TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

North Tahoe Conference Center  January 28, 1998
Kings Beach, California

REGULAR MEETING MINUTES

I. PLEDGE OF ALLEGIANCE

Chairman Drake DeLanoy called the regular January 28, 1998, meeting of the
Governing Board of the Tahoe Regional Planning Agency to order at 9:30 a.m. and
asked Vice Chairman Sevison to lead in the Pledge of Allegiance to the Flag. Mr.
DeLanoy noted that he had received correspondence from the Nevada Department of
Conservation and Natural Resources appointing Freeman Johnson to sit in as Mr.
Morros' designee for this meeting.

II. ROLL CALL AND DETERMINATION OF QUORUM

Members Present: Mr. DeLanoy, Mr. Waldie, Dr. Miner, Mr. Sevison, Mr. Heller
(present at 10:25 a.m. after the vote on consent calendar item 3),
Mr. Cole, Ms. Bennett, Mr. Johnson, Ms. Neft, Mr. Galloway, Ms.
Bresnich, Mr. Upton

Members Absent: Mr. Wynn, Mr. Cronk, Mr. Neumann

III. PUBLIC INTEREST COMMENTS

Chairman DeLanoy noted that a representative from the American Land Conservancy
would be making a brief presentation on the Dreyfus property acquisition after the lunch
recess.

Mr. Don Komreich, Incline Village resident, commented on the following: 1) the recent
$1-1/4 million scenic byway funding application submitted to the Federal Highway
Administration for the East Shore; 2) the status of the anticipated formation of the North
Shore Transportation District; 3) the upcoming Washoe County Regional Transportation
Commission survey of TART users in Incline and future public transportation options; 4)
discussion with the Forest Service on installation of parking meters at Forest Service
parking lots; and 5) Nevada State Lands and the Conservation Districts' RFP for water
quality projects using some of the $20 million water quality bonds in Nevada.

Mr. Dick Mudgett, Incline Village resident, commented on two-cycle engines and how
small horsepower outboard engines affected boat operation.

IV. APPROVAL OF MINUTES

MOTION by Dr. Miner to approve the regular December 17, 1997, meeting minutes.
The motion carried unanimously.
V. APPROVAL OF AGENDA

Deputy Director Jerry Wells noted that the Meeks Lumber relocation item (IX.A.) was to come up after 11:00 a.m.

MOTION by Mr. Gallaway to approve the agenda as discussed. The motion carried unanimously.

VI. CONSENT CALENDAR

Chairman DeLanoy noted he had received a request that item 3 (IVGID bike and pedestrian pathways) be taken off the consent calendar and acted on separately.

Deputy Director Jerry Wells advised that affected property owner Doug Rastello had asked that item 9 (Glenbrook new corporation yard) be acted on separately.

Transportation Planner Bridget Cornell distributed a copy of the resolution supporting Carson City’s application for national scenic byway grant monies for Nevada State Route 28 improvement (consent calendar item 16). The resolution was not included in the packet materials.

Finance Committee Chairman Kay Bennett advised her committee earlier in the morning had met and recommended approval of items 1, 2, 6, 7, 8, 12, 13, 14, and 15. Item 10 (the MOU with South Shore TMA for expenditure of CTS funds) was recommended for a continuance to February. She thanked members of the TRPA staff and TEAM Tahoe for their work on Carson City’s application for Highway 28 scenic byway grant monies.

Legal Committee Chairman Waldie noted that his committee earlier in the morning recommended approval of the Coordinated Transit Agreement (CTS) (consent item 10).

MOTION by Mr. Sevison to approve the consent calendar with the exception of items 3, 9, and 10. The motion carried unanimously.

Mr. Upton noted that there may be some minor changes to the Coordinated Transit Agreement (item 11), in response to some suggestions by El Dorado County.

(Following are items approved on the consent calendar:

1. December 1997 Financial Statement and December 1997 Check Register
2. Programming of FTA Section 5311 Funds for Acquisition of Transit Rolling Stock by the City of South Lake Tahoe (RTPA Resolution No. 98-1)
4. Don Hyatt, Multi-Family Special Use Determination, Placer County APN 117-100-30
5. Falcon Capital, Land Capability Challenge, Douglas County APN 005-230-11
6. Release of Water Quality Mitigation Funds ($187,734) to the City of South Lake Tahoe for Erosion Control and SEZ Restoration
7. Release of Water Quality Mitigation Funds ($101,435) to Washoe County for Erosion Control
8. Programming FTA Section 5311 Funds for Acquisition of Transit Rolling Stock by Placer County (RTPA Resolution No. 98-2)
11. Coordinated Transit Agreement
12. Allocation of FY 1997-98 LTF ($381,544) to South Lake Tahoe for Operating Assistance of South Tahoe Area Ground Express (STAGE) (RTPA Resolution No. 98-3)
13. Allocation of FY 1997-98 LTF ($372,607) to Placer County for Operating Assistance of the Tahoe Area Regional Transit System (TART) (RTPA Resolution No. 98-4)
14. Allocation of FY 1997-98 STA ($45,054) to Placer County for Operating Assistance of TART (RTPA Resolution No. 98-5)
15. Release of Air Quality Mitigation Funds ($150,000) to Placer County to Assist in Financing Construction of the TART Maintenance Facility
16. Resolution Supporting State Rte 28 Scenic Byway Grant Application (Resolution No. 98-1)

Incline Village General Improvement District Pedestrian Pathways and Bicycle Paths, Washoe County (Consent Calendar Item 3)

Associate Planner Vanessa Mongeon presented a summary of the proposal to construct a pedestrian pathway along Tahoe Boulevard from the east end of Northwood Boulevard to the west end of Northwood Boulevard and to construct a bicycle lane along Northwood Boulevard from Tahoe Boulevard to Village Boulevard and along College Drive from Village Boulevard to Mount Rose Highway.

Mr. Dan St. John, engineering director for IVGID, noted that IVGID was facilitating the project under an agreement with Washoe County and NDOT. He presented information on the public process and public meetings dating back to April 1996, when the Washoe County Commission initially approved a master plan. This plan included pedestrian pathways and funding priorities. There were numerous meetings at which the public was able to provide input and comment on the proposal. Mr. St. John responded to Mr. Galloway’s questions about the content of numerous meetings and the opportunity for involvement by the public and the citizen advisory group. He explained that the intent of the MOU between IVGID, the County, and NDOT was to keep the decision making as local as possible. The project design was approved by IVGID and conformed to Washoe County standards.

TRPA Executive Director Jim Baetge explained that Board member Jim Galloway and numerous players attended an April 30 meeting at Incline to discuss the project within the community. Everyone walked away from that meeting feeling that the project design at that point was satisfactory, he felt very comfortable that there was an exceptional effort to get public involvement.

Mr. George Toto, an Incline resident and an affected business owner, noted he was not aware until yesterday that the project was before the TRPA Board today. He and one other affected property owner were not permitted on April 30 to present comments, findings, or objections to the project. He disagreed with the statement that there was no negative comment on the project. Not everyone was in favor of the project, and it was being forced on the community. The plan was faulty because it proposed sidewalks on Tahoe Boulevard between Northwood and Southwood and resulted in safety hazards and parking problems. Parking in front of his Wildflower Café was private, and cars could not be left there so that people could go to other businesses across the highway. There was also a hazard because of the 40 mph speed limit and the storage of snow on the sidewalks on the side of the road. Over the 13 years he had been at this location, he had at his own expense kept the area open, visible, and clean. Now the State was going to build sidewalks, reduce parking, and remove visibility from the street. Mr. Toto presented more information and responded to Board members.

Chairman DeLanoy asked Mr. Toto to submit all of his written information and photographs on the proposal so that the Board Clerk could copy the material and return it to him.

Incline resident Glen Phillips spoke in support of Mr. Toto’s objections. If the sidewalks were constructed in this area, the businesses, including the Wildflower Café, would lose their ability to
get in and out without hurting someone using the sidewalk. Without this access, the businesses would dry up.

Mr. Dick Mudgett, an Incline resident, noted he was not opposed to the sidewalks but was concerned with snow removal problems. The project did not really address the parking problems at Incline. The County should look at putting public parking near the library. He presented more information on snow removal, pedestrian access, parking, and design problems.

Mr. Don Komreich, an Incline resident, noted that he never had said there was no opposition to the project. He had known from the beginning that the Wildflower Café and others were opposed to the project. He presented more information on the parking design, design of the plan, access, walkways, compatibility with property owner agreements and public acceptance of and enthusiasm for the project. The public had known for a long time about the project.

Mr. Galloway explained that everything had been considered in detail on this project. A great deal of engineering consideration was given to every aspect of the proposal; the bottom line was that Washoe County wanted I VGID to make final design decisions, so long as they were consistent with County code. NDOT had accommodated the County and local concerns. There had been compromises along the way. So much work had been put into this project and efforts were made to preserve parking, much of which was on NDOT right of way.

Chairman DeLanoy submitted a January 27 letter of objection on the project from A. Bricken.

Mr. James Nakada, the chairman of I VGID in 1997 when District public meetings were conducted, described the public comment segment of the April meeting referred to earlier by Mr. Toto. Mr. Toto had raised his hand to speak on the project after the Board had gone past that item and on to other agenda items. The District voted to approve the proposals that were presented.

MOTION by Mr. Galloway to make the findings for approval of the I VGID pedestrian pathways and bicycle paths on the grounds that there would be no adverse environmental impacts and there was no unfair process which would open the matter to challenge later. The motion carried unanimously.

MOTION by Dr. Miner to approve the I VGID bike path and pedestrian path project as proposed. The motion carried unanimously.

IX. PLANNING MATTERS

A. Meeks Lumber Company Relocation, Linked Project Status Designation, City of South Lake Tahoe

Senior Planner Lyn Barnett described the linked project concept and the agreement between TRPA, the City of South Lake Tahoe, Meeks, the California Tahoe Conservancy, and McDonalds to pull together such a project for properties that were not contiguous. The relocation of Meeks to the Y involved properties separated from each other by a mile of distance. Normally, the linked project status would be approved as the first step in a process that recognized certain parcels as being linked for development. The affected property owners had already negotiated the predevelopment agreement. The Board’s action today would establish the base for the project planning to go forward.
MOTION by Dr. Miner to make the findings to grant linked project status for Meeks Lumber. The motion carried with Mr. Upton abstaining.

MOTION by Dr. Miner to grant linked project status for the properties described in the staff summary. The motion carried with Mr. Upton abstaining.

Mr. Upton explained he had abstained because Meeks Lumber was close to where he lived.

Glenbrook Homeowners Association, New Corporation Yard and Employee Housing, Old Highway 50 in Glenbrook, Special Use Determination, Douglas County APN 01-090-12 (Consent Calendar Item 9)

Senior Planner Lyn Barnett explained that the Association had been asked to vacate the site where it previously had a corporation yard. In July 1997, the Board approved a temporary permit to allow a maintenance facility on the affected property; the proposal before the Board would make this a permanent facility. TRPA staff was under the impression that the neighboring property owners had no problem with the proposal. Mr. Rastello, an adjacent property owner, was requesting a continuance. Mr. Barnett presented more information about the specific proposal and staff’s recommendation for approval.

Mr. Doug Rastello, an adjacent property owner, objected to the project suggesting that it would affect the character of the neighborhood because of increased traffic and noise caused by snow removal and landscaping equipment. He asked that the matter be continued to February or March so that the four affected property owners could meet with the Homeowners Association to discuss the project mitigation in more depth to ensure that alternate sites had been considered. He had not attended the September Homeowner meeting when this matter came up. He wanted to be involved in the process and in the project decisions. Mitigation should be clearly spelled out.

Mr. Barnett commented on the permitted uses in the area and on the finding regarding the neighborhood character. The site was not in the Glenbrook residential zone but in the Spooner Lake Plan Area, which allowed recreation and open space-type uses. As a public health and safety use, the facility was allowed at this site.

Mr. Cole suggested this was a neighborhood conflict, and the Board should limit its discussion to environmental impacts and thresholds.

Ms. Bennett urged the Board to postpone action on this matter so that the issues raised by Mr. Rastello could be addressed and, if possible, mitigated.

Ms. Eleanor Dietlein, year-around resident across the street from the proposal, suggested the project would increase summer maintenance traffic and she would like a continuance for more discussion. She commented on her previous discussions with the Glenbrook Homeowner Association on the temporary facility and increased maintenance costs to residents. She preferred that the facility be located in the rodeo area.

Mr. Gary Midkiff, on behalf of the Homeowners Association, explained previous discussions with affected property owners to mitigate the project, including possible signage and a gate to reduce casual trips to the facility. He had met with Mr. Rastello last night to discuss the project. He did not feel that a continuance would make much difference. Mr. Midkiff described the alternate sites that were looked at and why they were eliminated. Mitigation was adequately documented and could be put in the record today. Additional time would not change the project, although the
Homeowners would be willing to continue to work with the neighbors in an attempt to identify additional measures as the process continued.

Mr. Rastello again asked that the mitigation measures be set forth and that there be agreement on what those measures were as conditions on the project. This was the area that the Homeowners Association had fallen down on.

Ms. Bennett suggested the request was not an unreasonable one. Mr. Rastello only wanted a continuance so he could understand the impact of the project on his property. She urged the Board to consider a 30- or 60-day continuance to ensure that his concerns and those of his neighbors had been considered.

Mr. Cole expressed concern with a continuance on the project itself and construction this year. The Homeowners had had meetings on this, and that was the time for the affected property owners to have resolved their differences. TRPA was to look at the findings and environmental issues.

Mr. Midkiff explained that the project was going to Douglas County for action in March. Preparing working drawings and selection of a contractor was a four- to six-week process once TRPA action was taken. He was hoping for a May 1 start date to commence construction.

Mr. Upton noted that the project appeared to meet TRPA's requirements. There seemed to be a question of mitigation, although improvement in this area did not appear likely. If the matter was still going to be taken up at the local level, there was an opportunity for more discussion. He did not see that an alternate site was a possibility, in view of the analysis done by the proponent.

Mr. Heller suggested as an option that the Board approve the project with a requirement that documentation of mitigation measures be provided. When the project went to the local level for action, there would be adequate documentation on mitigation.

MOTION by Ms. Bennett to move for a continuance of the Glenbrook corporation yard and employee housing project for 30 days.

Dr. Miner suggested that the continuance should be focused on the mitigation measures only. He did not want to get into another situation where the Board was being asked to seek out alternate sites for the project. If there were mitigation measures that the homeowners could live with, he would want to focus on mitigation measures when the project came back. He would not want to get into a discussion on alternative sites.

Ms. Bennett concurred.

The motion carried unanimously.

Chairman DeLanoy noted that the motion had passed subject to the continuation of the discussion on mitigation.

MOU With South Shore Transportation Management Association for Expenditure of CTS Funds (Consent Calendar Item 10)

MOTION by Mr. Upton to continue this item as recommended by the Finance Committee. The motion carried unanimously.
VII. PUBLIC HEARING

A. Designation of Special Area #5 (National Avenue) of the Tahoe Vista Community Plan as a Preferred Industrial Area

(Mr. Waldie was out of the room during the discussion and vote on this item.)

Associate Planner John Hitchcock reminded the Board that this item had come up in November, at which time there was discussion whether the finding could be made that Placer County would commit to implementing areawide BMPs in the special area. The Board directed staff to work with Placer County to come to some conclusion. Since that time, staff had met with Placer County on the site and Placer County had agreed to install BMPs, as noted in Placer County's January 14 letter in the packet materials. Mr. Hitchcock presented more information on uses in the area, required findings, and the staff and APC recommendation for approval.

No one wished to comment during the public hearing.

MOTION by Ms. Neft to make the required findings for the designation of special area #5 of the Tahoe Vista CP as a preferred industrial area. The motion carried with Mr. Sevison abstaining. (Mr. Waldie was out of the room.)

Mr. Sevison noted he had abstained because he owned property in the area.

MOTION by Ms. Neft to adopt Ordinance No. 98-1. The motion carried unanimously. (Mr. Waldie was out of the room.)

Chairman DeLanoy read the ordinance by title.

An Ordinance Amending Ordinance No. 87-9, as Amended, by Amending the Regional Plan of the Tahoe Regional Planning Agency; Amending the Tahoe Vista Community Plan to Designate Special Area #5 (National Avenue) as a Preferred Industrial Area, and Providing for Other Matters Properly Relating Thereto.

(Mr. Waldie came back into the room.)

B. Amendment of Code Chapter 1, Section 1.7, Introduction to Code of Ordinances to Provide for Administrative Fee for Mitigation Fund Management; and Resolution to Establish Amount Collected

Agency Counsel Rachelle Nicolle explained the Finance Committee's recommendation that TRPA charge a fee for the administration of the mitigation funds it managed on behalf of the local jurisdictions. TRPA staff's cost analysis indicated that $20,000 per year of time was spent on this task. Five percent of the interest per year on current funds would assist with the recovery of these costs, and the Finance Committee felt this was a legitimate cost. The APC reviewed this and recommended that the Board adopt the proposal. The ordinance amendment would authorize the Board each year to consider and adopt annually a resolution setting forth the percentage amount. The fees would fluctuate, particularly with implementation of the EIP, and the fees would be analyzed yearly to ensure the amount being charged was appropriate.
Interim Finance Director Paulea Bergamini explained that the cost for this administration was currently coming from TRPA's general fund. What staff was requesting was a sufficient amount to cover its costs, this equaled 5 percent of the interest. The administrative costs could fluctuate from year to year depending on how much money was in the account, how much came in, and how much went out.

Mr. Sevison indicated he had no problem with such a fee but had heard a lot of criticism from Placer County on TRPA's requirement that local jurisdictions and special districts, who were implementing EIP projects, were required to post a security or bond on an individual project-by-project basis. This made more work for TRPA to manage these funds, to return them and to decide who would get the interest. He would prefer either a one-time bonding process for a special district or county, or no security at all. Local governments weren't going anywhere.

Ms. Nicolle noted that the funds being discussed in this agenda item were different funds; they were mitigation funds, not bonding funds to ensure implementation of BMPs. Those were different costs.

Mr. Galloway noted that institutions that traditionally handled funds like TRPA's mitigation fund charged a reasonable fee, with review every few years. In some cases, entities charged a percentage of the actual fund balance per year.

Dr. Minar suggested that charging a fee based on the total amount in the mitigation fund would serve as incentive for local jurisdictions to get projects implemented. If the Agency were to tag into a percentage of the interest earned, projects would not get on the ground as quickly, for fear that the interest-earning capacity would be diminished. A reasonable approach may be to go after a percentage of whatever the fund balance was at a specific point in time and basing the amount charged on what the anticipated management costs would be. The amount would change annually and would be a part of the budget.

Ms. Bergamini responded that the amount in the funds could vary depending on the projects coming through and when money was withdrawn. Staff had determined that using a percentage of the interest would be a simpler process than taking a percentage from the principal at a set point in time. If a jurisdiction knew the point in time at which the determination would be made on how much was to be withdrawn, it could withdraw money in advance to reduce the charge taken. The simplest thing was to take a percentage of interest and to review the amount annually.

Mr. Freeman questioned what expenses would be applied to determining the cost. Philosophically, the mitigation fund was not to cover overhead costs but rather mitigation on the ground. Taking the money from the interest would make the charge more palatable than basing the amount on the entire fund.

Ms. Bergamini responded that it was primarily salaries and benefits. The only reason staff started looking at this was because of TRPA's budget problems. Currently, TRPA was providing these administrative services at no cost. It no longer could afford to do that.

Mr. Upton asked staff to come back in a month or two for discussion on charging local governments securities.

Ms. Bergamini noted this was a totally separate issue.

No one wished to comment during the public hearing.
MOTION by Ms. Neft to make the findings required to amend Chapter 1, Section 1.7, to allow collection of an administrative fee on the mitigation funds administered by TRPA. The motion carried unanimously.

MOTION by Ms. Neft to adopt Ordinance No. 98-2. The motion carried unanimously.

MOTION by Ms. Neft to adopt Resolution No. 98-2. The motion carried unanimously.

Chairman Delaney read the ordinance and resolution by title:

An Ordinance Amending Ordinance No. 87-9, as Amended, of the Tahoe Regional Planning Agency, Amending Chapter 1 of the Code of Ordinances Relating to Establishing the Administrative Fees Collected Pursuant to TRPA Section 1.7.

Resolution of the Tahoe Regional Planning Agency Establishing the Administrative Fees to be Collected Pursuant to TRPA Code Section 1.7.

Mr. Severson asked that the discussion on the requirement for local governments to post bonds for their projects be brought back to the Board in February, since he would not be present in March.

VIII. SHOW CAUSE HEARING

A. Executive Director Determination to Use Project Security, Tahoe Mariner, Litigation Settlement, Washoe County APNs 123-055-01, 123-062-01, and 123-071-24

Agency Special Projects Attorney Susan Scholley advised that, since preparation of the staff summary, staff had received a letter stating that the property owner did not have the ability to pay the $87,000 owed the contractors. The property was scheduled to be sold on January 30 at a trustee sale. It was 99 percent certain that the holder of the first note would become the property owner by Friday. The new owner would not pay the contractors and would look to the bond. She had recommended to the Legal Committee that staff write a letter to the property owner and her representative giving them ten days to pay all the outstanding invoices. If not paid by that date, TRPA would call the bond, and the bond company would pay the contractors. There already was an existing contract for the spring work, and the first priority lender would like to step into that contract to ensure the work would be done. The bond company would pay for that work when it was accomplished. The remainder of the bond would be available for the work that may need to be done in 2000.

Discussion followed on whether to call the bond immediately or to allow the ten days requested by Ms. Scholley.

MOTION by Mr. Waldie to approve staff’s recommendation to authorize staff to send a ten-day (calendar) deadline letter to the property owner. If at that point all bills had not been paid, TRPA would notify the bond company that it was calling the bond. The motion carried unanimously.

IX. PLANNING MATTERS

A. Approval of Staff Recommendation Concerning Lowering the IPES Line
Senior Planner Joe Pepi summarized the five required findings for lowering of the IPES line and recommended that, because none of the jurisdictions had met all of the required findings, the line not be lowered in either California or Nevada. The APC unanimously supported this recommendation. No Board action was necessary at this time.

Mr. Larry Hoffman, attorney for the Tahoe Sierra Preservation Council, noted that once again the line was not moving in California. In Nevada that line had been moving down over the past few years. This was a classic takings, because the regulations were basically stating that building could not occur. For up to ten years, he had expressed disappointment with implementation of the IPES system, because of the initial understanding that the line would come down through the inventory as the public acquisition programs were implemented. This was not occurring on the California side at all. The bottom line was that the Board was again being asked to make a decision for approximately 2,000 property owners that they could not use their land. This flew in the face of all litigation that was going on. He had been told that even if the line started to move on the California side, there was a whole process that was required at the State Board level that involved review of environmental documentation. The Board needed to step back and look again at the rules and why the process was not working. Modest changes in the Agency’s procedures would not have any impact on Lake Tahoe and would avoid an obvious collision course.

Mr. Upton noted that several years ago Mr. Hoffman presented assumptions on which the IPES system was based. As he recalled, the California and Nevada bond acts were going to purchase lots; erosion control would be implemented; and the line would move down through the vacant lot inventory. What went wrong was that the system changed from a Bailey land capability system to the IPES system, causing a lot of lots to flip from being sensitive in one system to not being sensitive in another. In the meantime, many of them were purchased and made the equation impossible to be met. TRPA needed to rework the equation at the very least and to look at the system rules and what they were accomplishing. The California Conservancy was coming along each year with $2 million in erosion control projects and $3.5 million this year. Things were happening, but the line still was not moving in California, because credit was not being given. An equation had been created that could never be met in California.

Executive Director Jim Baetge agreed that in Nevada the line had been moving. In California, the issue involved the formula. The only way to change that was through the 208 Water Quality Plan amendment process at the State Board level. At the moment, staff was gearing up to accomplish that.

Agency Special Projects Attorney Susan Scholley noted that the vacant lot equation was a requirement of both the Regional Plan and the 208 Plan, and to change that 20 percent target would require their amendment. The problem in California did not involve the monitoring, capital improvement expenditures, or compliance findings; rather it was the requirement that before the line could come down the inventory of sensitive lots in each jurisdiction needed to be reduced by a significant factor - by about 80 percent. It was not impossible to meet, but the rate of acquisition and of lot retirement had not met the 1986 projections – for any number of reasons.

Mr. Hoffman suggested that the proper approach was to treat this as a high priority and to schedule the matter for a future agenda so that all the issues could be aired out and the rules changed. Year after year, he had advised the Agency of what the problem was and what needed to be done to change it. The problem was that the rigid formula was mechanically applied without really looking at the trip wires.
Mr. Sevison commented that California was trying to do everything right – acquisitions were occurring as fast as the public would sell; improvements were occurring – yet there was no hope that the line would move in anyone’s lifetime. In California, the percentage of sensitive lots could not exceed 20 percent of vacant lots. In Placer County, the figure was still up to 54 percent. Lots were being counted that in reality would never affect the system. There was no realistic carrot out there.

Ms. Mary Gilanfarr, Executive Director of the TSPC, noted the importance of this issue for some 2,000 property owners in the Tahoe Basin. She urged the Board to treat a reanalysis of the program and the necessary 208 Plan amendments as a very high priority. Promises were made ten and 12 years ago that could not now be met. Lots that were considered buildable in Nevada were not considered buildable in California, and this was a great inequity that created two classes of citizens.

Chairman DeLanoy asked that Mr. Hoffman provide the Board with a detailed, written layman’s approach to modifying the program in advance of the Board’s consideration.

Ms. Gilanfarr and Mr. Hoffman responded they would provide such an analysis.

Mr. Upton suggested that Mr. Hoffman resurrect his earlier analysis paper, along with a written recommendation for an action plan and that he meet with staff prior to the Board’s discussion.

Mr. Baetge agreed there was a problem that needed to be addressed. TRPA was leading into the 208 plan. He would like to set aside an hour at the March Board meeting for a workshop and to get all the players necessary to move ahead on this. The March date would give staff time to prepare something in advance of the meeting.

Mr. Hoffman asked that the Board not take action today on the staff’s recommendation. He preferred a March discussion.

Mr. Cole explained that his initial reaction to the IPES program was that it was designed to avoid a takings action in court. It was to give people hope that some day their lots would be buildable. The reality was that in South Lake Tahoe the demand for single family allocations had dropped under the current IPES line program. To fulfill the promises given to the public that everyone would have a chance to build, TRPA needed to look at this again and to look at it from the regional standpoint, taking into account implementation of CIPs, BMPs, and erosion control. He was not advocating opening up the whole building program but keeping the allocations the same while being sensitive to the environment.

Agency Special Projects Attorney Susan Scholley reminded the Board that Mr. Hoffman was the attorney for the Preservation Council, and the Council did have a pending lawsuit in which approximately 100 California plaintiffs owned parcels below the current IPES line. It was appropriate for staff and the Board to consider 208 Plan amendments which would adjust the program, but she urged caution in terms of discussing legal issues and takings law.

Mr. Hoffman responded that he would not be telling the Board about the law in his memo; the Board had a good sense of the legal issues. He understood Ms. Scholley’s caveat.

Ms. Scholley distributed the outside counsel proposals along with a staff memo on the selection process.
The meeting recessed for a lunch break from 12:25 to 1:40 p.m. The Environmental Improvement Program Implementation Committee met during the lunch break.

(Members present after lunch: Sevison, Galloway, Neft, Bennett, Waldie, Miner, Bresnick, Upton, Johnson, DeLanoy Members absent: Cronk, Wynn, Heller, Cole)

III. PUBLIC INTEREST (continued)

Mr. Phil Caterino, with the American Land Conservancy, updated the Board on the status of the acquisition of the historic Whittell Estate. The private, non-profit Conservancy purchased the property from Jack Dreyfus, Jr., at the end of the year and sold the property to the Del Webb Conservation and Holding Corporation. This transaction bought the time needed to convey the property to the Forest Service and to the University of Nevada system. The Forest Service would own the land; the University would have access to the structures through a reservation similar to a special use permit. Mr. Caterino presented more information on how the property would be managed and maintained and noted that the acquisition of all the Dreyfus Foundation lands in the Tahoe Basin would take an $80 million chunk out of the EIP programs.

Mr. Baetzge and the Board members complimented Phil for his outstanding efforts in the pursuit and completion of this acquisition.

IX. PLANNING MATTERS

B. Approval of Staff Recommendation Concerning Lowering the IPES Line (continued)

Chairman DeLanoy noted that no action had been taken by the Board on this item. Deputy Director Jerry Wells reminded the Board of Mr. Hoffman’s request that the Board take no action on this matter.

Ms. Bennett suggested that this would mean the IPES line stayed where it was.

Mr. Wells commented that the question was whether the Board had continued the matter for future discussion or had actually taken action to not move the line.

MOTION by Mr. Upton to continue the action to March for further discussion.

Mr. Sevison asked that the matter be continued to the April meeting, since he would not be present in March.

Mr. Upton’s motion to continue the matter to April carried unanimously. (Members present: Miner, Waldie, Neft, Galloway, Sevison, DeLanoy, Bennett, Bresnick, Johnson, Upton)

X. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

A. Finance Committee

Committee Chairman Bennett noted that all items had previously been dealt with.

B. Environmental Improvement Program Implementation Committee
Executive Director Jim Baetge updated the Board on the noon hour EIPIC discussion topics. Staff intended to mail out in February the RFP for the feasibility study on alternative sources of revenue. Payment for the study would come from $80,000 in California funding and $20,000 from yet-to-be-developed local sources, with the report to be completed by the end of June. The RFP would be brought to the Board in February. The 1998 legislative packet was being finalized now for Carl Hasty to take back to Washington next week. Both the legislative packet and EIP would be available in the next few weeks. Good consensus on both documents was in the works.

C. Legal Committee

1. Selection of Outside Counsel

2. Action on Rules of Procedure (Section 1.5) Relating to Organization of the Legal Division

3. Performance Evaluation of Agency Counsel (Includes closed Session Without Action)

Before getting into the Legal Committee Report, Chairman DeLanoy asked that the Board spend some time discussing outside counsel selection. The Legal Committee met on January 27 and discussed Section 1.5 relating to the Legal Division organization. Agency Special Projects Attorney Susan Scholley would be leaving the Agency in March, as the Board members had been advised. He had discussed agenda item C.3. with Agency Counsel R. J. Nicolle, and that performance evaluation would not be taking place at this time but would be put over.

Legal Committee Chairman Waldie reported that the Committee this morning discussed a settlement proposal by Incline Lakes Corporation, parties to the TSPC litigation. There was a proposal being worked on by TRPA counsel and Larry Hoffman to remove a considerable number of plaintiffs from the suit, in agreement for approval of some projects around Incline Lake. The effort made and the direction being taken were beneficial both from the legal and environmental standpoint. The Legal Committee unanimously urged Mr. Hoffman to continue. No action at Board level was needed.

Mr. Waldie continued with a summary of the Cohen resolution of enforcement, which involved a dispute between Mr. Cohen and staff on the amount of fine to be assessed for a wrongful limbing of two trees. The staff recommended $2,000 per tree; Mr. Cohen was offering $500 per tree. After listening to the analysis, the Committee unanimously concurred with the staff’s assessment.

In another matter, the CTS agreement was presented by Mr. Baetge and was approved on the consent calendar. The Tahoe Mariner issue was already dealt with.

Mr. Waldie explained that the Legal Committee met on January 27 in a special meeting to go over various matters. The first item that the Committee took up was the process of selecting outside counsel for services, particularly in two pending cases (Suitum and the TSPC case). The Committee went over Agency Counsel recommendations and recommended Board interviews of three firms (Shute, Remy, and McDonough). The Board members had been given copies of these three proposals with a staff cover memo. Because of the urgency caused by Susan’s leaving and the status of the litigation, there was a need to make the selection so that the firm selected could begin preparing, particularly while Susan was able to assist with the transition. The Committee recommended that oral interviews by the entire Board be conducted on Monday,
February 9 between 5 and 9 p.m. at the TRPA office. If Board members could not attend, they could be hooked in by telephone. Hopefully the decision for employment could be made that night.

More discussion followed on the schedule, the type of legal expertise and experience desired, the basis for Ms. Scholley's and Ms. Nicolle's recommendations, conflicts, background and reference checks, and negotiation of fees.

MOTION by Ms. Neft to approve the process for selection of the outside counsel as recommended by the Legal Committee. The motion carried unanimously. (Members present: Upton, Waldie, Neft, Miner, Galloway, Sevson, DeLanoy, Johnson, Bennett)

The Board members discussed fee rates, having reference checks prior to the interviews, having a list of possible questions prepared for Board discussion prior to the interviews, and ensuring the proposed legal team members were present at the interviews.

With regard to agenda item X.C.2. (Rules of Procedure Section 1.5) Legal Committee Chairman Waldie asked that this just be discussed at this point. This agenda item resulted from confusion in the line of authority from the attorneys for the Board as to whom they were to report and to whom they were accountable - the Board or the Executive Director. He presented a history of the position over time, as set forth in the staff packet materials. The proposal presented by Mr. Baetge was to retain some of the parameters of the present situation but to tie accountability more directly to the Executive Director, while not excluding the Board.

Mr. Baetge explained the Agency staff was going through a total reorganization. At issue here was the line of authority on policy and budget issues. What he was looking for was a shift more towards Executive Director control, particularly in the area of evaluations, salary setting, and on selection to a point. He wanted Board comment on whether this was the right direction to be headed.

Discussion followed among Board members and staff on previous experience at other governmental levels on this same topic, the pros and cons of various approaches, the need for cooperation among all parties no matter what framework was adopted.

No action was taken.

XI. REPORTS

A. Executive Director Monthly Status Report

1. Annual Status Report on IPES/Land Capability Determinations – in the packet material

Mr. Baetge reminded the Board that the Nevada Oversight meeting was scheduled for Friday, January 30 at the Lakeside Inn and Casino. TRPA would be reporting on its budget and structure. With the term limit requirements, all of the players in the California legislature were changing and staff would have to go through a major educational effort on Tahoe issues.
TRPA REGULAR MEETING MINUTES JANUARY 28, 1998

Mr. Baetge noted the staff-prepared letter for outgoing City Attorney Dennis Crabb. The letter, signed by him and by Chairman DeLanoy, would be presented to Dennis Saturday night at his retirement party. A card of congratulations had been distributed to Board members for signature.

1. Status Report on Project Applications

Mr. Baetge advised that because of staffing changes the ability to meet the 30-120 day project review requirements was becoming more and more difficult.

A. Legal Division Monthly Status Report

Agency Counsel Rachelle Nicolle reported to the Board on the status of Lake Tahoe Watercraft Recreation Association v. TRPA, TRPA v. Tonnemacher, TRPA v. Lafferty, Suitum v. TRPA, TRPA v. Barbi. She noted that Susan Scholley would be leaving the Agency at the end of March.

Agency Special Projects Attorney Susan Scholley reported to the Board on the status of TSPC v. TRPA.

B. Governing Board Members

Ms. Bennett asked that the staff look into the legality of having the Board meet in Carson City outside the Basin.

VII. ADJOURNMENT – The meeting adjourned at 2:55 p.m.

Respectfully submitted,

[Signature]
Julie D. Frame
Clerk to the Board

This meeting was taped in its entirety. Anyone wishing to listen to the tapes may call for an appointment at (702) 588-4547. In addition, written materials submitted at the meeting are available for review at the TRPA office, 308 Dorla Court, Zephyr Cove, Nevada.