I. PLEDGE OF ALLEGIANCE

II. CALL TO ORDER AND DETERMINATION OF QUORUM

Chairman Biaggi called the meeting to order at 9:50 a.m.

Members Present:

Ms. Aldean, Mr. Biaggi, Ms. Bresnick, Mr. Galloway, Mr. Kranz, Mr. Merrill, Ms. Motamedi, Mr. Ruthe, Ms. Santiago, Mr. Smith, Mr. Swobe, Mr. Waldie, Mr. Weber, Mr. Yount

Members Absent: Mr. Heller

III. PUBLIC INTEREST COMMENTS

John Friedrich, League to Save Lake Tahoe, stated that he has come before the Board several times in the last few months. As we are getting ready for some big issues coming up, whether they are Shorezone, Heavenly Master Plan or Pathway, he asks that on the environmental bottom line we make assure that there is a net improvement. Look at each and every proposal from this view, will this make Lake Tahoe better and better protected. We should test the mitigation measures first in the environmental program to make sure they are sufficient to offset the impacts.

IV. APPROVAL OF AGENDA

Executive Director Singlaub stated that Mr. Galloway called and will be late. He asked to be present when the Board votes on Item #6 of the Consent Calendar. Item X.B. has been continued until next month.

Mr. Smith moved approval of the agenda with Item X.B. being continued. Motion carried unanimously.
V. APPROVAL OF MINUTES

Mr. Smith moved approval of the minutes as amended.
Ms. Bresnick, Mr. Kranz abstained.
Motion carried.

VI. CONSENT CALENDAR

Mr. Waldie stated that the Legal Committee approved unanimously Item 3, 5 and 6.
Item 4 was referred back to staff for further discussion.

Ms. Marchetta clarified Item 5 and stated that it was approved with the modification to Item 1 in the settlement agreement that the payment of the $5,000 settlement be split equally between the homeowner and the contractor.

Mr. Galloway stated that Mr. Panagopoulos stated that the $10,000 fine on Consent Item 6 was excessive and he asked to pull the item so that Mr. Panagopoulos could give an explanation.

A discussion was held and Mr. Panagopoulos asked that the fine be reduced.

Ms. Aldean clarified for the record that even if the violator signs the settlement agreement prior to being taken to the Board, it is not binding on either party until the Board actually authorizes the settlement. She thinks there is a misunderstanding that because the alleged violator signs the settlement agreement that he/she has no further recourse before this Board.

The Board denied Mr. Panagopoulos' request.

Mr. Swobe moved to approve the Consent Calendar.
Motion carried.
Ms Aldean voted no.

The following Consent Calendar items were approved:

1. Acceptance of April 2006 Monthly Financial Statement
2. Jackpine Public Parking Lot, Jack Pine and Tahoe Streets, Placer County, California; APN 094-110-023 / TRPA File #20051777
3. Resolution of Enforcement Action, Unauthorized Tree Removal, Donald Giesen, 8595 Silvertip Court, El Dorado County, CA, APN 016-493-10
4. Resolution of Enforcement Action, Unauthorized Grading, Jordan Morgenstern, John Werner, 1603 Thunderbird, El Dorado County, CA, APN 033-312-14;
5. Resolution of Enforcement Action, Unauthorized Grading during the Seasonal Grading Prohibition, and Violation of Cease and Desist Order, Jim Panagopoulos, 1357 Tyrol, Washoe County, Nevada, Assessor’s Parcel Number (APN) 126-490-06, TRPA Permit Number STD20040309
The following Consent Calendar item was continued to next month:

4. Resolution of Enforcement Action, Unauthorized Tree Removal, Paul Wilson, Dane Purcell, 1851 Bellacoola, El Dorado County, CA, APN 034-101-0610

VII. GOVERNING BOARD MEMBER REPORTS

Ms. Santiago stated there are two issues that she wanted to bring up as part of the report to the Governing Board. She wants to thank EDAW and TRPA staff for their efforts in engaging the Latino community in the placed-based planning process. She would like to specifically thank Jill Sarick, Julie Jacobs, Kim Carr and John Hitchcock and also thanks to Delícia Spees, Alturo Rangel and the teachers of the ESL classes who helped bring together this important part of our community. The first workshop was held last night with nearly 70 in attendance. From her point of view, she saw many similarities regarding the concerns about where we live and gained a new prospectus on some additional important issues. She felt that the participants were appreciative that time was taken for them to voice their concerns. She is honored to be able to help in anyway she can with this process and once again wants to thank those who organized this workshop. Her next item is regarding an ongoing concern expressed to her by many of her constituents over the last several months, the dreaded BMPs. She has heard comments such as: 1) where is the science; 2) it’s too expensive; 3) they don’t work and 4) what do I do when my BMPs do not match what needs to be done for defensible space, etc.? With the looming October deadline for the South Shore, the concerns have multiplied. It is her opinion that the current BMP program has many challenges that makes its implementation difficult at best. While she appreciates all the outreach efforts by TRPA staff and work done by the TRCD, she thinks it’s time that we come up with a new plan. She has a possible solution and would like to present the concept only and test it’s feasibility over the next month and report back to the Board at the June Board meeting. It is her understanding that the Basin is currently divided in over 180 sub-watersheds. Her proposal is rather than going residence by residence that we go sub-water shed by sub-watershed. These private projects need to be interfaced with public projects that deal with the erosion issues, so that the public and private projects work together to reach the same goal. We should also incorporate defensible space issues and how they relate to the retrofit.

Mr. Kranz reported on his trip to Washington, D.C. two weeks ago where he met with officials from the Bureau of Reclamation, Bureau of Land Management and the Forest Service and it looks like we are getting some more resolution. EPA is looking at the air pollution standards and the benefits with burning in a bio-mass plant as compared to open burning. Bio-mass is 95% clean and we never receive any credit for taking the product and putting into this kind of plant. They are looking at changes in the law to permit us to take some credit for taking this from open burning to putting it into a plant which could help dramatically. He also stated that Resolution 4200 passed the House and is going to the Senate and will probably be built into Senate Bill 2079. He is continuing to pursue this at a government level in conjunction with Congressman Pombo’s, Doolittle’s and Feinstein’s offices.
Mr. Swobe stated his concern over the notice for public invitations to meetings. The notice that he received concerning the meeting tomorrow was that there will also be an opportunity for the public to offer ideas. He purchased the Tahoe Tribune and there wasn’t a reference to the public being invited or that the public would get the opportunity to voice any opinions on Shorezone tomorrow. He thinks it’s time this Board put some sunshine on the activities of this Board and this Agency.

Mr. Galloway stated that Washoe County has money in a fund for under-grounding of existing utilities and he has succeeded in getting approval from the Commissioners to authorize a preliminary engineering cost and feasibility study on a project at the Stateline, which will also benefit California. However, they have not authorized the project. Any encouragement to proceed to authorize the project would be welcome when we get to that stage. Washoe County is trying to do something similar to what California does and allocate a percentage of their franchise fee to fund underground some of the most unsightly existing above ground utilities.

Mr. Weber stated that he supports the BMP suggestion that Ms. Santiago presented and let the City know what they can do to help. They did a walk about with some of the TRPA staff and our planning and housing staff through some of the neighborhoods by Pioneer Trail and Highway 50 where a lot of the workforce staff lives. He wants to thank staff for taking the time to be there. What they learned in the walk about is there is a real opportunity to reduce some of the artificially created community exchange units that are out there and really look at these projects and say does this make sense for Lake Tahoe.

VIII. REPORTS

A. Executive Director Status Report

Executive Director Singlaub gave the Executive Director’s Status Report.

B. Legal Division Status Report

Chairman Biaggi noted for the record that Joanne has passed the Nevada Bar which is one of the most difficult tests. The Board congratulates her and thanks her for now being licensed in Nevada.

Legal Counsel Marchetta presented a brief update on the Kings Beach spill and the TRPA vs. McDonald case.

Adjourn as the TRPA and convene as the TMPO

Terri Marceron, Forest Service Supervisor, joined the Board for the discussion of the TMPO.

IX. TAHOE METROPOLITAN PLANNING ORGANIZATION

A. Approval of the Tahoe Basin Transportation Overall Work Program for FY 2007
Staff member Nick Haven presented the overall work program for 2007.

Ms. Motamedi moved approval.
Motion carried unanimously.

B. Approval of Amendment #3 of the 2004 Federal Transportation Improvement Program (FTIP)

Staff member Marc Reynolds presented the amendment of the 2004 FTIP.

Mr. Weber moved approval.
Motion carried unanimously.

Adjourn as the TMPO and reconvene as the TRPA

X. PROJECT REVIEW

A. Bertagnolli Park Lane Right-of-Way Paved Roadway Extension, Placer County, APN 090-212-39, File Number 20051523 (30 minutes)

Staff member Jeanne McNamara presented the project.

Jim Rinestra, KB Foster Engineering representing the applicant, supported staff's presentation and stated that this project is a modification to the existing right-of-way and is needed to provide paved vehicular access to the approved single family residence.

Virginia Loren, California Tahoe Conservancy, stated that they are negotiating with the land owners and have completed a joint appraisal. It is currently under internal review. She feels that the land owner is genuinely interested in the CTC purchasing this land.

Public Comment:

Norma Carter, resident, stated that she objects to this development and feels that her property would be impacted physically, financially and environmentally, because of the widening of the road in that area. It would also bring in additional traffic and she doesn’t think that this will be limited to one building.

Richard Reeder, resident, stated that he is directly below the construction site and this will directly and adversely affect him. He has deep concerns regarding this project and the due process which causes us to make decisions in 2006 with antiquated guidelines, perceptions and approvals. The problem is not the new road that meets all the requirements for the NTFPD. The problem is Park Lane itself and the perception or reality that more than one house will be built along the new right-of-way. He introduced an expert, Dr. Jim Murphy, who has worked in fire control jobs and is Professor of Forest Fire Science and Technology at the University of Washington.

Jim Murphy stated his concern as to whether the part of Park Place that extends from Hwy. 28 to the end of the pavement is fire safe.
Corena Cutler, resident, stated that she is concerned that with the current property values in their area and that the conservancy will not be able to afford this property. She opposes the project for three reasons: 1) it cuts off the forest access, both visually and physically for the entire neighborhood; 2) water, this is very steep hillside and it is riddled with underground creeks and springs and there is a lot of water on this hillside. She feels the project should also have a hydrology report; 3) access, Park Lane exits onto Hwy. 28 in a very steep, narrow and it takes a turn and is very slippery and icy in the winter.

Michael Weinstock, resident, stated that there is no access, because this is a dead end street and there is no way out. He also has concerns that this 300 foot improvement that is designed according to the drawings he saw included eight lots. To think that only one house is going to be build when the improvement that was applied for and approved by this group would encompass eight homes and would not have to come back to this Board for approval. He also suggests that they get rid of the entire bottle neck on Park Lane as part of the process.

Sean O’Leary, resident, stated that there are seven fire hydrants currently on Park Lane and this additional one is not the only one available.

Gil Gause, resident, stated that this improvement is great for fires and no one is denying that, but there are driveways that infringe into the right-of-way that makes this road tiny in some spots and two of those driveways were built by Mr. Bertagnolli. He also feels that this is being done for the potential development of a major subdivision at the end of Park Lane, but it’s being done one by one just like the other four homes that Mr. Bertagnolli has built.

Manuel Pastor, resident, stated that his concerns are that the addition of this paved road will drastically change the nature of the environment and the feeling in the neighborhood. Tahoe is one of the greatest Alpine lakes in the world and what is happening here is a similar issue as we see in Borneo and Brazil where they are destroying the forest. This project will impact the future of the forest in this area.

Chris Dale, resident, stated this isn’t a County road nor serviced by the County.

Mr. Bertagnolli, applicant, stated that his folks bought this property back in the late 1950’s. He has built three houses on the property. He stated that he has applied for one home and that’s it. The road in question was not his idea. They had applied to TRPA for a 10’ wide road with a hammer head turnaround. TRPA basically approved it, but then the fire department disallowed it. The fire department are the ones who requested the 20’ wide road and the turnaround. They did not request that. They are here because another agency is requiring this change before they can build their home. The other lots do not have buildable IPES scores. They approached the Conservancy to see if they were interested in purchasing the remaining property. The Conservancy didn’t approach them.

Minutes to reflect that 1) There are parcels in escrow and 2) The Board offered the applicant the opportunity to withdraw the application and that was declined by the
applicant.

Ms. Aldean moved approval with no significant environmental affect.

Motion failed by the following vote.

Yes: Ms. Aldean, Mr. Biaggi, Mr. Smith, Mr. Kranz, Ms. Motamedi, Mr. Weber

No: Mr. Galloway, Mr. Ruthe, Mr. Swobe, Ms. Bresnick, Mr. Merrill, Ms. Santiago, Mr. Waldie

XI. PLANNING MATTERS

A. Discussion of Proposed Interim Program for Residential, Commercial Floor Area, Tourist Accommodation Units and Recreation Allocations (PAOT)

Staff member Paul Nielsen presented the proposed interim allocation program.

Public Comment:

Alex Mournalotis, property owner for the Cedar Grove project, described the effects on what is being considered in terms of its impact on a demonstration project. He has a project that reflects the community needs and is a village concept; however, the financial unfeasibility associated with obtaining the allocations for moderate housing is probably a deal killer.

John Falk, representing the Tahoe Sierra Board of Realty, stated that they urge the Board to support the staff recommendation and move forward in an expedited process to ensure that the seamless transition is not only from the current plan to the new plan, but also this interim period. It's in no ones' best interest to try and reinvent the system in the interim period.

Pat Davidson, Executive Director of the Contractors Association of Truckee/Tahoe, passed out a letter to the Board. Her comments were to keep it simple and provide certainty to the land use community and look at two years as the timeframe. She supports the staff's recommendations to keep the status quo and look at those changes that might be possible without code changes.

John Friedrich, League to Save Lake Tahoe, stated that he is generally in agreement with what John Falk stated. He feels that there needs to be a Threshold update to make sure that new allocations are commensurate with environmental protection. He thinks the staff is being wise and reasonable and should not be adding things to the program that will need more analysis.

Jennifer Merchant, Placer County Executive Office, requested that there be an analysis done to ensure a fair share allocation between the jurisdictions. She is concerned with the special project designation, especially with redevelopment infill projects, and the commercial floor area being only available within community plan areas. She feels strongly that there has to
be an opportunity in certain areas to make fixes for these types of needs and not let them wait for three years.

No action item.

B. Pathway 2007 Status Report and Request for Endorsement of Phase I Recommendations

Executive Director Singlaub introduced the Forum staff members that would be presenting the status report and requested endorsements for Pathway.

Lisa Beutler presented the Pathway Status Report and the Forum recommendations.

Barbara Perlman-Whyman representing the Recreation Community gave a statement of their commitment to the Pathway process.

Steve Teshara representing the Business Community gave a statement of their commitment to the Pathway process.

John Friedrich representing the Conversation Community gave a statement of their commitment to the Pathway process.

John McCall gave a wrap up statement of the Pathway recommendations and future direction.

No action item.

C. Presentation by Lake Tahoe Development Company, LLC, for the Proposed “Project 3” Redevelopment Project in the City of South Lake Tahoe

This item was continued to the June Governing Board meeting.

The meeting was recessed at 5:50 p.m. and will reconvene tomorrow at the Cal Neva.

The meeting reconvened on May 25, 2006 at 9:30 a.m.

XII. SHOREZONE WORKSHOP

Agency Counsel Joanne Marchetta gave an overview on the conflict of interest. Assertions have been made publicly concerning conflict of interest of certain members of the Board in relationship to this discussion around the Shorezone amendments. She was asked by the Board to provide advice and she has done so comprehensively to all members of the Board. In addition, she has counseled individual members of the Board in connection with their request to take a look at their own individual circumstances. She has reviewed their disclosure statements and has analyzed both the facts and the law on this issue. In her legal opinion, she has found no economic interest that would require any of the voting members of this
Board to recuse themselves. Stuart Yount has recused himself from this matter and will continue to do so for the deliberations on the Shorezone amendments.

Executive Director John Singlaub presented the potential Shorezone Alternative 6A for review and discussion.

Board member Coe Swobe stated that sometime during the next few months this Board is going to debate and vote on an ordinance regulating every facet of the rights of Shorezone owners and users of Lake Tahoe. This ordinance is very important because if enacted, it will affect practically every resident, visitor and business alike. Most of the provisions of the proposed ordinance have been kept under wraps but some have been revealed today and maybe some will come along later before the final copy is made available. However, one thing is very clear and that is there is no provision for grandfathering of buoys. The fact that the TRPA may not recognize some buoys which existed prior to the creation of the agency and are in place today is very troubling. The effective date of the TRPA is March 19, 1970, a date proclaimed by then Governors Reagan and Laxalt. During the 1967 negotiations which lead to the enactment of the Tahoe Regional Planning Compact at a meeting between Governor Laxalt and Reagan at which he was present, Governor Reagan and Laxalt expressed concern about the protection of existing property rights of property owners of Lake Tahoe which they both believed should be respected. Governor Laxalt stated that the voting members of the Governing body would be made up of only local and state representatives and he felt confident that those representatives, especially the local government representatives, would look out for and protect the existing property rights of the property owners of Lake Tahoe. He is not a local government representative but he believes the property rights which existed prior to the effective date of the agency, should be honored as Reagan and Laxalt intended. The property owners who own buoys which existed prior to March 19, 1970 and are presently in use should be recognized by the Agency in the future. He has requested Agency Counsel, Joanne Marchetta to draft such as amendment which he will present to the Governing Board at the proper time. He believes there are relatively few buoys in the grandfather category, but they are extremely precious to their respective owners. He has been made aware of some of the buoys that are located in Incline, Glenbrook and Marla Bay. The Marla Bay application has been pending for months before this agency unresolved. The TRPA grandfather provision provides for casinos, piers and fences, but not buoys. To deny the grandfathering of buoys existing prior to March 19, 1970, in his opinion, would constitute an unlawful taking of property, provoke unnecessary law suits and create unnecessary animosity towards the TRPA. He doesn’t know how many buoy owners would benefit from the grandfather clause, but if he were a property owner with a buoy that existed prior to 1970 and he didn’t have a specific TRPA recognition of the same; he would be very concerned. A buoy which existed prior to 1970 and used today, may not be honored by this Agency in the future. In short, a buoy which was in existence yesterday and here today may be gone tomorrow.

Board member Steven Merrill stated he feels that this may not be a major problem except when someone has had a buoy in front of someone else’s property for that period of time and not permitted. This does create a problem. Maybe they can get an agreement from the current property owner. There may be a way to work around this so it’s not a big problem.
Public Comment:

Mr. Beckett, Marla Bay property owners, stated they support 100% Coe Swobe’s proposed amendment to the ordinance. In 1964 they put in an application for the Marla Bay Protective Association for 50 buoys from the Corps of Engineers and they were permitted 50 buoys by the TRPA. There is documentation this went through proper public notice and the 50 buoys were permitted. They have those buoys out there physically today. In trying to be accommodating to the TRPA, they put an application in at the end of last summer and on November 9, 2005 that application was deemed final and the 180 days expired on May 8, 2006. They have had no decision. Under TRPA rules and regulations, TRPA is required to make a decision within 180 days or else they can go to the Governing Board and request a decision. One of the issues was legally existing and whether there is a requirement for littoral or having land to have these buoys. It is their position, and they are supported by legal analysis, that it is not necessary as long as it pre-dates the TRPA. He referred to Section 52.1 of the TRPA code that recognizes structures that legally exist prior to the effective date of the ordinance of 1987. Under the ordinance that is currently existing; they are trying to restrict them. They are trying to say that fine if it is legally permitted, but they are also going to add another criteria to that which is as long as it also meets eligibility criteria.

Board member Shelly Aldean asked if Marla Bay is the association where a strip of land that’s owned by Douglas County between the Marla Bay subdivision and the lake. There was an issue of whether the Marla Bay property owners were actually littoral property owners because of that.

Mr. Beckett stated that was the case and an ex-partner of his did a quick claim deed from the Zephyr Cove Property Inc. that is still a current entity to the Zephyr Cove Owners’ Association. That is an error and it should have gone to the Marla Bay Owners Association. They have been waiting almost nine months and they were informed that a decision would be made and it would be somewhat pro forma and this should have been resolved a long time ago.

Legal Counsel, Joanne Marchetta stated that one of the issues with this analysis is that on the face of the Army Corps of Engineers’ permit there is a substantial disclaimer that says essentially that this permit grants no property rights and no future rights. It is subject to the regulations of other state, local entities and it’s authorized only for purposes of determining navigational safety. The Army Corps’ intent at that time was to provide a relatively limited authorization for this buoy field. She thinks that Mr. Beckett has given a very fair summary of the dispute between them and the Agency. That dispute boils down to what is the proper interpretation under TRPA’s Code of the words “legally existing”. We have a legal dispute on that very narrow legal issue. It is her opinion that the Code creates ambiguity on that issue and when there is ambiguity, you look to construe the Code as a whole. TRPA has a very long standing interpretation of its Code with respect to recognizing and permitting buoys, where we require that that buoy be pertinent to some littoral property ownership. In order for TRPA to now interpret its Code to permit recognition of a buoy based solely on a Corps of Engineers permit that was issued in 1964, she
believes could require a Code amendment. She takes full responsibility for not issuing this opinion because she knew at the time that the only legal opinion that she could issue on this matter would have determined that TRPA could not recognize this buoy field. She also recognized that were there a legal finding or an administrative finding that the Marla Bay buoy field was associated with littoral ownership by the association, she could render a completely different opinion. She also knew that on the facts, the Marla Bay Association has submitted multiple applications both in the form of applications from individual landowners as well as applications from the association itself to Nevada State Lands for a finding of littoral ownership in favor of the association. If Nevada State Lands make a positive finding then TRPA’s issue is mute. It seemed the reasonable resolution to this was to work with the association to establish their littoral recognition and show they had rights pertinent to a littoral property. That is the direction that she has been working in. She was trying not to issue an adverse legal opinion as she doesn’t think that would resolve this issue in a manner that either TRPA wishes to resolve it or the Marla Bay association would like to see this resolved.

Mr. Beckett stated that they are going to meet or exceed the standards that TRPA is requiring, but legally it’s their position that they don’t have to. Their position is that they are grandfathered as brought out by Mr. Swobe and as long as they comply with the grid that Army Corps assigned them (a buoy field area) and are going to reside within that grid. They are going to do this for their own safety. They feel they have the right to do as they have done for the last 50 years.

Jay deBenadetti, representing the Board of the Lakefront Homeowners’ Association, stated that they are anxious to get the Shorezone process concluded. His concerns on Alternative 6A are: 1) the Lake Front Owners should have access to the process of applying for a pier and they should have to comply with the mitigations that are attendant to those approvals. Everyone should have a right to do that. 2) they feel there is no reason why, purpose for or legal right to assess $100,000 fee to build a pier. They don’t understand where that came from and can’t see that it has a nexus to public access. If there was a serious mitigation necessary for environmental purposes they would listen. They think it’s just an opportunity to raise money. They don’t think taxes should be imposed upon lakefront owners for putting in a pier. They pay a lot of taxes as it is. 3) He’s not sure of conditions for public access. They would strongly oppose the right to deal with public access in the area along the high to low water mark. So it’s excessive fees, unfair treatment to property owners vs. public, or any other sort of improvement for piers. He asked that the Board keep this in mind when considering the ordinances. As far as buoys are concerned, they think that we have come a long way toward implementing a good buoy program. There are small changes that need to be done, but more importantly is a commitment to enforcement. They also think that it’s a good idea to wait until more studies are completed to determine what the effects of boating and boats from out of the area has on the lake before coming up with a specific slip and ramp policy.

Tyrone Kelly, representing the Forest Service, stated that they would like to further discuss future management options in these preservation zones and what effect those preservation zones would have on land management on the shore. There has been a proposed water trail around the lake and in his opinion, this eliminate that option. There is the Washoe Tribe that has lakefront access and because of the government to government relationship, there are different laws that cover their lake-
front. The definition of existing needs some clarity. What does this mean to the Forest Service? They think that they should have the opportunity in future to propose these kinds of options and implement them.

Patrick Wright, Executive Director California Tahoe Conservancy, stated that he is committed to maintaining the relationship between CTC and TRPA. The coalition of State agencies informal concerns are: 1) what the process will be to address their concerns and issues; 2) the relationship of this plan with the Pathway effort and the Regional Plan update. For their organization, there are difference standards of review and which makes this tricky; 3) Some of the mitigation strategies are aimed at offsetting the impacts of new piers and others are aimed at existing piers. Also there are comprehensive basin wide strategies, like the exotic species program. For the agencies reviewing these, each comes with a different set of reviews. 4) The issue of CEQA and the Clean Water Act requirements and issues with Lahontan. 5) With respect to other state agency’s participation, we need to make sure these agencies are ramped up and can speak with one voice and be fully supportive of the plan.

Barbara De Gallen, Assistant Chief of Land Management Division of CA State Lands, stated that she supports what Patrick Wright said. She thanks the Board members and TRPA staff for giving them this opportunity. Some of their issues are: 1) public access and public trust interests and natural resource protection on lands under their jurisdiction; 2) they commented in Sept/Oct 2004 and in 2005 and they have never received a response and don’t know what has happened with their comments; 3) they would like to get conformation that they will have the opportunity to review the document and make comments.

Leah Kauffman, local planning consultant, stated that she is generally happy with the new ordinance and regulations. She has concerns with the easement definitions where in Placer County and on the West Shore there is a lot of existing paper streets. Some of the projects may not have a TRPA and Corps of Engineers permit and is concerned how that would be addressed as part of these new ordinances. If TRPA is to commission another study by the Army Corps of Engineers, she would hope that this study actually gets used unlike the 2003 Army Corp report that identified at risk sewer lines in Lake Tahoe. She hopes that TRPA will work with the utility companies also. If communication is fostered between all agencies in permitting piers then she thinks it will be a very successful future and protection of the water quality of Lake Tahoe.

Pam Wilcox, Administrator of NV State Lands, stated that they have long supported TRPA in protecting public values in the Basin including many years of partnership in management of the Shorezone and more recently the coordination of the implementation of the Tahoe Environmental Improvement Program. In August 2005 they submitted comments on the amended Alternative 6 and on behalf of the entire Department of Conservation and Natural Resources the agencies of the department are supportive of many elements of the Alternative 6 but raised a number of questions and to-date they have not received any formal written response to these questions. They have only recently had preliminary discussions with TRPA staff and this has so far not succeeded in addressing their concerns. They are very concerned about the Resource Protection Zones which are now being called SPAs. They concur that the lands managed by public agencies are among the most pristine in the Basin. These SPAs would place a heavy burden on the publicly owned
Shorezone lands. The prohibition on new Shorezone structures with SPAs would
limit opportunities to improve public access to the lake. They feel it is not reasonable
to expect the public to provide the mitigation for private pier and Shorezone
development. They agree to the concept of the proposed streamlined buoy
permitting process. They are coordinating the implementation of Nevada’s share of
the Environmental Improvement Program and it’s very important for the partner
agencies to discuss the relationship between the Shorezone ordinance amendment
and the update of the EIP Program.

Gregg Lien, representing private clients, stated that this is going to be a very
restrictive plan compared to what the consensus group had recommended. One of
his issues is grandfathering. A cornerstone of the last Regional Plan was that
everything would be grandfathered. We decided that if we ever got into trying to take
someone’s deck off their house and if it was in a stream environment zone or in a
class three property area, we were going to have no end to litigation and no end to
trouble. There is no exception that he is aware of to this grandfathering cornerstone
principal other than a recently invented fiction that buoys were not to be
grandfathered. He doesn’t think we ought to have absolute black and white
adherence to a standard; that never works. An example, Mr. and Mrs. Shaw have a
lakefront property and they have had two or three buoys and some anchor blocks
lakeward of their property since 1952. They would like to keep their two buoys.
They have 49.15 feet at the lakefront and by a strict adherence to the new standard;
they would be required to lose one buoy. Even that one buoy could be in jeopardy if
they can’t show 50 feet. Why should a valuable property right be lost not for an
environmental issue, but simply to adhere to a standard for the sake of adhering to
a standard. We need to recognize the rights of people that have been built up over
time and the expectation in the real estate market and normal day-to-day business.

Judy Shaw, lakefront homeowner, stated regarding the grandfathering of buoys, she
has been listening to the discussion and thinks what’s important to keep in mind is
your ultimate goal. Your ultimate goal is to know to whom the buoys belong. They
are already out there and have been counted and what you would like to do is
document who owns them and then get them into the process so you receive a
yearly fee which helps go toward mitigation. If they have already counted all the
buoys out there, then what you need to do is find out to whom they belong.
Therefore if you have a grandfather ordinance of some sort, you will get the
documentation that you need. It seems that when you say grandfather in, there are
people who want to get by without paying the fee and she doesn’t think that’s a good
assumption. There should be some compromise and for people who want to submit
applications, they should be willing to pay something to help preserve the beauty of
the lake.

Michael Donahoe, Sierra Club, stated he represents 700,000 people throughout the
country. Based on the fact that the State and Federal agencies are looking for more
input and collaboration and given that the science is not there yet for the Pathway
process, maybe we should do some waiting until some of those things are in place.
He thinks we should do this right. He will be considering with this new proposal what
the state of the lake is today. After 20 years and hundreds of millions or dollars
spent, we still have not reached thresholds. Shorezone is aimed at mitigation and
Pathway is aimed at threshold attainment and that concerns him. He thinks
Shorezone should be aimed at threshold attainment and until we attain thresholds,
we shouldn’t be thinking of doing anything except attaining thresholds. We should be asking the questions, which of the 7 alternatives are best for the lake and will help toward threshold attainment. As a property rights advocate, he will be looking to see if this alternative protects the property rights of the majority of the property owners. Last year TRPA received 2,063 post cards as of September and only 95 wanted more piers. This is a definite indicator. He would like all Board members to rethink their conflict of interest as it pertains to Shorezone.

John Falk, representing the Tahoe Sierra Board of Realtors, stated he wanted to echo some of the comments that relate to grandfathering of buoys. He thinks this is a more important issue than it may seem on the surface and that is due to the fact that this is the little guy who is trying to discern how TRPA does business. This is an opportunity to show your flexibility. He would encourage the Board to continue on the path of finding solutions. As it relates to how many structures or how many piers or buoys people want to see, there is an important point that often times gets lost and that is not a matter of statistics put private property rights and those first ten amendments to the Constitution. The Bill of Rights is to protect the individual against the tyranny of the majority. There should be a counter balance here.

John Friedrich, representing the League to Save Lake Tahoe, stated that he knows the staff has been working diligently to find a solution that satisfies all interests. He knows there is definitely room for improvement compared to the current regulations in protecting water quality standards. His concerns are: 1) they opposed Alternative 6 which this new proposal stems from because of the total projected impacts in the document. They didn’t feel that the proposed mitigation measures would be sufficient to offset these impacts. They feel this Alternative would be a violation of the outstanding national resource water protection for Tahoe. It would also have significant negative impact on TRPA’s thresholds. They had proposed that the mitigations be tested to see if they work. Rather than going toward the approach to mitigate first, many of the mitigation measures are being weakened and there would be an overall cost passed on to Lake Tahoe. They have a concern with the precedent set for the last twenty years for 220 private piers in this period but 415 would be eligible. The concern what the precedent would become for a 40 year period, over 400 new piers with the boat lifts being allowed on piers now. Piers still being allowed in visually sensitive areas, for scenic protection of Lake Tahoe to have a fair balance for the public’s enjoyment, those areas should be protected from new development. If certain areas are not protected from additional development there could be a defacto linear marina around the shore of Tahoe. 2) On the mitigation side, some of the concerns are buoy fees being lowered and the scaling back of fisheries mitigation, the removal of the quiet days for kayakers and others in Emerald Bay and the study for the implementation of the boat sticker and boat wash program. He feels this is less protection for the lake. So he feels that we can do better to better protect Lake Tahoe.

Leonard Shaw, lakefront homeowner, stated that he favors sound discretion on the issue of grandfathering. He thinks when it comes time for the Board to pass an ordinance, it is very important to be able to have a provision permitting staff to exercise sound discretion that may come before them. With buoys, whether the individual is a littoral owner or is a non littoral owner, there are a great many people who purchased these properties in the early 1950’s and put buoys out there. Through the years in good faith and having absolutely no knowledge of any
permitting requirements, people have placed and perpetuated buoys. He feels that in the ordinance a provision which would enable the staff to exercise what he is sure they have and that is sound discretion. If he came to TRPA and did his best to document that these buoys were there since 1952, he would like to have staff have the ability to make a decision to act in his favor if they felt that was the proper exercise of sound discretion. He urges the Board to insist upon the fact of whatever resolution they pass not be so hard and fast that it will generate multiple law suits, but will give sufficient ability and flexibility to staff to avoid this type of consequence.

Elise Fett, Pathway 2007 representative of local homeowners, stated that she would like the Board to consider the importance of the homeowners who have been here for 40+ years and have had buoys. Some of them have been paying fees for 30 years to State Lands or to Army Corps of Engineers and they have not gone through the process with TRPA. She can see the problems that they will face financially and arguments that they could have with their neighbors. In some of these areas where there are coves, there is a constant fight for the best location of buoys. Neighbor meetings might assist in determining who had these buoys for many years, even though they don’t have a TRPA permit.

Jan Brisco, representing the Tahoe Lakefront Owners' Association, stated that their comments have been largely incorporated in this Alternative 6A. She is disappointed that they did not get the full alternative to review as it's very difficult to say they agree to certain policies as a framework without seeing the entire document. She thinks there are places that we can make agreements and places where they won’t. It will be the Board’s job to figure out what the best solution is going to be. The total number of pierless parcels, the total number of buoys, boats and all of those things, you get down to a basic level of what is considered a property right. What is considered a privilege and what is considered good for the lake and ultimately that will be the big question. Their Association believes in the right to wharf out to navigable water and that’s not a distance off shore. In some cases a 40 foot pier is adequate and in other cases you will need a 250 foot pier or more. When we get into the public piers and some of the waterborne transit needs, those piers will have a huge impact on the thresholds. Legally existing structures is very simple. Those structures that pre-date TRPA, those structures that have received a TRPA permit or all other permits associated with that particular project at the time, should comply with the rules. The structures that are legally existing should have precedent over something that comes in the future. TRPA has been grandfathering buoys and piers and she doesn’t think we need to come up with anything new for this. Repair and modification should be separated from expansion. You also need to look at how to resolve this threshold equity and how to respond to balancing out the thresholds. Rock crib piers have been found to be valuable to fish habitat in some areas. Yet, what we heard today is that many of those rock crib piers would be required to be removed in the public lateral access near shore. The critical spawning and fish habitat is right up there on shore. With lateral shoreline access, we want to make sure that stays with each respective State. We don’t think that TRPA needs to get involved with that as it has huge implications across the board. Hopefully you will be looking to each State to implement their public access and public trust policies as appropriate. With respect to mitigation programs, the number one thing they want to see is successful programs. No one has more at stake than they do in making sure these programs work. They need to be fair and equitable and analyze the legitimate impacts and they will help with the adaptive management process if for some reason
something isn’t working. If we are making huge improvements like with the 2-stroke ban, are you going to release more development? We want to make sure we are looking for the success in the process. Performance evaluation needs to be very clear and we want to make sure whatever the mitigation programs are, they are properly analyzed. We need to make some guidelines rather than standards. Why is the retirement of lake frontage important? You can only have one pier per parcel, so why does it matter if you have 50 feet or 500 feet. She thinks it should be the retirement of development potential that should be looked at. That should be more important than how much lake frontage someone has because that sounds discriminatory. Public piers taken from the private pool is a concern. Please set a date and make August the drop dead date for the release of the document. They want to make sure that Lahontan is at the table and agreeable to piers in fish habitat. The Shorezone partnership committee should be reconvened.

Amanda Fehd, reporter for the Tahoe Daily Tribune, explained her role in all the newspapers around the lake. She suggests that the Agency create more official accounts of its policies and its announcements. She suggests that the agencies official stance and their official announcement of what’s going on at the Agency would be reflected more accurately in the papers if she had it in writing.

Bruce Fisher, homeowner and on the Board at Star Harbor, stated that he was really encouraged two years ago when he heard John Singlaub speak that things were going to happen fast. He was really optimistic and he is sure John has really learned a lot since then. They have some buoy problems that they want to correct and we heard they couldn’t do anything. They are almost finished with their BMPs at the expense of almost $450,000. The homeowners are very supportive of protecting the lake, but would like to get their buoys taken care of. He would hope that whatever is decided on buoys and piers that it is practical and usable. They have a buoy field that has been legal and tagged two years ago by TPRA and it is good except it doesn’t work. They use their buoys primarily in low water, but their buoys stay inside 6219 and most of the boats that use their buoys are sailboats with deep keels or the longer boats. They had one sailboat that sunk because it bottomed out on our deepest buoy. They want to get to a point where they can move their buoys out where they are usable and they think environmentally, the buoys are better in deeper water. They just ask that when you look at the alternative that it be practical.

**Board Direction to Staff:**

Board member Shelly Aldean stated that for staff’s consideration and members of the Board, there has to be someway to determine the status of all the buoys and she suggests that questionnaires be sent to all littoral property owners to confirm the presence and status of their buoys and documentation would be provided to substantiate any claims by those property owners. Legal easements affording shoreline access would be recognized as a legitimate interest in a littoral piece of property for purposes of applying for retaining a buoy. Existing pre-1970 buoys and buoys permitted by other agencies that can be brought into compliance shall be with respect to the grid setback, regardless of whether or not they are technically grandfathered, they would have to comply with those requirements. If evidence is presented to confirm that a buoy has been properly permitted by one of the jurisdictional agencies or that the buoys were in existence before 1970, the buoys can be retained. If use of these buoys were discontinued for three years or longer,
the buoys would have to be removed. We would need some way of determining that the use of these buoys was discontinued for an extended period of time.

Board member Steven Merrill stated that he thinks they all agree that there is a need for grandfathering but what is also clear is that one size is not going to fit all and there needs to be some flexibility for people to come to the Board and for us to look at those on a case by case basis. The same could be for grandfathering that doesn’t meet the criteria that they don’t have a Corps permit or a pre-1970 aerial photograph. He has a problem if someone has a buoy in front of someone else’s property. We should draw the line so that you cannot have a buoy in front of someone else’s property, unless there is express written permission from the littoral property owner.

Board member Coe Swobe stated that he agrees with Mr. Merrill that the Board or staff can determine where these exceptions lie and deal with them. If buoys have been here for 40 years, do we have a problem with non-littoral interfering with littoral and has anyone complained about this?

Board member Mike Weber stated that he has three points: 1) flexible buoy program with a practical, reasonable grandfather clause; 2) public trust/public access – it’s really critical that our State and Federal agencies feel that they are heard and listened to by our staff and our agency and we treat them with the kind of respect that we would want to be treated with as it may relate to a certain agency that we pleaded with to help us on something and coming up with a document together and who is not here to day; 3) preferred Shorezone 6A plan – how did this become fourth out of fifth in attaining recreation thresholds.

Board member Steven Merrill stated he thinks the direction that we are going in for grandfathering is correct. We should make this clear and that will eliminate a lot of the issues. He thinks the concept of adaptive management with teeth in it is critical to getting support from those who have concerns about how are these program going to work. If we have an adequate review process we can stop, look and adjust. The $100,000 fee for a pier is contentious and we should make sure we can justify it. He has always been bothered by the fact that buoys and buoy fields have a much bigger impact on lateral access along the lake than piers, but there is no public access fees for buoys and thinks this should be more in balance to be consistent.

Board member Tim Smith stated that he agrees with Mike and other regarding the grandfathering and thinks that staff will bring back a reasonable solution. A request was made about giving staff a deadline for the release of the document. If a reasonable deadline was given, are we going to be doing something that would make it impossible to come out with a good document? He asked for a status on the Shorezone ordinances at each Board meeting under the Executive Director’s report.

Chairman Allen Biaggi stated that he appreciates the commitment that John has made to work with the State agencies and he encourages flexibility within the document to allow those agencies to have some element of flexibility of future needs.

Board member Norma Santiago stated that she also encourages some flexibility and getting a really good assessment of what we really have and determine if we can have more buoys in certain areas. She wants to make sure that we take into account things that are happening in the Pathway process and that we are working
together toward that common goal and what might have some impact on water quality, particularly the TMDL. In Emerald Bay and looking at a speed of 5 miles per hour zone, we have to make sure that we have some enforcement stipulations in there and to include those agencies and be clear that we provide these agencies tools necessary in order to make sure that it is implemented.

Board member Jim Galloway supported some flexibility by staff in certain cases and that he would ask staff to see if they can do something to cover the kinds of situations that have been used as examples today. If the impact of these different discretions become too great that they put some safe guard in there as you can't make 100's of these kinds of individual rulings. He feels the impact of these decisions should be capped somehow. This should be part of the adaptive management. He would favor getting agreement on a specification for the boat program performance. If you can't get that you can't bring back the EIS. He wants to see some limits put on grandfathering. We could say that you will not be grandfathered unless you let your situation be known. If buoys have already been permitted, they should have some priority. In regard to the non-littoral buoys, we should but in our permit that other permits may be required.

Board member Coe Swobe stated that we should limit the non-littoral owners to only one buoy.

Chairman Biaggi stated that he didn’t think that we can’t write this document for something that may be perspective in the future. You have to address the realities that exist today.

Board member Norma Santiago asked when we are looking at the Pathway’s process and we are looking at specific goals and objectives in terms of water quality, and we now know that TMDLs are going to be out in July. How are we going to balance that out with Shorezone policy? If these studies are contradictory to what we are doing in the Shorezone, how will we balance this out.

Executive Director, John Singlaub stated that we have made a commitment to make adjustments to whatever Shorezone ordinances are proposed if it conflicts with Goals and Policies or thresholds that are approved under the Pathway process and will happen at that time. The TMDL is only looking at fine sediments, nitrogen and phosphorus. The only one relative here is nitrogen and the contribution that boats make to the overall nitrogen going into the lake is very minimal.

Board member Mike Weber stated that this is the adaptive management strategy. He thinks that we should help these people where we can help them and where you can’t help them, send them to the Board.

Board member Jim Galloway stated that he is supportive of moving the buoys out further where it’s practical.

Board member Norma Santiago stated that if we are looking at 5 miles an hour in Emerald Bay, it will take a little longer to get in and out of the Bay, how does that work in terms of pollutants.
Executive Director, John Singlaub stated that as he understands it from the manufacturers of the boats and the boat owners is that most efficient speeds for most boats today, are either 5 miles per hour or 40 miles an hour.

Board member Allen Biaggi stated that he feels this process has been very successful and these things don’t happen on their own and he wants to thank John, Joanne, Judy, Jerry, Sydney and Julie and all the staff for putting this together and moving forward. He thanks all the members of the Board for hanging in there and for being attentive and providing comments. He also thanks the public for providing some great input.

Board member Norma Santiago stated that she thinks that it’s important that we keep in mind that we want to minimize this moving target and try to get to some final resolution and for anyone in the public who didn’t get to speak today contact their Governing Board representative and give them your input.

Board member Larry Sevison thanked staff, as he has been with this for thirteen years, and he thinks they should be congratulated for the hard work. He is happy we have come this far this fast and really looks like we have our arms around the situation and looks like there are only a few areas of concerns. He gives staff a lot of credit for moving this forward quickly and he thinks everything is looking positively.

XIII. ADMINISTRATIVE MATTERS

A. Release of $35,000 from the Shorezone Mitigation Fund in order to Conduct a Motorized Watercraft Recreation Use Study

Executive Director John Singlaub asked for the Board to release these funds to study motorized watercraft recreation use.

Mr. Weber moved approval.
Motion carried unanimously.

XIV. ADJOURNMENT

Chairman Biaggi adjourned the meeting at 5:50 p.m.

Respectfully submitted,

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.