October 2000
GB Packet
TAHOE REGIONAL PLANNING AGENCY (TRPA)

NOTICE IS HEREBY GIVEN that on Tuesday, October 24, 2000, commencing at 5:30 p.m., in the conference room of the Tahoe Regional Planning Agency, 308 Doria Court, Zephyr Cove, Nevada, the Environmental Improvement Program Implementation Committee (EIPIC) will meet. The agenda will be as follows: 1) public interest comments (no action); 2) approval of minutes; 3) review of EIP Update documents; 4) update on Regional Revenue Feasibility Analysis; and 5) member comments (Committee: Waldie, Cole, Perdock, Minor, DeLany)

NOTICE IS HEREBY GIVEN that on Wednesday, October 25, 2000, commencing at 9:30 a.m., the Governing Board of the Tahoe Regional Planning Agency will conduct its regular meeting. The meeting will take place at the Tahoe Seasons Resort, Saddle Road at Keller, South Lake Tahoe, California. The agenda is attached hereto and made a part of this notice.

Governing Board Committee items are action items unless otherwise noted

NOTICE IS FURTHER GIVEN that on Wednesday, October 25, 2000, commencing at 8:30 a.m., at the same location, the TRPA Finance Committee will meet. The agenda will be as follows: 1) public interest comments (no action); 2) receipt of September revenue/expense summary; 3) member comments. (Committee: Neft, Heller, Galloway, Solaro, Bennett)

NOTICE IS FURTHER GIVEN that on Wednesday, October 25, 2000, commencing at 9:00 a.m. at the same location, the TRPA Retirement Committee will meet. The agenda will be as follows: 1) public interest comments (no action); 2) disbursement of retirement funds to former employees; 3) member comments. (Committee: Sandoval, DeLany, Neft, Chouinard, Palma)

NOTICE IS FURTHER GIVEN that on Wednesday, October 25, 2000, commencing at noon, at the same location, the TRPA Rules Committee will meet. The agenda will be as follows: 1) public interest comments (no action); 2) resolution exempting hire of the Deputy Executive Director from Policy 1.2 (Personnel Recruitment) of the Personnel Policy Manual; and 3) member comments. (Committee: Solaro, Neft, Heller, Galloway, Medina)

October 16, 2000

Juan Palma
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.
TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

Tahoe Seasons Resort
Saddle Road at Keller
South Lake Tahoe, California

October 25, 2000
9:30 a.m.

All items on this agenda are action items unless otherwise noted. Items on the agenda, unless designated for a specific time, may not necessarily be considered in the order in which they appear. For agenda management purposes, approximate time limits have been assigned to each agenda item. All public comments should be as brief and concise as possible so that all who wish to speak may do so; testimony should not be repeated.

AGENDA

I. PLEDGE OF ALLEGIANCE (5 minutes)

II. ROLL CALL AND DETERMINATION OF QUORUM (5 minutes)

III. PUBLIC INTEREST COMMENTS - All comments are to be limited to no more than five minutes per person.

Any member of the public wishing to address the Governing Board on any agenda item not listed as a Project Review, Public Hearing, TMPO, Appeal, or Planning Matter item may do so at this time. However, public comment on Project Review, Public Hearing, Appeal, and Planning Matter items will be taken at the time those agenda items are heard. The Governing Board is prohibited by law from taking immediate action on or discussing issues raised by the public that are not listed on this agenda.

IV. APPROVAL OF AGENDA (5 minutes)

V. APPROVAL OF MINUTES (5 minutes)

VI. CONSENT CALENDAR (see agenda pg. 3 for specific items) (5 minutes)

VII. PLANNING MATTERS

A. Review and Adoption of 2000 Regional Transportation Improvement Program (RTIP), Amendment #2, Approval of Resolution (10 Minutes)  Pg 21

VIII. PUBLIC HEARINGS

A. Amendment of Plan Area Statement 058, Glenbrook, to Add Special Area #1 Where the Construction of New Piers Will Be Prohibited (15 minutes)  Pg 25

IX. PROJECT REVIEW

A. Ruvo/Whittemore/Carano, New Pier, 1960 Glenbrook Inn Road, Douglas County APN 01-190-13 et al., TRPA File No. 990108 (15 minutes)  Pg 45

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B. Hooks Landing, Outdoor Recreation Concession, Tahoe City, Temporary Use Permit, Placer County APN 94-510-01 (1 hour)  

C. Peter Sprock/Rick Parker, Multiple-Use Pier Recognition/Pier Expansion, TRPA File No. 200034 (20 minutes)  

X. ADMINISTRATIVE MATTERS  
A. TRPA’s “Best in The Basin” Awards – (11:15 a.m. – 12:00 noon)  
B. California Lay Member Appointment to the Advisory Planning Commission (10 minutes)  

XI. COMMITTEE RECOMMENDATIONS AND BOARD ACTION  
A. Finance Committee (5 minutes)  
B. EIIPC (5 minutes)  
C. Local Government Committee (5 minutes)  
D. Rules Committee (10 minutes)  
  1. Resolution Exempting Hire of the Deputy Executive Director From Policy 1.2 (Personnel Recruitment) of the Personnel Policy Manual  
E. Retirement Committee  

XII. REPORTS  
A. Executive Director Monthly Status Report (5 minutes)  
  1. Status Report on Project Applications  
B. Legal Division Monthly Status Report (5 minutes)  
C. Governing Board Members (5 minutes)  

XIII. ADJOURNMENT
## CONSENT CALENDAR

<table>
<thead>
<tr>
<th>Item</th>
<th>Recommendation</th>
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</thead>
<tbody>
<tr>
<td>1. Receipt of September Expense/Revenue Summary</td>
<td>Receipt</td>
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<tr>
<td>2. Scott, Land Capability Challenge, 215 Wheeler Road, Incline Village, Washoe County APN 130-204-07</td>
<td>Approval</td>
</tr>
<tr>
<td>5. Catron, Appeal of Land Capability Challenge, 7238 Plaza Court, Tahoe Vista, Placer County APN 117-110-38</td>
<td>Approval</td>
</tr>
<tr>
<td>6. Bridgetender LP, New Commercial Structure, 65 West Lake Boulevard, Placer County APN 94-540-18, TRPA File No. 200396</td>
<td>Approval of Findings and Conditions</td>
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The consent calendar items are expected to be routine and non-controversial. They will be acted upon by the Board at one time without discussion. The special use determinations will be removed from the calendar at the request of any member of the public and taken up separately. If any Board member or noticed affected property owner requests that an item be removed from the calendar, it will be taken up separately in the appropriate agenda category.
Four of the members of the governing body from each State constitute a quorum for the transaction of the business of the agency. The voting procedure shall be as follows:

(1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each State agreeing with the vote of at least four members of the other State shall be required to take action. If there is no vote of at least four of the members from one State agreeing with the vote of at least four of the members of the other State on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.

(2) For approving a project, the affirmative vote of at least five members from the State in which the project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the State in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion for approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

(3) For routine business and for directing the agency’s staff on litigation and enforcement actions, at least eight members of the governing body must agree to take action. If at least eight votes in favor of such action are not cast, an action of rejection shall be deemed to have been taken.

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Tahoe Regional Planning Agency Governing Board Members:
Chairman Larry Sevison, Placer County
Vice Chairman Don Miner, Douglas County
Kay Bennett, Carson City
Jim Galloway, Washoe County
Hal Cole, South Lake Tahoe
Dave Solaro, El Dorado County
Brian Sandoval, Nevada At-Large Member
Dean Heller, Nevada Secretary of State
Wayne Perock, Nev. Dept. of Conservation Appointee
Drake DeLany, Nevada Gov. Appointee
Jerry Waldie, Calif. Senate Rules Com. Appointee
Leslie Medina, Calif. Assembly Spkr. Appointee
Joanne Neft, Calif. Gov. Appointee
(Position Vacant), Calif. Gov. Appointee
Peter Chase Neumann, Presidential Appointee

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Article III(g) Public Law 96-551

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TAHOE REGIONAL PLANNING AGENCY  
GOVERNING BOARD

Granlibakken Conference Center  
625 Granlibakken Road  
Tahoe City, California

September 27, 2000

REGULAR MEETING MINUTES

I. ROLL CALL AND DETERMINATION OF QUORUM

Chairman Larry Sevison called the September 27, 2000, Tahoe Regional Planning Agency (TRPA) Governing Board meeting to order at 9:40 a.m.

II. PLEDGE OF ALLEGIANCE TO THE FLAG

Vice Chairman Don Miner led the Board in the Pledge of Allegiance to the Flag.

Members Present: Dr. Miner, Mr. Waldie, Mr. DeLanoy, Mr. Solaro, Mr. Heller (arrived at 9:52 a.m.), Mr. Cole, Mr. Bennett, Mr. Perock, Ms. Neft, Mr. Galloway (arrived at 9:50 a.m.), Mr. Sandoval, Mr. Sevison

Members Absent: Ms. Medina, Mr. Neumann

Dr. Miner reminded the Nevada contingents that a North Tahoe Regional Planning Agency meeting immediately following the TRPA Governing Board meeting.

III. PUBLIC INTEREST COMMENTS

Ms. Elizabeth Hale, a local citizen, expressed her concern about the buoys in the Lake that seem to be multiplying. The people on the North Shore say there is not much supervision about how these buoys appear. She didn't know exactly the person she should discuss this issue with. In addition, there have been some problems at TRPA approving permits to have some trees cut on Commons Beach property. There is going to be some movement towards having seating areas on the street so that people can watch out towards the Lake through these view corridors. Ms. Hale is concerned about this perpetuation of something that perhaps should not have started. Ms. Hale suggested that Juan Palma would be the person to discuss this issue with. She hoped that TRPA would help because some things just sort of happen up at this end of Lake that the locals are not too happy about.

IV. APPROVAL OF AGENDA

Acting Executive Director John Marshall advised that staff would be continuing Planning Matter Item IX.A, and the Show Cause Hearing Item X.A. The Notice of Violation has been removed because the correction notice has been complied with.
Mr. Waldie stated that before Mr. Marshall removes the Show Cause Hearing, it is scheduled to come before the Legal Committee and he, as the Chair of the Legal Committee, would prefer that the Legal Committee approve what is being proposed. Mr. Marshall stated that we could have that discussion at the Legal Committee. One of the points that Mr. Marshall needs to address is the discretion of the Executive Director to remove things. Mr. Waldie commented that until we talk about that, let’s leave it on the agenda. Mr. Marshall agreed.

The only other item Mr. Marshall addressed is the time certain discussion at 2:30 of the Potential TRPA Office Relocation Sites Planning Matter IX.B., which, if the meeting does end early, that item can be continued until November.

Chairman Sevson stated that if we do continue the above-referenced item, he would like a listing of the options and priorities and why each particular site that is being considered is best so that we have something to weight when we get to instead of spinning our wheels. Mr. Marshall stated that this was going to be just an information item. Mr. Sevson questioned if Mr. Barrett would tell the Board what locations were being considered, and Mr. Marshall replied if we to that item.

**MOTION** by Dr. Miner to approve the agenda as discussed. The motion carried unanimously.

V. APPROVAL OF MINUTES

**MOTION** by Ms. Neft to approve the August 23, 2000, meeting minutes as presented. The motion carried unanimously.

VI. CONSENT CALENDAR

Mr. Perock asked that on page 6, 3.(h), of Consent Calendar Item No. 1, California Division of State Lands and California Department Fish & Game be changed to Nevada Division of State Lands and Nevada Division of Wildlife.

**MOTION** by Dr. Miner to approve Consent Calendar Items 1 through 8, with the amendment to Consent Calendar Item No. 1.

VII. PUBLIC HEARINGS

A. Amendment of Chapter 4, Project Review and Exempt Activities, to Amend the MOU with Nevada State Parks to Increase Vegetative Management Exempt Activity Area Limits From 30 Acres to 100 Acres

Special Programs Administrator Rick Angelocci presented the staff summary amending Chapter 4, Project Review and Exempt Activities, to Amend the existing Memorandum of Understanding between TRPA and the Nevada Division of State Parks.

Chairman Sevson opened the meeting up for a public hearing. Since no one wished to comment, Chairman Sevson closed the public hearing.

**MOTION** by Dr. Miner to amend Chapter 4, Project Review and Exempt Activities, to Amend the MOU with Nevada State Parks to Increase Vegetative Management Exempt Activity Area Limits From 30 Acres to 100 Acres. The motion carried unanimously.
Chairman Sevison reminded Mr. Angelocci that he was to give a brief presentation to the Board on MOU's.

Mr. Angelocci stated that under Agenda Item XII.A.2. there was a request for a status report on the delegation of MOU's. Mr. Angelocci stated that on the hand out that he was distributing showed the MOU modifications that the Governing Board had approved in the delegation process in 1999 and 2000. The list also includes all the other existing MOU's that we have with the various public and quasi-public entities. Mr. Angelocci stated that thanks to Mr. Solaro and his work at the County, the County just adopted the expanded MOU with El Dorado County. All the addition items that they are taking over for TRPA in terms of delegation in issuing permits are listed under "El Dorado County" on the first page of the hand. On the second page, he thanked Mr. Cole and his staff at the City of South Lake Tahoe who have taken over small commercial projects under 2500 square feet; in addition, commercial floor area. The City is the first in the Basin to do so. At the bottom of the page, Mr. Angelocci pointed out that last year, TRPA did have a Douglas Planner sitting in our office processing both TRPA applications and Douglas County applications. We are planning to do that again; hopefully, with Dr. Miner's help. The difficulty is that Douglas County, as well as a lot of other jurisdictions, are having difficulty filling their positions now. The job market is very hot. TRPA is looking to do that this coming Spring. Two months ago, the Board approved the expansion of the MOU with Douglas County, which is listed on the second page of the hand out. Also listed are the four new and expanded MOU's we processed last year with Sierra Pacific Power Company, McKinney Water Company, Tahoe Park Water Company, and Nevada Division of State Lands. In addition, we have expanded the MOU’s with the California Department of Parks and Recreation, California Tahoe Conservancy, Nevada Division of State Parks and Lahontan Regional Control Board. We are planning on including MOU's with the California Department of Transportation, Nevada Department of Transportation and United States Forest Service. Mr. Angelocci also listed all of the existing MOU's which have not been modified. Based on a rough estimate, combining both the permits issued by the local jurisdictions and the qualified exempt activities which no longer require permits from TRPA, Mr. Angelocci estimated that in excess of 500 to 600 different activities which previously required permits from TRPA are now delegated out. Part of our permit integration program is to continue to issue delegations to other jurisdictions. The difficulty is that the local jurisdictions, in order to take over these duties, have to gear up their resources to handle these types of delegations. It is a balancing act of who has the resources to take on these duties.

Mr. Cole commented that he brought this issue up because the City has been plagued by a backlog of permits. The City even had a moratorium of accepting applications. Obviously, the City is understaffed to handle these and he wanted to know what opportunities the locals had. He didn’t see a list of where we are going to go next. One specific incidence happened at the City just recently was the hospital trying to do a parking lot expansion that comes under public service. He questioned if things like this going to be in the works so perhaps some public service could be done locally.

Mr. Angelocci replied that currently, he is in negotiations with the City Public Works Department and he has developed an MOU with the Public Works Department. He also in negotiations with the Planning Staff to start to include some of the public service projects. Public service was not included in the latest expansion. Each of these is done one step at a time. That is one of the opportunities TRPA is looking at. As the counties and local jurisdictions say that they have the resources to take on further delegation, TRPA will give it to them. Mr. Cole questioned if Mr. Angelocci would encourage local representatives to be proactive and come to TRPA and state
that they are willing to take on more and not wait for TRPA to say they are willing to give them more delegation. Mr. Angelocci stated absolutely.

Dr. Miner that there was some testimony at the EIP implementation committee regarding private sector and the backlog that they faced with in getting their projects approved. They are willing to invest their own capital into plan check or some way to expedite their projects. He asked Mr. Angelocci if he had been looking into this to see how we can move some of these projects along. There are certain incentive built into the EIP process and our rules call for that, yet we are delaying the private sector investment to make these EIP projects a reality.

Mr. Angelocci replied that this a process that is scheduled to be looked at under the permit integration program. TRPA looked into this several years and the difficulty at the point was coming up with a system where TRPA could certify and insure that the outside consultant knew all the complexities of the current TRPA Code. He believed that it was still a possibility.

Mr. Sevion stated that at the Tahoe Conservancy's Board meeting, the Conservancy appropriated $500,000 to help set up that process on the California side so that the local jurisdictions can do the planning, the environmental stuff, the engineering and contract stuff a head of time. That money is available from the Conservancy on a grant basis far in advance of actually doing the construction. The idea here is to get the EIP program accelerated and that money is there and available for these types of planning matters for the California jurisdictions. Mr. Sevion believed that this would help expedite that program, but it will cause a lot of people to start doing projects and it will mean that we need to be ready to accept these projects and act on them as quickly as possible.

Mr. Angelocci stated that TRPA anticipated this and once we resolve the budget issues, and a large of part of his work program this coming year is to streamline the EIP process.

Ms. Bennett is encouraged by Mr. Sevion's report about the Conservancy advancing some funding. She commented that in order for TRPA to move forward, it is going to require some serious out-of-box type of thinking. The TRPA is going to have to enable other entities to be able to do the work and put us in a situation of guiding and monitoring rather than doing. That is going to be an innovative and creative aspect. She hopes that we can move forward to that and hopes that Nevada can join California, and the private sector in some way can copy the example of the Tahoe Conservancy.

Mr. Sevion stated that Placer County is talking about joint venturing with El Dorado County in an effort to consolidate everything so that if you have 12 projects that look a like, may be they can be done as a group and process them all at once and do all the environmental work ahead of time. He commented that if the two counties could get together and staff up that package -- if they know what they are doing; they know who to talk to; they know how to get things done; they know where the money is coming from; they know what is going to be asked of them -- the bottom line is it is going to make it go much better and be more efficient.

Ms. Bennett hoped that the other counties take that lead, and the three counties could work together.

Mr. Galloway asked Mr. Angelocci if he was considering doing something with Washoe County, and Mr. Angelocci stated that he had approach the Washoe county staff and asked if they were interested in expanding, and at this point, there have not responded. Mr. Galloway commented that he and Mr. Sevion had been contacted by one private developer, but it was not about an
EIP program. Mr. Galloway stated that there are certain plan review functions that TRPA staff has never delegated to Washoe County, and this private developer stated that if he had a list of qualified outsource review people that TRPA would accredit, then may be they, in conjunction with Washoe County, could they review these plans if a fee was paid to Washoe County and these certified private consultants. He just wanted to throw out this idea. In some cases, people run into these weather schedule problems. Of course, from time to time, these people would have to audited.

Mr. Angelocci replied that TRPA could certainly look into this concept. In reference to Ms. Bennett's comments about the three counties working together, Mr. Angelocci stated that TRPA has anticipated this. We have established what is called a County of Local Assistant's Unit, who is overseeing all of these MOU's. As is indicated by the list, TRPA has increased dramatically the amount of responsibilities we have delegated out to local jurisdictions, and in anticipation that the EIP process and the number of projects we were receiving, was going to grow greatly.

Ms. Bennett said that the sooner TRPA can get started on a certification program that qualified engineers and plan checkers can certify documents, the better. This would be a great leap forward in the implementation process.

Chairman Sevison announced that box lunches were being brought in for the Legal Committee, and if others wanted have a box lunch and eat here, it is $8.50 a person. If you would rather go into the dining room and have the buffet lunch, with tax and tip included, the cost is $15.00. He asked the Board what they preferred, and the consensus was to have box lunches brought in.

B. Certification of 64 Acre Tract Intermodal Transit Center EIR/EIS/EIS

Associate Transportation Planner Jim Allison presented the certification of the 64 Acre Tract Intermodal Transit Center EIR/EIS/EIS.

Ms. Bennett questioned in the analysis of the cumulative impacts of air quality, has anyone or entity evaluated the cumulative air quality impact of 130 full spaces and 10 buses at the same time. Mr. Allison stated that it is in the final document and in Chapter 19 of the draft EIS. The cumulative condition were not significant; they do not violate any of TRPA's standards; in fact, the TRPA standards are not violated today at that location; we are in attainment. The fleet is becoming cleaner and cleaner and we also moving to using compressed natural gas in transit vehicles where possible. We are moving into the direction away from sever air quality impacts; in fact, we do not have any sever air quality impacts remaining anymore. The main hot spot for Tahoe was in South Shore at Park Avenue, and that is now in attainment of the TRPA standards and has been so for about three years.

In the staff report, Ms. Bennett stated that one of the comments that Mr. Allison made was "revised parking mitigation measure involves Placer County passing an ordinance to prohibit parking by rafters in the intermodal transit center parking area, with the ordinance enforced by the Placer County Sheriff". She questioned how TRPA, as an agency, condition an approval of this document based upon Placer County's passing an ordinance. Perhaps someone from Placer County can explain this. Ms. Bennett didn't believe that we could dictate to another county or condition another county's developing an ordinance or drafting or adopting an ordinance.

Chairman Sevison responded that typically, you could have conditions that have to be met by any agency that is asking for permission to do a project. It is like a conditional use permit, as he
understood it. So that is a condition of approval; however, he too struggled with this but for different reasons, because he knew that one of his other hats is on the Tahoe Conservancy, and the Conservancy has put a considerable amount of money into this area to create the public access so the public would have that to use. He is not sure if it is appropriate for us to necessarily go in and encourage the general public, make it available to them, encourage them to come there, and then turn right around and ask for a prohibition on the usage of it. He asked Mr. Allison to explain the extent of the prohibition; may be that would help clarify some of the concerns he had. He shared some of Ms. Bennett's concerns, but in a different fashion.

Mr. Allison responded that the mitigation identified in the staff summary is a reflection of the comments we received from the Placer County Department of Public Works. The original mitigation in the draft EIS was to have a man kiosk in forcing the issue in that parking area that there is an existing raft parking. The existing raft parking is limited by how many people can park there; therefore, there can be X number of rafts impacting any potential resources on the Truckee River. When the draft EIS was developed, we recognized the potential that rafters could also park in the existing lot, and they could potentially park in the new 130-space lot. There has been a coordinated resource management protection going on between the Forest Service and Placer County reviewing the rafting impacts on the Truckee River. It was felt that we did not want this project to contribute any more rafting capacity to the Truckee River. By including that mitigation in the draft EIR/EIS, we felt we addressed that. Placer County Public Works said that they could not fund that mitigation. So what we revised is a requirement that Placer County would pass an ordinance prohibiting the parking of rafting vehicles in that lot and would allow the rafting parking in the existing rafting area to remain. We are trying to be neutral to that potential impact. This is a package deal. There are three levels of approval for certification for this EIS and at least two very direct levels of approval of a project. If Placer County does not go with that revised mitigation, this project will not happen with the way it was identified in the draft document.

Mr. Sevison believed that after Mr. Allison explained it, it made more sense.

Ms. Bennett asked Mr. Allison if the Forest Service was planning to charge for parking, and Mr. Allison answered not at this time. We are trying to encourage people to park here; we do want to have a deterrent at this point in time for people to use the 130 spaces for transit use; for park and ride; for getting onto bicycle trails, etc. Ms. Bennett questioned if this added additional parking to Tahoe City or is it alternative parking, and Mr. Allison said it was alternative parking, but it is consistent with the Tahoe City Community Plan where they identified where there was a parking shortage in the Tahoe City area. This is going to be at the western end of the Tahoe City parking solutions; there is also an eastern end solution identified in the Tahoe City Community Plan.

Ms. Bennett inquired how would this parking area be managed to prevent people from parking long term. Mr. Allison responded that it has not been identified as yet, but Placer County would have vehicle abandonment laws that would apply in this situation. Again, we do want to encourage long-term parking; for instance, when people parking their car at a certain place for a period of time and then take public transit to and from their destination. He didn't know what the vehicle abandonment laws in Placer County or what the requirements are, but the Forest Service and Placer County Sheriffs would have jurisdiction over this lot for those types of matters.

Mr. DeLanyo questioned if we the Board agrees to certify this document, do we also agree with the position of the Forest Service; another words, that this is a temporary recreational facility.
Mr. Marshall stated that the 4(f) finding is the Federal Transportation Administration's finding and it is not before the Board today for approval or disapproval. Mr. DeLanoy commented that if we agree to the certification based upon those issues that have been raised by counsel and the homeowners, does that mean we approve of the Forest Service's position; in law. Mr. Marshall replied, because the Board does not have jurisdiction over that finding.

Chairman Sevison opened the meeting up for a public hearing.

Ms. Rochelle Nason, representing the League to Save Lake Tahoe, expressed the League's strong support for this project. So that members of the Governing Board are aware of the League's position for this project and for the 64 acres over time, we proposed that the Forest Service and others involved in this project consider ultimately integrating an interpretive center with a transit center. This will enable people who come to learn about Lake Tahoe also learn about how they can get around Lake Tahoe without their car. Also, locals who come to use transit have an opportunity to learn about Lake Tahoe and its environment while they are waiting for their bus. It is something that has not been done elsewhere. The League believes that creative, intelligent design could create a very attractive facility as an integrated facility that brings these two things - education and transportation - together in one place. Although this alternative has never been analyzed in any of the environmental documents, the Forest Service has recognized the legitimacy of this idea and has assured the League that the design - and will go forward with a project - the design will keep this open as an option. With regards to the issue of rafting impacts on the Truckee River, this is a serious concern to everyone involved with this project. But the League does not believe that parking is ultimately the way that we are going to protect the Truckee River. People can, after all, get rafts to the river without having to park. In the long run, the solution is going to have to come through the CRMP process and a master plan developed and enforced by the Forest Service, and the League would be supportive of that process as it goes forward. When a project comes forward, there will be more elements to it. She encouraged the Board to certify the document and was glad to be a part of this project.

Mr. Ron McIntyre, with the North Lake Tahoe Resort Association, stated that we are a funding partner of this project, as well as a funding partner of the downtown projects. He saw this as a long-term solution, pedestrian transit solution area, and he urged the Board to certify the document so that we can move ahead with the project.

Mr. David Hanson, Association Manager for Tahoe Tavern and Tavern Shores Property Owners' Associations; the adjacent homeowners on the other side of the 64 acres. Mr. Hanson stated that Tony Rossmann is their attorney, and he presented some of their objections to the Board a couple of months ago. He submitted a letter from Mr. Rossmann, and believed that staff has a copy of it. He read one of the more pertinent points to the letter which reads as follows "The one relevant development has been the apparent decision of the Federal Transit Administration (FTA) to succumb to the argument that the Forest Service, of the Forest Service, that the project is exempt from 4(f) of the Department of Transportation Act. This unfortunate decision accepts the reasoning that the bus stop along Highway 89 adjacent to the Albertson Supermarket, anticipated when the 64 Acres were transferred to the Forest Service under the federal law requiring their use as recreation lands somehow is equivalent to the present proposal that takes up tens of acres of land at the core of the 64 acres. We ask your board to have the independence and common sense to reject this reasoning by the FTA, and to require that a new EIS be prepared that honors the reality of the 1983 plan that has no recognizable similarity to that that is now being put before you. We recognize that some time will remain before any project is before either the county, or the Forest Service, or this board for approval."

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We will endeavor in that time to convince the FTA that their arbitrary and determination cannot withstand a rational judicial review that is so substantially unjustified as to merit an award of attorneys’ fees as well as substantive relief. Your board can perform a greater service to the public, and restore the property owners’ – who he represents today – their confidence in their government by reaching this conclusion on your own and requiring the section 4(f) analysis. Thank you for continuing to give us your attention to the property owners’ needs and interests in this project, and we anticipate your efforts to bring it to resolution is acceptable."

Mr. Steve Teshara, on behalf of the Truckee North Tahoe Transportation Management Association and their Board of Directors, has been pleased to be a part of the development of this environmental document on this project. The public outreach process for this has been extensive and has gone on for many years and involved many public meetings. Mr. Teshara was of the opinion that the issues are well flushed out, and he appreciates the diligent job that staff and the consultants have done to respond to all the comments received and to provide that response as part of the document that you have before you. The over 85,000 riders who have used our transit systems on the North Shore this summer will be please, as well as will many of the others in the community who have worked hard for this project to come forward. The documentation is ready for certification, and urged the Board to take that action today.

Ms. Elizabeth Hale, a citizen, decided to run for PUD supervisor because she got involved with Commons Beach and found out that people did not go to local meetings because they felt that their opinions were not heard. That is the main reason she is running. Tahoe City residents are very concerned about the current and future problems of the Truckee River. They voted several times about the redevelopment plan going on in town, and their wishes were ignored. They voted against Measure E and what was planned. Tahoe City citizens do not want to pay for ski shuttles and say that locals will not ride and the buses are already empty. She went to a presentation that said buses and cars that would be turning into the parking lot from Highway 89 would create a certain amount of congestion. This year we didn't have monitors from Placer County to help us with the backup at Fanny Bridge. They are concerned about the loss of open space and landscaping isn't really going to make it look beautiful because we are looking for something natural. There are other places in Tahoe City for a parking lot, like the local PUD building. The citizens are very concerned about the impacts that this will have on the Truckee River. She has a list of concerns about things that are going on in the river, and it will be going out to the local homeowners. There are other rafting companies that don't have permits to go down the river; there are a lot of accidents; there are quiet zone violations; there is a lot of trespassing going on; there is drunken and lewd behavior; confrontations; sensitive area violations and bank erosion; inadequate monitoring of our sanitation facilities, and we have rafts going down the river without tags. The increased parking will give more people access to the Truckee River. We have a part of the Basin that has the highest use of any other part of the Basin for the area used. TRPA has a history of not paying much attention to what's going on in the Truckee River, and the Truckee River down to the River Ranch is under the supervision of the TRPA. We think it is a time for TRPA to help us out with out environmental concerns, and not just ignoring us one more time.

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

Mr. Galloway asked if the Truckee River down to the River Ranch is under the supervision of the TRPA, and Mr. Allison stated that it was in our jurisdiction. Mr. Galloway stated that increased rafting would be addressed by the condition prohibiting parking for rafting purposes, and Mr. Allison replied that the potential for the project to add to the impacts out there, is mitigated by the condition for mitigation. Mr. Galloway remarked that it had been the opinion of
his staff that this item is decoupled from both the decision about the interpretative center and the future decision about where and whether there would even be one; is that a correct statement? Mr. Allison stated that TRPA analyzed what they could consider reasonably foreseeable. At the time we started this process with an EIS in the foreseeable future for an interpretative center, we had to include that project. In addition, there is a letter from Acting Forest Service Ed Gee stating that there is no money for the interpretative center at this point in time, and it is getting to a point where enough may have changed by the time they would get the money for an interpretative center that another document would have to be developed when, and if, that project comes along. Mr. Galloway questioned if the decision as to whether to build that or not is being made today, and Mr. Allison responded no. Mr. Galloway questioned if we were decoupled from a section 4(f) finding in the sense that it is not our rule, and if we make a decision here, it doesn't in any way diminish any one's right to argue that point. Mr. Allison responded yes.

Mr. Sevison commented that there was some frustration recently at the county level with the applications for the rafting down the river. The dilemma that showed itself was there is no mechanism for policing the clean up and the maintenance of the river for the public rafters that came from this site. So what was happening, if we, in fact, did away with the concessionaires that were doing the rafting, the river would turn into a mess. There would be beer cans, paper and junk, and the only legitimate way we had to maintain a level of cleanliness and restrooms was by using the concessions as a means to augment that process. Unfortunately right now the way it is, Mr. Sevison believed the river was being kept in better condition because we have the commercial rafters there then it would be if we cut them off. They do put a lot of people on the river; there is no doubt about that. The use of that river is a very popular thing. Everyone knows it is there; it is fun; they like it. If you are going to stop the concessionaires, there needs to be some solutions to picking up the trash and the mess that is going to be left behind. Because we have a handle on that right now. He believed that this issue is a separate issue, and he encouraged the Board to act on the EIR/EIS based on the information that has been presented today.

Dr. Miner also believed that the compliance issue is a separate issue. The certification should go forward and deal with the compliance issues so far as the permitting via the Forest Service or via Placer or TRPA oversight. We can always improve the clean up efforts. But this should not confuse this issue at all. The big benefit from this particular activity is self-explanatory.

MOTION by Dr. Miner to approve the certification of the 64 Acre Tract Intermodal Transit Center EIR/EIS/EIS. The motion carried unanimously.

Mr. Marshall made a correction and stated that a motion should be made to approve the findings as articulated and also to certify.

MOTION by Dr. Miner to approve the findings and certify the 64 Acre Tract Intermodal Transit Center EIR/EIS/EIS. The motion carried unanimously.

Mr. Marshall introduced Danae Aitchison, who is with the California Attorney General's Office, and has been providing some hours at TRPA while he has been acting in a duel capacity and has been an immense help, particularly on improving and working with Mr. Allison on this document.

Mr. Richard Wiggins, Chief of the Transportation Division, commented that as many of you know, Jim Allison has been with the agency for 10 years and today is basically his last day. He
wanted to make sure that everyone was aware of that and expressed his appreciation as his supervisor over the past couple of years, and on behalf of the rest of the staff, for all the things that Jim has done. His work has been outstanding and always puts forth a lot of effort into what he does.

Mr. Sevison stated that we will certainly miss him, and asked if he was staying in the area, and Mr. Allison responded that he would be moving to San Francisco with his girlfriend and working for the Amtrak Capitol Corridor.

Mr. Angelocci expressed how proud of Jim he was to be able to bring such a complex and controversial project as the EIS to a successful conclusion.

(Break taken at 11:00 a.m.)

(Reconvened at 11:15 a.m.)

C. Amendment of Code Section 54.4.A(3) to Allow for a Pier in Prime Fish Habitat, When Done in Conjunction with Removal of a Boat Ramp

Senior Planner Coleen Shade presented the staff summary amending Code Section 54.4.A(3) to Allow for a Pier in Prime Fish Habitat, When Done in Conjunction with Removal of a Boat Ramp.

Chairman Sevison opened the meeting up for a public hearing.

Mr. Gregg Lien, representing the applicant, Mr. Lowe, commented on his appreciation to Ms. Shade for her mediation skills in helping both of them focus on what their particular differences were and much to their surprise, after her prodding, that the two of them were not that far apart. The intent of that last line is to say the replacement pier is a new structure; it is going to have to meet all of TRPA’s standards; go through all the environmental review requirements; it is going to be subject to scenic review; fish habitat, etc. The point that we were missing before in the prior language is that you have to recognize that we have some credit for having an existing structure there before that performed much of the same function. We think that this language does that. In other words, we are hoping to set a precedent for example, the new ordinances, where we will have strict allocations. If you have a boat ramp, you would not need an allocation to come in and get your application in for a new pier. It gives people some incentive to come in and take out these boat ramps and replace it with a conforming pier. Mr. Lien wanted to make sure his intent from his point of view was put in the record. From the nodding heads he sees, that’s what they all agreed to. He commends the new staff recommendation to the Board, and if anyone has questions, he would be happy to answer them.

Dr. Miner questioned what other credit did Mr. Lien want for a boat ramp, and Mr. Lien stated that the recognition it was there and it is going away. That it is not a situation where one is coming in with a completely new pier where there is no structure.

Mr. DeLanoy asked how much a pier enhances a homeowner’s property in terms of dollars, and Mr. Lien replied that it depends on the area, but in today’s market, it is pushing six figures easily, and in some sections much more. Mr. Lien said it is hard to predict the real estate market now, but is very hot.

Since no one else wished to comment, Chairman Sevison closed the public hearing.
MOTION by Dr. Miner to approve the required findings and adopt the amendment of Code Section 54.4.A(3) to allow for a pier in prime fish habitat when done in conjunction with removal of a boat ramp.

Ms. Shade stated that with regards to the findings and the ordinance, the language in the ordinance is the language that the APC recommended, so the Board would have to approve the addition of the two sentences that were added to Section 54.4.A(3).

The motion carried unanimously.

MOTION by Dr. Miner to approve the ordinance with the extended language.

The motion carried unanimously.

Mr. Hale commented that it didn’t seem that long ago when this project came and we saw this quandary we were in with the boat ramp wanting to be removed, and now it has come back to us – gone through all the steps; the public hearing; the APC; we have an amendment, and now the Lowe’s now can actually remove this project and put in a pier. He was impressed how quickly this turned around and came back to the Board as an ordinance amendment and a project.

Chairman Sevison read the ordinance into the record: "An Ordinance amending Ordinance No. 87-9, as amended, by amending the Regional Plan of the Tahoe Regional Planning Agency; amending Chapter 54 of the Code of Ordinances to allow for a pier in prime fish habitat when done in conjunction with removal of a boat ramp, and providing for other matters properly relating thereto."

Chairman Sevison questioned if the item for the Lowe pier itself goes away, and Mr. Marshall stated that the appropriate action would be to continue it for 60 days to effectuate the 60-day period for the amendment to the Code, and then staff will be it back in November for approval.

VIII. PROJECT REVIEW

A. Lowe, New Single Use Pier/Conversion of an Existing Accessory Shorezone Structure, 77 Shoreline Circle, Incline Village, Washoe County APN 122-169-09, TRPA File No. 990882

Associate Planner Jon Paul Harries stated that there was an opportunity for this item to go before a Hearings Officer, and TRPA staff would like to remove this item from the agenda and have it be heard by the Hearings Officer in 60 days.

MOTION by Mr. Sandoval to remove the item from the agenda. The motion carried unanimously.

Chairman Sevison reiterated that Agenda Item IX.A. had been continued, and there was a request by one of the Governing Board members that Agenda Item IX.B., the Discussion of Potential TRPA Office Relocation Sites, be continued for 60 days; not 30 days.

MOTION by Mr. DeLanoy that the discussion of potential TRPA office relocation sites be continued for 60 days. The motion carried unanimously.
B. Amendment of the 2000 Regional Transportation Improvement Program, Acting as the Regional Transportation Planning Agency, Approval of Resolution.

Chief of Transportation Richard Wiggins presented the amendment of the 2000 Regional Transportation Improvement Program, Acting as the Regional Transportation Planning Agency, Approval of Resolution.

Mr. Cole asked if the funds would actually be transferred into our accounts, and is it interest bearing; it's programmed for us to receive when we have projects, but it sits in somebody else's account. Mr. Wiggins replied yes, and said what is probably going to happen is the State of California will take the shares of the unprogrammed balances and use it in other projects across the state for enhancements.

Chairman Sevison opened the hearing up for public comment. Since no one wished to comment, Chairman Sevison closed the public hearing.

MOTION by Mr. Solaro to amend the 2000 Regional Transportation Improvement Program, Acting as the Regional Transportation Planning Agency, Approval of Resolution. The motion carried unanimously.

Chairman Sevison read the ordinance into the record: "Tahoe Regional Planning Agency, Sitting as the Regional Transportation Planning Agency, TRPA Resolution No. 2000, Adoption of Amendment #1."

XI. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

A. Finance Committee

Ms. Bennett briefly stated that the Finance Committee met and we discussed in depth the status of the Finance Department itself. Mr. Marshall and his staff have done a remarkable job in understanding the situation we have in addressing a number of different issues; basically, getting ready for an audit report and getting our grants management situation in place, as well as getting the agency's budget preparation in place; especially on the Nevada side. The new NEBS system has been a difficult task. We have had some staff issues and have hired some temporary people and she believed that Mr. Marshall and his staff and Juan Palma really understands some of the issues that we need to address, and John presented a very good plan.

C. EIPIC

Dr. Miner commented that a workshop was held last night. The EIPIC presented a breakout of the new format of the updated EIP document, which will include the scientific component and some research stuff, as well as the presentation on where we are with the alternative revenue component. This will be presented to the Board in October and November so the Board has a full understanding of where we are in that fund acquisition. Staff is doing an excellent job in detailing out the EIP; the priorities and the scope, which is necessary in order to reap the benefits of the EIP project.

Mr. DeLanoy stated that it seems that the TRPA has created the image that we are the ones that are going to facilitate or implement the fund raising for the local and private sector. He thinks that we should have some kind of mission statement that we make as to what we are
going to do. We are only going to service and try to help these people raise that money. People get nervous with the TRPA being involved in things. It would be better to state that we are only here to facilitate this thing.

Mr. Sevison believed that this is a tough role to establish what it is we are actually doing. There has been some discussion in the past that we should take the lead. Mr. DeLanoy had no problem with that; we are not going to actually implement it for them.

Dr. Miner remarked that this was a discussion that the EIP committee had, and what the Compact does allow and doesn't allow; whether you are regulating or implementing. Since no one has taken the role of implementing, TRPA has taken on the role of facilitation toward implementation; defining the role; defining the funding sources, so eventually another entity could actually do the implementation. The Board has to decide if the Compact allows them to be implementors or how we adopt a look-alike organization, like the TMPO that allows us to implement some transportation transit opportunities. This has slowed down the EIP process.

Mr. Marshall said that there was a discussion at the Committee regarding the role of TRPA implementation versus a regulating entity, and as an example of the type of facilitating role that is where we draw the line between implementation and what we do, is what we did with the 64-acre tract. That was taking some leadership position with the production of the environmental documentation for that project. That project is actually going to be implemented by other agencies. But TRPA worked with the parties and moved the document and project forward. We are not actually implementing a project, but we are facilitating the approval by the necessary regulatory agencies, and eventual implementation by the actual applicants and the people doing the groundwork.

Mr. Waldie believed that the resolution of the question that was just raised, as well as resolution of other questions, awaits a lot more information then we have. We asked Mr. Marshall to provide a legal analysis of the ability to engage in a facilitating or implementation role rather than a regulatory role given the restrictions and constrictions of the Compact. Also, a discussion of whether or not, indeed, we have already engaged in facilitation and regulation. His concerns is that the Compact makes TRPA a regulatory agency; not a facilitating or implementing agency; those may be desirable roles to have, but he wants to be sure that we have the legal basis for it, and he wants to be very careful that we don't run afoul of the political sensitivities in the Basin that we find our encroachment into implementation; particularly, as encroaching into their political territory. We should not move into these areas without a full understanding of where we are going. He is not criticizing staff because they are working very hard, but the Board has to be fully aware that we are moving into a different role then we have been playing in this agency since he has been on the Board. The changes are quite dramatic in terms of where we could be going.

Mr. Sevison believed that we have a system in place now that makes it happen. The role he sees the agency is playing as a facilitator and enhancing those processes so that they work smoothly so we don't have delays. We just need to build upon and expand on. He didn't think the Board's role should change.

Mr. Waldie stated that another problem is that we were so active in facilitating that project and yet we are those that make the last regulatory judgments and that seems almost a built in conflict of interest that we will have to be careful of. The more we get into these projects facilitating, the less we relinquish our regulatory role in being neutral and above the fray.
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Chairman Sevison introduced Juan Palma as the new Executive Director for TRPA. He commented that Mr. Marshall has done an excellent job as Acting Executive Director and thanked him.

Mr. Waldie asked Mr. Marshall that the Show Cause Hearing not be taken off until the Legal Committee met to discuss some problems that he wanted to discuss about the procedure.

XII. REPORTS

A. Executive Director Monthly Status Report (the Executive Director report was continued on page 18)

1. Status Report on Project Applications

Mr. Marshall commented that there are two projects that over 120 days; one that action was taken on today, the IVGID water tank; and the second one is the Ledbetter pier modification, which staff and the applicant are negotiating to try and bring forward a much more approval project that staff can support.

2. Report on the TTD September 8, Meeting

Mr. Marshall said that there is a memorandum on page 115 of the packet of the agenda and the action items. It is usually not a discussion item, but since we did not have the TMPO this morning and the Executive Director also acts as the Executive Director of the TMPO and TTD, we would report that under the TRPA Executive Director reports.

B. Legal Division Monthly Status Report

Mr. Marshall stated that we had a number of district court victories in the Barbieri case and the new TSCP challenge, which is to the IPES system, both on the statute of limitations. Both cases were appealed. Barbieri is the single lot owner on Jamelson Beach. There were some remaining administrative penalty issues, so that appeal has been withdrawn and we are going back to the district court and arrive at some sort of settlement for those penalties. The homeowner will probably appeal at that point. A briefing is schedule for December through January in the TSCP case, and that will be handled by the Shute, Mihaly firm. The original TSCP case on the 1981 through 1987 time period, the landowners have requested a rehearing on that case and that is pending with the Ninth Circuit. If a rehearing is denied, we will probably have to oppose a Request for Certiorari at the U.S. Supreme Court on that case.

The only active case is the Menasha case that is the timer violation, in which there was a Show Cause Hearing that went before the Board. We received their opposition to our motion for summary judgment. The key legal issue there is whether or not the Board's Show Cause Hearing is an administrative procedure under the Compact that would fit with a substantial deference type of review. In other words, does the trial judge, when we take these cases to court, does he/she have to conduct a denovo proceeding on whether or not there was a violation. Under the Compact, it is pretty clear that for the assessment of the penalty, the judge makes an independent assessment of what the penalty should be, probably taking into account what is the recommendation of the Governing Board. But as to whether or not there was a violation, we are attempting to demonstrate that that is the type of administrative hearing that should be entitled to deference and it would result in a favorable standard review for TRPA and would generally uphold the Board's finding on that substantial evidence test.
Mr. Marshall introduced Amy Henderson who is the Legal Intern for the Legal Division. Ms. Shade introduced TRPA’s new AmeriCorps employee, Tiffany Hayes, who will be working for Matt Graham, Pam Drum and Carl Hasty. She would be introducing TRPA’s second AmeriCorps member in October.

Xl. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

C. Legal Committee

Legal Committee Chair Jerry Waldie stated that there are a couple of procedures he needs to be informed of. There was an Order to Show Cause Hearing scheduled for a time certain and a penalty had been recommended by staff, and the Order to Show Cause hearing was to establish: 1) whether a violation occurred and 2) whether the penalty recommended was warranted and then to report to the Board. Each member of the Legal Committee was sent a fairly substantial sizable packet to review in connection with this Order to Show Cause Hearing. He did review it and he came out of the review with considerable misgivings about the Rubicon Owners’ Association’s actions in this particular Notice of Violation. Then when he arrived at the Board meeting, he was informed that—well, he was informed the day before by telephone—that the matter had been settled with no fine being asserted at all and the person subjected to the Notice of Violation had agreed to remove the offending buoys. Therefore, the item was to be taken off the calendar. The question for the Legal Committee that he would like answered is it would seem to him that what was done with this case was to take a recommended penalty and dispose of it—in this instance, you said there would be no penalty, but you could have reduced it—or I suppose you could have raised it—your position is that whatever you did in terms of the recommended penalty that was the subject of the Order to Show Cause was not a matter for the Legal Committee any longer to exercise their independent judgment. He questioned if he had overstated that.

Mr. Marshall stated that no, and just to provide some background to the Board and Legal Committee, this violation was the placement of eight buoys beyond the setback between the Rubicon Tahoe Owners’ (RTO) buoy field and adjacent property owner. TRPA issued a correction notice and the only action requested in the correction notice was to take the buoys out. We could not come to a mutual understanding, and so we proceeded with a Notice of Violation. On Monday, we had a meeting with the President of RTO and finally received an agreement that they would remove the buoys and not put them back until they received a permit from TRPA. So the corrective action that we were seeking was satisfied. In the Hearing Summary, we suggested a penalty to go along with the violation at the Show Cause Hearing of $2,000 a buoy, or $16,000. They agreed to comply with the Correction Notice on Monday. Under our Rules of Procedure, Article IX, the Compliance Procedures, Section 9.12, it states “the Executive Director or the Board may withdraw a Notice of Violation at any time. This is under continuance of hearing or withdrawal of notice.” On the one hand, he believed the Executive Director does have the discretion to withdraw a Notice of Violation which would result in the continuance or withdrawal of the hearing. On the other hand, it was a determination by the Executive Director that the Executive Director would not seek penalties in this instance. On the one hand, it is a determination by myself, acting as the Executive Director that we would forego seeking civil penalties for what we considered to be a violation, but he believed that there is discretion under the Rules of Procedure for him to do that.

Mr. Waldie stated that once an Order to Show Cause Hearing has been scheduled, you dispose of the matter at the Order to Show Cause Hearing. Mr. Waldie stated that all the things that Mr.
Marshall did, he had the authority to do, and it would have been done with better grace before the Order to Show Cause. But once the Order to Show Cause has been set up, then it seemed to him that the Legal Committee's entitled to the deference of coming before the Legal Committee and proposing what you intend to do. It is just a matter of courtesy. This is just his point of view; not necessarily the point of view of the Legal Committee.

Dr. Miner stated that this is not the first time issues have been settled; sometimes it provides an incentive to the party to come forward and settle it. He believed that we have settled more by noticing them then we have heard. He believed that it should be within the purview of the Executive Director to make that call.

Mr. Marshall stated that since we had reached what he considered a good resolution of the matter, whether to have the Legal Committee confirm that or he act unilaterally -- his thinking was we got a ton of paper off of the Legal Committee's shoulder that you don't have to read -- but he appreciated Mr. Waldie's comment about bring that forward to the Show Cause Hearing. On the other hand, if we have reached an agreement with the alleged violator, then to bring them into a Show Cause Hearing, there is some considerations regarding them being prepared to go before the Board.

Mr. Waldie stated that the original recommendation was that the penalty was assessed because the violations were willful; that is a standard of misconduct that warrants a penalty if their conduct was willful. As part of that conduct, according to the summary, there was an Order to Show Cause Hearing originally scheduled for June of this year, but at the request of the Rubicon Owners' Association, it was postponed. So it was postponed through the season that the buoys would be in place. He asked what the rental is for a buoy. Mr. Marshall stated that it is about $1200 per season. The homeowners' association nets about $400 - $500 for a rental.

Mr. Waldie was interested in pursuing the extraordinary derogatory references to the Board by attorneys for the homeowners' association and derogatory references to the neighbor who complained about the buoys being in front of their property. He wanted Rubicon to know that, I as Chairman, and one member of the Legal Committee who has read all of the attorneys' documents and all those presentations, that there was an arrogance that was quite remarkable on the part of the Rubicon Homeowners. There was a scofflaw attitude that seemed to me to be pretty troublesome to me and that the findings of staff that you conduct was willful was justified. Therefore, to escape with no penalty with the extraordinary cost that this agency had to bear to bring about this result, when this result should have been a foregoing conclusion from the beginning. It seems to me to be something that should not be a signal out in that Basin that as the powerful -- and I don't mean that as a personal attack upon the staff -- but the powerful in this Basin ought not to get a different standard of conduct then the guy who cuts a few limbs off his Redwood tree and we hit him for $1,500 or $3,000. Seems to me that there has to be some proportionality which I did not see in this case. That's simply what I wanted to state for the record. That is also why I asked that the Order to Show Cause Hearing be allowed to proceed for that purpose.

Mr. DeLanoy commented that he read all the documents, and he was somewhat offended by counsel's for the buoys owners. The thing that struck him was that we have condoned, as a group here, the willful misconduct of allowing buoys to be in possibly the hazardous area. He didn't know if the Corp. of Engineers determined that they should be within a certain area because of the navigability. We condoned that, and if there had been an accident, he would suspect punitive damages would be brought forth. He is upset that we did not bring it to some other conclusion because he didn't think the punishment was adequate. He thought that when
we settled it, we would get some kind of a penalty from them. He didn’t think that was the way to conduct it.

Mr. Marshall stated that in terms of criticism of the decision to settle, he is more than willing to accept that criticism. He believed that it was a balance of something that we have to do with every violation. He didn’t feel that TRPA would get their agreement to pull the buoys if we insisted on a penalty. It was a judgment call as to whether or not we go ahead and agree to this, the removal, and in return, we got a commitment not to put the buoys back until they were under permit, which is no small task with RTO. Mr. Marshall agreed with Mr. Waldie that he was very offended by the conduct of their counsel; in fact, the settlement came about when we started dealing directly with the president of RTO outside the presence of his counsel. That is how we got to where we are. On the other hand, he definitely appreciates the concern of the message this might send. On the other hand, it is a significant expenditure of agency resources if we could not reach an agreement, and then have to go to court with both an injunctive and civil penalty action. If the Board’s feeling is this was not a good settlement because the message did not come out correct, then we need to take that lesson under advisement and think about what we should do in the future.

Mr. DeLanoy questioned if all the buoys had to be permitted, and Mr. Marshall replied that the agreement is that RTO will come in for a permit for their North buoy field, which is where the offending buoys are located. That is a permit for all the buoys.

Mr. Severson questioned Mr. Waldie if no action should be taken and it should go forward, and Mr. Waldie replied that the action has been taken, and Mr. Marshall stated that we can’t do anything about it, and he accepted that. Mr. Waldie urged Mr. Marshall that next time a matter like this comes up to consult with the Legal Committee a little earlier; it would be helpful. On this case, Mr. Waldie was not asking that the decision be reversed.

Mr. Marshall commented that he usually does call Mr. Waldie and he apologized that that didn’t occur before we finally made the deal.

MOTION by Mr. DeLanoy to move approval of Rubicon settlement. Mr. Waldie reminded Mr. DeLanoy that the item was not before the Legal Committee for approval.

Mr. Waldie adjourned the Legal Committee. Mr. Marshall reminded the Committee that there were two more items on the Legal Committee agenda that needed to be heard.

Mr. Brian Judge, with the Compliance Division, gave an update on the compliance issues at the Tahoe Keys Marina. We are in negotiations with the Tahoe Keys owners. Most of the issues are easily resolvable, except for the expansion of docks and the commercial floor space, and a couple of extra buildings they put up. These issues can be resolved easily. The dock expansions will take more work. TRPA’s proposal to them is some time around the end of October to remove all the docks that are not permitted. All the slips have been rearranged in areas where we do have historic allowed docks, which can remain, but where the slips are extended out, we would want them to be removed, along with some sort of monitoring penalty. Our next step is to meet with the owners in person and discuss these issues.

Dr. Miner asked Mr. Judge if the procedure is to identify those piers that are not in the correct spot or not permitted, and then would allow them the opportunity to submit an application for a permit. Mr. Judge said that they couldn’t submit an application until TRPA approves the master plan for the marina expansion.
XII. REPORTS

A. Executive Director (see page 14 for the beginning of the Executive Director report)

Mr. Marshall stated that he, and Mr. Heller, attended a Glenbrook Homeowners’ meeting last Thursday. At the end of last month’s Board meeting, there was a tentative agreement to a possible framework for a deal they were considering. This involved agreeing to drop the application for the pier for the Ruvo/Whittemore interest and add a couple of boat lifts to the community pier. There are some other side issues that went along with that agreement; a disclosure of development plans on the rodeo grounds and a couple of other things. The Board continued those applications for 60 days. After the meetings, there was some correspondence between Glenbrook Homeowners and Ruvo/Whittemore that was probably not helpful in tone, but there was a draft agreement from Ruvo/Whittemore to the homeowners. The homeowners had a board meeting last Thursday and they voted to respond to that proposal with a letter back to the Ruvo/Whittemore interest that stated the terms they wanted to see in the agreement. The basic differences between the parties are that the homeowners believe that they need a 75% vote of their membership to allow the Ruvo/Whittemore interest to have a license to put the boat lifts on the pier. To get a 75% approval, the homeowners need more things then just “we won’t get this pier over here”. The message to the Ruvo/Whittemores is there are a lot of issues out there that we want to try and resolve in a global settlement. The Ruvo/Whittemores’ interests are not particularly interested at this point in resolving those global issues; they want to focus on the pier and the rodeo ground issues, but hopefully, with some encouragement from Board members, they can come to some common understanding. Mr. Terry Giles has been involved a little bit, but his time is limited. Mr. Marshall encouraged the parties to consider hiring a mediator. He is cautiously optimistic that we might see an agreement, but he would not be surprised at all if come next Board meeting we have the pier application back.

Mr. Heller mentioned that Mr. Marshall’s description of what took place is fairly accurate. Mr. Marshall being cautiously optimistic is far more optimistic then he is. This became a very broad issue. There were two issues before the Board regarding the pier and an ordinance on the cove itself and now it has become a rodeo grounds issue. The Homeowners’ Association is far more interested in what the plans are for the rodeo grounds then they are whether or not the pier is built in the cove.

Mr. Marshall stated that if they reached a global settlement, TRPA wouldn’t have to spend so much time on every Glenbrook item that is submitted for approval.

Mr. Waldie adjourned the Legal Committee.

XII. REPORTS

C. Governing Board Members

Mr. Solaro stated that his Board of Supervisors passed a lighting ordinance, which will be very beneficial for the Basin. When he originally submitted it, he anticipated that it would apply just to the Basin, but there was enough reception and support that we made it countywide and passed unanimously. The County is going forward with a nuisance abatement, which will allow the County to do a wide variety of things on cleaning up areas that need to be cleaned up. That ordinance will be for the Basin only because he didn’t anticipate getting support from other supervisors if it is countywide, but they will support it for the Basin.
Chairman Sevison made the comment that an election needed to be scheduled for one of the upcoming months. Mr. Marshall looked at the Rules of Procedure and the election for Chairman is suppose to occur in November, so we will schedule that for November.

XIII. ADJOURNMENT – The meeting adjourned at 12:25 p.m.

Respectfully submitted,

Sue Mikanovich

Sue Mikanovich
Clerk to the Board

This meeting was taped in its entirety. Anyone wishing to listen to the tapes may call for an appointment at (775) 588-4547. In addition, written materials submitted at the meeting may be reviewed at the TRPA office, 308 Doria Court, Zephyr Cove, Nevada.
MEMORANDUM

October 17, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Receipt of September Expense/Revenue Summary

Background and Requested Action: Staff will be discussing the September expense/revenue summary with the Finance Committee at 8:30 a.m. on October 25. Requested Board action, should the Finance Committee concur, is receipt of the summary.

CONSENT CALENDAR ITEM 1
October 5, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Scott, Land Capability Challenge, 215 Wheel Rd., Washoe County APN 130-204-07

Proposed Action: The applicant, Vince Scott, requests that the Governing Board review the proposed Land Capability Challenge on the parcel and, if appropriate, approve it.

Staff Recommendation: The staff recommends that the Governing Board approve the land capability challenge for the parcel, changing the land capability class from 1b and 6 to 6.

Background: The subject parcel is shown as land capability class 1b and 6 on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the IsC (Inville stony coarse sandy loam 2-9 percent slopes) soil map unit. The IsC soil map unit is consistent with the E-2 (Outwash, till and nearshore lake deposits) geomorphic unit classification. The Inville soil formed in deposits derived from volcanic sources.

A land capability verification was never conducted on this parcel. A land capability challenge was filed to confirm the soil series and land capability for the parcel.

Findings: This parcel is 16,644 square feet (.38 acres) in size and is located at 215 Wheel Rd., Incline Village, Washoe County, Nevada. The parcel is mapped within geomorphic unit E-2 IsC (Inville stony coarse sandy loam 2-9 percent slopes) on the TRPA Geomorphic Analysis Map of the Lake Tahoe Basin. The soils investigation was conducted by Tim Hagan, Associate Planner/Soil Scientist, and this report was prepared. Based on two soil pits, a representative soil profile was described (see Attachment A). After visits to the parcel on September 14, 2000, the soils on APN 130-204-07 were determined to be consistent with land capability class 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974).

If you have questions on this agenda item, please contact Tim Hagan, at 775-588-4547 (ext. 275).

Attachments
SOIL INVESTIGATION FOR
WASHOE COUNTY APN 130-204-07, 215 Wheel Rd.

INTRODUCTION
A soil investigation was conducted on APN 130-204-07, Washoe County, on September 14, 2000. This parcel is approximately 16,644 square feet (.38 acres) in size and is located on 215 Wheel Rd. in Washoe County. A land capability verification was never conducted by TRPA staff on this particular parcel.

A land capability challenge was filed with TRPA on July 19, 2000 to determine the appropriate land capability class for this parcel based on a soil investigation.

ENVIRONMENTAL SETTING
This parcel is shown as land capability class 1b and 6 on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the IsC (Inville story coarse sandy loam 2-9 percent slopes) soil map unit. The IsC soil map unit is consistent with the E-2 (Outwash, till and nearshore lake deposits) geomorphic unit classification. The Inville soil formed in deposits derived from volcanic (latticic andesite) sources. This parcel is on a gentle west-northwest facing slope. The natural slope is between 1 and 3 percent. The overstory vegetation is Jeffrey pine and White fir, with an understory of turf grass and landscape ornamentals.

PROCEDURES
Two soil pits were dug on this parcel, using hand excavation. After examination of the exposed profiles, the soils were described as being representative of those on the parcel. A copy of this description is included in this report. Slopes were measured with a clinometer.

FINDINGS
One soil series and one map unit were identified on this parcel. The soils on this parcel are generally deep and well drained. The soil is characterized as having a very thick (< 2") surface mantle of turf thatch over brown story coarse sandy loam surface layer. The subsoil is comprised of a brown to reddish brown gravelly coarse sand loam subsoil to a depth of greater than 55 inches. This soil is similar to the central concept of the Inville series listed in the Soil Survey for the Lake Tahoe Basin. The IsC soil map units associated with land capability class 6, under the Bailey Land Capability Classification system.

CONCLUSION
Based on the results of the site visit, the soil on APN 130-204-07 was determined to be most closely resembling the Sic (Inville story coarse sandy loam 2-9 percent slopes) soil map unit, which is associated with land capability class 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974) and therefore is assigned 30% allowable coverage.

Tim Hagan, Associate Planner/ Soil Scientist
Representative Soil Profile:

Soil Classification (1998) Loam-skeletal, mixed, frigid Ultic Haploxeralf
Soil Series: Inville
Hydrologic Group: A
Drainage Class: Well Drained

Oi 2 to 0 inches; Jeffrey pine and White fir litter and turf grass.

A1 0 to 8 inches; brown (10YR 4/3) gravelly coarse sandy loam, very dark brown (10YR 2/2) moist; moderate fine granular structure; soft, very friable, nonsticky and nonplastic; many very fine and fine roots, few coarse roots; many very fine and fine interstitial pores; 15 percent gravel; clear smooth boundary.

Bw1 8 to 15 inches; brown (10YR 5/3), gravelly coarse sandy loam, dark yellowish brown (10YR 3/4) moist; medium fine subangular blocky structure; soft, very friable, nonsticky and nonplastic; few coarse roots; many very fine and fine roots, many very fine and fine interstitial pores; few thin clay skins lining pores, 15 percent gravel; clear smooth boundary.

Bt1 15 to 27 inches; reddish brown (5YR 5/3), gravelly sandy loam, reddish brown (5YR 4/3) moist; medium fine subangular blocky structure; soft, very friable, nonsticky and nonplastic; few coarse roots; many very fine and fine roots, many very fine and fine interstitial pores; common thin clay skins lining pores and ped faces, 20 percent gravel; clear smooth boundary.

Bt2 27 to 38 inches; reddish brown (5YR 5/3), gravelly sandy loam, reddish brown (5YR 4/3) moist; medium fine subangular blocky structure; soft, very friable, nonsticky and nonplastic; few coarse roots; many very fine and fine roots, many very fine and fine interstitial pores; common thin clay skins lining pores and ped faces, 30 percent gravel and 15% cobbles; clear smooth boundary.

C 38 to 55 inches; brown (10YR 5/3) very gravelly loamy coarse sand, dark yellowish brown (10YR 3/4) moist; massive; soft, very friable, nonsticky and nonplastic; common fine, medium and coarse roots; many very fine and fine interstitial pores; 35 percent gravel and 15% cobbles.
MEMORANDUM

October 4, 2000

To: TRPA Governing Board

From: TRPA Staff


Proposed Action: The applicants, Greg and Lori Vernosky, request that the Governing Board review the proposed Land Capability Challenge on the parcel and, if appropriate, approve it.

Staff Recommendation: The staff recommends that the Governing Board approve the land capability challenge for the parcel, changing the land capability class from 2 to classes 4 and 6.

Background: The subject parcel is shown as land capability class 2 on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the CaE (Cagwin-Rock Complex, 15-30 percent slopes) soil map unit. The CaE soil map unit is consistent with the C1 (Granitic foothills) geomorphic unit classification. The CaE soil formed in deposits derived from intrusive igneous (granodiorite) sources.

Land capability verification was never conducted on this parcel. A land capability challenge was filed to confirm the soil series and land capability for the parcel.

Findings: This parcel is 43,560 square feet (1 acre) in size and is located on Highway 50 in Zephyr Cove, Douglas County, Nevada. The parcel is mapped with the C1 (Granitic foothills) geomorphic unit on the TRPA Geomorphic Map of the Lake Tahoe Basin. Tim Hagan, Senior Planner/Soil Scientist, conducted the soils investigation and prepared this report. Based on three soil pits, a representative soil profile was described (see Attachment A). After a visit to the parcel on September 15, 2000, the soils on APN 05-132-01 were determined to be consistent with land capability classes 4 and 6 in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974).

If you have questions on this agenda item, please contact Tim Hagan, at 775-588-4547 (ext. 275).

Attachments

TH/dmc
INTRODUCTION
A soil investigation was conducted on APN 05-132-01, Douglas County, on September 15, 2000. This parcel is approximately 43,560 square feet (1 acre) in size and is located on Highway 50, Zephyr Cove Douglas County Nevada. A land capability verification was never conducted by TRPA staff on this particular parcel. A land capability challenge was filed with TRPA on March 17, 2000, to determine the appropriate land capability class for this parcel based on a soil investigation.

ENVIRONMENTAL SETTING
This parcel is shown as land capability class 2 on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the CaE (Cagwin-Rock Complex, 15-30 percent slopes) soil map unit. The CaE soil map unit is consistent with the C1 (Granitic foothills) geomorphic unit classification. The CaE soil formed in residuum derived from intrusive igneous (granodiorite) sources. This parcel is on a west to northwest facing slope. The natural slope is 8 to 23 percent. The overstory vegetation is Jeffrey pine, with an understory of manzanita and bitterbrush.

PROCEDURES
Three soil pits were dug on this parcel, using hand excavation. After examination of the exposed profiles, the soils were described as being representative of those on the parcel. A copy of this description is included in this report. Slopes were measured with a clinometer.

FINDINGS
One unknown soil series was identified on this parcel. The soils on this parcel can be characterized as being very deep and somewhat excessively well drained. This unknown soil is derived from ancient lacustrine deposits. It can be physically described as having a very thin (< 1") surface mantle of organic matter over a brown to dark brown loamy coarse sand surface layer. The subsoil is comprised of light yellowish brown to pale brown loamy coarse sand to a depth of greater than 60 inches. This soil is quite dissimilar to any soil series listed in the Soil Survey for the Lake Tahoe Basin. Therefore based on depth and the slight relative erosion and runoff potential, the unknown soil series on this parcel is appropriately placed into land capability classes 4 and 6, per Table 4 of the Bailey Land Capability Classification system.

CONCLUSION
Based on the results of the site visit, the soils on APN 05-132-01 were determined to be most accurately described as deep ancient lakebed deposits principally derived from granitic sources. These soils are associated with land capability classes 4 and 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974) and therefore are assigned 20% and 30% allowable coverage.
Representative Soil Profile:

Soil Classification (1998) Sandy, mixed, frigid Typic Haploxerept
Soil Series: Unknown
Hydrologic Group: A
Drainage Class: Somewhat excessive

Oi 1 to 0 inches; Jeffrey pine needles and duff.

A1 0 to 6 inches; brown (10YR 5/3) loamy coarse sand, very dark brown (10YR 3/2) moist; moderate fine granular structure; soft, loose, nonsticky and nonplastic; many very fine and fine roots, few coarse roots; many very fine and fine interstitial pores; clear smooth boundary.

A2 6 to 15 inches; brown (10YR 5/3), loamy coarse sand, dark yellowish brown (10YR 4/4) moist; weak fine granular structure; soft, loose, nonsticky and nonplastic; few coarse roots; many very fine and fine roots, many very fine and fine interstitial pores; clear smooth boundary.

Bw1 15 to 26 inches; yellowish brown (10YR 5/4) loamy coarse sand, dark yellowish brown (10YR 4/4) moist; weak fine subangular blocky structure; slightly hard, very friable, nonsticky and nonplastic; common very fine, medium and coarse roots; many very fine and fine interstitial pores, gradual smooth boundary.

Bw2 26 to 48 inches; light yellowish brown (10YR 6/4) loamy coarse sand, yellowish brown (10YR 5/4) moist; weak fine subangular blocky structure; slightly hard, very friable, nonsticky and nonplastic; common very fine, medium and coarse roots; many very fine and fine interstitial pores; gradual smooth boundary.

C 48 to 60 inches; very pale brown (10YR 7/4) coarse sand, yellowish brown (10YR 5/4) moist; massive; slightly hard, very friable, nonsticky and nonplastic; few fine, medium and coarse roots; many very fine and fine interstitial pores.
MEMORANDUM

October 4, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Anderson/Palomba, Land Capability Challenge, 101 Meadow Dr., Douglas County APN 007-491-18

Proposed Action: The applicants, the Anderson and Palomba families, request that the Governing Board review the proposed Land Capability Challenge on the parcel and, if appropriate, approve it.

Staff Recommendation: The staff recommends that the Governing Board approve the land capability challenge for the parcel, changing the land capability class from 2 to classes 1a, 4 and 6.

Background: The subject parcel is shown as land capability class 2 on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the CaE (Cagwin- Rock Complex, 15-30 percent slopes) soil map unit. The CaE soil map unit is consistent with the C1 (Granitic foothills) geomorphic unit classification. The CaE soil formed in deposits derived from intrusive igneous (granodiorite) sources.

Land capability verification was never conducted on this parcel. A land capability challenge was filed to confirm the soil series and land capability for the parcel.

Findings: This parcel is 193,508 square feet (4.45 acres) in size and is located at 101 Meadow Dr., Stateline, Douglas County, Nevada. The parcel is mapped within C1 (Granitic foothills) geomorphic unit on the TRPA Geomorphic Map of the Lake Tahoe Basin. Tim Hagan, Senior Planner/ Soil Scientist, conducted the soils investigation and prepared this report. Based on three soil pits, a representative soil profile was described (see Attachment A). After visits to the parcel on September 15, 2000, the soils on APN 007-491-18 were determined to be consistent with land capability classes 1a, 4 and 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974).

If you have questions on this agenda item, please contact Tim Hagan, at 775-588-4547 (ext. 275).

Attachments
INTRODUCTION
A soil investigation was conducted on APN 007-491-18, Placer County, on September 15, 2000. This parcel is approximately 193,508 square feet (4.45 acres) in size and is located on 101 Meadow Dr., Stateline, Douglas County, Nevada. A land capability verification was never conducted by TRPA staff on this particular parcel.

A land capability challenge was filed with TRPA on March 14, 2000 to determine the appropriate land capability class for this parcel based on a soil investigation.

ENVIRONMENTAL SETTING
This parcel is shown as land capability class 2 on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the CaE (Cagwin-Rock Complex, 15-30 percent slopes) soil map unit. The CaE soil map unit is consistent with the C1 (Granitic foothills) geomorphic unit classification. The CaE soil formed in residuum derived from intrusive igneous (granodiorite) sources. This parcel is on a gentle southeast-facing slope. The natural slope is 10 to 22 percent. The overstory vegetation is Jeffrey pine, with an understory of manzanita, bitterbrush and landscape ornamentals.

PROCEDURES
Three soil pits were dug on this parcel, using backhoe excavation. After examination of the exposed profiles, the soils were described as being representative of those on the parcel. A copy of this description is included in this report. Slopes were measured with a clinometer.

FINDINGS
Two soil series were identified on this parcel, one is known and one is unknown. A major portion of the soils on this parcel can be characterized as being very deep and somewhat excessively well drained. The unknown soil is derived from residuum. It can be physically described as having a very thin (< 1") surface mantle of organic matter over a brown to dark brown loamy coarse sand surface layer. The subsoil is comprised of light yellowish brown to pale brown loamy coarse sand to a depth of greater than 60 inches. This soil is quite dissimilar to any soil series listed in the Soil Survey for the Lake Tahoe Basin. Therefore based on depth and the slight relative erosion and runoff potential, the soils on this parcel are appropriately divided into land capability classes 4 and 6, per Table 4 of the Bailey Land Capability Classification system. The remaining small portion of CaF (Cagwin-Rock complex, 30-50 percent slopes) receives land capability class 1a.

CONCLUSION
Based on the results of the site visit, the soils on APN 007-491-18 were determined to be most accurately characterized as deep residuum derived from in situ granitic sources. These soils are associated with land capability classes 4 and 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974) and therefore are assigned 20% and 30% allowable coverage. A remaining small portion of the property is best described as Cagwin, CaF (Cagwin-Rock complex, 30-50 percent slopes) which receives land capability 1a and therefore is assigned 1% allowable coverage.
Representative Soil Profile:

Soil Classification (1998) Sandy, mixed, frigid Humic Haploxerept
Soil Series: Unknown
Hydrologic Group: A
Drainage Class: Somewhat excessive

Oi 1 to 0 inches; Jeffrey pine needles and duff.

A1 0 to 4 inches; brown (10YR 5/3) loamy coarse sand, very dark brown (10YR 3/2) moist; moderate fine granular structure; soft, loose, nonsticky and nonplastic; many very fine and fine roots, few coarse roots; many very fine and fine interstitial pores; clear smooth boundary.

A2 4 to 10 inches; brown (10YR 5/3), loamy coarse sand, dark yellowish brown (10YR 4/4) moist; weak fine granular structure; soft, loose, nonsticky and nonplastic; few coarse roots; many very fine and fine roots, many very fine and fine interstitial pores; clear smooth boundary.

Bw1 10 to 22 inches; yellowish brown (10YR 5/4) loamy coarse sand, dark yellowish brown (10YR 4/4) moist; weak fine subangular blocky structure; slightly hard, very friable, nonsticky and nonplastic; common very fine, medium and coarse roots; many very fine and fine interstitial pores, gradual smooth boundary.

Bw2 22 to 48 inches; light yellowish brown (10YR 6/4) loamy coarse sand, yellowish brown (10YR 5/4) moist; weak fine subangular blocky structure; slightly hard, very friable, nonsticky and nonplastic; common very fine, medium and coarse roots; many very fine and fine interstitial pores; gradual smooth boundary.

C 48 to 60 inches; very pale brown (10YR 7/4) coarse sand, yellowish brown (10YR 5/4) moist; massive; slightly hard, very friable, nonsticky and nonplastic; few fine, medium and coarse roots; many very fine and fine interstitial pores.
Representative Soil Profile: Pit 2

Soil Classification: (1998) Sandy, Mixed, Frigid, Typic Xeropsamment
Soil Series: Elmira: Cagwin
Hydrologic Group: C
Drainage Class: Somewhat excessive

Oi  1 to 0 inches; Jeffrey pine litter

A1  0 to 8 inches; brown (10YR 5/3) loamy coarse sand, very dark grayish brown (10YR 3/2) moist; weak fine granular structure; soft, very friable, nonsticky and nonplastic; many very fine, fine and medium roots; many very fine and fine interstitial pores; 5 percent gravel; gradual clear boundary.

A2  8 to 15 inches; brown (10YR 4/3) loamy coarse sand, dark brown (10YR 3/2) moist; weak fine granular structure; soft, very friable, nonsticky and nonplastic; many fine medium and coarse roots; common very fine and fine interstitial pores; 5 percent gravel; gradual smooth boundary.

C1  15 to 27 inches; light yellowish brown (10YR 6/4) coarse sand, brown (10YR 4/3) moist; massive; soft, friable, nonsticky and nonplastic; common fine, medium and coarse roots; many very fine and fine interstitial pores; 10 percent gravel.
MEMORANDUM

October 4, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Catron, Appeal of Land Capability Challenge, 7238 Plaza Ct., Placer County APN 117-110-38

Proposed Action: The applicant, Linda Catron, requests that the Governing Board review the proposed appeal to the Land Capability Challenge on the parcel and, if appropriate, approve it.

Staff Recommendation: The staff recommends that the Governing Board approve the appeal of the land capability challenge for the parcel, changing the land capability class from 1c to classes 4 to 6.

Background: The subject parcel is shown as land capability class 1c on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the UmD (Umpa very stony sandy loam, 5-15 percent slopes) soil map unit. The UmD soil map unit is consistent with the E-2 (Outwash, till and nearshore lake deposits) geomorphic unit classification. The Umpa soil formed in deposits derived from volcanic (latitic andesite) sources.

Land capability verification was completed on this parcel in December 11, 1989, and the parcel was verified as land capability class 5. A land capability challenge was filed to confirm the soil series and land capability for the parcel.

Findings: This parcel is 58,900 square feet (1.35 acres) in size and is located at 7238 Plaza Ct. in Tahoe Vista, Placer County, California. The parcel is mapped within E-2 (Outwash, till and nearshore lake deposits) geomorphic unit on the TRPA Geomorphic Map of the Lake Tahoe Basin. Tim Hagan, Senior Planner/Soil Scientist, conducted the soils investigation and prepared this report. Based on two soil pits, a representative soil profile was described (see Attachment A). After visits to the parcel on September 15, 2000, the soils on APN 117-110-38 were determined to be consistent with land capability classes 4 and 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974).

If you have questions on this agenda item, please contact Tim Hagan, at 775-588-4547 (ext. 275).

Attachments

TH/dmc

CONSENT CALENDAR ITEM 5
INTRODUCTION
A soil investigation was conducted on APN 117-110-38, Placer County, on September 15, 2000. This parcel is approximately 58,900 square feet (1.35 acres) in size and is located on 7238 Plaza Ct., Tahoe Vista, Placer County. A land capability verification was conducted by TRPA staff on this particular parcel.

An appeal to the land capability challenge was filed with TRPA on March 14, 2000, to determine the appropriate land capability class for this parcel based on a soil investigation.

ENVIRONMENTAL SETTING
This parcel is shown as land capability class 1c on the TRPA Land Capability Overlay Maps. The Soil Conservation Service Soil Survey for the Lake Tahoe Basin places this parcel within the UmD (Umpa very stony sandy loam, 5-15% slopes) soil map unit. The UmD soil map unit is consistent with the E-2 (Outwash, till and nearshore lake deposits) geomorphic unit classification. The Ump soil formed in deposits derived from volcanic (andesitic latite) sources. This parcel is on a gentle south-southwest facing slope. The natural slope is 8 to 23 percent. The overstory vegetation is Jeffrey pine, with an understory of manzanita, bitterbrush and huckleberry oak.

PROCEDURES
Two soil pits were dug on this parcel, using backhoe excavation. After examination of the exposed profiles, the soils were described as representative of the soils on the parcel. A copy of this description is included in this report. Slopes were measured with a clinometer.

FINDINGS
One unknown soil series was identified on this parcel. The soils on this parcel are generally very deep and somewhat excessively well drained. This soil is characterized as being eolian in origin. It can be physically described as having a very thin (< 1") surface mantle of organic matter over a dark brown very stony loamy sand surface layer. The subsoil is comprised of yellowish brown very stony loamy sand to a depth of greater than 55 inches. This soil is quite dissimilar to any soil series listed in the Soil Survey for the Lake Tahoe Basin. Therefore based on depth and the slight relative erosion and runoff potential, the soils on this parcel are appropriately divided into land capability classes 4 and 6, per Table 4 of the Bailey Land Capability Classification system.

CONCLUSION
Based on the results of the site visit, the soils on APN 117-110-38 were determined to be most accurately characterized as deep, wind deposited loess. These soils are associated with land capability classes 4 and 6, in accordance with the Land Capability Classification of the Lake Tahoe Basin (Bailey, 1974) and therefore are assigned 20% and 30% allowable coverage.

Tim Hagan, Senior Planner/Soil Scientist
Representative Soil Profile:

Soil Classification (1998) Sandy-skeletal, mixed, frigid Humic Dystroxerept
Soil Series: Unknown
Hydrologic Group: A
Drainage Class: Somewhat excessive

Ol 1 to 0 inches; Jeffrey pine needles and leaves.
A1 0 to 4 inches; grayish brown (10YR 5/2) very stony, loamy sand, very dark
grayish brown (10YR 3/2) moist; moderate fine granular structure; soft, loose,
nonsticky and nonplastic; many very fine and fine roots; few coarse roots; many
very fine and fine interstitial pores; 30 percent stones and 20 percent gravel;
clear smooth boundary.

A2 4 to 14 inches; dark brown (10YR 4/3), very stony loamy sand, dark yellowish
brown (10YR 3/4) moist; weak fine granular structure; soft, loose, nonsticky and
nonplastic; few coarse roots; many very fine and fine roots, many very fine and
fine interstitial pores; 60 percent stones and 20 percent gravel; clear smooth
boundary.

Bw1 14 to 22 inches; yellowish brown (10YR 5/4) very stony loamy sand, dark
yellowish brown (10YR 3/4) moist; weak fine subangular blocky structure; soft,
loose, nonsticky and nonplastic; common very fine, medium and coarse roots;
many very fine and fine interstitial pores; 60 percent stones and 20 percent
gravel, clear smooth boundary.

Bw2 22 to 48 inches; yellowish brown (10YR 5/4) very stony loamy sand, dark
yellowish brown (10YR 4/4) moist; weak fine subangular blocky structure; soft,
loose, nonsticky and nonplastic; common very fine, medium and coarse roots;
many very fine and fine interstitial pores; 60 percent stones and 20 percent
gravel, clear smooth boundary.

2C 48 to 55 inches; pale brown (10YR 6/3) very stony loamy coarse sand, dark
yellowish brown (10YR 4/3) moist; single grain; soft, loose, nonsticky and
nonplastic; common very fine, medium and coarse roots; many very fine and fine
interstitial pores; 60 percent stones and 25 percent gravel.
MEMORANDUM

October 16, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Bridgetender LP, New Commercial Structure, 65 West Lake Boulevard, Placer County APN 94-540-18, TRPA File No. 200396

This project will be continued to the November Governing Board hearing to allow staff to work with the applicant to improve the design of the project.

jf
10/16/00

CONSENT CALENDAR ITEM 6.
October 17, 2000

To: Tahoe Regional Planning Agency, Acting as the Regional Transportation Planning Agency

From: TRPA Transportation Staff

Subject: Review and Adoption of Regional Transportation Improvement Program (RTIP) Amendment #2, Approval of Resolution

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Action Requested: Approve Amendment #2 to the 2000 California Regional Transportation Improvement Program (RTIP), approve resolution.

Background: Last month, the TRPA Governing Board, acting as the Regional Transportation Planning Agency, approved Amendment #1 to the RTIP. This amendment added $2.07 million to the unprogrammed balance of the RTIP, for a total of $5.2 million. Since that time, Caltrans has requested additional funding to support development of the Ph. I, US 50 Highway Improvements Project in South Lake Tahoe.

Tahoe Transportation Commission Recommendation: The Tahoe Transportation Commission (TTC) discussed this action at their October 13th meeting. Although a quorum was not present, the members present supported the amendment. The TTAC discussed this issue at their September 28 meeting, and voted to recommend the amendment. Caltrans staff were present at both meetings to provide input into the purpose and need for these changes.

Discussion: As shown in the attached spreadsheet, the proposed amendment includes additional funding ($223,000) to complete the Project Report and Environmental Document, reduces the funding needed by $119,000 to complete the design of Phase I, and increases both the Right-of-Way Engineering and Right-of-Way by $613,000 and $165,000, respectively. The net change requested is an additional $882,000 for the Phase I project. Construction funding is anticipated for programming in late 2001 when the 2002 RTIP is brought forward for consideration.

If you have any questions or need additional information regarding this item, please contact Richard Wiggins at (775) 588-4547.
October 16, 2000

To: TRPA Governing Board Members

From: TRPA Staff

Subject: Governing Board Agenda Items VIII.A and IX.A, Plan Area Statement Amendment and New Pier, Glenbrook, Douglas County, TRPA File Nos. 200000 and 990108.

The above-referenced agenda items were continued from the August Governing Board meeting while the applicants and representatives of the Glenbrook Homeowners Association (GHOA) discussed project alternatives in lieu of a new pier.

The discussions and negotiations between parties are on-going and TRPA staff feel continuance of the plan area statement amendment and new pier application to a later Governing Board meeting may be beneficial by allowing additional time for negotiations.

Following this memo are the staff summaries prepared for the August Governing Board meeting. If the Governing Board determines not to continue the above-referenced agenda items to a later Governing Board meeting, then staff is prepared to give brief presentations to the Governing Board based on the following staff summaries.
MEMORANDUM

August 14, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Amendment of Plan Area Statement 058, Glenbrook, to Add Special Area #1 Where the Construction of New Piers Will Be Prohibited

Proposed Action: The applicant, Glenbrook Homeowner's Association, proposes to amend Plan Area Statement (PAS) 058, Glenbrook, by adding Special Policy #7 (see Attachment A) that would prohibit new piers within the boundaries of a new Special Area #1 (see Attachment B). The applicant-proposed boundaries for Special Area #1 would include all littoral parcels between Slaughterhouse Creek and the southern boundary of APN 01-070-17 on the south end of Glenbrook Bay. The purpose for this amendment is to protect and preserve the natural, historic, and scenic values of Glenbrook Bay.

Staff Recommendation: Staff supports the applicant's proposal with a slightly different boundary alignment for Special Area #1 (see Attachment C). Staff recommends that the southern boundary be drawn at Glenbrook Creek. Staff's recommendation is consistent with the Landscape Units that have been developed and identified in the TRPA Shorezone EIS. Staff recommends that the Governing Board conduct a public hearing as noticed and adopt the staff-proposed PAS amendment Special Area #1 boundary alignment in PAS 058.

Advisory Planning Commission Recommendation: Almost 3 hours of public comment was received on this item at the April 12, 2000 APC meeting. The motion to recommend approval of staff's proposed Special Area #1 boundaries in which to prohibit new pier construction was unanimously supported by the APC. Attached to this staff summary are the minutes recorded and approved for this item (see Attachment D).

Background: The amendment of PAS 058, Glenbrook, is to ensure that the direction of the Glenbrook Homeowners Association (GHOA) and the Glenbrook Property Owners Association (GPOA) members be implemented. During last summer's associations' meetings, the majority of members from both groups went on record to show their continued support for prohibiting new piers in Glenbrook Bay. This application is an attempt to further codify language that was developed in the Glenbrook Bay Shorezone Plan (April, 1984) and provide more direction for Special Policy #4 which exists in PAS 058 today.

In 1983, Nevada State Lands facilitated drafting a plan for the shorezone of Glenbrook Bay. The purpose of the plan was to bring together all interests to develop a plan that would be useful to permitting agencies, meet the concerns of the people in Glenbrook, provide direction for resource management and planning in Glenbrook Bay, and provide...
direction for future decisions affecting Glenbrook Bay. The Glenbrook Bay Shorezone Plan was completed and presented to the Tahoe Regional Planning Agency Governing Board. The TRPA Governing Board did not adopt or certify the plan; however, when the TRPA adopted the Plan Area Statements in 1987, PAS 058 Special Policy #4 states the "the Glenbrook Shorezone Plan should serve as a planning guide for development in the shorezone".

The Plan referred to in Special Policy #4 identifies recommendations for the following: pilings, buoys, swim areas, piers, breakwaters, and watercraft. Pertinent to this proposed PAS amendment are the five recommendations for piers. The recommendations are listed below in their entirety:

1. A landing may be added to the south side of the existing community pier as space allows between preserved pilings and the pumphouse, similar in size and construction to the present landing on the north side of the pier, providing the pilings mentioned in item 1.C, under Pilings, are removed and appropriate permits obtained.

2. For the present, no additional modifications or extensions should be allowed to the community pier, including boat holts, except the landing discussed above. A future review of this pier may be made by a representative committee of the various interests and property owner groups in the Glenbrook community to evaluate the adequacy of the pier and landing space. However, extensions and/or additions that may be approved in the future, if any are to be designed to preserve the remaining historic pilings.

3. No additional piers should be constructed on the community beaches, including the China Garden beach area.

4. Individual private piers should be kept to a minimum and allowed only where there is a special need (i.e., where littoral properties are inaccessible to the lake for boating purposes due to the terrain). Multiple ownership piers serving as many littoral property owners as possible are preferable to individual private piers. Pier applications may be reviewed by a representative committee of the various interests and property owner groups in the Glenbrook community for appropriateness and need.

5. All pier owners shall be entitled to repair or replace their piers when necessary in accordance with existing regulations.

By restricting the development of new piers in Special Area #1 in Glenbrook Bay the amendment would maintain unimpeded lateral beach access from the community pier on the south end through Slaughterhouse Creek on the north end. The amendment assists maintaining scenic quality within the Bay. Glenbrook Bay falls within the Shoreline Unit 26, Cave Rock. The overall unit scenic quality composite rating is moderate (2); however, Shoreline View 26.2, is the view specifically of the low shore with long sandy beaches of Glenbrook, and the scenic quality is rated as high (3). TRPA has identified thirty-three (33) shoreline units around the entire shoreline of Lake Tahoe. Only 7 shoreline units have a high-rated view of a sandy beach. Of the 7 units, Rubicon Point (Paradise Flat view), Edgewood (Edgewood Golf Course view), and Cave Rock (Glenbrook Bay view) are privately owned. All other shoreline units' shoreline view ratings of a sandy beach are either rated moderate or low.
Amendment to PAS 058, Glenbrook
August 14, 2000
Page 3

Special Area #1 includes all littoral parcels where terrain does not pose a problem for lake access from the beach. The area known as Yellow Jacket Point on the south end and Deadman’s Point (or Lands End) on the north end of the bay are not included in the Special Area #1 designation because of the steep and rocky condition of the backshore.

Glenbrook has a rich and varied history. During the Comstock, the bay was full of lumbering/milling activity. Logs were floated from the West Shore across the Lake to Glenbrook where they were milled at any one of a number of mills located around or over the bay and then shipped by rail and flume to the mines in Virginia City. The historic piles that dot the waters of Glenbrook bay are the only structures left to remind us of that time in Glenbrook’s history and the mills that operated over the waters of Glenbrook Bay. The historic piles have been recognized by the Nevada State Historic Preservation Officer as important historic resources. By prohibiting the construction of new piers in Special Area #1, we also protect these historic resources. There is a potential conflict between safe navigation to new piers built in the bay and the hazard the piles pose to navigation to a pier along the shoreline.

Special Policy #7 language will prohibit new piers from being constructed in Special Area #1 and recognize the Glenbrook community pier as an existing permissible use. This special policy language is consistent with TRPA’s Draft Shorezone EIS mapped landscape units which identify some units as visually sensitive. The Glenbrook Bay sandy beach area is identified as visually sensitive which requires a reduction in potential pier density.

As the beach area in Glenbrook Bay is critical to scenic and vegetation thresholds, staff is recommending limiting Special Area #1 to the beach area mapped on Attachment C.

**Required Findings:** The following findings must be made prior to adopting the proposed amendments:

**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 amendments to PAS 058, Glenbrook, will not adversely affect implementation of the Regional Plan. The amendment supports Special Policy #4 that is currently found in PAS 058, assists in maintaining scenic quality, is consistent with the Glenbrook Bay Shorezone Plan and maintains the historic character of the long sandy beaches.

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

   **Rationale:** The amendment will support environmental threshold maintenance and attainment. As discussed above in the background section, the view of Glenbrook Bay’s long sandy

CS/dmc
beach is one of only 3 privately owned beaches around the entire Lake that has a rating of high (3) for its shoreline view. This amendment assists TRPA in maintaining this scenic quality rating. In addition, Tahoe yellow cress (Rorippa subumbellata), a sensitive plant species listed as endangered in California and critically threatened in Nevada, and a potential listing candidate for endangered species by the U.S. Fish and Wildlife Service, is found along Glenbrook’s sandy beaches. Piers tend to concentrate activity rather than disperse it and, therefore, create areas where Tahoe yellow cress cannot tolerate the level of disturbance. The amendment provides for the same level of dispersed beach recreation as is currently being experienced. A community pier currently serves Glenbrook. This structure is still permissible and provides recreational access to Lake Tahoe for the Glenbrook Community.

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: No new pier structures would be allowed in Special Area #1; therefore, there will be no impacts on federal, state, and local air and water quality standards due to this amendment.

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

Rationale: For reasons stated in Findings 1 and 2 above, the Regional Plan will continue to achieve and maintain the threshold.

Chapter 13 Findings

1. Finding: The amendment is substantially consistent with the plan area designation criteria in Subsections 13.5.B and 13.5.C.

Rationale: These amendments are consistent with the Plan Designation for the attached Plan Area Statement and the addition of Special Policy #7 further supports Special Policy #4.

Environmental Documentation: Based on the above analysis and completion of an IEC, no significant environmental impacts were identified that cannot be mitigated to a less than significant level.
Amendment to PAS 058, Glenbrook
August 14, 2000
Page 5

**Requested Action:** Staff requests the Governing Board take the following actions:

1. Motion to make the required findings:
   a) Make the Chapter 6 and 13 findings; and
   b) Make a Finding of No Significant Effect (FONSE).

2. Motion to approve the Plan Area amendment.

Staff will begin this item with a brief presentation. Please contact Coleen Shade at (775) 588-4547 or coleens@trpa.org if you have any questions regarding this matter.
TAHOE REGIONAL PLANNING AGENCY
ORDINANCE 00 –

AN ORDINANCE AMENDING ORDINANCE NO. 87-9, AS AMENDED, BY AMENDING THE REGIONAL PLAN OF THE TAHOE REGIONAL PLANNING AGENCY; TO AMEND PLAN AREA 058, GLENBROOK, TO ADD A SPECIAL POLICY #7 LIMITING NEW PIERS IN SPECIAL AREA #1 AND AMEND THE PLAN AREA STATEMENT MAP H-10 TO ADD SPECIAL AREA #1, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

The Governing Board of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.00 Findings

1.10 It is necessary and desirable to amend TRPA Ordinance 87-9, as amended, which ordinance relates to the Regional Plan of the Tahoe Regional Planning Agency (TRPA) by amending PAS 058, Glenbrook to amend Plan Area 058, Glenbrook, to add a Special Policy #7 limiting new piers in Special Area #1 and to amend the Plan Area Statement Map H-10 to add Special Area #1 as illustrated in Adopting Ordinance Exhibit 2, in order to further implement the Regional Plan pursuant to Article VI(a) and other applicable provisions of the Tahoe Regional Planning Compact.

1.20 These amendments have been determined not to have a significant effect on the environment, and are therefore exempt from the requirements of an environmental impact statement pursuant to Article VII of the Compact.

1.30 The Advisory Planning Commission (APC) has conducted a public hearing on the amendments and recommended adoption. The Governing Board has also conducted a noticed public hearing on the amendments. At those hearings, oral testimony and documentary evidence were received and considered.

1.40 Prior to the adoption of this ordinance, the Governing Board made the findings required by Chapter 6 of the Code and Article V(g) of the Compact.

1.50 The Governing Board finds that the amendments adopted here will continue to implement the Regional Plan, as amended, in a manner that achieves and maintains the adopted environmental threshold carrying capacities as required by Article V(c) of the Compact.

1.60 Each of the foregoing findings is supported by substantial evidence in the record.

Section 2.00 Amendment of the Glenbrook Plan Area Statement

Subsection 6.10, subparagraph (2)(___) of Ordinance No. 87-9, as amended, is hereby further amended as set forth on Exhibit 1, dated August 15, 2000, which attachment is appended hereto and incorporated herein.
Section 3.00  Amendment of the Glenbrook Plan Area Boundary Map

Subsection 6.20, subparagraph (1)(____) of Ordinance No. 87-9, as amended, is hereby further amended as set forth on Exhibit 2, dated August 15, 2000, which attachment is appended hereto and incorporated herein.

Section 4.00  Interpretation and Severability

The provisions of this ordinance and the amendments to the Plan Area Statements adopted hereby shall be liberally construed to effect their purposes. If any section, clause, provision or portion thereof is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and the amendments to the Plan Area Statements shall not be affected thereby. For this purpose, the provisions of this ordinance and the amendments to the Plan Area Statements are hereby declared respectively severable.

Section 5.00  Effective Dates

The provisions of this ordinance amending the Glenbrook Plan Area Statement (058) shall be effective 60 days after its adoption pursuant to Subsection 13.7.B.

The provisions of this ordinance amending the Glenbrook Plan Area Map shall be effective immediately after its adoption pursuant to Subsection 13.7.B.

PASSED AND ADOPTED by the Governing Board of the Tahoe Regional Planning Agency at a regular meeting held August 23, 2000, by the following vote:

Ayes:

Nays:

Abstentions:

Absent

Larry Sevison, Chairman
Tahoe Regional Planning Agency
New language is underlined in blue.

058
GLENBROOK

PLAN DESIGNATION:

<table>
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<th>Land Use Classification</th>
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<tbody>
<tr>
<td>Management Strategy</td>
<td>MITIGATION</td>
</tr>
<tr>
<td>Special Designation</td>
<td>NONE</td>
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</tbody>
</table>

DESCRIPTION:

Location: This area around Glenbrook Bay is located on TRPA maps H-10 and H-11.

Existing Uses: This area is a mixture of older low density residential development and a new planned unit development that includes condominiums, single family dwellings, and restored resort structures. The beaches are private, but the golf course is open to the public. The area is 65 percent built out.

Existing Environment: The area is 40 percent SEZ, 25 percent low hazard, 20 percent high hazard and 15 percent moderate hazard. The planned unit development area is developed in accordance with the land capability system although there are some SEZ conflicts. The older areas at both ends of the Bay are high hazard. The shoreline contains tolerance districts 3, 4, 5 and 7. The land coverage is 10 percent plus an additional 20 percent disturbed.

PLANNING STATEMENT: This area should continue as residential, maintaining the existing character of the neighborhood.

PLANNING CONSIDERATIONS:

1. Public access to beaches and historical structures is limited.
2. Subdivision improvements are not up to minimal BMP standards in the Deadman's Point area.
3. This beach is identified as a habitat for an endangered plant species.
4. The meadow area adjacent to Glenbrook Creek could be managed as a waterfowl habitat.
5. Scenic Roadway Unit 29 and Scenic Shoreline Unit 26 are within this Plan Area.

SPECIAL POLICIES:

1. The Glenbrook Master Plan should be used as a planning guide for the area subject to such a plan.
2. Designated beach areas should be set aside and protected for Rorippa subumbellata.
3. Enhancement of wildlife habitats along Glenbrook Creek should be encouraged.
4. The Glenbrook Shorezone Plan should serve as a planning guide for development in the shorezone.
5. The lots in the Glenbrook Subdivisions designated as eligible for multi-density under the approved subdivision map shall be eligible for such density with TDR.

6. New or additional commercial development shall be limited to parcels with commercial development on the effective date of this Plan or conversion to a commercial use of accessory recreation uses.

7. In Special Area #1, the existing Community pier shall be the only permissible pier.

PERMISSIBLE USES: Pursuant to Chapter 18 PERMISSIBLE USES and if applicable, Chapter 51 PERMISSIBLE USES AND ACCESSORY STRUCTURES IN THE SHOREZONE AND LAKEZONE, the following primary uses may be permitted within all or a portion of the Plan Area. The list indicates if the use is allowed (A) or must be considered under the provisions for a special use (S). Existing uses not listed shall be considered nonconforming uses within this Plan Area. The establishment of new uses not listed shall be prohibited within this Plan Area.

General List: The following list of permissible uses is applicable throughout the Plan Area:

Residential
- Single family dwelling (A), employee housing (S), and multiple family dwellings (S) only on the lots in the Glenbrook Subdivision that are designated as eligible for multi-density on the approved subdivision maps.

Commercial
- Eating and drinking places (S) and professional offices (S).

Public Service
- Cemeteries (A), public health and safety facilities (S), transit stations (S), pipelines and power transmission (S), transmission and receiving facilities (S), transportation routes (S), public utility centers (S), and local post offices (S).

Recreation
- Participant sports facilities (S), temporary events (A), day use areas (A), outdoor recreation concessions (S), riding and hiking trails (A), cross country ski courses (A), beach recreation (A), and golf courses (A).

Resource Management
- Reforestation (A), sanitation salvage cut (A), special cut (A), thinning (A), early successional stage vegetation management (A), structural and nonstructural fish/wildlife habitat management (A), farm/ranch accessory structures (A), grazing (A), range pasture management (A), fire detection and suppression (A), fuels treatment/management (A), insect and disease suppression (A), sensitive and uncommon plant management (A), erosion control (A), SEZ restoration (A), and runoff control (A).

Shorezone: Within the specified shorezone tolerance district, the following primary uses may be permitted in the backshore, nearshore, and foreshore. Accessory structures shall be regulated pursuant to the regulations applicable to the primary use upon which they are dependent in accordance with Chapter 18. The following structures may be permitted in the shorezone as an allowed (A) or special (S) use only if they are accessory to an existing, allowed use located on the same or adjoining littoral parcel.
Tolerance Districts 4, 5 and 7

Primary Use: Beach recreation (A), safety and navigational devices (A), outdoor recreation concessions (S), and salvage operation (A).

Accessory Structures: Buoys (A), piers (A)*, fences (S), boat ramps (S), breakwaters or jetties (S), shoreline protective structures (S), floating docks and platforms (A), and water intake lines (S).

*See Special Policy 7

Tolerance District 3

Primary Use: Safety and navigational devices (A), and salvage operations (A).

Accessory Structures: Buoys (A), piers (A), fences (S), boat ramps (S), breakwaters or jetties (S), shoreline protective structures (S), floating docks and platforms (A), and water intake lines (S).

MAXIMUM DENSITIES: Pursuant to Chapter 21 DENSITY, the following list establishes the maximum allowable densities that may be permitted for any parcel located within the Plan Area. The actual development permitted may be further limited by transfer of development rights limitations, residential density incentive program, special use determinations, allocation limitations and general site development standards.

<table>
<thead>
<tr>
<th>USE</th>
<th>MAXIMUM DENSITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td></td>
</tr>
<tr>
<td>Single Family Dwelling</td>
<td>1 unit per parcel</td>
</tr>
<tr>
<td>Multiple Family Dwellings</td>
<td>In accordance with Special Policy #5 for this Plan Area</td>
</tr>
</tbody>
</table>

RESIDENTIAL BONUS UNITS: Pursuant to Chapter 35, the maximum number of residential bonus units which may be permitted for this Plan Area is 0 units.

MAXIMUM COMMUNITY NOISE EQUIVALENT LEVEL: The maximum community noise equivalent level for this Plan Area is 50 CNEL. The maximum community noise equivalent level for the Highway 50 corridor is 65 CNEL.

ADDITIONAL DEVELOPED OUTDOOR RECREATION: The following are the targets and limits for additional developed outdoor recreation facilities specified in Chapter 13 to be located within this Plan Area. Specific projects and their timing are addressed in the TRPA Five-Year Recreation Program pursuant to Chapter 33 Allocation of Development. The following additional capacities allowed are measured in persons at one time:

SUMMER DAY USES 0 PAOT   WINTER DAY USES 0 PAOT   OVERNIGHT USES 0 PAOT

IMPROVEMENT PROGRAMS: The capital improvement and other improvement programs required by the Regional Goals and Policies Plan for this area shall be implemented. The improvements include, but are not limited to, the following:

1. Improvements required by the Surface Water Management Plan as shown on Figure VIII-1 through 18 of Volume I of the 208 Water Quality Plan.
2. The highway and transit improvements indicated in the Transportation Element of the Regional Goals and Policies Plan.
3. Stream zone restoration as indicated in the Stream Environment Zone Restoration Program. (To be completed.)
Senior Planner Coleen Shade presented the staff summary amending the Plan Area Statement 058, Glenbrook, to prohibit new piers between Slaughterhouse Creek and the South End of Glenbrook Bay.

Mr. Poppoff questioned how many piers were on the stretch now, and Ms. Shade said one, which is the Glenbrook community pier.

Chairperson Marchio asked Ms. Shade if the 1984 plan had been adopted, and she replied that it has not been officially adopted, but is used as a basis in the plan area.

Chairperson Marchio opened up the meeting for a public hearing.

Mr. Doug Jones, President of the Glenbrook Homeowners' Association ("GHOA") and a consultant in the utility industry, he stated that the reason why he is here is to preserve the scenic beauty of Glenbrook Bay, the environment and also the historical culture and history of that area. Our community fully supports this amendment. There are about 273 property owners in Glenbrook, of which 228 are GHOA members. There are a few independents, and there is also another group called Glenbrook Property Owners' Association, which is 50 plus members. We are looking at 273 people. Last Spring, this pier thing went all over the papers and we got a lot of calls on the Board about the possibility of piers appearing on Glenbrook Bay. We felt that it would be important to quantify what the community's feeling for it was. We got a group of volunteers together and ran a survey in May of 1999 and talked to all of the people that we could get a hold of. The total number of people contacted is 198, which is 73% of the population. The total number against pier building on Glenbrook Bay was 185, which represents 93% of the people contacted. The total number for pier building were 6, representing 3% of the people contacted; 7 people had no opinion. We feel very confident, as a community there is a strong outcry for no pier building on Glenbrook Bay. I think that is very important to mention.

GPO is an organization that exists, but they were formed prior to the PUD; before GHOA occurred. All of them are littoral property owners. He read the following letter from Mr. Bob Ham, president of that organization, "In further support of the current application for a Plan Area Statement Amendment for Glenbrook Bay, I would make the following points: 1) the membership of Glenbrook Property Owners Association; those 50 plus residents of the Glenbrook Community who are not part of the PUD, that is GHOA, continue to support enthusiastically the GHOA requested amendment calling for no new piers on the West facing the sandy beach of Glenbrook Bay; 2) this long stretch of sand interrupted only by the historic community pier is a precious part of the ecstatic quality of Glenbrook; a quality gradually disappearing from other areas of the lake; 3) granting even one new pier would be a precedent setting event that could open the door to many such requests and lead to the loss of this visual assets. All residents of the Glenbrook Community are afforded access to the Lake by virtue of the GHOA-owned and maintained beaches of the North and South ends of the Bay, and the community pier located on the South beach area. My neighbors and I, all non-GHOA members, have always felt no restriction on the usage of that pier to board passengers or to tie up all visiting friends. Other non-GHOA residents moor boats in the vicinity of that pier and use it and the GHOA operated tender regularly. For myself, and on behalf of the members of GPOA, I encourage approval of the requested Amendment, Robert Ham, President. That represents the 50 plus people that we are talking about.

We want to make this crisp and short. We appreciate your time, and I would like to turn this over to Bud Hicks, who is also on our Board, to talk a little about our belief that everybody in that community has excess to the community pier.

Mr. Bud Hicks, homeowner in Glenbrook and on the Board of Directors, stated that Glenbrook is a community founded by the Bliss family, who has historic roots in the area. At one time, the Bliss family owned the entire valley and the area known as Glenbrook. Glenbrook truly is a planned
community. The Bliss family planned it. They established principles that allow all property owners in Glenbrook to utilize the recreational aspects of the community; beaches, hiking trails, and most importantly, the community pier. The community pier for years was always used by all residents of Glenbrook freely; without charge and limitation. The Glenbrook community pier is a good example of the positive benefits that were addressed in the 1994 plan that Ms. Shade spoke about. In that plan, it limits the proliferation of private piers in areas where there are multiple use or community piers available. Nevertheless, you are going to hear today, I believe, some legalistic arguments that some people are not allowed to use the community pier. In fact, on behalf of GHOA, I can tell you that no one has been denied the use of that pier; it is open for everyone's use.

However, to clarify GHOA's position on this issue; and GHOA presently is the owner of the pier and sits on – it doesn't own the land under the pier; it has an easement – but it owns the physical pier. To clarify GHOA's position to the extent that there is any ambiguity on it, and at the request of GHOA's Board of Directors, a series of resolutions have been prepared for adoption at their next meeting, and they will be adopted at the next meeting. He stated that it is fully the intent of GHAO to honor and respect the right of all Glenbrook residents, as it always has, to use the community pier. He asked Mr. Gary Midkiff, their consultant, to talk about the environmental, historic, and scenic issues.

Mr. Lane questioned how many affected privately owned lakefront parcels are there, and Mr. Midkiff responded 15 or 16 private owners.

Mr. Gary Midkiff, the consultant for Glenbrook Homeowners' Association, showed a series of displays and photos that reviewed the history of Glenbrook.

Ms. Huntington, a homeowner in Glenbrook, stated that Glenbrook pier and doesn't know why a private pier is being considered 240 feet from a perfectly adequate, well-maintained community pier opened to everyone in Glenbrook. It has a boatman on duty during the summer, and it is very well taken care of, and people are served well. She stated that 99% of the beachfront property owners, South of Slaughterhouse, are opposed to piers. These are long-time owners; second and third generation owners. If they wanted to have a pier when they were a first generation, they would have had it. But none of them wanted it, and they don't want it today. When the developer bought a large part of Glenbrook – this was in the early 80's from the Bliss family – he explicitly set up beach rights for all of the community. This was to help sell property in the backshore as well. This access started at the Avery property, which is mid-Bay, and goes south to my family's property on the South cove of the Bay. There was one exempt property. Why must my family residence, in place for more than 30 years now, be subject to a view corridor of Glenbrook beach area, totally disturbed by an extended pier with a boathouse at the end that will house two boats? That is directly in our view's corridor.

In normal years, this protected cove of the Bay has had tremendous fish spawning and wildlife nesting. In drought years – and we have them – this cove is a sandy and sawdust covered beach out to the old rock crib, built by the Prey brothers, who owned and operated the first sawmill in Glenbrook, and that sawmill was right on our property. Some of things that were found, like old teacups and old miling things still come to the surface.

APC and TRPA were established many years ago, and I was around then too, to preserve and look after Lake Tahoe, to that it is restored and preserved for generations to come. This is a difficult role with so many people in our present world only selfishly interested in what today brings them. This is your opportunity to stand up for what is right for our Lake Tahoe and to stand up for the reasons you were created as a governing entity.

Mr. Mark James, representing the Ruvo and Whittemore families, stated that this is the first time he has appeared before a Tahoe Regional Planning Agency board. He is from Las Vegas. There is a theme that best describes what is being proposed today and those two words are "improper" and "unnecessary". Improper as a matter of fact. He will show why existing TRPA law and existing laws and plans governing Glenbrook don't allow TRPA to do what it would do by
eliminating the right for certain property owners to build a pier, which is part of their property right. Secondly, unnecessary from a practical standpoint. As you will see, one of the exhibits that Mr. Midkiff's exhibits did not reveal is the fact that piers are already prohibited in all of the scenic areas of Glenbrook Bay that everyone, specifically, the TRPA staff and the people who did the shorezone plan back in 1984 were talking about. He presented a slide show of the history of Glenbrook.

Glenbrook Homeowners' Association ("GHOA") concerns to protect environmental and scenic issues stemming from piers do not because the property in question is so different. They are questionable at best. The reason is in 1994, Mr. Midkiff, who represents GHOA, submitted a proposal on behalf of GHOA to place a water ozone treatment facility in precisely the area that the proposed pier would be built. Back in 1994, it apparently was not as scenic enough or historic enough area not to disturb with a water treatment plant, but now in 2000, it's so scenic that no one can construct a pier there under any circumstances, even with whatever kind of mitigation of Glenbrook Creek that they are proposing. He stated that it is disingenuous for GHOA to express concern about the ability to support environmental impact from a pier in the same area that they wanted to build this facility.

Mr. James stated that he and his client opposes the GHOA proposal, and agrees to TRPA staff's proposal. He commented that if the plan the GHOA proposes were adopted, it would not be general zoning legislation; it is what is called "spot zoning." The only legal argument that he made to the APC is that spot zoning is unconstitutional. One can't say, "we are going to do something general, but it's just going to apply to a couple of people down here," if there is a really good basis for "saying you guys are differently situated", and if you think that these properties are not differently situated, he suggested those people stand at the community pier and walk south. Because whether or not it is a drought or it is the high-water mark of the Lake, you will run straight ahead into thick riparian brush and rocks, and it is an absolute different change in topography. To say that that land is different then this land or that land, would be an irrational basis upon what to make a distinction and it would be spot zoning and it would be wrong.

In closing, he suggested that the APC adopt what staff has recommended, and leave it there, and we will go forward and support it at the Board level, and the issue will be done with.

A discussion ensued.

Mr. Dave Roberts, on behalf of the League to Save Lake Tahoe, commented that the League supported the Glenbrook Homeowners' Association recommendation. He is not familiar with the all the issues surrounding the development of the proposed pier. But he did know that there are substantial environmental issues, and issues as to whether or not there is going to be a reduction in development potential which would facilitate the multi use designation. Of the 12 alternatives presented, he stated that the Glenbrook Homeowners' Association's proposal is by far the more environmentally superior of the two alternatives. With the change in Ordinance language that is being proposed in the draft environmental impact statement for shorezone, this type of change represents the only alternative that homeowner associations have to protect the integrity of the community in which they live in and which they care about and which they hope to preserve.

The League supports this type of change, and he encouraged other homeowner associations around the Lake that hope to preserve their communities to do likewise.

Ms. Jan Brisco, representing the Tahoe Lakefront Owners' Association, stated that it is important to note that we keep hearing about the EIS and all this information on the scenic, and this is just a draft; nothing has been finalized so it is very discouraging to them that as part of the partnership process, they have not reviewed this issue. This is something that the Association has been working on for a long time in terms of who is eligible, what we are trying to preserve, to make sure that we take into account all the interests involved. She stated that she has been hearing most of the afternoon about protecting and preserving all of these important environmental and threshold-related issues. But who is protecting the property rights? We don't necessary agree that this is
the only way. There is a way to resolve this issue within the community without having to pass any special amendments and having any special areas to further complicate the issue. For those lakefront owners, who so desire, can deed restrict their property from having a pier, which will take care of this issue.

Ms. Brisco further commented that when she heard Ms. Huntington mention that 99% of the property owners were in support of this proposal – the lakefront property owners – she thought this was a simple way to go about this; by deed restricting. This takes the issue out of contention for future generations.

The other concern is that for the last thirteen years or so, regardless of whether the Glenbrook shorezone plan was codified or not, no new piers have been constructed in Glenbrook Bay. The system is working very, very well. Why fix it if it isn't broken.

So she is concerned about the property owners, just because they are not here today, either in support or opposition or this proposal, doesn't mean that their interests should not be very carefully considered by this Agency. Ms. Brisco stated that it is incumbent that the APC really look at those issues in detail. As part of the partnership process, she stated that the Association would be willing to look at this issue in more detail so that we can come up with an accommodation. We don't want to get into specifics on any of these projects. We are not advocating anything other than the potential for this type of amendment for every other association around Lake Tahoe to come in with a similar plan area amendment. She stated that she could see other owners taking this type of action to preclude the lakefront and littoral property rights that are so valuable at Lake Tahoe. If an individual lakefront property owner wants to give up those rights in perpetuity, so be it. That should be an individual choice and not something put upon them by TRPA or by special interest or by anything other than a voluntary situation.

Ms. Brisco believed that we should be reviewing this proposal as part of the draft EIS. It is going to have impact, regardless of what happens today and what the Governing Board acts upon. It will have an impact on our draft environmental impact report that is still in the works. She urged the APC to at least defer action on this specific issue until after we have had a chance to look at what the impact will be in the document.

Mr. McIntyre commented to Mr. Midkiff that there has been a change in the policy of the water master where they have decided to hold the Lake as much as possible to no more than a foot and a half below the top of the Dam. He believes that whenever possible the water will always be at this current elevation, which he is against. Mr. Midkiff replied that he was against it also but there wasn't much anyone can do about the Federal Water Master, but there are environmental impacts that result from that policy and there are continuing to be other efforts to deal with that issue. Mr. McIntyre stated that holding the Lake higher eliminates a lot of the potential beach property we used to have.

Mr. Lohman questioned that if the pier extends beyond the high water line, it is inhibiting the public's right to the beach area below the highwater line. Mr. Marshall stated he did not think that an assertion that you are prohibiting piers, one is doing something illegal. The APC should feel free to consider the issue on its underline merits, whether it is good policy or not

Ms. Shirley Synder, a homeowner in Glenbrook, stated that Mr. Ruvo owns and belongs to GHGA so he has a right to the pier. Ms. Synder said that when people get up and say things that are not true – she wished all the facts were presented and looked into.

Since no one else wished to comment, Chairperson Marchio closed the public hearing. Chairperson Marchio asked staff where do we stand with the shorezone EIR/EIS and how does this proposal fit into that document, and when do we anticipate seeing that document before the APC and the Governing Board. Ms. Shade answered that she is hoping to be bringing a final document forward in August; best case scenario. To answer the second question as how this proposal fits into the EIR/EIS, Ms. Shade responded that this proposal is applicant driven. This is
outside of that process in that we had an applicant bring forward their proposal and application fee, and like any other application, TRPA is obliged to bring that forward to the APC and Governing Board. In addition, for the most part, the issues that have been discussed were being discussed in a partnership group that is also a consensuses group. This proposal is a very, very specific area; very specific issue that is supported by a very specific community. Taking this to a consensus group, personally, would be a set up for failure because of the specific issues that are addressed in the application.

Mr. Cole asked Ms. Shade what purpose does this application serve TRPA and its goals. Ms. Shade stated that when we look at amendments to the Regional Plan, such as a plan area amendment, TRPA asks three questions: 1) Is there something wrong; was a mistake made that needs to be change; 2) Has something changed in that area; some land use activities that would require this amendment; no, and 3) Does this assist TRPA to better obtain and maintain thresholds; yes. Specifically, on the scenic quality issues. We have an environmental document in draft stage, and our consultants are telling us that we have very few sandy beaches that our left that are in this high of a quality. We should be reducing development potential on these resources. It is not to say that the riparian area to the South of Glenbrook Creek does not hold significant scenic value; it does; but, in terms of the sandy beach itself and what we have identified as visually sensitive, this is consistent with what TRPA’s staff is proposing in the shorezone EIS and this helps us to attain that high rating that is there today.

Mr. Cole said that is why TRPA’s proposal is different than the Homeowners’ Association, and Ms. Shade responded yes.

Mr. Kehne questioned whether the Glenbrook Homeowners’ Association, as they apply for this application, support TRPA staff’s proposal, and if they don’t, would they withdraw their application if the proposal were approved by the APC. Mr. Wells stated that an applicant submitted an application, TRPA reviewed it, and we have some difference of opinion on what that should be in terms of the final approval by the Governing Board. Staff makes a recommendation to the APC; the APC makes an application to either support or not support the original application. TRPA would then forward that on to the Board, and then the Board would decide.

Ms. Kwas questioned if plan area statements can be made with requirements. Mr. Marshall replied that there is nothing that prohibits the conditioning of a plan area statement amendment on an applicant-driven plan area amendment.

Ms. Baldrica pointed out that there are some wood pilings North of what is called an existing pier on the map; one of three in the Glenbrook shorezone plan. There is an existing pier and cribbing. If the line is to fall at Glenbrook Creek, there would be some – not the majority – historic features which fall within the shorezone area under Special Area #1 that would be preserved. There are some historic things that would be left out of that Special Area #1 should we go with the staff recommendation. However, the majority of the features would be within that Special Area #1

MOTION by Mr. Cole, with a second by Mr. Morgan, to recommend to the Governing Board amending Plan Area Statement 058, Glenbrook, to prohibit new piers between Slaughterhouse Creek and the South End of Glenbrook Bay. The motion carried unanimously.

Mr. Kehne went on record to say he supports staff’s recommendation that believed that the purpose of the APC’s efforts here are to protect the environment in a capacity that we can. That process then would happen. If this applicant goes through for a pier development that is another process that will happen. Cultural resource issues and historical issues will not be escaped and will be covered in a different process. He suggested that the APC supports staff’s proposal.

In addition, Mr. Kehne passed out copies of the Home Landscape Guide to each of the APC members.
TAHOE REGIONAL PLANNING AGENCY
STAFF SUMMARY

Project Name: Ruvo, Whittemore, Carano - New Pier

Application Type: Shorezone, New Multiple-Use Pier, Recognition of Multiple-Use Facility, Stream and Stream Environment Zone (SEZ) Habitat Restoration

Applicants: Lawrence Ruvo Living Trust; Harvey Whittemore; Postmistress Properties, LLC; and Recreational Enterprises Inc.

Agency Planner: Jon-Paul Harries, Associate Planner


Assessor's Parcel Numbers (APN)/File Number: 01-070-20(Recreational Enterprises Inc.); 01-070-27(Postmistress Properties, LLC); 01-190-12(Whittemore); and 01-190-13 (Ruvo)/TRPA File Number 990108.

Staff Recommendation: Staff recommends the Governing Board deny the application on two grounds. First, the applicants have not been able to definitively establish that their proposed pier would not illegally interfere with a recreational easement held by the Glenbrook Homeowners Association (GHOA) burdening the pier parcel. Second, the applicants may have access to the GHOA multiple-use pier and the reductions in development potential are minimal. The required actions are outlined in Section F of this staff summary.

Project Description: The applicants are proposing to construct a new pier located on APN 01-190-13. The pier is proposed at the south end of Glenbrook Bay's sandy beach and approximately 150 feet south of the existing community pier. The community pier is the only pier currently existing in the area. As shown in Exhibit C, the proposed pier utilizes an open-piling design and is proposed to be 289 feet in length. Single pilings will support the first 206 feet of pier decking which will measure six feet across. The final 83 feet forms the pierhead, which will measure 10 feet wide and be supported by double pilings. Also proposed at the pierhead is a single 3'x45' catwalk and two large low-level boatlifts. A large low-level boatlift uses two lifts with a single fork each to lift a single boat (up to 12,000 lbs.). The only stabilized access to the pier is through the residence.

In conjunction with the proposed development, the applicants are requesting the Governing Board recognize the pier as a multiple-use facility and thus allow deviations from certain design standards and also avoid TRPA's prohibition of single-use shorezone structures on littoral parcels that are served by multiple-use facilities. The deviations include the addition of a second boatlift and placement of the pier within the TRPA shorezone projection line setback. The recognition of the pier as a multiple-use facility is further discussed in the Issues section below.

The applicants are also proposing to mitigate any potential impacts to nearby Glenbrook Creek, as well as assist in partial fulfillment of certain projects identified in the Environmental Improvement Program (EIP), by proposing a stream restoration project on the lower 600 feet of Glenbrook Creek. The proposed project is designed to remove existing fish passage barriers and restore the creek bed and surrounding SEZ to a habitat that is suitable to support fish passage and spawning. The stream

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/JPH

AGENDA ITEM X.A

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restoration project is further discussed in the Issues section below and in Exhibit H of this staff summary.

**Site Description:** The pier is proposed to be constructed on APN 01-190-13 which is located within the Glenbrook community at the south end of the sandy beach that forms the eastern shoreline of Glenbrook Bay. Approximately 80 feet north of the proposed pier, on APN 01-190-12, is the mouth of Glenbrook Creek. The lake bottom substrate in the area of the proposed pier has been mapped and verified as marginal fish habitat. The only nearby pier in the area is the Glenbrook community pier. Adjacent land uses include other residential development.

The pier is proposed to serve the owners, residents, and guests of four littoral parcels. Exhibit B shows the location and layout of the subject parcels. A summary of the parcel developments is as follows:

**APN 01-190-13:** The parcel is currently developed with a recently rebuilt, Governing Board approved, single family residence (formerly the site of the “Beach House”), and has no existing shorezone structures other than a rock shoreline protective structure that was constructed sometime before 1975. This parcel is the site of the proposed pier.

**APN 01-070-27:** This unusually shaped parcel forms the “Glenbrook Rodeo Grounds”, and is developed with several residential units and accessory structures, including an historic barn. The parcel meets the shoreline in two locations: south of APN 01-190-13 and north of APN 01-190-12. The northern portion of the parcel that meets the shoreline contains the existing community pier and a portion of the community beach.

**APN 01-190-12:** Site of the lowest reach of Glenbrook Creek and the proposed stream restoration project. This parcel is currently developed with a single-family residence (“Lakeshore House”) with no accessory shorezone structures.

**APN 01-070-20:** This parcel is currently developed with a single family residence known as the “Jellerson House.” The parcel does not have any shorezone structures, but the shoreline is used as a portion of the Glenbrook community beach.

**Issues:** This project involves the construction of a new pier, recognition of the pier as a multiple-use facility, and modification to a Stream Environment Zone (SEZ). Therefore, the project requires Governing Board review in accordance with Chapter 4, Appendix A, of the TRPA Code of Ordinances. The primary issues associated with this project are:

1. **Potential Interference with Recreational Easement:** If a proposed shorezone development affects a recorded easement, TRPA requires that the project proponents obtain agreement from the holder of the easement. Such an agreement demonstrates that the project applicants have, in fact, the legal right to construct the project if it is approved by TRPA. For example, if a county owns a beachfront right-of-way or similar interest, TRPA requires that a littoral property owner obtain the county’s permission to build a pier that cross that real property interest. If the project proponent and the holder of the easement cannot agree on whether the proposed structure interferes with the easement or right-of-way, TRPA will deny the application and direct the parties to settle their differences (in court of necessary).
The proposed pier intersects a deeded recreational easement held by GHOA. The easement provides to Glenbrook residents lateral access along Glenbrook beach. A letter from GHOA’s attorney (attached as Exhibit D) demonstrates that GHOA asserts that construction of the proposed pier will interfere with the recreational easement. In a letter from the their attorneys (attached as Exhibit E), the applicants assert that the pier will not improperly infringe on GHOA easement. The applicants also assert that TRPA is not suited nor authorized to resolve alleged infringements of GHOA’s access rights. TRPA Staff agrees and recommends that the Governing Board deny the proposed project because at this time the applicants cannot demonstrate that they have the clear right to construct the pier across GHOA’s recreational easement.

2. Recognition of a Multiple-Use Facility: In conjunction with the proposed development, the applicants are requesting the Governing Board recognize the pier as a multiple-use facility. The issue of multiple-use designation is important because such a designation allows the applicants to deviate from certain design and location standards. Also, because the Code prohibits new single-use shorezone structures on littoral parcels that are served by multiple-use facilities, the applicants must have the Governing Board recognize the pier as a multiple-use facility to avoid the single-use prohibition. Currently, none of the applicants’ properties have the ability to construct single-use piers because they are already served by the Glenbrook community pier, beach and buoy field.

This section of the staff summary focuses the issue of recognizing a structure as a multiple-use facility. A discussion on the proposed deviations from design and locations standards follows this section.

Chapters 2 and 54 of the TRPA Code of Ordinances (Code) contain specific language regarding multiple-use facilities that the Governing Board must consider while evaluating the proposed project. Chapter 2 of the Code defines a multiple-use facility as:

“A shorezone facility, usually but not always a pier, which is used by the public, homeowners association, or two or more littoral property owners, and is recognized by TRPA as a multiple use facility pursuant to Subsection 54.8.D.”

As set forth in Chapter 54 (attached as Exhibit F), Subsection 54.8.D of the Code is as follows:

*54.8.D Recognition Of Facilities As Multiple-Use: Facilities recognized by TRPA as multiple-use are subject to the following Provisions:

(1) Deviation From Standards: Deviation from those standards identified in Subsections 54.8.B and 54.8.C as guidelines for multiple-use facilities, shall be allowed only if TRPA recognizes such facilities as multiple-use. The extent of deviation from the standards shall be approved by TRPA and shall be dependent on:

(a) The reduction in development potential of shorezone facilities associated with the application such that the facility will be shared by other littoral property owners; and
(b) The number of people utilizing the facility or the extent to which the facility is available for general public use.

(2) Reductions in Development Potential: Reductions in development potential shall be established through the recordation by the owner of permanent deed restrictions or other covenants running with the land, reflecting use agreements and development limitations approved by TRPA on the affected properties."

Based on the above referenced Code sections, there are essentially two tests the proposed pier must pass before it can be considered a multiple-use facility and thus be allowed to deviate from design standards. First, it must serve the public, a homeowners association, or two or more littoral property owners. Second, TRPA must recognize the facility as multiple-use. Pursuant to Chapter 4, Appendix A, of the Code, only the Governing Board can recognize a facility as multiple-use.

The pier is proposed to serve four littoral property owners including several residences and, therefore, passes the first test. It should be noted, however, that the only stabilized access to the pier is through the residence. In evaluation of the second test, staff does not recommend the Governing Board recognize the pier as multiple-use. The staff recommendation is based on guidance provided by the TRPA Goals and Policies, the Code of Ordinances, the subject Plan Area Statement, and a review of past TRPA actions.

The Code does not expressly state what factors should be considered in order to recognize a facility as multiple-use, but it does require the Governing Board consider the number of people using the facility and the reduction in development potential of shorezone facilities when evaluating the extent of deviation from design standards. Requiring development limitations to be established through permanent deed restrictions or other covenants emphasizes the importance of reduced development potential.

The provisions within the Code of Ordinances were created, in large part, by the direction set forth in the Goals and Policies. The Goals and Policies identify the need for multiple-use piers when there is resultant reduction of shorezone development potential. As shown in Exhibit G of this staff summary, Policy 10, of Goal #1, of the Shorezone Subelement, states:

"PROVISIONS SHOULD BE MADE TO ALLOW MULTIPLE-USE PIERS WHEN SUCH USES ARE INTENDED TO REDUCE THE NUMBER OF SINGLE USE PIERS EXISTING ON ADJOINING PROPERTIES.

Fish habitat in the nearshore can be improved if habitat modifications and disturbances are minimized. Centralized activity centers are preferred to numerous points of activity dispersed along the entire shoreline."

The provisions for facilities recognized by the Governing Board as multiple-use are closely tied to their ability to serve the public, or when serving two or more littoral property owners, reduce shorezone development potential. While the applicants are proposing to deed restrict the subject properties from further shorezone development, the staff opinion is that recognition of the proposed pier as a multiple-use facility would result in an increase in development with no reduction in development potential because the applicants already have access to a multiple-use pier, which coincidentally, is also located within the proposed project area.
The applicants are requesting the Governing Board recognize the pier as a multiple-use facility, in part, to avoid the prohibition of single-use facilities on littoral parcels that are within a land development served by multiple-use facilities (see TRPA Code Subsection 54.8.A in Exhibit F). Currently, none of the applicants' properties have the ability to construct single-use piers on their own because they are already served by the Glenbrook community pier, beach and buoy field, which are owned and controlled by GHOA through deeds and easements. According to GHOA representatives, all the applicants have the ability and right to use the common facilities, and they frequently do (see Exhibit D; also see the applicants' response provided as Exhibit E).

The development of new multiple-use piers to avoid the prohibition of single-use piers is not consistent with the intent to reduce shorezone development potential as established in the Goals and Policies and subsequent multiple-use provisions of the Code of Ordinances. Also, staff is unaware of a previous Governing Board action that allowed the creation of a private multiple-use pier within a residential development that is served by an existing community or association pier. Staff is concerned that approval of this pier will cause a precedent setting action that would not result in a reduction of development potential, but instead promote littoral property owners basin-wide that are under similar restrictions to develop numerous multiple-use piers.

In addition, certain code provisions and potential environmental impacts do not support development of single-use piers on the subject parcels. For example, development of a single-use pier on APN 01-190-27 would be prohibited because the community pier is already located on this parcel. Development of a pier on the northern-most subject parcel (APN 01-070-20) would present significant scenic impacts as well as interfere with the existing community beach, and construction of a pier on parcel APN 01-190-12 would likely present significant impacts to fisheries because the shorezone area of the parcel forms the mouth of Glenbrook Creek.

For the reasons stated above, and the resultant inability to make the required finding in Sections E.1 and E.2 of this staff summary, staff does not recommend the Governing Board recognize the proposed pier as a multiple-use facility. The staff opinion is that such designations are better suited for facilities proposed to serve the public, a homeowners association, or two or more littoral property owners when there is a clear reduction in the shoreline development potential.

3. **Deviations from Pier Design and Location Standards:** The proposed pier requires the Governing Board to consider two deviations from pier design and location standards. Specifically, the deviations include the addition of a second boatlift and placement of the pier within TRPA shorezone projection setback lines. The subject standards may be considered as guidelines pursuant Subsections 54.8.B and 54.8.C if the Governing Board recognizes the pier as a multiple-use facility. Staff does not recommend the Governing Board recognize the pier as a multiple-use facility, therefore, staff does not recommend approval of the deviations.

The applicants are proposing two large low-level boatlifts, which requires a deviation from the design standard set forth in Subsection 54.4.B (1) of the Code limiting piers to a single low-level boatlift. Deviation from this limitation creates scenic impacts which are further discussed below. If the Governing Board determines to recognize the pier as a multiple-use facility, staff does not recommend approval of the second boatlift.
The applicants are also proposing a pier that is within the 20-foot projection line setback for new piers set forth in Subsection 54.4.B(5) of the Code. The property to the south (APN 01-070-27), which would be affected by the deviation is, however, one of the applicant properties and would not be adversely impacted by the proposed deviation. Also, placing the pier within the southern setback increases the distance of the proposed pier from Glenbrook Creek and the community pier. If the Governing Board determines to recognize the pier as a multiple-use facility, staff would not object to deviating from the setback standard as proposed.

4. The Glenbrook Shorezone Plan: In 1983, the Nevada Division of State Lands, Glenbrook residents, and other interested parties, including a TRPA representative, met to develop a shorezone plan for the Glenbrook area. At the time, a master plan guided development in the area, but it lacked a plan for the facilities and uses in the shorezone. The committee created the Glenbrook Shorezone Plan, which was later incorporated by reference into TRPA’s Plan Area Statement for Glenbrook as Special Policy #4. The special policy states, “The Glenbrook Shorezone Plan should serve as a planning guide for development in the shorezone.”

The Glenbrook Shorezone Plan sets forth five recommendations on piers. Three of the recommendations pertain to changes and repairs to the existing community and private piers. The other two recommendations, applicable to this project, provided guidelines for new piers with the following determinations: “No additional piers should be constructed on the community beaches, including the China Garden beach area. Individual private piers should be kept to a minimum and allowed only where there is a special need (i.e., where littoral properties are inaccessible to the lake for boating purposes due to the terrain). Multiple ownership piers serving as many littoral property owners as possible are preferable to individual private piers.”

In accordance with one of the recommendations of the Glenbrook Shorezone Plan, the applicants are proposing a multiple-use pier designed to serve four separate properties. The proposed pier does not appear, however, to be consistent with the Glenbrook Shorezone Plan’s recommendation against new piers on the community beach. The Glenbrook Shorezone Plan does not describe the location of the community beach, but it has been strongly asserted by GHQA, that the community beach is, in part, that area identified in the recreational easement burdening the subject parcels.

5. Scenic Quality: The proposed project is located within Scenic Shoreline Unit 26, Cave Rock. This shoreline unit has a Threshold Composite score of 10, which is in attainment with the established scenic thresholds. As proposed, the pier will result in a significant impact to the scenic quality of the shoreline unit. The primary impacts are not from the pier itself, but from the large boatlifts and loss of shorezone vegetation that provides the only screening of the residence. Boatlifts, when in use, add significant mass and visual clutter to a pier. In this proposal, the boatlifts are to be located on opposite sides of the pierhead causing the pier to be approximately 20 to 30 feet wide. A streamlined pier design without above-deck structures would be highly preferable in this area. The existing community pier and buoy-field would largely obscure such a streamlined pier. In addition to the impacts created by the boatlifts, the pier is proposed to access the shoreline in a location that is currently providing valuable vegetative screening of the residence. Removal of the established vegetation will further expose the residence to the lake. The approval for the rebuilt residence incorporated all the scenic mitigating elements available in the project area. There do not appear to be any available opportunities for scenic improvement that would mitigate the impacts of the pier and boatlifts. It may be possible to add additional screening on the lakeside of the residence, but it...
will require years of growth to mitigate the scenic impacts associated with the loss of the existing vegetation.

6. Fisheries: The lake-bottom substrate in the area of the proposed pier is primarily sand and has been mapped and verified as marginal fish habitat. The project is proposed, however, approximately 80 feet south of the mouth of Glenbrook Creek. Chapter 54 of the Code does prohibit placement of piers within 200 feet of certain stream inlets, but Glenbrook Creek is not included in the list. Additional protections to fish habitat are provided in Chapter 79, Fish Resources. In accordance with Subsection 79.2.A(1) of the Code, projects and activities in the shorezone may be prohibited, limited, or otherwise regulated in prime habitat areas, or in areas at times found by TRPA to be vulnerable or critical to the needs of fish. A review of aerial photographs and the fisheries analysis completed for this project reveal the area of the proposed pier is within the influence of Glenbrook Creek. It is further evident that under low water conditions there is significant meandering of Glenbrook Creek below the highwater line (6,229'). It is highly probable the stream will migrate into contact with the proposed pier under low-water conditions. According to the fisheries analysis completed for this project, this creates the possibility that the creek could be partially or completely blocked by debris accumulating against the pilings. The analysis goes on to state that if the stream became blocked by debris, it would likely occur during the spring spawning run.

The applicants are proposing to mitigate impacts to nearby Glenbrook Creek, as well as assist in partial fulfillment of certain projects identified in the Environmental Improvement Program (EIP), by completing a stream restoration project on the lower 600 feet of Glenbrook Creek. Currently the stream does not support fish migration and spawning because of barriers (primarily culverts crossing roadways) and poor stream habitat. The proposed project is designed to remove existing fish passage barriers and restore the creek bed and portions of the surrounding SEZ to a habitat that is suitable to support fish passage and spawning.

As proposed in Exhibit H, the project consists of three elements. The first element involves repairing the lower culvert that crosses Glenbrook Inn Road, and installing boulder step pools at the outlet to raise the stream elevation and pool depth. This will improve upstream fish passage into the next reach of the creek. The second element consists of re-constructing the channel reach from the maintenance road to a point 300 feet downstream into boulders step pools and gravel-riffle pool channels. This is intended to create high-quality spawning and rearing ground for rainbow trout and Kokanee salmon (if introduced to Glenbrook Creek). The third project element involves replacing the maintenance road crossing and existing culvert. The applicants propose to replace the culvert crossing with a new 30-foot long flatcar steel bridge. The bridge would span over a five-foot wide low water channel and 25-foot wide flood plain area. The intent of this element is to remove an existing barrier and provide for upstream fish passage under a full range of flow conditions.

As presented in Exhibit I, Mr. Ruvo is also proposing to transfer existing water diversion rights from Glenbrook Creek and North Logan House Creek to the waters of Lake Tahoe.

The staff determination is that the proposed stream restoration project would mitigate any adverse impact created by construction of the pier. Staff has also concluded that
the project goes beyond mitigating adverse environmental impacts from the pier by surrendering water diversion rights from the creeks, and restoring and replacing the maintenance road culvert crossing with a bridge. It does not, however, negate the multiple-use pier issue.

Staff Analysis:

A. **Environmental Documentation:** The applicants have completed an initial Environmental Checklist (IEC), a Fish Habitat Impact Determination, a fisheries analysis, and a scenic simulation in order to assess the potential environmental impacts of the project. Significant scenic impacts were identified and staff has concluded that the project may have a significant effect on the environment. A copy of the completed IEC and supporting documents will be made available at the Governing Board hearing and at TRPA. Although staff has identified potential significant impacts to the scenic quality of the area, staff is primarily recommending denial because of Code prohibitions designed to limit piers and an outstanding dispute over a recreational easement. Staff does not feel preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) would address these issues, and therefore, is unwarranted at this time.

B. **Plan Area Statement:** The project is located within Plan Area Statement (PAS) Number 058 (Glenbrook). The Land Use Classification is Residential, and the Management Strategy is Mitigation. The proposed structure (pier) is an allowable accessory structure in the plan area and single family dwellings are an allowed use. TRPA staff has reviewed the plan area statement and has determined that the project, as conditioned, is consistent with the applicable planning statement and planning considerations. The proposal does not appear, however, to be consistent with PAS Special Policy #4, which states, "The Glenbrook Shorezone Plan should serve as a planning guide for development in the shorezone."

C. **Land Coverage:** The following land coverage calculations refer only to APN 01-190-13. No new or relocated land coverage is proposed on any other of the subject parcels.

1. **Land Capability District:** The subject parcel is comprised of land capability class 1b, (SEZ and backshore). The subject parcel is 9,302 square feet in size.

2. **Total Allowable Land Coverage:** 93 square feet

3. **Total Existing Land Coverage:** 4,153 square feet

4. **Existing Banked 1b Land Coverage:** 153 square feet

5. **Proposed Land Coverage:** 4,205 square feet

6. **Proposed Banked 1b Land Coverage:** 76 square feet

7. **Excess Land Coverage:** 3,297 square feet

8. **Excess Land Coverage Mitigation:** In accordance with Chapter 20 of the TRPA Code of Ordinances, the applicant will be required to mitigate the excess land coverage on the parcel in conjunction with any proposed project.
D. **Shorezone Tolerance District:** The subject parcels are located within Shorezone Tolerance District 3. Projects within Shorezone Tolerance District 3 must ensure stabilization and the least environmental impact to the backshore. Access to the shoreline is limited to stabilized pathways. The project, as proposed, complies with the shorezone tolerance district standards, but it should be noted that the only stabilized access is through the residence of the subject parcel.

E. **Required Findings:** The following is a list of the required findings as set forth in Chapters 6, 20, 28, and 50 of the TRPA Code of Ordinances. Following each finding, agency staff has briefly summarized the evidence on which the finding can or cannot be made.

1. **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.**

   This finding cannot be made. Recognition of the proposed pier as a multiple-use facility is not consistent with TRPA's goal of reducing development potential through the approval of multiple-use structures. The prohibition of single-use structures in areas served by multiple-use facilities is intended, as a part of the Regional Plan, to control the density and proliferation of piers and other shorezone development. The project, as proposed, will also create unmitigated scenic impacts to the Scenic Shoreline Unit.

   (a) **Land Use:** The single family dwellings on the subject parcels are an allowed use within the applicable plan area statement. Multiple family dwellings are a special use. The proposed project involves the construction of an allowed accessory structure (pier). Surrounding land uses are residential.

   (b) **Transportation:** The existing pier serves the homeowners of the affected parcels and, as such, will not result in an increase of daily vehicle trip ends (dvte) to the subject parcel.

   (c) **Conservation:** The project, as proposed, is not consistent with the shorezone and scenic subelements of the Conservation Element of the Regional Plan. The project involves a stream habitat restoration plan that is consistent with the fisheries subelement of the Regional Plan. As part of the project the applicant will install the required Best Management Practices (BMPs) on the parcel, in accordance with Chapter 25 of the TRPA Code. There are no known special interest animal species within the project area.

   The sensitive plant *Rorippa subumbellata* (Tahoe Yellow Cress) has not been recorded in the location of the proposed pier, but it has been found in the immediate area. When the lake is under low water conditions, there is good to excellent habitat in the area of the proposed pier. An on-site inspection for Tahoe Yellow Cress should be conducted prior to any development lakeward of the highwater line.
Historical surveys have been completed in the Glenbrook Bay and they have identified historic pilings and cribbing that should be retained. The project does not proposed to physically impact the historic structures, and it is not likely the project will impact any other unknown historic or cultural resources. Due to the significant historical activities in the bay, however, the applicants are proposing to complete a cultural resource survey of the area. The survey will be able to identify the potential of impacting any subsurface artifacts. The Nevada State Historic Preservation Office has reviewed the work plan of the proposed survey and has found it to be adequate provided all field reconnaissance is completed in partial fulfillment of an actual historical resources survey, and not as a preliminary examination as proposed.

(d) Recreation: This project does not involve any public recreation facilities or uses. The proposed pier will be similar in length to the adjacent existing community pier and will not extend beyond the TRPA pierhead line or lake-bottom elevation 6,219 feet. The proposed pier will not adversely affect recreational boating or top-line angling.

(e) Public Service Facilities: This project does not require any additions to public services or facilities.

(f) Implementation: The proposed project does not require any allocations of development.

2. The project will not cause the environmental threshold carrying capacities to be exceeded.

(Refer to paragraph 1, above.)

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

The basis for this finding is provided on the checklist entitled "Project Review Conformance Checklist and Article V(g) Findings" in accordance with Chapter 6, Subsection 6.3.B of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities pertaining to air and water quality standards. A copy of the completed checklist will be made available at the Governing Board hearing and at the TRPA.

Findings required to allow disturbance of an SEZ in conjunction with a habitat restoration project:

4. The project, program or facility is necessary for environmental protection.

TRPA staff have identified the restoration of Glenbrook Creek as necessary for the environmental improvement of the area. The restoration of the fisheries habitat in Glenbrook Creek and the transfer of water diversion rights to Lake...
Tahoe have been identified as project numbers 890 and 891 of the Fisheries component of the Environmental Improvement Program (EIP).

5. There is no reasonable alternative, including relocation, which avoids or reduces the extent or encroachment in the stream environment zone.

The project proposes restoration of a stream environment zone (SEZ) and, therefore, must encroach into the SEZ.

6. Impacts are fully mitigated and, if applicable, transferred land coverage requirements pursuant to 20.3.C(2)(e) are met.

The project is intended, in part, to mitigate adverse impacts from the proposed pier development. Measures have been incorporated into the restoration project to avoid and mitigate any potential adverse impacts that may be caused by the project.

Land Coverage Relocation Findings:

7. The relocation is to an equal or superior portion of the parcel or project area.

The land coverage relocation is occurring within class 1b, Stream Environment Zone. The coverage is being relocated closer to the lake, but Chapter 20 of the Code allows for relocation of land coverage to provide access to shorezone facilities provided the impacts of the relocation are mitigated. The applicants are mitigating the relocation impacts by reducing land coverage at a ratio of 1.5:1 of land coverage to be relocated.

8. The area from which the land coverage was removed for relocation is restored in accordance with Subsection 20.5.

The applicants propose to use existing "banked" land coverage as well as relocate existing land coverage. The area from where the coverage is proposed to be removed is also proposed to be restored in accordance with Subsection 20.5 of the Code.

9. The relocation is not to Land Capability Districts 1a, 1b, 1c, 2 or 3, from any higher numbered land capability district.

All land coverage is proposed to be relocated within land capability district 1b.

Findings required to allow a habitat restoration project with a 100-year flood plain:

10. The project, program or facility is necessary for environmental protection.

(Refer to paragraph 4, above.)
11. There is no reasonable alternative, including relocation, which avoids or reduces the extent or encroachment in the flood plain.

The project proposes restoration of a stream and, therefore, must encroach into the flood plain.

12. Impacts are fully mitigated and, if applicable, transferred land coverage requirements pursuant to 20.3.C(2)(e) are met.

(Refer to paragraph 6, above.)

Shorezone Findings:

13. The proposed project will not adversely impact: (1) littoral processes; (2) fish spawning; (3) backshore stability; and (4) on-shore wildlife habitat, including wildfowl nesting areas.

The proposed project will not have an impact on littoral processes because the project does not involve a structure that is less than 90 percent open. The lake-bottom substrate has not been identified as spawning habitat, and the project, as proposed, will minimize impact to the lakebed substrate. The applicants are proposing to mitigate any adverse impacts created by the pier's proximity to Glenbrook Creek by completing a stream restoration project. The proposed pier will not impact the stability of the backshore; however, the proposal does include removal of established vegetation within the backshore.

The proposed pier is not located within an area that is mapped as on-shore wildlife habitat nor has the site been shown to be a waterfowl nesting area. There are large numbers of waterfowl that use the area of the proposed pier, but there is no evidence to suggest that piers adversely impact waterfowl lake habitat. The meadow areas adjacent to Glenbrook Creek have been identified in the Plan Area Statement as important waterfowl nesting areas, but the applicants have not proposed a development or activity that would impact the habitat of the meadow areas.

14. There are sufficient accessory facilities to accommodate the project.

This project involves the construction of a new pier. The project is located offshore of properties occupied by single and multiple family residences. The pier will only be used by the owners of the properties and their guests. There are sufficient parking and upland facilities to accommodate the project.

It should be noted, however, that the only stabilized access to the pier would be through the residence owned by Larry Ruvo. Multiple-use piers that are intended for use by more than one residence should provide reasonable access for the other applicants.
15. The project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modification of such existing uses or structures will be undertaken to assure compatibility.

This cannot be made. Currently there is a conflict between the applicants and GHOA over the appropriate use of the recreational easement that forms the community beach. The proposed pier will intersect the easement and impede movement along the shoreline. Until there is a definitive resolution between the applicants and GHOA over the use of the easement, staff is unable to recommend that this finding can be made.

16. The use proposed in the foreshore or nearshore is water-dependent.

The pier is located in the foreshore and nearshore of Lake Tahoe and is water-dependent.

17. Measures will be taken to prevent spills or discharges of hazardous materials.

This approval prohibits the use of spray painting and the use of tributyltin (TBT). Also, conditions of approval prohibit the discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal. No containers of fuel, paint, or other hazardous materials may be stored on the pier.

18. Construction and access techniques will be used to minimize disturbance to ground and vegetation.

The applicant shall not be permitted to store construction materials on the beach. Permanent disturbance to ground and vegetation is prohibited.

19. The project will not adversely impact navigation or create a threat to public safety as determined by those agencies with jurisdiction over a lake’s navigable waters.

The proposed pier will not extend beyond the TRPA pierhead line. The U.S. Army Corps of Engineers must also review this project for navigational safety. The U.S. Army Corps of Engineers have completed a preliminary review of the project and commented that no safety or navigation impacts have been identified.

20. TRPA has solicited comments from those public agencies having jurisdiction over the nearshore and foreshore and all such comments received were considered by TRPA prior to action being taken on this project.

This project must receive approval from the Nevada Division of State Lands and the U.S. Army Corps of Engineers. Comments from these agencies, as well as the Nevada Division of Wildlife, were solicited as part of the review of this project. None of the agencies indicated that they had concerns regarding the proposed project.
F. **Required Action:** Agency staff recommends that the Governing Board deny the project by making the following motion based on this staff summary and evidence contained in the project record:

1. A motion to approve the project, **which motion should fail.** (to approve the project, a 5/9 vote is required – five in the affirmative from Nevada.)
Steel grate stair to be installed as access to the pier in order to minimize disturbance within the backshore.
July 5, 2000

John Marshall  
General Counsel  
Tahoe Regional Planning Agency  
P.O. Box 1038  
Zephyr Cove, NV 89448-1038

Re: Glenbrook Homeowners Association; Application for Multiple-Use Pier at  
Ruvo “Beach House” Site, APNs 01-190-09, 01-190-11, and 01-070-26

Dear Mr. Marshall,

This letter is further to my letter to you of April 21, 2000, and will respond to your  
request for a focused statement of the position of Glenbrook Homeowners Association (GHOA),  
that construction of a pier on Mr. Ruvo’s “Beach House” parcel, as he proposes, would  
unlawfully obstruct GHOA’s Recreational Easement which burdens all portions of the beach on  
Mr. Ruvo’s parcel. This letter will further respond to your question as to whether a permit must  
be issued by TRPA before GHOA’s claim that the pier would obstruct its Easement would be  
“ripe” for judicial determination.

GHOA is confident that the exposition of the nature and extent of GHOA’s Recreational  
Easement, which follows, supports the assertions contained in letters to you from Mark  
Gunderson, Esquire, of May 11, 2000 and June 5, 2000 that, absent the consent and concurrent  
application of GHOA and its members for the pier permit sought by Mr. Ruvo, the latter’s  
application is fatally incomplete.

To avoid needless duplication in this letter, references to lettered Exhibits will be to the  
same exhibits referenced in my letter of April 21, 2000; additional Exhibits referenced in this  
letter will be designated by numbers.

SUMMARY OF CONCLUSIONS

Based upon the facts discussed below and in my letter of April 21, 2000, and in those of  
Mr. Gunderson, above, Mr. Ruvo has no legal right to permanently or temporarily occupy or  
obstruct any portion of GHOA’s Recreational Easement by construction of a pier structure, or to  
exercise his common use rights in a manner which unreasonably interferes with other common  
use right holders, including GHOA and its members, for the following reasons.
1. Mr. Ruvo holds the Beach House parcel as a servient estate subject to GHOA’s Recreational Easement and to the common use rights of other owners in Glenbrook; therefore, he can make no use of the servient estate which obstructs or unreasonably interferes with GHOA’s and others’ use rights.

2. Mr. Ruvo’s proposed private pier, if allowed by TRPA, would permanently obstruct and interfere with GHOA’s and others’ use rights.

3. GHOA, its members, and all others holding common use rights to the Recreational Easement burdening the Ruvo parcel are necessary parties for a complete application by Mr. Ruvo for the subject pier permit which will necessarily obstruct and interfere with the Easement; without notice to and the consent and joinder of all persons holding interests in the real property where the pier is proposed, TRPA is not authorized to proceed to even consider the application.

4. Without a complete application joined by all persons entitled to enjoy the Easement in common with Mr. Ruvo, which persons in fact oppose the incomplete application, there is no proper application to which the question of “ripeness” could attach and it is therefore irrelevant.

**OPERATIVE FACTS**

1. GHOA’s Recreational Common Area includes a deeded Recreational Easement over the beach portions of Mr. Ruvo’s littoral parcels, and is thereby the holder of the dominant estate as to these parcels. See Maps, Exhibits “C” and “D.” GHOA’s easements, as described in Exhibit “K,” infra, and as expanded by Exhibit “I”, infra, are depicted on Exhibit Map 1, attached overlaying the Ruvo littoral parcels.

2. By acquiring the Glenbrook Inn littoral parcel and the Beach House parcel, Mr. Ruvo is the successor of the Glenbrook Company and Glenbrook Properties, the developer of Glenbrook Units 1, 2 and 3 (collectively “Glenbrook”), and is owner of the servient estates burdened by GHOA’s deeded Recreational Easement. See Deeds, Exhibits “B” and “E”.

3. Glenbrook’s June 23, 1977 Deed to GHOA (Exhibit “K”) granted a Recreational Easement to use recreational areas, as to which Glenbrook had acquired use rights from the original (Bliss) Glenbrook Company (see Exhibits “H,” 2 and 3, infra), including the Beach Frontage which is now a part of the Beach House parcel, providing in relevant part as follows:

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1 The term “littoral parcels” includes the Glenbrook Inn littoral parcel and the “Beach House” parcel, described in the next paragraph and in Exhibits “B” and “E”.

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"The right to use those parcels of land that are particularly described on
that certain exhibit marked "Exhibit A," and also designated thereon as
'Description of Southern Portion Southern Recreation Zone' and "Description
of Beach Frontage Glenbrook Property" for the purposes designated
in that certain deed wherein The Glenbrook Company is grantor and
Glenbrook Properties is grantee, which deed is recorded in the office of the
Recorder of Douglas County, Nevada, on May 9, 1977, under Instrument
09022, ... [Exhibit 2, infra], and in accordance with Rules and Regulations for use
of Recreational and General Forest Areas at Glenbrook, Nevada recorded
in the office of the Recorder of Douglas County, Nevada, on June 23, 1977,
under Instrument No. 10405 [Exhibit "J"].

"Subject to the obligations imposed by said deed from The Glenbrook Company
to the Glenbrook Properties, which obligations party of the second part [GHOA]
evidence its agreement to assume and perform by joining in the execution of this
instrument.

"TO HAVE AND TO HOLD said premises, together with the appurtenances,
unto [GHOA], and to its successors and assigns. *** "(Emphasis ours.)

Exhibit "A" to GHOA's Deed describes the Southern Portion Southern Recreation Zone
and Beach Frontage, Glenbrook Property.

4. The description of the Beach Frontage was expanded by the Bliss' Agreement
Amending Deed, Exhibit I, which granted to all persons entitled to use the beaches the right to
use "... not less than the full width of the beach contiguous to the water in Glenbrook Bay
for the same uses that they would enjoy if said strip had been included in the areas so designated
as 'Recreational Areas' ..." in the August 31, 1976 Deed from The Glenbrook Company to
Glenbrook Properties [Exhibit "H", discussed, infra]. See, Exhibit 1.

5. Those permissible uses referenced in GHOA's deed, are those recited in the
Deeds from the Bliss Glenbrook Company to Glenbrook dated August 31, 1976 (Exhibit "H"),
May 9, 1977 (Exhibit 2, attached, cited in GHOA's Deed, Exhibit "K") and May 18, 1978
(Exhibit 3, attached), by which Glenbrook's developer acquired the lands which became
Glenbrook Units 1 and 2 and the rights to use Bliss' retained Recreational Areas "in common
with others that may have heretofore been granted similar rights by [Bliss]*** for those
permitted uses designated in Section 7.32 (1) through (6) inclusive of Ordinance No. 19 adopted
by the [TRPA] on February 10, 1972 and amended on May 24, 1973, in accordance with
reasonable rules and regulations relating to such use..." (See, Exhibit "H" at page 2, ¶ (c)). The
incorporated provisions of Section 7.32, a part of Section 7.30 governing Recreation Districts,
provide as follows (emphasis added):

"7.30 Recreation District
7.31 Specific Purposes:
(1) To assure adequate public opportunity for outdoor recreation, including ... boating, day use areas, and access to public and Quasi-public beaches in urban core areas and settlement node areas.

7.32 Permitted Uses:
*None but the following uses*, or those allowed pursuant to an administrative permit issued in accordance with Section 8.33, which are found to be appropriate and similar in nature, shall be permitted.

(1) **Residential**: None, except as provided in Section 9.13 [*infra*].
(2) **Tourist Residential**: None.
(3) **Outdoor Recreation**:
   (a) All those permitted in the General Forest District;
   (b) Day use areas;
   (c) Outdoor recreation concessions.

(4) **Resource Management and Agriculture**:
   (a) Forest management programs.

(5) **Public and Quasi-Public**:
   (a) All those permitted in the General Forest District;
   (b) Educational facilities; avocational.

(6) **Commercial**: None."

The General Forest District provisions incorporated by reference into Section 7.32 are in relevant part as follows:

"7.20 General Forest District
7.21 Specific Purposes:
(1) To preserve outdoor recreational opportunities.
(2) To permit the growing and harvesting of timber, agricultural activities, and extraction of resources.

7.22 Permitted Uses:
*None but the following uses*, or those allowed pursuant to an administrative permit issued in accordance with Section 8.33, which are found to be appropriate and similar in nature, shall be permitted:

(1) **Residential**: None, except as provided in Section 9.13.
(2) **Tourist Residential:** None.

(3) **Outdoor Recreation:**
   (a) Hiking trails and undeveloped campgrounds;
   (b) Developed campgrounds;
   (c) Riding trails ....
   (d) Organized recreation camps;
   (e) Skiing facilities.

(4) **Resource Management and Agriculture:**
   ***

(5) **Public and Quasi-Public:**
   (a) Major roads and water crossing structures
   ***

(6) **Commercial:** None.”

Section 9.13, part of Section 9.00 governing Non-Conforming Uses, Structures and Alteration, pertains to the permissibility of constructing one single family residence on any legal parcel of record as of February 10, 1972 in any district except Tourist Commercial or General Commercial; The Beach House was in existence long before the adoption of Ordinance 19 and was zoned Tourist Commercial. See, TRPA Zoning Maps. Residential Uses, such as the addition of a semi-private pier not in existence as of the date of the 1976, 1977 and 1978 conveyances in Exhibits “H,” 2 and 3, respectively, would not be permitted under the provisions of Ordinance 19 as in effect at the time of those Deeds, and are therefore not permissible uses to be made of the beach areas under the express terms of Exhibits “H,” 2 and 3. See, excerpted provisions of Ordinance 19 collected as Exhibit 4, attached.

6. Exhibits “H,” 2 and 3 further contain the express covenant that”... neither party will make rules and regulations relating to the Recreational Areas that will prohibit access by either party or its successors and assigns to the beach areas....”

7. Each of these Deeds also granted to the ultimate purchaser of every subdivided parcel, the right to use the grantor’s Recreational Areas within Glenbrook, in virtually verbatim language, as follows:

“**TOGETHER with the right to use in common with others that may have heretofore been granted similar rights by [Bliss’ Glenbrook Company] or that may hereafter be granted similar rights by [Bliss’ Glenbrook Company], the following rights shall be appurtenant to, and run with the title to, the parcel hereby conveyed and each lot or parcel into which it may be subdivided: *** (c) The right to use those lands of [Bliss’ Glenbrook Company] that are generally known and designated as “Recreational Areas” and that are more particularly described in that certain

EXHIBIT D

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John Marshall, Esq.
GHOA/Ruvo Pier Issues
July 5, 2000
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exhibit marked “Exhibit C” attached hereto and incorporated herein....”

***  (See Deeds, Exhibit “H,” Exhibit 2 and Exhibit 3, attached).

The deed reference to “Exhibit C” includes as Parcel 2 of “C”, the “Description of the Middle Recreation Area Glenbrook Property, and as Parcel 3, the “Description of the Southern Recreation Zone, Glenbrook Property,” which are also described in GHOA’s Deed, Exhibit “K”, and which are part of over 6,000 feet of beach extending north of the Huntington lands and includes the beach fronting The Beach House. See Maps, Exhibits “C” and “D,” and Exhibit Map 1. This right of use running with the subdivided lands was subject to Rules and Regulations recorded by the Bliss Glenbrook Company, which retained the right to enforce these rules against the “old” property owners who had been given the right to use these recreational areas. See Exhibit “J.” When the Bliss recreational and improved lands, including The Beach House parcel, were sold to Glenbrook, Glenbrook in turn granted certain of the recreational lands to GHOA in fee as Recreational Common Area (for example, Beach Recreational Areas Lots E, F, G and H of Unit 3 and Lot z of Unit 2), and retained the fee as to certain of them over which common use rights had been granted by Bliss and over which Glenbrook granted certain use rights, for example the Glenbrook Inn littoral parcel and The Beach House parcel.

8. On December 12, 1995 Mr. Ruvo purchased from Glenbrook the Beach House parcel, and thereby acquired the servient fee subject to GHOA’s recorded Recreational Easement and subject to Bliss’ covenant providing use rights to “old” property owners in Glenbrook and to “new” lot purchasers. See Map, Exhibit 1 and Deed, Exhibit “E”.

ISSUES PRESENTED

1. Does the presence of GHOA’s recorded Recreational Easement preclude Mr. Ruvo’s proposed construction a private pier over, across or upon the community beach?

2. Does the covenant imposed by Bliss’ Glenbrook Company and running with the title in Mr. Ruvo to The Beach House restrict permissible uses to those specified in the Deeds imposing the covenant, which prohibit all new residential and commercial uses, including private piers?

3. As owners of the Recreational Easement over The Beach House parcel and users in common with Mr. Ruvo, are GHOA, its members and all others entitled to use the beach frontage on The Beach House Parcel necessary parties for a complete application and legally sufficient notice before TRPA may take any action on the application?
4. Can an incomplete application be “ripe” for lawful action by TRPA?

DISCUSSION

1. Mr. Ruvo’s proposal to obstruct a community beach with a private pier will unreasonably interfere with GHOA’s use of its Recreational Easement.

While Mr. Ruvo, as successor to Glenbrook, retained all uses of the servient tenement that did not conflict with the use rights of GHOA as the dominant tenement and the rights of other Glenbrook residents (Scruby v. Vintage Grapevine, Inc. (1995) 37 Cal.App.4th 697, 43 CR 2d 810), Mr. Ruvo can lawfully make no use of the servient estate which unreasonably interferes with the use of the easement by GHOA and its members or with the rights of other Glenbrook residents whose use was permitted by the Bliss Glenbrook Company. Los Angeles v. Ingersoll-Rand Co. (1976) 57 Cal.App.3d 889, 894-895, 129 CR 485, and Scruby v. Vintage Grapevine, Inc., supra.

Unreasonable interference with an easement holder’s use of the servient estate is an infringement upon a valuable property right, and courts have observed that the rights of the owner of the easement are paramount to those of the servient owner. Texon, Inc. v. Holyoke Mach. Co., 8 Mass. App.Ct. 363, 366, 394 N.E.2d 976, 978 (1979); see also Erdy Clothiers, Inc. v. Spentzos, 228 Ill. App.3d 540, 549, 592 N.E.2d 615, 622 (1992).

While the determination of whether a particular activity or structure constitutes an unreasonable interference with the easement is usually a question of fact (City of Los Angeles v. Howard, 244 Cal.App.2d 538, 543, 53 Cal.Rptr. 274, 277 (1966), the prevailing view is that the owner of a servient estate may not erect any structures that encroach on a right-of-way. See, for example, Consolidated Amusement Co., Ltd. v. Waikiki Business Plaza, Inc., 6 Haw.App.312, 317-318, 719 P.2d 1119, 1123-1124 (1986), which held that the servient owner could not construct a structure over the easement even when the structure did not obstruct the dominant owner’s use; see also cases collected at Section 8.04[2] of Law of Easements and Licenses, at pages 8-30-31.

Details of the proposed private pier submitted with Mr. Ruvo’s application establish that, as a matter of law, the 330' pier extending over the entire width of the beach to the water of Glenbrook Bay — which is the entire width of GHOA’s Recreational Easement — will constitute an unreasonable interference with rights of GHOA’s members to recreate in this area. According to the profile sketch of the South Elevation of the proposed pier and Plan View attached to Mr. Ruvo’s application, the distance between mean high water and mean low water — the full width of GHOA’s Recreational Easement — is about 155 feet of the 330' pier. As described in Mr. Gunderson’s letter of May 15, 2000 to you, the construction of a private pier
over the entire width of GHOA’s Easement will limit, if not totally eliminate, the ability of GHOA’s members to walk, wade, float, boat, swim, fish, or simply sit on beach, in this area. See, Exhibit 1 Map, with proposed pier superimposed over GHOA’s Easement.

Not only would the pier structure unreasonably obstruct GHOA’s beach Easement, but Mr. Ruvo’s declared intent to use the pier as part of a large entertainment facility for huge gatherings far in excess of private, “family” affairs, would inevitably subject GHOA’s Recreational Easement to throngs of users having no connection to Glenbrook other than Mr. Ruvo’s business interests. Because both plans are clearly intended by Mr. Ruvo in connection with the pending application, it is appropriate for TRPA to require application for the pier and entertainment facility as a total project and to thereupon consider the effect on GHOA’s Easement rights that such a complex would likely produce. Cast in its true light, then, the pier application if permitted will inevitably result in substantial and unreasonable interference with the rights of GHOA, its members, and others entitled to use The Beach House beach.

2. Construction of a private pier ancillary to Mr. Ruvo’s residence and to his proposed entertainment complex would violate the permitted uses under Ordinance 19 incorporated into the covenant running with and burdening The Beach House parcel.

Bliss’ Glenbrook Company imposed an equitable servitude upon its recreational lands, including the Beach Frontage now a part of The Beach House parcel, which limited permissible uses to those described in its Deeds to Glenbrook as included under Section 7.32 of Ordinance 19. Those provisions prohibit all new residential uses such as that proposed by Mr. Ruvo. Equally clearly, the incorporated provisions prohibit all commercial use, such as that proposed by Mr. Ruvo in conjunction with his planned entertainment complex designed to accommodate parties of 500 or more and parking of up to 213 vehicles. As the permitted use of a public or quasi-public “water crossing” does not, by definition, include a private pier, no provision of Ordinance 19 permits Mr. Ruvo’s proposed private use of these beaches which, by virtue of the rights of “old” and “new” owners in Glenbrook must be deemed community beaches. Indeed, the existing Community Pier lies within the property line extension of The Beach House parcel shown on application exhibits!

That the Bliss covenant “runs with” and burdens Mr. Ruvo’s ownership is apparent from a brief analysis of the requirements of such a covenant, or equitable servitude, as follows:

A. The covenant limits uses of Bliss’ Beach Frontage to those permitted by Section

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2 Section 3.00 of Ordinance 19 defines “Water Crossing or Diversion Structures” as “any structure designed to alter or cross any stream, river or other body of water.” (Italics ours.)
7.32 and its incorporated provisions, and thus clearly "touches and concerns" the Beach Frontage at issue;

B. Bliss in its Deeds expressed an intent that Glenbrook, its subdivision purchasers, and all persons theretofore or thereafter granted the rights to use the beaches be subject to the limitation of compliance with Section 7.32;

C. There were in existence at the time of the Deeds both benefitted parcels ("old" property owners' lots and "new" purchasers of lots to be created from lands conveyed in the Deeds) and burdened parcels, namely virtually all of Bliss' recreational lands and over 6,000 feet of beaches on Glenbrook Bay, including that in front of The Beach House; and

D. That there be privity of estate between Bliss and Mr. Ruvo, which exists by virtue of the latter's succession in interest to Glenbrook's purchases from Bliss, including The Beach House. See, City of Reno v. Matley, 79 Nev. 49, 378 P.2d 256 (1963).

Accordingly, the covenant binds The Beach House parcel and prevents new residential uses not existing in 1972 including the proposed private pier and all commercial uses including Mr. Ruvo's proposal to entertain up to 500 business guests by amenities including the proposed private pier. That use of the proposed pier to entertain legislators, lobbyists and other business invitees is likely by Messrs Ruvo and Whittemore, is evidenced by the attached news clipping of just that use by these applicants of the Community Pier in May, 1999. See, Exhibit 5, attached.

3. GHOA and its members, as owners of its Recreational Easement as well as a common user of recreational rights on the subject Beach House parcel, have sufficient legal interests in the subject property to be necessary parties for Mr. Ruvo's application to be deemed complete and for notice of the application to be legally sufficient.

GHOA and its members are holders of a recorded Recreational Easement over the entire beach frontage of The Beach House parcel. The ineluctable fact is that, as a matter of law, Mr. Ruvo's proposed pier will unreasonably interfere with GHOA's Easement wherever it may be located on The Beach House parcel. It is therefore not necessary to divert the application process to a court for this factual determination. This fact alone is sufficient to establish GHOA and its members as "person[s] having sufficient legal interest to make application" as provided in TRPA's Rules of Procedure, Section 5.2, governing what constitutes a complete application.

Under subpart 5.2(b), Mr. Ruvo was required to submit a completed application form which on its face requires the identification of all persons owning interests in the real property under application. Mr. Ruvo omitted to name GHOA as owner of a recorded easement over the entirety of the Beach House parcel.
Under subpart 5.2(c), Mr. Ruvo was required to describe and verify any legal interests held by others in the real property upon which the project is proposed to be constructed; this Mr. Ruvo failed to do by omitting GHOA's interests and those of other residents in Glenbrook, forcing GHOA to advise TRPA of its recorded rights outside of the application format. Under subpart 5.2(d), Mr. Ruvo was required to attest under penalty of perjury to the truth, completeness and accuracy of this clearly incomplete application. Further, under subpart 5.2(e), the correct assessor's parcel number for the project parcel was required, yet GHOA is informed that an incorrect number was used which would result in the lack of notice to GHOA as an affected property owner.

TRPA's Rules of Procedure further prescribe, in Article XII at sections 12.4 through 12.6 that this Shoreszone project application required notice to affected property owners within 300 of the project area boundaries; yet GHOA which owns a recorded interest in the very ground upon which the project is proposed was not provided notice of the application by the applicant which, under Section 12.6, is required to verify his notice list as complying with these Rules.

The foregoing defects in Mr. Ruvo’s application inexorably defeat it. Given a fatally incomplete application, TRPA should simply and summarily deem Mr. Ruvo’s application withdrawn. Now that TRPA is aware of the interests of GHOA, its members and of other residents in Glenbrook, then as mandated by Section 5.4, TRPA must decline to undertake review of the application unless and until the application is joined in by GHOA and all owners of legal interests in the subject real property (Section 5.2(c)).

Mr. Ruvo was advised by TRPA staff on March 26, 2000 that his application was incomplete, and TRPA has been aware through written communications from counsel for GHOA since at least April 21, 2000, that GHOA's interests have been improperly omitted from the application and notice processes by Mr. Ruvo, yet the application remains without the consent or joinder of GHOA—neither of which will be forthcoming. Under Section 5.7 of the Rules, applications remaining incomplete shall be considered withdrawn, and TRPA should close this application file.

4. Mr. Ruvo’s application is opposed by persons holding legal interests sufficient to require joinder in the application; therefore, there is no proper application to which the question of “ripeness” could attach and it is therefore irrelevant.

TRPA need never reach the question raised by Mr. James as to whether Mr. Ruvo’s application is “ripe” for adjudication by a court because TRPA, in conformity with its own application form and Rules of Procedure, must not undertake to review, much less act upon, an application known to it to inevitably infringe upon the real property interests of GHOA and its members, and other owners who do not join in, or consent to, but who oppose the application.
Moreover, in light of Mr. Ruvo’s declared intention to use the proposed pier to entertain literally hundreds of non-Glenbrook residents, were TRPA to approve this pier for use by such huge numbers as to constitute a “public” use over GHOA’s Easement, then TRPA would be acting under color of law to deprive GHOA and its members of important property rights without constitutionally guaranteed due process of law and in violation of the provisions of 42 U.S.C. Section 1983 et sequitur.

CONCLUSION

Only by obstructing GHOA’s deeded Recreational Easement over the entire beach fronting on Glenbrook Bay, and only by contravening the terms of the express covenant binding Mr. Ruvo’s title that he shall make no rule which prohibits access to the beach, and only by violating the covenant burdening Mr. Ruvo’s title which prohibits new residential uses and all commercial uses, can Mr. Ruvo construct a private or semi-private pier at this location. The Glenbrook Shorezone Plan’s guideline prohibiting additional piers on community beaches wisely prevents new private facilities, especially those intended to promote commercial ends.

Faced as it is with an incomplete application which cannot be rendered complete without ignoring the legal interests of GHOA, its members and others in the Glenbrook community, TRPA is without authority to review or approve the instant pier application. As no is permit capable of lawful issuance in this matter, no permit can be granted by TRPA in order for a test of “ripeness” to come to judicial fruition.

Any other course by TRPA will collide with the constitutional rights of GHOA, its members and those of countless other members in the Glenbrook community who gained their rights from the Bliss Glenbrook Company through the covenant which binds Mr. Ruvo’s title. The TRPA need not and should not permit itself to be a party to setting such a course.

For all of the reasons advanced in this letter and in my letter of April 21, 2000, and in Mr. Gunderson’s letter of May 11, 1000, TRPA must and should deem this fatally defective application to have been withdrawn and forthwith close the subject application file. Please ensure that this and all correspondence on behalf of GHOA is placed in the subject file.

Very truly yours,

MARY MARSH LINDE
Attorney for Glenbrook Homeowners Association

-cc: Glenbrook Homeowners Association Board of Directors
June 1, 2000

Mr. Paul Kaleta
Basin Strategies
P.O. Box 11945
Zephyr Cove, Nevada 89448


Dear Mr. Kaleta:

We are counsel for Mr. Larry Ruvo (“Ruvo”). In this capacity, we have been asked to give our opinion regarding whether by virtue of his ownership of the property known as the “Beach House,” previously owned by Glenbrook Company, a Nevada corporation (“Glenbrook”), Ruvo holds rights to use the multiple use pier owned and controlled by the Glenbrook Homeowner’s Association (“GHOA”) (the “Common Ownership Pier”), which pier Glenbrook had deeded to GHOA subject to a deed restriction reserving rights to use the pier in Glenbrook, and its successors and assigns. We have also been asked to discuss whether the Tahoe Regional Planning Agency (“TRPA”) may properly refuse approval of Ruvo’s pier application on the basis that construction of the pier will infringe upon easement rights claimed by GHOA.

I.

Preface

This letter reflects our reasoned opinion regarding the issues contained herein. In the context of giving this opinion we have been required to make certain legal and factual determinations. In so doing, we have attempted to resolve legal and factual issues in what we deem to be the most reasonable manner. However, a court or other tribunal deciding such issues, whether in the context of a lawsuit, an administrative proceeding, or otherwise, may make findings differently than we have, as this opinion is not binding on any such court or other tribunal. This may change the outcome of any such proceeding from the outcome we have stated here as being most supported by the facts and law.
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We are Nevada attorneys. Where possible, we have cited to and have relied upon Nevada law. However, we have also cited to and have utilized in our analysis non-Nevada authorities which are not binding on Nevada courts or other tribunals and which may or may not be persuasive to them. Accordingly, to the extent our opinion is based on non-binding legal authority, an actual court or other tribunal applying Nevada law may choose not to follow such legal authority, which may affect the outcome of any determination it may make. We have not attempted an exhaustive search of all non-binding legal authority on point, but have performed a search of non-binding authority to our satisfaction to assist us for analysis purposes. We disclaim any responsibility for citing to any non-binding authority not listed here that may affect the analysis contained in this letter. We do not state whether any cases cited from jurisdictions other than Nevada accurately reflect the present status of the law in such jurisdictions. However, we have performed a case citation of all such cases with Shepard's Citators to establish to our satisfaction that as of the date hereof such cases have not been explicitly overruled. We do not state whether any authority cited herein reflects the "majority" or "minority" view.

We state our opinion as to existing law, and undertake no duty to update this opinion if and when the laws change. We state no opinion as to the effect, if any, of any changes in the law as to the opinions given herein. We state no opinions other than those specifically given herein.

Our opinions are based upon facts as they have been told to us, which facts are set forth below. We have not undertaken an independent review of such facts. Accordingly, although nothing has come to our attention that would cause us to question the facts as they have been told to us, the actual state of facts may be different from those which we are relying upon for purposes of this letter. These additional or different facts, if known to us, could have an effect on the factual and legal conclusions that we have reached in this letter, and could cause a court or other tribunal to reach a different conclusion. We disclaim any responsibility for the effect of relying upon any incorrect or incomplete information in reaching our conclusions. No statement of fact being made herein shall be construed as an admission by or as being binding upon Ruvo in any litigation, arbitration, or administrative proceedings relating to these matters.

II.

Factual Background

The issue has arisen regarding the extent to which Ruvo, by virtue of his ownership of the Beach House (as opposed to by any other right or method), has acquired use rights of the Common Ownership Pier. This question has become important because Ruvo has an interest in building, and has formally requested approval from TRPA to build, a private pier at the Beach House to serve parcels owned and controlled by the Ruvo family and by the Harvey Whittemore family. The Common Use Pier is located on Glenbrook Bay, in Glenbrook, Nevada, to the north of the Beach House. Neither the Beach House nor any other parcels to be served by the new pier are members of, subject to, or otherwise affiliated with, the GHGA. Accordingly, these properties do not enjoy rights to the Common Use Pier by virtue of GHGA membership. However, GHGA has made the argument that Ruvo, by virtue of his purchase of the Beach House from Glenbrook, enjoys rights to
the Common Use Pier that run with the land. GHOA also argues that because Ruvo also owns a unit in the Glenbrook Inn, his consequent GHOA membership entitles him to use the Common Use Pier and bars him from building his own at the Beach Home parcel.

The Common Use Pier was owned by Glenbrook until August 19, 1987, when Glenbrook deeded the Common Use Pier to GHOA “TO HAVE AND TO HOLD said premises, together with the appurtenances, unto grantee, and to its successors and assigns, RESERVING, HOWEVER, unto grantors, their successors and assigns, the rights to use said property in common with others entitled to use the same.” This will be referred to herein as the “Common Use Pier Deed.”

At the time of executing the Common Use Pier Deed, Glenbrook owned the Beach House and several other properties.

Glenbrook then deeded the Beach House to Ruvo on December 12, 1995, by a deed which did not mention the Common Use Pier.

In late 1998, Ruvo began to apply to TRPA for construction of a private pier for the Beach House property.

The TRPA has a code provision which purportedly restricts TRPA from approving a single-use private pier when the property where the pier is to be located is serviced by another pier. In particular, TRPA, Code Section 54.8.A states:

54.8.A Limitations On Single-Use Facilities When Served By Multiple-Use Facilities: No facility shall be approved which is intended for the use of one individual or family and guests if the following circumstances apply:

(1) Proposed Residential Development: Where the littoral parcel is part of a residential land development which is being developed for use by, or sale or lease, to more than one person or family;

(2) Existing Residential Development: Where the littoral parcel is held in common ownership by owners of parcels within a residential land development, or by an association representing them, or by a person for use of such owners; or

(3) Littoral Property Owners Within An Area of Common Ownership: Where individual lots fronting the shoreline are within a residential land development served by multiple-use facilities, such as described in Subparagraphs (1) and (2) above.

The GHOA objects to the construction of the new pier and, accordingly, is trying to prevent the construction by taking the position that Ruvo has rights to use the Common Use Pier both as being a member of GHOA and because rights were supposedly reserved to him in the Common Use Pier Deed.
Pier Deed as one of Glenbrook's "heirs and assigns." GHOA further has informed TRPA of its belief that construction of the pier at the Beach House parcel will encroach upon certain easement rights held by GHOA across the Beach House parcel. Accordingly, GHOA asserts that the TRPA should deny Ruvo's application to build a private pier at the Beach House.

III.

Discussion

A. TRPA Code Section 54.8.A Does Not Apply to Ruvo's Pier Application.

TRPA Code Section 54.8.A applies by its terms to "one individual or family and guests." We have been informed that the pier in question has always been intended for the use of at least two families and their guests—the Ruvo family and the Whittemore family. Additionally, we are informed that the pier is intended for use by residents at a Glenbrook Inn unit owned by Ruvo. Accordingly, we conclude based upon the plain meaning of TRPA Code Section 54.8.A that the prohibition stated in TRPA Code Section 54.8.A addresses only single family piers and thus is inapplicable to the proposed Ruvo pier.

B. Ruvo's Application to Build a Private Pier Should not be Denied on the Grounds of His Usage of the Common Use Pier as a Member of GHOA.

One issue that can be quickly addressed and disposed of is the argument that due to Ruvo's GHOA membership he should not be permitted to build a pier at the Beach House. This is an erroneous and illogical argument, based both on TRPA codes and on general legal principles, as explained below.

TRPA Code Section 54.8.A does not disallow a property owner from utilizing his private property to build a pier where he has access to a pier as a result of ownership of another property. Instead, the section by its terms applies only to prohibit a private single family pier on property that is part of a homeowner's association, and is thereby "served by" a multiple-use pier. See TRPA Code Section 54.8.A. Ruvo's Beach House parcel is not within GHOA, and not thereby served by the Common Use Pier.

Any other result would raise serious potential due process and equal protection issues, as well as potential takings claims. See Bateson v. Geisse, 857 F.2d 1300, 1303 (9th Cir. 1988) citing Herrington v. County of Sonoma, 834 F.2d 1488, 1498 (9th Cir. 1988) ("A substantive due process claim does not require that all use of the property has been denied but rather that the interference with property rights was irrational or arbitrary."); Jacobs, Visconsi & Jacobs Co. v. City of Lawrence, 927 F. 2d 1111, 1119 (10th Cir. 1991) (the relevant equal protection analysis will review whether Ruvo is being treated differently than other property owners, and will determine whether there exists a rational basis for such treatment).
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The problem can be illustrated by slightly changing the facts. Consider that in addition to owning property in GHOA, Ruvo has property on Lake Tahoe outside of GHOA, located on Lake Tahoe’s western shore. Under the interpretation of TRPA Code Section 54.8.A that any access to any common use pier, by whatever means derived, demands TRPA denial of a new private pier application, Ruvo would be disallowed from building a private pier at his non-GHOA property on the opposite side of the lake. This would be an erroneous result, because it would mean the unreasonable denial of valuable property rights to Ruvo. His property would not be served by a pier. However, his successor-in-interest, if not a GHOA member or otherwise having use rights to a multi-use pier, would (assuming all other conditions are satisfied) enjoy the right to build a private pier there. The illogical nature of this result is made more apparent by so altering the facts. However, here is no valid legal distinction between the situation posited and the actual set of facts.

C. Ruvo Has not Inherited Rights to the Pier that Have Passed with the Land.

i. Glenbrook’s Interest is Personal to Glenbrook

In deeding the Common Use Pier to GHOA, Glenbrook reserved an interest or right in itself, its heirs and assigns. A first task is to determine the nature of this interest or right. Three basic categories of interests or rights that Glenbrook may have kept in the pier include: (1) an easement, (2) a cotenancy, or (3) a license or contract right to use the pier.

Of the three choices above, the easiest to dismiss is that of a cotenancy, which here is being used in a generic sense to include tenancy-in-common and joint tenancy. A cotenancy is essentially an ownership interest in one property by more than one persons or individuals. Typical language employed would include “To A and B as joint tenants,” or “To A and B as tenants in common.” See Nev. Rev. Stat. 111.065 (joint tenancy created only when intent that such interest be created is evident on face of deed); see also Nev. Rev. Stat. 111.063 (tenancy in common created only when intent that such interest be created is evident on face of deed). Indeed, while strict adherence to these words is not essential, it is plain that something fairly close to these must be employed. At the very least, it would appear that the words “joint tenant” or “tenant in common” or a description of the characteristics of such interests must be included. See id. In this case, Glenbrook employed no such language. Accordingly, we would conclude that the Common Use Pier Deed did not create a cotenancy.

A somewhat similar analysis applies to determining whether the Common Use Pier Deed created an easement. An easement is an interest in land for specified uses, such as for right-of-way, for recreation, and so forth. It is less than a fee simple interest. See, e.g., Boyd v. McDonald, 81 Nev. 642, 408 P.2d 717 (1965).

Once again, we look primarily to the four corners of the Common Use Pier Deed and attempt to determine the parties’ intent. See, e.g., Burns v. Alderman, 838 P.2d 878 (Idaho App. 1992). The parties never used the word “easement,” but the use or non-use of such labels is not conclusive. See, e.g., Beebe v. Swerda, 793 P.2d 442 (Wash. App. 1990); see also Saunders v. Lutz, 784 P.2d 12 (N.M. 1989). The parties also never specified any parcels of land to be benefitted if there was
an easement created and if that easement were intended to be appurtenant (i.e., if it were intended to benefit certain parcels). This again is not necessarily decisive, since courts may imply a benefitted parcel where none is specified, by exigent facts and circumstances. See, e.g., Luevano v. Group One, 779 P.2d 552 (N.M. App. 1989).

In this case, we are informed that at the time Glenbrook deeded the Common Use Pier to GHOA, Glenbrook held many properties, including properties around Lake Tahoe and properties distant from it. This creates difficulties in determining which properties, if any, were meant to constitute the benefitted properties. If it were the case that all of Glenbrook’s properties were benefitted parcels, the result would be absurd. For instance, a party buying property from Glenbrook located in Reno might, quite unexpectedly (and unknowingly), acquire easement rights to the Common Use Pier in Glenbrook. However, if only some of Glenbrook’s many properties constitute the benefitted estate, then difficult questions arise as to which properties are benefitted and which are not, since all purchasers of Glenbrook’s property under GHOA’s treatment of the phrase would arguably constitute Glenbrook’s “successors and assigns.” Cf. Verezanno v. Carpenter, 815 P.2d 1275 (Or. App. 1991) (where court finds intent to benefit grantor’s land, benefitted parcels include just the contiguous parcels and not the non-contiguous parcels) with Moylan v. Dykes, 181 Cal. App. 3d 561 (1986) (noncontiguous parcels may constitute benefitted parcels).

External factors including the actions of the parties seem also to point away from a finding of an appurtenant easement. We are aware of no circumstance in which a buyer of property from Glenbrook has asserted rights in the Common Use Pier as a result. We are informed that Glenbrook has never treated such rights as being appurtenant to any of its properties upon sale but has treated its rights to the pier as being personal to itself. We are not aware of historical evidence that GHOA has asserted that non-GHOA members have an interest in its pier simply by taking title to property from Glenbrook, with the exception of doing so very recently in a thinly-veiled attempt to defeat the Ruvo pier application.

Because of the inherent difficulties in establishing which of Glenbrook’s properties would constitute benefitted estates, if an easement is found to exist, the evidence best supports the finding that it is an easement in gross. An easement “in gross” is an easement that does not benefit any particular parcel but instead benefits the grantee personally. See Cushman v. Davis, 80 Cal. App. 3d. 731 (1978). Easement rights do not pass with title to any property but remain in the grantee, unless specifically assigned. See id.

Another possibility is that Glenbrook has retained a license to use the Common Use Pier. This amounts to creation of a contract right personal to Glenbrook. The language of the deed also supports the finding that a license was reserved. Glenbrook reserved to itself, its heirs and assigns, the rights “to use” the pier.

The actions of the parties support this conclusion as well. Glenbrook has seemingly always understood that the rights were personal to itself, and that grantees of its property did not automatically assume such rights merely by purchasing property from Glenbrook. This is reflected in Glenbrook’s deed to Ruvo, which makes no mention of any rights to the Common Use Pier and
which in fact does not refer to or describe the Common Use Pier at all. Moreover, we are aware of no other claimant of use rights to the Common Use Pier as a result of merely purchasing property from Glenbrook, much less, as in this case, GHOA attempting to make such an argument on behalf of any such purchaser.

ii. Glenbrook’s Rights Are of Such Nature That they Can be Assigned, However, These Rights Were Not Assigned to Ruvo as Part of the Deed to the Beach House

Whatever intention the parties had as to the character of the rights Glenbrook was reserving in itself, the Glenbrook Pier Deed makes clear that such rights were to be perpetual and assignable. This is clear by the language that the rights would inure to Glenbrook’s “heirs and assigns.” Additionally, it appears likely that Glenbrook would not have granted the pier to GHOA had it not been able to reserve rights in itself. If a license exists, this fact alone is sufficient to make it irrevocable. See Masini v. Fraser, 102 Nev. 634, 729 P.2d 1358 (1986) (otherwise revocable license rights may be made irrevocable based on, inter alia, consideration paid by the licensee) (citing Lee v. McLeod, 12 Nev. 284 (1877)); Miller v. Lutheran Conference & Camp Ass’n, 200 A 646 (usage of term “heirs and assigns” reflects an intention that rights be assignable). Although case law authority suggests that non-commercial easements in gross may not be assigned, see, e.g., Crane v. Crane, 683 P.2d 1062 (Utah 1984), this rule should be overcome by the express agreement of the parties to the contrary, to satisfy their intent.

Accordingly, Glenbrook might have legally assigned its rights to Ruvo as part of the deed to the Beach House. However, reference to the deed to the Beach House reveals that it did not do so. Accordingly, the Beach House did not of its terms act as an assignment of Glenbrook’s rights to use the Common Use Pier.

iii. The Pier Rights Did Not “Run with the Land”

Inherent in GHOA’s arguments is that the pier rights are of a nature to “run with the land.” Thus, a discussion of what is required for a covenant to run with the land rather than be merely a personal covenant is in order here.

The requirements that must be established for a covenant to run with the land is: (1) it must “touch and concern” real property, (2) there must be intent that it run, (3) there must be benefitted and burdened parcels, (4) at law, there must exist “privity of estate.” See, e.g., Federoff v. Pioneer Title and Trust Co., 803 P.2d 104 (Ariz. 1990).

Element 1 is probably satisfied. The covenant regarding the usage of a pier is probably a covenant that “touches and concerns” the usage of real property, that real property on which the pier is located.

Element 4 may be satisfied, depending upon how a court decides on the issue whether the Common Use Pier Deed created any benefitted estates in Glenbrook. The requirement of “privity of estate,” which includes the elements of “horizontal privity” and “vertical privity,” and which is
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a dated concept losing favor in the law, is generally satisfied where a grantor of real property deeds part of his property to another individual subject to deed restrictions, retains a benefitted parcel, and deeds that parcel to yet a third party. See City of Reno v. Malley, 79 Nev. 49, 378 P.2d 256 (1963). Under one possible interpretation of the facts in this case, one that we would disfavor (see following paragraph), that may be what in fact happened here.

Element 3 is problematic, because of the inherent problems in determining which of Glenbrook’s many parcels of real estate constitute benefitted parcels. As discussed above, it would be rather silly to claim that all of Glenbrook’s parcels are benefitted parcels, such that the owners of any of these parcels no matter how geographically remote have use rights to the Common Use Pier. However, it is equally problematic to draw the line determining which properties have such rights and which do not.

Moreover, to our knowledge there is not a single document in existence indicating that the Beach House is benefitted by reserved rights in the Common Use Pier. If the circumstances were reversed and Ruvo were attempting to claim rights in the Common Use Pier as a result of reservations in the Common Use Pier Deed, he would likely face substantial evidentiary and substantive burdens in so doing. See, e.g. NRS 111.210 (every conveyance of real property or an interest therein must be in writing).

Element 2 (intent that a covenant came with the land) is likewise problematic. A court should look first to the terms used in the deed. Here, the parties used the term “successors and assigns,” which arguably could refer to successors in title to Glenbrook and thereby imply an intent that the benefit run to such persons or entities. However, the parties could have but yet never expressed their explicit intention that the use rights run with the land. Accordingly, if anything the issue is ambiguous from the face of the document.

Resort to external factors also suggests that the parties did not intend the benefit to run with the land. Moreover, evidence suggests that Glenbrook has consistently treated the use rights as belonging to it personally, and that such rights never passed with title to any of its land.

However, the problematic term “successors and assigns” still remains and must be explained. One explanation that we favor as being most consistent with the phraseology used in the Common Use Pier Deed and with external evidence is that this personal use right would remain in Glenbrook under its current management (“to Glenbrook”), would remain in Glenbrook even under successive management (“its successors”), and could be assigned by Glenbrook as personal property rights (“and its assigns.”).

D. It Would be Improper for TRPA to Refuse the Ruvo Pier Application Based Upon a Claimed Infringement on GHOA’s Easement Rights.

GHOA has claimed periodically that the construction of the Ruvo pier would infringe upon rights to the Beach House Parcel stemming from a recreational easement across the Beach House Parcel. TRPA has raised the question of whether the existence of, location of, and/or characteristics
of a pier constructed on the Beach House parcel would violate its easement rights under the recreational easement across the Beach House parcel.

We would first point out that we could not find, and are aware of, no provision in the TRPA Code, in the interstate compact that created TRPA, or in any other source, requiring TRPA to involve itself in or inquire about whether construction of the Ruvo pier would violate GHOA's easement rights in connection with acting upon Ruvo's pier application.

The applicable standard for determining whether use of a servient parcel by the owner thereof would violate the rights of an easement holder is whether such usage would "unreasonably interfere" with the rights of the easement holder. See, e.g., Scruby v. Vintage Grapevine Inc., 43 Cal. Rptr. 2d 810, 812 (Cal. App. 1995); see also Dolske v. Gormley, 375 P.2d 174 (Cal. 1962); Conley v. Whittlessey, 985 P.2d 1127 (Idaho, 1999). This appears to be a factual question to be resolved by a court. In our opinion, TRPA is not well equipped to resolve these issues. We are aware of no procedure in place by TRPA to engage in such factual and legal analysis as would be required for this purpose. We are aware of no particular ability or authorization of TRPA to engage in the factual and legal analysis that would necessarily be involved in making such an adjudication. In short, every authority we have seen clearly indicates to us that the matter of whether construction of a pier would infringe upon the rights of GHOA is best suited for the courts, or if the parties were to agree to such a procedure, to a means of alternative dispute resolution such as mediation or arbitration.

We are informed that TRPA may be inclined to require an adjudication of the easement infringement issue before it is willing to issue a pier permit. We believe that this would also be inappropriate and unworkable, and the cause of needless delay. Any adjudication on the issue of whether an infringement of GHOA's easement rights has occurred would most likely come in the context of a lawsuit by GHOA seeking to enjoin construction of the pier (we believe such a lawsuit would lack merit). Ruvo can hardly be expected to initiate such an action, since Ruvo is informed and believes that his actions in building a pier would not violate any easement rights. Accordingly, since GHOA would probably have to initiate such a lawsuit, GHOA could effectively delay Ruvo's pier application indefinitely by simply sitting on its hands. This is untenable and improper.

Additionally, and perhaps more fundamentally, a court would likely not be able to make the necessary determinations to adjudicate the issue before TRPA issues its pier permit. A matter must be ripe for judicial determination before a court can take action. See, e.g., Resnick v. Nevada Gaming Comm'n., 104 Nev. 60, 752 P.2d 229 (1988); Doe v. Bryan, 102 Nev. 523, 728 P.2d 443 (1986). This means that generally speaking courts will not adjudicate issues that, like this one, would be merely theoretical or conjectural in nature. The importance of this legal principle to this case cannot be understated, given the fact that a court's determination as regarding infringement of easement rights is necessarily a very factually intensive one. Accordingly, it is almost impossible for a court to make anything resembling a competent adjudication on the issue of easement encroachment without first having determined, for example: (1) the essential characteristics of the pier in question (e.g., the length, height, width, number of boat lifts, etc.), and (2) the location of the pier in question. These issues will not be resolved unless and until TRPA actually grants a pier permit.
Based on the foregoing, it is our opinion that TRPA’s proper course of action would be to proceed on the merits of the Ruvo pier application without concern as regarding the issue of easement encroachment, which is not a matter that TRPA can properly address.

IV.

Conclusion

GHOA is placed in a unique situation of asserting that ownership of the Beach House, a property outside of GHOA, enjoys rights to GHOA’s pier. Setting aside issues such as GHOA’s standing to assert such rights on Ruvo’s behalf, and assuming that a court or other factfinder applying Nevada law would entertain GHOA’s arguments, the law and facts favor a finding that Ruvo acquired no rights to the pier merely by purchasing the Beach House. The best interpretation of the evidence is that Glenbrook acquired a personal right that does not automatically pass with its land. Furthermore, TRPA should not deny Ruvo’s pier application because of an alleged infringement it would cause to GHOA’s easement rights. TRPA is not well equipped to decide this issue, and it is best left to the courts. Additionally, TRPA should not require adjudication on the issue before issuing its approval. Until a pier is in fact permitted for the Beach House parcel, and until the specific pier approvals are in place, the matter is likely to be held not ripe for adjudication.

This letter is addressed to you solely for your use and may not be furnished to or relied upon by any other person for any purpose without our express written consent in each instance, except that you may provide a copy of this letter to TRPA for its examination in connection with Ruvo’s application concerning the Beach House pier. This letter is not intended to be employed in any manner other than in connection with Ruvo’s application efforts to obtain TRPA approval to build the Beach House pier.

Very truly yours,

JAMES, DRIGGS, WALCH, SANTORO, KEARNEY, JOHNSON & THOMPSON

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Chapter 54
DEVELOPMENT STANDARDS
LAKEWARD OF HIGH WATER

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54.0 **Purpose:** The Shorezone Subelement, Conservation Element of the Goals and Policies requires TRPA to regulate the placement of new piers, buoys and other structures in the nearshore and foreshore to avoid degradation of fish habitats, creation of navigation hazards, interference with littoral drift, interference with the attainment of scenic thresholds and other relevant concerns. The Goals and Policies also requires TRPA to conduct studies, as necessary, to determine potential impacts to fish habitats and apply the results of such studies and previous studies on shoreline erosion and shorezone scenic quality in determining the number of, location of, and standards of construction for facilities in the nearshore and foreshore. The Shorezone Subelement indicates that provisions should be made to allow multiple-use piers when such uses are intended to reduce the number of single use piers on adjoining properties. This chapter sets forth standards and provisions in accordance with these policies.

54.1 **Applicability:** All projects and activities in the nearshore or foreshore of any lake or in lagoons in the Region shall comply with the standards and provisions set forth in this chapter.
54.2 **Review Of Support Facilities:** Whenever review of a structure, use or activity is required pursuant to the terms of this chapter, review shall encompass the structures, uses and activities in the backshore, nearshore, foreshore and on the adjacent littoral parcel to ensure adequacy of all facilities related to the new or expanded structure, use or activity.

54.3 **Fish Habitat And Spawning Study:** TRPA shall prepare a study assessing the impacts resulting from the construction and use of structures, including mooring buoys, on fish habitat and spawning areas in Lake Tahoe and the mouths of its tributaries. The study shall also evaluate and recommend methods for restoring fish habitat.

54.3.A **Schedule For Completion Of Study:** The study required pursuant to this section shall be completed in accordance with the following schedule:

1. Funding shall be secured by December 31, 1987. (2) The final report shall be completed by October 31, 1989.

54.3.B **Reconsideration of location standards:** within 90 days of a determination by TRPA that funding will not be secured by December 31, 1987 or the report completed by October 31, 1989, but not later than January 24, 1990, TRPA shall reconsider the standards set forth in Subsection 54.3.A(2) and (3) for piers, in Subparagraph 54.5.A(2) for boat ramps, in Subparagraph 56.A(2) for mooring buoys, and in subparagraph 54.7.A(2) for floating docks and platforms.

54.4 **Piers:** Where otherwise allowed pursuant to Chapters 51 and 52, the placement and design of piers shall conform to the following standards:

54.4.A **Location Standards:** Location standards are:

1. A maximum of one pier may be permitted per littoral parcel existing on July 1, 1987.

2. The placement of piers shall be prohibited within 200 feet of the stream inlets of the following creeks and rivers:

   (a) Third Creek;
   (b) Incline Creek;
   (c) Wood Creek;
   (d) Slaughterhouse Creek;
   (e) Upper Truckee River;
   (f) Taylor Creek;
   (g) Tassac Creek;
   (h) Cascade Creek;
   (i) Eagle Creek;
(j) Lake Tahoe Tributary at Mouth of Paradise Flat;

(k) Lonely Gulch Creek;

(l) Meeks Creek;

(m) General Creek;

(n) McKinney Creek;

(o) Quail Creek;

(p) Madden Creek;

(q) Blackwood Creek;

(r) Ward Creek;

(s) Truckee River;

(t) Dollar Creek;

(u) Watson Creek;

(v) Griff Creek;

(w) Baldy Creek; and

(x) Snow Creek.

(3) The placement of piers shall be prohibited in areas identified as "Feeding And/Or Escape Cover Habitat," "Spawning Habitat" or "Areas Targeted For Habitat Restoration" on TRPA's Prime Fish Habitat map, adopted on April 26, 1984.

(4) Piers shall not extend beyond lake bottom elevation 6219.0 feet, Lake Tahoe Datum, or beyond the pierhead line, whichever is more limiting. The pierhead line is established as depicted on the TRPA Shorezone Tolerance/Pierhead Line Maps.

(5) The setback for existing piers shall be five feet and for new piers it shall be 20 feet. Piers shall be placed within the setback lines established by TRPA. TRPA shall establish the setback lines by measuring the applicable distance inward from each property line along the high water line. From this point, a setback line shall be projected lakeward and perpendicular to the tangent of the shoreline. TRPA may adjust angle of projection to compensate for unique circumstances such as a small cove.

(6) The standards set forth in Subparagraphs (1), (4) and (5), above, may be waived for piers recognized by TRPA as multiple-use pursuant to Section 54.8.
54.4.B Design And Construction Standards: Design and construction standards are:

(1) The width of piers shall be a maximum of 10 feet, which shall include all appurtenant structures except for a single low-level boat lift and a single catwalk. A catwalk below the level of the main deck, and not exceeding three feet in width by 45 feet in length, may be permitted. Additional width for a single catwalk may be permitted where TRPA finds it is necessary to facilitate barrier free access but at no time shall the entire width of the pier and catwalk exceed 13 feet. A low level boat lift with forks not exceeding 10 feet in width may be permitted.

(2) Pier decks shall not extend above elevation 6232.0 feet, Lake Tahoe Datum. Boat lifts, pilings, and handrails and other similar safety devices, shall not extend more than four feet above the pier deck. Pier decks may extend up to elevation 6234.0 feet in limited situations where TRPA finds that the additional height is necessary for safety reasons or that local wave characteristics represent a real threat to the integrity of the structure.

(3) To permit free circulation of water, piers shall be floating, or shall be built on an open piling foundation, but in no case shall a pier be supported on a foundation that is less than 90 percent open.

(4) Superstructures shall not be permitted on any lake or lagoon in the Region unless the structure is assured to be removed upon discontinuation of the use or the need for the structure; and it is either:

(a) for the purpose of conducting research identified in the Environmental Impact Program or conducting ongoing monitoring of environmental conditions identified in TRPA's monitoring program; the nature of the research or environmental monitoring requires an “over the water” location for data gathering instrumentation and is the minimal size necessary; and no watercraft will be housed in or on the superstructure; or

(b) required by a public agency for public health and safety purposes (such as a radio transmitter or a light beacon); by its very nature the superstructure requires an over the water location and is the minimum size necessary; and no watercraft will be housed in or on the superstructure.

(5) Fueling facilities shall not be permitted on piers located adjacent to littoral parcels on which the primary use is residential.

(6) The standards set forth in Subparagraph (1), above, may be waived for piers recognized by TRPA as multiple use pursuant to Section 54.8.

Amended 02/25/98
54.5 **Boat Ramps:** When otherwise allowed pursuant to Chapters 51 and 52, the placement and design of boat ramps shall conform to the following standards:

54.5.A **Location Standards:** Location standards are:

1. A maximum of one boat ramp may be permitted per littoral parcel.
2. The placement of boat ramps shall be subject to the prohibitions set forth in Subparagraphs 54.4.A(2) and (3).
3. Boat ramps shall be placed only within the area prescribed in Subparagraph 54.4.A(5).
4. Boat ramps shall not extend lakeward beyond an elevation of 6219.0 feet, Lake Tahoe Datum, but not to exceed 75 feet in length as measured from high water line except for marine railways, which may be permitted additional length.
5. The standards set forth in Subparagraphs (1) and (3), above, may be waived for boat ramps recognized by TRPA as multiple-use pursuant to Section 54.8.

54.5.B **Design And Construction Standards:** Design and construction standards are:

1. Boat ramps shall not exceed 10 feet in width.
2. Boat ramps shall be constructed from prefabricated materials. Metal grates or rails are the preferred construction material. Precast concrete shall be permitted only when metal grates are infeasible.
3. The standard set forth in Subparagraph (1), above, may be waived for boat ramps recognized by TRPA as multiple-use pursuant to Section 54.8.

54.6 **Mooring Buoys:** Where otherwise allowed pursuant to Chapters 51 and 52, the placement and design of buoys shall conform to the following standards:

54.6.A **Location Standards:** Location standards are:

1. A maximum of two mooring buoys may be permitted per littoral parcel.
2. The placement of mooring buoys shall be subject to the prohibitions set forth in Subparagraphs 54.4.A(2) and (3).
3. Mooring buoys shall not be located any further lakeward than necessary to provide for safe mooring, but not to exceed 350 feet lakeward of the high water line.
4. Mooring buoys shall be placed within the setback lines established by TRPA. TRPA shall establish the setback lines by measuring 20 feet inward from each property line along the
highwater line. From this point, a setback line shall be projected lakeward and perpendicular to the tangent of the shoreline. TRPA may adjust angle of projection to compensate for unique circumstances such as a small cove.

(5) The standards set forth in Subparagraphs (1) and (3) may be waived for mooring buoys recognized by TRPA as multiple-use pursuant to Section 54.8.

54.6.B Design And Construction Standards: Mooring buoys shall comply with the construction specifications set forth in the California Waterway Marking System or as otherwise recommended by the U. S. Army Corps of Engineers or Coast Guard.

54.7 Floating Docks And Platforms: Where otherwise allowed pursuant to Chapters 51 and 52, the placement and design of floating docks and platforms shall conform to the following standards:

54.7.A Location Standards: Location standards are:

(1) A maximum of one floating dock or platform may be permitted per littoral parcel.

(2) The placement of floating docks or platforms shall be subject to the prohibitions set forth in Subparagraphs 54.4.A(2) and (3).

(3) Floating docks and platforms shall not extend beyond lake bottom elevation 6219.0 feet, Lake Tahoe Datum, or beyond the pierhead line, which ever is more limiting.

(4) Floating docks and platforms shall be placed only within the area prescribed in Subparagraph 54.4.A(5).

(5) The standards set forth in Subparagraphs (1) and (4), above, may be waived for floating docks and platforms recognized by TRPA as multiple-use pursuant to Section 54.8.

54.7.B Design And Construction Standards: Design and construction standards are:

(1) Floating docks and platforms shall not exceed an area of 100 square feet or a dimension along any side of 15 feet.

(2) Floating docks and platforms shall not project more than three feet above the surface of a lake or other body of water.

(3) Floating docks and platforms attached to a pier shall conform to the standards set forth in Subsection 54.4.B.

(4) Superstructures shall not be permitted on floating docks or platforms.
(5) The standard set forth in Subparagraph (1) above, may be waived for floating docks and platform recognized by TRPA as multiple-use pursuant to Section 54.8.

54.8 Multiple-Use Facilities: Where otherwise allowed pursuant to Chapters 51 and 52, the placement and design of piers, boat ramps, mooring buoys, and floating docks and platforms designed to serve individuals on a multiple- or commercial-use basis shall conform to the following standards. If any such structure is accessory to a marina, the provisions of Section 54.12 also shall apply.

54.8.A Limitations On Single-Use Facilities When Served By Multiple-Use Facilities: No facility shall be approved which is intended for the use of one individual or family and guests if the following circumstances apply:

(1) Proposed Residential Development: Where the littoral parcel is part of a residential land development which is being developed for use by, or sale or lease, to more than one person or family;

(2) Existing Residential Development: Where the littoral parcel is held in common ownership by owners of parcels within a residential land development, or by an association representing them, or by a person for use of such owners;

(3) Littoral Property Owners Within An Area Of Common Ownership: Where individual lots fronting the shoreline are within a residential land development served by multiple-use facilities, such as described in Subparagraphs (1) and (2) above.

54.8.B Location Standards: Multiple-use facilities shall comply with the location standards set forth in Subsection 54.4.A for piers, Subsection 54.5.A for boat ramps, Subsection 54.6.A for mooring buoys, and Subsection 54.7.A for floating docks and platforms; except that, for facilities recognized by TRPA as multiple-use pursuant to Subsection 54.8.D, the location standards set forth in Subparagraphs 54.4.A(1), (4) and (5), Subparagraphs 54.5.A(1) and (3), Subparagraphs 54.6.A(1) and (3) and Subparagraphs 54.7.A(1) and (4) shall serve as guidelines.

54.8.C Design And Construction Standards: Multiple-use facilities shall comply with the design and construction standards set forth in Subsection 54.4.B for piers, Subsection 54.5.B for boat ramps, Subsection 54.6.B for mooring buoys and Subsection 54.7.B for floating docks and platforms; except that, for facilities recognized by TRPA as multiple-use pursuant to Subsection 54.8.D, the design and construction standards set forth in Subparagraph 54.4.B(1), Subparagraph 54.5.B(1), and Subparagraph 54.7.B(1) shall serve as guidelines.

54.8.D Recognition Of Facilities As Multiple-Use: Facilities recognized by TRPA as multiple-use are subject to the following provisions:

(1) Deviation From Standards: Deviation from those standards identified in Subsections 54.8.B and 54.8.C as guidelines for multiple-use facilities, shall be allowed only if TRPA recognizes such facilities as multiple-use. The extent of deviation from the standards shall be approved by TRPA and shall be dependent on:
(a) The reduction in development potential of shorezone facilities associated with the application such that the facility will be shared by other littoral property owners; and

(b) The number of people utilizing the facility or the extent to which the facility is available for general public use.

(2) 

Reductions In Development Potential: Reductions in development potential shall be established through the recording by the owner of permanent deed restrictions or other covenants running with the land, reflecting use agreements and development limitations approved by TRPA on the affected properties.

54.9 Safety And Navigation Devices: New safety and navigational structures may be permitted only upon the recommendation of the Army Corps of Engineers or the Coast Guard.

54.10 Structures And Uses In Lagoons And Lakes Other Than Lake Tahoe: All projects and activities permitted by this chapter in the nearshore and foreshore of Lake Tahoe may be permitted by TRPA in lagoons and other lakes in the region pursuant to the permissible use regulations set forth in the plan area in which the project or activity is located. The location, design and construction standards for such structures shall be determined using the standards in this chapter as guidelines. These standards may be established in memorandums of understanding between TRPA and appropriate homeowner associations.

54.11 Jetties, Breakwaters, Rock Cribs And Fences: Jetties, breakwaters, rock cribs and fences may be permitted as follows:

54.11.A Location: Jetties, breakwaters, and rock cribs shall not be permitted in locations where beach erosion or loss of sediment from the shorezone is likely. Fences shall not be permitted lakeward of the high water line of any lake or body of water except to protect the health or safety of the general public or to protect property located adjacent to areas of public access to any such lake or body of water from trespass and provided such fences are approved by agencies having jurisdiction.

54.11.B Design And Construction Standards: The design, construction and maintenance of jetties, breakwaters and fences shall comply with the following standards:

(1) Except as provided in Subparagraph 54.11.B(2), jetties and breakwaters shall have openings which allow adequate free circulation of water and sediment.

(2) No jetty or breakwater shall be a solid or nearly solid structure unless TRPA finds that it will not interfere with littoral processes, cause shoreline erosion, or harm water quality or clarity and;

(a) The solid or nearly solid jetty or breakwater is a necessary part of a marina for which TRPA has approved a master plan; or
5. **TRPA SHALL CONDUCT A SURVEY TO IDENTIFY AREAS WHERE EXISTING EXCESS COVERAGE IS CAUSING ENVIRONMENTAL DAMAGE.**

Over a five-year period, TRPA shall survey the streams and watersheds in the Basin to identify areas that show empirical evidence of soil erosion or adverse changes in hydrological conditions as a result of excess coverage. The survey shall propose specific programs to address the problem of excess coverage and may include limits on new coverage, coverage removal, and remedial erosion and runoff control projects.

6. **GRADING, FILLING, CLEARING OF VEGETATION (WHICH DISTURBS SOIL), OR OTHER DISTURBANCES OF THE SOIL ARE PROHIBITED DURING INCLEMENT WEATHER AND FOR THE RESULTING PERIOD OF TIME WHEN THE SITE IS COVERED WITH SNOW OR IS IN A SATURATED, MUDDY, OR UNSTABLE CONDITION. SPECIAL REGULATIONS AND CONSTRUCTION TECHNIQUES WILL APPLY TO ALL CONSTRUCTION ACTIVITIES OCCURRING BETWEEN OCTOBER 15 AND MAY 1.**

Impacts related to soil disturbance are highly exaggerated when the soil is wet. For precautionary reasons, all project sites must be adequately winterized by October 15 as a condition for continued work on the site. Exceptions to the grading prohibitions will be permitted in emergency situations where the grading is necessary for reasons of public safety or for erosion control.

7. **ALL EXISTING NATURAL FUNCTIONING SEZs SHALL BE RETAINED AS SUCH AND DISTURBED SEZs SHALL BE RESTORED WHenever POSSIBLE.**

Stream environment zones (SEZs) shall be managed to perpetuate their various functional roles, especially pertaining to water cleansing and nutrient trapping. This requires enforcement of a non-degradation philosophy. This policy is common to the Water Quality, Vegetation, Stream Environment Zone, and Wildlife Subelements and will be implemented through the Land Use Element and capital improvements program.

**SHOREZONE**

The shorezone of Lake Tahoe is of both local and national significance. The scenic quality of the shoreline is enhanced by a diversity of views that range from sandy beaches to isolated coves, rocky shorelines, and steep cliffs. The competing demands for development of the shorezone need to be reconciled in light of the unique qualities that stand to be lost. The existing Shorezone Plan of Lake Tahoe is the basis for developing guidelines for appropriate uses along the shorezones of Lake Tahoe, Fallen Leaf Lake, and Cascade Lake.

**GOAL #1**

**PROVIDE FOR THE APPROPRIATE SHOREZONE USES OF LAKE TAHOE, CASCADE LAKE, AND FALLEN LEAF LAKE WHILE PRESERVING THEIR NATURAL AND AESTHETIC QUALITIES.**

The shorezones of the Basin's lakes are inherently suitable to different intensities of use depending on local shorezone characteristics. Both the physical and biological qualities of the shorezone are useful for assessing the development potential of a particular site. Visual quality should be an additional test of an area’s capability to accommodate
different types of land use. Policies are developed within the framework of TRPA's existing shorezone plan (which is incorporated into this Subelement) and adopted environmental thresholds.

POLICIES

1. **ALL VEGETATION AT THE INTERFACE BETWEEN THE BACKSHORE AND FORESHORE ZONES SHALL REMAIN UNDISTURBED UNLESS ALLOWED BY PERMIT FOR USES OTHERWISE CONSISTENT WITH THE SHOREZONE POLICIES.**

   Vegetation at the interface between the backshore and the foreshore is significant to buffering the impacts that occur in this zone. It is the last naturally occurring measure for stabilizing soils and absorbing nutrients in the runoff from the backshore. It prevents accelerated shoreline erosion from wave action and reduces the need for engineered structures. Vegetation is an important element of the wildlife and fish habitat that occurs in the zone. The vegetation also screens backshore development, thus preserving the natural appearance of the shoreline. Well established, native vegetation is adapted to the zone and provides a strong binding root system and a protective cover of foliage and branches. The interface is defined as the zone that includes backshore cliffs and other unstable lands influenced, in part or in total, by littoral or wave processes.

2. **CONSTRUCTION ACTIVITY SHOULD BE SET BACK TO ENSURE NO DISTURBANCE OF THE INTERFACE BETWEEN HIGH CAPABILITY BACKSHORE AND UNSTABLE CLIFF AREAS.**

   Building setbacks from the edge of unstable or potentially unstable areas are necessary so as to minimize the risk of accelerated erosion, cliff collapse, or slumping. Retention of a natural buffer to minimize impacts of backshore development is preferred over engineering solutions to backshore instability.

3. **THE USE OF LAWNS OR ORNAMENTAL VEGETATION IN THE SHOREZONE SHALL BE DISCOURAGED.**

   The land area adjacent to water bodies is susceptible to intensive erosion forces such as undercutting. Deep root systems associated with trees and shrubs help stabilize the backshore by binding soil and rock material. Lawns are less effective for this purpose in unstable areas and fertilizer necessary for their maintenance may contribute nutrients directly to the lake. Plant species approved by the Agency (see Vegetation Subelement, Goal #1, Policy 8) shall be selected when revegetating disturbed sites.

4. **CLASS 1 CAPABILITY SHOREZONES SHALL BE MANAGED CONSISTENT WITH THE GOALS AND POLICIES OF THE STREAM ENVIRONMENT ZONE SUBELEMENT.**

   Class 1 shorezones (barrier beaches) are particularly vulnerable to both natural and unnatural perturbations. These areas typically support backshore wetlands and are usually linked hydrologically with the lake. As such, Class 1 shorezones typically exhibit the characteristics of stream environment zones. New development in Class 1 shorezones will be regulated to be consistent with Policies 5, 6, and 7 of the Stream Environment Zone Subelement. These policies generally prohibit new development except for unusual circumstances involving the siting of public outdoor recreation facilities and public works projects. Replacement of existing coverage in barrier shorezones may be permitted in accordance with the policy for replacement of existing coverage in the Stream Environment Zone Subelement (Policy 9).
5. **DISTURBANCE OF CLASS 2 AND CLASS 3 CAPABILITY SHOREZONES SHALL BE MINIMIZED TO AVOID ACCELERATED BACKSHORE EROSION OR CLIFF COLLAPSE.**

Class 2 and Class 3 shorezones are typically steep and have high erosion potential. No activity should be undertaken which is likely to accelerate or initiate backshore erosion.

6. **LOW TO MODERATE INTENSITY DWELLING AND RECREATIONAL USES SHOULD BE ALLOWED IN THE STABLE AND HIGH CAPABILITY BACKSHORE AREAS OF CLASS 4 AND 5 CAPABILITY SHOREZONES.**

The overall capability of Class 4 shorezones is severely limited by the unstable nature of the actual shoreline, beaches, and crumbling cliffs. Vegetation preservation and restricted development are the best means for protecting the unstable rock and soil materials. The erosion, mass movement potential, and rocky ground of Class 5 shorezones limit the construction potential of these sites. Low to moderate recreational development is the best use, where gradual slopes permit.

7. **WATER DEPENDENT RECREATIONAL FACILITIES AND RESIDENTIAL BUILDINGS ARE ACCEPTABLE USES IN CLASS 6, 7, AND 8 CAPABILITY SHOREZONES SO LONG AS SUCH USES (1) PROVIDE FOR THE NATURAL EQUILIBRIUM OF THE SHORELINE INTERFACE, (2) DO NOT ACCELERATE NEARSHORE SHELF EROSION, (3) MINIMIZE DISTURBANCE OF VEGETATION, (4) CONSIDER VISUAL AMENITIES, AND (5) COMPLY WITH OTHER RELEVANT POLICIES OF THIS SUBELEMENT.**

Class 8 shorezones offer the highest capability for development due to their relative resilience to perturbations. Class 6 and Class 7 shorezones are less capable of tolerating disturbances, but still provide suitable development potential when the uses allow for minimum site disturbance.

8. **STREAM CHANNEL ENTRANCES TO THE LAKE SHALL BE MAINTAINED TO ALLOW UNOBSTRUCTED ACCESS OF FISHES TO UPSTREAM SPawning SITES.**

Barriers to upstream migration of fish may arise either from actual physical barriers or from disturbances. Activities or structures that pose as upstream barriers are not permitted uses in stream mouths.

9. **THE AGENCY SHALL REGULATE THE PLACEMENT OF NEW PIERS, BUOYS, AND OTHER STRUCTURES IN THE FORESHORE AND NEARSHORE TO AVOID DEGRADATION OF FISH HABITATS, CREATION OF NAVIGATION HAZARDS, INTERFERENCE WITH LITTORAL DRIFT, INTERFERENCE WITH THE ATTAINMENT OF SCENIC THRESHOLDS, AND OTHER RELEVANT CONCERNS.**

The Agency shall conduct studies, as necessary, to determine potential impacts to fish habitats and apply the results of those studies and previous studies on shoreline erosion and shorezone scenic quality in determining the number of, location of, and standards of construction for facilities in the nearshore and foreshore.

10. **PROVISIONS SHOULD BE MADE TO ALLOW MULTIPLE-USE PIERS WHEN SUCH USES ARE INTENDED TO REDUCE THE NUMBER OF SINGLE-USE PIERS EXISTING ON ADJOINING PROPERTIES.**

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Fish habitat in the nearshore can be improved if habitat modifications and disturbances are minimized. Centralized activity centers are preferred to numerous points of activity dispersed along the entire shoreline.

11. THE AGENCY SHALL REGULATE THE MAINTENANCE, REPAIR, AND MODIFICATION OF PIERS AND OTHER STRUCTURES IN THE NEARSHORE AND FORESHORE.

Piers and other shoreline structures are particularly subject to damage and deterioration caused by the elements. Some fail to conform to the standards of the Agency. Maintenance, repair, and modification projects provide opportunities to remedy existing deficiencies. Ordinances shall set requirements, appropriate for the situation, to correct environmental and navigation problems.

12. CASCADE AND FALLEN LEAF LAKES SHOULD BE EVALUATED AND CONSIDERED FOR LOW INTENSITY USES TO INCLUDE RESTRICTIONS ON THE USE AND SIZE OF BOAT MOTORS.

Both of these lakes are relatively small when compared to Lake Tahoe and are, themselves, located in small basins. Use of powerboats on these lakes impacts a greater portion of the shorezone users because of the small size of the lakes and the fact that the noise is accentuated due to the bowl-shaped topography. Restrictions on motor size and use is a strategy to provide for the best use of these lakes while preserving their many different recreational qualities. El Dorado County, in cooperation with the USFS, private land owners, and other agencies, should evaluate the best uses for each lake.

13. ALLOW PUBLIC ACCESS TO THE SHOREZONE WHERE LAWFUL AND FEASIBLE ON PUBLIC LANDS.

There is considerable demand for public use of the Lake Tahoe shoreline. Increased opportunities to use the shorelines shall be provided when consistent with the tolerance levels of the shorezone. Improved access to the shorezone should be provided through public lands from expanded public ownership. Trails and support facilities in the backshore should be consistent with the goals and policies of the Recreation Element.

14. PRIVATE MARINAS SHALL BE ENCOURAGED TO PROVIDE PUBLIC BOAT LAUNCHING FACILITIES.

Boating access to Lake Tahoe would be increased under this strategy by encouraging all marine facilities to provide public launching facilities, where practical, and by providing incentives for those facilities which improve or provide such services.

15. TRPA MAY DESIGNATE SHOREZONES AS MAN-MODIFIED. THE ASSIGNMENT OF A MAN-MODIFIED STATUS REQUIRES THE FOLLOWING FINDINGS:

- Further development will not exacerbate the problems caused by development in shorezones that the original capability rating was meant to avoid;
- The area no longer exhibits the characteristics of the original shorezone capability rating;
- Restoration is infeasible;
- Further development can be mitigated off-site; and
March 3, 2000

Mr. Paul Kaleta  
Basin Strategies  
P.O. Box 11945  
Zephyr Cove, NV 89448

Re: Glenbrook Creek Proposal

Dear Paul:

As requested, we have completed our revised conceptual design for a fisheries enhancement on Glenbrook Creek.

Project Setting

Glenbrook Creek drains a 4.2 square mile basin in Nevada from Spooner Summit to Lake Tahoe. The project site is located within the lower 0.6 miles of Glenbrook Creek, within the historic Glenbrook residential area. Although the proposed projects are located within the lower 600 feet of Glenbrook Creek, our assessment of enhancement opportunities for fisheries and water quality conditions extend through the meadow area to the Old Highway 50 crossing (Figure 1).

Lower Glenbrook Creek has undergone many modifications due to historical human activities. The lower 600 feet of channel was apparently moved southward in the late 1800s to accommodate the construction and launching of the steel hulled ship Meteor. Glenbrook Creek has been confined by three crossings.

The lower crossing is a 30-inch CMP culvert that underlies the shoreline maintenance road and a number of underground utilities (sewer, phone and electrical). The Tahoe Regional Planning Agency (TRPA) has identified the culvert as a partial fish passage barrier for spawning rainbow trout that migrate upstream from Lake Tahoe.

The middle crossing is a maintenance road. The riparian corridor in the road alignment is filled with fill and asphalt. Flow is concentrated in a 30-inch CMP culvert that daylights 4.0 feet above the channel bed on the downstream side and is regarded as an impassable fish barrier.

The upper crossing occurs at old Highway 50 where a 30-inch culvert completely blocks fish passage.
The lower 0.6 mile of Glenbrook Creek has been channelized to accommodate residential development and historical grazing.

The focus of the enhancement proposal is the lower 600 feet of channel from Lake Tahoe to the maintenance road crossing (middle crossing). This reach is bounded on the north by landscaped areas of lawn and shrubs and to the south by a dense riparian corridor. Silty, eroding banks and a sandy substrate characterize this reach of channel and, as mentioned above, the reach contains two significant fish barriers. Only minor areas of low quality spawning habitat occur in this reach and the eroding fine clay/silty banks provide a constant source of turbidity.

The reach above the maintenance road crossing up to the Old US Highway 50 was straightened in the 1800s to accommodate grazing. Review of historical aerial photographs reveals old sinuous meander channels in the meadow. The creek now flows within a dense forest cover of old (decadent) willow and alder and is characterized by a sandy bed. Instream woody cover dominates channel morphology and erosion and sedimentation processes. No spawning habitat was observed in this reach.

Proposed Project

The proposed project consists of three elements designed to correct fish passage problems in the lower and middle crossings, increase spawning habitat and improve water quality. It involves re-constructing the channel from the maintenance road crossing to a point approximately 250 feet downstream.

The lower culvert will be corrected for fish passage by installing two boulder step pools at the outlet to raise the tailwater elevation and pool depth. A rock step pool will also be constructed at the upstream end to reduce supercritical flow inside the culvert inlet. The two downstream weirs could be constructed of hand-placed native rock or in the style of the mortar and rock walls found in the bridge railings. The rock walls would be less prone to modification by recreational users. The 30-inch culvert has corroded inside and should be repaired; replacement would be very difficult and expensive as most underground utilities lie directly above the culvert. Repair of the culvert could be accomplished by patching with concrete after flow is diverted. Rocks could be placed in the concrete patches to provide resting-places for upstream migrating adult fish.

The channel reach from the maintenance road crossing to a point about 300 feet downstream would be re-constructed into a boulder step pool channel at the upper 75 feet and a meandering gravel-riffle pool channel for the lower 225 feet. This would create high quality spawning and rearing habitat for rainbow trout and possibly Kokanee salmon (if introduced to Glenbrook Creek) and would create continuous fish passage to the Old US Highway 50 crossing.

The maintenance road crossing and 30-inch culvert would be replaced with a new 30-foot long steel flatcar bridge spanning over the 5-foot wide low water channel and 25-foot wide flood plain area. This improvement will allow for upstream fish passage under a full range of flow conditions.
Construction Procedure

Lower Culvert Crossing

Construction would begin by de-watering the existing channel by diverting flow in a 500-foot long pipe along the south side of the channel. Construction would occur in late summer and early fall (September to October). The lower crossing culvert weirs, step pools and culvert repairs would be carried out by hand crews. The weirs would be about 18 feet wide and 1.5 feet high. A 1.5-foot deep pool would be immediately below each boulder step. The boulder step on the upstream side of the culvert would be constructed to create a pool "tailout" at the culvert inlet and would also be constructed by hand crews. The channel would be re-watered with the completion of the upstream sections.

300-foot Channel Reach

The channel from just above the maintenance road would be re-constructed by first diverting flow from the channel and around the construction site into a pipe that discharges into Lake Tahoe. The conceptual design calls for creating a 75-foot long boulder step pool channel (Rosgen B-2 stream type) from existing ground just upstream of the maintenance road to a point about 60 feet downstream. From this point, a meandering gravel riffle channel (Rosgen C-4 stream type) would be constructed to point just above the USGS stream gage. After flow diversion and de-watering, the channel and flood plain areas would be excavated. The channel alignment would expand into the lawn area behind the Glenbrook Lodge by 12-15 feet. The excavated material would be hauled offsite and disposed of. The excavation area would then be lined with 1.0 feet of pit-run alluvial material and compacted by portable equipment. The next step involves placement of channel substrate in the B channel section. This would begin with placement of river-rounded boulders, cobbles and gravels by an excavator and a two-person hand crew. Boulder step drops and pools would be strategically placed to achieve channel stability and fish passage. After placement of the substrate, the banks of the new channel and flood plain would be constructed in three lifts of coir fabric encapsulated soil and with vegetation plantings (willow, alder sedges, etc.). The coir lifts would be constructed by a three-person hand crew and an excavator.

Once the B channel section is complete, a transition to the C channel type would be constructed. The transition would be one sequence of a boulder step, then a pool-to-pool tail out to the first riffle. Gravel sizes appropriate to spawning and channel stability would be placed in the riffle. The riffle would be shaped naturally to guide flow into the next pool. A sinuosity of 1.3 will be used to construct 4 riffle pool sequences. The lowermost pool would be connected to the existing channel at the last pool tailout. The banks would be constructed with layers of live meadow sod, which would be acquired from the meadow upstream; the area of sod removal will be re-seeded. 6-foot by 3-foot sod layers would be placed along the channel banks and staked in. The outside bends of the meanders would be filled with 2 to 3 layers of sod; the edges of the riffles would be bounded by sod partially buried beneath the placed gravels. Willows and alders would be planted in the sod along banks. Salvaged woody materials would be placed in pools to provide fish cover.
A small excavator and a three-man hand labor crew would carry out the channel work. The area between the new channel and the lawn area would be covered with sod salvaged from the initial excavation.

**Replace Maintenance Road culvert with a Bridge**

The new bridge would be constructed by first removing the asphalt and fill on the southerly bridge approach to the south edge of the culvert crossing. A 30-foot span over the creek and flood plain would be constructed using concrete abutments 30-feet apart holding a 30-foot long steel flatcar bridge. Steel piles would be driven at the new abutment and concrete would be poured. With the channel de-watered, the culvert crossing would be removed and hauled for disposal off-site. Construction of the B channel section would be completed before the span is placed. The bridge would be completed as the channel construction downstream is completed.

**Re-watering Channel**

The new channel would be flushed by discharging part of the natural flow into the head of the new channel then pumping the flow out at the downstream end into the sanitary sewer or into water trucks that would haul the water for offsite disposal. Once the flow in the new channel is acceptably clear, the natural flow would be re-introduced fully.

**Monitoring and Maintenance**

The new channel and crossings would be monitored for a five-year period for vegetative success, fish population, passage and usage, erosion and channel stability. Data collection would include spawning redd counts, fish counts, topographic surveys, substrate sampling and vegetative success monitoring. Any problems would be corrected as necessary and all monitoring information would be archived.
August 7, 2000

Mr. Jon-Paul Harries
Tahoe Regional Planning Agency
P.O. Box 1038
Zephyr Cove, NV 89448

Re: RUVO Beachhouse Pier Project, TRPA File Number 990108
Douglas County APN's 01-190-09, 01-190-11, and 01-070-26

Dear Jon-Paul:

Consistent with our conversation of this afternoon, I want to take this opportunity to provide you additional information pertaining to Mr. Ruvo's ownership of rights for the diversion of water from both Logan House Creek and Glenbrook Creek, and would ask that you consider the foregoing during your review of the above-referenced pier application.

Larry Ruvo has for several years owned and yet not exercised the following water diversion rights.

1. A portion of Certificate Record No. 3491 diverted from North Logan House Creek, not to exceed 78.784 acre feet annually.

2. Permit No. 52272 diverted from Glenbrook Creek, not to exceed 22.072 acre feet annually.

3. Permit No. 52271 diverted from Glenbrook Creek, not to exceed 14.012 acre feet annually.

(The above-outlined appropriation quantities are not necessarily additive because some of the places of use for various appropriations overlap. Total appropriation from all sources will be limited to 92.796 acre feet annually, for irrigation of 23.199 acres.)

Further, in keeping with the State Engineer's Office's requirement that he do so, Mr. Ruvo has made appropriate application each year for an extension of those rights.

Understanding the potential for negative environmental impact should he utilize these water rights and remove water from Glenbrook and Logan House Creeks, Mr. Ruvo has decided that, in conjunction with the proposed Glenbrook Creek Restoration / Mitigation Project, he will make application for a transfer of the point of diversion from Logan House Creek and Glenbrook Creek to the waters of Lake Tahoe.

As this specific type of transfer of water diversion rights is outlined in the EIP as being important to the health of Glenbrook Creek, we believe it will have a valuable impact as a part of the entire Glenbrook Creek restoration project. We are therefore proposing this transfer for inclusion in the mitigation portion of the pier application package.
We would ask that you please take this information into consideration during your review of the project, and if necessary give us a call for clarification of any information.

Kindest regards

Toni A. Lutes

cc: Larry Ruvo
Harvey Whittemore
Dean Bennett / Mark James
Larry Hoffman
HABITAT RESTORATION-GLENBROOK MIGRAT PHASE I

Program: FISHERIES
Jurisdiction: DG

EIP Project Code: 9510
Implementation Date: 2000

Priority: 1
Estimated Project Cost: 100,000.00

Keywords: GLENBROOK, LAKE HAB, PRIVATE, DOUGLAS, NDOW,

FACILITATE THE EXCHANGE OF POINT OF DIVERSION FROM THE STREAM TO SOME OTHER SOURCE. REMOVE BARRIERS TO FISH PASSAGE AND IMPROVE THE CHANNELIZE CONDITIONS WITHIN THE FIRST REACH.

Scenic Unit: S26
PAS/CP: 58
Street: Stream: GLENBROOK CREEK

Needs Assessment: X
Concept:
TRPA Permit: Completed:

EIP THRESHOLD SUBJECT

Water Quality: X
Soils/SEZ: X
AQ/Trans: X

Noise:
Recreation: X
Fish: X

Wildlife: X
Scenic: X
Vegetation: X

COMMENTS: PHASE I WILL ASSIST 5 MI MIGRATORY TO GO FROM MARG. TO GOOD

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HABITAT RESTORATION-GLENBROOK CK IMPROV PHASE II

Program: FISHERIES
Jurisdiction: DG

EIP Project Code: 9510
Implementation Date: 2007

Priority: 3
Estimated Project Cost: 250,000.00

Keywords: GLENBROOK, PRIVATE, USFS, STATE LANDS, NDOW

IMPROVE CHANNEL MORPHOLOGY BY RECONTOURING CHANNELIZED SECTIONS, IMPROVE STREAMBED SUBSTRATE, STABILIZE STREAM BANKS AND IMPROVE SHADE CANOPY COVER.

Scenic Unit: S26
PAS/CP: 58
Street: Stream: GLENBROOK CREEK

Needs Assessment: X
Concept:
TRPA Permit: Completed:

EIP THRESHOLD SUBJECT

Water Quality: X
Soils/SEZ: X
AQ/Trans: X

Noise:
Recreation: X
Fish: X

Wildlife: X
Scenic: X
Vegetation: X

COMMENTS: COMPLETING PHASES 1&II WILL ASSIST 3.1 MILES TOTAL TO EXCEL.

Fisheries - Page 38
TAHOE REGIONAL PLANNING AGENCY
STAFF SUMMARY

Project Name: Hook's Landing – Temporary Outdoor Recreation Concession

Applicant: John Kearns/Michael Kearns/Rhonda Gramanz

Applicant's Representative: Lewis Feldman, Feldman, Shaw & DeVore

Agency Representative: Jordan Kahn, Assistant Agency Counsel

Location: 270 North Lake Blvd., Placer County

Assessor's Parcel Number/File Number: 94-510-01/990436

Staff Recommendation: Staff recommends that the Governing Board approve a six-month temporary use permit for the proposed activity. The required actions are set forth in Section F of this staff summary.

Project Description: This project involves the partial recommencement of a previously existing outdoor recreation concession at the "Hook's Landing" pier and on property adjacent to Commons Beach as a temporary use. The proposed concession consists of the following rental activities.

- 6 personal watercraft
- 1 parasailing boat
- 8 single kayaks
- 4 pedal boats
- 3 rental power boats
- 1 fishing charter
- 8 double kayaks
- 3 canoes

Unlike previous proposals, this project does not include packaged food and beverage sales. No grading or construction is proposed with this project. The motorized watercraft will be operated from the pier and all non-motorized watercraft will be operated from an on-shore kayak rental area (see site plan attached as Exhibit 1).

Site Description: The project site is between State Highway 28 and Lake Tahoe, southwest of Commons Beach in Tahoe City, California (see map attached as Exhibit 2). The project area consists of two parcels and contains an existing pier ("Hook's Landing"), parking area, and kayak rental area (see attached site plan). The kayak rental area is located on Lot 49 (APN 94-500-022). There is an existing paved walkway easement leading from the pier to the parking area on Lot 51 (APN 95-510-01) through Lot 50 (APN 94-510-02). The project area is located in an area mapped and verified as Feeding and/or Escape Cover Habitat.

Background: The applicants operated a previous concession including commercial fuel sales at the site that were moved to another location in the late 1980s. At its July 1999, meeting the TRPA Governing Board considered two items brought by the applicants concerning Hook's Landing:

1. An appeal of the Executive Director's decision that they lacked vested rights to operate an outdoor recreation project including fuel sales because the use had been discontinued for more than one year; and

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AGENDA ITEM NO. IX.B.
Hooks Landing, Outdoor Recreation Concession, Tahoe City

2. An application for an outdoor recreation concession at Hook’s Landing that did not include fuel sales.

Both of these items were rejected by the Governing Board. The project identified in item 2, above, was substantially similar to that which is currently proposed. The only differences between the current and former projects is the current project has one less rental powerboat, three less rental sailboats, and does not include food and beverage sales.

The applicants filed a lawsuit against TRPA in the Fall of 1999, alleging that substantial evidence did not support the Governing Board’s rejection of their vested rights claim and application. At its May 2000 meeting, the Governing Board voted to reconsider this project as a means to settle the litigation. To comply with TRPA’s “one year rule” (Rule of Procedure 5.23), the Governing Board directed staff to have the project brought forward for consideration at its August 2000 meeting.

For a number of reasons, staff recommended denial of this project in the staff summary prepared for the August 2000 Governing Board meeting. At the request of the applicants, the matter was continued until the October 2000 meeting. In the interim, the applicants have agreed to significant conditions that, as discussed in this staff summary, make the project substantially stronger than as initially proposed. However, uncertainties remain. For this reason, TRPA staff recommends only a temporary (six month or one boating season) permit for the project. After that time, the applicants will have to re-apply if they wish to continue their watercraft concession, although the Executive Director has the discretion to re-issue another six-month permit without bringing it before the Governing Board.

Issues: This project involves the partial recommencement of a previously operated recreation concession at the Hook’s Landing pier. Outdoor Recreation Concessions are listed as a Special Use in the Tahoe Community Plan. The primary issues associated with this project are:

1. Public Access: The proposed project will increase opportunities for the public to recreate on Lake Tahoe, in furtherance of TRPA’s Recreation Threshold. Hook’s Landing is a public pier that the applicants currently lease from Lands of the Sierra. The proposed project will increase public access and enhance the public’s ability to recreate on Lake Tahoe.

2. Easements: The project proposal includes the rental of motorized watercraft from the Hook’s Landing pier and the rental of non-motorized watercraft from the NE corner of Lot of Lot 49 (“kayak rental area”). The Tahoe Marina Lodge (“Lodge”) leases Lot 49 from Lands of Sierra subject to an easement allowing the operation of a concession on the kayak rental area. The Lodge also leases Lot 49 subject to an easement connecting the pier and the kayak rental area, although the TRPA Legal Division and the Placer County Counsel’s office understand that this easement exists for use only by concession employees and not for the general public. Customers will have to walk around the Lodge to connect the two distinct points of operation (this walk takes approximately eight minutes and is over 1,000 feet).

The Lodge also leases Lots 50 and 51 from Lands of Sierra subject to easements for parking and access to the Hook’s Landing pier. Specifically, 10 parking spots in Lot 51 are reserved for those members of the public using Hook’s Landing and a trail connects the parking lot along Lot 50 to the pier. Concerns have been voiced that the public does not know about these spots and that those currently parking in the spots are not
recreatin on the pier. The Lodge has increased the signage to ensure that members of
the public are aware that public parking exists on Lot 51. Further, the applicants have
agreed to submit a parking monitoring plan so that the ten designated parking spots in
Lot 51 are used by those recreating on the pier.

3. Parking: The applicants have submitted a Parking and Traffic Generation Analysis
("Analysis") for the proposed project. The Analysis concludes that the proposed project
will generate a peak parking demand of 17 parking spaces (see Analysis attached as an
Exhibit 4). The Analysis proposes that this demand be satisfied by spaces at Lot 51 off
of Mackinaw Road and the Commons Beach parking lot. Ten parking spaces in Lot 51
are supposed to be available for the public, “using the pier and recreational facilities."
As discussed above, signage and monitoring will ensure that these parking spaces are
used by those recreating on the pier. There is a large parking lot in Commons Beach
operated by the Tahoe City Public Utility District ("TCPUD"). Although spaces in the
Commons Beach lot are available for the public, they are not designated for use by
concession patrons (see letter from TCPUD dated July 9, 1998 attached as Exhibit 6).

At the July 1999 Governing Board meeting, members of the public and the Board alike
objected to the project based on concerns that it would increase traffic in an already
congested area. Although these comments were based on personal observation and did
not challenge the adequacy of the Analysis, it remains to be seen whether the number of
spaces identified in the Analysis as needed to accommodate the project will actually be
available. For this reason, staff recommends only a temporary permit. If the Governing
Board approves this project, TRPA staff will obtain information about the sufficiency of
the parking to be used by both the Executive Director in deciding whether or not to re-
issue another temporary permit and the Governing Board if the applicants return for an
ordinary permit.

4. Sanitation: Concern has been expressed over two issues relating to sanitation: (1) the
disposal of trash generated by the project; and (2) the availability of restrooms for use by
patrons of the watercraft concession. With respect to the first issue, the applicants have
agreed to provide trash receptacles at both parts of the concession. There is currently a
dumpster operated by TCPUD on Commons Beach and a condition of approval will be
that the applicants obtain permission to use the dumpster to dispose of trash generated
by the concession on a daily basis. Because the current proposal does not involve the
sale of food and beverages, TRPA staff does not believe that a significant amount of
refuse will be generated by the proposed project.

Regarding restrooms, there is currently a public restroom located on Commons Beach.
This facility is sufficient for patrons of the non-motorized watercraft concession as well
as the concession employees who have an easement across Lot 50, providing quick
access to Commons Beach from the pier. However, an issue remains as to whether the
Commons Beach public restroom is sufficient for those patrons of the motorized
watercraft concession at the pier, given that they must walk over 1,000 feet around the
Lodge to reach Commons Beach. The applicants maintain that their patrons can use the
restroom located on Lot 50 within a fenced pool area operated by the Lodge. However,
the Lodge objects to having concession patrons use the Lot 50 restroom and the matter
may be litigated.

The applicants have proposed to install a portable toilet to accommodate the patrons of
the motorized watercraft concession on the pier. The Lodge objects vigorously to such
Hooks Landing, Outdoor Recreation Concession, Tahoe City

being placed on Lots 50 and 51 and TRPA staff will not allow one to be located on the pier due to risk of upset. Consequently, it is doubtful that a portable toilet can be used to accommodate those patrons using the pier. Even without a portable toilet, staff believes that patrons of the motorized concession on the pier will have adequate restroom facilities for the following reasons:

a) Patrons will likely be on the pier for only a few hours at a time;
   b) The Commons Beach restroom is less than ten minutes away;
   c) The project does not involve the sale of food and beverages; and
   d) As a condition of approval, the applicants will be required to provide pier patrons with directions to the Commons Beach restroom.

Nevertheless, because of this concern, staff recommends only a temporary permit. If the Governing Board approves this project, TRPA staff will obtain information about the sufficiency of the restroom facilities to be used by both the Executive Director in deciding whether or not to re-issue another temporary permit and the Governing Board if the applicants return for an ordinary permit.

5. Safety: The Lodge has raised an issue related to the structural safety of the Hook’s Landing pier in its current condition. For this reason, the applicants have agreed to have Placer County inspect the premises and to make any necessary repairs before the concession becomes operational. Another safety issue involves the potential of gasoline spilling into Lake Tahoe as a result of the use of motorized watercraft. The applicants have agreed that the boats will be fueled at marinas and that the personal watercraft will be fueled pursuant to a stabilization technique to avoid spillage. A related condition of approval is that the applicants will remove the unsightly, unused gas pumps that currently exist at the end of the pier.

Staff Analysis:

A. Environmental Documentation: TRPA staff has completed an Initial Environmental Checklist (IEC) in order to assess the potential environmental impacts of the project. No significant environmental impacts were identified. TRPA staff has also reviewed a Parking and Traffic Generation Analysis submitted by the applicants.

B. Plan Area Statement: The project is located within the Tahoe City Community Plan, Special Area Number 4. The land use classification is Commercial/Public Service, and the Management Strategy is Redirection. Outdoor Recreation Concessions are listed as a Special Use in the Tahoe City Community Plan. TRPA staff has reviewed the Community Plan and has determined that the project is consistent with the applicable planning statement, planning considerations and special policies.

C. Land Coverage: No changes to land coverage are proposed or required for this project.

D. Shorezone Tolerance District: The subject parcel is located within Shorezone Tolerance District 7. The project, as conditioned, complies with the shorezone tolerance district standards.

E. Required Findings: The following is a list of the required findings as set forth in Chapters 6, 33, 50, and 51 of the TRPA Code of Ordinances. Following each finding, agency staff has briefly summarized the evidence on which the finding can be made.

JCK/
1. 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.

(a) **Land Use:** The proposed use (Outdoor Recreation Concessions) is a special use in the Tahoe City Community Plan. The land use classification is Commercial/Public Service and the Management Strategy is Redirection. The proposed project involves the operation of outdoor recreation concessions at the “Hook’s Landing” pier. Surrounding land uses are commercial, recreation, tourist accommodation, residential, and public service. Lake Tahoe is located south of the project area. The proposed concessions are consistent with, and will not alter, the existing land uses.

(b) **Transportation:** The applicants have submitted a parking analysis to TRPA with the conclusion that the proposed concession will generate a demand for 17 parking spaces. There is ample public parking on Commons Beach, although such is not designated for those using the non-motorized concession. Further, there is an easement for ten parking spaces in Lot 51 reserved for those recreating on the pier, and the applicants have agreed to monitor the lot to ensure that the spaces are used for that purpose. Finally, the Lodge has increased its measures to alert the public of the ability to park in Lot 51. For these reasons, this finding can be made. However, TRPA staff recommends only a temporary permit so that the parking situation can be monitored during and evaluated after one season of operation.

(c) **Conservation:** The project will be consistent with the fisheries, shorezone, and scenic subelements of the Conservation Element of the Regional Plan. The proposed project does not include the operation of carbureted two-stroke engines. The applicant is required to immediately comply with Section 81.2.D of the TRPA Code of Ordinances. This ordinance prohibits the discharge of unburned fuel and oil from the operation of watercraft propelled by carbureted two-stroke engines after June 1, 1999. The applicant is also required to comply with Sections 54.16.A and B of the TRPA Code of Ordinances. Section 54.16.A prohibits the creation of wake or speeds in excess of 5 MPH by motorized watercraft within 600 feet of the waterline. This is intended to mitigate any noise or recreation conflicts. Section 54.16.B prohibits the operation of motorized watercraft within tributary waters of Lake Tahoe. This information shall be given to visitors and is outlined in the operation plan submitted to TRPA. To enhance scenic quality, the applicants will repaint the shed located in the kayak area a color that has been reviewed and approved by TRPA. Unused gas pumps remain at the end of Hook’s Landing and the applicants will be required to remove them as a condition of project approval. No historic or prehistoric resources are located in the project area. Water quality improvements are not required.
Recration: The project will provide improved access and additional recreational facilities to the general public. The project will not interfere with public access along the shoreline and is consistent with the Recreation Element of the Regional Plan. There is the potential that this non-motorized concession will conflict with existing uses on Commons Beach by generating an increase in parking and impacting a kayak concession currently operating on the premises. However, it is anticipated that the non-motorized concession proposed on Lot 49 will be used primarily by those already recreating on Commons Beach and, therefore, will enhance existing recreational opportunities. The kayak concession already operating on Commons Beach has a TCPUD permit but not a TRPA permit. It should be noted that TCPUD does not object to two non-motorized watercraft concessions serving Commons Beach. To the extent that the proposed project may conflict with the unauthorized concession, the matter may be referred to the TRPA Compliance Division for appropriate action.

Public Service Facilities: This project does not require any additions to public services or facilities. The applicants will provide garbage receptacles and, as a condition of approval, will work out an arrangement with TCPUD to use the Commons Beach dumpster to dispose of the refuse generated by the project on a daily basis. Further, the public restroom on Commons Beach is sufficient to accommodate patrons of the non-motorized watercraft concession and employees who have an access easement across Lot 49 connecting both parts of the project. Concern exists over whether the Commons Beach restroom is sufficient to accommodate patrons of the motorized watercraft concession on the pier given the distance between the pier and the restroom. For several reasons discussed previously in this staff summary, TRPA staff believes that this finding can be made without requiring the installation of a portable toilet. However, TRPA staff recommends only a temporary permit so that the restroom situation can be monitored during and evaluated after one season of operation.

Implementation: As a temporary use permit, an allocation of PAOT (People At One Time) is not required pursuant to Section 7.2 of the TRPA Code of Ordinances.

2. The project will not cause the environmental threshold carrying capacities to be exceeded.

The basis for this finding is provided on the checklist entitled "Project Review Conformance Checklist and Article V(g) Findings" in accordance with Chapter 6, Subsection 6.3.B of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. A copy of the completed checklist will be made available at the Governing Board hearing and at the TRPA.
3. Wherever federal, state or local air and water quality standards applicable for the region, whichever are strictest, must be attained and maintained pursuant to Article V(g) of the TRPA Compact, the project meets or exceeds such standards.

(Refer to paragraph 2, above.)

4. There is a need for the project.

The Tahoe City Community Plan states: "Use all appropriate opportunities to increase opportunities for public access to the Truckee River and Lake Tahoe". The proposed project would allow the general public increased recreational access on Lake Tahoe.

5. The project complies with the Goals and Policies, the applicable plan area statements, and Code.

The project is located within the Tahoe City Community Plan. The proposed use (Outdoor Recreation Concessions) is a special use within the applicable Plan Area Statement. The Tahoe City Community Plan states: "Use all appropriate opportunities to increase opportunities for public access to the Truckee River and Lake Tahoe." The proposed project would provide additional recreation facilities within the Tahoe City area. The proposed project is consistent with the Goals and Policies, The Tahoe City Community Plan, and the Code.

6. The project is consistent with TRPA's 20-year targets for outdoor recreation, which are 6,114 people at a time ("PAOT") in overnight facilities, 6,761 PAOT in summer day-use facilities, and 12,400 PAOT in winter day-use facilities, as well as the allocations set forth in the plan area statements, or the pools or reserved PAOT capacity.

The Tahoe City Community Plan does not have any PAOTs allocated to it at this time. As a temporary use permit, the proposed project does not require any PAOTs pursuant to Section 7.2 of the TRPA Code of Ordinances.

7. The project meets the findings adopted pursuant to Article V(g) of the Compact as set forth in Chapter 6 as they are applicable to the project's recreational service capacity.

The basis for this finding is provided on the checklist entitled "Project Review Conformance Checklist and Article V(g) Findings" in accordance with Chapter 6, Subsection 6.3.B of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. A copy of the completed checklist will be made available at the Governing Board hearing and at the TRPA.

8. If the project requires PAOT allocation, it is consistent with the TRPA Environmental Improvement Program.

The proposed project does not require a PAOT allocation because it is a temporary use permit, pursuant to Section 7.2 of the TRPA Code of Ordinances.
Hooks Landing, Outdoor Recreation Concession, Tahoe City

There is no evidence in the file or record the proposed project will negatively impact implementation of TRPA's Environmental Improvement Program.

9. The proposed project will not adversely impact: (1) littoral processes; (2) fish spawning; (3) backshore stability; and (4) on-shore wildlife habitat, including wildfowl nesting areas.

The proposed project will not have an impact on littoral processes because the project does not involve a structure that is less than 90 percent open. The proposed project is not located within an area that is mapped as on-shore wildlife habitat and will not affect backshore stability. The project is located in an area that is mapped and verified as Feeding and/or Escape Cover Habitat. No construction or grading is proposed as part of this project. The project does not require disturbance to the substrate of Lake Tahoe.

10. There are sufficient accessory facilities to accommodate the project.

There are three distinct aspects to this finding: (1) whether sufficient parking is available to offset the demand generated by the project; (2) whether the garbage generated by the project will be disposed of properly; and (3) whether there are adequate restrooms available for patrons of the proposed project. As discussed earlier in this staff summary, the finding can be made for all three items. Although concern remains regarding the first and third items, TRPA staff believes that this finding can be made but will monitor and evaluate the sufficiency of parking and restrooms after one season if the temporary use permit is approved.

11. The project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modification of such existing uses or structures will be undertaken to assure compatibility.

The proposed project is compatible with other accessory uses (recreation) in the vicinity. The proposed activity is listed as a Special Use in the Tahoe City Community Plan. Surrounding land uses consist of commercial recreation, tourist accommodation, residential, and public service. The proposed motorized watercraft concessions will be located on the "Hook's Landing" pier. The existing pier is approximately 510 feet in length. The proposed activity has been designed to reduce noise impacts by locating the motorized watercraft at the end of a long pier and by educating and enforcing the 600-foot "No Wake Zone." The non-motorized aspect of the project will not have any noise impacts because it is located on the kayak parcel adjacent to Commons Beach. The proposed concession is compatible with and will not alter the existing land uses.

It is anticipated that the Lodge will object to this proposed project as inconsistent with their adjacent use of lakefront condominiums. However, the 1970 Placer County Special Permit included both the motel and related public recreation facilities (see 1970 Permit attached as Exhibit 7). Therefore, Lodge residents have always been on notice that concessions such as those proposed in this project could operate on adjacent property.
12. **The use proposed in the foreshore or nearshore is water-dependent.**

The pier is located in the foreshore and nearshore of Lake Tahoe and is water-dependent. The concession activities will consist of renting of motorized and non-motorized recreational equipment (i.e., kayaks, canoes, and personal watercraft). Also included will be a parasailing boat and fishing charters.

13. **Measures will be taken to prevent spills or discharges of hazardous materials.**

The applicants have agreed that all boats will be fueled at marinas and all personal watercraft will be stabilized during fueling. The applicants have submitted a fueling plan for TRPA review and approval. The fueling plan identifies the proposed emergency response procedures and the agencies to be contacted in case of an emergency. A condition of approval when the Governing Board considered the project in July, 1999, was that the applicants submit a revised fueling plan that incorporates some stabilization component for the watercraft during fueling to insure the personal watercraft is secure during fueling and reduce the risk of fuel entering Lake Tahoe. The applicants will have to comply with this condition prior to commencing operation. Finally, approval will be conditioned on a requirement that all boats be fueled at a marina to minimize the risks associated with fueling watercraft on Lake Tahoe.

14. **Construction and access techniques will be used to minimize disturbance to ground and vegetation.**

No construction or grading is proposed as a part of this project, other than to make necessary repairs to the structural integrity of the pier if required to do so after an inspection by Placer County.

15. **The project will not adversely impact navigation or create a threat to public safety as determined by those agencies with jurisdiction over a lake’s navigable waters.**

The proposed concession will be operated from an existing pier and shed. No new facilities or structures are included as a part of this project. In 1999 comments were solicited from the U.S. Army Corps of Engineers regarding the proposed project. No negative comments were received from the U.S. Army Corps of Engineers regarding the proposed project. This project, as conditioned, will not adversely impact navigation or create a threat to public safety.

16. **TRPA has solicited comments from those public agencies having jurisdiction over the nearshore and foreshore and all such comments received were considered by TRPA prior to action being taken on this project.**

This project must receive approval from the California State Lands Commission. Comments from the California State Lands Commission, the U.S. Army Corps of Engineers, and California Department of Fish & Game, were solicited in 1999. The California State Lands Commission ("CSLC") had concerns about the methods of fueling the watercraft. However, CSLC had no objections to TRPA issuing a permit. None of the other agencies indicated that they had concerns regarding the proposed project.
17. The project, to which the use pertains, is of such a nature, scale, density, intensity and type to be an appropriate use for the parcel on which, and surrounding, in which it will be located.

There are three distinct aspects to this finding: (1) whether sufficient parking is available to offset the demand generated by the project; (2) whether the garbage generated by the project will be disposed of properly; and (3) whether there are adequate restrooms available for patrons of the proposed project. As discussed earlier in this staff summary, the finding can be made for all three items. Although concern remains regarding the first and third items, TRPA staff believes that this finding can be made but will monitor and evaluate the sufficiency of parking and restrooms after one season if the temporary use permit is approved.

18. The project, to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or in the region.

The project is located within the Tahoe City Community Plan, Special Area No. 4. Outdoor Recreation Concessions are listed as a Special Use in the Tahoe City Community Plan. The applicant has a lease with Lands of Sierra that requires them to maintain and repair their facilities. The proposed concessions are compatible with surrounding land uses, as evidenced by the project areas having historically been used for the rental of motorized and non-motorized watercraft. Further, as a condition of approval, the applicants will have the premises inspected by Placer County and will make any and all necessary repairs to the structural integrity of the pier.

It is anticipated that the Lodge will object to this proposed project as inconsistent with their adjacent use of lakefront condominiums. However, the 1970 Placer County Special Permit included both the motel and related public recreation facilities (see 1970 Permit attached as Exhibit 7). Therefore, Lodge residents have always been on notice that concessions such as those proposed in this project could operate on adjacent property.

19. The applicant has taken reasonable steps to protect the land, water and air resources of both the applicant's property and that of surrounding property owners.

As stated above, the applicants are required by the lease agreement to maintain the existing facilities and will have the premises inspected and make necessary repairs. If the project is approved, the applicants will be required to immediately comply with Section 81.2.D of the TRPA Code of Ordinances (two-stroke engine prohibition). The applicants are also required to comply with Section 54.16 of the TRPA Code of Ordinances (54.16.A prohibits the creation of wakes or speeds in excess of 5 MPH by motorized watercraft within 600 feet of the waterline and 54.16.B prohibits the operation of motorized watercraft on the tributaries of the Lake Tahoe region). The proposed activity has been designed to reduce noise.
Hoeks Landing, Outdoor Recreation Concession, Tahoe City

impacts by locating the motorized watercraft at the end of a long pier and by educating and enforcing the 600-foot "No Wake Zone." The non-motorized aspect of the project will not have any noise impacts because it is located on the kayak parcel adjacent to Commons Beach. A condition of approval when the Governing Board considered the project in July, 1999, was that the applicants submit a revised fueling plan that incorporates some stabilization component for the watercraft during fueling to insure the watercraft is secure during fueling and reduce the risk of fuel entering Lake Tahoe. The applicants will have to comply with this condition prior to commencing operation. Finally, approval will be conditioned on a requirement that all boats be fueled at a marina to minimize the risks associated with fueling watercraft on Lake Tahoe.

20. The project, to which the use pertains, will not change the character of the neighborhood, detrimentally affect or alter the purpose of the applicable plan area statement, community, redevelopment, specific, or master plan as the case may be.

The project is located within the Tahoe City Community Plan, Special Area No. 4. Outdoor Recreation Concessions is listed as a Special Use in the Tahoe City Community Plan. The Tahoe City Community Plan states: "Use all appropriate opportunities to increase opportunities for public access to the Truckee River and Lake Tahoe." The proposed project would provide additional recreation facilities within the Tahoe City area. TRPA staff has determined that the project is consistent with the applicable planning statement, planning considerations and special policies.

F. Required Actions: Agency staff recommends that the Governing Board approve the project by making the following motions based on this staff summary and evidence contained in the project record:

I. A motion to make the findings to approve the temporary use permit, which motion should pass. (To approve the temporary use permit, a 5/9 vote is required – five in the affirmative from California).

II. A motion to approve the temporary use permit, which motion should pass. (To approve the temporary use permit, a 5/9 vote is required – five in the affirmative from California).

G. Exhibits: The following exhibits have been mailed separately to each member of the TRPA Governing Board. If members of the public wish to obtain copies of these exhibits, please contact Sue Mikanovich of the TRPA Legal Division at (775) 586-4547.

1) Map depicting Assessor’s Parcel Numbers for the proposed project.
2) Map of Lake Tahoe depicting project location.
3) Photographs depicting the project area.
5) Enforceable Transit Program Plan submitted by applicants.
7) Placer County Special Permit for Land Development, dated October 1, 1970.
9) Operation Plan submitted by applicants, including: (a) Hours of Operation/Details; (b) Business Plan; and (c) Fueling Plan.
12) Letter entitled "Notes & Comments to Tahoe Regional Planning Agency Staff Summary" from Paul Feldman, Tahoe Marina Lodge Homeowners' Association, received September 8, 2000.
Hoaks Landing, Outdoor Recreation Concession, Tahoe City

- D - R - A - F - T -
TEMPORARY USES PERMIT

PROJECT DESCRIPTION: Temporary Outdoor Recreation Concessions

PERMITTEES: John Kearns, Mike Kearns, and Rhonda Gramanz

ASSSESSOR’S PARCEL NUMBERS (APNS): 94-510-01 & 95-500-22      FILE #990436

COUNTY/LOCATION: Placer County/270 North Lake Blvd., Tahoe City, Hook’s Landing Pier

Having made the findings required by Agency ordinances and rules, the TRPA Governing Board approved the project on October 25, 2000, subject to the standard conditions of approval attached hereto (Attachment S) and the special conditions found in this permit.

This permit shall expire six months from April 15, 2001, without further notice. A one-time six-month extension may be issued at the discretion of the TRPA Executive Director in accordance with Chapter 7 of the TRPA Code.

NO USES SHALL COMMENCE UNTIL THE PERMITTEE OBTAINS ALL REQUIRED COUNTY PERMITS AND PERMITS FROM OTHER REGULATORY AGENCIES. COUNTY AND OTHER REGULATORY AGENCY PERMITS AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPRIATION DATES AND RULES REGARDING EXTENSIONS. NO USE SHALL COMMENCE UNTIL ALL APPLICABLE CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA’S ACKNOWLEDGEMENT OF THIS PERMIT. IN ADDITION, NO USE SHALL COMMENCE UNTIL TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT. TRPA’S ACKNOWLEDGEMENT MAY BE NECESSARY TO OBTAIN COUNTY PERMITS AND PERMITS FROM OTHER REGULATORY AGENCIES.

_________________________  __________________________
TRPA Executive Director/Designee       Date

PERMITTEE’S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents’ and employees’ compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Permittee Signatures: ___________________________  __________________________
John Kearns       Date  ________________
Mike Kearns       Date  ________________
Rhonda Gramanz   Date  ________________

/LB

PERMIT CONTINUED ON NEXT PAGE
Hooke's Landing, Outdoor Recreation Concession, Tahoe City

APNS 94-510-01 & 95-500-22
FILE NO. 990436

Air Quality Mitigation Fee: N/A (Temporary Use)
Water Quality Mitigation Fee: N/A
Excess Coverage Mitigation Fee: N/A

Security: Amount: $3,500\(^{(1)}\) Submitted __________ Receipt No. __________ Type __________

Security Administration Fee\(^{(2)}\): Amount __________ Submitted __________ Receipt No. __________

Notes:
(1) Acceptable forms of security are described in Attachment "J."
(2) $130 if cash security is posted, or $65 if non-cash security is posted.

Required plans determined to be in conformance with approval: Date: _________________

TRPA ACKNOWLEDGEMENT: The permittee(s) have complied with all conditions of approval as of this date and may commence the approved uses if all other regulatory permits are obtained.

TRPA Executive Director/Designee

Date

SPECIAL CONDITIONS

1. This permit authorizes temporary outdoor recreation concessions in Lake Tahoe at Hook's Landing Pier, and on a portion of APN 94-500-22, in Tahoe City, as described in the project application to TRPA. The approved concession includes, and is limited to the following:

- 6 personal watercraft
- 1 parasailing boat
- 8 single kayaks
- 4 pedal boats
- 3 rental power boats
- 1 fishing charter
- 8 double kayaks
- 3 canoes

All motorized watercraft shall be operated from the pier and non-motorized watercraft shall be operated on-shore from the "kayak rental area" described in the application to TRPA. The operation of carbureted two-stroke engines and other engines prohibited in the TRPA Code is not permitted by this temporary permit.

The approved hours of operation are from 8:00 AM to sunset during the operation period described in Special Condition 3, below. As an exception, the fishing charter may commence daily operations at 6:00 AM. The operation of watercraft and other business
activities associated with the approved use shall cease after sunset. The time of sunset shall be as published in a Lake Tahoe newspaper with general circulation to the public and shall be specific to the date of operation.

No signs are authorized by this permit. All signs shall be reviewed by Placer County pursuant to the "Memorandum of Understanding Between Tahoe Regional Planning Agency and the County of Placer, April 1997." No new buoys or other shore zone structures are authorized by this permit. This permit does not verify or bank any buoys or other shore zone structures or uses.

2. The permittee shall comply with the Standard Conditions of Approval listed in Attachment "S", where applicable.

3. This temporary permit is authorized pursuant to Chapter 7 of the TRPA Code of Ordinances. The period of operation shall not exceed six months and shall commence in 2001. Unless modified in writing by the TRPA Executive Director, the period of operation shall be from April 15 to October 15, 2001. The Executive Director may approve one six-month extension to this permit effective during the 2002 boating season. A written request for an extension shall be submitted to the Executive Director no later than March 15, 2002. This permit does not represent a conceptual approval of any permit extension or other permit approvals.

4. By acceptance of this permit the permittee agrees to maintain the pier in a safe and acceptable condition as determined by Placer County or other regulatory agency having jurisdiction over this matter. TRPA accepts no liability for public safety or the general condition of the pier. Repairs and other modifications to the pier and/or other structures associated with the approved activities may require TRPA review and approval in accordance with the TRPA Code of Ordinances depending on the nature and scale of the repairs or modifications.

5. Prior to permit acknowledgement and prior to commencement of the approved activities, the following special conditions of approval shall be satisfied:

A. The permittee shall remove all fuel lines, pumps and dispensers from the pier.

B. The permittee shall submit a $3,500 performance security. Please see Attachment "J", Security Procedures for acceptable forms of security.

C. The permittee shall agree in writing to paint the shed on the pier a dark earth-tone color acceptable to TRPA prior to July 1, 2000. Please submit a color sample to TRPA for review and approval.

D. The permittee shall agree in writing to implement the traffic and parking mitigation measures described in the traffic analysis dated July 7, 2000, prepared by LSC Transportation Consultants.

E. The permittee shall submit to TRPA a final fueling plan for motorized watercraft. This plan shall include provisions for emergency containment and clean-up of any fuel spills, and shall include procedures for contacting appropriate agencies in the event of a fuel spill. All fueling containers shall be approved by TRPA and shall meet U.S. Coast Guard or other applicable safety design specifications. All
Boats shall be fueled at a marina fueling facility acceptable to TRPA. Personnel watercraft may be fueled at the pier provided the permittee first receives TRPA approval for a stable floating watercraft fueling platform or other structure. The fueling plan shall contain safe fueling training for all employees. Only trained employees shall be allowed to fuel personal watercraft.

F. The permittee shall submit final a trash removal plan to TRPA for review and approval. An appropriately sized trash receptacle with a lid or other appropriate cover shall be placed on the pier near to the food sales area and near the kayak rental area. Trash shall be emptied into the TCPUD dumpster at the end of each business day as approved by TCPUD. If the TCPUD dumpster becomes unavailable to the permittee, the permittee shall cease operations until an alternative trash removal plan is approved by TRPA.

G. The permittee shall submit a final monitoring plan to TRPA for review and approval for the ten parking spaces on Lot 51. This plan shall ensure that parking is available for members of the public who desire to access the pier. The permittee shall not restrict or discourage parking for pier users who do not desire to patronize the approved temporary concessions.

H. The permittee shall submit sample direction hand-outs for business customers indicating the location of approved rest room facilities at the Tahoe City Commons Beach. These hand-outs shall be given to each business customer.

6. By acceptance of this permit the permittee agrees to comply with Chapter 81, and other applicable provisions of the TRPA Code, which prohibits the discharge of hazardous or toxic fuel waste into Lake Tahoe. TRPA prohibits the discharge of unburned fuel and oil from the operation of watercraft propelled by carbureted two-stroke engines. Operation of two-stroke watercraft engines in Lake Tahoe is prohibited by TRPA.

7. By acceptance of this permit the permittee agrees to comply with, and enforce for their operation, the wake and speed controls of Subsections 54.16.A and 54.16.B of the TRPA Code. Wakes or speeds in excess of 5 MPH are prohibited by watercraft within 600 feet of the waterline at the shore of Lake Tahoe. The operation of motorized watercraft is prohibited on any tributary of Lake Tahoe.

8. No commercial fuel sales are permitted under this permit.

9. Litigation over any easement will not trigger Article VI(p) of the TRPA Compact and will not extend this temporary watercraft concession beyond the limitations of this permit.
TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD STAFF SUMMARY

Project Name: Sprock/Parker New Multiple-Use Pier

Application Type: Shorezone/Recognition of Multiple-use Facility/Pier Extension

Applicant: Peter Sprock/ Rick Parker

Applicant's Representative: Gary Midkiff, Midkiff and Associates

Agency Planner: Elizabeth Harrison, Associate Planner, Project Review Division

Location: 1006/1008 Skyland Drive, Skyland Subdivision, Douglas County

Assessor's Parcel Number/Project Number: 05-051-17 & -16/ 200034

Staff Recommendation: Staff recommends approval of the subject project. The required actions and recommended conditions are outlined in Section F of this staff summary.

Project Description: The applicant proposes to expand an existing concrete pier. The proposed pier will be designed to be an open, single-pile, floating pier. The existing pier extends across both subject properties, is approximately 15 feet long and 8 feet wide, and does not have any catwalks or boatlifts. The pier extension will be approximately 97 feet in length, and 8 feet wide for a total pier length of 112 feet. This project will also include the addition of two low level boatlifts. In conjunction with the proposed development, the applicant is requesting the Governing Board recognize the pier as a multiple-use facility.

Site Description: The project area contains two residential parcels. The Sprock Parcel (APN 05-051-17) is currently developed and has a recent approval for a single family dwelling rebuild. The Sprock parcel has shorezone development that includes a boat hoist, a portion of a wood dock on the south end of the property, and a portion of the concrete pier on the north end of the property. The Parker parcel (05-051-16) is currently developed with a residence, a marine railway system with a boat house, and a portion of the concrete pier on the south end of the property. An existing rock breakwater extends in front of four residences to enclose a small bay, two of which are the Sprock and Parker parcels. The project site is in an area mapped and verified as Prime Fish Habitat (Feed and Escape/Cover). Adjacent land uses include residential development.

Background: The subject properties are within a breakwater structure. The breakwater structure extends in front of four residences, two of which are the subject parcels. One residence exists to the north of the subject parcels and another residence exists to the south of the subject parcels. Both property owners object to the expansion of this pier in the breakwater. Both parties have written letters to staff in regards to this project. These letters are included at the end of this staff summary.
Previously, a single-use pier was proposed on APN 05-051-17 by Ponce Nicasio Broadcasting, (a.k.a. John Briggs, a former owner) represented by Gary Midkiff of Midkiff & Associates. The proposed pier was of a fixed and floating design, extended 135 feet from highwater elevation (6229.1 Lake Tahoe Datum) and included one low-level boatlift. This proposal received Governing Board approval on April 4, 1998. Projects brought to a public hearing are required by the TRPA Rules of Procedure to be noticed to all property owners within three hundred (300) feet of the project area. The property to the south of the subject property, APN 05-051-18, owned by the MacSween Family Trust, did not receive a notice regarding the Governing Board Hearing on April 4, 1998 to approve the single use pier on APN 05-051-17. The applicant of the single-use pier neglected to submit an addressed envelope to TRPA for mailing to this neighbor. It was in the opinion of Susan Scholley, previous legal counsel for TRPA, that the single-use application must be brought before the Governing Board a second time as the adjacent property owners were not properly noticed for TRPA to issue a permit. Mr. Sprock has since purchased APN 05-051-17 and has retained Midkiff & Associates, Gary Midkiff, as his consultant. Peter Sprock and Rick Parker (owner of APN 05-051-16) together have submitted an application for a multiple-use pier.

The current project as proposed is reduced in size and disturbance area in comparison with the single-use pier approved by the Governing Board. The current proposal extends approximately 112 feet from highwater elevation (6229.1 Lake Tahoe Datum), which is 45 feet and 60 feet from two sections of the rock breakwater and is 23 feet less than the previous single-use pier approved. The current proposal provides a greater area for navigation within the breakwater than the single-use pier approved with a distance of 36 feet 6 inches and 43 feet 4 inches from two sections of the rock breakwater structure. The proposed pier is entirely a floating design in comparison to the fixed and floating design approved for the single use pier. The current proposal includes two low-level boatlifts in comparison to the one low-level boatlift approved for the single-use pier, however, the current proposal is designed to be a multiple use pier to serve two property owners. The applicant have proposed additional scenic mitigation measures to offset impacts associated with a second boatlift.

**Issues:** This project involves the expansion of an existing nonconforming structure and recognition of the pier as a multi-use facility. Therefore, the project requires Governing Board review in accordance with Chapter 4, Appendix A, of the TRPA Code of Ordinances. The primary issues associated with this project are:

1. **Recognition of the Pier as a Multiple-Use Facility** Subsection 54.8.A of the TRPA Code of Ordinances describes the situations in which single-use and multiple-use facilities qualify. One qualification stated in this subsection is whether the proposed development will be utilized by more than one person or family. The applicants are proposing to expand an existing pier that will be shared by both subject parcels. Given that two parcels will be served by the pier, staff has determined the pier can qualify as a multiple-use facility.

Typically, applicants request the TRPA Governing Board recognize a facility as multiple use so the applicant can propose a project that deviates from certain shorezone development standards. The TRPA Code allows deviations from certain location and design standards if the pier is recognized as multiple-use pursuant to Subsection 54.8.D. of the Code. Subsection 54.8.D. states,
“Recognition of Facilities As Multiple-Use: Facilities recognized by TRPA as multiple-use are subject to the following provisions:

(1) Deviation From Standards: Deviation from those standards identified in Subsections 54.8.B. and 54.8.C. as guidelines for multiple-use facilities, shall be allowed only if TRPA recognizes such facilities as multiple-use. The extent of deviation from standards shall be approved by TRPA and shall be dependent on:

(a) The reduction in development potential of shorezone facilities associated with the application such that the facility will be shared by other littoral property owners; and

(b) The number of people utilizing the facility or the extent to which the facility is available for general public use.

(2) Reductions in Development Potential: Reductions in development potential shall be established through the recordation by the owner of permanent deed restrictions or other covenants running with the land, reflecting use agreements and development limitations approved by TRPA on the affected properties."

The applicants are proposing a pier that complies with all TRPA development standards except for locating the pier in Prime Fish Habitat and locating the pier outside of established setback lines.

2. Deviation from Development Standards: The applicants have requested deviations from the following development standards.

A. Subsection 54.4.A(3), TRPA Code of Ordinances: The placement of piers shall be prohibited in areas identified as “Feeding And/Or Escape Cover Habitat,” “Spawning Habitat” or “Areas Targeted for Habitat Restoration” on TRPA’s Prime Fish Habitat map, adopted on April 26, 1984.

Response: The pier extension will be located in Prime Fish Habitat (Feed And/Or Escape Cover). Recognition of a structure as a multiple-use facility does not permit deviation from the prohibition of new piers in Prime Fish Habitat. This pier will be incorporated into the new pier which was verified as legally existing. TRPA has generally allowed expansions of piers in Prime Fish Habitat provided it would not have a significant adverse unmitigated impact on the fish habitat.

B. Subsection 54.4.A(5), TRPA Code of Ordinances: The setback for existing piers shall be five feet and for new piers it shall be 20 feet. Piers shall be places within the setback lines established by TRPA. TRPA shall establish the setback lines by measuring the applicable distance inward from each property line along the high water line. From this point, a
setback line shall be projected lakeward and perpendicular to the tangent of the shoreline. TRPA may adjust angle of projection to compensate for unique circumstances such as a small cove.

Response: The applicants are proposing to place the pier on the property line dividing the two subject parcels. Subsections 54.4.A(6) and 54.8.B of the TRPA Code of Ordinances, allow deviations from the setback standard if the facility is recognized as multiple-use pursuant to Subsection 54.8D. The provision states that the extent of deviation from the standards is dependent on the reduction of development potential and the number of people using the facility.

TRPA staff recommends the setback standard be waived for this project. Staff recognizes that the pier will be shared by the two parcels and also that the existing pier will be utilized in the expansion of this pier. Therefore, no new disturbance in the backshore will result from the construction of this pier. The owners of both parcels will record a TRPA “approved-as-to-form” deed restriction limiting potential shorezone development. Under the current ordinances, new structures are prohibited in areas designated a Prime Fish Habitat. Therefore, a deed restriction would not immediately result in a reduction of development potential; it would only ensure a reduction in potential development if the current ordinances are changed. However, the boat hoist existing on the Sprock’s parcel will be removed as a condition of this permit reducing the shoreline development on these two parcels.

3. Scenic Quality: The proposed project is visible from Scenic Shoreline Unit Number 27. This scenic shoreline unit has a score of 7, which is not in attainment with TRPA scenic thresholds. The applicants have proposed a pier that is eight (8) feet in width with single piles. In addition, the pier is proposed to be a floating design, therefore, the pier will not project above the water during low water years. The two boat lifts proposed are to be constructed on separate pilings and may be adjusted according to the pier height. The applicants have proposed scenic mitigation measures to offset scenic impacts associated with the construction of the new pier and two boat lifts.

The proposed scenic mitigation measures include:

(1) the removal of the boathoist located on APN 05-051-17,
(2) painting of the fascia features of the boathoist and canopy located on APN 05-051-18,
(3) painting of the roof overhang, the visible siding, and window trim on APN 05-051-16, and
(4) the addition of 3-4 foot landscaping on the patio deck of the boat house and on the upper terrace of retaining walls in front of the windows on APN 05-051-16.
4. **Fisheries:** This project is located in an area mapped and verified as Prime Fish Habitat (Feed and/or Escape Cover). Large rocks and cobbles are typical of an area designated as feed and/or escape habitat. Around the 1960's, most of the rocks and cobbles in this area were removed apparently to construct the rock breakwater. No rocks or cobbles will be removed or disturbed for the construction of the pier. Therefore, TRPA staff has determined that the proposed project will not adversely impact fisheries. During pier construction, the applicant will be required to implement Best Management Practices at the discretion of the TRPA Environmental Compliance Officer pregrade inspection.

**Staff Analysis:**

A. **Environmental Documentation:** The applicant has completed an Initial Environmental Checklist (IEC) and staff has completed a fish habitat impact determination in order to assess the potential impacts of the project. No significant environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed IEC and the fish habitat impact determination will be made available at the Governing Board hearing and at TRPA.

B. **Plan Area Statement:** The project is located within Plan Area Statement 065, Skyland. The Land Use Classification is Residential and the Management Strategy is Mitigation. The proposed structure (pier) is an allowable structure in the plan area and single family dwellings are an allowed use. Agency staff has reviewed the subject plan area statement and has determined that the project is consistent with the applicable planning statement, planning considerations, and special policies.

C. **Land Coverage:**

**Sprock Parcel (APN 05-051-17)**

1. **Land Capability Districts:** The verified land capability districts for the project area are Class 4, Class 1a, and Class 1b (backshore). The project area is 10,762 square feet in size.

2. **Total Existing Land Coverage:** 5,276 square feet

3. **Total Allowable Land Coverage:** 1,761 square feet

4. **Total Proposed Land Coverage:** 5,276 square feet

5. **Excess Land Coverage:** 3,515 square feet

6. **Land Coverage Mitigation:** As a condition of project approval, the applicant will be required to mitigate the excess land coverage based upon the difference between the existing land coverage and the allowable land coverage in the project area. The applicant has mitigated 554 square feet in conjunction with the previous project, therefore, 2,961 square feet of excess coverage remains to be mitigated.

/EH
10/25/2000

AGENDA ITEM NO.IX.C

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Parker Parcel (APN 05-051-16)

1. **Land Capability Districts:** The verified land capability district for the project area are Class 4, Class 1a, and Class 1b (backshore). The project area is 14,772 square feet in size.

2. **Total Existing Land Coverage:** 8,517 square feet

3. **Total Allowable Land Coverage:** 2,077 square feet

4. **Total Proposed Land Coverage:** 8,517 square feet

5. **Excess Land Coverage:** 6,440 square feet

6. **Land Coverage Mitigation:** As a condition of project approval, the applicant will be required to mitigate the excess land coverage based upon the difference between the existing land coverage and the allowable land coverage in the project area.

D. **Shorezone Tolerance District:** The subject parcels are located within Shorezone Tolerance District 8. Projects within Shorezone Tolerance District 8 must ensure stabilization and the least environmental impact to the backshore. Vehicle access to the shoreline is not permitted and pedestrian access to the shoreline is limited to stabilized access ways. The project, as conditioned, complies with the shorezone tolerance district standards.

E. **Required Findings:** The following is a list of the required findings as set forth in Chapters 6, 50 and 52 of the TRPA Code of Ordinances. Following each finding, Agency staff has indicated if there is sufficient evidence contained in the record to make the applicable findings or has briefly summarized the evidence on which the finding can be made.

1. **Chapter 6-Required Findings:**

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

   (i) **Land Use:** The single family dwellings that exist on the subject parcels are an allowed use within the applicable plan area statement. The project proposes an expansion to an existing pier which is an allowable accessory structure. Surrounding land uses are residential.

   (ii) **Transportation:** The proposed pier is accessory to the existing residences and, as such, will not result in an increase in daily vehicle trip ends (dvte) to the project area.

/\EH 10/25/2000

AGENDA ITEM NO.IX.C

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(iii) **Conservation:** The project, as proposed, is consistent with the fisheries, shorezone, and scenic subelements of the Conservation Element of the Regional Plan. The proposed colors and design are consistent with the TRPA Design Review Guidelines. This project will not result in the obstruction or degradation of any scenic vista or view open to the public provided the proposed mitigation measures are implemented. The subject parcels have installed or are in the process of installing all required water quality improvements in accordance with Chapter 25 of the TRPA Code. There are no known special interest animal species or cultural resources within the project area. Tahoe Yellow Cress (*Rorippa Subumbellata*) has not been recorded on site, however, this area contains a sandy beach which is suitable habitat for Tahoe Yellow Cress.

(iv) **Recreation:** This project does not involve any public recreation facilities or uses. The proposed project will not extend beyond the pierhead line and is entirely within the existing breakwater. By remaining within the pierhead line and being located within the breakwater structure, the proposed pier should not adversely affect public recreational boating or top-line angling.

(v) **Public Service and Facilities:** This project does not require any additions to public services or facilities.

(vi) **Implementation:** This project does not require any allocation of development.

(b) **The project will not cause the environmental threshold carrying capacities to be exceeded.**

The basis for this finding is provided on the checklist entitled “Project Review Conformance Checklist and Article V(g) Findings” in accordance with Chapter 6, Subsection 6.3.B. of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. A copy of the completed checklist will be made available at the Governing Board hearing and at TRPA.

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

(Refer to paragraph (b), above)
Chapter 50-Required Findings for shorezone projects

(a) The proposed project will not adversely impact: (1) littoral processes; (2) fish spawning; (3) backshore stability; and (4) on-shore wildlife habitat, including wildfowl nesting areas.

The proposed project will not have an impact on littoral processes because the proposed pier is built using a single, open pile construction. In addition, the pier is being built within an existing breakwater structure. No additional impacts associated with the littoral processes should be affected due to the expansion of the pier. The lake bottom has not been identified as spawning habitat and the project as proposed will not disturb or remove any existing rocks or cobbles in the area of the pier. The project should not impact backshore stability as a rock wall exists along both of the subject property upland of the highwater line (6229.1 Lake Tahoe Datum) that acts as a retaining wall. In addition, high wave action is generally suppressed by the existence of the breakwater structure. The proposed project is not located within an area that is mapped as onshore wildlife habitat nor has the site been shown to be a waterfowl nesting area.

(b) There are sufficient accessory facilities to accommodate the project.

This project involves the expansion of an existing pier for two single family residences. Each residence has at least two on-site parking spaces available and access to shorezone currently exists to accommodate this project.

(c) The project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modifications of such existing uses or structures will be undertaken to assure compatibility.

The project, as conditioned, is compatible with existing lake and shorezone uses and structures in the vicinity. The surrounding uses consist of piers, buoys, and other beach recreation facilities and will not be adversely affected by this pier.

(d) The use proposed in the foreshore or nearshore is water dependent.

The pier is located in the foreshore and nearshore of Lake Tahoe and is water dependent.
(e) **Measures will be taken to prevent spill or discharges of hazardous materials.**

This approval prohibits the spray painting and the use of tributyltin (TBT). Also, conditions of approval prohibit the discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface water of the Lake Tahoe Basin. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal. No containers of fuel, paint, or other hazardous materials may be stored on the pier.

(f) **Construction and access techniques will be used to minimize disturbance to the ground and vegetation.**

The storage of construction materials on the beach is prohibited. Primary construction access to the shorezone structures shall be from a barge.

(g) **The project will not adversely impact navigation or create a threat to public safety as determined by those agencies with jurisdiction over a lake's navigable waters.**

The U.S. Army Corps of Engineers have completed a preliminary review of the project and commented that no safety or navigation impacts have been identified.

(h) **TRPA has solicited comments from those public agencies having jurisdiction over the nearshore and foreshore and all such comments received were considered by TRPA prior to action being taken on the project.**

This project must receive approval from the Nevada Division of State Lands and the U.S. Army Corps of Engineers. Comments from those agencies, as well as the Nevada Department of Wildlife, were solicited as part of the review of this project. This project was discussed at the Shorezone Review Committee meeting held September 21, 2000. Rich Ellington of the Nevada Department of Wildlife expressed concerns regarding navigation safety of boats around the proposed pier. The current proposal is 23 feet shorter than the previous single-use pier approved by the Army Corps of Engineers therefore the area of navigation between the rock breakwater and the current pier proposal has increased.
3. Chapter 52—Repairs/Modifications to Existing Structures

(a) The structure is not an obstacle to navigation, is not causing significant shoreline erosion or interference with sediment transport, and is not contributing to noncompliance with a scenic threshold.

The proposed project did not receive any adverse comments from the Army Corps of Engineers and the proposed pier length is within the TRPA pierhead line. The project is proposed utilizing a single, open-piling design. It has been found that open pilings generally do not interfere with sediment transport or contribute to significant shoreline erosion. This project is a shoreline travel route that is not in attainment with TRPA scenic thresholds. Reducing existing shorezone bulk and reducing scenic impacts from upland structures to offset scenic impacts associated with this project shall be implemented as scenic mitigation measures. In addition the pier is a floating design therefore during low water years, the pier will not project above the water and the proposed boatlifts will be adjusted according to the height of the pier.

(b) The structure has not been unserviceable for more than three years.

The existing structure projects beyond the high-water elevation (6229.1 Lake Tahoe Datum) and has not been unserviceable for more than three years.

(c) The expansion decreases the extent to which the structure does not comply with the development standards and/or improves the ability to attain or maintain the environmental thresholds.

Provided the pier is recognized as a multiple-use facility pursuant to Subsection 54.8.D of the TRPA Code of Ordinances, the proposed project would comply with all development standards except for its location in Prime Fish Habitat. The project, as conditioned, will not create a degradation of any of the environmental thresholds. The proposed project is visible from Scenic Shoreline Unit #27 (Lincoln Park) which has a score of 7. This unit is not in attainment with TRPA scenic thresholds, however, staff has worked with the applicant and is recommending conditions of approval that are expected to offset scenic impacts associated with this project. The project is located in any area mapped and verified as Feed and/or Escape Habitat which is deemed Prime Fish Habitat. Cobbles and rocks that are typical of an area mapped as feed and/or escape cover habitat have been cleared through construction of the breakwater structure built.

/ EH
10/25/2000

AGENDA ITEM NO.IX.C
around the 1960's. TRPA has field inspected the subject properties and has determined that the proposed project will not adversely impact fish habitat.

(d) The project complies with the requirements to install Best Management Practices (BMPs) as set forth in Chapter 25.

All required permanent BMPs have been installed or are in the process of being installed on the subject properties. Temporary BMPs such as caissons or a turbidity curtain may be required through the discretion of the TRPA Environmental Compliance during the pregrade inspections to reduce the amount of resuspended sediment during pier construction.

(e) The project complies with the design standards in Section 53.10.

The proposed project complies with all design and color standards identified in 53.10 of the TRPA Code of Ordinances.

F. Required Actions: Agency staff recommends that the Governing Board approve the project by making the following motions and findings based on this staff summary and the evidence contained in the record:

I. A motion based on this staff summary, for the findings contained in this staff summary, and a finding of no significant environmental effect.

II. A motion to approve the project, based on the staff summary, subject to the conditions contained in the attached Draft TRPA Permit:
Sprock/Parker Multiple-Use Pier
Page 12

- D-R-A-F-T-

PERMIT

PROJECT DESCRIPTION: Multiple-Pier Expansion
APN: 05-051-16, 17

PERMITTEE(S): Peter Sprock/Rick Parker
FILE #200034

COUNTY/LOCATION: Douglas County/1006, 1008 Skyland Drive

Having made the findings required by Agency ordinances and rules, the TRPA Governing Board approved the project on October 25, 2000 subject to the standard conditions of approval attached hereto (Attachment S) and the special conditions found in this permit.

This permit shall expire on October 25, 2003 without further. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

NO CONSTRUCTION SHALL COMMENCE UNTIL ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT. IN ADDITION, NO CONSTRUCTION SHALL COMMENCE UNTIL TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE(S) HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT AND A TRPA PRE-CONSTRUCTION INSPECTION HAS BEEN CONDUCTED. TRPA'S ACKNOWLEDGEMENT IS NECESSARY TO OBTAIN A COUNTY BUILDING PERMIT.

______________________________________________________
TRPA Executive Director/Designee

______________________________________________________
Date

PERMITTEE'S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee(s) _______________________________ Date __________________
Rick Parker
Date __________________

Peter Sprock

______________________________________________________
PERMIT CONTINUED ON NEXT PAGE
Sprock/Parker Multiple-Use Pier
Page 13

Excess Coverage Mitigation Fee: Amount $_______ Paid _________ Receipt No. ________
APN 05-051-16

Excess Coverage Mitigation Fee: Amount $_______ Paid _________ Receipt No. ________
APN 05-051-17

Shorezone Mitigation Fee: Amount $3,910 Paid_________ Receipt No.________

Security Posted: Amount $3,000 Posted _________ Receipt No. _______ Type________

Security Administrative Fee: Amount $__________ Paid _________ Receipt No. _______

* to be determined.
** $130 if cash security posted.
    $65 if non-cash security posted, see Attachment J.

Required plans determined to be in conformance with approval: Date:________

TRPA ACKNOWLEDGEMENT: The permittee has complied with all pre-construction conditions of approval as of this date:

_________________________________________  _______________________
TRPA Executive Director/Designee                  Date

SPECIAL CONDITIONS

1. This permit authorizes the construction of a multiple-use pier that will be located on the property line between APNs 05-051-16, and 17. The pier shall not exceed 112 feet in length, as measured from the highwater line, and 8 feet in width. This pier is designed to be floating and to be open with single piles. This permit also authorizes the addition of two low-level boatlifts, one on each side of the pier. This permit does not authorize the removal or relocation of any boulders including those that have fallen from the existing breakwater structure. This permit does not include any repair to the breakwater structure.

2. Prior to permit acknowledgment, the following conditions of approval must be satisfied.

A. The site plan shall be revised to include:

   (1) The following revised land coverage calculations for APN 05-051-16:

/EH
10/25/2000

AGENDA ITEM NO.IX.C

133
Sprock/Parker Multiple-Use Pier

Existing Land Coverage
Class 1b 423 square feet
Class 1a 634 square feet
Class 4 (backshore) 877 square feet
Class 4 6,583 square feet
Total 8,517 square feet

Allowable Land Coverage
Class 1b 14 square feet
Class 1a 15 square feet
Class 4 (backshore) 10 square feet
Class 4 2038 square feet
Total 2077 square feet

B. Pursuant to Subsection 54.8.D(2) of the TRPA Code, the applicant shall record a TRPA "approved-as-to-form" deed restriction reflecting pier use agreements and shorezone development limitations on the affected properties. Evidence of document recording is required prior to final permit acknowledgement.

C. The permittee shall provide a landscape plan on the Parker parcel (APN 05-051-16). The plan shall include the planting of 3 to 4 foot inch shrubs consistent with Chapter 30 of the TRPA Code of Ordinances. Fertilizer use in the backshore is prohibited.

D. The permittee shall submit three (3) sets of final construction drawings and site plans to TRPA.

E. The permittee (APN 05-051-16) shall mitigate 6,440 square feet of excess land coverage on this property by submitting an excess coverage mitigation fee, or by removing coverage within Hydrologic Transfer Area Number 3.

The excess coverage mitigation fee shall be calculated as follows:

(1) Estimated Project Construction Cost x 0.0200.

Please provide a construction cost estimate by your contractor, architect or engineer. In no case shall the mitigation fee be less than $100.00.

Excess land coverage may be removed in lieu of an excess coverage mitigation fee. To calculate the amount of excess coverage to be removed use the following formula:

(2) Excess coverage mitigation fee (per formula (1), above) divided by $5.00 per square foot. If you choose this option, please revise your final site plan and land coverage calculations to account for the coverage removal.
F. The permittee (APN 05-051-17) shall mitigate 2,961 square feet of excess land coverage on this property by submitting an excess coverage mitigation fee, or by removing coverage within Hydrologic Transfer Area Number 3.

The excess coverage mitigation fee shall be calculated as follows:

1. Estimated Project Construction Cost x 0.0125.

Please provide a construction cost estimate by your contractor, architect or engineer. **In no case shall the mitigation fee be less than $100.00.**

Excess land coverage may be removed in lieu of an excess coverage mitigation fee. To calculate the amount of excess coverage to be removed use the following formula:

2. Excess coverage mitigation fee (per formula 1, above) divided by $5.00 per square foot. If you choose this option, please revise your final site plan and land coverage calculations to account for the coverage removal.

G. The permittees shall submit a shorezone mitigation fee of $3,910 for the construction of 97 feet of new pier (assessed at 30/foot) and two low-level boatlifts (assessed at $500/application). This mitigation fee may be adjusted dependent on the final project approved by the Governing Board.

H. The security required under Standard Condition A.3 of Attachment s shall be $3,000. Please see Attachment J, Security Procedures.

3. Scenic mitigation for the construction of the multiple-use pier and the addition of two boatlifts includes, (1) the removal of the boathoist located on APN 05-051-17, (2) painting of the ancillary features of the boathoist located on APN 05-051-18, (3) painting of the roof overhang, the visible siding, and window trim on APN 05-051-16, and (4) the addition of 3-4 foot landscaping on the patio deck of the boat house and on the upper terrace of retaining walls in front of the windows on APN 05-051-16.

4. The shorezone of the subject properties contains a sandy beach which has been identified as habitat suitable for Tahoe Yellow Cress (*Rorippa subumbellata*), a TRPA-designated sensitive plant species. Therefore, storage of construction material and equipment or beach recreation equipment is prohibited in the shorezone. Beach raking and other forms of beach grooming is strictly prohibited.

5. Construction materials and equipment shall not be stored on the beach.
6. The use of wood preservatives on wood in contact with the water is prohibited and extreme care shall be taken to insure that wood preservatives are not introduced into Lake Tahoe. Spray painting and the use of tributyltin is prohibited.

7. Disturbance of the lake bed materials shall be kept to the minimum necessary for project construction.

8. A turbidity curtain and/or caissons may be required to be installed at the discretion of the TRPA Environmental Compliance Officer at the time of the pregrade inspection.

9. The use of wood preservatives on wood in contact with the water is prohibited and extreme care shall be taken to insure that wood preservatives are not introduced into Lake Tahoe. Spray painting and the use of tributyltin is prohibited.

10. Primary construction access to the shorezone structures shall be from a barge. Disturbance of the lake bed materials shall be kept to the minimum necessary for project construction.

11. The discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin is prohibited. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal.

12. No containers of fuel, paint, or other hazardous materials may be stored on the pier.

13. Gravel, cobble, or small boulders shall not be disturbed or removed to leave exposed sandy areas, before, during, or after construction.

14. Boat cleaning operations should be performed on land wherever feasible to avoid the release of harmful cleaners and solvents into surface water. Detergents containing phosphorus, ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, and cleaning compounds are discouraged. Detergents shall not contact surface waters.

15. Boat repair including hull scraping or any process that occurs underwater to remove paint from the boat hull shall not be conducted on the water and should be conducted at a marina that provides repair service. All wastes associated with hull maintenance and cleaning (paint chips, sandings, debris etc.) should be collected and disposed of properly. Vacuuming is the preferred method of collecting these wastes.

16. Waste disposal including disposal of waste oil, waste gasoline, used antifreeze, and waste diesel shall only be to appropriate receptacles.

10/25/2000
17. Vessel fueling shall only be conducted if the project proponent can implement BMPs to prevent petroleum hydrocarbons from entering surface waters. If the project proponent uses a portable 5-gallon tank to fuel a boat, spills shall be minimized by wrapping the nozzle with fuel absorbent pads.
May 4, 2000

Kim Neuerberg
State of Nevada
Department of Conservation
and Natural Resources
Division of State Lands
333 W. Nye Lane, Room 118
Carson City, Nevada 89706-0857

Re: Application at Lake Tahoe APN 005-051-16&17
Our File No. 2226.002

Dear Mr. or Ms. Neuerberg:

We represent Olson Enterprises in connection with the above-referenced Application.
Olson Enterprises is Mr. Alan F. Olson and his wife Virginia Olson. The Olsons own the
property adjacent to the property where the proposed pier is intended to be constructed. The
Olsons have owned their property since 1959.

Olson Enterprises is opposed to the pier construction described in the Application for
the reasons outlined below. Olson Enterprises is not opposed to the repairs to the existing
breakwater.

The Application incorrectly speaks in terms of an extension to an existing pier but the
existing "pier" is little more than a concrete platform which, to the Olsons knowledge, has
never extended into Lake Tahoe. This structure has never been used for boating purposes of
any sort. The proposed pier would be 117 feet long and accommodate two boat hoists. While
the Application submitted by Midkiff & Associates speaks in terms of an existing pier, the
attached "Multiple Use Pier Agreement," entered into by the respective property owners is
clear that this is not an extension but, rather, the construction of a new pier. Multiple Use Pier
Agreement, ¶ 1.2. Midkiff's recharacterization of what is proposed - "extension of an existing
pier" - should be replaced by the actual applicant's, i.e. construction of a new pier. We trust
you will evaluate this project as a new pier and not as an extension of an existing pier.

The new pier would be inconsistent with the existing shorezone uses on and in the
immediate vicinity of the littoral parcel. Currently four parcels enjoy unlimited access to
17. Vessel fueling shall only be conducted if the project proponent can implement BMPs to prevent petroleum hydrocarbons from entering surface waters. If the project proponent uses a portable 5-gallon tank to fuel a boat, spills shall be minimized by wrapping the nozzle with fuel absorbent pads.
May 4, 2000

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State of Nevada
Department of Conservation
and Natural Resources
Division of State Lands
333 W. Nye Lane, Room 118
Carson City, Nevada 89706-0857

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Our File No. 2226.002

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The Application incorrectly speaks in terms of an extension to an existing pier but the existing "pier" is little more than a concrete platform which, to the Olsons knowledge, has never extended into Lake Tahoe. This structure has never been used for boating purposes of any sort. The proposed pier would be 117 feet long and accommodate two boat hoists. While the Application submitted by Midkiff & Associates speaks in terms of an existing pier, the attached "Multiple Use Pier Agreement," entered into by the respective property owners is clear that this is not an extension but, rather, the construction of a new pier. Multiple Use Pier Agreement, ¶¶ 1, 2. Midkiff's recharacterization of what is proposed – "extension of an existing pier" – should be replaced by the actual applicant's, i.e. construction of a new pier. We trust you will evaluate this project as a new pier and not as an extension of an existing pier.

The new pier would be inconsistent with the existing shorezone uses on and in the immediate vicinity of the littoral parcel. Currently four parcels enjoy unlimited access to
nearly all of the inlet formed by the breakwater. Any boats in the inlet tie up to buoys over 100 feet distant from the shoreline. The bulk of the sandy beach area between the arms of the breakwater is unobstructed by any structures that would hinder recreational use such as children swimming and fishing. The new pier would essentially bisect the inlet, cutting recreational opportunities in half. In addition, there is no discussion in the Application to the impact of this new pier upon the existing fish population and its spawning area.

Olson Enterprises has several other objections to the construction of this pier, including but not limited to the Applicant’s characterization of the pier as a multiple use pier, the pier’s conformance with applicable standards and regulations of the Tahoe Regional Planning Agency.

Please keep me apprised as to your office’s disposition of this Application.

Very truly yours,

THE DIEPENBROCK LAW FIRM
A Professional Corporation

By
Michael V. Brady

cc: Alan F. Olson
May 3, 2000

Kim Neuerburg, Program Assistant III
Division of State Lands
333 W. Nye Lane, Room 118
Carson City, Nevada 89706-0857

RE: APPLICATION AT LAKE TAHOE APN 005-051-16 & 17

Dear Kim Neuerburg:

We are submitting comments in response to your letter of April 5, 2000. We have the property adjacent to the South of the applicant's property.

This is not open water. This pier is being proposed within a small lagoon. This lagoon was created when the owners of lots 34-35-36 and 37 agreed in 1960 to jointly clear the rocks and form a breakwater. In 1967, due to stagnation, open breakwater as per U.S. Corp. Engineers was completed. This was a non-navigable opening in the South portion of the breakwater.

The proposed pier should not be built as it will: 1. Block navigational access. 2. The water quality and algae and moss will be a stagnation problem as a result of restricted circulation of water. 3. The noise of a floating structure washing up and down with the waves would not be acceptable. 4. The debris from this float rubbing on the sand and rock bottom, will litter the beach. 5. Aesthetically a floating pier over 100 feet long and 8' wide with two boat holists each at least 8' by 24' creates a foot print in this small lagoon that is not reasonable (see pictures). 6. By prior verbal agreement, when the four property owners went together to build the breakwater they agreed that no one would build a pier encroaching on the navigable water within the break water.

We here by request that you deny this application.

Sincerely,

John J. MacSween
Trustee

cc: John Paul Harlies, Tahoe Regional Planning Agency
Max Hoseit
Al Olson
POOR QUALITY ORIGINAL (S) TO FOLLOW

HIGH DESERT MICROIMAGING, INC.
1225 FINANCIAL BLVD
RENO, NV 89502
(775) 359-6980
Yellow Caution tape and scaffold outline the proposed pier.

From NW corner of lot 37 (17-1)

From South section of Break Water (16-21)
From SW corner of Lot 34 (17-6)

From Public Beach (17-13)
9-17-67  AS BUILT-OPEN
BREAKWATER AS PER
U.S. CORP. ENGINEERS
650 CAPITAL MAUL SAC.

LOT 37  SKYLAND SUBDIVISION#1
LAKE TAHOE
DOUGLAS COUNTY, NEVADA.
September 27, 1960

Stockton Garden Homes Inc.
145 South San Joaquin Street
Stockton, California

Dear Sirs:

We wish to submit the attached plans for your approval to clear the rocks, and form a break water. Also placing rocks on the top of the natural reef.

Lots 34-35-36 and 37, Skyland Subdivision #1
Douglas county, Nevada.

Sincerely yours,

Florence M. Olson
John B. Nelson
Eugene M. Clark
E. M. Max Secure
October 16, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Appointment of California Lay Member to the Advisory Planning Commission (APC)

Background: The two-year term of California lay member Kevin Cole expires the end of October 2000. The original recommendation for Mr. Cole’s appointment came from the City of South Lake Tahoe representative on the TRPA Governing Board. Mr. Cole has expressed an interest in being reappointed for another term. Lay members may be reappointed.

Recommendation: The staff recommends that the Board take action on this appointment. Should Mr. Cole be reappointed, his term would run through October 2002.

For your information, following is the current status of lay member appointments on the APC:

- **California**
  - Alan Tolhurst
  - Leo Poppoff
  - Kevin Cole

- **Nevada**
  - Bob Jepsen
  - Paul Morgan
  - Randy Lane

- **Bistate**
  - Jay Kehne (NRCS)
  - TTD Chairman

Term Expires:
- September 2001
- February 2001
- October 2000
- June 2001
- November 2000
- August 2001
- March 2001
- July 2001

AGENDA ITEM X B
October 17, 2000

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution Exempting Hire of the Deputy Executive Director
From Policy No. 1.2 (Personnel Recruitment) of the Personnel Policy Manual

Background: This proposal would allow an exemption from the TRPA personnel recruitment procedures that initially limit the consideration of candidates for open staff positions to current employees. It is the desire of Executive Director Juan Palma to widen the pool of candidates for the vacant Deputy Executive Director position, so that internal as well as external candidates may be considered for the position at the same time and without preference. If approved, this exemption would operate for this particular hire at this time and would not exempt the position from subsequent application of Policy 1.2.

Recommendation: Staff will be making a presentation on this topic at the Rules Committee meeting scheduled for the noon hour on October 25. Staff recommends that a resolution be adopted by the full Board permitting this exemption pursuant to a recommendation from the Rules Committee.
TAHOE REGIONAL PLANNING AGENCY
RESOLUTION NO. 2000-____

A Resolution Exempting Hire of the Deputy Executive Director From Policy 1.2
(Personnel Recruitment) of the Personnel Policy Manual

WHEREAS the Deputy Executive Director position is currently vacant; and

WHEREAS the Executive Director desires to have the discretion to consider both
internal and external candidates for the Deputy Executive Director position at the same
time and without preference; and

WHEREAS this action does not exempt the position from subsequent application
of Article 2.1;

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Tahoe
Regional Planning Agency to exempt the hire of the Deputy Executive Director from
Policy 1.2 of the Personnel Policy Manual and permit the consideration of both internal
staff and external candidates for the position at the same time.

PASSED AND ADOPTED this twenty-fifth day of October, 2000 by the following
vote:

Ayes:

Nays:

Abstain:

Absent:

Larry Sevison, Chairman

148
MEMORANDUM

October 16, 2000

To: TRPA Governing Board
From: TRPA Staff
Subject: Status Report on Project Applications

Staff will be distributing the status report at the October Board meeting.