TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

TRPA
Stateline, NV

REGULAR MEETING MINUTES - REVISED

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Governing Board Chair Ms. Santiago called the meeting to order at 9:35 a.m.

Members Present:

Ms. Aldean, Ms. Bresnick, Mr. Beyer, Mr. Breternitz, Mr. Cashman, Ms. McDermid, Ms. Fortier, Ms. Thomas for Mr. Miller, Ms. Reedy, Mr. Robinson, Ms. Santiago, Mr. Sevison, Mr. Sher, Mr. Shute

Members Absent: Mr. Reid

II. PLEDGE OF ALLEGIANCE

III. PUBLIC INTEREST COMMENTS

Ellie Waller said she was concerned about the removal of trees with redevelopment projects. She also said living wage jobs were being filled from outside of the Basin and provided some examples.

Dawn Beffone, No Biomass in Lake Tahoe Coalition, said she was against the proposed Lake Tahoe Biomass Plant for the Kings Beach area. She suggested everyone do more research at the Friends of Lake Tahoe website and for the TRPA to become more educated on the plant’s effects before taking a vote. She said the TRPA should vote against the plant because the plant would go against the TRPA’s vision statement for Lake Tahoe.

Ms. Aldean said Governing Board members have been receiving emails regarding this issue insinuating a fait accompli and that a decision has already been made by the Board. She clarified for the record that the Governing Board has not yet made a decision regarding this issue and that staff was only involved in preparing the environmental documents required to evaluate the potential impact of the plant.

Dawn Beffone said the documents they are distributing to the public do not state that the TRPA has made a decision on this matter, but that the TRPA was working hand-in-hand with Placer County on this issue.

Ms. Aldean said, as far as she knows, no member of staff has made any determination definitively regarding this issue.
Sue Evans said she hopes the TRPA votes against the proposed Biomass Plant because it will affect everyone in the Basin.

Ian Smith expressed his opposition to the Kings Beach Industrial Community Plan and requested the Board work with them on this issue.

Ms. Marchetta said everyone needs to understand the environmental document has not been completed or issued at this point. She was also planning to make a recommendation that the Governing Board have a higher level policy discussion about biomass before the environmental document ever comes forward.

IV. APPROVAL OF AGENDA

Mr. Sevison moved approval. Motion carried unanimously.

V. APPROVAL OF MINUTES

Ms. Santiago said the Board should have received the minutes under a separate e-mail due to its length.

Ms. Aldean said she had a number of comments specifically related to the comments allegedly made by her in the minutes, but she would prefer to communicate directly with Judy Nikkel regarding this matter because of the length of time needed to go over them.

Ms. Thomas said she was in attendance at the last meeting, but in the audience and not representing Mr. Miller, as stated in the minutes.

Ms. Bresnick said she would follow Ms. Aldean’s lead and contact Ms. Nikkel regarding her comments about the comments she made in the minutes.

Ms. Marchetta said Judy Nikkel was on vacation for a month and that Marja Ambler was filling in for Ms. Nikkel.

Ms. Bresnick said she would like the tape from the last Board meeting to be reviewed with regards to her comments or she may send an e-mail which will state what she was trying to convey. She asked how long the section of the tape was that was missing and if comments made during that period were noted in the minutes.

Ms. Ambler said she did not know what Ms. Nikkel summarized, but there were minutes missing from the time the tape stopped working to the time the problem was fixed.

Ms. Bresnick asked if the missing minutes were summarized or if there is information that needs to be added to the missing section.

Ms. Ambler said she could not answer that, but that she would investigate and do a follow-up.

Ms. Santiago said, just as a reminder, there were also two court reporters in attendance at that meeting that may be able to provide additional information.
Mr. Sevison suggested delaying approval of the minutes because he has not yet received a copy.

Ms. Aldean moved to delay approval of the April 27-28, 2011 meeting minutes. Motion carried unanimously.

VI. TRPA CONSENT CALENDAR (see TRPA Consent Calendar agenda below, for specific items)

TRPA CONSENT CALENDAR

1. Acceptance of April 2011 Monthly Financials

2. Tahoe Woods Multiple Family Dwelling Project, 3967 Cedar Ave, City of South Lake Tahoe, California, Assessor's Parcel Number (APN) 29-095-06, TRPA File Number ERSP2008-0183

3. South Tahoe High School Modification-Plan Revision, Student Union and Sports Area Improvements, 1735 Lake Tahoe Blvd., City of South Lake Tahoe, California, Assessor's Parcel Number (APN) 32-040-04, TRPA File Number ERSP2011-0516

Mr. Breternitz said the Operations Committee reviewed and recommended approval of item number 1.

Mr. Sevison moved for approval of the Consent Calendar. Motion carried unanimously.

Ms. McDermid moved to adjourn as the TRPA and convene as the TMPO.

VII. TAHOE METROPOLITAN PLANNING ORGANIZATION CONSENT CALENDAR (see Consent Calendar agenda below for specific items)

TMPO CONSENT CALENDAR

1. Adoption of TMPO Overall Work Program

Mr. Breternitz said the Operations Committee reviewed and recommended approval.

Mr. Breternitz moved approval. Motion carried unanimously.

Ms. McDermid moved to adjourn as the TMPO and reconvene as the TRPA. Motion carried unanimously.

VIII. ADMINISTRATIVE MATTERS

A. Shorezone Monitoring Report

Ms. Marchetta gave a brief introduction of this item.
Shane Romsos presented the Shorezone Monitoring Report.

**Board Comments & Questions**

Ms. Aldean said the trends were encouraging and asked if the reason they were no longer monitoring for bacteria was because of favorable results from the 2010 Monitoring Program versus fiscally related.

Mr. Romsos said it was primarily fiscal related, but the results documented thus far indicate no issue. They would like to continue with those efforts as well as the PAHs, but it does not appear to be fruitful.

Ms. Aldean asked if human fecal matter can be distinguished from animal fecal matter.

Mr. Romsos said it can, to his understanding, but it involves a more in-depth and more costly investigation. They may want to investigate more in-depth if chronic exceedances were found.

Ms. Aldean asked if there were no exceedances in 2010 with respect to state and federal standards, but that fecal material can be from other sources other than humans.

Mr. Romsos said that was correct.

Ms. Aldean asked if the 8% decline in boating from 2009 to 2010 was factored into the carbon emissions being measured.

Mr. Romsos said boat numbers and the types of boats being used are factored into the emission model.

Ms. Aldean said, to summarize, it takes into account the diminishment in boating activity.

Mr. Romsos said yes. They also build into the model the hours of operation.

Ms. Aldean asked if it is a fair statement that you can’t say all of the factors were improving because of a diminishment in boating activity because that diminishment has already been factored into the final figures.

Mr. Romsos asked Ms. Aldean to rephrase her question.

Ms. Aldean said somebody alleged that the reason these areas have improved with respect to air pollutant emissions loading is because of a general diminishment in boating activity, but she wanted to confirm for the record that this diminishment has been taken into consideration in connection with the final calculations so it’s not necessarily related to a diminishment in the number of boats.

Ken Kasman said the calculations for air quality and air emissions take into account
boating hours and trips, so the changing emission factors over time do play into that model, but they are not adjusting the historical numbers. He explained emission factors are a “snapshot” of the population at that current time.

Ms. Marchetta said, to put it simply, the fleet mix is getting cleaner and emission factors take that into account.

Mr. Romsos said the fleet mix getting cleaner was due to federal and state requirements of having cleaner boats and because people were upgrading their boats.

Mr. Sher said it appears everything being monitored for water quality, air quality and noise, for the most part, is moving in the right direction and was within standards. He asked if the conclusion should be drawn that everything is fine and there are no further challenges in these areas.

Ms. Marchetta said no. This information was presented to show trend and to show that there were some areas that were close to standards, but that monitoring is still required.

Mr. Sher asked what challenges remain.

Ms. Marchetta said there are always challenges that remain.

Mr. Romsos said the noise data suggest there are still some issues with noise.

Mr. Sher asked about remaining challenges for air quality and water quality.

Mr. Romsos said, for air quality, the information presented was only model estimates of emissions. This summer, an air quality monitoring device will be established at Emerald Bay to get a better sense of actual concentrations of the different pollutants in the lake. Regarding water quality, the information presented are the concentrations that were measured. The lake is extremely clean in relation to the pollutants that were identified as part of the EIS.

Ms. Marchetta said the two-stroke ban was the essential contributor to that water quality result.

Ms. Bresnick asked what contributed to the post-season spike in fecal waste in Zephyr Cove.

Mr. Romsos said they document what they observe when taking samples, but it is hard to explain spikes in certain areas.

Ms. Marchetta said sometimes they can pinpoint the cause, which they have done with noise, but not with water quality.

Ms. Bresnick said that explains the big spike in noise between 2009 and 2010 at Emerald Bay. She asked if another occurrence happened between 2009 and 2010 or
if something had changed to justify the spike.

Mr. Romsos said the level of effort in 2009 was not as great as in 2010, but this year they have established a camera device on top of the noise monitors that will take a picture when the decibel level is exceeded to get a sense of what is occurring.

Ms. Bresnick asked if there were other requirements to mandate sampling PAH or bacteria.

Mr. Romsos said neither of those are threshold issues therefore standards are not established mandating that sampling.

Ms. Bresnick asked if there had to be an occurrence that would make staff re-consider sampling PAH or bacteria.

Mr. Romsos said it could be re-considered if more funding became available.

Ms. Bresnick asked if sampling would be re-considered if there was a natural occurrence.

Mr. Romsos said they may do localized sampling if there was a sewage or gasoline spill but, without monitoring at a regular interval, they would not have the ability to identify those types of issues.

Mr. Robinson said, regarding fecal material, the State Environmental Commission was able to distinguish between water fowl and human fecal material within certain bodies of water. He asked if speed limitations or laws were violated in relation to the noise exceedance.

Mr. Romsos said a 600-foot, no wake management standard has been established and certain landscape features around the lake force boaters into going faster, but they suspect the exceedances are primarily related to those boats that go very fast with very large engines, but it is difficult to classify these boats.

Ms. Bresnick asked if the raw data is kept on file.

Mr. Romsos said yes.

Ms. Aldean said it is critical to make the distinction between human fecal material and animal waste especially water fowl when funding becomes available because humans are not always the culprit.

Mr. Romsos said that is true, and that they have documented other sources that may have contributed to the elevation.

Ms. Fortier asked about the percentage of sail boats versus motorized watercraft and if the trend was moving in the direction of motorboats or sail boats.

Mr. Kasman said he did not have the exact numbers, but sail boats are less than
10% of the overall fleet. The vast majority is motorized watercraft followed by fishing boats and then sail boats. There are also less than 1% of wooden boats and historical boats and a couple of hybrid boats and a handful of electric boats.

Ms. Santiago asked what parameters were used to determine the projections in the EIS.

Mr. Romsos asked Gabby Barrett to address that question.

Ms. Marchetta said she wanted to remind the Board that some of the baseline information for the Shore Zone EIS derived from what little information was available in 2004.

Gabby Barrett explained projections were based on 2004 databases and the base information was gathered from conducting surveys and touring the lake.

John Marshall said there were surveys conducted on boat use and not only physical moorings, so the information presented today is more accurate.

Ms. Santiago asked at what point do you start moving forward with projections from the more accurate data provided.

Ms. Marchetta said it will be the next time another comprehensive environmental document related to the Shorezone Program is presented. She said the benefit of ramping up implementation of 2008 ordinances was the funding source which provided the capacity to collect the data. The system that was designed had always been intended to be an adaptive management system but, with the currently limited amount of funding resources, they would surgically strike those areas where the data set shows the focus should be.

Mr. Sevison said something that needs to be realized is that a large percentage of users are a static number because there are only so many buoys and piers for people to use. The fluctuation in the numbers will be via the boat ramps, but the numbers may not grow expeditiously in time because there are very limited launching facilities.

Ms. Santiago said that is why she asked the question because the base line could conceivably change given the data on behavior and other issues that are being studied, but the funding source needed to continue that analysis is being cut short. She asked if there was no standard for particulate matter.

Mr. Romsos said TRPA has no threshold standard for particulate matter. There is a threshold standard for wood smoke, which is somewhat ambiguous because the California State particulate matter is used as the surrogate threshold standard.

Ms. Santiago asked how that relates to motorized watercraft.

Mr. Romsos said fine particulate matter was being released through emissions.
Ms. Santiago asked if the threshold standard that is being used to study this particulate matter from emissions of motorized watercraft is the same threshold standard being used for wood smoke.

Mr. Romsos said no. The information presented was to show where they were regionally with particulate matter in Lake Tahoe. Emission estimates show a decline from 2009 to 2010, but the information shows they were right on the line in achieving the California standard for particulate matter.

Mr. Marshall asked about the differences in air quality and water quality standards in relation to the information presented regarding particulate matter.

Mr. Romsos said he broke out the watercraft particulate matter from the atmospheric deposition source category to show the proportion.

Mr. Marshall asked if it is known what percentage of boats produce the amount of particulate matter in air quality.

Mr. Romsos said that information was in the presentation and that it was assumed everything produced by boats would be deposited into Lake Tahoe.

Ms. Santiago asked for an explanation about the spike of VOCs in 2006.

Tim Rowe said it may be due to boat usage. It was also a heavy water year.

Mr. Romsos said it was a fraction of an increase from .16 to .21.

Mr. Rowe said it may also be due to a change in sites because twenty sites were expanded in 2009-2010.

Ms. Santiago asked if it was a change in the number of sites that were monitored.

Mr. Rowe said there were only ten sites, but sites were expanded in 2009-2010.

Ms. Santiago asked if 2009-2010 would be more of a representation of what actually happened with VOCs because the monitoring sites were increased.

Mr. Rowe said yes.

Mr. Romsos said the same sites and the same time frame were used to calculate the averages.

Mr. Sevison asked if there would have been a drastic change in the information if the expanded sites were used.

Mr. Romsos said maybe.

Ms. Santiago said what draws people’s attention is the spike shown in the graph for 2006 when it only reflects a minor increase.
Mr. Romsos explained how the five-year mean is used to smooth out the variations.

Ms. Santiago asked how having additional monitoring stations when additional funding becomes available fits into the analysis.

Mr. Romsos said they would stick with the same sites to maintain the comparability amongst years. Additional sites would provide a better picture of what’s going on around the Lake and how pollutants might be distributed around the Lake.

Ms. Santiago asked if future analysis would show the existing data versus the “real picture” with the additional monitoring sites.

Mr. Romsos said the data could be broken out in many different ways.

Mr. Cashman asked if there was a federal standard.

Mr. Romsos said the federal standard is 1000 parts per billion.

Ms. Bresnick asked if it was important to note that the standard of importance to the area is the ONRW because it is significantly lower than the other standards and because it is based on Lake Tahoe itself.

Mr. Romsos said yes. It is an anti-degradation standard.

Ms. Santiago said that it seems the trend was heading in the right direction given how the lake is evaluated and the standards of the lake.

Mr. Romsos said yes, absolutely.

Ms. McDermid moved to go into closed session after a ten-minute break. Motion carried unanimously.

B. Closed Session with Counsel to Discuss Existing and Potential Litigation

Ms. Santiago moved to go into open session

C. Adoption of a Resolution to Implement a Partial Shorezone Permitting Program

Ms. Marchetta introduced this item.

Ken Kasman presented the Partial Shorezone Permitting Program.

Board Comments & Questions

Ms. Fortier asked if allowing master plans for marinas that have already been submitted include the Tahoe Keys Marina or if there are some marinas where this will be an issue.

Mr. Barrett said Tahoe Keys Marina was one of the master plans approved by this Board but, in order to implement the plan, project approval is needed as well as following guidelines. Homewood Marina has also submitted to complete a master plan but, due to current issues with that marina, projects to come out of that plan
would be limited to the freeze if a freeze is agreed upon by the Board.

Ms. Aldean asked if the proposed guidelines to not collect mooring registration fees or register any buoys or other moorings until the development of a new permitting program will not apply to legally existing buoys or to buoys that currently have a TRPA permit.

Ms. Marchetta said that is correct. The attempt is to maintain today’s environmental status quo. New buoys or additional buoys will not be permitted until a new permitting program is developed.

Ms. Aldean asked if fees will also not be collected from those buoys that were issued TRPA permits before 2008 and the adoption of the new Shorezone Ordinance.

Ms. Marchetta said that is correct.

Ms. Aldean asked if Nevada and California were still collecting fees for buoys that may ultimately be deemed as illegitimate.

Mr. Kasman said the State Lands Agencies are still continuing to collect fees for their permits and leases depending on the agencies for buoys that are placed on their land.

Ms. Aldean commented that they should weigh in on the current litigation that says their permits have no validation and defend the merits of their permitting process. She asked for clarification for the record that the definition for item 2C: “Legally existing boating facilities” is the pre-2008 definition, which means a TRPA permit issued prior to 2008 is needed.

Mr. Marshall said that is not correct. The definition of legally existing is either existing at the date of the permit or have been permitted since.

Ms. Aldean asked if that included grandfathering because it pre-dates the adoption of the Regional Plan.

Mr. Marshall said grandfathering was included because of the issue with defining the legal existing status of buoys placed pre-’72.

Ms. Aldean asked Mr. Marshall to re-define legally existing for purposes of the proposed guidelines.

Mr. Marshall read the definition listed under Chapter 52.1.

Ms. Aldean said her concern is whether or not people who do not fall under the current definition for legally existing are exempt from maintenance and repair.

Ms. Marchetta said they agree with Ms. Aldean’s concern which is why the guiding principle of proposing an interim Shorezone Permitting Program is to maintain the current environmental status quo including any maintenance work that is needed so dereliction is not encouraged.

Ms. McDermid asked about the plan regarding fees that have already been collected.

Ms. Marchetta said staff had previously taken direction from the Board on this issue
and had agreed to hold the fees in accounts for the purposes of what those fees were collected for and only to expend those fees with authorization. She provided a summary of fee categories and said fees could be refunded upon request.

Ms. Bresnick asked if no further yearly fees would be collected for existing, permitted buoys under the 2008 program.

Mr. Marshall said that is correct because there is no legal authority to do so.

Ms. Bresnick said there has been significant progress in identifying illegal buoys. She asked if there were still a significant number of illegal buoys and fees in place for their removal.

Ms. Marchetta said they were holding enforcement funds, but one of the issues of enforcement is that there is no longer a clear line as to what is considered a legal buoy and what is considered an illegal buoy therefore there are no legal or staff resources to remove illegal buoys. The proposal is to continue using boat patrols to monitor and record new buoys put in place.

Ms. Bresnick asked if the process was started to remove illegal buoys.

Mr. Barrett said the process was to begin in September, but has been halted due to litigation.

Ms. Bresnick asked if buoys in the process of becoming legal would be halted and the application returned back to the applicant.

Ms. Marchetta said yes.

Ms. Bresnick asked if screening criteria is being developed for non-boating facility projects to prevent cumulative impacts to the environment.

Mr. Marshall said yes and no because the screening criteria relates to all project categories, not just non-boating facility projects.

Ms. Bresnick asked if screening criteria was being developed for each of these categories and that screening criteria for each category may be different.

Mr. Marshall said yes.

Ms. Bresnick asked if screening criteria would be vetted with staff and if it would be presented to the Board.

Ms. Marchetta said they had not proposed to present screening criteria to the Board because of the timing of the summer activity season, but for the Board to direct staff to implement criteria based on the guiding principle from the Board.

Ms. Bresnick said her preference would be for the Board to approve of screening criteria before implementation, but that she understood the urgency. She said if the Board was interested in viewing criteria, it could be viewed and subsequent issues could be raised at that time.

Ms. Marchetta said they would be happy to work with the Board in vetting criteria as it is developed.
Ms. Bresnick asked if it was possible to develop criteria that would require a higher level of environmental review for projects that exceed threshold standards for applications, not Compact Threshold Standards.

Mr. Marshall said criteria was just to get a project “in the door” with the standard review process to follow. Criteria were not being developed to alter the review process.

Ms. Bresnick asked if criteria were just the initial screening for projects that might be considered for processing.

Mr. Marshall said yes. It was the initial screening for the actual acceptance of the application by the agency in order to initiate processing under the standard rules.

Ms. Bresnick asked about the statement on page 166.

Ms. Marchetta said there is an updated resolution.

Ms. Bresnick asked if the statement was referring to the environmental review for the overall program or if there would be a second interim program.

Mr. Marshall said the wording of the statement was to provide the flexibility needed for whatever the final outcome is with regards to the Shorezone Permitting Program.

Ms. Bresnick asked if there were concerns with regards to exempt activities because they are being proposed to remain in place as is because they do encompass such things as maintenance.

Mr. Kasman said yes.

Mr. Cashman said he was unclear about the status of the state-permitted boating facilities with regards to this issue. He asked how those facilities would be treated under this plan.

Ms. Marchetta said they would allow the two State Land Agencies that permit buoys for their respective states to continue under their system and criteria, but they would not be able to fully reconcile those two permitting systems until an up-to-date Shorezone Program is implemented.

Mr. Cashman asked if that could include new buoys permitted by the state thereby increasing the potential problems to the lake.

Mr. Marshall said placing a buoy in the lake without a TRPA permit is illegal even with a state permit.

Mr. Cashman asked if that also goes for the 1,000 or so buoys in the lake currently.

Mr. Barrett explained they try to coordinate permits between the different permitting agencies. He said California will renew permitting leases for existing buoys, but they will not issue any new permits. He said he was not sure if Nevada will continue to issue new permits, but they may coordinate with the TRPA to not issue new permits.

Ms. Aldean commented on the lack of adhesion with permitting stickers and asked if new stickers will be issued to replace stickers that have fallen off.
Ms. Marchetta said she did not believe they were proposing to re-issue permitting stickers, but they will rely on GPS coordinates in determining whether a buoy is legal or illegal.

Mr. Kasman said, at the end of last season, they were evaluating other options for tags.

Ms. Santiago asked where funding was coming from for the Blue Boating Program.

Ms. Marchetta said that program had been invalidated by the court, so there is no longer a Blue Boating Program, but they were attempting to find funding to keep the baseline monitoring going.

Ms. Santiago asked if there was any value to looking at the components of a new Shorezone Permitting Program at this time while waiting for the appeal, which should take approximately 18-24 months.

Ms. Marchetta said they are not planning to dedicate resources to the start of an updated EIS for an updated program. They have committed to try to keep the monitoring data current because that will be the essential foundation to the next environmental document for a new program.

Ms. Santiago asked about the amount of funding needed to keep the baseline monitoring going.

Mr. Kasman explained they were using funding from other sources for air quality and water quality monitoring, but the long-term sustainability of those funding resources is what is of concern.

Ms. Santiago asked about the annual cost to keep the interim program going for an indefinite period of time.

Mr. Kasman said approximately 30% of mooring fees that was received under the 2008 ordinances were used for monitoring and that approximately $150,000 of that amount was being used this year for monitoring purposes.

Ms. Santiago asked if that would amount to approximately $150,000 to $200,000 a year.

Mr. Romsos said yes and that it depends on what is monitored, but that it could increase to approximately $200,000 to $225,000 a year if bacteria and PAH sampling was brought back.

Public Comment:

Jan Brisco, Tahoe Lakefront Owners Association, said they were requesting a delay in taking action on this issue for 60 days or to implement a buoy program under the current code. They were also requesting staff return with a more definite plan and schedule for revisiting the Shorezone EIS and the related shorezone amendments.

Kevin Agan said he would encourage the Board to amend the resolution to operate under the current code rather than imposing a moratorium. He requested an amendment of application fees to reflect the change in rules if there is a reverting back to the 2008 ordinances.
Board Comments & Questions

Mr. Sher asked if many of the buoys permitted and fees collected on would now be considered illegal under the pre-2008 rules because of their location in the fish zones.

Ms. Marchetta said yes, possibly.

Mr. Sher commented that the use of the word “expansion” in the resolution may be inconsistent with the guidelines that state applications for new boating facilities will not be accepted. He suggested the word be omitted or taken into consideration for discussion.

Mr. Marshall said the agency’s interpretation of expansion is not a new facility.

Mr. Sher asked if there is a definition of that listed somewhere.

Mr. Barrett said there is a definition of expansion in Chapter 52 and that it defines expansion as any change in configuration of an existing structure.

Ms. Santiago asked if expansion, by definition, does not mean a new structure, which was Mr. Sher's point that this definition of expansion is not included.

Mr. Barrett said that is correct.

Mr. Sevison said he was having trouble with this process because it's like saying only a portion is okay, but not the rest. He suggested falling back on ordinances already on the books because the risk of being sued for doing that is no less or no greater than approving what staff is proposing today.

Ms. Reedy said she feels the same way as Mr. Sevison, but she would suggest continuing the moratorium until better information is received. She asked about the impact of continuing the moratorium for another month.

Ms. Marchetta said the pre-2008 rules will go into affect June 21, 2011 and that operation will be under those rules until there is policy consensus to continue that course indefinitely or whether to look at line drawing.

Ms. Reedy asked if the Board cannot take a vote to continue the moratorium for another vote.

Ms. Marchetta said the Board could.

Ms. Aldean said the Board does not have that option because it is not agendized. The action agendized is to adopt the resolution as part of an interim program or not to adopt it with the pre-2008 ordinance going into effect and the risk of further litigation because the TRPA has already publicly acknowledged that the pre-2008 ordinance does not address cumulative impacts.

Mr. Marshall said he would agree with Ms. Aldean’s latter point, but not her earlier point about not voting on a moratorium because it is within the scope of the agenda item.

Ms. Aldean said her concern is that it would be fundamentally unfair to keep a
moratorium in place and to not allow people to maintain what they have. She asked if repair project requests have been continued to be processed.

Ms. Marchetta said yes.

Ms. Aldean asked if the word “new” should be added to the language on page 170 regarding boating facilities.

Ms. Marchetta said the updated resolution language needs to be distributed.

Ms. Aldean said the word “new” has been added to the amended language. She asked if that was the only change.

Ms. Marchetta said the essential changes were to the re-wording of language about individually or accumulatively because of poor sentence structuring.

Mr. Kasman read the section language changes.

Ms. Aldean said she would like to suggest that it be made clear, if the resolution is approved, that the completion of additional environmental review will be done by the TRPA and not the applicant.

Ms. McDermid said she concurs with some of Mr. Sevison’s comments regarding only going part way and that she was still concerned about withholding funds for twenty-four months because of the time and effort that will be needed in seeking out those people who need to be refunded. She asked if everything will go back prior to October 22, 2008 with the exception of the few things that have been identified.

Ms. Marchetta said all applications accepted under the pre-’08 rules are in effect now. Staff is proposing to screen applications and neither accept the application or the processing fee for an application on its face based upon some gross screening criteria that concludes has a generally high likelihood of implicating accumulative effect analysis.

Ms. Santiago said what this brings to the table that is not included in the pre-2008 ordinance is recognition of accumulative or individual impacts. She asked about the legal risk for approving the resolution.

Mr. Marshall explained a Cumulative Impacts Analysis will be completed no matter which option the Board votes on today and that the Board was voting on the context with which it will be presented.

Ms. Marchetta said what staff was trying to avoid was individual project lawsuits which would allow the courts to re-orient priorities of the TRPA back to shorezone issues and force another Shorezone Program, which is not the biggest environmental issue in the area.

Ms. McDermid said this resolution would give staff direction to make judgments. She asked what would prevent someone from going forth with litigation if their application was not processed.

Mr. Marshall said the resolution defines what can and cannot be processed.

Ms. McDermid asked if that would then throw the TRPA back into coming up with a
Shorezone Program.

Mr. Marshall said no. It would be litigation over the validity of this resolution.

Ms. Santiago asked if a Shorezone Program would be enforced if it is the same scenario, but without the resolution being adopted by the TRPA.

Mr. Marshall said yes.

Ms. Bresnick said she had conflicting feelings about this resolution, but that it would define what the TRPA has already done which will allow certain activities to continue that are not implicated by the court order and that anything that is allowed “through the door” will still have to meet the criteria of environmental review.

Ms. Aldean said this is a fair compromise.

Ms. Aldean moved to make the Chapter 6 findings and the finding of no significant effect as indicated in Attachment A.

Ms. Reedy asked if the Board was approving, in effect, no refunds with regards to mooring registrations under Guideline 6.

Ms. Aldean said that is true, but there will still be benefit to people who still have buoys in Lake Tahoe because they will not be removed.

Mr. Sher asked if the Board was approving the statement of the resolution.

Ms. Santiago said the motion is to make the Chapter 6 findings and a finding of no significant effect as described in Attachment A.

Motion carried.

Ms. Aldean moved to adopt the proposed resolution as amended and to direct staff to share with the members of the Governing Board all screening criteria used to evaluate future applications under this resolution when developed.

Ms. Bresnick asked if the amendments included amendments to the environmental review by the TRPA.

Ms. Aldean said yes.

Mr. Sevison asked about the timeline for bringing back criteria for Board review.

Ms. Marchetta said some form of criteria can be brought back next month for informational purposes, but not as an action item.

Ms. Aldean said her motion directs staff to bring back the screening criteria to the Board for review when developed.

Motion carried.

Ms. Bresnick said she wanted to reiterate having a progress report on the resolution with the monthly reporting.

IX. PLANNING MATTERS
A. Presentation on the Basin Catastrophic Wildfire Prevention Program

Mark Novak, Tahoe Douglas Fire, presented the Basin Catastrophic Wildfire Prevention Program.

Board Comments & Questions

Ms. Aldean commented on the lawsuit being filed against the Forest Service regarding restoration work being done in the Angora Fire area. She asked if their agency has experienced similar problems.

Mr. Novak said he was not aware of similar problems.

Mike Vollmer said a wildlife review is done.

Ms. Aldean asked if they need to proceed with caution pursuant to certain guidelines.

Mr. Vollmer said that’s correct.

Ms. Santiago asked if the South Shore Plan was not moving forward because of potential litigation.

Mr. Vollmer said things are moving forward.

X. REPORTS

A. Executive Director Status Report

1. Agency Work Program Priorities for May
   a. Regional Plan
   b. Forest fuels Management Update
   c. Aquatic Invasive Species
   d. EIP Implementation
   e. Shorezone Implementation
   f. CEP Update

Ms. Marchetta said the Executive Director Status Report will be presented to the Board in writing.

B. General Counsel Status Report - none

XI. GOVERNING BOARD MEMBER REPORTS

Ms. Bresnick requested as a follow-up to the Operations Committee meeting regarding retention of general counsel that staff bring back a report on retention of general counsel because of a change in the process.

Ms. Aldean said she wanted to mention that mussels have been found in Lake Lahontan and Rye Patch Reservoir.

Ms. Marchetta said those two lakes are suspect of quagga mussels and that they are being re-tested and mandatory decontamination was being required of boats from those areas.
XII. COMMITTEE REPORTS

A. Legal Committee - none

B. Operations Committee

C. Public Outreach & Environmental Education Committee – Immediately following this meeting across the hall.

D. Catastrophic Wildfire Committee – Presentation provided

E. Local Government Committee - none

XIII. ADJOURNMENT

Governing Board Chair Ms. Santiago adjourned the meeting on Wednesday at 2:16 p.m.

Respectfully submitted,

[Signature]

Judy Nikkel
Clerk to the Board

The above meeting was taped in its entirety. Anyone wishing to listen to the tapes of the above mentioned meeting may call for an appointment at (775) 588-4547. In addition, written documents submitted at the meeting are available for review at the TRPA Office, 128 Market Street, Stateline, Nevada.