

**TRPA
GOVERNING BOARD
PACKETS**

**MAY
1985**

May 5-85

TAHOE REGIONAL PLANNING AGENCY
NOTICE OF MEETINGS

NOTICE IS HEREBY GIVEN that on May 22 and 23, 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, May 22, 1985, commencing at 8:30 a.m. in the same location, the Finance Committee will meet to discuss the following: 1) status of Nevada Legislative Auditor Report; 2) status of FY 1984-85 budget; 3) status of FY 1985-86 and 1986-87 budget requests; 4) receipt of April financial statement; 5) Transportation Development Act status report; and 6) other.

NOTICE IS FURTHER GIVEN that on Thursday, May 23, 1985, commencing at 8:30 a.m. in the same location, the Litigation Committee will meet to discuss additional legal support.

Date: May 10, 1985

By: W.A.M. Morgan
William A. Morgan
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

May 22, 1985 9:30 a.m.
May 23, 1985 9:30 a.m.

PRELIMINARY AGENDA

I CALL TO ORDER AND DETERMINATION OF QUORUM

II APPROVAL OF AGENDA

III DISPOSITION OF MINUTES

IV LITIGATION

A. Consideration of Litigation in the Following:

1. State of California/League to Save Lake Tahoe v. TRPA
2. Tahoe Sierra Preservation Council v. TRPA, et al (Eastern District of California and District of Nevada)

B. Closed Litigation Session to Confer on the Following:

1. State of California/League to Save Lake Tahoe v. TRPA
2. Tahoe Sierra Preservation Council v. TRPA, et al (Eastern District of California and District of Nevada)

V ENFORCEMENT

A. Request for Reconsideration and Further Action If Necessary, Tom Montesano, Violation of Conditions of Approval, 534 Cole Circle, Incline Village, Washoe County APN 122-135-15

B. Reports

VI PLANNING MATTERS

A. Report on Apparent Discrepancies in Water Quality Analyses

B. Sierra Pacific Power/Sacramento Municipal Utility District (SPPCo./SMUD), Intertie, Status Report

C. Further Information on ULI Report from the Tahoe Basin Association of Governments - Wednesday, 3:00 p.m.

D. Scheduling the Work Leading to Implementation of the Plan

VII ADMINISTRATIVE MATTERS

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

VIII REPORTS

- A. Executive Director
- B. Legal Counsel
- C. Executive Session
- D. Governing Body Members
- E. Public Interest Comments

IX CORRESPONDENCE

X RESOLUTIONS

XI PENDING MATTERS

XII 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

2155 South Avenue

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

(916) 541-0246

MEMORANDUM

Date: May 14, 1985

To: TRPA Governing Body

From: Agency Staff

Subject: Request for Reconsideration: Tom Montesano, Violation of Conditions of Approval, 534 Cole Circle, Incline Village, APN 122-135-15

On March 27, 1985, the Governing Board of the Tahoe Regional Planning Agency made certain findings and took specific actions (see attachment) with respect to violations of conditions of approval concerning Mr. Montesano's single family dwelling construction site. Tom Montesano and his attorney, Peter Tomaino, are now requesting that items #2 and #5 of the attached Board actions be reconsidered.

With respect to item #2, Mr. Montesano believes that the required stabilization can be obtained without a retaining wall, and he is objecting to this requirement. However, the Washoe County Building Department has required plan modifications to include a retaining wall, to stabilize the slopes created by the driveway excavation. Staff called for the retaining wall requirement based in part upon the County's action. However, Agency staff is willing to work with the property owner and to review engineered alternatives to a retaining wall. As of this date, no plans have been submitted for staff review and approval.

With respect to item #5, the \$5,000.00 penalty assessment was based partly upon Mr. Montesano's lack of cooperation when instructed by Agency staff to replace the required temporary erosion controls. Continued slope sloughing and erosion damage resulted from his late response to an immediate and necessary action. Article VI(1) of the revised TRPA Compact provides that a penalty of up to \$5,000.00 may be assessed for each day the violation persists. In this particular instance, a considerable period of time elapsed prior to obtaining compliance, potentially resulting in a much larger fine being assessed. This lack of cooperation coupled with the seriousness of the impact on the environment resulted in staff's recommendation for penalties.

Mr. Tomaino, in his letter (copy attached), feels that the fine is not justified when compared to the violation involving the Huntington's unauthorized placement of a caboose on their property. In that situation, no fine was assessed. With respect to the caboose violation, Agency staff received full and immediate cooperation with the property owner's, and were able to work out a settlement agreement with the Huntington's to resolve the violation. In addition, the caboose was not considered to be an intentional or flagrant violation since the

RP:bl
5/14/85

AGENDA ITEM V A.

MEMORANDUM

Re: Tom Montesano - Request for Reconsideration

May 14, 1985

Page Two

Huntington's voluntarily informed the head of the Douglas County Building Department of their intentions in July of 1981, prior to moving the caboose onto the property. The immediate environmental impact of the Huntington matter was not as serious as the Montesano case and will be fully rectified.

Staff believes the \$5,000 fine was justified for the Montesano case and recommends against a reduction in penalty.

5/14/85

AGENDA ITEM V A.

Peter A. Tomaino, Inc.

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

Post Office Box 790
3339 Sandy Way
South Lake Tahoe, California 95705
(916) 541-6084

Reply to above
May 9, 1985

Bill Morgan
NEVADA ADDRESS:
P.O. Box 6102
Stateline, Nevada 89449

Mr. Bill Morgan
Tahoe Regional Planning Agency
P. O. Box 8896
S. Lake Tahoe, CA 95731

Re: Tom Montesano

Dear Mr. Morgan:

Pursuant to Mr. Owen's letter of April 30, 1985, and the letter of Robert Pavich dated May 3, 1985, herewith the information on which we base our request for reconsideration of the Governing Board's March 26, 1985, decision imposing the following:

1. That an engineered retaining wall be built to permanently stabilize the driveway excavation, with such plans submitted to Agency staff for approval; and
2. That a payment of a civil penalty of \$5,000.00 be made to TRPA within 30 days of this Board action.

With respect to the first item, Mr. Montesano now has engineered plans to show that the slope in question can be stabilized without a retaining wall. Such stabilization is environmentally superior to a retaining wall, and I believe your staff feels that this alternative procedure is in fact superior to the retaining wall. A request is therefore made to allow stabilization by this engineered alternative rather than the retaining wall.

With respect to the \$5,000.00 penalty assessment, it is felt that the assessment was arbitrary and capricious. Subsequent to the March 26th hearing, it was discovered that the Board had considered a violation regarding David and Fritz Huntington. Although that violation was clearly intentional and flagrant, no fine was imposed. Enclosed are copies of two articles from the Tahoe Daily Tribune which brought the incident to our attention. Based on the fact that Mr. Montesano's violation was unintentional, in that he was not aware that Washoe County had removed his hay bales; and the further fact that he did all reasonably possible to rectify the situation once it was discovered, we feel no penalty should have been imposed.

Please advise if this matter will be reconsidered by the Governing Board.

A Thank you for your cooperation.

Best regards,

P. A. Tomaino
Peter A. Tomaino

PAT:dmc
Enclosure
cc: Tom Montesano

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MAY 10 1985

TAHOE REGIONAL
PLANNING AGENCY

Caboose legality on TRPA agenda

The legality of a family caboose on a Glenbrook property will be addressed by the Tahoe Regional Planning Agency governing board when it meets today.

David and Fritzi Huntington, owners of the life-size caboose that was once part of an actual train hook-up, say it was brought on the property in 1981 for entertainment and recreational purposes. But it has since been cited by Douglas County building officials as being used for living quarters.

After a month or so of correspondence among the Huntingtons, Douglas County, the state of Nevada and the TRPA, the agency has requested Mrs. Huntington to appear today before the governing board regarding the caboose's status.

Mrs. Huntington is the president of the pro-environmentalist League to Save Lake Tahoe.

Jerry Schwartz of the Douglas County Building Department said his staff recently found plumbing and electrical installations in the caboose without a permit. Schwartz said he notified TRPA officials about the caboose on March 14.

Prior to that, Schwartz said he had been in contact with the Huntingtons regarding the caboose. He wrote to David Huntington Feb. 13, asking for an explanation on the caboose's use.

Schwartz said he received a reply from Huntington about a week later, explaining the caboose was used only for entertainment purposes.

Schwartz said his staff, upon inspection, found plumbing and electrical hook-ups, which would make the caboose a "dwelling" rather than an "accessory" as the Huntingtons had claimed.

Schwartz contacted the Nevada Division of Manufactured Housing, he said, to see if the caboose was under state jurisdiction as a mobile-type home.

The division replied that it was not considered mobile and therefore required a building permit from Douglas County, he said.

Schwartz said he then contacted the TRPA about the caboose.

Also to be addressed by the TRPA staff is the cutting back of 2,700 square feet of "non-conforming coverage" on the Huntingtons' property, he said.

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Between a rock and a hard place.
Tahoe Daily Tribune 5-8-85

Editor's letterbox

Concern for drivers

EDITOR, TAHOE DAILY TRIBUNE:
I have a very deep concern with people drinking and driving. I was out with friends the other night and as I sat back watching the groups of people around me, I observed a woman being almost carried out, since she was so drunk she couldn't walk and hit me where I almost fell off my chair.

I immediately called for the manager and explained what I had just seen. As we went on to our next stop, I observed a man almost asleep with head bobbing and the cocktail waitress served him.

Is our society so money hungry that it doesn't care about another human being? We've got to educate the employees in our bars and restaurants, in order to keep these dangerous drivers off our roads.

How would you feel if you knew someone you served a cocktail who was your customer really didn't need that extra cocktail and they drove and killed someone? I don't know if I could ever live with myself. We have a new service in town, the Good Samaritans. Their main concern is to remove these dangerous drivers. They provide a sober and insured driver to drive the intoxicated person and his vehicle home.

GAIL ANNE OSMER
South Lake Tahoe

Abiding by the rules

EDITOR, TAHOE DAILY TRIBUNE:
A "conditional agreement" given to Mr. and Mrs. David Huntington...

wrist with a wet noodle.
Mrs. Huntington is the president of the League to Save Lake Tahoe, a pro-environmentalist group, yet their president is in violation of what they stand for.

Let's look at the facts as stated by Jerry K. Schwartz on March 27, 1985 to the Reno Gazette Journal.
"The Huntingtons did do electrical, plumbing and heating work in their caboose without benefit of permits or inspections. This constitutes violations of Douglas County codes and ordinances and Nevada State law."

He also states that the staff of Tahoe Regional Planning Agency, at that time, said the caboose presents a land coverage problem.

Only because they were caught were the Huntingtons willing to correct the situation, and according to TRPA staff, again at that time, the Huntingtons were "therefore not (?) in flagrant and willful violation."

Who is kidding whom? Sewer hookups, electrical, plumbing and heating work without permits are not "flagrant, willful violations? Gee, if I cut down a lot of trees and agree to plant new ones everything is OK?"

Mrs. Huntington, I believe the membership of the so-called League to Save Lake Tahoe should fire you as president, or to save face, you should resign now. Not only have you committed the above violations, you have violated the bylaws of the League to Save Lake Tahoe.
How can we have others abide by the rules...

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LAW OFFICES
HEATON, DOESCHER & OWEN, LTD.

SCOTT J. HEATON
LOUIS R. DOESCHER
GARY A. OWEN
SUSAN E. SCHOLLEY

304 SOUTH MINNESOTA STREET
P. O. BOX 605
CARSON CITY, NEVADA 89702

NAM
CC: SC

AREA CODE 702-682-2164

April 30, 1985

Peter A. Tomaino, Esq.
Post Office Box 790
South Lake Tahoe, California 95705

Re: Montesano Matter

Dear Peter:

Your letter to Bill Morgan, TRPA Executive Director, dated April 22, 1985, has been referred to me for reply. While the Governing Body's action concerning Mr. Montesano is not subject to "appeal", TRPA historically has permitted persons appearing before the Governing Body to request reconsideration of actions affecting them. Reconsideration, however, is generally granted only in the event new information has been discovered that was not otherwise available for presentation during the previous hearing.

Accordingly, please set forth the details of any new information you determine pertinent for purposes of reconsideration in a letter to Bill Morgan. Mr. Morgan will review the material submitted and determine whether it justifies placing your request for reconsideration on the agenda for the May TRPA Governing Body meeting. In the interim, however, to protect your opportunity to appear on the agenda, TRPA will note an appropriate agenda item for this purpose. The process essentially involves two steps: (1) A decision by the Governing Body whether to reconsider; and (2) If the latter motion is adopted, new action upon the original matter before the Governing Body.

Finally, in order to effect meaningful reconsideration should same be warranted, please be advised that I have been authorized to waive the applicable statute of limitations set forth in Article VI(j)(4) of the Compact to 30 days subsequent to the date of the May Governing Body meeting when reconsideration is to be considered. Again, please understand Mr. Morgan may elect not to allow the matter to proceed should your reasons for requesting reconsideration be insufficient.

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BY _____
MAY 01 1985
TAHOE REGIONAL
PLANNING AGENCY

Peter A. Tomaino, Esq.
April 30, 1985
Page 2

If you have any questions or desire further information,
please do not hesitate to contact me at your convenience.

Sincerely yours,

HEATON, DOESCHER & OWEN, LTD.

By 
Gary A. Owen

GAO:pay

cc: ✓ William A. Morgan, TRPA Executive Director

TAHOE REGIONAL PLANNING AGENCY

2155 South Avenue

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

(916) 541-0246

March 29, 1985

Tom Montesano
1601 Prospect
Sparks, NV 89431

Subject: Governing Board Action, Montesano Violation

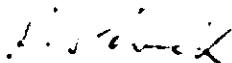
Dear Mr. Montesano:

On March 27, 1985, the Governing Board of the Tahoe Regional Planning Agency made the following findings regarding the above-noted matter:

1. That a violation does exist;
2. That an engineered retaining wall be built to permanently stabilize the driveway excavation, with such plans submitted to Agency staff for approval;
3. That the retaining structures noted in item #2 be completed within 10 days of May 1, 1985;
4. That all permanent erosion control and slope stabilization measures, and the dwelling foundation be installed by October 15, 1985;
5. That a payment of a civil penalty of \$5,000 be made to TRPA within 30 days of this Board action;
6. That the property owner agrees to waive the statute of limitations (Agency staff needs to receive a letter in writing to this effect); and
7. That noncompliance with any of the Board approved actions result in the case being forwarded to Agency legal counsel for action towards civil judicial proceedings.

If you should have any questions concerning this matter, please feel free to give me a call.

Sincerely,



Robert Pavich
Field Representative

RP:bl

cc: Peter Tomaino, Esq.

TRPA REGULAR MEETING MINUTES MARCH 27, 1985

Mr. Houghteling suggested that only the Chairman or majority of the Board could call a special meeting. Ms. Scholley responded that the notice of the public hearing and special meeting for the 15th had been published to give the Board the option should the members wish to have a public hearing. There is a 20-day notice requirement.

Mr. King questioned the hurry in holding a public hearing. Mr. Reed responded that the Committee felt it was important to get a review by the Board and the public as soon as possible if there were going to be a settlement. By getting the hearing scheduled as early as possible, the 1985 building season can perhaps be saved.

Mr. Westergard reminded the Board that the Committee had been appointed to develop a settlement package. The Committee members followed that direction; a logical procedure to follow now is to hear their report. Anyone in the public sector who would wish to know what is going to be reported today has had ample opportunity to be present. By setting the public hearing, the Committee is simply responding to expressed concerns about public involvement.

Ms. Roberts withdrew her motion pending the Committee's report.

While copies of the framework were being made, the Board moved on to other agenda items.

2. Tahoe Sierra Preservation Council v. TRPA, et al (Eastern District of California and District of Nevada)

Ms. Scholley advised she had nothing new to report or discuss.

B. Closed Session to Confer on the Following:

2. Tahoe Sierra Preservation Council v. TRPA, et al

No closed session was held on this matter.

VII ENFORCEMENT

A. Show Cause Hearings

5. Manny Beals, Unauthorized Construction and Signs, Douglas County APN 03-141-01 and 03-142-01

Mr. Midkiff advised that Mr. Beals had called and requested a continuance because of the weather. The Board agreed to give him a continuance to the April regular meeting.

6. F. Huntington, Unauthorized Structure, Douglas County 01-080-09

Copies of a March 25, 1985 settlement between the Huntingtons and the Agency were distributed to Board members and a brief summary of its contents was presented by Mr. Midkiff. The Huntingtons have agreed to sign the settlement and will post a \$6,500 security to ensure implementation of its terms. Ms. Scholley advised that every violation or settlement is handled on its individual merit. There are no rules which would have the Board's treatment of this matter

TRPA REGULAR MEETING MINUTES MARCH 27, 1985

set a precedent for another situation. Each is handled independently. Ms. Roberts commented that this situation points to the fact that good people do get desperate. It doesn't matter which side of the development/environmental issue a person is on; everybody has a problem with land use and the right to use of private land. These problems affect everyone.

Mr. Pruett reminded the Agency that Douglas County was instrumental in bringing this matter to the public's attention. The background work was done by the County.

MOTION by Mr. Reed to accept the Huntington settlement. The motion carried on the following vote:

Ayes: Mr. Pruett, Ms. Roberts, Mr. Henrikson, Ms. Twedt, Mr. Westergard,
Mr. Houghteling, Mr. Dodgion, Mr. Reed, Ms. Lowe
Nays: Mr. King, Mr. Hansen
Abstain: None
Absent: Mr. Hibdon, Mr. Haagen, Mr. Gibbs

4. Raymond Haas, Unauthorized Structure Below High Water Line, 5550 North Lake Boulevard, Placer County APN 89-051-08

Mr. Midkiff presented a brief summary of the violation and of staff's discussions with the property owner. Mr. Haas has agreed to remove all fence material including associated concrete retaining wall and pier blocks lakeward of the high water line (6229.1 Lake Tahoe Datum), and he has posted a \$2,500 security to insure removal. A final judgment has yet to be made on whether the tree that was removed was dead. Based on Mr. Haas' agreement to remove the structures, to post the security, and pending a final report on the tree, staff feels the settlement is satisfactory. No Board action was taken.

V LITIGATION (continued)

- A. 1. Consideration of California Attorney General/League to Save Lake Tahoe b. TRPA

Chairman Hansen asked that members of the Committee present a report on their efforts. (A copy of the document entitled: "TRPA Special Litigation Committee, Proposed Settlement Framework", Draft #10, March 27, 1985, was distributed to Board members and members of the audience.) Mr. Reed started by advising that the Committee had met for 16 hours last week and had met with the plaintiffs. In attendance were Leo Poppoff, Tony Clark, Peggy Twedt, Chester Gibbs and himself. Preliminary discussion recognized the concern on the part of many Nevada legislators and others that it appeared the California Attorney General was making policy decisions for TRPA. The Committee agreed, basically, that the law suits would, effectively, be put on hold. The appeal would be stayed, and the law suit by the Attorney General in District Court would also be stayed, pending pursuit of the planning process. The basic agreement does not put the Committee, the Board or the plaintiffs in the posture of making substantive policy decisions. What it does is fill out in more detail the framework of a plan and adds such items as monitoring to determine if the Agency is making progress towards thresholds. It fills out the framework and adds to the Regional Plan without undoing most of the policy decisions that have already

SETTLEMENT AGREEMENT

March 25, 1985

In settlement of a claim by the Tahoe Regional Planning Agency that an unauthorized structure, namely a railroad caboose, was placed on Douglas County APN 01-080-09, Glenbrook, Nevada, David and Fritz Huntington agree to do the following:

1. Huntingtons agree to remove all dwelling unit amenities from the caboose, to include: cook top stove, sink, refrigerator, water closet, and shower;
2. Huntingtons agree to disconnect the water and sewer utility connections from the caboose;
3. Huntingtons agree to submit an application to the Tahoe Regional Planning Agency (TRPA), within ten (10) days from the date of acceptance of this agreement by the TRPA Governing Board, for replacement of nonconforming land coverage;
4. Huntingtons agree to pay double the usual filing fee upon submittal of the above-referenced application;
5. Huntingtons agree to remove 2,742 square feet of existing nonconforming land coverage, as required by the TRPA Land Use Ordinance, and by the California Tahoe Regional Planning Agency Land Use Ordinance. Said removal shall be accomplished no later than June 1, 1985;
6. Huntingtons shall revegetate and restore to a natural setting the area of land coverage removal;
7. Huntingtons agree to post a security deposit with the TRPA, in the amount of \$6,500, to ensure implementation of the terms of this settlement. This security shall be posted within ten (10) days from the date of acceptance of this agreement;
8. Huntingtons agree not to assert any rights under any applicable statute of limitations that would or may otherwise preclude the TRPA from commencing ordinance enforcement proceedings relating to the unauthorized placement of the caboose, in the event of noncompliance with this settlement; and

HUNTINGTON SETTLEMENT AGREEMENT

9. In the event of litigation with respect to the terms or enforcement of this agreement, the prevailing party shall be awarded reasonable attorney's fees and costs of suit, in addition to such other relief as may be granted by the Court.

TAHOE REGIONAL PLANNING AGENCY

Gary D. Midkiff
Gary D. Midkiff, Acting Executive Director

4/2/85
Date

David Huntington
David Huntington

April 2 1985
Date

Fritzi Huntington
Fritzi Huntington

April 2 1985
Date