REGULAR MEETING MINUTES - REVISED

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Meeting called to order at 9:30 a.m.

Members Present: Mr. Angelocci, Mr. Donohue, Mr. Greene, Mr. Jepsen, Ms. Kemper, Ms. Krause, Mr. Plmel, Ms. McMahon, Ms. Merchant, Ms. Sertic, Mr. Riley, Mr. Thompson, Mr. Tolhurst, Mr. Upton, Ms. Garcia for Mr. Walker

Members Absent: Mr. Goldberg, Mr. LeFevre, Mr. Loftis, Mr. Maurer, Mr. McIntyre

II. APPROVAL OF AGENDA

Ms. Marchetta requested a continuance of agenda item 5A due to the absence of Mr. Goldberg. She stated that further background work was also needed for the item.

Mr. Upton moved approval with amendments.

Motion carried unanimously.

Mr. Angelocci abstained.

III. PUBLIC INTEREST COMMENTS

Dave McClure expressed his opposition to the APC's role in assisting the TRPA Board with technical and scientific issues.

Jerry Dinzes stated he also wanted to express his disappointment with the APC's current role.

IV. DISPOSITION OF MINUTES

Ms. Kemper moved approval with amendments.

Motion carried.

Mr. Angelocci abstained.

V. PUBLIC HEARINGS

A. Recommendation on Amendment to Chapter 4, Project Review and Exempt Activities, Chapter 71, Tree Removal, and Related Chapters to Clarify Tree Removal Regulations for Trees under 14" Diameter at Breast Height (DBH)
This item was continued at the request of the Executive Director.

B. Recommendation on Shorezone Cleanup Amendments to Chapter 4, Project Review and Exempt Activities, and Chapter 54, Shorezone Project Findings and Development Standards

Mr. Jepsen recused himself.

Staff member Gabby Barrett presented the recommended Shorezone cleanup amendments.

Commission Comments and Questions

Ms. Kemper stated it would be helpful to have an example for item number two.

Ms. Rinke clarified the revised amendment would create a structure that was parallel to the structure for piers.

Mr. Upton asked what was meant by “material”.

Ms. Rinke clarified the term “material” was designed to obtain meaningful environmental benefit and that the language was already in the rules.

Ms. Merchant asked about the appeal process.

Ms. Rinke clarified an Executive Director determination including issues of a permit would be appealable to the Board.

Ms. Merchant asked for an example of what was meant by a “material net environmental benefit”.

Ms. Rinke provided an example.

Ms. Merchant asked for an explanation regarding why the word “replacement” was changed to “reconstruction”.

Mr. Barrett stated they were trying to match defined terms on the second page of Chapter 53.

Mr. Angelocci clarified these were for structures other than piers that conform to the location and design standards.

No Public Comment

Ms. Krause asked if it would be better for number 3 to be separated.

Ms. Rinke clarified they wanted to stick with statutory structures.

Ms. Krause stated individuals may be confused in the future if it was not separated.

Mr. Upton moved to recommend to the Governing Board that they make the Chapter 6 and Ordinance 87-9 findings.
Motion carried unanimously.

Mr. Upton moved to recommend to the Governing Board adoption of the attached ordinance adopting the Code of Ordinance with amendments. Motion carried unanimously.

VI. ADMINISTRATIVE MATTERS

A. Discussion of Governing Board and APC Meeting/Agenda Management Policy Changes

Deputy Executive Director Jerry Wells presented the discussion of the Governing Board and APC meeting/agenda management policy changes.

Item No. 1 – Return EIS scoping to APC

Commission Comments and Questions

Mr. Tolhurst asked if there were other examples for Item No. 8 besides following Robert's Rules of Order.

Mr. Wells stated items have not been defined, but public comment would not be restricted.

Executive Director Marchetta explained the “pro” and “con” procedure for Board comment.

Mr. Tolhurst commented that clarifying questions should be made to better understand the issue presented and that opinions should be heard after public comment.

Item No. 2 – Delegate certification of EISs and project consistency findings to the APC with or without the right of appeal to the Board

Mr. Tolhurst stated he was at the Governing Board and brought up the issue to delegate EIS certification to the APC.

Ms. Kemper suggested the APC have training on the TRPA Environmental Review Process. She stated EIS certification should be tied to a project decision in order to ensure that mitigation measures were properly carried out in the permit.

Ms. Rinke clarified they were talking about delegation of the technical adequacy findings of the document to APC and not project findings.

Ms. Kemper stated that was the current action of the APC.

Mr. Donohue stated that, in his opinion, the certification should remain with the Board, if they want to re-hear the issue rather than accept the APC recommendation. He commented that relationship building between the APC and the TRPA should be the critical element.
Executive Director Marchetta stated that was the core issue. The TRPA was looking for a technical advisory body that they were willing to stand behind.

Mr. Tolhurst commented that the TRPA was considering hiring technical advisors for scientific matters.

Mr. Angelocci commented that the first question is to clarify whether the APC would be delegated to make the final decision of the agency.

Mr. Wells clarified that the APC would still be expected to make recommendations on findings of project consistencies, but project action would be at the Board level.

Mr. Greene asked if there would be more lawsuits if APC recommendations were not appealable except through court action.

Ms. Rinke clarified it could work both ways.

Ms. Marchetta stated one of the underlying reasons for this type of change was to address technical problems early.

Mr. Greene asked if Board members attending APC meetings would be members of the public or the Board.

Ms. Rinke clarified they would be members of the public.

Mr. Tolhurst stated that one of the underlying issues was that public issues were not raised until after APC meetings.

Ms. Rinke stated the Board could also limit issues raised on an appeal before it becomes questionable whether it is in conflict with the Open Meeting Law.

Ms. Merchant stated she would recommend consider implementing Item No. 3 for a six-month period before implementing Item No. 2, in order to prove their decision-making to the Board. There should also be an appeal process at the Governing Board level, but that limits public comment.

Mr. Tolhurst stated one issue that came up at the Governing Board meeting was accountability. He commented that building a relationship with the Governing Board was a continuing process because change in membership of the Board.

Ms. Rinke commented on staff’s plug for the APC’s technical expertise.

Mr. Upton commented that he agreed that the APC should have the final determination and that the appeal process has detailed issues of concern. He suggested reviewing a policy agenda.

Item No 3 – Delegate review of projects and planning matters identified in Chapter 4 Appendix A of the Code to the APC with or without the right of appeal to the Board
Mr. Angelocci commented on the need for more authority at the APC level to deal with issues of concern and the more effort that will be needed by APC members if that authority was given.

Ms. McMahon commented she would support delegating both the EIS certification and the items listed under No. 3 to the APC because of the time it would save the Governing Board. She also agreed those items should be appealable to the Governing Board.

Ms. Kemper expressed concern about the APC’s possible lack of expertise on some issues.

Mr. Wells clarified there would need to be a code amendment in order to make changes to Appendix A, but right now they needed to know if the Board wanted to move forward on this issue.

Ms. Kemper suggested that the APC be responsible for the delegation of MOUs.

Mr. Wells clarified that the APC was responsible for delegating permitting authority MOUs and that cooperative MOUs between agencies can be assigned by the Executive Director.

Ms. Kemper asked if the Forest Service MOU was considered a cooperative or delegation MOU.

Mr. Wells clarified that it was a cooperative MOU.

Ms. Rinke clarified that there were three types of MOUs: delegation, exempt activity, and cooperative. The delegation and exempt activity MOUs were both covered in Chapter 4 and both require Governing Board approval.

Mr. Upton expressed his favor of delegating items 2 and 3. With regards to his comments earlier regarding an appeal letter, he added the appeal letter should be on an issue that was discussed and should also include why there was opposition to the APC’s decision.

Mr. Angelocci asked if a statement of appeal was defined and what needs to be included.

Ms. Rinke clarified there could be a more precise definition, but it does state that the basis for the appeal is needed.

Mr. Angelocci asked about the majority when voting on issues.

Mr. Wells stated there would have to be a 5-9 vote by the Governing Board if an issue was appealed.

Item No. 4 – Schedule matters to be heard by both APC and Governing Board at least 1 month apart and change the APC meeting to the first Wednesday of each month.
Mr. Wells stated he needed to know if the APC would be available for a meeting on the first Wednesday of the month versus the second and if items could be heard one month apart.

Mr. Tolhurst stated he commented at the Governing Board meeting that a more thorough set of meeting minutes would be needed and that holding a meeting the first Wednesday of the month would be easier for him.

All members but Mr. Angelocci, Ms. Merchant and Mr. McIntyre could adjust their schedules to the 1st Wednesday of the month.

Mr. Jepsen suggested considering another day other than the first Wednesday of the month.

Mr. Tolhurst commented that the APC needed to first consider moving the meeting date.

Mr. Upton commented that Thursdays would be easier for him than Wednesday meetings. He asked if moving the meeting date forward one week would allow enough time to provide information to the Governing Board.

Mr. Wells clarified they felt they needed the four to six week time to make the transition especially with more detailed minutes.

Mr. Donohue suggested there could be sufficient time to provide information between the APC and the Governing Board without having to re-arrange meeting schedules if it was only to provide more detailed minutes.

Ms. Merchant pointed out that she attended the last Governing Board meeting as an alternate and had expressed concern about the month lag time in providing information to the Board on items that already had pressing timelines.

Mr. Tolhurst stated another issue that came up at the Governing Board was that the additional month would provide staff with more time to respond to issues with a project.

Mr. Greene requested getting Board meeting minutes in APC packets.

Item 5 – Require technical reports related to APC or Board action items to be submitted well in advance of the hearings and submitted to APC first for items to be heard by both APC and the Board

Item 6 – Establish additional independent technical expertise to compliment staff and APC on certain technical issues

Mr. Wells asked APC members to volunteer on how to establish additional independent technical expertise.

Mr. Donohue commented it might be helpful to provide Board members information to determine if there was additional technical expertise within the APC rather than outsourcing this expertise.
Mr. Wells clarified there were a few of the Board members that questioned the level of expertise on the APC.

Mr. Donohue reiterated it would be helpful to have an information exchange about the individuals on the APC.

Ms. Merchant and Mr. Tolhurst volunteered their services.

Mr. Tolhurst commented that it would be helpful for the board to have a better understanding of the APC expertise.

Mr. Upton commented that staff needed to be harder against attitudes that rights were violated during “technical reports”. He stated he was not clear why staff summaries were needed sooner than expected.

Mr. Wells clarified that staff summaries were needed in order to determine the issue of technical reports.

Regarding Item No. 6, Mr. Upton commented that projects should be examined on a case-by-case and based on their environmental impact. Technical expertise may be needed, on a site by site basis, to provide credible data to evaluate the environmental improvements that would occur from work economically feasible now versus the continued environmental cost of not doing the improvements. The expertise could estimate when and under what conditions higher-level environmental improvements could be accomplished at the site in question, what they might additionally accomplish, and whether it is better to proceed with the achievable project now, or wait for the added improvements to occur.

Ms. Marchetta stated she was not sure how to respond to Mr. Upton’s comments, but that there may be individuals who would vehemently disagree.

Mr. Upton stated that may be true, but the way to get around that would be through better scientific expertise.

VII. REPORTS

A. Executive Director

Ms. Marchetta gave the Executive Director’s report on Governing Board decisions from last month.

B. General Counsel

Ms. Rinke gave the APC an update on current litigation.

C. APC Members

Ms. Merchant apologized for Mr. McClure sending e-mail to other APC members. She stated she would provide background information regarding her qualifications if necessary.
Ms. Sertic announced proposal requests were currently open for 319 non-point source funds. Approximately $1 million is available. The RFP closes October 14, 2009. They are also working on a combined 2008/2010 305B/303D list of impaired waters. Data from the period from October 2002 through September 2009 was being requested. They are working on a listing criteria document for public comment to be available at the end of September 2009. The Pier Review process with the TMDL was completed. Overall, comments were supportive of the models that were used.

Ms. Kemper added peer reviewer comments were posted on-line and may be distributed along with more information before the end of the year.

Ms. Sertic reported that the TMDL Crediting Program would begin tomorrow at the TRPA office from 1:30 p.m. to 4:30 p.m.

Ms. Kemper added that the workshop would be a stakeholder meeting primarily targeting the Public Works Departments, because the biggest pollutant for lake clarity loss was fine sediment from urban environments.

Mr. Greene provided background information and announced the Historical Society guest lecturer tomorrow will be discussing the TV series “Bonanza” because of its 50th Anniversary. He was also talking with staff about some historical exhibits of the TRPA. He encouraged all APC members to review their organizations’ history.

Ms. Garcia announced the Washoe Tribe would be having a booth at the Bijou Bash to be held at Lake Tahoe this weekend.

Ms. McMahon announced she would be on maternity leave beginning next week. She introduced Dirk Goering who will be her replacement.

Mr. Donohue requested an updated APC roster and to receive code changes.

VIII. ADJOURNMENT

Chair Mr. Tolhurst adjourned the meeting at 11:50 a.m.

Respectfully submitted,

Judy Nikkel
Clerk to the Commission

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) 589-5243. In addition, written documents submitted at the meeting are available for review at the TRPA Office, 128 Market Street, Stateline, Nevada.