 Relationship to Regional Plan
1.06 Relationship to Other Plans
1.07 Relationship to Previous Ordinances
1.08 Rules of Interpretation

CHAPTER 2  Definitions

8/5/86
CHAPTER 3 Applicability

3.01 Activities Subject to Ordinances
3.02 Vested Activities

CHAPTER 4 Permits Required

4.01 Activities Requiring Agency Review
4.02 Activities Exempt from Agency Review
4.03 Activities Requiring Governing Board Review
4.04 Expiration of TRPA Approvals

CHAPTER 5 Environmental Impact Analysis

5.01 Activities Requiring an EIS
5.02 Determination of No Significant Impact
5.03 Activities Exempt from EIS
5.04 Relationship to CEQA and NEPA

CHAPTER 6 Findings for TRPA Approval

CHAPTER 7 Variance

CHAPTER 8 Enforcement

CHAPTER 9 Nuisance

CHAPTER 10 Nonconformity

10.01 Uses
10.02 Structures
10.03 Lots and Parcels
10.04 Matrix

CHAPTER 11 - 12 Reserved

Land Use Plan Ordinance

CHAPTER 13 Plan Area Statements

13.01 Procedure
13.02 Content
13.03 Relationship to Regional Plan

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CHAPTER 14  Community Plans
   14.01 Procedure
   14.02 Content
   14.03 Relationship to Regional Plan

CHAPTER 15  Redevelopment Plans
   15.01 Procedure
   15.02 Content
   15.03 Relationship to Regional Plan

CHAPTER 16  Specific Plans
   16.01 Procedure
   16.02 Content
   16.03 Relationship to Regional Plan

CHAPTER 17-19  Reserved

Site Development Standard Ordinance

CHAPTER 20  Land Coverage
   20.01 Land Capability System
   20.02 Land Coverage Limitations
   20.03 Prohibition of Land Coverage
   20.04 Excess Land Coverage

CHAPTER 21  Allowable Uses and Maximum Densities
   21.01 Allowable Uses
   21.02 Intensity and Density

CHAPTER 22  Height Limitations

CHAPTER 23  Noise Limitations

CHAPTER 24  Parking
   24.01 On Site
   24.02 Off Site
   24.03 Access

CHAPTER 25  Best Management Practice Requirements

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CHAPTER 26 Scenic and Outdoor Advertising
   26.01 Scenic Corridors
   26.02 Scenic Restoration
   26.03 Off Premise Signs
   26.04 On Premise Signs

CHAPTER 27 Other Land Use Development Standards
   27.01 Set Back Requirements
   27.02 Design Review Guideline Requirements
   27.03 Basic Services

CHAPTER 28 Natural Hazard Regulations
   28.01 Flooding
   28.02 Avalanche/Landslide
   28.03 Earthquake
   28.04 Fire

CHAPTER 29 Historic
   29.01 Archeologic
   29.02 Historic
   29.03 Design Review

Growth Management Ordinance

CHAPTER 30-31 Reserved

CHAPTER 32 Regional Plan and Threshold Review
   32.01 Five Year Review
   32.02 Schedules
   32.03 Monitoring

CHAPTER 33 Allocation of Development

CHAPTER 34 Transfer of Development Rights

CHAPTER 35 Transfer of Land Coverage

CHAPTER 36 IPES

CHAPTER 37-39 Reserved

8/5/86
Subdivision Ordinance

CHAPTER 40  Reserved

CHAPTER 41  Allowable Subdivisions

CHAPTER 42  Limitations
  42.01  Subdivisions
  42.02  Conversions
  42.03  Lot Line Adjustments
  42.04  Lot Consolidations

CHAPTER 43  Protection of Purchasers

CHAPTER 44  Subdivisions Standards

CHAPTER 45-49  Reserved

SHOREZONE ORDINANCE

CHAPTER 50  Reserved

CHAPTER 51  Shorezone Tolerance Districts and Development Standards

CHAPTER 52  Permitted Uses

CHAPTER 54  Development Standards in the Backshore

CHAPTER 55  Development Standards Lakeward of High Water

CHAPTER 56  Speed and Discharge Limitations

CHAPTER 57  Mitigation Fee Requirements

CHAPTER 58-59  Reserved

GRADING AND CONSTRUCTION ORDINANCE

CHAPTER 60  Reserved

CHAPTER 61  Special Information Report

CHAPTER 62  Inspections

8/5/86  AGENDA ITEM V. D.
CHAPTER 63  Construction/Inspection Schedules
CHAPTER 64  Standards for Grading and Filling
CHAPTER 65  Vegetation Protection
CHAPTER 66  Objects of Antiquity
CHAPTER 67-69  Reserved

Resource Management Ordinance
CHAPTER 70  Reserved
CHAPTER 71  Tree Removal
CHAPTER 72  Prescribed Burning Programs
CHAPTER 73  Livestock Grazing
CHAPTER 74  Remedial Vegetation Management
CHAPTER 75  Landscaping
CHAPTER 76  Revegetation
CHAPTER 77  Wildlife Resources
CHAPTER 78  Fish Resources
CHAPTER 79  Reserved

Water Quality Ordinance
CHAPTER 80  Open
CHAPTER 81  Water Pollution Control
  81.01  Discharge Limits
  81.02  Runoff Controls
  81.03  Snow Disposal
  81.04  Salt and Abrasive Controls
  81.05  Sewage Spills
  81.06  Pesticide Use
CHAPTER 82  Water Quality Mitigation
CHAPTER 83  Water Supply and Conservation
CHAPTER 84-89  Reserved

Air Quality/Transportation Ordinance
CHAPTER 90  Reserved
CHAPTER 91  Inspection and Maintenance
CHAPTER 92  Gas Heaters
CHAPTER 93  Wood Heaters
CHAPTER 94  Open Burning
CHAPTER 95  Stationary Source Review
CHAPTER 96  Traffic Mitigation Program
CHAPTER 97  Aviation Facilities
CHAPTER 98  Diesel Vehicles
CHAPTER 99  Reserved
MEMORANDUM

August 5, 1986

To: Advisory Planning Commission
From: Agency Staff
Subject: Schedule of Ordinance Committee Meetings

Given the tight schedule for completing the principal elements of the Regional Plan package (see Agenda Item V. A.), it is imperative that all APC committees (natural resources, air quality/transportation, and land use) meet with the staff in August to review issues pertaining to preparation of the Code of Ordinances. A shorezone committee meeting was held on August 6.

The staff will contact the APC members prior to the August 13 meeting to attempt to schedule the remaining meetings, and will report to the APC on the 13th. In the event the schedule is still unsettled on the 13th, please bring your calendars with you, so that all necessary meetings can be arranged.

DSZ:cs
8/5/86

AGENDA ITEM V.E.
MEMORANDUM

August 4, 1986

To: Advisory Planning Commission
From: Susan E. Scholley, Legal Counsel
Subject: Status of Proposed Residential Foundation Ordinance

Attached is a copy of the most recent memo prepared on the status and progress of the ordinance. The redraft was not complete by packet mailing. The redraft should be available at the meeting.

We are interested in APC comments and ideas.
July 28, 1986

To: Interested Persons  

From: Susan E. Scholley, Legal Counsel  

Subject: Draft Ordinance for Exemption from Allocation System for Residential Foundations

The Litigation Committee met on both July 23 & 24, 1986 and re-drafted the proposed ordinance. Following is a brief outline of the ordinance.

The Litigation Committee will be meeting again on August 27 & 28, 1986. At that time, it is our intent to make some last minute changes and present the ordinance to the Governing Board for first reading.

Draft Ordinance

The ordinance addresses only single family homes. It does not include multi-family residential projects (duplexes, triplexes, condos, apartment buildings), commercial, or other types of uses. The committee is now assembling information to enable it to propose solutions for the particular problems presented by those other situations.

The system proposes a one year exemption period (window) during which all owners of foundations may apply for an exemption from the proposed residential allocation system. The one year period would probably begin shortly after the ordinance is adopted.

The application process is shaping up as follows:

The applicant would apply to TRPA for a determination of exemption. TRPA would review the lot to determine two facts:

1. Was the foundation constructed on or after January 1, 1976.

2. Does the structure onsite fall within the definition of foundation.

(The burden of proof will be on the property owner to show that the foundation was constructed after January 1, 1976.)

Upon determining that the foundation qualifies, TRPA will then process any modifications to original plans if the owner does not wish to build the original plans.
If the lot is classified in land capability districts 4 - 7, the following rules apply:

1. Any modifications must be consistent with the Bailey coefficients.

If the lot is classified in land capability districts 1 - 3, the following rules apply:

1. The plans may be modified so long as the coverage is not more than the coverage originally approved.

2. If the owner cannot locate or document the original approval, then the coverage permitted will be that included within the perimeter of the foundation and the additional coverage necessary to provide parking and access for the house.

All foundation owners would also be required to implement erosion controls on the site (most original approvals already contain provisions for erosion controls). Residences would also be required to meet current standards for woodstoves, and gas, space, and water heaters. Owners would also be expected to pay current air quality and water quality mitigation fees. Credits for previous payments would be given.

The conditions of the exemption are proposed as follows:

1. The structure would be complete within two years from that date.

2. A complete structure is defined as a fully enclosed structure with all permanent drainage improvements, slope stabilizations, and revegetation of the lot.

3. One one-time-only extension of the two year period may be granted, provided good cause is demonstrated for the failure to meet the deadline, and provided that further construction has occurred onsite. A security to insure completion within the one year extension shall be required as a condition of extension.

After obtaining the TRPA determination, the applicant would then be required to proceed to the county building department. The applicant would have to obtain a county certification of structural soundness of the foundation. The certification would be based on county standards. The applicant would also be required to obtain a current local building permit.

Foundations which are too old to qualify, or which do not apply within the one year window, will be subject to abatement by either the counties or the TRPA. Abatement may take several forms:

1. Removal under local or TRPA ordinances as a public nuisance.

2. Burial of the foundation to abate the nuisance.

3. Revegetation or stabilization of the lot if necessary.

4. Requirement that the project obtain and utilize a new allocation within a certain period of time.
Expiring Local Permits

Some foundation owners have currently valid local building permits. The counties have been notified of this pending ordinance and asked to accommodate the gap that may be created by local permit expiration dates and the ability of TRPA to implement the ordinance. The problem is especially acute in Placer County where all permits are due to expire on August 1, 1986. The county has been asked to either renew the permits (subject to an understanding that foundation owners whose TRPA approvals have expired must await the implementation of the draft ordinance to recommence construction), or reissue permits as soon as a determination is made that the foundations may continue construction.

The important point to remember is that the status of one's local permit will not affect the ability to qualify for an exemption. If your TRPA approval has expired, then it does not matter whether your local permit is kept current or not. Each county may have different ways to handle renewal or reissuance.

Summary

I hope that this outline gives you a rough idea of what will be proposed to the Governing Board in August. The Governing Board must then consider the ordinance and hold a public hearing on the terms of the ordinance.

We will make every effort to enable the Board to take action on the ordinance in August. Realizing that winter is never far away, we are trying to implement the process as quickly as possible.

A draft ordinance will be available on August 18, 1986. If you would like a copy of the draft, please contact Margie McCauley at 702/588-4547, or stop by the Agency offices at 195 U.S. Highway 50, Roundhill, Nevada. If you would like to be added to the mailing list of foundation owners, please call or write with your name, mailing address, and APN of your property (if you own a foundation).

We will be notifying you of the outcome of the August Board meeting shortly thereafter.

SES: mlm