TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

North Tahoe Conference Center
Kings Beach, California

September 27, 1995

REGULAR MEETING MINUTES

I. PLEDGE OF ALLEGIANCE

Chairman John Upton called the regular September 27, 1995, meeting of the
Governing Board of the Tahoe Regional Planning Agency to order at 9:45 a.m. and
asked Vice Chairman Drake DeLaney to lead in the Pledge of Allegiance.

II. ROLL CALL AND DETERMINATION OF QUORUM

Members Present: Mr. DeLaney, Mr. Waldie, Dr. Miner, Mr. Severson,
Ms. Baldrica (for Nevada Secretary of State Dean Heller),
Mr. Cole, Ms. Bennett (present at 12:00 noon prior to
vote on agenda item IX.A.), Mr. Westergard,
Mr. Bradhurst, Ms. Hagedorn (present at 10:05 during
discussion on the consent calendar), Mr. Wynn, Mr. Upton

Members Absent: Mr. Cronk, Ms. Neft, Mr. Neumann

A quorum to act on California projects was not present until 10:05 a.m.

III. PUBLIC INTEREST COMMENTS

Mr. Don Kornreich, an Incline resident, distributed a September 26 memo from
him to the Board members and provided three other pieces of correspondence for
the record. One of the handouts contained excerpts from the bistate compact
to assist in formulation of a policy and mission statement. One document
contained his thoughts on the current water board transit study, one of which
was that the study was inappropriate because it had reached the same
conclusions as an earlier study. It was not conclusive on a source for
project funding. He opposed issuance of project studies without a project
funding source. Mr. Kornreich also commented on the future of the TTD's
technical advisory committee and problems with funding shortfalls, the desire
for the TRPA Board and Capital Financing Committee to start discussing the
Basin impact fee. He had requested Agency Counsel Susan Scholley to provide
an opinion on the Basin impact fee and on a parking system and parking space
bank. Mr. Kornreich submitted a letter from Roger Imseahl, of the TTD,
commenting on the MOU with TRPA on the Coordinated Transit System (CTS).

Mr. Reuben Hills, representing Mr. Robert Gardner, distributed a September 21,
1995, letter to the Board members containing a request for a Chapter 22
amendment. A 1994 proposed amendment, which would have assisted Mr. Gardner,
was still in the study phase. He urged the Board to consider this code
amendment as a priority work task.

Agency Counsel R. J. Nicolle noted this matter was not on the agenda for
action. If the Board wished to proceed with the amendment, it could direct
staff to reallocate resources and change the work program to accomplish it.
TEPA REGULAR MEETING MINUTES SEPTEMBER 27, 1995

Deputy Director Jerry Wells explained that an overhaul of all of Chapter 22 was proposed for the fall of 1996. The Project Review staff could look at the specific issue if the Board wished this one item to be moved up in the work program.

Chairman Upton asked staff to report back in October on what effect this change would have if the amendment were moved up in the work program.

Chairman Upton noted he had a letter from Nevada Secretary of State Dean Heller appointing Alice Baldrica to sit in for him at the September meeting.

IV. APPROVAL OF MINUTES

MOTION by Mr. Cole to approve the July 26 and August 23, 1995, Governing Board minutes as presented. The motion carried unanimously.

V. APPROVAL OF AGENDA

Mr. Wells advised of the following changes: 1) item VIII.B. (Blockbuster Video) to be taken up after 1:30 p.m.; 2) Washoe County had requested a continuance to October of action on the residential delegation MOU to allow the County to act on it first; 3) Mr. Tonmemacher requested withdrawal of his appeal (item X.A.), because he would be meeting to discuss his concerns with Executive Director Jim Baetge and Chairman Upton.

Chairman Upton asked that the Legal Committee report and recommendation (item XIII.B.) be taken up after agenda approval and that action on Plan Area Statements 128 and 175 (IX.A.) be considered after the Legal Committee report.

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

VI. CONSENT CALENDAR

(Ms. Hagedorn came into the meeting as the Board members were discussing items on the consent calendar. A quorum of Board members was present.)

Ms. Baldrica complimented Cal Vada and consultant Leah Kaufman for the proposed reuse of the historic building as a part of the change in use to professional offices and cultural facilities (item #8).

Associate Planner Lyn Barnett responded to Mr. Westergard’s questions regarding proposed mitigation resulting from the findings of the traffic analysis for Pine Ridge Plaza (item #1), coverage mitigation, and transfer of commercial floor space.

Mr. Wells noted that the staff had distributed three additional findings for the Pine Ridge Plaza Building. These were to be incorporated into staff’s report.

MOTION by Mr. Sevison to approve the consent calendar. The motion carried unanimously.
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XIII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

B. Legal Committee

2. Authorization for Mediation Sessions in TSPC v. TRPA, Consolidated Case No. 84-257-ECR, District of Nevada

Committee Chairman DeLancy explained that the Committee had met earlier in the day to consider a proposal for mediation in the TSPC case. Mr. Larry Hoffman, representing the Tahoe Sierra Preservation Council, was present at that meeting and agreed, along with the California Attorney General’s office, to participate in mediation discussions before retired Judge Ramirez. The Committee recommended authorization for Agency Special Projects Attorney Susan Scholley and legal staff to proceed with mediation and to share the costs with all participants.

Ms. Scholley explained that, because the cost would range from $5,000 to $20,000, she would like the flexibility to make the allocation among the parties. Copies of retired Judge Ramirez’ resume had been distributed to Board members.

Mr. DeLancy emphasized that approval of the request was not an indication of TRPA’s position regarding the litigation but an attempt to resolve the issues before proceeding with costly litigation. The case had been in existence for 11 years and had been to the Ninth Circuit several times. Mediation was an alternative to litigation.

Mr. Upton explained that the mediation would take place the first two weeks of November.

Ms. Scholley explained she was not asking for authority to settle the case,
since any proposed settlement would be brought back to the Board. If there was need for interim direction, she would contact the chairmen of the Legal Committee and the Governing Board. This was authorization to participate in mediation and to participate in the joint funding of the mediator’s fee.

**MOTION** by Mr. Sevison to approve the requested authorization in TSPC v. TRPA. The motion carried unanimously.

**IX. PUBLIC HEARING AND ADOPTION OF ORDINANCES, RESOLUTIONS, AND PLANS**

A. Amendment of Plan Area Statement Boundaries Between Plan Area 128, Baldwin (Recreation) and Plan Area 175, Cascade Properties (Residential) to Add Portions of El Dorado County APNs 18-320-01, 02, -03, -04, and -05 to Plan Area 175

Senior Planner Andrew Strain distributed a drawing of the proposed boundary line adjustment and an additional condition regarding a grazing management plan. The Forest Service’s proposed boundary line change would expand the urban boundary to accommodate a future residential use in Plan Area 175 by moving approximately 7.5 acres from Plan Area 128 to 175. The Forest Service working with the private land owner, the Ebright family, proposed to maintain all the existing threshold indicator categories required by the urban boundary criteria and, as required, to improve the recreation threshold by providing additional public access to the lakeshore. The amendment would facilitate a land exchange of 15 acres (known as ski beach) from the Ebright family to the Forest Service in exchange for lands to be added to Plan Area 175 for construction of one house and a possible guest house. Residential uses today were not permitted in Plan Area 128; they were permitted in 175. Mr. Strain presented more information on the applicant’s proposed protection plan for *Rorippa subumbellata*, the effect of residential construction on eagle habitat, provision for public access, and requiring a deed restriction on building envelope size to protect the eagle habitat.

The Board discussed at length the APC and staff concerns regarding continued horse grazing on the 1B recreation lands, potential damage and nutrient loading to the Lake, the topography of the site, a BMP (Best Management Practices) retrofit program, the impacts of grazing in general in the Tahoe Basin, the proposed Forest Service grazing management plan, a deed restriction in the transfer to allow no more than one residence and guest house in perpetuity.

Mr. Dave Marlow, Land Staff Officer with the Tahoe Basin Management Unit, explained the Forest Service had attempted to obtain this land for the past 30 years and had reached agreement with the Ebright family on the exchange. The exchange provided 270 feet of excellent beach frontage and public access to the Lake and filled in a hole between the “ski beach area” and the Baldwin Beach Recreation Area. Mr. Marlow presented more information on beach access, continued grazing of 75 horses on the 15 acres that were part of the larger Baldwin grazing allotment, exclusion of horses by fencing and topography from grazing near the Lake, revision of the Baldwin grazing allotment plan beginning in spring 1996 and ending in summer, and whether continued grazing was a condition of the exchange agreement.
Mr. Mike Dill, representing the Ebright family, asked that grazing on the 15 acre parcel be allowed to continue south of Tallac Creek, as it had for 100 years. Tallac Creek acted as a barrier to grazing on the northern portion of the parcel. He recommended installation of fencing 25 to 50 feet away from Tallac Creek to prohibit grazing in this area and to protect the creek.

Mr. Robert McDowell, head of planning for the Forest Service Lake Tahoe Basin, noted the scheduled grazing management plan to be completed according to NEPA guidelines by October 1996 would involve all interested parties and would address and analyze all concerns regarding nutrification, effect on stream zones, grazing capacities, seasons of use, and BMPs. A scientific evaluation was needed so that informed, rational decisions could be made. Grazing could be terminated if the findings of the analysis and plan showed it was inappropriate. Currently grazing occurred on approximately 100 to 150 acres of National Forest land in this area bordered by Highway 89, the Lake, Baldwin Beach, and the Ebright property.

Ms. Hagedorn suggested she preferred applying conditions based on an area wide management plan; it did not make sense to condition only one parcel. If horses could not graze on this one parcel, they likely would be moved over onto another parcel, thereby shifting the impact.

Mr. McDowell noted that study and analysis of the Baldwin allotment was already scheduled for 1996. The 208 water quality plan and Chapter 73 contained TRPA’s grazing policy. A TRPA permit was required only for new grazing, not for previously existing grazing.

Mr. Bradhurst described the results of Washoe County’s request of the Forest Service to preclude grazing in the Gray Creek Watershed because of problems caused by thunder storms and flooding. The flooding was causing sediment loading and other significant problems. It was his understanding that the Forest Service could handle this rather quickly through its planning program. Apparently grazing in the Gray Creek area could be phased out in the near future because it could be tied to the urban watershed. He assumed this situation was similar and that the grazing question could be addressed quickly. He questioned how someone would be permitted private grazing on public lands.

Mr. McDowell responded these kinds of questions would be addressed in the allotment plan. Nothing, however, could be done immediately because there was no evidence or proof of a problem - although there was an issue. All the management options also needed to be analyzed. It was not uncommon in the forest to have a mix of private and public lands, with private lands surrounded by forest lands. The landscape design would define the area of grazing, and an allotment plan would determine the grazing capacity and environmental issues and solutions.

Senior Planner Carl Hasty explained that the grazing issue was to be addressed by staff in the current FY work program because of water quality impacts. The 1991 threshold evaluation set forth certain changes to be made to the code, some of which related to grazing. TRPA, the Natural Resources Conservation Service, Lahontan, and the Forest Service were all involved. The first step was to document what the problems were. Intuitively, it was felt that grazing
had an impact on streams because of nutrient loading and trampling of the stream banks. Solutions could include removal of animals. This issue was in the forefront and there was an interagency effort to address the issues as a whole. This was of particular interest in the South Shore where the majority of the grazing in the Basin was occurring. In this case, there was the ability through a remedial action plan to document problems and evaluate solutions, one of which could be removal of the animals. Without more study, he felt uncomfortable with a blanket requirement in this case to remove all grazing. The proposed condition of approval for this agenda item was sufficient. If grazing was causing a problem on this property, TRPA had the ability to prohibit it.

Mr. Wells explained that the ordinances permitted imposition of a remedial action plan for specific problem areas in the Basin, although TRPA had not required them very often. It involved a lengthy process and it was not easy, but TRPA had the authority to impose them.

Mr. Wynn expressed concern that the Board was being asked to approve a project that permitted continued grazing when it was known up front there may be an environmental problem. If the possibility existed that there was an environmental problems caused by horses grazing next to a beach, he wanted to stop that grazing by voting in opposition to the request. He did not favor having TRPA spend a lot of time in the future in legal action trying to accomplish the goal that could be accomplished today in voting against grazing. Perhaps the Board should defer action until a decision was available on whether there was a negative impact.

Mr. McDowell responded that the proposed modified staff condition (#8 distributed by staff) gave TRPA the tool to accomplish that. The condition recognized preparation of the management plan which would contain much mitigation measures as reduction or prohibition of livestock grazing. The tools were available.

Mr. Sevison suggested there be a condition prohibiting grazing in the Stream Environment Zone (SEZ) or shorezone. This would restrict grazing to the higher capability areas.

Ms. Rochelle Nason, for the League to Save Lake Tahoe, noted the Forest Service had been looking at its allotments in developing plans to protect water quality. Unfortunately, although the local Basin Management Unit had done a very good job on the first major allotment plans in recent years, the whole issue of grazing at Lake Tahoe had become mired in politics at the national level. A group of organizations representing grazers had chosen, for some reason, to make Lake Tahoe a place where they drew the line in trying to demonstrate their ability to bring political pressure on the Forest Service at the national level to create results on the ground at the local level. The upshot was that, if TRPA wanted to see significant progress on the grazing issue, it would not be able to rely on the Forest Service but would need to enact effective regulations of its own as part of the next threshold review to assure that grazing was properly handled within the Basin. Although the existing regulations relied on the Forest Service, clearly TRPA had the power to enact effective regulations, and the appropriate time and way to do that was as part of the threshold review. The remedial action plan system,
although in place, had never been used. It would not be rational to rely on it when no remedial action plan had ever been formulated in the Basin. She suggested that to permit the Forest Service to go ahead but also to prevent additional environmental damage TRPA should require that no building permit be issued for the newly created lot unless and until a management plan for the Forest Service allotment was in place to protect water quality. This would eliminate degradation represented by construction of the additional house until a management plan for the whole allotment (the 15 acres and the remainder of the area where grazing was occurring) had passed all agencies' scrutiny.

Mr. Wynn suggested conditioning this and all other applications involving grazing such that, whether public or private land, there was a requirement that no grazing would be conducted in the area of a stream zone or on other lands or soils that flowed directly into Lake Tahoe.

The Board continued to discuss the issue of grazing, its impacts near the Lake and streams, concern with moving the horses from the 15 acre parcel to other nearby properties, the effect of applying the management plan to portions of or all of the allotment, how to condition the proposal, the intent of the Forest Service to prepare a grazing allotment system for this area regardless of TRPA's action on this request, different impacts from corraling v. grazing, the fact the entire 15 acres and surrounding lands were SEZ, control over new v. historic grazing, requiring the Ebrights to address the grazing issue on the 115 acres as a condition of the amendment and residential construction, timing of BMP implementation, and the size of the Ebright allotment.

Mr. Strain suggested that condition 7 which, as with all conditions, must be satisfied prior to the effective date of the amendment be amended to include a condition that "the established building and disturbance envelope would be the subject of a deed restriction which will run with the property in perpetuity." To respond to concerns regarding the grazing and a management plan, condition 8 would be amended to read, "The applicant shall provide TRPA with a grazing management plan prepared by a qualified professional which provides for implementation of grazing-related Best Management Practices (BMP) on-the-parcel-to-be-acquired-by-the-applicant-on-the-entire-Ebright-allotment. The plan shall include, but not be limited to, identification of appropriate grazing area(s), establishment of a maximum number of animals to be grazed, identification of protection methods for stream banks and other sensitive areas, including physical barriers and setbacks from stream channels identification of appropriate grazing time periods, together with a BMP implementation and maintenance schedule. BMP implementation shall be completed no later than October 15, 1996."

Ms. Nason suggested that condition 8 include as well wording that "the allotment management plan be acceptable to the Governing Board of the TRPA." This would ensure that mitigation measures would be completed because the matter would have to come back to the Board.

Mr. Strain referenced page 144 of the packet material for the conditions that needed to be satisfied before the Regional Plan amendment would become effective. The Ebrights could not apply for a residential permit without the
zoning being effective. The changes to condition 7 as he had stated previously required a deed restriction establishing the building envelope. Condition 8 was to be modified as stated earlier.

Mr. Wells suggested that condition 8 also include a requirement that "the applicant shall submit such a grazing management plan for TRPA review and approval." If the plan were found to be unacceptable, the Regional Plan amendment, which would allow construction of the house, would not go forward.

Mr. Waldie asked that this added amendment be modified to state, "The applicant shall provide TRPA with an acceptable grazing management plan."

Mr. Wells asked that the condition state "...for review and approval."

After more discussion, Mr. Strain restated the condition as "the applicant shall submit for TRPA...review and approval."

Mr. Sevison suggested that the amendment be continued until there was a full California Board. There was an opportunity for the Ebrights to step forward and state they would not have grazing on the parcel and solve the whole problem. This application involved activity in the proximity of a stream bank; other applicants were required to stay away totally from stream zones. He did not feel there were sufficient votes to approve it as it was proposed. The Ebrights needed to concentrate the horse storage facilities in areas that were not causing environmental concerns. He would like to see the Forest Service do the study on its whole allotment.

(Ms. Bennett came into the meeting at 12:00 noon).

Mr. Cole explained that the parcel was only a portion of the entire problem. The Ebrights could agree not to have any grazing on the parcel being transferred to them but this would not affect the 100 acres surrounding the transferred parcel that was a part of the allotment. The Ebrights ran a commercial operation with the horses at a stable. They needed the horses in the area. He did not know that the Ebrights were likely to offer to remove all the horses from the entire allotment.

Mr. McDowell explained that the Forest Service was amenable to condition 8 as modified and to all other conditions as discussed. To make an arbitrary decision on 15 acres apart from the large whole did not seem to be rational or based on good science. This would not really fix anything in terms of grazing, stream protection and water quality protection.

Mr. Upton noted the condition as proposed would not ban grazing but rather cause the BMPs to be installed on the entire area and require the plan and its elements to take place within a particular time frame prior to construction of the residence.

Mr. Cole suggested the proposal would facilitate TRPA's goals which were to effect positive change on the entire area as it related to grazing and the impact on the Lake. Imposing BMPs in this way did accomplish what TRPA wanted and, at the same time, got the land swap.
After more discussion, Agency Counsel R. J. Nicolle explained that the conditions as written would not allow the Plan amendment to go forward unless staff was satisfied with the grazing management plan. The condition included "TRPA approval." If TRPA staff did not approve the management plan, the Plan Area amendment would not go forward and the house would not be built.

Mr. Wells noted that the condition included not only the BMP plan but also an analysis of what the land would support for horses. The plan may conclude that no horses were appropriate.

Mr. Dill, for the Brights, accepted the conditions as revised. He was not in a position to concede the grazing in the area, since it would cause an economic hardship.

Chairman Upton asked for a straw vote on the matter prior to taking a formal vote. He asked for a show of hands of any Board members opposing the proposal as modified through the discussion. (No hands were raised.)

MOTION by Dr. Miner on the boundary adjustment between PAS 128 and 175 to make the finding of No Significant Effect based on the staff report and the findings required by chapters 6 and 13. The motion carried unanimously.

MOTION by Dr. Miner to adopt Ordinance No. 95-7 implementing the amendment as modified by the addition of a new finding 1.80 (new condition 8 as read into the record, with an addition to condition 7 requiring a dead restriction on the building envelope in perpetuity).

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 the Boundary Between Plan Area Statements 128 (Baldwin) and 175 (Cascade Properties), and to Create a Special Area #1 in PAS 175; Amending Plan Area Statement 175 to Add a Special Policy and Update the Improvement Programs; and Providing for Other Matters Properly Relating Thereto.

The motion carried unanimously.

The meeting recessed for a lunch break from 12:15 to 1:40 p.m.

VII. PLANNING MATTERS

A. Discussion Regarding Transportation Enhancement Program and Interjurisdictional Strategy

Senior Planner Richard Wiggins explained this no-action item related to Transportation Enhancement Activity funds to be used for transportation-related projects that enhanced quality of life in or around transportation facilities. The issue related at this time to California projects. TRPA planned to work in cooperation with Placer and El Dorado Counties on a list of appropriate projects. In Placer County, TRPA would be applying for funds
independent of the County. For El Dorado County and the City, TRPA would work with the affected jurisdictions to come up with a joint project list for inside and outside the Basin to submit to the California Transportation Commission. The report to the Board today related solely to that process. Mr. Cole and Mr. Upton would be asked to assist on a committee in January or February after staffs of the two RTPAs had selected and ranked the projects.

B. Discussion on the Subdivision Policy Regarding Post 1987 Projects

Agency Special Projects Attorney Susan Scholley noted that her packet summary contained the background and theory and practice of subdividing post 1987 projects. She responded to Board member questions regarding TRPA review of CC&Rs for condominium projects, the fact that the two-step subdivision process would not facilitate an increased density for condominium units over multi-residential units, the limitation of the subdivision ordinance, the Regional Plan concept of transferring units into urban areas where they could better be served with transit and pedestrian facilities, the fact that permitting subdivisions on a limited basis was an integral part of the transfer program, and the need for receiving areas for the transferred units.

Mr. Sevison suggested identifying areas appropriate for condominiums up front so that the conversion of multi-residential projects after their approval would not be so controversial.

Mr. Cole concurred that it would be better at the outset to know if there at least was an opportunity for the conversion when the Board looked at a multi-residential project.

Ms. Scholley noted that the conversions usually occurred at the same time the project as a multi-residential proposal was reviewed. Because of current financing constraints, most times when people were building multi-residential units it was premised on the basis that they were going to be converted to condominiums. As a practical matter, any multi-residential project had the potential to come in at any time in the future to request conversion, barring unforeseen ordinance changes. TRPA did not always know this up front; even a five-year old apartment building could request conversion. TRPA could not require an applicant up front to tell TRPA on a multi-residential project, duplex, or apartment what was to be proposed ultimately.

Mr. Sevison expressed concern that constructed affordable housing units could, theoretically, be transferred and become condominium units. He was concerned that the housing stock for service-providing residents would disappear.

Chairman Upton explained that all that was being done with these types of conversions was changing the type of ownership. He felt these were market-driven decisions. The process was a way to achieve the Regional Plan goals. He was concerned that the applicants were being caught in the middle of the disagreements over the original policy decision to permit subdivision conversions. He was uncomfortable with that, and perhaps the Board needed to revisit the overall policy decision.

Mr. Westergard suggested the policy permitting the conversions did not meet the test set forth in the ordinances prohibiting new development potential.
In the case of Incline, TRPA a few months ago approved a condominium under the two-step process where eight units were being constructed. They were selling now for $1/2 million each. This flew in the face of the prohibition on new development potential.

Ms. Scholley noted that the Regional Plan had policies in it that were not necessarily consistent with a desire to maintain or to create affordable housing. The transfer policies were a good example. The subdivision policies did permit tearing down old units which, it was earlier assumed were substandard, overly dense, likely run down and in need of BMPs. It would be better for the Basin to take out those units and rebuild them somewhere else consistent with coverage, BMP, and scenic rules. This did not address the housing issue, and there was a conflict between some of the Agency goals with respect to that. She had no illusions that affordable housing units were being created with these subdivisions. The fact that the new units were very expensive home made the purchase of old units or vacant lots for transfer economically feasible. In creating the transfer market, which accomplished good environmental goals, the Agency may be counter-productive on other goals. How this was resolved was not clear. The Board had been wrestling with the affordable housing issue. At the date of Regional Plan adoption, the Basin had a finite number of development rights (12,000 to 13,000) and to build a new residential unit, a person needed to have a development right or to tear down an existing residential unit and transfer it. On a regional basis, the number of units had not changed, although the units were moving around. New subdivisions could not be created without transfer of existing units.

Mr. Wynn noted that there was an established number of housing units in the Basin based on environmental practices. When someone now said that TRPA was obliged to create affordable housing, this would mean cheaper housing and more density per acre and, ultimately, changing the game. TRPA could not deal with the environmental soundness of the Basin and change the density and increase housing. There never would be affordable housing without condemnation and removal of value. There still would not be enough building units to accomplish the purpose. When the day came that TRPA tried to get the citizens to swallow this bitter medicine, TRPA would be in the courtroom. This was a very nonproductive use of TRPA's time. It was a laudable goal, but perhaps it could be done at the local level. With the limited amount of housing in the Basin, he did not feel TRPA was going to create affordable housing.

Mr. Cole disagreed and suggested the creation of affordable housing in the Basin had been successful in recent years. It was appropriate and achievable financially and every other way. There were proponents who wanted to build more affordable housing in the Basin if there were only agencies that would let them do it. It needed to be done, and the fact that some jurisdictions did not want to admit to it and aggressively pursue it was a different matter.

Chairman Upton suggested that the subdivision ordinance was not the vehicle to achieve affordable housing. In the core statement discussions, the Board had looked at the connection between Vehicle Miles Traveled issues, affordable housing, and environmental protection. The local government representatives would be meeting on October 10 to discuss this further.
Ms. Bennett noted this issue was not unique to the Basin. All communities were having to face it. There needed to be some new tools, beyond the subdivision ordinance, to take it on. The Board would come to that.

Mr. Severson noted that there was a limited number of development rights. This was unique. As the California Conservancies had acquired one-third to one-half of the development potential as it was known ten years ago, the numbers became fewer and fewer. As that happened, the market values went up. The cost to bring development rights in for affordable housing was diminishing by the day.

Ms. Scholley explained that, in an effort to address the need for affordable housing when the Regional Plan was adopted in 1987, a pool of 1,600 bonus units (comparable to a development right) was created for affordable housing. Development rights were free to affordable housing projects. A 25 percent increase in density was permitted for affordable housing along with the development rights. Fewer than 200 of the 1,600 units had been used.

Mr. Westergard asked that the record be clear that his concern had nothing to do with affordable housing but strictly with the development potential concept.

Mr. Wynn suggested that if affordable housing could be implemented without radically changing population density, it would be great.

VIII. PROJECT REVIEW

A. Vogel, Subdivision of Post-1987 Structure, 214 Robin Drive, Washoe County APN 132-212-03

Associate Planner Paul Nielsen presented the summary of the project originally denied by the Board in July. In August the Board voted to waive the fee to reconsider the matter because the applicant was not present at the July meeting. Staff recommended approval of the proposed subdivision.

Mr. Larry Hoffman, attorney representing the Vogels, explained that Ms. Vogel was not present when the matter came up previously on the consent calendar. In the future if the Board pulled something off the calendar to act on it separately, the Board should verify first that the applicant was present. If not, the matter should be continued to a subsequent meeting. The policy issues involved here included: 1) TRPA's involvement in affordable housing; 2) affordable housing problems caused by the regulatory structure and supply and demand; and 3) the best way to retrofit an affordable housing program. This housing problem was certainly not unique to the Tahoe Basin. The Vogels purchased their property with the intent of building a duplex but needed to switch to a condominium because of the costs involved. The result would be a 1,500 square foot home in the price range of $200,000; the return was anticipated to be a 10 percent return. The same unit to get any return would have to rent at the $1,500 range. Because of land and development costs, the owners had found they could not economically retain the units for rent.

Mrs. Marge Vogel described previous purchases of duplex properties and rentals in San Diego and Incline and the results of her purchase of a duplex lot as a
Mr. Bradhurst explained he had heard similar stories from those who had
attempted to build affordable housing in Nevada. He had asked a number of
people to provide him with information on problems in the Incline area. The
bottom line was that, as evidenced by the Vogel’s situation, affordable
housing would not pencil out in Incline Village.

The Board members discussed consistency of uses with the Plan Area Statement,
the prohibition on subdivisions in preferred affordable housing areas after
December 1995, how this particular application would affect affordable
housing, the economics of this particular situation, the fact this project was
submitted before the deadline and was not intended as a way of sliding in
under the deadline, and the fact that affordable housing was possible in all
jurisdictions.

Ms. Rochelle Nason, from the League to Save Lake Tahoe, advised she did not
oppose the application. She did note there was limited land inside the
existing urban boundaries at Lake Tahoe, and the protection of water quality
required their integrity be maintained. As residential development increased,
the need for other uses increased (schools, fire departments, police stations,
parks, etc.). Also needed was provision for those who could not afford the
market rate housing. There were many creative solutions to the problem, but
it was a problem that had to be dealt with.

**MOTION** by Mr. Cole to make the findings to approve the Vogel subdivision. The
motion carried with Mr. Westergard voting in opposition.

**MOTION** by Mr. Cole to approve the Vogel project. The motion carried with
Mr. Westergard voting in opposition.

B. Blockbuster Video/H.V. Real Estate Corporation, New Commercial
Building, 2037 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado
County APN 023-201-67

Senior Planner Lyn Barnatt distributed three handouts on the project,
described the numerous meetings with the applicants to work out problems
because of franchise deadlines, and noted staff’s continuing recommendation
for denial for a Blockbuster on this site. Since preparation of the staff
report, the project had been modified: the building size decreased from 4,500
square feet to 4,000 square feet; the highway driveway was eliminated; the
scenic quality analysis was modified because of the change in building exterior; the traffic analysis changed from 766 daily vehicle trip ends (DVTE) to 574 trip ends. The peak hour traffic went down from 154 to 98, and vehicle miles traveled (VMT) dropped from 5,811 to 3,314. The applicant also proposed the following additional mitigation measures not set forth in the staff report: four drop-off boxes elsewhere in town for video return; fliers describing easy routes to the site; a proposal to obtain signed commitments from customers to drive certain routes to the site. The staff summary showed access would be in front of the Miller’s Outpost site through the Tahoe Y Shopping Center. Because an access agreement had not been obtained from the Tahoe Y property owners, this particular mitigation was being dropped from the proposal. Mr. Barnett described in detail staff’s six major concerns: 1) circulation; 2) level of service at intersections; 3) vehicle miles traveled; 4) daily vehicle trip ends; 5) scenic quality; and 6) Plan Area consistency.

Using a schematic of the Y area showing road configuration and commercial uses, Mr. Barnett described and responded to questions regarding anticipated circulation problems with the proposed Blockbuster project at this location, anticipated customer driving patterns coming to and from various directions, the impact on local streets and the Y intersection, traffic conflicts, traffic generation figures for video stores, the previous service station on the site, the permitted uses for the site, and the proximity of other video stores.

Chief of Project Review Rick Angelocci discussed the City’s proposed transit center and potential intersection movements in the vicinity. He noted this intersection was one of the worst operating ones in the Region because of the turning movements. The consultant's traffic analysis concluded there would be ten illegal turns made in a peak hour upon completion of the project.

Agency Special Projects Attorney Susan Scholley suggested that the Board focus on the traffic issues. She pointed out that a denial of the project did not amount to an illegal taking of property and did not mean that there was no use permitted for the subject property. Staff was of the opinion that this particular project was not a good one for this site. Denial of the project was not a condemnation of the site.

Mr. Angelocci suggested that the applicant had not provided staff with substantial mitigation, at this point, to alleviate concerns regarding turning movements and traffic impacts. Staff commended the applicant for continuing efforts to come up with mitigation for better circulation. Based on what staff had seen at this point, turning movements and circulation would result in significant problems. That was not to say that mitigation was not possible. When the City of South Lake Tahoe proposed a transit center on an opposing corner, it came up with free right turn lanes to help ease the turning movements at that intersection.

Mr. Cole noted the Blockbuster project was scheduled for South Lake Tahoe Planning Commission approval this evening. The recommendation was for approval with some driveway adjustments. The City did not feel this was a problematic proposal. Both TRPA and City approvals were needed.

Mr. Barnett presented more information on the proposed 15-space parking, the potential for people to drive through or park at the Miller’s Outpost parking
lot, increased VMT caused by people driving on back streets to get to the site, air quality impacts, the change over time in level of service (LOS) at the intersection from C to E causing long stacking times, waiting and stopped cars. This was a carbon monoxide violation intersection. The LOS would not go from an E to an F with this particular application, but the trend was moving in that direction.

Senior Planner Richard Wiggins explained that the LOS evaluations now showed the intersection at a level B because of the volume or capacity and the number of lanes v. the number of cars going through the intersection. These figures came from Caltrans and from independent reports and analyses.

Mr. Barnett suggested that staff did not necessarily concur with the proponent's analysis that the majority of traffic to the site would be coming from the Tahoe Keys/Tahoe Island neighborhoods. If this was the target clientele, there were other locations closer to those customers. This site was most likely chosen because of its competitive location with other video stores. Mr. Barnett noted that, from a scenic standpoint, the intersection was located in a scenic unit that had one of the lowest ratings in the Region. While a second simulation prepared by the applicant incorporated a number of suggestions on landscaping, building articulation, and color, staff had not had sufficient time to go through the entire evaluation and score the project. Normally this time would have been required. (Mr. Barnett passed around the simulation.)

Mr. Cole noted that the intended vacant parcel was created by the City's action to remove an abandoned, derelict and deteriorating Texaco gas station. To suggest that this proposal was a scenic degradation was a little out of context when comparing it with what could still be standing on the site. He questioned whether staff was suggesting that derelict buildings not be removed because the very removal may jeopardize the ability for future development.

Mr. Barnett explained that the proposed personal services use was allowed in Plan Area 110. The problem for staff was that the PAS contained a planning statement that this area should continue to be a regional, commercial area but be redirected for more efficient use. Staff did not feel this particular project in this particular location was an efficient use because of traffic considerations. Even though a lot of mitigation had been proposed, staff was not convinced there would be an improvement in the efficiency of transportation systems. An increase in traffic should provide corresponding traffic flow improvements. Unfortunately, there was no negotiating time left because of the franchise deadlines. The problems should be negotiated with the City, TRPA, Caltrans, and all affected property owners. It was a rushed process. TRPA staff was not opposed to Blockbusters coming to South Lake Tahoe; what caused concern was the particular high trip-generating use at this intersection. Staff was seeking Board direction on how to approach this and other projects wishing to locate in this area.

The Board and staff discussed traffic configuration, limiting additional driveway cuts onto Highway 50, creation of friction points on the highway, the unique characteristics of this situation and its urgency, and use of the property.
Mr. Gary Midkiff, on behalf of the applicant, Columbia Holdings, and the ultimate operator, John Mason, passed around a 1972 aerial photo of the site and the intersection and explained that in 1992, at the City's request, the gas station and asphalt were removed, and the site was revegetated and fenced. This was done with the representation to the property owners that the 1,567 square feet of commercial floor area and 18,000 square feet of coverage would be banked without penalty for later construction. A gas station was attributed 786 daily trip ends under the trip rating tables, and the gas station which operated on the site for 25 years never had a problem. The Police Department when it reviewed the project had no problem with accident rates or illegal turning movements. The City's Engineer had a problem with the entry off of Highway 50 because of the angle of the parking access - not because of the access. There currently were two Highway 50 curb cuts to the site and two additional ones on Dunlap. Although the project applicant had proposed one on Highway 50 and one on Dunlap, he had offered to eliminate all curb cuts on 50. The analysis by the traffic consultant determined it would make no difference in terms of circulation or traffic so far as creating or removing an impact. At this point, if possible, Blockbuster would like to keep a Highway 50 access, because it facilitated the operation of the business. If it was necessary to give it away now and consider it later, Blockbuster was willing to do so. It was not fair to let a property owner bank certain rights on a piece of property for future use and then have staff limit those purchased rights on the property. Two years ago, Video Maniacs, a store of approximately the same size was approved by TRPA across the highway with about the same trip rate and about the same floor area and trip generation. Mr. Midkiff distributed a September 26 letter from Silver State Entertainment, Inc., regarding revised traffic figures and assumptions used in targeting the Tahoe Keys/Tahoe Island, and Gardner Mountain neighborhoods as the primary Blockbuster market.

Mr. Midkiff explained the applicant's mitigation proposed in response to staff's concerns. These included a drop-box program for return of videos to reduce trips by 11 percent, a $2 discount for customers arriving by bus or bicycle, provision of a circulation and signage program, discounts for those who signed a commitment agreeing to access the site by certain routes. This applicant had done everything he could to provide transit, to reduce trips through better circulation, and to offer mitigation for what staff perceived as problems with the project. For scenic impacts, the applicant had agreed following preparation of simulations to provide additional screening landscaping, redwood or cedar siding on the building, a black roof and river rock on the front of the building. While there was insufficient time to complete the scenic evaluation scoring, he was confident the project could be approved with a finding there was no scenic impact. In addition to these mitigation measures, the traffic study indicated a $15,000 traffic and air quality mitigation would be required. The Code allowed this to be spent on improvements to transportation or air quality or put into a fund. After discussions with staff, the applicant offered an additional $15,000 to make the transit facility on the opposite corner and the right-turn lane happen sooner to help the City. When the transit facility project came in to the City, it was over budget and had to be redesigned and rebid. As he understood it with new budget cuts, construction of the center and turn lane was still questionable. This $15,000 was in addition to the $15,000 required transportation and air quality mitigation fee.
Mr. Cole explained that the South Y transit center should have been built some time ago but was not because of cost overruns. It was scaled down more than once and was currently back at the architect’s office being redesigned. Although the City was able to adjust the funding for the right turn lane, because of restrictions on use of funds for road improvements, the City would end up with a bus stop and shelter instead of a transit center. The $15,000 would go a long way to making the transit facility a more appealing facility for people interested in using transit.

Mr. Mikkiff explained that because the applicant was conscientious he was willing to make an additional contribution to the transit center in the amount of $10,000. The total payment for transportation and air quality improvements, not including the discounted tapes, drop boxes, and other mitigation, totaled $40,000. If the City was interested, and although the Police Department was not concerned, the applicant was willing for a month or two to fund a portion of a City enforcement officer for the initial term of opening to ticket people making illegal turns into and out of the site. There were two existing curb cuts onto Highway 50, and the applicant was proposing to have one but could live with none for the time being until this could be addressed later. To his knowledge the only CO violation was at Park Avenue and Highway 50 during the winter time. On PAS consistency, the planning considerations called for redirection for efficient use. This site was consistent with concentration of commercial uses. There may be turning movement problems, but to attribute them all to this project was not accurate. Any type of use that generated any trips at all, even just rebuilding the former 1,567 square feet, would exceed the 100 trips. The applicant had made every effort to make the project as innocuous as possible. To staff’s concerns regarding circulation, safety, and turning movements, while he knew there was reference to LOS in the regional transportation program, he knew of no standard calling for safety for turning movements. He had been working with staff since April on this application; the application was submitted May 4, and if Blockbuster was not approved today, the applicant would lose his franchise agreement. The applicant had purchased the property.

Mr. Gordon Shaw, a registered traffic engineer appearing on behalf of the applicant, used overhead projections to describe the situation and problems at the South Y intersection and at Dunlap Avenue. One problem at the Y intersection related to the westbound to northbound sweeping right-turn lane. The 1960 Basin transportation plan showed a freeway heading off in the direction of Emerald Bay; it seemed that this 60-mile an hour design curve was the only part of that freeway ever built. Caltrans would like to see this basically eliminated and replaced with a standard right-turn lane. In looking at Dunlap and the merge and diverge issues, these may very well not be here in the future. Caltrans would like to improve the scenic quality of the intersection and knew it was easier to maintain landscaping on the outside of the intersection than on an island. That would solve the Dunlap access problem and turning problem into the Miller Outpost parking lot. Mr. Shaw presented Blockbuster traffic generation figures from Park City, Utah, and Klamath Falls, Oregon, and what his estimates were for redistribution of existing trips and new trips to the site. The project’s proposed increase amounted to 1 percent total at the intersection, and there would be no effect on the LOS. The issues and problems were far bigger than one applicant could be expected to solve and should be addressed as part of the Community Plan.
Mr. Mike Grace, for developer Columbia Holdings, noted that his firm had developed almost 50 Blockbuster projects around the country. In looking at the South Lake Tahoe market, he felt this was a tremendous site. One of the reasons for this was because of all the traffic. Originally the gas station had two access points on Highway 50 and two on Dunlap. In helping to design the site in response to the City and TRPA, it appeared reasonable to keep one curb cut on Dunlap and one on Highway 50. The initial plan was to have the Highway 50 curb cut as far away as possible from the Dunlap intersection. There was a concern by Caltrans about new access points onto Highway 50, so he had reoriented the design back to the existing Highway 50 curb cut. Effort was made to address concerns and also to obtain easements or acquire properties next door to pull access even further away. That request was denied. Access at the existing Highway 50 location was to remain. He had also attempted to contact the owners of Miller's Outpost to see if traffic could be routed through that shopping center. They were not interested.

Mr. Grace commented on proposed mitigation (circulation proposals, mitigation fees, building design, signage to direct traffic).

Mr. Lew Feldman, attorney for the applicant, thanked staff for its help on the project and noted that in the last ten years seven new projects had been added in the South Shore corridor between the airport and Stateline. It was very difficult to find an available commercial site on Highway 50 and even more difficult to put a package together that made any economic sense at all. It had taken two years to put this together. This area had been looked at as a relocation for Meeks Lumber; that was not likely to occur. The nearby Video Maniacs project approved several years ago had identical trip counts, and he could not see these estimates as justification for denial of this project. Treating this applicant fairly was what was being asked. The applicant had gone the extra mile.

Applicant John Mason explained this was his and Judy Alexander's project; it was not Blockbuster's project. Blockbuster was a franchise company, and 1,800 of the 4,000 stores were owned by private individuals. This was not a Blockbuster corporate project. He was only proposing to use the name and the Blockbuster system. Columbia Holdings was the developer of the store; it would buy the property and build the store. Mr. Petragallo, owner of other video stores in the area, had made his two-year effort to get a video store very difficult. He had tried to respond to problems that were intuition issues, and no one from staff had presented any evidence there was a problem.

Mr. Mason described his efforts to respond to staff's concerns regarding curb cuts, access, and mitigation. His project would generate new tax revenues for the City, would create 12 new jobs, and would create scenic improvements. He did not have a franchise but a franchise development right. He paid $10,000 two years ago for it. Under the development agreement, he had nine months to get the store open. He had received two extensions, the last of which ran out August 20. On August 20 he received a letter revoking the franchise development agreement. He had an oral agreement from the head of Blockbuster Real Estate to allow him to make his presentation to the Board today. If he was successful, Blockbuster would reinstate the franchise development agreement.
Mr. Gene Garfinkel, whose family owned the neighboring Miller's Outpost Shopping Center, suggested that the project at the outset intended to use his center for parking and for access. With fifteen parking stalls and 12 employees, he knew the project planned on using his site from the beginning. He did not think customers would wind around neighboring side streets to get to the Blockbuster site. He was not contacted about this proposal until September 12. Now, all of a sudden, there was a time problem. He had not had time to consider what was being proposed, and neighboring property owners should have some protection to ensure their properties were not being used for parking.

Mr. Wynn suggested that the concerns raised by Mr. Garfinkel were more properly problems to be addressed by the local planning commission, not the environmental agency. The issue was whether staff and those who objected to the project had objectively made the connection between the project and violation of environmental thresholds.

Mr. Waldie agreed and suggested that the problem confronted by Mr. Garfinkel did not really involve the authority that TRPA could render a decision on. Even if traffic were diverted around or through the shopping center the environmental consequence was miniscule. He did not feel TRPA could do anything for him.

Ms. Rochelle Nason, from the League to Save Lake Tahoe, noted her office was located in Mr. Hertz's building on the shopping center property. The League's concerns related to vehicle miles traveled, very much a responsibility of TRPA; each month approved projects increased incrementally the amount of VMT in the Region. As of yet, there was no plan that really did anything about that. Over the years, areas such as San Francisco and Sacramento became more sophisticated in terms of transit; here at Tahoe things remained stagnant. She was hopeful this would change. Until TRPA formulated a way to deal with VMT, it should hold a presumption against approving any project that would significantly increase VMT - at least unless it could demonstrate that it could mitigate impacts. Although mitigation was proposed, there was not sufficient detail to explain it. Where were the drop boxes going to be? The same with a discount given on a second tape for those who brought a bicycle to the store. What were the impacts of that? There were no performance-based standards to show the mitigation was working and to quantify its mitigation of the impacts. There also should be a follow-up system to see if the mitigation had, in fact, worked as it was claimed. This project and any other project that had a significant impact was an appropriate case to draw the line and require full mitigation. This was a significant impact. There were other mitigation projects to be suggested in the area; this was one of the most pedestrian unfriendly areas in South Lake Tahoe. Aside from the VMT issues was the issue of parking. The town and its parking arrangements forced people to drive from store to store, because there was no centralized commercial core where a person could park and do all his shopping. There needed to be some kind of coordinated parking and ways to encourage people to leave their vehicles. There needed to be a parking management strategy for the south shore. Ms. Nason recommended that the Board not make the situation worse by approving the project.
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In response to a question whether this project was a deal breaker when it came to the VMT threshold, Transportation Planner Richard Wiggins noted that VMT would be raised by 3,500. The threshold required VMT to be 10 percent below the 1981 value. Mr. Wells explained that, when the 1991 threshold evaluation was completed, VMT was actually at 10 percent above the 1981 value. This problem was faced everywhere in the Region whenever a project proposed a significant increase. Usually there was a mitigation package that demonstrated through transit and bus provisions that VMT could be lowered to an acceptable level. One of the Community Plan tasks for this area was to identify ways to lower VMTs.

Mr. Cole noted that Community Plans (CPs) were designed to concentrate commercial development, and this project was in the center of a CP area. When the plan was adopted, there would be 50 percent coverage instead of 30 percent coverage available, and there would be the possibility of bonus square footage available. There could be an even larger building than what was proposed here. The potential was greater in terms of the impacts. It seemed that what was offered in terms of mitigation was substantial. He questioned whether staff felt the transit center, which was going to receive a mitigation contribution from this applicant, could not be counted as mitigation because it was going to occur even without Blockbuster. Was this mitigation being factored into the package?

Mr. Barnett explained that staff asked applicants to look at mitigation other than projects which had previously been approved. In this case, staff did not include this as mitigation, although the staff did see value in the center. Since the removal of the gas station, there had been other traffic generators at the Y, including Video Maniacs and changes in the uses at the South Y Shopping Center. Two years after removal of a commercial structure, the Code required that the base trips for a site be considered at zero. That was what staff had based its analysis on. Video Maniacs was further away from the Y intersection, and there was a center left-turn lane to the site that prevented the blocking of traffic. There was a larger parking area, and it was on leg of the intersection that had the least amount of traffic.

Mr. Sevison suggested that the City may wish to set up a mitigation package to address all the problems at the intersection, instead of focusing on this one project applicant.

Chairman Upton noted that the problems at the South Y intersection would not be fixed with one project. The larger issue related to the highway and the need to address problems associated with it. The money could be used most effectively by addressing the highway, perhaps in the context of the Community Plan. There needed to be systemic changes in this intersection worked on cooperatively by TRPA, the City, and Caltrans.

Mr. Waldie suggested that the applicant seeking to improve the property had nothing to do with the problems they were being asked to solve. It wasn't fair that the people that had everything to do with the problem weren't putting anything into the pot to solve the problem. The City should make a generous offer to help fund the bus stop, perhaps, as part of the mitigation. To use mitigation fees for the installation of a bike rack did not make sense when the goal was to improve an intersection.
Ms. Hagedorn commented that it appeared the Board felt the project would make life more difficult on the intersection. She did not feel personally that this was the parcel that would break the bank. She did not see justification for holding this parcel hostage. There was a need, however, to look at a holistic approach. She would like to take the full $40,000 and ask the City to come up with a way to use that money to mitigate some of the direct impacts and the larger impacts.

Mr. Cole suggested that the condition was not to solve all the problems at the south Y intersection with the $40,000, but he knew that there had been ongoing discussions with Caltrans on what could be done to improve the intersection.

Ms. Scholley suggested that in order for mitigation to be tied to the project and be considered appropriate mitigation the money should not go toward planning efforts or a study or toward a project that had already been approved. If it were going to go to an enhanced transit facility or some project, that would be appropriate. Rather than delegate that function, though, to another entity which may put TRPA at risk, it would be an appropriate decision to have the money deposited into the air quality mitigation fund, which was held in trust for the City to be dispersed on request through the usual channels.

Ms. Baldrics asked for assurance that other issues relating to scenic quality would be addressed. There were a lot of last minute offers, and she would like clarification on what the Board was being asked to vote on.

Mr. Wynn suggested that the Board did not necessarily accept what staff said about scenic quality. Inherent in the conversation was a rejection of staff's characterization of it. He did not think any of the Board members felt there was a problem with scenic quality.

Mr. Barnett noted there was more than one proposal before the Board; he urged that there be clarification. Mr. Midkiff had just advised staff that if the Board was intending to approve the project today the applicant wanted to go with the maximum square footage. Staff needed to define what proposal was being acted on. The square footage being proposed was more than what staff had in its summary. He asked the Board for some time to nail down the details regarding the size of the building, whether there was or was not driveway access to the highway, whether there was two-way driveway access, and the status of the scenic evaluation.

Chairman Upton concurred and directed that the Board take a brief recess.

After the recess, Mr. Barnett presented the following proposed conditions of approval for the Blockbuster project, asking that staff be given discretion on final wording. Conditions included the standard commercial project conditions in Attachment Q, including payment of excess coverage mitigation fee, posting of a security to insure all BMPs were installed on the site; a condition requiring that the additional commercial floor area to be used on the site be transferred in accordance with TRPA provisions in a separate application; the applicant repair the sidewalk in front which was in disrepair; the applicant construct a pedestrian fence on the northern and east property line of sufficient height to discourage pedestrian access across those sites and
illegal parking on the health food store site; the building size would be
4,648 square feet as represented on the visual simulation and not 4,550 square
feet, as stated in the staff summary; one two-way driveway for ingress and
egress be constructed from Highway 50 at the applicant’s request.

Ms. Baldrica noted that this ingress and egress off Highway 50 was not
recommended by Caltrans or staff.

Mr. Cole suggested this made sense for those exiting the site and going
through the intersection toward Upper Truckee Road; customers could pull out
onto Highway 50 and go through the intersection.

Mr. Feldman noted that there were two existing road cuts on Highway 50. The
applicant proposed to reduce one and keep one. There would be a net reduction
of friction points.

Ms. Baldrica questioned how left-hand turns would be prevented onto Highway
50.

Mr. Barnett noted that one of the applicant’s proposals included a sign
prohibiting left-hand turns. Installation of such a sign could be a condition
of the permit. Additional conditions included installation of drop boxes in
locations in town. The location for those was to be identified by January 1,
1996. Some of those locations may need TRPA approval because staff did not
know the nature of the drop-off boxes. All traffic mitigation identified in
the analysis would be conditions, with the following modification: that the
applicant submit a $40,000 total air quality mitigation contribution held in
trust for the City of South Lake Tahoe for local mitigation, minus the cost of
any signing to be installed for the project. The applicant was proposing to
install offsite signage in the back streets, directional signs to direct
people to Fifth Street and Third Street. This was not advertising.

Mr. Midkiff explained that these signs were to direct people away from the
site. According to the circulation plan, they would be directing people back
to Highway 50 and to Highway 89 and other points to improve the flow of
circulation. The signs would not have any reference to Blockbuster; the signs
would be directional signs only.

Mr. Barnett continued with the conditions, noting that a portion of the
$40,000 would go towards air quality mitigation in accordance with the TRPA
Code. The TRPA air quality mitigation fee for the trips was in the
neighborhood of $15,000. It would go up because the floor area was
increased slightly. This would be taken from the $40,000 as would the cost of
directional, offsite signs. Whatever was left would be held in trust for the
City for local mitigation measures.

Ms. Scholley noted that the applicant had represented the estimated cost of
the signage to be not more than $1,000. If it were to exceed that by a
significant amount, the staff would bring it back to the Board.

Mr. Westergard questioned the $40,000 air quality mitigation fee. What was
the condition regarding the City’s commitment specifically?
Mr. Barnett noted the money would be held in trust, for the City at some point to come in for a project that would use the funds.

Mr. Cole noted that the project had already been identified. He did not know how official it was, but it had been identified in terms of the money being used for improvements at the intersection. The City knew now that there was close to $40,000 held in a fund for that purpose. The City would apply for it. There had already been some significant discussions as to what could be done to improve the intersection. The funding would make that possible.

Ms. Scholley reminded the Board that there were two types of air quality impacts here. One was regional VMT impacts, a threshold issue. That was what the air quality mitigation fee of $15,000 was to address. This was based on a trip table and the square footage of the project. This air quality mitigation fund was segregated by jurisdiction for local use in implementing projects in the Regional Transportation Plan. In order for the Board to make the findings, it was staff’s recommendation that the $15,000 go into that fund. The applicant had offered mitigation money in addition which, as she understood it, would be set aside and used for localized intersection improvements, a different kind of impact. That impact was one in the localized vicinity of the particular project. One was a Basin impact; the other was a localized impact. While the total amount was $40,000, the Board was looking at segregating localized mitigation in order for the Board to make the findings. The $15,000 was going into the air quality mitigation fund to make findings related to the VMT.

Mr. Cole asked if there was anything that would preclude an application that would access all of the funds for some sort of intersection improvement.

Ms. Scholley indicated she did not want to hold out to the Board that the Regional Transportation Plan in terms of reducing VMT would permit that. Accessing the air quality mitigation fund for that purpose would depend on the nature of the project and whether it improved air quality.

Mr. Barnett continued with proposed conditions. The permittee would offer to install signs on the Tahoe Y Center property for traffic and parking concerns. The permittee would install the directional side street signage as described in their letters. The permittee would provide educational handouts described in their letters in perpetuity directing customers to safe access routes. The permittee would provide transit and bicycle discounts as represented in their letters. The permittee would provide TRPA in six months and in 12 months with a performance report after the opening day on the status of the discount program. The permittee would provide bicycle racks on the property.

Ms. Scholley asked about the status of the enforcement officer.

Mr. Barnett responded that he had not discussed this during the break.

Mr. Feldman explained that it was the applicant’s intent that this officer be funded out of the $40,000 mitigation fees being offered.

Staff indicated that the funding of an officer was not a desirable use of the mitigation funds.
Mr. Barnett added the condition that the final building colors and materials selected must be acceptable to TRPA staff.

Mr. Garfinkle asked about the signs proposed for the South Y Center. Rather than stating that the applicant would "offer" the signs, the condition should require placement of signs as approved by TRPA staff or by the center's owners. Offering the signs meant nothing. It was a nonenforceable condition.

Mr. Feldman noted that the condition, having been accepted, the applicant was happy to install them. He did not know previously that it was acceptable. The applicant would install them.

Mr. Westergard asked if the findings could be made based on the mitigation that had been offered. Would the project jeopardize attainment of the thresholds? The line had to be drawn somewhere, and that line continued to go up because of the mitigation. To make the findings, the Board had to be assured that the mitigation was sufficient.

Mr. Wells explained that staff was not certain. The proposed package was a good one, but staff had not had an opportunity to quantify the benefits.

Mr. Cole noted that the Board didn't know either how many VMT the project would produce. The Board had adopted a philosophy that it would try to make incremental improvements, however they could be defined, through projects. From his perspective, this was a scenic improvement and in a variety of ways. There was some risk here, as there was with the CTS agreement. The Board did not know for certain and could not absolutely guarantee it. There was reasonable belief that all of the mitigations would add up to a significant reduction or, at least, mitigation for the impacts.

Mr. Upton suggested that the fact there was a monetary mitigation in excess of the formula amount plus a number of other mitigation proposals was a justification for the plan.

Mr. Westergard noted for the benefit of the local jurisdictions that there were ten or twelve resources where TRPA was pushing the threshold limit. He continued to encourage local governments to start prioritizing these, because if someone in the City came in with another project and the Board was faced with the same situation, it would have to start relying on the local jurisdictions to advise TRPA of its priorities and where the resources should be committed. If TRPA was not safe on this one, the next project was going to pay the price, and so on. There were finite resources. He was willing to defer those decisions to local jurisdictions but they had to them assume that responsibility.

Ms. Hagedorn suggested that as with earlier stated concerns regarding water rights the Board may need to consider a fair share for VMT for the Basin and look to local governments to determine where they wanted to allocate this fair share.

Mr. Wynn suggested that everyone of these conversations led sooner or later to a no growth situation. As these quotas were established, the ultimate position
was no-growth - whether the limits were for cars, affordable housing, or commercial businesses. If TRPA really intended to do that, there would need to be public input. A logical conclusion was that eventually there would come a point when a new business could not be approved because there were no additional VMT permitted.

Mr. Cole suggested that TRPA had already done that. In his estimation this had occurred here, because previously there was a service station, and now the parcel was vacant. This wasn’t really growth but replacement of one facility with another.

Mr. Barnett asked for a condition requiring TRPA review of a final landscape plan. On the question of driveway access from Highway 50, staff continued to feel it should not be there. One option may be to not have the driveway as a part of the approval and give staff the ability to review and approve it, if appropriate, at a later time.

Ms. Hagedorn asked that the access be pulled out of the project and have the City, TRPA, and Caltrans take another look at it. The Board had not had sufficient time to talk about it. It made good sense not to put those points close to major freeway intersections because they created enormous problems down the line. That should be kicked back.

Mr. Wynn noted that a letter from a Caltrans representative had asked that there be no entrance to the site from Highway 50. She did not say where it should go, however.

Chairman Upton concurred that the highway access condition should not be included. Access would be provided from Dunlap.

Mr. Barnett explained that it was staff’s understanding that the driveway was eliminated with the approval, but staff had the ability through studies to decide if the driveway was appropriate at a later time.

Mr. Wells suggested that if staff could not work out the issue of the driveway the matter would come back to the Board.

Agency Counsel R. J. Nicolle suggested a redraft of the findings in the packet material. The second sentence in finding 1(a) (Land Use) would be replaced with the following: "The project is consistent with the Planning Statement and will not significantly worsen traffic congestion in peak periods or has been significantly mitigated so that it will not." Finding 1(b) (Transportation) would be replaced with the following: "The project will not negatively create significant traffic circulation impacts." The second sentence of finding 1(c) (Conservation) would be replaced with the following: "Scenic impacts are consistent with the thresholds."

MOTION by Mr. Cole to make the findings as amended to approve the Blockbuster application. The motion carried unanimously.

Ms. Nicolle asked that finding 2 be redrafted to read that there was adequate information to make the finding based on the above information. She also asked that finding 3 be redrafted by deleting the sentence stating that "staff
has determined that traffic impacts are not adequately mitigated with the project."

Mr. Cole asked that his motion approving these findings reflect these last two changes.

Mr. Wells suggested that the evidence for finding 3 did need to contain a sentence that "staff has determined that traffic impacts are adequately mitigated with the project."

Mr. Cole and the Board members concurred by consensus with this further change to the findings.

MOTION by Mr. Cole to approve the project with conditions as outlined. The motion carried unanimously.

XIII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

E. Shorezone Policy Committee

The Board members discussed having a continued meeting of the committee prior to the next regular Board meeting.

MOTION by Mr. Severson to continue the Shorezone Policy Committee to Wednesday, October 4 at 9:00 a.m. at TRPA. The motion carried unanimously.

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

C. Amendment of Chapter 64, Grading Standards, to Add an Exception to Subsection 64.7.B, Excavations, Related to Certain Redevelopment Projects

Senior Planner Carl Hasty presented a summary of the proposal to create an exception to interception of groundwater for projects in the redevelopment area, specifically the special height district. A map in the packet showed the limit of the affected area. The redevelopment agency had made application to amend the ordinance. Staff had worked with the applicant on a hydrologic study of the area and had done extensive monitoring and evaluation of the groundwater situation. Staff felt an amendment was appropriate. The environmental thresholds being improved in this area because of the amendment related to transportation, scenic and water quality.

Ms. Rochelle Nason, for the League to Save Lake Tahoe, noted this was the fourth or fifth time the Park Avenue project had come before the Board for an ordinance change. The League felt the project should be brought forward in its most desirable form and the necessary code changes brought to the Board at that time. Other than that, the League did not object to this proposal.

MOTION by Mr. Wynn to make the findings to approve the Chapter 64 amendments as proposed. The motion carried unanimously.

MOTION by Mr. Wynn to adopt Ordinance No. 95-8.
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Chairman Upton read the ordinance by title.

An Ordinance Amending Ordinance No. 87-9, as Amended, of the Tahoe Regional Planning Agency; Amending Chapter 64 of the Code of Ordinances Relating to Grading Standards and Limitations on Depth of Excavation, and Providing for Other Matters Properly Relating Thereto.

The motion carried unanimously.

D. Amendment of Article V of the Rules of Procedure Regarding Time Limit on Reapplication

Chairman Upton advised that this matter was to be continued to October.

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

A. Amendment of the Caltrans/TRPA FY Overall Work Program

Senior Planner Richard Wiggins explained the proposed amendments to reflect more up-to-date information received since adoption of the California budget. These related to an increase in available TDA funds, a decrease in RTPA Replacement Funds, reflection of a carryover from FY 1994-95, deletion of an already completed work element and renumbering of remaining tasks, and a funding increase for overnight summer surveys.

Mr. Cole noted that the Finance Committee had reviewed these changes and recommended approval.

MOTION by Mr. Sevison to adopt RTPA Resolution No. 95-11. The motion carried unanimously.

XII. ADMINISTRATIVE MATTERS

A. Report on Performance Statistics for the Project Review and Environmental Compliance Divisions

Chairman Upton noted that these reports were in the packet material.

B. Discussion of Goals and Policies, Core Statement of Policy, and Formation of Governing Board Subcommittee

In Executive Director Jim Baetge's absence, Deputy Director Jerry Wells noted that the staff, while supportive of the core statement concept, had concerns with some of the statements in Ms. Urza's September 27 core policy paper. While it appeared consistent with what had previously been discussed, staff did have concern with the suggestion that the thresholds be modified.

Mr. Upton noted that several Board members had volunteered to serve on a core policy statement subcommittee; he would be preparing a list of names for approval next month. A resolution creating the committee, describing the committee's responsibilities, and how its members would be chosen would be drafted for consideration in October.
Ms. Urza noted that, in earlier discussions with Mr. Baetge, Principal Planner Gordon Barrett's name had come up as a logical participant in the discussions because of his extensive background.

Ms. Urza noted she had faxed to Board members a new draft (September 27, 1995) of a proposed core policy statement based on the August discussion. This new draft attempted to shorten the previous document, to use plainer language, and to bring in the additional points discussed at the last Board meeting. She apologized for the fact that a number of Board members and staff had not received her draft until just recently. The discussion in August was fruitful and in her mind provided consensus as to the proper role of TRPA. There seemed to be unanimous agreement that TRPA was not a typical planning agency and that the balancing of factors by TRPA was unique. Specifically, the environmental factors were central. She felt the process of developing a core statement of policy was proving beneficial to the Board's discussions and that the focus of Board deliberations, as evidenced by affordable housing and project-specific discussions, was centering more on environmental factors. In response to Mr. Wells' concern regarding item 10 (Review of Standards) and the potential for altering thresholds and whether the Board had authority to prioritize them, Ms. Scholley's August memorandum indicated that this would be fully legal and that the Board had the authority to amend the thresholds. There was not agreement, however, among the Board members on this because it was too broad an issue to be included in the core policy statement. In the present draft, this was noted as a statement of intent to consider amending the thresholds. Several Board members had pointed out today that this provision be eliminated because, by contrast to the other provisions, it really did not set any kind of policy, but rather a vague statement of intent. It distracted from the whole definitive thrust of the policy statement. She agreed to remove it, and staff would likely agree. If the Board decided to later go into this process of amending the thresholds in one or more respects, there would certainly be legal questions as to the extent of the Board's authority, what thresholds were mandated by the compact, what thresholds should be foremost. In her September 18 packet memo, she had recommended that once the Board could reach agreement on a core statement of policy the full procedure prescribed under the compact for formal adoption of ordinances, which would include notice to the public and hearings, be followed so that the core statement of policy could be brought in as a formal part of the Regional Plan. Mr. Waldie and other Board members had expressed agreement with this public process and to solidify the importance of the core policy statement. Mr. Wells had indicated earlier in the day that staff would prefer not to see the statement formally enacted as a part of the Regional Plan; it should be considered more as a guidance statement.

Mr. Wells explained that staff's understanding when this process started was that it would be a part of the strategic plan to give planning guidance and direction.

Mr. Wynn suggested that if the Board did not give this as much of a solid framework as possible, then it would always be something that could be shoved aside. He had hoped that the statement would be considered as a bill of rights with the full force and effect that the Board could give it. The public should be able to rely on it. Without this, the whole core statement discussion would have been a waste of time.
Referring back to the original core policy needs paper prepared by her and Mr. Wynn, Ms. Urza noted that the compact mandated TRPA to enact as a part of the Regional Plan a statement of goals and policies. There was a strong argument that the existing goals and policies statement was not a goals and policies statement. As she had seen it used on the affordable housing issue, as an example, the goals and policies were not treated as such. They were so dispersed, diverse and minute in detail that they could be picked from and chosen among depending on the desired outcome by an applicant or staff. Technically, they did not qualify as a goals and policy statement. Aside from the federal mandate, one of the original purposes that the Board unanimously agreed on was that the enactment of a core policy statement was crucial to synthesize the various provisions in the goals and policies statement and to make that statement understandable to the public and consistent in application.

Ms. Baldrica questioned staff on how much public input was necessary for the formation of the current goals and policies.

Mr. Wells noted there was a lot of public involvement. If this core statement of policy were to be a part of the Regional Plan, TRPA would need to follow the public hearing process because of the proposed amendments. One of the reasons staff had concerns with incorporating such a statement in the Regional Plan was that the process would require a total evaluation of all the existing goals and policies to see if they were consistent with the core statement. It would take a lot of time and staff resources.

Mr. Wynn suggested that the Board had all agreed that there were a lot of things that had to be reevaluated. The Board did not know how to start and needed a bill of rights to begin with. Once this was available, the Board would try, depending on the schedule and other work priorities, to work a way through the ordinances and regulations so that some day they would all conform. No one ever suggested this could be done in one step.

Ms. Hagedorn noted the information was very helpful; it involved a mixing of values, principles, outcomes, processes. A bill of rights meant something very specific to her. She wanted staff and the subcommittee to be prepared to look at other issues, one of which was TRPA's role as the responsible agency for such things as air and water quality. Every word in a bill of rights had meaning, and if TRPA started mixing up review of standards, water clarity and air quality, there was a long way to go.

Ms. Urza suggested a bill of rights while definitive was flexible so far as its ability to be applied to different factual circumstances. It did not set forth all rights but only those that were most important.

Ms. Hagedorn suggested there were essential things she did not see in this draft. She was very nervous, as an example, about the core policy to achieve "equilibrium." Goals were more appropriately phrased, as an example, that TRPA would improve water quality; TRPA would improve air quality. These were achievable goals.

Ms. Urza suggested that the existing goals and policies statement created havoc. As an example, she was concerned with staff's position that an EIS was
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not done on the affordable housing ordinance last December, because, as staff explained, in 1986 a goal and policy was enacted which favored affordable housing and the Board's adoption of the ordinance posed no significant impact on the environment because it imposed the status quo. Staff had looked through the existing goals and policies to find the statements regarding affordable housing and totally ignored all other policies relating to density, urbanization, land coverage.

Ms. Bennett noted that the compact itself addressed the powers of TRPA to establish environmental threshold carrying capacities and to enforce a regional plan. This was the empowering language which should be reflected in the core policy statement.

Chairman Upton urged Board members individually to review the material. He would propose subcommittee membership at the next meeting, after which the group would start its work.

Ms. Bennett commented she would want a very thorough discussion by the legal staff on these core policies. She was concerned that TRPA may be as vulnerable as ever with the core statement and that it could be manipulated to achieve or justify whatever outcome a person wanted. She was very concerned about this.

Agency Counsel R. J. Nicolle commented on Ms. Urza's concern that there was no environmental analysis done for the affordable housing ordinance. The staff did do an analysis and made a recommendation, and the Board did make findings. The recommendation was based on a long history of environmental holdings that said a more restrictive ordinance adoption studied under an GIS did not need a separate analysis. There was a lot of precedent for this, and she wanted to put the Board at ease that it did not take an untoward or illegal action.

To a question by Mr. Bradhurst regarding the level of environmental documentation for Board action, Ms. Nicolle explained that if a more liberal ordinance was adopted stating, as an example, that a higher level of VMT was permitted and subsequently TRPA was considering adoption of a lower level of VMT, the worst case scenario would have already been studied. The more restrictive regulation would have been considered evaluated already. It was when a regulation was being made more liberal or something was being adopted that was totally irrelevant to the original that additional environmental documentation was needed. In the case of the affordable housing ordinance, based on the staff analysis of the environmental checklist, staff recommended adoption of the ordinance without a full GIS. Staff felt there was no impact because of the earlier study.

XIII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

A. Finance Committee

2. Receipt of August Financial Statement and Check Register

MOTION by Mr. Cole to receive the statement and check register as recommended by the Committee. The motion carried unanimously.
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1. Committee Report

Mr. Cole explained the Committee's earlier discussion on possible use of trolleys outside the Basin during fall and winter months when they were not in use at Tahoe. The Committee directed staff to investigate the options so long as a profit could be made. Simply recovering expenses or breaking even was not sufficient. Apple Hill was one of the areas which could potentially use the trolleys. This was not an action item.

C. Capital Financing Committee

Committee Chairman Cole noted that Mr. Kornreich had asked that the Board specifically deal with Basin impact fees on the next agenda. This issue was effectively accomplished in the discussion on the 1996 legislative packet. That was where funding was being requested for an update of a 1974 study. Other than that, the group worked on finetuning the 1996 legislative packet. There would be a meeting on the remaining forest issue in the near future.

D. Rules Committee

2. Amendment of Article V of the Rules of Procedure Regarding Time Limit on Reapplication

Committee Chairman Steve Bradhurst advised that staff would be providing some additions to the reapplication provisions and reconsideration provisions. Some participants questioned whether a reapplication provision was needed.

XIV. REPORTS

A. Executive Director

1. Monthly Status Report

Deputy Director Jerry Wells advised the Board that Executive Director Jim Baetge was absent because of a family emergency in Sacramento. The Board members asked that their condolences be relayed to Jim and his family.

Mr. Wells advised that the Nevada Oversight Committee was tentatively meeting on October 26, the day after the regular Board meeting. The committee Chairman was Senator Lawrence Jacobsen. On that same day the Project Review Division was planning an all day field trip to review project sites approved during the year. If Board members were interested in attending either event, they were urged to advise staff. Ms. Hagedorn asked that photos be taken on the field trip.

Mr. Wells urged California Board members to take part in the California license plate program to raise funds for erosion control projects in the California portion of the Tahoe Basin.
2. Notice of Circulation, Lake Tahoe Shoreszone Development Cumulative Impact Analysis, Draft EIS

Mr. Wells advised that the comment period closed on November 4. He anticipated a request for an extension.

Mr. Waldie noted he had read a good part of the document and commended Coleen Shade and staff for the work. It was an excellent report, and there was a lot of new information in it.

3. Notice of Preparation, Forest Service North Shore Eco-System Management Project EIS

Mr. Wells explained this was the next phase of the Forest Service timber harvesting projects in the Basin. After close of the notice of preparation on September 28, an EIS for the project would be circulating.

Mr. Robert McDowell, from the Forest Service, noted that the APC members at their meeting had expressed interest in a field trip for the North Shore project. There had been several forest health trips over the years. He was extending the invitation to the APC, the forest health consensus group and the Governing Board. He would advise staff with a tour date.

4. Notice of Circulation, Draft Supplement to the South Lake Tahoe Redevelopment Project No. 1 EIS/EIR (Embassy Vacation Resorts)

Mr. Wells noted this also had a November 4 closing date for receipt of comments. This would be brought back to the Board for a full report in October.

(Ms. Hagedorn left the meeting at 6:45 p.m.)

The Board members discussed the timing of committee and Board review of the shoreszone EIS and regulations. Mr. Wells explained that once the comment period closed on the EIS the staff would be responding to all received comments. The final EIS would then be brought to the Board for action. If the Board agreed that the document was adequate, the necessary ordinance amendments would be prepared for Board action. The initial intent was to have regulations ready for next year’s boating season. This was an ambitious schedule, given the complexity of the issues.

B. Agency Counsel Report

Agency Counsel R. J. Nicolle updated the Board on the status of Hallman v. TRPA, Suitum v. TRPA, TRPA v. Barbieri, the status of the Fallen Leaf Lake Association permit. Special Projects Attorney Susan Scholley reported on the status of Stack v. TRPA (related to the Fallen Leaf Lake Association action by the Board), and the TSPC v. TRPA case. There would be a meeting at TRPA on October 2 of all affected parties to air the issues related to Bitterbrush. Participants would include the County, homeowner groups, TRPA, legal counsel, and others. The matter would be brought to the Board in November.
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C. Governing Board Members - no reports

XV. ADJOURNMENT - The meeting adjourned at 6:55 p.m.

Respectfully submitted,

[Signature]

Julie D. Frame
Clerk to the Governing Board

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

These minutes were approved as submitted on Oct. 25, 1995.