

TAHOE REGIONAL PLANNING AGENCY  
GOVERNING BOARD

GoToWebinar

November 17, 2021

**Meeting Minutes**

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Mr. Bruce called the meeting to order at 12:15 p.m.

Members present: Ms. Aldean, Mr. Bruce, Mrs. Cegavske, Ms. Conrad-Saydah, Ms. Faustinos, Mr. Friedrich, Ms. Gustafson, Mr. Hicks, Ms. Hill, Mr. Hoenigman, Mr. Lawrence, Ms. Novasel, Mr. Rice (1:35 pm), Ms. Williamson, Mr. Yeates

Ms. Conrad-Saydah was appointed by Governor Newsom. She served for four years within the Bureau of Land Management starting as a Presidential Management Fellow and helped to develop and deploy the renewable energy program for the west. She then served as the Deputy Secretary for Climate and Energy Policy at the California Environmental Protection Agency for the duration of the Brown administration. In both of those capacities she worked with state, federal, local, regional, and government agencies, civil society, academics, and members of the public to ensure that their policy direction and implementation was inclusive and broke down barriers for people who felt traditionally marginalized by policy engagement and implementation.

She left government a few years ago to do policy consulting with the U.S. Climate Alliance helping states that made commitments to reach ambitious climate goals. It includes working across multiple sectors from transportation to natural working lands to short lived climate pollutants. She's also working with companies to bring technological tools into decision making at the ground level. In addition, she's working with LA Metro on their climate vulnerability assessments coming out of the pandemic to get folks back to using transit and alternative mobility options.

She has a background in ecology, conservation planning, and helped produce the Forest Carbon Plan along with a lot of scoping plans. She worked extensively on natural and working lands and forested landscapes.

Mr. Hoenigman said his experience is in the private sector starting out as an engineer in technology. He started a company in the early 1990s in San Francisco and then merged with another company that went public in the dot-com boom. Since then he's started several other companies one of which is a real estate development company that's built about 2,000 infill homes trying to reduce sprawl in Southern California and Nevada. He's also involved in a lot of nonprofits and has been a board member for about 20 years with the San Francisco Planning and Urban Research Association which is a 125 year old organization that works on good planning, policy, and government issues for the Bay Area primarily on housing and transportation. During his tenure as board chair he started their sustainability and resilience work around natural disasters. He also served on the board of the Natural Parks Conservation Association for approximately 15 years and has been involved with other work around climate change, social justice, homelessness, poverty, and education. His Masters is in Urban and

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Regional Planning.

He's had a home in Homewood for about 25 years.

II. PLEDGE OF ALLEGIANCE

Ms. Hangeland led the pledge.

III. APPROVAL OF AGENDA

Ms. Regan stated no changes to the agenda.

Mr. Bruce deemed the agenda approved as posted.

IV. APPROVAL OF MINUTES

Ms. Aldean said she provided her minor clerical changes to Ms. Ambler and moved approval of the October 27, 2021 as amended.

Mr. Lawrence abstained.

**Motion carried.**

V. TRPA CONSENT CALENDAR

1. October Financials
2. Release of City of South Lake Tahoe Air Quality Mitigation Funds (\$75,000), and Water Quality Mitigation Funds (\$75,000) towards purchase of a new, high-efficiency, Street Sweeper
3. Release of El Dorado County Operations and Maintenance Mitigation Funds (\$81,000), towards purchase of a new, CARB compliant, Vacuum/Rodder Truck
4. FY 2021-2022 State of Good Repair project lists for the Tahoe-Truckee Area Regional Transit (TART) and Tahoe Transportation District (TTD)
5. Allocation of FY 2021-2022 Local Transportation Funds of \$75,000 to the Tahoe Regional Planning Agency for the Administration and Planning of the Transportation Development Act
6. Estimated Allocation of FY 2021-2022 Local Transportation Funds of \$1,388,584 to Tahoe Transportation District
7. Estimated Allocations of the FY 2021-2022 State Transit Assistance funds of \$521,739, and approval for FY 2020-2021 State Transit Assistance final allocations of \$113,485 plus interest to the Tahoe Transportation District
8. Allocation of FY 2021-2022 State of Good Repair funds of \$91,604 to the Tahoe Transportation District for a preventative maintenance project
9. Estimated Allocation of FY 2021-2022 Local Transportation Funds of \$1,070,024 to Tahoe Truckee Area Regional Transit (TART)
10. Estimated Allocations of the FY 2021-2022 State Transit Assistance funds of \$447,260, and approval for FY 2020-2021 State Transit Assistance final allocations of \$73,886 plus interest to the Tahoe Truckee Area Regional Transit (TART)
11. Allocation of FY 2021-2022 State of Good Repair funds of \$78,527 to the Tahoe Truckee Area Regional Transit for purchase of a replacement 40' transit bus
12. Inflation Adjustment to TRPA Application Filing Fee Schedule

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13. Resolution of Enforcement Action, Unauthorized Material Damage to Trees, Dana Marlin, Wren Circle, Douglas County, NV, Assessors' Parcel Numbers 1418-27-810-013 & 1418-27-810-014
14. Tunnel Creek Alternative Trail, EIP No. 03.02.02.0091, File No. EIPC2021-0008

Ms. Aldean said the Operations and Governance Committee recommended approval of items, 1 through 11 which were related to transportation funding. In addition, the committee recommended approval of item number 12 which was to approve a 5.3 percent inflation adjustment in filing fees which is based on the Western Region Consumer Price Index as opposed to the California Bay Area Consumer Price Index. The Western Region CPI is also used as a statutory basis for adjusting local building permit fees in Nevada.

The objective is to do a better job of covering the Current Planning Divisions operating costs. These application fees as adjusted will be waived for affordable housing projects using bonus units.

Mr. Marshall said the Legal Committee unanimously recommended approval of the settlement agreement.

Board Comments & Questions

Mr. Lawrence said regarding consent calendar item 13, enforcement action. He would like to make a comment on behalf of their Division of State Lands and Attorney General's offices that they're fine with the settlement action and support that moving forward. A lot of the damage was to trees on the State of Nevada property that used public bond dollars to purchase that property and protect it as open space. Although, they support TRPA on this enforcement resolution, it doesn't preclude the State of Nevada for doing further investigation or enforcement actions.

Mr. Bruce said the party was notified of that during the Legal committee meeting.

Ms. Aldean said that there was an errata sheet for Consent Calendar Item No. 14, Tunnel Creek Alternative Trail regarding the posting of signage. She wanted to bring this up to ensure that they try to advise users of that new trail because the intent is to reduce user conflicts. It's important that they try to separate user groups to the extent possible to avoid some dangerous conflicts.

Public Comments & Questions

None.

Board Comments & Questions

Ms. Aldean moved approval of the consent calendar.

Ayes: Ms. Aldean, Mr. Bruce, Mrs. Cegavske, Ms. Conrad-Saydah, Ms. Faustinos, Mr. Friedrich, Ms. Gustafson, Ms. Hill, Mr. Hoenigman, Mr. Lawrence, Ms. Novasel, Ms. Williamson, Mr. Yeates

Absent: Mr. Rice

**Motion carried.**

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### VI. PLANNING MATTERS

#### A. Update on TRPA Climate Change Initiative:

- 1) 2021-2022 Operations Work Plan Update
- 2) Briefing on Climate Change and Sustainability Initiative

TRPA staff Mr. Hester and Mr. Middlebrook provided the presentation.

#### 1) 2021-2022 Operations Work Plan Update

Mr. Hester recognized the excellent staff who continued to improve the operations during the pandemic and fire while they received record levels of requests for services such as permitting, inspections, etc.

Presentation overview: Focus on Climate Change, Role of the Work Plan, and Strategic Initiative. (Slide 3) The components of the climate change and sustainability are climate mitigation, adaptation, and resiliency. Mitigation is the greenhouse gas reduction portion of the effort. They completed a plan in 2014 that focused on greenhouse gas (GHG) reduction. Adaptation is what they do to change the existing systems so they're ready for climate change such as flooding, droughts, and how to change the infrastructure and forest management. Resiliency is the outcome they are all hoping for where they are prepared for and recover from disruptions that includes the less obvious like recreation, tourism, impacts on the economy, as well as having the infrastructure resilient.

In the middle of the chart are the tools that the Compact gives TRPA to address things like climate change, threshold standards, the Regional Plan, Code of Ordinances, and implementing projects through private projects that come through the permitting process as well as a number of public projects that the partners work together on through the Environmental Improvement Program.

The top part of this chart shows how TRPA implements all of this. Current tools are the top left. For example, how they've used the current processes, tools, and resources to prepare a plug in electric vehicle plan from Interstate 80 to US Highway 50 partnering with the Tahoe Donner Public Utility District and are now receiving funding for that. They're also working on new standards and plans such as the one they did for the new vehicle miles traveled per capita standard that's designed to address greenhouse gas emissions from transportation. Then there's the new projects in the Environmental Improvement Program.

(Slide 4) The work plan carries forward the initiatives of the strategic plan (pillars) that's updated every four to five years. The initiatives that are in the work plan this year are those that are carried forward from the previous years which were discussed at the Governing Board retreat. They are reflected in the annual budget that's been adopted which allocates the resources to achieving these initiatives. The Operations Work program delineates how these initiatives are carried out, as well as the ongoing activities of the Agency throughout the year. The objectives from the strategic plan are self-explanatory, but some more detail on transportation and sustainable recreation that will address funding, implementation, and the impact on recreation and tourism in the basin.

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For example, it addresses climate through the greenhouse gas reductions that they'll get from the transportation system. That is the biggest, single category in the emissions inventory that there's the most direct impact on. The housing and community revitalization initiative continues work on near, medium, and long term priorities that have been developed through the working group which four of the board members sit on and is overseen by the Local Government and Housing Committee. Those exhibit an example of how those address climate change and they are trying hard to provide more housing in the Basin for those who work here.

The Environmental Improvement Program is being updated to focus on all of these adaptation responses to climate change and sustainability.

The Thresholds and Monitoring update is considering climate as they look at every threshold standard and EIP performance standards. An example is the new greenhouse gas reduction component of the new GHG and VMT per capita thresholds. That threshold is designed explicitly to reduce greenhouse gas emissions by changing the transportation system and the land use pattern.

The Digital First Innovation initiative is designed to allow both staff and the public not to have to travel to the TRPA office to conduct business. People can get information and apply online and improve the customer service to 24 hours a day, seven days a week.

### 2) Briefing on Climate Change and Sustainability Initiative

Mr. Middlebrook said this summer the Tahoe Basin felt the brunt of climate change as the Caldor fire caused smokey skies and poor air quality. As the South Shore was evacuated, they saw that those impacts of climate change that are predicted in models of the future years of 2050 and 2100, they are here today.

The Caldor fire was one of only two wildfires that crossed the crest of the Sierra Nevada, the other being the Dixie Fire, which also burned in 2021. This just highlights the importance of the work they're doing and the need for increased pace and scale to address climate change. Mitigation, adaptation, and resilience, in regard to climate change, are used through their existing regulatory authority programs' plans and implementation. Climate change does have those impacts on the region such as drought, flooding, and wildfire. The mitigation activities are reducing the amount of greenhouse gas being emitted to the region, lessening those climate impacts. However, like the Caldor Fire, those impacts are going to happen to the Tahoe Basin no matter what and is why they need to look at climate adaptation, adjusting the systems to better avoid those known impacts. This together creates a resilient system, the ability for the community to bounce back.

(Slide 9) Some of the highlights of the greenhouse gas inventory is that they're making progress towards reducing the greenhouse gas emissions. Between 2005 and 2018, the big three emitters of solid waste, transportation, and energy all saw reductions. More work is needed to be done to continue this trend and meet statewide, federal, and local greenhouse gas reduction goals. From 2015 to 2018 there was a slight increase in emissions from a variety of factors within and outside of TRPA's span of control.

The 2014 Sustainability Action Plan won the National American Planning Association awards for outstanding climate plan, set a target of a 15 percent greenhouse gas reduction by 2020, which was met in 2018. It also set interim goals of a 49 percent reduction of emissions by 2035, and

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this board has endorsed a net zero goal by 2045. These goals are in line with both the State of California and Nevada which have carbon neutrality or net zero goals of their own. The City of South Lake also has their own climate goals.

As a region they looked at, not only what they're emitting, but what the forests and meadows are sequestering every year of the carbon that they're holding onto. The net emissions for 2018 has a wide range from either being a net emitter or putting out more greenhouse gasses than they're absorbing. On the other side of spectrum they're absorbing more greenhouse gasses than they're emitting which is due to a number of factors including the uncertainty within the carbon sequestration modeling and the need for more on the ground data collection within the landscape. But as seen with the Caldor Fire, just absorbing carbon in the trees and meadows isn't the final and only solution to the climate issues. The Caldor Fire has put a bunch of that stored carbon back into the atmosphere, these numbers have already changed based on what's going on in the landscape. Being able to sustainably manage the landscape such as the changes that are coming through the forest fuel treatment ordinances needs to be pursued along with emission reductions.

(Slide 12) Climate adaptation: The path of the Caldor Fire in relation to forest fuel treatment projects that have happened in the Tahoe Basin. The Wildland Urban Interface (WUI) interface has successfully been surrounded by forest fuel treatments that served as a barrier and aid to the firefight in protecting our community. Fires are going to become more prevalent and more common in the region and they need to do things to create a more resilient forest. There's also a lot of planning documents being done. The Forest Service just released a Vulnerability and Adaptation Assessment for infrastructure and recreation in the Sierra Nevada, very relevant to both the transportation and sustainable recreations strategic initiatives. The California Tahoe Conservancy along with TRPA, and many other partners released a Climate Adaptation Primer, Adaptation Portfolio, and Vulnerability Assessment this year, which outlines all of the actions that basin partners are taking to adapt to climate change. This month, the State of California released their draft updated California Climate Adaptation Strategy. There's about 12 strategies identified in that draft plan that either directly reference the Sierra Nevada or the Tahoe Basin. They're integrating not only state policies down to a local level, but they're using their local best practices to then influence state policy.

(Slide 13) Climate Resiliency Initiative: Each of the mitigation, adaptation, and resiliency components connects to the work program. For example, transportation is a not only a mitigation program to get people on transit, trails, and out of their vehicles, it also serves as an adaptation program. Looking at rock slides and landslides across our highways from the increase in rain over snow and the hardening to the infrastructure that we need to do which creates a more resilient transportation system for when we need to evacuate for example.

(Slide 14) The overarching umbrella is the Lake Tahoe Environmental Improvement Program. This is the overall program for restoring and preserving the Tahoe region and environment. There's 80 plus partners and \$2.6 billion invested in the environment since 1997. Climate is being integrated within each of those focus areas. The aquatic invasive species program is a success story on how climate change is impacting that program. They've seen over the last two years record number of interceptions of Quagga mussel infested boats coming to the region. As the lake warms, the lake is becoming a more suitable habitat for those invasive species. The increased emphasis on those inspection programs in light of climate change is an example of how they do integrate climate.

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They're working to bring a climate discussion to the Tahoe Interagency Executive Steering Committee (TIE SC). TIE is having a two part retreat in December and February and they'll be working with them to get direction from the Basin executives on how to better integrate climate into the five year priority action list, action priorities, performance measures, and science.

Transportation is one of the key strategic initiatives. The Tahoe Truckee Electric Vehicle Readiness Plan won two Nevada American Planning Association awards in 2017 and since then they've seen a 50 percent increase in the availability of charging locations, and the number of stations or plugs at those locations. The City of South Lake Tahoe now has an electric vehicle in their fleet, and the Tahoe Transportation District has three new electric busses. The new transit hub at the Lake Community College will include overhead induction charging for those busses. Also, the Lake Tahoe Unified School District now has electric busses in their fleet as well. They're seeing electrification of both the light duty and heavy duty fleet which is a key strategy within the Regional Transportation Plan, to meet California Senate Bill 375, Greenhouse Gas reduction targets.

They're integrating climate change with the sustainable recreation and tourism initiative in several ways. Through the traditional efforts of transit trail and technology, for example, the East Shore Express and along the east shore of the new trail that is reducing the vehicle trips to the beaches and recreation sites such as Sand Harbor, reducing those emissions. They're also looking at a global scale. TRPA was an initial signatory to the Future of Tourism Council which is identifying and helping serve best practices across the region for all tourist and recreation destinations. Across the globe, they're all struggling with the challenges of increased visitation, over tourism, litter, traffic, and congestion. In 2019, Tahoe was named a top 100 global sustainable destination.

(Slide 17) There are many ways to connect housing to climate action and climate change. One of the best examples is Sugar Pine Village in South Lake Tahoe that's currently under the planning phase. Not only will this development provide workforce and afford affordable housing for the region, but it is also located close to a transit center. They're using high efficiency appliances and have plans to install solar on the roofs of those buildings. These high efficiency buildings is an example of what the Regional Plan and Regional Transportation Plan are trying to achieve. And within the thresholds is the updated vehicle miles traveled (VMT) per capita threshold that's targeted at reducing greenhouse gas emissions. Staff is working to look at all of the other thresholds to see how climate change is affecting their ability to achieve those thresholds and what thresholds or metrics are missing that climate change is impacting that they're not currently measuring.

TRPA uses their strengths through the Regional Plan and the mandates and the Bi-State Compact to reduce those energy emissions and create a more resilient infrastructure for people that live work and play in the Tahoe region. Embracing their role as the Regional Metropolitan Planning Organization to reduce transportation emissions, support things like electric vehicle adoption, but also create a resilient system that can move visitors around to the recreation sites without a vehicle and serve as an emergency response when needed. Then through the Environmental Improvement Program, whose tagline is a blueprint for climate resiliency and how they bring the partnership together to tackle the collective challenges.

Over the next year and throughout this Operations Work Plan implementation, the board will see several things coming before them for direction and decisions. Staff is working with

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executives on the Environmental Improvement Program to bolster climate adaptation and resiliency throughout that program.

One of the key items they're moving forward with the Operation Work Plan program is the sustainability code recommendations on how to make code changes to the Code of Ordinances to better incentivize solar, electric vehicle adoption, high efficiency buildings. There are a lot of things that they can bring forward to make the code more climate ready and incentivize development to move that direction. Within the equity, education, and engagement objective, the transportation team led by Ms. Smith is embarking on a transportation equity study, which is building off of the equity work included in the 2020 Regional Transportation Plan. Not only are they looking at equity issues related to the underserved communities getting to their basic services such as work or shopping, but also how does climate change impact those specific areas where underserved populations are located broader than just the transportation network. How is climate change being addressed within those neighborhoods?

Science data and monitoring: Part of the Lake Tahoe Information platform, EIP Project Tracker sustainability dashboard is going to be updated with more relevant metrics to climate following the Plan, Do, Check to ensure that they're hitting the mark and their actions are making a dent on climate change.

Presentation can be found at:

[Agenda-Item-No.-VI.A\\_1\\_2-Work-Plan-and-Climate-Nov-GB.pdf](#)

Board Comments & Questions

Ms. Conrad-Saydah is excited to see this climate action implemented at the local level. She asked how the emission metrics reporting was done particularly on the natural and working lands emissions and if they're able to report those to California and Nevada as they think about hitting their mid-century targets. That net balance is interesting and there's not a lot of people doing that. She's glad to see this focus on mitigation resilience and adaptation and the integration with all of the projects.

Mr. Middlebrook said he'll follow up with her in an email with the full greenhouse gas inventory and appendices. On the carbon sequestration part they had the consultants compare several different models that are used across different areas of the state to model carbon sequestration on the landscape. They did a comparative analysis and blended all those into that number they got which is why there was that wide variability range. That information has been shared with some of the statewide collaboratives. The Nevada State Climate Strategy does identify carbon sequestration as one of their key strategies and having more science involved in that. The California Adaptation Plan that was updated has a lot of information and actions around carbon sequestration. Hopefully, in the future, they can get additional money possibly through the Science Advisory Council to do on the ground truthing of those models to see how the restoration of the Upper Truckee Marsh impacts carbon sequestration. And are there restoration techniques from swaddles to cut riverbanks, etc. to have not only the water quality benefits, but also increased carbon sequestration over other techniques.

Mr. Friedrich said he and Mr. Middlebrook as City of South Lake Tahoe Council members will be voting on a resolution for 100 percent renewable energy, 24/7 by 2030. This is a new evolution in renewable energy commitments. Ms. Regan provided a great presentation to the city council last night. About 15 million visitors seems like a great asset to make them into advocates for

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climate action where they live as it relates to being part of the solution for Tahoe. Are there any discussions happening on that level of connecting what they're doing here with climate action throughout the basin, and visitor awareness of those activities such as climate or sustainability education.

Mr. Middlebrook said many have heard of the Take Care Tahoe program with those cute drawings and reminders for people to do good. That is one of their main unified paths towards getting people to be more sustainable. For example, hopefully choosing re-usable over plastic in the Tahoe basin spread to people's behavior when they return home.

## VII. APPEAL

- A. Appeal of Rejection of Appeal of Qualified Exempt Declaration QESZ2021-0152 and denial of Administrative Determination Request ADMIN2021-0030, 1600 North Lake Boulevard, Placer County, CA, Assessor's Parcel Number (APN) 094-160-009, Appeal File Number ADMIN2021-0033

Mr. Bruce asked if any board members had ex parte communications or believe they may have a conflict of interest with respect to any party or the subject matter of this appeal.

None.

Mr. Bruce then turned the presentation over to Mr. Marshall.

Mr. Marshall said staff wanted to be certain that two legal advice functions are met and separated in this case. One is an advisory function that he normally provides and the other is a staff advocate function that he will do for this appeal. Ms. Doherty will be advising the board and he'll be answering questions specific to his role in the appeal and any staff level background questions. There is a due process issue if you have in contested hearings like this, the advisory and adjudicative functions in the same attorney. Ms. Doherty will provide you with the advisory role.

This matter was heard by the legal committee this morning who voted unanimously to recommend denial of the appeal. Voting at the board would be a "no" vote on a motion to grant the appeal.

(Slide 3) The location is north east of Tahoe City. (Slide 4) The Fialho property is outlined in red and the Polite property is outlined in blue. The pier is the one extending from the Fialho property. There's two boat lifts and power to the boatlift is the genesis of this dispute.

(Slide 5) Visual from 2017. This shows that there's two adjacent properties and that they share a pier.

(Slide 6) This is the site plan of the Qualified Exempt (QE)that was stamped by TRPA. The critical item here that was discussed a lot at the Legal committee meeting was that this is a QE that they can only excavate less than three cubic yards of soil all by hand. It's the dashed line that extends along the property boundary on the Polite side and then crosses over into the Fialho side and then out towards the pier. It's that crossing over that has generated the controversy, because it's within an area where there's an easement on behalf of Mr. Polite for access. He also has an easement agreement to have the boatlift on the pier.

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(Slide 7) The eventual qualified exempt that TRPA stamped on contained the statement in the bottom left, which emphasizes that TRPA cannot, and does not, provide Mr. Polite with permission or authorization to enter the Fialho property. Instead, that has to be something that he has on his own or receives from the Fialho's. In this case, the dispute between these parties relates to whether or not there is such an agreement. The key issue that they discussed the most in the Legal committee, is whether or not the appeal was filed timely. You have to appeal an action of the Executive Director within 21 days. This appeal was not filed within that timeframe. The Fialho's are asking the Governing Board to deviate from that rule.

Fundamentally, they believe that they registered their objections and should be excused. Staff and the Legal committee essentially found that there was no justification for a deviation in this case. The board will need a 5/5 vote to approve that deviation from our standard rules of procedure.

On the merits of the QE itself, there's two key things: One is whether or not it required a signature of Mr. Fialho to submit because he's a property owner. TRPA's practice is when they get in these situations where there's an easement interest, they look to see whether or not there's sufficient interest of the main property owner to determine whether or not they can apply or get a QE for work done on someone else's property. Most of the work on this is on the Polite property. In this case, they found that they had enough interest to apply but doesn't give them the right to go on the property. It just says that they have the ability to get permit from TRPA to do work that might be on someone else's property, but within the easement area. Secondly, because the QE is limited to only three cubic yards, and must be done by hand, that the QE was appropriately issued for TRPA purposes which is just the excavation for the electrical conduit. Other entities such as the county, etc. have to issue their own permits for the electrical components and any other building permits, etc.

Mr. Lemieux said regarding deviating from the appellant. First, there is no rule in TRPA's guidelines that even allows you to appeal a QE. A QE is not a permitted action. A final action contemplates an appeal from a permitted action. Part of the problem is they're getting too much in the weeds about appellant rules and deadlines that don't even apply. They were told that they couldn't appeal, and then subsequently filed a request for determination and admin form on TRPA's website, only to be told that they no longer accept those despite it being on the website. His position is that the board should get to the merits of this because it's really important for a number of things. The second thing he heard Mr. Marshall comment on which he believes is part of the problem is that TRPA doesn't understand the issues that are going on in the litigation. They got involved after the court issued a preliminary injunction prohibiting the very activity that the QE authorized. The QE came after a court order. TRPA should not be taking action after a court order halts any work. There's no easement for electrical or boatlift here.

Looking back at the documents, there is one easement, a 1980 easement and multi-use pier agreement. The 1980 easement is very clear, it limits Mr. Polite, the owner of 1600 Northlake Boulevard to egress and ingress to the pier, meaning, he can walk on the stairs to get to the pier. They amended that agreement in 1985, Mr. Polite's predecessor asked if you let us have a boatlift, a piece of personal property on the pier in exchange, they would supply power. The Polite's predecessor agreed to that but that's not an easement, that's a contractual agreement. Mr. Polite's predecessors never fulfilled their end of the deal with supplying the electrical. The litigation is about much more than just that electrical piece before TRPA. Part of the problem today is that TRPA has injected itself into an ongoing litigation when they had no business to do so. They should wait until the court decides who owns the pier, what the rights are under the 1980 easement in the 1985 agreement and then it can take guidance an issue there.

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A QE is an exemption, meaning a privilege. It should not be issued to someone like Mr. Polite who illegally showed up on the Fialho's property which is undisputed. In March of 2021 he showed up and began construction on the Fialho's property without permits, approvals from TRPA, Placer County, or the Fialho's consent. And we're going to reward him with a qualified exemption after the court said he showed up without rules, permits, or plans. Now he's given an exemption and then prevent the Fialho's from challenging it. In March, Mr. Marshall informed them in writing that they couldn't issue a QE without the Fialho's consent. Mr. Polite, after a temporary restraining order had already been issued. Mr. Polite asked for a QE and the answer was they can't unless they have both property owners consent. TRPA then unbeknownst to them reversed itself, without input from the Fialho's and no notice decided it could. Looking at the basis for why they deemed it could and why the Legal committee made an error today, The staff report said it determined that Mr. Polite had the sufficient interest in the easement area to allow him to file a QE Declaration. TRPA is not making that determination that the determination made for the Court and that is contrary to the court's ruling to date. It's like the Glenbrook case that was the permitted action that was after public comment. The Board should rescind the QE for a number of reasons and wait for the court to rule. Then they can adjust accordingly but it should be treated as a project, meaning everybody should have a chance to present and be heard which shouldn't just be some reward for someone who showed up, engaged in illegal activity.

The determination is a wrong, they got that from one of Mr. Polite's lawyers who was advocating behind the scenes when they weren't involved. It was that Mr. Polite had some sufficient easement interest in the area. Looking at the proposed construction which Mr. Marshall showed the plan in his presentation where Mr. Polite is planning and intending to go through the Fialho's wall and up the rocks which is not even the easement area. Again, that determination is erroneous. They don't understand the issues, which is precisely why you need to let the court rule.

The court ruling is shown in Exhibit 13. One of the things the staff report cited was the court order stating that the trial court held that Mr. Polite had an easement interest in the Fialho's property to access and maintain a boatlift. It didn't do that, in Exhibit 13, they talk about Mr. Polite's argument, that he has some kind of implied easement to install electrical. The court stated, "The court concludes that even if a secondary easement exists to allow the defendant to run electrical conduit, through the plaintiff's property defendant has not demonstrated that his proposed course of action is reasonable, particularly in light of the far less intrusive courses of action, which appeared exist." There was no finding that Mr. Polite has an implied easement. It rejected that; it granted the injunction. The order states that the Fialho's are likely to succeed on the merit and Mr. Polite showed up illegally without plans, permits, or approvals, and that this injunction remains in place today. The premise of the staff report with all due respect: it erroneous, and it should be rescinded.

This board can deviate from the rules. Their brief explains that's it's more than justified why there was a delay. First, the rules say you can't appeal a QE. The declaration itself, has a disclaimer on there that states TRPA can take any action at any time and rescinded a QE. It doesn't even need an appeal. Mr. Marshall confirmed that you can't appeal a QE. The rules themselves don't contemplate an appeal. They filed an objection within 48 hours of receiving Mr. Marshall's email that had the QE on July 2<sup>nd</sup>. That is not a final action that triggers an appellant deadline, an email stating here's a qualified exemption declaration, this is not a final action. They objected immediately. They made the same arguments they've been making for three months, and no one had listened to the substance of the arguments which is go look at

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what's wrong with the QE. One, it was issued after the court injunction, which TRPA should not be doing. Secondly, it should be rescinded because the QE represented that Mr. Polite had the Fialho's consent, he did not. They admitted that this morning. Second, the QE represented Mr. Polite can do this construction without excavating more than three cubic yards, that's impossible. There's large boulders that they're going to have to move by hand, that's misleading. These are the same plans that were rejected by the court and said that Mr. Polite's plans were insufficient. It doesn't take account for a proper analysis on depth dimensions or how conduit be installed through a steel wall without damaging the property.

The court said those plans aren't sufficient, yet TRPA issues a QE after the fact. Per TRPA's rules this project doesn't qualify for a QE because it will have a substantial impact on the land. Even if something's granted an exemption status, it can be lost if the project is clear that it will have a substantial impact on the land. Again, you're not excavating the massive steel wall, going up a hillside and then crossing over to a neighbor's yard without it having a substantial impact. That's why they showed up with machinery and heavy equipment trying to do this in the first place. The idea that they can somehow do this without impacting the land is wrong and what's the harm in waiting? There's already an injunction in place that says he can't do that construction. Why is TRPA taking a position when it clearly doesn't understand all the issues? Instead of saying, like Placer County said, with respect to the electrical permit, let the court sort out the issues, and then go back to them and then treat it as a project. They're asking to be heard and that this be treated as a project. Mr. Polite can present his side and they can present their side but only after the court has determined whether Mr. Polite can even do this.

Mr. Lee said the reason they're here is because appellant, Mr. Fialho removed the existing electrical conduit that existed during his renovation, and then refused to allow his client's predecessor, Ms. Mettler to re-install it. That's why they are here needing a QE is to re-install the electrical. He's heard time and time again, about the notion that the court has not allowed or didn't authorize the installation of electric. Exhibit 13, court's order, page 4, lines 5 to 7 state "The Court has previously determined that an implied term of the 1985 agreement is an agreement that the grantee, Mr. Polite would be allowed to run power to the pier for the purpose of operating the boat hoist." Two, he's heard repeatedly the quoting of the injunction but never hearing from the appellant the language of the injunction. The reason is the language of the injunction is that work cannot be done on the Fialho property or in the easement area "That could compromise the structural integrity, the structures on the property." It's not that no work can't take place, just that no work that could compromise structural integrity. That's what the Placer County Building Department is for to review the plans and specifications and determine whether that work can be done.

The staff has spent an inordinate amount of time since the submittal of this qualified exemption declaration back in April, having to deal with Mr. Fialho's opposition. All of the matters heard today and the submissions that have been made were considered by TRPA staff before that QE was issued on July 1 and after the QE was issued on July 1. It's undisputed that they waited 63 days after the QE to file the appeal. They did file a notice of appeal in early September. Attached to that Notice of Appeal was an administrative determination which aren't being used anymore. TRPA went out of its way to consider this as an appeal to the QE because they don't do administrative determinations. There is nothing that this QE permits in any way interferes with the court, with the preliminary injunction, or with the Placer County Building Department. Nothing that will be done under this QE which you saw from the map that Mr. Marshall showed is primarily involved with Mr. Polite's property in any way will interfere with the preliminary injunction. No work will be done on the Fialho property until permission is obtained, either from

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the court or Mr. Fialho. They urged the board adopt the legal committee's recommendation and deny the motion.

Mr. Lemieux said counsel just proved his point. There are a number of legal issues here that remain in dispute and need to be determined by the court, not this board. That's why this matter should be held in abeyance, and the QE should be rescinded. The idea that his client ripped out the electrical is false. The Mettler's were the owners of 1600 North Lake Boulevard at the time and were joint applicants on the permit to remove that. There was no requirement that they re-install it. That was by private agreement between them. The Mettler's breached that and that's where the electrical issue came from. If it were true that Mr. Polite could show up today and engage in construction so long as it doesn't damage the property, he would have already done that. The court said he wasn't to do anything until ownership and rights were decided including whether the easement even allowed him to do that. He points everyone to the order where it talks about his argument about having a secondary easement. And it was rejected because he didn't meet the burden of proof that it was necessary. Part of what Mr. Polite could do that they're not talking about is there's a bunch of different ways he can get electrical to the boatlift including going through his own property and including applying for his own shoreline project. He could have had a TRPA permit revision that allowed him to install electrical through his own property. He's insistent on going through the Fialho's property because of the contentious dispute. TRPA should have held this matter in abeyance and waited for the court to rule on who is right and then take action. They can't do anything right now, anyway, so why issue a QE that touches on the issues that are in dispute that they now are waving around, trying to weaponize in the litigation when the issues haven't been decided?

It is false that they waited 63 days. They objected on July 4 with a letter to Mr. Marshall stating that this QE issued on July 2 should be rescinded because it's false and misleading, and there's a court order. The board has the authority to set aside these technical arguments and say it was clear they were trying to appeal. Again, There is no appeal from a QE. On September 1, during the Caldor Fire when TRPA servers were being removed from the office, the online filing was down, and the offices were physically closed, they did not file it as an appeal but rather a request for determination because Mr. Agan and others told them this is a way to get a decision. They filed it as a request for determination but was told that TRPA didn't take those anymore even though there's a form on the website. Then it was rejected as an untimely appeal. They've been attacking this QE since it was issued. It jeopardizes his client's property; it concerns issues that are in dispute that the court has already ruled on. They requested that the board reject the Legal committee's recommendation to grant the appeal and to rescind this either as a request for legal determination or as an appeal. The QE states that it can be rescinded at any time for any reason it deems appropriate.

Mr. Marshall said this is an illustration of how TRPA and staff navigate between two qualified attorneys and how they might move forward in fits and starts but try to address all the instances in which they have easements and other issues involved in permits. They need to determine how to proceed and navigate a way between these parties that addresses TRPA's, main interests, which is if someone has a QE declaration for excavation below three cubic yards, there has to be a good reason to say no.

Mr. Bruce asked Mr. Marshall to explain the process with respect to the limitations in the QE and what the enforcement and oversight is with respect to those limitations.

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Mr. Marshall said they discussed that at the Legal committee. Fundamentally, Mr. Polite is limited to three cubic yards and if its over that it becomes a violation. If there's any complaints TRPA will investigate whether or not there's a violation and if so, the project would be shut down. To continue they would have to complete an application for the project.

Mr. Bruce asked Ms. Doherty to advise on TRPA's role when reviewing an easement.

Ms. Doherty said when staff receives a QE declaration, they take the exemption at face value including all the declarations and affidavits that accompany that exemption. The exemption says that the work and representations as described on the QE do not constitute a project requiring further TRPA review. What the QE doesn't do is say is nothing else is needed for you to do this work. The applicant or the declarant of a QE is still required to obtain any other necessary permits. In this case, it's highly likely that a county electrical permit is required to comply with California Building Code and any interests and access or real property that have to be acquired to access the site and do the work that's contemplated in the QE. Her understanding is that staff does not do typically litigate between two property owners whether or not all the representations made in the QE are accurate and supported or whether or not, as in this case, a court has issued a final judgement on the issue of access.

Mr. Bruce said to extent that the QE recipient is required to get access rights, it is up to them and not within TRPA's purview, Is that correct?

Ms. Doherty said that's right. They have to declare that they have rights of access and that there are no encumbrances to them being able to do the work contemplated by the QE.

Presentation can be found at:

[Agenda-Item-No.-VII.-A.-Fialho-Appeal.pdf](#)

Board Comments & Questions

Ms. Aldean said there was a statement during the presentation that implied that staff had reversed its position with respect to issuing the QE.

Mr. Marshall said that was an internal miscommunication. They've been holding onto this QE because of the controversy surrounding it. They informed Mr. Polite that he could not go ahead until they figured out exactly how they were going to take all this information in and whether they need to do anything particular to issue the QE. That's when it was decided to produce this language. Unfortunately, through miscommunication, staff issued the QE, they pulled it back immediately and re-issued it with that language in the bottom left-hand corner.

Ms. Aldean said if Mr. Polite proceeds with his project in defiance of a court order, he does so in his own peril, correct?

Mr. Marshall said correct.

Ms. Aldean said she doesn't know if that has anything to do with their administrative processes, which are distinct from any court action that might be taken. It's a tough situation, TRPA has found itself as kind of a de facto arbitrator in these property disputes and she feels uncomfortable with that. TRPA's primary duty is to receive applications, evaluate them based on the rules and regulations, and issues a permit if it's warranted. It appears to her that's what

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they've done. She's not sure they can do anything other than that and be faithful to our processes. Has TRPA denied an otherwise reasonable requests for an approval based on the pending court case.

Mr. Marshall said what they've done in the past is conditioned permits on the settling of legal issues. The Glenbrook pier case had to do with whether or not they could meet the criteria to get a single use pier under the old ordinances. The legal question, whether or not the documents presented gave them access. What's different in that case than here, is the underlying legal question went to the heart of whether they could qualify for the pier as opposed to, in this case, whether or not they could move forward with the excavation. TRPA's permit doesn't grant them any authority to enter into another property. He doesn't believe they've had this situation where there's pending litigation, like this one. But they encounter these situations where a project applicant has an easement across someone else's property for access. For example, they want to build the road, and the owner of the property that is covered by that easement will object and say their signature is needed. There's posturing between the two, because one might want one thing and the other property owner might want something else and they are odds with each other. In that case, they try to look at if there's sufficient interest in order to just grant the appeal or grant the application. It doesn't give them the right to do the work on that other property without moving forward with their own easement rights.

Ms. Aldean asked if during deliberations they considered predicated the issuance of this on some sort of resolution to the disputes between the property owners, or was that inappropriate given TRPA's rules and regulations?

Mr. Marshall said the latter, principally, because this is a QE, not a permit. They can't condition QE's. With that statement it clarified that the QE did not act as an authority to enter, to ensure that Mr. Polite knew that he had to have some other ability to get on the property. They did know at the time there had been a temporary restraining order but is not sure of the exact timing or whether or not that the preliminary injunction was granted before the QE was issued. That affirmed that he couldn't go forward, absent, getting permission from the court, and the court was looking at whether there was the underlying right to do the work. So, that issue would be resolved in the court, so they didn't have to make a final determination on whether, the QE work could go forward without resolution of the court case.

Ms. Aldean asked if they're comfortable with the scope of work authorized under this QE is within their right to approve.

Mr. Marshall said yes.

Public Comments & Questions

None.

Motion:

Ms. Doherty said TRPA's Rules of Procedure, Section 2.4.4.D requires 5/5 vote to deviate from the Rules of Procedure. Because there's a motion to deviate based on the untimeliness of the appeal, staff is recommending that the Board make a motion to grant the appeal, and if that motion doesn't get five affirmative votes, then staff's determination would be upheld.

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The motion would be to grant the appeal and if the board wishes to uphold staff's determination to let the QE stand then they'll vote no to not grant the appeal and uphold staff's determination.

Mr. Bruce said if the Board doesn't want to uphold staff's recommendation, then vote yes. He asked Mr. Marshall if they're doing this in a two-step process or just voting on the merits of this.

Mr. Marshall said staff would advocate that they vote on one motion to grant the appeal and that they don't need separate motion on this question.

Mr. Rice made a motion to grant the appeal regarding this matter.

Nays: Ms. Aldean, Mr. Bruce, Mrs. Cegavske, Ms. Conrad-Saydah, Ms. Faustinos, Mr. Friedrich, Ms. Gustafson, Ms. Hill, Mr. Hoenigman, Mr. Lawrence, Ms. Novasel, Mr. Rice, Ms. Williamson, Mr. Yeates

**Motion failed.**

## VIII. REPORTS

### A. Executive Director Status Report

Ms. Regan said Ms. Marchetta will be returning to the office on November 29.

On Monday, December 6, the Governing Board, the Advisory Planning Commission, and staff are invited to an ice skating party at the Edgewood Lodge from 3:30-5:30.

They will have a virtual board meeting in December and stay on a virtual platform for the next several months particularly with winter weather uncertainty. They'll re-evaluate in the spring to see if they're able to go back to in person meetings.

The Lake Tahoe Restoration Act is the federal law that passed in 2016, authorizing the federal share of the Lake Tahoe Environmental Improvement Program. It's a huge piece of policy for Lake Tahoe Partnership. There's a hearing in the Senate tomorrow in the Energy and Natural Resources Committee, Senator Catherine Cortez Masto is the Chair of a subcommittee which they call the ENR Committee. It'll be a simple administrative item to amend the timeline for the bill to extend that for another 10 years. When that passed in 2016, 7 years seems like a long way away to 2023. They need to extend the authorization for investments in the EIP.

Last Monday, the bipartisan infrastructure bill was passed. This is a huge investment in the future of the country and their infrastructure. Lake Tahoe had a special line item in the bill for \$17 million for the Aquatic Invasive Species Program and is authorized through the Lake Tahoe Restoration Act. It's the biggest single appropriation to date since the Lake Tahoe Restoration Act was passed in 2016. This is not just an authorization, it's appropriations over five years. They'll see an additional \$3.4 million dollars for aquatic invasive species, prevention and control on top of the usual appropriations. They hope that the money can be used to move into permanent inspections stations at locations around the basin. Spooner Summit is the first idea that they're pursuing and then potentially in Meyers on the California side. Together with the usual appropriations, brings them to full funding for the aquatic invasive species program and

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action agenda. This board for many years worked tirelessly to keep them from going over a fiscal cliff with that very high priority program. With the passage of this bill, she's excited for their partnership in the basin that they have potentially now full funding for the aquatic invasive species plan and our action agenda.

They join the Forest Health Plan, and that also being fully funded with the new influx of federal and bi-state funding contributions to forest health. Two of the highest priority EIP programs now are poised to have funding to allow that implementation work to proceed. There's a lot more work to do in transportation, recreation, and many other programs where they're not in the same position. It takes many years to secure these funding sources.

Last night, she addressed the City of South Lake Tahoe's City Council on Sustainable Recreation and Tourism work. That is a collaborative partnership with the Forest Service and local governments around the basin with the Lake Tahoe Visitors Authority, North Lake Tahoe Resort Association, private sector partners, and non-profit partners like the Tahoe Fund. That is pulling together a consortium of folks who are interested in a new future for tourism to address these new pressures while keeping an eye toward climate change.

They're interviewing consultants to design a new future of tourism roadmap that's looking at a more sustainable path in collaboration with community involvement on the business side of tourism. Tourism drives the economy and is a critical piece of prosperity for the region. They're excited to be moving toward a path of a destination roadmap strategy and developing a shared vision in the region for the future of tourism. Staff will be bringing a briefing on that in a couple of months.

### B. General Counsel Status Report

No report.

## IX. GOVERNING BOARD MEMBER REPORTS

Ms. Gustafson said the local jurisdictions do a lot on implementation, as well, toward all of the goals in climate change and sustainability in the Basin issue. The Placer County Board of Supervisors approved a \$1.4 million dollars to continue the micro mass transit from December 10 through April 10. Free service on demand in the basin area as well as connecting with the Northstar Ski area and the resorts in Olympic Valley and Alpine Meadows. This is sustainable funding for five years only. There's about another four years and are interested in continuing their efforts on sustainable funding, for these kinds of additional services. She would like to have the local jurisdiction's give a report to the Governing Board on some of the projects they're undertaking at the local level. So that those of you at the state, an appointed seats understand their contributions and the strategies they are developing to expand transportation, forest health, sustainable recreation, etc.

Of the 50,000 riders that they served from June 24 through September 6 in the pilot program, 35 percent had never used their public transportation system before. Real inroads into a new market, developing new ridership alternatives, especially in that first mile, last mile in those categories.

Mr. Friedrich said at their City of South Lake Tahoe City Council meeting last night, the Council voted to explore a new partnership for a 79 unit affordable housing project at Ski Run and

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Pioneer Trail. This was formerly proposed by the Pacific Development Group, who backed out and now has a new developer, Alpine Corporation. The city is exploring donating \$5 million to that project, which would be a straight up gain of 79 units.

At their next meeting they'll be looking for a commitment to have 100 percent of their energy supply from renewable sources at all time periods by 2030, which would require some new round the clock resources whether it's biomass, batteries, or other sources.

In the future, they'll also be looking at a presentation on dark skies and considering an ordinance along those lines as well.

Ms. Novasel said a new Sacramento to South Lake Tahoe Connector bus route has started allowing riders from the Lake to the west slope, Sacramento Valley and the train stations in that area.

Eldorado Transit System is partnering with the Capitol Corridor and Amtrak to provide this daily roundtrip bus service between Sacramento, Placerville, and two stops in the South Shore at the Transit Center at the Y and the Stateline Transit Center. The grand opening will be tomorrow but has been operational since July.

## X. COMMITTEE REPORTS

### A. Local Government & Housing Committee

No report.

### B. Legal Committee

No report.

### C. Operations & Governance Committee

No report.

### D. Environmental Improvement, Transportation, & Public Outreach Committee

Mr. Lawrence said the committee will be meeting on December 15.

### E. Forest Health and Wildfire Committee

Mr. Hicks said the committee addressed an item that was long overdue which was the proposed amendments to the Code of Ordinances relating to the use of mechanical equipment on slopes of greater than 30 to 50 percent. This was originally a recommendation of the Bi-State Fire Commission following the Angora Fire 14 years ago. It was slowed up at that time because of the equipment that was available to do this type of thinning work. New equipment and technology has evolved and now they're in a position today where we they can amend the ordinances and bring them into compliance with the US Forest Service and California, both of which have changed their requirements to allow the use of mechanical equipment on slopes up to 30 to 50 percent. About half of the slopes in the Tahoe Basin are in the Wildland Urban Interface (WUI) zones are close to homes, property, and people. The committee unanimously

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recommended approval of these proposed amendments. He thanked Ms. McIntyre's work on this.

F. Regional Plan Implementation Committee

Mr. Yeates said the committee unanimously recommend approval of the Mobility Mitigation Fee, which is part of the vehicle miles traveled threshold. Because staff did such an excellent job and outreach that it was a short meeting of the committee today.

XI. PUBLIC INTEREST COMMENTS

None.

XII. ADJOURNMENT

Mr. Yeates moved to adjourn.

Chair Mr. Bruce adjourned the meeting at 2:17 p.m.

Respectfully Submitted,



Marja Ambler  
Clerk to the Board