Horizon Casino Resort
Stateline, Nevada

February 26, 1997

REGULAR MEETING MINUTES

I. PLEDGE OF ALLEGIANCE

Chairman Drake DeLany called the regular February 26, 1997, meeting of the Governing Board of the Tahoe Regional Planning Agency to order at 9:30 a.m. and led the Board and audience in the Pledge of Allegiance to the Flag.

II. ROLL CALL AND DETERMINATION OF QUORUM

Members Present: Mr. Upton, Mr. Waldie, Dr. Miner, Mr. Sevison, Mr. Cole, Mr. Haller, Ms. Bennett, Mr. Cronk, Mr. Westergard, Ms. Neft, Mr. Galloway, Mr. Wynn (present at 9:45 a.m. after item IX.A.), Mr. Hime, Mr. DeLany

Members Absent: Mr. Neumann

III. PUBLIC INTEREST COMMENTS - there were no public interest comments

IV. APPROVAL OF MINUTES

MOTION by Mr. Sevison to approve the regular January 22, 1997, meeting minutes as submitted. The motion carried unanimously.

V. APPROVAL OF AGENDA

Deputy Director Jerry Wells asked to modify the agenda so the Board could act on the appointment of a California lay member to the Advisory Planning Commission (agenda item IX.A.) after action on the consent calendar.

VI. CONSENT CALENDAR

Mr. Wells advised that the applicant for the Meyers Roadrunner Market commercial addition (item 4) had requested a continuance to the March meeting. On item 3 (DMV special use determination/change in use), staff had received 18 pieces of correspondence; 17 favored the action; one was opposed. Staff reviewed the concerns that were raised in the one opposition letter and felt they were adequately addressed in the permit proposal.

Mr. Westergard asked that item 12 (Release of Up to $85,000 in Water Quality Mitigation Fees for Flood Damage Repair of Ward Creek, Blackwood Creek, and Town and Country Land Slide, Placer County) be taken off the calendar and acted on separately.

Finance Committee Chairman Bennett advised that the Committee had discussed items 5, 11, and 12 earlier in the day and had recommended approval.
MOTION by Mr. Sevison to approve the consent calendar with item 4 being continued and 12 being acted on separately by the Board. The motion carried unanimously.

(Following are items approved on the consent calendar: 1. 1997-2001 List of Additional Recreation Facilities Pursuant to Code Section 33.6 (Resolution No. 97-2); 2. 1997-2001 List of Additional Public Service Facilities Pursuant to Code Section 33.5 (Resolution No. 97-3); 3. California Department of Motor Vehicles, Special Use Determination/Change in Use, 3344 Lake Tahoe Boulevard, City of South Lake Tahoe, El Dorado County APN 027-361-07; 5. Release of $50,000 from the Shoreside Mitigation Fund for Special Studies Related to the Shoreside EIS; 6. North Lake Tahoe Fire Protection District/Tahoe Biltmore, Inc., Change in Operation From Public Service to Commercial, Northwest Corner of Lake view Avenue and Reservoir Road, Crystal Bay, Washoe County APN 123-053-04; 7. Lane Lewis/Safeway Corporation, Recreation Addition/Modification, New Clubhouse Building, Old Brockway Golf Course, Northwest Corner of Highways 28 and 267, Kings Beach, Placer County APNs 117-160-02 and -06; 117-180-08, -09, and -10 and 117-200-14, -46, and -47; 8. The Gibb Trust, Recreation Addition/Modification, New Harbormaster Building, Tahoe City Marina (Roundhouse Mall), 700 North Lake Boulevard, Tahoe City, Placer County APNs 94-090-08, -09, -19, -30, -31, and -34; 9. Philip Erickson, New Single-Use Pier and Two Mooring Buoys, 1013 Lakeshore Boulevard, Incline Village, Washoe County APN 130-230-29 (formerly APN 130-230-04); 10. Carole Terry/Donald Wrinkle, Special Use Determination, Change in Operation from General Merchandise to Animal Husbandry, 307 Doria Court, Douglas County APN 07-400-03; 11. Release of $10,000 in Water Quality Mitigation Fund Interest for Contract to Update the 208 Plan Erosion Control Project Descriptions, Priorities, and Cost Estimates in Nevada)

Release of Up to $85,000 in Water Quality Mitigation Fees for Flood Damage Repair of Ward Creek, Blackwood Creek, and Town and Country Land Slide, Placer County (consent calendar item 12)

Mr. Westergard wanted to ensure that, although the mitigation funds were being used to alleviate flood damage, the end result would be an enhancement of the environment over and above what the situation was prior to the flood. That was the appropriate use for mitigation funds.

Senior Planner Carl Hasty responded that both the Ward and Blackwood Creek project improvements would go beyond what had existed prior to the floods and go further up into the watersheds. He was not totally familiar with the condition of the Town and Country site prior to the floods. Blackwood and Ward Creek were being combined with federal efforts and use of Army Corps of Engineer funding to address overall drainages. These projects were small parts of the larger picture. Ward and Blackwood were on the priority list for improvements, since they were some of the worst contributors to water quality problems to the Lake. Mr. Hasty passed around Forest Service aerial photographs showing flood damage; described FEMA involvement and disaster cleanup efforts.

Dr. Miner questioned staff on use of TRPA funds for disaster projects, FEMA guidelines in repairing disaster damage, TRPA's response to local government
and private party requests for matching funds to repair New Year flood damage; was TRPA soliciting other requests now that this precedential process was underway?

Mr. Hasty explained that these requests would be looked at on a case-by-case basis. TRPA was also asking for Corps funding so that entire drainages could be assessed. Much of these areas were under snow now and considerable runoff was expected. The combined judgment of several entities was that these projects were a good use of the mitigation monies. A multi-agency team consisting of TRPA, the Forest Service, the Natural Resource Conservation Service, the California Tahoe Conservancy, and other agencies had asked each jurisdiction to compile their damage reports so that matching funds using FEMA guidelines could be sought for flood damage repair.

Mr. Sevison advised that the Office of Emergency Services in Placer County had contacted him asking for his advice in addressing flood damage that had occurred over the Christmas holidays. He encouraged that office to contact TRPA and the California Tahoe Conservancy for expertise in funding and repair work. The idea was that if something was to be done that it be done right. This was a great solution to something that could otherwise sit for 10 to 20 years without being corrected.

MOTION by Mr. Upton to approve item 12. The motion carried unanimously.

MOTION by Mr. Upton to approve consent calendar items 5 and 11. The motion carried unanimously.

(In the discussion, there was confusion whether items 5 and 11 were taken off the consent calendar earlier in the meeting. The second motion was taken to ensure approval of all items.)

IX. ADMINISTRATIVE MATTER

A. Appointment of California Lay Member to the Advisory Planning Commission

Deputy Director Jerry Wells advised that Leo Popoff’s two-year term as a California lay member expired the end of February 1996. Mr. Popoff had expressed an interest in staying on the APC.

MOTION by Mr. Sevison to approve the appointment of Mr. Popoff to a two-year California lay member term. The motion carried unanimously.

(Mr. Popoff’s term will expire the end of February 1999.)

VIII. PUBLIC HEARING

B. Amendment of the Regional Plan Land Capability Overlay Map Pursuant to Man-Modified Determination for Washoe County APN 127-010-02

Senior Planner Joe Pepi presented the summary of the request to recognize a portion of a 20-acre site in Incline as man-modified based on field work. The area in question was covered with approximately 15 feet of imported fill
material. Staff recommended the capability of the area be changed from a 1B to a class 6 in the upper portion of the site near the tennis courts.
Mr. Pepi summarized the required findings and distributed and explained a February 26 staff memo with a revised condition relating to flexibility and options in providing restoration and mitigation.

Mr. Gary Midkiff, for the permittee, noted the modified conditions were acceptable and agreed the site of the employee parking lot was much more ideally suited for restoration. Hyatt was prepared either to pay the fee or to work with staff and IVGID to come up with a plan for restoration. The option permitted the best choice to be made after more analysis. Using a plot plan display, Mr. Midkiff described the site and the proposal. He would be working with staff on planning installation of all BMPs in accordance with the 208 water quality plan requirements. Improvements would be installed as each phase of the project went forward. The Resource Conservation District was working with TRPA and IVGID on design of SEZ restoration work for the lower stretches of Incline and Third Creeks.

Mr. Westergard asked whether SEZ restoration should be accomplished by a set date or tied to completion of project phases. He wanted to see the environmental benefits as soon as possible.

Executive Director Jim Baetge noted that improvements would likely happen rapidly. There were a number of different entities working to put this all together. Staff was comfortable with the way the conditions were set forth.

Mr. Midkiff and staff responded to Board member questions about the relocation of the parking lot, the reason for flexibility in setting the time frames for SEZ restoration, and the efforts to work the Hyatt proposal into the larger area improvements in Incline.

Mr. Baetge explained that the proposal for improvements in this area was an example of the Environmental Improvement Program (EIP). The key was not necessarily to work just within the limits of a project application but rather to look at the broader scheme and surrounding players to complete comprehensive improvements and restoration.

Mr. Midkiff explained that the parking lot coverage had to be relocated to provide the replacement parking before the Hyatt project could be occupied. At the very least the area would be revegetated. Ideally, when the coverage was removed from the parking lot, the rest of the plan would be far enough along that restoration of the parking lot could happen at the same time. There were so many players involved that the final timing was not known.

Agency Counsel Rachelle Nicolle asked that the Board disclose any ex parte communications concerning any items on the agenda and to disclose any information that had not been brought up at the meeting.

Chairman Delaney noted he had had a discussion with Mr. Bob List but not on this item.

**MOTION** by Mr. Upton to move the finding of no significant effect and the Chapter 6 and 20 findings. The motion carried unanimously.
MOTION by Mr. Upton to adopt Ordinance No. 97-1.

Chairman Delaney read the ordinance by title:

An Ordinance Amending Ordinance No. 87-9, as Amended, of the Tahoe Regional Planning Agency Relating to the Regional Plan; Making a Finding of Man-Modification and Amending the Land Capability Overlay Maps by Amending Overlay Map H-4, for 111 Country Club Drive, Incline Village, Nevada, and Providing for Other Matters Properly Related Thereto

The motion carried unanimously.

VII. PROJECT REVIEW

A. Hyatt Vacation Club, 60 New Timeshare Units, 111 Country Club Boulevard, Washoe County APN 127-010-02

Associate Planner Melissa Joyce described the proposal by Hyatt to construct 60 timeshare units, with tourist accommodation units for the project being transferred from the Third Creek Development. The units would be housed in six three-story buildings. There would also be a registration building, an activity center, and additional parking. Ms. Joyce presented more information on the finding regarding no expansion of gaming, the man-modified finding (see previous agenda item), conditions regarding reconfiguration of and number of parking spaces, conditions regarding employee parking, the relationship between the 100 year flood plain and development, the applicant’s option for water rights sufficient to serve the project, and the proposed subdivision into two parcels (the 16-acre parcel housing the Hyatt Resort Casino and a 4-acre parcel housing the new timeshares). Staff appreciated the applicant’s willingness to working on this very complex project and recommended approval.

Mr. Gary Midkiff, on behalf of the applicant, noted the project included transfer of 60 units from the previously approved Third Creek Development; the permittee had accepted the conditions in the staff report. The project was substantially different from previous subdivisions in that this was a currently developed site. The tourist accommodation units were not new units; they were vested rights that could have been built 15 or more years ago. There was no increase in coverage; parking would be adjusted so there would be no loss in spaces. He had discussed the proposal with the NTRPA staff and a determination was made that there was no conflict with the gaming provisions of the bistate compact. All TRPA and NTRPA issues had been addressed.

MOTION by Mr. Upton based on the staff summary for the Hyatt Vacation Club to make the findings contained in the staff summary and a finding of no significant environmental effect for the construction of the project. The motion carried unanimously.

MOTION by Mr. Upton to approve the 60 timeshare unit project based on the staff report and subject to conditions 1-14 in the staff summary.

Mr. Westergard noted he had previously been critical of the two-step subdivision process. He had given this considerable thought and felt
comfortable in distinguishing this application from other projects in the Basin. He asked staff and applicant if they would have any objection to modifying condition 13 (page 14 of the staff summary, page 124 of the packet) to require the permittee to have documentation of the approval of the Nevada State Engineer for any required changes of water rights. This was consistent with the representation today that there were adequate water rights for the project.

Ms. Joyce and Mr. Midkiff responded they had no problem with this addition; it would be included in the conditions.

Mr. Upton's motion to approve the 60 timeshare unit project with conditions as modified carried unanimously.

**MOTION** by Mr. Upton to make the findings contained in the staff report and a finding of no significant effect for the subdivision of the Hyatt parcel.

Mr. Westergard noted that conditions 15 and 16 further supported his rationale in being able to vote favorably on the motion. These conditions related to deed restriction requirements and to voiding of the subdivision map should the timeshare approval expire.

Mr. Upton's motion carried unanimously.

**MOTION** by Mr. Upton to approve the Hyatt subdivision based on the staff summary and subject to conditions 15 through 17 as set forth in the summary. The motion carried unanimously.

B. Lake Tahoe Cruises, Temporary Use Permit, Tour Boat Operation, Timber Cover Marina, 3411 Lake Tahoe Boulevard, City of South Lake Tahoe, El Dorado County APN 27-090-01

Associate Planner Jim Lawrence presented the staff summary and recommendation for approval of the temporary use permit for the Tahoe Queen to operate at the Timber Cover Marina through April 30, 1997. In December the Board rejected a proposal for a temporary use permit; this project was different. Mr. Lawrence presented information on the 250-passenger operation, parking and traffic issues, the integrity of the pier, the Lahontan cleanup and abatement order at the previous Ski Run Marina site, the prohibition in the hazardous materials plan on storing materials on the site, and sewage pumpout and STPUD findings. Mr. Lawrence explained that in the process of conducting a pressure test of the sewage pumpout line at the Timber Cove Marina last week there was a grading violation. A settlement had been reached by Lake Tahoe Cruises and TRPA staff, and if the project were approved, the settlement would be a part of the conditions of approval.

Agency Counsel Rachelle Nicolle explained that after the agenda was issued for this meeting TRPA learned of the grading violation which occurred in the conducting of a pressure test at the new site. It involved five separate violations; this was a serious violation. The general practice would have been to pull the project from the agenda; this would, however, have created a tremendous hardship on the applicant in this case. Three licensed contractors should have known better, and there was not time to decide who should pay.
what. The applicant had agreed to pay the $20,000 fine and would work out later who should pay the fine. This was a condition of the project approval. This violation would normally have gone to the Legal Committee, but due to the recent occurrence of the violation, there was not time. The agreement could be approved as part of the project action. The violations at the new site included grading more than three cubic yards without a permit, grading outside the grading season, failure to employ temporary best management practices, and two occurrences of unauthorized grading and dewatering. Although it was not staff’s usual practice, it was legal to bypass the Legal Committee in this matter; it was a question of timing.

Mr. Waldie explained he had expressed to Mr. Thiemann in an ex parte communication his concern that the application was conditioned upon future performance in the environmental field. His concern was whether credibility on the part of the applicant would justify extending to him confidence that the environmental conditions set forth in the permit would be executed. He had told Mr. Thiemann that he wished to discuss previous compliance with environmental issues during his operation. His questions related to 1985, 1994, and 1996. The first involved a 1985 enforcement action where a fine was assessed for 37 violations of permit conditions concerning a condition regarding a 250-passenger maximum load. The second violation was operating 12 days in violation of a cease and desist order.

Mr. Jon Paul Kiel, with TRPA’s Compliance Division, responded that he could attest to the exceedences of passenger volume; he did not know if it was 37 violations, since he did not handle that matter. Operation in violation of the cease and desist order was before his time at TRPA.

Mr. Waldie explained that the second violation involved a 1994 plea bargain with the United States Attorney for a misdemeanor involving Lake pollution and a violation because permits were not obtained for dredging. The consequence was a $50,000 fine and a five-year probation as a result of the plea bargain. What were the terms of the five-year probation and was it still in existence?

Mr. Kiel suggested the applicant respond to this.

With regard to the latest violation, Mr. Kiel explained that staff received an anonymous complaint last Wednesday that unauthorized grading was occurring at Timber Cove Lodge Marina Resort. He and another staff member inspected and found that excavation in excess of the three cubic yards had occurred; there were no TRPA permits. The purpose of the excavation was to facilitate a pressure test of a sewer line to serve to offload sewage from the Tahoe Queen. The initial excavation was to have been an exempt activity of fewer than three cubic yards. The excavation exceeded three cubic yards because STFUD could not accurately mark the location of the sewer facilities, and the contractors in the field ended up having to chase the line down. They graded from three to 30 cubic yards. A cleanup and abatement order was issued by Lahontan for cleanup of the Ski Run site.

Mr. Harold Singer, executive officer of the Lahontan Regional Water Quality Control Board, explained the cleanup and abatement order was issued February 24 for violations observed at the existing Ski Run Marina site once the site was vacated by the Tahoe Queen. Lahontan received the complaint from the
property owners indicating they believed there were inappropriate waste storage facilities and handling and soil staining. Lahontan investigated the site on February 21 and took soil samples and pictures. The initial results showed there was very poor housekeeping practices in terms of storage of hazardous materials. This most likely involved waste oils, hydraulic fluids, and anti-freeze; tests of samples would confirm the constituents involved. Lahontan found a number of open five-gallon barrels and soil staining.

Mr. Singer distributed seven photographs of the site. A load of material was taken to the refuse site and was refused because it appeared to be hazardous material that could not be disposed of in the landfill. The Lahontan order required that by today a proposal be submitted to show removal of all the liquid material and where that material would be hauled. Lake Tahoe Cruises did indicate it would submit the report today. This plan was to be implemented within two days, so that the material could be offsite by the end of the week. By March 3, Lake Tahoe Cruises was to provide an investigation proposal which would sample all the apparently contaminated soils with a grid pattern to determine the nature of the contamination. How extensive it was, and what impact there could be to groundwater or to the Lake. Lahontan would be asking that the plan be implemented as soon as it was approved. By March 14, Lake Tahoe Cruises was to submit records because of concerns regarding improper disposal practices at the site dealing with these hazardous materials. Lahontan wanted to assure that what Lake Tahoe Cruises had purchased was equivalent to what Lake Tahoe Cruises had been disposing of.

Mr. Galloway commented that he had been told by Mr. Thiemann, of Lake Tahoe Cruises, that when he attempted to return to the site to clean up the materials there was a fence erected so he could not clean up the site further. He questioned whether there was a locked gate on the property.

Mr. Singer explained there were two issues here: the liquid materials in the barrels or buckets and the large amount of soil staining. This latter had occurred it appeared over a long period of time and could be the result of poor housekeeping or intentional placement of materials on the soil. This was not known at this point.

Ms. Virginia Huber, with El Dorado County Environmental Management, explained she had responded with Lahontan staff to the site. They drove into the parking lot area. The fence was up on the construction site and did now go around the area where the Tahoe Queen offices were. She did not know what legal issues there were regarding access, but the County had no problem gaining access to the property. There was not a locked gate into the marina parking lot.

Mr. Kiel presented more information on the pressure test, the grading violation, the content of the pipe materials, and the receipt by TRPA of an application from Lake Tahoe Cruises to complete a grading project to replace the transite line with modern PVC line.

Mr. Wynn questioned Agency counsel about why the staff included conditions to be met prior to acknowledgement of the permit and conditions related to the fuel hose ending being manual, the fuel pumps to be switched off when not filling the vessel, placement of absorbent materials under the hose ending to catch drops after filling the vessel, and prohibition on discharge of
petroleum products, waste or earthen materials to Tahoe Basin waters. Were these a necessity of all applications?

Ms. Nicolle responded these conditions were necessary in order to make the findings required under the Code of Ordinances. The ordinances required that there be no impact from the project.

Mr. Hime asked if there was annual checking of this operation and why these fueling and discharge problems had not been noticed previously.

Mr. Singer responded that Lahontan would not normally be looking at this type of facility on a regular basis. Lahontan would normally assume there were requirements for handling these materials, and most people did comply with the requirements. People with permits from Lahontan did have annual filings but were required to report adverse conditions. Lahontan never received a report from Lake Tahoe Cruises that there was an adverse condition. A lot of what were called minor dischargers, of which Lake Tahoe Cruises was considered one, were not inspected on a regular basis. This was one of the least important permits from an overall perspective. Lahontan was not sure it would permit the new activity at this point, because there should not be a discharge from this type of activity. It was not an activity that had an ongoing discharge that Lahontan would be concerned about. Much of the handling of these kinds of materials was handled by other codes, and other agencies did have some jurisdiction.

Ms. Huber, with El Dorado County Environmental Management, noted that any business that had more than 55 gallons of waste was required to have a hazardous material business plan on file. The County had no idea these amounts of waste were on the site; there was no hazmat business plan on file for Lake Tahoe Cruises at this time.

Mr. Singer explained that the second phase of Lahontan's requirement for Lake Tahoe Cruises included submitting a sampling plan that would grid the area that had been stained to find out what the material was and where it could be disposed of. This would also determine if the materials had seeped down or laterally. This was not currently known. It was too early to tell if this was a fineable action.

Mr. Westergard expressed concern about the process which attempted to resolve the finding of a serious violation through the conditions placed on a permit; none of this had been noticed to the public. He was concerned about violation of the meeting notice - without even getting to the merits of the project one way or another. If this was acknowledged as a serious violation, it should be noticed and referred to the Legal Committee for a recommendation back to the Board. While that may forestall action on the application, the Board should not accommodate a consideration of this application and in the same action be guilty of a violation of due process.

Ms. Nicolle responded that it was common for TRPA to incorporate a project approval and a violation resolution into one action. The staff felt it was legal and defensible in this instance. The preference would have been to bring the matter to the Legal Committee, and it would have been done under ordinary circumstances. This issue just arose last week after the agenda was
released. No Legal Committee was scheduled. If the item had been held off
the agenda, it would have had tremendous adverse consequences for the
applicant and the employees.

Mr. Waldie asked for a discussion on the Coast Guard violations. His perusal
of the details of the violations was to determine whether the applicant could
provide mitigation of what seemed to be serious disregard of environmental
constraints and whether the past performance of the applicant justified his
vote to allow continued operation, or the speculation that permit conditions
would be complied with in the future. These were issues he wished the
applicant to address.

Mr. Gregg Lien, representing Lake Tahoe Cruises, suggested the real issue
centered around whether the backshore could handle what was proposed and
whether the conditions could guarantee there would be no further violations.
There had been violations, and the last week there were problems with the
pressure test and the resulting digging that should not have occurred. There
was a violation of the grading season maximum of three cubic yards by a factor
of 10. This was not with Mr. Thiemann’s knowledge. The applicant approached
the staff and agreed to take responsibility for it and had satisfied staff
that there would be absolutely no further violations. The site was buttoned
up within 24 hours completely back to grade with absolutely no evidence that
the grading had gone on. The $20,000 fine was certainly adequate to deter any
kind of future activity along that line, if, in fact, deterrents were needed.
Within the same week, there was the matter of the storage of materials. This
was something that was not usually solely attributable to a tenant. Lake
Tahoe Cruises was one of many tenants at the marina; there were a number of
other fishing boats and others had access. Usually the land owner was
targeted. He and his client were still trying to get up to speed on the facts
— how many barrels were associated with Lake Tahoe Cruises and with others.
This was a very preliminary investigation. For today’s discussions to center
on something about which all the facts were not known disturbed him. He would
like to get to the point of discussing the issues of the project and how to
guarantee there would be no further violations.

Mr. Joe Thiemann, president of Lake Tahoe Cruises, presented his thoughts on
the occurrences of the last week. With regard to the Ski Run Marina issue,
his operation was evicted and had until Tuesday night of last week at 12:00 to
have all the equipment off site. They worked all weekend cleaning the area,
even the office which was to be torn down. Heavy equipment (trailers, dump
truck, storage facilities) were moved on Tuesday. He had arranged with the
marina manager to do final cleanup on Wednesday. When he left on Tuesday
there were six 55-gallon drums barrels of waste oil that were sealed and
stored in an approved area. These were left over from the prior week’s engine
oil change. That was all that was on site. Evergreen Environmental was
scheduled on Wednesday to pick up and dispose of the stored waste oil. When
he arrived Wednesday morning with a crew to clean up the site, there was a
locked cyclone fence around the site; he was told to come back the next day.
He went back on Thursday and, without his knowledge during that timeframe,
more barrels were added, the tops were taken off and the barrels were shaken
so that oil leaked off the sides. All of the agencies were called. Lake
Tahoe Cruises was accused of abandoning a toxic waste site. There were no
toxic wastes in the garbage truck, as claimed by the marina owner. There was
only some slight dripping of fluids, moisture from the garbage. He felt that Lake Tahoe Cruises was set up on the cleanup of the Ski Run site. Three weeks prior to this, Mike Solt from TRPA staff inspected the site to see if the $5,000 cleanup deposit could be returned after installation of new engine. Mr. Solt inspected the entire site and approved return of the $5,000 deposit. He felt he had been blind-sided and set up. The shed on the pier that had the oil in it was used by all the marina and boat operators. It appeared there were 5-gallon drums of bilge oil in there; Lake Tahoe Cruises did not dispose of oil in that manner but rather put the oil in 55-gallon drums. The marina had been in a confrontational relationship with Lake Tahoe Cruises for quite some time. If the site was managed that way, the operation would have been turned in a lot sooner. This was intentional, and timing was orchestrated. It was not fair for Lake Tahoe Cruises to take the blame.

On the question of Timber Cove, he knew the line had to be pressure tested. Mike Dill, from Aspen Environmental, contracted through his company to handle the permitting process. He got approved plans through Lahontan and TRPA; he contracted with Lake Tahoe Plumbing to do the job. It supposedly was a small job. An exemption was filed for the three yards; there was a permit to do the digging. Unbeknownst to him, STPU marked where the pipe was supposed to be, it was not found. The contractor continued to dig until he found the line and did the job. The plumber and contractor who did the excavating should have known better. He, again, was not aware of what had occurred but did take full responsibility as the applicant. He felt this was another example of bad timing. He did not think that anyone intentionally did this. It was an error, for which he took full responsibility.

Mr. Waldie questioned Mr. Thiemann about the 1994 criminal misdemeanor matter for dredging without permits, the $50,000 fine, and whether the five-year probation was still in effect.

Mr. Thiemann explained in 1987 he made application to dredge the Ski Run site to allow the Tahoe Queen to get to the dock. A permit from all agencies was obtained with the exception of State Lands. He contracted with an environmental consultant and an attorney to get through the permit process. He was under the impression, as was TRPA, that all proper permits were in hand. The project took eight months to complete, and during that time Lahontan and TRPA were on site on a daily basis, and there were no violations during that period of time from any of the lead agencies. After the dredging was completed in the summer of 1988, the Tahoe Meadows, the adjacent homeowners group who had sued and lost an injunction, reviewed the process and determined there was not a State Lands permit to do the dredging. In that review process, it was found that the Army Corps of Engineers had inadvertently issued the wrong permit (an extended pier permit not a dredging permit). This was not realized until months after completion of the dredging project. The dredging work was done professionally and properly and within the scope of all agency requirements. It made no sense that all permits would have been obtained from all entities, without getting one from State Lands, if it was known that a permit was required from that agency. It slipped through the cracks. The Army Corps of Engineers alleged Lake Tahoe Cruises did not have the proper permit. He acknowledged that in hindsight but felt it was a staff Army Corps error. Mr. Thiemann presented more information on the Army Corps permit.
Mr. Waldie questioned the terms of the five-year probation.

Mr. Thiemann responded that he was not to violate any of the Army Corps of Engineer permitting functions. There had been no violations in the ensuing years.

Mr. Waldie asked Mr. Thiemann to comment on Coast Guard violations during his years of operation.

Mr. Thiemann responded that the only violations were those referred to as 835s, similar to fix-it tickets. Lake Tahoe Cruises had not had anything he would consider abnormal or unusual in the process. He was proud of the Tahoe Queen’s safety record and history. The loss ratio was considerably lower than industry standards.

Mr. Waldie asked if there were 37 separate violations in 1985 of the permit condition limiting passenger numbers to 250, rather than 500.

Mr. Thiemann responded this was not inadvertent. Carrying 500 passengers when 250 were permitted was absolutely intentional. TRPA at the time was enjoined by the California Attorney General under an injunction from Judge Garcia’s court not to approve anything. Lake Tahoe Cruises had obtained permits from all the agencies other than TRPA. It had a staff recommendation for approval, yet TRPA was enjoined. Lake Tahoe Cruises challenged Judge Garcia’s court and intentionally carried more than the permitted number of passengers. He knew exactly what he was doing. He took on Judge Garcia’s court and lost.

Mr. Waldie asked if this was the motivation for operating 12 days beyond the cease and desist order.

Mr. Thiemann responded he did not recall but it probably was. It was his intent to intentionally challenge the court’s decision in enjoining TRPA.

Dr. Miner asked when Mr. Thiemann was first apprised the lease would expire at Ski Run Marina.

Mr. Thiemann explained he signed a 25-year lease with Richard Hodge of El Dorado Improvement Corporation in 1986. When Mr. Hodge went bankrupt due to the redevelopment project, Lake Tahoe Cruises lost its lease and the marina went back to the prior owner, who informed him from the first year that the lease would not be renewed. He had said every year since then that the lease would not be renewed. He was in error in not taking him seriously. It did not make sense to him to kick out a tenant who always paid his rent and was a major contributor to the success of the marina. It made no sense that he would be evicted. He was told the lease would not be renewed for 1996. It was renewed in February 1996. He felt it was not a substantive threat. The motive behind all this was for them to acquire his business. They had been trying to buy it for the last couple of years. They had made low below-market value offers and were trying to force him to sell. Today’s effort was to try to move in that direction. They would like to see the Board deny the relocation effort because if that occurred the value of the business would be way down and they would probably be able to pick it up cheap through a bankruptcy. That was the reality of what was happening here. He had operated
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his business professionally and properly for the last 25 years, and he was proud of his record. The Tahoe Queen operation was the most environmentally studied and approved marine business in the history of Lake Tahoe.

Mr. Thiemann presented more information on the environmental review process conducted in the 1980s.

Mr. DeLanoy advised he had had a conversation with Mr. List on this matter. He had furnished information that had now been covered by the arrangement with TRPA’s legal staff. That was information about the spill without permits. He asked if Mr. Thiemann would have any objection in hearing from the opposition at this time to move this forward.

Mr. Thiemann explained he had not had an opportunity to really present the facts in the case.

Chairman DeLanoy asked Agency counsel if any testimony had been taken from the opposition on the matter of the fine.

Ms. Nicolle responded that she had not had input on that issue.

Mr. Thiemann asked that Mr. Lien present the facts in the relocation effort.

Mr. Lien explained that if the Board wished to exhaust the violation question he had no objection, but he certainly wanted the opportunity to review the project-oriented issues at some point. He wanted an opportunity to rebut the opposition.

Mr. DeLanoy commented that the violation process had not followed the normal review pattern. A suggestion would be to refer this back to the legal staff for discussion by the Legal Committee. The public should have an opportunity to be heard.

Mr. Lien agreed they would in a few moments. The fact was this was being brought to the Board in the context not of a violation but in the context of a project. The item was noticed as a project. These things had just happened last week, and staff had not had a chance to fully investigate. The business had been in operation for 25 years; the timing was extremely critical, and staff had allowed the matter to come forward not only in December but also today. The operation was about out of business. This business had 110 employees; it was a business that was literally teetering on the brink of going under. Each of these violations would be dealt with. The Ski Run issue would be dealt with by Lahontan; the grading issue was being dealt with by TRPA staff. His client had voluntarily come forward and agreed to pay the heaviest fine that had ever been levied on anyone for a grading violation so that the project could come before the Board. The project needed to be heard today. There would be a $25,000 cash security with the Agency; secondly, this was only an operation for 60 days. The applicant would be back in May or June for a permanent permit. Unless this operation was squeaky clean, the applicant was putting the permanent permit in jeopardy. He knew this. With regard to the waste oil, there was one scheduled oil change that would occur during the entire run of the temporary permit. There would be no oil storage on the site at all during that time. The engine crank cases would be drained into 55-gallon drums, and that same day Evergreen Environmental would collect
and properly dispose of those materials. There would be absolutely no opportunity for there to be a waste of oil. He would like to get to the merits of the project.

Mr. Lien continued with a presentation on the project itself, citing the earlier extensive environmental documents (EIR/EIS) in 1983, the 14-year track record, the understanding of traffic patterns, the 8-year earlier operation of the 350-passenger M.S. Dixie at the Timber Cove pier, the procedural history dating from the knowledge of the eviction in late September 1996, work with TRPA staff to relocate the boat, the Board’s hearing in December, the City’s zoning administrator and appeal process, the change from a permanent to a temporary operation, environmental studies, and the specific project-related issues. Mr. Lien distributed a February 26, 1997, handout and used duplicate large displays to address the site plan, the planned operation, and neighborhood concerns.

Mr. Dan Wilkins, civil engineer representing transportation engineers Leigh, Scott, and Cleary, used a large display to describe the results of the traffic and parking impact analysis done for the temporary relocation of the Tahoe Queen to Timber Cove. He explained how the study was performed and the key conclusions. He responded to the Board member questions about on-site parking, proposed shuttle and tour bus services, and the parking agreement with Timber Cove Lodge.

Board member Jim Galloway advised that Mr. Bob List had forwarded to him an analysis by Mr. Giab concerning parking; this contended that the City should not permit this operation. He questioned the peak periods for different uses, the overlap of parking needs, the agreement, and whether the Lodge parking facility would meet the demand.

Mr. Wilkins responded that the marina parking facility would accommodate all of the parking demand being generated during the peak period. His firm initially felt that there would need to be a shared parking concept to accommodate the total parking demand. As it turned out, it looked like there was enough parking at the marina to accommodate the tour-related traffic and parking demands. If this was not accurate and more parking was needed than what could be met at the marina parking site, for all the day-time cruises there were 100 parking spaces that were empty at the Lodge. The one period that could be a problem was the Saturday evening dinner cruise, when all of the Lodge patrons were on site using the parking spaces.

Mr. Cole explained that when the City reviewed this temporary application it studied only the shoulder seasons; it did not address what happened June, July, August and September, the peak periods. From now through April, he did not think there would be 80 to 90 percent occupancy, except for a few weekends.

Mr. Lien addressed the issue of structural integrity of the pier. A structural engineer, who wrote the letter in the packet materials, was present if the Board had questions. During the last week 30 to 40 mph winds shoved the Tahoe Queen against the pier for a period of eight hours. The only damage sustained by the pier was to some decking.
On the sewer issue, Mr. Lien advised that as part of the resolution here the Tahoe Queen would fix the line; it was not just the Tahoe Queen that used that line. The building containing commercial uses out on the pier also used it, and there was an independent need to get that line fixed right away so no other sewage leached into the soil. That would be done as part of the project approval by the end of this week or early next week. He asked for time to present a rebuttal to other testimony.

Attorney Treva Hearne, on behalf of opponents living at Bal Bijou and Lakeside, suggested that this matter be continued to another meeting if there was not sufficient time for her to air her concerns. On February 19 the Tahoe Queen was moved to Timber Cove without appropriate permits from State Lands. With regard to the problems left at Ski Run, she did not think there were many small craft that used 55-gallon drums of hydraulic oil. There also was a problem, only alluded to by the applicant, involving losing control of the boat impacting the deck. This was addressed in the permit conditions. From the video, it was apparent the boat could not be controlled. She had a letter for the record outlining the lack of permits, lack of authorities, the clean up and abatement, the claim that the Queen had water rights; the Resources Control Board showed the Tahoe Queen had a statement of use but no water right. It was important that the credibility of people submitting information to TRPA be examined thoroughly. She submitted traffic information for the record. She suggested the most important letter was the letter of rejection from California State Lands, suggesting the application was incomplete. The Commission questioned ownership of and responsibility for the Timber Cove marina and dock. The Tahoe Queen was a lessee. She encouraged the Board to understand that it was not present to save Mr. Thiemann from poor business judgment but to the entire community and to the taxpayers who objected to the project going forward. She asked for a clarification whether this was a one-year permit, as suggested by Mr. Thiemann and staff, and that he intended to get extensions without a recirculation of environmental documents prior to that. She and her clients were very concerned about that and wanted clarification. She had filed a violation of CEQA lawsuit against the City of South Lake Tahoe enumerating the reasons the proceedings were not conducted correctly in approving the project. She hoped the Board would look at this before making its decision. She introduced Mr. Harry Brach, a nearby resident in the area.

Mr. Lawrence responded to the question regarding the duration of the permit. The permit before the Board was for a temporary operation through April 30. There was no understanding that this would be a one-year proposal.

Mr. Cole agreed that from the City's perspective this would be a permit through April 30.

Mr. Harry Brach, owner of a residence on the beach between Tahoe Marina Inn and Timber Cove, commented that the neighbors in the area were quite concerned that the past performance of the Tahoe Queen might be an indication of future performance as far as citizenship was concerned. They had concerns that the application, although temporary, might well be extended for reasons of employment and tourist convenience, and become even a permanent permit. He
presented a video showing the previous site where the Tahoe Queen was located and what happened the last couple of days at the Timber Cove pier when the Tahoe Queen was attempting to maneuver at night during a 35 to 40 knot wind storm. The ship appeared to be unable to maneuver under its own power to clear the pier. This resulted in a rescue effort the next day where cables were extended across the beaches of the private residences and across the fence to a tow truck parked in front of the Tahoe Marina Inn. The boat churned up the lake bottom upon its departure.

The video as described was shown.

Mr. Craig West, home owner on Bal Bijou, suggested that, as shown in the video, the Tahoe Queen if moored on the eastern side of the pier would cause potential hazard and great liability to him and his family as he used the water. He was very concerned with the boat trying to use this area in the summer and what could happen if his children were in the water.

Mr. Mike Phillips, owner of Ski Run Marina, described the past number of years at the marina and the contract violations and problems he had had with Mr. Thiemann which had harmed the marina’s reputation. He presented a history dating back to contract violations starting in 1978 when he signed an agreement with Mr. Thiemann. He had been in and out of court with Mr. Thiemann for several years. He allowed him to come back to the marina on a year-to-year basis. In 1985 he sold the marina to Mr. Richard Hodge; six years later in the bankruptcy proceedings he got the marina back but with part of the agreement being that any agreements with Mr. Thiemann were void. The reason for this was that on a year-to-year basis he would have the upper hand and there would be no violations because Mr. Thiemann’s need for a renewal each year. This worked well. He became a part of the redevelopment plans and decided after two years that the problems with Mr. Thiemann were harming the marina’s reputation. He continually had customer complaints, community complaints, and public agency complaints. This was the reason he had decided not to renew Mr. Thiemann’s lease. Today, he was having to defend himself again, and he expected another lawsuit from Mr. Thiemann based on his testimony today. He was tired of his reputation being destroyed because Mr. Thiemann could freely say what he wanted to say. Concerning the contamination of the property, for a long time, longer than the March 9 letter, there were problems on the site. He had encouraged Mr. Thiemann to move to Timber Cove, and in the agreement with him the last year the contract stated for the last time that this would definitely be the last year. In October 1995, he told Mr. Thiemann at that time he would not renew the lease and that the property would be redeveloped. There needed to be a change in the image. This was the first time he ever told Mr. Thiemann that the lease would not be renewed. In the contract he gave Mr. Thiemann an opportunity to sell the business, and he would give a ten-year lease to sell. He offered to buy the business at $5.5 million, and an independent appraiser gave a price of $3 million. He felt the offer was a fair one. He had a group of people who were willing to buy the boat but Mr. Thiemann was not interested.

Chairman Delaney asked that Mr. Phillips make the letters a part of the record. Due to the time constraints of the meeting, he needed to move on.
Mr. Phillips indicated that on March 9 he asked Mr. Thiemann to remove the sunken tanks at the pier and to remove the improper storage and excessive amounts of 55-gallon drums of hydraulic fluid. On April 15, 1996, he wrote another letter to Mr. Thiemann and noted the improper storage of the 55-gallon storage tanks. He had several letters since spring of this year asking Mr. Thiemann to clean up the site. For Mr. Thiemann to allege he had placed the tanks on the site was absurd and outrageous.

Traffic consultant John Glab suggested this was the wrong time of the year to do an Environmental Assessment, particularly one that involved traffic, passenger counts, and parking. The traffic and parking analysis relied on information received from other sources and information that was taken at the wrong time of year to determine the peak values, values required for a traffic and parking analysis. He questioned the availability of parking for the 120 employees and the support services on the site. He did not know if provision had been made for parking conflicts between customers going on skiing trips and those going to Emerald Bay. Mr. Glab urged the Board to show consistency. TRPA was set up to protect the Lake, not any one individual.

Chairman DeLanoy asked Mr. Glab to submit his information for the record.

Mr. Lien noted that a portion of the EIR done for the Tahoe Queen was authored by Mr. Glab; he had identified the Timber Cove Marina site as suitable for the Queen as a backup to Ski Run Marina. As to the Queen losing control, the winds during the storm were unprecedented and caused major damage in several places. As to the State Lands issue, the letter that was presented related to the permanent project. The Tahoe Queen would do whatever the State Lands required to get a permit. As to the barrels shown in the video, this was not about personalities. It was about whether the findings could be made. There was more than adequate protection because of the $25,000 cash deposit. This was a temporary permit. The Tahoe Queen was not allowed access to the site to clean it up, although it was fully the intention to get the site spotless. As to the video of pumps in the water, these were there long before the Tahoe Queen negotiated to find a space at the Timber Cove. The Tahoe Queen had some financing in the works that was contingent on being able to continue operation.

Mr. Hal Cole asked whether the Board could take into account past performance in the consideration of future use.

Ms. Nicolle responded that staff had taken this into consideration in the establishment of the $25,000 cash performance security. It was asking the Board to recognize that this was the incentive which it felt was necessary to insure performance. The Board was allowed to look at the findings for a project, and if the Board felt a project did not have sufficient conditions to ensure it could be confident there would be no environmental impact, then the Board should vote against it. If the Board felt there was a way to adjust the conditions to allow the findings to be made, then the Board could make those adjustments.

Mr. Waldie noted that he had had ex parte communications on this agenda item with Mr. Thiemann, Mr. List, and Ms. Schwarte. His position from the last meeting had been somewhat reinforced. If this were an application for a
permanent operation, the environmental documentation would be complete with no conditions unfulfilled, and the environmental concerns would be before the Board. That was not the case because of other problems external to the environmental concerns affecting the Lake, concerns that dealt exclusively and seriously with the well-being of the applicant's business but not with the environmental threat to the Lake. To accommodate those concerns, the temporary permit had been proposed with lesser environmental documentation than would be required. Much of that lesser documentation was dependent upon future performance on the part of the applicant of conditions that were designed to circumscribe the deficiencies to environmental documentation. He personally was not persuaded by the applicant's past performance, particularly in his violation of the Federal court order. He spoke in arrogance that was startling. He was not personally, sufficiently confident that the conditions imposed in lieu of proper environmental documentation would be fulfilled. He would oppose the project.

Ms. Bennett disclosed that she had had a conversation with Mr. Thiemann, Mr. List, and Ms. Schwarte.

Ms. Nicolle asked if there was any information disclosed in the phone calls that was not disclosed in the hearing.

Mr. Wynn noted he had received a phone call from Mr. Thiemann and Mr. List generally asking him if he had read the submissions and the staff report. They told him nothing that had not been covered today or was in the reports.

Mr. Severson noted he had had a call from Mr. Thiemann.

Mr. Galloway explained he had talked with Mr. List and Mr. Thiemann. In addition, he had received an unsigned paper that touched on some of the issues but also included alleged lawsuits. He did not intend to take this into account, since it was not raised.

Dr. Miner explained he had been contacted by Mr. Thiemann, as well as the Ski Run Marina owner. Anything discussed was quite brief and was presented at the meeting.

Mr. Upton concurred with Dr. Miner's comment.

Ms. Neft and Mr. Heller concurred.

Mr. Cronk suggested that much of the comment today was interesting but was irrelevant from an environmental point of view. He was curious from an environmental standpoint and given the recent information on the State Lands position and the applicant's less-than-noble record at being environmentally sensitive in the past both to TRPA's regulations and others - he was surprised staff had concluded it was comfortable with the findings. While it was noble to be swayed by the economic concerns, from an environmental point of view he was surprised.
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Executive Director Jim Baetge explained that the staff recommendation was based on what staff knew a week and a half ago. That was what was presented. The staff responded to questions brought out at the December meeting. Information that had arisen came out after that report was made available.

MOTION by Mr. Heller to approve staff's recommendation to approve the temporary permit. This included the proposed two conditions that were distributed. The motion failed on the following vote:

Ayes: None
Nays: Mr. Wynn, Mr. Sevison, Mr. Galloway, Ms. Neft, Ms. Bennett, Mr. Waldie, Mr. Heller, Mr. Cronk, Dr. Minor, Mr. Hime, Mr. Upton, Mr. Westergard, Mr. Cole, Mr. DeLanoy
Abstain: None
Absent: None

Chairman DeLanoy recessed the meeting for a lunch break from 12:00 to 1:10 p.m.

VIII. PUBLIC HEARING

A. Shorezone Policy

1. Direction to Staff for the Preparation of the Necessary Environmental Documentation and Potential Future Ordinances Governing the Use of Personal Watercraft or Other Motorized Watercraft on Lake Tahoe

Chairman DeLanoy started the discussion by advising of the order of presentations: the proponent of the ban on personal watercraft (PWC) would go first; the opposition would follow; the public who had signed up on the cards available at the back of the room would present testimony; the meeting would adjourn for a dinner break and return after 7:00 p.m. The proponents and opponents would be presenting expert testimony at the meeting and would be receiving via video conferencing comments from elsewhere in the country and from out of the country. The Board would accept testimony without going through the qualifications of these people as experts. There would also be time for testimony by the manufacturers, by the purveyors and by the staff.

Mr. Bruce Laxalt, a Reno attorney speaking on behalf of the League to Save Lake Tahoe, presented his personal background and described time spent in Nevada and at Tahoe. He noted that any discharge of gas and oil into Lake Tahoe was against the law. This violated three or four very direct instructions that TRPA had operated by and had enforced over the years. He cited the Code, the Goals and Policies, and the 208 Water Quality Plan which prohibited any discharge of toxic matter into the Lake. He explained his testimony would address an obsolete technology which the industry had known to be obsolete and antiquated for 25 years. The industry for unknown reasons insisted on continuing to sell two-stroke, non-fuel-injected engines. This type of engine would discharge one-third of its tank of unburned gasoline and oil directly into the Lake. This was conceded by the industry. Estimates ranged from 100,000 to 200,000 gallons of gasoline and oil going into the Lake.
Mr. Laxalt gave an extensive presentation and described regulations imposed elsewhere regulating and prohibiting two-stroke engines. His presentation included question and answer discussions conducted via teleconference with the following: 1) from Bern, Switzerland) Mr. Gerhard Kratzenberg, Chief of Navigation for the Swiss Federal Office of Transport; and Mr. Hans Jurgen Gotet, engineer with the Swiss Federal Office of Transport. These gentlemen responded to questions regarding the analysis and test results relied on to implement regulations and restrictions banning two-stroke engines on certain European lakes. They also responded to questions about interaction with and efforts to get cooperation from the industry in the analyses and setting of regulations. 2) Dr. John Giesy, professor at Michigan State University in Fisheries and Wildlife, a PhD in limnology and a practicing aquatic toxicologist. Dr. Giesy presented his findings and responded to questions from Mr. Laxalt on water quality relative to polycyclic aromatic hydrocarbons and effects of solar radiation on their toxicity to aquatic animals.

Dr. Giesy responded to questions posed by Mr. John Pagan, attorney representing the National Marina Manufacturers Association, regarding testing procedures, the chemistry of fuel, toxicity, and the results of his findings. He also responded to Board member questions about test results of fuels in water and effects on aquatic life.

The Board members took a five-minute break at 2:00 p.m. Following the break, Mr. Kratzenberg and Mr. Gotet returned to the meeting via teleconferencing to respond to questions by Mr. Pagan, Mr. Laxalt, and the Board members on results of sediment core studies, evaporation, work with the manufacturing industry, effects of two-stroke engines on aquatic life, and the 1976 ban of PWC from Swiss waters.

Mr. Laxalt introduced Dr. Stephen Scott, noting he was the chairman of the emergency room at Barton Hospital.

Dr. Scott described his pre-med organic chemistry classes where work was done with chemicals which were so toxic that work on them was done under a ventilated hood. These same chemicals were being discussed in the context of two-stroke engines. Polycyclic aromatic hydrocarbons were carcinogenic and mutagenic to humans. They should not be consumed, and they were getting into Lake Tahoe as shown by the film on the water.

Mr. Gerald Rosenbluth, president of Automotive Consulting Services in Arizona, listed some of his clients and explained his specialization in forensic investigations involving product liability and other areas relative to automotive engines. Using two table models, he described the difference between two-stroke and four-stroke engines, the mechanics of fuel injection (as manufactured by Ficht and Orbital), the known technology relative to reduction of emissions and engine efficiency. Mr. Rosenbluth also used an overhead projector to show manufacturers brochures describing up-to-date engine technology which had reduced engine emissions over the two-stroke PWC engines. He suggested that the two-stroke engine - without the Orbital or Ficht fuel injection system - was an example of 1949 or older technology.

(Mr. Rosenbluth completed his remarks at 3:00 p.m.)
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Dr. Charles Goldman, with the Tahoe Research Group, introduced Dr. Reuter (head of interagency monitoring program), Brant Allen (fish studies manager), and Bob Richards (manager of overall Tahoe field operations), and explained his team’s work over the last three weeks to get as much information as possible on FWC and, in particular, jet ski operation on Lake Tahoe. Tahoe was the tenth deepest lake in the world, and water transparency was being lost at a rate of 1/2 a meter per year. The Lake’s depth was approximately 505 meters, and extensive studies over 40 years showed Tahoe mixed every third or fourth year. Tahoe was listed as an ONWR lake, an Outstanding Natural Resource Water and a water body of inestimable value — both as a drinking water source for people in the basin and for those downstream. Dr. Goldman presented technical information about the lake’s physical characteristics; about how gasoline, gasoline additives and oil reacted in Tahoe’s water; how long they stayed in water once introduced; the concerns with cumulative emissions over several years; evaporation; effects of fuel on algal productivity. The nitrogen loss from motorboats alone at Lake Tahoe each year was the equivalent to developing 40 acres of urbanized land in the Tahoe Basin. Since the commencement of his studies of Lake Tahoe in 1958, Tahoe had accumulated so much nitrogen that it had become a co-limited lake — limited by both nitrogen and phosphorous. If NOX emissions at current levels continued into the lake, this relentless progress of eutrophication would continue. He was strongly in favor of doing everything possible to reduce the inputs on NOX as well as the more toxic substances into Lake Tahoe. Dr. Goldman responded to Board member questions.

Following a five-minute recess, Chairman Delaney asked for testimony from the manufacturers of FWC.

Mr. John Fagan, representing the Marine Manufacturers Association, suggested it was unclear what the focus was — personal water craft, two-stroke engines, or four-stroke engines; the entire fate of recreational boating on Lake Tahoe seemed to be under attack. It was important for TRPA to hear from the technical experts on the very complex issues relating to these subjects. While having the Swiss experts testify was appreciated, it should be noted scientific studies to support the Swiss ban were lacking, as pointed out in earlier submissions. The ban was imposed for political, not environmental reasons. The hypothesis of photo-induced toxicity suggested by Dr. Giesy was cutting edge and raised concerns; it merited study first, however. The burden of proof was on those who wanted to eliminate two-stroke watercraft. TRPA was making an action that would directly take away the livelihoods of many people around the lake, and it would be significant. To the allegation of fuel spills, it was a matter of degree, of amount. It was not just one drop of oil or water; there had to be a note of reason injected in the process. Lake Tahoe had a long history of recreational boating, and he cautioned the Board not to let emotion drive the decision. Mr. Fagan presented more information on the proposed ban; his proposed ordinance which incorporated noise buffer zones, a safety and education program, and a minimum age of operation; his experts who would clarify earlier erroneous testimony on emissions, noise, and water quality. The staff report showed that the relative contribution of recreational boating to nitrogen loading was 1.65 percent, for hydrocarbons it was approximately 4 percent, acceptable levels which worked their way out of the water. Mr. Fagan responded to Board questions regarding the extent to which the industry agreed there were or were not impacts and problems with
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noise, safety, and pollution or emissions from personal watercraft. He suggested that the industry believed the impacts particularly from hydrocarbon emissions related to personal watercraft were miniscule. It was for the Governing Board to address whether these emissions were so insignificant that they need not be addressed; from an industry standpoint, the Board should listen to all the evidence. In his opinion, until there was more scientific data, there was sufficient concern raised that a study of hydrocarbons at Lake Tahoe was merited. As Dr. Goldman would likely admit, there was no study of hydrocarbons or PAHs at Lake Tahoe. Until there was a scientific basis for it, it was appropriate that there be no pollution or emission regulations.

Mr. Fagan introduced Dr. Ted Morgan, who had received a bachelor of mechanical and electrical engineering from the University of Sydney, an engineering PhD from Cambridge, was a physics professor at the Case Institute, and director of engineering at Mercury Marine for 29 years.

Using an overhead projector Dr. Morgan presented his findings related to the inventory of raw emissions coming from recreational marine engines, including NOx, carbon monoxide, total organic gases, and hydrocarbons from atmospheric inventory and emissions related to personal watercraft. He responded to questions regarding his use of staff numbers to generate his findings.

TRPA Principal Planner Gordon Barrett explained that staff in its report increased 1988 figures by 1.5 percent to generate recreational boating figures for 1994. The 1988 survey figures provided the best overall boating numbers. The 1988 figures assumed a 5 percent PWC use; the 1996 California Air Resources Board report on watercraft in California indicated that in Placer and El Dorado Counties, the figure was approximately 9.5 to 10 percent. These numbers related to private owners; and the commercial numbers from the concessionaires were added in. Staff boosted the figure to 10 to 15 percent, for a total inventory of 400 personal watercraft. Mr. Barrett explained the method staff had used to reach a total number of watercraft on the Lake.

Using the overhead projector, visual displays, and a video, Dr. Morgan continued with his technical presentation on an emissions inventory for watercraft, mixing of scavenged products and high temperature combustion products, exhaust stream paths, and factors affecting hydrocarbons remaining or not remaining in the water from operation of PWCs. Dr. Morgan responded to Board member questions about engine types and emissions and suggested that, in his opinion, there was no cause for concern or regulatory action regarding cognizable pollution occurring in Lake Tahoe from the use of personal watercraft. While he would not say that research should not be done, he felt that results of such research would show that there was no impact of boating emissions on the environment today.

Mr. Fagan introduced Dr. Bill Stubblefield, noting he had an MS in toxicology from the University of Kentucky, a PhD in aquatic toxicology from the University of Wyoming, was employed by NSR and was an adjunct professor at Colorado State.

(During Dr. Stubblefield's presentation, Ms. Pamela Crowell took Nevada Secretary of State Dean Heller's place at the dais on or about 5:00 p.m. Board member Rex Hime left the meeting on or about 5:00 p.m.) Using an
overhead projector, Dr. Stubblefield presented an evaluation of contaminants and how one went about evaluating their potential effects on the environment. He described the "risk assessment paradigm," the ability to make quantitative statements and decisions on potential impacts associated with exposure and effects, exposure periods and amounts of exposure, and what should be taken into consideration in the evaluation of effects associated with contaminants resulting from two-stroke motor boat use in Lake Tahoe. The analysis needed to address types of contaminants, how much were present, and duration of exposure. Dr. Stubblefield described the characteristics of the four components being considered in the analysis (gasoline, fuel oxygenates [MTBE], lubricants, and combustion byproducts); the reaction of emissions in water; and the results of his studies on the effect of these components on organisms in the Lake. He suggested there was insufficient information available to appropriately characterize hydrocarbon exposures in Lake Tahoe, and additional data were needed to determine the extent of risks, if any, to resident aquatic species. There also needed to be field evaluation of the issue of photo-induced toxicity to determine whether it was, in fact, important for consideration in these deliberations. Dr. Stubblefield responded to Board member questions about his conclusions.

Mr. Fagan introduced Mr. Jim Scribner, educated at Sacramento State, and employed 32 years at Placer County Environmental Health in Tahoe City. He explained that Mr. Scribner had been asked to contact each water purveyor around the Lake to determine if there were any traces of gasoline compounds in any of the tests performed pursuant to state standards.

Mr. Jim Scribner described the results of his sampling of water at Tahoe to see if there were any organic compounds in the drinking water from Lake Tahoe. He randomly checked with ten of the large water companies around the Lake. None of the sampling results showed any organic compounds that might be associated with gasoline. The detection level was .5 parts per billion. Using an overhead projection, Mr. Scribner displayed and described the sampling locations around the Lake, his testing methodology, and the results of his tests. He responded to Board member questions.

Mr. Roger Eggenberger, director of utilities for IVGID, explained that all of the sample data that was reported for this process was raw water data, not treated water data. In years past IVGID did pump water out of the intake and sample it before treatment. As part of the watershed management study to avoid filtration under the new surface water treatment rule, the District installed sampling intake lines all the way out to 700 feet. There was some limited boating activity at or above the intake structure. While he would not want to see activities that could contribute to water quality problems adjacent to the intake structure, the data that had been reported here did not support that current boating levels caused any hydrocarbon accumulation in the intake. Mr. Eggenberger responded to Board member questions.

Mr. Fagan noted that the testing done by Mr. Scribner was the only study for hydrocarbons at Lake Tahoe that had been done.

Mr. Fagan introduced Mr. Dick Lampheer, an expert in sound, explaining he had his BS in physics from the University of Wisconsin; he had been employed for 31 years as the director of environmental engineering for Mercury Marine and
was a charter member of the Society of Automotive Engineers. Marine Sound Subcommittee.

Using a chart, Mr. Lampheer described the characteristics of sound; how sound was measured; the sources of noise for internal combustion engines (exhaust, induction, and mechanical); methods used to mitigate marine engine noise; sound as a function of distance; results of noise tests done in response to noise complaints caused by watercraft; the benefits of adopting a Model Noise Act with an 88 db level for dry-stack watercraft; a 65 db limit at the shoreline during daytime hours and a 55 db at night. To address the rental situation, Mr. Lampheer suggested consideration of a 500-foot buffer zone in which boats were not allowed to exceed 5 mph. If the Board were to adopt his recommendation for a Model Noise Act designed for Lake Tahoe, there would be significantly more stringent requirements on boat noise. Noise regulations would be focused on noise impact at the property line, which was where complaints originated. Also, user awareness would be greatly increased, with the net result that community noise would be substantially reduced. Mr. Lampheer responded to questions about variations in types of boat noise and the fact his recommended buffer zone and hours of operation went beyond the Model Noise Act.

Mr. Fagan noted for the Board that the exhibits for those testifying before the Board for the manufacturers were set forth in the report provided to the Board members.

Mr. Fagan introduced Mr. Glyn Johnston, manager of Public Affairs and Government Relations for Bombardier Motor Corporation of America, and chairman of the Personal Watercraft Industry Association.

Mr. Glyn Johnston explained that the industry wanted to continue to work with TRPA to resolve issues that existed in the Lake Tahoe area. The industry had never moved from that position. Based on the information presented today, the current PWC use did not warrant discriminatory bans or severe, unfair restrictions. On the issue of education, he felt the industry could educate PWC users. This could include courses, materials in each product delivered, and working with the dealers to educate the public. These steps would all enhance boating on Lake Tahoe. Options included taylor-made signs at public launch ramps to address environmental concerns as well as rules of the road, loaner units on the water to enhance patrol capability, adoption of the Model Noise Act, and prohibition on use of all boats in environmentally sensitive areas. Boating was evolving as shown in the statistics from 1988 through 1995. During this time period, there was a decline in traditional boat sales of approximately 300,000 units but an increase in purchase of PWC from 25,000 to approximately 200,000. Mr. Johnston and Mr. Lampheer responded to questions regarding boating prohibitions in environmentally sensitive areas, potential efficiencies of fuel injection engines, evolving technology, and safety issues.

Mr. Fagan referred to and summarized two written declarations in the packet material: 1) one by Robert G. Tardiff, Ph.D., toxicologist and risk analyst, on MTBR; 2) one by Dr. Richard B. Ganong, of the Truckee-Tahoe Medical Group, on the subject of safety and injuries related to PWC.
At this point in the meeting, Chairman DeLanoy asked that the experts be available for any further Board member questions. Mr. Gerald Rosenbluth and Dr. Morgan responded to technical questions about fuel emissions test results, operation of two-stroke engines, lubricating oil, and fuel use of PWC.

Concessionaire Mark Sentyre, operator of Kings Beach Aqua Sports, explained that gasoline on the water created a sheen; his 12 machines were tuned to elevation 6200', and he had never seen a sheen. If fuel was getting into the Lake as suggested by proponents of the ban, he would see a sheen. There was no sheen with properly tuned machines.

At 6:30 p.m., Chairman DeLanoy recessed the meeting for a dinner break until 7:30 p.m.

(Members present after the dinner recess: Crowell, Westergard, Neft, Wynn, Cole, DeLanoy, Bennett, Waldie, Cronk, Miner, Galloway, Upton, Sevison)

(Chairman DeLanoy disclosed that he had practiced law with attorney Bruce Laxalt 11 years ago. After that time Mr. Laxalt continued to practice law in Reno; he had moved to Las Vegas. He had discussed this by Agency Counsel, by Mr. Laxalt, and Mr. Fagan; there was no conflict.)

Attorney Gregg Lien, for the Lake Tahoe Watercraft Recreation Association, composed of 12 concessionaires around the Lake, apologized if unfortunate news received during the dinner hour affected his comments. He noted that written comments had been made available for the Board members. His comments related to the effect of TRPA's actions on those trying to make a living in the Tahoe Basin - whether a tour boat or a concession. Fines were one thing; everyone needed to honor and adhere to the rules. When debating a ban as the Board was doing today, the Board needed to be cognizant of the fact it affected people seriously. Some behaved appropriately to that stress and some, unfortunately, in a tragic manner. His clients, 12 purveyors of PWC, had in good faith obtained all their permits. He had checked with the enforcement staff, and none of the concessionaires had any violations pending. They all had a good history with TRPA. They had invested substantial dollars in rentals and they provided a service the public demanded. PWC was a growth industry, one which people wanted on the Lake. It was an expensive sport at approximately $75 per hour. Many customers were families. Each concessionaire had several employees. The Board needed to look at the impacts on those people in a very personal way. It was all well and good to be concerned about the Lake's environment; unless this was balanced with the concern for human beings, the environment was not worth saving. Balance was critical; TRPA was required to consider balance. He worried that often in the conduct of environmental review and litigation, there were no winners - zero win for the environment and zero win for the private sector. In the effort to find simple solutions, a punitive approach was often taken. From his perspective, there was a bigger picture. While looking at any litigation and economic impacts that may come out of this, there may be an alternative, a middle ground and a negotiated settlement, a consensus approach. There were no benefits to be gained by the former approach. He favored a win/win approach as now in progress with the shorezone consensus effort. Instead of looking at a ban/no ban solution and at who would win and who would lose in either case, he preferred collectively to identify the problems and the solutions and to work toward improving the
environment in a way that did not put people out of business. Enforcement would be difficult here if the Board approved a ban. If the ban were imposed, each of his clients had certain due process rights. There was a high balancing test here and a high burden of proof that there was a distinct harm and a provable environmental nuisance situation. He did not know how a ban could be implemented by this coming boating season and deal in a fair, logical way with the concessionaires. It would not be easy to implement a ban; to do so would be counterproductive. He favored looking at alternatives. The Shoreszone Partnership group came up with a commonsense solution to the noise concerns; those who were talking on the beach should be able to talk in a normal voice and be heard. There should be a technical standard that would accomplish whatever this buffer may be. On water quality, rental fleets turned over far more rapidly and could get into the new technology quicker than anyone else on the Lake. The concessionaires also were the ones providing education and policing. More study was needed; as evidenced by the testimony today.

Mr. Greg Green, 20 year resident and owner of Tahoe Water Ventures, explained the income from his PWC business qualified him to get a loan to purchase Lakehouse Pizza. The way the loan was structured, if he did not make a certain amount of money in a year at the pizza restaurant it would be taken back. It was cross-collateralized with everything else he owned, such as his house. He would be really messed up if he could not operate his 12 PWCs on the water this year. He operated four to four and a half hours per day in August; two to two and a half in July, and one in June. His prices ranged from $60 to $80 per hour. He used approximately 4 gallons per hour per machine. If he could buy an Orbital-type machine, he would if they were available. The PWCs were a critical portion of his business; a ban would have an abrupt and drastic effect. Mr. Green responded to Board member questions about gallons used, cost, his financial situation, and his purchase of new machines for his business every year.

Chairman Delaney asked for public comment based on the filled-in cards he had received. He asked those wishing to testify to keep their comments to two minutes each because of the number of people who had signed up and to address areas not previously covered.

Mr. Brian Wallace, chairman of the Washoe Tribe of Nevada and California, submitted a written statement and addressed the human dimensions of the issue. The Washoe Tribe’s concern related to water quality and the continuation of the customary use by the Washoe of Lake Tahoe. The Washoe religion was very water based and dated back years. Water quality and clarity were very important, not only in the direct contact with the shorezone and ongoing traditions of tribal members. The whole basis for the aboriginal pharmacology occurred in the shorezone and its relationship with the waters. In the matter of noise abatement, some of the activities the tribe were involved in required some level of silence, particularly along the shoreline. The craft being discussed had a distinct impact on that.

Mr. Harold Singer, executive officer with the Lahontan Regional Water Quality Control Board, noted the Lahontan Board had not taken a position on PWCs; it would be premature for him to offer an opinion. He was not a scientific expert; his job was to look at scientific information, compare it to
regulations in place, and propose policy for Board action. Mr. Singer commented on the prohibition of discharge of toxic wastes, Tahoe's status as an Outstanding Natural Resource Water, best management practices, the context of the Board's evaluation and intent to modify shoreline regulations, the importance of mitigation in addressing increased impacts created by ever increasing boating activity, and mitigation as impacts occurred. Mr. Singer responded to the Board on ONRS designation and the ability to mitigate.

Mr. Phil Pearl, regional director of the National Parks and Conservation Association, explained his non-profit agency with 500,000 members was opposed to PWC use in national parks and was working for a ban in these areas. PWC were different from conventional watercraft. The industry's argument was that they were Class A motorboats, and they could not be arbitrarily singled out. He disagreed, as statistics showed. The Coast Guard did not define PWC as Class A motorboats, nor did it acknowledge the PWC's existing definition. The Coast Guard had explicitly reserved the right to regulate PWCs differently from other boats. Mr. Pearl presented more information on previous litigation regarding PWCs, on the perceived impacts of PWC noise because of the change in pitch and use patterns, regulations regarding use of snowmobiles in national parks.

Dr. Russell Long, director of the Earth Island Institute's Bluewater Network, a non-profit organization working to protect oceans, lakes, and rivers, explained his group's focus for the last year to reduce pollution from two-stroke outboards and jet-ski type crafts because they were the cause of more toxic pollution to U.S. waterways than any other single source. Over the next 50 years, EPA in its 1996 marine motor regulations determined that 20 billion pounds of hydrocarbons would be discharged into American rivers, lakes, and reservoirs. There were no good long-term studies on the effects of such a catastrophic discharge on the marine environment. Dr. Long presented more information on his organization's work and the results of his research on evaporation, engines, and fuels.

Chairman Delaney asked if one person could speak on behalf of the concessionaires, rather than having them speak individually.

Mr. Bob Hassett, Action Watersports, indicated he would not want to speak for others in the business. What was on the table was his livelihood, his savings, and his investment. He suggested that there was a misperception that jet ski operators or concessionaires had no concern for the Lake. This was his home. His final project in school was preparation of a business plan for a PWC concession. He had been in business for nine years, and he would hate to have it taken away for what he saw as no apparent reason. A PWC ban would render his equipment worthless. He now had $100,000 in watercraft; a ban would drop that to $30,000. If the evidence really showed him that PWC were causing harm, it would be easier for him to give them up. Over 10,000 people were put on PWCs last year. There were no accidents. He ran a tight ship, and he provided education to users. Safety could be addressed in another way than a ban. On the subject of emissions (NOx and hydrocarbons), PWCs were not the real problem. On the issue of noise, the Shorezone Partnership group worked together to come up with a suggestion for a buffer zone. He did not think that TRPA really wanted to eliminate this form of recreation that had become so important to the recreating public.

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Mr. Ryan Forville, owner of H2O Sports at Round Hill Pines Beach, explained he had taken over the FWC rental business from his father. A ban would affect him and his family and would take his livelihood away without substantiating fact. This entire process had put a damper on the industry, and his industry was being linked with a threat to the environment. Numbers were all different, and he urged the Board not to ban PWCs but to do further research into exactly what the specific impacts were. He was in the Lake every day during the summer, and if he knew there was gasoline in the water, he wouldn't be in the water.

Mr. Steve Gadsby, operator of Lakeside Marina, concurred with Mr. Hassett's comments. He turned his machines over every two years; if there were a better product, he would buy it. He was not convinced by all the testimony that PWCs were polluting the Lake any worse than anything else. He loved the Lake and had lived here since 1979. It was his livelihood.

Mr. John Palivoda, with the California Motorcycle Dealers Association, noted this proposed ban and its implications would affect the Association's dealers, its employees, and other jobs dependent on PWC use. The dealers he represented were offering legitimate recreational activity for families and individuals who might not otherwise be able to afford a larger, more expensive vessel. Dealers could be more proactive in efforts to address the noise perception problems through public awareness efforts. Laws were being proposed in California to deal with issues of licensing and misuse of water craft.

Mr. Dale Anderson, a Tahoe resident, suggested there was a lack of information on PWCs. There were two sides to the coin, with both sides having conflicting information. He felt there needed to be proof on what was happening. If the Board wanted to focus on zero tolerance, it needed to look at golf courses, on the Park Avenue project. Earlier meetings on the shoreline came up with a middle ground approach; now it appeared there was a recommended ban. This had occurred without public input. He was frustrated with the process.

Mr. Timothy Manning, a retired Tahoe homeowner and PWC owner, explained what he had done to his machine so it would be clean. His boat used 1.5 gallons per hour. He opposed a ban and would suggest instead a smog check for all two- or four-cycle engines with a decal put on the boat to certify proof that the boat would run well at altitude.

Mr. Mark Sentryz, with Kings Beach Aqua Sports, explained he replaced his 12 PWCs every year. He would replace his current equipment with newer engines. He had seen no Sheen on the Lake during his operations. He hoped the manufacturers would use new available technology. He had 10,000 families that rented from him every summer. They loved the activity. He operated from 9:00 a.m. to 4:00 or 5:00 p.m., depending on the wind. He could live with a buffer zone to address noise concerns. Mr. Sentryz responded to Board member questions about the turn-in on his machines and costs. On the question of enforcement, there were rules on the books now that were strong enough to eliminate safety concerns; enforcement was not what it could be.

Mr. Joe Arcwch, property owner and jet ski driver, questioned the need for technical bureaucrats from another country to give testimony that would assist
in the imposition of a ban in this country similar to their own. He had attempted without success to capture raw fuel from his PWC. There was none. The credibility of the environmental movement was undermined everywhere and he suggested the Board not be guided by actions and prohibitions achieved by movements elsewhere.

Mr. Joseph Rufo, chairman of Skyland GID, and a professional registered engineer, suggested that since earlier meetings he had been gathering information on the subject to make up his own mind from the standpoint of water filtration at Cave Rock. These past two meetings he had attended he was hearing the same rhetoric he had heard four years ago. He would like to see more information from the engine people. He was concerned about contamination.

Mr. William Mckissock, speaking for himself, suggested there was no confusion in his mind. Running out the experts' numbers on fuel, emissions, and number of water craft to a logical conclusion, he figured the amount of pollutants going into the water or air was hazardous to the planet. Mr. Mckissock presented his mathematical equation results.

Ms. Jan Brisco, on behalf of the Tahoe Lakefront Property Owners Association, concurred with Gregg Lien's earlier statements. His comments were based on the concept of reason over the long term. She represented the full range of interests on PWC from a ban to no restrictions. The financial hardship of a ban would apply not only to concessionaires, since many property owners on the shoreline had invested in these crafts themselves. They would likely invest in new and safer technology if it was available. Basinwide financial implications needed to be studied too. Navigation was also an issue. To restrict a certain type of boat was considered by many as a taking. Rather than protracted legal battles, she urged the Board to consider putting money toward a study and to look to the Shorezone Partnership group for its recommendations.

Mr. Robert Galvin, Rear Commodore of the South Lake Tahoe Yacht Club, read and submitted for the record a letter from the yacht club board in opposition to a ban on boating rights on Lake Tahoe. The board's concerns related to TRPA's inability legally to impose a ban on Lake Tahoe, the lack of scientific fact on environmental impacts, recent failed court actions to ban watercraft, and the need for TRPA to work with the boating industry and community to resolve the matter. He urged a reasonable and responsive approach to resolving the matter other than banning PWC from the water.

Mr. Richard Reinhardt, for the International Jet Sport Boating Association, a non-profit association of small water enthusiasts committed to the safe and responsible use of PWC, explained his association had 23,000 members. The Association had and would agree to continue to work in consensus with TRPA on the issues. Tahoe was one of the most treasured public waterways and deserving of protection. Public access to the Lake for recreation was also important. Mr. Reinhardt commented on the Coast Guard's treatment of PWC and Coast Guard certification requirements and discussed treatment of PWCs in other waterways and sanctuaries.
Mr. Steve Goodall, representing the Tahoe Miss Association, a group of people who grew up and still lived at Tahoe, explained that Tahoe had over the last 40 years undergone the worst environmental damage. He was concerned with the future, and his group agreed the problem needed to be addressed. His group wanted to take a proactive position on stopping environmental pollution. There was no reason to continue to pollute when there was technology available to clean up the problems. His group was working actively to see that clean fuels were used in boats. The preservation of Tahoe's environmental integrity was the number one priority.

Mr. Larie Trippet, owner of North Tahoe Motorsports in Incline Village, suggested it was important to look at concentrations in the discussion of toxics. There were many polluting sources from boats, to cars, to snowblowers and lawnmowers. The testing of water for drinking water safety was the valid test. Data for ten years showed that pollutants being discussed today were undetectable in the Lake's water. If it were detectable, he did not think that their source could be determined.

Mr. Russell Anders, a vacation home owner at Tahoe, explained he spent 30 to 40 hours on Tahoe in the summer. He did not want to see it degenerated in any way. The issues here involved PWC and also TRPA's credibility and integrity, and how it dealt with the former would affect the latter. Mr. Anders compared speculation regarding fuel pollution and noise with scientific and empirical data. Mr. Anders presented in detail his technical findings on studies of air quality, visibility, emissions, water quality, and other aspects related to the PWC issue.

Brief discussion followed between Dr. Morgan, Mr. Laxalt, and Board members on an EPA study done in 1973.

Ms. Monique Laxalt Urza, noted she worked as an assistant for Board member Steve Wynn and had put a lot of time into this issue. She had worked on much of the research for Mr. Wynn and responded to the discussion on data regarding scavenging of emissions into the water.

Mr. George Finn questioned whether TRPA had the authority to pass ordinances and ban anything. The TRPA Board was not elected and, as such, did not have the ability to pass laws covering the use of the air, land, and water in the Tahoe Basin. The majority of the Board was appointed.

Dr. Stephen Scott referenced his earlier comments and described negative changes to water quality that he had seen in his kayak rides over the years between Cave Rock and Zephyr Cove.

Mr. Jim Hildinger, a South Lake Tahoe resident since 1931, spoke about the history of Lake, the damage done over time by man's activities to the Tahoe watershed and to air quality. The Lake itself had no control over what man would do to it. The Board's decision and vote today would bring about a change to the Lake's character and nature. He hoped it would be a change that would be desirable.

Mr. Sherman Walker, representing himself, explained his vacation experiences at Tahoe during the summer and his boating and jet ski experiences. He wanted
Tahoe protected for his grandchildren and later generations. Not much had been heard about applied science. None of the science discussed today had been applied to the Tahoe Basin. That was needed.

Mr. Roy Hampson, civil engineer and former Lahontan executive officer, spoke on the prohibition established in the Tahoe Basin on discharging sewage into Lake Tahoe. Tahoe was not polluted but it was being degraded due to man’s activities. If TRPA was going to get into regulation in this area, it needed to recognize the level of resources that would be needed for enforcement. If the Board was going to consider a prohibition, it should do so with a reasonable time frame attached to it.

Chairman Delaney closed the public comments and took a short recess. The meeting reconvened at 9:55 p.m.

Principal Planner Gordon Barrett, coordinator of the staff report mailed to the Board, noted there were copies of this administrative draft in the room for review by the audience. The report found there were significant and potentially significant impacts in several areas. Staff continued to believe that after hearing the day’s testimony, in the areas of water quality, air quality, noise, recreation, and safety, there were significant and potentially significant impacts. As evidenced by the six binders of written public comments (available for review at the meeting), this was a very controversial issue. Mr. Barrett went through his handout which set forth staff’s recommendation regarding motorized watercraft impact, noting that the recommendation addressed air quality, water quality, noise, safety, recreation, fish, and wildlife impacts. This was a "doable" recommendation. Staff had discussed this with state and local agencies to see what effect a ban would have. A ban by summertime with the cooperation of all affected agencies was not possible. There also were other work programs which had been and would be delayed by efforts to impose a ban. Preparation of the administrative draft required 700 to 800 staff hours and seven to eight staff members to research and complete. Other factors that were affected by the additional work load and shift in work assignment were the ‘96 threshold evaluation, the BIP, the upcoming Presidential summit, and the budget. These factors all needed to be taken into consideration in the decision-making process. Staff’s recommendations were presented in that context. Another factor was fairness to all players involved and looking at the facts as they were known.

Mr. Barrett summarized the handout and recommended actions for upcoming Board meetings: March - a resolution requesting assistance from affected state and federal agencies to help resolve issues related to motorized watercraft; June - preparation of findings, environmental documents and ordinances to phase out use of carburetted two-stroke engines in the Tahoe Basin effective June 1, 1999. The ordinance would also address a no wake zone, hours of operation, and a ban of motorized watercraft in tributaries. The shoreside consensus process would examine an Inspection and Maintenance program, an air quality mitigation fee, a limitation on the number of motorized watercraft, a requirement for use of bilge sponges, shoreside BMPs and other mitigation, and restrictive noise standards. The 1997-98 work program would address an educational program and MOU program for enforcement and the need for cooperation among local governments in implementing mitigation measures.
The Board members discussed modifications to the proposal, as follows: inclusion of an analysis on impacts of MTBE in the study of motorized watercraft, water quality testing program under every marine gas pump at Tahoe once a month through the summer, protection of environmentally sensitive areas (Emerald Bay, Bliss State Park, Sugar Pine Point State Park, East Shore areas used by the public), phase-out by 1998 (not 1999), asking the consensus group to also consider limits on hours of operation, a limit on the number of commercial watercraft until regulations were adopted and establishment of a boating registration program. The Board also discussed whether staff had considered a temporary ban until further studies could be completed.

Agency Counsel Rachelle Micelle reminded the Board that what was on the agenda for action was direction to staff to prepare the necessary environmental documentation and potential future ordinances governing use of personalized watercraft or other motorized watercraft. The Board’s action needed to be done in the context of that direction. If the Board wished to reiterate that the deposition of unburned fuel was a hazard to Lake Tahoe it could be in the context of giving staff direction.

Mr. Fagan suggested the February 25 date on staff’s handout indicated its recommendation had been prepared before hearing any of the day’s testimony. The phase-out of two-stroke carbureted engines was unacceptable to the National Marine Manufacturers Association. It was based on an assumption that technology was available as a substitute. There was no basis for a phase-out and no scientific nexus for imposing such a ban at this time. He urged commission of a study to ensure the right decision was being made. He recommended a 600 foot wake zone. His organization would object to anything that limited the right of boats. He agreed with the need to protect sensitive environments within the lake.

Executive Director Jim Baetge noted that the date on the proposal submitted at the meeting (2/25/97) was an error. The rewrite before the Board was completed an hour or so ago.

Mr. Laxalt commented the law was the law. As far as the science put forward, there had been nothing from the industry to refute all the studies that showed a degradation or to refute the earlier testimony on toxicity. The industry had the burden of proof that there was no effect; it had not done so. The new two-strokes, non-carbureted engines avoided environmental impact that was harmful; that was an admission from the industry that there was a toxic effect. The League’s position was that a moratorium or ban should go into effect now. If the Board was not agreeable to that, he would agree that a phase-out should go into effect in June 1998, as recommended by Ms. Neft. That would give the industry one year to get machines on the market.

The Board continued to discuss options on timing for a phase-out, potential changes in technology over time, an inspection and maintenance program and annual registration program, applying the engine phase-out to all bodies of water in the Tahoe Basin, the effect of additional assignments on TRPA’s current work program, consequences of continuing impacts until a June 1999 phase-out and setting a limit on motorized watercraft.
MOTION by Mr. Upton to approve staff recommendation with changes as follows:
1) adding under action to be taken at the March Governing Board meeting an
overview staff report on the feasibility of a registration and inspection and
maintenance program; 2) directing the consensus group to "consider" rather
than "develop" standards and programs to mitigate watercraft impacts; 3)
adding items g., h., and i. for consideration by the consensus group: limit
on hours of operation, a limit on the number of commercial watercraft until
adoption of regulations, and establishment of a boating registration program.
The motion carried unanimously.

2. Direction to Staff Regarding Completion of the EIS for the Lake
Tahoe Shorezone Development Cumulative Impact Analysis

Deputy Director Jerry Wells advised the Board that the staff recommendation on
the EIS for the Lake Tahoe Shorezone Development Cumulative Impact Analysis
was to close the comment period on the current draft EIS, to update it and to
recirculate it.

MOTION by Mr. Sevison to approve the staff recommendation on the Shorezone EIS
as stated by staff. The motion carried unanimously.

The meeting adjourned at 11:00 p.m.

Respectfully submitted,

[Signature]
Julie D. Frame
Clerk to the Board

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

These minutes were approved as
corrected on March 26, 1997.
(The vote at top of p.19 was
inaccurately stated. These original
minutes show the correct vote.)
Addendum to February 26, 1997, Governing Board minutes of the Tahoe Regional Planning Agency regarding the following agenda items:

VIII. PUBLIC HEARING

A. Shorezone Policy

1. Direction to Staff for the Preparation of the Necessary Environmental Documentation and Potential Future Ordinances Governing the Use of Personal Watercraft or Other Motorized Watercraft on Lake Tahoe

2. Direction to Staff Regarding Completion of the EIS for the Lake Tahoe Shorezone Development Cumulative Impact Analysis

These agenda items were taken up by the Governing Board after the lunch recess at 1:10 p.m. Board member Rex Hime was present for this discussion until approximately 5:00 p.m., when he had to leave the meeting because of a prior commitment. He was not present for the evening discussion and final action, which took place at approximately 10:50 p.m.

Following the meeting, Mr. Hime was advised by fax and telephone of the outcome of the Board's action. He asked that a note be appended to the February minutes showing that he concurred with the action taken by the Board on both the above matters.

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