

**TRPA
GOVERNING BOARD
PACKETS**

**DECEMBER
2002**

**TAHOE REGIONAL PLANNING AGENCY (TRPA)
AND TRPA COMMITTEE MEETINGS**

NOTICE IS HEREBY GIVEN that on Wednesday, December 18, 2002, 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 Horizon Casino Resort, U.S. Highway 50, Stateline, Nevada. The agenda is attached hereto and made a part of this notice.

NOTICE IS HEREBY GIVEN that on Wednesday, December 18, 2002, commencing at 12:00 Noon, at the TRPA Offices 308 Dorla Court, Zephyr Cove, Nevada, the Governing Board of the TRPA will attend a Holiday Luncheon hosted by the TRPA staff.

Governing Board Committee items are action items unless otherwise noted

NOTICE IS FURTHER GIVEN that on Wednesday, December 18, 2002, commencing at 8:30 a.m., at the same location, the TRPA Finance Committee will meet. The agenda will be as follows: 1) public interest comments (no action); 2) monthly statement; 3) FY 2002-2003 Budget Augmentation; and, 4) member comments. (Committee: Slaven, Heller, Galloway, Solaro, Plank, Quinn)

NOTICE IS FURTHER GIVEN that on Wednesday, December 18, 2002, commencing at 8:30 a.m., at the same location the TRPA Legal Committee will meet. The agenda will be as follows: 1) public interest comments (no action); 2) Discussion of Policy Guidelines for Resolution of Violations; 3) Prosecution of Litigation against Jack and Rebecca Kendall for the Unauthorized Construction of a Pier, 7728 North Lake Boulevard, Kings Beach, Placer County, California, Assessor's Parcel Number 117-140-03 (discussion in closed session/action in open session); 4) Update of Pending Litigation (closed session); and, 5) member comments. (Committee: Waldie, DeLanoy, Miner, Swobe)

NOTICE IS HEREBY GIVEN that on Thursday, December 19, 2002, commencing at 9:00 a.m., at the TRPA Offices, 308 Dorla Court, Zephyr Cove, Nevada, the Shorezone Policy Committee will meet. The agenda will be as follows: 1) public interest comments (no action); 2) Discussion on the roll of the Shorezone Policy Committee; 3) Discussion and approval of EIS Alternatives; 4) Buoy policy issues discussion; Grandfathering of existing buoys and fish habitat boundaries, and the placement of buoys; 5) Policy discussion on private piers when served by a multi-use facility; 6) Develop a schedule and agenda for a workshop on shorezone regulations and policies for the Governing Board; and, 7) member comments. (Committee: Waldie, Sevison, Galloway, Quinn, Perock, Swobe)

December 9, 2002



Juan Palma
Executive Director

This agenda has been posted at the TRPA office and at the following post offices: Zephyr Cove and Stateline, Nevada, and Tahoe Valley 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
GOVERNING BOARD

Horizon Casino
U.S. Highway 50
Stateline, Nevada

December 18, 2002
9:30 a.m.

All items on this agenda are action items unless otherwise noted. Items on the agenda, unless designated for a specific time, may not necessarily be considered in the order in which they appear. For agenda management purposes, approximate time limits have been assigned to each agenda item. All public comments should be as brief and concise as possible so that all who wish to speak may do so; testimony should not be repeated.

AGENDA

- I. PLEDGE OF ALLEGIANCE (5 minutes)
- II. ROLL CALL AND DETERMINATION OF QUORUM (5 minutes)
- III. PUBLIC INTEREST COMMENTS - All comments are to be limited to no more than five minutes per person.

Any member of the public wishing to address the Governing Board on any agenda item not listed as a Project Review, Public Hearing, TMPO, Appeal, or Planning Matter item may do so at this time. However, public comment on Project Review, Public Hearing, Appeal, and Planning Matter items will be taken at the time those agenda items are heard. 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 (5 minutes)
- V. APPROVAL OF MINUTES (5 minutes)
- VI. CONSENT CALENDAR (see agenda pg. 3 for specific items) (5 minutes)
- VII. REPORTS

A. Executive Director Report (30 minutes)

1. Commemorating the Signing of the Compact (December 19, 1969)
2. Resolution for Chairman Dean Heller
3. Monthly Status Report on Agency Activities Pg. 3
4. Tahoe Transportation District/Commission Agenda from the December 13, 2002, Meeting Pg.11
5. Follow -up on Compliance Matter Resulting from The November Public Interest Comments Pg.15
6. Scenic Ordinance Update

B. Legal Division Monthly Status Report (5 minutes)

VIII. PROJECT REVIEW

- A. Davis/Coffeng, New Multiple-Use Pier, 7770 and 7780 (15 minutes) Pg.17
North Lake Boulevard, Placer County, Assessor's Parcel Number
117-80-017, 018, TRPA File No. 20010400 (Hearing of this item is
contingent upon the Governing Board's action on Agenda Item No.
XI.A.)
- B. TVI Investments Land Capability Challenge, Highway 28, (15 minutes) Pg.59
Lake Forest, California, Placer County, Assessor's Parcel Number
093-480-009 (Hearing of this Item is contingent upon the Governing
Board's action on Agenda Item No. XI.B.)
- C. Chaplinsky, Conversion of a Boat Ramp to a New Pier, and (15 minutes) Pg.63
Removal and Reconstruction/Reconfiguration of a Shoreline
Protective Structure, 90 Shoreline Circle, Washoe County,
Nevada, Assessor's Parcel Number 122-162-026, TRPA File
No. 20010765
- D. Meadow Brook Apartments/Affordable Housing and (30 minutes) Pg.89
Resource Management, Special Use Determination, 134 Kahle Avenue,
Stateline, Nevada, Douglas County, Assessor's Parcel Number 007-100-
01
- E. Timberlake Pier Relocation and Expansion, 1380 North (15 minutes) Pg.121
Lake Boulevard, Placer County, Assessor's Parcel
Number 094-520-001, TRPA File No. 200491

IX. PUBLIC HEARINGS

- A. Amendment of the TRPA Code of Ordinances Chapter 81, (30 minutes) Pg.135
Chapters 4 and 74, and Goals and Policies Land Use
Element, Goal #1, Policy 6, to Implement an Improved
Fertilizer Management Program, and Clarify Landscaping
Exceptions Under Exempt Activities and Reference Fertilizer
Use Restrictions
- B. Amendment of the TRPA Code of Ordinances, Chapter 25, (30 minutes) Pg.149
Goals and Policies Land Use Element, Goal #1, Policy 3,
For Updates on BMP Retrofit Implementation Priority Dates
And Programs
- C. Amendment of the TRPA Ordinances Chapter 33 and (90 minutes) Pg.159
Goals And Policies Chapter VII Amendments to Allow for
Residential, Community Plan CFA, and TAU Allocations
through 2006
- D. Amendment of Map Showing Need for Water Quality (20 minutes) Pg.207
Improvements Pursuant to Requirements of Chapter 37,
Individual Parcel Evaluation System, Section 37.10.A.,
Installation of Water Quality Improvements in Vicinity of
Parcels

X. PLANNING MATTERS

- A. Discussion of Draft South Y Industrial Community Plan (20 minutes) Pg.215
And Environmental Assessment

XI. ADMINISTRATIVE MATTERS

- A. Reconsideration of the Governing Board's Decision Denying (10 minutes)
The Davis/Coffeng, New Multiple-Use Pier, 7770 and 7780
North Lake Boulevard, Placer County, Assessor's Parcel
Number 117-80-017, 018, TRPA File No. 20010400 (This
Item must be acted upon prior to consideration of Agenda Item
No. VIII.A.)
- B. Reconsideration of the Governing Board's Approval of TVI (10 minutes)
Investments Land Capability Challenge, Highway 28, Lake Forest,
California, Placer County, Assessor's Parcel Number 093-
480-009 (This item must be acted upon prior to consideration of
Agenda Item No. VIII.B.)
- C. Adoption of Agency Personnel Policy Manual Update (15 minutes) Pg.221
- D. FY 2002-2003 Budget Augmentation (5 minutes) Pg.227
- E. Status Report on Lake Tahoe Cruises, Inc. (formerly owned by
Hornblower and Recently Acquired by Aramark) Pg.233

XII. COMMITTEE RECOMMENDATIONS AND BOARD ACTION

- A. Finance Committee (5 minutes)
- B. Legal Committee (5 minutes)
- C. Shorezone Committee (5 minutes)

XIII. REPORTS

- A. Governing Board Members (15 minutes)

XIV. ADJOURNMENT

CONSENT CALENDAR

<u>Item</u>	<u>Recommendation</u>	
1. November 2002 Financial Statement	Receipt	
2. Prosecution of Litigation Against Jack and Rebecca Kendall for the Unauthorized Pier Construction, 7728 North Lake Boulevard, Kings Beach, Placer County, California, Assessor's Parcel Number 117-140-03	Approval with Conditions	<u>Pg.1</u>

The consent calendar items are expected to be routine and non-controversial. 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 Governing Board Members:

Chairman Dean Heller, Nevada Secretary of State	Hal Cole, South Lake Tahoe
Wayne Perock, Nev. Dept. of Conservation	Tom Quinn, Calif. Gov. Appointee
Appointee	Larry Sevison, Placer County
Vice-Chairman Dave Solaro, El Dorado County	Ronald Slaven, Calif. Gov. Appointee
Drake DeLanoy, Nevada Gov. Appointee	Coe Swobe, Nevada At-Large Member
Jon Plank, Carson City	Vacant, Presidential Appointee
Jerry Waldie, Calif. Senate Rules Com. Appointee	Don Miner, Douglas County
Jim Galloway, Washoe County	
Vacant, Calif. Assembly Spkr. Appointee	

TAHOE REGIONAL PLANNING AGENCY
GOVERNING BOARD

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

November 20, 2002

REGULAR MEETING MINUTES

I. ROLL CALL AND DETERMINATION OF QUORUM

Chairperson Dean Heller called the November 20, 2002, Tahoe Regional Planning Agency ("TRPA") Governing Board meeting to order at 9:35 a.m.

II. PLEDGE OF ALLEGIANCE TO THE FLAG

Chairperson Heller led the Board in the Pledge of Allegiance to the Flag.

Members Present: Ms. Moss, Mr. Waldie, Mr. DeLanoy, Mr. Montgomery, Mr. Heller, Mr. Cole, Mr. Plank, Mr. Slaven, Mr. Perock, Mr. Quinn, Mr. Galloway, Mr. Swobe, Mr. Sevison

Members Absent: California Assembly Speaker Appointee, Presidential Appointee Vacant

III. PUBLIC INTEREST COMMENTS

Mr. Wayne Ford, representing several property owners, as well as himself, stated that on December 12, 2001, they filed a complaint for unauthorized creating of coverage, and unauthorized use of a vacant lot in his neighborhood; specifically, the parking of a boat for storage purposes. It took eight months for the Compliance Division to issue a Cease and Desist Order for that property owner. It has been four months since that order was issued, and there has been no compliance. His concern is that in talking to Mr. Zabaglo about this issue of violation of TRPA's Code, that he said after sending certified letters to the owner, the owner would not receive them, thus he did not know how to serve the owner. We are still sitting with the same problem. His neighbors and he have done all they can to make the owner aware of this issue. He basically does not want to do anything about it. We have also noticed that traffic is using this access to the property to get to other properties behind their home so that they can store snowmobiles, and get snowmobiles out of storage for the winter; thus, creating even more use. We have made our properties compliant. We tried to live under the rules of the 208 Water Quality Plan, and the message is everyone in that area is getting frustrated about this. His concern is one of an additional issue, and that is the fact that TRPA is spending so much effort and time on the scenic regulations, and these kinds of things are basically getting ignored because staff at that level, Dennis and others, do not have the resources to get their jobs done. One year will have passed since this complaint was filed, and nothing has been done about it. He encouraged the Board to look into these kinds of things, and make sure that, in a timelier manner, people are noticed when they are in violation and ensure that a correction takes place.

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Chairperson asked Executive Director Juan Palma if he was aware of this situation, and Mr. Palma replied no. Mr. Palma stated he would look into this issue and report back to the Board next month.

Mr. James Nakada, a resident of Incline Village, voiced his concern for the entire Basin in terms of scenic. He asked for a review discussion or research six years ago to determine the extent of pollution that comes over the mountain because he wondered at that time how do they prove that it was more important that we reduce the amount of automobile traffic as compared to the pollution overall. He has yet to hear one word from anybody regarding the research that was done to determine the extent of pollution that comes over from the other side of the mountain. He hopes that will be done. He noticed that part of the agenda was to get the fees for taxes here, and part of it is because of the additional pollution that they provide. He hoped that sometime in the future TRPA would come up with some good research that shows the extent to which pollution from the California side of the mountain affects the Tahoe Basin. He has looked from the top of the areas that have a view of the Lake, and he noticed that none of these pictures really shows the problem. We have seen that there are so many boats that are along the shore, that if you look at it, it has as much to do with affecting the scenic beauty of the corridor. Yet, he does not see anything in the regulations that really addresses the issue of what you would consider pollution of the Lake with all the boats that are along the shore; especially, in the evening. With the many energy problems that we have, Mr. Nakada believed that in the future, we are going to have other alternative sources of energy, among them the glass that will be used to provide energy saving and the propellers or windmills that will also be helpful. He didn't think that the TRPA was really doing much in conjunction with energy savings. He hoped that these issues would be considered along with the scenic corridor regulations.

Mr. Don Epstein, from Incline Village, stated that when you talk about scenic corridor, and he goes out on the Lake and sees five or six thousand boats on buoys, and has heard for the past few years that there are about 1800 permitted buoys, and the rest of them are illegal, this also affects the scenic corridor. He wondered what was being done, if anything, for getting some of these illegal buoys off of the Lake.

Chairperson Heller asked Mr. Palma to address this issue during Executive Director's comments.

IV. APPROVAL OF AGENDA

MOTION by Ms. Moss, to recommend approval of the agenda, with the removal of Agenda Item No. X.A., Reconsideration of the Scenic Ordinance.

Deputy Director Jerry Wells suggested that since there were many people in the audience that may be here for the scenic issue, move Agenda Item No. X.A. after the Legal Division and Executive Director's report.

Chairperson Heller appreciated Ms. Moss' motion, but didn't think it was appropriate because the item would be taken up as an action item this morning.

MOTION by Mr. Quinn to recommend approval of the agenda as amended.

Mr. Galloway protested and believed that Ms. Moss made a proper motion. Chairperson Heller stated that Agenda Item No. X.A. would be considered following the Executive Director's report.

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Agency Counsel John Marshall believed that it was an appropriate motion to take an item off of the agenda. If Ms. Moss' motion passes, the item would not be on the agenda. If the Board does not want to reconsider, then they should vote "no" on Ms. Moss' motion. If the Board does want to reconsider, then they should vote "yes" on Ms. Moss' motion.

MOTION by Ms. Moss to remove Agenda Item No. X.A. from the agenda.

Mr. Marshall clarified for the Board that a vote on this issue is a vote as to whether they want to reconsider the scenic package today. If you vote "yes", that means you do not want to hear this item; if you vote "no", that means you want the opportunity to decide later in the agenda whether you want to hear this item today, and allow public comment as well.

The motion failed on the following votes:

Ayes: Mr. Cole, Ms. Moss, Mr. Galloway, Mr. Plank, Mr. Montgomery, Mr. Sevison
Nays: Mr. Perock, Mr. Quinn, Mr. Waldie, Mr. DeLanoy, Mr. Slaven, Mr. Swobe, Mr. Heller
Abstentions: None
Absent: None

MOTION by Mr. Perock to approve the agenda as presented in the packet, with the adjustment of moving Agenda Item No. X.A. forward. The motion carried with Ms. Moss voting no.

V. APPROVAL OF MINUTES

Mr. Quinn commented that the "Ayes" votes on page 13 should be "Nays" votes.

MOTION by Mr. Sevison to recommend approval of the October 23, 2002, Governing Board minutes, as amended. The motion carried unanimously.

VI. CONSENT CALENDAR

Mr. Waldie stated the Legal Committee recommended approval on Consent Calendar Item No. 2. He requested removal of Consent Calendar Item Nos. 4 and 6.

MOTION by Mr. Slaven to approve Consent Calendar Item Nos. 1, 2, 3, 5, 7 and 8. The motion carried unanimously.

(The following are items approved on the consent calendar

1. October 2002 Financial Statement
2. Resolution of Enforcement Action, Chad and Barbara Keck, 5750 McKinney Drive, Placer County, Assessor's Parcel Number 097-192-001
3. Release of \$726,000 in Air Quality, Water Quality, and Stream Environment Zone Mitigation Funds to the City of South Lake Tahoe
5. Approval of Cycle 21 California 5311 Program of Projects and Adoption of Supporting Resolution (approved by Resolution RTPA 2002-3)

Land Capability Challenges

7. Incline Village General Improvement District Land Capability Challenge, 1220 Sweetwater Road, Incline Village, Nevada, Washoe County, Assessor's Parcel Number 130-010-008

TRPA REGULAR MEETING MINUTES NOVEMBER 20, 2002

8. VI Investments Land Capability Challenge, Highway 28, Lake Forest, California, Placer County, Assessor's Parcel Number 093-480-009)

Mr. Waldie stated that he did not understand in the description of Consent Calendar Item No. 4, where it indicates rock cribs was a single pier; is that a pier built on cribs of rock? Associate Planner Brenda Hunt responded yes. Mr. Waldie asked if it was one crib or were there separate cribs for the piers that sustained the platform of the pier. Ms. Hunt responded separate cribs. How many? Ms. Hunt responded four.

Mr. Quinn commented that he has a hard time each month voting for new piers when we know we are out of compliance; we know there is a problem; and we know that the problem is getting worse, and every month we aggravate the situation and make it more and more difficult to come into compliance. He believed that we are digging ourselves deeper in a hole, and making it more difficult for people who live on the shore to enjoy the Lake. Mr. Quinn believed it is wrong to continuing doing this until we get a handle on this problem.

Chairperson Heller commented that we don't have Ordinances or regulations for the shorezone. We have a Shorezone Committee that has been meeting for last seven to eight years, and we have not put the necessary regulations into place to know exactly why we are approving all of these piers, and it is causing problems because we are not taking the necessary actions to have the necessary regulations in place. We are doing things haphazardly, and it is causing some problems with the Board. Not having a Shorezone Policy in place today is what's causing the concern over these piers.

Mr. Wells stated that we have had shorezone Ordinances in place since 1972. The 1987 Plan had shorezone Ordinances in it, and those are the Ordinances we are using to bring projects before the Board. There are some anticipated changes in the EIS to revise some of those policies, but we do have Ordinances at this time. Staff has brought pier applications like this previously to the Board and they have been approved.

MOTION by Mr. Galloway to recommend approval of the findings, and a Finding of No Significant Environmental Effect, with the inclusion of the in perpetuity restrictions as a condition of approval.

The motion carried on the following votes:

Ayes: Mr. Cole, Ms. Moss, Mr. Galloway, Mr. Plank, Mr. Montgomery, Mr. Sevison
Mr. Perock, Mr. DeLanoy, Mr. Slaven, Mr. Swobe, Mr. Heller
Nayes: Mr. Quinn, Mr. Waldie
Abstentions: None
Absent: None

MOTION by Mr. Galloway to approve Consent Calendar Item No. 4. The motion carried with Messrs. Quinn and Waldie voting no.

Mr. Waldie commented that in reference to Consent Calendar Item No. 6, he could not understand where the littoral parcels were located; is Parcel 13, which is the Placer County title, between the shorezone and Parcels 17 and 18? Associate Planner Melissa Joyce responded yes; it was not a true parcel. It was given a number by the Placer County Assessor's for administrative purposes, but it was shown on the parcel map between the high water and low

TRPA REGULAR MEETING MINUTES NOVEMBER 20, 2002

waterline. Mr. Waldie asked who owned that now, and Ms. Joyce stated that as far as TRPA is concerned, the subject parcels are littoral parcels, and own that property up to high water.

Mr. Marshall responded that as he understood it, there is no separate parcel; it was incorrectly identified as a separate parcel, so the littoral owner or project proponent owns down to high water.

Mr. Waldie asked who owned the littoral parcel and how can you, without having the title cleared; consider the upland properties that are not littoral to be littoral.

Mr. Randy Faccinto, representing the property owners, stated that he researched the title for the owners, and based on a California Statute, 800 series of the Civil Code, it states, "if you are the owner to the high waterline, you are the owner to the low waterline, unless there is some other grant or intervening right of record." In reliance on that statute, Mr. Faccinto has on a number of occasions for other lakefront owners received the agreement of at least Placer County Counsel on various items in Placer County that that is the correct legal analysis of title.

Mr. Waldie asked that prior to this application coming up, was any use being put to the land that was in the title of Placer County. Mr. Faccinto responded not that he was aware of. The public uses between high and low waterline under the public grant. The public trust applies between high and low waterline. But the ownership, and therefore the title of littoral owner, does go with the owner who has a grant to the high waterline unless there is some other document that changes.

Mr. Waldie questioned if we were to do a title search today, would parcel 13 no longer be on the map, and Mr. Faccinto stated that this is the County Assessor's action to indicate a separate parcel number between high and low water because the deed going back to when these lots were created – the original deeds were by lot and block, and if you look at the subdivision map referenced in the deed, it defines it as the lot and you look on the map and the lot has a defined line that is either at or very close to the high waterline. However, the Statute adds to that title – the title to the low waterline – and he believed that what the Placer County Assessor was acknowledging; they were looking at the deed as just the lot itself, and here is this area between high and low water, and they deeded it proper to assign it some other parcel number. But that doesn't create it as a legal parcel. It certainly is not a legal parcel existing under the California Subdivision Map Act. It could be owned by anybody else right now. Mr. Waldie asked to whom it now belongs, and Mr. Faccinto responded to the land owners immediately landward of that area; extension of their side boundaries out to the low waterline. If they were to convey that property, Mr. Waldie questioned if that would be the description of the deed, and Mr. Faccinto said yes. What he has had to do for other parties where they wanted to have a recorded document that stated that, is that we do a quiet title action, which County Counsel has stipulated to in a couple cases, that states a description of the area between high and low waterline and adds it to title. In this case, this hasn't been done; it could be, but it hasn't been done because it is expensive.

Mr. Waldie didn't know why title wasn't quieted before Mr. Faccinto became before the Board and alleged that these two parcels are littoral and that a deed restriction on these two parcels would accomplish the desire of TRPA to prevent the proliferation of piers. Mr. Faccinto commented that the quiet judgment itself is not required to create the title between high and low waterline. That is created by statute. The quiet title process is just to come up with a piece of paper that you can record to state that. But it doesn't change the fact that you do own to low waterline.

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Chairperson Heller opened the meeting up for a public hearing. Since no one else wished to comment, Chairperson Heller closed the public hearing.

MOTION by Mr. Sevison to recommend approval of the findings, and a finding of No Significant Environmental Effect.

The motion failed on the following votes:

Ayes: Ms. Moss, Mr. Galloway, Mr. Plank, Mr. Slaven, Mr. DeLanoy, Mr. Montgomery,
Mr. Perock, Mr. Sevison, Mr. Cole, Mr. Heller
Nayes: Mr. Quinn, Mr. Waldie, Mr. Swobe
Abstentions: None
Absent: None

(Break taken at 10:35 a.m.)

(Reconvened at 10:55 a.m.)

VII. REPORTS

A. Executive Director Status Report

Mr. Palma introduced Mr. Brent Richmond who made a presentation on buoy fields. Mr. Mike Kenney, who is in charge of the Air Resources Board in California, met with several people last week and they are doing a study on the pollution that is coming into the Basin. Mr. Wells stated that we have been able to start to decrease the amount of backlog projects and maintain the 120-day projects at a static level. The level of applications that we are receiving every month is increasing. We had 158 applications submitted in October; that is the most we had the entire summer. We are going to consultants for help since we don't have the resources to increase staff. Mr. Wells stated that we are going to be looking at increasing delegation to local governments, as well as working overtime, to reduce the project workload. In December, we plan to bring some filing fee increases for those that we did increase earlier in the summer.

B. Legal Division

Mr. Marshall stated that in the *Gonzales* enforcement case, we have completed our briefing on motion for preliminary injunction to remove the breakwater. The landowner refuses. We hope to get an order on that shortly. In addition, we have discovered a new pier that was built without a permit. We are attempting to negotiate with the landowner to get that out; if not, we will proceed to court to remove that illegal structure. In the *College Park* case, we have a motion for summary judgment on the notice issue; whether or not we improperly noticed the Board action because we didn't give specific notice to each individual mobile home park tenant; we gave notice to their attorney. We have been sued, but not served, with a lawsuit by the Committee for the Reasonable Regulation of Lake Tahoe regarding scenic issues. It alleges that the Board lacks the authority to regulate scenic issues in the first place; that the threshold that was adopted in 1982 was irrational; that the threshold report adopted in July was without support; and, a preempt strike on the regulations that were proposed at that time saying that any regulations that might be adopted in response to the threshold report are also invalid for a number of reasons.

X. ADMINISTRATIVE MATTERS

- A. Reconsideration of the Governing Board's Decision to Defer Action on the Scenic Ordinances Until the January 2003 Governing Board Meeting and Require the Scenic Ordinances To be Returned to the Advisory Planning Commission for Reconsideration (This Item must be acted upon prior to Consideration of Agenda Item VIII.B.)

Chairperson Heller apologized to the Governing Board for not attending the October meeting. He believed we could have avoided this exercise had he been available that day. He was under the understanding that this particular issue was going to be postponed a month; he was comfortable with that, having followed up on the negotiations currently. In fact, he had members of Group A in his office about a week prior and they had said that the negotiations were going well. They were very comfortable with what had been negotiated. They told this to him and his staff that they had not had an opportunity to read through the complete document, but they were close to a good compromise. Having told him that, he felt comfortable to postpone it another month. Juan felt it was necessary; Group A felt it was necessary, and as much public input as possible was positive. Unfortunately, this same group came in front of the October Board meeting and disagreed with the compromise at the time. He was somewhat taken back on that. In fact, the next time they met, they had 71 issues on the agreed to compromise. Mr. Heller was somewhat concerned that perhaps what discussion occurred in his office, in fact, was unfactual.

It became even more apparent when the lawsuit was filed; not served; but filed, that perhaps the negotiations then had gone awry. He thought it was pretty obvious in a quote, just a couple of days in the Reno Gazette Journal, when one of the members of the Committee for Reasonable Regulations was asked on a scale from 1 to 10, how opposed is each of the scenic Ordinance, and the answer was 3,000. I guarantee that going from 3,000 to 5 is going to be a Herculean task, at best, to bring the two sides together. Even reinforced more this week in one of the local newspapers here was an ad that was almost identical to an ad that they had put in the paper in August. So, after all of these negotiations we had -- we had the Oversight Committee from the Nevada Legislature come in and say we need more meetings, and we had nine more meetings. Mr. Heller doesn't know what the magic number for the amount of meetings that we might need to discuss this with the general public, but there have been at least nine. Maybe he is misunderstanding that that magic number is 10, and then everybody will be happy; maybe it is 11. Nine for some people doesn't seem to be enough.

After all of the negotiations, and discussions, and all the public hearings and workshops, we are still on a scale from 1 to 10, opposed by some people by 3,000. Mr. Heller didn't believe that between now and January that scale is going to change. He was at the Advisory Planning Commission ("APC") meeting last week, and Mr. Palma did a presentation to explain to them what we were going to do and what actions we wanted to take today. It was his sense -- and he has talked to many members of the APC -- and the consensus seems to be that they have done their job. Clearly, they expect the Governing Board to do their job. Mr. Heller agrees with the APC, and believes it is time to take this issue up; discuss it; and, make some decisions. He urged the Board to reconsider the actions and bring forward the proposal for the scenic Ordinance. We have been working on this for 18 months; there is nothing that is going to change between now and January. He hoped that the Board supported him on this particular move.

Chairperson Heller opened the meeting up for a public hearing.