

TAHOE REGIONAL PLANNING AGENCY
LEGAL COMMITTEE

TRPA
Zoom

November 16, 2022

Meeting Minutes

CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Williamson called the meeting to order at 8:31 a.m. on November 16, 2022.

Members present: Ms. Aldean, Ms. Williamson, Mr. Rice, Mr. Hicks and Mr. Yeates.

Members absent: Ms. Novasel.

I. APPROVAL OF AGENDA

Mr. Marshall stated that there were no changes to the agenda.

Ms. Williamson deemed the agenda approved as posted.

II. APPROVAL OF MINUTES

The Minutes from October 26, 2022 meeting will be available in the December 2022 packet.

III. DISCUSSION OF OUT OF BASIN PROJECTS

John Marshall framed this discussion for committee members because there have been some recent inquiries about TRPA's regulatory relationship to projects that are close to the Basin's borders. This introduction will give the committee and understanding of what TRPA has done and how they've reacted to projects near the Basin boundaries in the past and, particularly, if there are any board members, Mr. Yeates wanted to have this discussion, the committee can talk specifics. Marsha Burch has been handling the Palisades Tahoe redevelopment because Mr. Marshall has a conflict of interest and has stepped away from those discussions. If this discussion gets into specifics regarding Palisades, Mr. Marshall will recuse himself.

The major projects have been the Placer County projects in Martis Valley and Olympic Valley. The way that TRPA looks at these projects is that they are extra-territorial so TRPA doesn't have particular regulatory authority but they do participate where appropriate to protect the Basin's interests in either the approval process or, more particularly for California-side projects, the CEQA process. In the past, TRPA has submitted comment letters (for example, in the Martis Valley development and the Northstar ski area developments) when projects within that area have the ability either through traffic or scenic or other ways to affect the Lake Tahoe Basin environment. TRPA has done that through the CEQA process, writing comments on the quality of the environmental document that the local, California approving agency has prepared. In those cases, that was Placer County, which bring TRPA into a little bit of an awkward relationship sometimes with a member of TRPA's own Governing Board or an important partner. TRPA tries, therefore, to be very upfront with the government agency considering our comments of TRPA's concerns and how those concerns may be mitigated.

Mr. Marshall can talk specifically about what happened with Martis Valley and Marsha Burch can talk about where TRPA is with Palisades development.

Ms. Aldean asks Mr. Marshall typically how early in the process TRPA gets engaged with the partners? After the document has been submitted for review or prior to that?

Mr. Marshall states that TRPA would like to engage as early as possible. If TRPA doesn't feel like they're getting traction then they participate as an interested agency would which is submitting comments on a draft environmental document. Obviously TRPA has lines of communication with partner governments who are close to the Basin borders so they have in the past used those to express concerns. Particularly, with the Martis case, there were some fundamental disagreements with how to implement TRPA's mitigation programs on projects that were outside of the Basin but had impacts in the Basin. That's where there were some disconnect which resulted in TRPA's comment letter stating that the Vehicle Miles Travelled ("VMT") and traffic issues that these projects right against the Basin borders would be generating within the Basin. In particular, using TRPA's standards of significance within the Basin to assess the impacts. It ended up that TRPA's comments were used by the environmental Plaintiffs in the litigation and ultimately by the Court who reviewed to say Placer County needed to have looked at these Water Quality and other impacts from the Basin perspective. While the lead agency has the discretion to choose their standards of significance under CEQA and TRPA's environmental article VII and under NEPA, they do need to take a hard look at TRPA rules and justify why they wouldn't be following them if they choose not to do so.

Ms. Aldean presumes that based on the way TRPA's comments have been treated by the courts, if TRPA engaged as a litigant, they would have standing but they still have an impact on the direction that these developments take from an environmental perspective merely by making comments. It doesn't require legal engagement in order to have TRPA concerns addressed and hopefully incorporated into the environmental documents.

As far as Mr. Marshall is aware, TRPA has never participated as a plaintiff in a near but out of Basin development. Not even as a friend to the court. The documents provided by TRPA have been utilized by other parties in litigation.

Chair Williamson asks if the court gave any indication of how far out that nexus goes? For example, thinking of air quality effects of a biomass facility, all of a sudden you're affecting air quality from further away. Or traffic issues in El Dorado Hills could have impacts "up the hill"; how far do you go? She surmises this is very project specific.

Mr. Marshall says that the short answer is no but that there is a lot of guidance in CEQA and NEPA case law, and to some degree TRPA case law, about the speculative-ness of impacts. The farther out you get, the more tenuous a connection to a direct impact. So, when you get into West Slope, California, or the Sacramento Basin, or Reno, or Las Vegas, it becomes more tenuous in TRPA's ability to say that those developments are impacting TRPA in such a way that they need to participate in some fashion. If there's some huge development someplace that there could be such a notable aggregate impact that TRPA shouldn't do something. But, to date, TRPA has not commented as an agency on either slope development that's not right up against Basin borders.

Chair Williamson asks to confirm that the Martis Valley nexus issue was water quality?

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Mr. Marshall responds that it was a water quality issue caused by traffic. In the initial designs of that development, there were scenic concerns because at the top of 267, there's a plateau and you're out of the Basin but you can be seen from inside the Basin. So, there was concern about scenic, particularly at night, and TRPA felt that should have been analyzed. The developer then moved those buildings back so they were not only out of the Basin but out of the viewshed. After that it became much more about the traffic impacts associated with loading more cars on 267 coming into the Basin.

Ms. Aldean asks then if the allegation or insistence by some that TRPA has somehow been neglectful in not engaging in a more aggressive manner is really unfounded because she's getting the sense that by submitting comment letters and expressing concern about potential Basin impacts, a lot of those comments have been taken to heart either by project proponents or by the courts in the way these projects are reviewed?

Mr. Marshall agrees and says it's a bit of a mixed bag. TRPA was a little late to the game on the Palisades development but that California Attorney General's Office really got what TRPA would have wanted which was the mitigation of those traffic impacts through payment of TRPA's trip reduction mitigation. It was less about the adequacy of the analysis, per se, and more about whether or not the impacts were being mitigated. With Martis, TRPA came in a little earlier and were a little more directly involved with production of the environmental document.

Mr. Yeates would like to point out the need to take the earliest opportunity to get involved. One of the few times he's taken umbrage with Mr. Marshall was over the Palisades (formerly Squaw Valley) project when TRPA didn't provide any comments at all. TRPA was asked by interest groups after that why they didn't provide comments and Mr. Yeates and Mr. Schute didn't have a good answer. As things evolved on the TRPA Governing Board, he came to understand that they serve as more than just TRPA. The Regional Transportation Plan ("RTP") applies, especially in some areas of Placer County, outside of the Basin. TRPA is also a Metropolitan Planning Organization ("MPO") that provides funding and actually funds TART.

That Basin includes TART's overall program which goes into Nevada County. There is a provision in the CEQA guidelines that helps TRPA provide some sense of how far, what is the nexus, etc. Mr. Yeates has provided that to Chair Williamson and Ms. Burch. It says that for a project of aware-wide significance, the transportation planning agencies and public agencies which have transportation facilities, which would include transit facilities, within the jurisdictions that could be affected by a project. Those transportation facilities include major, local, arterial, and public transit within 5 miles. Certainly, the TART operation is within 5 miles of Palisades' proposed project. The point he wants to make is not that TRPA is going to be in opposition to anyone's project, it is the opportunity at the earliest moment for TRPA, TTD, TART staff to get together. That way they can sit down and deal with many of the projects, especially in the North shore, that are trying to address the impact of transportation and traffic in and out of the Basin. These major development projects may not be within our permitting jurisdiction but are certainly within transportation planning jurisdiction.

There is authority from California in the CEQA guidelines for how TRPA should address issues like this. In the Board to Board call with the League to Save Lake Tahoe this came up, they want TRPA to be really involved and Mr. Yeates feels it's appropriate that TRPA should be consulted and should work with Placer County and others on how TRPA deals with whatever traffic counts might be. TRPA is not adversarial. This is different from the Martis Valley project for several reasons. Martis was initially within the Basin and then it was just outside but right up next to the Basin but still visible. On the California side, there is guidance from CEQA because of TRPA's role

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as a MPO that works within SECHOG and Placer County. There are opportunities at the earliest stage of the environmental review process, long before there might be a draft environmental document that draws everyone's attention to sit down and understand how this project fits in to what TRPA is trying to accomplish on Hwy 89.

This law was put in place by the California Legislature because of problems in Southern California where everyone was building auto-malls because it was a good way to get revenue and they built them right up next to one another but the traffic consequences were punted until the state made it a regional issue. In many of the things TRPA does, we have the opportunity to work collaboratively with partners, and it makes it easier to resolve some of these issues rather than leave it for the court of appeals to find a fault with an agency's environmental review.

Ms. Burch give the status of the Palisades Tahoe project. They are preparing to rescind the previous project approvals and they're moving forward with a revised environmental document. She's not gotten a clear answer on how close they are on releasing a draft. The California AG is still engaged and wants to see a similar mitigation requirement and are probably going to want to see an agreement like the one they had for the previous project. That's a long process, a longer process than the applicant was hoping it would be. There's a new AG so it's a different conversation than it was during the previous project review. It's just in the beginning stages of getting back on track for release of the environmental document as a draft and that will provide the comment opportunity and consultation opportunity. In Ms. Burch's view, that consultation should happen before the draft is released and she's working on getting that process going. There's been a bit of a disconnect with the county in terms of what mitigation requirements should apply. In Ms. Burch's view, the court has the opinion that TRPA standard and thresholds should at least be part of the analysis, whether or not the lead agency chooses to use that as the threshold of significance. With substantial evidence, they could potentially use a different threshold but they do need to take into account TRPA standards and thresholds. It's Ms. Burch's suggestion that TRPA does attempt to engage the county prior to the release of the draft environmental document in this consultation role that Mr. Yeates described.

Chair Williamson asks if TRPA would need to provide formal comments before the draft is released or what's the chain of authority once there are actual dates available?

Mr. Yeates adds that as TRPA's been working on the implementation of the RTP, the understanding is that they would work with Placer County and Placer County's transportation agencies, and TART to figure out how to do it. TRPA has projects that are queued up within the RTP to address Hwy 89's traffic problems. One was one that Placer County proposed which was a third lane to allow a bus leaving Truckee going directly to Palisades that would take skiers or summer visitors to avoid the traffic. There are differences today than what that previous Cal AG mitigation measure was. TRPA has advanced the transportation planning process significantly with two bi-state discussions, priorities established within the Transportation plan, including projects on the north shore that are outside TRPA permitting jurisdiction but within TRPA's planning jurisdiction. Those are the kinds of things that should be discussed with Placer County in order to continue working together. It's important to address these transportation issues in a way where everyone is working together. In working together, we may find that there's more funding available which wouldn't necessarily come from a private developer.

Ms. Aldean wonders if there's an opportunity to amend the Memorandum of Understanding with Placer County? If we can all agree that projects that fall within our jurisdiction, from a transportation perspective, if they agree to confer with TRPA as projects come forward, even at the conceptual level, maybe this will become more routine and less of an exception to the rule.

Mr. Marshall says that the existing MOU focuses on project approval and delegation issues. TRPA might be able to expand that to relate to coordination on near basin developments. Julie Regan, as new executive director, will need to get up to speed on this issue in order to provide direction to staff.

Ms. Aldean continues that this could avoid confrontation because it becomes part of the established process. Chair Williamson agrees.

Julie Regan offers that in the last 6-months there have been discussions with Placer County on the new projects they're looking at under the Area Plan on the North Shore. There's a renewed spirit of cooperation with County leadership and at staff level. Herself, John Hester, Joanne Marchetta, and Nick Haven met with their CEO's office on the North Shore with Board chair Cindy Gustafson who should be engaged in this conversation. Placer County is leading the way in terms of Area Plan implementation. These out of basin projects weren't specifically discussed but those topics could be added to a more structured conversation with the County. John Singlaub was Executive Director at TRPA when the Martis Valley project came to the agency and Ms. Regan remembers the stinging headline of "TRPA Takes a Powder on Development". There's been a lot of evolution since then.

Ms. Regan agrees with Mr. Yeates' point about transportation investments. This is the transportation action plan and it's an opportunity to collaborate. That dedicated transit lane project is a \$400 million project but record infrastructure investments are available to pursue collaboratively and not in an adversarial position.

Ms. Aldean comments that the landscape changes very quickly, especially among elected officials. Even though TRPA may have a currently productive relationship, that may change in the future. The extent that TRPA can memorialize some of these agreements and these understandings among the jurisdictions, the better.

Mr. Yeates agrees with Ms. Aldean's idea to establish that relationship regarding out of basin but within transportation planning aspects of what TRPA's working would be very helpful. From a mitigation standpoint, a CEQA document won't solve everything, but if everyone's talking about it you can find the impetus to do what we want to with the RTP. He advised Ms. Regan to include TTD Chair Alexis Hill in the discussions with Placer County.

Ms. Regan will come back to Legal Committee with an update on those discussions with Placer County.

Public Comment

Gavin Feiger on behalf of the League to Save Lake Tahoe. He thanks the Legal Committee and Mr. Yeates for this discussion. The League has very similar if not almost identical mission to TRPA. They only get engaged in a few out of Basin projects, Palisades and Martis Valley being the two referenced today. The League strongly believes that TRPA remain engaged in these projects. The transportation nexus is a really good idea. Those are usually the largest impacts to Lake clarity. In that vein, he hopes TRPA has been following the Truckee General Plan update which is also linked to transportation. They're projecting an increase in VMT and a large portion of that is into the Tahoe Basin. The League provided comments on the Truckee general plan which they'd be happy to share with TRPA. Similar to Martis and Palisades, the League hopes that TRPA would look at the transportation impacts of the Truckee General Plan. Finally, the

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League encourages TRPA to get involved with Palisades soon, "like now", as they are actively repurposing their proposal to address some concerns brought up by the court. These projects could undermine all the work being done in the Basin, especially around transportation.

IV. CLOSED SESSION WITH COUNSEL TO DISCUSS EXISTING AND POTENTIAL LITIGATION

Ms. Aldean made a motion to move the committee to closed session.

Motion carried.

V. POTENTIAL DIRECTION REGARDING AGENDA ITEM NO. 4

No direction.

VI. COMMITTEE MEMBER COMMENTS

None.

VII. PUBLIC INTEREST COMMENTS

None.

VIII. ADJOURNMENT

Ms. Aldean moved to adjourn.

Meeting adjourned at 9:38 a.m.

Respectfully Submitted,



Katherine Huston
Paralegal

The above meeting was recorded in its entirety. Anyone wishing to listen to the recording 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.