TAHOE REGIONAL PLANNING AGENCY

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

MEMORANDUM

August 16, 2006

To: TRPA Governing Board

From: TRPA Staff

Subject: Acceptance of July 2006 Monthly Financial Statement

The Agency's July, 2006 Monthly Financial Statement was not available at the time the Governing Board packet was mailed. Therefore, it will be provided at the August 23, 2006 Governing Board Meeting.

Any questions regarding this matter should be directed to the Kevin Prior (775) 588-4547 ext. 246 or kprior@trpa.org.

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MEMORANDUM

August 14, 2006

To: TRPA Governing Board

From: TRPA Staff

Subject: Resolution of Enforcement Action, Unauthorized Grading during the Seasonal Grading Prohibition, Kurt Dunshee, 205 Nadine Court, Washoe County, Nevada, Assessor's Parcel Number (APN) 125-171-20

Responsible Parties: Kurt Dunshee, property owner.

Location: 205 Nadine Court, Washoe County, Nevada, having Assessor's Parcel Number 125-171-20 ("Dunshee Property").

Recommendation: Staff recommends that the Governing Board accept the proposed Settlement Agreement (attached as Exhibit A) in which Dunshee agrees to pay TRPA $10,000.

Agency Staff: Steve Sweet, Senior Environmental Specialist, and Jordan C. Kahn, Assistant Counsel

Alleged Violation Description: On November 1, 2005, TRPA staff inspected the Dunshee Property. TRPA staff at that time discovered an occurrence of unauthorized grading of more than 3 cubic yards that had taken place during the seasonal grading moratorium. So that site conditions could be fully observed, on June 6, 2006, after the snow melt, TRPA staff met Dunshee on the Dunshee Property. At that time, staff observed that earthen material had been removed from underneath the home and placed in the backyard area. Staff estimated the amount of graded material to be approximately 20 cubic yards. These actions were taken without TRPA review or approval in violation of TRPA regulations. Dunshee has taken full responsibility for the unauthorized activities.

Proposed Settlement: TRPA staff has agreed to a settlement with Dunshee and recommends that the Governing Board approve the following settlement terms:

1. Dunshee shall pay TRPA $10,000 within 30 days of Governing Board approval.

2. If Dunshee fails to pay the $10,000 as required by this Settlement Agreement, Dunshee confesses to judgment against him and in favor of TRPA in the amount of $20,000 (payable immediately) and an injunction to enforce the terms of this Settlement Agreement. Dunshee also agrees to pay all reasonable attorneys fees and costs associated with collecting the increased settlement of $20,000.

Notwithstanding the foregoing, the confession of judgment shall not be filed unless TRPA has provided Dunshee with written notice of default, including the requirement that such default must be cured within ten days of the date of written notice. If the default has not been cured by that time, TRPA may file the confession of judgment.

3. Dunshee shall submit to TRPA a proposed restoration plan for the Dunshee Property ("Plan") within 30 days of Governing Board approval. Dunshee or any successors-in-interest shall restore the Dunshee Property pursuant to the TRPA-approved Plan.

4. TRPA shall release Dunshee of all claims arising out of the actions described in this Settlement Agreement.

Following is a statement of facts relating to the determination of violation:

On October 27, 2005, and November 1, 2005, TRPA staff received complaints of unauthorized grading on the Dunshee property from Washoe County and anonymous concerned citizens. Washoe County representatives contacted Dunshee himself to inform him of the TRPA grading rules. Dunshee immediately contacted TRPA staff to discuss the issue. During that conversation, TRPA staff directed Dunshee to cease and desist all grading on his property. To fully inspect the property, staff had to wait until the snow receded.

On June 6, 2006, TRPA staff met Dunshee on the Dunshee Property, and observed unauthorized grading of approximately 20 cubic yards. Earthen material had been removed from underneath the home and placed in the backyard area. These actions were taken without TRPA review or approval in violation of TRPA regulations. Dunshee explained that he was completely unaware of TRPA's grading regulations, and he has taken full responsibility for the unauthorized activities.

The above-described activities violate TRPA Code of Ordinances ("Code") sections 4.2.A(4) and 64.2A. Under Code Section 4.2.A(4) (Exempt Activities), excavation, filling or backfilling of no more than three cubic yards of soil does not require TRPA permit approval, provided the activity is completed within a 48 hour period and the excavation site is stabilized to prevent erosion. Here, substantially more than 3 cubic yards of earthen material had been graded without TRPA review or permit authorization in violation of Code section 4.2.A(4).

Furthermore, it is a violation of Code Section 64.2.A (Grading Season) to excavate, fill, clear vegetation or disturb the soil between October 15 and May 1 of each year, unless approval has been granted by TRPA. Here, by Dunshee's admission, the unauthorized grading had taken place after the beginning of the seasonal grading prohibition.

Violation Resolution: TRPA staff recommends that the TRPA Board accept the proposed Settlement Agreement, under which Dunshee will pay $10,000 for the unauthorized grading and the fill in the backyard area will be removed pursuant to a TRPA approved restoration plan. The proposed amount represents a fair and consistent resolution of the matter. This particular violation has some similarity to the *Sorenstam* violation resolved in June 2005 involving approximately 24 cubic yards of unauthorized soil movement after the end of the grading season. The Legal Committee and Governing Board approved a $7,500 fine in that case. In this case, an increased fine of $10,000 is appropriate because the violation also involves unauthorized fill. Here, the

soil was not removed from the site, but used illegally to terrace an area to create more usable backyard space, according to Dunshee's explanation.

Documentary Evidence supporting the determination of a violation includes photographs of the site. These documents are in TRPA's possession and may be reviewed at the TRPA Offices.

The Tahoe Regional Planning Compact Article VI (k) Compliance provides for enforcement and substantial penalties for violations of TRPA ordinances or regulations.

> *Any person who violates any ordinance or regulation of the Agency is subject to a civil penalty not to exceed $5,000 and an additional civil penalty not to exceed $5,000 per day, for each day on which a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.*

Required Actions: Staff recommends that the Governing Board resolve the alleged violations by making a motion to accept the proposed Settlement Agreement based on this staff summary and evidence in the record.

If there are any questions regarding this agenda item, please contact Senior Environmental Specialist, Steve Sweet at (775) 588-4547, Extension 250, or via e-mail at: ssweet@trpa.org.

EXHIBIT A

TAHOE REGIONAL PLANNING AGENCY

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SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Kurt Dunshee (collectively "Dunshee") and the Tahoe Regional Planning Agency ("TRPA").

This Settlement Agreement represents full and complete compromise and settlement of the certain violations alleged by TRPA, as described below:

> On November 1, 2005, TRPA staff inspected the real property owned by Dunshee located at 205 Nadine Court, Washoe County, Incline Village, Nevada, having Assessor's Parcel Number 125-171-20 ("Dunshee Property"). TRPA staff at that time observed unauthorized grading of more than 3 cubic yards during the seasonal grading moratorium. On June 6, 2006, TRPA staff met Dunshee on the Dunshee Property, and observed unauthorized grading of approximately 20 cubic yards. Earthen material had been removed from underneath the home and placed in the backyard area. These actions were taken without TRPA review or approval in violation of TRPA regulations. Dunshee has taken full responsibility for the unauthorized activities.

This Settlement Agreement is conditioned upon approval by the TRPA Governing Board. Execution of the agreement prior to Board action shall not be binding on either party in the event that the Board does not authorize settlement on the terms set forth below:

In order to fully resolve the matter, the parties hereby agree as follows:

1. Dunshee shall pay TRPA $10,000 within 30 days of Governing Board approval.

2. If Dunshee fails to pay the $10,000 as required by this Settlement Agreement, Dunshee confesses to judgment against him and in favor of TRPA in the amount of $20,000 (payable immediately) and an injunction to enforce the terms of this Settlement Agreement. Dunshee also agrees to pay all reasonable attorneys fees and costs associated with collecting the increased settlement of $20,000. Notwithstanding the foregoing, the confession of judgment shall not be filed unless TRPA has provided Dunshee with written notice of default, including the requirement that such default must be cured within ten days of the date of written notice. If the default has not been cured by that time, TRPA may file the confession of judgment.

3. Dunshee shall submit to TRPA a proposed restoration plan for the Dunshee Property ("Plan") within 30 days of Governing Board approval. Dunshee or any successors-in-interest shall restore the Dunshee Property pursuant to the TRPA-approved Plan.

4. TRPA shall release Dunshee of all claims arising out of the actions described in this Settlement Agreement.

Dunshee has read this Settlement Agreement and understands all of its terms. Dunshee has executed this Settlement Agreement voluntarily and with full knowledge of its significance. Dunshee has been offered the opportunity to review the terms of this Settlement Agreement with an attorney prior to signing.

Dunshee acknowledges TRPA's contention that the above-described activities constitute a violation of TRPA regulations. Dunshee agrees to comply with all applicable TRPA requirements in the future.

Signed:

_____	_____
Kurt Dunshee	Date
_____	_____
John Singlaub, Executive Director Tahoe Regional Planning Agency	Date

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MEMORANDUM

August 23, 2006

To: TRPA Governing Board and Operations Committee

From: TRPA Staff

Subject: Approval of Use of Abandoned Cash Securities

Proposed Action: Governing Board approval to use $6,350.00 in abandoned cash securities to assist low-income families in installing BMPs on their property. The Erosion Control Team of TRPA will develop administer this program, perhaps in coordination with the local Resource Conservation Districts which assist in the implementation of BMPs on private property.

Staff Recommendation: Staff recommends that the Governing Board approve the proposed use of the abandoned securities.

Background: On July 27, 1994 the Governing Board amended the Code of Ordinances, adding Subsection 8.8.D(2). This subsection provided a process for determining abandonment of cash project securities.

> *8.8.D Forfeiture of Security: Securities may be forfeited in either of the following ways:*
>
> *(1) Non-compliance: TRPA shall monitor compliance with secured conditions of approval pursuant to Section 8.2. A security, or portion thereof, shall be forfeited if TRPA finds that a secured condition of approval has not been timely complied with, and that the security, or a portion thereof, is necessary to achieve compliance. After notice and an opportunity to be heard is given to the permittee pursuant to the Rules of Procedure, TRPA may use the security to accomplish the condition of approval which was found to be not in compliance. Any portion of the security not used by TRPA shall remain posted until release pursuant to Subsection 8.8.E.*

(2) *Abandonment of Cash Securities: Securities posted in cash may be forfeited after TRPA has mailed a check for the security amount, or sent the appropriate IRS form to allow the release of a check, to the person who posted the cash security (of a completed project), and received one of the following responses: a) the check or IRS form was returned with no forwarding address, b) the person who posted the cash security did not respond to the request to complete and return the IRS form necessary to release the check; c) the person who posted the cash security did not cash the check within one year of receipt, or; d) the person who posted the cash security refused to claim the security. Prior to forfeiture of a cash security, TRPA shall publish a notice of forfeiture, which notice shall name the person who posted the security. The notice shall be published one time in a newspaper of general circulation in the Tahoe Region. If the person who posted the cash security does not claim the security within one year after the publication of the notice, the cash security shall be deemed abandoned and forfeited to a fund designated by the Governing Board.*

Discussion: TRPA staff has utilized the direction in the Code for locating owners of securities and have used other search options available through banks and the Internet to return cash securities to their owners. The vast majority of owners are located and their securities have been returned. These cash securities represent four separate projects that have been completed in accordance with their approvals. The forfeiture process does not apply to non-cash (bonds, certificates of deposit, hold on accounts and letters of credit) project securities.

Newspaper notices were posted in the Tahoe World on June 23, 2005, Tahoe Tribune on June 22, 2005, and North Lake Tahoe Bonanza on June 22, 2005. This Code section allows TRPA to deem project securities forfeited for those securities posted in cash form when a project has been completed in accordance to its approval, and the owner of the security cannot be located. In most cases this is due to ownership changes or dissolution of a business entity.

After attempting to locate the owners of many securities and being successful in some cases, staff instituted the process for forfeiture. Subsection 8.8.D(2) allows TRPA to forfeit project securities posted in cash when a project has been completed in accordance with its approval, and the owner of the security cannot be located. In most cases this is due to ownership changes or dissolution of a business entity.

The projects for which the securities were posted have been inspected and determined to be in conformance with their approval. The original owners of the securities could not be located and the securities have not been claimed during the time period set forth in Section 8.8.D(2) of the TRPA Code of Ordinances

In June 2006, $6,350.00 in cash securities had met the findings required by TRPA Code Section 8.8.D(2) and have been determined to be abandoned. The specific securities are:

NAME	DATE POSTED	AMOUNT	APN
Kathy Clark	06-18-1996	$2,400.00	84-121-08
Ray & Margo Berner	09-30-1992	$ 500.00	01-221-04
James Kirst	12-16-1983	$3,000.00	05-241-08
James Ahrens	04-25-1988	$ 450.00	83-109-06

Over the past few years, these abandoned securities have been used to fund the TRPA Environmental Scholarship program in addition to other positive public outreach efforts. While deliberating on the use of the abandoned securities, staff suggested the funds be used to assist low-income families implement their BMPs. Staff believes this to be a good use of the funds in the public interest, by facilitating the implementation of BMPs.

If there any questions regarding this agenda item, please contact Lyn Barnett at (775)588-4547, ext. 239 or by email lbarnett@trpa.org.

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August 14, 2006

To: TRPA Governing Board

From: John Singlaub, Executive Director

Prepared by: Lee Kidwell, Planning Technician
Environmental Review Services Branch

Subject: TRPA Application Status Report
July 1, 2006 through July 31, 2006

Projects by Work Element

	IN	OUT
1000 Residential	22	30
2000 Tourist	3	3
3000 Commercial	3	4
4000 Public Service	3	8
5000 Recreation	4	2
6000 Resource Management	1	0
7000 Shorezone	0	2
8000 Administrative Projects	18	27
9000 Redevelopment	2	1
SSA Scenic Shoreland Assessments	5	0
SA Site Assessments	21	8
RGN Plan Amendments	0	1
LCV-LCC-IPES-SOILS HYDRO	22	0
Addendum to EIS		1
TOTAL	**104**	**115**

TRPA Workload as of July, 2006	406
Permits acknowledged in July, 2006	35
Tree Permits In	93
Tree Permits Approved	55

lk

PROJECT REVIEW APPLICATIONS

The following projects exceeded 120 days in review on July 31, and remain unresolved on the date of this report. Staff is working to complete the review of these applications as expeditiously as possible.

APN	Applicant	Projects by Work Element	Days Complete
1418-03-301-008	Rockwell 1997 Trust	Recreation	122[1]
117-010-12	Schneider	Residential	122[2]
093-083-13	Tuncer	Residential	123[3]
1318-22-002-028	Cohen	Residential	125[4]
027-351-01	Sage	Residential	129[5]
126-580-20	Gage	Residential	130[5]
1318-23-401-035	Edgewood Village	Commercial	133[5]
017-041-17 (0371)	Green	Shorezone	143[1]
126-010-60	Diamond Peak (IVGID)	Public Service	143[2]
1318-10-000-001	US Forest Service	Scenic	144[6]
017-041-17 (0362)	Green	Shorezone	145[7]
1318-23-311-016	Villalobos	Residential	165[8]
1318-23-311-018	Villalobos	Residential	165[8]
1318-23-311-015	Villalobos	Residential	165[8]
1318-23-311-017	Villalobos	Residential	171[8]
560-116-05	Kent Grusendorf/USFS	Public Service	215[9]
093-083-41	Miller	Shorezone	1185[10]

Notes

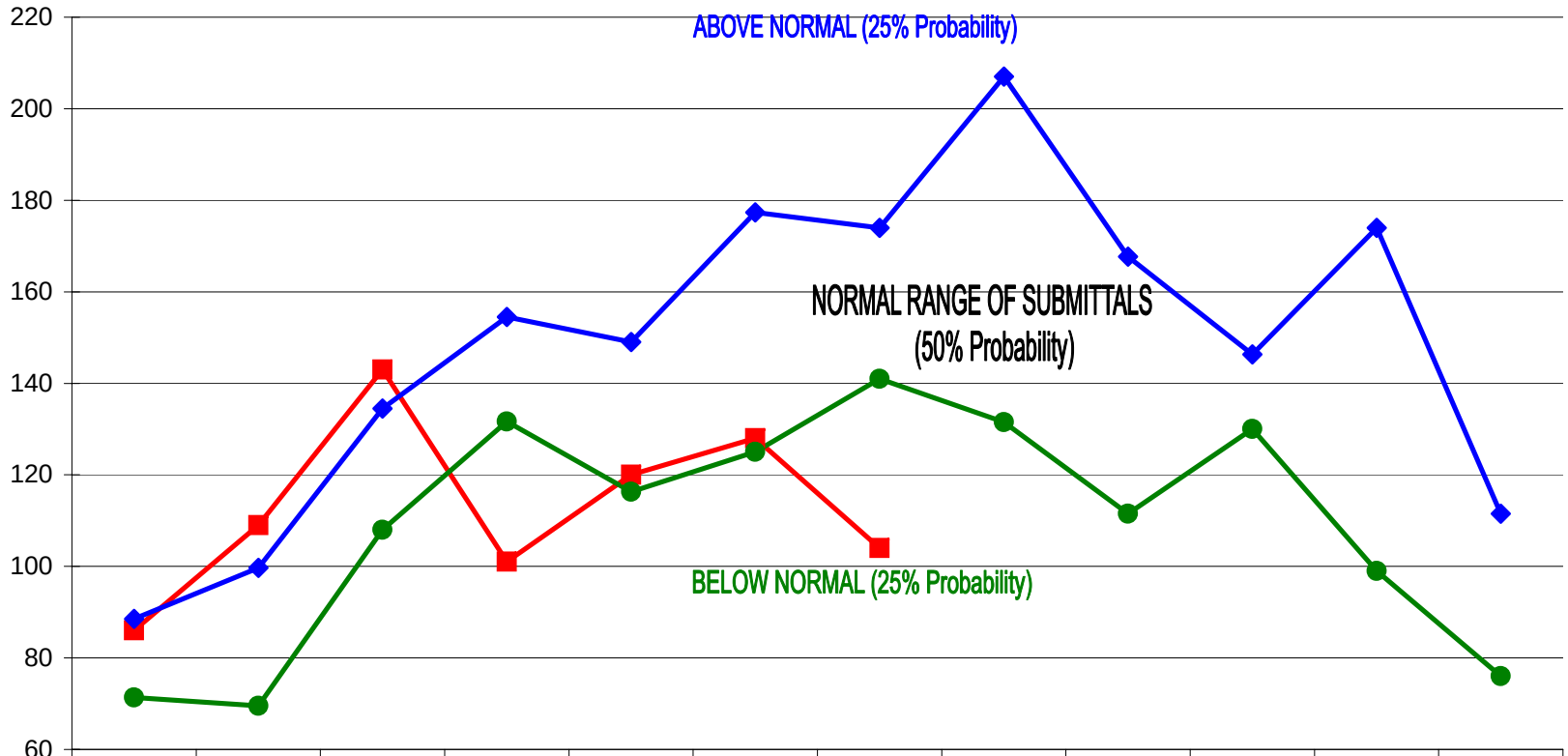
1. Final Review Scheduled for August, Staff Level
2. Approved August 3, 2006
3. Planner anticipates action in August.
4. Approved August 14, 2006
5. Planner anticipates action in September
6. With scenic planning sub-contractor
7. Scheduled for Hearings Officer August, 17
8. Planner is waiting for additional information with regard to parking issues
9. Complex project will need to go to Hearing Officer September for special findings
10. APN 093-083-41 (Miller) is “on Hold” at the directions of the Governing Board. For this reason, this project is not counted in the list of projects exceeding 120 days

MONTHLY HIGHLIGHTS

- Two projects were presented to the Governing Board during July, 2006
- Three projects were presented to the Hearing Officer during July, 2006

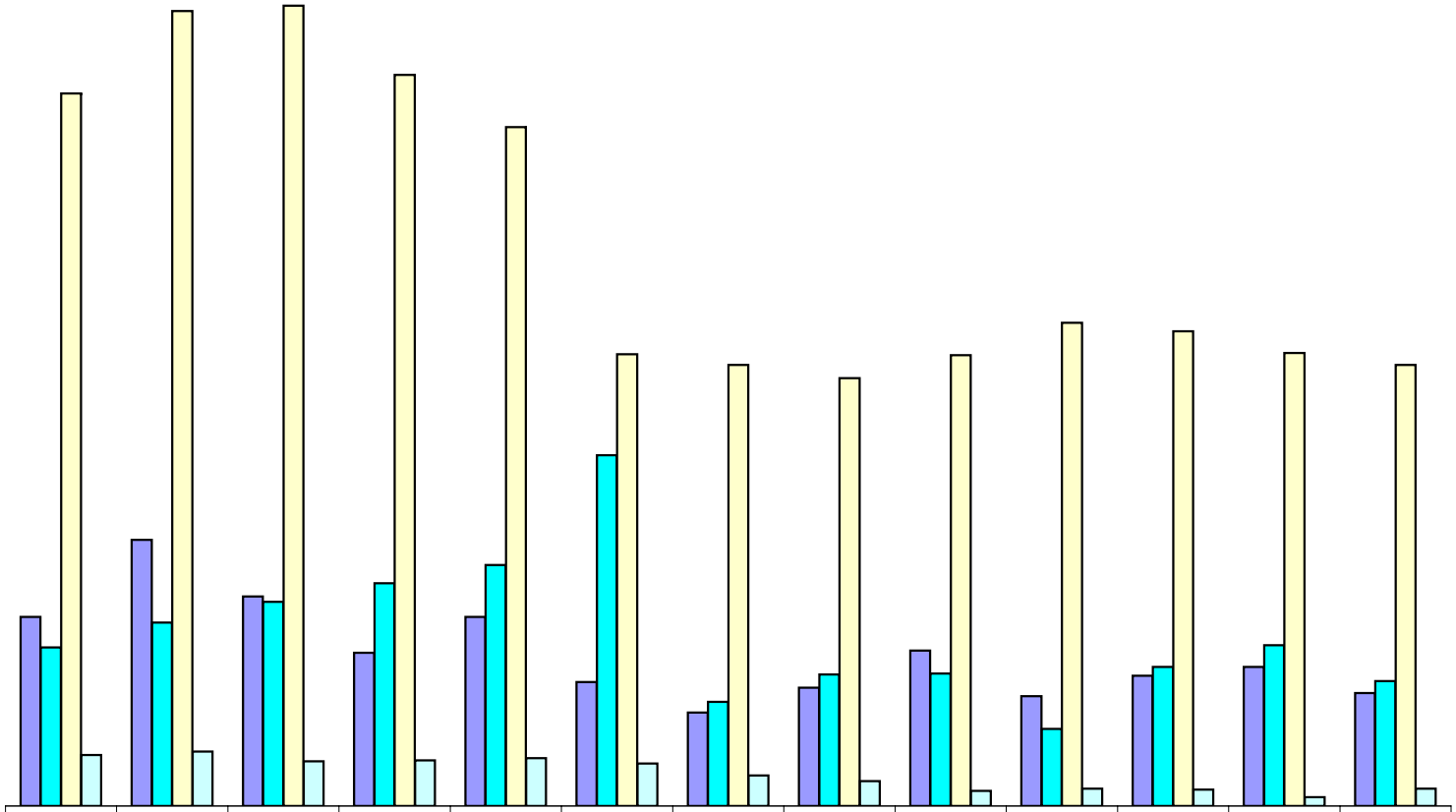
- One hundred and fifteen projects were approved during July, once again reducing the Workload. The Workload for July, 2006 is 406 compared to 656 for July 2005
- At the request of Stewart Yont we have included a chart (Please see Table 6.) clearly illustrating the difference between figures before and after the Fee Schedule change in March, 2005. This is a one occasion chart and the statistics are from the "Projects over 120 Day Report since Completion" for the period July, 2003 to July 2006

Table 1. 2006 TRPA Application Trend
Predicted and Actual Application Submittals Based on
Mean Deviations from a Five-Year Mean



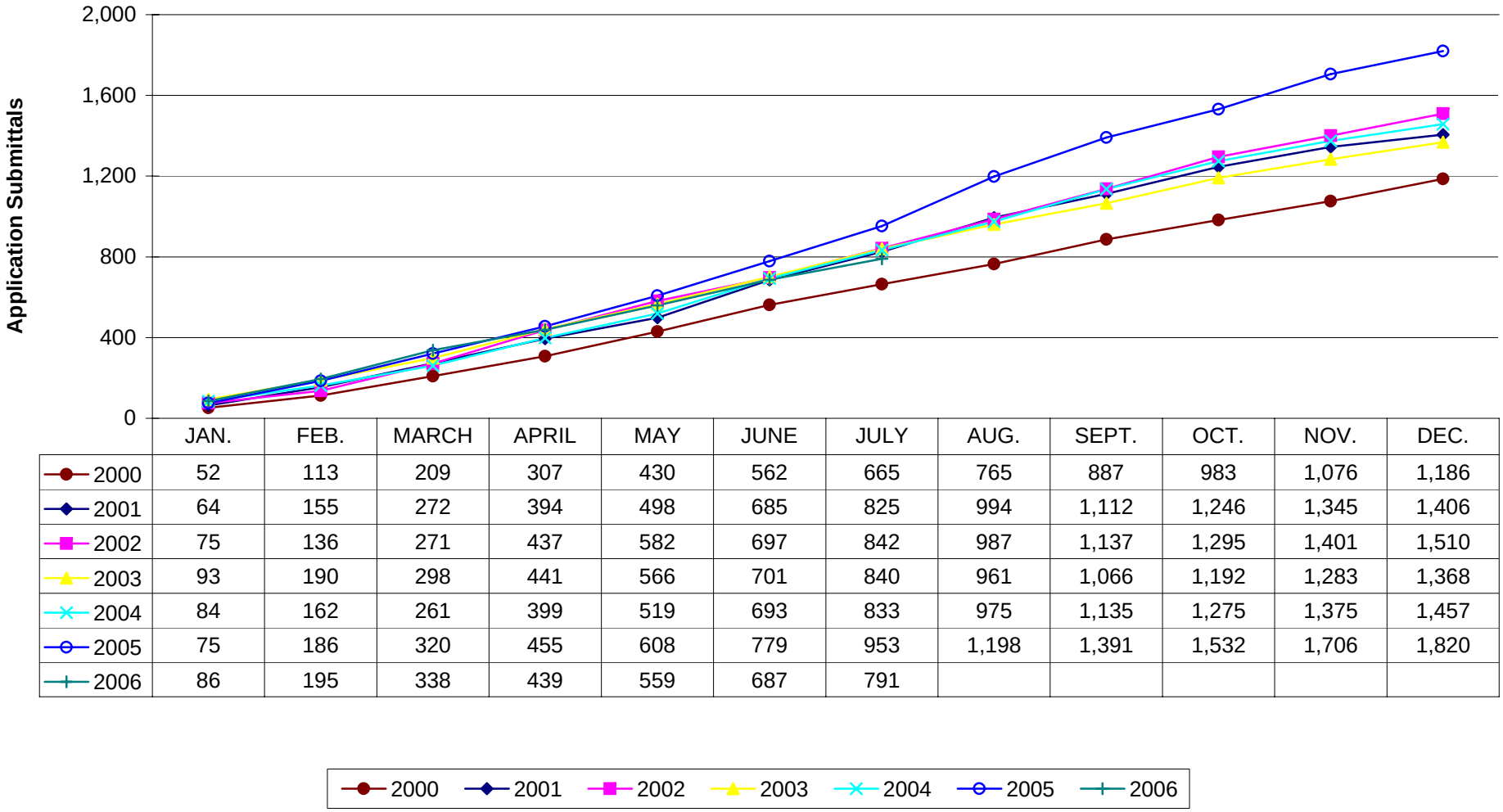
	Jan.	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	86	109	143	101	120	128	104					
Avg. Var. Above Mean	89	100	135	155	149	177	174	207	168	146	174	112
Avg. Var. Below Mean	71	70	108	132	116	125	141	132	112	130	99	76

Table 2. TRPA Project Application Workload - 13-Month Period



	July 2005	Aug 2005	Sep 2005	Oct 2005	Nov 2005	Dec 2005	Jan 2006	Feb 2006	Mar 2006	Apr 2006	May 2006	Jun 2006	July 2006
Projects In	174	245	193	141	174	114	86	109	143	101	120	128	104
Projects Out	146	169	188	205	222	323	96	121	122	71	128	148	115
Total Workload	656	732	737	673	625	416	406	394	415	445	437	417	406
Projects 120+ Days in Review	47	50	41	42	44	39	28	23	14	16	15	8	16

Table 3. Cumulative Trend in TRPA Application Submittals
Calendar Years 2000 - 2006



	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
2000	52	113	209	307	430	562	665	765	887	983	1,076	1,186
2001	64	155	272	394	498	685	825	994	1,112	1,246	1,345	1,406
2002	75	136	271	437	582	697	842	987	1,137	1,295	1,401	1,510
2003	93	190	298	441	566	701	840	961	1,066	1,192	1,283	1,368
2004	84	162	261	399	519	693	833	975	1,135	1,275	1,375	1,457
2005	75	186	320	455	608	779	953	1,198	1,391	1,532	1,706	1,820
2006	86	195	338	439	559	687	791					

Table 4. Elapsed Time from Complete Application to Action - July 2006

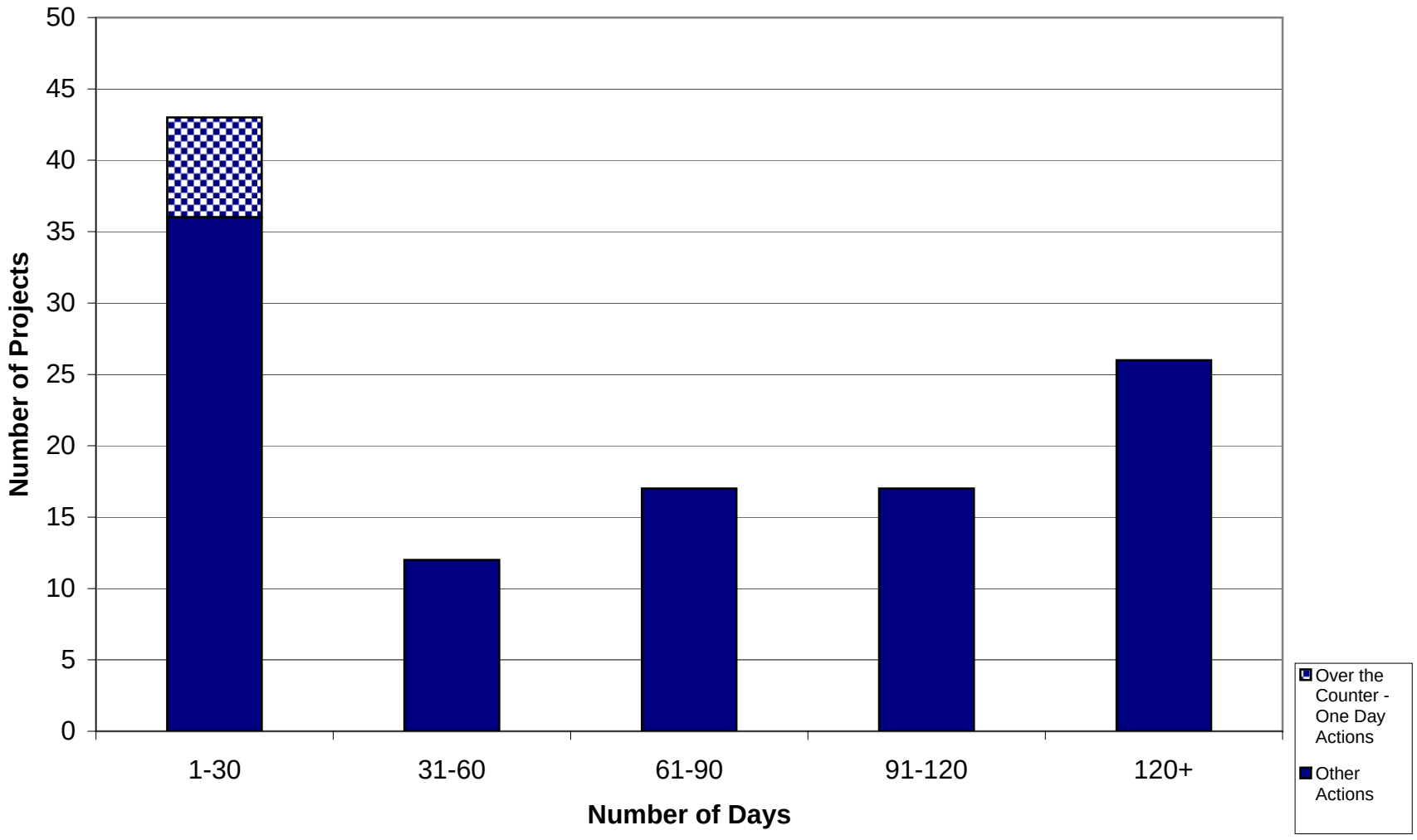


Table 5. Current ERS Workload. Number of Complete Applications as of July, 2006

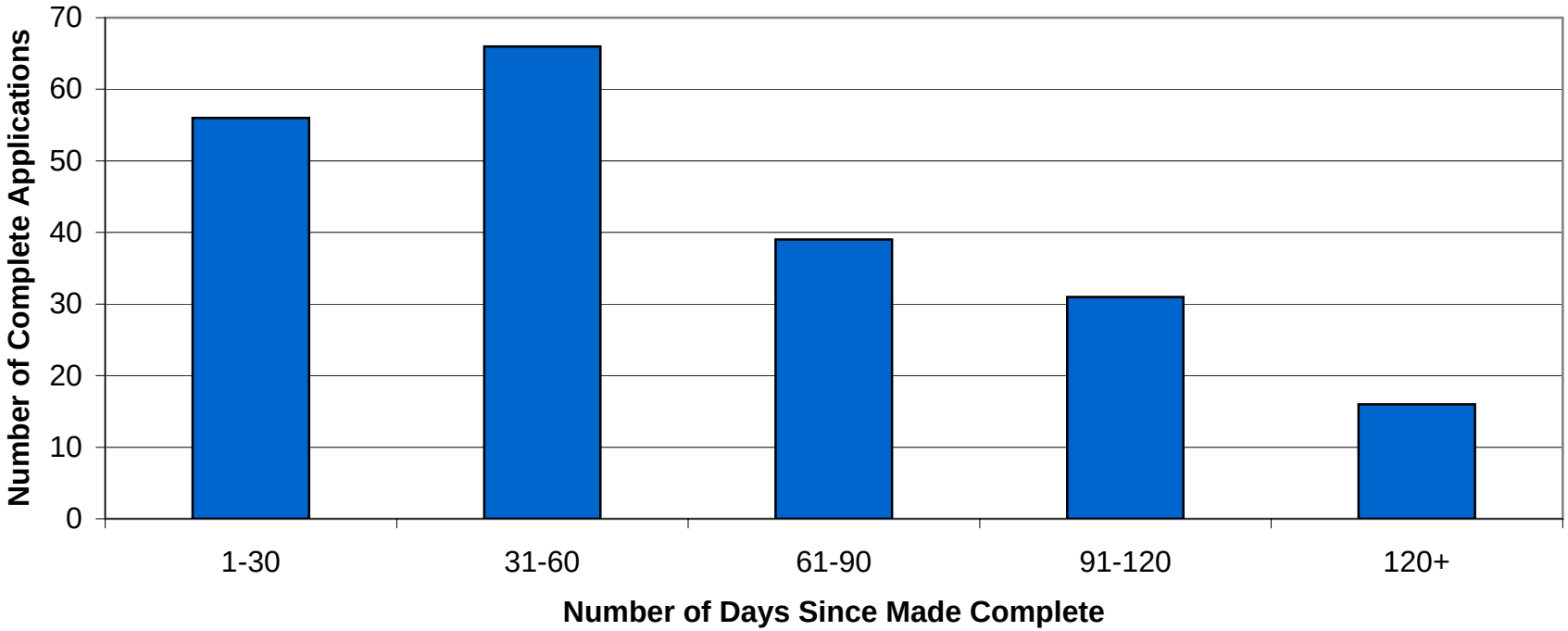
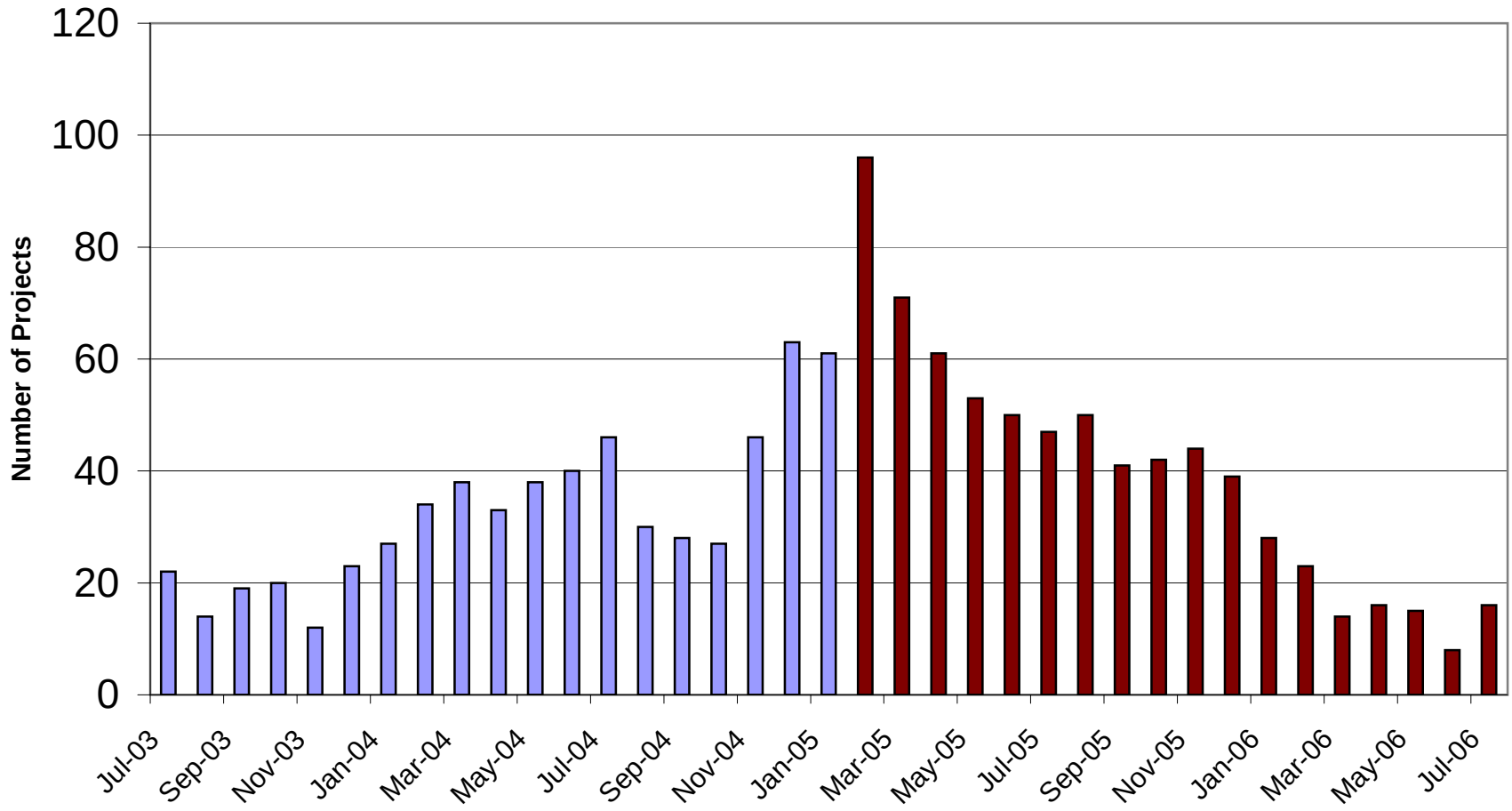


Table 6. Projects over 120 Days since Complete from July 2003 to July 2006 showing changes since Fee Schedule Adoption, March, 2005



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HEARING SUMMARY

To:	TRPA Governing Board
From:	TRPA Staff
Date:	August 14, 2006
Subject:	Show Cause Hearing, Unauthorized Material Damage to Trees, 315 Uplands Way, El Dorado County, California, APN 032-364-04
Respondent:	Dr. Cam and Charlene Lindberg
Respondents' Representative:	Michael Johnson, Esq. Rollston, Henderson, Rasmussen, Crabb & Johnson

The following Hearing Summary, prepared pursuant to TRPA Rule of Procedure ("Rule") 9.14, outlines the violation and the issues for the August 23, 2006, Show Cause Hearing concerning alleged unauthorized material damage to trees at 315 Uplands Way, El Dorado County, California, APN 032-364-04 (the "Property"). TRPA staff invoked the Show Cause Hearing process on July 12, 2005, by issuing pursuant to Rule 9.6 a Notice of Violation and Violation Report ("NOV"), attached hereto. On September 2, 2005, the Lindbergs submitted to TRPA a Response to the NOV ("Response"), also attached hereto. The Lindbergs have waived the statute of limitations through November 7, 2006.

TRPA staff alleges that a violation of the TRPA Code of Ordinances ("Code") occurred on the Property in the summer of 2004. The Lindbergs owned the Property at the time of the alleged violation. In March 2005, the Lindbergs sold the Property to Ms. Dorene Hoffman and Mr. Steven Garcia (collectively "Hoffman/ Garcia"). The new owners too have waived the statute of limitations and are willing to cooperate in a resolution as to site restoration. Hoffman/ Garcia are not, however, "Noticed Parties" in the NOV because they did not own the Property at the time the violation occurred.

A. TRPA's Statement of Uncontested Facts

The Lindbergs submitted a permit application for tree removal to TRPA on August 4, 2004. On August 16, 2004, in response to the permit application, TRPA staff visited the Lindberg Property to identify and mark trees for removal. The Lindbergs' application asked TRPA to "look at all trees . . . and mark for removal any that are diseased[, a] safety hazard, crowded, etc." On the date of the site visit, staff observed a number of trees on site that were dead, dying or in poor health. Upon closer inspection, staff observed what appeared to be a ring of white rock salt spread around the base of a white fir tree with a diameter-at-breast-height ("dbh") of 20 inches located on the Property down slope of the Lindberg residence. Staff tasted the substance and confirmed it was rock salt, a substance commonly known to be harmful or deadly to trees. Staff photographed the salt and the trees on the Property.

The application of rock salt that kills or materially damages trees is a violation of the TRPA Code. Section 71.1 requires that TRPA approve the removal of all trees in the Tahoe Region having a dbh of six inches or more. Chapter 2 of the Code defines "tree removal" to include killing or materially damaging trees. "Materially damage" is defined in Chapter 2 and includes "application of chemicals harmful to the tree." The application of rock salt on the Lindberg Property resulted in the killing of, or material damage to, ten trees on the Property with a dbh of at least 6 inches in violation of Code Section 71.1. Pursuant to TRPA Code Section 4.2.A(5), the removal of dead trees is exempt from TRPA review.

A total of 10 white and red fir trees with dbh's between 7 and 20 inches located within 20 feet of the salt application were observed by staff to be materially damaged on August 16, 2004. The trees showed the signature spiral pattern of systemic damage associated with salt poisoning of trees. Since the 2004 inspection, all ten trees, including the 20 inch white fir to which the salt was most directly applied, have been removed due to death or impending mortality. The poisoned trees that have been removed once obstructed significant views of Lake Tahoe and the surrounding mountain scenery from the residence on the Property. The salt was applied to the base of the tallest tree; the 20 inch dbh white fir that most directly obstructed distant scenic views.

Sometime prior to TRPA's discovery of the violation, the Lindbergs put their residence on the market for sale. Shortly after discovering the salting of the trees on the Property, TRPA contacted the Lindbergs to discuss the violation and potential resolution. During the negotiations, TRPA informed the Lindbergs of the likelihood that a monetary penalty would be required, and had also discussed with them the need for implementing a forest health restoration plan. Nonetheless, the sale documents did not disclose either the alleged TRPA liability or the ongoing TRPA administrative process.[1] Six months into the negotiations with TRPA and after some of the poisoned trees had been removed opening up new scenic views from the residence, the Lindbergs sold the Property to Hoffman/ Garcia on March 7, 2005, for $800,000. TRPA learned of the Property transfer for the first time months later on July 11, 2005, as a result of correspondence from the Lindbergs' attorney.

Not only has the tree poisoning opened up views from the residence to the Lake, but the removal of the poisoned trees has degraded scenic quality. Without the vegetative screening from the large trees now removed, the contrasting color of the residence, the high degree of roof articulation, and the substantial amount of reflective glass on the Lake-facing side of the residence is now generally visible and would benefit from scenic mitigation.

From the start of the settlement negotiations with TRPA, the Lindbergs, through their attorneys, have disclaimed any responsibility for the tree poisoning. When asked for an explanation of the tree poisoning on their Property, the Lindbergs offered several possible scenarios. First, they suggested that the source of the salt may have been from use on their driveway to melt snow/ice in the wintertime and the associated salty runoff from the driveway. This explanation lacks credibility because the poisoned trees are located uphill from the Lindbergs' driveway and the salt was discovered in a near perfect

[1] The real estate disclosures included only a vague reference to the Lindberg's responsibility to plant some new trees on the Property due to requirements of the U.S. Forest Service.

ring around the 20 inch fir tree; runoff cannot flow uphill and would not exist in a regular geometric pattern. The Lindbergs also suggested that a neighbor may have been responsible for the tree poisoning, but TRPA could not identify any animus of, or benefit to, a neighbor. The Lindbergs attempted to eliminate their motive for the poisoning by informing TRPA staff that the salting occurred after the Property had gone into escrow on the sale, but this turned out to be false.

The Lindbergs did initially agree to implement environmental restoration of the Property. They hired a tree specialist to prepare a forest health enhancement plan. The Lindbergs have not provided TRPA with the tree specialist's restoration plan prepared on their behalf, and have indicated they are willing to commit to only the most modest of restoration measures (*i.e*., the retention of specified seedlings on the Property at no cost). Since the Property was sold to Hoffman/ Garcia, the new owners have expressed a willingness to undertake forest health enhancement measures provided any required actions are paid for by the Lindbergs. Hoffman/ Garcia are also seeking reimbursement from the Lindbergs for the costs of removing poisoned trees from the Property.

Staff has been unable to reach settlement with the Lindbergs because they have been steadfastly opposed to a penalty payment commensurate with the scope and egregiousness of the violation. They have so far offered only a small "nuisance value" payment as resolution. The Lindbergs have not met personally with staff, despite numerous requests for such meetings over the last two years. Most recently in July 2006, staff arranged a face-to-face meeting to attempt a more personalized settlement discussion. The Lindbergs balked at the last minute, explaining that they could not be in the Tahoe area until September and seeking to postpone the Show Cause hearing proceedings until later this Fall.[2]

The Lindbergs deny any responsibility or liability for the death or damage of the poisoned trees on their Property. They contend that they "did not damage the trees in question or cause them to be damaged . . . . [and] have no knowledge of how the damage occurred or who may be responsible." Response at 2. The Lindbergs dispute as a legal matter the imposition of "strict liability" under the TRPA Code, and contend that TRPA must prove the Lindberg's caused the violation in order to hold them liable for the tree poisoning on their Property. As expressed by Lindberg's counsel in 2004, the Lindbergs "have serious concerns about the manner in which they have been treated during the inquiries to date and do not wish to meet with TRPA staff."

B. Factual and Legal Contentions of TRPA and the Responding Party

TRPA staff contends that the Lindbergs would be found liable by a reviewing court for the tree poisoning discovered on their Property without any requirement that TRPA prove knowledge or participation by the landowner. See TRPA v. Terrace Land, 772 F.Supp. 506 (D. Nev. 1991). TRPA staff's position is that Respondents, as the owners of

[2] Staff's efforts to resolve this violation have been complicated by the change in ownership, and the Property is once again being marketed for sale. Although as a result of the tree poisoning the residence on the Property could benefit from scenic mitigation measures, staff has not pursued this as an element of the settlement negotiations because of the complications of assigning responsibility due to the change in ownership.

the Property at the time the trees were poisoned, are liable for the tree damage violations regardless of proof of their personal knowledge of the violations

Respondents' counsel argues that no penalty is warranted against the Lindbergs because TRPA has not proven the Lindbergs had knowledge of, or participation in, the salting of the trees. Lindbergs' counsel asserts – without authority – that the Tahoe Regional Planning Compact, P.L. 96-551, Cal Gov't Code §§ 66801 et seq., N.R.S. §§ 277.200 et seq. (1980) ("Compact") requires that TRPA prove responsibility in the violation in order to establish liability. Respondents misread the Compact. The Compact Article VI(l) provides for enforcement and substantial penalties for violations of TRPA ordinances or regulations as follows:

> Any person who violates any ordinance or regulation of the Agency is subject to a civil penalty not to exceed $5,000 and an additional civil penalty not to exceed $5,000 per day, for each day on which a violation persists. *In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.* (Italic emphasis added)

The Compact's legislative structure evidences the fundamental difference between liability for violation of the Code, which is dealt with in the first sentence of Article VI(l), and the imposition of penalties for those violations once established. It is sufficient for liability purposes that Respondents were the landowners at the time, and the violation of Code Section 71.1 occurred on Respondent's Property. In this respect, the Compact is consistent with other environmental statutes that distinguish the imposition of liability for violations from the ordinary private tort cause of action that requires proof of causation. It is only after the violation is established that the Compact mentions the violator's level of culpability (intentional, gross negligence, or inadvertence). The level of culpability therefore becomes relevant to adjust the potential size of the penalty assessment for the violation(s), but not as to the initial assessment of liability.

Respondents' interpretation of Article VI(l) is inconsistent with the Compact language and prior TRPA violation resolution precedent. Were TRPA required to prove personal responsibility for every violation, the Agency would be hamstrung in its ability to enforce its Regional Plan. Landowners would have an overly broad, absolute defense to liability. They could violate TRPA regulations and merely claim (as the Lindbergs have in this case) "I don't know how the violation happened," or alternatively "I didn't know of TRPA's regulation." Accepting either assertion to excuse the landowner from liability would be contrary to the language and intent of the Compact.

Moreover, sufficient circumstantial evidence exists to establish that the Lindbergs should be held responsible for the tree poisoning on their Property. They had both a motive and the opportunity to poison trees on the Property, and most likely benefited from the violation. The desire to enhance scenic views of Lake Tahoe and the surrounding mountain scenery is well established in the Tahoe Region. It is common knowledge that property values increase as a result of improved scenic views and that dead trees can be removed without TRPA authorization. The poisoned trees, once removed, opened up and improved the scenic view corridors from the Lindberg residence. That the house being marketed for sale only strengthens the motive to remove obstructions to the

Property's scenic views, and the sale for $800,000 provides a strong basis to conclude that the Lindbergs benefited from the violation.

Should the matter proceed to litigation, TRPA would be able to ascertain more facts concerning the Lindbergs' involvement in the tree poisoning. Although TRPA staff would prefer to resolve the matter without litigation, the discovery process provides a formal mechanism to discover facts (unlike the administrative process). In litigation, TRPA can question under oath those with the profit motive to poison the trees, namely the Lindbergs and their realtors. During the investigation, TRPA staff interviewed the realtors who, like the Lindbergs, denied any involvement in the tree poisoning.

The Lindbergs have legal remedies available, through which they may be able to obtain indemnification from those they can establish as being liable for the violations. They may pursue the neighbor who they have suggested was responsible or the realtors who shared a financial motive to poison the trees. Holding property owners ultimately liable for activities that occur on their property does not mean that they are without recourse in the event that they have not acted personally to violate TRPA regulations.

C. Issues to be Determined

The issues for decision by the Legal Committee and Governing Board are:

1. whether to accept the Executive Director's NOV; and, if so,
2. the appropriate settlement amount for which TRPA would be willing to forego litigation.

Pursuant to Rule 9.16, the Legal Committee and Governing Board must decide whether to affirm, modify or withdraw the TRPA staff's NOV and proposed resolution. Staff proposes to resolve the matter by having the Lindbergs pay $50,000 and finance the implementation of a TRPA-approved forest health enhancement plan on the Property. Although this recommended amount equates with the $5,000/ tree baseline, staff did consider the following factors as relevant to an adjustment:

a) Factors that support decreasing the baseline $5,000/ tree assessment:
   - Some of the smaller trees in the clump of poisoned trees would have been eligible for removal regardless of having salt damage because they are in an overly dense clump needing thinning; and
   - If the Lindbergs' defense is taken as true, the penalty amount could be adjusted down based on the violation being "inadvertent." Compact, Art. VI(l).

b) Factors that support imposing or increasing the baseline $5,000/tree assessment:
   - Tree poisoning is an "egregious" violation under the reasoning of the Terrace Land case warranting a greater penalty assessment. In view of the recent *Fitzhenry* tree poisoning violation resolution ($50,000 penalty assessed for 3 poisoned trees and one illegally limbed tree), a sufficient penalty should be imposed here too in order to establish an adequate deterrent effect against future similar tree poisoning violations.
   - The need to deter similar violations (see Terrace Land, 772 F. Supp. at 509). Here, in particular, the Lindbergs seek to avoid liability by claiming lack of any knowledge of the violation. To allow landowners to avoid liability by merely

claiming a lack of knowledge as to either TRPA regulations or the actions on their property is an improper interpretation of the Compact and should be rejected, especially to excuse liability for such an environmentally pernicious and clandestine type of violation as tree poisoning.

- The Lindbergs have demonstrated no willingness to cooperate with TRPA in resolution of the matter. Resolution has in fact been frustrated by the mid-investigation sale of the Property without notice to TRPA or to the new owners.
- The Lindbergs most likely received an economic benefit from the violation at the time of sale of the Property in March 2006 as a result of the poisoned trees because prospective purchasers likely knew that the dead trees could be removed without TRPA authorization, thereby enhancing views of Lake Tahoe and surrounding mountain scenery. See Terrace Land, 772 F.Supp. at 509.
- The "necessity of vindicating the authority" of TRPA (see Terrace Land, 772 F.Supp. at 509). Here, TRPA was asked to inspect trees on the Property for possible removal, and in the course of the inspection observed a deliberate violation of TRPA's regulations governing tree damage and removal.

Staff recommends that the Legal Committee and Governing Board endorse a settlement of the violations outlined herein as follows:

(1) The Lindbergs make a settlement payment of $50,000; and
(2) The Lindbergs finance the implementation of a TRPA-approved environmental forest health enhancement plan on the Property that contains the following measures:
    i) Planting of replacement trees;
    ii) Retention of trees less than six inches dbh; and
    iii) Removal of dead, dying or damaged trees that have not yet been marked for removal.
(3) In the event that the Lindbergs do not agree to the proposed settlement within 30 days of Board action, Legal Committee and Governing Board authorize the commencement of litigation against the Lindbergs.

D. EXHIBITS

TRPA's Notice of Violation (NOV)
Respondents' NOV Response

TAHOE REGIONAL PLANNING AGENCY

128 Market Street
Stateline, Nevada
www.trpa.org

P.O. Box 5310
Stateline, Nevada 89449

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

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 12, 2005

Mr. Cam and Ms. Charlene Lindberg
2825 Lewis Drive
Lompoc, CA 93436

Ms. Dorene Hoffman
315 Uplands Way
South Lake Tahoe, CA 96150

Mr. Dennis Crabb, Esq., attorney for Mr. and Mrs. Lindberg (via facsimile without attachments)
591 Tahoe Keys Blvd., Suite D8, South Lake Tahoe, CA 96150

Dear Cam and Charlene Lindberg, and Dorene Hoffman:

NOTICE OF VIOLATION AND VIOLATION REPORT, UNAUTHORIZED MATERIAL DAMAGE TO TREES, 315 UPLANDS WAY, EL DORADO COUNTY, ASSESSOR'S PARCEL NUMBER (APN) 032-364-04

This Notice of Violation and Violation Report is being issued to Cam and Charlene Lindberg (collectively "Lindberg") and Dorene Hoffman ("Hoffman") for unauthorized damage to trees larger than six inches diameter at breast height ("dbh"), at 315 Uplands Way, El Dorado County, having Assessor's Parcel Number (APN) 032-364-04 (the "Property"). This unauthorized damage to trees is in violation of TRPA Code of Ordinances ("Code") subsections 4.7, 71.1, 71.3 and 71.5. Per Rule 9.8 of Article IX of the TRPA Code (enclosed), you may serve a written response to this notice no later than twenty–one (21) calendar days after service of this Notice of Violation.

Article IX of the TRPA Rules of Procedure (enclosed) outlines a procedure for resolving violations of the TRPA Compact, Regional Plan, or TRPA permits. This involves Notices of Violations and Violation Reports. The content of these items is specified in the Rules and is explained below for your reference.

Section 9.6 NOTICE OF VIOLATION

(a) Nature of Violation

Rock salt, a substance widely known to be harmful to trees, was piled around the base of a white fir tree larger than six inches dbh on the Property. The rock salt dissolved into the soil and killed or materially damaged ten white fir and red fir trees larger than six inches dbh within twenty feet of the salt application. Three trees have been removed due to impending mortality, and others show severe poisoning symptoms.

The poisoned trees previously obstructed spectacular views of Lake Tahoe and surrounding mountain scenery from the residence on the Property. Poisoning the trees would foreseeably result in the removal of this obstruction of this view because TRPA allows the removal of dead trees. The salt was applied to the base of the tallest tree, suggesting that it was targeted because it was the most obstructive of the view. This improvement of the view of Lake Tahoe likely increased the market value of the Property, which was put on the market for sale near the time of the salt application. Hoffman purchased the Property from Lindberg on March 7, 2005, for $640.000 (a fact made known to TRPA on July 11, 2005).

The violation was discovered when Lindberg applied for a permit to remove the poisoned trees. No other properties gained view enhancement benefits from the deaths of these trees. No persons other than Lindberg had motive to damage these trees located well within the Property. Although Hoffman did not own the Property when the violation occurred, her involvement is necessary to resolve the matter in order to implement the necessary vegetation and scenic quality mitigation measures.

Section 71.1 of the TRPA Code of Ordinances requires that tree removal be approved by TRPA. TRPA Code Chapter 2, Definitions, defines "tree removal" to include the killing or materially damaging of trees. The salt application killed and materially damaged ten trees larger than six inches dbh. "Materially damaged" is also defined in TRPA Code Chapter 2, and the definition includes "application of chemicals harmful to the tree." Rock salt is harmful to trees and these ten trees show symptoms associated with poisoning by salt application.

(b) Correction of the Violation

The intent of the Rules of Procedure, Article IX, is to promote resolution of violations at the administrative level. In keeping with that intent, the resolution section of this letter includes a proposed settlement.

(c) Cease and Desist

A REQUEST FOR INFORMATION (enclosed) was sent to the Noticed Parties on September 16, 2004. This REQUEST FOR INFORMATION included direction to not remove, damage or poison trees at 315 Uplands, as well as direction to provide information to TRPA.

(d) Show Cause Hearing

A Show Cause Hearing before the TRPA Governing Board will be scheduled for the August 24, 2005, Governing Board Meeting beginning at 8:30 a.m. before the TRPA Legal Committee. This meeting will be located at the TRPA office, at 128 Market Street, Stateline, NV. TRPA may continue this hearing if Lindberg and Hoffman agree to extend the applicable statute of limitations (the present statute of limitations waiver expires on September 1, 2005).

Section 9.6 VIOLATION REPORT

(a) Noticed Parties:

Mr. Cam and Ms. Charlene Lindberg
2825 Lewis Drive
Lompoc, CA 93436

Ms. Dorene Hoffman
315 Uplands Way
South Lake Tahoe, CA 96150

(b) Provisions of the Tahoe Regional Planning Compact and the Regional Plan Package violated:

Tahoe Regional Planning Compact, P.L. 96-551, 94 Stat. 3233 (1980), Art. V(g), VI(b).
TRPA Code of Ordinances, Subsections 4.7, 71.1, 71.3, 71.5
(Copies Enclosed)

(c) Statement of Facts:

TRPA received a Tree Removal Permit Application submitted by Joe Benigno, a tree contractor, on behalf of Lindberg for the Property. The application requested that TRPA "...look at all trees on property and mark for removal any that are diseased[,] safety hazard, crowded, etc. etc." On August 16, 2004 TRPA Forestry Assistant Susan Kaiser visited the site but could not complete the permit application review because she noted "Rock salt @ base of largest fir in a clump of firs btwn house & Lake." Kaiser reported the rock salt to her supervisor.

On or about August 24, 2004 TRPA staff photographed the salt-damaged trees, the rock salt at the base of the tree, and the views from the Property that would be improved by the removal of poisoned trees. Staff also took notes regarding the size and species of the ten affected trees and the symptoms of decline they were showing, apparently as a result of the large amount of salt placed at the base of the tree at the center of the cluster. The damage to these trees caused environmental harm primarily through degradation of the TRPA Vegetation and Scenic Quality Thresholds (the residence on the Property is now more visible from Lake Tahoe).

On September 16, 2004 Staff mailed Lindberg a Request for Information concerning the unauthorized damage to trees at the Property. Staff subsequently met with attorney Dennis Crabb representing Lindberg on the Property. Lindberg has at all times denied having any knowledge of who was responsible for damaging the trees on the Property. Although Mr. Crabb initially suggested that the trees sustained damage as a result of salting on the Property driveway, he changed his position upon inspecting the Property with Staff (as the trees are located uphill from the Property driveway).

Lindberg has started working on a forest health restoration plan for the Property. However, Lindberg has not been willing to negotiate the payment of a penalty or implement a scenic restoration plan considered appropriate by TRPA staff to resolve the matter (the residence on the Property is particularly well-suited for scenic mitigation because of its color, articulation, and use of reflective glass). Lindberg has executed a series of statute of limitation waivers, most recently until September 1, 2005. On July 11, 2005, TRPA staff was first made aware that the Property was sold to Hoffman. Prior to the sale of the Property, TRPA staff interviewed the Lindberg realtor (Jim Bolen at McCall Realty). Mr. Bolen denied having any knowledge concerning who was responsible for damaging the trees on the Property.

(d) Documentary Evidence:

Documentary evidence supporting the determination of a violation, including written statements and photographs, are in TRPA's possession and may be reviewed at the TRPA Offices.

(e) Proposed Resolution of Enforcement Action

The Tahoe Regional Planning Compact provides for substantial penalties for violations of TRPA ordinances or regulations.

Article VI of the Compact States:

Any person who violates any ordinance or regulation of the Agency is subject to a civil penalty not to exceed $5,000 and an additional civil penalty not to exceed $5,000 per day, for each day on which a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

As a means of resolving this matter, TRPA proposes the following resolution:

1. Lindberg shall pay TRPA $50,000 ($5,000 x 10 poisoned trees) within 30 days of Governing Board approval.

2. Hoffman shall restore the Property pursuant to a TRPA-approved forest health restoration plan ("Plan"). Hoffman shall submit to TRPA a proposed Plan within 30 days of Governing Board approval.

3. Hoffman shall restore the Property pursuant to a TRPA-approved scenic quality restoration plan ("Plan"). Hoffman shall submit to TRPA a proposed Plan within 30 days of Governing Board approval.

(f) Governing Board Show Cause Hearing

A Show Cause Hearing before the TRPA Governing Board and its Legal Committee will be scheduled for the August 24, 2005 Governing Board meeting. The Legal Committee commences at 8:30 a.m. at the TRPA office, at 128 Market Street, Stateline, NV. The Governing Board will consider the matter after the 9:30 a.m. commencement of the Governing Board Meeting. This hearing date may be extended if TRPA receives statute of limitations waivers executed by Lindberg and Hoffman.

Governing Board action (as a consent calendar item) may be necessary to ratify a settlement of the violations. If you decide to pursue a settlement of the violations and a waiver of the statute of limitations, as outlined under Election to Pursue Settlement, is received by TRPA, the Show Cause Hearing will be stayed pending the outcome of the settlement efforts. Settlement of this matter, by acceptance of the above-proposed resolution or an alternative proposal agreed upon by the parties, is the preferred option.

(g) Response Date

A response to this notice must be received by the TRPA or deposited in the U.S. Mail, postage prepaid, addressed to the TRPA **no later than 5:00 p.m., Tuesday, August 2, 2005** (see Section 9.8 and 9.9 of the TRPA Rules of Procedure for the contents of a response - copy enclosed). The response may be provided via facsimile. This response date may be extended if TRPA receives statute of limitations waivers executed by Lindberg and Hoffman.

Section 9.10 ELECTION TO PURSUE SETTLEMENT

TRPA staff has been working towards settlement of this enforcement action since September 16, 2004, without sufficient progress. Although Lindberg did begin work on a reforestation plan, the Property was sold to Hoffman without complete implementation of the plan, or any progress towards scenic mitigation, or the payment of a penalty. If TRPA does not receive acceptance of

the proposed settlement by August 2, 2005, we will consider settlement discontinued, and the scheduled Show Cause Hearing will proceed at the August 24, 2005 TRPA Governing Board. The hearing date may be continued if TRPA receives statute of limitations waivers executed by Lindberg and Hoffman.

Should you have questions, I may be reached at 775-588-4547, extension 250, 8:00 a.m. through 5:00 p.m., Monday through Friday.

Sincerely,

Steve Sweet
Associate Environmental Specialist
Violation Resolution Unit

c: John Singlaub, TRPA Executive Director
Jordan Kahn, TRPA Assistant Agency Counsel
Brian Judge, Principal Environmental Specialist, TRPA Violation Resolution Unit

Enclosure: Public Law 96-551; Tahoe Regional Planning Compact
TRPA Rules of Procedure, Article IX, Compliance Procedures
TRPA Code of Ordinances, Chapter 2, *Definitions*, (in part)
TRPA Code of Ordinances, Subsections 4.7, 71.1, 71.3, 71.5
Request for Information September 16, 2004

ROLLSTON, HENDERSON, RASMUSSEN & CRABB
ATTORNEYS

KENNETH C. ROLLSTON*
ROBERT M. HENDERSON†
J. DENNIS CRABB

* A Professional Corporation
† Also Licensed in Nevada

Of Counsel
Judge (Ret.) L. EUGENE RASMUSSEN

September 2, 2005

Jordan Kahn
Assistant General Counsel
Tahoe Regional Planning Agency
P.O. Box 5310
Stateline, NV 89449-5310

VIA E-MAIL & U.S. MAIL

Dear Jordan:

As requested, this letter is the response of Cam and Charlene Lindberg to the TRPA Notice of Violation in the form set forth in Section 9-8 of the TRPA Rules of Procedure. As you know the same information has previously been provided to TRPA both verbally and in letter form.

Response To Notice of Violation

Names and Addresses of Noticed Parties Participating in the Response: Cam Lindberg, M.D., and Charlene Lindberg, husband and wife c/o Rollston, Henderson, Rasmussen and Crabb, Attorneys at Law, 591 Tahoe Keys Blvd., Suite D8, South Lake Tahoe, CA 96150.

Statement of Facts Relied Upon By the Responding Party:

There is no dispute that rock salt damaged certain trees on the property at 315 Uplands Way in the County of El Dorado. The Lindbergs did not apply the salt or cause it to be applied and will so state under oath. They have no knowledge of who may have done so and will not engage in speculation.

Response to TRPA's Statement of Facts:

The TRPA Statement of Facts accurately states that Joe Benigno, on behalf of the Lindberg's, submitted a tree removal application, which resulted in discovery of the "salted" trees. It is inaccurate in its statements that the Lindbergs "poisoned" the trees for financial gain, the number of trees that were damaged as defined by the TRPA code, and that the Lindbergs have not engaged in good faith settlement discussions.

The TRPA staff report and it supporting documents contain nothing but speculation, conjuncture, and innuendo. The Lindbergs categorically deny each and every such allegation.

Explanation of the Responding Parties Defense:

As sated above he Lindbergs did not damage the trees in questions or cause then to be damaged. They have no knowledge of how the damage occurred or who may be responsible.

Copies of Documentary Evidence: The tree removal permit application is in the possession of TRPA.

Names and Addresses of Witnesses: None known to responding party.

Resolution Acceptable to Responding Party:

While the notice of violation was pending the property was sold. The Lindbergs agreed to take certain steps to resolve matters with TRPA under the terms of the sale.

To that end, the arborist employed by the Lindbergs has been working with TRPA staff to obtain the tree removal permit. Once that permit is obtained a restoration plan for the site involving both dead tree removal and the planting of new specimen trees can be finalized. A draft plan has been prepared by the arborist and will be submitted as soon as the tree removal permit is finalized. The process was delayed by extensive snow on the site and the need for a survey to determine the property lines. This effort has been complicated by the change in ownership.

TRPA staff is understandably reluctant to enter the property without the consent of the present owner. As I understand it she has not responded to such requests nor do the purchase documents grant the Lindbergs the ability to grant consent to enter.

The Lindbergs are willing to negotiate a reasonable settlement which involves site restoration and replanting of significant trees. They do so not because of any liability or culpability in the matter but as a way to conclude the issue without incurring further legal expense.

They will not agree to any of the "scenic mitigation measures" or pay a fine to TRPA since they did nothing wrong.

Pursuant to Section 9.11 of the Rule of Procedure

The Lindbergs request that the presently scheduled hearing be stayed until such time as the tree removal permit is issued, the site restoration plan approved, and the costs of implementing that plan are known. The Lindbergs will agree to any necessary extension of the statute of limitations for that purpose.

If that is not acceptable the Lindbergs request that this matter be resolved by the Board directing staff to negotiate a settlement involving exclusively a site restoration plan and return that settlement to the Board for final approval. This determination by the Board would be based upon the fact that the only credible evidence presented is that Dr. and Mrs. Lindberg have no responsibility for the damages but are willing to make environmental improvements on the site to reach an available resolution.

If there are any questions please contact me.

Very truly yours,

Dennis

J. Dennis Crabb

cc: Cam & Charlene Lindberg

Letters\kahn 090105

TAHOE REGIONAL PLANNING AGENCY

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TAHOE REGIONAL PLANNING AGENCY
STAFF SUMMARY

To: TRPA Governing Board

From: TRPA Staff

Date: August 14, 2006

Subject: Single Use Pier Reconstruction and Expansion and Conversion to Multiple-use, Victor and Shirley Metas APC 117-020-20, William Rienhard, APC 117-020-19, 4798 North Lake Boulevard, Placer County, File No. 20050843

Staff Recommendation: Staff recommends approval of the proposed project based on this staff summary and evidence contained in the project record. The required actions are outlined in Section F of this staff summary.

Project Description: Please refer to Exhibit A for site and design plans. The applicant is proposing to relocate an existing 55-foot long single-use pier to the common property line of the Reinhard's and Metas' and create a multiple-use pier that is approximately 160 feet in length. The proposed pier will extend from the highwater line to a lakebed Elevation 6219 LTD, an expansion of 105-feet in length. The pier is proposed to be six feet wide to the beginning of the pierhead and have a single-piling design. The pierhead is proposed to be 10-feet wide by 45-feet long, and be supported by double-pilings. The pierhead will contain two 3-feet wide by 45-feet long adjustable catwalks on either side. No pilings or railings are proposed to extend above the pier deck. Low-level lighting will be used to illuminate the pier deck only, and not illuminate the waters of Lake Tahoe directly. The pier will be colored to match the shoreline backdrop. The project also proposes to remove a vertical shoreline wall located on the lakeward side of the Metas and Reinhard parcels and replace it with a sloping dynamic shoreline protective structure. This structure will be a combination shoreline restoration and protective structure and, based on the project record, will provide an overall scenic and fish habitat improvement to this stretch of shoreline. Several non-conforming structures located below the highwater line shall be removed as a part of the overall project. These include a portion of fence on the west side of the property, a small deck overhang, two remnant pilings, any remnant wood cribbing associated with a previously existing pier, and a concrete patio.

Site Description: The lake-bottom substrate in the project area is composed of larger cobbles and rocks and has been mapped as prime spawning fish habitat. Please see the discussion on fish habitat in the Issues section below. There are neighboring piers to the northwest of the proposed pier that are of similar length, the pier to the south is similar in length to the existing pier. The upland portion of the Metas parcel is 3,190-square feet and contains a single-family dwelling. The shorezone is developed with a series of concrete patio structures and an existing vertical concrete/rock vertical wall in front of the parcel. The

vertical wall is below the highwater line (Elevation 6,229.1 LTD). The Reinhard parcel is 6, 779-square feet and contains a small guest house and single-family dwelling. The shorezone is developed with a deck/stairway access to the existing 55-foot pier and the vertical concrete rock wall extends approximately half way along the Reinhard shoreline. The balance of the shoreline on the Reinhard property is a sloping rock fill area authorized by the US Army Corps in the early 1970's. (See Exhibit B) Both subject parcels contain Land Capability Districts 1c and backshore. The backshore boundaries have been verified by TRPA. The residence's are located in the shoreland and are subject to the Shoreland Scenic Ordinances. The parcels are visible from Scenic Shoreline Travel Unit 20 (Flick Point) and Scenic Roadway Unit 19 (Flick Point). These scenic units are currently in attainment with the TRPA Scenic Threshold. The proposed pier relocation and expansion will be visible from both the Lake and the roadway. The shoreline restoration/shoreline protective structure will be visible from the Lake.

Issues: The primary issues associated with this project are multiple-use, prime fish habitat, scenic quality, the restoration of the shoreline and the replacement of the vertical rock/concrete wall with a shoreline protective structure. This project involves the relocation and expansion of an existing non-conforming pier and the replacement with a multiple-use pier to be located on the common property boundary. The main points of non-conformance are the existing and proposed structures are located in prime fish habitat and that the applicant is requesting the replacement pier be allowed to deviate from the TRPA standards. In order to deviate from the standards, the resulting structure must be designated as a multiple-use facility. For these reasons, this application requires Governing Board review in accordance with Chapter 4, Appendix A, of the TRPA Code of Ordinances. :

Additionally, Staff has worked with the applicant and their representatives to balance the need for a shoreline and fisheries restoration component of this project with the health and safety concerns primarily relating to the close proximity of the two main residences to the the highwater line. This is a particular concern for the residence located at APN 117-020-20, the Metas residence (See Photos in Exhibit C). The shoreline will be restored to the furthest extent possible taking into consideration both the fish habitat and the health and safety concerns regarding the existing residential structures. The shorezone restoration portion will require the placement of a shorezone protective structure. The Plan Area Statement specifies that this structure is considered a special use and special use findings must be made to ensure the structure complies with the Regional Plan. A discussion on each of these issues is outlined below.

A. Multiple- Use Pier: The applicants are proposing a pier that will be shared by two littoral property owners. Given the number of people being served by the pier, staff has determined the pier can qualify as a multiple-use facility. The definition of a multiple-use facility set forth in Chapter 2 of the TRPA Code of Ordinances is as follows

> Multiple-Use Facility: A shorezone facility, usually but not always a pier, which is used by the public, homeowners association or two or more littoral parcel owners, and is recognized by TRPA as multiple-use pursuant to Subsection 54.8.D.

The Code allows deviations from certain location and design standards by reducing the standards to guidelines if the structure is recognized as multiple-use pursuant to Subsection 54.8.D of the Code. Subsection 54.8.D states,

> Recognition Of Facilities As Multiple-Use: Facilities recognized by TRPA as multiple-use are subject to the following provisions:
>
> (1) Deviation From Standards: Deviation from those standards identified in Subsections 54.8.B and 54.8.C as guidelines for multiple-use facilities, shall be allowed only if TRPA recognizes such facilities as multiple-use. The extent of deviation from the standards shall be approved by TRPA and shall be dependent on:
>
> (a) The reduction in development potential of shorezone facilities associated with the application such that the facility will be shared by other littoral property owners; and
>
> (b) The number of people utilizing the facility or the extent to which the facility is available for general public use.
>
> (2) Reductions In Development Potential: Reductions in development potential shall be established through the recordation by the owner of permanent deed restrictions or other covenants running with the land, reflecting use agreements and development limitations approved by TRPA on the affected properties.

The applicants are requesting to deviate from the standards by adding an additional adjustable catwalk to the pier. Below is a staff discussion and recommendation for each standard the applicants are requesting a deviation.

Subsection 54.4.A(4), TRPA Code of Ordinances: The width of piers shall be a maximum of 10 feet, which shall include all appurtenant structures except for a single low-level boat lift and a single catwalk. A catwalk below the level of the main deck, and not exceeding three feet in width by 45 feet in length, may be permitted. Additional width for a single catwalk may be permitted where TRPA finds it is necessary to facilitate barrier free access but at no time shall the entire width of the pier and catwalk exceed 13 feet. A low-level boatlift with forks not exceeding 10 feet in width may be permitted.

The applicants are requesting the Governing Board approve two catwalks. The primary impact associated with approving a second catwalk is the potential impact to scenic quality. The applicants have prepared a visual simulation and scenic mitigation package. TRPA staff recommends the Governing Board approve this deviation from standards based on the Scenic Quality Section discussion outlined below.

The reduction in development potential will be established by the recordation of permanent deed restrictions on the two parcels (APN's 117-020-19 & 20). The deed restrictions shall be TRPA approved and shall detail the use agreements for access to the pier and the limits of any future shorezone development. The draft permit has been conditioned to ensure a deed restriction is recorded. (See Draft Permit Condition 3.L)

Based on the above, TRPA staff recommend the Governing Board designate the proposed pier as a multiple-use facility and allow the applicant to deviation from standards outlined above.

B. Fish Habitat: The project is located in prime fish habitat mapped as spawning. Field verification was conducted by TRPA in 1988 and verified the mapped spawning unit. The applicant has provided an intitial and a revised report entitled, "Evaluation of the Fisheries, Fish habitat and Restoration Plan for the Fish Habitat in the Littoral Area", by Stafford Loeb, dated April 27, 2006 & June 1, 2006, that documents the fish habitat in front of the two subject parcels as feeding and escape cover habitat, and marginal spawning habitat. In response to these reports, TRPA staff conducted site visits on May 3, 2006 and June 30, 2006 and have confirmed that the fish habitat in this location is primarily feeding and escape cover with a limited amount of useable spawning habitat only available during excessive highwater years. This small amount of habitat is located landward of the existing vertical rock/mortar wall.

TRPA's Regional Plan Threshold standard for prime fish habitat is "no net loss". As a condition of approval, the applicant is required to submit a fish habitat restoration plan. The proposed pier will have seven additional pilings. There are two existing pilings within the project area that the applicant is proposing to remove. These will be credited toward the additional amount of fish habitat disturbance. Therefore, the project will be required to restore the footprint of five additional pilings equaling 4 square feet of prime fish habitat either on-site or at another TRPA approved location as mitigation. The restoration will consist of re-establishing cobbles in an area that has been targeted for restoration per the fish habitat report located within the file. The applicant will also be removing an existing vertical lake wall that is below the highwater line (6229.1 LTD). This area will be replaced with a sloping rock shoreline protective structure that will be accessible as feeding and escape cover for fish and will maintain the limited spawning access at varying lake levels. The small rock piles associated with two areas of old rock cribbing will be left in place to maintain the feeding and escape cover for the fish, specifically, the Lahontan Red-sides, verified at the project site. The remnant timbers associated with these piles will be removed. Other non-conforming structures located in the backshore will also be removed including a small deck overhang, a fence and its concrete foundation that has been placed below the highwater mark, and a concreted walkway/patio feature. (See Draft Permit Condition 1). As these are located below the highwater line, no land coverage credit is obtained for removal of these structures, however, fish habitat restoration credit does apply. The shoreline restoration/protective structure will replace some of these structures. The permit has been conditioned to include a fish monitoring component to determine if the shorezone restoration aspects of the project are achieving the desired results. (See Draft Permit Condition 3.J)

C. Scenic Quality: The proposed project is visible from Scenic Shoreline Unit 20, Flick Point and Roadway Unit 19, Flick Point, which are currently in attainment with the established TRPA Scenic Threshold. The applicant and their representative have developed a scenic mitigation package that is consistent with the recommendations for improving the scenic quality identified in the Scenic Quality Improvement Program (SQIP) and the Shoreland Scenic Ordinances.

TRPA's 2001 Scenic Threshold Evaluation highlights additional man-made development within this scenic unit due to new and remodeled residences and pier extensions and boatlifts. The shoreline scenic unit has been identified as being at risk of falling out of attainment. In an effort to better maintain the scenic quality within the Shoreland, the Governing Board adopted the Scenic Shoreland Ordinance in November 2002. This ordinance has a component for reviewing shorezone projects. Additionally, the 2001 evaluation of the Roadway Scenic Unit 19, Flick Point suggests that large home rebuilds are responsible for a loss of Lake views from along the highway corridor. The report states the unit will remain at risk of falling out of attainment if present trends continue.

This project was reviewed under Level 3 of the Shoreland Scenic Ordinances, TRPA Code Section 30.15.C (3), which requires the shoreland project area to have or exceed a contrast rating score of 21. A Baseline Scenic Assessment has been completed and TRPA has verified that APN 117-020-19, the Reinhard parcel, obtained a baseline contrast rating score of 20. The Metas parcel, APN 117-020-20 received a baseline contrast rating score of 11. The proposed composite shoreland project area receives a contrast rating score 23 which exceeds the 21 required for the project. To reach this composite score, the applicant will be painting the Metas residence a darker color that blends with the background and screening the perimeter of the structure with vegetation.

The additional visual mass created by the proposed pier extension and the rock shoreline protective structure totals 341 square feet. This was calculated by adding the visual mass of the proposed pier extension and the two catwalks and the shoreline protective structure visible above mid-Lake level (6226 LTD), and providing the applicant credit for the visual mass of the existing pier. The applicant is required to utilize the Transfer of Scenic Mitigation Credits (Interim System), TRPA Code Section 30.15.H. The pier is in a Shoreline Travel Route that is currently in attainment, and the additional visual mass must be mitigated at a ratio of 1:1. Therefore, as a condition of approval, the applicants must reduce the visual mass within the shorezone, or Shoreland Scenic Unit, by 341 square feet. The applicant and his representatives have chosen to reduce visual mass in the upland by planting additional vegetation equaling 122 square feet to help screen the existing residences, and by using the balance of the allowed visible area between the contrast rating score of 21 and 23 which equals 220 square feet. This totals the 341 square feet required.

Visual simulations have been prepared to depict the pier, the shorezone protective structure and the required upland screening from a view perpendicular to the project and at a 45-degree angle to the proposed pier (worst case scenario). (See Exhibit E)

A landscaping plan has been submitted to TRPA as a part of the project and based on this information; staff has concerns that the proposed plantings may not be feasible. To ensure the implementation and long-term survival of the scenic mitigation plantings, the draft permit has been conditioned (See Draft Permit Conditions 3.C, D & O) to require the following: the plans are stamped by a licensed landscape architect; they include accurate cross sections of the plantings in and adjacent to the shoreline protective structure; construction and planting techniques and methodology are specified for the creation of planting beds located in and near the proposed shoreline protective structure and under the deck of the Metas residence; a landscaping security be provided; and an annual monitoring report shall be submitted to TRPA to ensure the project is implemented as proposed.

As conditioned, the project complies with the Shoreland Scenic Ordinance.

C. Shoreline Protective Structure: The vertical wall structure is proposed to be removed as a part of this project. A sloping permeable rock shorezone protective structure will be constructed that will: attenuate the waves better than the existing vertical wall; be more natural in appearance than the existing conditions; and continue to provide and maintain the prime fish habitat. The shoreline protective structure has also been engineered to provide a reasonable amount of protection to the Metas and Reinhard structures. Robert Joslin of Joslin Geotechnical has provided a report detailing the review of the area and remediation techniques that should be employed on site. Subsequent letters discuss the need for the applicant to be aware that the location of the Metas residence does constrain the ability of the shoreline restoration/protective structure to completely achieve full protection for this residence (Exhibit D). The project has been conditioned to ensure accurate revised cross sections of the proposed revetment structure are submitted for TRPA review and approval prior to acknowledgement of the permit. (See Draft Condition 3.A.10).

Staff Analysis:

A. Environmental Documentation: The applicant's representatives have completed the Initial Environmental Checklist (IEC), a baseline scenic assessment, and two visual simulations in order to assess the potential environmental impacts of the project. Additionally, the applicant has provided a Geotechnical Report by Robert Joslin, and a Fish Habitat Evaluation and Restoration Plan by Stanford Loeb. No significant environmental impacts were identified that cannot be mitigated by the conditions of the permit. A mitigated declaration of no significant effect on the environment shall be completed if the project receives approval from the Governing Board. A copy of the completed IEC, the baseline scenic assessment contrast rating score sheet, the visual simulations, the Geotechnical Report and the Fish Habitat Evaluation and Restoration Plan will be made available at the Governing Board hearing and at TRPA prior to the hearing.

B. Plan Area Statement: The project is located within Plan Area Statement 021 Tahoe Estates. The Land Use Classification is Residential, and the Management Strategy is Mitigation. The proposed use (pier) is an allowable accessory structure in the Plan Area Statement and the shoreline protective structure is a special use. Single-family dwellings are allowed uses.

C. Land Coverage: Minor land coverage changes are expected to occur on the properties as a result of the proposed project. At the time of the writing of this staff summary, the land coverage verification for these parcels has not been finalized. TRPA is working with the applicant to complete this verification. The proposed project requires the new pier access to be mitigated at a ratio of 1.5:1 as the access is located in the backshore. Additionally, a project area deed restriction may be required to ensure the properties are not becoming more non-conforming in relation to land coverage. The permit has been conditioned to ensure that, at the time of acknowledgement, the proposed project land coverage figures shall be consistent with Chapter 20 and Chapter 55 of the TRPA Code of Ordinances and that a project area deed restriction may be required. (See Draft Permit Conditions 3.A.2 & 3.K).

D. Shorezone Tolerance District: The subject parcel is located within Shorezone Tolerance District 2. Access to the shoreline is proposed to be restricted to stabilized access ways which minimize the impact to the backshore.

E. Required Findings: The following is a list of the required findings as set forth in Chapters 6, 20, 50, 51, 52, 53, 54, and 55 of the TRPA Code of Ordinances. Following each finding, agency staff has briefly summarized the evidence on which the finding can be made.

1. Chapter 6 Findings:

a. 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.

(1) Land Use: The project area contains two single-family dwellings and a guest house. The single-family residences are listed in the Tahoe Estates Plan Area Statement (PAS) as allowed uses. The guest house is a non-conforming legally existing secondary structure. The proposed project involves the relocation and expansion of an existing accessory structure (pier) which is an allowed use within the PAS. The project also includes the shorezone restoration/shoreline protective structure which is a special use within the PAS. The proposal is consistent with the Land Use Element of the Regional Plan. Surrounding land uses consist of residential properties with accessory shorezone development consisting of piers and

boathouses. The proposed project will not alter any land use patterns.

(2) Transportation: The proposed pier will serve the homeowners of the affected parcels and, as such, will not result in an increase of daily vehicle trip ends (dvte) to the subject parcel or vehicle miles traveled (VMT).

(3) Conservation: The project, as conditioned, is consistent with the Conservation Element of the Regional Plan. Please refer to the Issues Section, Item A, B and C for a discussion on the fish habitat, scenic quality and shorezone protective structure/restoration issues regarding this project. No Tahoe Yellow Cress (*Rorippa subumbellata*) plants were found during site visit by California State Lands Commission in 2002. The draft permit is conditioned to ensure that a Tahoe Yellow Cress Survey is conducted prior to the commencement of construction. The survey shall take place between June 15 and September 15 when the plant is visible and identifiable (See Draft permit condition 3.I). There are no known special interest animal species or cultural resources within the project area.

(4) Recreation: This project does not involve any public recreation facilities or uses. The proposed pier will be similar in length to adjacent existing piers and will not extend beyond the TRPA pierhead line or lakebed Elevation 6219 LTD. By remaining consistent with existing neighboring development, the proposed pier will not adversely affect recreational boating or top-line angling. The proposed pier will be at least 90-percent open, which may allow small craft to pass under it depending on Lake water levels.

(5) Public Service Facilities: This project does not require any additions to public services or facilities.

(6) Implementation: Coordination of the project with other agencies was achieved at the Shorezone Review Committee monthly meetings. The proposed project does not require any allocations of development or transfers of development.

b. 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 the TRPA.

c. 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 1.b, above.)

2. Chapter 20 - Land Coverage Relocation Findings:

a. The relocation is to an equal or superior portion of the parcel or project area.

The proposed project will require that 128 square feet of coverage be relocated in the backshore for pier access. The permit has been conditioned to ensure that all relocated land coverage is consistent with Chapter 20 and Chapter 55 prior to acknowledgement of the permit (See Draft permit condition 3.A.2). Relocation of land coverage from a higher class to a lower class is prohibited. In accordance with Subsection 55.4.D of the TRPA Code of Ordinances, the applicant will be required to restore an area of land in the backshore in the amount of 1.5 times the amount of land in the backshore to be covered. See Staff Analysis, Section C, Land Coverage above for additional information.

b. The area from which the land coverage was removed for relocation is restored in accordance with Subsection 20.4.C.

The permit has been conditioned to ensure restoration of the areas where land coverage is being removed shall be restored. All restoration activities will use species listed on the TRPA-approved plant list as species appropriate for the backshore site conditions. (See Draft permit Conditions 3.A(2) & 3.A(9))

c. The relocation is not to Land Capability Districts 1a, 1b, 1c, 2 or 3, from any higher numbered land capability district.

No land coverage is proposed to be relocated from a higher land class to a lower class. The property contains only 1b and 1c land classes. All relocation will occur within these land classes and will be from an equal or superior portion of the property per 2.a above.

3. Shorezone Findings (Chapter 50):

a. The proposed project will not adversely impact: (1) littoral processes; (2) fish spawning; (3) backshore stability; and (4) on-shore wildlife habitat, including wildfowl nesting areas.

The proposed pier project will not adversely impact littoral processes because the pier design is at least 90-percent open. According to the Geotechnical Report written by Bob Joslin of Joslin Geotechnical, the proposed shoreline protective structure has been designed to improve littoral processes within the area. The shoreline has significant non-natural development, including a crumbling concrete/stone vertical wall. This wall will be removed and the shoreline will be restored for improved wave attenuation and littoral drift processes. The proposed project is located in an area mapped as fish spawning habitat and field verified as fish feeding and escape cover habitat. The fish habitat and restoration report by Stanford L. Loeb outlines that portions of the fish habitat will be restored and enhanced including two old rock crib from the original pier, removal of some old piling, and the removal of the vertical wall and replacement with the sloping rock shoreline protective structure. These changes are expected to improve the existing fish habitat and will not adversely impact fish spawning. The existing backshore and shoreline is very modified and will be restored and stabilized using a balanced approach between shoreline restoration and stabilization for health and safety purposes. Due to the location of the residence on APN 117-020-20, this structure will benefit greatly from the placement of the shoreline protective structure and the restoration for the backshore areas. The proposed project is not located within an area that is mapped as on-shore wildlife habitat nor has the site been shown to be a waterfowl nesting area.

b. There are sufficient accessory facilities to accommodate the project.

The project area contains two single-family dwellings that provide sufficient access, parking and sanitation facilities to accommodate the project. The pier and shoreline protective structure will be used by the property owners and their guests.

c. The project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modification of such existing uses or structures will be undertaken to assure compatibility.

The project is compatible with existing shorezone accessory uses (piers and boathouses) in the vicinity. The proposed pier will not extend beyond the TRPA pierhead line or lakebed Elevation 6219 Lake Tahoe Datum, whichever is more restrictive (See Draft Permit Condition 1).

d. The use proposed in the foreshore or nearshore is water-dependent.

The pier is located in the foreshore and nearshore of Lake Tahoe and is, by its nature, water-dependent. The shoreline protective structure is located in the backshore and nearshore and is also water-dependent by its nature.

e. Measures will be taken to prevent spills or discharges of hazardous materials.

This approval prohibits the use of spray painting and the use of tributyltin (TBT). Also, conditions of approval prohibit the discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal (see Draft Permit Condition 6). No containers of fuel, paint, or other hazardous materials may be stored on the pier (See Draft Permit Condition 11).

f. Construction and access techniques will be used to minimize disturbance to ground and vegetation.

The applicant shall not be permitted to store construction materials on the beach or in the backshore. Permanent disturbance to ground and vegetation is prohibited. The construction of the pier extension and portions of the shoreline protective structure will be accomplished from the lake by barge. No vehicular access shall be authorized in the backshore (See Draft Permit Condition 7). The permit has been conditioned to ensure construction methodology and a schedule are approved prior to acknowledgement (See Draft Permit Condition 3.H).

g. The project will not adversely impact navigation or create a threat to public safety as determined by those agencies with jurisdiction over a lake's navigable waters.

The proposed pier will not extend beyond lakebed Elevation 6219 LTD or TRPA pierhead line whichever is more restrictive. The U.S. Army Corps of Engineers must also review this project for navigational safety. The U.S. Army Corps of Engineers has indicated they plan to issue a General Permit 16 for this project and that no safety or navigation impacts have been identified. The project is not located beyond 350-feet (measured from the Highwater Mark, 6229.1 LTD). Therefore, it is located outside the general permitting jurisdiction of the U.S. Coast Guard.

h. TRPA has solicited comments from those public agencies having jurisdiction over the nearshore and foreshore and all such comments received were considered by TRPA prior to action being taken on this project.

This project must receive approval from the California State Lands, Lahontan Regional Water Quality Board, California Fish and Game, and the U.S. Army Corps of Engineers. The project was brought to the Shorezone Review Committee and agencies comments were considered during the review of the project. California Fish and Game California have issued a permit for the project. California State Lands, Lahontan and the United States Army Corp of Engineers intend to issue their permits pending TRPA project approval. Lahontan must also approve the fish habitat restoration aspect of this project to go forward with the pier. No other concerns or objections to the proposed project were raised.

4. Shorezone Findings (Chapter 51) – Special Use Findings- (*Required for Shorezone Protection Structure Only)*

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

According to the Plan Area Statement, Shoreline Protective Structures are considered a special use. The existing vertical wall is currently being undermined by wave action and portions of the mortar and rock are falling into Lake Tahoe. Additionally, the vertical wall and subsequent backfill was completed sometime in the mid-1970's, is the main structure that is protecting the residence on APN 117-020-20/Metas home from being inundated by wave action from Lake Tahoe. Placer County records do not indicate a year built for the Metas Residence, APN 117-020-20. TRPA issued a permit to complete an addition in 1989. The proposed removal and reconstruction/ reconfiguration of the existing protective structure are of a nature, scale, density, intensity and type to be an appropriate use within this project area. The proposed shorezone restoration/protective structure will be an improvement to the scenic quality of the project area and its surroundings, as it will mimic the natural rocky shoreline and be revegetated with vegetation appropriate for the area. The permit will be conditioned to require a monitoring plan to ensure that the proposed benefits relating to the creation of additional fish habitat, better littoral processes and scenic improvements are realized. (See Draft Permit Condition 3.J)

b. 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.

The project, as proposed, will utilize best management practices during the removal and reconstruction/reconfiguration of the shoreline protective structure to ensure the project is not injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or neighboring properties. The revised Geotechnical Report by Robert Joslin, provides evidence that the proposed replacement of the shoreline protective structure will protect the land and water resources along this portion of shorezone and should improve the littoral process in and around the project area.

c. 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 removal of the existing vertical wall and the replacement, reconstruction/reconfiguration will not change the character of the neighborhood or detrimentally affect or alter the purpose of the plan area statement. The proposed shorezone protective structure and landscaping will enhance the character of the area by removing the vertical wall and restoring the shoreline to mimic the natural rocky shoreline. The proposed project will be confined to the two parcels boundaries.

5. Shorezone Findings (Chapter 52):

a. The expansion decreases the extent to which the structure does not comply with the development standards and/or improves the ability to attain or maintain the environmental thresholds.

The proposed pier will be an open piling design and will meet all of TRPA's development standards except for location in prime fish habitat. TRPA staff has inspected the subject parcel and has determined that the proposed project will not adversely impact fisheries if the mitigation requirements are met as conditioned in the draft permit (See Draft Permit 3.J and 12). The proposed pier project is located within Scenic Shoreline Unit 19 – Flick Point, which is in attainment with TRPA scenic quality thresholds. The applicants are proposing a scenic mitigation package that, if fully implemented, shall result in an incremental improvement in the scenic quality of the scenic unit. The draft permit has been conditioned to ensure the permittee submits a landscaping plan certified by a qualified professional to

ensure the implementation of the proposed landscaping and scenic mitigation plan. The fish habitat of the area is proposed to be enhanced. See Section 3.a and the Issues Sections above. The project contains a monitoring component to ensure the survival of the landscaping. Additionally, the function of the shorezone protective structure will also be monitored to ensure the structure will not cause additional degradation to any of the other environmental thresholds (Finding 1.b above).

b. The project complies with the requirements to install Best Management Practices (BMPs) as set forth in Chapter 25.

This project will require that all installed BMPs be reviewed for correct sizing and maintenance needs and any that are not functioning properly shall be replaced. All required temporary BMPs will be installed as a condition of approval (See Draft Permit Condition 3.B)

c. The project complies with the design standards in Section 53.10.

The project is consistent with TRPA Code Section 53.10. The decking is proposed to be dark brown color and shall be compatible with the surroundings. Conditions of approval will ensure that earth tone colors are used on the pier extension and the specific colors must be reviewed and approved by TRPA prior to acknowledgement of the permit (See Draft Permit Condition 3.A(7)). If a wood decking is used, the applicant will be required to stain the decking prior to attaching it to the pier frame (See Draft Permit Condition 6).

d. The structure has not been unserviceable for more than five years.

The existing pier remains serviceable.

6. Shorezone Findings (Chapter 53):

a. Projects shall not be permitted in the backshore unless TRPA finds that such project is unlikely to accelerate or initiate backshore erosion.

The proposed shoreline restoration/shoreline protective structure and the protection and augmentation of additional native vegetation will further stabilize the shoreline and attenuate future wave attack on this portion of the shoreline. Relocation of the existing pier to the common property line, in conjunction with the shoreline restoration/protective structure, will not result in an increase to backshore erosion. Access to the proposed pier will be limited to a designated pier walkway located on the Reinhard parcel, APN 117-020-19 and also along the common property boundary between the subject parcels. (See Exhibit A)

7. Shorezone Findings (Chapter 54):

a. Structures in the backshore or environmental threshold values will be enhanced by the construction and maintenance of the protection structures.

The applicant has provided documentation and geotechnical advice that the shoreline erosion problem at this project site will require remedial measures (See Exhibit D). The removal of the existing vertical rock and mortar wall and the reconstruction/reconfiguration with a dynamic, sloping, and permeable structure will enhance protection of structures located in the backshore, will improve water quality, enhance scenic quality, and provide improved fish habitat. (See Exhibit B)

b. The protection of structures in the backshore or the enhancement of environmental threshold values more than offset the adverse environmental effects of the construction and maintenance of he shoreline protective structures.

See 7(a) above.

c. Each protective structure has been designed to be sloping and permeable.

The proposed shorezone protective structure to replace the existing vertical rock and mortar wall will be sloping and permeable. (See Cross Sections in Exhibit A) A landscaping plan for the structure will provide substantial riparian plantings of willows, dogwoods and aspens to screen the perimeter of the structure, and once established, provide added stability to the site. (See Exhibit A)

d. Each protective structure has been designed so that backshore erosion on adjacent properties will not be accelerated as a result of the erection of the protective structure.

Shoreline processes within this area are man-modified. The proposed shoreline protective structure will slightly curve/taper toward the adjacent property to the west, but will not extend onto the neighboring property. To the east, the structure will taper into the existing rock fill/protective structure already on the Reinhard parcel. The project anticipates an enhancement of littoral processes in the area.

8. Shorezone Findings (Chapter 55):

a. The project, program or facility is necessary for environmental protection.

See 7(a).

b. There is no reasonable alternative, which avoids or reduces the extent of encroachment in the backshore.

Complete removal of the existing shoreline protective structure without further protection will result in increased erosion of the backshore and presents a health and safety concern in relation to the Metas residence, APN 117-020-20 (See Exhibit D). Staff concurs that there is no reasonable alternative to the proposed encroachment in the backshore. All construction activities and final outcomes will be monitored to ensure the project is implemented and functions as proposed.

c. Land coverage and land disturbance may be permitted in the backshore to provide access to an approved or legally existing structure or use located in the nearshore or foreshore , provided TRPA finds that the amount of land coverage proposed is the minimum necessary to provide access to the structure or use and the impacts of coverage and disturbance are mitigated in the manner prescribed in Subparagraph 55.4.A (5), which states: The impacts of the coverage and disturbance are mitigated to the extent feasible through means including, but not limited to , the following:

a. Application of BMPs; and

Refer to 5.b above.

b. Restoration in accordance with Subsection 20.4.C of land in the backshore or a stream environment zone in the amount of 1.5 times the area of land in the backshore covered or disturbed for the project beyond that permitted in Section 55.3.

Refer to 2.a above.

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

I. A motion based on this staff summary, for the findings contained in Section E above, and a finding of no significant environmental effect for the project.

II. A motion to approve the project based on this staff summary subject to the conditions contained in the attached draft permit.

List of Exhibits

A: Site Plans and details (pp. 1-5)
B: Low water photographs (pp. 1-2)
C: High water photographs (pp. 1-2)
D: Letter from Robert Joslin dated July 10, 2006
E: Visual Simulations - Existing and Proposed Conditions

TAHOE REGIONAL PLANNING AGENCY

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DRAFT PERMIT

PROJECT DESCRIPTION: Existing Single-use Pier Relocation & Expansion to a Multiple-use Pier/ Shoreline Restoration and placement of a Shoreline Protective Structure.

PERMITTEE: Victor and Shirley Metas & William Rienhard APN: 115-060-009

FILE NO. 20051094 COUNTY/LOCATION: 4798 North Lake Boulevard, Placer County

Having made the findings required by Agency ordinances and rules, the TRPA Governing Board approved the project on August 23, 2006, subject to the standard conditions of approval attached hereto (Attachment S) and the special conditions found in this permit.

This permit shall expire on August 23, 2009, without further notice unless the construction has commenced prior to this date and diligently pursued thereafter. Commencement of construction consists of driving the pier pilings and does not include grading, installation of utilities or landscaping. Diligent pursuit is defined as completion of the project within the approved construction schedule. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action, which delayed or rendered impossible the diligent pursuit of the permit.

NO CONSTRUCTION OR GRADING SHALL COMMENCE UNTIL:

(1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE(S) HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;

(2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT;

(3) THE PERMITTEE OBTAINS A COUNTY BUILDING PERMIT. TRPA'S ACKNOWLEDGEMENT IS NECESSARY TO OBTAIN A COUNTY BUILDING PERMIT. THE COUNTY PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS; AND,

(4) A TRPA PREGRADING INSPECTION HAS BEEN CONDUCTED WITH THE PROPERTY OWNER AND/OR THE CONTRACTOR.

_____ _____

TRPA Executive Director/Designee Date

PERMITTEE'S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee: _____ Date _____

PERMIT CONTINUED ON NEXT PAGE

D-R-A-F-T

APN: 117-020-19 & 20
FILE NO. 20051094

Excess Coverage Mitigation Fee (1) Amount_____ Paid_____ Receipt No._____

Shorezone Mitigation Fee (2) Amount $3,650 Paid_____ Receipt No._____

BMP Security Posted (3) Amount $_____ Posted _____ Receipt No. _____ Type_____

Security Administrative Fee (4) Amount $ _____ Paid _____ Receipt No. _____

Landscape Security Posted (5) Amount $_____ Posted _____ Receipt No. _____Type _____

Security Administrative Fee (6) Amount $ _____ Paid _____ Receipt No. _____

Fisheries Security Posted (7) Amount $_____ Posted _____ Receipt No. _____Type _____

Security Administrative Fee (8) Amount $ _____ Paid _____ Receipt No. _____

Notes:
(1) Amount to be determined. See Special Condition 3.M below.
(2) See Special Condition 3.N, below.
(3) Amount to be determined. See Special Condition 3.O, below.
(4) $144 if a cash security is posted, or $74 if a non-cash security is posted. See attachment "J"
(5) Amount to be determined. See Special Condition 3.P, below.
(6) $144 if a cash security is posted, or $74 if a non-cash security is posted. See attachment "J"
(7) Amount to be determined. See Special Condition 3.J, below.
(8) $144 if a cash security is posted or $74 if a non-cash security is posted. See attachment "J"

Required plans determined to be in conformance with approval: Date: _____

TRPA ACKNOWLEDGEMENT: The permittee has complied with all pre-construction conditions of approval as of this date:

_____ _____
TRPA Executive Director/Designee Date

SPECIAL CONDITIONS

1. This permit specifically authorizes the removal of an existing 55-foot single-use pier and its relocation to the common property line of APNs 117-020-19 & 20 to create a multiple-use pier that is approximately 160 feet in length. The proposed pier will extend from the highwater line to a lakebed Elevation 6219 LTD, or the TRPA pierhead line, whichever is more restrictive, for a total expansion of a maximum of 105-feet in length. The pier is proposed to be six feet wide to the pierhead and have a single-piling design. The pierhead is proposed to be 10-feet wide by 45-feet long, and be supported by double-pilings. The pierhead will contain two 3-feet wide by 45-feet long

standard adjustable catwalks on either side. The forward facing steel steps located on the catwalks are not permissible. No pilings or railings are proposed to extend above the pier deck. Low-level lighting will be used to illuminate the pier deck only, and not illuminate the waters of Lake Tahoe directly. The pier will be colored to match the shoreline backdrop. The permit also authorizes the removal of the vertical rock and mortar shoreline wall located on the lakeward side of the subject parcels and replace it with a sloping dynamic shoreline protective structure. This structure will be a combination shoreline restoration and protective structure and, based on the project record, will provide an overall scenic and fish habitat improvement to this stretch of shoreline. This permit authorizes no railings, pilings, or other structures above the pier deck. The small unauthorized stairwell and railing that connects the existing pier to the shorezone shall be removed. The permit also authorizes the removal of several non-conforming structures located below the highwater line of the subject properties. These include a portion of fence and its associated foundation on the west side of the property, a small deck overhang, two remnant pilings, any remnant wood cribbing associated with a previously existing pier, and a concrete patio. No buoys or other shorezone structures are authorized by this permit. The permit also requires 341-square feet of scenic screening to mitigate for the expansion of the pier and placement of the shoreline protective structure.

2. The Standard Conditions of Approval listed in Attachment S and Q shall apply to this project.

3. Prior to permit acknowledgement, the following conditions of approval must be satisfied.

   A. The site plans and plan elevations shall be revised as follows:

      (1) The setback lines shall be revised and shall be drawn in the manner described in TRPA Code Section 54.4.A (5) using the five feet setback for existing structures.

      (2) Land coverage calculations shall be consistent with Chapter 20 of the TRPA Code of Ordinances. The following revised land coverage calculations for each of the subject parcels:

         (a) Allowable land coverage for each land capability district including the revised backshore area,
         (b) The existing land coverage for each land capability district and coverage type,
         (c) The proposed land coverage for each land capability district and coverage type,
         (d) The excess land coverage in each land capability district including the backshore area,
         (e) Any previously mitigated excess land coverage,
         (f) Amount of excess land coverage remaining to be mitigated,
         (g) Any existing banked land coverage (if applicable),
         (h) Any proposed use of previously banked land coverage (if applicable).

(i) Pursuant to Chapter 55 of the TRPA Code of Ordinances, highlight specific areas on plans and in the land coverage calculations, of land coverage areas to be removed and relocated at a ratio of 1.5:1 to mitigate land coverage for the pier access. Highlighted areas on plans and in calculations shall contain amount of land coverage in square feet.

Please note: The revised coverage calculations for the Metas parcel shall be consistent with the previous Addition/Modification permit and plans approved in 1989 and shall not exceed those figures. Any changes shall reflect on-site conditions that are consistent with the previous approvals and the backshore boundary location. Any minor changes to land coverage shall be reviewed and approved by TRPA prior to acknowledgement and shall be consistent with all relevant sections of the TRPA Code of Ordinances.

(3) Placement of a turbidity curtain, caissons and erosion control fencing during removal of non-conforming structures lakeward of highwater, the existing pier, and any work involving modification of the shoreline. Depending on the lake levels, the type and use of these measures is at the discretion of the TRPA Compliance Inspector.

(4) Notes and details for double filter fabric fencing located down slope of the proposed replanting areas. *Please Note: Straw bales are no longer preferred for temporary erosion control and straw is no longer a recommended mulch material in the Lake Tahoe Basin. The use of straw has contributed to the spread of noxious weeds throughout the basin. The use of alternatives to straw bales, such as pine needle bales, filter fabric, coir logs and pine needle or wood mulches for erosion control purposes is strongly encouraged.*

(5) Notes and details for vegetation protective fencing around the entire construction site located in the backshore. Where a tree exists within the construction area, the vegetation protection fencing must be placed beyond the drip-line of the outermost branches. Additional vegetation protection may be required by the TRPA Environmental Compliance Inspector at the pre-grade and throughout the project.

(6) All required permanent Best Management Practices (BMP's) for the entire project area per Permit Condition 3.B.

(7) A note stating the pier pilings, structural steel, and catwalk shall all be a flat dark brown or a dark color consistent with the project simulation and Section 53.10.A of the TRPA Code of Ordinances. The decking shall be 'trex' type and shall be dark brown in color, per color sample submitted, to blend in with the shoreline backdrop. The forward facing steel steps located on the proposed pier catwalks are not consistent with TRPA design standards and as such are not permissible. The revised plans shall remove these features.

(8) TRPA approved low-level lighting (turtle-type) details for the pier as per Standard 54.4 Guideline 6 in the TRPA Design Review Guidelines.

(9) Design specifics including materials and construction methodology for the pier access path on both the subject properties. The existing vegetation in the backshore including the 8-inch aspen and associated aspen clumps, and the 17-inch pine shall not be removed, cut or disturbed for placement of the access path.

(10) Revised details of the shoreline protective structure that accurately depict the highwater line and the extent of the revetment. Add specific notes to the plans that specify the type and size class of the rocks and the type and size class of the cobbles to be used. All stones shall be a color and type that is consistent with the natural surrounding area. Submit small sample chips for TRPA review and approval in the array of colors that shall form the structure. No soils shall be placed within the shoreline protective structure, except were authorized for planting pockets.

B. A Permanent and Temporary Best Management Practices Maintenance Plan shall be submitted for TRPA review and approval. The plan shall include, but not be limited to the following:

(1) the location and type for all new permanent erosion control measures including those measures to be used to capture runoff from the driveway and any other hard impermeable surfaces, and those used to infiltrate areas below roof driplines that are not protected by hard cover or vegetation,
(2) assessment and maintenance requirements for existing permanent erosion control measures,
(3) any replacement requirements and infiltration calculations for existing BMP areas,
(4) all temporary BMPs,
(5) calculations demonstrating that all new or replaced erosion control measures are sized accordingly for the slope and soil type of the property and will capture and infiltrate a 20-year/1 hour storm event.
(6) The installation of infiltration facilities adjacent to or within the backshore boundary is not permissible. Any existing devices that infiltrate in the backshore shall be replaced with an appropriate alternative.

C. The landscaping plans shall be revised to include a site plan and elevation that depict the required vegetation for scenic mitigation and backshore stabilization. The plans shall label the vegetation planted to obtain the 341-square feet of the upland structure for scenic mitigation. This vegetation shall be planted to screen the residence to mitigate the visual mass of the proposed pier and shoreline protective structure. Some vegetation may serve a dual purpose of backshore stabilization. The final landscaping plans shall be consistent with the final visual simulations (per Permit Conditions 3.F & G). The plan shall also include the planting design, methodology and maintenance requirements for

stabilization of any backshore areas in accordance with Section 53.8.B & 55.6 of the TRPA Code of Ordinances. The landscape plans shall be submitted for TRPA review and approval, and shall include:

(1) Identification of existing vegetation (species and size),
(2) Include specific planting details, specifications, and construction methodology for creating planting pockets located in and adjacent to the shoreline protective structure and under the deck of the residences located on APN 117-020-20 & 19,
(3) Cross sections of the plantings in and adjacent to the shoreline protective structure,
(4) an irrigation system plan specifically outlining watering requirements and techniques,
(5) a fertilizer management plan in accordance with the standards required in Section 81.7 of the TRPA Code of Ordinances. The proposed plan shall be revised to specifically detail how the landscaping plan is meeting the above Code sections,
(6) Revise notes 2 and 8. No fertilizer will be applied within the TRPA verified Backshore Boundary,
(7) Notes stating that all vegetation shall be consistent with the requirements of TRPA Code Sections 30.7, 55.6, and 74.2 of the TRPA Code of Ordinances, including the specification for sizing and species of plants. Each note shall outline specifically what these Code Sections state.
(8) Provide proposed revegetation seed mix to TRPA specifications and revise note 11 accordingly,
(9) The proposed plants shall be consistent with TRPA Code Section 55.6 and 74.2, and shall be native plants chosen from the TRPA approved plant list as described in Table 1 of the Home Landscaping Guide for Lake Tahoe and Vicinity.
(10) The landscape plans shall be stamped and dated by a certified and licensed landscape architect.
(11) Mulching of the landscaped areas within the backshore shall be completed with materials that will not wash into Lake Tahoe and degrade water quality. Amend note 9 accordingly and specify such mulch.

An integrated BMP, backshore restoration, and scenic mitigation implementation and maintenance plan, may be acceptable if all required elements are included.

D. In conjunction with the landscaping plan and prior to the return of the posted security, the permittee shall submit a landscape monitoring plan which requires that annual reports be submitted to TRPA Environmental Review Services staff by October 1 each year until TRPA determines that the proposed landscaping has been established according to the approved plans. The monitoring plan shall include post-construction photos demonstrating any resultant impacts to scenic quality as viewed from 300 feet from shore looking landward and to lake bottom conditions as viewed from the subject parcel. Any landscaping that fails shall be re-planted as directed by TRPA until planting succeeds.

E. The Metas Residence siding shall be painted a medium dark brown (Munsell 7.5YR 4/6 or equivalent) and trim and facia shall also be painted a dark brown (Munsell 2.5YR 3/3 or equivalent) per the scenic mitigation documentation outlined within the July 11, 2006 submittal to TRPA. Color samples depicting the above colors (no larger than 8.5 X 11) shall be submitted to TRPA.

F. The upland mitigation visual simulation shall be revised to be consistent with the TRPA Memo entitled Scenic Simulation Standards and Requirements for Projects Located in a Scenic Resource Area, dated August 26, 2004, and shall:

(1) Accurately depict the authorized project,
(2) Accurately depict the portions of the upland scenic mitigation (red-lined on simulation) to mitigate the pier extension.
(3) Depict vegetation, that is consistent with the approved landscaping plan per Permit Condition 3.C, at a maximum of five years growth
(4) Provide an appropriate scale based on the location of the upland mitigation vegetation.

G. The proposed pier (45-degree) visual simulation shall be revised to be consistent with the TRPA Memo entitled Scenic Simulation Standards and Requirements for Projects Located in a Scenic Resource Area, dated August 26, 2004, and shall:

(1) State the scale at highwater and at the end of the pier.

H. The permittee shall submit a construction schedule. This schedule shall include, but not be limited to, dates for implementing the following items:

(1) Installation of temporary erosion control structures
(2) Demolition of existing pier
(3) Construction of the authorized shorezone restoration/ shoreline protective structure,
(4) Construction of the pier access pathway,
(5) Construction of the multiple-use pier,
(6) Installation of all permanent erosion control measures
(7) Installation of the landscaping
(8) Completion of construction

I. The permittee shall have a TYC inspection completed by TRPA staff, or a qualified professional botanist approved by TRPA. Inspections occur from June 15 to September 15 of each year. If the inspection reveals that the site contain TYC plants, the applicants shall submit a TYC Management Plan for the subject parcel. The protection plan shall include methods used during construction for protection of the species and the habitat, monitoring during construction, and also protection measures to be utilized long term. Construction methods must include vegetation fencing to prevent vehicular disturbance, pedestrian disturbance and storage of equipment on the beach. Long-term protection

measures may include limiting beach raking, limiting access to the population/habitat, and/or avoiding population disturbance

J. A Fish Habitat Monitoring Plan shall be developed in conjunction with TRPA staff and a qualified fisheries expert. The plan shall assess fish use of the shorezone restoration areas, the shorezone protective structure, and the pier as feed and escape/cover habitat and limited spawning habitat. Monitoring, with annual reports, shall be conducted for a period of not less than three years after completion of the project. After 3 years TRPA shall assess the results and the need to continue the monitoring. The monitoring shall inform TRPA whether the mitigation is achieving the desired results. An additional security per TRPA Code Section 8.8 shall be provided by the permittee in an amount equal to 110% of the total costs of the shoreline restoration/shoreline protection structure and the monitoring program for the subject properties, to ensure success of the proposed shorezone restoration/fisheries mitigation requirements. This security shall not be released until the monitoring has been completed to TRPA's satisfaction and shall be based on the annual reporting and periodic site visits by TRPA Compliance Inspectors.

K. Based on the determination of land coverage figures per Condition 3.A.2 above, it may be necessary to record a approved to form deed restriction, prepared by TRPA, for each APN within the project area (117-020-19 & 20), permanently assuring that the coverage calculations for the parcels within the project area shall always be made as if the parcels had been legally consolidated. An original TRPA signed copy will be provided to the applicant with the conditional permit. This copy shall be used to record the deed restriction. A copy of the recorded deed restriction, or the original recorded deed restriction, shall be provided to TRPA prior to permit acknowledgement.

L. Pursuant to Subsection 54.8.D(2) of the TRPA Code, the applicants shall record a TRPA approved-to-form deed restriction reflecting pier use agreements and shorezone development limitations on the affected properties. TRPA shall draft the deed restrictions. An original TRPA signed copy will be provided to the applicant with the conditional permit. This copy shall be used to record the deed restriction. A copy of the recorded deed restriction, or the original recorded deed restriction, shall be provided to TRPA prior to permit acknowledgement.

M. The affected property has an amount to be determined of excess land coverage. The permittee shall mitigate a portion or all of the excess land coverage on this property by removing coverage within Hydrologic Transfer California Area 9 – Agate Bay, or by submitting an excess coverage mitigation fee.

<u>To calculate the amount of excess coverage to be removed, use the following formula</u>:

Estimated project construction cost multiplied by the fee percentage identified in Table A, Chapter 20 of the TRPA Code of Ordinances, divided by the mitigation factor of 8. If you choose this option, please

revise your final site plans and land coverage calculations to account for the permanent coverage removal.

An excess land coverage mitigation fee may be paid in lieu of permanently retiring land coverage. The excess coverage mitigation fee shall be calculated as follows:

Coverage reduction square footage (as determined by formula (1) above) multiplied by the coverage mitigation cost fee of $8.50 per square foot for California Area 9 – Agate Bay projects. Please provide a construction cost estimate by your licensed contractor, architect or engineer. In no case shall the mitigation fee be less than $200.00.

N. The permittee shall submit a pier mitigation fee of $3,650 for the construction of 105 additional feet of pier (assessed at $30/linear foot) and one additional catwalk (assessed at $500).

O. The BMP security required under Standard Condition A.3 of Attachment S and TRPA Code Section 8.8 shall be determined upon the permittee's submittal of a required Best Management Practices Plan (per Condition 3.B above to include any erosion control vegetation and structures) and related cost estimate for implementation. In no case shall the security be less than $2,000. Please see Attachment J, Security Procedures for appropriate methods to post a security and for a calculation of the required Security Administrative Fee.

P. An additional security per TRPA Code Section 8.8 shall be provided by the permittee in an amount equal to 110% of the total costs of landscaping the subject property, to ensure success of the proposed landscape plan and scenic mitigation requirements. The security shall be determined upon the permittee's submittal of a required Landscaping Plan, Landscape Monitoring Plan, and the related cost estimate for implementation of the upland mitigation portion of the project. In no case shall the security be less than $5,000. Prior to return of the landscaping security, the applicant shall provide post-construction photos demonstrating the realized growth rate (size, height, aerial extent) of the planted vegetation. Any landscaping that fails shall be re-planted as directed by TRPA until the planting succeeds. The landscaping security shall not be released until the planting succeeds and reaches the size shown on the approved landscape plan per Condition 3.C & D and the approved visual simulation. By signature of this permit, the permittee agrees that the landscaping authorized under this permit shall be maintained for scenic mitigation purposes in perpetuity. Please see Attachment J, Security Procedures for appropriate methods to post a security and for a calculation of the required Security Administrative Fee.

Q. The permittee shall submit 3 sets of final construction drawings and site plans to TRPA.

4. Final pier construction drawings shall conform to all the applicable design standards of Section 54.4.B. and 54.6.B, TRPA Code of Ordinances, and all other applicable TRPA design standards.

5. The proposed low-level pier lighting shall illuminate the pier deck only, and shall not illuminate the waters of Lake Tahoe directly. The fixture shall be consistent with the color of the decking. Any changes to the lighting shall be reviewed and approved by TRPA.

6. The use of wood preservatives on wood in contact with the water is prohibited and extreme care shall be taken to insure that wood preservatives are not introduced into Lake Tahoe. Spray painting and the use of tributyltin are prohibited. If wood decking is to be used on the pier extension, the permittee shall stain the decking prior to attaching it to the pier frame.

7. Disturbance of the lakebed materials shall be kept to the minimum necessary for project construction. Any disturbance beyond what is outlined in this permit, the Loeb fish habitat report and the Joslin Geotechnical report shall be restored. All pier construction access shall be from Lake Tahoe via barge. Vehicular access to the shoreline is prohibited. In addition, storage of materials and equipment within the backshore is prohibited.

8. Best practical control technology shall be employed to prevent earthen materials from being suspended as a result of pier construction and from being transported to adjacent lake waters. At the TRPA inspector's discretion, the permittee shall install caissons while pile driving to prevent re-suspension of lakebed sediments during construction.

9. To ensure the protection of the water quality of Lake Tahoe, the discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin is prohibited. All surplus demolition and construction waste materials shall be removed from the project area via barge and deposited at TRPA approved points of disposal. All surplus landscaping waste shall be removed from the project area and deposited at an appropriate landscape disposal location.

10. No containers of fuel, paint, or other hazardous materials may be stored on the pier.

11. All existing trees and shrubs on this parcel between the lake and the residence were used to calculate the baseline contrast rating score and shall be considered as scenic mitigation. These trees and shrubs shall not be removed or trimmed without prior written TRPA approval. Any such removal or trimming shall constitute a violation of project approval.

12. By acceptance of this permit, the permittee agrees to implement all mitigation measures outlined in the Fish Habitat Environmental Assessment and the Soil and Geotechnical Investigation Report submitted for this project on the subject parcel and all modifications as outlined in the staff summary approved by the Governing Board on August 23, 2006.

13. By acceptance of this permit, the permittee agrees that all scenic design and mitigation measures outlined in the revised project site plans, scenic mitigation package, revised

visual simulation, and the revisions made to the best management practices and landscaping plan are hereby included as conditions of project approval and will be implemented as such.

14. By acceptance of this permit, the permittee agrees that the allowable visible area for all future development on the shoreland of the subject parcel shall maintain the 341-square feet of mitigation to account for the multiple-use pier extension and the shoreline protective structure.

END OF SPECIAL CONDITIONS

TAHOE REGIONAL PLANNING AGENCY

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MEMORANDUM

August 23, 2006

To: TRPA Governing Board

From: TRPA Staff

Subject: Proposed amendment to the Stateline/Ski Run Community Plan, City of South Lake Tahoe, El Dorado County, CA adding: *Timeshare-Residential Design*, *Timeshare-Hotel/Motel Design* and *Hotel, Motel, and Other Transient Dwelling Units* as allowable uses for the six-acre Van Sickle District (District 6a) at maximum densities of 15 units/acre.

Proposed Action: Governing Board approval of the proposed amendment of the Stateline/Ski Run Community Plan to add tourist accommodation unit uses, as referenced in the subject line, to the Van Sickle District, District 6a. The requested maximum density, regardless of the use category, is 15 units per acre and all uses are requested to be added as "allowable."

Staff Recommendation: (See Exhibit A.) Staff recommends that the Governing Board hold a public hearing on this item and adopt the proposed amendments and ordinance (Exhibit B). In addition, TRPA staff recommends that a footnote be added to these uses that states:

> *If District 6A is developed for Tourist Accommodation purposes, the following special provisions will apply in addition to the design requirements of the Community Plan:*
>
> A. *Affordable multiple family housing units shall be provided on site as part of the TAU project. The number of housing units to be provided shall be at least 20% of the number of the project's TAU's.*
>
> B. *Design of the project shall incorporate provisions for pedestrian access to the nearby commercial uses and provide a native landscaping plan that minimizes the project's visual intrusion into the roadway corridor. In addition, the developer shall be obligated to implement, or work with the California Tahoe Conservancy by committing the required funding for the project's fairshare of the bike trail component of the Stateline/Ski Run Community Plan's Implementation Element for the Van Sickle District."*

APC Recommendation: At the Advisory Planning Commission meeting held August 9, 2006 staff gave a brief presentation on the proposed amendment. No public comment was received on the project. APC unanimously voted to recommend approval of this item to the Governing Board inclusive of the special provisions outlined in the Staff Recommendation section above. The motion was unanimously approved, and although the APC did not have concerns with the concept of including a requirement that affordable multi-family housing units be provided as a

part of any TAU project in this instance, they did express a concern this not be considered a precedent setting policy for the basin until further information could be gathered as to whether 20% was the 'right" percentage in all situations. They additionally requested that with any subsequent project, the applicant and TRPA staff coordinate with Nevada and California State Parks and the California Tahoe Conservancy to ensure the potential project is integrated with the adjacent public lands (Van Sickle State Park).

Location: (See Exhibit F) District 6a is located off of Lake Parkway. Lake Parkway is a portion of the "loop road" described in the Community Plan. This District is located "outside the loop road" and consists of three parcels. Two parcels (APNs 029-441-15, 21) are owned by the applicant, Falcon Capital, and the third (APN 029-441-20) is owned by the California Tahoe Conservancy (CTC).

District 6a is bounded on two sides by federal and state lands, including the proposed Van Sickle State Park, all located in PAS 080 (Kingsbury Drainage), a Conservation Plan Area. These lands are available for public recreation, open space and natural resource protection and management purposes. Adjacent to the southwest is District 4a of the Community Plan, a SEZ Restoration/Recreation district. Across Lake Parkway from the District, inside the loop road, are developed parcels with commercial, recreation and tourist accommodation uses located within Commercial/Tourist Accommodation-designated Stateline-Ski Run Community Plan districts, all located within walking distance to the parcels proposed for amendment.

City Planning Commission and Council Action: The City of South Lake Tahoe (City) has adopted TRPA's Plan Area Statements and Community Plans for its zoning. The amendment being considered addresses proposed amendment to District 6a of the Stateline Ski Run Community Plan, located within the City. This Community Plan amendment requires public hearings and adoption by both TRPA Governing Board and the City Council in order to be effective. This item was heard before the City's Planning Commission on July 13, 2006 and received a unanimous recommendation of approval, without the recommended footnote, to the City Council. The Council will take action on the application on August 1, 2006.

The City circulated its Initial Study/Proposed Negative Declaration for the requested amendment. No public comments were received. As part of its project circulation, the City also obtained staff comments on the requested amendment. In considering their recommendation on the project, the City Planning Staff considered the importance of the site for housing purposes as viewed by the Housing Coordinator:

> "*It seems like this would be a good location for tourist accommodation units due to its proximity to existing amenities. I would be concerned about the benefit to the City of developing affordable workforce housing at this location because most likely it would serve the casino industry across Stateline instead of our own community. Furthermore, I believe in order for an affordable housing project to provide dignity to its residents it should not be located in areas that are in or immediately adjacent to employment centers. There should be separation between housing and employment allowing an employee to dwell in a less hectic environment than their work atmosphere*."

Background: To put this amendment in perspective, this section will provide background regarding the ownership and development potential associated with the three affected parcels:

Ownership: The applicant owns two of the three parcels located within this approximately six-acre district. The California Tahoe Conservancy (CTC) owns the remaining parcel. All parcels

are undeveloped and each contains a portion of land classified as environmentally sensitive Stream Environment Zone. The high capability portions of the parcels are developable.

CTC Purchase Declined: (Exhibit G) Based on discussions with the CTC Land Acquisition Program Manager, the Falcon Capital parcels within District 6a were considered for purchase from Mr. Van Sickle as a part of the larger (150 acres) CTC acquisition proposed as the California portion of Van Sickle Bi-State Park. As a part of that transaction, Mr. Van Sickle donated to the CTC the approximately 2-acre, environmentally sensitive parcel located within District 6a.

CTC was offered the opportunity to acquire the parcels currently owned by Falcon Capital; however, the agency ultimately decided not to purchase these mixed high- and low-land capability parcels. The fact that the Community Plan District was themed "*Affordable Housing*" played a role in the final decision not to acquire them, as the CTC did not want to usurp the opportunity for affordable housing at the site, which was the identified use for the site in the Community Plan.. The agency sought to allow the opportunity for private development to occur consistent with the adopted Community Plan direction.

Falcon Capital Original TRPA Project Application: Falcon Capital purchased the two parcels in District 6a with the original intent to build affordable housing. However, given the high costs of land and construction and the inability to obtain a sufficient development subsidy construction of affordable or unsubdivided multiple family housing has not proven financially feasible.

Prior to the submission of the Community Plan Amendment currently under consideration, the applicant applied to TRPA and the City for a market rate, Multiple Family Dwelling project using the 50% land coverage incentive provided for in Community Plans. Falcon planned to later subdivide the multi-family project, not realizing that the 2-step subdivision is impermissible under the code. Use of this multiple family housing incentive does not allow the option of doing a two-step subdivision to create single-family condominiums per TRPA Code Subsection 20.3.B(3). TRPA staff reviewed the project, which was heard before the Hearings Officer, Jim Baetge on September 29, 2005. Mr. Baetge expressed concerns with the project as included in the meeting minutes (Exhibit C) and referred it for hearing by the Governing Board. The applicant subsequently requested that the application be placed on hold to explore other options and work out a solution to the concerns that had been raised at the Hearing Officer level.

The applicant then applied for this Community Plan amendment. The residential project application is still on hold, neither approved nor denied. The applicant has requested that the project application be re-reviewed as a tourist accommodation project presuming adoption of this requested amendment. However, since the review of the original project was already completed, TRPA staff has requested the original application for the multi-family dwelling project be withdrawn, and a new application outlining the potential new TAU project be submitted.

Discussion: TRPA staff is recommending approval of this requested community plan amendment with conditions that were not proposed by the applicant. The special conditions have been added to staff's recommendation in order to further the Community Plan's intent related to land use.

Community Plan Intent The overall Land Use Classification for the Stateline/Ski Run Community Plan is "Tourist." Tourist areas are defined in Chapter 13 of the TRPA Code as:

"… areas that have the potential to provide intensive tourist accommodations and services or intensive recreation. This land use classification also includes areas recognized by the Compact as suitable for gaming. These lands include:

(i) areas now developed with high concentrations of visitor accommodations and related uses;
(ii) lands on which gaming is a permitted and recognized use;
(iii) lands of good-to-moderate land capability; or
(iv) areas with adequate public services and transportation linkages."

Within this overall tourist classification, the Community Plan designated three districts, including District 6a with a multi-family residential/affordable housing land use theme. Consequently, in evaluating this requested amendment, staff considered two primary questions: (1) Would approving the addition of tourist accommodation uses be inconsistent with the Community Plan's residential land use direction and the Housing Sub-element of the Goals and Policies? (2) Are TAU's an appropriate use outside of the loop road? The recommended policy footnote stems from this assessment.

<u>*Residential Land Use Direction*</u>: The introduction section of the Community Plan – Vision for Land Use states, *"Affordable housing is encouraged within the Pentagon, Van Sickle (South of Montreal) and Upper Ski Run areas."* The key Planning Consideration found in Chapter II – Land Use Element of the Community Plan in relation to this amendment is item G:

"There is a need to upgrade and/or replace substandard housing and create some additional affordable housing within this area". The Van Sickle District has a Multi-Family Residential land use direction (page II-10 of the Land Use Element), with a specific Affordable Housing "theme" identified in the Permissible Uses and Land Use matrices.

The Final Environmental Impact Statement (FEIS) on the Community Plan also supports the need for affordable housing within this Community Plan area.

"The Regional Plan Goals and Policies include a goal of providing, to the extent feasible, affordable housing in suitable locations for the residents of the Region, and provide that special incentives will be given to promote affordable or government-assisted housing for low-income households. The Regional Plan Area Statements make employee and multiple-family housing a permissible use in the plan areas of the redevelopment area" (page. 4-.175).

To encourage the implementation of affordable housing in these areas, the FEIS proposed that multi-family housing be constructed on the large, developable parcels within certain districts by allowing up to 50% land coverage for these types of projects. This incentive was translated into the Community Plan as Objective 4; however, this Objective only names District 6c (Land Use Strategy and Economic Feasibility Goals, Objective 4, Policy B, pp. II-5). Nevertheless the incentive still applies to the other parcels per TRPA Code of Ordinances Chapter 20, Subsection 20.3.B(3). Additionally, this document proposes that, *"The community plan supports and encourages adequate housing in close proximity to employment generators, which is affordable to workers in the visitor industry."* This proposal was translated into the CP's Goals, Objectives, and Policies under the Urban Design and Development Section, Policy P: "*Place locations for affordable housing within convenient distances to local serving retail uses."*

Finally, the permissible uses matrix for this and the other two identified affordable housing districts were reviewed. No tourist accommodation uses are currently permissible in any of

these areas. In addition, in District 6a, no industrial/storage or other commercial or retail uses are identified as allowed or special uses. The primary uses include Residential uses (employee housing, multi-family dwellings, multi-person dwellings, and condominiums); Services (financial services only); Public Services (Daycare centers/Pre-schools, Local public health and safety facilities); and a range of Linear Public Facilities, Recreation, and Resource Management uses.

In debating whether the requested amendment weakens the viability of the designated affordable housing district located in an area previously identified as a suitable location for such uses, TRPA staff considered the likelihood of whether affordable housing would be developed on the site and the appropriateness of construction of tourist accommodation units on that area.

The Community Plan's intent to encourage development of affordable housing on the site is not accompanied by a specific requirement to do so. The limited range of permissible uses for the site would likely result in a residential project; however, without amendment, it is apparent that the applicant might take their existing residential project and reduce the land proposed coverage to the Bailey limits for the parcel and apply again for a high-end condominium project through the two-step subdivision process. Therefore, the likelihood that affordable or moderate-income housing would be developed on this project site is not likely.

Further, City housing staff has reconsidered the site's suitability for affordable housing in comments on the requested amendment (quoted above). Whether employees should have the housing choice to live nearby and walk to work, or to live further away and separate from their work environment could be debated; however, that fact remains that the local jurisdiction is on record that this site is not necessary, or even desirable, for affordable housing, even though the City's Housing Element identifies this as a potential affordable housing site. The City Manager's correspondence (Exhibit D) states that the City is committed to providing affordable housing without this site. While broadening the range of permissible land uses for District 6a further dilutes the possibility that construction of affordable housing would be selected by a developer seeking to make the highest economic use of the property, the likelihood is already low. Consequently, staff determined that given the choice between a high end housing project and a tourist accommodation project with some inclusionary affordable housing in this area, the latter provides more public benefit.

The Implementation Element of the CP also addresses the intent of District 6a to be an affordable housing area in relation to the construction of a Class 1 bike trail on the mountainside of the Loop Road to be developed as a part of the Van Sickle affordable housing (District 6a) or the Van Sickle Recreation/Drainage Basin A-1 (District 4a) (p. VII-11).

Loop Road Location For Tourist Accommodation Use: The CP provides policy direction regarding the desired locations for Tourist Accommodation uses and identifies six land use districts (1a-f) with this as the primary theme. The Land Use Strategy and Economic Feasibility Goals Section (CP, p.II-5), Policy A states: "*Intensify TAU's within the area surrounded by the Loop Roads*…" Further, the Urban Design and Development Goals Section (CP, p. II-4), Policy K states:

"Transfer of tourist accommodation units from the area within the Loop Roads to areas outside the Loop Roads is prohibited."

(NOTE: The source of the TAU's for any subsequent project was not identified by the applicant. Modification of the requested amendment to enable such transfers is not proposed by the applicant and therefore any transfers will have to come from outside the Loop Road area.

There is one other existing area, (District 1c) which is themed Tourist Accommodation that exists outside the Loop Road. This is a one parcel district containing the Colony Inn, a hotel/motel facility that existed prior to the adoption of the CP. The recently-approved "Project 3" project reduces motel rooms by 46% from the original 1998 approval of 709 units. A tourist project on this site could add to the financial viability of the Heavenly Village tourism center, furthering the objective of the area providing for a "tourist hub."

Recommended Policy Footnote: Staff recommends the following policy footnote:

> *"If District 6A is developed for Tourist Accommodation purposes, the following special provisions will apply in addition to the design requirements of the Community Plan:*
>
> *A. Affordable multiple family housing units shall be provided on site as part of the TAU project. The number of housing units to be provided shall be at least 20% of the number of the project's TAU's.*
>
> *B. Design of the project shall incorporate provisions for pedestrian access to the nearby commercial uses and provide a native landscaping plan that minimizes the project's visual intrusion into the roadway corridor. In addition, the developer shall be obligated to implement, or work with the California Tahoe Conservancy by committing the required funding for, the bike trail component of the Stateline/Ski Run Community Plan's Implementation Element for the Van Sickle District."*

The first footnote (A) originates from a blending of the applicant's amendment application, TRPA Code requirements and Community Plan intent. The amendment application states the applicant's desire to "*build a resort with 20 tourist accommodation units and potentially 4 units of employee housing*." This footnote furthers the intent of the Community Plan's affordable housing by requiring the units to be affordable housing. There is no requirement that the units be used only for employees of the project.

The second footnote (B) stems from the discussions that occurred at the September Hearing's Officer meeting and a thorough review of the Community Plan. Further, it clarifies the bike trail obligation so that it cannot be interpreted that the bike trail need only be constructed if the property is developed as affordable housing (Exhibit E).

Effect on TRPA Staff Work Program: Staff does not anticipate any impacts on the Environmental Review Services workload. Currently, this amendment does not result in any additional work beyond that anticipated for a standard project review.

Required Findings: The following findings must be made prior to adopting the requested amendment:

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 Plan Area Statement amendments are limited to one identified six-acre Community Plan land use district and do not amend any boundary lines, the new "footnote" policy language will assist TRPA to meet Community Plan land use intent, and are consistent with the criteria defined in Code Section 18.2.G(1) thru (4). Any projects approved under this new language must meet all Regional Plan standards.

2. Finding: That the project will not cause the Environmental Thresholds to be exceeded.

Rationale: The requested amendment to the Stateline/Ski Run Community Plan does not create any impacts to environmental thresholds. Any project resulting from this amendment must comply with the applicable provisions of the regional plan, including applicable thresholds. The environmental thresholds do not specifically address the topic of housing.

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: Any project resulting from this amendment will continue to be subject to federal, state, and local air and water quality standards.

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: For reasons stated in Findings 1 and 2 above, the Regional Plan will continue to achieve and maintain thresholds.

5. Finding: The Regional Plan, as amended, achieves and maintains the Thresholds.

Rationale: See findings 1, 2, and 4 above.

B. Chapter 13 Findings:

1. Finding: Prior to adopting any plan area amendment, TRPA must find the amendment is substantially consistent with the plan area designation criteria in Subsection 13.5.B and 13.5.C.

Rationale: The Community Plan's identifies that the Van Sickle District as a preferred for affordable housing site; however, no specific policies are outlined that require the construction of affordable housing or that require that housing built within this district be deed restricted as affordable housing, The Regional Goals and Policies provide that incentives be given for affordable housing and such incentives (bonus units, land coverage) were and are available for this site. The

Community Plan supports and encourages such housing; but, without a mandate.

Environmental Documentation: The applicant has completed and staff has reviewed the Initial Environmental Checklist for the proposed action. Based on the above analysis and completion of an IEC, no significant environmental impacts were identified that cannot be mitigated to a less than significant level. Staff recommends that a Finding of No Significant Effect (FONSE) be made based on the following:

1. The amendment will have limited applicability.
2. With the proposed density limits, the amendment would not approve development greater than contemplated by the Regional Plan.
3. Any additional vehicle trips and associated vehicles miles of travel (VMT) which may be created will be considered in the project application.

Requested Action: Staff requests the Governing Board take the following actions:

1. Make a Finding of No Significant Effect based upon Chapter 6, 13, and 14 Code Findings in addition to the Initial Environmental Checklist.
2. Adopt the Ordinance amending the Stateline/Ski Run Community Plan.

If there are any questions regarding this agenda item, please contact Brenda Hunt at (775) 588-4547 or by e-mail at bhunt@trpa.org.

Attachments:

Exhibit A; Land Use Matrix with footnote

Exhibit B: Proposed Ordinance

Exhibit C: Hearing Officer's Report

Exhibit D: Letter from the City of South Lake Tahoe

Exhibit E: Excerpt from Implementation Element of the Stateline/Ski Run CP

Exhibit F: Map of proposed amendment area District 6a – Van Sickle

Exhibit G: Email from Bruce Eisner, California Tahoe Conservancy

Exhibit A.

Stateline/Ski Run Community Plan
Land Use Matrix

Proposed Gondola Vista amendment in RED.

Key:

1 = Tourist Accommodation	a Lakeside	b Van Sickle	c Montreal	d Monterey
	e Tahoe Marina Hotel	f Lower Ski Run-west		
2 = Tourist Related Retail	a Stateline Pedestrian	b Lower Ski Run-south		
3 = Local Serving Retail	a Crescent V	b Ski Run Village		
4 = Recreation	a Van Sickle	b Basin E	c Osgood Basin	
5 = B&B & Prof. Offices	a Upper Ski Run-north	b Upper Ski Run-south		
6 = Affordable Housing	a Van Sickle	b Pentagon	c Upper Ski Run	
7 = Transportation Corridor				

LAND USE CATEGORIES	**DISTRICTS**																		**~~MAXIMUM~~ UNITS/ACRE**
	1a	1b	1c	1d	1e	1f	2a	2b**	3a	3b	4a	4b	4c	5a	5b	6a	6b	6c	7a	
I. RESIDENTIAL																				
Domestic Animal Raising											S									
Employee Housing	S	S	S	S	S	S	S	S	S	S				S	S	A1	A1	A1		15
Mobile Home Dwelling																				
Multiple Family Dwelling	S	S	S	S	S	S	S	S	S	S				S	S	A1	A1	A1 19		15
Multi-Person Dwelling	S	S	S	S	S	S	S	S	S	S				S	S	A1	A1	A1		25 Persons/acre
Nursing & Personal Care																				
Residential Care															S					
Single Family Dwelling	A	S	S	S		S					S2			S	S	S11				1 per parcel
Summer Home																				1 per parcel
II. TOURIST ACCOMMODATION																				
Bed & Breakfast Facilities	A1			A1		A1				S				A1	A1					10
Hotel, Motel, Other Transient Dwelling Units	A1	A1	A1	A1	A1	A1	S	S	S	S				A1	A1	A 20				40
*Time Sharing (Hotel/Motel Design)	A1	A1	A1	S	S	S	S	S						A1	A1	A 20				40(no kitchen)
*Time Sharing (Residential Design)§	A1	A1	A1	S		S	S §§							A1	A1	A 20				15 (w/kitchen)
III. COMMERCIAL																				
A. Retail																				
Auto, Mobile Home, and Vehicle Dealers																				
Building Material & Hardware									S4											
General Merchandise Stores		A1 15 §				S5	A1	A1	A1	A1		A1 §§§		S5	S5				A14	
Mail Order and Vending								S1	A1											
Nursery															A1					
Outdoor Retail Sales		S 15					S	S	S	S										
Eating & Drinking Places	S6	S6		S6	S6	A1	A1	A1	A1	A1		A1							A14	
Food & Beverage Retail Sales		S 15					S	S	S	S		S							A14	
Furniture, Home Furnishings & Equipment							S	S	S	S										
Service Stations	S							S	S			S			S					
B. Entertainment																				
Amusement & Recreation Services	S	S 15					S7	S7	S											
Privately Owned Assembly and Entertainment	S	S									S10									
Outdoor Amusements	S	S				S			S		S			S	S					
C. Services																				

§§ *Amended 6/26/96*
§ *Amended 12/22/00*
§§§ *Amended 2/28/96*

Exhihbit A.

LAND USE CATEGORIES	DISTRICTS																		MAXIMUM UNITS/ACRE
	1a	1b	1c	1d	1e	1f	2a	2b**	3a	3b	4a	4b	4c	5a	5b	6a	6b	6c	7a	
Animal Husbandry Services																				
Auto Repair and Service																				
Broadcasting Studios						S		S						S	S					
Business Support Services						S		S						S	S					
Contract Construction Services																				
Financial Services							S8	S8	A1							A1				
Health Care Services		S 17				A1			A1	A1				A1	A1					
Laundries & Dry Cleaning Plant																				
Personal Services		S 15				S5	S13	S	A1	A1				S5	S5				A14	Rev. 3/4/97
Professional Offices		S 17				A1	S 18	A1	A1	A1				A1	A1				A14	
Repair Services							S9	S9	S9											
Sales Lot																				
Schools – Business & Vocational						S			S					S	S					
Secondary Storage																				
D. Light Industrial																				
Batch Plants																				
Food & Kindred Products																				
Fuel & Ice Dealers																				
Industrial Services																				
Printing & Publishing																				
Recycling & Scrap																				
Small Scale Manufacturing							S	S	S	S										
E. Wholesale/Storage																				
Storage Yards																				
Vehicle & Freight Terminals																				
Vehicle Storage & Parking	S	S	S	S	S	S	S	S	S	S		S		S	S					
Warehousing																				
Wholesale & Distribution																				
IV. PUBLIC SERVICE																				
A. General																				
Airfields, Landing Strips & Heliports (New Non-Emergency Sites Prohibited)																				
Cemeteries																				
Churches	S					S								S	S			S		
Collection Stations									S											
Cultural Facilities	S	S					S	S	S	S		S								
Daycare Centers/Preschool	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1				A1	A1	A1	A1	A1		
Government Offices															A1					
Hospitals																				
Local Assembly & Entertainment	S	S					S													
Local Post Office																				
Local Public Health and Safety Facilities	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1		
Power Generating																				
Public Owned Assembly & Entertainment	S	S					S				S10									
Public Utility Centers	S																			
Regional Public Health and Safety Facilities																				
School – College																				
Schools – Kindergarten through Secondary																				
Social Service Organizations						A1			A1					A1	A1					
B. Linear Public Facilities																				
Pipelines & Power Transmission	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		
Transit Stations & Terminals	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		
Transportation Routes	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		

Exhihbit A.

LAND USE CATEGORIES	**DISTRICTS**																			**MAXIMUM UNITS/ACRE**
	1a	1b	1c	1d	1e	1f	2a	2b**	3a	3b	4a	4b	4c	5a	5b	6a	6b	6c	7a	
Transmission & Receiving Facilities	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		
V. RECREATION																				
Beach Recreation						A1						A1								
Boat Launching Facilities												S								
Cross Country Ski Courses											S					S				
Day Use Areas	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1		
Developed Campgrounds																				
Downhill Ski Facilities																				
Golf Courses																				
Group Facilities											S					S				25 Persons/acre
Marinas												A1								
Off-Road Vehicle Courses																				
Outdoor Recreation Concessions												S								
Participant Sport Facilities[§]		S					S				S10					S				
Recreation Centers											S10					S				
Recreational Vehicle Parks	S																S			10 sites/acre
Riding and Hiking Trails											S					S				
Rural Sports											S					S				
Snowmobile Courses											S					S				
Sport Assembly																				
Undeveloped Campgrounds																				
Visitor Information Centers	A1	S					S					S								
V. RESOURCE MANAGEMENT																				
A. Timber Management																				
Reforestation	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Regeneration Harvest																				
Sanitation Salvage Cut	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Selection Cut																				
Special Cut																				
Thinning																				
Timber Stand Improvement	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Tree Farms	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		
B. Wildlife and Fisheries																				
Early Succession Vegetation Management	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Nonstructural Fish Habitat Management	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
C. Range																				
Farm/Ranch Structures											A					A				
Grazing											A					A				
Range Pasture Management											A					A				
Range Improvement											A					A				
D. Open Space																				
Allowed in all Areas of Region	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
E. Vegetation Protection																				
Fire Detection and Suppression	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Fuels Treatment/Management	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Insect & Disease Suppression	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Prescribed Fire/Burning Management																				
Sensitive Plant Management	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Uncommon Plant Community Management	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
F. Watershed Improvements																				
Erosion Control	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	

[§] *Amended 6/26/96*

Exhihbit A.

LAND USE CATEGORIES	**DISTRICTS**																			**MAXIMUM UNITS/ACRE**
	1a	1b	1c	1d	1e	1f	2a	2b**	3a	3b	4a	4b	4c	5a	5b	6a	6b	6c	7a	
Runoff Control	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	
SEZ Restoration	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	A1	

Footnotes

A = Allowed
S = Special Use Permit Required

** Note all special uses within 2b are appropriate for development on SW Corner. Refer to Redevelopment Demonstration Plan.

1. Requires CSLT Design Review
2. Caretaker Residence Only
3. New Auto Parts Only
4. Wallpaper, Paint, Hardware Only
5. Sporting Goods, Equipment and Accessory Bike and Moped
6. Not Freestanding Building
7. Entrance Only Fronting Highway 50
8. ATM Only
9. Jewelry Repair Only
10. See Recreation Element, Objective 5, Policy A (rev. by TRPA – 3/27/94)
11. For condominium projects only, with multiple units per parcel (rev. by TRPA – 3/27/94)
12. No outside storage or display, no blacksmith or trusses and the like (rev. by TRPA – 3/27/94)
13. Offsite rental of sporting equipment, beauty and barber shops only and to be consistent with the "window, door, window, door" concept. (rev. 3/4/97)
14. Allowed only within existing buildings.
15. Allow consideration for placement of the use, only in the vicinity of the public plaza that enhances and directly links to the highway 50 pedestrian corridor[§§]
16. Allow consideration, for placement of the use, of an emergency outpatient medical center ("urgent care facility) only in the vicinity of Park Avenue.[§§]
17. Allow consideration for placement of Realty Offices only within the district. [§§]
18. Allow consideration for placement of Realty Offices only within the district, and only when operated in conjunction with approved Park Avenue Redevelopment fractional ownership tourist accommodation projects.
19. The parcel 27-323-10, physical address 3521 Pioneer Trail, has been added to the Stateline/Ski Run Community Plan in District 6c to facilitate affordable housing. Community plan development incentives may only apply to this parcel if and when a deed restricted affordable housing project is developed. [§]
20. If District 6A is developed for Tourist Accommodation purposes, the maximum density is 15 units per acre and the following special provisions will apply in addition to the design requirements of the Community Plan: (A) Affordable multiple family housing units shall be provided on site as part of the TAU project. The number of housing units to be provided shall be at least 20% of the number of the project's TAU's. (B) Design of the project shall incorporate provisions for pedestrian access to the nearby commercial uses and provide a native landscaping plan that minimizes the project's visual intrusion into the roadway corridor. In addition, the developer shall be obligated to implement, or work with the California Tahoe Conservancy by committing the required funding for, the bike trail component of the Stateline/Ski Run Community Plan's Implementation Element for the Van Sickle District. (Rev 8-2006)

Entire matrix revised in 1999, additional revisions by City and TRPA December 2000, March/April 2001 and August 2006.

[§§] *Amended 12/22/00*
[§] *Amended 3/28/01*

EXHIBIT “B”

TAHOE REGIONAL PLANNING AGENCY
ORDINANCE NO. 2006-___

AN ORDINANCE AMENDING ORDINANCE NO. 87-9, AS AMENDED, BY AMENDING THE REGIONAL PLAN OF THE TAHOE REGIONAL PLANNING AGENCY; AMENDING THE TAHOE REGIONAL PLANNING AGENCY STATELINE/SKI RUN COMMUNITY PLAN, TO AMEND THE PERMISSIBLE USES MATRIX FOR DISTRICT 6A AND PROVIDING CONDITIONS FOR PROJECT APPROVALS PROPERLY RELATING THERETO

The Governing Board of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.00 Findings

1.10 It is necessary and desirable to amend TRPA Ordinance No. 87-9, as amended which ordinance relates to the Regional Plan, by amending the Stateline/Ski Run Community Plan as exhibited in Exhibit A, in order to further implement the Regional Plan and Article VI(a) and other applicable provisions of the Tahoe Regional Planning Compact.

1.20 The Advisory Planning Commission ("APC") conducted a public hearing and recommended adoption of the amendments. The Governing Board has conducted a noticed public hearing on the amendment. All oral testimony and documentary evidence received were considered.

1.30 The provisions of this ordinance have been found not to have a significant environmental effect on the environment, and thus are exempt from the requirement of an environmental impact statement pursuant to Article VII of the Compact.

1.40 The Governing Board finds that, prior to the adoption of this ordinance, the Board made the findings required by Section 6.4 of the Code of Ordinances and Article V(g) of the Compact.

1.50 The Governing Board finds that the amendment adopted hereby will continue to implement the Regional Plan, as amended, in a manner that achieves and maintains the environmental thresholds as required by Article V(c) of the Compact.

1.60 Each of the foregoing findings is supported by substantial evidence in the record.

Section 2.00 Amendment of Chapter 35 of the Code and Applicable Community Plans

TRPA Ordinance 87-9, as amended, is hereby amended to amend the Stateline/Ski Run Community Plan as illustrated in Exhibit A A.

Section 3.00 Interpretation and Severability

The provisions of this ordinance and the amendments to the Code and Community Plans adopted hereby shall be liberally construed to effect their purposes. If any section, clause, provision or portion of this ordinance or the amendments adopted hereby is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance or the amendments shall not be affected. For this purpose, the provisions of this ordinance and the amendments are hereby declared respectively severable.

Section 4.00 Effective Date

This ordinance shall become effective 60 days after the date of its adoption.

PASSED and ADOPTED by the Governing Board of the Tahoe Regional Planning Agency at a regular meeting held August 23, 2006 by the following vote:

Ayes:

Nays:

Abstentions:

Absent:

_____

Allen Biaggi, Chairman

Exhibit "C"

HEARINGS OFFICER

Tahoe Regional Planning Agency
128 Market Street
Stateline, Nevada 89449

Date: September 29, 2005
2:00 p.m.

REGULAR MEETING MINUTES

I. CALL TO ORDER

Mr. Jim Baetge, Hearings Officer, called the meeting to order.

II. APPROVAL OF THE AGENDA

Mr. Baetge approved the agenda as published.

III. PUBLIC INTEREST COMMENTS

The Hearings Officer opened the meeting to public interests comments and since there were none; he closed that portion of the hearing.

IV. ANNOUNCEMENT OF APPEAL RIGHTS

The Hearings Officer explained the Appeal Rights process and advised that Appeal Rights Application, Procedural Guidelines and copies of the staff summaries were available for those who might be interested in the information.

V. PUBLIC HEARING ITEMS

A. Tom Turner, 8791 North Lake Blvd., Kings Beach, California, Assessor's Parcel Number (APN) 090-192-56, TRPA File #20050747. The applicant is proposing to remodel an existing commercial restaurant building including 725 square feet of additional commercial floor area.

Senior Planner, Paul Nielsen noted no changes to the staff summary. He did have a clarification in regards to the most recent BMP plan received by the TRPA staff. It did not include the permanent BMPs for the parking lot. Therefore, as part of the acknowledgement of the final permit TRPA staff will make sure the parking lot includes the permanent BMPs as well.

The Hearings Officer needed some clarification regarding the residence removal whether it was part of the permit or not. It was noted, it was included in the permit. Mr. Baetge also had some uncertainty regarding the parking, what was going to happen or how much was going to be provided. Senior Planner, Paul Nielsen stated we are still waiting for Placer County to make a final decision on parking. We are deferring to the County on their determination regarding

parking. Once they make the decision we will incorporate that in the final acknowledgement of the permit.

Jan Brisco, representative for the applicant, Tom Turner, was under the assumption that the BMP plans provided to TRPA included all the permanent BMPs for the building and the addition, etc. The parking lot is part of a bigger community drainage program that would come under the Community Development improvements. It was understood that it would go under the Kings Beach Community Improvement Program with Cal Trans as part of the community conveyance.

Mr. Paul Nielsen addressed the issue stating that there are some negotiations about an area wide treatment system in Kings Beach that may be similar to Tahoe City's system. Their system's commercial core area is drained to convey water off of the property and gets concentrated in an area-wide off site treatment system. These discussions have not been finalized but will be done in the future. So, as to ensure TRPA staff will get the BMPs, TRPA staff wants a plan on file that shows on-site BMPs. However, when the discussions of the off-site treatment area proceed and conclude that an area wide treatment system is better than an on-site, the plan on file can be deleted. They will then have a couple years to implement this. This is the special conditions 4.B.

Applicant, Tom Turner, stated that he is okay with this condition. This does pose two issues; what is the community plan going to do when it is five years down the road and they said the North side of the road will not be until 2011 if they're on time, and next door, to the east, there is a contaminated gas station, and there is many ground water problems which contaminated his property, as well as the highway and south of the lake. The County is moving forward with a clean-up with ERA funds presently. Mr. Turner did not want to do the actual work until this has been completed.

Ms. Jan Brisco had some clarifications of the special conditions item 4. f., the offsite coverage mitigation fee needs to be changed from $12 to $6.50. Also, number 4. J., in the interest of time, they're planning to do a project area deed restriction to be issued as quickly as possible. Paul Nielsen also noted a memo submitted regarding the clarification of the condition changes (coverage mitigation fees and the BMPs are for the parking lot and the building).

Also, Special Condition, item K. will be changed to state; the permittee shall submit a Caltrans encroachment permit for the encroachments into the SR28 right-of-way prior to commencement of work.

The Hearings Officer opened the hearing for public comments. There were no public comments at this time.

The Hearings Officer approved the findings contained in the staff summary and approved the project based on the staff summary and subject to the conditions as revised and the conditions contained in the attached draft permit as revised.

B. Tahoe Regional Planning Agency, 1340 Glenwood Way, South Lake Tahoe, El Dorado County, California, Assessor's Parcel Number 025-36-018, TRPA File #20051214. The applicant is proposing for the installation and operation of an air quality station in the southwest corner of the old drive-in site.

Senior Planner, Paul Nielsen, noted a couple minor changes to the staff summary in the draft permit (numbering errors) and also the PAS mentioned on page 1, states it is applicable to Glenwood 096 and needs to be changed to Bijou Meadows 101.

The Hearings Officer, Mr. Baetge, questioned whether the proposed project was permanent or temporary. Rita Whitney clarified that TRPA would like it to be a permanent installation. The city has already agreed to two years with a renewal option. Long-term monitoring is an essential item of this plan.

The Hearings Officer opened the hearing for public comments.
Rita Whitney did receive a phone call that commented regarding his/her concerns of what it will look like. Ms. Whitney stated that it will be painted to blend in and that there are also scenic mitigation fees as well.

The Hearings Officer approved the findings contained in the staff summary and the finding of no significant environmental effect. He approved the project based on the staff summary with the numbering changes subject to the conditions contained in the attached draft TRPA permit.

C. Randy Lane, Falcon Capital, LLC, 60 Lake Parkway, South Lake Tahoe, California, Assessor's Parcel Number 029-441-11 & 15, TRPA File # 20040024. The applicant is proposing to construct a 22-unit multifamily project which will be contained in 11 structures on the property. The project will be accessed off of a new common roadway from Lake Parkway. The subject site consists of two adjacent parcels located on Lake Parkway in the City of South Lake Tahoe near the intersection of Lake Parkway and Park Avenue near the California-Nevada Stateline. (Continuance)

The Hearings Officer, Mr. Jim Baetge, noted a letter from the City of South Lake Tahoe to be added to the Hearing. Jeanne McNamara also noted that she had received a phone call a few months ago from the manager of the Forrest Inn asking where the access point was.

Senior planner, Jeanne McNamara, noted no changes or additions to the staff summary.

Mr. Baetge stated:

> He had questions regarding the staff summary- the community plan has a number of policies and objectives that make it for the affordable housing. What happened to that idea? The Douglas side does state that it is affordable housing only. Both the Douglas and the South Lake Tahoe plan discuss lake and mountain access continuously throughout the whole community plan. The proposed application is for a gated community which closes off the access. This is inconsistent with the two community plans. The applicant has also made an inquiry about subdividing; according to the plans this also cannot be done. I would also like to know if the sub-dividing is a necessary action. The driveway access issue, in terms of moving it over toward the SEZ further on the loop road. According to the community plan it states; no new driveways or plan and also your own staff report, inconsistent with the findings states we cannot make findings on the crossing of the SEZ.
>
> I'm going back to a little of my memory, separate issue, when we did the EIS for Heavenly redevelopment back in 1994-95 there was a big discussion of the Heavenly Resort. The issue was why we let all this happen down in the most critical part of our corridor of transportation. The answer for this question was we're trying to not create new trips in there; it was to get people on transit. As a matter of fact, everyone wanted to trust the system and spend the money on transit rather than mitigating it. It seems to me, there is going to be an issue there with, as it stands when you talk affordable you would be putting salaried employees in those houses and the trip generation would go substantially down because that is the work center. The Community Plan even states this, something to the effect we should provide that type of housing near the worksite. It also asks for a setback exemption from 20 to 30 feet. We really need to discuss this one. We spent a lot of time on Highway 50 about getting setbacks so we can see the mountain ridge, the scenic issue. If you go to the Community Plan, the Upper Loop Road is going to be up to a five lane road. In my reading of this, this should fall under the same scenic requirements as what was done down below. My question is, when you're putting something of a 20 foot setback are you really creating another corridor like we used to have on Highway 50? Did you intend on adding a condition saying no new subdivision is allowed within the 50% coverage? It seems to me, one way or another, it was put into the staff report but not put into the special conditions. On page 4 of the staff report, it states no significant environmental impacts were identified. It seems to me that a loss of employee housing or the road and SEZ are both significant impacts.

Jeanne McNamara states:

> I had many of the same concerns as you. We have been working on this project for almost two years with the applicant. With the first one with the intent for affordable housing in that area. When I went through the Community Plan I read just like you did at kept saying affordable housing area theme. However, when I went to the land use matrix and went through the policies in the Community Plan

there was nothing that required it. So there was no way we could make them do affordable housing based on what the Community Plan said. It was basically that they could do multi-family or they could do single family if we can make the special use findings. There was one more use – commercial use and that was it. It did not say anything in there about requirement for affordable housing even though I agree it does say throughout that document that that is the intent.

Lew Feldman states:

On the affordable issue I agree with Jeanne. There certainly is a stated preference for affordable in the Community Plan. On the other hand, there is also the allowed use of multi-family residential and if you can make the findings. At the time this land was under consideration for acquisition. For whatever it's worth a discussion occurred with the City of South Lake Tahoe's Housing Coordinator on how we might be able to make this thing pencil as affordable. The reality of that was that it did not pencil as affordable. The City was not in the position under their policies to provide whatever subsidy would have been required to make it pencil as affordable. Therefore, at that time before escrow closed, because it was really purchased originally to pursue affordable, we needed to know that there was another use that was possible. We reviewed the Community Plan and came to the same conclusion that Jeanne McNamara did – multi –family residential was an allowed use. On that base, in fact, bought the property and then worked with the Agency for the last two years to bring it to you for your consideration. So, we are not disagreeing with you but, I think at the end of the day, this is an allowed use and an appropriate use to be permitted.

Jim Baetge states:

When you talk "it doesn't pencil", I'm not sure what that means. I hear this all the time "you can't do this and you can't do that." However, have we ever sat down with all the parties involved and actually made that determination? I can see you say that you didn't make enough profit so it doesn't pencil out. I think somewhere in there it has to be a determination made that there is no way you can do that unless somebody comes up with a lot of money.

Lew Feldman states:

There may be, and I'm not adverse to it if that's the burden of proof here, but I don't think it is. Just by way of example, because you'll relate to this, several years ago there were nine acres behind the old TRPA building that Falcon Capitol wanted to develop for affordable housing and probably could have got seventy units there. The land cost for that parcel was cheaper then the land costs for this twenty unit parcel. If you get seventy units for something less than a million dollars that is one set of economics. If you can only get twenty units or thirty units for a million dollars or more that is another set of economics. The land costs for affordable when you put it at that number per unit requires if your going to do it on that kind of expensive real estate which when the Community

Plan was adopted there was no Heavenly Village, no Gondola, there was not much critical mass down there other than Lake Tahoe Inn. It may have been a whole other set of economics but, I can tell you that you couldn't do that project and not lose a lot of money without some significant government participation. While that discussion occurred it did not bare fruit and that is the honest realty.

Randy Lane, Falcon Capital, states:

We built the units across the street and are in the process of trying to do, which have already approve twenty units at Incline, which we have gone to the next level of affordable which is how moderate radar work force housing, however you want to refer to it as. The issue on this particular site, it's not unique in the sense that, as Lew Feldman very eloquently stated, it's not just a matter of land costs it's a matter of land costs, a matter of coverage costs, matter of all of the components of the system that we deal with here that all lean towards it costing a lot more to build here than it does in Carson Valley or somewhere else. That is the issue, in the affordable housing industry it all of these things to process. To even go beyond that, we had to finesse, we built twenty-eight or thirty units down up on Kahle, Meadowbrook. Just to give you an example, we did that with tax credits from the State of Nevada. The TRPA system is such that you need to have all your excavation and grading done by October 15th and cannot build again until May 1st. The way that you get the tax credits from the state is the same way, or was the same way in most other states. Nevada is one of the last to change; California has already made this change. You get granted those credits and you have to start construction within twelve months. So you get the credits in May/June timeline but you cannot start. The point is is tat the whole system is flawed from the standpoint that you can't get an allocation credits until the May/June timeframe. We as a Developer, I'm not going to go out and spend the money to do CDs and stuff, construction drawings and all the things that go with it even though I feel that the affordable may have even been approved. Until I know that I have the financing mechanism in place to build it. By the time I have my construction drawings done, the funding is not available until June. It only gives me ninety days or so to get construction drawings and line up somebody to start digging before October 15th which is impossible. If you don't get it done by October 15th they won't extend your timeline to start construction so you lose your tax credits. It is a system that is cumbersome anyway and in this particular instance if we didn't already have had a grading permit on this site to do the EIP project we were going to do down there, not only the affordable project would have happened, we also would of lost $250,000 in reservation fees that we pay up front that are non-refundable. It just doesn't work and that is just one example. That can be fixed and we went through the process with the state of Nevada and starting next year in 2006 you get a longer period do have your credits still have value so that you are committed to your project without losing them. The other thing that I have a pretty hard feeling about in this particular site, I've been around here a really long time and I've watched a lot of the community come out, plans evolve. I've also watched a lot of the potential projects come and go and I can remember on the Park Cattle Company Site

when they were going to evaluate doing some market rate housing which had some exclusionary affordable in it so on and so forth. I think that is a wonderful thing. I agree with that sort of concept. Again, you cannot find parcels of land. There aren't park cattle company parcels of land. If they are, they're already in general forest and outside the urban boundary, you cannot develop them anyway. What you're doing is going around and developing pockets. I think development of pockets is good if they are already in a community like this particular property. On the Kahle site, there are already units down there. But to take this site even if it was affordable, and everybody has the mentality that some affordable is better than zero affordable. I disagree; all you're doing is building a project. If you put twenty units of affordable there or whatever fits there and there is no other neighborhood infrastructure around them other houses what are the other kids going to do go out and play in the forest by themselves? It doesn't happen that way. The City of South Lake Tahoe has numerous opportunities if we can ever get the money part of it down which the housing coalition is working on, to go in and build in existing neighborhoods. That is where you want to put them otherwise it becomes a project. A project has a stigma associated with it and we've been not careful with that but sensitive to that. We have to build where we can go. The land uses in the basin are dictated by what you can do on them not by what is best for everybody, including the people that need affordable, market rate housing. I think that particular site has a far better use as a market rate, either a tourist accommodation use or a second home use or primary home use. It is more in tune with what is going on in that area. That is one point and I said this at the last work for (SP) housing meeting, and I'm on the record, I'm not trying to put extra conditions on us. I also don't think TRPA, as Jeanne stated, has the right to – we've applied under what we interrupt the Code to say and what everybody agrees with what the Code states until we get to some later issues. We've actually bought another site in South Lake Tahoe in anticipation that there might be some housing mitigation requirement for affordable. We are not opposed to that; we are trying to be good citizens. However, you cannot take that site and say it is not affordable; it is not the land cost. You go through this and you factor in what you can get from the available sources of subsidies to pay for this. Again, by way of example, this project across the street we have sixty-four units, we were supposed to get paid $360,000.00 developer fee. We never received the money because the first thing that goes when you don't have enough money to pay for a project is the time that you work and the effort that you put into it that scrapes away. There is no incentive to do it unless you have a market rate project tied to it. That is the only reason why there has been any affordable housing, in my opinion, built in the last twenty years. From the last twenty year plan that was done, there have been a total of a hundred units. Teri might know what is happening with the city. The point is that there has got to be a reason why there isn't any. It is not me saying that I cannot afford to do it, it is everybody else coming to the same conclusion.

Jim Baetge states:

> To comment on that, it is not necessarily your issue directly but it was one of the other things I brought up. I remember this so clearly that we debated it; when you look at Highway 50 we agreed not to modify the roadway and do all those things. We made a really difficult decision to put the Gondola down there and all the redevelopment, and do more redevelopment. The motive behind all this was to not increase trips, in fact, to reduce trips by letting people come and stay and use the facilities. Then we took all of our money and dumped it in transit. Part of this, when we looked at this was; what was going to happen in and around there? Douglas County was pretty clear on theirs that it would be employee housing. California was not quite as clear. They did make a lot of indications of what it was. What I see, when you look at why you say it isn't economically feasible to do; just think about it. You are going to do another redevelopment on the other side and there is going to be a lot of change in that corridor. Here, in this particular parcel, one of the last few where you can let employees walk to work and do all the things you would like to happen will vanish. If you take the model we put forward there is a hundred and sixty more trips and seven to a unit, which is probably reasonable. What you have also done is taken twenty-two more families and moved them to Carson City or Gardnerville because they no longer can walk to work and do all those things. Those are increased impacts, major increases and they fly in the face of what we agreed in the EIS. I think that is what needs to be ironed out because that is not what we said or what we planned at that time. Now, we're saying there is a good reason to do something else and who's accountable for this? I think the City's letter was great and it showed all the things they're doing. However, it is on the other end of the hour glass, it's not where we need it. I think it's an important item. Whether the redevelopment has to pay or somebody has to pay I don't know. Somehow it has to be made economically feasible. Whether it has been exhausted in your discussions I do not know.

Lew Feldman states:

> The only other point I would make and I think you were the Executive Director at the time when we went through the approval process on this project across the street; we had quite a turn out of the concerned neighbors. One of the factors that seemed to be compelling to the Governing Board and was contrary to the view of the neighbors; what you want to do with these projects is not build them in isolation but put them near other market rate facilities. That is the reverse of what the analysis you're proposing on this Gondola Vista project. If you did build it there, as Randy Lane stated, you would have an island of affordable, which is really contrary to what the contemporary thinking is about where you want to place affordable.

Jim Baetge states:

There is some argument there, yes. There is all kinds of affordable at whatever level you go to and if you go further down on Montreal that is where the affordable is. It is not totally isolated. The discussion of why we did the development and the Gondola was a big item. We all said that we would trust that everyone would throw they're money in the pot and make it work better. I think it is and has but, now it's backwards.

Lew Feldman states:

First of all, the project area is outside the redevelopment project boundary. I do agree with you. We were pretty passionate about the fact that we thought this was actually a traffic mitigation process and there were a lot of doubters as to whether in fact that was the case. What the Gondola has demonstrated is that over forty percent of the people accessing the mountain are now accessing through the Gondola and the majority of them are traveling on foot. So, the experiment did work and the outcome of that is we got what we bargained with and perhaps more so. So, I don't see this project as inconsistent with this.

Jim Baetge states:

You are going to another redevelopment on the other side and I think there are a lot of issues. When you say "economically feasible" it is different than it might be looking at another area of the community. This one was based on economic feasibility of an entire redevelopment area and you can't separate it.

Lew Feldman states:

One of the things you're trying to do before buying a piece of property is to go to TRPA, City, and the Community Plan to see what the allowable uses are. This process occurred before somebody went out and wrote the check. Nobody is saying the information is wrong. That was the information that was the information that was relied on which is the current list of allowed uses.

Teri Jamin, CSLT states:

The City manager apologizes for not being here. He did have another obligation with Placerville. He did ask me to come and represent him. I appreciate that you put his letter into the record. As you mentioned, the summary of the affordable housing projects that have taken place in the City and our continuing commitment to that are attached to the letter. Part of the letter that is most germane to what you were just discussing is the second to the last paragraph where the City Manager talks about the fact that the project adds value to this area and compliments and supports the existing Heavenly Village project and is proposed to be constructed to meet the highest standards of building qualities as deemed the Environmental Protection Requirements as does not detract from the overall goal of meeting affordable housing needs in the City. I think the way this

project is being viewed is as a type of housing product that is not currently close to the redevelopment project area. In order to purchase a unit of this type you would have to be further away from the redevelopment area and so there is a benefit in locating this type of housing product close to the redevelopment area as well. I would also like to concur that having affordable housing is a benefit in that area too. They are both different products but they both have a different purpose and value in terms of the overall scheme of the redevelopment project as well as the housing element approach. So, he has indicated in the letter that he believes that this project is consistent with the goals of the City's housing element because it talks about diversifying the housing stock for all types of housing products from the lowest income up in through the higher income levels. We currently don't have a project of this type in this area.

Jim Baetge states:

Patrick is basically saying that you guys are meeting your requirements independent of this project is really where you are?

Teri Jamin states:

Patrick provided an attachment that shows all of the projects that we currently have constructed and the different programs we have to meet the housing element requirements which are the ones that comply with the state law as part of our general plan.

Jim Baetge states:

Do you understand though Teri the issue of the hour glass? We said that was the critical part between Pioneer and Ski Run and we were trying to deal with the area on the other side of the congestion. What you're building isn't necessarily transit users. The people that buy these are probably looking at million dollar houses or more and they are not necessarily transit users.

Teri Jamin states:

I would not envision them needing to use transit to any great degree because their location is so close to all of the amenities that they'll want to utilize once they get to their dwelling.

Jim Baetge states:

So you're looking at trips being created, as opposed to in the past you would have said you're reducing the trips because of employee trips to the casinos or wherever they were. Now you're saying you're going to put something in there that will increase the auto trips.

Teri Jamin states:

> I guess the way I would look at that it's unlikely that the people who would buy these units be located in this area if these units were not available so they would be probably in a house that is further away from the Stateline area. So they are still going to take a trip from wherever their more expensive home, in the Key's for example, instead of buying this project. So they would still be getting trips going into the area. Just as employees now who are located further away because they don't have an affordable housing unit in this area would be taking a trip. Although, I would agree with you that the employee would be more likely to take transit than the person in the Keys whose either residing there or visiting there in order to access the Stateline area.

Jim Baetge states:

> Your letter is supporting the concept of market rate housing?

Teri Jamin states:

> The letter is saying that it is consistent with the City's goals and the housing element.

End: Affordable Housing Discussion

Subdividing Affordable Housing Development

Jim Baetge states:

> The issue I have is with the Community Plan access and the fact that we're providing a high-end gated community blocking the access to the mountain.

Jeanne McNamara states:

> First of all for the record there is no application to subdivide these into single family at TRPA at this time. From what I understand the applicant has basically formalized their intent to subdivide with the City.

Jim Baetge states:

> Can I ask a question? Does penciling out the economics require that you subdivide?

Lew Feldman states:

> The answer to that is it would be probably impossible to collect rents that would come close to supporting the cost of the project.

Jim Baetge states:

So basically you're relying on the fact that you have to subdivide?

Lew Feldman states:

We recognize that there is an impediment to subdivision. As we sit here today we're simply asking for an approval for a multi-family residential that is the pending application. We've had several conversations with Jerry and John and staff and we think this is an issue that ultimately will be decided by the Governing Board. Not based on this project but more of a generic discussion that is going to be forth coming. We are not asking you to approve the subdivision, were not asking you to oppose a condition to bar a subdivision. We think that is a conversation that needs to occur as a policy matter elsewhere.

Jim Baetge states:

Why wouldn't the entire matter be a board policy question then?

Lew Feldman states:

Because we have the right to pursue a multi-family residential project. We also have worked for the last couple of years to pursue that approval. That is the first step in our process. The issue, just to bring clarity to it is whether or not the fifty percent coverage allowed in the Community Plan can be subdivided. There may be a solution that permits subdivision without availing oneself of that requirement. That will be explored after the project hopefully is approved but that would be our preferred method of moving forward.

Jim Baetge states:

I've spent a lot of time reading the last few days trying to find a way that you can subdivide fifty percent coverage. Very honestly, I don't see it. If you said that this project can go to fifty percent, why is everyone else limited to thirty? There is no motive behind it.

Driveway Access

Jim Baetge states:

Why a gated community blocking the access from the casino corridor to the lake to the mountain? It is already blocked on one side and now your saying nobody can go through there.

Jeanne McNamara states:

> Right now the public cannot access that parcel because it is private. There is an easement through it for STPUD access because there is a water tank farther up the hill. Right next to the parcel is going to be the Van Sickle State Park. It is public property now which would allow the public to access up the mountain.

Jim Baetge states:

> But not the corridor we worked on through the casino? It is in a different place. It seems like the Community Plan worked on by everyone spent a long time working on the specific subject of getting it accessible. Now we are saying to put a gate up? Then again, I cannot find anything saying that we cannot do that.

Jeanne McNamara states:

> Right, and that is what we struggled with too but there is this Van Sickle State Park which will surround this property.

Lew Feldman states:

> I respect your position on this but I really think being right next door to a park we are really celebrating public access right there. So it's not as though if this project were constructed nobody would ever be able to get back up into these woods.

Randy Lane states:

> I don't think your access would be at that point anyway. In the North you have private property, to the South where they're going to access through the existing driveway at Montreal to access the park is going to be the logical access point anyway.

Jim Baetge states:

> Well, the vision, if you read it states; from the lake through the meadows. It is very specific and now you're not going to be able to.

Randy Lane states:

> I understand that but you can never access the private property. You can say what you want but if there is private property the public has no right to go across it.

Jim Baetge states:

> No, but what we are trying to do in Tahoe is to buy or do what we have to do in order to make that happen. If you took that approach you couldn't do a lot of things.

Lew Feldman states:

> At the Trendwest project there was a trail there and there was no other way to get to it. We provided public access, same developer. We don't have to deal with that issue here because there's already access.

Driveway Access

Jim Baetge states:

> Before we go on, there are several drawings on my end but they are not all the same. It looks like there were several alternatives for doing it. One of them had twenty-three separate ones and another one had twenty-two attached. I wasn't clear which one we were using.

Jeanne McNamara states:

> The applicant first proposed twenty-three units. Now that is not valid, we are going with twenty-two units. They reduced the density because of some groundwater issues on the property that has a lot of high groundwater. The access point on the East leads through the easement for STPUD to get to the water tank. There is no access point off of Lake Parkway there. There is an access point ingress and egress for the property which is the existing road that leads up to the water tank. Where that road is that comes in is within a couple feet.

Jim Baetge states:

> So that is not the SEZ then?

Jeanne McNamara states:

> No, when you get to the "T" of the intersection between Park and Lake Parkway, the Gondola is to the East, the Community Plan had originally envisioned that access to this property would be just a four-way intersection. You would then proceed up that dirt road (Van Sickle) to where the barns are. That is all through

stream zone. We looked at an option of having them use that intersection but then they would have to get an easement from the Conservancy to cross their property and then there would be construction of a road through the stream zone. This avoids the stream.

Jim Baetge states:

This totally changes the staff report then because it said the…

Jeanne McNamara states:

On page 3 of 12; to access the subject parcel off of the T-intersection, the applicant would have needed to obtain an easement across an adjacent Stream Environment Zone (SEZ) and this would have resulted in additional disturbance to the stream zone there. Because they would have had to cross the stream zone to get to their parcel from that T-intersection.

Lew Feldman states:

So all that is abandoned.

Jim Baetge states:

Because the project could be accessed on the Lake Parkway which would not require disturbance to the SEZ.

Jeanne McNamara states:

Using the proposed and the existing access to the property, we couldn't make the finding for them to do the easement. Right at the Western property line the SEZ line is almost on that property line. They would have had to cross that to get into their property.

Jim Baetge states:

So basically it is going to be a cut slope right into where that road is now.

Scenic issue with setback

Jeanne McNamara states:

The other issue was the scenic with the setback and we have that same concern.

Jim Baetge states:

> It was kind of a broad scale thing about what is going to happen with Highway 50 being diverted up to the Upper Loop which is throughout the Community Plans.

Jeanne McNamara states:

> Our transportation staff did look at the traffic report on this and the traffic report did address that. They found there wouldn't be any impact. Basically, if Highway 50 was diverted up there this project would not preclude Highway 50 being diverted up there based on what was planned currently. For the scenic, we had the applicant prepare a simulation of the project as viewed from Lake Parkway to help us make the finding because they want to encroach into that thirty foot setback. When you go through the Community Plan it talks about visual, how the buildings shall not…they didn't want them right on the top of that cut slope. We also were trying to make the finding that the buildings were in three quarters of the tree canopy. So, we had them prepare a simulation and it shows what the increase landscaping that they're proposing on that cut slope that the project would not have any sort of scenic detriment to it.

Jim Baetge states:

> With twenty feet?

Jeanne McNamara states:

> I think it is a little more than twenty feet isn't it?

Lew Feldman states:

> I think it's more than twenty feet and there is no living area within a thirty foot setback there is just some deck area.

Jim Baetge states:

> What I was thinking is if whether you have applied the same setback as if you were on Highway 50. We've spent a lot of time on ensuring the scenic view of the ridge of the mountain and if whether you were applying that same measure to this.

Lew Feldman states:

> There wouldn't be any impairment at any ridgeline.

Jim Baetge states:

> You couldn't see anything because of the existing trees. The other thing when you're out there it looks like it's a much higher bank than it looks here on the scenic simulation. Is the bank being cut down that much?

Jeanne McNamara states:

> The slope is not being touched and it's not being terraced. I think with the increased landscaping on there that that is helping to break that up.

Lew Feldman states:

> The site plan that you looked at compared to the one that you weren't supposed to see shows how much work has been done to side everything.

Jeanne McNamara states:

> We do have an updated landscape map here too that reflects what is on the simulation. At one point the applicant actually proposed having a wall along there and that was removed also so we can help make that finding for the setback.

Jim Baetge states:

> The Community Plan also says no new driveways and this turned up. You don't have any other access, it's just that one?

Lew Feldman states:

> This is the only one. If you look at the dash-line you can see the thirty foot setback and you can see where the encroachment of the thirty foot setback occurs which is pretty modest.

Jeanne McNamara states:

> As far as the condition for the no new subdivision we can add that. I have no problem doing that. I did not include it because they hadn't submitted the application to subdivide at this time. I thought the staff summary put them on record if a future subdivision did come in terms of the land coverage they were transferring in they would have to come back to Bailey.

Jim Baetge states:

> The reason this is troubling to me is that it isn't the staff report that they have made with the application and that was their intent. It sounds like it is a clear

intent. A lot of it was straight forward with the plan and everything is pretty straight forward here but, I don't think that is what we got. We've got a judgment made about what the plan said about employee housing not necessarily appropriate for here. We've got a corridor where we fixed up Highway 50 and now we're going to have that problem again. I know it doesn't speak to it but we have a gated community blocking access. I think there are several relative policy issues. The fact that we have twenty-eight square foot gated community is a real policy question in terms of how you want to go on it. If I thought, which I have reason to think, now we're going to subdivide it and then sell it as residential housing I think that is reaching well into the whole regional plan in terms of what we all have done and where we are headed, which is a true policy question.

Joanne Marchetta states:

I would agree with you on the subdivision component of this. I think it has to be clear in special condition (1) one in order to be consistent with the findings that need to be made. Given the facts that we know here; that there is an intention at some time in the future to subdivide this, I think that special condition one needs to be clear that this not only… Page 7 of 12 states: This permit specifically authorizes construction of 22 unit multifamily project on two adjacent vacant parcels. The proposed 22 units are to be used as multifamily dwellings only and use of the units shall be consistent with the multiple family dwelling use definition. I would for prudence add to this stating; for multi family dwellings only and subdivision for fewer units is prohibited pursuing to 20.3.B (3) of TRPA's Code because otherwise we can't make the consistency finding.

Jim Baetge states:

I was thinking about this last night about how you would word it. The trouble I see if you say okay let's go with a multifamily but that whole approval is conditional on the fact that it is not subdivided. The reality is you can build it and then come in later because the condition would be voided due to the fact that it is already built. I just don't see a good way to get around that. Very honestly from my end, this is a logical determination for the Hearings Officer to make that big of a jump in policy. That is where my trouble is.

Joanne Marchetta states:

I think that is fine. If complete denial here or bumping it up to the Board is the only alternative instead of creating an ambiguity between the facts and the conditions we can do that as well. I do think this needs to be dealt with at a policy level because the move to subdivide this in the future as a single family is clearly consistent with our Code and I don't think we can approve a project on the assumption that we will make a Code change in the future.

Jim Baetge states:

> My feeling with where we are here is that we are taking a big jump to say we ought to be setting policy. But at the same time I've tried in the past not to say I don't want to approve something.

Lew Feldman states:

> Let me just say and maybe Jerry will jump in here, but we've been working with Jerry more than anyone else on how we are going to get off a dime on this deal. We talked about just going to the Governing Board, having a project specific discussion and a variety of different mechanisms. What we agreed to do in terms of process was to take this through the Hearings Officer process as a multifamily residential subdivision and to defer the subdivision issue to the Governing Board. We have two other projects that have similar issues. We didn't come here blindly we came here with understanding this is the best way to tee it up. We are going to be on hold pending the outcome of this discussion and I don't think anyone has compromised. We are the ones taking the risk right? If we don't get it approved as a policy issue through the board we will have to go back and figure out how we will solve the problem. The prohibition that we are talking about is not a prohibition on subdivision of this project. In the abstract it's only if it's the fifty percent coverage bonus. So, we may have other ways to deal with that. From our perspective we would urge you to approve the project recognizing that no one is trying to pull a fast one here. We have a serious subsiding policy issue that we're not asking you to resolve it has to go to the Governing Board and that's where it's going to get resolved one way or the other.

Joanne Marchetta states:

> Then perhaps a way of winding our way through this little tightrope is rather than approving a multifamily project that we know there is intent ultimately for it not to be multifamily perhaps there should be a special condition. The condition could say; in the event that this project goes forward as a single family residential development it can only go forward at the lower coverage.

Jim Baetge states:

> That would basically void the project.

Lew Feldman states:

> We're saying Joanne is that the Governing Board needs to make that call. We have had serious debates; we haven't been able to resolve how that is going to be resolved. The way that is going to get resolved is that the Governing Board is going to make that determination as opposed to that determination being made as a condition of this permit. We don't have a subdivision application before you that issue isn't on the table.

Joanne Marchetta states:

> It actually is exactly on the table for purposes of the policy discussion. If we're going to take a policy discussion forward in the context of a project then let's not put on blinders as to what the policy is that we are there to discuss. We're not there to discuss whether you're allowed a multifamily rental development. This is a proposal for a multifamily with a second step. That is the policy debate.

Jerry Wells states:

> I think part of the issue here as opposed to the other two projects that you referred to up in Incline Lew, is that those projects can function as rental properties. Maybe not ideally but, they can function as that. So when we approved those they are ones that wouldn't necessarily have to be. I'm making that assumption let me know if I'm wrong.

Randy Lane states:

> I don't think I agree with that. I'm getting the feeling from Jim's comments that if this was a thirty percent sub dividable issue in this location you would still have reservations. That is what I'm hearing.

Jim Baetge states:

> Part of the issue is when a project is consistent with the plans and everything else, I have never objected to one. I have accepted these because they are all consistent. When you have a policy issue there are people out there that are interested, particularly when you are talking about the redevelopment area and all the things that are going on. The circulation of this isn't out there. Everyone doesn't know this is going on. What I have trouble with and it's just..if you were saying well it's thirty percent and it's all consistent and everything is down the line, I don't have a lot of trouble with the idea. I wish they were smaller but the idea is okay. I do have trouble with abusing what we have created and I think it would be.

Randy Lane states:

> Well I have trouble with that too. What I'm saying from my position, which rolls over to Jerry's thing, we make an economic decision based on what we understand the rules. If there is a policy question it seems to me it should have been brought up three years ago when we submitted this application. Not by your own processing requirements after we've done hundreds of thousands of dollars worth of scenic. All I'm saying is that TRPA processing system has a flaw. From a developers perspective it almost looks like it was done intentionally so that nobody would ever submit anything because nobody in there right mind is

going to invest a million dollars or two and buy a piece of property based on what they think the Code is. When they hire somebody like Lew Feldman who is an expert at this and then come to learn that he says we can't do that. That's what is happening and it's not just happening here it's happening in Incline and several times before. We need to know in the beginning and not at the end that there is going to be issues. Jerry is interpreting from his standpoint in Incline. We made the conscious decision to buy two pieces of property based on being able to subdivide those two pieces of property based on what the Code said.

Jim Baetge states:

That's where I have confusion. I cannot find it anywhere that it states that you can subdivide into residential with fifty percent coverage.

Lew Feldman states:

We're not going to resolve this here and Jerry has heard this and so have others. There was a project approved in August at fifty percent, community plan project. We went to the Governing Board on this eight unit for sale moderate project which the Governing Board and staff embraced. Everybody was under the belief that under the Code it was written that you can subdivide within the community plan with fifty percent rule.

Jeanne McNamara states:

I don't think it is accurate that you say we had the belief that we could do it. I don't think that is accurate.

Lew Feldman states:

Let me say this because I do have some blame or responsibility for this as well. 20.3B, which is the section of the Code we are talking about did not have this prohibition that everybody is now talking about until I made an application for a Code amendment to allow this project across the street to proceed. The basis of that application was that it was a post 1987 parcel and the fifty percent coverage rules were not eligible for post 1987 regional plan parcels. The whole scope of that proposal and amendment was simply to say why you would discriminate against post 1987 parcels or pre 1987 parcels. It was a good thing and the Governing Board approved it and it was described as cleanup language tagged on to the end of that process that was never discussed with the Governing Board. It was not featured nor was it highlighted that I never understood to bar what we talking about today. Other people that have had experience with the Agency didn't understand it to bar what we were proposing and so we think that if the Agency truly intended when I made an application to make the fifty percent rule applicable to post 1987 projects, the Agency's intention was to change the rules to subdivision. That is a big deal. It probably should have been highlighted, called out, noticed, and minimally been a part of the subdivision

rules. So there is an ambiguity. As we look at this it is not teed up for a discussion that quite frankly, caught me by surprise. I think it caught Jeanne by surprise too. It was brought to your (Jim Baetge) attention just as this was coming up for processing. So we've been in this process for some period of time and I'm not trying to point the finger at anybody. I'm just telling you it isn't as obvious as you might have thought.

Jim Baetge states:

When you did the Regional Plan you allow a certain level of coverage and there are a whole slew of things that we put in there that say; and that will bring it into conformance. But, now were going to say fifty percent coverage can be subdivided. It changes the whole character.

Lew Feldman states:

The Amendment was a recent amendment. That rule, what were talking about now occurs as a result of this project across the street. Before that there was no prohibition.

Jeanne McNamara states:

I think there was. It says multifamily it doesn't say single family and that was basically a clean up to make it consistent with the goals and policy. Which is the intent to allow fifty percent coverage for multifamily not for a subsequent single family. I have talked to Gabby and John about that.

Lew Feldman states:

Obviously it's a difference of opinion.

Jim Baetge states:

Again here, this is a big policy issue to be addressed and resolved before we go forward because we are changing the whole character of that Regional Plan.

Jeanne McNamara states:

I just wanted to say one thing in response to what Randy stated earlier. I did ask this question; what was the intent? Were you intending to subdivide? I did ask this question of the applicant in a meeting in April 2004. I was told it was not appropriate for me to ask that question and that I should be reviewing the project on its merits as multifamily. So I did ask that question.

Randy Lane states:

> I don't think it's appropriate to get into a "he said, she said." We have different recollections.

Jeanne McNamara states:

> I'm just saying this for the record when I'm being told that, this is a late hit. I just didn't appreciate being called as a late hit and I did ask. Review is review and unfortunately we cannot pick everything up at the beginning of the review and what came along through it.

Jerry Wells states:

> When I came into this meeting I was thinking there are three options. One is the project can either go forward as recommended by staff and then we would have this debate in the bigger picture with the Board. We were thinking of doing that in November. The other was to deny the project since it was based on needing to be subdivided to make it equitable. Or to heavily condition the project relative to subdivision and all those sorts of things. The more I'm hearing here I don't think only one of those options is acceptable to you folks. I'm hearing for you, Jim, its difficult because of this issue on whether or not the project requires to be subdivided or not. Whether were just approving it on paper knowing that it's never going anywhere that has given you some uncomfortable feelings. Another option and this probably isn't acceptable to you either, to continue it until we have this discussion with the Board. That way at least you got the information from the meeting today that we can convey to the Board to kind of help frame the picture but they don't have an approved project coming before them to frame this position or this discussion.

Randy Lane states:

> I don't think that is equitable Jerry. I'm not asking you to approve the fifty percent coverage thing. I read the Code and I can see where it says clearly when you go back to the coverage section what it says. How that evolved, I'm not here to discuss that. Although I think a lot of us were out doing it and in fairness to Jeanne nobody is trying to say that you did anything inappropriate. You didn't. But, I think we've been fairly open since the beginning of this thing because our original design showed single units not even duplex units. So, I don't agree with you but I don't want to take you to task on it because I don't think it serves any purpose. But, the reason I asked the question I asked before Jim is if you as the Hearings Officer are prepared to approve this as a thirty percent subdivision then I think it is important to have that approval Jerry. That is on the table, Lew wants me to not do it. That's why I asked the question is because what I wanted to do is have the flexibility that if this thing gets bogged down to where it can be heard in November but might not see action till March or April I've been around the block before and I know that happens. This thing was originally submitted

almost three years ago and I know there is a process you go through to deem things complete and all that. I'm just saying no matter how crumby we submit stuff, which I think we know the drill pretty well, more than most people. So I think to be in the system for three years and then say; hey now you got to wait again and not have the option to have a thirty percent deal and maybe be in 2006 or 2007 I don't think that is fair to us. That is all I'm saying.

Lew Feldman states:

What Joanne is proposing is that they condition this cannot be subdivided under the fifty percent rule and that would be a condition of approval which would not preclude the thirty percent subdivision.

Randy Lane states:

I don't think you would just blatantly say that it cannot be approved. I guess that is what it says in the Code but I don't like that tagged onto my project.

Lew Feldman states:

So maybe the way to deal with this is to say the condition recognizes unless there is a determination by the Governing Board that would…

Randy Lane states:

I would allow you to put a condition in there that states the Code only allows for subdivision, you don't get any bonus consideration for thirty to fifty for a sub dividable project. I don't have any problem with that. I don't like the word prohibited when it's in my documents. Because that issue hasn't been decided I don't think. That's my eye point.

Jim Baetge states:

The only trouble with the thirty percent part is that you really don't have a plan there. You're not looking at anything, so it is a little hard. I think we all agree there are some policy issues here. The reality is, to get a decent project you're going to need some policy guidance from the Board or whatever the case may be. It seems to me to totally condition it whether it's the thirty percent which we don't have or whether it's something else it isn't going to get to the policy issue and it doesn't make the finding.

Lew Feldman states:

We may not have to get to the policy issue. We're saying is if we can agree to a condition that doesn't put you in the position where you feel as though you're up against policy because the condition would prohibit the fifty percent coverage subdivision. We may be able to find a solution to have this project comply with

the thirty percent rules. That would at least keep a door open for us which under the circumstances I think is consistent with where you would like to wind up and fair with Randy. So I don't see how there is a down side to that.

Jim Baetge states:

The only way you can do that is to continue it and come up with a project that does comply.

Lew Feldman states:

Well, we may be able to do a minor plan revision that achieves that and I think that is the position we would like to find ourselves in. It is now our problem let us figure out how to solve it. At least now we got something for our three years of effort that is an approval that warrants further investment to solving the problem.

Randy Lane states:

What's the effect if we get delayed to the next Hearings Officer meeting time?

Jim Baetge states:

Two weeks from today. What I don't fully understand though is in order to get a project that is going to work, your probably looking at a Board determination. I don't think there is any way around the Board determination. You can put all the policy issues before the Board. What is the down side to that?

Jerry Wells states:

The discussion should be focused on the project for the policy issue. If you're thinking we would have the project there at the same time as the policy discussion that will be a little difficult. I would like to have that discussion with the Board and the bigger picture without focusing on any one project. What we will be asking them to do is to look at that subdivision requirement as it relates to affordable, moderate, and market rate. If you have a market rate project there on the same day it is all going to focus on that one project. We can do it possibly but I have not talked with John Singlaub to see if he would be willing to do that. That is why I was thinking of the continuance idea because then it could stay at Hearings Officer probably.

Jim Baetge states:

I don't mind it staying here. I think we need to be really careful not to let this get lost in developing policy.

Jerry Wells states:

> The only reason why I thought it might still stay at Hearings Officer is so that the Board made some policy decisions and we knew clearly what it was then we could decide what to do.

Lew Feldman states:

> If Joanne's condition is placed on this which takes it out of the policy issue how is that bad?

Joanne Marchetta states:

> After hearing the discussion I'm going to revise my suggestion because I do think it's extremely difficult to condition a project that is not at thirty percent on thirty percent. Then it is a different project. I don't know how Jim can approve…

Lew Feldman states:

> You're prohibiting the subdivision at fifty percent. That is all you're doing, which is consistent with the staff recommendation.

Joanne Marchetta states:

> Without a plan in front of us and what that thirty percent looks at, to say it's approved automatically…

Lew Feldman states:

> It's not. All you're approving today is a multi-family residential project at fifty percent that cannot be subdivided. Unless we come back with a thirty percent minor plan revision. We may or may not choose to do that.

Joanne Marchetta states:

> My point went more toward the issue of, I don't see a Code prohibition if a thirty percent subdivision project were to come in the door. The Hearings Officer process, is that what is essentially the policy issue. If it is at fifty percent we cannot subdivide, if it is a thirty percent we can. That is the policy debate.

Jim Baetge states:

> He is talking about doing prohibition on further subdivision as a condition of the project. I think you had some words at the start of that.

Randy Lane states:

> What Lew is saying is if we brought this project in without everybody thinking it was going to be subdivided he could act on it today because the Code allows for it not to be subdivided to be fifty percent coverage. So the project before you is exactly that. Again, if nobody was aware of the subdivision then he would only be asked to make that decision today and we wouldn't be having this discussion of prohibition or anything else. We're doing that because everyone in this room recognizes that there is a policy issue that were going to try to do something in the future that is probably unclear and may even be contrary to the policy. What Lew is suggesting is just to approve it at a fifty percent deal non-sub dividable. If Jim wishes to make those findings and even go ahead and put in some language like you stated before. Even prohibited is fine, I don't care. That issue is not going to be resolved. The only thing I'm, asking for is that I hate taking three steps forward and four back and that is what I feel like has been happening. I'm not trying to use this approval to hammer anybody over the head. We are asking for what the Code states you can do, which is a fifty percent bonus if you do not subdivide. So if that is all were asking for and I get that done then we have our day in court in front f the Board. Then they can decide whether they want it to apply to this or only affordable. Which I hope will be brought to the floor at the same time because I've got two twenty units out in Incline that are just hanging out there in limbo.

Joanne Marchetta states:

> They cannot decide whether subdivision is applicable to affordable without a major comprehensive plan change. We had made a policy call for purposes of a couple of test cases (Tahoe Vista affordable project in Placer County, Tahoe Valley Community Plan) in the context of front loading P7 in the community planning process that we would agree to look at these issues not approve. We have not approved that concept of subdivision in any affordable context nor could the Board approve that without major environmental review of some specific context.

Randy Lane states:

> If you approve this thing a multifamily and it's incumbent on us if we can redesign the project or we don't want to go forward with the affordable thing, we still have the right to step back and look at it as thirty percent.

Lew Feldman states:

> Or you can build and try and rent.

Randy Lane states:

> We are looking at another alternative is the same design but how can we meet the thirty percent coverage issues. We have some ideas but were not finished going through that process. Jerry asked me about that a couple weeks ago and I just said were not there yet, were about fifty percent there. So, if you approved it as non- sub dividable I'm assuming we would have that option or non-sub dividable today. We would have the option if we cannot cure that thirty percent but, that thirty percent or whatever we're doing to meet the Code from the coverage standpoint comes into to give us some relief, we would still have the option to come back with the revised project at a later time. We then can say we can't have twenty-two units but we can have eighteen units. Is that still an option?

Jeanne McNamara states:

> Just provided we can make special use findings because it is a special use.

Lew Feldman states:

> You are not locked into it forever to be a fifty percent coverage non sub dividable twenty-two unit project.

Randy Lane states:

> That would be good for us because again, I don't think the issue is going to be from a policy standpoint is going to be resolved quickly especially from what Joanne just said. Which is consistent with what was said the other day.

Jim Baetge states:

> The policy issue before the Board would come up with direction to staff or whatever the case may be will at least give you some indication of whether you have a viable project or not.

Randy Lane states:

> Well, I'm going to leave this room today thinking that if I want to subdivide it I can only get thirty percent coverage. That is the conclusion I got.

Jerry Wells states:

> That's what you got. Randy another option that Jim should feel comfortable doing today is to come back in two weeks with a thirty percent plan that would actually have a plan to put in front of him to be able to day yes or no.

Randy Lane states:

> Well, that is where I was going before but what is the difference were approving this plan. If we change it we will have to modify it anyway.

Jim Baetge states:

> I wouldn't feel comfortable doing that without seeing what it is. Just like we did this one I would have to look at the plans thirty percent, what does it do with the traffic and all that? There are too many variables.

Lew Feldman states:

> That is not going to get done in two weeks anyway. If you can't respond…

Jim Baetge states:

> Lew I think the option may be, Jerry being here too, if you don't want to take both to the Board you could probably split the items and say let's put one together that meets all the requirements now to come to a future Hearings Officer. The policy question is going to go forward in November. I think the two can come together. If you don't want the project before the Board if you could look at a redesign project that fits it. I will tell you I do not feel comfortable just because I know the situation of saying I can make those findings. I just do not feel comfortable with that, the way we stand. I think the cleanest way is to take both before the Board. Both the project and the policy issue. The policy issue is certainly going to go through environmental documents and everything else.

Jerry Wells states:

> I can talk to Mr. Baetge and I can talk to the chairman of the Board but our direction to staff in the past on policy issues is that the Board prefers not to do it in the context of a project because it gets so specific. It can encumber their discussion a little bit if it is focused on a single project.

Jim Baetge states:

> What if, I don't want to make anything anymore difficult than it is, the policy issue be taken to the Board. Then the determination of what the project could be made by the applicant and TRPA staff following. That doesn't necessarily have to go to the Board.

Jerry Wells states:

> That is what I would suggest either tabling or continue at this time so it doesn't lose a place in line. Which I know Randy is probably concerned about.

Randy Lane states:

> That is my concern too. My concern is just time. I'm still hearing conflict here. You don't want to act on the project and I don't understand that if your action doesn't compromise what the Code says. If all were asking you to do is approve it as multi family why don't you feel comfortable?

Jim Baetge states:

> Not that you would do it but, you could take the project and go build a multifamily, conditions are gone now because the project is closed out and then you can go forward in splitting it up into a fifty percent coverage residential. No matter how you put a condition on it, it vanishes when the project is done. You don't have a project without subdivision.

Randy Lane states:

> You're taking the position that because of some future act that you don't want to act today and that tells me you're not comfortable with the process or your own Code. That is the message that gets sent to me. Today, I'm before you asking you to do something that is totally consistent with the Code and consistent with TRPA staff(s) recommendation and your saying that you don't want to do that because you can build it and then later you can subdivide. If that is the real issue, which is what I'm trying to get to, there is a not wanting to do it and there is an I'm not doing it under any circumstances. That is the feeling I'm getting. That your uncomfortable doing it. If you do say that and we are told to go to the Board that is your prerogative. I'm certainly willing to go along with it. We've extended this thing like twice. We sent this letter to extend the thing in August 31, 2005, it's almost October and I know how things work. I can see this thing being another year or two. My argument to everybody is the reason nothing gets done in Tahoe id that there is no certainty with the process, number one. Number two, how do you design something when you start four or five years ago and you don't even get an approval until six or seven years later? The dynamics of everything changes; economics, interest rates, all these things. I just don't think that is right or fair for the Agency to make it so burdensome for potential people that have projects. You might as well not have any Code. We had this discussion with John and I told John that I'm starting to feel like we are being picked on because you don't want any projects period. That's fine I can deal with that. All somebody has to say is that were not doing anymore projects in Tahoe and I'm fine with that. I just don't like spending the time and energy it takes to do it. There is too much interpretation in the process already from my perspective I can assure you. No reflection on anyone in the room past or present. There has got to be a better way to do this. This just doesn't work for me and my company. I'm starting to lose partners over deals like this. We structure something economically one way and what happens when it doesn't happen and my deal starts to fall apart? There are consequences that the Agency doesn't even ever think about and I have to deal with everyday. I also have to think about the

environmental side everyday because that is part of the process. I'm asking for a fair shake and not to compromise how you feel at all. I just want to be very clear that if we do delay or do this or we come back in two weeks that you're not going to say the same thing based on another look at another design or solution to this problem. Getting to you is a lot easier than getting to the Board.

Jerry Wells states:

Is there an option that we can take a five minute break to discuss with Joanne and Jeanne to see if there is another option to somehow move this forward to the Board?

Jim Baetge states:

Yes, we can take a recess. You said what is approvable? You're basically saying that if you go with the thirty percent you will subdivide. You could do a project that shows thirty percent. I have trouble making the findings because of the idea of going to fifty percent coverage when you're talking residential. Like it or not, it doesn't pencil without it and that is the approach being taken. You know that and I know that. That gives me trouble. If I were designing or redesigning I would really have trouble with a gated community blocking that. I really have trouble with that. Would I reject it over that, I cannot find anything in the Code that states you can't. It sure does give me trouble though.

Randy Lane states:

We wouldn't put an easement on the property line either. Just because you have two or three acres doesn't mean people should be able to walk all over the two or three acres. You make an access point for them. I don't have any problem with that. Nobody ever came back and said to do that. We're flexible.

Jim Baetge states:

I've been working with Sacramento County, El Dorado and Placer over that. The whole foothills are full of that and it is becoming sort of a social issue in terms of the well-to-do lock themselves behind the gate and everybody else in other places. I think that is a kind of concept thing. I don't find it as a problem other than the trails and things but that gives me trouble. If I were to design it I would put a public access through this project and get people like we originally had in the Community Plan. The idea that we are going to five lanes, maybe traffic looked at this, I don't know, everything very clearly points that the Upper Loop Road is going to be something that it isn't today. That needs to be thought through and resolved. I think we are reaching beyond the Hearings Officer and there are people in the community that would like to know this.

Lew Feldman states:

> The people that were noticed support the project.

Jerry Wells states:

> Maybe there's a way to split this where we can have the bigger policy issue with the Board in November, have the project on the agenda as well but not for subdivision. Have it on there for the multi-family approval just as it is here today but, not take that action until after they have had that policy discussion. That way at least it keeps the project on track for an action in November.

Randy Lane states:

> I disagree with you, all you're going to do is have the policy discussion if that's a hot and heavy issue it will still spill over onto our project. There is no way you can do this.

Kevin Lane states:

> The other one has already been applied. It's well over and one hundred twenty days already past. That one is going to hit the Governing Board soon in the next month or two.

Jerry Wells states:

> I think your kind of hearing where this is going to go today and I'm not sure it's going to be any better than what I'm suggesting.

Lew Feldman states:

> I think the earlier suggestion in light of Jim's concerns and Joanne's comments, a placing it in some sort of abeyance until the policy issue is resolved is probably the best outcome under the circumstances.

Jim Baetge states:

> You can also leave that flexible if you want it to go on the agenda at the same time. I think what you would get there is the other players that can see it on the agenda and come forward. Right now they do not know we're doing this.

Lew Feldman states:

> I'd rather have the policy discussion, as Jerry would, without the project being the target.

Jim Baetge states:

> Why don't we just say the policy issue is directed to the Board. The policy issue being the subdivision fifty percent and so forth. The issue of the project can be a determination made between TRPA staff and the applicant on whether it would come back to the Hearings Officer or go to the Board or whatever you choose to do.

Jerry Wells states:

> As Joanne mentioned earlier all the Board is going to be able to do is have a discussion on it and be able to direct staff on which way to go with it, whether we should amend the Code to allow subdivision for certain types of housing or not. Then they will make a final decision. At least it will give you some direction as to which way you want to go.

Randy Lane states:

> The issue of the affordable from what Joanne said is going to be something that will not be resolved. Which then has other consequences for my other project in Incline Creek and so forth. It is what it is. If I assume that those two things are going to happen then, I come back to you and I say I want to do a fifty percent multi-family thing are you going to act on it?

Unidentified states:

> And you think it's economically viable?

Randy Lane states:

> Why do I have to even answer that question? It's none of TRPA's business as far as I'm concerned. I'm doing what the Code allows me to do. If I make a conscious decision that I want to build this as a market rate thing are you going to come back to me and say you don't believe me because I might in the future in five years change and you might end up with a single family subdivision. I don't think that is appropriate to make that kind of observation.

Jim Baetge states:

> My issue is who knows what's going on. If that discussion is advertised before the Board and the Board gives staff the direction then you have all the players that know what's happening on the project. Right now I think we're talking policy issues without most people knowing.

Randy Lane states:

The other option I haven't discussed is why don't I bring the project forward in October even though your gone (Lew). As a thirty or a fifty? Jim doesn't want to make a decision, let me go to the Board and see what they say. I don't think staff can get up there and say we know you're going to subdivide later so we want you to wait.

Jim Baetge states:

I think presenting that to the Board that way is fine.

Jerry Wells states:

There is nothing wrong with that but we could potentially have this exact same discussion at that meeting.

Randy Lane states:

I would like to be able to take what Jeanne's got here to the Board at the earliest spot. I don't care if you change it or leave it exactly the way it is. I want the right to go to the Board in October. Either approved or disapproved.

Teri Jamin states:

Just on this one issue could you approve it subject to the Board approving the policy that would allow fifty percent coverage for the multifamily? If that doesn't happen you could revise the project and bring it back if you choose.

Jim Baetge states:

I could not make findings with that. You're violating the Regional Plan of the environmental….

Teri Jamin states:

No, because it's not valid unless they approve the change of the policy. It's subject to that change.

Jim Baetge states:

Even they can't. Basically your saying does this conform to the Regional Plan? You would be saying no it doesn't but the Board says okay go anyway.

Teri Jamin states:

Well you're approving it at fifty percent coverage as multifamily unless the Board approves a change which would allow it to go to condominium single family.

Otherwise it's approved as multifamily and then if the Board doesn't do that you can either appeal this approval or revise your project.

Randy Lane states:

We're not even asking him to do that. Where we're at is that he doesn't want to act on the project period. No matter what way it is packaged right now he is uncomfortable approving it.

Teri Jamin states:

Well he hasn't said that yet, I think.

Jim Baetge states:

What he's saying is right on.

Jerry Wells states:

I'm trying to be optimistic. My other side is telling me we are going to have this same discussion in front of the Board and they are going to say let's continue this until we have had the bigger policy discussion. I'm just guessing but that could happen.

Jim Baetge states:

Jerry the Board could make a determination on...

Jerry Wells states:

They could approve the project. Technically it's consistent with the Code. I think the thing that may hang them up which is hanging Jim and I up too is that everyone has admitted that this project cannot go forward unless it is subdivided. You're not going to be able to rent twenty-eight hundred square foot units in Tahoe. There's not a market for it.

Randy Lane states:

There are other issues that the Agency should not get involved in. That exact issue was the reason I get frustrated many times in dealing with the Agency. You don't deal with my consequences so why should you deal with what I should or should not do? Why should I be precluded from having that opportunity? I don't agree with that. I want to preserve my options. If the Code allows me to have this approved as twenty-two units at fifty percent coverage as a multifamily I want it approved. End of story. I don't care what condition you put in. I want Jim to be happy. I want Joanne to be happy. If Jim isn't comfortable I'll go to the Board.

Jim Baetge states:

> It seems like a straight forward solution. Your saying at this level you're not comfortable with some of the questions, and there are policy questions that the Board takes the same project, they have the background of what we just did, and makes a determination. Regardless of that other issue they can say I don't care, this is what we're going to go with.

Jerry Wells states:

> They do and it does let a broader public that would have focus on this issue that doesn't have it today.

Randy Lane states:

> I'm going to lot me the Board to say I want action on only this issue. I don't want to deal with this issue. I think it's inappropriate for staff to sit there and quote "ifs" when the project has been sitting here for three years and it has not been acted on. That's not right.

Jerry Wells states:

> There's nothing in our rules that say we can't as far as notice the general property owners…Jeanne…

Jeanne McNamara states:

> Do we need to re-notice it if it goes from the Hearings Officer to the Board?

Jerry Wells states:

> Absolutely. I would.

Jim Baetge states:

> We are referring the project to the Board for action without prejudice.

VI. ADJOURNMENT

The Hearings Officer adjourned the meeting.

Respectfully submitted,

_____
Kimberly Ellis
Clerk to the Hearings Officer

This meeting was taped in its entirety. Anyone wishing to listen to the tapes may call (775) 588-4547 to make an appointment. In addition, written documents submitted at the meetings are available for review at the TRPA office, 128 Market Street, Stateline, Nevada.

Approved:

_____

Hearings Officer

"D"

City of South Lake Tahoe

"making a positive difference now"

CITY OF SOUTH LAKE TAHOE
FACSIMILE TRANSMISSION

TIME SENSITIVE

September 27, 2005

TO: **Mr. Jim Baetge, Hearing Officer**
Tahoe Regional Planning Agency
FAX: **775. 588.4527**

FROM: **David Jinkens, City Manager**
FAX: **530.542.4054**

PAGES: **5 (INCLUDING COVER)**

SUBJECT: **GONDOLA VISTA PROJECT – HEARING ON 9/29/05**

Dear Mr. Baetge:

Here is a letter that I would appreciate you making part of the record for the above-mentioned project.

Thank you!

Office of the City Manager · 1052 Tata Lane · South Lake Tahoe, California 96150-6324
City Manager · (530) 542-6045 · FAX (530) 542-4054

City of South Lake Tahoe

"making a positive difference now"

COPY SENT VIA FACSIMILE TRANSMISSION
ORIGINAL SENT VIA U.S. MAIL

September 27, 2005

Mr. Jim Baetge
Hearing Officer
Tahoe Regional Planning Agency
P.O. Box 5310
Stateline, Nevada 89449

Re: Gondola Vista

Dear Mr. Baetge:

I only recently learned of your hearing on September 29, 2005. I had planned to attend, but unfortunately, I have a pre-scheduled meeting with staff of the California Integrated Board in Placerville that afternoon regarding our source reduction and recycling plan extension, and I am unable to attend the hearing. I apologize for being unavailable that day for the hearing and presenting testimony to you in person.

I am writing to you regarding the proposed Gondola Vista project. As you know, the proposed project is located on the mountain side of Montreal Road, adjacent to the Gondola's right-of-way and Van Sickle State Park. This 3+ acre parcel is located within the Stateline/Ski Run Community Plan.

Originally, the proposed site was conceived as one that would be available for affordable housing. I am informed and verified with City staff that prior to proceeding with the currently proposed market-rate project, project proponents met with the City's Housing Coordinator to explore developing the site for affordable housing. Unfortunately, the needs for subsidy to make the project financially feasible were not available from the City/RDA. The developer/owner of the property subsequently proposed the present 22 unit market- rate project.

As you know, the City of South Lake Tahoe and the City Redevelopment Agency are committed to addressing affordable housing needs in the City and the Region. I have attached a copy of a summary of City/RDA assisted projects that have been funded to date in cooperation with private-sector investment. We have more projects in the pipeline. As you can see, the City's/RDA's commitment to affordable housing is strong,

and its commitment will continue. Affordable housing projects and opportunities are being proposed and undertaken throughout the City's corporate boundaries. This market-rate project does not detract or take away from our goal and commitment to providing affordable housing.

The City's General Plan Housing Element and State law encourages and directs cities in California to provide housing opportunities for all income levels. The proposed project, taken in the context of our overall housing and affordable housing strategy and effort, is consistent with these goals. This new project adds value to the area, compliments and supports the existing Heavenly Village Project (Park Avenue), is constructed to meet the highest standards in building quality and existing environmental protection requirements, and it does not detract from our overall goal of meeting affordable housing needs in the City.

I am respectfully requesting your serious review and consideration of this request, and I appreciate your time and effort in this regard.

Sincerely,

DAVID M. JINKENS, MPA
City Manager & Executive Director, STRA

C: Mayor and Council (w/attachment)
Community Development Director (w/attachment)
Redevelopment Manager (w/attachment)
File

Attachment 1

September 27, 2005

SUMMARY OF CITY OF SOUTH LAKE TAHOE/SOUTH TAHOE REDEVELOPMENT AGENCY AFFORDABLE HOUSING SUCCESSES

Rental Affordable Housing Projects:

- Tahoe Pines Apartments - 28 units of family affordable housing for low- and very low-income persons constructed with $1,000,000 of City grant funding;
- Tahoe Senior Plaza – 45 units of senior housing for very low-income person 62 years and older constructed with 1,027,381 of City grant and RDA funding;
- Tahoe Valley Townhomes – 70 units of family housing for low- and very low-income persons rehabilitated with $2,786,775 of grant funding;
- Evergreen Apartments – 26 units of family affordable housing for low and very low-income housing currently under construction with $3,850,000 of City grant and RDA funding;
- Sky Forest Acres – 18 unit housing project for very low-income persons with disabilities anticipated to start construction May of 2006 with $1,959,392 of City grant and RDA funds committed to the project;
- Sierra Garden Apartments – 76 unit of family affordable housing for low and very low-income persons anticipated to start rehabilitation on May of 2006 with $5,300,000 of grant funds in the process of being awarded and/or committed by City; and
- Tahoe Senior Plaza II – 33 units of senior housing for very low-income seniors anticipated to start construction in May 2007 with $3,455,000 of City grant and RDA funds committed to the project;

- Total Amount of City Grant and RDA funding for projects: **$19,378,548.**
- Total Number of Units: **296**

First-Time Homebuyers:

- To date, the City has made **39 loans** to low income first-time homebuyers to purchase single family residence within the City by offering deferred payment second mortgages at low interest rates.
- Loan amounts ranged from $25,000 up to $150,000.
- Total amount of funding from City grants and RDA funds is **$2,173,595**.

- In addition, the City is working with St. Joseph Community Land Trust on a demonstration project for moderate-income housing and has committed a $140,000 of RDA funds for land acquisition.
- The City's Redevelopment Agency has 3 other parcels that could also be developed as moderate-income housing under the CLT model using Low and Moderate Income Housing Funds.

Housing Rehabilitation Project of 7 or Less Units:

- To date, the City has made **48 loans** to owners of housing units occupied by low-income families for housing improvements by offering low interest (0% to 3%), amortized or deferred payment loans.
- Loan amounts range from $955 to $160,833.
- Total amount of funding from City grants and RDA funds is **$1,664,279**.
- The City was recently awarded an additional $900,000 of grant funds to continue operating this program.

Illegal Unit Conversion Program:

- Under this program, the City has authorized the conversion of **23** illegally constructed units to be brought into compliance with health and safety standards and other applicable codes, and then deed restricted as affordable housing for the life of the unit.
- Cost of bringing the illegal unit up to code is paid by the property owner.
- Only involves City staff time for research and inspections paid through an application fee.
- Program is on-going.

Grand total of all affordable housing units assisted or in the process of being assisted: **410 units**.

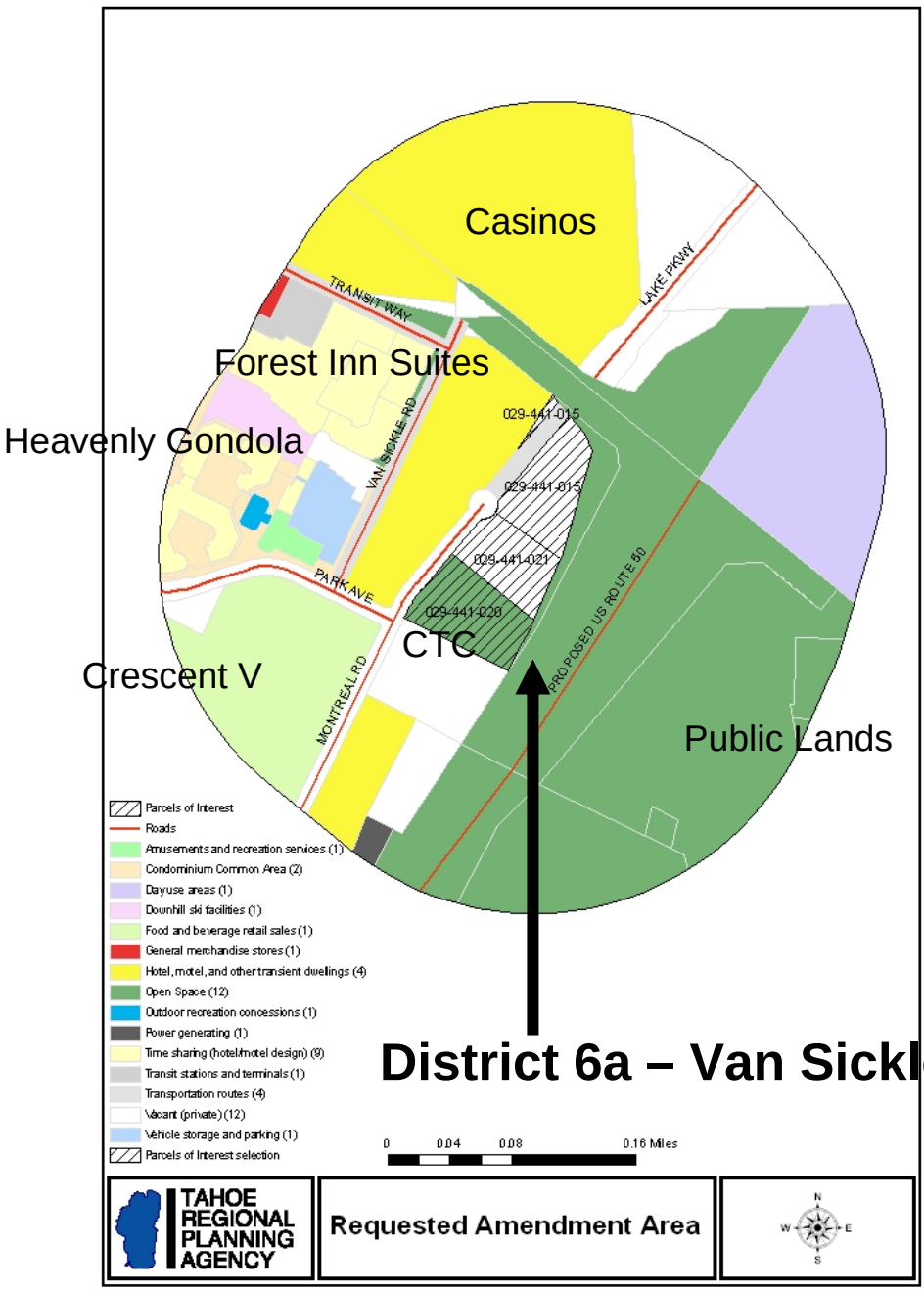
Grand total of all City grant and RDA funds expended, committed or in the process of being obtained for affordable housing: **$24,256,422**.

Summary prepared and submitted by Patrick Conway, Housing Coordinator, Department of Redevelopment and Housing, City of South Lake Tahoe, CA

"E"

Improvement	Description
Van Sickle	Construct a class I bike trail on the mountainside of the Loop Road utilizing the Caltrans ROW and/or the Van Sickle property to connect the Moss Road class II facility to the Douglas County class I facility. Ultimately this Class I facility will connect to the Montreal extension. Schedule: To be constructed as a part of the development of the Van Sickle affordable housing (6a) and/or the Van Sickle Recreation/Drainage Basin A-1 (4a) Cost estimate: $150,000 Funding: Developer costs, CTC
Loop Road (Mountainside)	Create class III bike trail route on the mountain side of the loop road to connect with Douglas County, as well as creating a class II facility on Moss to connect Pioneer Trail's Class II to the Van Sickle, class I. This improvement's schedule, cost estimate and funding are a part of the Loop Road improvements.
Montreal Road	Create a class I bicycle trial within the Cal Trans ROW parallel to the future Montreal Road extension Schedule: Unknown. Although the roadway alignment and bicycle trail should be conceptually designed together, the trail he road construction. Cost: est. $200,000 Funding: CTC

Exhibit F



District 6a – Van Sickle

Exhibit: G

Brenda Hunt

From: Bruce Eisner [beisner@tahoecons.ca.gov]
Sent: Monday, July 31, 2006 7:18 AM
To: Teri Jamin; Brenda Hunt; Patrick Conway
Cc: Ellen Boyle
Subject: RE: Gondola CC Staff Report

Thanks Teri for the staff report. It is a shame that, in retrospect, the Community Plan had no real mandate for the affordable housing designation. The land now owned by Falcon Capital was specifically not acquired by the Conservancy (at the time it purchased the remaining adjoining land from Jack Van Sickle) in deference to the Community Plan designation for affordable and multiple unit housing. As you know, the opportunities for such housing are relatively limited within the City and there has been, over the years, criticisim from various quarters about the removal of such housing opportunities through government land acquisition.

Bruce Eisner
Program Manager
California Tahoe Conservancy
1061 Third Street
South Lake Tahoe, CA 96150
Phone: (530)542-5580x6043
FAX: (530)542-5567
Email: beisner@tahoecons.ca.gov

-----Original Message-----
From: Teri Jamin [mailto:tjamin@ci.south-lake-tahoe.ca.us]
Sent: Friday, July 28, 2006 3:31 PM
To: bhunt@trpa.org; Patrick Conway; Bruce Eisner; Sloan Gordon
Cc: Ellen Boyle
Subject: FW: Gondola CC Staff Report

Here is a copy of the staff report for the 8/1 City Council Agenda. If you have any questions, please feel free to contact me at 530-542-6025.

Thanks,

Teri

TAHOE REGIONAL PLANNING AGENCY

128 Market Street
Stateline, Nevada
www.trpa.org

P.O.Box 5310
Stateline, Nevada 89449-5310

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

STAFF SUMMARY

To: TRPA Governing Board

From: TRPA Staff

Date: August 14, 2006

Subject: Appeal of Executive Director Denial of Swim Platform Relocation Application, 750 & 770 West Lake Boulevard, Tahoe City, Placer County, California, APNs 083-172-11 & 12 (the "North Cook Property" and South Cook Property," respectively), TRPA File No. Numbers 20030729 & 20031092

Appellant: Robert Cook, Esq. ("Cook")

Appellant's Representative: Kevin Agan, Agan Consulting Corp.

Interested Party: Florene Heck Buckman ("Buckman"), Plaintiff in Buckman v. Cook, Placer County Superior Court Case No. SCV13122 (suit concerning the swim platform at issue in this Appeal).

Interested Party Representatives: Michael Brown, Esq., Stoel Rives LLP
Jan Brisco

Staff Recommendation

Staff recommends that the Governing Board ("GB" or "Board") deny the subject Appeal and affirm the Executive Director's determination. The required actions are set forth below.

In the event that the GB grants the Appeal, staff recommends that the GB do so on the limiting terms and conditions of the proposed draft permit (Exhibit I). With these permit conditions, staff believes that Cook's swim platform relocation project can be authorized consistent with applicable requirements.

Appeal Summary and Description: The present matter has a long tortuous history of unauthorized activity, permit applications, appeals, litigation by Cook against TRPA, disputes between the lakefront neighbors Cook and Buckman, legal actions between them, and prior GB action concerning improvements to Buckman's pier. At the core of these actions, which have demanded innumerable hours of TRPA staff time over many years, is an intractable and longstanding neighbor dispute over the use of the waters between their two piers.

The present action is before the GB on Cook's Appeal. He is appealing the denial of his application to relocate a swim platform/ anchor block from its grandfathered location offshore from Cook's northern lakefront parcel to his adjacent southern lakefront parcel. Cook moved the shorezone structure from one of his properties to the other without TRPA authorization. TRPA's Code allows the relocation of such shorezone structures only within the projection lines of the same parcel. Nevertheless, TRPA staff has worked arduously to settle this Appeal and the pending violations by finding a swim platform location offshore of the South Cook Property acceptable to both Cook and his neighbor Buckman, who objects to its present location and has litigation pending against Cook seeking its removal.

Between 1978 and 1980, Cook moved the subject swim platform/ anchor block without authorization. More recently, Cook dropped another illegal anchor block and mooring buoy in front of his South Property pier head. In the summertime, Cook has at times attached to the lakeward mooring buoy an inflatable structure described variously by the parties as a "trampoline" or a "toy." Buckman has complained to TRPA about the second illegal buoy/ anchor to which the trampoline is sometimes attached and asked TRPA to require its removal as well as the removal of the illegal anchor block/ swim platform. Buckman urges TRPA to bring an enforcement action, through litigation if necessary, to force removal of both anchor blocks once and for all.

TRPA has made repeated efforts to work with both Cook and Buckman to find a resolution of the neighbors' conflict that did not require enforcement litigation or Governing Board intervention. TRPA staff now brings this Appeal forward after years of efforts to reach a negotiated settlement have proven fruitless.

Background:

A. Prior Actions of Cook, Buckman, and TRPA

1. The "Grandfathered" Location of the Swim Platform:

Cook owns two lakefront parcels in Placer County, covering approximately 180 feet of lakefront. He purchased his lakefront property in 1965, at which time an "L" shaped pier legally existed on the South Cook Property. A 1975 aerial photograph shows a swim platform/ anchor block located offshore of the North Cook Property. Sometime thereafter, Cook moved the structure to the South Cook Property, south of the "L" shaped pier and within proximity of the adjacent parcel owned by Buckman located at 780 West Lake Blvd., Tahoe City, Placer County, California, APN 083-172-04 ("Buckman Property"). Buckman bought her property in 1966, at which time it also had a legally existing pier. A 1975 aerial photograph showing both piers and the Cook swim platform is attached hereto as Exhibit A.

Because of both the curve of Lake Tahoe at the intersection of the Cook and Buckman Properties and the fact that the Buckman pier was located closer than usual to the property boundary projection line when it was first built, the two piers are quite close to one another. Current TRPA projection line/ setback requirements, design standards, and fish habitat regulations would not today allow the construction of these piers as they were first built. Prior to the adoption of the 1987 Regional Plan, TRPA in 1972 and again in 1976 enacted regulations governing the shorezone of Lake Tahoe. The ordinance in

effect today similarly "grandfather" certain non-conforming structures including swim platforms. In a recent conversation with staff, Cook claimed that the current swim platform location is properly grandfathered because the swim platform has always been offshore of Cook's southerly parcel; TRPA staff dispute this position because the projection of the historic lot lines shows the platform/ block to be offshore of the northerly parcel before 1978.[1]

The distance between the Cook and Buckman piers is approximately 75 to 80 feet. Currently, the anchor block for the swim platform is located approximately 20 to 25 feet north of the Buckman pier and about 55 to 60 feet south of the Cook pier, making it closer to the Buckman pier than Cook's own pier. Buckman has stated that in its current location, it impedes her navigational access when she is attempting to maneuver her boat to the north side of her pier.

The Neighbors' Dispute: Cook and Buckman have been involved in a longstanding neighbor dispute, and the parties have been in litigation with one another about shorezone uses at least twice. In a 1982 lawsuit between the parties initiated by Cook, Buckman gave the following deposition testimony:

> Your swimming float that used to be on the north side of your pier all of a sudden just for antagonistic reasons was placed right on – right on your front line, where I have to turn my boat around to dock it at the only usable side of my dock ….

Cook has interacted with TRPA in the past and is familiar with the TRPA regulations and processes. TRPA in 1985 issued Permit No. 85263 to Cook authorizing a lot line adjustment between his two parcels, as well as the repair of one driveway and the construction of another. Although Placer County and TRPA in 1987 directed Cook to stop work on the project for grading beyond that which was permitted, he ultimately came into compliance and in 1989 TRPA finalized the project and returned the security that it held on the project.

TRPA first became involved in the neighbor dispute in 1996 when Cook filed another lawsuit, this time against both TRPA and Buckman. Cook's suit alleged that Buckman had not complied with TRPA regulations in repairing her pier. TRPA staff ascertained that Buckman's rebuilding of her boathouse and technical expansion of her pier through the submission of six Qualified Exempt Declarations from 1990 through 1996, when viewed cumulatively, instead required a TRPA permit. To resolve the situation, Buckman submitted an after-the-fact permit application for her pier improvements. As with the present Appeal, TRPA staff made every effort to mediate the dispute without the need for Governing Board action. Nevertheless, staff presented the matter to the Governing Board at its December 1997 and April 1998 meetings. The antagonism between Cook and Buckman was evident at these hearings.

At the April 1998 GB hearing, the TRPA Board approved an after-the-fact permit authorizing the improvements to the Buckman pier. The main issue at the hearing focused on the use of the Buckman pier. Cook had throughout the administrative process on Buckman's pier application sought to prevent Buckman from using the north side of her pier. To resolve the issue, the first Special Condition of Buckman's TRPA

[1] This claim was not properly raised in Cook's Appeal and need not be considered by the Board.

Permit No. 960811 requires the "removal of the catwalk from the north side of the pier" to be replaced with ladders and a fender piling. This permit condition reflected a compromise from the original proposal by TRPA staff that "[t]he permittee agrees to allow only limited access from the north side of the pier." The administrative record demonstrates conclusively that although Buckman agreed to remove the catwalk on the north side of her pier, there was no outright prohibition imposed and she retained rights to access her pier from the north side. As set forth in the Governing Board minutes:

> Legal Committee member Rick Cronk explained that . . . . the problem boiled down basically to a battle between two neighbors. . . . Mr. Steve Chilton, Chief of the Environmental Compliance Division, explained that [the proposed permit] . . . would still allow for very limited access from the north side of the pier. Most if not all of the boating activity would be on the south side of the pier where there was a boathouse and a landing. While this action would bring the structure within the five foot setback from the property line and would resolve the safety concern, it would not address all of Mr. Cook's issues, because he believed there should be a deed restriction running with the property that would forever disallow any further activity on the north side of the pier.

TRPA's 1998 permit issuance did not ameliorate – and in fact exacerbated – the problems between the neighbors. Buckman claims that shortly after permit issuance Cook relocated his swim platform/ anchor block to move it closer to her pier to obstruct her navigational access. Cook countered that Buckman unreasonably delayed in removing her catwalk as required by the permit.

Alleging the swim platform to be an obstruction of her use, Buckman subsequently filed a lawsuit against Cook for nuisance (Placer County Superior Court Case No. SCV13122). ("Nuisance" is a legal cause of action premised on unreasonable interference with a landowner's use and enjoyment of real property.) As part of that suit's written discovery and deposition testimony, Cook admits to moving the swim structure without the requisite agency approvals.

As with this Appeal, the private litigation too has required significant amounts of TRPA staff time. Staff submitted sworn declarations to clarify TRPA's past actions as to the Cook/Buckman dispute and present position concerning the potential illegality of the location of Cook's swim platform south of the Cook pier.

B. TRPA's 2003 Application Denial and Cook's Appeal

TRPA's Correction Notice: In addition to initiating litigation, Buckman formally complained to the U.S. Army Corps of Engineers ("Corps") and TRPA that Cook had moved the swim platform without the requisite authorization. On February 7, 2003, the Corps sent correspondence to Cook informing him that his swim platform had been relocated in violation of federal standards (attached hereto as Exhibit B). TRPA investigated the matter and on June 11, 2003, issued a Correction Notice (attached hereto as Exhibit C) informing Cook that TRPA regulations had been violated and directing him to either:

1. Move the swim float anchor to the historical location [north of the Cook pier] shown in the 1975 aerial photo[];. . . . or

> 2. Submit a shorezone application to TRPA for the relocation of the swim platform anchor block. . . .

The TRPA Correction Notice informed Cook that further enforcement action could be taken if he did not pursue either of these options. In response, on July 11, 2003, Cook submitted the application that is the subject of this Appeal through his consultant Kevin Agan/ Agan Consulting Corporation (the "Project Narrative" is attached hereto as Exhibit D). The submission prompted the August 11, 2003, correspondence (attached as Exhibit E) from Buckman's consultant, Jan Brisco, identifying a host of perceived deficiencies with the proposal that concludes as follows:

> The treatment of this application is an example of rewarding bad behavior. The applicant, by his own admission, relocated an anchor block in spawning habitat offsite to an adjacent parcel . . . .

TRPA's Application Denial: TRPA denied Cook's application on September 15, 2003 (attached hereto as Exhibit F). The Compliance Investigator who issued the Correction Notice at the time did not realize that Cook owned separate legal lots. Upon this realization, TRPA staff denied the application as follows:

> When the Correction Notice was issued, TRPA staff thought there was a possibility that the swim platform and anchor would be permitted in the current location. Unfortunately, after a review of the information submitted to the TRPA, staff cannot approve the proposed relocation because the swim float's previously existing location was on a different parcel.

Cook filed his Notice of Appeal on October 6, 2003, and thirty days thereafter submitted his Statement of Appeal (attached hereto as Exhibit G).

Thereafter, TRPA staff commenced several rounds of negotiations with Cook in an attempt to resolve the matter. TRPA staff involved Buckman in these discussions to avoid the result whereby she appealed any compromise that was reached. Cook agreed to place his Appeal on hold pending the outcome of settlement discussions. TRPA staff encouraged Cook and Buckman to present TRPA with a resolution that worked for them both, and spent numerous hours meeting and working with the representatives for both parties (including an October 2005 site visit).

TRPA's Recent Settlement Efforts on the Appeal: Over the last nine months, TRPA staff has suggested at least four alternative locations and several streamlined permitting proposals to authorize the swim platform offshore of Cook's southerly parcel and in proximity to his pier. Perhaps not surprisingly given the history between the parties, a resolution could not be reached that satisfied Cook, Buckman, and TRPA. Cook's November 2005 proposal to move the swim platform out beyond the pier-head line was rejected by TRPA for violating an outright prohibition in the Code of Ordinances (Section 54.7.A). TRPA in January 2006 presented an option that the swim platform be moved within the "L" of the Cook pier (attached hereto as Exhibit H). This proposal addressed TRPA staff's scenic concerns and Buckman's navigational concerns. Cook rejected the proposal as preventing him from docking his boat where he liked.

TRPA's extensive efforts to negotiate a compromise continued. Two counter-proposals from Cook were unacceptable to TRPA for scenic reasons (in front of the pier without any scenic review/ mitigation) and opposed by Buckman (too close to her pier). Later, TRPA presented a revised proposal suggesting placement outside his pier head but within the pier head limit. This proposal included a combined streamlined permit and scenic review application. Cook rejected TRPA's alternative, objecting to the costs of the permitting and consultant fees of the streamlined permit review.

Most recently, TRPA again proposed to both Cook and Buckman the resolution that is incorporated into the proposed draft permit (recommended only in the event the GB grants the Appeal). Cook has indicated a general willingness to resolve the matter as set forth in the draft permit; Buckman's representatives rejected the proposal, requesting that the matter be scheduled for a GB hearing.

C. Possible Enforcement Action Against Cook

Throughout the attempts to settle the Appeal, Buckman has continued to protest Cook's failure to comply with applicable regulations. It is undisputed that between1978 and 1980 Cook moved his swim platform/ anchor block from the north side of his pier to the south side of his pier without the requisite agency approvals. Buckman claims that, since that time, the seasonal structure has been further relocated, again without the requisite approvals. In addition, in 2005, Cook installed the "trampoline" float in place of the illegal mooring buoy outside his pier-head constituting a further violation, and replaced the swim platform with a mooring buoy in the area between the Cook and Buckman piers. These actions, which required TRPA review and approval, generated more Buckman complaints.

Buckman insists that TRPA must take enforcement action against Cook's multiple Shorezone violations, but regulatory agencies like TRPA have wide prosecutorial discretion in deciding which violations to pursue and how to pursue them. TRPA staff has not elevated the 2003 Correction Notice because the parties themselves instituted the better mechanism through which compliance can be achieved, namely the private litigation initiated against Cook by Buckman. The judge in that lawsuit has stayed the action pending a decision by TRPA as to the authorized location of the errant swim platform. Once this Appeal is decided, the private parties to the dispute may enforce the decision through their pending litigation or other judicial relief.

Grounds for Denial: The existing anchor block and attached float were not placed pursuant to a required TRPA permit and are in violation of TRPA's Code in their present location. There is no basis for an after-the-fact permit authorization to relocate the swim platform from one parcel to the other. There are therefore sufficient grounds for the Governing Board to affirm the Executive Director's denial of Cook's after-the-fact application seeking permit authorization to move the swim platform. These grounds include:

1. TRPA's Code prohibits the relocation of grandfathered structures from one parcel to another

The TRPA Code does not authorize transfer of shorezone structures between different parcels. The Cook parcels are separate legal lots, and the Code prevents TRPA under a strict reading from allowing relocation of the Cook swim platform as he desires.

2. The legally authorized location for the Cook swim platform is in its grandfathered location offshore from the North Cook Property.

TRPA's Code allows the "grandfathering" of certain non-conforming shorezone structures including swim platforms that existed as of 1972 when TRPA first enacted shorezone regulations. Both the 1972 and 1976 shorezone ordinances contain the following definition, the substance of which remains in effect today.

> Existing Structures or Alterations – Structures or alterations which have been constructed before the effective date of this ordinance, or for which a permit has been issued pursuant to this ordinance.

In order to retain the shorezone structure, the Code would require Cook to move his swim platform back to the north side of his pier to its grandfathered location as shown on the 1975 aerial photograph (Exhibit A) within the projected boundary lines of the North Cook Property.[2]

Cook advances two arguments as to why he will not move his swim platform back to the north side of his pier. First, he asserts he would be unable to watch his grandchildren from his residence as they play on and around the swim platform if it were located on the north side of the south pier. In response, TRPA staff has suggested numerous alternate locations for the platform on the south side of the pier where he can watch his grandchildren swim. Second, Cook resents his neighbor dictating where he can place his swim platform and believes that he should have near exclusive rights to the use of the waters between his and Buckman's pier. He bases this latter claim on the discussion at the 1998 Board hearing involving limiting Buckman's use of the north side of her pier.

TRPA staff has made its best efforts not to take sides in the neighbors' battle, but instead to find a resolution that would address the rational concerns of all parties, including conformance with TRPA's applicable Code requirements.

Recommended GB Action: As set forth above, legal grounds exist for denial of the Appeal, and staff recommends that the Governing Board do so, thereby requiring Cook to relocate the swim float and associated anchor block immediately to its grandfathered location on the North Cook Property.

In the event the GB grants the Appeal (i.e., allowing Cook to locate a swim platform on the South Cook Property), staff recommends it do so on the limiting terms and conditions

[2] TRPA's Code would support the position that the swim platform has lost its "grandfathered" status due to its illegal relocation without authorization several decades ago. Nevertheless, staff has avoided that position, favoring instead a fair and equitable resolution that does not deprive Cook of a structure that existed upon the enactment of the first TRPA shorezone ordinance.

of the draft permit proposed by staff. Exhibit I. The proposed permit conditions necessary for Cook's proposed swim platform relocation project to be authorized consistent with applicable regulations include:

(1) Cook must locate the swim platform / anchor block so that it falls within the projection line off the end of Cook's pier head – an estimated 20 feet further north from its present location (see Exhibit H);
(2) The swim platform/ anchor block must be located so that it does not unreasonably interfere with Buckman's use of the north side of her pier;
(3) The permit shall indicate the GPS coordinates of the new location of the anchor block and platform;
(4) Any violation of the GPS coordinates of the relocation permit will require that the anchor block be immediately removed, unless the structure is returned to its authorized location;
(5) The location of the anchor block and structure must at all times be in compliance with the location and form requirements of the TRPA Code, and confirmation of compliance with the size, form, and scenic requirements of the Code shall be aided by submittal of detailed location, specification, and elevation drawings of the structure;
(6) The swim platform structure shall not exceed an 8' x8' flotation device with a deck, chain and anchor block, and a swim line shall be prohibited;
(7) The permitee shall record a deed restriction creating a shorezone project area for the limited purpose of the swim platform relocation;
(8) Nothing in the permit or the agency's decision shall be construed to limit the authority of either TRPA or a third party to enforce any or all terms of the relocation permit; and
(9) The swim platform anchor shall only be used for the swim platform and not for mooring other vessels and structures.

Required Actions: Agency staff recommends that the Governing Board deny the Appeal by making the following motion based on this staff summary and evidence contained in the record:

A motion to approve the Appeal, which motion should fail. (To approve the Appeal, a 5/9 vote is required – five in the affirmative from California and 9 total affirmative votes.)

(Pursuant to TRPA's Rules of Procedure, the Governing Board should make an affirmative motion to grant the Appeal, but that motion should fail -- i.e. to affirm the Executive Director's denial, members should vote "no").

In the alternative, if the Governing Board chooses to overturn the Executive Director's denial decision and grant the Appeal, it should do so by making the following motion:

A motion to grant the Appeal, but only on the limiting terms and conditions set forth in the draft permit proposed by staff. (To approve the Appeal, a 5/9 vote is required – five in the affirmative from California and nine total affirmative votes.)

Exhibits:

A. 1975 aerial photograph showing Cook and Buckman piers and the 1975 location of the Cook swim platform
B. February 7, 2003, US Corps of Engineers correspondence to Cook
C. TRPA Correction Notice dated June 11, 2003, issued to Cook
D. Project narrative from Cook's July 11, 2003, application to relocate his swim platform
E. August 11, 2003, correspondence to TRPA from Buckman's consultant, Jan Brisco
F. TRPA Executive Director's September 15, 2003, denial of Cook's application
G. Cook's Statement of Appeal, dated May 4, 2006
H. TRPA's January 2006 proposal to Cook that the swim platform be moved within the "L" of the Cook pier
I. Proposed draft permit authorizing Cook's relocation a swim platform from the North Cook Property to the South Cook Property.

Note: Due to volume, the Exhibits will not be reproduced in the TRPA Governing Board packet. Each Governing Board member will receive a separate package including the Exhibits. Members of the public wishing to view or obtain copies of the Exhibits should contact Judy Nikkel, TRPA Executive Assistant, at (775) 588-4547 extension 243 or via e-mail at: jnikkel@trpa.org.