I. PLEDGE OF ALLEGIANCE

II. CALL TO ORDER AND DETERMINATION OF QUORUM

Governing Board Chair Ms. Motamedi called the meeting to order at 9:30 a.m.

Members Present:
Ms. Aldean, Mr. Biaggi, Ms. Bresnick, Mr. Kranz, Mr. Galloway, Ms. Moss for Ms. McDermid, Mr. Merrill, Mr. Miller, Ms. Motamedi, Mr. Ruthe, Ms. Santiago, Mr. Swobe, Mr. Weber.

Members Absent:
Mr. Waldie, Mr. Yount

III. PUBLIC INTEREST COMMENTS

James Nakata stated that he is having difficulty getting someone to look at his trees for defensible space.

Mira Besser stated she believes that we need redevelopment but cautions the Board to be careful not to be greedy and do the right thing for Tahoe and the environment.

IV. APPROVAL OF AGENDA

Ms. Aldean moved approval.

Motion carried unanimously.

V. APPROVAL OF MINUTES

Ms. Aldean moved approval as amended.

Motion carried unanimously.

VI. CONSENT CALENDAR (see Consent Calendar agenda below, for specific items)
Ms. Aldean stated that the Legal Committee is recommending that staff be authorized to litigate Item No. 3 and also that the show cause hearing should be cancelled as all of the parties failed to attend the meeting.

Mr. Weber moved approval.

Motion carried unanimously.

_The following Consent Calendar items were approved/accepted:_

1. Acceptance of October 2007 Monthly Financial Statements
2. Release of $428,000 of Air Quality Mitigation Funds to the City of South Lake Tahoe
3. Show Cause Hearing and/or Board Authorization to Litigate, Unauthorized Material Damage to Trees, State of California Parcel Adjacent to 498 Beaver, Kings Beach, Placer County, California, APNs 090-172-030, and 090-201-001 (the Board authorized the Agency Counsel to litigate)
4. Resolution Allocating Carryover Local Transportation Funds (LTF) from FY 2003-2004 and FY 2006-2007 ($297,094) to El Dorado County for Community Transit Services (Resolution 2007-20)
6. Resolution Allocating FY 2007-2008 Local Transportation Funds (LTF) ($664,530) to the City of South Lake Tahoe for Local Transit System Operating Assistance (Resolution 2007-22)
7. Resolution Allocating FY 2007-2008 State Transit Assistance (STA) ($133,416) to the City of South Lake Tahoe for Local Transit System Operating Assistance (Resolution 2007-23)

**VII. GOVERNING BOARD MEMBER REPORTS**

Ms. Santiago stated that she attended the California State Association of Counties Conference and was in a workshop that pertained to land use and transportation where they talked about California adopting SB32 which relates to green house gas reduction and minimizing the carbon footprint. She believes that the Board should be proactive in their involvement in these discussions in terms of determining of what is the appropriate reduction in green house gases that is attainable in the construction of projects.

Mr. Merrill stated that he is concerned about the invasive species situation and the fact that we haven’t received the money that has been set aside for this as we have not secured the private section portion to complete this request. He is frustrated that we are not doing enough before this gets to be a real problem, as it is one of our top priorities.

Mr. Biaggi stated that the Nevada delegation has come up with some ideas and recommendations for a compromise position in regards to where California is at regarding Shorezone. He is hopeful that Shorezone may be agenized for the December meeting.
Mr. Weber stated that as one of the representatives from the South Shore, he is proud that they are leading the Basin in smart growth in redevelopment projects.

VIII. PUBLIC HEARINGS

A. Amendment to Chapter 4.2.A (13) Project Review and Exempt Activities and Chapter 71.3 Tree Removal to increase the diameter limit on trees requiring a permit for removal from 6 inches to 14 inches and other related amendments

Staff member Mike Vollmer presented the proposed amendment to Chapter 4.2.A (13) Project Review and Exempt Activities and Chapter 71.3 Tree Removal to increase the diameter limit on trees requiring a permit for removal from 6 inches to 14 inches.

Agency Counsel Marchetta clarified for the record what is before the Board. It came to her attention after she had conversations with four Governing Board members that there is a belief that the proposed Code language that Mr. Vollmer just summarized that is included in your staff summary for the 14” tree removal amendments was an attempt by staff members to undermine and change the agreement that was made with the group of fire chiefs, to undermine the desires of the Fire Commission, to undermine the recommendations of the Advisory Planning Commission and to undermine the vote of the Governing Board Fire Committee. She needs to be very clear with the Board members today that the modified language that was added to the staff summary; the language that says for defensible space purposes was based on her legal advice. It was not an attempt by staff to change agreements. That advice was based on her legal concern that the amendments be worded so as to have a stronger basis to make our legal findings and to support the environmental review that supports the proposed change. Other suggested wording changes were based upon her recommendation to create internal consistencies within the Code. In order words, she was making her best attempt to bolster the legal basis for this change. It was not meant as disrespect or disregard for the decision of the Governing Board Fire Committee. It was not meant to disrespect the Fire Chiefs. It was not meant to disrespect or disregard the will of the Fire Commission and it was certainly not meant to disrespect or disregard the public’s concern for their personal safety. She is sorry that this was misperceived by all. It was an honest attempt to fulfill her role, which is to offer legal advice to this Board. Her advice was incorporated in consultation with other staff and in hindsight she should have fully vetted it with all of the members of this Board. Her vetting opportunity was between November 14th, the APC meeting and last Wednesday, November 21st, the day before Thanksgiving. She apologizes that vetting didn’t occur. She apologizes that the language went out the way that it did. She was attempting to balance a wide variety of considerations and in this instance her advice based on your feedback, reflected the wrong balance and an outcome to which you may now be supportive. The legal buck stops here and she accepts responsibility for the extent to which she mishandled this. It is certainly within your discretion not to agree with her advice and so in effort to give you options, the options that you have indicated that you wanted, she is offering today corrected language and she will pass it out. She is offering this language at Mr. Galloway’s request and that language is would strictly implement what the APC and the Fire Committee by their votes recommended. It would recommend that up to 14” tree removal is exempt from permit requirements and it would simply state that for lakefront structures the 6” limit would remain in effect between the structure and the lake. That is the language that is front of you and each of you has a copy. Later, after all the findings of the Fire Commission are in and we have a full package of proposed Code amendments in front of us, at that point she would recommend that we consider consistency changes and technical amendments that are conforming changes to make sure our Code is internally consistent.
Trying to make these amendments on an issue by issue basis makes it very difficult to maintain consistency within our Code. Some of her proposed language to you was intended to do nothing more that to make conforming amendments to the Code. But those conforming amendments were not considered by the committees, so she has pulled those off the table today and we can bring them forward and consider them at a later time to make sure our Code doesn’t have inconsistencies within it.

Public Comment:

Fire Chief Lorenzo Galliotti, South Lake Tahoe representing the Basin Fire Chiefs, stated that the fire districts would prefer to be able to get out there and do the work without an over encumbrance of administrative process and to allow residents to achieve voluntary compliance with California Public Resources 4291, the defensible space standard that we are all trying to accomplish.

John Pickett, Fire Safe Council, stated that he is trying to restore White Pine Forests (Sugar Pines) that is the most beloved tree in the Basin. He is trying to restore our forest ecosystem to pre-Comstock levels. What is being proposed today is the right thing to do for the ecology of our forest.

Duane Whitelaw, North Tahoe Fire Chief, stated that they would prefer to have this for all property owners and not have an exception for lakefront owners. He doesn’t want this to get in the way of a property owners that want to do the right thing and remove the hazardous trees.

Curt Ladiplou stated that as you consider this amendment, keep in mind that there is a potential to have conflicting regulations. Those conflicting regulations come out of what has already been adopted within California under the Public Resources Code and what has currently been adopted by the Nevada Fire agencies in the Basin that have to do with defensible space. Senator Feinstein has introduced several pieces of legislation relative to grants and most of them are for funding of prescription hazard abatement, for public education, and for the suppression of fire management for local governments.

Mike Brown, Fire Chief North Lake Tahoe Fire Protection District, stated that he would like to see this amendment kept simple. This will be confusing if we approve a different standard for lakefront properties.

John Pang, Fire Chief Meeks Bay, stated the fire districts are also very concerned with the blue of Lake Tahoe. We need to protect the entire Basin from fire which in turn protects the watershed.

Board Discussion:

Mr. Swobe thanked the Advisory Planning Commission and the Fire Committee for supporting the staff report and the amendment, and especially the Fire Chiefs for their role in this process.

Mr. Weber stated that when he made the motion regarding the defensible space for Shorezone properties, it was with the intention that if there is a tree, no matter what side of the house it is on, the tree could be marked by the fire jurisdiction and removed. Then the scenic mitigation permitting process would happen after the fact and it wasn’t meant to be before you can cut a tree, you would have to mitigate the impact first.
Ms. Santiago asked if the fire districts have the funding to do defensible space inspections or do we need to find funding for this? The fire districts work with the University of Nevada, Reno Extension to publish and provide “living with fire” information which is becoming the standardized educational format for use by all the fire agencies.

Mr. Kranz stated that this is the first of many changes that we are considering and this is our opportunity to show the public that we are serious about this matter. He wants to make sure that the information gets out to the public as soon as possible.

Ms. Bresnick stated that this is defensible space driven and is carte blanche' for people to remove trees 14” or less and we need to recognize this.

Ms. Aldean recommended that property owners contact their local fire districts before they start cutting down trees, as this is very educational and thinking that you are lessening the probability of your house burning may not be the case. This is a valuable exercise and she encourages everyone to use this service. This takes this out of TRPA’s purview and anyone who has a situation where someone has cut down trees on their property under 14”, TPRA is no longer going to be able to assist those aggrieved parties.

Mr. Merrill stated that the hope has been that we could take the necessary steps to improve the fire safety in the Basin and not develop conflicts between environmental standards that we have. This does not mean that homeowners cannot remove trees on lakefront properties, but they would need to get a permit which has two benefits: 1) this makes sure that the trees taken out are only for defensible space and 2) this also gives the person great advice and you have a forest benefit by learning about what is located on your property. This also pertains not only to lakefront property, but to our scenic corridors and helps protect this area.

Ms. Motamedi stated she appreciates the fire districts’ support on this amendment and we are trying to create partnerships with the agencies to maximize all of our resources for the benefit and clarity of Lake Tahoe. She feels that we need to be consistent with PRC 4291 throughout the state and we need a process that is understandable to the public.

Mr. Swobe moved approval of Alternative 1, with the exception of the one sentence that has been stricken, and including the correction of 14” or less dbh.

Yes Votes: Ms. Aldean, Mr. Biaggi, Ms. Bresnick, Mr. Kranz, Mr. Galloway, Ms. Moss, Mr. Miller, Ms. Motamedi, Mr. Ruthe, Ms. Santiago, Mr. Swobe, Mr. Weber

No Votes: Mr. Merrill

Motion carried.

IX.   PLANNING MATTERS

A. Community Enhancement Program - Update on Pre-application Proposals and Public Meetings

Staff Member John Hitchcock presented an overview of the program and staff member Brenda Hunt presented in more detail, the proposed projects that have been submitted under the Community Enhancement Program process.
Public Comment:

Teri Jamin, City of South Lake Tahoe, stated that they are excited to have two proposed CEP projects at the Y, which is a major gateway to our community. They are looking forward to working with the Board and staff on these projects.

John Falk, Tahoe Sierra Board of Realtors, stated they appreciate the evolution of the demonstration project concept into the CEP proposal that is moving forward. They feel it is imperative that you have these on the ground projects to be able to test out concepts and principles that may be included for consideration in the next Regional Plan.

Brennan LaGlasse, League to Save Lake Tahoe, stated the League believes that the Regional Plan should guide the CEP process, which should then guide project level development.

Ellie Waller stated that there are no guidelines or limitations set for height or density that the community members know that TRPA is accepting or objecting to. The community does not know these limitations and the developers are spending thousands of dollars on what you might reject. Does the Kings Beach and other community plans get informed and do the communities have input on the character of what the communities will look like in the future?

Susan Gearhart stated she is concerned about how large the Homewood project is.

Ron Grasse stated that the Homewood ski area project is not only large but it will double the population of this small area.

Michael Oliver stated that along with most of the business owners in the Homewood area and they are in full support of the Homewood proposed development project.

Dave McClure stated that the CEP programs say it will inform the new Regional Plan, yet the two are running concurrently. There will not be any results from a CEP project including monitoring that will inform the Regional Plan. How and when will cumulative impacts of these projects be addressed?

George Coster stated some of the things that the CEP programs address are what the community workshops wanted for their communities in the terms of smart growth. He thinks that these projects are trying to answer what the public is looking for in revitalizing the urban areas.

Mira Besser stated she has enormous concerns about the six different projects that are planned right now in the Kings Beach area. There are six projects of high density, commercial and office space, timeshares and rental units with nothing for sale. They say they want to be ecological and environmentally sound and yet some do not have a clue on what this means.

James Gearhart stated the community plan will increase housing and does not cover rural areas, such as Homewood. He does not support the Homewood project which he considers over development.

Rob Weston stated that the CEP projects are designed to test future requirements and he applauds the Board for accepting these projects. He thinks these new concepts are a good thing to test and that is what the CEP process is for. The Homewood project has a community
center proposed and this area desperately needs a community center. He welcomes the fact that this is being considered for this area, which benefits the economy and the community as it provides some family areas to gather as well as for visitors.

Jennifer Merchant, Placer County, stated that she thanks staff and the Board for working with Placer County and the other local jurisdictions in the development of the Community Enhancement Program. She was involved in thirteen (13) presentations at North Lake Tahoe within the past three months on the Community Enhancement Program. We talked about what the program is, what the timeline is and how it is related to place-based planning and to the Regional Plan. She is surprised to hear some public say there was lack of public participation. We also had a planning working group involved that represented members of the community, local special districts, environmental groups, fire personnel, affordable housing and Latino groups and she thinks that we have brought the community into this process a lot earlier than we normally would have. These are only concept projects and we haven’t even started environmental documents and we don’t have environmental questionnaires complete and into the County. We are talking only about concepts at this stage.

Dave Ferrari stated that the Board should look very favorably on the housing portion of this program. Almost all of the properties that are being considered for removal are almost all studio/motel unit apartments that are now lived in by 4 people in each of these units. The affordable housing in the North Shore is at a crisis stage as these buildings were built in the 1950s and 1960s and are not near the proper Code of today.

Corey Richie stated that she commends the efforts to seek environmental improvements through the CEP and these commodities being offered to encourage smart growth have a value, worth millions of dollars. One South Shore project is requesting 17,000 square foot of CFAs and the market value is about $935,000 for this one project. Let’s be sure to ask for a lot in return. She hopes that these projects will be leed certified construction.

Board Discussion:

Mr. Galloway asked the following questions:

1) Are we accepting project applications that are not consistent with the community plans – like variances of our height requirements? He hopes if they want a variation on height or any other TRPA Code restriction, that they specify that.
2) How do we lawfully implement that, since we don’t do variances – is there going to be a CEP Ordinance, and does that ordinance allow different heights or other different features on buildings, setbacks, etc. than our normal Code and is it going to have side bars?
3) Even before an EIS is completed, we will be asked to reserve commodities for some projects and if a project has a low score, do we have the option to not allocate those projects but bank them for a second round of CEP.
4) Some projects have different versions. The Tahoe Valley Plan – include the original community alternative in the EIS – that may require less commodities than the proposed other project that involves redevelopment of areas that are not part of the Y but are adjacent areas. Do we have the choice in reserving commodities that we can decide for which version we reserve the commodities?
5) What happens to the commodities if the project doesn’t move forward? Will there be a timeline expiration? When people promise things like lodging, is there going to be some specificity in that? How do you turn proposed benefits into guaranteed benefits?

Mr. Galloway would like the answers to all Board questions be posted on the TRPA website.

Ms. Santiago stated she would like to understand the process. Under the area called important considerations, it says the project proposals are at a concept level and no projects are seeking approvals at this time. Are these nine projects now going to be reviewed against the Community Enhancement Program criteria? (Staff responded yes) She assumes that staff in January will bring to the Board to describe which of those nine projects best meet this criteria. (Staff responded yes) The South Shore project has met the criteria, but as it is part of the Tahoe Valley Community Plan EIS, how does that project correlate with what we are trying to do with the Tahoe Valley Community Plan? (Staff stated that we are hopeful that we can combine all these things into the community plan EIS, so we are doing those together which would make the most sense.) What additional public meetings will take place? She wants to make sure that the public knows what the Board will be doing in January. We will not be voting on projects to move forward, but only that the CEP criteria has been met. She would like a flowchart on what we are doing and when.

Executive Director Singlaub stated that we are working with all of these projects now, trying to get them to a place where we can recommend to the Board to invite them to submit a project application. We are at the pre-application stage and we are trying to make this as transparent as possible so in January we can make a recommendation to the Board to invite some or all of these projects, in the best form that we can get them, to move forward. We want to get as many environmental improvements as possible. The goal is to improve the projects so they meet the CEP criteria.

Mr. Merrill stated that the six projects proposed in the Kings Beach area are huge. He agrees that we should look at Kings Beach/Tahoe Vista collectively.

Executive Director Singlaub stated that they are discussing with Placer County whether it would be feasible to do an EIS encompassing all the projects collectively for redevelopment. We want to look at the cumulative impacts of these and we can look at these as a cumulative redevelopment of the downtown Kings Beach area.

Agency Counsel Marchetta stated that this program is based on the existing Code, but it is also intended to have enhancements based upon some of the scientific information that has been developed that we know is relevant to the Regional Plan update, specifically the TMDL information where we know that our urban cores are a direct and the most significant problem with respect to fine sediment runoff into the Lake. We also know that our urban cores are approximately 90% covered right now. We have commodities available under the existing Code. Those commodities can be used poorly or used aggressively to enhance some of the environmental benefits that we would like to fast track and not wait until we have the new Regional Plan. We do not want these commodities to be used up without taking into account an increased increment of environmental benefit which will move us toward faster attainment of thresholds.
Ms. Aldean asked that with a limited number of commodities, if all these projects go forward as currently proposed, would we exceed the number of commodities available.

Ms. Bresnick stated that she feels that there is still some confusion on what this process is. This is at a conceptual level and this is the time to continue public input. The public can contact TRPA staff or the project proponents with questions regarding the process or the projects. There will be additional meetings that the communities can participate in and give their comments. The answers to all Board questions raised here today will be posted on the TRPA website.

No action was taken.

B. Status Report on Scope of Work and Alternatives for Regional Plan Update EIS

Staff member John Hitchcock gave a status report on the scope of work and alternatives for the Regional Plan Update EIS. This will be brought back to the Governing Board periodically to give an update on the progress of the EIS and to hash out any issues that may arise.

Public Comment:

John Falk, Tahoe Sierra Board of Realtors, stated the only alternative of the four that has been presented that captures the essence of the Pathway 2007 Forum process, the Place-Based Planning process and all of the technical advisory group’s participation is Alternative 2. This is trying to do it the best way possible with Best Management Practices and creates the balance that will be so critical for the next 20 year planning cycle.

Dave McClure stated he has not seen in any of the alternatives the retrofitting of BMPs. If there are thousands of private property owner lots that haven’t done BMPs, is there some incentive that would give the homeowner the ability to feel that it is worth it to do their BMPs.

Rochelle Nason, League to Save Lake Tahoe, stated there were aspects of the Pathway Forum process, Place-Based planning that were not well captured or reflected in some of the dialogue that was heard. One of the key concepts is fewer, but better utilized, housing units. In all of these alternatives there are more exclusionary housing, moderate and affordable housing and how do we get more of this type of housing? If you step back and think about it, half or more of the housing in the Tahoe Basin is vacant and is second home owners. There is plenty of housing, but it is not used very well. We should find ways to offer incentives to homeowners to make those homes available on a rental basis to local people. Another item that is very critical is the need for a Regional revenue source.

Board Discussion:

Ms. Santiago stated she can’t emphasize enough how proactive we need to be in terms of getting green building going and understanding what this is. When we establish what we are measuring for the standards for the EIS and climatic changes, that we are engaging the States somehow in the process of setting the standards.

Ms. Moss stated that the staff report is easy to read and understand and she appreciates that.
Ms. Bresnick clarified that because we have married the thresholds and the Regional Plan environmental review process, we are going to assess the four alternatives against the existing thresholds as they are now and then assess them against what the proposed changes are and assess the proposed changes against the existing thresholds.

Mr. Biaggi stated that he has concerns about applying California air quality standards in Nevada. He thinks that we are setting ourselves up for problems down the road.

Mr. Merrill stated that he was unaware that we had a plan to increase indoor recreation proposed in Alternative 2.

Staff member Gabby Barrett stated that there is a Recreation Technical Group that has been working on recreation for the last few years. As part of the Forum process, they revisited recreation and a lot of the recreation providers felt that we need to put emphasis on other types of recreation. We have a threshold that talks about outdoor recreation but the group felt that we should be putting more emphasis on the other types of recreation which is reflected in Alternative 2.

Mr. Merrill stated that he noticed in the summary of comments that the thresholds that are to be reviewed do not include transportation as a threshold and he had suggested this be considered as a threshold. Was this lost in the translation?

Staff members Eileen Carey stated that she was responsible for putting together the test for these proposed threshold changes. The revisions for the VMT threshold was under air quality and she overlooked that request and when it is posted to the website she will make sure that is identified in the scoping report.

Mr. Merrill stated that there is mention of vehicle delay which is an interesting approach and was wondering why it is only showed under Alternative 2.

Staff member John Hitchcock stated that it could definitely be added to all the Alternatives.

Mr. Galloway stated that he has the same concerns as Mr. Biaggi and wants to keep the Basin's air quality standards open for further discussion.

No action was taken.

C. Discussion Regarding 2004 Regional Transportation Plan Bicycle and Pedestrian Element for the Lake Tahoe Region

Staff member Karen Fink presented the 2004 Regional Transportation Bicycle and Pedestrian Master Plan for the Lake Tahoe Region. She discussed how the TRPA transportation staff uses this plan on a day to day basis for projects that may come forward to the Board in the future.

Public Comment:

Ty Polastri, President of the Lake Tahoe Bicycle Coalition, stated that there are three issues that he would like to present: 1) Bicycling is the top three entry points for outdoor recreation. Bicycling plays an important gateway for people to learn about the outdoors and become an active participant in the value of outdoor recreation; 2) there is a disturbing trend occurring and that trend is a concept called side paths. Side paths are glorified sidewalks that are used for
bicycle lanes. Money is going towards building these sidewalks with bicycles on them. The problem is high use and high concentrations of conflict. We are trying to redefine the discussion and the use of these classifications. Side paths are not class one bike trails and we are not in favor of this because of conflicts and accidents that may occur; 3) an opportunity is that the Director of Caltrans is pro-bike, pro-complete streets and he wants to leave a legacy of a bicycle friendly state. Let’s take the opportunity to be proactive to work with Caltrans to get the kinds of things done that are described in the master plan.

Ellie Waller stated that she lives on an unmaintained County road that intersects Highway 28 and she is not sure how you incorporate a bike path with unmaintained roads. Is there a pre-requisite in the CEP to look at the bike plan?

Staff member Karen Fink stated that this definitely is part of CEP. Also there isn’t anything called for on unmaintained roads.

Lisa O’Daly, California Tahoe Conservancy, stated that this is a valuable tool that serves for our program and they are a primary funding source for the bike trails on the California side. They use it in all areas of their future planning.

Board Discussion:

Mr. Galloway stated that in Washoe County they did not call their facilities bike paths but called it a pedestrian path. There wasn’t any way to get enough right-of-way or enough coverage to do both a bicycle lane and a pedestrian path, so they had to choose between the two. It is not a simple matter of misrepresentation if bicycles use that path, as they don’t have enough enforcement capability to stop this. Until we solve the coverage right-of-way problems, we will have to settle for less than the ideal, which is one of each.

Ms. Moss stated that we should not forget to make sure that part of the updates to the Community Plans and the Plan Area Statements should also be included as well.

Mr. Biaggi asked what leverage we have to compel Caltrans and Nevada Department Of Transportation to comply with the bike master plan.

Staff member Nick Haven stated that part of the difficulty is that Caltrans’ permitting process is not aligned with the rest of the storm water and other permitting process that we have. They get well down the road before TRPA says that they are supposed to be including a bike lane in their projects. They tell us that if they stop now, they will lose their funding. We continually are trying to get them to come into more of a conformance with our process so we know when we can get the input to make sure they include the bike component on their projects.

Ms. Aldean asked when you talk about rights-of-way, how do you calculate coverage. In many instances if they pave the entire right-of-way, it is 100% coverage. How are roadways dealt with?

Staff member Nick Haven stated that Caltrans has a banking system where in many areas they are not paving the entire right-of-way; so they are gaining some coverage opportunities. They also coordinate with the Conservancy to purchase coverage from their coverage bank.

No action was taken.
X. **APPEALS**

A. Appeal of Executive Director’s Administrative Determination, Kevin Lawson, El Dorado County, California, Assessor’s Parcel Numbers (APNs) 016-533-01 and 016-534-01, TRPA File Numbers 20061850 and 2007-0016

Staff member Nicole Rinke presented the project and the reason for the requested appeal.

The proponent, Kevin Lawson, presented his case for requesting the over turn of the Executive Director’s administrative determination.

Public Comment:

None

Board Discussion:

Mr. Weber stated that he thinks Nicole addressed this but he thought the entire time we were talking about El Dorado County and he has illustration number sixteen (from Mr. Lawson’s materials) is from Placer County, why is that?

Staff member Nicole Rinke stated that his exhibit number sixteen is referring to a whole different application and a whole different property that he is relying on as precedent for this decision. And yes as she pointed out, that one was in Placer County and this is El Dorado County and so the definitions and the way they do the subdivision maps, etc. are not necessarily overlapping or parallel.

Agency Counsel Marchetta stated that frankly the facts of what is being referred to as the perecedential case are not analogous to the facts here. It is a different case and so this case needs to be taken on its merits. For the record, he is referring to our decision as being the initial administrative determination. There was a re-issuance of that administrative determination which is actually the official decision - so we are talking about a basis for the decision that has been updated.

Ms. Aldean stated that in one of the pieces of correspondence with Mr. Lawson, he was talking about the difference between the allocations received as part of the IPES line drawing as opposed to the allocation assignment program. What, from a realistic standpoint, is the difference? Is there a difference in the marketability of those allocations, from a practical standpoint?

Staff member Nicole Rinke stated no. The allocations are identical. They both require that they be transferred to another parcel for use and that you retire a sensitive parcel in order to get the allocation. The only thing she has been able to understand as different between the two programs, and she has asked a lot of people, is the way we distribute them. For the drawing, TRPA reserves 10% of the pool every year for this drawing. We notify everyone who has a parcel below the IPES line, inviting them to apply for the allocations, and selected the recipients by random lottery, essentially. And the only other difference she can see is that if you apply for the allocation assignment program, you have to have your transfer site identified at the time of application. Whereas, if you get an allocation through the drawing, you have 6 months to identify a transfer site and transfer the allocation.
Ms. Aldean stated that so when Mr. Lawson applied for a below the IPES line allocation and received an allocation; he had until, he received the allocation she guesses on February 12, 2007, so he had until June 1, 2007 roughly a 6 month period to put that to beneficial use.

Staff member Nicole Rinke stated that was correct.

Ms. Aldean asked, what is the normal sequence of events? We went ahead and issued the allocations before he retired the lots. She wouldn’t think we would do anything until we had proof that the lots had been retired in accordance with the Code.

Staff member Nicole Rinke stated that the way the below the IPES line drawing works is that we invite you to apply if you have a below the IPES line parcel. If you apply, and are chosen to receive an allocation, then as part of that application to actually get the allocation, you have to show that you have retired the parcel.

Ms. Aldean asked whether he had demonstrated that.

Staff member Nicole Rinke stated that he did not make it to that stage.

Ms. Aldean stated that he received them from a procedural standpoint. He basically confirmed his eligibility to receive those allocations, but they were never actually delivered?

Agency Counsel Marchetta stated to clarify, he was awarded allocations under the below the IPES line drawing and he was awarded those allocations erroneously. When Nicole referred initially to the procedural complexity of this, TRPA made an error. While his appeal of whether he was eligible for an allocation under the allocation assignment program was pending, he applied through the below the IPES line drawing and another arm of TRPA erroneously issued him a below the IPES line allocation award. When we became aware of that award, we said did you check eligibility? We mistakenly did not check eligibility. He is not eligible for that erroneous allocation.

Ms. Aldean stated that by the same token, you in all fairness, and she appreciates the Agency taking this position, you weren’t going to revoke that assignment of allocation. So, in view of the fact that he received the allocations, even if it was erroneous, what did he have to do to perfect those allocations, to use them before the June 1st deadline? That is her question to Nicole and to Mr. Lawson, why didn’t you perfect them while you had possession of them?

Staff member Nicole Rinke stated that it is basically like if you had won the lottery and you have to go claim the money. So he won the lottery and got picked to be able to come in and get the allocations, but he never came in to get them. To actually get the allocations, he would have had to show retirement and also have picked a transfer location and be ready to transfer them and show that it was a suitable site to transfer to. He never made it to that next step.

Ms. Aldean stated that she thought the allocation assignment program required that you identify the receiving parcel upon receipt of the allocation, but not the below IPES line allocation drawing.

Staff member Nicole Rinke stated the drawing doesn’t require you to have the transfer site identified in order to get “picked” from the drawing, but it does require you to have it identified to come into actually say I am ready to use it.
Ms. Motamedi asked what the timeline is to come in to do that.

Staff member Nicole Rinke stated you have 6 months. It wasn’t clear when she looked back over the staff summary when the amended administrative determination was issued. The amended determination was issued on April 20th that was when we issued the amended admin determination and said okay you can go ahead and use those two allocations that we accidentally gave you, but as a legal matter we maintain that these were not eligible to receive allocations. So that was April 20th and they expired June 1st.

Ms. Aldean asked, so Mr. Lawson, you were not during that time able to identify receiving parcels for those allocations and is that why you didn’t perfect them?

Mr. Lawson stated no, that is not why. What Nicole is saying is that these types of allocations are identical; in fact they are extremely different. The first difference is that you cannot use below the IPES line allocations for parcels below a score of 726. He has a number of parcels that are below 726 and he doesn’t have any above 726. These allocations could not be used by me for my parcels or for any other parcels below 726.

Ms. Aldean asked why he applied for them.

Mr. Lawson stated that he applied because that would give him a marketable allocation which he could have used instead.

Ms. Aldean stated that you could only use it above the IPES line.

Mr. Lawson stated that he could only use it above the IPES line, so it would be a consolation prize. So he made that application while his appeal was pending. This appeal was supposed to be heard a year ago. The legal department has delayed this appeal for just about one year. During that time, they told me that my appeal was going to be heard back in January and at that time, he expected that this appeal would have been resolved and if it were in fact unfavorable, he would then have the opportunity to use these below the IPES line allocations. The other thing about them that makes them vastly inferior is that there is a very limited timeline to use them. If you grant his appeal, these two lots then can be used for allocations at any time even years in the future. With the below the IPES line, he had a very limited period of time. He did not finally get word from the legal department of whether or not if he was going to be allowed to use these until April 20th. He was still waiting to get his appeal heard and go ahead and use these allocations. Suddenly on April 20th, they said no now you have 40 days and you have to use them in that time. He considered very carefully the merits of trying suddenly to find someone to buy those allocations. But he relied instead on the fact that his appeal was based in the Code and in the all the designations of this parcel that it is clearly not being open space.

Agency Counsel Marchetta stated that what has been characterized as a delay was actually an effort to try to provide Mr. Lawson with what we considered to be an equitable remedy. We were in discussions with him and he was at least on notice that we believed we were going to make an unfavorable determination. We held back that unfavorable determination when we learned we had erroneously issued allocations in order to rewrite our administrative determination as an equitable matter to allow him to use the below the IPES line allocations. We gave him a gift and we didn’t think that would be characterized as harmful delay. We gave him a gift and he didn’t like the color of the gift. We gave him a blue gift and he wanted a red gift and then we got into this back and forth about whether or not he was eligible under one
program but not the other. It took hundreds of hours of emails back and forth to sort out exactly what the issue was.

Mr. Galloway stated that we are asked to rule on his appeal. So he is reading his appeal and his appeal asks us to review the administrative determination. the way he reads it. “I would like to get an administrative determination regarding the eligibility of two lots for use as sending lots in an allocation assignment transfer.” So we are not asked to rule whether they are open space or not. We are asked to rule whether they are eligible for an allocation. He would like Nicole to read him the section of Code that says if it was for park use, it is not eligible for an allocation.

Staff member Nicole Rinke stated that what it comes from is Code 21.6A.3 which says “parcels that contain one or more of the primary uses listed in 18.3 under recreation shall not have a development right”. In 18.3 there is a whole list of things that include day use areas, group facilities, etc. and she thinks that is the provision that you are talking about.

Mr. Galloway asked if it says parks use in general or just these possible specific examples.

Staff member Nicole Rinke stated that 18.3 says parks use.

Mr. Galloway stated that the subdivision document says, parks use.

Staff member Nicole Rinke stated that it does not have a special listing for park use, specifically. As she reads it, it basically says recreation and it lists a whole series of things, beach recreation, recreation centers and day use areas.

Mr. Galloway asked if it says something like including, but not limited to the following.

Staff member Nicole Rinke stated that she would show Mr. Galloway the section – it is just a list and it doesn’t say that. She clarified that she thinks there are two ways to look at this and this is where the “effectively retire” language comes in. One is that retirement implies that there has to be something that can be retired, so in other words there has to be a development right that can be forfeited and given up. This parcel doesn’t have a development right because it is reserved for park purposes. That is the chain of thought on that.

Mr. Miller asked what is the legal standard of review that we should be looking at, and who bears the burden of meeting that standard?

Agency Counsel Marchetta stated that the standard of review is substantial evidence on the record to support whatever position it is to be decided and we are not in a court of law, but were this to go to litigation, Mr. Lawson would as the claimant bear the burden of proof.

Mr. Miller stated that, along those lines, in the conclusion on Page 10 of the staff summary, number 2 says TRPA’s decision to dismiss Lawson’s initial appeal as moot was reasonable. He wonders if there may be a more appropriate term there as you could reach a decision that would be reasonable, but never the less legally unsound.

Agency Counsel Marchetta asked if Mr. Miller is asking us to modify that or explain what we meant by that.

Mr. Miller stated that he thinks if we are going to follow staff’s recommendation as to the conclusions that you have laid out, he thinks that the second criteria “TRPA’s decision to
dismiss Lawson’s initial appeal as moot was reasonable” may not give us enough justification. We may want to say something stronger. In other words, staffs conclusion that Lawson’s appeal was moot was justifiable and appropriate given the criteria that you have stated there in the staff summary.

Agency Counsel Marchetta stated that this is a good clarification and they will correct the record.

Ms. Bresnick stated that to follow on Mr. Galloway’s question, she thinks that park purposes is a generic term and she thinks you can take from the list of items in that Code section that those are park uses - gathering places, day use areas generally defines park uses. So from her perspective, that the word park uses is not specifically listed in that section does not preclude us from a finding that park uses are subsumed within that Code section and if that is the case and these parcels were preserved for park or designated for park uses, that they would not have a development right. She does not think that the lack of the actual use of the term park uses in that Code section precludes a finding that the uses listed in the section are in fact what you would find within a park, whether it be a passive park or an active park. She thinks the actual use of the term is not determinative. With respect to what Mr. Weber had raised with the example of Placer County, what’s contained in Placer County subdivision maps would not be controlling on El Dorado County maps? The fact that open space, park, or other purposes are designated differently, or that the Counties have different ways of establishing them, does not mean that this is the right way and this is the wrong way to do it, they are just different. She thinks that in terms of whether these parcels have a development right, from her perspective and from listening, they do not. And if they do not, they are not eligible for the program.

Mr. Galloway stated that he has new information. Here is the section that says what does not have a development right if it is not open space. All he concludes is that this is for parks use and that’s all he can conclude. “Parcels that contain one or more of the primary uses in Section 18.3, under recreation on the effective date of the Regional Plan shall not have a development right.” Then there is a list of specific uses, beach recreation, riding and hiking trails and so on. Except that parcels with only dispersed outdoor recreation as a primary use shall have a development right. There is not a specific designation and this parcel is not restricted to one of these specific uses or even a certain number of these specific uses, the map just say park uses.

Staff member Nicole Rinke stated that if we are going to look at those definitions from Chapter 18, there is also a definition of open space which is “land with no land coverage and maintained in a natural condition or landscape condition consistent with best management practices, such as deed restricted properties and designated open space areas”.

Mr. Lawson stated that neither of which this is.

Ms. Aldean stated that she doesn’t know that Nicole mischaracterized this map - as you can see that there is a portion of open space area that says “not a part of this subdivision”. This is a subdivision as far as she can tell, otherwise they would not be using this terminology. Her question is how did these lots, the restrictions she guesses, the CC&Rs that pertain to this subdivision that may have expired or were cancelled directed the use of these properties as park purposes.

Agency Counsel Marchetta stated that we are not aware of what the CC&Rs are or have been on this property. It has been asserted on the record that these parcels were reserved for tennis courts and swimming pool development and that never occurred.
Ms. Aldean asked whether the other homeowners have a beneficial use or ownership interest in these parcels by virtue of these CC&Rs.

Agency Counsel Marchetta stated that we don’t know this.

Ms. Aldean stated that it appears to only be a partial title report in the documentation that is provided.

Mr. Lawson stated that there was a promise made by the developer to the home owners and that promise was never fulfilled that these lots would be developed as swimming pool and tennis courts. They didn’t follow through on that and there was a suit against them for not following through on that and in 1987 that suit was dropped because IPES came in and the entire situation was rendered moot. At that point you couldn’t develop anyway.

Ms. Aldean said that Mr. Lawson’s statement today is that these other homeowners have no equitable interest in these properties.

Mr. Lawson stated yes they have no equitable interest. They were reserved by the developer in the name of the developers and they made a promise that they would make that available or make access to these lots available, but they retained it as their private property.

Ms. Aldean asked that when we developed the allocation process, her understanding was the allocations were designed for residential use only or single family residential use. So the presumption is that if the IPES scores weren’t so low on these two pieces of property that they could perhaps be used for residential purposes and therefore be entitled to a residential allocation.

Agency Counsel Marchetta stated that is Mr. Lawson’s contention - based upon some of the record that he has put in saying that the county has designated these lots as having residential potential. As a practical matter, these are reserved for park purposes and she doesn’t think that the park use would be consistent with actually building residential structures on these two lots.

Ms. Aldean questioned whether the counties position is even relevant to our discussion. If the allocations were designed to basically preserve value in residential properties and because of low IPES scores are not eligible for development, the allocations are one way of avoiding inverse condemnation suits and that is how IPES came about - to preserve some value, marketable value, in these environmentally sensitive lots. So the whole allocation system was designed to provide residential lots owners with some relief, is that a fair statement?

Agency Counsel Marchetta stated that is a fair statement.

Mr. Lawson stated yes but you would need an allocation in order to develop facilities on these parcels. What we are talking about here is what is in the Code. Nicole has slipped in a new concept in here that was not in anything that she and I discussed in the period of a year. Suddenly she has brought up the issue of development rights. He is scrambling a little bit to respond to the issue of development rights because that was not in the staff summary.

Ms. Bresnick questioned what dispersed outdoor recreation is supposed to mean.
Executive Director Singlaub stated that dispersed recreation is governed under our PAOT system and that is Forest Service, Park Lands and those kinds of things.

Ms. Bresnick stated that those kinds of things would have a development right.

Executive Director Singlaub stated that the only reason that they have a development right is because in order to be able to develop a camp ground or a trail head or something like that on those public parcels.

Ms. Bresnick asked if Nicole had read to them TRPA’s definition of open space and what did that say.

Staff member Nicole Rinke stated that she doesn’t believe this would qualify as dispersed outdoor recreation under the way we use it at TRPA and even under his argument that these were intended for swimming pools and tennis courts.

Executive Director Singlaub stated that open space is “land with no land coverage and maintained in a natural condition or landscaped condition consistent with best management practices such as deed restricted properties and designated open space areas”.

Ms. Bresnick stated that to her park purposes is a designated open space area. We have definitions that are controlling from TPRA. What El Dorado County might designate as open space and the definition of open space can change through time, it would not be controlling on TRPA. This land has been maintained in an open space condition and was such at the time of the adoption of this Regional Plan and so therefore that on the effective date, these areas were open space as defined by TRPA.

Mr. Lawson asked how TRPA can define these as open space as the definition of open space you are saying is open space. That is not a definition, it is a circular argument. There is nothing in that definition of open space other than open space is open space.

Executive Director Singlaub stated that it says maintained in a natural condition or landscaped condition.

Mr. Lawson stated that any lot that hasn’t been developed is now open space. This is not a lot that has no land coverage. These parcels have land coverage. These parcels have 890 square feet of land coverage.

Staff member Nicole Rinke stated that she has never seen anything about that.

Mr. Lawson stated he would hope that someone here is aware of this as every zero IPES and that is in the determination that they sent to me was that you are entitled to the land coverage and each parcel is entitled to 1% land coverage that amounts to a total of 890 square feet of land coverage.

Executive Director Singlaub stated that there is a difference between allowable land coverage and existing land coverage.

Mr. Lawson stated that distinction is not made in the Code.

Staff member Nicole Rinke stated that distinction is made in the Code.
Mr. Lawson stated that what we have done is jump from the concept of open space, and didn’t win on open space, and then they jumped to the concept of retired and they didn’t win on retired and now they are jumping to the concept of development right.

Mr. Galloway stated that he thinks that the fact that at the time it was dedicated it didn’t have any existing coverage on it is not sufficient grounds to say it was open space because none of the vacant lots that are clearly entitled to allocations had coverage on them. So unless it was deed restricted as open space, it’s not open space. What he sees as the deed restriction here is the note on the map. The deed restriction is for parks and it doesn’t say open space. So, he agrees this is a tough call and he doesn’t want to just hand out things willy-nilly to people, but he still thinks we can’t deny the allocations as it isn’t restricted to just one or two or three of those uses. Conversely he could maybe say all you residents, do you want to buy into my camp ground that I am going to build here and put some BBQ pits down and do dispersed recreation. Let’s just vote on it.

Agency Counsel Marchetta stated how you interpret the words for “park purposes” is key. Is for “park purposes” intended to be for development potential or is “for park purposes” intended to be as open space. That is the fundamental question and there is a disagreement and there is ambiguity and it often comes up in Code interpretation and you have heard both sides. Is this a parcel that was intended for developed?

Ms. Moss moved to approve the appeal. Clearly there is record from staff that all of the steps were taken properly and it was determined that there were no allocations available on the property. There was an error in terms of processing the IPES evaluation and that has been made reference to in the staff report. TRPA allowed the owner to keep those two allocations and to use those. But he elected not to do that. There is sufficient documentation in the subdivision map that these lots are clearly deed restricted and she would defer that to the county who is responsible for approving those final maps and who set that up initially.

Voted No: Ms. Aldean, Mr. Biaggi, Mr. Miller, Mr. Ruthe, Ms. Moss, Mr. Swobe, Ms. Bresnick, Mr. Merrill, Ms. Motamedi, Ms. Santiago, Mr. Kranz

Voted Yes: Mr. Galloway, Mr. Weber

Motion failed.

Mr. Biaggi moved to go into Closed Session.

Motion carried unanimously.

XI. ADMINISTRATIVE MATTERS

A. Closed Session for Agency Counsel’s Performance Review

Ms. Aldean moved to go into open session.

Motion carried unanimously.

B. Agency Counsel’s Salary Adjustment
Mr. Galloway moved approval of a 4% increase to the Agency Counsel’s salary retroactive to July 1, 2007.

Motion carried unanimously.

D. Executive Director’s Performance Review and Salary Adjustment

Mr. Biaggi presented an overview of the performance review process. The Board decided to evaluate Ms. Marchetta and Mr. Singlaub using a 360 review, which would provide input from a large number of individuals spanning internal and external people. The review was completed by a third party consultant. This is a basis for the evaluation but not the only tool and certainly doesn’t preclude further individual Board member input today. In accordance with the requirements of Nevada law, this performance review is being done in a public forum.

Board Discussion:

Mr. Galloway asked about the performance information included in the Governing Board packet. He asked staff who wrote the performance report and what time period it applies to?

Executive Director Singlaub stated that Attachment A sets out the performance goals that were established and approved by the Board in July, 2006, which apply for the Fiscal Year July 1, 2006 to June 30, 2007. The goals in the performance report are taken directly out of that and in italics are the this year’s for each goal. These are taken out of the Strategic Plan that the Board approves every year. Attachment B is the performance goals for this current Fiscal Year beginning July 1, 2007 to June 30, 2008. This year we extracted out this year’s goals that were approved by the Board in July, 2007. He is operating under this fiscal year’s goals as the Board’s expectation of what should be accomplished.

Mr. Galloway stated that the performance rating suggests there are some performance problems being perceived by the Board and also from other groups. When we approved the goals, we did not have the benefit of this performance report and he wants to know if something should be done to address the results where there are some weaknesses such as coming up with performance goals that address these.

Mr. Swobe’s comments are attached.

Ms. Aldean stated that for some additional cost, the consultant will work with the person that has been evaluated to develop a work plan to improve his or her performance, which is an option. Ms. Aldean stated that Mr. Singlaub has a very difficult job and in this Basin there is very little consensus of opinion and TRPA as it goes through an agonizing culture change is going to experience some bumps along the way and Mr. Singlaub is the recipient of most of the complaints as he is the Executive Director. Has he done a perfect job, no. Could anyone in this position do a perfect job, in her estimation, no. It is an extraordinarily difficult job. There are some of us on the Board who occupy political offices and we are extremely sensitive to political winds and we try to translate that into a change in policy and request that Mr. Singlaub implement those changes in policy. Is that fair, probably not, but unfortunately it is a reality. Her only criticism of Mr. Singlaub is that the position requires tremendous composure to be the target of so much criticism and it is very easy and only human to lose your composure. It is something that we all have to work on. She thinks that Mr. Singlaub has done a good job when you look at things that have been accomplished under his stewardship. There are always areas of improvement, but he has done an excellent job of changing the culture of TRPA and she has
received letters from the public congratulating Mr. Singlaub for doing an exemplary job and she agrees with those comments.

Ms. Motamedi stated that Mr. Singlaub has a very complex job and has to answer to a lot of people. She received a very clear understanding of things that were identified in your review and her desire is to see openness on Mr. Singlaub’s part to accept and digest what was presented and be open to working on those items.

Ms. Bresnick stated that she would like to see a focus on the skills as well as the tasks. It is very hard at this level for you to try to do too many things and suggests working on the composure skill that helps get your message across when dealing with the public, Board members and staff.

Mr. Merrill stated that he agrees with some of the Board members who are advising that Mr. Singlaub takes this opportunity to implement these suggestions, and use some Board members to assist in this process.

Mr. Galloway stated that, with the assistance of the consultant, there be a revision of the performance goals to include some of the skill items. He suggests adding balancing Board and other obligations of TRPA. It can happen not just with regard to the fire request, but it could happen with regard to Shorezone and other issues and that is the skill to focus on with a response to all the competing priorities.

Ms. Moss stated by looking at the review, Mr. Singlaub’s single strongest skill is the ability to deal with change, which correlates to strategic thinking. At the time you were hired, we were going through acting directors and had no clear leadership in terms of a director. She thinks that you have done that. She thinks that behaviors are identified for improvement more than certain proficiencies, and that is something to work on. We have to understand that, as a Governing Board, we set policy and to implement that policy we have to put together Code provisions. If the Board is not clear in what the policy direction is or we have a difficult time setting policy direction, it is very difficult for the Executive Director to follow through and make something happen. Her comments are a reminder for this Board, from her perspective of a County government representative, that more would be done. We have to be able to say that we need to make change in order for that change to occur over time. It is one thing to come up with a great plan, but if we don’t implement at the Board level, no one else is going to do it.

Mr. Kranz stated that he was contacted by the media before this review to ask his opinion and he has made no secret of the fact that he has been very disappointed in our movement to deal with catastrophic wildfire issues. This process was enlightening to him, and he wanted to know what other people thought. Looking at the responses from various people, generally speaking for a senior leader based on a 1-5 ranking, this places him in the bottom 25%. He thinks there is a lot of work that needs to be done. From the Board’s perspective, the lowest ratings are conflict management, composure and patience and he agrees with this. Even though this job is extremely difficult, he agrees with almost all the comments that were in the report.

Mr. Weber stated that he doesn’t having this review in public is a good idea from Nevada and it would be more constructive to discuss performance behind closed doors. He sees there is plenty room for improvement and one of the things the report says is that you do respond to change. So the challenge is to bring in someone like the consultant and take 90 days to define what the skill sets are for improvement. If we decide to give more direction, we need to decide how much, who is going to be responsible and the follow-up process? He thinks it is time for
the agency to grow up and to evolve from being an agency trying to stop all development, to one that is supposed to be the lead planning agency in the Basin. He wants to make sure that you can accept constructive criticism, because that is part of this. He knows you are bright, but are you willing to change? He has personally undergone this kind of review and thinks that if you take this in the spirit of an opportunity for improvement, with the Board’s help you can address these issues.

Executive Director Singlaub stated that this is the first time that a 360 assessment of an Executive Director has ever been done by TRPA and it is important to note that the expectations of his performance were spelled out very clearly by the Board and it didn’t include improvements to his leadership skills, which is what this addresses. He thinks this is very fascinating and if the Board decides to use this again, there are probably some different things that could be done. Normally in this process he would be allowed to have input into selecting the outside peers to participate, and he doesn’t know how those were set. He is disappointed in that only 10 of 20 of the Board members replied to the 360 review questionnaire, and if five of those were former Board members, it is possible that only five of the current Board members gave input. That said it is right on in a lot of ways and he would like to put together a development plan with the assistance of some Board members to bring back for review by the Board. He is very proud of the accomplishments that staff has done over the past year. We opened a North Shore Office and we are at an all time low in terms of employee turnover. We produced the first integrated fire plan for the Basin. Can we do more, sure! He wants to make sure that the agency goals that were approved by the Board for this Fiscal Year are what the Board expects to be accomplished and then we can work together on the skills by moving forward with a development plan.

Public Comment:

None

Mr. Galloway stated that within 90 days the Board should see the enhanced performance plan. He would like to see the plan before the Board takes action on the salary adjustment.

Mr. Weber suggested that a few Board members work with Mr. Singlaub and the consultant to come back with a plan in no more than 90 days. He would like to see the development plan and how is it going to help this Board; some people think that the problem is the Board.

Mr. Biaggi stated that there is a lot of merit in having a sub-set of the Board work with Mr. Singlaub under the developmental plan.

Mr. Weber volunteered to be part of the performance planning process.

Ms. Aldean stated that she approves of the Board assisting in helping to improve Mr. Singlaub’s performance but she is not inclined to wait to give him a cost of living adjustment. All the other members of staff, some are great and some are mediocre, all received a cost of living increase. This is not a merit raise and if we are properly going to motivate Mr. Singlaub to implement these changes and perform to the best of his ability, we need to meet him half way.

Ms. Bresnick agrees with Ms. Aldean and would volunteer if Mr. Singlaub wants her to participate in the development plan.

Ms. Moss agrees with Ms. Aldean.
Ms. Aldean moved approval of a cost of living adjustment equal to what line staff received.

The Governing Board directed the Executive Director to prepare an action plan to address issues raised in the 360 evaluation, in coordination with Board members on the scope of the plan.

Voted Yes: Ms. Aldean, Mr. Biaggi, Ms. Moss, Ms. Bresnick, Ms. Santiago, Mr. Galloway

Voted No: Mr. Kranz, Mr. Ruthe, Mr. Swobe Mr. Weber

Members Absent: Ms. Motamedi, Mr. Merrill, Mr. Miller, Mr. Waldie

Motion failed.

Ms. Aldean requested that the Governing Board’s action on the cost of living increase be reconsidered at the December Governing Board meeting.

XII. REPORTS

A. Executive Director Status Report
   1. Monthly Status Reports on Permit Processing
   2. Regional Plan Update
   3. Forest Fuels Management Update
   4. Agency Work Program Priorities for December

Executive Director Singlaub gave the Executive Director’s report.

B. Legal Division Status Report

Agency Counsel Marchetta stated she did not have a report this month. Next month she will give a brief report to the Board regarding the status of the law on the issue of climate change that Ms. Santiago mentioned. She believes it will come into play in a prominent way in our Regional Plan EIS and the Board should be aware of what those issues are and what the developing state of the current law is.

XIII. COMMITTEE REPORTS

A. Legal Committee – no additional report

B. Operations Committee – Mr. Merrill stated that the Committee spent most of their time discussing the Pathway budget and it is clear that we have a deficit that needs addressing.

C. Catastrophic Wildfire Prevention Committee – Mr. Swobe stated that the Fire Committee met on November 15 and they considered the action on the 14” rule, which the fire chiefs had as their number one on their list. This was adopted by the Advisory Planning Commission and adopted by the Fire Committee. There will be a meeting on December 4th with the fire chiefs to discuss and define the dimensions and the extents of ground cover for defensible space. They had a presentation by the Forest Service on mechanical equipment use in stream
XIV. ADJOURNMENT

Governing Board Vice-Chair Mr. Biaggi adjourned the meeting at 5:20 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.