

**TRPA
GOVERNING BOARD
PACKETS**

**MARCH
1985**

TAHOE REGIONAL PLANNING AGENCY

2155 South Avenue

P.O. Box 8896
South Lake Tahoe, California 95731

(916) 541-0246

3.85

NOTICE OF AMENDED AGENDA

NOTICE IS HEREBY GIVEN that the March 27, 28, 1985 regular meeting agenda for the Governing Body of the Tahoe Regional Planning Agency is amended by adding the following item:


VII ENFORCEMENT

A. Show Cause Hearings

7. Douglas County Senior Center, Unauthorized Change of Use and Construction Activity, Douglas County APN 05-070-02

Date: March 20, 1985

By:



Gary D. Midkiff
Acting Executive Director
Tahoe Regional Planning Agency

Counter


TAHOE REGIONAL PLANNING AGENCY
NOTICE OF MEETINGS

NOTICE IS HEREBY GIVEN that on March 27, 28, 1985, commencing at 9:30 a.m. each day, the Governing Body of the Tahoe Regional Planning Agency will conduct its regular meeting at 2155 South Avenue, South Lake Tahoe, California. The agenda for said meeting is attached to and made a part of this notice.

NOTICE IS FURTHER GIVEN that on Wednesday, March 27, 1985, commencing at 8:30 a.m. in the same location, the Litigation Committee will meet to discuss additional legal support.

NOTICE IS FURTHER GIVEN that on Thursday, March 28, 1985, commencing at 8:30 a.m. in the same location, the Finance Committee will meet to discuss the following: 1) administration of mitigation fee and security bond funds; 2) acceptance of February, 1985 financial statement; 3) report on Transportation Development Act; 4) status of Nevada Legislative Auditor Report; 5) status of FY 1984-85 budget; and 6) status of FY 1985-86 and 1986-87 budget requests.

Date: March 8, 1985

By: 
Gary D. Midkiff
Acting Executive Director
Tahoe Regional Planning Agency

NOTE Items on the agenda without a time designation may not necessarily be considered in the order in which they appear on the agenda.

TAHOE REGIONAL PLANNING AGENCY
GOVERNING BODY

TRPA Office, 2155 South Avenue
South Lake Tahoe, California

March 27, 1985 9:30 a.m.
March 28, 1985 9:30 a.m.

PRELIMINARY AGENDA

- I CALL TO ORDER AND DETERMINATION OF QUORUM
- II APPROVAL OF AGENDA
- III DISPOSITION OF MINUTES
- IV PROJECT REVIEW
 - A. Cove East Subdivision, Tentative Map for 26 Units, City of South Lake Tahoe (Pursuant to Settlement Agreement)
 - B. Caltrans, Tahoe City Left-Turn Channelization and Highway Widening, Highway 89, Placer County, TRPA File #84600
- V LITIGATION
 - A. Consideration of Litigation in the Following:
 - 1. California Attorney General/League to Save Lake Tahoe v. TRPA
 - 2. Tahoe Sierra Preservation Council v. TRPA, et al (Eastern District of California and District of Nevada)
 - 3. City of South Lake Tahoe v. TRPA, et al (Eastern District of California), Unauthorized Expansion of Service at South Tahoe Airport
 - B. Closed Session to Confer on the Following:
 - 1. California Attorney General/League to Save Lake Tahoe v. TRPA
 - 2. Tahoe Sierra Preservation Council v. TRPA, et al (Eastern District of California and District of Nevada)
 - 3. City of South Lake Tahoe v. TRPA, et al (Eastern District of California), Unauthorized Expansion of Service at South Tahoe Airport
- VI APPEAL
 - A. Tahoe Keys Property Owners Association, Appeal of Staff Determination That Proposed Shoreline Protective Structures Are Inconsistent With the Shorezone Ordinance

- B. Edgewood Golf Course, Appeal of Staff Determination Regarding Additional Parking for the Senior Open

VII ENFORCEMENT

A. Show Cause Hearings

1. City of South Lake Tahoe, Unauthorized Expansion of Service at the South Tahoe Airport
2. Tom Montesano, Violation of Conditions of Approval and Revocation of Permit, 534 Cole Circle, Incline Village, Washoe County APN 122-135-15
3. Joseph Borselli, Unauthorized Land Coverage, 198 Ray Way, Skyland, Douglas County APN 05-023-01
4. Raymond Haas, Unauthorized Structure Below High Water Line, 5550 North Lake Boulevard, Placer County APN 89-051-08
5. Manny Beals, Unauthorized Construction and Signs, Douglas County APN 03-141-01 and 03-142-01
6. F. Huntington, Unauthorized Structure, Douglas County 01-080-09

B. Reports

VIII PLANNING MATTERS

- A. Tahoe Basin Association of Governments, Report and Recommendations on the Urban Land Institute Study Findings
- B. Status Report on Air Quality Planning
 1. Nitrate Deposition
 2. Reasonable Further Progress Report
- C. Report on Apparent Discrepancies in Water Quality Analyses

IX ADMINISTRATIVE MATTERS

- A. Finance Committee Report and Recommendations
- B. Litigation Committee Report and Recommendations

X REPORTS

- A. Acting Executive Director
- B. Legal Counsel

- C. Executive Session
- D. Governing Body Members
- E. Public Interest Comments

XI CORRESPONDENCE

XII RESOLUTIONS

XIII PENDING MATTERS

XIV ADJOURNMENT

Four of the members of the governing body from each State constitute a quorum for the transaction of the business of the agency. The voting procedure shall be as follows:

(1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each State agreeing with the vote of at least four members of the other State shall be required to take action. If there is no vote of at least four of the members from one State agreeing with the vote of at least four of the members of the other State on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.

(2) For approving a project, the affirmative vote of at least five members from the State in which the project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the State in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion for approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

(3) For routine business and for directing the agency's staff on litigation and enforcement actions, at least eight members of the governing body must agree to take action. If at least eight votes in favor of such action are not cast, an action of rejection shall be deemed to have been taken.

TAHOE REGIONAL PLANNING AGENCY
STAFF SUMMARY

Cove East Subdivision
Tentative Map for 26 Lots
City of South Lake Tahoe

Applicant: Dillingham Development Company

Applicant's Representative: Bernard E. Frizzie

Project Description: The Executive Summary from the Final EIS prepared for the project is attached to and made part of this summary. The Executive Summary contains descriptions of the project and of the alternatives to the project assessed in the EIS, an overview of the analyses and conclusions contained in the EIS, the special mitigation measures proposed by the applicant and the significant impacts that cannot be mitigated.

Revised Tentative Map: In response to the environmental impact analyses and conclusions contained in the Final EIS, the applicant has submitted a revised tentative map (Attachment A). This revised map was designed to achieve two basic objectives. First, to reduce development in areas of the project site identified in the Final EIS as not being man-modified; and second, to maintain the economic viability of the project.

In recognition of the settlement agreements affecting the project site, Agency staff worked in conjunction with the applicant in an attempt to prepare a revised tentative map proposing no development in the areas of the site identified in the EIS as not man-modified lands. However, the applicant contends that lots must be developed along the shoreline to make the project economically viable. Therefore, the revised tentative map proposed by the applicant includes lots 1 thru 6 along the shoreline, although they are located in an area that does not qualify for recognition as man-modified.

The revised tentative map is within the scope of the EIS since it proposes generally the same lot configuration as the modified site design alternative assessed in the EIS.

Man-Modified Areas: Most critical to the development is a determination of the areas of the project site that are man-modified in accordance with current TRPA criteria. The Final EIS contains a detailed analysis of the project site with respect to current TRPA criteria for man-modified lands. This section of the Final EIS is made part of this staff summary as Attachment B.

In summary, the Final EIS concludes that Area A on Figure 3 is natural, undisturbed stream environment zone which is subject to seasonal flooding. Area A is definitely not man-modified lands and should not be built upon.

GG:mlm
3/19/85

AGENDA ITEM IV A.

Areas designated as Area B on Figure 3 are areas that have been substantially modified to the extent that they no longer have the characteristics of a stream environment zone. The Final EIS concludes that Area B meets TRPA's current criteria for recognition as man-modified lands if the Governing Board finds that restoration of these areas is infeasible.

The Final EIS concludes that Area C on Figure 3 "are natural areas on the islet that have riparian vegetation and have not been modified". Area D is defined in the Final EIS as "an area on the islet that has riparian vegetation on fill land". The EIS further states that "Area D on the islet does not meet the definition of man-modified from a vegetation standpoint; however, a soil boring in the area shows that as much as two feet of fill has been placed over the marsh". Areas C and D do not satisfy TRPA's current criteria for recognition as man-modified lands and are, therefore, capability 1b lands.

However, the EIS does conclude that Areas C and D are not subject to seasonal flooding and, therefore, "are not contributing to the trapping of sediments and are probably only to a very small degree participating in the denitrification process".

Restoration: Based on a report prepared by the applicant and submitted to the California Water Quality Control Board, Lahontan Region (Lahontan) no more than two feet of fill would have to be removed to allow the inland area to be periodically inundated. Soil pits indicate that no more than 2.6 feet of fill were placed by Dillingham at most locations. Removal of all fill material on the westerly portion of the islet would still not allow the land to be periodically inundated, but would permit it to be restored to its original condition as a stream environment zone. The cost of such a proposal, using costs given in the report, would be about \$700,000. This cost does not include the cost of the land.

The Final EIS states that restoration of the original stream environment zone is technically possible, however, its feasibility depends upon active support and cooperation between Dillingham and various government agencies.

Land Coverage: The Settlement Agreement allows up to 463,000 sq. ft. of land coverage on the project site. The original tentative map proposed 424,000 sq. ft. of land coverage. The revised tentative map proposes 400,000 sq. ft. of land coverage. The land coverage proposed on the revised tentative map is as follows:

Roads	=	114,000 sq. ft.
Recreation Facilities (including parking)	=	12,200 sq. ft.
26 Lots @ 10,500 sq. ft. each	=	273,000 sq. ft.
Walks and Pathways	=	<u>800 sq. ft.</u>
Total	=	400,000 sq. ft.

The revised tentative map proposes approximately 11,000 sq. ft. of land coverage in Area C and approximately 57,750 sq. ft. of land coverage in Area D.

Impact Analyses: The EIS concludes that the Cove East project will result in adverse impacts on water quality, wildlife and scenic resources that cannot be mitigated to a less than significant level.

Water Quality Impacts - The Final EIS concludes that any development on the site will result in significant water quality impacts since development of the site will assure that most of the existing fill will remain in the marsh indefinitely.

The revised tentative map results in additional significant impacts on water quality due primarily to the creation of land coverage in Areas C and D, which are capability 1b lands.

Water Quality Mitigation - Agency staff has compared the estimated costs of the proposed stream zone restoration project, which is \$500,000, to the TRPA water quality mitigation fee that would otherwise be applicable. The mitigation fee for the land coverage proposed in Areas C and D, considering these areas as capability 1b lands, would be approximately \$207,000. For the land coverage proposed on the remainder of the site the mitigation fee would be approximately \$96,000, for a total mitigation fee of approximately \$303,000.

Based on this evidence, it may be concluded that the proposed restoration of 7.5 acres of existing land fill on the project site to totally functioning stream environment zone is adequate mitigation to offset the water quality impacts resulting from the 400,000 sq. ft. of land coverage proposed by the project. The stream zone restoration may also be the basis to determine that the project generally complies with the TRPA policy that stream zone lands be restored in the amount of 1.5 times the area of stream zone lands disturbed or developed by a project. The stream zone land disturbed or developed would be Areas C and D.

The proposed TDR program may provide additional water quality mitigation if stream environment zone properties are purchased and restored.

Lahontan may require the applicant to mitigate the impacts resulting from the original fill being placed in the marsh through the payment of a mitigation fee and/or additional stream zone restoration. Under Lahontan regulations, the extent of mitigation must be equivalent to the loss in treatment capacity resulting from the modifications to the stream environment zone. Based on preliminary figures received from Lahontan, if Area B only is reclassified as man-modified, the mitigation fee would be \$342,990 including credit for the 7.5 acres of stream zone restoration proposed by the applicant. If the entire parcel is reclassified as man-modified, the fee would be \$566,500.

Wildlife Impacts - The revised tentative map will have unavoidable impacts on wildlife since the Final EIS concludes that any development on the project site will increase encroachment on the important wildlife habitat of the Upper Truckee Marsh.

Wildlife Mitigation - Recommended condition #13 requires that a signing plan and all public access improvements be designed to discourage public access to the sensitive wildlife areas on, and adjacent to, the project site. This condition will help to reduce the adverse impacts on wildlife.

Scenic Resources Impacts - The EIS concludes that development along the shoreline will degrade the scenic quality of the shoreline unit.

Scenic Resources Mitigation - Recommended condition #10 requires that the native vegetation on the site be maintained and enhanced and that a vegetative screen be created between the building sites located along the shoreline and the beach. This condition will help to reduce the adverse impacts on scenic resources.

Article V(g) Findings: Agency staff has reviewed the revised tentative map with respect to the Article V(g) findings set forth in Section 3.00 of TRPA Ordinance 84-1 and has made the following determinations relative to each applicable finding. This review is based on the language contained in the Settlement Agreement which establishes that the project is not a new subdivision.

- * 1. The project is inconsistent with Section 3.00 of TRPA Ordinance 81-5 inasmuch as the project proposes approximately 68,750 sq. ft. of land coverage in areas of the project site identified in the Final EIS as not eligible for recognition as man-modified, and therefore capability lb lands. The no project or cluster alternatives are consistent with TRPA Ordinance 81-5. The revised tentative map is also inconsistent with Section 5.23 of the Subdivision Ordinance, which requires that all grading, filling and excavating done in connection with any subdivision be in accordance with the TRPA Grading Ordinance. The Grading Ordinance prohibits development in stream environment zones where it cannot be demonstrated that such development will not have detrimental effects on water quality.
2. The project has been processed in accordance with the Agency's Rules and Regulations of Practice and Procedure.
3. The Governing Board could find, based on the provisions of the Settlement Agreement, that with respect to the impacts on water quality, wildlife and scenic resources, specific considerations make infeasible the mitigation measures or project alternatives discussed in the EIS for the project. As stated in the Compact, special considerations such as economic, social or technical may be considered.

4. Not applicable.
5. There is no evidence to indicate that the project will be detrimental to the health, safety, peace, comfort or general welfare of the Lake Tahoe Region.
- * 6. Approval of a project that results in land coverage in the areas of the project site that are not recognized as man-modified will adversely affect implementation of the Regional Plan.
7. The revised tentative map is consistent with the Water Quality Element of the Regional Plan, provided approval of the project is subject to the conditions recommended by Agency staff, including the proposed stream zone restoration.
8. The revised tentative map is consistent with Transportation and Air Quality Elements of the Regional Plan, provided approval of the project is subject to the conditions recommended by Agency staff, including the proposed transfer of development rights program.
- * 9. The revised tentative map is inconsistent with the goals and policies of the Conservation Element of the Regional Plan. The project is inconsistent with this element of the Regional Plan due primarily to its proximity to the significant wildlife habitat of the Upper Truckee Marsh and the shoreline, and the proposal to create land coverage in areas on the project site that are not man-modified.
10. The revised tentative map is consistent with the Recreation Element of the Regional Plan. Restrictions on public access to the beach on the project site are appropriate due to the sensitive nature of the beach and adjacent marsh areas.
11. The revised tentative map is consistent with the Public Services and Facilities Element of the Regional Plan.
- * 12. The revised tentative map will be inconsistent with the Implementation Element of the Regional Plan if the TDR program allows the transfer of development rights to lots located in areas of the project site that are not recognized as man-modified.
13. Provided the TDR program is implemented in compliance with recommended condition #16, it has been demonstrated that the suppliers of all utilities have the physical and legal capacity to supply the necessary services to the project.

14. Not applicable.

15. The Final EIS prepared for the project and this staff summary provide substantial evidence for the record supporting the foregoing findings.

* Indicates Article V(g) findings that cannot be made with respect to the proposed revised tentative map.

Project Alternatives: The EIS assesses the impacts of three (3) alternative projects and a no project alternative. A brief description of the alternatives is included in the Executive Summary. The impacts resulting from the three (3) project alternatives are generally the same on wildlife and scenic resources as those of the revised tentative map. This conclusion is based primarily on the finding in the EIS that any development on the property will adversely impact wildlife due to its proximity to the important wildlife habitat of the Upper Truckee Marsh and any development on the islet portion of the property will degrade the scenic quality of the shoreline unit.

However, the impacts on water quality resulting from the cluster alternative are substantially less than the two (2) other project alternatives and the revised tentative map. Whereas the other project alternatives and the revised tentative map propose land coverage in areas of the project site identified in the EIS as not man-modified stream environment lands, the cluster alternative proposes no land coverage in these areas. All the land coverage proposed under the cluster alternative is located in areas identified in the EIS as man-modified lands.

The EIS, due to initial demonstrations that they would not be economically feasible, does not assess project alternatives that would; (1) not result in impacts on wildlife, scenic quality or water quality; or (2) not result in development on the islet. Therefore, no alternative would prevent visual impacts on the shore zone unit or impacts on water quality and wildlife.

The no project alternative assessed in the EIS is the only alternative that would not result in significant impacts on wildlife, scenic quality or water quality. A project with no development on the islet would not result in significant impacts on visual quality, but would still result in significant impacts on wildlife and water quality. Except for the no project alternative, a project with no development on the islet would result in the least amount of impact on wildlife and water quality, and would be most consistent with the amended Regional Plan and adopted environmental threshold carrying capacities. However, the economic feasibility of such a project is questionable.

An evaluation of the project alternatives with respect to consistency with the Article V(g) findings indicates that a project with no development on the islet would be most consistent, however, such a project would still be inconsistent with the Conservation Element due to impacts on wildlife and water quality. A project proposing no development in Areas C and D, such as the Cluster Alternative, would be the second most consistent but, in addition to impacts on wildlife and water quality, would result in impact on scenic quality. Any project proposing development in Areas C or D, including the revised tentative map proposed by the applicant, will result in additional, significant impacts on water quality and is inconsistent with TRPA ordinances prohibiting development in stream zones.

Alternative Actions: Based on evaluation of the project, the EIS prepared for the project and the litigation settlement in Dillingham vs TRPA, Agency staff has developed three (3) alternative actions for Governing Board consideration:

I Require Proposed Tentative Map to be Revised to Eliminate Development in Areas C and D

A. A motion to find that;

1. The Dillingham Settlement Agreement requires the EIS to consider alternatives consistent with TRPA's plan and ordinances;
2. The Settlement requires TRPA to review the project pursuant to its subdivision map review procedures under the amended regional plan;
3. The TRPA amended regional Plan and ordinances prohibit grading and construction in SEZ's;
4. The project, as proposed, includes grading and construction in SEZ lands and is therefore inconsistent with TRPA's amended regional plan and ordinances;
5. The project as proposed would adversely affect the implementation of the amended plan and would cause the environmental threshold carrying capacities to be exceeded;
6. The findings required by Article V(g) cannot be made with respect to the project as proposed;
7. The Settlement agreement provides that the Governing Board may require modification;

8. The Settlement Agreement provides that the Governing Board may impose reasonable conditions and mitigation measures;
 9. The modification required by the Governing Board does not propose any grading or construction in SEZ;
 10. The project as modified is consistent with TRPA ordinances prohibiting development in stream environment zones and is most consistent with the amended Regional Plan, while allowing some development on the islet portion of the project site;
 11. Each of the foregoing findings is supported by substantial evidence in the record.
- B. A motion, based on the foregoing findings, to direct the applicant to revise the proposed tentative map to eliminate any land coverage or grading in Areas C and D as shown on Figure 3 of the Final EIS.

II Approval of Proposed Tentative Map, Revised to Eliminate Development in Area C

- A. A motion to find that;
1. In recognition of the limitations upon the Governing Body's project review authority, which limitations are a direct result of the injunction in the litigation entitled CA/LTSLT v. TRPA, the tentative map shall not be considered finally approved until a specific exemption is obtained from the injunction or the injunction is dissolved; and
 2. As to the significant impacts identified in the EIS: water quality, scenic resources and wildlife, the Governing Body makes the following separate written findings for each of said identified impacts:
 - a. Water Quality - Specific considerations relating to the litigation settlement in Dillingham v. TRPA and the potential for serious adverse impacts should the litigation proceed, which impacts include but are not limited to, construction of an 86 unit subdivision, other construction on Dillingham's property being found to be exempt from TRPA's plan and ordinances, invalidation of certain TRPA ordinances, invalidation of the prohibition against new subdivisions in the Compact, and money damages against the TRPA; and

specific considerations relating to the economic feasibility of the project in that the financial viability of the project requires the lots to be sited as proposed as well as other aspects of the subdivision; and

specific considerations relating to the general welfare of the inhabitants of the Tahoe Basin which include the benefit derived from the donation of Parcel 5 to a public agency, the option to buy Parcel 1 given to the City of South Lake Tahoe and to be used for the welfare of said City, and the avoidance of protracted and expensive litigation.

- b. Scenic Resources - Specific considerations relating to the litigation settlement in Dillingham v. TRPA and the potential for serious adverse impacts should the litigation proceed, which impacts include but are not limited to, construction of an 86 unit subdivision, other construction on Dillingham's property being found to be exempt from TRPA's plan and ordinances, invalidation of certain TRPA ordinances, invalidation of the prohibition against new subdivisions in the Compact, and money damages against the TRPA; and

specific considerations relating to the economic feasibility of the project in that the financial viability of the project requires the lots to be sited as proposed as well as other aspects of the subdivision; and

specific considerations relating to the general welfare of the inhabitants of the Tahoe Basin which include the benefit derived from the donation of Parcel 5 to a public agency, the option to buy Parcel 1 given to the City of South Lake Tahoe and to be used for the welfare of said City, and the avoidance of protracted and expensive litigation.

- c. Wildlife - Specific considerations relating to the litigation settlement in Dillingham v. TRPA and the potential for serious adverse impacts should the litigation proceed, which impacts include but are not limited to, construction of an 86 unit subdivision, other construction on Dillingham's property being found to be exempt from TRPA's plan and ordinances, invalidation of certain TRPA ordinances, invalidation of the prohibition against new subdivisions in the Compact, and money damages against the TRPA; and

specific considerations relating to the economic feasibility of the project in that the financial viability of the project requires the lots to be sited as proposed as well as other aspects of the subdivision; and