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Errata

Agenda Item No VII.B.1 John Marshall Performance Review

The following changes were made to include a revised staff report with the correct accomplishments, Attachment A Self-Evaluation, and change the Summary of Performance Review Results to Attachment B.



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REVISED

STAFF REPORT

Date: December 6, 2023
To: TRPA Governing Board
From: TRPA Staff
Subject: General Counsel Performance Review and Proposed Compensation

Summary and Staff Recommendation:

The performance review process for the Agency's General Counsel John Marshall is from July 2022 through June 2023 and consists of the following: a summary of Agency accomplishments, a brief self-assessment of performance, and an evaluation from Governing Board members and selected members of Staff.

Staff requests consideration of a proposed base pay adjustment for the General Counsel based on performance through this time period.

Required Motions:

In order to approve this motion, the Board must make the following motion, based on the staff report:

- 1) A motion to increase John Marshall's base pay to \$205,871.71 per year effective December 10, 2023.

In order for motion to pass, an affirmative vote of any eight Board members is required.

Discussion:

Accomplishments for fiscal year 2022 to 2023 are set forth in the self-evaluation of Attachment A and include the handling of an extensive litigation load (both overseeing outside counsel and litigating inhouse cases), providing advice to Board and staff on Project Review matters and process of development applications (e.g. Waldorf Astoria Lake Tahoe, the South Lake Tahoe South Refuse Biomass Facility, Latitude 39, Shoreline Plan Implementation and USFS Lily Lake Trail and four appeals of permit decisions), providing advice to Board and staff on Long Range Planning items (e.g., Phase 2 Housing Amendments, Permitting Process Improvements, Threshold Update Initiative, and adoption of the Washoe County Area Plan), maintaining legal compliance (e.g. Open Meeting laws, public record requests), and guiding the Compliance team on violation resolutions.

Recommendation for a 4% salary increase is in line with TRPA's compensation policy and most recent distribution of increases to the senior level staff.

Contact Information:

For questions regarding this agenda item, please contact Angela Atchley, Human Resources Director, at (775) 589-5238 or aatchley@trpa.gov. To submit a written public comment, email publiccomment@trpa.gov with the appropriate agenda item in the subject line. Written comments received by 4 p.m. the day before a scheduled public meeting will be distributed and posted to the TRPA website before the meeting begins. TRPA does not guarantee written comments received after 4 p.m. the day before a meeting will be distributed and posted in time for the meeting.

Attachments:

- A. Summary of Accomplishments and Self-Evaluation
- B. Summary of Performance Review Results

Attachment A

Summary of Accomplishments and Self-Evaluation

Date: November 18, 2023

To: TRPA Governing Board

From: John L. Marshall, General Counsel

Subject: Self-Assessment, December 2022 to November 2023

This self-evaluation provides Governing Board members with an overview of my responsibilities and representative accomplishments during the review period. The responsibilities of TRPA General Counsel divides into the following categories: legal advice and counseling, general legal compliance, code compliance, litigation, relationship building, management of legal staff and resources. These general topics are be subdivided into work categories as shown.

A. Internal Legal Advice

1. Development Projects

I spend significant time aiding the Permitting and Compliance and EIP Divisions during the review and process of development applications. Advice provided includes interpretation and application of Regional Plan and Code of Ordinances to specific development proposals, meetings with staff and/or applicants and their representatives, and review of environmental documentation and staff reports. The review year also included of appeals from the Hearings Officer/Executive Director to the Governing Board. I draft the staff reports and present the appeal issues at the board meetings. Accomplishment examples:

- a. Application Review
 - i. Waldorf Astoria Lake Tahoe
 - ii. South Lake Tahoe Refuse Biomass Facility
 - iii. Latitude 39
 - iv. Shoreline Plan Implementation (Pier/Mooring/Boulder Relocation Applications)
 - v. USFS Lily Lake Trail
- b. Appeals of Permitting Actions
 - i. Miller (appeal additional excavation depth for Ski Run cell tower)
 - ii. Metcalf (appeal of denial of non-littoral buoy application)

- iii Dobbins (applicant appealing denial of buoy permit)
- iv. TTD East Shore Express (citizens appeal of extension of permit)

2. Plan and Policy Development and Adoption

I provide legal advice to the Long-Range Planning and Transportation, EIP, and Research and Analysis Division in strategic development of plan and policy development, including drafting and editing plans, codes, and rules, review environmental documentation and findings, and staff reports.

- d. Accomplishment examples:
 - i. Phase 2 Housing Amendments (Coverage/Height/Density/ADU's)
 - ii. Permitting Process Improvements
 - iii. Threshold Update Initiative
 - v. Washoe County Area Plan Amendments

B. Legal Compliance

1. Governing Board/Committees/Advisory Planning Commission

Open Meeting Law Compliance -- I review all notices, agendas and staff reports for legal sufficiency and possible policy implications. I also respond to Open Meeting Law complaints filed with the Nevada Attorney General's Office.

2. Public Record Requests

Supervise response to and review of all public records requests. Accomplishment: agency timely processed all records requests.

3. Personnel/Human Resources

Advise and aid Human Resources' and the Executive Director's management of agency personnel and practice.

4. Memoranda of Understanding/Contracts

Advise and help draft Memoranda of Understanding (MOU's) and contracts. Marsha and I share this work with Marsha reviewing most contracting documents.

5. Continuing Education/Training – To provide up-to-date legal advice, I monitor developments in applicable case law, e.g., cases interpreting Compacts and the Compact Clause, federal and state takings cases, California and federal CEQA and NEPA cases, Open Meeting Law/Brown Act litigation, Public Records Acts decisions. I also consult with various staff members and partners regarding impacts of proposed legislation on TRPA, including legalized marijuana sales, the federal Restoration Act, new state laws requiring housing starts and “as of right” approvals, etc. Specific accomplishment: providing specific “office hours” for staff; presenting at CWA@50 conference.

C. Code Compliance

Through weekly meetings, I provide legal advice and general guidance to TRPA’s Code Compliance team. We strategize about enforcement priorities, investigations, appropriate avenues for resolution of misconduct, settlement terms, and review of staff reports and presentations. The Compliance Team and I then negotiate with violators and their representatives/counsel all in aid of effective resolutions or proceeding towards enforcement litigation.

D. Litigation

I spend a significant amount of time handling litigation against and brought by the agency. Where TRPA is a defendant, we usually hire outside counsel to litigate the cases under the indemnification special condition of our permits. My work on these cases involves development of litigation strategies, development of arguments, review of briefs, and management of attorney billings. For cases brought by unsuccessful applicants, plaintiffs suing on non-indemnified agency decisions (e.g., policy and enforcement cases), I represent the agency and litigate the cases with the aid of our paralegal and contract counsel. I also monitor important pieces of litigation involving partners. During the review period the following cases were active:

1. Cases handled by outside counsel
 - a. *Garmong v. TRPA* (challenge to cell tower permit)(dismissed at district court, on appeal)
 - b. *Eisenstecken v. TRPA* (challenge to cell tower permit)(Motion to Dismiss pending)
 - c. *Harrosh v. TRPA* (challenge to a pier permit)(Motion to Dismiss pending)
 - d. *Miller v. TRPA* (challenge to additional grading for ski run cell tower; Magistrate Judge issued report and recommendation in TRPA’s favor)

2. Cases handled in-house

- a. *Bryan v. TRPA* (challenge to non-littoral buoy application denial)(summary judgment granted in TRPA favor)
- b. *Dobbins v. TRPA* (challenge to TRPA's denial of buoy application, case settled)
- c. *TRPA v. Reziapkine* (illegal mooring enforcement action; default taken)
- d. *Cal. Sportfishing Ass'n v. Lahontan RWQCB* (monitor challenge to Tahoe Keys CMT permits issued by Lahontan)
- e. *Incline Residents v. NDSL* (monitor challenge to NDSL's annual mooring fees)

E. Conflict Counseling

Throughout the review period I provided counseling to Governing Board and staff members regarding potential conflicts of interest with TRPA initiatives and projects.

F. Relationship Building

I build and maintain relationships with the legal representation of our key partners, include the California Tahoe Conservancy, both state lands agencies, the California and Nevada Attorney General offices, and local City Attorney and County Counsel offices.

Attachment B

Summary of Performance Review Results

SUMMARY OF PERFORMANCE REVIEW RESULTS

**Mr. John L. Marshall, General Counsel
Tahoe Regional Planning Agency
Presented December 13, 2023 in Legal Committee**

Process:

Feedback on Mr. Marshall's performance this year is based on the fiscal year of July 2022 to June 2023. Mr. Marshall wrote a self-assessment of his 2022-2023 results which was e-mailed to respondents consisting of two groups: all Governing Board members, Agency Senior Leadership and a select group of TRPA Staff members. These respondents were then sent a confidential, anonymous survey link which asked for feedback on his level of overall goal attainment and his performance on TRPA Core Competencies and Effective Legal Representation. Respondents rated his performance using a scale of *Exceptional, Fully Effective/Achieved, Effective/Achieved, Partially Effective/Achieved, Conditional Achievement/Needs Improvement*. In addition, there were three open ended questions (one asked for feedback on the ranked competencies, one was reflective of the past review period, and one focused on the future).

Response Groups and participation rates:

Governing Board: 7 (24%)

TRPA Staff: 22 (76%)

Overall Results: Both Respondent Groups

Both groups – representing 29 respondents – marked Mr. Marshall “*Exceptional*” for 47% of all responses, *Fully Effective/Achieved* for 37% of all responses, *Effective/Achieved* for 12% of all responses, *Partially Effective/Achieved* for 1% of all responses, and *Needs Improvement* for 3% of all responses.

Specific Results: Both Respondent Groups

Question 1: Referring to both your own experience and Mr. Marshall's written summary, please rate his level of goal attainment for July 1, 2022, to June 30, 2023:

48% ranked Mr. Marshall Exceptional, 38% ranked him Fully Effective/Achieved, 10% Effective/Achieved, and 3% Needs Improvement.

Rankings based on TRPA's Core Competencies:

- **Self-Development:** Committed to personal growth and self-reflection. Self-regulates emotions and understands motivations of self and others. Constant learner; curious. Seeks, receives, and incorporates feedback. Demonstrates strong social skills. Is able to empathize with others. Has a strong public service orientation and is committed to success.

45% ranked Mr. Marshall as Exceptional, 31% Fully Effective/Achieved, 21% Effective/Achieved, and 3% Partially Effective/Achieved.

- **Critical Thinking and Continuous Improvement:** Understands and aligns actions with the Agency’s vision and mission. Can think and execute both strategically and tactically. Maintains focus on the “big picture”. Takes intelligent risks. Connects the dots: recognizes important information and interprets and organizes ambiguous data into successful recognizes important information and interprets and organizes ambiguous data into successful approaches.

62% ranked Mr. Marshall as Exceptional, 31% Fully Effective/Achieved, 3% Effective/Achieved, and 3% Needs Improvement

- **Collaborative Relationships and Teamwork:** Maintains positive relationships even under difficult circumstances. Builds and strengthens constructive internal and external coalitions; demonstrates collaborative leadership. Treats others with respect. Engages in constructive conflict resolution and problem solving.

68% ranked Mr. Marshall as Exceptional, 27% Fully Effective/Achieved, and 14% as Effective/Achieved

- **Initiative and Results Focus:** Produces quality products, processes and outcomes that are complete, on time, and thorough. Effectively and proactively manages the resources of the Agency to optimize results.

38% ranked Mr. Marshall as Exceptional, 48% as Fully Effective/Achieved, 10% as Effective/Achieved, and 3% Needs Improvement

- **Communication:** Has excellent written and oral communication skills. Delivers high quality written work and presentations. Demonstrates active listening and a positive outlook. Strives first to hear, then to be heard. Takes initiative to communicate.

52% ranked Mr. Marshall as Exceptional, 31% Fully Effective/Achieved, 10% Effective/Achieved, 3% Partially Effective/Achieved, and 3% Needs Improvement.

- **People Leadership:** Recognizes strong talent; assembles strong teams with necessary complementary knowledge and skills; builds bench strength. Manages people well; mentors, shares knowledge and resources, promotes a sense of belonging, removes obstacles to success, finds creative ways to make work challenging and rewarding, and delegates appropriately.

24% ranked Mr. Marshall as Exceptional, 48% Fully Effective/Achieved, 24% Effective/Achieved, and 3% Needs Improvement.

- **Agency Leadership:** Focuses on priorities, identifies critical goals, shapes successful strategy and drives execution. Translates goals into practical strategy and action plans. Anticipates risks and obstacles and adjusts appropriately.

45% ranked Mr. Marshall as Exceptional, 38% Fully Effective/Achieved, and 14% Effective/Achieved, and 3% Needs Improvement

- **Effective Legal Representation:** Demonstrates accuracy and thoroughness of legal advice, knowledge of Agency plans and regulations, and understanding of relevant case law. Ensures the best legal outcomes for the Agency, represents the Agency in a professional and ethical manner, effectively manages legal resources, is timely in meeting legal deadlines, and proactively identifies potential legal issues.

69% ranked Mr. Marshall as Exceptional, 24% as Fully Effective/Achieved, 3% Effective/Achieved, and 3% Partially Effective/Achieved.

Open Ended Questions:

Themes from the optional “Comments” based on the rankings of the core competencies can be summarized as follows: “I appreciate that John is now providing specific office hours for Agency staff; appreciate direct communication with counsel on emergent issues; good at working with staff to bring the code and rules of procedure to life and how to understand it; deft handling of legal issues and guidance of staff and decision makers; provides exceptional service as legal counsel; surely knows the law and TRPA; even handed approach to challenging complex issues.” And one commenter mentioned they were concerned about the information being provided to the governing board.

When asked to comment on which results stand out from the year, themes were positive crediting him with being available to staff and board members alike for review and guidance, providing unwavering support of staff in complicated code interpretations and at public meetings, drawing the board into the “right” conversations based on facts and on the law.

When asked to make suggestions for the next one to two years, responses ranged from “keep up the good work, add additional legal staff, impart knowledge to others, increase focus on enforcement”.