TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION
NOTICE OF MEETING

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, October 12, 1994, at the North Tahoe Conference Center, 8318 North Lake Boulevard, Kings Beach, California. The agenda for the meeting is attached hereto and made a part of this notice.

October 3, 1994

By: [Signature]
James W. Baetge
Executive Director

This agenda has been posted at the TRPA office and at the following post offices: Zephyr Cove and Stateline, Nevada, and Tahoe Valley and Al Tahoe, California. The agenda has also been posted at the North Tahoe Conference Center in Kings Beach, the Incline Village GID office, and the North Lake Tahoe Chamber of Commerce.
All items on this agenda are action items unless otherwise noted.

AGENDA

I. CALL TO ORDER AND DETERMINATION OF QUORUM

II. APPROVAL OF AGENDA

III. PUBLIC INTEREST COMMENTS (No Action)

Any member of the public wishing to address the Advisory Planning Commission on an agenda item not listed as a Public Hearing or a Planning Matter item, or on any other issue, may do so at this time. However, public comment on Public Hearing items will be taken at the time those agenda items are heard.

NOTE: THE ADVISORY PLANNING COMMISSION IS PROHIBITED BY LAW FROM TAKING IMMEDIATE ACTION ON, OR DISCUSSING ISSUES RAISED BY THE PUBLIC THAT ARE NOT LISTED ON THIS AGENDA.

IV. DISPOSITION OF MINUTES

V. PUBLIC HEARING AND RECOMMENDATIONS TO THE GOVERNING BOARD

A. Application by Tahoe Redevelopment Agency, Park Avenue Development Project, Amendment of the Regional Plan Land Capability Overlay Map Pursuant to Man-Modified Determination for El Dorado County APNs 29-440-04, 29-400-14, 29-200-12, 29-200-22, 29-200-23

B. Lowering the IPES Line in Washoe and Douglas Counties

VI. PLANNING MATTERS

A. Discussion Concerning Affordable/Low Cost Housing and Urban Boundary Code Amendments

VII. ADMINISTRATIVE MATTERS

A. Role of the Advisory Planning Commission (APC), Recommendations to the Rules Committee of the Governing Board Regarding a Requirement for Presenting Testimony Before the APC

VIII. REPORTS

A. Executive Director
B. Legal Counsel

C. APC Members

IX. RESOLUTIONS

A. For Former APC Member Neil Brooks

B. For Former APC Member Janet Beronio

X. ADJOURNMENT
Horizon Casino Resort
Stateline, Nevada

TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION

September 14, 1994

REGULAR MEETING MINUTES

Chairperson Joe Thompson called the regular September 14, 1994, meeting of the Advisory Planning Commission (APC) to order at 9:37 a.m. and asked for a roll call.

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Members Present: Mr. Jepsen, Mr. Ruben, Mr. Hansen (arrived at 9:40 a.m.), Ms. Baldrica, Mr. Barham, Mr. McDowell, Mr. Dodds, Mr. McCurry, Mr. Joiner, Mr. Lawrence, Mr. Mudgett, Mr. Haen, Mr. Combs (arrived at 9:40 a.m.), Ms. Jamin, Mr. Thompson

Members Absent: Mr. Poppoff, Mr. Hust, Ms. Woodbeck

II. APPROVAL OF AGENDA

Deputy Director Jerry Wells noted that Item V.D. had been moved to V.A., and Items V.E., V.B had been continued and that testimony would be taken but no decision made on Item V.C.

Mr. Thompson asked if there was anyone from the public that wanted to speak about Item V.B and Item V.C. Mr. Thompson commented that public testimony would be taken on Item V.C. but a decision on the project would not be made until November.

Ms. Christina Hill, representing Joe Lonzo, requested that Item V.B. be continued until December. Deputy Director Jerry Wells replied that staff did not have a problem with the request.

MOTION by Mr. Jepsen, with a second by Mr. Lawrence, to approve the agenda as amended. The motion carried unanimously.

III. PUBLIC INTEREST COMMENTS - There were none.

IV. DISPOSITION OF MINUTES

Ms. Baldrica requested that the words "preservation of archaeological and historic sites in the shorezone" replace "shorezone, along with the preservation of the trees" on page 6, paragraph 4. Mr. Mudgett requested the word "follow" be replaced with "enforce" on page 6, paragraph 3. Mr. Mudgett requested that "EIR" be dropped from the initials "EIR/EIS" on various pages throughout the minutes. Mr. Wells clarified that when a document was presented to the APC for TRPA regulation, the EIS was always certified. But for CEQA purposes, the EIR/EIS are coupled together. Mr. Mudgett requested a verbatim of the fifth paragraph on page 9 regarding Mr. Chilton's statement.

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MOTION by Mr. Lawrence, with a second by Mr. Joiner, to approve the August 10, 1994, APC minutes as amended. The motion carried unanimously with Mr. Jepsen, Mr. Barham, Mr. McDowell and Mr. Dodds abstaining.

V. PUBLIC HEARING AND RECOMMENDATIONS

D. Amendment of Plan Area Statement 168, Talmont, and Plan Area Statement 166, Upper Ward Valley, Boundaries to Include Remainder of Talmont Estates Parcels (APNs 83-460-22 Through -27), Within Plan Area Statement 168

Special Projects Attorney Susan Scholley presented the staff summary amending the boundary between Plan Area 168 and 166 to include the remainder of Talmont Estates in Plan Area 168.

Mr. Mudgett reviewed the history of the project and the land use management. He was of the opinion that there needed to be a more concise way of planning so that land use management was not being done by lawsuits and settlement. He requested that TRPA staff investigate tree cutting violations within the Basin.

Rochelle Nason, representing the League to Save Lake Tahoe, was of the opinion that the fundamental environmental problem of Lake Tahoe was that urban boundaries were set far too liberally in the first place and should be held in place. The plan area amendments that increased the urban boundary were damaging to water quality and undermine the premise of the Regional Plan to protect water quality in the Lake Tahoe basin.

Mr. Dodds questioned if Ms. Nason recommended denial of the amendments and she replied that she agreed with staff's recommendation regarding the plan area amendment.

Since no one else wished to comment, Chairman Mr. Thompson closed the public hearing.

MOTION by Mr. Combs to follow the staff's recommendation to amend the plan area statement. Seconded by Ms. Baldrica. The motion carried unanimously.

A. Amendment of Chapter 4, Project Review and Exempt Activities, MOU between TRPA and Placer County to Implement Sign Ordinance

Principal Planner Gordon Barrett presented the staff summary proposing to amend Chapter 4 to adopt a MOU delegating sign review in the Tahoe City Community Plan to Placer County.

Mr. Mudgett encouraged the implementation of more MOUs with other counties. Mr. Baetge commented that Washoe County had been working with TRPA to form an MOU.

Mr. Combs commented that the Placer County Board of Supervisors had not seen the MOU and hoped that the APC acted favorably on adopting it.
Since no one wished to comment, Chairman Thompson closed the public hearing.

**MOTION** by Mr. McCurry to recommend to the Governing Board amendment of Chapter 4 to adopt a MOU delegating sign review in the Tahoe City Community Plan to Placer County. Seconded by Mr. Jepsen. The motion carried unanimously.

C. Amendment of Plan Area Statement 115, Golden Bear (Residential), to add Multiple Family Dwellings as a Permissible Use, and to Add El Dorado County APNs 080-010-15 and 080-030-01 to Plan Area 115

Senior Planner Andrew Strain presented the staff summary proposing to amend Plan Area Statement 115, Golden Bear (Residential), to add Multiple Family Dwellings as a Permissible Use, and to add El Dorado County APNs 080-010-15 and 080-030-01 to Plan Area 115

Mr. Mudgett questioned if a multiple family residential could be a detached condominium group and Mr. Strain replied yes.

Mr. Mudgett commented that he did not want massive building in the Tahoe Basin. Mr. Mudgett stated that the plan area allowed for employee housing but was not located near the employer, which would be casinos, and thus created more traffic in a residential area. He also addressed the balance between land ownership and the economic viability of the land that had been downzoned because of the result of a settlement with the League to Save Lake Tahoe. Mr. Mudgett read to the APC a written statement regarding the U.S. Supreme Court case *Noolan v. California Coastal Commission* (easement across a beach) (copy attached). Mr. Mudgett requested a definition of the economic uses this property could be used for and was of the opinion that the land was traded so that it would not be subdivided.

Mr. Thompson requested TRPA staff to pursue the original intent and the trade and the history of this property between the Forest Service and the owner and the purpose of the trade. He stated that some of the land indicated a special use and the multiple-use which meant that they would have to be brought before the APC and Governing Board for approval.

Agency Counsel R. J. Nicole made the statement that no ordinances had been adopted in the Douglas County Community Plan settlement.

Mr. Hansen questioned whether a committee was going to be formed to look at different language regarding multiple-use and multiple-residential outside the urban boundaries. He was of the opinion that this was a major issue and needed to be resolved.

Executive Director James Baetge replied that the above issue would be brought before the Governing Board in December for their consideration.

Before opening the public hearing, Mr. Thompson reminded the public that there would not be a decision for recommendation to the Governing Board at this
Mr. Paul Kaleta, of Basin Strategies, representing the property owner, elaborated on the history of ownership of the property, current features of the property, and proposed some development options. He questioned what could be done with the private property consistent with the TRPA thresholds, the characteristics of the neighborhood and what economically viable opportunities existed to a property owner who traded away two acres for one.

Mr. McDowell commented that when the Forest Service did a land exchange, acres did not have anything to do with it; the exchange would be purely based on value and the value would be established by an independent appraiser that was agreed upon by both the Forest Service and the other party.

Mr. Haen commented that there was no nexus between retiring lots and the transferring of a development right.

Agency Counsel R. J. Nicolle clarified the fact that this development right transfer was not a one-for-one swap; there were a number of different ways the parcels could be rated.

Ms. Rochelle Nason, representing the League to Save Lake Tahoe, commented that the Douglas County Community Plan litigation did not change the prohibition on subdividing. Ms. Nason commented that there was a dispute between the League and TRPA about the interpretation of certain narrow exceptions to the subdivision rule. The disagreement was not resolved and the League and TRPA decided to bring the issue forward to the policy making bodies over a period of time so it could be adequately considered by all the governing bodies of the TRPA rather than submitting it immediately for judicial decision.

Ms. Nason was of the opinion that this item was not considered a takings issue because the property owner was not deprived of all economically viable use of the property. The property owner had several options. She commented that the ban on subdividing was the single most fundamental item that needed to be enacted in the Basin to protect water quality. It was not environmentally beneficial to create a new subdivision for the purpose of moving development rights out of existing subdivisions where roads had already been created.

Mr. Hudgett inquired as to what the League to Save Lake Tahoe would view as a reasonable disposition of the land that the owner could receive. Ms. Nason replied that she had several properties that she could identify in which uses of this type occurred. She also mentioned that there was a great market for luxury housing, such as a ranch with a second home for housing another family or a guest home, would could be done on this property, along with employee housing.

Mr. Dodds questioned that with regards to the moving of development rights from subdivisions, could some of the vacated lots be used to treat the runoff from the roads if the development rights were transferred to a less sensitive area. Ms. Nason replied that would be on a case-by-case situation. Sometimes the lots can and can't be used for this purpose.

Mr. Bud Silvado, who lived at 1100 Sundown Trail in the Golden Bear
Subdivision, commented that there was an over tax burden on this subdivision. Mr. Silvado was concerned about where the money was coming from towards the new development and growth in the Tahoe area. He commented that in order to add a new closet to his home, he had to purchase the lot next to him for a substantial amount. He was also concerned about the impact Golden Bear Park would create.

Mr. Terry Powers, who lived at 1127 Lone Indian in the Golden Bear Subdivision, commented that he was opposed to the amendment because it would increase the urban boundary and it would also allow multiple-family dwellings. He was of the opinion that TRPA should not be required to support an investment that went wrong.

Karen Phelchin, who lived 1166 Gold Dust Trail, commented that she was opposed to any development in the area because she was of the opinion that TRPA's mandate was to protect the quality and clarity of the Lake to impede all future development. He hoped that TRPA would deny the proposal.

Since no one else wished to comment, Chairman Thompson closed the public hearing. Because this item was being continued until November, no action was required.

VI. PLANNING MATTERS

A. Discussion on Recreation Threshold Program Management

Senior Planner Andrew Strain presented the staff summary discussing the Recreation Threshold Program Management, along with specific program elements, including significant implementation milestones.

Mr. Nudgett believed that we needed to identify what lands were required for public access and recreation and it needed to be done now.

Mr. Hansen commented that he wanted quoted in the text that 25% of the Lake Tahoe Basin was reserved for recreation. He was also concerned that the Lake Tahoe Area was impacted by other things outside the Basin.

Mr. Ruben questioned how bike paths were to be implemented and how this was going to be accomplished. Mr. Strain commented that the number one goal at this point in time was to look at the existing public land layout and see if we can't accomplish what we want to do on public lands. He also stated that a capital improvements element needed to be in the recreation program.

Mr. Nudgett questioned it mountain bikes were considered off-road vehicles and were the bike paths Mr. Ruben referred to beside the road. Mr. Strain replied that these were considered Class I or Class II paved trails along side the road or within the public right-of-way. Mountain bikes were not considered off-road vehicle uses; they are part of riding and hiking trail uses.

Mr. Nudgett was of the opinion that mountain bikes created more wear and tear on the trails and TRPA should investigate the damage they were creating. Mr. Strain agreed with him and stated that it was being looked into.
Mr. McDowell commented that there might be an avenue through the National Park Service for potential funding of this project.

Ms. Rochelle Nason, representing the League to Save Lake Tahoe, commented that the League was supportive of the plan but had severe environmental concerns. She was of the opinion that the Basin was in dire straights concerning head room, especially in transportation and water quality. Ms. Nason believed that something needed to be accomplished in the Basin to make transit happen and if that did not occur, we will not have the head room in the threshold areas to make the thresholds work and have the recreational capacities that were needed. She was also concerned about the conflicts between the different outdoor recreational users; particularly between beach users, kayak users, and other normally quiet recreational activities, while jet skis and other high powered water craft can be extremely noisy and irritating to the people on the beaches.

Ms. Nason also commented that a similar conflicted existed between off-road vehicles users and hikers and horseback riders. The presence of off-road vehicles use could make an area unusable for all other recreational uses because of the danger and destruction involved with off-highway vehicle usage, when not properly regulated and mitigated. She also mentioned the conflict between profitable and non-profitable uses and the biases that exist.

Recessed for lunch at 12:20.

(Me. Baldrica left the meeting at 12:20 p.m.)

Meeting reconvened at 1:25 p.m.

B. Review of Tentative Scope of Work for Preparation of an EIR/EIS for Park Avenue Redevelopment Project EIR/EIS

Chief of Project Review Rick Angelocci presented the staff summary reviewing the tentative scope of work for preparation of an EIR/EIS for Park Avenue Redevelopment Project EIR/EIS.

(Mr. Hansen abstained from participating in this item because his employer, Heavenly, was involved with the Park Avenue Project.)

Mr. Richard Shaw, Principal Planner with Design Workshops, presented a program plan and focused on the context of the project and also presented a series of slides regarding the description of the proposed project.

Mr. Jim Jordan, consultant for Balloffet and Associations, reviewed the work plan to accomplish the requirements of TRPA and the California Environmental Quality Act (CEQA) for environmental documentation of the proposed project.

Mr. McDowell questioned if the environmental document addressed all the different aspects of funding, financing sources and financial impacts. Mr. Jordan replied that the document will look at different alternatives, but will not give a detailed economics/financing chapter in the plan.
Mr. Mudgett commented that he reviewed the soils analysis for the man-modified determination and was of the opinion that it should be a joint effort in sharing the costs of performing this analysis.

(Mr. Hansen returned to the meeting at 2:35 p.m.)

VII. ADMINISTRATIVE MATTERS

A. Role of the Advisory Planning Commission (APC), Recommendations to the Rules Committee of the Governing Board Regarding Project Review, Testimony, and Role of Official APC Members

Agency Counsel R. J. Nicolle presented the staff summary amending Article VII of the Rules of Procedure pertaining to 1) APC review of projects for which an EIS had been prepared; 2) mandatory presentation of issues to the APC; and 3) official members.

Mr. Thompson stated that the lay position was not assigned to the Soil Conservation Service; it was assigned to the Resource Conservation of Districts.

(Mr. Combs left the meeting at 2:00 p.m.)

Mr. Thompson questioned the definition of an alternate and Ms. Nicolle replied that the Compact did allow for a member of the APC to appoint an alternate.

Mr. Jepson questioned if a statement in the meeting notification or application could be made stating that the information had to be presented at the APC meeting before being presented to the Governing Board.

Ms. Nicolle replied that she would discuss this with the Project Review Division and Ms. Julie Frame in terms of adding a statement in the agenda.

Ms. Rochelle Nason, representing the League to Save Lake Tahoe, commented that she did not object to the first and third amendments to Article VII but objected to Rule 7.6 because it was inconsistent with other rules and was not clear and hard to understand for members of the public. The statement "shall not take additional testimony" did not clarify in addition to what and was vague, ambiguous and unclear. Ms. Nason also commented that it was inconsistent with other TRPA rules and procedures and, in particular, the environmental documentation requirements. The problem was the environmental documents are not always available for review and/or comments prior to the Governing Board meetings.

Deputy Director Jerry Wells commented that environmental documents and checklists are available to the public at TRPA's offices.

Mr. Mudgett was of the opinion that the Governing Board would not object to someone presenting testimony who could not have reasonably presented it first to the APC members.
APC REGULAR MEETING MINUTES SEPTEMBER 14, 1994

Mr. Dodds commented that the language in Rule 7.6 should be presented more clearly. Mr. Barham agreed.

Mr. Thompson commented that he wanted it stated in the Rules that the Governing Board had the discretion to reject testimony being brought before them if it had not previously been presented before the APC.

Mr. Haen and Mr. Jepsen both disagreed that the Governing Board should have the discretion to reject testimony.

Executive Director Jim Baetge suggested that Article VII 7.6 be brought back to the APC with new language drafted and then the entire package be presented to the Governing Board in October for approval. The APC members agreed unanimously.

Mr. Thompson thanked Ms. Nicolle for her input and preparation of the Amendment.

VII. REPORTS

A. Executive Director

Executive Director Jim Baetge questioned if the APC members were happy with the new facility. He mentioned that because of the earthquake retrofit, some of the projects in the basin were in jeopardy of losing funding from the California Department of Transportation; those specifically being the Tahoe City Urban Improvement project and Brockway.

Mr. Hansen requested a position paper on CTC projects being supported by TRPA.

B. Legal Counsel

Agency Counsel R. J. Nicolle commented that she passed the segment of the bar exam she took on August 12, 1994. She mentioned that TRPA currently had 10 active litigation cases; 8 in the trial court level and 2 in the opponent court level. The League to Save Lake Tahoe and Committee for Lake Planning cases were dismissed with a settlement in July. The Lawyers Title case had voluntarily been dismissed. Three new cases had recently been filed against TRPA: Stack v. TRPA; Tahoe Keys Property Owners’ Association v. TRPA, and Peterson, et al. v. TRPA. A settlement offer in Peterson, et al. v. TRPA was being presented to the Governing Board in September. A decision was handed down in the Tahoe Sierra Preservation Council v. TRPA case. This case was a procedural case. A motion for reconsideration had been filed and TRPA was considering taking the case to the Supreme Court if not successful. Ms. Nicolle stated that regarding the takings issue raised by Mr. Nudgett, she would review the material and provide a written response to the APC.

C. APC Members

Mr. Dodds mentioned that the Lahontan Regional Board would be meeting in October in Tahoe City.
APC REGULAR MEETING MINUTES SEPTEMBER 14, 1994

Mr. McDowell commented that for Fiscal Year 1995, there would not be any funding for the Forest Service/Santani-Burton program. He mentioned that the Sierra Club appealed the Forest Supervisor’s decision on the East Shore project. The Regional Forester upheld the Forest Supervisor’s decision. No further decision had been made.

Mr. Barham commented that there would be no new sole source agreements.

Mr. Hansen commended that it was going to be harder to get funding for the acquisition of land, and we have to take care of ourselves and not rely on the Government any more. We have to acquire more alternative sources of reliable revenue and funding to complete the projects proposed, such as looking at basin-user fees.

Mr. Mudgett requested a position paper on Mr. Hansen’s comments and recommendations.

Mr. Ruben requested the applicant’s statement of justification as part of the package when presenting items such as the Golden Bear project. Mr. Mudgett agreed.

Mr. Thompson mentioned that he would not be attending the APC meeting in November but requested a copy of the water quality material to be presented.

VII. ADJOURNMENT – Meeting adjourned at 3:40 p.m.

Sue Mikanovich
Clerk to the Commission

This meeting was taped in its entirety. Anyone wishing to listen to the tapes may call for an appointment at (702) 588-4547. In addition, any documents submitted at the meeting may be picked up at our office, 303 Dorla Court, Elks Point, Nevada.
September 14, 1994

Written statement for the minutes of the TRPA APC Meeting of September 14, 1994 by Richard Mudgett, Planning Commissioner.

U. S. Supreme Court, 1987 Nollan v. California Coastal Commission, (easement across a beach)

"a mere restriction on its use" is to use words in a manner that deprives them of all their ordinary meaning.

We have long recognized that land use regulations does not effect a taking if it "substantially advances legitimate state interests" and does not deny an owner economically viable use of his land.

The evident constitutional propriety disappears, however if the condition substituted for the prohibition utterly fails to further the end advancement as the justification for the prohibition. When that essential nexus is eliminated.

We view the Fifth Amendment's property clause to be more than a pleading requirement, and compliance with it to be more than an exercise in cleverness and imagination.

The Commission may well be right that it is a good idea, but that does not establish that the Nollans alone can be compelled to contribute to its realization.

Rather, California is free to advance its "comprehensive program" is it wishes, by using its power of eminent domain for this "public purpose," but if it wants an easement across the Nollan's property, it must pay for it.

The fact that the Commission's action is a legitimate exercise of the police power does not, of course, insulate it from a taking challenge, for when "regulation goes to it will be recognized as a taking.

Lucas v. South Carolina Coastal Council
Lucas was denied a building permit on two residential lots on a South Carolina barrier island.

Church of Glendale v. County of Los Angeles (holding that temporary deprivations of use are compensable under the Taking Clause.
Justice Holmes recognized in Mahon, that if the protection against physical appropriations of private property was to be meaningfully enforced, the government's power to redefine the range of interests included in the ownership of property was necessarily constrained by constitutional limits.

The second situation in which we have found categorical treatment appropriate is where regulation denies all economically beneficial or productive use of land.

As we have the case, which rests upon our "no economically viable" statements, that finding entitled him to compensation.

The South Supreme Court however, thought otherwise. In its view, the Beachfroint Management Act was no ordinary enactment, but involved an exercise of South Carolina's "police powers" to mitigate the harm to the public interest that petitioner's use of his land might occasion.

One could say that imposing a servitude on Lucas's land is necessary in order to prevent his use of it from "harming" South Carolina's ecological resources: or, instead, in order to achieve the "benefits" of an ecological preserve.

Whether Lucas's Construction of single-family residences on his parcels should be described as bringing "harm" to South Carolina's adjacent ecological resources thus depends principally upon whether the describer believes that the State's use interests in nurturing those resources is so important that any competing adjacent use must yield.

Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with.

we think the notion pressed by the Council that title is somehow held subject to the "implied limitation" that the State man subsequently eliminate all economically valuable use is inconsistent with the historical compact recorded in the Taking Clause that has become part of our constitutional culture.

We believe confiscatory regulations, i.e. regulations that prohibit all economically beneficial use of land; Any limitation so severe cannot be newly legislated or decreed (without compensation)

When, however a regulation that declares "off-limits" all economically productive or beneficial uses of land goes beyond that the relevant background principles would dictate, compensation must be paid to sustain it.
Dolan v. Tigard
(required to give land to get a building permit.

The City must quantify its finding beyond a conclusory statement that the dedication could offset some of the traffic demand generated by development.

of what is the required degree of connection between the extractions imposed by the city and the projected impacts of the proposed development.

A land use regulation does not effect a taking if it "substantially advances legitimate state interests" and does not "deny an owner economically viable use of his land.

Under the well-settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right---here the right to receive just compensation when property is taken for a public use---in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit.
TAHOE REGIONAL PLANNING AGENCY

MEMORANDUM

September 30, 1994

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Amendment of Regional Plan Land Capability Overlay Map Pursuant to Man-Modified Determination, Portion of Park Avenue Redevelopment Area, portions of APNs 29-440-04, 29-400-14, 29-200-12, 29-200-22, and 29-200-23. Park Ave and U.S. Highway 50, El Dorado County

Proposed Action: To amend the Land Capability Overlay Map (M-16) to indicate a determination of man-modified on portions of El Dorado County APN's 29-440-04, 29-400-14, 29-200-12, 29-200-22 and 29-200-23, in the vicinity of Park Avenue and U.S. Highway 50.

Staff Recommendation: Staff recommends that the Advisory Planning Commission recommend to the Governing Board approval of the plan amendment which changes the land capability of a portion of the parcels from land capability class 1b to land capability class 5, with the following conditions:

1. A schedule for the installation of standard BMPs be completed by the owner and a security deposit be posted prior to the acknowledgement of any permits on this parcel. All BMPs must be installed prior to October 15, 1997, or if a TRPA permit is given for a project on these parcels and construction commences before this date, that BMPs be installed in compliance with the conditions specified in the permit. Implementation of BMPs relating to, but not limited to, ripping of compacted areas, revegetation, and stabilization of fill sideslopes, shall be required as part of onsite mitigation. The owner shall post a security equal to 110 percent of the project cost as determined by a licensed Civil Engineer or equivalent, to ensure completion of the necessary BMPs on the parcel.

2. Prior to the acknowledgement of a permit for a new project on this parcel which relies on the increase in the allowable land coverage associated with this man-modified determination, the owner shall restore 92,680 square feet (2.2 acres) of stream environment zone (SEZ). A funded and TRPA approved plan for the restoration of the SEZ area shall be completed by the applicant prior to acknowledgement of any permits.
restoration of SEZ is to occur on parcels designated as SEZ restoration sites within the Stateline/Ski Run California Community Plan area, the area designated for SEZ restoration within the Tahoe Meadows, or other SEZ restoration projects identified within the City of South Lake Tahoe.

Background: This site is located about one-quarter mile from the California-Nevada stateline (see map Exhibit 1). The parcels which are affected by this man-modified determination cover an area of 140,340 square feet and are located at Park Avenue and U.S. Highway 50, South Lake Tahoe, California (see map, Exhibit 2). The soils and land capability classes in this area were mapped in 1990 by TRPA as part of the planning process for the Stateline/Ski Run California Community Plan. Based on this mapping the majority of this area was placed in land capability class 1b, associated with the Ev (Elmira loamy coarse sand, wet variant) map unit (See map, Exhibit 3).

A land capability challenge request was filed in June 1993, by Design Workshop and was accompanied by a soils investigation report prepared by Resource Concepts Inc. (RCI). This report included information on the area which is the subject of this man-modified determination, as well as the remainder of the Park Avenue Redevelopment area. Information on the soils and hydrology of this area was included. This soils information involved thirteen soil pits and soil information taken in the course of completing eight well drill holes. The soils information taken at the wells consisted of logging soil properties using a split spoon drill sampler. This soil investigation was designed to verify the extent of soils at the level of soil series and relate them to soils identified in the Soil Survey for the Tahoe Basin and the mapping completed by TRPA for the Community Plan.

Gathering of hydrologic information for this report involved the installation of eight observation wells, in addition to the three that were previously installed in 1989 as part of a surface runoff infiltration study. Eight new wells were installed in January 1993, and were read on the date of installation and on February 4, March 17, and June 2, 1993.

Based on the soils and hydrologic information, RCI classified the area being considered in this man-modified determination as land capability classes 5 and 6, associated with two map units created by RCI, JcB (Jabro cobbly loamy coarse sand) and GeC (Gefo gravelly loamy coarse sand), respectively.

After receiving this report and application, TRPA reviewed the information provided and compared it with that previously collected on this site by TRPA staff and with historical evidence contained in aerial photographs taken of the site dating back to 1940. Staff concluded that there was sufficient information from the aerial photographs to support the conclusions made by staff in 1990, that a major portion of these parcels were part of a larger meadow which extended down to Highway 50 from above the current Montreal Road, and that the area was properly placed into land capability class 1b, stream environment zone (SEZ).

In order to narrow the focus of this evaluation to the specific areas of major concern to the applicant, it was agreed that any further work to resolve the differences between the soil and land capability classifications determined by JP/rd.

AGENDA ITEM V.A.

9/30/94
TRPA and RCI, would be focused on the portion of the Park Avenue Redevelopment Area directly adjacent to the lower part of Park Avenue and U.S. Highway 50. RCI and TRPA staff agreed that two backhoe pits would be excavated in the parking lot of the Crescent V Shopping Center half way up to the entrance of the Raley's Supermarket and near the first turn of Park Avenue (see map Exhibit 3).

This field work was completed on January 3, 1994 by a combination of TRPA staff and personnel from RCI. Soils work was conducted by Joseph Pepi, TRPA's Certified Professional Soil Scientist, and Leslie M. Burnside, Senior Resource Specialist for RCI. Soils field description reports were prepared for each of the backhoe pits. Based on these pits, the conclusion was that the soils located on this portion of the Crescent V parcel consisted of less than 1 foot of imported fill material placed over the native meadow soil. The soils had colors which are indicative of formation under soil conditions which were saturated substantial portions of the spring and early summer. These reports support the conclusion drawn from the historical aerial photographs that a major portion of this and adjacent parcels were a wet meadow that has been modified by the placement of fill material, paving, and the installation of a storm drain system to the extent that the land capability has been significantly altered.

After clearly establishing that based on soils information that this site was historically a stream environment zone, the evaluation shifted from a land capability challenge to a man-modified determination. The focus then shifted to verifying the current hydrologic conditions on the site. A meeting was held on February 16, 1994 between Gary Midkiff, agent for the applicant, and TRPA staff members Carl Hasty, Kevin Hill, and Joe Pepi, to discuss the additional information required to make the man-modified determination for the area around the Park Avenue and Highway 50 site. At this meeting it was agreed that additional soils investigation pits and groundwater monitoring wells adjacent to these pits were required.

During the field work conducted the first week of March 1994, SEZ indicators were found along the rear of the Tahoe Manor Inn and the St. Christophers Lodge, but not adjacent to the Cecils Market parcel and the Ski Bird Lodge. Based on this information two additional groundwater monitoring sites were identified; one behind the Ski Bird Motel in the right of way of Park Avenue, and the other adjacent to the lower backhoe pit in the Crescent V Parking lot.

After installation of these new wells, (No. 9 and 10), it was agreed that all the wells in the area that were the subject of this man-modified determination, including well TH-1 installed in 1989, and well No. 3, installed in 1993, would be read on a weekly basis through the middle of June 1994, alternately by TRPA and RCI, with the goal of determining the current depth of groundwater below the ground surface. In addition, the remaining nine wells in the redevelopment area were also read at the same time.

At the end of this monitoring period, it was determined that groundwater
levels in all of the four wells (Th-1, 3, 9, and 10) stayed below the 40 inch depth limit under which they would be classified as SEZ and land capability class 1b.

Chapter 20, Subsection 20.2.6 of the TRPA Code of Ordinances, sets forth the standards for processing man-modified determinations. A man-modified determination is appropriate when land has been altered such that it no longer exhibits the characteristics of the original mapped land capability.

Analysis: The following analyses are provided to complete the man-modified report:

(a) Geomorphic characteristics - The Geomorphic Analysis of the Lake Tahoe Basin (Bailey, 1974) maps this area within geomorphic unit, E-2 (Outwash, till, and lake deposits, low hazard lands). The soils mapped on the parcel (see item c) are consistent with the mapped geomorphic hazard rating. Based on an analysis of historical aerial photographs and soils information gathered onsite, it would more appropriately be place in E-3 (Alluvial lands, high hazard lands). However, due to placement of fill material, paving, and the installation of a storm water drain system, the geomorphic unit for this parcel has been changed.

(b) Surface and subsurface hydrology - There is no evidence of near surface groundwater in the area included in this man-modified determination.

(c) Physical/chemical soil characteristics - TRPA Land Capability Map H-16 shows these parcels in one land capability district and soil map unit. The land capability is Class 7 associated with the Efb (Elmira-Gefo loamy coarse sands, 0 to 5 percent slopes) map unit. Based on a land capability verification (LCV), TRPA staff determined that they were unable to verify land capability class 7. These parcels are mapped within one Geomorphic Unit, E-2 (Outwash, till, and lake deposits, low hazard lands) in the Bailey Geomorphic Analysis of the Lake Tahoe Basin. There is little or no native vegetation on the parcel, the majority of which is under asphalt pavement.

The soils on these parcels consist of moderately coarse textured fill material placed over the native meadow soils and a moderately coarse textured glacial outwash material on the terrace just above the meadow. The soils report prepared by Joseph Pepi is on file. Two soil map units were found on these parcels. The soils found on this parcel are most similar to the Jsb (Jabu coarse sandy loam, shallow variant, 0 to 5 percent slopes) and the Ev (Elmira loamy coarse sand, wet variant) map units. Both are recognized in the Lake Tahoe Basin Soil Survey (Rodgers, 1974). The Jsb map unit is in land capability class 5, and Ev is in land capability class 1b.

(d) Erosion hazard - The slope on this parcel is flat and the majority of the parcel is paved. The soils on this site have moderately low runoff potential and a slight relative erosion hazard.
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(e) Vegetation - There is little native vegetation on these parcels and the vegetation on the unpaved disturbed areas is sparse.

(f) Land capability district - There was one land capability class found in this detailed soil investigation. This is land capability class 5.

Required Findings: The following is a list of required findings as set forth in Chapters 6 and 20 of the TRPA Code of Ordinances. Following each finding, TRPA staff has briefly summarized the evidence on which the required finding may be made.

A. Chapter 6 Findings:

1. Finding: The project is consistent with, and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code, and other TRPA plans and programs.

Rationale: The proposed amendment of the Regional Plan to amend TRPA land Capability Overlay Map H-16 is consistent with the procedures set forth in Chapter 20 of the Code. No significant impacts on the Regional Plan, Goals and Policies, Plan Area Statements, the Code and other TRPA plans and programs are anticipated.

2. Finding: That the project will not cause the environmental thresholds to be exceeded.

Rationale: The amendment is consistent with the Regional Plan and will help attain the environmental thresholds. The restoration of SEZ as part of the mitigation for this project will help achieve the threshold for SEZ restoration.

3. Finding: Wherever federal, state and local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(d) of the Compact, the project meets or exceeds such standards.

Rationale: See findings 1 and 2 above.

4. Finding: The Regional Plan and all its elements, as implemented through the Code, Rules, and other TRPA plans and programs, as amended, achieves and maintains the thresholds.

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JP/rd
9/30/94
Rationale: For the reasons stated in support of findings 1, 2, and 3 above, the proposed amendment will result in the Regional Plan Package continuing to achieve and maintain thresholds.

B. Section 20.2.F. Findings

Finding: The land was modified prior to February 10, 1972.

Rationale: The fill material, paving, and drainage system was placed on these parcels in the mid-1960's. Documentation of this is contained in the administrative record.

Finding: Further development will not exacerbate the problems resulting from the modification of the land and will not adversely impact sensitive lands adjacent to or nearby the man-modified area.

Rationale: Development of the paved area will not increase runoff or erosion provided all new development is completed with properly designed and installed SMPS which are properly maintained. Revegetation of the graded areas not utilized for development would enhance nutrient uptake and minimize surface erosion potential. There is no evidence of near surface groundwater and further development would not interfere with groundwater.

Finding: The land no longer exhibits the characteristics of land bearing the original land capability classification.

Rationale: The land capability of the parcel was mapped class 7, based on the soil survey completed in 1972. The alterations to these parcels are such that no groundwater is currently encountered within 5 feet. Before the fill, paving and drainage system were put in place, these parcels had native soils in which a seasonal high water table was found at a depth of 12 to 24 inches. Due to the change in drainage conditions, the soils now exhibit the characteristics of a land capability class 5.

Finding: Restoration of the land in question is infeasible because of factors such as the cost thereof, a more positive cost-benefit ratio would be achieved by off-site restoration, onsite restoration would cause environmental harm, restoration onsite would interfere with an existing legal use and the land is not identified for restoration by any TRPA program.

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Rationale: Onsite restoration of the parcel to the original land form and corresponding slope gradient would require removal of existing buildings and pavement and up to 2 feet of fill material to recreate the original land surface. Restoration of the parcel to the original land surface level would severely impact the existing legal use of the parcel. There are no current TRPA plans for restoration of these parcels. The parcel is within the area designated by the Stateline/Ski Run California Community Plan for concentrated commercial development.

Finding: Further development can be mitigated offsite.

Rationale: The major impact related to the change in land capability of this parcel would be related to increased allowed land coverage. This loss of SEZ could be mitigated by offsite restoration of SEZ within the Stateline/Ski Run California Community Plan area. All new land coverage would be subject to the standard TRPA water quality mitigation fees.

Finding: Mitigation to offset the losses caused by the modification of the land and pertinent land capability district shall be as follows: (i) onsite and offsite mitigation, (ii) pursuant to a maintenance program, including a schedule of maintenance proposed by the owner and approved by TRPA, and (iii) collection of a security, if deemed necessary by TRPA, to guarantee mitigation.

Rationale: The man-modifications of this parcel has resulted in an increased benefit to the owner in that there is an increase in allowed land coverage. The onsite mitigation for development of land coverage would entail runoff control of storm water by infiltration. Revegetation of disturbed areas would reduce runoff and erosion potential onsite. Onsite mitigation measures shall be in compliance with the TRPA BMP Handbook. The owner of the property shall include appropriate onsite mitigation measures with any project proposal submitted to TRPA, for review and approval.

There will be an increase of 33,682 square feet in allowable coverage over the allowed land coverage associated with the previous verified land capability (1b), as a result of the man-modified determination. This increase in land coverage would not have been available to the property owner had the parcel remained in its natural state. This increase in land coverage can be mitigated offsite by the restoration of 92,680 square feet of SEZ.
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restoration of SEZ can be accomplished by the restoration of SEZ area on
parcels designated for SEZ restoration within the boundaries of the Community
Plan area, within the Tahoe Meadows Subdivision, or within the boundaries
of the City of South Lake Tahoe.

The owner of the property shall include a program and schedule for maintenance
of the required BMPs as a condition of approval by TRPA.

Conclusions: Agency staff has found that due to the placement of fill,
paving, and installation of a storm drain system, that the original land
surface has been altered to such an extent that it now has characteristics
which would place it in a higher land capability class (class 5) rather than
the present class 1b associated with the Ev map unit. It is infeasible to
restore the 1b land capability class.

If you have any questions or comments regarding this agenda item, please
contact Joe Pepi at (702) 588-4547.
EXHIBIT 1 PARK AVENUE MAN-MODIFIED AREA

LAKE
TAHOE
SOUTH LAKE TAHOE

Nevada Beach Forest Camp
Elk Point
Stateline
Edgewood
Incline
Bel Air

TAHOE VILLAGE
Heavenly

Tahoe Valley

NO SCALE

STUDY AREA
October 4, 1994

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Lowering the IPES Line in Washoe and Douglas Counties

PROPOSED ACTION: The proposed action is a recommendation to the Governing Board on lowering the IPES lines in Douglas and Washoe Counties.

STAFF RECOMMENDATION: Staff recommends that the APC hold a public hearing on the lowering of the IPES line for Douglas and Washoe Counties and continue the hearing to November to allow staff the opportunity to prepare additional information regarding those findings that cannot be made at this time.

BACKGROUND: Chapter 37 of the Code sets forth the five findings which must be made for a jurisdiction for the IPES line to be lowered. Those findings are:

1. All parcels included in the top rank are otherwise eligible for development under the applicable state water quality management plan for the Lake Tahoe Basin (208 plans) and other legal limitations;

2. For any jurisdiction, the number of parcels having scores below the level defining the top ranked parcels, divided by the number of parcels in that jurisdiction that were identified as sensitive by TRPA on January 1, 1986, does not exceed the following percentages:

   (i) El Dorado County - 20 percent
   (ii) Placer County - 20 percent
   (iii) Douglas County - 33 percent
   (iv) Washoe County - 33 percent

3. The monitoring program for that jurisdiction is in place pursuant to Chapter 32 and the TRPA monitoring plan;

4. Demonstrable progress is being made on capital improvement programs for water quality within that jurisdiction; and

5. The level of compliance with conditions of project approvals within any jurisdiction is satisfactory.

The above findings are further defined in Volume I of the 1988 TRPA 208 Plan (see pages 118-120, attached as Exhibit A).

At the October 1993 meeting, the Governing Board lowered the IPES line in Douglas County to 708. At the November 1993 meeting, the Governing Board lowered the IPES line in Washoe County to 694.

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DISCUSSION: Since consideration of lowering the IPES line is an annual event, staff has compiled the necessary information from the preceding calendar year (1993) or fiscal year (93-94), as appropriate, for consideration of lowering the line in Nevada in 1995. As before, the California counties are ineligible because the vacant lot equation finding cannot be made. The current vacant lot equation is presented for both California counties later in this staff summary for informational purposes.

FINDING 1. ELIGIBILITY UNDER 208 PLAN

Staff recommends making the first finding regarding eligibility and legality of IPES parcels below the IPES line for development under the applicable 208 plans because the TRPA 208 Plan, which includes implementation of the IPES and the potential for lowering the line, was certified by both states and approved by U.S.E.P.A. in 1989. The 1990 TRPA amendment to the 208 Plan redefining "in place" monitoring, was certified by Nevada in 1990, by California in 1992, and approved by U.S.E.P.A. in August 1993.

FINDING 2. VACANT LOT EQUATION

The "vacant lot equation" is the requirement that the number of parcels with IPES scores below the line (725 or less), divided by the number of parcels deemed sensitive (i.e., land capability districts 1, 2 and 3) on January 1, 1986, cannot exceed 20 percent in the California counties and 33 percent in the Nevada counties.

Numerator = Number of vacant parcels with IPES scores of 725 or less.

Denominator = Number of vacant parcels deemed sensitive (Bailey 1, 2 or 3) on January 1, 1986

The current calculations are based on the September 1994 IPES inventory, to which has been added unscored parcels which are mapped predominantly land capability 1-3 and parcels which purchased points within the last two years. The denominators are taken from a September 1986 memorandum to the Governing Board from William Morgan. The denominators are constant and do not change.

Douglas County: 272/1067 = 25%  Placer County: 1038/1667 = 62%

Washoe County: 366/2350 = 16%  El Dorado County: 1609/4363 = 37%

Staff recommends making this finding for Douglas and Washoe Counties. Since the finding cannot be made for the California counties, the remainder of this summary shall focus on the Nevada counties.

FINDING 3. MONITORING FINDING

The monitoring finding requires a monitoring program pursuant to Chapter 32 and the TRPA monitoring plan to be in place in a given jurisdiction. "In place" is defined in the 208 Plan, Volume I, p.119, as amended, as:

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"... This monitoring program shall be in place in a local jurisdiction, and shall characterize water quality conditions, before the numerical level defining the top rank for the jurisdiction is lowered. (Goals and Policies, p.VII-25). The term "in place" means that a TRPA-approved monitoring system, with established procedures and responsibilities, is physically located on the selected tributaries, and samples have been collected and analyzed for the previous water year. The monitoring program, to be effective, should remain in place on a continuing and long term basis. It is the intent of TRPA to collect, on a long term basis pursuant to stringent QA/QC procedures, improved tributary water quality data which will be used to better assess average and existing conditions and to understand water quality trends and compliance with state and federal water quality standards."

Additional detail and description of the IPES-related monitoring program is found in Volume I, pp.118-119 of the 208 Plan (Exhibit A.).

In summary, the program consists of permanent monitoring stations at the mouths of ten streams, stream flow gauges and monitoring at upstream locations on five of the ten streams (Incline, Trout, Ward and Edgewood Creeks and the Upper Truckee River), and eleven additional upstream sites in Nevada on both the monitored streams and in other watersheds (developed and undeveloped). The monitoring program meets the requirements of the 208 Plan and the Monitoring Subelement in the Goals and Policies.

The expanded tributary monitoring program has been in place in Nevada since the spring of 1991 so samples have been collected for at least three previous water years (WY 91-92, WY 92-93, and WY 93-94). The monitoring program is identical (in Nevada) to the program which was in place in 1993 at the time the Governing Board lowered the IPES lines in Douglas and Washoe Counties.

Staff recommends making the finding that the monitoring program is in place in Washoe and Douglas Counties.

**FINDING 4. CIP PROGRESS**

The CIP finding requires that a jurisdiction make demonstrable progress on capital improvement programs for water quality within that jurisdiction. The 208 Plan defines demonstrable progress as requiring one of the two following findings to be made:

1. Funding is committed and there is a strong likelihood that construction will commence on one or more high priority watershed improvement projects in the current or upcoming year and construction of one or more high priority projects has taken place in the previous or current year. (High priority projects are projects with substantial water quality benefit.); OR

2. The performance of the local jurisdiction on implementation of SEZ restoration and capital improvement projects is consistent with progress necessary to meet the benchmarks established on pp.183-184.
-- THREE-YEAR PERIOD ALTERNATE CIP FINDING (Finding #1): Following is the list of CIP projects for Washoe County for the applicable three year period of 1993 - 1995:

1995 (Upcoming)  Attached project list (Ex.B): over $4.4 million.
1994 (Current)  Upper Tyrolian Village, Phase 3: $50,297
1993 (Previous)  Knotty Pine (Incline Village #4): $3.6 million

-- THREE-YEAR PERIOD ALTERNATE CIP FINDING (Finding #1): Following is the list of CIP projects for Douglas County for the applicable three year period of 1993 - 1995:

1995 (Upcoming)  Glenbrook Curve Reveg: $185,000
1994 (Current)  Glenbrook Curve Reveg: $244,000
1993 (Previous)  None

Note: Douglas County has completed all its Priority 1 and 2 water quality CIP projects as listed in the 208 Plan.

--CIP/SEZ BENCHMARK ALTERNATE FINDING (Finding #2): The 1996 benchmarks for CIP expenditures (established in the 1992 Water Quality CIP Financing Plan) are: $4.0 million for Washoe County and $4.0 million for Douglas County. The SEZ restoration target for December 1996 is 700 acres. Because the amount of restored SEZ acreage up to 1991 was approximately 80-100 acres, this finding cannot be made for any county. The amount of SEZ restoration which has occurred since 1991 is not sufficient to change this situation.

TRPA staff recommends making Finding #1 for Washoe County but is not making any recommendation at this time for Douglas County pending further information on the 1995 project.

FINDING 5. COMPLIANCE WITH PROJECT CONDITIONS

A "satisfactory level of compliance" with conditions of project approvals, within the jurisdiction, is the last required finding for lowering the line. The four criteria listed in the 208 Plan are used as indicators of the level of compliance within a jurisdiction. The Governing Board has set numerical performance standards for the four criteria in Resolution 93-19 (Exhibit C).

The following compliance data, which pertains to the lowering of the IPES line, has been updated from 1993. The data is consistent with the format of the numerical performance standards in Resolution 93-19. The sources utilized include: TRPA computer database, project files, reading files, inspection records and daily logs, compliance activity summaries, TRPA securities receipt books, and TRPA securities index cards.

Criteria #1: The percentage of project securities which were posted within a calendar year at least three years earlier and which are currently not being returned for water quality reasons shall not exceed 30 percent of the number of project securities which were posted within that calendar year.
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The set of data is based on all projects which posted a security within the specified calendar year. Data is presented for the years 1985 through 1990.

### 1985 Security Returns

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<thead>
<tr>
<th>Jurisdiction</th>
<th>Total Posted</th>
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<th>Percentage of Securities Not Released</th>
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<td>Douglas County</td>
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### 1988 Security Returns

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### 1989 Security Returns

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<td>81</td>
<td>68</td>
<td>16%</td>
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### 1990 Security Returns

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<td>78</td>
<td>52</td>
<td>33%</td>
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**Criteria #2:** The percentage of BMP retrofit plans behind approved schedules shall not exceed 30 percent of the number of projects with BMP retrofit schedules as a condition of project approval and have reached either the five-year or ten-year deadlines set in Chapter 25. (The Code requires 50% completion at the five-year mark.)
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<table>
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<th>Jurisdiction</th>
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<tr>
<td>Douglas County</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>33%</td>
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</table>

Criteria #3: The percentage of projects which had Cease & Desist orders posted for failure to observe conditions of approval shall not exceed 20 percent of the number of projects which were inspected the previous fiscal year.

The data for the number of projects inspected is based on the number of pre-grade inspections completed.

FY 93-94 (7/1/93 to 6/30/94)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th># of Projects Inspected</th>
<th># of Projects Issued Cease and Desist Orders</th>
<th>% of Projects Issued Cease and Desist Orders</th>
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<tbody>
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<tr>
<td>Douglas County</td>
<td>59</td>
<td>8</td>
<td>14%</td>
</tr>
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</table>

Criteria #4: The percentage of projects which were issued notices of violation or were identified as alleged violations and which are unresolved at the end of the fiscal year shall not exceed 20 percent of the number of projects which were issued notices of violation or were identified as alleged violations within the fiscal year. Noticed or alleged violations which are resolved within 90 days of being reported as an alleged or noticed violation shall not be counted as unresolved, even if the resolution occurs in the next fiscal year. Alleged or noticed violations for which litigation has been filed shall be deemed resolved for purposes of this finding.

The data includes the number of notices of violations, and prenotice of violation settlements requiring Governing Board approval.

FY 93-94 (7/1/93 to 6/30/94)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th># of Violations Unresolved</th>
<th># of Violations Unresolved</th>
<th>% of Violations Unresolved</th>
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</thead>
<tbody>
<tr>
<td>Washoe County</td>
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<td>1</td>
<td>14%</td>
</tr>
<tr>
<td>Douglas County</td>
<td>4</td>
<td>1</td>
<td>25%</td>
</tr>
</tbody>
</table>

TRPA staff cannot recommend making the compliance finding for Douglas and Washoe Counties since they do not meet the recommended numerical standards for each criteria. TRPA will review the specific projects and be prepared to discuss the criteria in greater detail at the APC meeting.

ACTION REQUESTED: Staff requests that the APC hold a public hearing and make a recommendation for continuance on the lowering of the IPES lines in Washoe and Douglas Counties.

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Property owners may appeal their parcel's rating to an independent body of qualified experts not involved in the initial field evaluation of that parcel. These independent experts shall apply the IPES criteria, and their decision shall be final unless the property owner appeals to the TRPA Governing Board. The Board may change a rating only upon finding that the IPES criteria were not applied correctly.

TRPA shall rate all vacant residential parcels numerically and rank them from most suitable to least suitable, by jurisdiction. TRPA shall also establish a level in the ranking immediately above the most sensitive parcels, based on recommendations from the IPES technical committee. Only parcels above this level, as it may be subsequently adjusted, comprise the "top rank" and may pursue a building permit (Goals and Policies, p. VII-6).

The numerical level defining the top rank for any jurisdiction shall be lowered annually by the number of allocations utilized in that jurisdiction during the previous year, provided that the following conditions are met (Goals and Policies, pp. VII-6, -7):

-- all parcels in the top rank are otherwise eligible for development under state water water quality plans and other legal limitations,

-- a monitoring program for that jurisdiction is in place as set forth in the Monitoring and Evaluation Subelement of the TRPA Goals and Policies,

-- demonstrable progress is being made on the Capital Improvements Program for water quality within that jurisdiction,

-- there is a satisfactory rate of reduction in the inventory of vacant parcels; the IPES line shall not move down in any jurisdiction unless the number of parcels below the line in that jurisdiction, compared to the number deemed sensitive on January 1, 1986, does not exceed 20 percent in El Dorado and Placer Counties, or 33 percent in Washoe and Douglas Counties, and

-- the level of compliance with conditions of project approvals within that jurisdiction is satisfactory.

With respect to the requirement that a monitoring program be in place in a given jurisdiction, the Goals and Policies require TRPA to monitor representative tributaries to provide a basis for evaluating the relative health of the watershed within which development is contemplated and progress toward meeting thresholds. The monitoring program will monitor stream flows and
concentrations of sediments and dissolved nutrients to determine annual pollutant loads. This monitoring program shall be in place in a local jurisdiction, and shall establish baseline water quality conditions, before the numerical level defining the top rank for the jurisdiction is lowered (Goals and Policies, p. VII-25). The term "in place" means that a TRPA-approved monitoring system, with established procedures and responsibilities, is physically located on the selected tributaries, and samples have been collected and analyzed for at least one representative water year.

The location of sampling sites, frequency of sampling, and financial responsibilities for monitoring will be set forth in TRPA's Monitoring Program pursuant to the Goals and Policies (p. VII-25) and the TRPA Code of Ordinances (section 32.10), based on the recommendations of the TRPA Monitoring Committee. The objectives of the monitoring program are to:

1. Characterize the water quality of streams draining affected residential areas in relationship to the overall water quality observed in the watershed,

2. Identify short-term changes in water quality from affected residential areas, and

3. Ensure that TRPA and state water quality standards are being attained and maintained.

The monitoring program will include quality control and quality assurance (QA/QC) procedures to ensure that the data accurately represent the actual water quality conditions.

Monitoring will normally occur not only at the mouths of streams, but also at locations in closer proximity to residential subdivisions. While the stream mouth monitoring will generally cover the entire year, monitoring at other locations higher in the watershed will be geared toward the spring snowmelt period and the fall storm season to contain costs. In addition to the presently established monitoring stations, TRPA estimates that 30 to 40 additional stations will be required throughout the Region to support the IPES conditions.

With regard to the requirement that demonstrable progress is being made on the Capital Improvements Program within a given jurisdiction, TRPA's evaluation will be based on the programs adopted in Volumes III and IV of the 208 plan, including lists of SE2 restoration and capital improvement projects for erosion and runoff control, with priority designations, for each jurisdiction. Pursuant to the Goals and Policies, TRPA has established benchmarks against which the progress can be evaluated (Goals and Policies, p. VII-26). These benchmarks are found in Section I, Chapter VII of this volume, Plan Evaluation and Revision.
To make a finding of demonstrable progress in a local jurisdiction, TRPA will review the progress of that jurisdiction over a three-year period covering the previous year, the current year, and the upcoming year. For the demonstrable progress criteria to be met, TRPA must make one of the following findings: (1) funding is committed and there is a strong likelihood that construction will commence on one or more high priority watershed improvement projects in the current or upcoming year and construction of one or more high priority projects has taken place in the previous or current year, or (2) the performance of the local jurisdiction on implementation of SEZ restoration and capital improvement projects is consistent with progress necessary to meet the benchmarks established on pp. 183 and 184. In this context, the term "high priority project" means a project with a substantial water quality benefit.

To determine whether the level of compliance in a jurisdiction is satisfactory, TRPA will evaluate: (1) the percentage of projects which commenced construction three or more years earlier but which have not had their securities returned for water quality-related practices, (2) the number of projects which are behind approved schedules in project approvals for BMP retrofit, compared to those on schedule, (3) the number of projects which required TRPA issuance of cease and desist orders for failure to observe conditions of approval within the previous fiscal year, as compared to the number of projects inspected, and (4) the number of projects on which violations remain unresolved, compared to the number resolved. TRPA will review compliance data at the end of the 1989 building season, and will then set specific numerical performance standards for the four criteria above. The specific numerical performance standard shall reflect TRPA's goal of achieving a very high level of compliance with conditions of project approval.

Since it is possible (though unlikely) that individual appeals of IPES scores may result in a significant shift in the number of single-family parcels eligible to pursue construction permits by virtue of being in the top rank, TRPA shall, in a given local jurisdiction, and provided that IPES appeals increase the size of the top rank in that jurisdiction by three percent or more, subtract the number of parcels added to the top rank by appeals during the first year from the number of parcels which would be added to the top rank any year that the IPES line is lowered, until the number of parcels added to the top rank by appeals equals the number of parcels which would have been added to the top rank due to the lowering of the IPES line.

For TRPA to approve a project on a parcel rated and ranked by IPES, the parcel must be served by a paved road, water service, sewer service, and electric utility. However, Chapter 27 of the TRPA Code of Ordinances sets forth provisions for waiver of the paved road requirement, as provided for in the Goals and Policies (p. VII-8).
October 22, 1993

Kimble Corbridge
Washoe County
Dept. of Public Works
1001 E. Ninth St.
Reno, NV 89520

Re: First, Second, & Third Creek Water Quality Improvement Projects - 1994 Preliminary List of Projects, Construction Cost Estimate, and Location Maps

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Treatment</th>
<th>SEZ. Distance</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Creek Basin*</td>
<td>Sediment Basin</td>
<td>First Ck/50 Ft.</td>
<td>$40,000</td>
</tr>
<tr>
<td>Second Creek Cutbank*</td>
<td>Vegetation</td>
<td>Second Ck/100 Ft.</td>
<td>$20,000</td>
</tr>
<tr>
<td>Country Club Cutbank*</td>
<td>Vegetation</td>
<td>Third Ck/100 Ft.</td>
<td>$50,000</td>
</tr>
<tr>
<td>Sugarpine Cutbank*</td>
<td>Retaining Walls</td>
<td>Second Ck/500 Ft.</td>
<td>$120,000</td>
</tr>
<tr>
<td>Jackpine Basin*</td>
<td>Sediment Basin</td>
<td>Second Ck/500 Ft.</td>
<td>$20,000</td>
</tr>
<tr>
<td>Ponderosa Cutbank</td>
<td>Retaining Walls</td>
<td>Second Ck/200 Ft.</td>
<td>$30,000</td>
</tr>
<tr>
<td>Second Creek Ditches</td>
<td>Rock Lined Ditches</td>
<td>Second Ck/100 Ft.</td>
<td>$40,000</td>
</tr>
<tr>
<td>Silvertip Basin</td>
<td>Sediment Basin</td>
<td>Second Ck/100 Ft.</td>
<td>$50,000</td>
</tr>
<tr>
<td>Village Cutbank</td>
<td>Rock Riprap</td>
<td>Third Ck/200 Ft.</td>
<td>$30,000</td>
</tr>
<tr>
<td>Village Basin</td>
<td>Sediment Basin</td>
<td>Third Ck/200 Ft.</td>
<td>$20,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$420,000</strong></td>
</tr>
</tbody>
</table>

The projects marked with an asterisk (*) are projects previously reviewed with you. The addition projects are provided as alternatives to be further evaluated and offered for comparison. This list was completed with the assistance of Carl Hasty, TRPA, on October 21, 1993 relative to the most recent TRPA 208 Water Quality Plan. Carl was very pleased with this list of projects especially due to the proximity and favorable impact to stream environment zones.
TAHOE REGIONAL PLANNING AGENCY
RESOLUTION NO. 93-19

RESOLUTION SETTING NUMERICAL PERFORMANCE STANDARDS
FOR DETERMINING A SATISFACTORY LEVEL OF COMPLIANCE
WITH PROJECT CONDITIONS OF APPROVAL AS RELATED TO IPES

WHEREAS, the 1987 Regional Plan and Code of Ordinances adopted a new
system for evaluating and determining eligibility for development of vacant
residential parcels, which system is titled Individual Parcel Evaluation System
("IPES"); and

WHEREAS, a key component of IPES is the potential for annually lowering
the numerical level defining the top ranked parcels (IPES line) in a given
jurisdiction; and

WHEREAS, the numerical level defining the top rank in a given
jurisdiction cannot be lowered unless TRPA makes five certain findings as set
forth in Chapter 37 of the TRPA Code of Ordinances; and

WHEREAS, one of the five required findings is a finding that the level of
compliance with conditions of project approval is satisfactory; and

WHEREAS, the 1988 Water Quality Management Plan for Lake Tahoe Region
(1988 TRPA 208 Plan) adopted by TRPA, certified by California and Nevada and
approved by U.S. EPA, mandated the evaluation of four criteria and the setting
of numerical performance standards as a precursor to making the compliance
finding; and

WHEREAS, the numerical standards are to reflect TRPA's goal of achieving
a high level of compliance and will be the standards used by each
jurisdiction in the annual consideration of lowering the IPES line; and

WHEREAS, instead of two years of compliance data for the four criteria,
as contemplated by the 1988 TRPA 208 Plan, TRPA has now collected four to five
years of compliance data; and

WHEREAS, TRPA has conducted several noticed public hearings in both 1990
and 1993 on the setting of the numerical performance standards; and

WHEREAS, the APC has recommended the setting of the numerical performance
standards as set forth in the minutes of their October 13, 1993 meeting; and

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Tahoe
Regional Planning Agency hereby sets the numerical performance standards for
the four criteria in Volume I, of the 1988 TRPA 208 Plan, page 120, as
follows:

(1) The percentage of project securities which were posted within a
calendar year at least three years earlier and which are currently
not being returned for water quality reasons shall not exceed 30
percent of the number of project securities which were posted within
that calendar year.

EXHIBIT C2
(2) The percentage of BMP retrofit plans behind approved schedules shall not exceed 30 percent of the number of projects which have BMP retrofit schedules as a condition of project approval and which have reached either the five-year or ten-year deadlines set in Chapter 25.

(3) The percentage of projects which had Cease & Desist orders posted during the previous fiscal year for failure to observe conditions of approval shall not exceed 20 percent of the number of projects which were inspected the previous fiscal year.

(4) The percentage of projects which were issued notices of violation or were identified as alleged violations, and which are unresolved at the end of the fiscal year, shall not exceed 20 percent of the number of projects which were issued notices of violation or were identified as alleged violations within the fiscal year. Noticed or alleged violations which are resolved within 90 days of being noticed or identified shall not be counted as unresolved, even if the resolution occurs in the next fiscal year. Filing litigation shall be deemed a resolution of a violation for purposes of this finding.

BE IT FURTHER RESOLVED that the Governing Board shall reconsider the foregoing numerical standards at such time as reconsideration may be appropriate or required, including but not limited to, reconsideration based on the 1992 amendments to Chapter 25 requiring mandatory BMP retrofit by certain dates.

PASSED AND ADOPTED this 27th day of October 1993, by the Governing Board of the Tahoe Regional Planning Agency by the following vote:

Ayes: Westergard, Upton, Kanoff, Klein, Lau, Sevison, Bradhurst, Neft, DeLanoy, Waldie, Bennett, Hagedorn, Cronk

Nays: None

Abstentions: None

Absent: Chimarusti

John E. Upton, Vice Chairman
Tahoe Regional Planning Agency
MEMORANDUM

September 29, 1994

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Discussion Concerning Affordable/Low Cost Housing and Urban Boundary Code Amendments

Proposed Action: Pursuant to the recent settlement of the Douglas Community Plans lawsuit, TRPA staff is considering possible amendments of the TRPA Regional Plan to meet the following objectives:

Objective #1: To preserve parcels for multi-family development (primarily affordable and low cost housing) which have good access (roads, transit, and walking) to jobs and services.

Objective #2: To direct the location of new and transferred development to areas within urban boundaries.

Objective #3: To direct new and transferred development into land use patterns that concentrate such development in existing urbanized areas, that promote transit/pedestrian modes of transportation, that make efficient use of existing infrastructure, that promote conservation of the Basin’s limited resources, and generally help achieve thresholds.

Under the terms of the settlement agreement, TRPA staff is required to present recommendations to the Governing Board by December 1994. The APC is requested, at this time, to review and comment on the proposed objectives and the process.

Staff Proposal: Staff proposes to form a working group of local planners, local housing experts, and concerned citizens. Within the limited time constraints, the group will comment on the objectives and review the options. This informal group will assist TRPA staff in formulating recommendations.

Preliminary Analysis of Objective #1: As a starting point for the group’s work, staff will ask the group to review at least the following options:

Option #1 – Least Complicated: Amend Chapter 43 to prohibit post-1987 residential subdivisions on parcels in PASs designated for affordable housing, or multi-residential incentive program, or bonus units.
Option #2 - More Specific: By PAS, designate parcels (based on stated criteria) for affordable and low cost multi-family development and limit the parcels to that use only. The criteria would include parcel size, distance from transit or shopping, etc. There are 12 or more PASs that might be included for “affordable” or low cost designations.

Option #3 - Linkage to Objective: Link approval of subdivisions to the achievement of the objective. Subdivisions must demonstrate they are not eliminating parcels suitable for multi-residential development.

Option #4 - Prohibition Without a Housing Program: Have a prohibition of subdivisions until the local jurisdiction has a program that addresses the affordable/low cost housing issues.

The following options could also be considered, but they are more complex and controversial. It is staff’s opinion that, while these may be good ideas, it may not be practical to implement them by December.

A. Add an option that allows a subdivision if 25% (or some other percentage) of units are affordable or low cost units such as is done in Palo Alto.

B. Reserve allocations for multi-residential projects and prohibit condominium conversions, such as is done by the City of South Lake Tahoe.

C. Consider using a parcel size limit or subdivisions such as one-third acre or more (i.e., 5 units or more at 15 units per acre or the size of a SFD lot) or one acre or more (i.e., 15 units per acre).

D. Prohibit the use of bonus units for subdivisions in PASs with affordable housing designations.

E. Allow subdivisions only if they meet transit-oriented design standards (e.g., 10-15 units per acre, located on transit route, pedestrian improvements, etc.).

Preliminary Analysis of Objective #2: It is staff’s opinion that the urban boundary issue is much less complex. The Regional Plan and Code are clear as to the intent of keeping residential subdivision development within the urban boundaries. At issue is the expansion of the urban boundary to permit further subdivision development. The following options are being considered:

Option #1 - Prohibit the Expansion of the Urban Boundary: Limit additions to commercial, tourist, and residential PASs (they define the urban boundary) by freezing the boundaries or the total area.
Option #2 - Prohibit Subdivisions Outside the 1987 Urban Boundary:
Clarify Chapter 43 to indicate the existing prohibition outside the urban boundary applies to the boundary adopted in 1987.

Preliminary Analysis of Objective #3: Staff has attempted to state the fundamental principle of TRPA's transfer program, allocation program, community plan program, bonus unit program, and other growth management programs in Objective #3. The issue here has focused on the approval of low density residential subdivisions within the urban boundaries. The following options could be considered:

Option #1 - Special Findings For Adding Multi-Residential: When amending PASs to permit multi-residential uses (a requirement for new subdivisions) require findings be made to ensure that lot and block style subdivisions are not the result.

Option #2 - Establish Minimum Densities: As is done with the parking ordinance, establish maximum-minimum densities for residential development.

If you have any questions or comments regarding this agenda item, please contact Gabby Barrett at (702) 588-4547.
October 4, 1994

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Amendment to Rule 7.6 of the Rules of Procedure
          Pertaining to the Mandatory Presentation of Issues to the APC

Proposed Action: Adoption of amended Rules of Procedure by: 1) Requiring the applicant to present all significant issues and information to the APC before it is presented to the Governing Board; and 2) Giving the Governing Board the option of referring a matter back to the APC, or refusing to take testimony, whenever individuals other than applicants raise new issues and information that reasonably should have been presented to the APC.

Staff Recommendation: Staff recommends that the Advisory Planning Commission review the amendments in Exhibit "A", and see if they are deemed desirable.

DISCUSSION: A joint Governing Board and Rules Committee and APC meeting was scheduled on August 24, 1994. At that time, a series of concerns were raised.

On September 14, 1994, the Advisory Planning Commission received amendments to Rules 7.2, 7.6 and a new 7.11. The APC approved proposed Rules 7.2 and 7.11 unanimously during its September 1994 meeting. The Advisory Planning Commission asked staff to rewrite Rule 7.6 and bring it back for further discussion.

Rule 7.6 was designed to deal with the frustration that many individuals and groups were not presenting their testimony to the APC, but were choosing only to raise substantive issues before the Governing Board. The attached version of Rule 7.6 contains a stricter standard for applicants. It likewise allows the Governing Board additional discretion in handling significant new factual information or issues raised by non-applicants.

If there are any questions regarding this agenda item, please contact R. J. Nicolle, Agency Counsel, or Susan E. Scholley, TRPA Special Projects Attorney, at (702) 588-4547.

Attachment

AGENDA ITEM NO. VII.A.
Exhibit "A"

ARTICLE VII - ADVISORY PLANNING COMMISSION

7.6 Consideration by Governing Body: At the next regular meeting of the Governing Body, or at any special meeting that may be scheduled, the Governing Body shall consider the report and recommendations of the APC. The Governing Body desires all significant factual issues and/or information to first be brought before the Advisory Planning Commission. With this policy in mind, the following testimonial policies are adopted:

1) Applicant testimony - The Governing Body shall return a matter to the APC for further discussion or shall refuse to accept testimony from applicants when such testimony concerns significant new factual issues or information, unless such additional testimony could not reasonably have been presented to the APC; and

2) Non-applicant testimony - The Governing Body likewise reserves the right to return a matter to the APC for further discussion, or to refuse to take testimony, whenever individuals (other than applicants) present testimony that raises significant new factual issues, or provides significant new information, at the Governing Body meeting (unless those issues or information could not reasonably have been presented to the APC).

Examples of appropriate bases for presenting significant new factual issues or information at the Governing Body meeting are: 1) significant new information became available after the APC meeting; or 2) the person testifying demonstrates that they could not attend the APC meeting or present their testimony in writing.
TAHOE REGIONAL PLANNING AGENCY
RESOLUTION OF THE ADVISORY PLANNING COMMISSION
FOR NEIL BROOKS

WHEREAS Neil Brooks’ first two-year term as a Nevada lay member on the Advisory Planning Commission (APC) of the Tahoe Regional Planning Agency commenced in September of 1987; and

WHEREAS Neil Brooks has submitted his resignation from the APC after being reappointed for three additional two-year terms; and

WHEREAS Neil has served the citizens of Nevada, of Washoe County, and of the Tahoe Basin with distinction, bringing a quiet dignity to the Commission; and

WHEREAS, over the last six and a half years Neil participated in many important discussions and decisions and provided guidance and valuable input to the recommendations formulated by the APC for the Governing Board; and

WHEREAS Neil provided an invaluable lay member’s perspective on the many critical issues facing the regional planning agency – including Community Plans, Code amendments, transportation issues, and Regional Plan amendments;

NOW, THEREFORE, BE IT RESOLVED that the Advisory Planning Commission wishes Neil great success in his other endeavors and hopes he will continue his involvement and interest in planning for Tahoe’s future;

PASSED AND ADOPTED this twelfth day of October, nineteen hundred and ninety-four by the Advisory Planning Commission of the Tahoe Regional Planning Agency.

Joe Thompson, Chairman
Advisory Planning Commission

AGENDA ITEM IX. A.
TAHOE REGIONAL PLANNING AGENCY
RESOLUTION OF THE ADVISORY PLANNING COMMISSION
FOR JANET BERONIO

WHEREAS Janet Beronio's first term as a Nevada lay member on the Advisory Planning Commission of the Tahoe Regional Planning Agency commenced in September 1991; the Governing Board appointed her to a second term in January of 1993; and

WHEREAS Janet has submitted her resignation from the Advisory Planning Commission to take on a challenging opportunity with Harrah's in Arizona; and

WHEREAS in her letter to the Douglas County Commission expressing interest initially in serving as a lay member on the APC Janet cited her belief that her knowledge of TRPA's role in the Basin, her familiarity with the regulatory scheme, and involvement in numerous issues over the years would be of value in representing the County on the APC; and

WHEREAS her expertise in the planning issues facing the APC were borne out by her active participation and the articulate and well thought out recommendations on the many complex planning issues faced by the APC; and

WHEREAS Janet's quick wit, her ability to focus on critical issues in the decision making process, and her sense of humor will be missed by the Commission and the staff alike;

NOW, THEREFORE, BE IT RESOLVED that the Advisory Planning Commission of the Tahoe Regional Planning Agency wishes Janet well in the challenges facing her in Arizona;

PASSED AND ADOPTED this twelfth day of October, nineteen hundred and ninety-four by the Advisory Planning Commission of the Tahoe Regional Planning Agency.

Joe Thompson, Chairman
Advisory Planning Commission

AGENDA ITEM IX. B.