TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

Horizon Casino Resort
Stateline, Nevada

December 16, 1998

REGULAR MEETING MINUTES

I. PLEDGE OF ALLEGIANCE

Chairman Drake DeLanoy called the regular December 16, 1998, meeting of the Governing Board of the Tahoe Regional Planning Agency (TRPA) to order at 9:30 a.m. and asked Vice Chairman Larry Sevison to lead in the Pledge of Allegiance.

II. ROLL CALL AND DETERMINATION OF QUORUM

Members Present: Mr. Waldeg, Dr. Miner, Mr. Sevison, Mr. Reis (for Nevada Secretary of State Heller), Mr. Cole, Ms. Bennett, Mr. Cronk, Mr. Perock, Ms. Neft, Mr. Galloway, Ms. Bresnick, Mr. Chimirudet, Mr. Upton, Mr. DeLanoy

Members Absent: Mr. Neumann

III. PUBLIC INTEREST COMMENTS

Senior Compliance Specialist Mike Solt introduced Mr. Jim Malot, President of Terra Vac Corporation, and explained that the TRPA Board had been asked to serve as the forum for the presentation of Eco-Grade A awards recognizing exemplary gasoline stations in the Basin. The industry- and market-sponsored pilot program was launched last year and required cooperation and partnership with public regulatory agencies. Participants included TRPA, the Regional Water Quality Control Board, NDEP, and local jurisdiction environmental management departments.

Mr. Malot explained the awards were designed to recognize gas stations operating in the most environmentally friendly way and to communicate that information to the consumer at the point of sale. Consumers, then, could use this information to improve the quality of Tahoe's environment. The four criteria in the categories judged included vapor return nozzles, upgraded underground storage tank systems, a clean bill of health from the various agencies, and BMPs to minimize runoff to the Lake. Of 33 stations visited, three qualified for the award. Mr. Malot presented awards to Ron Pratt, owner of the Shell Station in Kings Beach, and Al Moss, owner of the two Chevron Stations in South Lake Tahoe (Ski Run and Tahoe Paradise).

TRPA Executive Director Jim Baatge noted this program was a good example of public/private partnership. These recipients had provided improvements which were needed at all service stations in the Basin. It was a very positive thing. He would like to see these awards presented in combination with TRPA's awards program in its next cycle.

TRPA Senior Planner Paul Nielsen introduced Elizabeth Harrison, a new planner in the Project Review Division. Elizabeth had a degree in Conservation Biology from UNR.
IV. APPROVAL OF AGENDA

MOTION by Dr. Miner to approve the agenda as presented. The motion carried unanimously.

V. APPROVAL OF MINUTES

MOTION by Dr. Miner to approve the October 28, 1998, regular meeting minutes. The motion carried unanimously.

MOTION by Dr. Miner to approve the November 18, 1998, regular meeting minutes. The motion carried unanimously.

VI. CONSENT CALENDAR

Finance Committee Chairman Kay Bennett explained that her committee met earlier in the morning and recommended receipt of the October 1998 financial statement and November check register (consent calendar item 1), approval of funding to retain Agency Special Projects Attorney (item 2), and Douglas County's request for water quality mitigation funds (item 4).

Legal Committee Chairman Jerry Waldie noted that his committee met earlier in the morning and recommended retention of the Special Projects Attorney.

Deputy Executive Director Jerry Wells explained that item 7 on the calendar was to be continued to January.

MOTION by Ms. Neft to approve the consent calendar as discussed. The motion carried unanimously.

(The following items were approved:
1. October Financial Statement and November Check Register
2. Retention of Agency Special Projects Attorney
3. Steinberg, Appeal of IPES Score, Tyner Way, Washoe County APN 125-142-13
4. Douglas County Request for Water Quality Mitigation Funds ($164,534) for Two Erosion Control Projects
5. St. Theresa's Catholic Church, Church Rebuild, 1041 Lyons Avenue, City of South Lake Tahoe, El Dorado County APN 26-190-02

The following item was continued:
7. North Tahoe PUD, Water-Oriented Outdoor Recreation Concession, Special Use Determination, Kings Beach Recreation Area, Placer County APN 90-080-04)

Chairman DeLanoy advised that the Nevada Tahoe Regional Planning Agency (NTRPA) elected Brian Sandoval to serve as the Nevada At-Large Member, replacing Steve Wynn. Mr. Sandoval was an attorney practicing in Reno, Nevada, was twice elected to the Legislature, and currently served on the Gaming Commission. He would be sitting on the TRPA Board starting in January 1999.
VII. PUBLIC HEARINGS

A. Review Of 1998 Lake Tahoe Watercraft Report and Direction to Staff to Prepare Recommended Actions in Response to the Report

Mr. Gordon Barrett, Chief of the Long Range Planning Division, used overhead projections to summarize the proposed agenda for the day’s discussion, including a brief overview of the process to date; a watercraft report summary by Brant Allen, of the Tahoe Research Group (TRG); the staff and Advisory Planning Commission (APC) recommendations; a summary of the California Air Resources Board (CARB) emission standards and sticker program; and discussion of exemptions. After public input, the staff would be looking to the Board for direction on a proposal for action in January. As directed by the Board in February 1997, TRPA did adopt an ordinance in June 1997 and asked that further study be conducted to obtain more data specific to Lake Tahoe. Because 20 to 30 percent of fuel oil from two-stroke engines was exhausted into the environment and impacting water and air quality, the study was designed to review these impacts and other related topics. TRPA regulations (Code Chapter 81) currently prohibited toxic or hazardous waste discharge to Lake Tahoe or other lakes or waters within the Region and also prohibited discharge of unburned fuel and oil from the operation of watercraft propelled by carbureted two stroke engines commencing June 1, 1999. Staff was asking for Board direction on proposed amendments to Chapter 81 as well as the Agency’s Goals and Policies. The report sent to the Board members in their packet materials was a combination of five major studies done by different entities and was compiled by the Tahoe Research Group (TRG). Mr. Barrett presented more information on the mechanics of how a two-stroke engine functioned, the proposed prohibition of two stroke engines with the exception of those whose fuel was directly injected into the cylinder, and staff’s recommendation to phase out the electronic injection engines. He described the ARB and EPA proposed standards and deadlines, the current market and availability of engine types, the ongoing survey, and results to date on boaters’ attitudes about the ban.

Mr. Brant Allen, staff researcher for the Tahoe Research Group (TRG) at U.C. Davis, noted the report in the Board’s packet materials was a synthesis of studies completed by the members of the motorized watercraft technical advisory group. The study results were presented to the Board in November. Mr. Allen highlighted report findings regarding, in part, detection of MTBE, BTEX, and PAH in Lake Tahoe; their relationship to motorized watercraft use; the negative impact of PAH on biota; the amount of fuel used by boat type; the difference in emissions resulting from a direct injection engine; the negligible impact of increased NOx emissions with a switch from two- to four-stroke engines (compared to automobile fuel emissions around the Lake). He responded to questions regarding the spiking of MTBE concentrations during the boating season and decreases as boating ceased; lack of inter-annual carryover of MTBE; volatilization and retention of emission components; toxic impacts on biota of PAHs exposed to UV light; and the need for more study to determine ecological effect of PAHs on the food chain and the Lake’s ecology.

Dr. Glenn Miller, UNR Professor of Environmental Resource Sciences and study participant, described PAH compounds, effect of UV light, PAHs resulting from incomplete combustion, and the intent to study the source of PAHs in the next two years. It was generally thought that the major source of photo-toxicity in recreational lakes was probably watercraft and combustion products directly injected into the Lake. This was
not known. Because of its high elevation, amount of UV light, and its incredible clarity, Lake Tahoe was a place where such a study could be focused. All of these factors made photo-toxicity particularly important to look at. Dr. Miller responded to Board member questions on engine emissions, the need for more data on four- and two-stroke engine emissions, and what stayed in the water from these emissions and what did not.

Mr. Allen presented more information and responded to questions on detectable levels of MTBE in drinking water, discharge in the Lake whether there was dissipation or not, the concentration of fuel constituents associated with boating activity in the littoral zone, and potential effects on water intake lines and fish.

Mr. Barrett presented the proposed staff and Advisory Planning Commission (APC) recommendation relative to the addition of a Policy #10 to Chapter 2 (Land Use Element, Water Quality Subelement, Goals and Policies). This new goal would recognize that use of motorized watercraft within the Region could adversely affect water quality through the discharge of pollutants such as MTBE, PAHs, human waste, and hydrocarbons. It directed TRPA to implement measures to attain and maintain TRPA, state, and federal water quality standards because of these pollutants’ adverse impact on fish and wildlife, recreation and water supplies. Mr. Barrett displayed on the overhead projector the proposed amendments to Chapter 81 as recommended by staff and the APC, as follows:

81.2.E Prohibition of Certain Watercraft: Commencing June 1, 1999, the launching, mooring, or operation of all watercraft powered by two stroke engines within the Region is prohibited, except:

1.) Any watercraft powered by a two stroke engine whose fuel is directly injected into the cylinder shall be exempt from the prohibition.
2.) Any new watercraft purchased after June 25, 1997, and before January 27, 1998, and powered by a two stroke engine whose fuel is injected into the crankcase shall be prohibited commencing June 1, 2000.
3.) Any watercraft powered by a carbureted two stroke engine, is owned by a fire protection agency, and is necessary for fire protection shall be prohibited commencing June 1, 2000.

Mr. Barrett explained that there was general agreement that two-stroke engines with fuel directly injected into the cylinder (DFI) were to be exempt from the prohibition. Because of the concern with the concessionaires who in the summer of 1997 bought the electronic fuel injection engines in reliance on TRPA’s initial testimony that these motors would be acceptable, the staff and APC recommended that the prohibition on these engines not commence until June 1, 2000. Concessionaires traditionally turned over their equipment every two years. This was a fairness issue.

Mr. Galloway suggested leaving out the acquisition dates ("after June 25, 1997, and before January 27, 1998"), stating it was an unnecessary restriction since the prohibition date would remain the same.

Ms. Bresnick suggested that while item 2 was the right approach it would be difficult to enforce, because of the need for people to have to rely on purchase slips to show when their machines were acquired.
Mr. Baetge reminded the Board that the purpose of the day's discussion was to give staff direction for the final ordinance. He did not see this as a big issue.

Mr. Galloway asked again that the dates be deleted. If a person purchased one of these engines before June 25, 1997, they most likely had reason to believe it would be exempted in the original ban. They had no time to plan, and he would like to give these engine owners the additional time, regardless of when the engines were purchased.

Mr. Upton suggested that he was not sure that these types of engines were even available at the time the Board took its initial action, and he would not encourage TRPA to get into an enforcement nightmare.

Mr. Barrett explained that the third exemption was raised by property owners at Fallen Leaf Lake who relied for fire protection on a watercraft powered by a carbureted two-stroke engine. The fire protection agency in that area would not have the money in 1999 to purchase a new engine. The Fallen Leaf area was unique in that its roads in the winter months were closed, and access to the houses for fire protection was by boat.

Ms. Bennett spoke in opposition to this exemption, noting that governmental agencies should hold themselves to the same if not higher standard expected of the private sector. She did not like the message this exemption was sending and felt there were other options to address the problem.

Mr. Upton explained that Fallen Leaf Lake was a small post-Proposition 13 community service district whose entire funding source came from voter-approved parcel fees. These fees now were fairly high; the district had a very small budget and relied mostly on volunteers. The District would be in desperate shape without an exemption.

Mr. Perock noted that there were a number of rescue and Sheriff's boats on the Lake that would fall into this same category. Similarly there was no money in Nevada's budget for State Parks to acquire a new boat.

Mr. Galloway agreed and suggested that this was not an unusual situation and could have impacts on other regulatory agencies that operated public safety watercraft. The reasonable basis for such an exemption, if the exemption were to be granted, should be that the boat was needed for a rescue or similar operation.

Ms. Bennett suggested that governmental entities always had this option within their police powers to make such exceptions.

Chairman DeLancy asked that staff look into this legal question before the January meeting.

Mr. Barrett noted there was a road system at Fallen Leaf Lake, and all houses had access in the summer. At Echo Lake, on the other hand, access to properties was provided by walking, water taxi, or personal boat.

Mr. Upton commented on earlier testimony that four-stroke engines did not work well at the 7,000 foot Echo Lake elevation. He questioned the availability of direct injection, low horsepower two-cycle engines for these homeowners. The water taxi was a two-cycle
engine, and only an outboard would provide access between the lakes. Getting to
cabins with supplies via walking was not an alternative.

Mr. Baetge noted that water from Echo Lake clearly flowed into the Tahoe Basin. Echo
Lake also had a water supply line going from the dam into the West Slope of El Dorado
County and a large line going the other direction. Some of that water did become
drinking water in El Dorado County’s water supply, and the Echo Lake Marina sat right
over the intake line. This was a significant issue, and the Board should look at the
results of the research before granting an exemption for Echo Lake.

Mr. Barrett discounted earlier testimony regarding performance problems with four-
stroke engines at Echo Lake. From all information available, staff felt that four-stroke
ingines were better engines and should work well at all altitudes. The highest sampled
reading for MTBE, above the warning level, was at Echo Lake, and there were water
intake lines at Echo Lake. He recommended against an exemption for Echo Lake.

Mr. Galloway commented on the history of exemption discussions dating back to the
original Board action. He had voted for the ban and against reconsideration, because
there was assurance that the Board would eventually consider exemptions. There
needed to be a reasonable basis for where to draw the line on granting exemptions. He
was at a point now where he felt that without some reasonable exemptions, he would
have difficulty voting for a change in the ordinance. Last December he had provided the
Board with an analysis, based on the original data for the ban, showing the basis for two
reasonable exemptions, one of which at the time was for Echo Lake. He was not now
advocating any exemption for Echo Lake, because he could not find a way to draw a
reasonable line for Echo Lake. The property owners at Echo used their engines a lot,
and the more engines were used, the more total pollution they created. If a person cold
afford to live at Echo Lake and run an engine as much as was needed, he or she could
afford a new engine. The exception in his mind would apply to motors used so
infrequently that they created very little total pollution. As engines got smaller, less fuel
was used. There was a point, however, at which combustion from small engines
became less efficient. His concern was for the small engine owner who used the engine
only occasionally for trolling or similar purposes. The Nevada Department of Wildlife
had indicated that the smallest engine that could be used for that purpose was 9.9 to 10
horsepower. The number of such engines on the Lake was very small, and the amount
of use was minimal. It was important for these engine owners to be able to enjoy Lake
Tahoe without having to go to the expense of replacing their engines for the very little
use and the minimal amount of fuel used. This was borne out in staff’s findings. If the
Board approved an exemption for 10 horsepower engines and under, it would be
exempting .3 percent of the boating season fuel. It would not materially reduce the
overall effectiveness of the ban and would greatly help those who otherwise would feel
that they were disqualified from experiencing the quality of life provided by one or two
days on Lake Tahoe. This was a reasonable factor from a human point of view.
Another reasonable exemption would apply for the auxiliary sailboat engine. Two years
ago, testimony was heard that 25 horsepower was the minimum size for such engines.
These engines were used mostly to get out of and back into marinas and an occasional
emergency situation. This was only .002 percent of all the fuel consumed in a boating
season. This, again, was a reasonable basis for an exemption. He proposed that,
contrary to staff’s recommendation, the Board grant an exemption to these engine
owners because of the human factor. He would not favor an exemption for any engine
below 4 horsepower, because of their inefficiency and because they were not useful for
a trolling fisherman. He would favor exempting engines that were less than 10 horsepower but more than 4, and he would agree to include a sunset of three boating seasons. He could not vote for direction to staff on an ordinance that did not include these exemptions, since he had put off this exemption discussion for two years. He also felt that owners of electronically injected engines should be given a longer time than one boating season to amortize their engines.

Dr. Miner agreed that amortization was a problem, since some boat owners acquired electronic fuel-injected engines because TRPA earlier stated that these types of engines would probably fill the bill. This was not now the case. He did not believe that the year 2000 for phase-out was appropriate and favored 2001 and conformance to the EPA requirement. He would support the smaller horsepower exemptions, as requested by Mr. Galloway.

Mr. Galloway suggested that the phase-out date should be September 2001 if the full boating season were permitted for the fuel-injected two-stroke engines.

Agency Counsel John Marshall explained that exemptions could be supported in litigation if there was a rational basis for them. In his opinion, a case would become less defensible in the larger sense when lines were drawn. Exempting portions of a problem because they were relatively small in some sense undercut the overall thrust and main message in dealing with the major problem. In looking at the engines under 10 horsepower and the 4 percent of MTBE contribution, the Board could argue whether that was a significant amount. If the Board was making an exemption for 4 percent of a problem, he questioned the impact this would have on other cases where TRPA was regulating a person's use of a resource that would contribute significantly less. He did not want this, however, to prevent the Board from granting exemptions if it wished to do so.

Mr. Cole noted that previous testimony had proven that all engines, including four cycles, emitted pollutants into the Lake. Using this reasoning, nothing should be allowed on the Lake at all, and all internal combustion engines should be outlawed. This ordinance was designed to go after the biggest polluters. TRPA was carving out the four cycles and saying they were acceptable.

Dr. Miner suggested that the exemptions may be looked on favorably to the point where the current litigation would be resolved. This might allow for settlement without any environmental impact and provide a god phase-out for the major polluters. This was a middle ground. TRPA could not continue to spend large amounts of money on lawsuits for infinitesimal results.

Mr. Galloway explained he had discussed this issue with TRPA's outside watercraft litigation counsel Ellison Folk, from the firm of Shute, Mihaly, and Weinberger, and she had suggested that an exemption based on a rational decision was defensible. It was a Board call.

(At this point Chairman DeLanoy advised the audience that the Board would be taking a two hour recess from 12:00 noon to 2:00 p.m. to attend a staff Christmas luncheon at the TRPA office.)
Executive Director Jim Baetge commented on the lack of a recommended discharge standard in staff's recommendation. The California ARB last week did adopt standards and a sticker program to identify boats. Staff's recommendation was not to incorporate this program into what TRPA was proposing for January action but would discuss this further with the industry.

The Board members discussed engine types and exemptions granted elsewhere in the country.

Mr. John Fagan, representing the National Marine Manufacturers Association (NMMA) in the current litigation, suggested that after review of the report it was clear that the pollution problem was not persistent since it did not last from year to year. This was one of the Board's earlier concerns. His December 16, 1998, letter (distributed to Board members) addressed summary findings from the watercraft report related to MTBE, BTEX and drinking water standards; EPA criteria for protection of aquatic life; low concentrations of MTBE and BTEX at the mid-lake sampling station; lack of toxicity in what was found at Lake Tahoe; lack of transport of MTBE or BTEX to depths; dropping levels of MTBE and BTEX at the end of the boating season; and lack of data regarding any drinking water standard violations. TRG in its report also found there were no measurable concentrations of MTBE above 1 part per billion observed until July each year. MTBE was not a persistent problem; it went away. Also, MTBE was not found at depths of 20 meters or greater. The solution was not to ban two-stroke engines at Lake Tahoe; it was to lower drinking water intakes. By and large, the results of the study were very positive. MTBE and BTEX compounds were not a persistent problem from year to year. The other issue that needed to be addressed before a vote on any ordinance amendment was whether Tahoe could truly be an MTBE-free zone. If TRPA was really concerned about MTBE getting to the water through two-stroke engines, MTBE should be prohibited at Lake Tahoe. NMMA was adverse in the lawsuit, but from the start he had felt there was a possibility for middle ground. The industry was still available to talk to TRPA. TRPA was not concerned with the technology, so should not ban the technology. Because TRPA's concern was emissions, TRPA should defer to the emission experts—EPA and CARB. Both had adopted extremely stringent rules for carbureted two-stroke engines and TRPA would be safe from legal challenge by using these same standards. While he was not comfortable talking about a litigation settlement at this meeting, he felt the exemptions did provide one step to a middle ground. The EPA guidelines for a phase-in of a ban on certain technology and, in particular, a phase-in of the DFI ban and a 2001 CARB ban at some point in the future would provide the ability to resolve the litigation and was consistent with TRPA's, CARB's and EPA's regulations.

Mr. Galloway clarified that in his vote for the original ban his concern earlier was not whether the emissions stayed in the water or went into the air. Of concern was a class of engines that was ten times dirtier than an alternative technology that was generally available for most purposes. This was why he had voted for the ban.

Dr. Miner suggested that even if MTBE were banned from Lake Tahoe there still was a major contaminant with the two stroke carbureted engine dumping BTEX into Lake Tahoe; this was a known carcinogen.

Mr. Fagan responded the focus had been on MTBE because it was so easily traceable. The first step was to eliminate MTBE; the second step was to adopt what CARB or EPA
had come up with and perhaps accelerate that. This would provide a middle ground. Then the cleaner burning technology that CARB had come up with and which would be sold in California beginning 2001 would take hold at Tahoe.

Chairman DeLancy recessed the meeting at 11:50 and explained that the STPUD would be making a presentation at 2:00 p.m. The remainder of the public comments on agenda item VII.A. would be taken up following that report.

(The meeting recessed from 11:50 to 2:00 p.m. Mr. Reis was absent for the afternoon session.)

VIII. PLANNING MATTERS

A. Status Report on Construction of the South Tahoe Public Utility District (STPUD) Export Line and Potential Effect on Water Quality

STPUD General Manager Bob Baer described the District’s export line which transported treated sewage from the plant in South Lake Tahoe out to Meyers up Luther Pass and over the summit into an Alpine County reservoir. To date STPUD had spent $23 million replacing the line and had received federal assistance in the form of a special appropriation. About 90 percent of the low pressure A-line and 40 percent of the high pressure line had been replaced.

STPUD Chief Financial Officer Ronda McFarland explained that Congress appropriated $7.15 million for STPUD in October 1997 and $2.5 million in October 1998. In March of 1998, EPA, as the grant administrator, came out with grant guidelines to be followed, and once these were in place STPUD could submit its application. At this time STPUD also submitted a deviation request. The guidelines called for federal funds to represent 55 percent of the project and local funds to be matched at 45 percent. The deviation request asked that the $16 million spent prior to the appropriation be counted towards the 45 percent match. EPA Region IX recommended approval of the deviation request, and headquarters gave a preliminary approval in July 1998. In August, STPUD was told by EPA that the deviation would not be approved as submitted, because EPA did not believe Congress intended to approve the deviation. Because of the denial, the District was required to come up with an additional $8 million for the local match. Since August, STPUD had been working on revising its financial plan, and these revisions would have an impact on the construction schedule. STPUD was in the process now of preparing a revised grant application for submittal to EPA by January 2, 1999. In the meantime, the STPUD board directed that no further money be spent on the project until the revised grant application was approved. The original grant application was for $7.15 million and adding the 45 percent match brought the amount up to $13 million. EPA had asked the District to combine appropriations and was giving a partial credit for some of the spending that had occurred after October 1. What was spent this construction season was being counted.

STPUD Engineer Richard Solberg explained that the original construction schedule was presented to Lahontan in October 1996. In October 1997, because the District felt $17 million in federal funds would be incorporated into the project, it accelerated the total pipeline replacement schedule for completion by the end of the 2000 construction season. In November 1998, the District revised the schedule a second time when the funding issues became apparent. Because the bidding window was passed,
construction would not continue in 1999. Projects were normally bid in the fall for
the following year’s construction. This gave time for the manufacturer to view the
project area and time over the winter to construct the pipe for delivery prior to the start of
the construction season in May. Bidding a project in the spring did not provide time for the
special pipe to be manufactured. Mr. Solberg presented more specific information on
the status of various portions of the A and B lines and the revised construction
schedules. He explained that District inspectors walked the entire length of the line from
the treatment plant to the Harvey Place Reservoir on a monthly basis.

Mr. Waldie questioned whether it was accurate, as related in newspaper accounts, that
the District was trying to put pressure on EPA by shutting down construction because
STPUD no longer trusted the word of EPA.

Mr. Duane Wallace, STPUD Board member, explained the District’s reason for halting
construction. Based on EPA’s Grant Division and, to some extent, Region IX’s oral and
written word, STPUD was able to convince a bank, and the bank was convinced by EPA,
that a $5 million loan to the District would be secured by the forthcoming grant. The
District borrowed the money a year early and did the work that would have been done in
1999. Because the $5 million needed to be repaid before STPUD could do anything
further, as soon as grant money was received, it would go to paying off the loan. The
District did not have money available to proceed this year without raising rates 47
percent. STPUD had no choice but to not build this year. As a result, rates would go up
as much as 20 percent over the next five to six years anyway. Financially it would not
be prudent to go forward. EPA reversed its earlier decision. The decision that was
made was consistent with EPA policy to not award pre-bid costs to any great degree.
The District would have accepted that and had a financial plan to reflect that. STUD did
have a capital replacement reserve, and to pay back the $5 million from this reserve
would sufficiently deplete it so as to put the District in an unsafe financial condition. The
District had other issues to address, such as MTBE contamination, that made spending
down the reserve unwise from a fiscal standpoint.

Mr. Ken Greenberg, from EPA in San Francisco, explained EPA was on the same page
with the District and understood how and when STPUD would get the grant funds from
EPA. EPA was working closely with STPUD in development of the new schedule and
was following its grant rules in being fiscally responsible to the taxpayers. Mr.
Greenberg described EPA’s rules for grant administration and distribution based on a
grant request and submitted work plan. EPA received an initial application from the
PUD, and the work plan was for work done prior to appropriation of the money (from
1990 to 1996). The basic federal grant rules required that EPA not make grant
payments for work done before the date of the award. Grants also were also generally
paid out on a reimbursement basis, to allow the grantee to proceed with the work. After
the award of the grant, the grant recipient was reimbursed for the work. In this case
there was a 45 percent matching requirement. When EPA reviewed the grant
application in light of the rules, EPA explained the payment arrangement. STPUD felt it
had promises that it could get more money up front from EPA. STPUD was asking,
basically, for EPA to pay the District for work done prior to the date of the grant award. It
was true that Region IX asked the headquarters office to review the grant request. It
was forwarded to EPA headquarters with Region IX’s suggestion that it be reviewed with
a view that EPA could possibly bend the rules enough to grant the District’s request to
give as much money up front as possible. EPA’s decision was explained to the District
and protracted discussions ensued. The total federal appropriation for the District was
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$9.65 million, representing the federal 55 percent share. The District would be expected to pay a 45 percent share. STPUD had pointed out that work equal to approximately $18 million had already been done on the pipeline. The District continued to do work after the date of the appropriation during the summer of 1998. EPA had promised and explained to the District that once the grant paperwork was finalized EPA could reimburse for a large percentage of the work done since the date of the appropriation of October 1997. EPA had also made the most flexible payment arrangement it could with STPUD, and EPA would continue to pay out federal grants at 100 percent of expenses up to the entire $9.65 million as construction continued in future years. This grant was handled as many others had been handled. Another grant made in the Tahoe area as part of the Presidential Forum was the $6 million grant to do repair work at the Reno Airport. This grant followed the same rules. TRPA also had some grants which were being handled in the same way. To some concern whether the Federal Government was following through on its commitments from the Presidential Forum, Mr. Greenberg explained that it was. The President was at Tahoe in July 1997 and promised 39 specific projects totaling approximately $27 million. All 39 had been delivered on for a total of about $25 million to the Tahoe Basin. The District’s grant was counted as one of those accomplishments.

Mr. Upton asked whether there was anything that could be done to get the project brought to a conclusion faster than restarting in 2000.

Mr. Greenberg responded that he had assurances from EPA that the paperwork would be processed as quickly as possible. Congress asked EPA to grant $9.6 million to STPUD, and EPA was hoping to do that.

Mr. Baetge explained that the construction work was still far ahead of Lahontan’s approved schedule. The money question was coming to a head, although things had taken longer than anticipated. The program was moving ahead and the threatening sections of the pipeline had been taken care of.

Mr. Wallace explained the District could request amended legislation if several conditions were met. These included reliance by the District, even in error, on advice given by EPA that the deviation should receive strong consideration and if it was Congress’s intent to grant the deviation. The District did have correspondence from the legislators who had introduced the appropriation outlining their intent. The District would welcome having TRPA write to EPA and Congress asking for language to be inserted in the legislation requesting a deviation. This would free up another $8 million to allow the pipeline to be done right away. The District would ultimately like to replace the C line down into Alpine County. A deviation was also possible if a district was under a directive by a governmental agency, such as Lahontan, and federal legislation, such as the Porter Cologne Act. (A copy of a document entitled, “STPUD Export Pipeline Project History of Federal Funding” was distributed to Board members.)

IX. PUBLIC HEARINGS

B. Review Of 1998 Lake Tahoe Watercraft Report and Direction to Staff to Prepare Recommended Actions in Response to the Report (continued)

Chairman DeLanoy asked for additional public comments on this item.
Mr. Mark Sentyrz, owner of several watercraft concessions in the North Tahoe area, explained that when the Board adopted the ban on personal watercraft former Board member Steve Wynn had commented that Bombardier manufactured watercraft that would meet the new requirements. He had bought 16 of these. Now TRPA was talking about a ban on these watercraft as well after this coming boating season. These personal watercraft were much more expensive than the product that was previously available. He was hoping the Board would provide him a stay of a few more years to amortize the price of these watercraft, which were about $8,000 apiece. They were fuel-injected 110 horsepower Bombardiers; they accelerated faster, were very quiet and they burned less gas. Normally he turned his machines over every two to three years, but because these were so expensive he was hoping for four to five years with the larger craft. Each machine weighed about 800 lbs.

Mr. Larry Trippett commented on the time spent studying this issue. The real concern was the water of Lake Tahoe, and the studies should be uppermost and very important to everyone. The need to clean up emissions from two-stroke engines was known two years ago, and EPA and now CARB were implementing a program. There was no question about the emissions problem. MTBE added a confusion factor; MTBE was bad and needed to be taken out of gasoline. Marine engines did not pollute the drinking water wells in South Lake Tahoe; that problem was caused by leaky gas tanks. To condemn recreational boating because of MTBE was the wrong solution. As made clear in the studies, MTBE was undetectable in mid-lake areas, undetectable in deep water, undetectable in winter; the NOX contribution was negligible and was no threat to drinking water. He did not see that there was a crisis that warranted the proposed action to ban watercraft. The positive consequence of banning watercraft was that a negligible amount of pollution would be removed from the water. The negative consequences were reduced economic activity in the Basin, something TRPA was to promote and maintain; reduced recreation by residents and visitors, recreation that TRPA was to promote; expenditure of dollars on legal fees; and enforcement problems. In his opinion, the negative consequences far outweighed the positive benefits. He recommended that in January the Board repeal the ban now on the books, because, based on the studies, the ban provided insignificant causes and effects on the water of Lake Tahoe.

Mr. Ron Williams, an owner of three watercraft concessions at Tahoe, expressed concern for Tahoe’s clarity. The concessionaires would do everything they could to live within the ban; they would buy the new watercraft and would gladly use MTBE-free gas if it could be brought into the Basin. If the concessionaires could use the Sea-dos already on order to the end of September 2001, which the Board earlier said could be used, it would be of great help and much appreciated. The concessionaires provided a recreational activity which was part of TRPA’s agenda as well. People enjoyed using these machines.

Mr. John Kleppe, a resident of Fallen Leaf Lake, compared size and other physical characteristics of Fallen Leaf Lake with Lake Tahoe, one of which was that Tahoe turned over its water in 700 years; Fallen Leaf turned over its water in seven. He asked for an exemption for the Fire Department in that area, noting that the roads were not open until May. The fire boat on Fallen Leaf provided a pump that could be hooked up to provide fire protection to the properties at Fallen Leaf Lake. He requested an exemption for one season for the boat, which was also used for search and rescue operations.
Mr. Bob Hassett, the owner of watercraft concessions at Timber Cove, Meeks Bay and Incline, suggested he was pleased that the studies showed there were no pollutants in the Lake during the winter months. The study also had results which were of concern to the Board. He shared those concerns. Two manufacturers had indicated they would have one model a piece (Tiger Shark and Polaris) of direct fuel-injected motors. Polaris was the only one he would consider because it offered an adjustable speed control. While Polaris had indicated the machine would be available, it was not made or tested yet and he did not know if it would be available by May or June of this year. His second concern with the Polaris machines was that they cost $9,000 each, 80 percent more than the earlier machines. While he realized this was the cost of doing business, he was concerned that these same machines would be banned in a year or two. He was willing to buy the machines to show his commitment to the Lake, but he wanted the Board’s support and assurance that they would not be banned in two years. In any case, the situation was no-win for everyone because of the money and time being spent. He suggested that the Board require the concession machines, as known quantities and as the main polluters, to get the new technology and to go with the phased in CARB requirements for the general public.

Mr. Galloway asked Mr. Hassett if giving those who had purchased the type of engine manufactured by Bombardier an additional three boating seasons for amortization would provide a greater level of confidence.

Mr. Hassett responded this would show good faith. He would like at least until 2001 or 2002 with the $9000 machine. For him personally, he would go to direct fuel injected engines as soon as they were available. He was hopeful that the manufacturers would advise him shortly about what clean-burning machines would be available for the 1999 boating season.

Mr. Baetge noted that the CARB requirements would kick in in 2001, but they did not deal with old craft. They related only to new sales. It was possible that by the time the Board took action in January, there would be word from the manufacturers on what would be available for the 1999 boating season.

Chairman DeLancy suggested that staff contact Polaris to find out what their schedule was for manufacturing the new machines.

Mr. Cronk suggested that the Board needed to stay on its course. If an exemption or two were made for owners of small engines that were used infrequently, he would want those exemptions to be reasonable. If the Board got into different dates, different definitions, and different engines for different boats, it was shooting itself in the foot and would send confusing communications outside the Basin. The bad guys were not the concessionaires or their customers. They abided by speed requirements, the no-wake zone, proper maintenance of the machines, and safety rules. TRPA’s job was not to keep the concessionaires in business; the business owners had to deal with whatever risks faced them. They chose to live and work in the water and to rent out boats. They had to make whatever business risk decisions they had to make. The Board had to come to grips with what was best for the Lake, and the business owners had to have fair warning of what was being done by TRPA.

Two-stroke engine owner Rhonda McFarland suggested that all news reports seemed to focus on people in the boating business who had the chance to pass their costs on to
the boat users. Her family could not do that and was hoping that the boat they purchased in 1993 could have lasted for 20 years. She appreciated the environmental goals but felt that the individual boat owner had gotten lost in the process. She was concerned with buying a new boat at this time because of a possible future ban. Changing the rules this close to the June boating season was not realistic.

Mr. John Fagan, counsel for the NMMA, distributed a revised proposal based on staff’s December 16 recommendation. At the lunch break three of the concessionaires who were plaintiffs in the watercraft lawsuit agreed to the proposal that would address the emissions caused by those responsible for a significant input of hydrocarbon and NOX into the Lake, the concessionaires who operated the two-stroke engines a significant number of hours on the Lake. They were offering to agree with the proposed ban commencing June 1, 1999, with exceptions for direct fuel injected engines and engines that met EPA 2006 or CARB 2001 emission regulations. This would clarify what engines were banned and which were okay for use at Lake Tahoe. The second date related to requirements for the occasional boater would commence the ban in October of 2001; engines that did not meet CARB 2001 or EPA 2006 standards would be prohibited. Although he had not received NMMA authorization to sign off on this proposal, if the Board went with something similar, he would recommend it favorably to the NMMA and recommend dropping the lawsuit. Larry Hoffman, who represented the concessionaires, was not available today, as he was involved in closing arguments on the TSPC case.

Executive Director Jim Baetge reminded the Board that the reports showed that there was a significant difference between two cycle and other engines. The focus of the regulation was at the two cycle engine. Unlike other lakes in California and Nevada, Tahoe was an Outstanding National Resource Water. Any discharge was significant in terms of what happened to Lake Tahoe. The Board should be careful in slicing out exemptions because they had small contributions. Staff had put forward what it thought were reasonable exemptions; phasing out the two-stroke injected engines made sense. He cautioned against in any form weakening the earlier action taken pursuant to environmental documentation. Some of the exemptions being proposed would basically weaken what was done previously and would require additional environmental documentation to see if they were appropriate. The staff was prepared to present in January the environmental documentation in support of the exemptions presented. The June ban was coming soon, and it would be truly confusing for the public if the Board now started granting additional exemptions.

Chairman DeLanoy closed the public comment.

Mr. Sevison asked that, before the Board committed itself to changes, there be a closed session among Board members and outside counsel to discuss the price to be paid if, in fact, the Board chose to relax the rules.

Agency Counsel John Marshall explained that the Board was not able to go into closed session on litigation matters. What the Board was seeing from the concessionaires and somewhat from the NMMA was an interest in trying to work out a settlement of litigation that might be put forth for final action. He would prefer to meet with outside counsel, staff and the parties to the litigation to see if something could be worked out within the context of where staff would like to go and where the Board would direct. At this point, staff was only seeking direction on what elements to include in the ordinance for January action.
Mr. Upton suggested that staff come forward in January with an exemption for direct injection two-cycle and, because of the good faith issue, an exemption through the 2001 boating season for already acquired two-stroke engines whose fuel was injected into the crankcase. He would urge also that the Board grant an exemption for the Fallen Leaf homeowners, because they could not feasibly implement the prohibition before then. The Board may wish later to consider the exemption proposed by Mr. Galloway, which would be the 5 to ten horsepower engines and the sailboat engines. This was something for the Board to additionally consider in January – as a second option.

Mr. Chimarusti reminded the Board it was the public policy, as established by the bistate compact and enabling legislation, to charge the Agency with improving Lake Tahoe’s water quality. This meant addressing pollution sources from wherever they were found – on shore or in the water. The evidence showed that two-stroke engines were a significant source of pollution. The Agency was not cleaning up the Lake; it was instead trying to create an environment by which the Lake could clean itself. This meant stopping these sources of pollution. Every one, including the industry, the private users, and the concessionaires, had been on notice for a couple of years that the rules TRPA had earlier established were coming. He did agree with the one exemption for the one concessionaire who had invested a significant amount of money to buy what he thought were cleaner engines. He needed additional time to amortize his engines. To the extent anyone else bought one of these engines, they should be permitted the same exemption. No other exemptions should be carved out. The TRPA Board meeting was not a forum for settling litigation. The attorneys could do this and make a recommendation to the Board. Nowhere in the compact did it state that TRPA was charged with protecting the economic viability of the Basin. That was added to the Agency’s mission as a means of implementing the primary purpose of the Agency, which was to clean up the Lake. He agreed with the extension in the exemption to 2001.

Mr. Waldie commented that he accepted staff’s recommendation with the exception of the staff’s amortization period. The time period was too short and he would prefer it to be extended to 2001. For all the rest, he agreed with Mr. Chimarusti.

Mr. Galloway agreed that this was not the place to settle a lawsuit, and he did not think that TRPA should get involved in the CARB requirements. He had consistently felt that TRPA would set some reasonable exemptions for the engine owner who turned on that engine rarely. This suggestion was not a destroyer of the ordinance. He had discussed this with outside counsel Ellison Folk, and the exemptions he was proposing would meet the criteria of reasonable exemption. It was the same that he had presented background on two years ago. Mr. Upton’s proposal was a reasonable task for staff to come back with, including the two exemptions and the extension of the amortization period to October 1, 2001. He urged the Board to direct staff to include his reasonable exemptions. He would not vote for any revision of the ordinance that did not include them.

Ms. Bresnick commented that she had no trouble bringing back exemptions that complied with Mr. Baetge’s request. The only exception that she would be willing to go along with was the one for those who were in a catch 22 who in good faith had purchased new equipment based on the Board’s representations. She would be willing to give them an extra season or two for amortization purposes. The ban needed to be strong. Once exemptions were carved out, there was always going to be someone who
wanted another exception that looked from someone's point of view equally as valid. Even the small two-stroke engine used infrequently was emitting for its size a tremendous amount of waste and pollution into the water. While this was a hard line position, it was one that as stewards of the Lake the Board needed to take. While she favored staff's recommendation with the increased season for those who purchased the machines in good faith, the alternatives suggested by Mr. Galloway should be assessed.

Chairman DeLanoy suggested that the fuels being dumped into Lake Tahoe were carcinogenic in nature. For years, the manufacturers had known this was a defective product, and he was surprised that the purveyors were not on TRPA's side in opposition to the manufacturers. He urged the Board to adopt staff's proposal, rather than splitting hairs over exceptions.

Mr. Baetge explained that the Advisory Planning Commission discussed this and unanimously voted to recommend staff's proposal. There was substantial technical support for it.

Ms. Bennett commented on the importance of sending a clear message to the public. She could support the few exceptions as stated; she would like to see the Board attempt to extend other reasonable exemptions. She would support Mr. Galloway's concern in the light of also supporting her constituents. She could not support, however, any ordinance that discussed an exemption for fire protection craft.

MOTION by Ms. Bresnick to direct staff to draft an ordinance essentially as presented—not with the changes presented by Mr. Fagan of the NMMA—but with the two exceptions being number one as worded by staff and exception two as revised by the Board to delete the dates and to commence the prohibition October 1, 2001.

Ms. Bresnick explained that this would provide two extra boating seasons for fuel injected two-stroke watercraft. Her motion did not include the fire protection boat for Fallen Leaf Lake.

Mr. Upton explained that the only way a complying boat could be purchased for Fallen Leaf was for the Supervisors to put an item on the ballot in February for a June vote. The money would not be in until property taxes were collected in November of 1999. Without this exemption the fire district was being put in an impossible situation.

AMENDMENT proposed by Mr. Galloway to include an additional three boating seasons for engines that were more than four but less than ten horsepower and an exemption for the same additional period of amount of time for all auxiliary sailboat engines (horsepower not specified). The amendment failed on the following vote:

Ayes: Mr. Cole, Mr. Severson, Mr. Galloway, Ms. Bennett, Mr. Cronk, Mr. Miner, Mr. Upton
Nays: Mr. Chimarusti, Ms. Neft, Mr. Waldie, Ms. Bresnick, Mr. Perock, Mr. DeLanoy
Abstain: None
Absent: Mr. Reis
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AMENDMENT proposed by Mr. Upton to add one fire boat.

The Board discussed whether there were other fire districts in a similar situation. Mr. Perock explained there were other rescue boats that would be affected by the ordinance. Mr. Chimarusti commented that it should be clear that the amendment would not apply to just one boat. Mr. Cronk suggested the amendment would apply to all rescue boats for one year.

The motion carried on the following vote:

Ayes: Mr. Chimarusti, Mr. Sevison, Mr. Galloway, Ms. Neft, Mr. Cronk, Dr. Miner, Mr. Upton, Mr. Perock, Mr. Cole, Mr. DeLanoy
Nays: Ms. Bennett, Mr. Waldie, Ms. Bresnick
Abstain: None
Absent: Mr. Reis

Mr. Galloway explained he would vote against Ms. Bresnick's motion because it did not in his opinion contain reasonable exemptions.

Mr. Sevison urged the Board to give legal counsel direction to see if there was a way to settle the litigation. There was a good chance the case could be put to rest and save a lot of time and money. The Board should encourage these discussions to see if something could be done in January.

Mr. Baetge responded that, even without this directive, staff was certainly encouraged to work in this direction. Staff could bring in alternatives for Board consideration should these become available.

Ms. Bresnick's motion (including the amendment) failed on the following vote:

Ayes: Mr. Sevison, Ms. Neft, Mr. Waldie, Mr. Cronk, Ms. Bresnick, Mr. Upton, Mr. Perock, Mr. Cole, Mr. Chimarusti, Mr. DeLanoy
Nays: Mr. Galloway, Ms. Bennett, Dr. Miner
Abstain: None
Abstain: Mr. Reis

MOTION by Mr. Upton to approve Ms. Bresnick's motion with the exemptions stated by Mr. Galloway. The motion failed on the following vote:

Ayes: Mr. Galloway, Mr. Cronk, Dr. Miner, Mr. Upton, Mr. Perock, Mr. Cole, Mr. Sevison
Nays: Ms. Neft, Ms. Bennett, Mr. Waldie, Ms. Bresnick, Mr. Chimarusti, Mr. DeLanoy
Abstain: None
Absent: Mr. Reis

Mr. Baetge suggested that the issues of concern here involved public service and fire protection and the wish by the Board to see some exemptions. The Board could consider a motion to direct staff to prepare the ordinance similar to Mara Bresnick's earlier motion but also direct staff in the accompanying environmental assessment to evaluate the impacts of Mr. Galloway's exemptions. The basic direction would be to put
the exceptions in the assessment as an option for consideration. To draft the ordinance with the exemption wording would send a message to the public that this was the way the Board was going. He did not know that that was accurate.

**MOTION** by Mr. Upton to adopt Ms. Bresnick’s motion with an evaluation of the reasonable exemptions.

Mr. Upton suggested it was eminently reasonable to give direct-injected engines an exemption, as it was to give extra time for those who had in good faith purchased those vehicles. Anything more than that would require an analysis. If the Board were to agree further exemptions were reasonable based on an analysis, they could be added in February.

Mr. Marshall explained that if the Board took no action the existing ordinance would remain in effect. None of the improvements proposed would be in place.

Mr. Upton restated his motion to approve Ms. Bresnick’s motion with direct injected and extended time on the good faith purchase and, secondly, to have an evaluation come back to deal with the other reasonable exemptions.

Mr. Galloway commented that he had presented such an analysis previously, and he would not vote in favor of any motion that did not include his requested exemptions.

Ms. Bennett explained that she was prepared reluctantly to withdraw her objection to Mr. Upton’s proposal. She was persuaded that her objection would only hold the process up. She wanted it clear that she did not feel governmental entities should have exceptions, and she felt that money could be found to respond to the problem. What Mr. Upton was proposing would open the door for other public entities in similar situations to postpone implementation of the ordinance for another year. She opposed it in principle but agreed the proposal was a step ahead.

Mr. Sevison commented on the difficulty in California of raising funds for anything. While the Proposition 13 theory had good ideas, it put the economy and providing services in a difficult if not impossible situation. He was sympathetic to Mr. Upton’s concern for Fallen Leaf. He noted that some Board members in the original consideration wanted latitude to look at future exemptions for the smaller engines. It would not help TRPA accomplish its EIP programs effectively if the general public was badmouthing TRPA. TRPA should focus on the big goals. He would like to see a process that would allow the Board to consider Mr. Galloway’s exemptions in January.

More discussion followed on the motion, the Board’s earlier action, and what direction was being given to staff.

The motion carried on the following vote:

Ayes: Ms. Neft, Ms. Bennett, Mr. Waldie, Mr. Cronk, Dr. Miner, Ms. Bresnick, Mr. Upton, Mr. Perock, Mr. Cole, Mr. Chimarusti, Mr. Sevison, Mr. DeLanoy

Nays: Mr. Galloway

Abstain: None

Absent: Mr. Reis
C. Resolution Designating the Tahoe Region as an MTBE-Free Zone

Associate Planner Jim Allison presented the summary of the resolution requesting that the California Governor take action prohibiting the use of MTBE as a gasoline fuel oxygenate for California and the California portion of the Tahoe Region. The resolution as proposed did reflect changes recommended by the Advisory Planning Commission.

Ms. Mary Lou Mosbacher, STPUD board member, commented on the seriousness of the problem and the impact of MTBE on the South Shore's well water. She urged the Board to support the District in protecting this water source and asked that TRPA host a workshop on the subject. She urged the Board to adopt the resolution.

MOTION by Mr. Sevison to adopt Resolution No. 98-14 recommending the California Governor take action prohibiting use of MTBE as a gasoline fuel oxygenate for California and the California portion of the Region.

Mr. Allison asked for one change in the final paragraph that the identified alternative methods to achieving acceptable air quality objectives "be consistent with air quality standards."

The motion carried unanimously.

C. Amendment of Chapter 22, Height, to Provide Additional Height for Certain Structures in Adopted Ski Area Master Plans

Associate Planner John Hitchcock distributed a revised copy of the proposed ordinance amendments and presented the summary of the proposal by Heavenly Valley to amend the Code to allow additional height up to a maximum of 56 feet for certain buildings located within adopted ski area master plans. The deep snow in higher elevations of the Basin was a major design constraint, particularly where the slope was relatively flat. Due to snow depth, skiers were required to access buildings by the second floor during winter months. To provide a design that complemented natural setting while still be functional, the additional height was needed beyond the maximum currently allowed. The additional height would be permitted for buildings whose primary use was public service, tourist accommodation, downhill ski facilities, cross-country ski facilities, or whose primary recreation use was participant sports facilities, recreation centers, or sports assembly. Mr. Hitchcock presented more information on the cross slope analysis.

No one wished to comment in the public hearing.

MOTION by Mr. Sevison to make the necessary findings to adopt the ordinance. The motion carried unanimously.

MOTION by Mr. Sevison to adopt Ordinance No. 98-28.

Chairman DeLanoy read the ordinance by title:

An Ordinance Amending Ordinance No. 87-9, as Amended, by Amending the Code of Ordinances of the Tahoe Regional Planning Agency; Amending Chapter 22, Height, Allowing Additional Height for Certain Recreation
Buildings in Adopted Ski Area Master Plans, and Providing for Other Matters Properly Relating Thereto

The motion carried unanimously.

D. Amendment of Round Hill Community Plan to Add Bicycle Facilities and Sidewalks to the Transportation Element and the Design Standards and Guidelines and Amend Figure 20-2 of the Design Standards and Guidelines

Associate Planner John Hitchcock presented the summary of the amendment requested by Douglas County to add bicycle lanes, a bike route, and sidewalks to design standards for the Round Hill Community Plan. The amendment to Figure 20-2 would add a bike route on the north side of Elks Point Avenue and a sidewalk on the north side of Elks Point south of Highway 50. NDOT was willing to incorporate these into its design and finance plan but first needed TRPA's modification of Figure 20-2, a part of the adopted Community Plan. The amendment was consistent with all Goals and Policies of the adopted plan.

No one wished to speak during the public hearing.

MOTION by Dr. Miner to make the findings. The motion carried unanimously.

Chairman DeLaney 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 Round Hill Community Plan to Add Bike Paths and a Bike Route to Figure 3 of the Community Plan Transportation Element, and Providing for Other Matters Properly Relating Thereto

MOTION by Dr. Miner to adopt Ordinance No. 98-29. The motion carried unanimously.

E. Amendment of Chapter 73, Livestock Grazing, and Chapter 2, Definitions, Relative to Grazing and Livestock Containment Practices

The Board discussed possible loss of a quorum and continuing this item to January.

Mr. Galloway noted that the direction given to staff when this came before the Board previously was to separate the issues of backyard animal containment from grazing.

Mr. Baetge suggested that the backyard animal containment may need more discussion. Staff was prepared to proceed with the grazing proposal.

(Governing Board member Hal Cole excused himself from the discussion.)

Senior Planner Joe Pepi noted that there had been two meetings on this, the last being a workshop in October. The current proposal would move the date for completion of grazing management plans to 2002 and would add a Section 73.5.J. to provide for alternate BMPs.
Mr. Baetge commented that there did appear to be some other issues that had arisen with other people involved in these issues. It may be better to continue the matter to January.

Mr. Mary Lou Mosbacher, an owner of a hobby farm, noted she was unable to attend the January meeting. She complimented staff for the changes and asked for clarification of Section 73.5.B relating to areas subject to overland flow. In heavy water years, the county drainage ran on to her property. She wanted assurance that her problem was not overland flow but rather the county’s drainage that ran onto her property. She had attempted many times to get this corrected but without success. She did not want to be in a position of losing her farm because the county was draining its streets and roads onto her property. Her second concern related to Sections 73.5.D. and Section 73.5.J and the ability to provide alternate BMPs. She did not think it was the Board’s intent to require her to add flooring or additional coverage to her outdoor confinement pens.

Mr. Baetge advised that the ability to implement alternate BMPs would address her concerns.

Ms. Bennett noted that the NRCS was willing to work directly with private owners in helping to implement BMPs. There were plenty of opportunities in this effort.

VIII. APPEAL

A. Bear Ridge Developers LLC, Appeal of Staff Determination, 926 Incline Way, Washoe County APN 132-231-15

Associate Planner Kathy Canfield presented the summary of the appeal of staff’s denial of a plan revision. She distributed a copy of a November 30, 1998, letter from the Nevada Department of Education on the status of the EFS (Educational Field Studies) program and the statement that it was not a public school, licensed or exempt private school. In the spring of 1997, the applicant applied to construct a commercial building, claiming that 2,600 square feet of the facility was a public service use. At that time, staff did not have sufficient information on the public service use. Because the developer was in a hurry to get the building going, he made a decision to go as a full commercial building with a caveat that he could come back to discuss the public service later. The applicant submitted a plan revision to have the entire 16,000 square foot building identified public service as a school, similar to a kindergarten through secondary school under TRPA’s definition. Because EFS, the building occupant, provided curriculum to schools for field trips and other services, staff felt the use, including the entire 2,600 square foot portion, fell under the professional office category, and as such required commercial floor area. The professional office definition did include educational, research and scientific organizations. Staff denied the plan revision application to recognize the full building as public service, finding that it needed the associated commercial floor area associated with the use. Staff recommended this decision be upheld through a motion to grant the appeal, with that motion failing to pass. Staff was making no judgment on the service EFS provided.

Mr. Waldie questioned whether, as stated in staff’s December presentation, former TRPA counsel R. J. Nicolle was now co-counsel for the appellant. This was of concern because of potential conflict of interest.
Ms. Canfield responded it was correct when she prepared the staff summary that Ms. Nicolle was co-counsel.

Mr. Robert Angres, attorney for Educational Field Studies (EFS), explained he had consulted with Ms. Nicolle on this case. Nothing beyond actually what he had consulted with her when she was TRPA counsel. It was basically not relevant under the rules of conduct or the substance of this matter. He was counsel for EFS.

Mr. Waldie noted that the staff summary referenced Agency Counsel review of the February 1997 submittal. This was Ms. Nicolle. He questioned whether staff counsel had approved specific language in the earlier staff summary prepared for April 1997.

Ms. Canfield responded she did not recall if Agency Counsel had read through the staff summary when the matter first came to the Agency. Typically, Agency Counsel did not read staff summaries unless there was a legal issue involved.

Mr. Waldie commented on one of the legal issues involved in the earlier staff summary approved by the Board in April 1997. If the applicant did understand the meaning of the statement regarding public service and commercial findings, it would bear heavily on his position whether the appeal had merit. He was concerned if the attorney who ultimately became co-counsel participated in the drafting of the language in the earlier staff summary. He questioned whether Mr. Angres was aware of this statement in the original staff summary at the time.

Mr. Angres responded that he did not remember being specifically aware of the language but it was not discussed with TRPA Counsel. It was only discussed with Ms. Canfield. The substance of the discussion was that the only way to get the project in the ground by May was to waive and reserve for future consideration the issue of exemption. If this was the case, the applicant could proceed on that basis. The applicant agreed to this because he had no other choice. To a question whether he was in agreement with the approved condition which found that the use of the Learning Center did not fit the TRPA definition of a school and was accessory to the main commercial business and the requirement for commercial floor area for the entire building, Mr. Angres replied he had agreed with the condition in conjunction with the reservation of right to come back and entertain the issue now before the Board.

Ms. Canfield explained that she did not recall it being an ultimatum to the applicant that if the project was going to be heard by the Board that it had to be processed staff’s way. It was more in the context that the applicant would have to complete the project application by the end of March to be heard by the Board in April. The applicant wanted to be on the April Governing Board agenda in spite of the outstanding issues. The applicant made a conscious decision to proceed because of their timelines. Staff was trying to accommodate the applicant so they could get their building on the ground and was going out of its way to assist the applicant with a two-week turn-around.

Agency Counsel John Marshall explained that TRPA’s ethical obligations required former TRPA employees to refrain from representing a party for 60 or 90 days. The obligations applicable to former Agency Counsel in this context stemmed more from her bar membership in California and Nevada as a practicing attorney rather than anything arising out of TRPA’s Code.
Mr. Waldie explained that his concern and a fairly deep one related to the wisdom of Ms. Nicolle representing a client in a case in which she represented TRPA as counsel and then represented a client in an adverse position before the Agency.

Mr. Marshall noted he shared the concern. It was a question of Ms. Nicolle's ethical obligation as an attorney, which was governed by the state bars. He did not see anything in the TRPA Code of Ordinance that would govern the behavior other than the 60 or 90 day ban, which had expired.

Mr. Angres stated that Ms. Nicolle did not make any determinations on this case, and she had only been consulted on the case. When Mr. Marshall conveyed his concerns to Ms. Nicolle, he specifically noted it was fine if she wanted to consult but not to appear. That was exactly what had happened. She was not at the meeting.

Chairman DeLanoy explained he did not doubt Mr. Angres' representation; his concern was the public's perception.

Mr. Cole suggested that granting the appeal would be modifying Agency policy because it would be finding that a school beyond secondary school, such as a continuing education or business school, was public service and therefore would not need commercial floor area. Although this was a specific appeal, granting it could have an effect on the whole ordinance related to public service and treatment of continuing education facilities. The question was whether the Board wanted to expand the definition of schools to include business schools.

Mr. Marshall explained that granting this appeal would not be modifying the ordinance. What the appellant was arguing was that the use qualified as a school as defined in the regulations, not that the regulation be expanded to incorporate their business. Staff did not believe EFS was a school. The appeal was based on the appellant's feeling EFS did fit within the regulation as a school. It was up to the Board to decide, given the language, whether it qualified as a school. By finding it was a school as defined in the Code, the Board would be expanding the interpretation of the ordinance past what was intended at the time the language was written. The appellant's motivation was to free up the commercial floor area so it could either be banked, transferred, used for another project, or sold. The floor area had to be acquired in the first instance for the facility.

Mr. Chimarusti noted that staff's summary stated the property itself was not owned by EFS but by a separate legal entity, Bear Ridge Developers LLC, a limited liability corporation. The appellant's argument was that the Board should disregard the fact they were two separate entities.

Mr. Marshall responded that the appellant was arguing that they, in effect, were one and the same, and the LLC should be treated as the same entity.

Mr. Chimarusti asked if the Agency's policy and practice in the past had been that if the school did not own the public service use and was not, in fact, the owner of the facility the owner of the facility did not have standing to commit and claim it was a public service use.

Ms. Canfield concurred.
Mr. Angres suggested that if the tenant had a long-term lease and there was a deed restriction then the concerns of the compact were respected. In this case, Bear Ridge Developers was just created within the last year and represented the exact same people who owned EFS in the exact same percentages.

Mr. Chimarusti suggested that the appellant availed himself of provisions in Nevada to create under the law a separate legal entity which, of its own, owned the property. Another legal entity owned the school. They, in fact, were not legally the same.

Mr. Angres explained that EFS operated the school; it was owned by the holding company and it had a 20-year lease. The Agency’s provisions had to do with tenure and the protection of the space with regard to deed restriction.

Mr. Galloway suggested that the recent ordinance amendment exemption for public service uses addressed leased property and the reversion to the building owner of commercial floor area should the public service use move.

Mr. Gordon Barrett, Chief of the Long Range Planning Division, explained that the recent amendment would allow certain commercial buildings occupied with specified public service uses with long-term leases to transfer out the occupied commercial floor area with certain conditions, one of which was a deed restriction. Schools were not included as a public service use eligible to take advantage of the transfer provision. This amendment would become effective later in December.

Mr. Marshall explained that one of the reasons why this appeal was being heard in December was to avoid a situation where an amendment to Chapter 33 would come into effect before the Board could act on the appeal.

Mr. Angres explained that the parent company intended to place a deed restriction on the property. The applicant had been pushing this issue over one year and was given no notice or asked to be a part of the study committee that discussed the ordinance changes. He maintained the project was in the pipeline and was not affected by the change.

(Ms. Bennett left the meeting at 5:10 p.m.)

Mr. Ronald DeCaprio, president of EFS, presented a computerized slide show of the EFS facility, its 18 year history in Incline, board membership, qualifications of employees, the learning center, curriculum, classroom, and student enrollment. The students ranged from all 50 states and internationally; EFS worked with more than 40,000 students each year and was unique in approach. The Incline EFS campus operated three buildings in Incline and had offices in Virginia, Florida, and in Southern California. Only the EFS learning center at Tahoe operated as a school. The classroom was the world; it was outside the traditional classroom. Just last year the Commission on International and Transregional Accreditation and the North West Association of Schools and Colleges looked at the program and accredited EFS. The Commission on Schools required that all of its member schools participate in a self-study, which EFS had done, and that a validation team review the program. The validation team had given EFS high marks and honors as a fully accredited school, with its findings based on an EFS self-study using performance-based models. EFS was a school and by TRPA standards would qualify as a school. It had been in business for more than 30 years and
had accreditation status throughout the United States. EFS had had provisional accreditation for more than two years, and an inspection team concluded its evaluation last November so that accreditation would take effect next school year. Full accreditation was needed in order for academic credits to be provided by EFS.

Mr. Angres explained that in the Learning Center there was a 2,000 square foot plus Discovery Lab which provided special programs. The 18,000 square foot Learning Center was the subject of the appeal. This was what he maintained constituted the school. The State Department of Education recognized EFS as a school, as noted in the letter referenced by staff, the first sentence of which stated that EFS was recognized as a supplementary educational school. High schools in Nevada did not have to be accredited. The importance of the successful accreditation could not be stressed highly enough. The Nevada Highway Patrol recognized EFS as a school under NRS 391; every staff member had to have background checks as did any other public school. While EFS had not had credits accepted by Stanford or U.C. Berkeley, it had been accredited by the same body, such that the courses successfully completed could give credit within the secondary school system. He did not feel that the ability to grant credit for courses was the only criteria for being considered a school. To a question on what advantage EFS was seeking by the school designation, Mr. Angres explained that in order to get moving on the project EFS had to borrow an enormous amount of money. This was impacting the ability to support the foundation. The designation would enhance the survival position for EFS.

Ms. Bresnick noted that the TRPA was bound by its ordinance. What EFS was doing, as noted in the staff summary, was good, but the Board could not now classify EFS as a school within the ordinance and give the commercial floor area back. TRPA was not making any kind of commentary on EFS's services or saying it was not a school in a very broad sense. Schooling took on a lot of meanings.

To a Board member question, Mr. Angres explained that EFS was not a licensed school. He did not know whether EFS would meet the requirements to be a licensed school under Nevada statutes. EFS had never been asked to meet those requirements.

Discussion followed on educational services provided, the status of credits, the difference between findings required for schools as public service and schools as commercial uses, and the fact supplemental education required commercial allocation.

Dr. Miner suggested that the reason staff differentiated between schools as public use and schools as commercial use needing a commercial allocation was that there was a certain finite amount of space available in the Basin. If all schools, whether public use or supplemental operations, qualified under public service, they would consume too much of the public service space. The question was whether the Board felt this was a commercially viable operation or whether it was a public service such as the post office or public schools.

Chairman DeLanoy closed the public comment.

**MOTION** by Mr. Sevison to grant the appeal.

Mr. Cole indicated he would oppose granting the appeal because he felt TRPA needed to be strict in its definition of schools. The language on schools was drafted for a
purpose; it was for primary education, not supplemental education. To modify the interpretation would find people with water-skiing schools, driving schools, and horseback riding schools requesting public use designation. The ordinance was clear that schools were meant to be a primary source for children’s education, not to augment that education. He did not feel the appeal should be granted.

The motion failed on the following vote:

Ayes: None
Nays: All
Abstain: None
Absent: Mr. Reis, Ms. Bennett

MOTION by Mr. Galloway to uphold the appeal in part for the square footage associated with the Discovery Learning Center (2,602 square feet). To qualify, the 2,602 square feet would have to be deed-restricted.

Mr. Baetge explained that the 1987 Regional Plan and supporting environmental documentation provided for a certain amount of commercial and public service use within the Basin and also for headroom for certain uses. A modification of the Code interpretation would have an effect on that headroom issue.

Mr. Perock expressed concern with the intent of the Board when it passed the original ordinance and the impact of opening the box without knowing what the effect would be.

The motion failed on the following vote:

Ayes: Mr. Galloway, Ms. Neft
Nays: Mr. Cronk, Dr. Miner, Ms. Bresnick, Mr. Upton, Mr. Perock, Mr. Cole, Mr. Chimaruisti, Mr. Sevison, Mr. Waldie, Mr. DeLanoy
Abstain: None
Absent: Mr. Reis, Ms. Bennett

F. Approval of Performance Review Committee Recommendations on 1999 and 2000 Residential Allocations and Distribution of 50,000 Square Feet of Commercial Floor Area Allocations to Local Jurisdictions

Senior Planner Paul Nielsen asked that the Board approve the Performance Review Committee’s recommendation for residential allocations for 1999 and 2000. The Committee was made up of a member from each local jurisdiction and was charged with recommending allocations based on local jurisdiction performance in implementing the residential MOUs. The Committee found they were all doing a good job as reflected in the audits and should receive their full allocations.

There was no public comment on the residential allocation.

MOTION by Mr. Sevison to make the finding of no significant effect for distribution of the residential allocation for 1999 and 2000 as recommended. The motion carried unanimously.
South Lake Tahoe 38 allocations
Douglas County 23 allocations
El Dorado County 92 allocations
Placer County 88 allocations
Washoe County 59 allocations

MOTION by Mr. Sevison to adopt Resolution No. 99-15 setting the 1999 and 2000 residential allocations as recommended. The motion carried unanimously.

Mr. Paul Nielsen explained that the next item involved apportionment of 50,000 square feet of commercial floor area. The Code provided apportionment of this square footage as an incentive for local jurisdictions to implement Community Plan improvements. December 14 letters from the Douglas and Washoe County Commissioners (copies distributed) requested continuation of this action so that the Committee could take a look at alternative methodologies for distributing the square footage. The Committee had agreed to reconsider if alternative ways of establishing the rating were presented.

(Mr. Chimarusti left the meeting at 6:00 p.m.)

Discussion followed on local government attendance at the earlier Committee meetings and concerns with postponing action, the binding nature of a Board-adopted resolution, the unanimous vote of the Committee (Douglas and Washoe Counties did not attend the meeting), and the effect of continuing the item.

Because of his other work priority assignments, Mr. Nielsen asked that this item be continued to March or April if the Board was going to continue.

MOTION by Dr. Miner to continue action on the commercial allocation to the April Board meeting. The motion carried with Mr. Cole voting in opposition.

IX. PLANNING MATTERS

B. Regional Transportation Planning Agency (RTPA) Resolution Reaffirming Regional Transportation Plan-Air Quality Plan

(Chairman DeLancy noted that the TRPA was meeting as the Regional Transportation Planning Agency (RTPA) for this agenda item.)

Senior Planner Richard Wiggins explained staff's recommendation to reaffirm the 1992 RTP-AQP in compliance with the state requirements. In no way was TRPA, as the RTPA, getting away from its efforts to update the plan and would be completing that update in order to meet MPO regulations. Staff had done a lot of work on the update but was not there yet.

Mr. Dwight Steele, on behalf of the League to Save Lake Tahoe, spoke in favor of staff's recommendation and the admonition to continue implementation of the 1992 plan. Although much progress had been made in the last few years, he asked for acceleration in implementation of reducing dependence on the automobile through more effective use of public transit to move people within the Region. Mr. Steele spoke on parking fees, visitor shuttles, transit between North and South Shores, and the need to meet the objectives of the bistate compact.
MOTION to adopt RTPA Resolution No. 96-20 reaffirming TRPA's Regional Transportation Plan-Air Quality Plan. The motion carried unanimously.

X. ADMINISTRATIVE MATTERS

A. Election of Chairman and Vice Chairman for Two Year Terms (1999-2000)

MOTION by Mr. Cronk to elect Larry Sevison as TRPA Chairman for 1999 and 2000. The motion carried unanimously. (Members present: Bresnick, Upton, Perock, Cole, Sevison, Galloway, Neft, Cronk, Miner, DeLanoy)

MOTION by Mr. Galloway to elect Don Miner as TRPA Vice Chairman for the coming two years. The motion carried unanimously.

XI. REPORTS

A. Executive Director Monthly Status Report


Executive Director Jim Baetge advised that all Chambers of Commerce around the Basin were proceeding with their participation in the local revenue generation study and would be holding hearings to assist TRPA directly with phase II of this study.

B. Governing Board Members

Mr. Cole commented that the STPUD presentation made earlier in the day was not entirely complete. If STPUD could convince the TRPA Board that the Legislature’s intent was to approve a deviation in the distribution of the grant fund, he would like to ask that TRPA prepare a letter to the legislature in support of the appeal. He asked that this be placed on an agenda, sooner than later, because the STPUD was going to the Legislature in February 1999. He would like letters from Nevada Senator Harry Reid and others involved in the approval of the grant funds addressing their intent. If the Board were convinced, he would like a letter to the Legislature encouraging it to grant the funds.

Mr. Upton explained that he had discussed this with the STPUD after the morning's presentation. He would work with the STPUD to get a letter back to the Board to clarify what the benefit of the deviation would be. This would then justify TRPA's support. The legislators intended to grant the deviation. If there was a benefit to getting the project done sooner by getting the deviation, it was in TRPA's best interest to assist. He would ask the STPUD to clarify in a letter what the benefit would be.

Mr. Baetge suggested that if the Board wanted this kind of a presentation it could be agendized. He would not want to write such a letter without having the Board know all the facts.

Mr. Cole suggested that the letter could be drafted and ready to go and the Board could modify it based on appropriate evidence.
Mr. Baetge explained that there was a lot of background on this and the Board should allow time for those presentations. Both STPUD and EPA had indicated to him that they did not want to open this issue again.

Mr. Upton agreed to discuss this with STPUD and to get back with clarification. The point was trying to get the TRPA Board to support the deviation so that the project could proceed sooner. He agreed to pursue this and get some clarification.

C. Legal Division Monthly Status Report

Agency Counsel John Marshall provided the Board with an update on the Suitum case, the TSPC case, and action in Nevada to support financing for this fiscal year for outside counsel costs.

Ms. Neft thanked John Upton for his eight years on the Board and Drake DeLanoy for being a very able chairman for 1997 and 1998.

The meeting adjourned at 6:15 p.m.

Respectfully submitted,

[Signature]

Julie D. Frame
Clerk to the Governing Board

This meeting was taped. Anyone wishing to listen to the tapes may call for an appointment at (702) 589-4547. In addition, written documents submitted at the meeting are available for review at the TRPA office, 308 Doria Court, Zephyr Cove, Nevada.

These minutes were approved as presented on Jan. 27, 1999.