

TAHOE REGIONAL PLANNING AGENCY  
GOVERING BOARD

TRPA/Zoom

September 25, 2024

**Meeting Minutes**

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Ms. Gustafson called the meeting to order at 10:58 a.m.

Members present: Ms. Aldean Ms. Bowman (for Mr. Aguilar), Mr. Bass, Ms. Conrad-Saydah, Ms. Faustinos, Ms. Gustafson, Ms. Hays, Ms. Hill, Mr. Kieckhefer, Ms. Laine, Ms. Leumer, Mr. Rice, Mr. Settlemeyer, Ms. Williamson

Members absent: Mr. Hoenigman

II. PLEDGE OF ALLEGIANCE

Ms. Hill led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Ms. Regan said staff received a request for the Governing Board to pull Item Number 7, Internal recruitment to facilitate transition of General Counsel from the consent calendar. We recommend that you proceed and at the end of discussion of the various consent items and public comment, the Board can decide if they want to pull that item to discuss it separately.

Ms. Gustafson deemed the agenda approved as posted.

IV. APPROVAL OF MINUTES

Ms. Aldean moved approval of the August 28, 2024 minutes as presented.

**Motion carried-voice vote.**

V. TRPA CONSENT CALENDAR

1. August Financials
2. Release of (\$25,000) in Excess Coverage Mitigation (ECM) Funds to the California Tahoe Conservancy for Land Bank Acquisition
3. Release of El Dorado County Stream Environment Zone (SEZ) Mitigation Funds (\$45,000) Mitigation Funds (\$45,000) towards the Class I Bike Path: East San Bernardino - West San Bernardino
4. Release of El Dorado County Air Quality Interest Mitigation Funds (\$52,983.65), and Water Quality Interest Mitigation Funds (\$45,016.35) for the South Tahoe Greenway - Upper Truckee

GOVERNING BOARD

September 25, 2024

Bridge at Johnson Meadow Project

5. Release of El Dorado County Stream Environment Zone (SEZ) Mitigation Funds (\$28,000) towards the Meyers Stream Environment Zone / Erosion Control Project
6. Quagga/Zebra Mussel Infestation Prevention Grant Program Application and Funding Agreement Resolution
7. Internal recruitment to facilitate transition of General Counsel

Ms. Gustafson said five items were reviewed by the Operations and Governance Committee, one by the Legal Committee, and one that was not reviewed by any committee.

Ms. Laine said the Operations and Governance Committee recommended approval of items one through five.

Ms. Williamson said the Legal Committee recommended approval of item number seven. The committee continues to support that path as we talked about last month. There's a lot of thought that went into that recruitment process and that transition. The Legal Committee voted unanimously to deny Agenda Item No. IX.A, Appeal of Denial of Application to re-evaluate IPES score.

Board Comments & Questions-Items 1-5

None.

Board Comments & Questions-Item No. 6

None.

Board Comments & Questions-Item No. 7

None.

Public Comments

Ellie Waller attended the Legal Committee today and read last month's discussion on the internal recruitment to replace Mr. Marshall. How much would it have cost to go out for an external search? Not that the recruitment that we previously did will provide a good attorney here. I believe the last major external outreach was for Ms. Regan's job.

Alan Miller said it's going to be more of the same if you promote from within. Marsha Burch has already shown herself to not be truthful on behalf of the Agency. It looks like there's every intent to promote Mr. St. Michel. He should know what kind of a criminal organization he's getting into. It's unfortunate that he's excused himself from these proceedings. Marsha Burch perjured herself in the Eisenstecken case and is not a good addition to staff.

Ms. Aldean moved approval of the TRPA Consent Calendar.

Ayes: Ms. Aldean Ms. Bowman (for Mr. Aguilar), Ms. Conrad-Saydah, Ms. Faustinos, Ms. Gustafson, Ms. Hill, Mr. Kieckhefer, Ms. Laine, Ms. Leumer, Mr. Rice, Mr. Settlemeyer, Ms. Williamson

Absent: Mr. Bass, Mr. Hoenigman

**Motion carried.**

GOVERNING BOARD

September 25, 2024

Mr. Settlemeyer moved to adjourn as the TRPA and convene as the TMPO.

**Motion carried.**

VI. TAHOE METROPOLITAN PLANNING ORGANIZATION CONSENT CALENDAR

1. Adoption of the 2025 Federal Transportation Improvement Program (FTIPES)

Ms. Laine said the Operations and Governance Committee recommended approval of Item Number one. Ms. Weber provided an excellent report. Ms. Regan also made some clarifying statements that I thought were important. This is simply of funding and a priority list that the California Environmental Quality Act (CEQA) and other environmental requirements such as the National Environmental Policy Act (NEPA), etc. are completely different, and apply on a different level. As specific projects move forward then they go through the environmental review.

Board Comments & Questions

None.

Public Comments

None.

Mr. Settlemeyer moved approval of the TMPO Consent Calendar.

Ayes: Ms. Aldean Ms. Bowman (for Mr. Aguilar), Ms. Conrad-Saydah, Ms. Faustinos, Ms. Gustafson, Ms. Hill, Mr. Kieckhefer, Ms. Laine, Ms. Leumer, Mr. Rice, Mr. Settlemeyer, Ms. Williamson

Absent: Mr. Bass, Mr. Hoenigman

**Motion carried.**

Mr. Settlemeyer moved to adjourn as the TMPO and reconvene as the TRPA.

**Motion carried.**

VII. ADMINISTRATIVE

A. Resolution recognizing former Governing Board member Jessica Diss, Nevada Governor Appointee

Ms. Williamson read the resolution into the record.

Board Comments & Questions

Ms. Hill said it's been a true joy to serve with you, Jessica. I've known you for years prior to TRPA, and your passion for the lake is widely recognized. We are so lucky to have you as an advocate for Lake Tahoe. I will miss how you grounded our discussions in realistic ways to carry out these policies, reminding us that we are a community of families. It's important to consider how families get around Lake Tahoe and support that. You will be missed, and we are so grateful for your support of our activities in the Senator's office.

Mr. Settlemeyer said it's been a pleasure working with you on the TRPA, as well as getting to know

GOVERNING BOARD

September 25, 2024

you and your husband through various avenues.

Ms. Williamson said Jessica's commitment to public service is truly commendable. I had the pleasure of working with you at the Public Utilities Commission in the General Counsel's office, and you are a true public servant. Your dedication to the State of Nevada is unparalleled. You are enthusiastic, smart, kind, and funny, and you succeed everywhere you go. Thank you for everything you've contributed to this agency, and we look forward to seeing all you do in the future.

Ms. Conrad-Saydah said thank you, Jessica, and good luck! Your public service record is truly impressive, and it's been great to have another working parent on this board. Balancing home life and work life for the good of future generations has been clear in your approach. Good luck as you continue to be a working parent while raising your little one along with your other children. It's a big job!

Mr. Kieckhefer said please pick up my calls when I ring! Good luck in your new ventures.

Ms. Gustafson said from a California perspective, I want to acknowledge your commitment, especially navigating a pregnancy and having a baby and still attending our meetings. It was impressive to see you back at it just a couple of weeks later. Your knowledge of the basin, along with your passion and commitment, has made a significant impact. You truly understand the communities around the lake, both on the California and Nevada sides. It has been wonderful working with you, and I really appreciate your balanced approach. Thank you for your dedication and commitment. I look forward to continuing our efforts in your new capacity.

Ms. Regan said there are very few TRPA board members who have also been staff members. Jim Lawrence was one, but echoing our chair's comments, your knowledge of the region and the system has been incredibly beneficial. I want to publicly thank you for championing the State of Nevada's contribution to our budget during your early tenure on the board. Your efforts with the Governor's Office of Finance ensured that Nevada met its one-third contribution, and we will always appreciate that. It has been an honor to work with you. I'm proud of our legal department, and you have been a great contributor during your time with the agency. Working with you on one of the most well-attended summits in nearly 30 years of Tahoe Summits was a highlight. We didn't miss a beat, and I'm excited to work with you in the Senator's office. Thank you for all that you've done for the lake and for TRPA.

Ms. Diss said I want to thank you all for today and for your collaboration during my time on the board. I enjoyed getting to know each of you and working together. I look forward to continuing our work in my new role. I am your champion. Public service is incredibly important, and I recognize that you're all here unpaid, whether for fun or as part of your official roles. It can be hard for people outside to understand how much effort this board puts in, and how dedicated the staff of this agency is. They are true professionals who contribute significantly and make our jobs easier, so I want to express my gratitude to them as well. Keep your chin up, you're doing a great job, even when it's challenging. As a Nevadan who spends a lot of time at the lake, I truly appreciate all that you do.

Public Comments

None.

## GOVERNING BOARD

September 25, 2024

Ms. Williamson moved approval Resolution recognizing former Governing Board member Jessica Diss, Nevada Governor Appointee

Ayes: Ms. Aldean Ms. Bowman (for Mr. Aguilar), Mr. Bass, Ms. Conrad-Saydah, Ms. Faustinos, Ms. Gustafson, Ms. Hill, Mr. Kieckhefer, Ms. Laine, Ms. Leumer, Mr. Rice, Mr. Settlemeyer, Ms. Williamson

Absent: Mr. Hoenigman

**Motion carried.**

### A. [Best in Basin Awards](#)

TRPA staff Mr. Cowen provided the presentation of awards.

TRPA's annual Best in Basin awards program showcases projects, programs, and actions around Lake Tahoe that demonstrate exceptional planning, implementation, and compatibility with Tahoe's natural environment and communities.

#### **BEBOT - Beach Cleaning Robot Eco-Clean Solutions, JB Harris & JT Chevallier Science and Innovation**

The BEBOT is a project and a program that helps sift through the sand on Tahoe beaches to collect small pieces of litter that human cleanups cannot. The innovators behind the project saw a need to remove small particles, wrappers, bottle caps, and small plastics that could degrade and enter Lake Tahoe.

Project partners: League to Save Lake Tahoe and The Searial Cleaners.

The BEBOT crew has also helped identify and protect Tahoe Yellow cress during its missions.

#### **Spooner Lake Frontcountry Improvement Project Sustainable Recreation and Forest Health Nevada Tahoe Resource Team**

The Spooner Lake Frontcountry Improvement project for Lake Tahoe Nevada State Park completely redesigned and updated the facilities at Spooner Lake to serve as a major portal for the 60+ miles of trails in this Lake Tahoe Nevada State Park. This area will also function as a bookend facility at the south end of the planned Incline to Spooner Lake section of the Stateline to Stateline Bikeway will be the Spooner mobility hub, and serve as a major information and interpretive pavilion for visitors to Spooner Lake and the Backcountry. The Visitors Center project was comprehensive upgraded pathways, parking spaces, stormwater treatment, and continuation of the Forest Resilience fuel reduction work that received a Best in Basin Award earlier.

Project partners: Nevada Division of State Parks, Nevada Division of Forestry, Nevada Division of State Lands, Nevada Department of Wildlife, Land and Water Conservation Fund, Tahoe Fund, Design Workshop, Group West Construction Inc., and Burdick Excavating.

This long list of partners also shows you what agencies make up the Nevada Tahoe Resource Team, which also helped shorten this presentation. And longtime supporters of the project, the Tahoe Fund brought private donations into the project with a very fun and attractive adopt a bear program.

#### **IVGID Effluent Export Pipeline**

GOVERNING BOARD

September 25, 2024

**Water Quality and Watershed Restoration  
Incline Village General Improvement District and  
Granite Construction**

You wouldn't think an underground project to upgrade a wastewater export line would fit in with the Best in Basin program, but there is much more to it. Construction Traffic. Granite Construction collaborated with project Owner, Incline Village General Improvement District (IVGID), to complete this historic project to replace 5,365 feet of high pressure effluent water line along the scenic SR-28. A significant risk on the project was working next to the existing, 50-year-old pipeline, that actively carried effluent water out of the Tahoe Basin. Crews worked carefully around this pipeline to ensure no effluent water was discharged. Granite installed three separate portions of this 6 mile pipeline. The project was extremely necessary to protect Lake Tahoe and public health and safety and was complex and challenging. The new line is light years beyond the one it replaced. The project was an outstanding success for all stakeholders. There were no recordable injuries on the project and zero environmental issues.

Project partners: Morgan Construction, T&S Structural, Q&D Construction, Neil's Controlled Blasting, HDR Engineering, Nevada Department of Transportation, and the Nevada Division of Environmental, Protection.

**Slaughterhouse Meadow Restoration  
Forest Health and Defensible Space  
Glenbrook Homeowners Association**

The Slaughterhouse Meadows Restoration Project on North Canyon Creek within the Glenbrook region of the western Tahoe Basin was envisioned to address both a water quality and watershed scale restoration concern and mitigate recognized defensible space concerns through improved forest health efforts. Human induced wetland impacts starting in the 1970's and exacerbated in the early 2000's caused a loss of wetland plant biodiversity, siltation of the existing channel, and to become overgrown with continuous willow and mountain alder overstory. County wildfire managers determined the area was so overgrown that safe access and egress could not be established during a fire. Seven Acres, Environmental Improvement Program project. Increased biodiversity from nine species in 2016 to 32 species in 2023, most of which were established with hand harvested native seed from other watersheds in the Tahoe Basin.

Project partners: Tahoe Douglas Fire Protection District and Nevada Environmental Consulting, LLC.

**San Bernardino Class 1 Bike Trail Project  
Transportation and Sustainable Recreation  
El Dorado County**

Open to the public in fall 2023, the Class I shared use path between West San Bernardino Avenue and East San Bernardino Avenue provides a connection over the Upper Truckee River and provides access to Washoe Meadows State Park, Tahoe Paradise Park, and the Meyers Elementary School. The Project builds upon the Meyers Bikeway and provides a critical link to the bicycle network between the neighborhood on North Upper Truckee Road and the community of Meyers. The Project supports the region's Active Transportation Plan and the Meyers Area Plan which includes a shared use path bridge over the Upper Truckee River just west of Tahoe Paradise Park.

Project partners: County of El Dorado Department of Transportation, Tahoe Paradise Recreation and

GOVERNING BOARD

September 25, 2024

Park District, USDA Forest Service Lake Tahoe Basin Management Unit, AM Development, Inc., San Bernardino Class 1 Bike Trail Project El Dorado County.

**Saxon Creek Aquatic Organism Passage Project  
Water Quality and Watershed Restoration  
Nevada Tahoe Conservation District**

This watershed restoration project by the Nevada Tahoe Conservation District with funding from the Forest Service Lake Tahoe Basin Management Unit removed a fish passage barrier and restored 900 linear feet of Saxon Creek in the Corral Trail mountain biking area on the South Shore to restore an impacted stream channel to a more natural function and upgrade the historic bridge and culvert for stream health and to remove a barrier to fish and other species.

Project partners: USDA Forest Service Lake Tahoe Basin Management Unit, Balance Hydrologics, and Meyers Earthwork, Inc.

The project survived the record winter of 22-23 and with adaptive management, the restored area looks natural, has lush vegetation, and used beaver analogues.

**Lake Tahoe Wildlife Hospital and Rehabilitation Facility  
Science and Innovation  
Lake Tahoe Wildlife Care**

Each year, LTWC rescues, rehabilitates, and releases hundreds of injured and orphaned birds and animals. This is a new local public health & safety facility with accommodation for an on-site caretaker, animal hospital, long-term intern facilities, and many animal enclosures for wildlife rehabilitation across a gorgeous forested lot in South Lake Tahoe.

Project partners: The Muller Family Foundation, Bently Foundation, Lisa Maloff: Angel of Tahoe, MH Buckeye, Natalia Wiczorek, Tom Borek.

Lake Tahoe Wildlife Care has operated in South Lake Tahoe for many years and finished construction on their new home in 2022. It is in the science and innovation field of the awards because of how high-tech and safe this facility is for injured wildlife. The raptor cage is impressive to say the least.

**Riverside Avenue Affordable Homes  
Saint Joseph Community Land Trust  
Affordable Housing and Community Revitalization**

Three deed-restricted, for sale moderate-income homes a few steps away from transit and walking distance to multiple services including the library, DMV, county government offices, the Lake, groceries, recreation center, middle school, multiple retail and restaurants. Largely completed with private donations to Saint Joseph Community Land Trust, three local families were able to purchase each home at a very affordable rate on a 100-year land lease.

Project partners: City of South Lake Tahoe, Brian Shinault Architect, Affordable Construction Services, Rural Community Assistance Corporation, Caliber Home Loans, and Compass Real Estate.

This project is deed-restricted and helps fill the need for missing middle income housing in the Tahoe Region.

**Upper Truckee River and Marsh Restoration Project  
California Tahoe Conservancy  
Water Quality and Watershed Restoration Project**

The Upper Truckee River and Marsh Restoration Project is large ecosystem project in one of the most Significant wetlands in the Sierra Nevada. The California Tahoe Conservancy constructed 1,200 feet of new river channels, reactivated 13,500 feet of historic river channels, created 13.7 acres of functional wetland from past development, eradicated 3 acres of aquatic invasive species from the Tahoe Keys Marina, increased carbon sequestration over 250 acres of wetland, and construction of a 3,200-foot accessible to all pedestrian trail to Lake Tahoe.

Project partners: California Department of General Services, USDA Forest Service Lake Tahoe Basin Management Unit, Northwest Hydraulics Consultants Inc., Meyers Earthwork Inc., U.S. Army Corps of Engineers, California Department of Fish & Wildlife, California Wildlife Conservation Board, U.S. Bureau of Reclamation.

The Upper Truckee watershed funnels around 30 percent of all the runoff in the basin and this project combined with multiple river and restoration projects both planned and completed upriver moves Lake Tahoe closer to the goal of restoring the lake's famed clarity to 97 feet. TRPA mitigation fees and collaborative funding from many agencies. The CTC also recently celebrated 40 years of implementing and helping fund major restoration, forest health, and bikeway projects throughout the Tahoe Basin.

**Honorable Mention:**

We had a number of great nominations for our judges to consider this year. A few of the projects that stood out but didn't move forward for an award are here. Desolation Hotel by the Pipkin Family is in the heart of South Lake Tahoe's hotel district that is helping revitalize the state line area. It provided significant environmental improvements for the lake and is steeped in sustainability and connection to the outdoors. Tahoe City Public Utility District reworked the Tahoe Vista boat ramp with amazing water quality and recreation improvements. And the City of South Lake Tahoe's drainage improvement project in high-density neighborhood is a top-notch water quality improvement project that also solved flooding and street parking issues in a constrained area.

**Judges:** Sam Cajandig, Nevada Environmental Consulting; JB Harris, Eco-Clean Solutions; Jeffrey Fearon, TRPA Intern; Victoria Ortiz, TRPA; Meghan Kelly, Nevada Tahoe Conservation District; Jeff Cowen, TRPA.

Board Comments & Questions

None.

VIII. PLANNING MATTERS

A. [State of the Lake Report by Alex Forrest, UC Davis/Tahoe](#)

Mr. Segan introduced Dr. Forrest, UC Davis, Tahoe Environmental Research Center. Alex is the interim director of TERC and an associate professor of civil and environmental engineering. His research has taken him to the Arctic and Antarctic, where he addresses and understands the impacts of climate change and warming. He is a pioneer in the use of autonomous robotics to collect environmental data, with over 20 years of experience applying these technologies around the world and in our local lakes.



## GOVERNING BOARD

September 25, 2024

More locally, he uses the same techniques to understand water quality and ecosystem health in Lake Tahoe and other lakes in Nevada.

Mr. Forrest said starting with the annual average, we have had continuous data collection since 1967. Many people are familiar with this as part of our long-term monitoring program supported by TRPA, which is essential for understanding the impacts of climate change and changes to the lake. One of the benefits of our program is that we are one of the few data sets like this in North America, giving us a unique advantage. The Secchi measurements, using high-tech sensors, represent only a small part of our monitoring efforts. We have been reviewing all aspects of the program to optimize and improve the measurements we take.

The Secchi measurement is effective at providing at least an indicator of what's happening. This year's results are important, but we should focus on long-term trends rather than year-to-year comparisons. These long-term measurements are crucial for understanding how the lake is changing overall. Notably, we are starting to plateau in our annual average, which is good news. It's even better news when we break down the data seasonally. Looking at winter data, our last Secchi measurement shows promising results. This is partly due to an overturning event in 2023, where a significant winter brought clear water from the bottom to the surface.

If we summarize the results, the average shows a plateau, but summer conditions are worsening. This is a concern that requires attention from both the scientific community to understand the processes driving these changes and from management to determine what actions can be taken to prevent further decline.

We have two different stations as part of our long-term monitoring program. The first is the Mid-lake station, located roughly off of the State Line in the northern half of the lake. Based on the Mid-lake measurements, we recorded the 10th lowest value in the historical record on an annual basis, which isn't great news. The second station is our Lake Tahoe Profiling station, located just off Homewood. Here, we have observed very good winter conditions, the highest since 1983, but we also recorded the 5th lowest summer conditions in the historical record. This reflects the idea that it can be the best of times and the worst of times. It's important to break down our understanding of the lake by seasonal variations to fully grasp the impacts.

The accompanying graph highlights our data for 2023. The gray dots represent all the data collected over the last 10 years, while the blue dots represent measurements taken in 2023, which we collect roughly every two weeks. We can see that we're beginning to move outside the statistical variation observed over the past decade. The lowest blue dot corresponds to a measurement taken on March 1st, while the highest blue dot indicates another significant measurement. We are indeed moving beyond the trends seen in the last decade, emphasizing the need for a seasonal understanding of our interpretation of the lake's conditions.

It's all about the biggest differences we're observing, and we are seeing very rapid changes. This year, we recorded the 3rd biggest difference on record, with a jump of over 100 feet from winter conditions in March to summer conditions in June. We're trying to understand what drives these significant changes, and part of the story involves particles. Many people have discussed particles in the past, and for reference, the width of a human hair is about 10 micrometers. Very small particles influence the optical properties of water.

This year, we observed a huge jump in particle concentrations, specifically in the range of 1 to 7 micrometers in the top layer of the water. We essentially doubled the particle concentration, and we are investigating their sources to mitigate their impact. One hypothesis is that there may have been an

## GOVERNING BOARD

September 25, 2024

increase in inflow. We looked at around 50 years of data from Blackwood Creek runoff, specifically because it is closest to our Homewood station. When examining the annual average, it doesn't appear to be an exceptional year.

However, if we take a closer look at Blackwood discharge, the highlighted years represent our most significant runoff years—2023, 2019, and 2017—typically following big snowfalls. These years also correspond with increased turbidity in the creek, which serves as a proxy for particle concentration entering the lake. In 2023, we are indeed seeing a substantial influx of particles through the streams into the lake. While this year's particle levels are not as high as in 2017, they are still significant compared to other years, particularly in our drier seasons.

All this is in the context of long-term changing trends. This plot shows our single profiles from a laser in situ scanning system. Essentially, it's a laser scattering transmissometer that measures particles as it is lowered from the boat. Instead of taking samples back to a lab, we measure them in situ PBI measurements, allowing us to gather data from the top 150 meters of the water column. The white gaps in the data indicate where the profiler couldn't reach the bottom for various reasons during those measurements.

Over the last 10 years, we have observed changes in the baseline conditions. While analyzing one year's data point is important, it is crucial to consider the overarching long-term trends in the lake, which we need to fully understand. Part of the story involves fine particles, those smaller than the width of a human hair. In 2016, we observed a significant increase in these very fine particles at various depths—10 meters, 50 meters, and 100 meters. We are currently developing hypotheses to understand why the lake experienced this sudden rise in small particles. These small particles could be inorganic, originating from runoff containing sand or decomposing organic material. Alternatively, they could be of organic origin, possibly linked to changes in phytoplankton populations.

For those who remember the Caldor fire, this photo may look familiar: a smoky day on the water. This image reflects changing conditions influenced by climate change. It's not just about warmer temperatures; it involves alterations in forest soil and an increase in wildfires.

Recent research from UC Davis has highlighted the number of smoke days lakes across North America have experienced. On average, from 2019 to 2021, 99 percent of lakes had at least 10 smoke days per year. Smoke can trigger nitrogen deposition and introduce particles into lake systems, contributing to these changing conditions.

There's also been considerable discussion about the levels of zooplankton in the lakes. These organisms are crucial to the lake's ecology. In 2022, there was a crash in their population, and while the exact reasons are still unclear, we are seeing signs of recovery in 2023.

We are observing changes in both Cladocerans and Copepods, which are types of phytoplankton. Additionally, there has been significant focus on cyclotella, which are about 4 microns in size and affect water clarity. Their population crashed, leading to the rise of a different phytoplankton, Synedra, which has become dominant since 2017. The shift from cyclotella to Synedra raises questions about the dynamics of the lake ecosystem. Both organisms were native, but cyclotella previously dominated. We are investigating what has driven these changes and cycles in the assemblage.

There has been a lot of conversation around microplastics. Micro means something that you can't see. We currently have a very poorly constrained understanding of microplastics in Lake Tahoe because we lack measurements at that scale. Our instrumentation can reliably detect particles down to about 10 or 20 microns, but the measurements we've conducted so far cap out at around 335 microns, which is

## GOVERNING BOARD

September 25, 2024

much larger than what we typically consider microplastics.

Current results show that Lake Tahoe has extremely high concentrations of microplastics compared to other similarly sized lakes, nearly double the levels we can measure. We want to understand what's happening at smaller levels to explore their optical properties. The technology we use picks up all particles but does not differentiate between them. At very small sizes, it's challenging to identify the composition without lab analysis to determine what percentage is inorganic, plastic, or organic. While the technology is advancing, it's mainly for laboratory use rather than field deployment, so we need to incorporate these developments into our monitoring programs.

A key takeaway from the State of the Lake report is that climate change does not have borders. It's reminiscent of the work Rachel Carson did in the 1960s and 1970s with *Silent Spring*, focusing on point source reduction and eliminating pollution sources. Now, we face climate change impacts that cross international boundaries, such as smoke from wildfires in Canada.

We need to monitor not only individual watersheds but also lakes collectively to understand how they drive overall systems. The State of the Lake report poses several important questions, including how climate change affects ecosystem shifts, clarity, the dynamics of invasive species, atmospheric deposition, nutrient levels, and forest health. We also seek to explore new technologies to study climate change and how Lake Tahoe can serve as a laboratory for broader insights.

Finally, we need to train the next generation to mitigate the impacts of climate change. For those who attended Katharine Hayhoe's talk in February, she emphasized that our goal is not to paralyze the world with anxiety but to galvanize action. We need genuine hope—not false optimism—that if we act, we can make a difference. Our role going forward is to inspire action and engage the next generation in this effort.

### Board Comments & Questions

Ms. Conrad-Saydah asked if you've considered the emissions from recreational activities, particularly from boats. For example, petroleum emissions in the lake could be one of the potential factors affecting water quality.

Dr. Forrest said a lot of our early work, particularly that of Charles Goldman, contributed to the banning of two-stroke engines in Lake Tahoe. This was one of our last major focuses on boat emissions. We try to understand deposition more broadly, looking at both nutrients and particle deposition. As part of our current monitoring program, we take atmospheric samples, especially concerning wildfires. We have been working to understand the impacts of localized wildfires, supported by many agencies in the Basin. We also deployed additional instrumentation during the Caldor and Mosquito Fire. While our long-term focus includes these aspects, I find it fascinating to differentiate specifically around recreational activities and tailpipe emissions. I would love to engage more with social scientists studying recreation and car usage in the Basin, as well as atmospheric science groups, to gain a better understanding of what affects air quality in the region.

Ms. Aldean said regarding particle deposition from wildfires. I assume there's also particle deposition from prescribed burning, which we support as a method for reducing materials in the Basin that could lead to catastrophic wildfires. Do you monitor prescribed burning when it occurs? Do you take measurements to determine what portion of those particles are attributable to the prescribed burns?

Dr. Forrest said no, but that's a great idea. When we've conducted monitoring, it has typically been

## GOVERNING BOARD

September 25, 2024

during major events, especially when Air Quality Index (AQI) values in the Basin exceed 600. That's when our instrumentation can effectively capture data. We're also working with others at UC Davis to understand broader scale impacts. We examined a series of lakes through an NSF grant across the West during the summer fires of 2022 to assess long-term effects. One interesting finding regarding fire and smoke deposition is that smoke contains about 40 percent and 55 percent black carbon, making it difficult to differentiate the particles. This nitrogen can significantly affect the lake when deposited. However, we haven't been able to isolate smaller sources yet. As for prescribed burns, I don't have specific information about their timing, but they may be small enough that we can't currently detect or partition them out.

Ms. Aldean said the upwelling that occurs accounts for increased lake clarity. But I think it would also deliver more nutrients when subjected to sunlight which could promote the growth of various organic species.

Dr. Forrest said it's a mixed blessing. We may experience good winter clarity, but there's a possibility of a response in the summer that is the opposite of what we want. This is part of the hypotheses we are testing. The deposition of nutrients can lead to issues if we're not getting regular turnover events. There are two main consequences when turnover events are infrequent: first, there's less oxygen reaching the bottom; second, when turnover events do occur, they are less frequent and can bring up nutrients that trigger algal blooms. This is one of our long-term concerns.

Ms. Aldean said projecting into the future, it's clear that we're not a closed system. As you mentioned, there are influences such as fires from outside of the Basin, particularly from areas like Canada, that may be affecting our water clarity. Microplastics, for instance, are found in the atmosphere worldwide and are not solely from local sources. Given this context, I wonder if our focus should shift. While it's important to appreciate the lake's clarity, perhaps we should prioritize water quality instead, especially since there are many factors beyond our control. We are somewhat at the mercy of how others manage their environmental behaviors.

Dr. Forrest said I use clarity as a proxy for water quality. The monitoring program we've been conducting has focused heavily on water quality and the various parameters involved. Clarity serves as a valuable public education tool, and we've used it for a long time to help understand the overall quality of the lake. I believe it's important to have discussions around both clarity and water quality.

Ms. Aldean said even if we were to eliminate all local sources of pollution, such as runoff, we would still be impacted by external influences. While the air quality in the Tahoe Basin is superb, we must recognize that outside factors will continue to play a role. Therefore, it's beneficial to use both clarity and quality as indicators of the lake's health.

Ms. Laine asked Is cloud seeding still practiced in the Basin? If that program is still in effect, how does it intersect with polluted waters.

Dr. Forrest said we don't practice cloud seeding and haven't been involved with it.

Ms. Regan said Desert Research Institute does practice cloud seeding and we could follow up on that for you.

Ms. Hill said the first Lake Tahoe Summit I attended as a Governing Board member was tough to hear about the fire effects on lake clarity. It really makes you think about what we can do at a local level to support improvements. Since you have spoken to scientists around the world, have you seen

## GOVERNING BOARD

September 25, 2024

local policies that have successfully addressed the issue of plastics? As a board member of the Truckee Meadows Water Authority, we've been doing a lot of work upstream to prevent fires outside our usual focus area for the watershed, recognizing that the water will eventually flow down into our watershed. It would be helpful to explore both what's happening outside of Lake Tahoe and any effective local solutions.

Dr. Forrest said my personal belief is that we need strong local action to inspire national attention. We already have that here in our community. For example, we have partners in Southern Quebec where Zebra mussels are just beginning to invade lake systems. One small lake, about 10 kilometers long, has been proactive. A local homeowners association took decisive action to shut down boat access, which garnered scientific interest and led to the establishment of a monitoring program. This effort ultimately prompted the Premier of Quebec to invest in a provincial program to monitor the advance of that invasive species across the region.

It was the actions of one small local community that drove significant progress. We have the potential for national attention as well, evident in the Federal Summit we hold each year, which attracts considerable focus because Lake Tahoe is an iconic destination. Going forward, we can unify others and draw attention to aquatic systems. This is not just one problem. Microplastics are becoming ubiquitous, as highlighted by a recent publication in Nature that found microplastics in the snow in Antarctica. This is our new reality, and we must continue our actions, increase our educational efforts, and provide a reference for others. The model we've developed here is being adopted elsewhere. Many of you know that Professor Schladow has taken this model and is working in Patagonia, where similar challenges are emerging. Instead of repeating past mistakes, they approached him and UC Davis to learn how to create a planning model that prevents the same aquatic problems we faced in the past. These are the types of actions we can take moving forward.

Mr. Bass asked if we are monitoring our stream inflows before they hit the lake to assess particle levels coming from certain meadows? I'm considering this in relation to our restoration projects, where we typically conduct assessments before and after the work is done. For example, with Johnson Meadow and other projects on the South Shore, it would be valuable to compare conditions before the project and after, allowing us to gauge the effectiveness of our efforts.

Dr. Forrest said the short answer is yes. The longer answer is that many partners around the basin, including Desert Research Institute, United States Geological Survey, the University of Nevada, Reno, and the University of California, Davis, participate in monitoring the streams. We have established reference streams because we observe differences between the west shore and the east shore, particularly in the response of streams due to varying snowpacks and loads on each side. We have long-term monitoring sites specifically related to certain restoration projects. It's essential for us to research the baseline conditions before the projects begin. So yes, there is certainly ongoing activity.

Ms. Regan said to build off the Environmental Improvement Program Committee's discussion about the Threshold Evaluation Report, particularly focusing on stream health, which we'll delve into this fall. In recent years, we've seen substantial reductions in pollutant loads as Tahoe's Total Maximum Daily Load (TMDL) has come online. However, it's crucial to consider historic use patterns and their impact over time. Areas like Blackwood Canyon, along with the influences of agriculture and mining in various parts of the lake, have affected watersheds differently. We've invested significant resources in Blackwood through the Forest Service and other partners, yet we continue to see the effects of historical legacy impacts. This brings us to our comprehensive monitoring efforts, which encompass both regional and specific stream-by-stream assessments. The program we've participated in and funded for years is robust, with a strong track record built over the last 40 to 50 years.

GOVERNING BOARD

September 25, 2024

Mr. Segan said the United States Geological Survey has seven established long-term stream monitoring stations in the basin that provide continuous data on the load and particles flowing into the lake. Collectively, these stations account for about 50 percent of Lake Tahoe's inflow.

- A. [Lake Tahoe Dam Investigatory work by the Bureau of Reclamation, Region 10, Tahoe City, Placer County, California, Assessor's Parcel Numbers 094-290-033, 094-540-008, & 094-540-017](#)

TRPA staff Ms. Good and Mr. Schoenfeld, Lahontan Basin Area Office provided the presentation.

Ms. Good said there is a lot of interesting background and historical information on Lake Tahoe dam. We will round out the presentation with a discussion of the details of the feasibility study itself. Today, we are presenting due to the nature and location of the work to be done. Lake Tahoe dam is in Tahoe City's North Shore. The dam plays a vital role in the water supply for our region outside the basin and is also an iconic structure within it. While it is currently safe and functional, the dam is very old.

The Bureau of Reclamation needs to conduct investigatory work to understand what may be done to rehabilitate the dam in the future. The first phase of this work involves taking concrete cores from the dam, which will then be analyzed. This analysis will inform subsequent geotechnical work and potentially a proposed project for dam rehabilitation. The Lahontan Regional Water Quality Board staff in Tahoe is the lead agency on the concrete coring portion of the investigatory work, which is being done per the Memorandum of Understanding with Lahontan. Lahontan is expected to take action in about 45 days, and the Bureau has completed all necessary applications for this initial work.

For TRPA, the concrete coring is an exempt activity. All temporary measures implemented as part of this activity is designed to ensure it remains exempt and does not have any adverse impact. TRPA will likely require permitting for the subsequent geotechnical work and any potential dam rehabilitation work in the future.

(presentation continued)

Mr. Schoenfeld said Lake Tahoe Dam was constructed in 1913 and stands about 18 feet tall. It controls the top 6.1 feet of the water level. Currently, there is no imminent danger; however, the concrete is showing signs of deterioration.

Our region manages both the Carson River to the south and the Truckee River to the north. The Bureau of Reclamation, established in 1902, initiated one of its first projects: the Truckee-Carson Irrigation Project, which aims to deliver water for irrigation to the Fallon area.

At that time, it was clear that the Carson River alone would not satisfy water demands, so the plan involved augmenting it with water from the Truckee River. The United States Geological Survey conducted studies in the late 1890s and early 1900s that highlighted the need for water storage, identifying Lake Tahoe as a viable solution, particularly during drought years.

A dam had already been constructed in the 1860s. The Newlands Project was authorized in 1902, coinciding with our decision to pursue water storage in Lake Tahoe. However, an existing dam owned by the Truckee River General Electric Company complicated matters, as they had interests in the river for their downstream power plants, while our focus remained on securing a reliable water supply.

Negotiations began in the early 1900s, and with help from the Truckee-Carson Irrigation Company, we

## GOVERNING BOARD

September 25, 2024

agreed to co-fund the project. In 1915, an agreement was reached with the Truckee River General Electric, establishing flow requirements of 500 cubic feet per second in the summer and 400 in the winter to support their power generation. In return, they granted us an easement for operational and maintenance control of Lake Tahoe Dam.

In 1981, Lake Tahoe Dam was added to the National Register of Historic Places.

In 2008, operative agreement regarding the Truckee River was signed and implemented in 2015, which we will discuss later. The yellow line on the map indicates our exclusive easement on the land, which is almost equivalent to ownership although the Truckee River General Electric Company maintained ownership at the time. The area under our control includes Lake Tahoe Dam and Fanny Bridge.

Lake Tahoe Dam was constructed between 1909 and 1913 and regulates the top 6.1 feet of water, which accounts for 744,000 acre-feet of storage, about 71 percent of the total storage capacity on the Truckee River. The outlet capacity is approximately 2,600 cubic feet per second (cfs), primarily influenced by the inlet.

There are 17 cast iron gates at the dam, originally designed to be hand-cranked, which limited their size. When we took over operations in the early 1910s, litigation began, leading to the Truckee River Agreement and subsequent decrees. The Tahoe Prosper Exchange was also part of this process.

Currently, we have a Federal watermaster who also acts as the Truckee River Agreement administrator. He is responsible for managing the gate operations and determining the amount of water released from Lake Tahoe Dam. My team primarily focuses on making the necessary gate adjustments.

Here's a brief history of the operations at Lake Tahoe, highlighting the various factors we need to consider. Due to ongoing litigation, particularly with the Pyramid Lake Tribe, the Truckee River Operating Agreement was established. The Truckee River flows from Lake Tahoe to Pyramid Lake, which is the land of the Pyramid Lake Tribe. Public Law 101-618 directed the Secretary of the Interior to negotiate a new agreement, which was completed in 2008 but finalized in 2015. This agreement introduced greater flexibility in how we manage our water resources.

Initially, each reservoir had a specific purpose, allowing water storage only for that purpose. Now, we can store water across all reservoirs, enhancing flexibility. This change allows us to manage water levels in the Truckee River more effectively and store water for future use. A significant portion of this stored water is designated for fish habitats, supporting both municipal needs downstream and recreational activities upstream.

We recently received funding through bipartisan infrastructure legislation to study Lake Tahoe Dam and explore future management options. We are currently conducting value planning studies to develop potential solutions. This includes gathering additional data from the dam and upstream areas.

As we move forward, we will conduct feasibility design alternatives and adhere to the requirements of the Bureau of Reclamation. This includes compliance with the National Environmental Policy Act (NEPA) and TRPA, as well as addressing national historic preservation and endangered species considerations.

## GOVERNING BOARD

September 25, 2024

The conditions of the dam reflect its age, having been built over 110 years ago. It lacks modern features, such as air pockets in the concrete that accommodate water expansion during freezing conditions, leading to deterioration. While the dam is not at immediate risk of failure, there has been a reduction in material strength and some impacts on gate operations, which affect our ability to meet the requirements set by various decrees and agreements.

One concern with the dam's construction is the presence of cold joints, where sections were built separately over the years. This results in poor bonding and weakens the structure's ability to resist lateral loads, making it vulnerable to earthquakes. One of our main objectives is to enhance operational reliability and ensure safe operations, particularly for downstream safety. Given that the dam is over 110 years old, we conducted concrete assessments in the early 2000s to evaluate its condition. At that time, we chose not to take action, despite recognizing some issues. We plan to follow a similar assessment approach to determine how the condition has progressed and decide on future actions.

Currently, we are in the permitting process and hope to conduct work in October and November, coinciding with the lowest water releases from the dam. We expect flows to decrease from 70 cfs to 50 cfs on October 1. Lower flows are advantageous for our downstream activities. Once we gather more information, the plan includes geotechnical permitting and work upstream to assess the possibility of relocating the dam as one of the alternatives. This work will take place over the winter, primarily via barge-based operations to avoid land-based boring.

We have been communicating with various stakeholders to keep them informed about these activities. We want to ensure that the community understands that the work is focused on studying the dam's condition and not indicative of any immediate problems.

Even after we complete the feasibility study, it will guide our future actions. However, obtaining funding can be uncertain and may take time, which means we face a long road ahead unless an urgent issue arises. If a significant problem does occur, the study will enable us to respond more quickly and effectively. While we don't anticipate any immediate issues, the dam is relatively small, and while it could potentially last another 100 years, we cannot be certain. This uncertainty is why we are prioritizing our study of the dam's condition.

### Board Comments & Questions

Ms. Aldean said the dam has fared quite well over its 110 years. If your investigation leads to the construction of a new dam upstream, considering that the current dam is on the National Register of Historic Places, would you open the gates and leave the old dam in place as a historic relic?

Mr. Schoenfeld said we are currently conducting cultural studies, and there will be some mitigation measures in collaboration with State Historic Preservation Office (SHPO) regarding our next steps. At this moment, I don't have a clear answer about whether we will proceed with anything upstream. It's certainly on our minds, but it may prove to be too difficult. As part of our National Environmental Policy Act (NEPA) responsibilities, we need to assess the environmental impact and determine the best solution by considering all factors. This is something we will address down the road.

Ms. Aldean asked what your historical interaction has been with TRPA. Have you applied for dredging permits in the past, especially regarding sedimentation buildup behind the dam?



GOVERNING BOARD

September 25, 2024

Mr. Schoenfeld said we don't have sedimentation buildup at the dam. Lake Tahoe is only a couple hundred feet below the natural rim, so most sediment has already settled out. There isn't much inflow into the Truckee River above the dam, which means there's no significant sediment coming in. To my knowledge, we've never had to dredge in the past 100 years.

Ms. Gustafson said this dam, considering its size, holds back more water than any other structure, potentially in the world, but definitely in the U.S. Is that correct?

Mr. Schoenfeld said he's unsure.

IX. APPEAL

A. [Appeal of Denial of Application to re-evaluate IPES score, 1341 Tata Lane, South Lake Tahoe, CA Assessor's Parcel Number 032-261-002, TRPA File No. ERSP2023-0033, Appeal File No. ADMIN2024-0011](#)

Ms. Williamson said the legal committee voted unanimously to deny the appeal. However, I believe it's essential that we hear presentations from everyone involved, as there are some complicated issues at play. Let's proceed directly to the presentations.

Ms. Burch said the issue on appeal is whether the parcel is subject to reevaluation under Code Section 53.6.3. This area is complex, as it involves the IPES land capability system, which can be intricate. The question before the board today is whether the application for reevaluation meets the criteria outlined in that code section. We'll review the specific code language shortly.

Essentially, the code states that if new information is available that was not known to or considered by the evaluation team at the time of the initial assessment such as existing easements or consolidations, then a reevaluation of the score may occur. However, it's important to note that the reevaluation cannot include the proper application of the IPES criteria; that determination is addressed in an appeal.

The land capability classification system includes the Bailey system, established in 1960, and the IPES system, which was added in 1987 with the update to the Regional Plan.

The 1987 Plan implemented the IPES system for undeveloped residential parcels. This objective system rates the environmental suitability of vacant residential parcels for development, with scores ranging from 0 to 1150. Parcels that receive a score of zero are considered unbuildable. While the management of parcels with scores above zero is not directly relevant to this specific parcel, it does inform the overall discussion and decision today. Under the 1987 Plan, only property owners with scores above the IPES line are eligible to submit applications for development permits. Available for development serves as a foundation for the IPES system and highlights the importance of the finality of the IPES.

The evaluation examines site-specific criteria set forth in the code to classify the land capability of individual parcels. Most vacant parcels in the Basin, primarily between 1987 and 1989.

There are two methods for challenging an IPES score: Reevaluation, This is the focus of today's discussion. Second is an appeal process for anyone who received an IPES score, allowing 180 days to appeal that score, which could be revisited at that time. In 1990, a second opportunity was added to the code for those who hadn't appealed to challenge their IPES scores. This occurred amidst significant legal challenges to the 1987 Regional Plan, leading to close scrutiny of the IPES by the courts. The 9th Circuit upheld the 180-day statute of limitations for appeals to an IPES score.

## GOVERNING BOARD

September 25, 2024

This brings us to the appellant's parcel, a 16,300 square foot lot in the city of South Lake Tahoe. It was scored by the IPES in August 1987. During the time TRPA was scoring IPES parcels, owners were notified and provided information on how to appeal their scores. The soil profile was described and evaluated based on IPES criteria. The evaluation verified that the entire parcel is in a Stream Environment Zone and was given a score of zero. The appellant's predecessor did not appeal the IPES score, so it became final. In 1991, the appellant purchased the parcel for \$8,000.

Next, we have the field notes, which provide some context. This is not all of the notes, but it shows the form used by the IPES evaluation team. Under item A, it indicates a score of 100 percent. The IPES notes also mention that a foundation was graded on the parcel. A 20 by 30-foot seep existed at the front of the parcel, with larger areas showing moist indicators. Wet site vegetation was present, and soil tests indicated strong bleaching at 32 inches. All of this information is included in the evaluation form. On the left side of the form, item B contains two marked boxes: one regarding access, marked "no," and the other regarding utilities, also marked "no." I will return to these issues shortly.

Next, we have a map from the field notes. This map was used by the team as they graded the parcels. It notes that the team was aware of the grading on the parcel and identifies the location of the seep.

The first assertion on the appeal from the appellant is that a new survey of the site indicates it had been graded before the IPES scoring took place, and that the soil pit used in the IPES evaluation was located in this previously graded area. The second assertion is that the IPES field notes indicate that access and utilities for the site are not located in a Stream Environment Zone (SEZ), suggesting that the IPES team made an error in concluding that the entire site was SEZ.

With respect to the graded area on the parcel, this is not new information; the IPES team acknowledged in their field notes that the parcel had been previously graded. The assertion that the IPES team did not consider the existing conditions of the parcel is not an appropriate basis for reevaluation, as it questions the application of the IPES criteria and whether the initial evaluation team properly considered the previous grading.

This relates back to the original discussion regarding the relevant code section, which explicitly excludes reevaluation based on new information that calls into question the application of the IPES criteria. Over the last 30 years, many sites have been altered due to manmade or natural changes, making today's surveys unreliable for indicating the topography of the site in 1987.

Regarding access and utilities, the 1987 field notes include checkboxes indicating that access and utilities were not in the SEZ. The appellant's position is that this implies confusion on the part of the IPES team. At that time, there was no developed access or utilities. We cannot speculate on the reasoning behind the IPES team's choices, but after evaluating the soil test pit and other parcel elements, they concluded that it was 100 percent SEZ.

There has been an instance where TRPA determined that new information warranted a reevaluation, specifically in 2007, when it was found that the IPES team had mistakenly scored an adjacent parcel. However, this situation is different; the evidence in the files and field notes suggests that the IPES team correctly identified the parcel and maintained thorough records of their scoring.

The key question on the appeal today is whether there is new information, under the applicable code section, which is unrelated to the question of whether the IPES criteria were correctly applied, which would support a reevaluation. This is a strict system, and here we are, 30 years later. Environmental conditions can change, whether due to natural or manmade factors. At this stage, it's tempting to look at the situation and suggest that conditions may have changed since the initial evaluation. However,

## GOVERNING BOARD

September 25, 2024

the IPES land capability system is an intricate structure established to balance growth with environmental quality, as required by the compact when it was adopted in 1987. There has been significant political and legal pressure regarding this balance.

When TRPA developed the IPES system, it aimed to create a robust framework to reconcile development needs with environmental protection. The level of development allowed in the region is based on the number of sensitive lots identified in the initial IPES evaluation and the number of those lots that have since been retired. It is critical to limit challenges to the application of IPES criteria to the appeal process to preserve the finality of the scores assigned in the late 1980s. If new survey information could be used to challenge the application of IPES criteria today, it would contradict the clear language of the code. This could allow for the reevaluation of any IPES parcel, undermining the established balance and percentages in each county, effectively dismantling the IPES system.

The land capability system has undergone nearly two decades of litigation, partly because the scoring system imposes significant limits on development. In the case of the SEZ, the parcel is unbuildable. What may seem like a strict result is a critical component of a carefully crafted system with clear rules, upheld by the courts.

### Board Comments & Questions

Ms. Conrad-Saydah asked if we grant the appeal, what are the steps that would happen after that? And what are the cascading impacts of granting the appeal?

Ms. Burch said granting the appeal would effectively reverse the denial of the application for a reevaluation. If the appeal is granted, the following would occur: A new IPES evaluation of the parcel would take place, resulting in the issuance of a new IPES score. The most significant consequence of this decision is that new information related to the application of the IPES criteria would now serve as grounds for reevaluation. Potential for Widespread Rescoring: This could lead to a significant number of parcels being rescored, as property owners might seek reevaluations based on updated information.

Ms. Conrad-Saydah asked if a third party could challenge the reevaluation if it raises concerns about legal inconsistencies.

Ms. Burch said the question today is whether a reevaluation is appropriate under the current code, particularly when new information relates to the application of the IPES criteria. The IPES system was established to fulfill TRPA's responsibility to balance development with environmental values. While there may be future considerations for revising this system, at present, it serves its intended purpose for TRPA.

Ms. Laine asked if all the lots that currently have an IPES score of zero are privately owned.

Ms. Burch said no. Some acquisition programs have successfully acquired sensitive and unbuildable lots, which are then retired and placed into conservation status. This process changes their role in land use considerations, as they are no longer part of the development equation. However, some lots remain in private ownership and continue to be subject to different regulations and uses.

Ms. Laine said this would be an example of one of those.

Ms. Burch said yes.

## GOVERNING BOARD

September 25, 2024

Ms. Laine disclosed that she spoke with Mr. Wendell about this months ago. The staff report states that the property was purchased in 1991. You noted that the IPES scores were most actively assigned between 1987 and 1989, during the development of the system and the assignment of IPES to various parcels.

Ms. Burch said that's correct. The system was adopted in 1987, and scoring began at that time. This particular parcel was scored in August 1987, and most of the scoring took place between 1987 and 1989.

Ms. Laine said this is consistent with the staff report. However, I want to highlight that someone purchasing property in 1991 may not have fully understood the implications of the IPES system. Many regulations and initiatives instituted by TRPA did not effectively reach local residents or small property owners, leading to confusion about their rights and responsibilities. While I recognize the legal aspects are clear, it's perplexing for someone who privately owns a lot that has restricted use and feels unable to take action with their property.

Ms. Burch said the owners of these parcels received significant communication from TRPA during the scoring process, including information about the appeal process and explanations of the scores. This correspondence was aimed at ensuring understanding among the appellants and their predecessors. Regarding your question about disclosure to the buyer, TRPA doesn't have control over private sales. From my understanding, the appellant was aware of the situation and hoped for a potential revision in the future. Additionally, the price of these parcels suggests that there is an awareness of their status. For example, nearby parcels with zero scores are assessed at \$13,000, while a similar-sized vacant parcel with a buildable IPES score is assessed at \$106,000. This underscores the principle of "buyer beware," emphasizing the responsibility of purchasers to investigate property details. If a seller fails to disclose relevant information, it becomes a private matter between the parties involved, with limited involvement from TRPA.

Mr. Bass said if the stream environment zone (SEZ) were to be analyzed today, it would depend on whether any changes have occurred since the original determination. Generally, once an SEZ is established, it remains in that classification unless there's new evidence or significant changes in conditions that warrant a reevaluation. If the site was previously designated as SEZ and no new analyses or developments have occurred, it is likely still considered SEZ. However, any new findings or changes in environmental conditions could prompt a fresh assessment.

Ms. Burch said we haven't specifically looked at the stream environment zone (SEZ) in this context, and that's precisely what the application for reevaluation seeks to address. The request is to assess whether the scoring can be updated, considering changes over the past 30 years, including both manmade and natural factors. However, it's important to note that the original scoring system was designed to ensure finality. Once scores were finalized, the system has operated based on those established ratios for decades. The core question is whether these scores should be reevaluated. The code is structured to protect the finality of scores, allowing for reevaluation only under very narrow circumstances.

Mr. Bass understands. It mentions mistakes related to the survey and utility locations from the 1987 analysis. If there were indeed errors in that initial assessment, it could certainly impact how we view the current designation of a zero score. It's crucial to examine whether those mistakes affected the original scoring and, if so, how they might influence the reevaluation. While it's challenging to reassess conditions from 1987, acknowledging any potential errors is essential in determining the validity of the current classification. This context could change the perspective on whether the score

GOVERNING BOARD

September 25, 2024

should be upheld or reconsidered.

Ms. Burch said in 1987, the IPES team took into account the grading on the parcel. The appellant is now arguing that recent surveys show this grading altered the natural grade, but the IPES notes indicate that the team was already aware of these alterations when they assessed the parcel. Since the grading was acknowledged in the original evaluation, it does not constitute new information. If the IPES notes had suggested that there had been no alterations to the natural grade, and we later found evidence of grading, that could warrant a different scenario for reevaluation. However, in this case, the staff's evaluation reflects that the grading was known and factored into the original scoring.

(presentation continued)

Mr. Dill, Aspen Environmental Services representing the property owner, Mr. Wendell. Our soil scientist, Mr. Pepi, made a presentation at the Legal Committee this morning.

In the second paragraph of our denial letter for the request to have the property reevaluated I've highlighted the specific language that guides our understanding of the rules and regulations as consultants representing our clients. The relevant code states that the owner of a parcel receiving an IPES score may request a reevaluation based on information that was not known to or considered by the evaluation team at the time of assessment.

In 1987, the TRPA field crew used the El Dorado County assessor maps at a scale of 1 inch to 100 feet. Our new survey, conducted by a licensed surveyor, uses a scale of 1 inch to 10 feet, making it ten times more accurate. This new topographic survey reveals natural features, including trees, existing cuts, and a driveway on the property. A crucial aspect of the soil evaluation for the IPES is the soil pit. While the staff mentioned that no new information is being presented, the field crew did recognize there was a cut in the parcel. Given that stream environment zones are assessed from natural grade, it raises questions about why the soil pit would be placed in an area with a cut, rather than measuring from the natural grade. This could indicate a significant oversight in the original evaluation process.

Here's the survey in question that we believe provides new information. The orange dot at the bottom indicates where the soil pit was taken in 1987, approximately 7 feet from the property line, which aligns with the setback line. Typically, a property owner builds toward the center of the parcel to comply with these setbacks.

Mr. Pepi noted that had the survey been conducted, the soil pit would likely have been placed in the middle of the parcel. This raises questions about whether the evaluation team accurately determined the location of the soil pit. Furthermore, the highlighted access and utility scores indicate they were assessed as not being in a stream environment zone, which suggests some confusion on the part of the staff. During our presentation to the legal committee, there was acknowledgment that the scoring of the parcel in 1987 was incorrect.

If the evaluation team had the benefit of this more accurate survey, they would have recognized that the soil pit should not have been placed in a graded area, but rather in an unaltered section of the parcel. The threshold for determining a stream environment zone is based on being 42 inches below natural grade. The team found soil profiles indicating a depth of 32 inches. Thus, based on the original data, the parcel was correctly classified as a stream environment zone. However, if the assessment had been made from the natural grade, which is 30 inches higher, the soil depth would have been 62 inches—20 inches below the threshold. Had the team had access to this new survey and the

GOVERNING BOARD

September 25, 2024

information available, it's likely that the scoring of the lot would have been different, and the soil pit would have been placed in a more appropriate location.

The Assessor's map that the field crew used in 1987 was 1 inch to 100 feet. No topographic information, no natural features with very limited information. The field crew in 1987 also used a map at 1 inch to 400 feet. Notably, the El Dorado County assessor's notes indicate that this map is intended for assessment purposes only and is not suitable for delineating stream environment zones. Given the scale, it lacks the precision needed for accurate environmental assessments, particularly for something as detailed as stream environment zones. This further supports the argument that the original evaluation may have been flawed due to reliance on inadequate mapping resources.

The field notes indicate where the soil pit was taken, marked by red circles. The pit was located right at the foot of the cut, raising questions about the objectivity of the staff during the evaluation. It's unclear how they could have noted that the site was graded yet still decided to place the soil pit in an area affected by that grading. This approach seems inconsistent with the established protocols for scoring in 1987, suggesting a potential oversight in the evaluation process.

On the IPES printout for this parcel you'll notice that out of all the parcels in this neighborhood, this is one of only three that received a score of zero. The other two parcels with zero scores are located on the opposite side of the street, down the hill, which aligns with where you would typically expect to find a stream environment zone. This distribution raises further questions about the consistency and accuracy of the scoring process for this parcel.

The TRPA's application process states that if incorrect information is submitted, action will be taken to deny a project. Given that this parcel was scored incorrectly, it's essential to correct this for the public's benefit.

Ms. Burch's argument against incorporating new technical information suggests that revising the scoring could jeopardize the entire IPES system. However, the purpose of the IPES system was established in response to the failures of the previous land capability system. When the TRPA was formed in 1968-69, it adopted the Robert Bailey agricultural map, which categorized land based on its suitability for agriculture. This initial system worked for a while but eventually led to numerous lawsuits regarding land use and compensation, particularly because lots, scoring one to three, were deemed unbuildable. In response to these issues, the TRPA developed the IPES system, which is based on seven criteria instead of just two, making it fairer. However, after 36 years, it's crucial to acknowledge that some of the zero scores may have been unfairly assigned and should be subject to reevaluation.

Mr. Pepi, a retired soil scientist and former TRPA staff member from 1990 to 2004, reviewed the situation and expressed his opinion that the computer-assisted topographic survey would have enabled the field crew to score the parcel more accurately. He pointed out that the crew was uncertain about the property corners when they dug the soil pit just seven feet from the property line. Typically, soil pits are dug in the middle of a parcel in a natural area, not in a graded area.

Mr. Pepi also emphasized that the computer-assisted topographic survey represents new information that was not available to the field crew in 1987, further supporting the argument for reevaluation. This underscores the need for a fair assessment based on the most accurate data available.

I was disappointed with the legal committee this morning, as they took action to deny our appeal based on precedence. They did not state that we were inconsistent with Code 56.6.3; instead, they expressed concerns about setting a precedent that could affect the integrity of the IPES system, which has been in place for 36 years.

## GOVERNING BOARD

September 25, 2024

Ms. Burch emphasized the importance of limiting challenges to the IPES system to avoid upsetting its balance or undermining its integrity. She mentioned that if we were granted a reevaluation, a significant number of parcels could come forward to appeal. I reviewed my original IPES book from when I was on staff from 1988 to 1992. The 1991 IPES book contained 13,000 scored parcels, with less than 10 percent of them receiving a score of zero, totaling around 1,300 parcels.

Mr. Pepi noted this morning that 80 percent of parcels with a score of zero did so based on having primary stream environment conditions, meaning they had standing water, a creek, or a river flowing through them. These parcels are not subject to appeal. This narrows the potential appealable parcels down to about 300.

When Ms. Burch referred to a "significant number," she meant those 300 parcels. As a planner with 40 years of experience in the basin, I can confidently say that many conservancy and state programs have already acquired these zero IPES parcels. Thus, there may be fewer than 150 parcels remaining that would actually be available for appeal.

The question is whether granting these appeals would upset the balance of the IPES system or undermine its integrity. Perhaps it should. The Bailey system lasted for 15 years before too many lawsuits prompted its replacement. Now, after 36 years of the current system, it might be time to reevaluate the rules or acknowledge that individuals like Mr. Wendell are unfairly burdened by these regulations. We know the lot was scored incorrectly, and we have new information. After 37 years, it's clear that the rules need to change.

### Board Comments & Questions

Mr. Kieckhefer asked if it was correct that your position is that a new survey should constitute new information.

Mr. Dill said yes. Obviously, it must be applicable to the rules.

Mr. Kieckhefer said the survey that was used at the time showed grading. So, the surveyors knew that the cut was in place. You've acknowledged that they applied it properly, based on what they did. So, anyone could go out and do a new survey of their property and come in and ask for reevaluation.

Mr. Dill said the only people that would be interested or eligible would be those with zero IPES scores.

Mr. Kieckhefer said or those with one below the threshold for development.

Mr. Dill said which in El Dorado County the score is one.

Mr. Kieckhefer said anyone could do a reevaluation of their property with a new cert.

Mr. Dill said it's a case by case basis.

Mr. Kieckhefer said either it's new information or it's not.

Mr. Dill said it's new information to correct an error.

GOVERNING BOARD

September 25, 2024

Ms. Aldean said you referred to taking some borings to determine where the water influenced the soil. Why wasn't that presented as new evidence, along with a survey?

Mr. Dill said we're an independent field crew. I'm not a soil scientist, but I understand modeled soils and what they are. I didn't want to waste anyone's time if I wasn't 100 percent sure that this lot was not a stream environment zone. I still think that a portion of this parcel may be an SEZ. It was interesting when staff asked if anyone on the board or TRP staff had been to the site since 1987. No one has.

Mr. Dill provided photos of the property. The front entrance driveway area is existing. The cut in the background is by the truck. Again, to front access. The fence on the left is a portion of the vacant lot. The seep is by the fence area. The property owner took the horizontal fence line and took the measurement from across the cut to where the soils pit actually was taken and we came up with 42 inches difference. This would technically put it at 72 inches to hit the modeled soils. Again, with a threshold being 42 inches. You can see the trees that have grown in the 30 years since that cut has been made. There's a good stand of Jeffrey Pine. There are all the indicators that this is not a stream environment zone. If you take the cut from natural grade, 62 to 72 inches and the threshold is 42 inches, you're 20 inches below.

The individual elements of the IPES score are what make the survey stand out as new information. However, I'm concerned that the Board is denying the project based on creating a precedent which could undermine the integrity of the IPES system. I disagree with this approach. If you run the numbers, we're looking at 80 potential lots with a score of zero that might think they can get a survey and somehow appeal. I just don't see that happening. That's my opinion, and I've been working with the IPES program and TRPA staff since 1988.

Mr. Settelmeier asked when they did the IPES scores way back when, did they only do vacant land?

Ms. Burch said yes, it was for vacant, undeveloped parcels.

Mr. Settelmeier said I wish they had gone farther. I have a problem with the idea of saying that just because you bought it in a certain year, one year before you could have done something with your land, and next year you can't. I wish they would have done the surrounding area to get better concepts of what their whole area was like in that respect. I appreciate the discussion that new technology and new science should be utilized. But if you do that, you're indicating that there are 1,300 scored, less than 10 percent, potentially 1,300 individuals who could come forth. Then based upon where they took the survey on the property, they might be able to get a different result.

Mr. Dill said that's correct. We want you to reevaluate. Apply the ordinances and criteria with the survey and let's see what the results are. If it comes back and it's a buildable parcel, we've corrected a mistake or oversight that was made. Two, I don't think it's going to undermine or change the whole IPES makeup and criteria that's been in place for 36 years.

Mr. Settelmeier asked what Mr. Dill's thoughts were on the aspect that when the plot was purchased, the person knew it had a zero IPES score and sat on it for 30 years.

Mr. Dill said rules change. Bailey lasted 15 years. I have three other projects pending that require attention. Your rules need to change. The historic ordinance states that a property 50 years old is considered historic. This means a property built in 1974 is historic. Are we really going to protect



GOVERNING BOARD

September 25, 2024

properties with T1-11 siding, green toilets, and shag carpets under your new historic ordinance? It doesn't make sense. I have a project in the South Industrial Track that's manmade, and they want a \$150,000 mitigation concept based on the 50-year rule.

Ms. Gustafson asked that we stay on the agenda topic.

Mr. St. Michel said I don't think staff or anybody during legal, had a conclusion. The appellants argument is that it was scored wrong. TRPA's position is that under the Code of Ordinances, that's an argument that needs to be appealed. Any deviation is a code change.

Ms. Regan said we are sympathetic about this situation. Experts can disagree respectfully. I've met with Relators and homeowners over my 20 years with TRPA. This is often a significant question. Terminology, such as the IPES has been established since the 1980s with appeals reopening in 1990. While I appreciate everyone's thoughtfulness in deliberating this, it's important to recognize that this issue is foundational to our land use system. Consider the thousands of people who have made property and purchase decisions based on established land use. We have a robust transfer of development rights program that property owners in this situation can utilize, and many have. We do not build on wetlands; this is a core principle of our 1987 plan and reflects decades of conservation success. The situation gets complicated at the parcel level, but this outcome stems from the consensus of the 1987 Regional Plan. In the 1980s, there was a building moratorium and chaos in the real estate market. We needed order because billions of dollars in property rights were at stake.

Ms. Conrad-Saydah said I didn't hear an answer to Director Settlemeyer's question whether this information was disclosed in 1990 when the property was purchased and is now coming forward in 2023. What is the impetus for the reevaluation? You mentioned that the policy is problematic, but why does the property owner want to pursue this 33 years after the original disclosure?

Mr. Dill said the property owner approached me and asked if there was anything he could do with the parcel. I looked into the rules and regulations and was uncertain. I then contacted staff. Interestingly, the staff in the Project Review Division informed me that a new survey constitutes new information and would qualify for a reevaluation.

Ms. Burch said we're hearing a lot of arguments that the methods used by the IPES team were incorrect. To some degree, that's speculative. We have their field notes, and they were aware of the grading. We can see where they placed the soil pit. These arguments specifically address the application of the IPES criteria. The reevaluation code section explicitly excludes this, and I don't find that ambiguous at all. What we're essentially hearing is a request for a code amendment that would allow those with a score of zero to submit a new survey using computer-enhanced methods and obtain a new score. However, that is not the issue we are addressing today. We must work within our existing code, which clearly states that the application of the IPES criteria does not serve as a basis for reevaluation.

Ms. Aldean understands staff's position. Technology has changed over the years. For example, we've had many individuals who were incarcerated based on evidence collected before DNA analysis became more common. Fortunately, many of those people were exonerated and released from prison because they were wrongfully incarcerated.

I understand the question of distribution, but our land development system limits the number of allocations and developments. At the Legal Committee this morning, I suggested that we examine IPES as there may have been some inadvertent injustices. I also referred to a letter from Bill Morgan,

## GOVERNING BOARD

September 25, 2024

which states that there are provisions for the IPES score of a parcel to change outside of the appeal process. TRPA can modify IPES if ongoing water quality monitoring programs detect significant changes in the water quality of the area where the parcel is located, or if local governments implement new projects that reduce runoff and erosion in the area of the parcel. If changes occur related to the watershed condition or erosion control improvements, TRPA will notify property owners of changes in their IPES scores.

I'm not suggesting that TRPA should take that action. While I offered it as a potential path forward for the applicant, I voted to deny the appeal because I didn't find the survey alone persuasive enough. However, it does concern me. To answer Ms. Conrad-Saydah's question, this is the second owner of the property, and unfortunately, the previous owner apparently did not disclose the IPES score. I gather that he owns the home next to it and may have initially purchased this open space but later became curious about whether it could be developed.

I'm not worried about this opening Pandora's box regarding additional development. It's possible that development rights will now be available to a lot owner like the one in this case, rather than someone else who may come in later and find themselves without the necessary commodities to develop their lots.

When the agency makes a mistake, we need to own up to it. I will likely vote again to deny the appeal, as I don't think what they presented is sufficient. However, I see merit in the idea that there may have been improvements in the neighborhood. Many of these lots are developed, and there could have been water quality improvement projects that have made this lot developable. This is something we need to consider, especially for equity reasons, if nothing else.

Ms. Conrad-Saydah said yes, absolutely. I think it's wise to consider our policies. This appeal gives us a reason to ask whether a policy that has been in place for over 30 years should be reevaluated. Geological timeframes are quite different from others, so we need to carefully examine how much geology can change in a 30-year period. It involves a longer-term scientific perspective. However, I have no objection to us reviewing IPES in the future, after this decision, and assessing how effective they are today. With advancements in technology, we should consider whether a review is warranted.

Mr. Settelmeyer said I believe that with new science and technology, we have access to information we never had before. We also have new building concepts, which means that almost every lot could be considered buildable. It ultimately comes down to how much money you want to spend on construction. You could span a lot side to side and build a house above it, creating usable space underneath. I am very supportive of property rights. The property owner still has the ability to "camp" on it, as they always have. They can also explore options with Santini Burton or the California Conservancy. This occurred in 1987, and they had 180 days to appeal. Unfortunately, this leaves the proponent with the options of legislation or litigation. They can go to California to have it reopened and extend the statute of limitations.

### Public Comments

Ellie Waller appreciated the robust discussion. This highlights the need for a code amendment and raises questions about how and when it gets prioritized. I know your work schedules have already been laid out, but it seems we need to take a closer look. We reviewed vehicle miles traveled over the last couple of years and identified some issues. Changes due to new technology should be considered just like the updates on vehicle miles traveled per capita. There are still some issues that many of us don't fully understand, and we must also consider fairness. People's circumstances change: for

## GOVERNING BOARD

September 25, 2024

instance, someone who might have recently retired now has the opportunity to reconsider this parcel in a way they couldn't when they first bought it.

Ted Wendell, Lake Tahoe resident since 1978, said I take great pride in preserving and improving the land while protecting the environment. My commitment to reasonable development was recognized with the Best of the BMP Award in the late 1990s for the Mitchell project. Today, I hope to appeal to your sense of logic and fairness as I seek to convince the staff to reevaluate my empty lot, which is directly next to my residence near the Y. I have owned my home since 1987 and purchased the lot from the original owner in 1990. The parcel was always intended for development, as the original owner facilitated grading of the land for construction in the late 1950s.

In 1987, the lot was incorrectly deemed a lot with a score of zero IPES. This has been proven incorrect by the detailed topographic survey I provided. The surveyor, Jeff Turner, confirmed that the parcel is not an SEZ and that any classification other than a buildable lot is incorrect. The former owner operated under the previous Bailey system, which changed in 1987 without his knowledge. He was unaware that he needed to appeal this zero IPES score classification, as he lived out of state in Arizona and did not receive proper notification of the new rules.

Numerous land and development specialists have told us that reclassifying this parcel would be straightforward and irrefutable. If there is no mechanism to contest TRPA's findings even when they are clearly wrong, why were we subjected to numerous appeals and incurred fees exceeding \$2,000 to TRPA, only to have our requests denied based on TRPA policy? I cannot continue spending thousands of dollars on a project with little chance of consideration. Our correspondence with TRPA staff indicated that new information warrants reevaluation, which should clarify that the parcel deserves reclassification. I have always planned to build a tasteful, environmentally sustainable structure that prioritizes detail and efficiency, knowing that the neighborhood would benefit from its existence. Now, I'm being told that this investment, which I have owned and paid taxes on for 34 years, is unusable. This is a tragic outcome, and TRPA has an opportunity to correct this mistake.

Finally, if I had any doubt about the parcel's buildability, I would not be pursuing this matter with such vigor and expense. I am an expert in BMP implementation and management. You might wonder why I purchased a lot with a score of zero. It was because the scoring changed from Bailey to IPES. In another 10 years, it may change again. This lot is in better shape than any other parcel on the street.

Alan Miller, civil environmental engineer with a 25-year regulatory background in wetlands and water quality, specifically with the regional water board. My interest in this matter centers on good governance. Last month, I wrote to you and spoke before your legal committee in support of granting the appeal. The appellant and I do not know each other. It is entirely within the Board's discretion to reevaluate the IPES score. There is new information indicating that mistakes were made in determining the depth of groundwater. I've visited the site, and it is clear that the entire area cannot be classified as unbuildable. Measurements were taken from an area modified by grading, but the extent of that grading wasn't fully understood.

The proposed denial rests on staff's narrow interpretation of the code, driven by the fear that the entire IPES system will collapse if this appeal is granted. The appellant is simply asking for what is just in this matter. I contend that there is no risk of lawsuits stemming from this decision. The staff's interpretation of the code is not supported, and this case does not set a precedent. Instead, it presents an opportunity for TRPA to use its discretion to correct mistakes made decades ago regarding this specific parcel, where new information supports a discretionary determination for reevaluation. In my experience with TRPA over the last five years, I have seen many abuses of discretion. I urge you

GOVERNING BOARD

September 25, 2024

to use your discretion wisely and grant the appeal. Forcing the appellant to start over on another baseless premise will only lead to unnecessary costs and frustration.

Board Comments & Questions

Ms. Laine said a letter was sent from the appellants attorney to Julie Roll, TRPA Senior Planner. It was noted in the TRPA Field Notes (Section B) that access to the site does not go through a stream environment zone. The field crew also observed that the utilities do not go through an SEZ. If access and utilities do not go through an SEZ, how can the entire site be mapped SEZ?

Ms. Burch said it's a checkbox on the form indicating access and utilities. It's unclear why they marked "no" for these items, except that those aspects had not yet been developed. While there was a planned area for a driveway, there were no utilities at that time. The rest of the notes indicate that the parcel is considered a hundred percent stream environment zone. This raises challenges when reviewing notes from over 30 years ago to understand the reasoning behind their decisions. The information was available when the score was issued to the parcel owner, so it's not new information. I also think this goes to the application of the IPES criteria, and the reevaluation potential under the Code of Ordinance code is very narrow. I don't think this situation falls within that narrow possibility.

Ms. Laine asked if there are utilities currently crossing through that parcel.

Ms. Burch said no.

Ms. Laine said the parcel map included from 1987, when the IPES score was determined for this parcel, states in the lower left corner: "This map is not a survey. It is prepared by the El Dorado County Assessor's Office for assessment purposes only."

Ms. Burch said that's correct. Those parcel maps were often used by the IPES to keep track of the ones they had completed and to make their notes. The IPES team surveyed and found the corner markers for this lot.

Ms. Aldean said in the letter from Bill Morgan, there is a section that states: "In cases where the only reasonable access to an otherwise buildable lot on a parcel is across a stream environment zone or SEZ setback, development for access may be allowed." It appears what they were marking on the form was that there was no access through an SEZ because there's no access or utilities to the site. But there may be an opportunity to bridge that SEZ for access purposes if the balance of the lot is developable.

Ms. Laine appreciated that context. I would like to see an outcome allowing for the reevaluation of this particular parcel. And we direct staff to review the IPES scoring policy and provide information on whether the IPESE score still aligns with its original intent. That would be my preference, though I understand the challenges we face.

Mr. Bass said I largely agree with Ms. Laine. When considering this issue, it's important to take into account the technology we have today, as well as the survey-related concerns. I also understand the hesitation about opening a "can of worms" with 1,300 parcels and the desire to avoid reexamining every single score across the basin. However, there seem to be inconsistencies in how this was handled. It may be beneficial to conduct a reevaluation analysis to ensure the grading and assessment were accurate. Given the long-term residents' perspectives and adherence to best management practices, I support the idea of reevaluation.

GOVERNING BOARD

September 25, 2024

Ms. Faustinos said as board members, we must remain consistent with the guidance and laws under which these decisions were made. While I have personal sympathy for the situation, I must act in good conscience and fulfill my responsibilities as a board member by adhering to the established guidelines and the relevant code sections. For the record, this is my position.

Ms. Conrad-Saydah said I understand what Ms. Faustinos and the other board members are expressing. My struggle lies in determining whether there is enough new information to warrant a reevaluation. Is there any legal guidance indicating that we have sufficient grounds for this reevaluation? I want to fulfill my responsibilities as a board member while also recognizing the long-term landowner's position. This landowner is not just a new developer coming into the basin, and while I shouldn't let that cloud my judgment, I do acknowledge it. I'm particularly interested in a legal opinion on the narrow aspects of this evaluation. The staff is doing incredible work, and I want to ensure that we support them appropriately.

Mr. St. Michel said a new survey, based on advanced technology and capabilities, is not necessarily new information. While it may be a new document, we are still examining the same land. As discussed, the land remains unchanged over geological time. If we begin to allow new surveys, you are manufacturing new information.

Ms. Burch said what I hear is that we are over 30 years from when this was developed. There may be factors to consider, such as how many parcels with zero scores are still out there. What would the process be? It's a complicated effort to convene and determine the best way to amend the code if such an amendment aligns with the will of the Board. Currently, it feels like we are caught between the idea of whether we should amend the code just for today, which is concerning. Should there be a new system of evaluation? Right now, we have the existing code, which was likely drafted to preclude a situation where a new survey would result in a new evaluation. This is important because we have more than just zero lots out there. In Placer County, for example, we still have an IPES line, where parcels are falling below that line. Those owners could also say they have a new survey. Before making case-by-case code amendments, we should consider all the potential ramifications of such changes, which may eventually be necessary.

Ms. Gustafson said I'm sympathetic to the appellant. We have new technologies and information, and while we have a code to uphold, changing the rules requires a thorough understanding of the repercussions down the line. In my jurisdiction of Placer County, many people are under the building score for IPES, and the number affected could be significantly more than just 100 or 200. We must understand the implications of the build-out and all related issues; that is our duty. I'd like to suggest that staff consider this. We are being asked to make a decision today regarding our code on these issues, but it seems there is a consensus that the Board is open to further discussion on what it might look like to revisit the IPES. I'm not sure how long this will take for the appellant or if he wants to continue with that, but it appears this is the sentiment from the Board. What would you suggest as a potential solution?

Ms. Regan said this is a very large area of work not currently in our program, and it would require studies, consultation, and discussions that could be quite involved. For instance, consider the work we're doing on housing, including land coverage changes and incentives. This impacts our entire land use framework at TRPA. We may be able to narrow this down into a code change that utilizes the best available science, and if so, we want to pursue that. We agree on the importance of relying on updated and accurate information, but we must be thoughtful and considerate in how we approach this. We could provide more analysis on how many parcels we're discussing. The Placer County issue is

## GOVERNING BOARD

September 25, 2024

significant, involving 15 to 20 years of development regarding sliver lots that differ from the rest of the lake. We need to assess how this affects the overall development potential of the entire basin and the environmental documents that have analyzed these concerns, which could call previous permits into question. This is a complex issue that will require substantial work and consultation with our legal team, planning team, and experts in soil science, among others. I'm happy to proceed with this and bring you an update next month.

Ms. Aldean said because of this new analysis, the appellant has become a catalyst for re-examining our IPES system. I would like to propose that if he comes back at some point with a new application for reevaluation, assuming it's permitted based on this analysis, the agency should waive its fees.

Ms. Regan said we'd be happy to do that.

Ms. Gustafson said what I'm hearing from the board and staff that a motion needs to be made on the appeal and then a secondary direction to staff on this larger issue.

Ms. Williamson made a motion to grant the appeal, which motion should fail, to affirm the Executive Director's determination.

Nays: Ms. Aldean, Mr. Bass, Ms. Bowman (for Mr. Aguilar), Ms. Conrad-Saydah, Ms. Hill, Ms. Faustinos, Mr. Kieckhefer, Mr. Settelmeyer, Ms. Leumer, Ms. Williamson, Ms. Gustafson

Ayes: Mr. Rice, Ms. Laine

Absent: Mr. Hoenigman

**Motion failed.**

Ms. Aldean added the caveat that staff will return with an evaluation of our IPES system and make any recommendations for modifications. At a future date, if we determine that these lots and in particular the appellants lot can or should be reevaluated that we waive any additional planning fees.

Ms. Gustafson asked if that should be a second motion.

Mr. Settelmeyer said in regard to the second motion this is not an actual item, it's something we need to reference and direct staff to do. This is not an agenized item.

Ms. Aldean suggested that the Governing Board direct staff to reexamine and reevaluate our IPES scoring system in light of the testimony here today. And that we bring it back next month for a preliminary review of the findings. If the appellant at some future date should return with an application for reevaluation if it's permissible under our amendments to the Code of Ordinances that his fees be waived.

Ms. Regan said in the next month, we won't have a full recommendation on IPES but will provide an update on how we might address those concerns.

Ms. Gustafson said also understanding the full basis of the precedent that it might set how many potential parcels and appeals.

Mr. Settelmeyer said he'd also like a discussion on the concept of the 180 days being a concept that it's a statute of limitations and that you had to appeal within that. With that being said on the aspect

## GOVERNING BOARD

September 25, 2024

of new technology, I'd also like to ask legal to look at the aspect of seven years. Because when a county changes a master plan and takes your rights without compensation, it's my understanding that you have seven years under contract law to argue that otherwise it stands.

### X. REPORTS

#### A. [Executive Director Status Report](#)

Ms. Regan said we had a historic moment on the House floor by voting out the Lake Tahoe Restoration Act extension, which extends funding for another ten years. Typically, such extensions ride along with larger legislative vehicles, but our entire delegation worked diligently for many years to make this happen.

The Act had already passed through the Senate before summer. Last Wednesday, I had the privilege to represent Team Tahoe and our partners in Congress during a House hearing. Congressman Kevin Kiley made remarks while Congressman Mark Amodei facilitated and pushed for bipartisan support for the Lake Tahoe Restoration Act.

I want to thank our full Congressional delegation, especially Senator Cortez Masto, who led the effort in the Senate, along with our other Senate members. The entire Nevada delegation in the House was behind this, as well as Congressman Garamendi and others who supported the bill.

There was significant behind-the-scenes work from our staff, including Devin Middlebrook and Kim Caringer, as well as communication staff, Sarah Underhill and Jeff Cowen. Our Environmental Improvement Program partners also played a key role in preparing for the summit and educating our members through field tours. This was a collaborative effort across all sectors, including work with the Washoe Tribe. The U.S. Forest Service was also by our side and testified at the national level in support of the bill. We still need the President to sign the bill, which we expect to happen in the next couple of weeks. Once signed, it will become law, allowing us to spend the already authorized \$415 million, of which \$300 million remains.

Recent summits and events showcased our ongoing push for the Lake Tahoe Restoration Act. I appreciate everyone's efforts to engage with constituents and stakeholders to make this happen. The most significant aspect of the hearing was the bipartisan testimony from Republicans and Democrats on the Natural Resources Committee. They highlighted Lake Tahoe as a national model of collaboration in natural resource management, particularly in forest health. If we can work together across the aisle on this, it demonstrates that we can tackle similar issues in other parts of the country. Let's continue to maintain this high-minded perspective, as we can inspire others nationwide.

It was a great team effort by our staff at TRPA and our partners to produce a special issue of Tahoe In Depth. We publish this paper twice a year, distributing it to property owners and throughout the communities in the basin and beyond. For many years, we've wanted to document the photography and messages from the Tahoe Summit. We went the extra mile to share the outcomes with Secretary Buttigieg and our delegation, demonstrating our continued commitment in a visible way at Round Hill Pines this summer.

While I was in Washington making rounds on the Hill and providing testimony, the Davis Fire was burning nearby, which became a significant topic of concern. I'd like to ask the Director Settlemeyer to share a few words about that.

## GOVERNING BOARD

September 25, 2024

Mr. Settelmeyer said big thanks to all the partners involved in battling the Davis Fire. The initial attack was led by the Truckee Fire District, who did an outstanding job. The Division of Forestry stepped up, and within 48 hours, the fire was turned over to the federal task force for further management.

It took only four hours for them to recognize it as a Tier 1 event, meaning all available resources from across the country were directed here to combat the fire. The Davis Fire started on September 7 around 2:30 p.m. and investigations are ongoing.

The Forest Service took over management after the fire burned 5,824 acres—a significant challenge. For context, the Broom Fire in Northern Nevada is currently about 8,000 acres, so we are still facing ongoing issues.

Thanks to assistance from Kacey KC with the Division of Forestry, we were able to utilize four super scoopers to aid in firefighting enabling a rapid aerial attack. There was over 214,400 gallons of water from Lake Tahoe for the super scoopers, keeping them out of the airspace of Reno-Tahoe International Airport and allowing ground crews to focus on the fire. The scoopers dropped over 214,000 gallons of water, while the helicopter crew delivered an impressive 791,000 gallons of water.

The estimated cost of fighting the fire is around \$14 million, with various land ownership impacts: the Bureau of Land Management had responsibility for about 20 percent of the land that burned. The Forest Service had about 37 percent, and private lands made up 34 percent. Washoe County had about 2.6 percent of the land around the Davis Creek Campground and the state of Nevada had about 7.2 percent of the land. Sadly, 13 structures were lost. Fortunately, the Federal Government will cover the majority of the costs. We also have the Burn Area Environmental Response Team (BAER) evaluating the area. At the height of the firefighting effort, there were 710 personnel on the scene, and over 340 remain involved in restoration efforts, focusing on repairing fire roads and stabilizing the soil. I have concerns about soil stabilization, particularly given the history of Slide Mountain and the lack of vegetation. The BAER team is working to stabilize the burn area and determine the best long-term approach by either removing the burned trees or leaving them to help stabilize the soil. Recovery of native vegetation will take time, and we must consider these factors moving forward.

Ms. Regan introduced TRPA's new Facilities Manager, Jeremy Davis, and new Assistant Planner, Kaley Arboleda is on a one year contract funded by the state of California's grant for new housing initiative; Cultivating Community, Conserving the Basin Initiative.

The Homewood Ski Area Amendments will be heard at the Regional Planning Committee following this meeting. We'll be bringing back other items as a follow up in a sequence of future discussions. We discussed the Thresholds Evaluation Report at the Environmental Improvement Program Committee meeting that will be coming back along with the Tahoe Blue Events Center and a season recap on forest health and fire. And what's going on with community wildfire protection plans around the Basin. We've got our annual filing fee inflation adjustment that'll be being vetted at the Operations and Governance Committee and coming back to you for your consideration. Some area plan amendments that have been working through the Regional Planning Committee will be coming back for your consideration later this year, along with a Shoreline program update. TRPA issued a permit to AT&T to remove the cables that are on the lakebed.

### A. General Counsel Status Report

Mr. St. Michel said we're currently tracking some litigation filed against the agency related to a slip-and-fall case involving the former Hard Rock Casino. Initially, we were named as a third party by the



GOVERNING BOARD

September 25, 2024

casino, but after discussions with our counsel, that case was dismissed. Now, however, we're being implicated by the plaintiff in a similar case in a different forum. We have not been properly served yet, so, the case is still pending. If we do get served, we don't believe there's a strong basis for liability. We will invoke our indemnification provisions in our permits.

Mr. St. Michel introduced new staff attorney, Jack Mensik.

XI. GOVERNING BOARD MEMBER REPORTS

No report.

XII. COMMITTEE REPORTS

A. Local Government Committee

No report.

B. Legal Committee

No report.

C. Operations & Governance Committee

No report.

D. Environmental Improvement Program Committee

Ms. Faustinos said if you didn't see the EIP presentations, please take a look. It's excellent work by the incredible staff.

E. Transportation Committee

No report.

F. Regional Planning Committee

No report.

XIII. PUBLIC INTEREST COMMENTS

Ellie Waller said in the 20-plus years I've been coming before this board; I've never seen anything as confusing and convoluted as the Douglas County South Shore Area Plan that will be presented in future meetings. The unconventional process began when Douglas County Planning held a town hall meeting without notifying the residents most affected. Members of the public are unaware if there's even a draft available for review and comment. The schedule is ridiculous, with three consecutive days of meetings on August 12, 13, and 14, just one day before your APC meeting. The Regional Planning Committee received a scant two-page staff report for consideration, and there wasn't even a link to the area plan.

## GOVERNING BOARD

September 25, 2024

It's clear to me that the concurrent process dealing with the proposed Barton Hospital—without an application submitted to TRPA as of August 29 should be bifurcated from the draft area plans amending the healthcare subdistrict and zoning changes. The extraordinary height request, TRPA commercial floor area exemptions, etc. are misleading and undermine what should be a structured process. The Douglas County area plan should not serve as a vehicle to expedite the Barton Hospital project.

TRPA has a link to a major project's webpage for Barton Hospital. A full environmental impact analysis, not just an environmental assessment, should be conducted for the concessions that Barton seeks. This analysis should not be conducted through the South Shore Area Plan. Additionally, existing and future Barton healthcare facilities, along with plans for a bridge over US 50 to connect their facilities to the hospital, must be included in the hospital's environmental analysis and should be removed from the South Shore area plan. I urge you to halt this bifurcation now. I hope you will not allow this situation to continue.

John Grisby, resident for the past 15 years, said the proposed hospital plans have been in progress for 2.5 years. The first any of us, including the Oliver Park General Improvement District, knew about it was in July. Fortunately, as Ellie Waller mentioned, the process has slowed down somewhat, but we still lack a proposed area plan to review. There are several glaring deficiencies in the draft plans that have been circulating. Most concerning is that multiple representatives from Barton and the Douglas County Planning Commission have explicitly told me that Barton doesn't really have a solid plan. They are essentially waiting for you to tell them what they can build, and then they'll proceed to do just that. This places TRPA and Douglas County in the awkward position of essentially designing their campus, which is not a role any of you should assume.

Instead of working behind the scenes for two years to push this through, let's involve the neighborhood directly in the planning process. The residents of Oliver Park, including property owners and renters, are closely connected, and this hospital will have a significant impact on us. We need to be included in shaping this plan, rather than simply receiving it after the fact. There are serious concerns about aspects of the current area plan, including an 85-foot height variance on the lakeside of a scenic corridor that is already in non-attainment. This proposal is misguided, especially considering the noise impact from helicopter flights overshadowing our neighborhood. Such operations should ideally be restricted to the other side of the highway. We urge you to work with the GID and local residents to develop a plan that benefits the neighborhood, rather than detracts from it. We are eager to collaborate and ensure that the outcomes serve as a net asset to our community.

John Gurner resident since 1999, and lives on Laura Drive. My main concern is the need for oversight regarding the construction related to the proposed hospital. The site has undergone dewatering, and according to their contractors, the soil is compacted to 92 percent, essentially making it concrete. After our first storm, we experienced significant runoff, with water running everywhere. Unfortunately, we received very little response from Barton and TRPA. Douglas County had to step in due to code violations to address the water management plan. From my observations, the plans do not seem to account for proper drainage, as water is running straight down the site and onto the street. Additionally, construction often starts at 6 a.m. every morning. Moreover, their construction fencing has taken out 50 percent of the footpath, leaving sharp metal protrusions that create hazards for pedestrians. Despite numerous requests for action, we've received vague responses, often just "cataloging" our concerns without follow-through.

## GOVERNING BOARD

September 25, 2024

Groundwater management is another pressing issue. The dewatering process has led to increased water flow onto neighboring properties. Despite assurances that groundwater would not be affected. There needs to be stronger oversight of Barton's operations. Many residents support the hospital, but we are concerned about the proposed 85-foot height and the proximity of the helicopter pad, which is only 200 feet from my bedroom. A properly managed construction process would benefit the community, and I believe that with sufficient oversight, Barton could effectively build a hospital on their existing land, utilizing the ample parking already available.

Sharon Rusk, resident of Lake Tahoe for 35 years and has lived in Oliver Park for the last 15 years. I love this community and deeply appreciate the work of TRPA as stewards of our beautiful basin. I want to speak about the importance of scenic protection in the Lake Tahoe area. TRPA's mission includes maintaining the quality of the basin, which largely depends on careful regulation of development. Scenic goals are shared by many in the Tahoe Basin. Maintain and restore the scenic qualities of the natural landscape and improve the accessibility of Lake Tahoe for public viewing.

The area around Lakeside Inn looks like a scenic corridor. My understanding of everything along the lakeside of Highway 50 is considered scenic corridor. These are views from places like Kahle Park across the street. It also says it will protect views from places that are recreational areas. The view from Van Sickle Park to Lakeside Inn, you see trees, not an 85-foot structure. I urge you to consider the impact on these views when approving future developments. We count on you to protect Lake Tahoe, one of the oldest and deepest lakes in the world. Our time here is limited, and it's crucial to safeguard this environment for future generations. While I support the need for a hospital and its services, we do not need an 85-foot building in such a significant location. Let's proceed cautiously with the South Shore area plan and ensure that our decisions reflect the best interests of our community and its future.

Sharon Skinner resident of Lake Tahoe for 52 years, said when I think of Tahoe, I think of the environment. This area should have been designated a national park, but since it wasn't, we have the privilege and responsibility to preserve it. I have serious concerns about the Barton project and its potential impact on the nearby Jennings Pond project, which has become a vital haven for wildlife. This area is unique, and it breaks my heart to think it may be affected by sirens and helicopters. Large birds, such as eagles and ospreys, use the flyway between these ponds, and they could be harmed or deterred by noise and an 85-foot building, which poses a danger to birds through window collisions. While Barton is a good hospital, I understand that serious health issues may require specialized care that could involve long drives to larger cities. We must be mindful of our past planning mistakes, and I urge you to consider the fragility of our environment. The decisions we make now will have lasting impacts, and it is our responsibility to protect this special place for future generations.

Brent Knittel property owner on Laura Drive, next to the proposed Barton project. We only recently learned about this development when it was nearing approval in Douglas County, and we've been researching ever since. It seems that if Douglas County pushes this area plan through, it could reduce TRPA's jurisdiction, which is concerning. This rush to approve the plan without proper communication is alarming. Moreover, the renderings shown are misleading; they depict buildings at 42 feet, but Barton is requesting an 85-foot structure. This height will intrude on my privacy, as those in the upper levels will overlook my backyard. I urge you to consider the implications of the helicopter use and to push back against Douglas County to ensure that proper oversight is exercised. TRPA has indicated that they're deferring to Douglas County on this matter, so it's vital that someone helps guide them toward a responsible decision.

GOVERNING BOARD

September 25, 2024

Tobi Tyler, Sierra Club Tahoe Area Group provided comments on Agenda Item VIII.B, Lake Tahoe Dam concrete investigation. We agree that a geotechnical investigation is necessary. However, we believe TRPA has a responsibility for permitting oversight of this project. Currently, TRPA is deferring this duty to Lahontan under a Memorandum of Understanding (MOU) that does not apply in this case. The staff report states that the Bureau of Reclamation will not be applying to TRPA for concrete borings, as Lahontan will be issuing a notice of applicability under the order consistent with the MOU. The MOU states that it does not affect projects or activities within the mutual jurisdiction of Lahontan Regional Water Quality Control Board and TRPA in the Truckee Watershed downstream of Lake Tahoe. Therefore, the Bureau of Reclamation must apply to TRPA for these investigative borings below the dam and TRPA must oversee and permit these activities.

Comments on Agenda Item VIII.A, State of the Lake Report. I urge TRPA to take the lead in issuing a single-use plastic ban. The Sierra Club Tahoe Area group has provided single-use plastic ban proposal to many of you. I encourage you to review it and respond accordingly, as TRPA is the only agency with the capacity to implement such a ban.

Evan Dreyer, lead organizer at the Tahoe lead removal project. We focus on removing old and inactive telecom cables from the lake. I'm here to share some positive updates since my last public comment in April. Last week, AT&T and the California Sportfishing Alliance entered into a final consent decree, reaffirming AT&T's commitment to removing the cables by November 30th of this year. We're celebrating this achievement and want to publicly thank AT&T for their action. We fully support AT&T in completing this project as outlined in the consent decree and encourage TRPA, along with all involved agencies and contractors, to expedite this important work. Our organization is ready to assist in any way we can.

Over the past five months, we've prepared our permits and plans in case we needed to take on this work ourselves. We've confirmed, through discussions with engineers, that this removal can be accomplished in less than a month, potentially as quickly as 10 days, making the November deadline achievable with proper planning. Additionally, I'd like to express gratitude to TRPA. When we reached out back in May, we were uncertain about how our efforts would be received, especially with pending litigation. TRPA responded as fantastic partners, quickly arranging an in-person meeting. The feedback we received was invaluable and has guided our subsequent actions.

We look forward to continuing our community efforts to complement the consent decree while addressing any concerns from those who have signed our petition. Our work won't be complete until the cables are out, so we'll keep pushing for this outcome and remain committed to partnering with TRPA until it's achieved.

Alan Miller, civil engineer with 25 years at the Lahontan Regional Water Quality Control Board. I want to address the State of the Lake Report presented by Mr. Forrest. Many of his comments echo concerns I raised in my written statements, particularly regarding microplastics. Testing so far hasn't gone below 335 microns, while the clarity of Lake Tahoe is impacted at levels below 20 microns. We are seeing double what we can measure, and it's crucial to keep plastics out of the lake. However, the current testing methods cannot differentiate between plastic types, leaving us in the dark about the specific particles present. While the focus on clarity is essential, we need to acknowledge that many shoreline structures approved by TRPA are deteriorating and contributing to pollution. It's disappointing to see TRPA spending significant public funds on testing that doesn't effectively inform

GOVERNING BOARD

September 25, 2024

policy. Immediate action is required to control plastic pollution in Lake Tahoe. I will continue to raise this issue until there's recognition that inaction is not an option. TRPA risk being labeled the "Tahoe Plastic Agency" if we don't act swiftly.

XIV. ADJOURNMENT

Ms. Aldean moved to adjourn.

Ms. Gustafson adjourned the meeting at 3:11 p.m.

Respectfully Submitted,



Marja Ambler  
Clerk to the Board

*The above meeting was recorded in its entirety. Anyone wishing to listen to the recording of the above-mentioned meeting may find it at <https://www.trpa.gov/meeting-materials/>. In addition, written documents submitted at the meeting are available for review. If you require assistance locating this information, please contact the TRPA at (775) 588-4547 or [virtualmeetinghelp@trpa.gov](mailto:virtualmeetinghelp@trpa.gov).*