TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

South Lake Tahoe City Council Chambers
South Lake Tahoe, California

June 28, 1995

REGULAR MEETING MINUTES

I. PLEDGE OF ALLEGIANCE

Board Chairman John Upton called the regular June 28, 1995, meeting of the Governing Board to order at 9:30 a.m. and asked Vice Chairman Drake DeLanoy to lead in the Pledge of Allegiance to the Flag.

II. ROLL CALL AND DETERMINATION OF QUORUM

Members Present: Mr. DeLanoy, Mr. Waldie, Dr. Miner, Mr. McCurry (for Nevada Secretary of State Heller), Mr. Cole, Ms. Bennett, Mr. Cronk, Mr. Westergard, Ms. Neft, Mr. Bradhurst, Mr. Savisone, Ms. Hagedorn, Mr. Wynn, Mr. Upton, Mr. Neumann

Members Absent: None

III. PUBLIC INTEREST COMMENTS

Mr. Donald Kornreich, an Incline Village resident, distributed several copies of a memo on finding an independent source of funding for achieving thresholds in the Tahoe Basin. He was particularly interested in the VMT (Vehicle Miles Traveled) threshold and stressed the importance of a detailed financial plan that assigned responsibility for erosion control and transportation improvements. A Basin impact fee would have those who create much of the air pollution and water quality problems pay for improvements. Such a fee was not unreasonable, and TRPA could not continue to rely on the states to provide the funding for solutions.

TRPA Executive Director Jim Baetge noted that staff would be bringing a range of financing options to the Board later this summer and fall. The Tahoe-Truckee Regional Economic Coalition was also working on this.

IV. APPROVAL OF MINUTES

MOTION by Mr. DeLanoy to approve the May 24, 1995, regular meeting minutes as presented. The motion carried unanimously.

V. APPROVAL OF AGENDA

Deputy Director Jerry Wells noted that the Carole Terry IPES appeal (item IX.A.) was to be continued as described in the packet material and the report on the Coordinated Transportation System Agreement (XI.A.) was to be taken up after the lunch recess.

MOTION by Mr. Cronk to approve the agenda as presented. The motion carried unanimously.
VI. CONSENT CALENDAR

Mr. Wynn asked that the First Baptist Church project (item 5) be taken off the consent calendar and act on separately.

Mr. Westergard noted he would vote in opposition to the Sierra Bouquet new multi-family dwelling and condominium subdivision (item 4) because of continuing concerns about the two-step process to approve subdivisions. He also questioned release of water quality mitigation funds for paving Amagosa Road in Washoe County (item 8). The staff summary indicated Washoe County would install roadway BMPs, yet the conditions of approval stated the County would not pay any matching funds on BMP installation.

Mr. Wynn noted he also would be voting in opposition to the Sierra Bouquet project (item 4).

Mr. Cole, a member of the Finance Committee which had earlier recommended approval of Washoe County's funding request, explained the County would maintain the road but the funding from the water quality mitigation fund would allow for road construction and the BMPs associated with them, so long as they met the proposed criteria. This request did meet the criteria; each such request for mitigation funds required individual Governing Board approval.

Mr. Westergard explained his concern came from Washoe County's earlier reluctance to accept the public roads in the Bitterbrush Subdivision. He was satisfied with the request if the Finance Committee had agreed to it.

Ms. Bennett asked that item 1 (amendment of the 1994-98 list of public service facilities to add Edgewood Water Company new water tank and ozonation facility) be acted on separately.

MOTION by Ms. Neft to approve items 2-4 and 6-9 on the consent calendar. The motion carried with Mr. Westergard and Mr. Wynn voting "no" on item 4 (Sierra Bouquet).

(Following are items approved on the consent calendar: 2. Edgewood Water Company, New Water Tank and Ozonation Facility, Douglas County APN 07-040-03; 3. Lake Tahoe Unified School District, Major Plan Revision, Public Service Facility Addition, Physical Therapy Building, South Tahoe Middle School/Al Tahoe Elementary School, El Dorado County APN 25-010-82; 4. Sierra Bouquet, New Multi-Family Dwelling and Condominium Subdivision (6 Units), Washoe County APN 127-023-05; 6. U.S. Forest Service and Douglas County, Upper Cave Rock Water Tank Replacement, Douglas County APN 03-090-04; 7. Brockway Shores Buoy Field Modification, Placer County APN 90-330-26; 8. Washoe County, Request for Release of Water Quality Mitigation Funds ($25,000) to pave Amagosa Road; 9. Ellis Island Cafe, Commercial Addition, 4093 Lake Tahoe Boulevard, El Dorado County APN 29-067-02)

See next page for correction on action on the consent calendar.
1. Amendment of 1994-1998 List of Additional Public Service Facilities to Add Edgewood Water Company New Water Tank and Ozonation Facility, Douglas County APN 070-040-03 (consent calendar item 1)

Ms. Bennett questioned whether the proposed storage tank would remain in existence.

Deputy Director Jerry Wells explained that Ms. Bennett had most likely wished to act separately on consent calendar item 2 (the project), not item 1 (amending the public service list to add the project).

Ms. Bennett agreed that her concern was with item 2, the project itself, not amendment of the public service list.

Chairman Upton noted a correction to the record to show approval of item 1 in the motion on the consent calendar and removal of item 2 for separate action. The consent calendar approval would include amendment of the 1994-1998 List of Additional Public Service Facilities to Add Edgewood Water Company New Water Tank and Ozonation Facility, Douglas County APN 07-040-03 (Resolution No. 95-13).

2. Edgewood Water Company, New Water Tank and Ozonation Facility, Douglas County APN 07-040-03 (consent calendar item 2)

Associate Planner Jim Allison explained that the existing storage tank would remain.

Ms. Bennett suggested that the Board had in its earlier compromise motion with Edgewood Golf Course and the Park Cattle Company agreed there would be no projects approved in this location until the areawide drainage program was implemented or underway.

Mr. Wells explained that the specific condition to which Ms. Bennett referred related to the proposed hotel complex, not utility-type projects that would normally come forward.

Mr. Gary Midkiff, representing the Park Cattle Company and the Edgewood Water Company, explained that the earlier commitment provided that no hotel-related projects would proceed without the stormwater package; that package was underway now, and all parties were strongly behind the individual property elements and the cooperative areawide elements. Mr. Midkiff presented more information on the ozonation facility, explaining it was primarily designed to serve existing users for fire flow and for ozonation.

MOTION by Dr. Miner to approve the Edgewood Water Company water tank and ozonation facility. The motion carried unanimously.

5. First Baptist Church of Tahoe City, Church Reconstruction, Special Use Determination, Placer County APN 94-060-03

Mr. Wynn questioned the letter in the packet material expressing concern about the increased uses of the church facility during the week and whether these
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were considered commercial activities in a residential neighborhood.

Senior Planner Lyn Barnett explained the uses were accessory to a church and were permitted; the project proposed removal of a 30-year old building and replacement with a more modern, functional facility that would increase the size by approximately 875 to 1,000 square feet.

Architect Dave Shelton described the classroom configuration and the variance granted by Placer County to meet parking needs. All these issues were raised at a conditional use hearing in Auburn, at which time the Hauserman’s letter was also discussed.

Mr. Waldie suggested that this type of permit should more appropriately be handled at the local level under an MOU and not involve TRPA.

Mr. Wells explained that, while an MOU with the local government was an appropriate mechanism to handle such projects, the local jurisdictions needed sufficient staff resources to take on these functions. These MOUs were in the works with local governments, and staffing impacts were a key issue in their implementation.

Mr. Upton suggested staff prepare a list of the types of activities that could be handled at the local level for consideration by the Tahoe Basin Association of Governments (TBAG).

MOTION by Mr. Sevison to approve the First Baptist Church project as proposed. The motion carried unanimously.

VII. PUBLIC HEARING AND ADOPTION OF ORDINANCES, RESOLUTIONS, AND PLANS

A. Amendment of Plan Area Statement 013, Watson Creek (Conservation), and Plan Area Statement 014, Cedar Flat (Residential), to Add Placer County APN 092-010-18 to Plan Area 014

Senior Planner Andrew Strain presented the summary of the proposal to amend an urban boundary to include 6.2 acres of a 26.5-acre parcel presently in a conservation plan area (013) in an adjoining residential plan area (014). The applicant was proposing to restore 15,500 square feet of existing coverage and to retire a minimum of 12,750 square feet of potential land coverage, consistent with the required threshold improvement findings adopted by the Board in December. This was the first request for amendment to an urban boundary under the process adopted by the Board in December. The Advisory Planning Commission (APC) and the staff recommended approval. The applicant’s intent was to develop additional residences on the site after completion of the IPRS and project review processes. The configuration of properties would ultimately result in three larger lots, instead of one large lot and two small ones. Today the applicant would be eligible to construct a summer home on the 26-acre parcel; he wished to construct a permanent single family home and would have to compete for an allocation. Each of the three parcels presently had a development right. There was not an increase in development over what was there today, although there was a change in form (a permanent v. a summer home).
Mr. Strain responded to Board member questions about retention of public access; potential for additional residential development; TRPA goals relating to infill of residential areas v. expansion of urban areas; whether the improvements offset the environmental impacts of development; the prohibition for future multiple family, affordable housing or subdivision development potential; retention of the public service and outdoor recreation uses on the 20-acre parcel; and special policy language to prohibit or restrict future subdivision or residential uses on the 6.2 acres. The Board also discussed findings, the adequacy of the tradeoffs, the significance of the policy implications, the recognition of ongoing programs to acquire already existing lots elsewhere in the Basin, the importance of establishing a clear record that approval of the urban boundary amendment would not create any significant additional development rights, and siting of a residence on the 6 acres.

Ms. Rochelle Nason, of the League to Save Lake Tahoe, suggested this was bad planning for Lake Tahoe because it expanded the urban boundary; it violated TRPA policy and increased the development potential by allowing a year-around residence over a summer home. The policy issue was whether TRPA wanted to see larger homes scattered throughout the forest or infill of development in existing urban areas, TRPA’s current policy. From a fire and forest health perspective this could not be a worse idea. The proposal called for a theoretical decrease in potential coverage but a vast increase in actual coverage. This was not a water quality or soil conservation benefit. The League urged the Board to hold the urban boundary firm.

After a short break, Mr. Strain advised the Board that subdivision standards in the Code would prohibit the two smaller lots and reconfiguring them so they would be big enough to have a guest home. They would not pick up an additional development right in a reconfiguration.

Ms. Nicolle explained that this matter and a potential deed restriction would be taken up at the time there would be a reconfiguration. That was the time to clarify there was no right for guest homes.

Mr. Floyd Gori, an adjacent property owner to the subject amendment, spoke in favor of the proposal and suggested the nearby residences would not impede pedestrian access to the conservation portion of the property.

Mr. Neil Eskind, representing the applicant, Joe Lanza, responded to points raised in the discussion and suggested each urban boundary amendment should be considered based on its individual facts. What was done on this application would not affect any other proposal. He distributed a map showing an error in the mapped location of Dollar Creek and discussed the need for a variance procedure and flexibility, the relation of the urban boundary to the hydrologic area and drainage system, the access to the site as shown on a photograph, the intent to achieve the best possible siting and not an increase in houses or guest houses, errors in the initial drawing of the Plan Area Statement boundary, Mr. Lanza’s intent to offer the appropriate public agency the right to build a public access walking path along the creek, and the addition of special language regarding consideration of any other uses on the conservation property.
Mr. Joe Lanza, the property owner, explained the 18-month process to get to this point and costs incurred getting the PAS amendment before the Board, the history of events since his purchase of the property in 1992, the current and more damaging uses now permitted in PAS 014, his intent to site a residence on the existing road, and his intent to provide an easement to foot path by the creek. Mr. Lanza responded to Board member questions.

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

The Board members and staff discussed the policy issue of whether the tradeoffs were sufficient to warrant amendment of the urban boundary and the rules provided in the Code.

Mr. Cronk spoke in favor of staff's recommendation, suggesting the applicant was trying to do what was right to accommodate TRPA's responsibilities and had agreed to put in a pathway along the creek. In December the Board adopted the criteria that permitted the amendment, and it was not appropriate for the Board at this time to get into the detail of how big the house should be, where it should be on the property and whether it was a summer residence or year-round home. TRPA was close to overstepping its responsibilities. He was satisfied from an environmental point of view that approval was a win/win situation. He was very impressed with the staff's work, the AFC deliberations, and the recommendation.

MOTION by Mr. Cronk to approve staff's recommendation for amendment of the urban boundary.

Ms. Nicoll advised the Board that the public access trail that Mr. Lanza had described was not now a part of the PAS amendment under consideration. If the Board felt this was significant, it could be added as a requirement.

Mr. Waldie expressed concern that the Board was sending a signal to the staff that a consequence of mitigation or quid pro quo for an extension of the urban boundary could be as minimal as what was proposed here. The urban boundary policy was such an extremely important one that any derogation of it or infringement of it should require a very severe burden on the part of the applicant. To approve it and thereby to send a message to the staff that a minimal improvement in a standard was a sufficient consequence to allow an expansion of the boundary would be bad policy.

Mr. Bradhurst explained that good planning needed to be flexible as new information became available or changes were needed. It appeared that the conservation designation in this case was a function of ownership as evidenced by the map. Many of the conservation plan areas around the Basin were most likely owned by public entities. In the future review of Plan Areas, the Board needed to recognize that urban boundaries were not sacred. In this case, the urban boundary was perhaps drawn in the wrong place and should be revised based on required findings as set forth in the ordinance. He supported Mr. Cronk's motion.

Ms. Nicoll explained that the Board could not deed restrict the property owner to not apply for a future Plan Area Statement amendment or restrict a future Board's discretion to approve Plan Area amendments. The Board could,
however, add a condition that any development of the 6-acre parcel would be conditioned upon an open space deed restriction placed on a portion of the parcel left in PAS 013, with the exception of the five-foot easement Mr. Lanza was intending to donate. This would be added to Finding 1.60.

Ms. Bennett explained that with this kind of a condition, as suggested by Counsel, she felt there was sufficient tradeoff to proceed with the amendment.

Mr. Sevison agreed with Mr. Cronk and suggested that there was not a lot of thought given in the drafting of the urban boundary since it did not actually follow the hydrologic boundary. It followed the property line. The area in question was always zoned residential by Placer County. He encouraged approval of the amendment.

Mr. Wynn suggested that simplicity and consistency were very important for TRPA to consider in working with the public. People needed to know what to expect from TRPA. In this application, staff was showing flexibility and balance in its approach and was looking to the Board for policy guidance. The conflict between being flexible and responsive and consistent in establishing expectations for the public and good planning was a mighty one. He was greatly influenced by the arguments made today, and TRPA was where people needed to come to achieve balance. He supported the application, not just because of the tradeoffs but because the boundaries were not brilliantly drawn initially. As a matter of policy, this was a good thing for the Board to do, and there were environmental benefits; the tradeoffs justified the approval.

Mr. Cole suggested the decision really centered on whether there were sufficient tradeoffs to justify the change. He felt there were more than enough to approve the adjustment. The coverage reduction, the potential development reduction in terms of campsites was significant, as was the offer of public access. Staff had done an excellent job and had worked hard for a mutually acceptable goal.

Ms. Hagedorn questioned the message being sent to lot owners within the urban boundary in the Basin who had been waiting in line to develop. She was persuaded by the applicant that there may be a good case for building a family home. She was wrestling with the tradeoffs, however; and Mr. Lanza's statement of intent to provide public access to the trail was important to her, as was the requirement for open space designation on a large portion of the property.

The Board members, Mr. Lanza, and staff discussed the initial drawing of the boundary line and whether it was drafted in error. Mr. Strain explained that the urban boundary line was intentionally drawn at the back of the existing subdivision. The location of the creek had no bearing on where the line was drawn. Staff did not feel that the urban boundary line as drawn was a mistake and was not comfortable with having the Board make that finding.

Mr. Lanza spoke in favor of his plan to revegetate the road, his offer of the footpath easement to the Conservancy or NTFUD, and his agreement to retain the current conservation uses for the 20 acres remaining in PAS 013 and the condition requiring public access and a trail on the stream. He would not, however, offer to build the trail.
Dr. Miner noted that the Board in December established an urban boundary amendment process in recognition of the fact that lines may have been incorrectly drawn. Staff had the policy to use its discretion to work with applicants to develop proposals for the Board's consideration. That had been done, and a positive precedent had been set. The applicant had provided tradeoffs in the form of restoration and a footpath easement. These were positive steps, and there was no environmental threat. He favored approval.

Mr. Westergard expressed concern with the policy implications of approval. He did think, based on the testimony and staff's testimony of how this met the criteria, that the Board could proceed. The record to date would assist in the future; there had been some pretty significant direction given to staff that would translate into interpretation of policy. When the Board was faced with future requests, he would like to see a more specific definition of benefits being gained. The concessions made by the applicant on public access and other factors gave him the comfort to proceed, but this approval would not be establishing a precedent for the future. This was a very critical point. He noted the staff clarification that there would be no additional residential units permitted and there was a limit to four (not six) units.

Mr. McCurry suggested this amendment was a positive step for the environment and provided a good balance of private and public interests, especially with the commitment for the trail and Mr. Lanza's intent with regard to PAS 013.

Mr. Cronk noted that his motion was to include the two provisions (the trail easement and uses in PAS 013).

MOTION restated by Mr. Cronk to make a Finding of No Significant Effect for the amendment of the boundary between PASs 013 and 014 based on the information contained in the staff report. The motion carried unanimously.

MOTION by Mr. Cronk to make the findings required by Chapters 6 and 13 of the Code of Ordinances based on the rationales set forth in the staff report with the two conditions as discussed relating to the trail and to the uses remaining in PAS 013. The motion carried unanimously.

Ms. Nicollle asked that the ordinance be amended to incorporate the suggestions included into the earlier motion. Specifically, to add in Section 1.60 at the end of the paragraph (page 126 of the packet) "...and provided that: 1) any additional residential development which may be approved shall occur only on the portion of the existing parcel which is to be located into PAS 014; and 2) applicant has agreed to hold open for ten years an offer to any public agency for a five-foot wide public footpath easement on the south side of the creek; and 3) the applicant shall record a deed restriction restricting the portion of the parcel to low density uses allowed in PAS 13 and recognizing the five-foot wide public foot path." Ms. Nicollle also recommended a new finding 1.70 to state, "Mitigation for the expansion of the urban boundary is based on the unique circumstances of this individual property and should not be used as a precedent for any future urban boundary expansion."
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Chairman Upton read the ordinance by title:

An Ordinance Amending Ordinance No. 87-9, as Amended, by Amending the Regional Plan of the Tahoe Regional Planning Agency, as Amended; Amending Plan Area Statement Overlay Maps to Change Boundary Between Plan Area Statements 013 (Watson Creek Conservation) and 014 (Cedar Flat Residential), and to Create a Special Area #1 in PAS 014; Amending Plan Area Statement 014 to Amend Special Policies; and Providing for Other Matters Properly Relating Thereto

MOTION by Mr. Wynn to adopt Ordinance No. 95-4 as amended. The motion carried unanimously.

Chairman Upton recessed the meeting from 12:40 to 1:45 p.m. for a lunch break.

B. Amendment of Chapter 22, Height Standards, Regarding Additional Height for Certain Buildings

Principal Planner Gordon Barrett presented a summary of the current ordinance provisions requiring a 5 percent coverage reduction for each foot of additional height and the Lake Tahoe Community College’s (LTCC) request for two feet of additional height for a theater without the associated 128,000 square foot reduction. The LTCC project was currently under construction and was hoping for a more reasonable approach to the additional height because the project site was a large one, it was a public service facility, and the site was not visible from a scenic roadway. Some APC members felt that the height provisions should be looked at as a whole and not on a project-specific basis, and others felt that this one situation should be addressed on its own. The APC voted 15 to 1 to permit additional height for public service projects not visible from scenic roadway units. The additional amendment proposed by staff would add a sliding scale of maximum land coverage reduction percentages for projects located on sites greater than 20 acres in size.

Ms. Rochelle Nason, Executive Director for the League to Save Lake Tahoe and adjunct instructor at LTCC, suggested that allowing LTCC to proceed without the coverage reduction was inconsistent with the Board’s action on the earlier PAS amendment, and the findings could not support the additional height without some coverage reduction. Should coverage need to be focused in this area, it could be transferred in. The premise of this amendment was that the height was essentially a right and it was wrong to insist on an environmental improvement in exchange for it. That was wrong and not the intent of the ordinance. The League did not agree with the premise that the larger the parcel the lower the percentage of coverage that should be given up.

LTCC President Guy Lease explained LTCC knew the building was over height from the start because it was a teaching theater and needed the additional height for drama facilities. Staff had earlier advised that digging into the ground for construction was not permitted, and the absolute ceiling was 42; LTCC needed 40 feet of height. LTCC objected to the 5 percent reduction at the time the permit was processed and was advised to work with the staff, the APC, and the Board to come up with something more reasonable than the current formula prior to completion of the facility. Work had been underway on this
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particular issue for over a year. LTCC was within the 42 feet, and a 3-acre reduction in coverage on the site was too onerous for two feet of height. The building was under construction; upon completion it would be 3 feet shorter than the adjacent building; the facility was in the middle of a large site (164 acres) and was not visible from Highway 50. No scenic views were blocked, and there were no negative scenic impacts, thus nothing to mitigate. Reducing 28,000 square feet of coverage was certainly a financial burden, likely in excess of $5,000 if the coverage had to be purchased.

The Board members, LTCC representatives, and staff discussed the building height and bulk, coverage reductions, whether to require major mitigation without apparent associated impacts, the intent to ultimately focus coverage on the LTCC site for community and governmental/public service uses, the importance of the LTCC as a teaching institution and participant in the local community, the need for flexibility in planning for the area, the impact on future applications should the ultimate amendment of the height regulations not permit what was being proposed, and the earlier need for the LTCC to proceed with the project so as not to lose funding.

Ms. Bennett indicated she could not support the proposal. The Board earlier had talked about the importance of consistency and the message being sent by TRPA to the public. If she were the owner of a casino or was a private developer, she would likely not stand a chance of being able to get additional height without having to do some significant mitigation. She was disturbed about the kind of message that was being sent that one standard was okay for the public sector and another for the private sector. She urged the Board to wait in approving this until the ordinance as a whole could be looked at. There should be some form of required mitigation.

Mr. McCurry suggested the purpose of the standard was to protect visible impacts. In this case, there was no visible impact, and he concurred with LTCC that the required reduction was in fact a penalty, not a mitigation. There was nothing to mitigate.

MOTION by Mr. McCurry to make a finding of no significant environmental effect and the findings required by Ordinance No. 87-9 and Chapter 6. The motion carried on the following vote:

Ayes: Mr. Wynn, Mr. Sevison, Mr. Bradhurst, Ms. Neft, Mr. Waldie, Mr. McCurry, Mr. Cronk, Dr. Miner, Mr. DeLanoy, Mr. Westergard, Mr. Cole, Mr. Upton
Nays: Ms. Bennett, Ms. Hagedorn
Abstain: None
Absent: None

MOTION by Mr. McCurry to adopt Ordinance No. 95-5 to permit additional height for public service buildings which are not visible from Lake Tahoe and which are not located within or are not visible from designated scenic highway corridors (Subsection 22.4.A(3)) but excluding an amendment that would permit additional height for reduced land coverage (Subsection 22.4.A(2)).
Chairman Upton read the ordinance by title:

An Ordinance Amending Ordinance No. 87-9, as Amended, of the Tahoe Regional Planning Agency; Amending Chapter 22 of the Code of Ordinances Relating to Height Standards, and Providing for Other Matters Properly Relating Thereto.

The motion carried on the following vote:

Ayes: Mr. Sevison, Mr. Bradhurst, Ms. Neft, Mr. Waldie, Mr. McCurry, Mr. Cronk, Dr. Miner, Mr. Delaney, Mr. Westergard, Mr. Cole, Mr. Wynn, Mr. Upton

Nays: Ms. Bennett, Ms. Hagedorn

Abstain: None

Absent: None

VIII. PROJECT REVIEW

A. Altwater Trust/Schumacher, Modification of Permit Conditions for a Multiple-Use Pier Expansion Permit, Washoe County APNs 130-230-16 and -17

Deputy Director Jerry Wells noted that staff had distributed a June 27 errata sheet to the Board members outlining changes to the staff summary.

Associate Environmental Specialist Doug Smith explained the past action by the Board in November to approve a multiple use pier with an extra boat lift and the conditions that required removal of stairs and a railing on a boat house as a means of reducing the nonconformity of the structure. The applicant wanted to change those conditions and in December submitted an application for revisions. Notice of the proposed modification of permit conditions for the multiple use pier expansion permit was sent to neighboring property owners. Staff had been working with the applicant since that time on a project that would remove the entire boat house and would be a modification of the November approval. The proposal was to remove the boat house entirely, to add 30 feet to the end of the pier, to take out the extra landings (total reduction 192 square feet), and to add two boat lifts on the end, one jet-ski lift, and two catwalk staircases to the Lake. The proposal would bring the pier into compliance with the height and width standards for a single use pier. The applicant proposed to permanently restrict the two adjoining properties to the two buoys currently in existence. Mr. Smith explained the purpose for and contents of the errata and the fact that the permit and its conditions approved in November had never been acknowledged by the applicant.

Mr. Waldie questioned the adequacy of an earlier 1994 notice to affected property owners for the Board's action on the modifications of permit conditions for a multiple permit expansion permit issued by the Board. This notice was grossly insufficient. Mr. Waldie questioned whether, as outlined by the applicant's attorney in a January 24, 1995, letter, a new application had been submitted and the pending application withdrawn. He questioned what notice was sent out to affected property owners regarding the proposal before the Board today.
MR. SMITH explained that a formal withdrawal of the application never occurred; staff amended the application and never required another application or formal withdrawal. The latest notice was for modification of permit conditions for a multiple-use pier expansion permit issued by the Board.

MR. WAILDIE suggested that the notice was terribly deficient and he questioned whether there was a formal application for the proposal before the Board today. Was the notice sufficient to withstand a legal challenge?

Agency Legal Counsel R. J. Nicolle stated that this style of notice had been the practice of TRPA for many years. It was adequate.

MR. UPTON suggested that the Board needed to review the notice issue in the context of a policy discussion in the future.

MR. SMITH presented more information on and discussed with the Board members the scenic quality, deviation from the standards, previous enforcement activities on the site, and ownerships involved in the multiple-use situation. Staff recommended approval of the proposal with findings, and the applicant had agreed to all proposed conditions including the errata changes.

MR. RICK CAMPBELL, representing the joint applicants, Altvater Trust and Mr. Schumacher, agreed with the staff recommendation and errata. The proposal called for removal of 900 square feet of visible surface area for the boat house from the pier and the potential for four buoys (two buoys per parcel). The multi-use finding would also eliminate the potential of another pier. Under staff's recommendation and the agreed-to conditions, there would be a 30-foot extension, a net 192 square foot reduction in the footprint of the boathouse, and three low-level boat lifts. The Board could easily agree to the recommended non-degradation finding and could find there was a net benefit. He did not feel there were any notice problems, but if that was a factor, he would agree to renotice the matter for later consideration. This was a better solution than a denial and ensuing litigation. Mr. Campbell presented more information on the progression of events with the proposals. The conditions on the first approval were unacceptable, so instead of fighting it and appealing the determination, he had met with staff to come up with a mutually acceptable proposal.

MS. JAN BRISCO, representing the Altvater Family and Schumacher Family, presented information on shorezone mitigation included with the project, the physical characteristics of the facility, and the goal of bringing the structure into compliance. Upon completion, the pier would comply with the Code.

MR. WAILDIE explained he would vote against the project because the deviations from the standards of a single pier that were proposed were unique. The Board had never gone as high as four lifts. In addition to exceeding the two-lift standard, the pier was also being extended 30 feet. This in exchange for elimination of the boathouse was giving too much.

MR. BRADNURST suggested that the net impact of the proposal was positive when considering what could be placed on the parcels. He also felt the scenic quality would be improved with the removal of the boat house.

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MOTION by Mr. Bradhurst based on the staff summary and the evidence in the record to make the findings for the Alvater Trust/Schumacher modification of permit conditions for a multiple-use pier expansion permit. The motion carried on the following vote:

Ayes: Mr. Bradhurst, Ms. Neft, Ms. Bennett, Mr. McCurry, Mr. Cronk, Dr. Miner, Mr. DeLanoy, Mr. Westergard, Mr. Cole, Mr. Severson, Mr. Upton
Nays: Mr. Waldie, Ms. Hagedorn
Abstain: None
Absent: Mr. Wynn

MOTION by Mr. Bradhurst to approve the project based on the staff summary and special conditions. The motion carried on the following vote:

Ayes: Ms. Neft, Ms. Bennett, Mr. McCurry, Mr. Cronk, Dr. Miner, Mr. DeLanoy, Mr. Westergard, Mr. Cole, Mr. Severson, Mr. Bradhurst, Mr. Upton
Nays: Mr. Waldie, Ms. Hagedorn
Abstain: None
Absent: Mr. Wynn

XI. PLANNING MATTERS

A. Report on Coordinated Transportation System (CTS) Agreement

Senior Planner Richard Wiggins introduced this item and the concept of the CTS. The issue would be discussed in more detail at a later meeting.

Mr. Steve Teshara, Chairman of the South Shore Transportation Management Association (TMA), explained this project went back to last fall when TRPA along with local community groups and the proponents for four large South Shore projects (Heavenly Ski Area, Park Avenue project, Ski Run project, and STFUD) asked the TMA to facilitate a joint approach to traffic, transportation, and mitigation issues. Gordon Shaw, of Leigh, Scott, and Cleary, was retained to draft a report describing what could be done with a consolidated transit system. Other pieces included a parking management study and a legal document among the project proponents, TRPA, and other interested parties. The concept provided for phasing together the existing transit resources from both the private and public sectors and incorporating three technologies (advanced vehicle location, demand-responsive dispatch, and automatic transit information).

Mr. Gordon Shaw, of Leigh, Scott, and Cleary, used overhead projections to explain the system in more detail. His presentation covered current transit providers, limitations of current strategies, automatic vehicle distribution, dispatch information, the service area, coordination with other transportation improvements, the implementation schedule, and long-term benefits and advantages of the system.

Attorney Lew Feldman suggested the CTS would change the way business was conducted in the South Shore. The trolley operated last year demonstrated that, if transit was understood by Tahoe guests and locals, transit ridership
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would increase - the underlying concept of the program. The businesses sponsoring some of the projects felt it was in their best interest to improve transit as a form of mitigation. The benefit of pooling the resources from the four separate projects would accomplish more in mitigation than the individual projects on their own. The goal was for all players (TRPA, South Lake Tahoe, the South Tahoe Redevelopment Agency, the League, the Park Avenue proponents, the Embassy Vacation Resorts proponents, the Heavenly Ski Resort proponent, South Tahoe FUD and perhaps Caltrans and NDOT) to create alternate mitigation and agree to determine impacts of the projects on the front end so as to calculate what the financial contributions of the various projects would be. The transportation/air quality components of all projects had been studied in anticipation of the CTS, and impacts had been documented. The parties were in the process of reviewing the impacts and had agreed to the method whereby the financial contribution to the CTS would be made, in lieu of the more conventional mitigation. This was subject to TRPA and other appropriate approvals. The agreement would create a cutting edge framework. Mr. Feldman presented more information on the level of commitment of the participants and the advanced technologies to be employed in the system.

Mr. Cole asked for comments from the League to Save Lake Tahoe and stressed the importance of a positive endorsement from all participants for the CTS program as a traffic reduction program and a transit enhancement.

Ms. Nason, for the League, expressed support for the agreement and plan because it would fulfill many long-standing goals. This was not an unconditional endorsement because there were side issues. The traffic would not be reduced because the projects were so staggeringly large that there would be an increase in traffic, in spite of the CTS. This was still better from the League’s point of view, however, than building the Loop Road and other types of road improvements that would otherwise be required to mitigate the projects. While the League was enthusiastic and strongly supported the CTS, she cautioned the Board to consider the overall picture and the fact that there was only enough money invested for what was essentially a pilot or demonstration project of a few years’ duration. A great deal of community support was needed behind this. There were great risks here.

Mr. Cole urged Ms. Nason to stress the positive aspects of the CTS and not the negative, because this was such a good project for the South Shore area.

Ms. Bennett urged the League to look beyond the impacts of several projects. The increase in population projected in Douglas County, Carson City and Washoe County would have a very profound effect on South Lake Tahoe and the demand for access to the Basin itself. The bigger, more general look at what was happening elsewhere was critical as well, and the League’s support and leadership in the CTS effort was needed.

Ms. Hagedorn suggested this was an exciting proposal and it fit with all the transit and clean air goals of the American Lung Association. She strongly supported it and would do what she could to assist it.

(Ms. Hagedorn left the meeting at 4:40 p.m.)
B. Extension of Project Permit(s) for Tourist Accommodation and Community Service District Projects at Fallen Leaf Lake, El Dorado County APN 21-410-11

Mr. Rick Angelocci, Chief of Project Review, presented the chronology of events since the approval of the project in 1985 and the November 1991 extension of the construction schedule until December 1996, and described the costs incurred and conditions under which the initial approval from recreation/campground to tourist accommodation uses was granted. Staff recommended Board approval of a two-year construction schedule until December 1998 for construction of the cabins and extension of the Community Service District portion of the permit until 1999. The findings for the extension would include diligent pursuit of the project or a finding that events beyond the control of the permittee prevented diligent pursuit of the project. The project if proposed today could not be approved because there was no way to convert recreation uses to tourist accommodation uses and allowing both a tourist accommodation and a single family residential use of the same structure on a seasonal basis.

Agency Counsel R. J. Nicolle explained that the June 26, 1995, letter of objection to the proposed action from Brian Stack (copies distributed to Board members) related to a project on which no construction had taken place.

Mr. Angelocci explained that, although there was some hesitancy on the part of staff initially regarding diligent pursuit, staff felt more comfortable with this finding after discussing the progression of events with the applicant.

Ms. Nicolle explained there were no legal impediments to acting on the application and there was valid reason for finding diligent pursuit in this case as well as a finding of undue hardship. Staff’s only concern related to the fact it was such an old project and was not consistent with the current Regional Plan. Staff wanted Board direction because of this. Because Agency Counsel Susan Scholley granted an extension in 1991, she presumed that staff had felt the earlier permit was vested. She had based her opinion regarding diligent pursuit, however, on her evaluation of the 1991 permit extension; she was not making a legal judgment on the earlier time period.

The Board members discussed litigation risk, grounds for denial, the need to recognize a vested right for the initial permit approval which had a seven-year construction schedule, the extent of improvements, the extent to which the project did or did not have to comply with present-day regulations, the conditions related to the seasonal use of the tourist accommodation/residential units, the extent of access during winter months, and requiring acknowledgement by the applicant that there would be no further extensions.

Mr. Tom Hall, on behalf of Fallen Leaf Lake Associates, presented information on the due diligence by the permit holder and the events outside the permit holder’s control. Part of the project (2.43 acres) was now owned by the public through the Community Service District. He had worked with staff and legal counsel to negotiate an agreement for a permit extension and mutual release that also addressed problems related to further extensions. The signed agreement would define the next few years on this matter. Mr. Hall presented more information on four instances of litigation involving the
community beach area and other events beyond the permit holder's control. All ground work had been accomplished, and time needed to allow the lots to be put on the market and to be processed. The applicant had voluntarily agreed to pay the current air mitigation fee for each new permitted structure, which amounted to approximately $2,002 per unit. The applicant also agreed that, in the event the roadway system was cleared in the winter, unit owners would be encouraged to rent in winter months as well. Public benefit included reduction in coverage of 256,000 square feet; conveyance of 2.43 acres to the public for the beach, marina and store; implementation by the CSD on operating the community project; elimination of litigation risk from the Association; and a road map for completion of the project. Mr. Hall responded to Board member questions about the rental agreements, number of rental days, and the ability to track compliance with the agreements.

**MOTION** by Mr. Sevison to approve the staff recommendation to authorize extension for the tourist accommodation units (December 1998) and for the Community Service District marina, store, public beach and parking (December 1999) with conditions as outlined in the staff summary.

Mr. Hall stated for clarification that the air mitigation fee was to be paid for all tourist accommodation units approved from today's date through December 1998.

Mr. Brian Stack, the author of the June 26, 1995, letter submitted earlier to the Board asked for clarification on the construction schedule included with the 1985 approval. The ordinance providing for such a schedule was not approved until 1987. What other document provided such a schedule?

Mr. Angelocci explained that under the preliminary injunction there was a series of ordinances and interim ordinances in place that provided a seven-year construction schedule.

Mr. Stack explained he opposed all extensions unless legal action, i.e., litigation, prevented diligent pursuit. This was TRPA's interpretation of the Compact as presented in the Ninth Circuit Court of Appeals. He had earlier argued that TRPA needed flexibility in this area. He lost the case and the sole grounds for an extension became litigation that prevented diligent pursuit of a project. He felt TRPA had misrepresented its position in the federal courts. All he had asked for was that applicants for a project extension be accorded the same policy; he was not convinced the court would allow TRPA to have an arbitrary policy with regard to permit extensions. He opposed this request in particular because the Ninth Circuit Court of Appeals established the criteria for an extension. His position in requesting an extension was that events in his particular situation were beyond his control. TRPA had argued there be no flexibility on this.

Ms. Nicolle explained that the Compact allowed for an extension of a permit. The permit would expire in three years unless there was diligent pursuit; however, the Compact specifically stated that diligent pursuit would be excused if the project was the subject of a legal action which delayed or rendered that pursuit impossible.
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Mr. Severson’s motion to approve the staff recommendation carried unanimously. (Members present: Bennett, Waldie, McCurry, Cronk, Miner, DeLanoy, Westergard, Cole, Severson, Bradhurst, Neft, Upton)

XII. ADMINISTRATIVE MATTERS

B. Appointment of Nevada Lay Member to the Advisory Planning Commission

MOTION by Mr. Westergard to approve the reappointment of Bob Jepsen to a new two-year term as a Nevada lay member on the APC. The motion carried unanimously.

(Mr. Jepsen’s term would expire the end of June 1997.)

(Mr. Severson, Mr. Bradhurst, and Dr. Miner left the meeting at 5:45 p.m.)

XIII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

A. Finance Committee

3. Approval of FY 95-96 General Operating Budget

MOTION by Ms. Bennett to adopt the budget as recommended for approval by the Finance Committee. The motion carried unanimously.

4. Revision to Resolution Authorizing TRPA to Acquire Surplus Governmental Property

Deputy Director Jerry Wells summarized the proposed resolution.

MOTION by Mr. Cole to adopt Resolution No. 95-14 authorizing TRPA to acquire surplus property in California. The motion carried unanimously.

Chairman Upton recessed the TRPA Board and convened the RTPA.

X. MEETING OF THE REGIONAL TRANSPORTATION PLANNING AGENCY (RTPA)

A. Resolution Approving Caltrans/TRPA FY 1995-96 Overall Work Program (OWP)

Senior Planner Richard Wiggins noted that since California had not yet adopted a FY 95-96 budget staff had not confirmed the funding coming into the TRPA/Caltrans overall work program. This OWP was an interim program and may have to come back in the next quarter for amendment. There was money in this program from Nevada to do a recreational traffic management study on Route 28.

Mr. Cole suggested that the title of the document was misleading ("Prospectus and Overall Work Program FY 1995-1996"), since it appeared that it was the total TRPA work program and not just the transportation program.

Mr. Wells noted that the Caltrans OWP had been incorporated into TRPA’s overall work program. He concurred with the need to change the transportation document title.
MOTION by Mr. Cole to adopt RTPA Resolution No. 95-6 approving the OWP. The motion carried unanimously.

(The Board continued on with the TRPA Governing Board agenda.)

XIII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION (continued)

B. Legal Committee Report

Committee Chairman Drake DeLaney noted there were no action items taken up by the Committee earlier in the day.

C. Capital Financing Committee Report – no meeting

D. Rules Committee Report – no meeting

E. Shorezone Policy Committee Report – no meeting

A. Finance Committee (continued)

2. Receipt of May Financial Statement and Check Register

MOTION by Mr. Cole to accept the Finance Committee recommendation to receive the May statement and register. The motion carried unanimously.

XII. ADMINISTRATIVE MATTERS

A. Three Year Strategic Plan (July 1995-June 1998) and Program of Work for FY 95-96

Deputy Director Jerry Wells noted that he had sent the Board members copies of these documents and would be proceeding with the program of work as proposed. He wanted to make sure the Board was comfortable with the document; it could be amended as time went on.

Chairman Upton directed staff to move ahead with the program of work and ask Board members in July to bring their plans and work programs with them to the July meeting for additional discussion.

XIV. REPORTS

A. Executive Director

Executive Director Jim Baetge reported to the Board on the status of the California budget and expressed appreciation for Board member assistance in the process.

Mr. Baetge advised he would be bringing the legislative package to the Capital Financing Committee in July for finalizing in September. Board members should let him know if they had any legislative requests for incorporation in the packet.
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Mr. Cronk suggested it was important for the full Board to understand the function of the Capital Financing Committee. He would like to see a report to the full Board at a future meeting.

Mr. Upton concurred and asked staff to schedule such a report in August or September.

B. Agency Counsel

Agency Counsel R. J. Nicolle reported to the Board on the status of Hellman v. TRPA, a case in which Board members were sued individually. She had filed a motion February 13 attempting to get Board members dismissed personally, and TRPA had not been successful in getting a response to the motion. Judge Reed was granting motions without giving TRPA a chance to respond, and she had recruited the California AG and perhaps the Nevada AG to write letters of protest regarding the delays.

Mr. Weistberg cautioned counsel on the wording of the letter so that it was not a protest but rather a request for consideration to be heard. Judge Reed did not do anything without careful thought, and it was important for counsel to be cautious.

Ms. Nicolle reported on the status of the Schumacher case, Stack v. TRPA, and the Preservation Council case.

C. Governing Board Members

Ms. Neft asked that the Board give consideration to scheduling a tour of the Gatekeeper’s Cabin and Museum followed by a lunch on the beach at the July or September Board meeting. The museum contained an extensive Native American basket collection and a graphic display of Tahoe in the 1870s and early 1900s. The Board could also take a look at the 64 acres.

Board members expressed enthusiasm for the suggestion.

Ms. Bennett advised the Board that on June 7 Carson City facilitated a workshop with 25 participants representing various agencies involved in the East Shore project. She especially wanted to acknowledge TRPA’s work on the project. An application for a $150,000 grant to proceed would be submitted June 29.

Chairman Upton noted that in May the Board was to have conducted performance evaluations for Agency Counsel and Executive Director. Since this had not occurred, he wanted to schedule it for a future agenda.

Mr. Upton complimented Jim Baetge for all his work in Sacramento on TRPA’s budget. It was clear that TRPA would take a hit, but the letters of support from the many parties around the Basin had been extremely helpful. Jim’s efforts at educating the staffs and legislators about TRPA had been extremely successful.

In particular, Mr. Baetge noted that Senator Tim Leslie had been very supportive.
XV. ADJOURNMENT - The meeting adjourned at 6:00 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 documents submitted at the meeting are available for review at the TRPA office, 308 Dorla Court, Zephyr Cove, Nevada.

These minutes were approved as submitted on July 26, 1995.