TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

North Tahoe Conference Center
Kings Beach, California

November 20, 1996

REGULAR MEETING MINUTES

I. PLEDGE OF ALLEGIANCE

Vice Chairman Drake Delaney called the regular November 20, 1996, meeting of the Governing Board of the Tahoe Regional Planning Agency (TRPA) to order at 9:35 a.m. and asked Board member Don Miner to lead in the Pledge of Allegiance to the Flag.

II. ROLL CALL AND DETERMINATION OF QUORUM

Members Present: Mr. Delaney, Mr. Waldie, Dr. Miner, Mr. Sevison (present at 9:45 a.m.), Mr. Heller (present at 9:40 a.m.), Mr. Cole, Ms. Bennett, Mr. Stewart, Ms. Neft, Mr. Harper, Mr. Hime (present by telephone from 9:40 a.m. until conclusion of the Park Avenue project item VII.A.), Mr. Montgomery

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

Vice Chairman Delaney noted that Mike Harper was sitting in for Washoe County; Conrad Montgomery was sitting for El Dorado County; and Bob Stewart was sitting for the Nevada Department of Conservation.

III. PUBLIC INTEREST COMMENTS

Mr. Don Kornreich, from Incline Village, submitted correspondence to the Board members and urged the Board to obtain funding to update the 1974 McDonald Smart Financial Feasibility Study. He asked Executive Director Jim Baetge to stay with the TRPA, because his leaving would be a major blow to achieving the Compact’s goals. The Conservation Districts were ready to proceed with environmental improvements made possible through the recent passage of bond acts in both California and Nevada. Incline residents were now meeting to discuss mechanisms to implement improvements and to seek additional funding. Mr. Kornreich asked that the Governing Board delegate more of its decision making authority to the Executive Director, the Advisory Planning Commission (APC), and staff, so it could focus more on planning issues.

Mr. Hime was patched into the meeting via telephone.

IV. APPROVAL OF MINUTES

MOTION by Dr. Miner to approve the October 23 regular meeting minutes as submitted. The motion carried unanimously.

V. APPROVAL OF AGENDA

Deputy Director noted that the Local Government Committee would be meeting during the lunch recess at the Landing (not at Steamer’s Restaurant, as set forth on the agenda). Other agenda changes included: 1) item IX.A.
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Tonnemacher appeal continued at the request of the appellant; 2) VIII E. amendment of PAS 057 to be taken up before item C., Chapter 26 amendments; 3) item VIII D., Chapter 33 amendments, taken up after discussion on Washoe County water rights, item X.A; 4) recognition of members on the Yes On 12 Committee to be taken up before lunch.

MOTION by Ms. Neft to approve the agenda as amended. The motion carried unanimously.

VI. CONSENT CALENDAR

Deputy Director Jerry Wells asked that item 1 (Prim Investments, Lakeview office center), item 4 (Tahoe Secret Harbor enforcement), and item 9 (Release of up to $17,000 from shoreline mitigation fund for scenic analysis) be continued.

MOTION by Dr. Miner to approve items 2, 3, 5, 6, 7, and 8 on the consent calendar. The motion carried unanimously.

(Following are items approved on the consent calendar: 2. City of South Lake Tahoe, Release of Water Quality Mitigation Funds ($299,266) for Erosion Control and SEZ Restoration; 3. Lakeland Village Owners Association, Resolution of Enforcement, South Lake Tahoe, El Dorado County APN 27-441-01; 5. Cerca, New Commercial Building, 1077 Fourth Street, South Lake Tahoe, El Dorado County APNs 23-392-34, -35, and -36; 6. Corda/Kahn, Pier Expansion/Multiple Use Determination, 1360 and 1370 North Lake Boulevard, Tahoe City, Placer County APNs 95-150-14 and -29; 7. Peppertree Inn, Cellular Phone Antennas, Special Use Determination, 645 North Lake Boulevard, Tahoe City, Placer County APN 94-110-09; 8. Birdwell, Black Bear Inn, New Bed and Breakfast, 1202 Ski Run Boulevard, City of South Lake Tahoe, El Dorado County APN 27-322-20)
review and approval. One of the detention basins would be located next to the Crescent V Shopping Center and would handle approximately 20 percent of the runoff from the site. A second detention basin would be located on the other side of the highway.

Mr. Angelocci distributed and responded to concerns raised in letters from neighboring property owners, including: 1) November 18 letter from Scott Wallace, of the Wallace Theater Corporation; 2) California Assemblymember Michael Machado, on behalf of property owner Evelyn S. Dutart; 3) a November 14 letter from Thelma and Manuel Alonso; 4) a November 11 letter from John Young; 5) a November 14 letter from Ron May; 6) a letter from Kathryn May; and 7) a November 14 letter from Evelyn Dutart. The letters raised concerns, in part, with parking, drainage, mosquito abatement, detention basins, and property condemnation required by the installation of the drainage basins.

Ms. Bennett stressed the importance of parking management, the efforts of the Tahoe Transportation District (TTD), the potential benefits of the Coordinated Transportation System in the South Shore, and the use of parking fees to mitigate impacts. She asked that the Governing Board review the completed parking management plan. While the alternatives analysis for the drainage basins may be a requirement of project approval, it was also critical that the drainage system be implemented up front to the satisfaction of the Board.

Ms. Judith Von Klug, the South Lake Tahoe Redevelopment Director, explained that the offsite detention basin would be acquired by the Redevelopment Agency, with the land ultimately being owned by the City of South Lake Tahoe. Bonding for the acquisition of the land would be done when the bonding was done for the project. These would occur at the same time as completion of the needed infrastructure improvements - around June 1997. At that time the money would be available to do the entire project, including both drainage basins and the parking structure. Ms. Von Klug described the alternative sites analyzed for the detention basin, including a single family home neighborhood below the highway from the project and the Tahoe Meadows Subdivision. The Tahoe Meadows area had been dismissed initially because locating the detention basin there would require a series of pump stations to pump the water uphill from the project site; there were also legal questions regarding the ability to modify the officially recognized historic nature of the subdivision; there could also be impacts to the SHZ and Tahoe yellow cress. The alternatives analysis would continue to look at this area. No matter where the basin was located, it would have to be on private land that someone owned now, and there would be objections from the public no matter where the basin was located. Water treatment facilities were very needed in this area, because there was a tremendous amount of developed land in the vicinity that currently was receiving no treatment. The power of eminent domain would be used if needed, and through the hearing process private property owners had the right to contest the City's use of this authority. A court would ultimately decide. Approximately ten properties would be affected in the single family subdivision, none of which were used as primary residences at this time. Fair market value and just compensation would be given for any properties acquired in the process. Ms. Von Klug presented more information on the redevelopment process, the power of eminent domain, proposed coverage reduction, the detention basins as areawide water treatment facilities, notification of affected property owners, and the plan for the City and Redevelopment Agency
to act on the preferred drainage site in March of 1997. On the subject of
parking fees, the parking structure would cost approximately $10,000 per
da parking space, a $6 million capital investment. While the parking management
study would analyze this further, the retirement of the bonds and the
operation of the system would eat up all the fees. It was anticipated that
the developers would be picking up the shortfall.

Vice Chairman DeLancio pointed out to the audience that there were two
different issues - one being condemnation, a matter for the City and the
Redevelopment Agency to deal with; the other, the Park Avenue project itself,
which was now before the TRPA Governing Board.

Mr. Lew Feldman, on behalf of the project proponents, commented on the package
of environmental benefits proposed with the project and the private/public
partnership which made the redevelopment project possible. The issue of
eminent domain and condemnation was outside the purview of TRPA. He thanked
staff and others involved in the review process.

Agency Counsel R. J. Nicolle explained it was within the Board's discretion to
evaluate various aspects of project approval but not to make an approval or
disapproval of an eminent domain issue. The Board's purview was the
environment and planning. It was within the Board's power to make the final
decision as to the location of the drainage basin; the Board was empowered to
evaluate a number of issues through an alternatives analysis. The Board
should not use eminent domain as a condition of its decision. The project the
Board was being asked to approve did not include a specific site; the
proponent was to submit alternatives.

The Board members discussed approval of a project on land not owned by the
project proponent, the legal ability of the redevelopment agency to acquire
land, bonding ability of the redevelopment agency, the requirement for an
offsite drainage site to meet water quality standards, and the importance of
the gondola to the overall project.

Ms. Monique Urza, from the audience, noted it was not the role of the Board to
approve or disapprove the concept of condemnation per se; points that might be
discussed would relate to associated environmental impacts of tearing down a
group of houses to potentially have them replaced somewhere else.

Mr. Angelocci advised the Board of a new condition recommended by staff:
"Prior to final acknowledgement of the permit the applicant shall submit an
alternatives analysis for location and design of the offsite drainage basin
for review and approval of TRPA."

The Board members discussed whether there would be public testimony on the
proposal and whether the testimony on the detention basins was relevant to the
Board's deliberations. Vice Chairman DeLancio reiterated that the Board was
not being asked to make a final determination on the location of the holding
basins today; he directed that the public be given an opportunity to testify
and that those wishing to speak select spokespersons so that testimony would
not be repetitious.
Ms. Diane Dutart Gallego, a Stockton resident, spoke on behalf of her family and her mother, a property owner at 418 Meadow Road. She strongly protested the choice of the single family neighborhood for the site of the basin. The property had been in her family for 34 years; her mother was planning to retire on the site. The area was a long-standing residential neighborhood, and she was not willing to give up the property for the basin. The creation of the drainage site would destroy a well-established neighborhood, would create an eyesore, and destroy the natural beauty of the area. Ms. Gallego questioned why private property owners should be forced to sell their homes for commercial improvements and why, if the drainage basin was necessary, the Tahoe Meadows was not further considered. The land in Tahoe Meadows did not have homes on it; it was open fields. Tahoe Meadows was directly adjacent to the site, and it currently had a stream that drained from a drainage basin to the lake. TRPA’s BMPs suggested that vegetation, as found in Tahoe Meadows, was ideal and far surpassed anything manmade for water treatment. The November 7 survey from the Redevelopment Agency did not list any alternative sites. Ms. Gallego questioned the success of a drainage site in the vicinity of the subdivision because the water table was high already. There would be no impact if there was water in the Tahoe Meadows open areas. She asked to be fully informed of alternatives being considered.

Ms. Judy Chen, owner of the Swiss Village Motel, at Pioneer Trail and Highway 50, opposed use of her property for construction of the storm management facility. Fair market value for a business that had been restricted because of planning activities was not fair market value. Replacement of a prime location and potential income were not possible. Her motel was historically representative of an old Tahoe style because of its small structure. She would like to be able to continue to operate her business in service to the community and travelers to the area.

Mr. John Yang, speaking on behalf of the Swiss Village Motel, explained that the whole approval process injected an element of uncertainty for private residents and businesses. Businesses had been on hold because of planning restrictions. Prices paid for acquired properties would be based on depressed earnings because businesses were already impacted. Inherently there was something very unfair about this even though this may not be the proper forum.

Mr. Ross Gibbons, a Vallejo resident representing his mother, an owner of property at 419 Meadow Road, noted his home had been in his family for 50 years. He had beach rights with his property; to find another piece of real estate of comparable value with beach rights was virtually impossible.

Ms. Pat Dysenrod, owner of a home at 860 Park Avenue, questioned how TRPA could regulate what she could do or not do to improve the value of her home and then give only fair market value in the purchase for the home. TRPA had already stipulated that she could not make improvements, and thus the buying price was low. If this project had been in the planning stages for such a long time, why had tenants been restricted for this period of time?

Vice Chairman DeLanoy closed the hearing.
Mr. Angelocci noted that, as set forth in the summary, conditions of approval included mitigation measures found in the EIR/EIS, pre-construction conditions, general conditions, and special conditions. A new pre-construction condition (new condition 20) requested by the Redevelopment Agency would read: "A noise monitoring program to insure compliance with the 65 CNEL provisions of TRPA for the Community Plan Area shall be submitted for review and approval by TRPA. The South Tahoe Redevelopment Agency shall be the responsible party for implementing the noise monitoring program." This condition arose from a concern expressed by owners of the nearby Embassy Hotel to insure that buses using the adjacent transit center would not exceed the allowable noise levels. A new General Condition 21 would read: "The transit lane shall be closed to all transit vehicle traffic from the Lake Tahoe Inn underground parking ramp north to VanSickle Road from the hours of 9 p.m. to 8 a.m." The transit station would be a 24-hour operation; however, from the hours of 9 p.m. to 8 a.m., through bus traffic would not be allowed along that side of the hotel. Buses would have to circle within the transit station and exit out onto Highway 50. A new General Condition 22 would read: "If there are bona fide complaints from guests of the hotel (Embassy Suites) concerning noise or air quality impacts of the intermodal transit center operation, the parties (South Tahoe Redevelopment Agency, KOAR, and South Lake Tahoe) shall promptly meet and confer as set forth in Section 10.2 of the Disposition of the Development Agreement Between Said Parties to resolve such issues, including, if appropriate, establishing hotel-specific mitigation measures, the cost of such measures and/or the intermodal transit center operational changes." A final new Pre-Construction Condition 21 would read: "Prior to final acknowledgement of the permit, the applicant shall submit an alternative analysis for the location and design of the drainage basin for review and approval of the TRPA."

Mr. Harper suggested that the wording of the last condition implied that what the applicant had submitted to date regarding preferred site was the one that would be approved, unless the alternatives analysis showed something different. The language needed to state that the final selection would be based on the alternatives evaluation, not that it presented something different. TRPA was not now approving a site.

Mr. Angelocci rephrased this last condition 21 that: "Prior to final acknowledgement of the permit, the applicant shall submit an alternative analysis for the location and design of drainage facilities for review and approval by TRPA. The final location of the drainage facilities shall be based on the information contained in the alternatives analysis." It would be appropriate based on the earlier discussion for the Board to require this plan and the parking plan to come to the Board.

MOTION by Mr. Cole to approve the required findings found in Section F of the staff summary for the Park Avenue development project. The motion carried unanimously. (Members present: Cole, Severson, Harper, Neft, Bennett, Waldie, Heller, Miner, Montgomery, Delaney, Stewart, Hime)

MOTION by Mr. Cole to approve the revised project including the conditions as amended by staff.
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Mr. Waldie commented for the benefit of those in the audience that the issue of their concern was the location of the drainage system and whether it would be in an area that would affect their properties. The Board was making no decision on that whatsoever. This matter would come back to the Board at a later date for a decision.

Ms. Bennett asked that the parking management plan come back to the Board in the conditions of approval along with the final location for the drainage site.

Mr. Cole restated that his motion was to approve the revised project with the conditions as amended. The motion carried unanimously.

Mr. Baetje noted that a lot of people had put a lot of time and effort into the review of the project. Rick Angelucci was to be commended for his work.

Mr. Cole commented that this project meant the future for Lake Tahoe and environmental improvements on the South Shore. He hoped it would be the stimulus for other projects in the Basin, because it showed that things could be done and the environment and the economy were not exclusive of one another. They complemented and benefitted one another.

XI. ADMINISTRATIVE MATTERS

C. Recognition of Members of the Yes On 12 Committee

Environmental Education Coordinator Pam Drum asked that the Board give special recognition to the committee members who worked so hard on the Yes On 12 Committee in Nevada. Although many had participated in the effort, there were certain people who had made a very special effort in the campaign. Question 12 was successful with a 52 percent majority. California Proposition 204 was also successful and provided $10 million for Tahoe projects. Ms. Drum recognized and commented on the contributions of: Jim Nakada, a member of the Board of Trustees of IVGID and of the Nevada Tahoe Resource Conservation District; Bill Chernock, Travel Systems Ltd., operator of the M.S. Dixie; Vicki Gonzales, on behalf of Mirage Resorts in Southern Nevada; Neena Laxalt, manager of the financial aspects of the campaign; Lisa Menante, R & R Advertising, public relations, manager of the press kits and logo designer; Sam McMullen, fund raiser and facilitator of TV spots; Jim Mitchell, at Camrac Studios, who produced the TV ad; Dennis Harmon, Stan Hansen, and Sandy MacKay, Heavenly Ski Resort, fund raisers at Heavenly; Steve Teshara, for the Lake Tahoe Gaming Alliance; Jim Gallaway, Jeff Cutler, Rochelle Nason, and all members of the League to Save Lake Tahoe; Nevada Assemblyman Brian Sandoval, a legislative advocate for Question 12; Assemblyman Mark James, a strong advocate in Clark County; Vice Chairman Drake DeLany, who assisted with media contacts in Clark County; and all the individual contributors to the campaign.

Mr. Jim Gallaway expressed special thanks and recognition to Pam Drum for all her efforts.

Board member Bob Stewart advised that the Administrator of Nevada State Lands was already in the process of drafting regulations. There would be a hearing
in December at the Lake to obtain more input on the expenditure of the funds. He anticipated the bond issue to be sold next summer, and regulations would be in place prior to that. Temporary regulations would most likely be adopted during the upcoming Nevada legislative session. The State was moving quickly on this, and there was a possibility that projects could move forward next summer.

Mr. Waldie expressed special thanks to Board member Steve Wynn for his efforts on Question 12 on behalf of Mirage Resorts.

Ms. Drum thanked the local media and television, particularly Jeff DeLong, from the Reno Gazette Journal, and Pat McCartney, from the Tahoe Daily Tribune, both of whom had given excellent coverage to the campaign.

The meeting recessed for a lunch break from 12:00 to 1:15 p.m. (The Retirement Committee and Local Government Committee met during the noon hour.)

Members present after lunch break: Harper, Heller, Montgomery, Neft, DeLanoy, Cole, Waldie, Sevison, Bennett, Westergard (present through discussion on item X.A. at 2:10 p.m.; Bob Stewart was the delegate for the Nevada Department of Conservation for the remainder of the meeting)

XII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

E. Shorezone Policy Committee Report

Shorezone Policy Committee Chairman Westergard reported on the November 19 public meeting on motorized water craft. The motorized water craft industry and the public were in attendance, as were Committee members Waldie, Wynn, Sevison, and Cole and staff members Wells and Shade. The shorezone committee process was designed initially as a means to assess ways to address issues that would ultimately come before the Board, for many good reasons the Committee wanted to move the process along. Numerous hearings and workshops had been held, and the Partnership Committee initially considered the issue of personal water craft to some degree prior to consideration by the Policy Committee. The Policy Committee concluded that there should be an opportunity for the Partnership Committee to take up the issue over the next six weeks but that the Policy Committee had a commitment to come back to the Governing Board with a recommendation on the motorized water craft issue at the January meeting. The record on that particular issue was to be closed as of January 1, 1997. Between January 1 and January 9, the staff and the Policy Committee members would have a chance to reassess the information, and on January 9 the Committee would finalize a recommendation to be presented to the full Board on January 24. If the matter was not concluded by the 9th or if during that time period some issues developed that related to the environmental evaluation process, a delay would be considered at that time. The goal, however, was to close the record January 1, to develop a Policy Committee recommendation on January 9 for submittal to the full Board in January. Personal water craft owners, the industry, and business operators had all been advised of the process and the schedule. The industry was represented and the record was clear that the industry had come up with suggestions to address the issue—not ones that totally and adequately addressed the issues. The industry was on notice to help facilitate a resolution before January 1.
Vice Chairman Delanoy asked that the staff prepare a press release to advise the public about the process and schedule. With all the public input and letters he had received, it would be helpful to have everyone aware of the meetings.

H. Performance Audit Committee Report

1. Endorsement of Interagency Agreement

2. Work Program Amendment in FY 1996-97 Budget

Committee member Larry Sevison noted that earlier in the day he, Roland Westergard, Agency Special Projects Attorney Susan Scholley, Pam Drum, and TRPA Finance Director Jim Dana had attended a meeting of the Nevada Interim Finance Committee to discuss various options regarding the funding of the performance audit. The final disposition was that Nevada would set the matter aside to see whether California would come up with the money.

Mr. Westergard complimented Pam Drum and Jim Dana for their presentations to Interim Finance. The final action under motion by Speaker Dini was to put the matter on hold based on the fact that there was an option for alternative funding in California. Because this was on the agenda and because the audit was ongoing, he felt it was important to give staff direction consistent with what Nevada had done. It appeared there was a renewed cooperative effort, and he wanted to keep the interagency agreement alive, yet not finalize it.

MOTION by Mr. Westergard that, consistent with what Nevada Interim Finance Committee had done, the Board put on hold the interagency agreement with the California Auditor staff, giving them the opportunity to develop alternative means of financing the audit study and subject to any action that Nevada Interim Finance Committee should take.

Agency Counsel R. J. Nicolle advised that this option was on the agenda and the motion was appropriate.

Mr. Waldie noted that there was a new legislature in California and likely a new Assembly Speaker. The political climate was more favorable to a better understanding of what was going on in the Basin. He did not want at this stage to take any action at the Board level on the agreement without some consultation with sources in the California Legislature. That was how the trouble arose in Nevada initially - not consulting with Nevada people on their reaction. The Board should be cautioned about equal trouble in California without some assessment. If that had been done, however, he would withdraw his reservation.

Mr. Westergard suggested that the Board should not act to approve the agreement, nor did he want it rejected. The attitude of California as interpreted in the last few weeks had been accepted fairly positively in Nevada. It would take a while to heal the wounds. The members of the Nevada Interim Finance had not said much at today's meeting because this had been aired in the media; they also chose to put the matter on hold which was sending the message to California and the Board. It also put the Nevada
contingent to the TRPA Board in a precarious position if it appeared to be succumbing to a demand that TRPA now enter into an interagency agreement - when the Nevada Interim Finance Committee put it on hold. He felt fairly strongly that TRPA needed to demonstrate an action consistent with Nevada, with the clear understanding that this was not to be interpreted as an affront in any way.

Mr. Severson noted that the money was not available to do the study at this point. That money should be in the bank before signing the agreement. Nevada had postponed the matter, and California had given a promise only that the money may be forthcoming. Those two issues needed to be resolved before an agreement was signed.

Mr. Baetge suggested deferring the agreement until there was a response.

Mr. Waldie explained that the new California Legislature would not be organized until early in December. The matter should be continued if that was acceptable to Nevada.

Mr. Westergard explained that prior to making the motion, Mr. Dini indicated that he thought things were better in Sacramento. He had had a discussion with someone in Sacramento.

Mr. Severson suggested that the appropriate Board action was to not take action on the agreement at this time. Action should be postponed until it was known where the money would come from.

Mr. Westergard noted that postponement was not as strong an action as he would have liked. He did not want staff to be confronted in the near future with a question from the California Auditor on what the Board had done and all staff could say was that the matter was continued. Unless something was forthcoming, the issue would resurface in some form. He did not want to jeopardize whatever cooperation was going on. A message needed to be sent to California that California was expected to continue to develop an alternate source of funding. If not, TRPA would be back in the same boat.

Mr. Waldie suggested this approach was good; his only problem was that the people who were to get the message were no longer in Sacramento. He would not want to send a hostile message to a friendly legislature. He did not think at this point that TRPA would be wise to take any action. TRPA should tread very easily until both legislatures were straightened out on where they stood.

Mr. Westergard noted that the executive branch of the Governor’s office in Nevada had indicated to him that they felt strongly about this. If the Board felt the message was too strongly worded, he would withdraw it with the understanding that the staff was directed to tell California that the Board had done nothing to act on the agreement; it was on hold consistent with the direction from Nevada Interim Finance. He wanted a commitment from the Board that nothing would be done until the Interim Finance Committee had another opportunity to address the matter and respond to all concerns. With that understanding he would withdraw the motion.
Mr. Waldie asked if this would meet the Nevada concern.

Mr. Westergard explained that Nevada Interim Finance Committee’s action was to hold; his motion was to hold to be consistent.

Mr. Waldie suggested that to hold was his wish as well.

Mr. Westergard responded that if that was the situation, he would let the motion stand.

Ms. Bennett asked for clarification on where the identifiable source of funds had been found.

Mr. Severson explained that the identified funds were interest collected on mitigation funds held by TRPA on behalf of the California Resources Agency for the former CTRPA.

Mr. Westergard’s motion to hold action on the Performance Audit matters carried unanimously.

Mr. Baetge advised that the California Auditors would wish to speak with some California and some Nevada Board members. He hoped they would make themselves available for such interviews.

X. PLANNING MATTERS

A. Status Report on Water Rights and Usage in the Washoe County Portion of the Tahoe Basin

Principal Planner Gordon Barrett advised this item was an informational item only; more information was needed. The issue involved a letter from the Nevada State Engineer stating that for calendar years 1994 and 1995 Incline Village General Improvement District (IVGID) pumped 4,061 acre feet and 3,900 acre feet, respectively, while the permitted amount was 3,905 acre feet annually. IVGID’s response was provided in the packet material. TRPA’s goals and policies document provided that no additional development requiring additional water should be allowed in any area unless it could be demonstrated that there was adequate water supply within the existing water right. Although the Compact stated that TRPA would not get into the distribution of water, its rules said that development would be approved consistent with the water rights. Staff was awaiting the State Engineer’s final determination on this and for the short term was accepting IVGID’s representation that an adequate supply existed for the remainder of the year, particularly for the single family dwellings and the allocations that were out. Each single family dwelling was not having to prove up to adequate water. So far as big projects were concerned, staff would be asking for proof of adequate water rights. Regional Plan amendments and allocations would be addressed as they were considered. Options to be considered were to obtain additional water rights, to reduce the system leaks that permitted approximately 18 percent of the water to be lost between the pumps and service meters, to implement water conservation, to change the measurement system, and to regulate development in line with infrastructure development. This issue had come up in years past in the Round Hill area of Douglas County and in Crystal Bay. Mr. Barrett
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responded to Board member questions about the leaking pipes, previous similar occurrences, and why TRPA was involved.

Mr. Westergard noted that water was a finite resource in the Tahoe Basin. Its availability could eventually lead to determinations whether further development could or could not be allowed. In that vein, the local jurisdictions should be considering priority for the resources they had available. This tied into the approval of projects by TRPA. The other overriding factor was that there was a companion effort going on to resolve the water issues on the Truckee River through a Truckee River Operating Agreement. In Public Law 101-618, authorizing the development of the agreement, there was an interstate allocation on the Truckee-Carson Rivers and Lake Tahoe. TRPA and the respective water agencies had to continue to demonstrate a good faith recognition of those limitations. Tahoe was treated well in the interstate allocations and, in his opinion, TRPA should not jeopardize whatever entitlement Tahoe might get under that agreement. The allocations and some of the benefits from that public law would not come into play until the parties had agreed to it and the federal district court had affirmed it. He agreed that TRPA should not get into the detail of it but TRPA needed to recognize these as factors that had a bearing on what could be done in the Tahoe Basin currently and in the future. He agreed that TRPA should rely on the appropriate agencies for the specific determinations, while keeping in mind the importance of setting priorities on the limited resource.

Mr. Baetge concurred that TRPA relied on the state agencies to advise on allocation of water rights and was not interested in getting involved in those determinations.

Mr. Dan St. John, engineering director for IVGID, explained that the District had been working under the assumption that the total allocation was over 4,000 acre feet, including rights that came to IVGID as a result of a merger with the Crystal Bay GID. The District acknowledged that it was approaching its limit and needed to be proactive in its approach. He had met with the State Engineer’s office and was now working on some of their suggestions to study use and demands and short- and long-term projections on available water rights. IVGID acknowledged that it was TRPA’s role to assure adequate resource availability for new development in the Basin and had worked closely with TRPA staff on this, particularly for single family dwellings.

Mr. St. John presented more information about the District’s tentative action plan to address the situation, including demonstrating a buffer amount of water between what would be used in 1997/98 and the allocation, borrowing water rights from neighboring utilities, and implementing a water conservation program (leak protection, irrigation savings, inverted rate structure). The District appreciated TRPA’s recognition of the role of the State Engineer in this matter, and the District would work closely with his office in addressing the situation. The District’s ordinance did anticipate this eventuality and provided that, at a certain stage in water use, any new development in Incline would have to bring to the table adequate water rights. Since the ordinance already anticipated this occurrence, the District requested that at the point of approving a large project TRPA look favorably on a project that brought its own water rights to the table. He hoped this would not be an issue in the land use amendment phase, if needed, for future project approvals.
Mr. Gary Midkiff, on behalf of Hyatt in Incline, spoke on the water rights issues raised in Hyatt's proposal to relocate vested units from Third Creek Inn to the Hyatt site. In this case, the applicant was bringing water rights to the table. He concurred with Mr. Westergard, Mr. St. John, and staff that applicants should rely on the State Water Engineer in these matters. Because projects had to go through such a long process to get approval and to move through the conditional approval to construction, if a determination could be made preliminarily at the time of approval that so long as there were sufficient water rights at the time of permit acknowledgement and commencement of construction - that should be adequate. There was a long time frame in this whole process. It did not make sense for a project proponent to spend a lot of money acquiring water rights early in the process only to have a project denied. He encouraged TRPA to continue to look to the State Engineer for water rights determinations. He would find acceptable a condition of approval that at the time of permit acknowledgement and commencement of construction the proponent had to be able to show to TRPA's satisfaction based on the State's determination that the project had sufficient water rights. Asking an applicant not only to have the water rights but to transfer them as well was more than what was appropriate at the time of project consideration. If the approval was not granted or some other entity had a problem, the applicant would have transferred water rights and spent a lot of money without being able to proceed.

Mr. Waldie commented that he would prefer the water rights question be resolved at the time the project was brought before the Board. He would not like to approve a project conditioned on its having to obtain water rights.

Agency Counsel R. J. Nicolle suggested that a solution for this concern was for the applicant to have an option to purchase and transfer water rights. The applicant in this situation would have an option contract to exercise and take identified water rights for the project. The Board in its approvals was required to make a basic service finding. An option granting an applicant a right to purchase water should be sufficient.

Ms. Mary Gilanfarr, for the Tahoe Sierra Preservation Council, suggested that the Board had made a big jump towards a moratorium. The water rights were paid for by the people of Incline Village in the 1960s and 1970s through very high bonds on each property. Those bonds were assessed and water rights estimated based on full buildout of Incline - all multi-family parcels, six casino parcels, major development at Ski Incline/Diamond Peak, and more commercial development. Through TRPA's actions to restrict development on SEZ parcels and to downsize multi-family parcels and because of the sale of large parcels to IVGID, the development potential had been reduced more than 25 percent. If Incline was now within 15 percent or so of the new buildout number, it should still be 25 percent below the estimated water usage acquired in the 1960s and 1970s. Before making any determinations on whether to permit additional building, it was more appropriate to find out how to measure, conserve and apportion the water rights that were there. Incline Village was an easy place to meter. She recommended that TRPA not make a stand that no more development could be approved until there were more water rights available or until additional water rights were purchased. She was not convinced that the existing water rights were not sufficient.
Mr. St. John noted that the system was fully metered.

Mr. Westergard responded that IVGID would be meeting with the State Engineer to collectively come up with the figures of current use and projections and remaining balance - one way or the other. If there was something available for more development, fine; if not, something else would have to be done.

(Mr. Stewart replaced Mr. Westergard on the Governing Board for the remainder of the meeting.)

VIII. PUBLIC HEARING

A. Amendment of Plan Area Statement 041, Incline Village #3
   (Residential), to Permit Multiple Family Dwellings as a Permissible Use on Washoe County APN 129-500-08

1. Determination Regarding Advisory Planning Commission Review and Recommendation on Related Project

Principal Planner Gordon Barrett presented the summary of the proposal to rezone an old school site in Incline for multiple development. The request was previously before the Board in another form and was denied because it did not meet transit-oriented design standard findings and density requirements. This proposal did not propose the use of bonus units. The implementing ordinance included specific conditions to be met should a future project be approved on the site. (A handout set forth the differences between the previous application and the current revised application, the TRPA code review criteria and the required findings.) These included an on-site pedestrian circulation system, home mail delivery, a transit shelter, ski shuttle service, a bicycle trail, 1:1 unit transfer, a minimum of 8 units and a maximum of 8.5 units per acre, a mix of attached and detached dwellings, and one-acre of SEZ restoration along Third Creek. Development would occur on the higher capability land; the SEZ area would remain unchanged. At the current time, a future project would have to bring in water rights to the site. The amendment would not create new development potential; units would have to be transferred in. Staff recommended approval, as did the Advisory Planning Commission (APC) on a 13 to one vote. The one member who voted in opposition did so because of the need for SEZ restoration. Since that action, the ordinance had been amended to require the restoration. A multiple use project on this site would be considered a special use and would require a public hearing. The project would come back to the Board, and neighboring property owners could testify at that time. Mr. Barrett responded to Board member questions about future drainage requirements, the increase in density from the previous proposal, residential infill in Incline, transit-oriented development, the ability to subdivide, and the maximum number of permitted units.

Applicant Jim Borelli explained the meetings with staff to modify the previous proposal to meet all the required findings. Using his handout on the findings, which was faxed to Board members prior to the meeting, he summarized the differences between the two requested amendments, suggesting that the revised application met all the required findings. The plan area statement amendment would permit a future proposal calling for 20 detached clustered
condominium units and 18 attached condominium units, 1 acre of streamzone restoration, density at 8.1 units per acre (38 units/4.7 acres; 2.5 acres of parcel to be donated to IVGID), one transit shelter, a ski shuttle, a bicycle/pedestrian pathway, on-site pedestrian circulation system, home mail delivery, and all public services.

Mr. Dale Smith, for the project, explained transit improvements, the proposed SEZ restoration and revegetation to be done in conjunction with the Natural Resource Soil Conservation Service, and the intent to obtain grants to fund the restoration work. Because the revised application was in conformance with Washoe County’s earlier approval, resubmittal to local entities was not necessary.

Executive Director Jim Baetge explained that TRPA’s priorities for watershed restoration focused on Upper Truckee, Third Creek and Edgewood. TRPA was looking for every possible opportunity to improve Third Creek. This was one of those opportunities.

Mr. Patrick Finnigan, General Manager for IVGID, spoke in support of the project for its public benefits and explained the negotiations between the project proponent and the District for a property donation. The District had identified a potential need for a reservoir in the vicinity of the project’s location. The District was interested in the donation for that reason and on August 12 conditionally accepted it. The District was also interested in the Third Creek restoration. The eastern portion of the site away from Third Creek may also serve as a natural, open space neighborhood park.

Ms. Monique Urza, an assistant to Nevada At-Large member Wynn, suggested that the earlier denial was not based on a desire for a higher density as suggested. Mr. Wynn’s concern was that the area was steep; it was rich with forest and there was no indication of what would be happening with that aspect of the property; and there were issues regarding the SEZ. She understood that when coverage was proposed at an SEZ site there should be a showing of no alternatives. This proposal would call for a multi-family development in an SEZ area, and the SEZ and natural drainage system had not been adequately addressed. The animal habitat had also not been addressed, and this and other issues had not been addressed at the Plan Area amendment stage of the process. The typical Plan Area Statement addressed all of these issues. The developer should not look at this Plan Area Statement action as a form of preliminary project approval. Ms. Laxalt suggested that the Board needed clarification on its rules regarding resubmittal of applications and when an application was resubmitted vs. revised. Was a minor change sufficient to allow resubmittal? She questioned whether affected neighboring property owners had been adequately noticed of the resubmittal and the request for an even higher density. Ms. Urza suggested the necessary findings were not included in the staff material and that the Board did not have adequate information on the SEZ question, the wildlife habitat and forest issues. The applicant’s summary of original and new findings was faxed yesterday. Mr. Wynn had not seen that information and she requested a continuance to the next Board meeting.

Agency Counsel R. J. Nicolle reminded the Board that TRPA had a rule that prevented an identical or substantially identical application before the Board within a one-year period of the first consideration. The exceptions related
to a substantial change in the application or a change to the law. In this case, she assumed staff had determined that the increase in density did create a substantial change as was the division off of the land and the donation to IVGID. She felt comfortable that this was a defensible position.

Mr. Baetge explained that the proposal would not put development in an SEZ but did the reverse and allowed for the uncovering and restoration of an SEZ. Development would be on high capability land.

Mr. Barrett explained that the letters of concern included in the staff packets were dated in October and were in response to a notice.

Mr. Wells noted that he was not aware of habitat issues raised by Ms. Urza; that was the first he had heard of habitat concerns on this site, other than the fish habitat which was being addressed in the SEZ restoration.

Mr. Cole explained that Mr. Wynn's concern with the amendment earlier related to the level of already existing development in Incline. Other Board members had opposed it because they did not feel the proposed density was sufficient to make the required transit-oriented development finding.

Mr. Byrne Falke, a resident across the site at 650 Village, explained his home was on a one-half acre site. Residences on the south side of Village were on half acre parcels. There was multi-family across the street. He could not see why TRPA would rezone the property to allow 37 more units when 4 units were currently permitted. To say this was transit-oriented was wrong; there was no bike path from the lower end of Village to the site, and the roadway was narrow. These would not be low income units and the residents would not be the type of people to use mass transportation extensively. Village was a highly traveled street by car, and development would likely occur in the forested area and require the removal of hundreds of trees. To zone this parcel for multi-family was a mistake.

Mr. Don Kornreich, an Incline resident, suggested that the majority of the people in Incline were in favor of this project. There were so many benefits to it that it could not be ignored. There were transportation advantages and SEZ improvements. According to the Tahoe Research Group over 80,000 tons of sediment per year flowed into Lake Tahoe; he estimated that 6,000 tons of that came from Incline, and over 25 percent of that came from Third Creek. Third Creek was by far the worst of the seven watersheds in the Washoe portion of the Basin. With completion of this SEZ restoration and another being handled by IVGID, there was still a large amount of Third Creek that was yet to be addressed by restoration. He would do what he could to get some of the Nevada bond money to address the remainder of Third Creek.

Mr. Smith explained that the slope from the street to the back of the property was approximately 10 percent. The slope at the back of the borrow pit would be contoured and would go away when the SEZ restoration was done. Slope was 10 percent, and capability 4 and 6 the area proposed for development.

MOTION by Dr. Miner to make a finding for the Plan Area Statement 041 amendment of No Significant Environmental Effect. The motion carried unanimously.
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MOTION by Ms. Neft to make the findings required by Chapters 6 and 13 of the Code. The motion carried with Mr. Waldie voting in opposition.

MOTION by Ms. Neft to adopt Ordinance No. 96-17.

Vice Chairman Delano 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 Plan Area Statement 041, Incline Residential #3, to Amend the List of Permissible Uses by Adding Multiple Family Dwellings as a Special Use in Special Area #1 and to Amend the Special Designations, Planning Considerations, Maximum Densities and Special Policies Relating to Special Area #1; Deleting Residential Bonus Units Transferred to Community Plans Updating the Improvement Programs; and Providing for Other Matters Properly Related Thereto.

The motion carried with Mr. Waldie voting in opposition.

Deputy Director Jerry Wells noted that the APC had requested the opportunity to review and make a recommendation on any subsequent project proposed for this site.

Vice Chairman Delano directed that any project on the site go to the APC for review and recommendation.

B. Draft EIS for the Lake Tahoe Shorezone Development Cumulative Impact Analysis

Deputy Director Jerry Wells reminded the Board that the comment period on the EIS had been extended to January 31, 1997.

Since no one wished to comment, the hearing was closed.

C. Amendment of Chapter 26, Sign Standards to Adopt Substitute Sign Standards for the North Stateline Community Plan and Amendment of North Stateline Community Plan Design Guidelines to Add Historic Architectural Design Guidelines

Principal Planner Gordon Barrett explained that the subject casino sign standards were not ready for adoption at the time the Community Plan was adopted. Mr. Barrett distributed photos of the existing and simulated conditions. The substitute sign standards section in the packet materials was to be modified to provide that the "maximum height of building signs shall be 25 feet above grade." The ordinance was modeled on the Douglas County sign ordinance in the South Shore casino core area and was based on the concept that it addressed generally large properties that would do extra scenic improvements. The additional signs were tied to improvements. Staff and the APC recommended approval of the proposed amendments.

Ms. Leah Kaufman, on behalf of the casinos, thanked everyone for their work on these amendments. Work had been ongoing for approximately three years. The casinos were actually reducing signage by about 40 percent from the current
condition, and the casinos had agreed to contribute $200,000 of their own money. The large white historical building near the Crystal Bay Club was going to be renovated.

The Board members complimented the proposal for the visual improvements. More discussion followed on funding of improvements.

MOTION by Mr. Harper to make a finding of no significant effect for the proposed amendments to Chapter 26. The motion carried unanimously.

MOTION by Mr. Harper to make the Ordinance 87-8 findings and specifically finding 2.b. (the amendment is designed to correct the demonstrated problem and is an equal or better means of implementing the Regional Plan package and complying with the Compact.) The motion carried unanimously.

MOTION by Mr. Harper to adopt Ordinance No. 96-18 (the North Stateline Community Plan Substitute Sign Standards Section and Proposed Excerpts from the North Stateline Community Plan Design Guidelines).

Vice Chairman DeLanday 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, As Amended; Amending Chapter 27, Signs, Chapter 30, Design Standards, and the North Stateline Community Plan, to Provide Substitute Sign Standards and Design Review Guidelines for the North Stateline Community Plan Area; and Providing for Other Matters Properly Relating Thereto

The motion carried unanimously.

E. Amendment of Plan Area Statement Boundary Between Plan Area 057, Spooner Lake (Recreation), and Plan Area 060, Genoa Peak (Conservation), or Plan Area 061, Logan Creek (Residential), to Relocate Douglas County APNs 01-130-09, -12, 013, 014, and 016 from Plan Area 057 to Plan Area 060 or 061

Principal Planner Gordon Barrett explained the proposed amendment which would relocate five parcels located east of and adjacent to Highway 50 into PAS 060 and to create a Special Area #1 encompassing all the parcels. The purpose of Special Area #1 was to make single family dwellings an allowed use and to establish scenic mitigation requirements. The APC and staff recommendation, which was supported by the applicant, was for approval of the amendment.

Mr. Mike Dill, with Aspen Environmental Services, on behalf of Mr. Martin and Mr. Kahn, thanked staff for meeting on the issues; he concurred with the special conditions. He had originally wanted to move the parcels into PAS 061, a residential Plan Area. After discussions with staff and the adjoining property owners, he agreed it would be easier to put them in PAS 060, a conservation plan area. Scenic issues would be addressed through setbacks and vegetative screening. The compromise to allow single family dwellings as an allowed use was a good compromise for TRPA and his clients.
Mr. Jeff Cutler, from the League to Save Lake Tahoe, expressed concern with expansion of urban boundaries in the Basin and felt the proper way to deal with this proposal was through a special use classification, rather than through creation of an allowed use. Approval would allow a de facto expansion of the urban boundary without going through the proper level of public review.

Since no one else wished to comment, the hearing was closed.

**MOTION** by Dr. Miner to make the finding of no significant effect for the amendment to PAS 057 and PAS 060. The motion carried unanimously.

Mr. DeLanoy authorized staff to correct the several typographical changes in the ordinance.

**MOTION** by Dr. Miner to make the Chapter 6 and Chapter 13 findings. The motion carried unanimously.

**MOTION** by Dr. Miner to adopt Ordinance No. 96-19.

Vice 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 Boundary Between the PAS 057, Spooner Lake Recreation Plan Area, and PAS 060, Genoa Peak Conservation Plan Area, to Incorporate Douglas County Parcels 01-130-09, -12, -13, -14, and -16 From PAS 057 to PAS 060 Special Area #1, and Providing for Other Matters Properly Relating Thereto.

The motion carried unanimously.


Principal Planner Gordon Barrett presented the summary of the proposed one-year extension of allocations. The APC voted in favor of the proposal with amended language (copies distributed). Staff recommended in favor of the amended language. The current residential allocations expired the end of December, and at this time staff was proposing to extend them one year because the 1996 threshold evaluation package was not yet completed. The threshold document to be presented in December would propose extension of commercial and residential allocations. The proposal would not permit any carryover but rather a pooling of unused allocations. The same numbers would be distributed.

Since no one wished to comment, Vice Chairman DeLanoy closed the hearing.

**MOTION** by Mr. Svisson to approve the findings for amendment of Code Chapter 33 and Chapter 7 of the Goals and Policies. The motion carried unanimously.
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MOTION by Mr. Sevison to adopt Chapter 6 findings. The motion carried unanimously.

MOTION by Mr. Sevison to adopt Ordinance No. 96-20.

Vice 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 Development and Implementation Priorities Subelement of the Implementation Element of the Goals and Policies Plan; Amending Chapter 33 of the Code of Ordinances Relating to 1997 Allocations for Residential Development; and Providing for Other Matters Properly Related Thereto.

The motion carried unanimously.

X. PLANNING MATTERS (continued)

B. Discussion on Incline Creek Environmental Improvement Program (EIP) and Proposed Hyatt Vacation Club

Senior Planner Carl Hasty asked for Board concurrence on an approach taken by staff in the review of a proposal by the Hyatt in Incline. Mr. Hasty used 1948 and 1983 aerial photographs to describe the changes that had occurred over time to the area where Incline and Third Creeks joined, an area through which 4,300 acres of land drained. Hyatt had come in with a proposal that would address the fill and man-modified status of the property. The affected Community Plan also required some SEZ restoration. IVGID, Washoe County, the Hyatt, and TRPA were all looking to receive some benefits from improvements on the site, and TRPA was taking a proactive approach to facilitate a joint effort on behalf of all entities. An area larger than the individual Hyatt parcel would be impacted. There were also fisheries needs along with SEZ restoration needs. There were previously 10 acres of naturally functioning SEZ that were now covered with a parking lot, a ballfield, and fill. Over the years the function of the SEZ had been impaired. There was managed turf, grass, the creek had been incised, and the floodplain had been diminished. One of the branches of the creek no longer existed. One issue at this point was whether TRPA could move fast enough to put a solution together to meet Hyatt’s time schedules. Mr. Hasty responded to Board member questions.

Executive Director Jim Baetge advised the Board that the 120 day turn-around time for Board action on a project would be a consideration in this process, since putting together all the agreements among the parties would take longer than 120 days. On December 9 staff would be shutting the office to attend an off-site retreat to discuss the Agency’s direction, one of which was set forth in this approach. The recreation of this channel and all of the appropriate agreements were good examples of a partnership among numerous parties that would assist in accomplishing numerous goals.

Several Board members spoke in favor of the approach and further addressed incentives, waiving bonding requirements for public agencies, and inducements for the private sector to take a part.
Mr. Gary Midkiff, on behalf of Hyatt, thanked Carl for his work and advised that Hyatt had retained engineers and environmental and geological specialists to look at this specific area to redefine the stream zone and floodplain. Another meeting was scheduled for December 3.

C. Discussion on Future Commercial and Residential Allocations

Principal Planner Gordon Barrett noted this was not an action item but for informational purposes only. The packet materials contained progress to date in creating a preferred alternative for future commercial and residential growth; this would be coming back to the Board as part of the 1996 threshold evaluation assessment in December.

Mr. Harper questioned the imposition of penalties on local jurisdictions that did not comply with the proposed permit tracking programs. This had not been the previous practice and implied that the cities and counties had, in fact, not been making good progress. Specifically, item V.A.1. (Review Criteria, Compliance, Permit Tracking) did not appear to be environmental performance criteria and he did not understand why cities and counties would be penalized for not having a real time reporting system. This appeared to be more of a convenience to TRPA than anything else. He also questioned the requirement for local jurisdictions to contribute $85 for each allocation issued for the IPES water quality monitoring program and a five percent reduction in allocations for the following year for failure to comply.

Mr. Barrett responded that the goal of the allocation system was to promote environmental improvements, transfer of development from sensitive lands, and MOU compliance. The basic premise of the 1996 and 1991 evaluation was that the Basin was not on schedule for meeting all capital improvements. The Environmental Improvement Program was to be the focus for the next five years to accomplish thresholds, and linking the amount of development with improvements was the key to both the residential and commercial allocations. Because improvements were behind schedule, there needed to be better linkages between the amount of development that was allowed and completed improvements. Fundamental to this was a concept that if capital improvement programs were not being developed and implemented there would be a reduction in allocations. In spite of the MOUs between TRPA and all the local jurisdictions, it was impossible to tell this year how many allocations had been issued and how many had not been issued. TRPA relied on local jurisdictions to send back information on which allocations had been issued. This was a general problem, and there was a need to set up a tracking system for permit issuance. In recognition of this, the group that drafted the allocation programs decided to require a program for the tracking of the data. The resulting proposal was to have a common computer information system that would be updated prior to issuance of any permits.

Mr. Harper suggested there be an opportunity for correction should a local jurisdiction be found in noncompliance with the tracking requirements. There should be an opportunity first to indicate what the problem was and to take corrective actions. If there was failure to comply, then a different procedure was appropriate. What Washoe County found offensive was that no problems had been brought to its attention to date in any of these areas up to this point in time. The proposal as currently proposed had no flexibility.
Mr. Barrett noted that the committee that prepared the proposal and the criteria was comprised of representatives from all local governments. The intent was not that this proposal be offensive to the local jurisdictions; it was a general problem for everyone and TRPA as well to track the permits. Washoe County, as a matter of fact, was one of the more advanced in terms of computer tracking of permits and processing.

Mr. Waldie commented that the wording of the permit tracking requirement left no flexibility in the event a situation was correctable. He suggested "failure by a local jurisdiction...shall/may require a 10 percent reduction..."

Mr. Barrett explained that this was a policy proposal and the "shall" language was not as important at this stage as the ultimate code regulation.

Mr. Waldie asked that in this case the wording be changed to "may."

Mr. Sevison suggested this proposal was a surprise, and everyone had worked very hard to get the cooperative MOUs in place to streamline and pick up the load. In view of that effort, the Placer County Board of Supervisors would most likely not be willing to continue on with the MOU if the ultimate regulations contained these penalty provisions. This was not the proper approach. At the least the proposal should go to the Local Government Committee to figure some way to use a carrot rather than a cannon approach to get the needed information.

Mr. Baetge explained that TRPA staff now was spending a lot of time overseeing what local governments were doing. The goal was to get out of the residential permitting program altogether, with an audit to be conducted every two years to ensure that everyone was doing the same thing. That was the starting point. There was general agreement among the working group that TRPA would back off residential. Then the group considered whether there should be a penalty for a local jurisdiction that the audit showed was not performing well. The group backed off further and decided not to have an audit but to have each jurisdiction come together in a training session to educate on the criteria to accomplish the whole residential review program appropriately. The progression involved giving the residential program to the locals, making it as easy as possible for them to administer and to get TRPA out of the oversight effort. Finally, there would be an educational process where a committee would review each other’s programs. The only question remaining was to determine what would be done if a jurisdiction was not performing well. TRPA should not be in that role. He wanted to see a willingness on the part of the locals to work together. Washoe County had put a lot of effort into this and had been doing a very good job.

Mr. Waldie suggested that TRPA should not be out of the picture if a jurisdiction was not performing. While he felt strongly that TRPA should make certain that failure to perform was a culpable matter, there should be flexibility to work out a solution. Use of the terms "shall" and "will" seemed not to permit that administrative flexibility.

Mr. Baetge explained the intent was that after the group developed the criteria and reviewed how each jurisdiction was performing, if one was not
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doing well the penalty would be loss of allocations for that jurisdiction. Those allocations would go to a pool available to all other jurisdictions.

Mr. Harper asked that there be an interim step to notify those jurisdictions that were failing so that they could respond. If they decided at that time to ignore the request, other options were available.

The Board members continued to discuss the current process of auditing local permitting programs under the MOUs, the impact on staffing resources and work loads caused by the MOUs, the shortfall in covering all permit processing costs through fees, participants on the residential and commercial working groups, the proposal for a 206 Plan amendment to allow 200 square feet of additional coverage on residential parcels, the need for flexibility, the need for careful understanding of the proposed policy, and the pool concept for allocations. Mr. Barrett explained that the whole package would be coming back to the Governing Board.

D. Discussion on Transit and Air Quality Programs for the 1996 Regional Transportation Plan/Air Quality Plan (RTP/AQP)

Associate Planner Bridget Cornell reminded the Board that in August the goals for the RTP/AQP were brought to the Board for review. The plan would be developed into six different programs, including air quality, transit, bicycle/pedestrian, aviation/waterborne, parking, and traffic congestion and highway programs. The transit and air quality program was before the Board today. The outline identified in the institutional overview (item 3 in the 1997-2015 transit program outline) listed all entities involved in transit throughout the Basin. This list indicated the complexity of what was going on in the Basin at this time and the need for coordination and consolidation. A technical advisory committee would be reviewing and commenting on each program in draft form. Local groups, the TTD, the Transportation Coalition and others were also being consulted. Ms. Cornell presented more information on comments received to date, transit priority projects for 1997-2002, draft goals for the transit and air quality programs, legislative issues, air quality goals and standards, the need for prioritization of programs/projects, and postal services and the status of home mail delivery.

XII. ADMINISTRATIVE MATTERS

B. Appointment of Two Nevada Lay Members to the Advisory Planning Commission

Mr. Baetge noted that the packet material contained a memo explaining that Phil Caterino’s two-year term as a Nevada lay member was expiring this month.

Mr. Harper distributed copies of a memo from Washoe County Commissioner Steve Bradhurst recommending that Paul Morgan be appointed by the Governing Board as a lay member to the APC.

MOTION by Mr. Harper to reappoint Mr. Phil Caterino to the APC and to appoint Mr. Paul Morgan to the APC, both as Nevada lay members. (The terms would expire the end of November 1998.) The motion carried unanimously.
Ms. Bennett suggested that when the TTD appointee position expired in July 1997 the TTD be consulted to make a recommendation.

Mr. Wells advised that a recommendation would be sought of the TTD, as was done for the current member representing that group.

A. Endorsement of Executive Director Delegation Agreement Relative to Work Assignments and Schedules

Mr. Baetge explained that based on the discussion last month with the Board he had put together a proposal for him to work on a part-time basis and to delegate certain duties to the Deputy Director while retaining responsibility for specific functions until the end of February 1997. (Copies of a proposal were distributed to the Board members.) He would be facilitating the negotiations on the Coordinated Transit System agreements so the system would be up and running hopefully by the end of 1997. He also would be responsible for completion of the 1996 threshold evaluation report and the Environmental Improvement Program (EIP), the residential and commercial allocations, and TRPA staffing requirements and reorganization for the EIP program. He would be available for Board meetings and to work on the budget process. Deputy Director Jerry Wells would be assigned the remainder of the work load. He would be taking a leave of absence without pay during the time he was not in the office. He knew there were some concerns on the Board with this proposal, and he would like to continue in this manner until the end of February, at which time he proposed to have a Board retreat. The ability to delegate certain functions to the Deputy Director was not really a change from the way the system currently operated.

Mr. Wells indicated he was comfortable with the proposal for the next three months, and he would be delegating some work himself to handle the work load. He was not requesting additional pay.

Agency Counsel R. J. Nicolle advised that generally when the Executive Director was out of the office the person delegated as acting director had the ability to sign contracts, respond to applicant appeals, and generally to serve the function of Executive Director.

Dr. Miner indicated he did not feel the Executive Director position was a part-time job. The decision on hiring a Director rested with the Board and not with the Director. He was not comfortable with the change. There were a number of concerns about compensation and fringe benefits and time on the job that were not being addressed. He would feel much more comfortable with a contract labor proposal.

Ms. Neft disagreed with Dr. Miner’s comments, noting that this proposal had resulted from the Board’s previous discussion with Mr. Baetge.

Mr. Delaney agreed and asked that there be a motion directing him to sign the agreement as proposed.

Mr. Harper indicated he had discussed this with Mr. Bradhurst, the regular Washoe County representative to the Board, and he concurred with Dr. Miner’s position. He had a concern about the situation and felt it placed Jerry Wells
in a difficult position. TRPA needed a full-time Executive Director. Mr. Harper noted he felt uncomfortable voting and would be abstaining on a motion.

Mr. Cole encouraged the Board to look at alternative ways of solving problems. What was proposed was a thoughtful alternative way of trying to address the situation. It provided the Board with resources in areas where they were needed, CTS being one. It provided a time for Jim Baetge to reflect on his situation. He was willing to try this if it seemed reasonable and appropriate. The proposal was a follow-through on previous direction.

Mr. Sevison noted that at the time this was discussed with Jim Baetge in October the Board members liked the approach that was being taken. He felt the Board had already discussed something like what was being proposed. If there were going to be a vote it should be when all Board members were present and not late in the afternoon. If there was any question about whether there was clear direction, it should be on the December agenda and not voted on now.

Mr. Baetge explained that he had talked with Dr. Miner previously about his concerns. Based on the Board discussion in October, he had put together a proposal that fell somewhere between leaving the Agency altogether and staying. That was the reason for his proposal. He would have no problem if the Board wished to renotice the position.

Mr. Harper suggested that it sounded like a vote was not needed since it appeared from previous discussions that there was already some understanding of the approach being proposed. The Vice Chairman should just direct that the agreement be executed.

Mr. Baetge summarized his previous position as discussed with the Board earlier and his initial proposal to resign from the Agency due to frustration with various events. He had wanted some time away and at his suggestion that he resign the Board indicated concern about the many programs in process and loss of continuity. His solution was to look at some middle ground, and that was what was set forth in the proposal.

Mr. Stewart suggested that the Board had the ability to vote at any time on the Executive Director’s position. Having an agreement like this in place simply defined the working conditions.

Mr. Montgomery explained that he had discussed this with Chairman Upton, and the agreement proposed today was in accord with what had previously been discussed with Mr. Upton. He was prepared to support it.

Vice Chairman DeLaney indicated that, unless he heard to the contrary, he intended to sign the agreement.

XII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

A. Finance Committee Report

1. Receipt of October Financial Statement and Check Register
MOTION by Ms. Bennett to receive the Financial Statement and check register as recommended by the Finance Committee. The motion carried unanimously.

Ms. Bennett reported on the discussion items of the Finance Committee.

2. Revisions to FY 1996-97 Operating Budget - continued

3. North Stateline Beatification Project Cooperative Funding Agreement - continued

Mr. Heller left the meeting at 5:15 p.m.

B. Legal Committee Report

1. Coordination and Association of Supreme Court Counsel in Suitum v. TRPA

Agency Counsel R. J. Nicolle advised that the Committee had met in between Board meetings and approved the hiring of Richard James Lazarus as the Supreme Court counsel to deliver TRPA's oral arguments. (Copies of his resume were distributed to Board members). He came very well recommended by many sources. He was a professor at Georgetown and had given TRPA an excellent rate of $150 per hour. The Committee authorized Mr. Lazarus to associate Professor Peter Byrne for up to 100 hours at a $150 per hour rate. He also was a recognized land use professor. In addition, the Committee authorized Mr. Lazarus to hire up to five of his top honor law students to assist with legal research with a budget limit of $5,000. This was a very talented team working on this very important case. A lot of her time and Agency Special Projects Attorney Susan Scholley's time was being spent on this case; it had extreme ramifications for a great many federal environmental laws throughout the country.

Mr. DeLancy advised that Mr. Lazarus had handled 24 cases before the Supreme Court and had argued eight personally. It was very difficult to find someone with these credentials, and TRPA was very fortunate to have hired him.

Dr. Miner noted that the Committee also recommended a $20,000 cap.

MOTION by Mr. Sivison to approve the payment to the counsel as outlined for the Suitum case. The motion carried unanimously.

Ms. Neft complimented the legal staff and the Committee for their work to date in hiring Mr. Lazarus.

Finance Committee Chairman Bennett asked that the December Finance Committee agenda contain discussion on the parameters of the financial resources needed for legal defense.

C. Capital Financing Committee Report

Mr. Baetge noted that the staff was now working on the legislative packet. There would likely be a meeting next month.

D. Rules Committee Report - no meeting
E. Shorezone Policy Committee Report - presented earlier

F. Local Government Committee Report

Committee member Kay Bennett noted that the committee was presented with some options to consider with regard to recommendations for fair share. This was related to residential allocations and affordable housing. The Committee would be bringing that information back to the Board next month and would be meeting again during the lunch recess in December.

G. Retirement Committee Report

Committee Chairman Neft reported that the committee had approved release of funds to former employee Vivica Orsi and also approved the transfer of retirement funds to Wells Fargo caused by the bank buyout.

H. Performance Audit Committee Report - previously presented

XIII. REPORTS

A. Executive Director Monthly Status Report

1. Status Report on Project Applications

Executive Director Jim Baetge advised this was a new agenda item and would provide an opportunity for staff to report on the review time for projects. Any project that took longer than 120 days to review would be reported on to the Board under this agenda item.

Deputy Director Jerry Wells reminded the Board members to RSVP to the staff by December 9 if they were attending the Christmas party in December. The December meeting date was the 28th.

B. Legal Division Monthly Status Report - continued

XIV. ADJOURNMENT - The meeting adjourned at 5:25 p.m.

Respectfully submitted,

[Signature]

Julie D. Frame
Clerk to the Governing 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.

These minutes were approved as presented on Dec. 20, 1996.