

**TRPA
APC
PACKETS**

**NOVEMBER
2001**

TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION
NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the Advisory Planning Commission of the Tahoe Regional Planning Agency will conduct its regular meeting at 9:30 a.m. on November 14, 2001, at the Tahoe Seasons Resort, Saddle Road at Keller, South Lake Tahoe, California. The agenda for the meeting is attached hereto and made a part of this notice.

October 29, 2001



Juan Palma
Executive Director

This agenda has been posted at the TRPA office and at the following locations: Zephyr Cove and Stateline, Nevada post offices, and South Lake Tahoe Library and AI Tahoe, California post office. 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
ADVISORY PLANNING COMMISSION

Tahoe Seasons Resort
Saddle Road at Keller
South Lake Tahoe, California

November 14, 2001
9:30 am

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

AGENDA

- I. CALL TO ORDER AND DETERMINATION OF QUORUM
- II. APPROVAL OF AGENDA
- III. PUBLIC INTEREST COMMENTS (No Action)

Any member of the public wishing to address the Advisory Planning Commission on any agenda item not listed as a Public Hearing or a Planning Matter item, or on any other issue, may do so at this time. However, public comment on Public Hearing and Planning Matter items will be taken at the time those agenda items are heard.

NOTE: THE ADVISORY PLANNING COMMISSION 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 MINUTES **PACKET INSERT**
 - A. April 2001
 - B. May 2001
 - C. August 2001
 - D. September 2001
- V. PLANNING MATTERS
 - A. Presentation on Interim Shorezone Projects **Page 1**
Recommendation and Completion of Final EIS on
New Shorezone Ordinances

VI. PUBLIC HEARINGS

- A. Annual Adjustment to Rental Car Mitigation Fee **Page 3**
- B. Amendment of Chapters 52 and 54 to Allow for Expansions of Buoy Fields in Fish Habitat and Related Amendments **Page 5**
- C. Amend Bijou / Al Tahoe Community Plan (PAS 098) to Add "Participant Sports Facilities" as a Permissible Use and Other Matters Properly Related Thereto **Page 15**
- D. Amendment of PAS 008 to Add Existing Development to TDR Description for Special Area #1 Only **Page 27**

VII. REPORTS

- A. Executive Director
 - 1. Report on Governing Board Actions Relative To APC Recommendations
- B. Legal Counsel
- C. APC Members

VIII. ADJOURNMENT

TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court
Elks Point, Nevada
www. trpa.org

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

Phone: (775) 588-4547
Fax (775) 588-4527
Email: trpa@trpa.org

MEMORANDUM

November 6, 2001

To: Advisory Planning Commission

From: TRPA Staff

Subject: Presentation on Interim Shorezone Projects Recommendation and Completion of Final EIS on New Shorezone Ordinances

TRPA Staff will present to the APC the approach to completing the Shorezone Final EIS and Shorezone Ordinances as well as the interim approach to reviewing shorezone projects and other upland projects that are within 300 feet of high water. Following the presentation, staff would like to discuss and receive feedback regarding these approaches.

Additional information will be supplied at the APC meeting.

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

Phone: (775) 588-4547
Fax (775) 588-4527
Email: trpa@trpa.org

October 30, 2001

To: Advisory Planning Commission

From: TRPA Transportation Staff

Subject: Approval of Annual Adjustment to Chapter 95 of the Tahoe Regional Planning Agency Code of Ordinances, Rental Car Mitigation Fee Program

Action Requested: To recommend approval of annual adjustment to Rental Car Mitigation Fee. The adjustment is to increase the Rental Car Mitigation Fee by ¼ of a dollar from \$4.25 to \$4.50 for each day a car is rented in the Tahoe Basin.

Staff Recommendation: Staff is recommending to increase the Rental Car Mitigation Fee by ¼ of a dollar consistent with the Consumer Price Index of the San Francisco Bay Area as stated in Chapter 95 of the TRPA Code of Ordinances. Staff recommends the Advisory Planning Commission hold a public hearing on this item and recommend approval to the TRPA Governing Board.

Background: In 1993, the Tahoe Regional Planning Agency adopted Chapter 95, the Rental Car Mitigation Fee Program, in the TRPA Code of Ordinances. This Ordinance was implemented to assist in the achievement and maintenance of environmental thresholds for air and water quality. The Ordinance applies to each rental transaction in which the rental car is rented by, or delivered to a person in the Tahoe Region (defined by watershed/TRPA jurisdiction). Each rental transaction is shall be assessed a mitigation fee, with some exceptions for local residents. The primary provision of this program is the assessment of a \$4.25 fee for each day the car is rented.

Since the inception of the Rental Car Mitigation Fee, the program has generated approximately \$757,741 in fees collected by the TRPA. Under terms of Chapter 95 of the TRPA Code of Ordinances, TRPA disburses the fees to the Tahoe Transportation District (TTD) to be used on projects that are consistent with the TRPA Regional Transportation Plan—Air Quality Plan. Since 1993, roughly \$400,000 of the Rental Car Mitigation Fees have been used to assist in the operation of the North and South Shore transit system, including the Nifty Fifty Trolley on the South Shore and the Tahoe Trolley on the North Shore. These funds have also been used as local match money for State and Federal grants to purchase vehicles within these fleets. In addition, up to 15% (annually) of the funds have been used for administrative support for Tahoe Transportation District activities.

Discussion: As stated in Chapter 95, Section 95.3 of the Tahoe Regional Planning Agency's Code of Ordinances, "The mitigation fee shall be adjusted annually consistent with the annual change in the Consumer Price Index of the San Francisco region, rounded to the nearest quarter-dollar." This fee has not been increased since 1995.

At this time, staff would like to present the proposed increase to the Advisory Planning Commission for recommendation of approval to the TRPA Governing Board. The proposed increase is as follows: the CPI for the San Francisco region for 2000 was 4.2% according to the Bureau of Labor Statistics. Therefore, the adjustment is calculated by multiplying the current \$4.25 mitigation fee by the 4.2% CPI increase for 2000. This equates to an increase of 17.85 cents with that being raised to the nearest quarter dollar, which is 25 cents. With this adjustment, the Rental Car Mitigation Fee would be \$4.50 effective December 1, 2001.

If you have any questions regarding this matter, please feel free to contact Alfred Knotts at 775-588-4547.

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

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Fax (775) 588-4527
Email: trpa@trpa.org

MEMORANDUM

November 1, 2001

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Amendment of Chapters 52 and 54 to Allow for Expansion of Buoy Fields in Fish Habitat and Related Amendments

Proposed Action: In response to the Dollar Point Home Owner's Buoy Field Expansion agenda item in June, the TRPA Governing Board directed TRPA Staff to bring back a revision to the Code that would directly present the policy questions of expansion of existing buoy fields located in prime fish habitat (see Attachment A, June GB minutes).

Staff Recommendation: Staff recommends the Advisory Planning Commission hold a public hearing on this item and recommend to the TRPA Governing Board to take no action on this item.

Background: The Dollar Point HOA's buoy field expansion project was presented at the Governing Board meeting in June with a staff recommendation of denial. Staff was unable to recommend making the findings because Code of Ordinance sections 54.6.A(2) and 54.4.A(3) prohibit Dollar Point HOA from placing new buoys in areas identified as Prime Fish Habitat.

At the June GB hearing, it was presented that prior to 1993 TRPA staff interpreted the Code differently and allowed the expansion of existing buoy fields in prime fish habitat by reviewing the field as a single structure. It was also presented to the GB that since 1993 staff has interpreted each buoy as a single structure and, therefore, do not allow new buoys in prime fish habitat.

The interpretation that is used today for single buoys in or out of a buoy field is the same interpretation that was used in the early 90's. A buoy is considered a structure. The prohibition that applies to new structures in prime fish habitat applies to each individual buoy.

TRPA has approved the expansion of existing structures in mapped prime fish habitat when the expansion extends out beyond verified prime fish habitat substrate, as in the expansion of an existing pier or the placement of individual buoys in to sandy substrates.

Discussion: Consideration of Dollar Point HOA's request to add new buoys in prime fish habitat raises significant issues:

1. Adding new structures in mapped and verified prime fish habitat is against the current prohibition in the Code of Ordinances.

2. The fish studies conducted by UCD Tahoe Research Group have concluded that buoys do not physically impact prime fish habitat.
3. Limited PAH studies conducted at Lake Tahoe have shown impacts to both zooplankton and larval fish.
4. Past actions did allow the expansion of buoy fields in mapped fish habitat when the buoys to be added were placed in sandy substrates.
5. The existing buoy field extends 650 lakeward of high water and exceeds the "50 foot grid" capacity proposed in the new ordinance.
6. The proposed new buoys would be placed in rows north (landward) of the existing buoys at depths that would not be navigable at lower lake elevations and would then need to be moved out to deeper water.
7. To lift the prohibition for the placement of new buoys in prime fish habitat an environmental document will be needed.
8. No one has a handle on non-permitted buoy enforcement. In the 1988 Regional Plan EIS there were an estimated 2,545 buoys around Lake Tahoe. The shorezone survey in 1994 identified 3,536 buoys with approximately 1100 of those permitted. Last summer's GPS buoy survey identified 6,262 buoys on Lake Tahoe.
9. The existing buoy field is in a scenic non-attainment unit.

With the issues listed above in mind, staff reviewed several proposals to accommodate the new buoys. The following is a discussion on each.

Option #1: Amend the Code to allow the one time expansion of up to 10 buoys in existing HOA buoy fields. This is consistent with what is allowed for in marinas without doing a master plan and EIS. Expansions of more than 10 buoys would need an Environmental Assessment (EA), at a minimum, which would also have to analyze cumulative impacts. Based on a conservative number of 30 HOAs who have lake access this Code amendment would have the potential to allow 300 new buoys. Based on these potential expansions, a cumulative analysis for the Code amendment would be required. This is the type of analysis that is being completed in the Shorezone EIS.

Option #2: A second Code amendment option would specifically allow the littoral parcel owned by the Dollar Point HOA to expand its buoy field by 14 buoys on a one-time-basis only. The potential impacts are locally limited and a baseline for PAH could be established prior to the placement of buoys and appropriate mitigation drafted to maintain the baseline levels. This approach, while very isolated, does not recognize the fact we have other buoy fields around the shorezone of Lake Tahoe that could argue they are in similar situations and would be discriminated against using the new Code language.

Option #3: A third Code amendment option would allow the expansion of an existing buoy field as a single structure in fish habitat when the buoys are placed landward of the

existing buoys. No new buoys could be placed lakeward of existing buoys therefore the lakeward extent of the buoy field would not increase impacts to navigation. However, the majority of prime fish habitat substrate exists in a narrow band along the shoreline, therefore, the capacity to moor boats would be increased in the areas of prime habitat substrate. The cumulative affects of this option would need to be analyzed for the whole lake. This option at the very least would need an inventory of all buoy fields that included, at the very least, the elevation at which the landward row of buoys were located and how many more buoys could be placed within a 50 foot grid land ward of that elevation and still have navigable water.

Option #4: A fourth Code amendment option is to lift the prohibition for the placement of buoys in prime fish habitat. This is being analyzed in the Shorezone Ordinance Amendments EIS. It would not be an efficient use of staff's time to prepare a separate EIS to address the impacts of the additional buoys when this analysis is included in the Shorezone Ordinance Amendments EIS that staff is currently working on to complete.

Option #5: A fifth Code amendment option is to provide the opportunity to amend the prime fish habitat map not only along perpendicular lines to the shoreline but also along parallel lines. Currently, prime fish habitat is mapped lakeward to the thirty foot contour. However, there are sites where the prime fish habitat substrate ends short of the thirty foot contour and becomes marginal habitat. This particular approach will not assist the Dollar Point HOA because the prime fish habitat substrate extends beyond the existing buoy field which is more than 650 feet lakeward from highwater. In addition, like the options listed above, other properties would be eligible to apply for new buoys under this scenario, and without a comprehensive analysis of this option there is no way to identify the increased capacity for the mooring of boats and the associated potential impacts to the Region's Environmental Thresholds.

Required Findings: The following findings must be made prior to adopting any proposed amendments:

A. Chapter 6 Findings:

1. Finding: 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.

Rationale: The proposed Code amendments cannot be found to be consistent with the Regional Plan. There has been no comprehensive analysis for the above options that identifies a potential build out number for buoys and how the increased capacity to moor boats would affect existing water quality baseline numbers. The option that would amend the Code so that it only applied to the Dollar Point Home Owners Association would be arbitrary.
2. Finding: That the project will not cause the environmental thresholds to be exceeded.

Rationale: Without an analysis of the number of properties that could be affected by these new ordinances and the potential number of new buoys there is no way to determine the impacts to Thresholds such as water quality, scenic quality and fisheries.

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

Rationale: See Findings 1 and 2 above.

4. Finding: The Regional Plan and all of its elements, as implemented through the Code, Rules and other TRPA plans and programs, as amended, achieves and maintains the thresholds.

Rationale: See Findings 1 and 2 above.

If there are any questions regarding this agenda item, please contact Coleen L. Shade at (702) 588-4547 ext. 228 or e-mail your questions to coleens@trpa.org.

Attachments: A. June 2001 Governing Board Minutes

TRPA REGULAR MEETING MINUTES JUNE 27, 2001

VI. CONSENT CALENDAR

Ms. Neft stated that the Finance Committee recommended approval on Consent Calendar Items Nos. 1, 6, 7 and 10.

Mr. Waldie reported that the Legal Committee approved the settlement in the *Barbieri* case, Consent Calendar Item No. 4.

MOTION by Dr. Miner to approve Consent Calendar Item Nos. 1, 4, 6, 7, 8, 9, 10, 11, 12 and 13. The motion carried unanimously.

(The following are items approved on the consent calendar

1. Release of \$150,284 in Washoe County Air Quality Mitigation Funds for Tanager Drive Pedestrian Path
2. City of South Lake Tahoe New Ice Skating Rink, APN 26-050-04, File No. 210042
3. Adahi, New Commercial Building, 936 Southwood Boulevard, Incline Village, and Conditions Nevada, APN 132-231-13, TRPA File No. 200435
4. Settlement proposal TRPA v. Barbieri, Eastern District of California, Case No. CIV-S-94-1380 LKK
6. Release of \$277,500 in air quality mitigation funds for the CNG fueling facility for TART and \$50,000 for reimbursement to the North Lake Tahoe Resort Association for the purchase of three trolleys
7. Release of \$35,341 from Douglas County's Water Quality Mitigation Fund for additional work on the Cave Rock General Improvement District Erosion Control Project
8. Mount Rose Publishing Company, Commercial Plan Revision, 925 Tahoe Boulevard, Washoe County, APN 132-231-06, TRPA File No. 200845
9. Lakeside Plaza, New Commercial Building, 550 North Lake Boulevard, Placer County, APN 94-090-15 & 16, TRPA File No. 200203
10. Request for \$10,000 from the Fines and Forfeitures account for the purchase of a new Honda 130 hp 4-cycle engine for the TRPA In-Lake Monitoring Boat

Land Capability Challenges:

11. Kingman Land Capability Challenge, 2076 The Back Road, Glenbrook, Douglas County, APN 001-050-28
12. Harry & Linda Traback Land Capability Challenge, 3970 Interlaken Avenue, Placer County, APN 085-213-018
13. Rob & Karen Laurie Land Capability Challenge, 450 Jill Court, Placer County, APN 125-131-11)

VII. PROJECT REVIEW

- A. Dollar Point Homeowners Association, Multiple-Use Buoy Field Expansion And Boatlift Addition, 3150 Edgewood Drive, Placer County, APN 93-072-06

Mr. Jon Paul Harries, Associate Planner with the Project Review Division, presented the staff summary for the Dollar Point Homeowners Association, Multiple-Use Buoy Field Expansion and Boatlift Addition, 3150 Edgewood Drive, Placer County, APN 93-072-06. Mr. Harries pointed out an error on page 98 of the staff summary, item 2.h., the second sentence, "Nevada Department of Wildlife" should be "California Department of Fish and Game".

TRPA REGULAR MEETING MINUTES JUNE 27, 2001

Mr. Waldie stated that he read on pages 95, 96 & 98 relative to the issue of fish habitat and the ability to put in a structure in prime fish habitat, that the Code denies that. He asked Mr. Marshall if there was any discretion on the Board's part to say, "in this instance, because there is a review pending that suggests that the prime fish habitat is erroneous; we can ignore the Code today." Mr. Marshall replied that we would have to change the Code prior to authorizing the structure, or they would be in violation. Mr. Waldie asked why did this come before the Board today on that aspect; why was this not prevented from coming forward if it is in contrary to the Code. Mr. Harris replied that the application was submitted, and it required the TRPA to do an assessment of the fish habitat. TRPA completed that assessment and informed the applicants that it was in prime fish habitat, and we did write a staff denial of the application. We have to look at the applicant and let them know one way or another; we can't just not accept an application. Mr. Marshall stated that he didn't want this application to be done at staff level; we want the Board to hear the application and make the decision. In addition, Chapter 4 of the Code requires the Board to make these types of decisions. Mr. Waldie commented that Mr. Marshall advised him that the Board couldn't make a decision because the Code prohibits it; we don't have discretion. If we don't have discretion, why is the Board listening to it? Mr. Marshall replied that one of the issues that is before the Board, and in some sense this discussion may be premature until after you have heard Ms. Brisco's presentation, but they may question the interpretation as to whether or not additions to an existing buoy field is new construction. They may present to the Board an interpretation that says within the confines of the existing Code, the Board can address this application. Notwithstanding the Board's long-term interpretation of how the Board treats buoy fields. In that sense, if the Board desires to make an interpretation that this is an expansion of existing buoys, and does not fall within the prohibition, then an action could be taken.

Mr. Waldie questioned that under a Homeowners Association is every property; every individual fee-owned property in the association, entitled to a buoy. Mr. Harries replied no. Mr. Waldie inquired how does TRPA interpret the limits of a buoy field for a Homeowners Association when there are 568 properties, and there will now be 77 buoys if this is approved; how do you determine the limit, or is there a limit? Mr. Harries said that there was no limit. He calculated that the ratio came out to one buoy per 8 properties, which on a need basis seems fairly reasonable. This also gets us into the limits of the size of the property; how many buoys they can place within the property lines.

Chairperson Heller opened the meeting up for a public hearing.

Ms. Jan Brisco, representing the Dollar Point Association, stated that she appreciated all of staff's efforts in this regard to try to come up with a way to encourage the recommendations of this project. Unfortunately, for those of us who have been around for a long period of time, remember when these types of projects were approvable, and somehow, somewhere, we got off track. She believed that the Board had the ability to make this project approvable. The existing Code as it is stated does provide the opportunity to take that action today. She is joined by Bob Peters today, who is the Chair of the Dollar Point Association Buoy Committee. He will be speaking to the Board momentarily about the Dollar Point issues and situation, and will also be here to answer any questions of the Board. Ms. Brisco reported that she will be talking about specific issues raised by the TRPA staff; buoys in general; the expansion of multi-use facilities; fish habitat issues; the recreation threshold; and, lastly, the water quality issues.

In 1992, the Dollar Point Association, numbering 568 properties, due to a subdivision, came in and was successful in obtaining permission to increase the size of the buoy field. At that time,

TRPA REGULAR MEETING MINUTES JUNE 27, 2001

the Association was under the status as a "multiple use facility". With that 1992 application, the Board gave them the multiple use status as a multiple-use facility.

In February of 2000, the Association made their application with the TRPA for the expansion of 14 additional buoys. These buoys were to be placed inside the existing field. They were going to move their slim line back, towards the beach, and were allowed 14 buoys; two rows of seven, to be placed from their property. This was done to avoid any scenic impacts and to provide for the increasing demand of the Association turnover, and the number of boats being purchased by the residents was increasing from 1997 to February 2000. Subsequent to their application, they received two letters from the TRPA; one letter was a list of nine items that the Association provide extensive information to staff. At no time in the incomplete letter was the fish habitat issue raised. The Association was under the impression that given their 1992 project, and 5 to 10 other Homeowner Association buoy extensions, that this was a project that could be approved. One issue raised was a BMP plan to deal with the water covert drainage pipe that is evident in some of the photos that they have provided. The Association proposed to remove the covert that discharges all of the drainage from Dollar Point into Lake Tahoe, and reconvey that water to an infiltration-type system that never has the water going into Lake Tahoe. We are required to provide additional offshore photographs. In approximately 30-60 days, we sent back the required information. Subsequently, they received another letter from staff, which is included in the exhibits. Again, they raised the issues relative to the BMPs. Subsequently, getting down to the 119th or 120th day review, Jon Paul Harries called and said that because this was in fish habitat, and the policy that was in place, they could not feel comfortable recommending approval before the Governing Board for that reason. She could find nothing in the Code or policies to support that. Ms. Brisco then went back to the project that Mr. Harries cited, Cedar Flats Improvement Association project, which she reviewed. That facility was not necessarily given a multiple-use status, which does provide for the expansion of multiple-use facilities. She didn't believe the project ever got that far.

The expansion of multiple-use facilities can be done under TRPA's Code 52(3)(g). Under this Code Section, as long as you have determined it to be a multiple-use facility, one can deviate from the Code relative to location standards. In this case, it is a fish habitat standard. TRPA has been approving projects since 1987 for expanded piers and buoy fields; nothing has changed, and we are not asking for any special exemptions from what has already been practiced for 14 years. When we are talking about expansion of multi-use structures, we should also be looking at the shorezone EIS. We were hoping something would be in place to deal with these issues. Unfortunately, that is not going to happen for a very long time. She believed that everyone has been patiently waiting the results of that to go forward with some of these projects. Ms. Brisco is trying to work within the confines of the existing Code. She did not make copies of the section of the Shorezone EIS, but it does deal with this. When you ask Jon Paul whether or not this is being dealt with as far as buoy fields in our deliberations and in the most recent draft of the EIS, he stated there is a provision, and it is a provision for what they are now classifying as "quasi public multiple-use facilities". Those are the ones that are not public facilities and are private. Ms. Brisco quoted the statement from the EIS regarding demonstrating the need for more than two more buoys per littoral parcel.

Ms. Brisco disagreed with staff's determination that somehow now we are changing the rules as we go. We have to look at the best and most available science, which shows us those structures, whether it be a pier piling, or a buoy walk, are still a structure in fish habitat. That does not necessarily create an impact. While we are addressing some of these issues, it should be noted that most of the people who are living in Dollar Point already have boats. This is not going to increase the number of boats. The 14 buoys would not increase the number of boats