

**TRPA
GOVERNING BOARD
PACKETS**

**NOVEMBER
1998**

Counter

**TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD AND COMMITTEE MEETINGS**

NOTICE IS HEREBY GIVEN that on Wednesday, November 18, 1998, commencing at 9:30 a.m., the **Governing Board** of the Tahoe Regional Planning Agency will conduct its regular meeting. The meeting will take place at the North Tahoe Conference Center, Kings Beach, California. The agenda is attached hereto and made a part of this notice.

Governing Board Committee items are action items unless otherwise noted.

NOTICE IS FURTHER GIVEN that on November 18, 1998, commencing at 8:30 a.m., in the same location, the **Finance Committee** will meet. The agenda will be as follows: **1)** public interest comments (no action); **2)** receipt of the October 1998 financial statement and check register; **3)** status report on TRPA audit recommendations; **4)** allocation of FY 1998-99 LTF (\$163,739) to El Dorado County for community transit services; and **5)** member comments. (Committee: Neft, Heller, Galloway, Bresnick, Chairman Bennett)

NOTICE IS FURTHER GIVEN that on November 18, 1998, commencing at 8:30 a.m., in the same location, the **Legal Committee** will meet. The agenda will be as follows: **1)** public interest comments (no action); **2)** approval of Tahoe Mariner settlement; **3)** Dobbie/Nunez, request for authority to initiate enforcement action, El Dorado County APN 032-050-401; and **4)** member comments. (Committee: Miner, Cronk, Sevison, Chimarusti, Chairman Waldie)

NOTICE IS FURTHER GIVEN that on November 18, 1998, commencing at 12:00 noon during the lunch recess in the same location, the **Environmental Improvement Program Implementation Committee** will meet. The agenda will be as follows: **1)** public interest comments (no action); **2)** legislative packet; **3)** regional revenue feasibility analysis; and **4)** member comments. (Committee: Miner, Cronk, Waldie, Upton, Perock, Bennett)

Date: November 9, 1998



By: _____
Jerry Wells
Deputy Executive Director

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

This agenda has been posted at the TRPA office and at the following post offices: Zephyr Cove and Stateline, Nevada, and Stateline and Al Tahoe, California. The agenda has also been posted at the North Tahoe Conference Center in Kings Beach, the Incline Village GID office, and the North Lake Tahoe Chamber of Commerce.

TAHOE REGIONAL PLANNING AGENCY

308 Doria Court
P.O. Box 1038
Zephyr Cove, Nevada 89448-1038

(702) 588-4547
Fax (702) 588-4527
Email: trpa@sierra.net

MEMORANDUM

November 10, 1998

To: TRPA Governing Board

From: John L. Marshall, Agency Counsel
Susan E. Scholley, Special Projects Attorney

Subject: December 1, 1998 Trial in *TSPC v. TRPA*

On December 1, 1998, trial will begin in the *TSPC v. TRPA* litigation. The trial will be on the question of TRPA's liability for the unconstitutional taking alleged by TSPC. The trial will be held in federal district court in Reno, Nevada before Judge Edward Reed. The case will be defended by Clem Shute and Ellison Folk of Shute, Mihaly & Weinberger, San Francisco, California; Dan Siegel and Mary Scoonover of the California Attorney General's office; and Bill Frey of the Nevada Attorney General's office. The case is estimated to take 2-3 weeks.

After fourteen years of litigation, the case currently consists of the following claims:

Period I - Ordinance 81-5 (June 25, 1981 to August 26, 1983)

Ordinance temporarily prohibited development on sensitive lands until new plan adopted. Note that the Nevada-side plaintiffs in land capability districts 1-3 have been dismissed as to this time period so the claim is now limited to the Nevada-side SEZs and the California-side plaintiffs.

Period II - Resolution 83-21 (August 26, 1983 to April 26, 1984)

Resolution temporarily prohibited acceptance or processing of any projects until new plan adopted.

Period III - 1984 Regional Plan (April 26, 1984 to July 1, 1987)

Regional plan was never implemented due to preliminary injunction by federal judge in Sacramento.

Although the regulatory provisions that are being challenged in the case have long since faded into history, the case is important to TRPA due to the precedent that might be set by any decision and due to the multi-million dollar damage claims. It is probable that, whatever the outcome of the trial, the losing side will appeal the decision to the Ninth Circuit Court of Appeals.

Attached is a case history detailing the evolution of the case to this point in greater detail. If you have any questions on the case, please call John Marshall at TRPA or you may contact me at (609) 748-7351.

TSPC v. TRPA LITIGATION SUMMARY

PLAINTIFF COUNT: At this time, the case encompasses 400 parcels, 227 in California and 173 in Nevada. Of those 400 parcels, approximately 280 parcels have been sold to one of the acquisition agencies in the Tahoe Region (154 in California, 126 in Nevada). Only 30 parcels remain ineligible for building permits. The remaining 90 privately-owned parcels are either above the current IPES lines or have been sold to private parties.

EARLY CASE HISTORY: The litigation was filed in 1984 as two separate cases. The California-side case was filed by the Tahoe-Sierra Preservation Council (TSPC) and several hundred property owners from California. The Nevada-side case was filed by TSPC and several hundred property owners in Nevada. The cases were virtually identical except for some minor differences. TSPC alleged that TRPA's 1984 Plan and predecessor enactments were regulatory "takings" of private property without just compensation. TSPC alleged over \$30 million in damages.

Defendants TRPA, California and Nevada filed motions to dismiss and both cases were dismissed, primarily on procedural bases. The Nevada-side case was decided first and TSPC appealed the decision to the Ninth Circuit. The Ninth Circuit upheld portions of the Nevada dismissal but restored parts of the case (*TSPC I*). The California-side case was appealed second and the Ninth Circuit panel reversed the district court on almost all issues (*TSPC II*). The final result was that both cases were substantially intact and back before the two federal district courts in late 1991. The two district court judges, at the request of the parties, agreed to consolidate the two cases in federal court in Reno, Nevada.

TSPC filed amended complaints that added claims against the 1987 Regional Plan. At this point in the litigation the case expanded and there were four enactments at issue:

Period I - Ordinance 81-5 (June 25, 1981 to August 26, 1983: temporarily prohibited development on sensitive lands until new plan adopted).

Period II - Resolution 83-21 (August 26, 1983 to April 26, 1984: temporarily prohibited acceptance or processing of any projects until new plan adopted).

Period III - 1984 Regional Plan (April 26, 1984 to July 1, 1987: ill-fated regional plan that was immediately enjoined by federal judge in Sacramento).

Period IV - 1987 Regional Plan (July 1, 1987 to present: new plan adopted after consensus process to resolve litigation over 1984 plan).

Defendants again filed motions to dismiss and the district court again dismissed the TSPC case. A third appeal was filed and the Ninth Circuit again reversed the district court (*TSPC III*) and returned the case to the district court for trial.

RECENT CASE HISTORY: In 1995, the *TSPC* case was back before the district court and a discovery schedule was set. The court also ordered that the trial would be bifurcated into two phases: liability and damages. The liability phase (i.e., whether the plan or ordinances amounted to an unconstitutional taking) was to be heard by a judge and, if liability was found, then the damages phase was to be heard by a jury.

Discovery commenced (eight depositions of property owners, interrogatories and document production) and then postponed when the parties agreed to hire a mediator in an attempt to settle the case. After almost two years of mediation, the parties agreed settlement was not possible. The district court set discovery and other deadlines.

Defendants filed 12+ expert witness reports and obtained an order to compel all individual plaintiffs to respond to a detailed questionnaire under oath. Defendants reviewed several hundred plaintiff files and the questionnaires from each remaining plaintiff in the case. Defendants took an additional 22 depositions of individual property owners and the deposition of TSPC's expert appraiser. TSPC deposed four of Defendants' experts. The second discovery phase ended on June 2, 1997.

Defendants then filed five pretrial motions in August 1997. Decisions on the pretrial motions were issued beginning in late December 1997 into February 1998. The five pretrial motions and their outcomes were:

Motion to confirm dismissal of Nevada-side plaintiffs within land capability districts 1-3 for the period of Ordinance 81-5 – Granted by the court on the basis the Ninth Circuit had previously dismissed this portion of the complaint.

Motion to confirm that the case was a "facial" challenge and not an "as-applied" challenge – Granted by the court on the basis that TSPC had clearly presented the case throughout the prior proceedings as a "facial" challenge.

Motion to dismiss the claims against the 1987 Plan because they were brought after the statute of limitations had run – Granted by the court on the basis that Defendants had not waived the statute of limitations defense. TSPC has filed a motion for reconsideration on this issue that is pending before the court.

Motion to dismiss plaintiffs who had failed to respond to the court-ordered questionnaire – Granted on the basis that the parties had agreed to stipulate that plaintiffs who did not respond within 30 days would be dismissed.

Motion to require that direct testimony be in writing – Denied by the court on the basis that the court would prefer such testimony to be live.

The district court also denied TSPC's renewed request for a jury trial on the liability question. The district court found that TSPC had previously waived its request for a jury trial and that the waiver was still binding.

TSPC then filed petitions for review of the jury trial ruling and the dismissal of the 1987 Plan claim with the Ninth Circuit. The Ninth Circuit denied review of both petitions.

December 1, 1998 Trial in *TSPC v. TRPA*
November 10, 1998
Page 4

In accordance with the order of the Court, the parties submitted a joint pretrial order on July 17, 1998. There are three procedural motions (*in limine* motions) currently pending before the Court on the issues of: 1) whether TRPA may present expert testimony on environmental studies and related matters; 2) whether TSPC may present evidence on claims that were previously denied; and 3) whether TSPC may call John Van deKamp, Richard Thalhammer and Clem Shute as witnesses at trial.

The *in limine* motions will be decided before trial. Each side must file a trial brief setting forth its case by November 23, 1998.

TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

North Tahoe Conference Center
8318 North Lake Boulevard
Kings Beach, California

November 18, 1998
9:30 a.m.

All items on this agenda are action items unless otherwise noted.

AGENDA

- I. PLEDGE OF ALLEGIANCE
- II. ROLL CALL AND DETERMINATION OF QUORUM
- III. PUBLIC INTEREST COMMENTS (No Action)

Any member of the public wishing to address the Governing Board on any agenda item not listed as a Project Review, Public Hearing, RTPA, Appeal, or Planning Matter item may do so at this time. However, public comment on Project Review, Public Hearing, RTPA, Appeal, and Planning Matter items will be taken at the time those agenda items are heard.

NOTE: THE GOVERNING BOARD IS PROHIBITED BY LAW FROM TAKING IMMEDIATE ACTION ON, OR DISCUSSING ISSUES RAISED BY THE PUBLIC THAT ARE NOT LISTED ON THIS AGENDA.

- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
- VI. CONSENT CALENDAR (see page 3)
- VII. PROJECT REVIEW
 - A. Redevelopment Project 3, Stateline Avenue at U.S. Highway 50, City of South Lake Tahoe PAGE 29
 - B. Reviglio, Expansion of Existing Pier, Placer County APN 117-140-07, TRPA File #980094 PAGE 65
- VIII. PUBLIC HEARINGS
 - A. Development of Lake Tahoe Source Water Assessment and Protection Program PAGE 77
- IX. PLANNING MATTERS
 - A. Workshop on Research Related to Motorized Watercraft – 1:00 p.m. PAGE 89

- B. Report on TRPA's Authority to Designate the Tahoe Region as MTBE-Free Zone PAGE 113
- C. Status Report on Regional Revenue Study (Phase 2)
- X. ADMINISTRATIVE MATTERS
 - A. Nevada Lay Member Vacancy on the Advisory Planning Commission PAGE 113
 - B. Direction to Staff Regarding Continuation of Governing Board Meeting Security PAGE 115
- XI. COMMITTEE RECOMMENDATIONS AND BOARD ACTION
 - A. Finance Committee
 - B. Legal Committee
 - 1. Approval of Tahoe Mariner Settlement PAGE 117
 - 2. Dobbie/Nunez, Authority to Initiate Enforcement Action, El Dorado County APN 032-050-401 PAGE 119
 - C. Environmental Improvement Program Implementation Committee
- XII. REPORTS
 - A. Executive Director Monthly Status Report
 - 1. Status Report on Project Applications
 - B. Legal Division Monthly Status Report
 - C. Governing Board Members
- XIII. ADJOURNMENT

CONSENT CALENDAR

<u>Item</u>	<u>Recommendation</u>	
1. October Financial Statement and Check Register	Receipt	PAGE 1
2. Horizon Casino Resort Hotel, Temporary Special Events Use Permit/Special Use Determination, Highway 50, Douglas County APN 07-140-11, TRPA File #980454	Approval of Findings and Conditions	PAGE 3
3. Wilson, Land Capability Challenge, 6409 Emerald Circle, Placer County APN 98-240-06	Approval	PAGE 15
4. RTPA Resolution Allocating FY 1998-99 LTF (\$163,739) to El Dorado County for Community Transit Services	Approval	PAGE 25

These consent calendar items are expected to be routine and noncontroversial. They will be acted upon by the Board at one time without discussion. The special use determinations will be removed from the calendar at the request of any member of the public and taken up separately. If any Board member or noticed affected property owner requests that an item be removed from the calendar, it will be taken up separately in the appropriate agenda category.

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.

Article III(g) Public Law 96-551

TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court
Elks Point, Nevada
www.ceres.ca.gov/trpa

P.O.B. 1038
Zephyr Cove, Nevada 89448-1038

(702) 588-4547
Fax (702) 588-4527
Email: trpa@sierra.net

MEMORANDUM

November 9, 1998

To: TRPA Governing Board
From: Julie D. Frame, Clerk to the Board
Subject: Minutes from the October Board Meeting

The minutes from the October Board meeting will not be completed in time for Board action at the November meeting. They will be mailed under separate cover for action in December.

jf

AGENDA ITEM V.

TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court
Elks Point, Nevada
www.ceres.ca.gov/trpa

P.O.B. 1038
Zephyr Cove, Nevada 89448-1038

(702) 588-4547
Fax (702) 588-4527
Email: trpa@sierra.net

MEMORANDUM

November 9, 1998

To: TRPA Governing Board
From: TRPA Staff
Subject: October Financial Statement and Check Register

Requested Action: Staff : Staff will be discussing these two items with the Finance Committee prior to the full Board meeting on Wednesday, November 18. Requested action, should the Finance Committee concur, is receipt and/or approval.

jf
11/9/98

ONSENT CALENDAR ITEMS 1

TAHOE REGIONAL PLANNING AGENCY
STAFF SUMMARY

Project Name: Horizon Resort, Special Events Area Designation

Application Type: Commercial, Temporary Special Use Determination and Violation Resolution

Applicant: Wimar-Tahoe, d.b.a. Horizon Casino Resort Hotel

Applicant's Representative: Gary Midkiff, Midkiff and Associates

Agency Planner: Lyn Barnett, Senior Planner, Project Review Division

Location: Horizon Casino and Hotel, Highway 50, Stateline, Nevada

Assessor's Parcel Number/Project Number: 07-140-11/980454

Staff Recommendation: Staff recommends that the Governing Board approve the project. The recommended conditions of approval are listed in Section E of this staff summary.

Project Description: The applicant is requesting a temporary use permit to hold special events such as arts and craft shows, entertainment, seasonal sales, etc., from May 1 1999 to October 31, 1999. These events are described in detail in the attached letter by Gary Midkiff (Exhibit "A"). All events are proposed to occur on existing pavement. Temporary banners and signs are also included in the proposal. No new permanent structures or events are proposed.

Site Description: The proposed activities will occur on existing pavement at the Horizon Casino Resort Hotel property. This property includes an existing hotel casino complex, surface level parking, a parking garage, and landscaping. Adjacent uses include other casino/resort hotels, a bank, and Edgewood Golf Course.

Issues: The proposed project involves a special use determination and therefore requires Governing Board review in accordance with Chapter 4, Appendix A, of the TRPA Code. The primary project related issue is the resolution of a use that is in violation of the TRPA Code. Specifically, on March 11, 1998, TRPA issued a correction notice to the applicant for holding more than four outdoor special event activities during calendar year 1997 without TRPA approval (please see enclosed correction notice, Exhibit "B"). The correction notice also cited another violation related to the previously issued TRPA permit for Horizon's new parking garage. The current application is only intended to resolve the special events use violation and does not address other violation issues.

TRPA may issue temporary use permits for a period up to six months in length and may approve one six-month extension in accordance with Chapter 7 of the TRPA Code of Ordinances. Extensions to seasonal uses may be issued during the year following the original

use. Therefore, if a temporary use permit is issued for this project the applicant may apply for a six month extension to continue the use into the year 2000 season. Temporary projects are exempt from the allocation provisions of the Chapter 33 TRPA Code (allocation of development), and from the mitigation requirements of Chapters 20 (land coverage), 82 (water quality), and 93 (air quality). Based on experience with past activities the proposed temporary activities have adequate on-site parking.

Staff Analysis:

- A. Environmental Documentation: Staff has completed an Initial Environmental Checklist (IEC) in order to assess the potential environmental impacts of the project. No significant environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed IEC will be made available at the Governing Board hearing and at TRPA.
- B. Community Plan: The project is located within the Stateline Community Plan. The land use classification is "tourist" and the management strategy is "mitigation". Staff has reviewed the subject community plan and determined that the project is consistent with the applicable planning statement, planning considerations and special policies. The proposed activities (outdoor retail sales) are listed as special uses in the Stateline Community Plan.
- C. Land Coverage: No modifications to land coverage are proposed or required. In addition, no land coverage mitigation fees are required pursuant to Chapter 7 of the TRPA Code. All proposed activities will occur on paved areas.
- D. Required Findings: The following is a list of the required findings as set forth in Chapters 6 and 18 of the TRPA Code of Ordinances. Following each finding, Agency staff has briefly summarized the evidence on which the finding can be made.
 1. The project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code and other TRPA plans and programs.
 - (a) Land Use: The proposed temporary activities are permissible uses in the Stateline Community Plan. The community plan encourages activities that enhance the year round economy of the area. This proposal is being reviewed as a special use in accordance with Chapters 7 and 18 of the TRPA Code.
 - (b) Transportation: The applicant has indicated that a significant number of visitors to previous special events on the affected property have arrived by foot from nearby hotels and that they have never experienced a parking shortage. All proposed events are temporary and are exempt from air quality mitigation requirements of the TRPA Code.

- (c) Conservation: There are no known special interest species, sensitive or uncommon plants, cultural or historical resources within the project area. All parking will be on existing paved surfaces and no additional water quality improvements are required on-site to facilitate this proposal. This project is located within a highway scenic corridor. No scenic quality mitigation measures are required, however, because of the temporary nature of the proposed events. Noise generated from the proposed events shall not exceed the maximum Cumulative Noise Equivalent Levels (CNEL) identified in the Stateline Community Plan (65 CNEL).
- (d) Recreation: The proposed commercial special events area will not impact recreation in the Lake Tahoe Region.
- (e) Public Service and Facilities: No additions to existing public services or facilities are required for this proposal.
- (f) Implementation: No allocations of development are required for this proposal.

2. The project will not cause the environmental threshold carrying capacities to be exceeded.

The basis for this finding is provided on the checklist entitled "Project Review Conformance Checklist and Article V(g) Findings" in accordance with Chapter 6, Subsection 6.3.B of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. A copy of the completed checklist will be made available at the Governing Board hearing and at TRPA.

3. Wherever federal, state or local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(g) of the TRPA Compact, the project meets or exceeds such standards.

(Refer to paragraph 2, above.)

4. The project, to which the use pertains, is of such a nature, scale, density, intensity and type to an appropriate use for the parcel on which, and surrounding area in which, it will be located.

The Stateline Community Plan encourages activities that enhance the area's year round economy. The applicant has indicated that past temporary events of the same size and scale have not caused parking or traffic problems. No closures to Highway 50 are proposed. All events will occur on-site and all activities will occur on existing paved surfaces and shall be within TRPA noise limits.

5. The project, to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect against any such injury and to protect the land, water and air resources of both the applicant's property and that of surrounding property owners.

No impacts to land, water, or air resources have been identified with the proposed temporary activities. Noise generated from the proposed uses shall not exceed community plan noise limits.

6. The project, to which the use pertains, will not change the character of the neighborhood, detrimentally affect or alter the purpose of the applicable planning area statement, community plan and specific or master plan, as the case may be.

The proposed special events will be located within the existing South Shore casino core area and are consistent with the Stateline Community Plan. Similar activities have occurred in the affected neighborhood.

- E. Required Actions: Agency staff recommends that the Governing Board approve the project by making the following motions and findings based on this staff summary and the evidence contained in the record:

- I. A motion based on this staff summary, for the findings contained in Section D above, and a finding of no significant environmental effect.
- II. A motion to approve the project, based on the staff summary, subject to the following conditions:
1. This permit authorizes seasonal special events to occur at the Horizon Casino Hotel consistent with the letter to TRPA from Gary Midkiff dated November 4, 1998 (enclosed). All events shall occur on paved areas only. No discharges of liquids or other materials, including but not limited to cooking oils, greases, cleaning fluids, litter, etc., are permitted. Modifications to this permit may only be authorized upon written request to TRPA, and may require TRPA Governing Board approval at the discretion of the TRPA Executive Director. No new permanent lighting or building modifications are authorized by this permit. One temporary banner may be installed per event. Temporary banners shall not exceed the size limits of Standards D(1) and D(2), Chapter 12, Design Standards and Guidelines, Lake Tahoe Region of Douglas County. Hours of operation are limited to the hours between 10:00 AM to 8:00 PM.
 2. This permit is valid from May 1, 1999 to October 31, 1999. One-six month extension may be issued pursuant to Chapter 7 of the TRPA Code for the period of May 1, 2000 to October 31, 2000. This extension may only be issued only upon written request by the permittee shall be at the

discretion of the Executive Director. A time extension is not a vested right. The installation time period for temporary banners shall be consistent with Standards D(1) and D(2), Chapter 12, Design Standards and Guidelines, Lake Tahoe Region of Douglas County.

3. Noise generated from special events shall not exceed 65 CNEL. The Horizon Casino Resort Hotel shall report to TRPA all noise complaints received for temporary activities that occur due to temporary activities.
4. The permittee shall acknowledge this permit before any temporary events occur on-site.
5. By acceptance of this permit, the permittee acknowledges that TRPA reserves the right review and approve any temporary activity that might have a substantial effect in the land, air, water, sound or any other natural resource of the Lake Tahoe Region.