

SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC RESOURCES

MARCH 18, 1975

The Senate Committee on Environment and Public Resources held a continuation hearing on the Tahoe Regional Planning Agency on March 18, 1975, at 7:00 p.m. in Room #213 of the Legislative Building. This was a hearing on SB 254 and SB 44.

Senator Thomas Wilson was in the chair.

PRESENT: Senator Thomas Wilson
Senator Carl Dodge
Senator Mary Gojack
Senator Richard Bryan
Senator Richard Blakemore
Senator Gary Sheerin

ABSENT: Senator Joe Neal

ALSO PRESENT: Mr. Richard Heikka, Executive Officer
Bi-State Planning Agency, TRPA
Mr. Gary Owen - Legal Counsel, TRPA
Mr. George Abbott, Attorney, Douglas Co.
Many interested citizens from Douglas Co.
Brennen Riley, Press
Dorothy Kosish, Press

Chairman Wilson opened the meeting with the following statement:
We are here tonight at this time and place for the purpose of taking testimony from the TRPA staff and counsel. Mr. Heikka, Executive Officer of TRPA lead off.

MR. HEIKKA: Distributed a prepared statement among the Committee.
(See attached.) A question and answer period then followed.

Q SENATOR DODGE: What about the Stateline Transportation Plan and Land Use Study, at the southern end of the Lake Basin?

A MR. HEIKKA: The Stateline transportation plan, land use study was prepared under a cooperative arrangement using the Lake Tahoe Area Council as the principle coordinator and certainly a number of the property owners in that area participated in that study which was done primarily by consultants and the use of staff. Now, that study attempted to look at the problems associated with the Stateline. Addressing such issues as employment, housing,

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requirements, resort hotels etc. (See Attachment A.)

Mr. Heikka went on to say that it was the opinion of the staff that there could be up to two thousand hotel groups on the Nevada side in connection with the South Stateline area, provided that: a new system was built, utilities became available, and particular energy requirements were met. The study went on to suggest that serious deficiencies would come into existence if they knew the casino core was allowed to develop in the Kingsbury area at this time.

What they were trying to impress on the agency at that time, and to the citizens, was the need to look at timing in connection with the planning. Certainly they are now faced with serious housing problems, particularly employee based housing in connection with the kinds of facilities that were being discussed. The fact that the staff recommendation was not favorable to the casinos was specifically because of the nature of the plans proposed. They did do an extensive study. The study is on record and he pointed out that it was not adopted. It was very controversial and many of the staff members believe that it was probably the reason for the initial breakdown that appeared between the Douglas County citizens and the agency staff. He said that it was unfortunate, but he felt they had to address the problems associated with the Stateline, regardless of the provisions of the government.

Discussion went into the transportation plan adopted by the agency. They discussed the three way loop system which was predicated on a local population projection by the government of 800,000 people. One of the things they did in the adoption of the plan was to reduce the population building capacity, and local zoning ordinances. In the process they dropped the need for a freeway loop around the basin. "Starting in 1971, we began to address specifically to the transportation plan." He then referred to the map and discussed the cut back in population and the need for the local highway system. He said that the statements made by a witness regarding the uses to depressed lands from development were made with a specific study dealing with the classification of properties to recreation zones -- selected parcels on the Lake front. This was done on the hopes by the agency that the parcels were going to be purchased for public use.

Senator Shecrin asked if this had not been a severe in the building restriction the case of Douglas County.

Mr. Heikka answered that statistics show that this is true in some areas. Some of the statistics will be the result of moratoriums placed by TRPA and by the Executive Board of the State of Nevada as relates to the availability of sewage. This would throw out of

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balance some of the normal building activities over the past three or four years. Problems are now behind them and there are now single family construction units being built. This is virtually throughout the basin.

In the case of the property West of Highway 50, it would take 2 years to obtain knowledge on land capability through the hearing process. The property east of Highway 50 was difficult to identify for specific development opportunities. They do have a system that addresses the amount of land disturbances but unless they know, with some degree of certainty, the kind of development: high or low rise, condominiums, etc., there is no way you could get down to the 4 units to an acre. They have tried to devise a system that would be in keeping with the mandates they have.

Senator Dodge asked if the original map was on file and suggested that some land use ordinances might not be complete because some exhibits were never filed.

Mr. Heikka said that in answer to his first question; it was a problem because the deposition was never completed. In answer to his second statement; there was never the opportunity to review and correct it. Question of them being on file. A plan had been produced in October. The Agency set a great number of hearings to review changes and requests for changes. Wound up in December with the Agency passing a great number of motions agreeing or disagreeing with requests for changes. Many requests were granted. The problem was in keeping an effective record of changes and they were trying to create a composite filing of the adopted general plan. Will ultimately have to go through courts.

Senator Dodge asked about the validity of procedure used?

Mr. Heikka remarked that it was a complex system. There had been a lot of routine development come through the agency advising property owners of opportunities that exist under ordinances. He said that over-all he thought it was running very smoothly.

Senator Dodge then asked if those on the staff were not qualified to evaluate land capabilities, etc.

Mr. Heikka answered that in this connection they use a development review committee made up almost entirely of specialists from State agencies and registered civil engineers. He said he thought the staff had qualifications and do not hesitate in going to specialists from both Nevada and California University systems to get the data they need to answer questions.

Senator Dodge then asked where they were with the transportation plan.

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Mr. Heikka related that they were winding it up. They were having a public hearing on March 28th. Whether the plan is adopted remains to be seen as they were having controversies with the California legislation, AB 69, which mandates April 1 as the deadline for them to come into the California Environmental Quality Act. He is of the opinion that Nevada will adopt the plan next week but does not think the California agency will as it relates to the California side.

Senator Dodge then asked if the Highway Departments will be in a position to go with their adopted plan?

Mr. Heikka said it is their opinion - yes. One of the difficult problems is addressing financial abilities of jurisdictions to resolve the solution.

Senator Blakemore asked can variances be granted under the 60 day rule?

Mr. Heikka answered yes, but they had to rely partly on counsel to testify here.

Senator Blakemore asked if they had any record of how many variances had been granted.

Mr. Heikka answered that a variance procedure has to have some type of safety valve. Can't write the perfect ordinance to cover all situations. The agency, in developing ordinances, recognized it could not accomplish all conditions that might exist. They did provide for variance procedures if property owner demonstrated where he was deprived. Do have administrative permit procedures that sometimes gets confused with variances and do make provisions of increasing amount of available coverage for land disturbance on findings that alternative mechanical solutions can be obtained. There are performance standard permits which can be granted on discretionary basis.

Senator Sheerin remarks that he wanted to preface his statements with: "Everybody wants to save Lake Tahoe." He said he is trying to find the problems - if any exist- and then find the solutions. He spoke in three areas:

1. Inverse condemnation
2. Regular use of land as presently zoned
3. Area Variances.

Mr. Heikka remarked that in reference to inverse condemnation, that when TRPA came into existence all counties had their own land ordinances and zoning maps. TRPA came along and by mandate of 2 State Legislatures and Congress they came up with their own Regional Plan as to land use. Courts will have to answer whether this additional restriction of land

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use is inverse condemnation. Property owners feel that their land has been taken unjustly prior to regulations. This is a major problem at Lake Tahoe.

Senator Sheerin asked how to solve the problem. Do we solve the problem by changing voting procedures and by adding new members to the board?

Mr. Heikka did not answer. He said it was putting him in a position to go against his bosses as it relates specifically to the merits of the bill. Asked that questions on inverse condemnation be addressed to the Agency Counsel.

Senator Sheerin then asked is inverse condemnation a problem with TRPA?

Mr. Heikka said that Counsel had advised him that it was no longer a problem for the agency.

Senator Sheerin asked Mr. Heikka why he did not want to testify on SB 254?

Mr. Heikka stated because he did not feel he was qualified to answer these questions. That he could answer to what they have done; the activities of the Agency, but was instructed by his bosses not to address the issue.

Senator Sheerin then asked Senator Wilson if the staff cannot answer the questions, could they not ask the ten bosses to come in to testify?

Senator Wilson stated that we can't ask the witness to be an advocate. Just exhaust the witness and go on. If the committee wishes to confer with additional witnesses we could do so.

Senator Sheerin stated that he disagrees with position on inverse condemnation. He thinks it is a serious problem although courts might prove differently. It is still a question of fairness and the landowners should be paid for lands taken.

Senator Sheerin then asked: "In order to get your zoning passed, do you use present plan and board voting procedures in order to obtain the land use ordinances, timber ordinances, land use capability map?" Why can't the present Board, as it is presently composed with its present voting procedures, adequately handle the situation.

Mr. Heikka stated that he could not answer. Would put him in an advocacy position for or against the bill.

Senator Sheerin then asked about variances. Where the land is now

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presently zoned, by your regulations, and a man wants to change those regulations, might it not be better to change the voting procedure as to the variances to provide that he must get approval, through both sides of the Lake in order to have variances granted since it is in this accord with the plans that were approved by a vote of both sides of the Lake?

Mr. Heikka asked variances from height? These variances would have been denied.

Senator Sheerin asked if height was established by the TRPA?

Mr. Heikka answered yes, established by dual vote on both sides.

Senator Sheerin: "If he wants to change from that basic legislation, shouldn't he too have to get a dual "yes" vote from both sides?"

Mr. Heikka: "Yes", "However, again I must refer to counsel on this."

Senator Sheerin then asked if this wasn't one problem we want to legislate? Isn't this the one problem where change in legislation is needed? We can do something in this Senate Committee now, rather than waiting 2 years or 4 years or waiting for the courts to act.

Mr. Heikka said that he could not answer this.

Senator Sheerin then asked if Mr. Heikka could state for him any reason why the make-up of the Board should be extended from 10 to 14? Again, Mr. Heikka could give no answer.

Senator Sheerin then asked if Mr. Heikka could tell him, give him any reason why we should double your budget from \$150,000?

Mr. Heikka said that it was a matter of financing. Two states have, on a year to year basis, been matching appropriation of local governments. We have been getting \$150,000 from the states, \$100,000 from California and \$50,00 from Nevada. The need of getting this into a legislative package is the uncertainty of trying to administer a complex plan with the uncertainty of where you will be from year to year in trying to maintain a qualified staff. There is a need for a basic administrative style, that does the work on a day to day basis.

Senator Sheerin then asked if their budget was doubled two years ago, would their transportation plan have been completed today?

Mr. Heikka answered no, because of problems on the transportation plan. There is a total lack of knowledge about the characteristics of what people do who come to the Lake. Didn't know what vacancy rate was in second homes.

Senator Sheerin asked if he could give the Committee any reasons why

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the voting procedure presently used should be changed?

Mr. Heikka stated that he could give no reason.

Senator Sheerin asked if Mr. Heikka could give him any reason why members of the Advisory Planning Commission within TRPA should be allowed to be residents and the members of the TRPA Commission themselves be non-residents?

Mr. Heikka stated that the whole rule of Advisory Planning Commission was one of uncertainty at the time of the adoption of the Compact. Being one of the members, it actually was envisioned to function primarily as a technical staff more than a truly planning commission in the accepted procedure. I don't think that they were contemplating that this group was going to have the responsibility as a routine citizen Advisory Planning Commission. It was really operating as a group of technicians assisting a limited staff in the preparation of a plan. Were comparing two different kinds of groups.

Senator Sheerin asked why should the Advisory be local and deciders be non-residents? Mr. Heikka said he could give an adequate answer to the question.

Senator Sheerin asked about the California bill, AB 1944, which assigned a \$10 million bond issue in California. Did the bond issue pass? Mr. Heikka said that the money was appropriated to State Parks and Recreation and that \$6.5 million had been set aside for purchase of the Burton Creek State Park and there was still \$3.5 million due, but this was not related to the existence of CALTRPA.

Senator Sheerin asked: "The transportation plans you suggest might be adopted shortly, is it different in any way from the system proposed by Douglas County several years ago?"

Mr. Heikka answered that there are variations to the system but the systems are basically the same. There is a variation of basic loop system. There have been studies and they have been collectively agreed upon.

Senator Dodge then asked if we were talking about the loop system around Stateline or were we talking about a regional system which is a transportation plan to bring people from Placerville into Lake Tahoe, Carson City and Reno.

Mr. Heikka said that this was just one part of that over-all transportation plan. We're addressing on how to get to the Loop System on this transportation plan, be it an up-grading of the Pioneer Trail, the New parkway system, and up-grading of Highway

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50. We often times look at the Loop System as the Transportation Plan. It is just one small part of a total transportation system.

Senator Dodge said that he thought Mr. Heikka said that the Loop system was the Transportation Plan. Mr. Heikka said no.

Senator Dodge asked if the TRPA recognizes the "1 mile limit" around Stateline?

Mr. Heikka remarked that they did not specifically. There is nothing on paper that identifies the "1 mile limit." He agreed that there is zoning in Douglas County extending out approximately a mile. There is a general zoning in Douglas County for resort hotels which extends out approximately a mile, but I know of no specific action or any resolution which identifies a 1 mile limit. There is no ordinance that says they couldn't go into the Douglas County portion of Lake Tahoe and rezone for resort hotels, nor is anyone precluded from asking. Anyone would have the right to ask for reclassification of his property to a resort hotel under Douglas County ordinance.

Senator Dodge stated that when Nevada entered into the Compact, there was a concern about any control or influence from the State or any decision of anyone in California in regards to gaming in that 1 mile area that had been zoned commercial at a prior point and time by Douglas County.

Mr. Heikka - Legal Counsel of TRPA answered that there is a provision that any lands owned as of a certain date in 1968 permitting commercial business licensed by the State may not be tampered with and this pertains expressly to gaming. It also included areas such as panorama point above Incline. There is a lot of areas on the Nevada side that this exemption applies to. It generally is out about 1 mile from the California border in the case of Stateline. Although it is much wider along the highway than most people realize.

Senator Sheerin asked that given the assumption that local government employees are elected or appointed and the TRPA agency and staff -- that all of these people act in good faith -- and the fact that we have TRPA rules and regulations, don't we have sufficient control right now to control Lake Tahoe?

Mr. Heikka answered that he hoped to think we did but it still came down to a question of timing of the public versus private improvements and I think that is the area -- This whole implementation game, I think is the giant area that we really don't have a handle on at Lake Tahoe.

Senator Sheerin related that they had spoke about fairness in land trades. Do you realize that a bill has been introduced in this Legislature to give TRPA the duty to act as some kind of land bank and try to solicit land listings from the Federal Government so the land owners within the Basin can go to your "bank" and try to protect trades. Do you think this is an area where TRPA should be given

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specific duties of working on?

Mr. Heikka answered not if it's going to possibly destroy the intent of the original legislation which created limited powers in land use authority and I think we have to look at in the context of the intent of the original ordinance. Mr. Owen will address this specifically following me.

Senator Dodge said that there were allegations by several witnesses that the whole thrust of your agency was slanted towards whatever sympathies or views that California had, not only from the California membership on the Regional agency, but also 18 out of 20 of your staff people are Californians.

Mr. Heikka said that he didn't know how to answer a question on this. He had a lot of answers and I won't give them. I think most of us live in the region. I don't look at myself as a Californian. I think most of us are concerned about the area. I live in South Lake Tahoe. I concern myself with the problems of the entire basin and the people I work for. I think that we have demonstrated -- our Counsel is a Nevada. A number of my staff people have lived in Nevada in times past. But, I don't really relate to -- we have regional problems. I think we have tried to address ourselves to the needs of the regional problems. We placed our offices at South Lake Tahoe because that's where the best medical facilities, the best hospital facilities, the best school facilities exist. It could just as easily been at Tahoe City or Incline Village. I suspect that if we had retained the offices in the Douglas County area, that many of those staff people would just as quickly live there because it would be close to the office. Very frankly, if we had our druthers, if we had both of our offices in Nevada, we'd have a heck of a tax break.

Senator Dodge then asked there has been the observation that there is objection to the California members of the TRPA against the Kahle and Jennings' applications and at the same time there has been no restraint on the building of bedrooms on the California side. And these have helped to accentuate the traffic problem. What comment would you make on that?

Mr. Heikka said that we should take the example of the property which is called "Dollar Hill". This property was zoned by Placer County in 1967 for about 4,000 dwelling units. It is one of the most developable pieces of property. It has good land capabilities. Those people have received this last year approval for 100 units on that property. The combination of events of availability of sewage and utilities, a variety of problems caused the bi-state agency to disapprove. That didn't get the publicity certainly that the Stateline casinos got. But, nevertheless, this is the kind of action that has been taken. There have been many, many decisions that have been made denying development in the case of California that maybe have not had the

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publicity. I will submit that the record will show that there is no particular picking on of any local jurisdiction. The one jurisdiction that has had the least development approved is Eldorado County.

Senator Sheerin: "You have just indicated that many programs in both California and Nevada have been denied. Have these been denied under the present voting procedures?" Mr. Heikka: "Yes".

Senator Wilson: You mentioned on a couple of things that I would like to touch upon. I understood that the initial zoning which would accommodate commercial zoning pertaining to gambling would be generally in four areas: 1) the mile limit area at the south end of the Lake; 2) the area at Zephyr Cove; 3) a large portion of Incline Village; and 4) the Stateline area at the north end of the Lake. Am I correct?

Mr. Heikka said that not to his knowledge. He didn't believe there was any zoning at Zephyr Cove. There is a substantial amount of zoning at Stateline at the south end of the Lake; there is a substantial amount of zoning at Stateline at the north end of the Lake; and, there is a very large area in Washoe County, virtually the entire corridor of Incline Village in Washoe County is exempt under the provisions of the Compact. And, then there is a couple of small areas which were zoned commercial prior to 1968 in Washoe County. There are three main block areas; North Stateline, South Stateline and Incline Village.

Senator Wilson asked how much undeveloped area was left at the North Stateline?

Mr. Heikka related that at the North Stateline area, most of the area has been developed, although there are a couple of parcels which could be utilized for commercial development.

Senator Wilson then asked how much land was available in the Panorama Point area north of Incline?

Mr. Heikka said there was quite a bit. Could probably develop 6 or 8 developments the size of King's Castle.

Senator Wilson asked what Mr. Heikka's estimate of developable area zoned commercial was there at the South end - Stateline area?

Mr. Heikka stated that a vast portion of Mr. Park's golf course, if he interpreted the Douglas County zoning maps correctly would permit resort hotels; west of Highway 50 between Kingsbury and Stateline. There is room for 4 or 5 hotels of the size that are up there now. There is a substantial amount of area on both sides of Highway 50 which is zoned for commercial use.

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Senator Wilson then thanked Mr. Heikka. Senator Bryan then asked Mr. Heikka: "You have indicated that you work with 10 people. In your staff relationship with these people, do you meet with the 10 at times to discuss problems with the Agency?"

Mr. Heikka informed Senator Bryan that they have the responsibility of open meeting laws with all jurisdictions. He does have a lot of communication with the individual members but we are very particular in not getting into any closed meetings.

Senator Bryan then asked that in the course of your administrative responsibilities, if there are any particular problems, you report back to the panel as your bosses? Mr. Heikka: "Yes."

Senator Bryan then asked Mr. Heikka if he was at liberty at this time to share with the Committee any recommendations which he had made to his 10 bosses for improvements which he may have found necessary?

Mr. Heikka stated that he felt they had consistently urged support of a program that would put a foundation under the funding sources. We have addressed, with funds, having studies of the nature of financial feasibility. Frankly, it is a hot potatoe because how does a family of collective governments can best fund the necessary improvements which are going to be needed to accommodate people and accommodate the environment. We have made recommendations to them which they have not always accepted. I have not discussed with them the merits or demerits of the legislation here. They have taken the position on the Ad-hoc Committee Report, as an example, that they would take no stand because of the very strong feelings in the collective membership. We have refrained from discussing these areas with them because we felt that the organic legislation was beyond our responsibility.

Senator Dodge asked if they had ever in the past as an agency or as a commission develop any unanimity of thinking about changes in the Compact law.

Mr. Heikka said that he thought he could reasonably say that they have recognized that this has been a pioneering effort; it has been going on for several years and certainly no one could envision at the time of its adoption because there was no agency to turn to and say "How did you do it?" I think we all have recognized the problems that have developed, the need to take a look at the Compact. Hopefully this is what this legislation is doing. It's taking a hard look at where it is in five years.

Senator Dodge asked if they were taking a position about specifics? Mr. Heikka said no, except as an adhoc committee. The Agency ten member governing board has just said "We should ask for these things." when special instances came up, but the feeling was don't try to go in and change a "whereas" in that Compact where we are talking about Legislative action. The feeling was that there was a time that we

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should look at the entire legislation and at the time develop the changes that might be needed.

Senator Bryan asked if the Staff has made any recommendations for any structural changes in the Compact by Legislative action, to the ten members which has not been acted upon?

Mr. Heikka said no, other than the need to build a better foundation and the need to look at means of implementation. It's one thing to plan and another to implement.

Senator Bryan said that he wanted to understand Mr. Heikka's testimony. Did he mean, at this point, the staff is not, aside from 254 and other legislative proposals which we may have before us which may alter the Compact; you have not made any recommendations to your employer or your bosses to change any part of the Compact.

Mr. Heikka said that Senator Bryan was correct, they have not.

Senator Blakemore asked if there were any changes made, then would it have to go to California for their concurrence?

Mr. Heikka said yes it does require identical legislation in the case of California. It would have to be absolute agreement down to the last comma. And, that would have to be ratified by the Congress of the United States, plus signed into law by the President.

Senator Blakemore then asked how long would this take?

Mr. Heikka said this could take two years, could go through another Session of this Legislature. It could happen within a year depending upon how much agreement or disagreement there is. I believe that Compact amendments could occur within one year. It's not likely but it is possible.

Senator Blakemore asked if Mr. Heikka could really see that Nevada TRPA needs any help at this time?

Mr. Heikka said he felt that the concern two years ago was that Nevada took the position that there was an area of exemption that needed to be addressed and namely that the exemption provision in the bi-state Compact should be covered by an Agency. There was a recognition that there was one area between California and Nevada in the Compact that was exempted. We have stated and continue to state that resort hotels and all their attending facilities have a very substantial impact upon almost anything that happens, be it transportation, housing. Housing particularly is critical. 75% of the casino employees live in California that live in the basin. These are regional problems and we have a provision in the Compact that says you can talk about everything, Gentlemen, but you can't talk about this one; then we have some tough times trying to get on with the responsibility of developing an orderly plan for the basin. I think that's one of the tough areas.

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Senator Wilson thanked Mr. Heikka for his testimony and asked if there was anyone else present who wished to testify. Mr. Gary Owen, legal counsel for the TRPA came forward to testify.

Senator Wilson related to the litigation pending with reference to the Federal Court decision which was handed down recently with respect to how the Agency stands on those litigations.

Mr. Owens said that with respect to SB 254, I am not an advocate, I am here, however, to discuss the testimony given here yesterday by Mr. Fran Breen. The issues are all that I will address. Mr. Breen ascertained that the Agency has not followed the Compact and that to this effect, the developers and the League to Save Lake Tahoe have agreed. Nothing could be further from the truth, not that Mr. Breen intended it that way, but it just isn't so. In fact, the developers in inverse condemnation suits, have not challenged whether the Agency has or has not complied with the Compact. They do allege that we have taken the property without due process of law. They do not say that the TRPA has failed to adopt one or more of the elements required by the Compact. What they say is that the Agency is too strict and has gone too far to protect the environment. The Bourne suit which was referred to by Mr. Breen, alleged in one of its Causes of Action that one of the Agencies land capability system was vague and could not be constitutionally applied.. That Cause of Action was dismissed by Judge Thompson as no Cause of Action. So the developers position, members of the Committee, is that the regulations are too strict.

Senator Sheerin asked if Judge Thompson did not give leave to amend.

Mr. Owens stated that there were 2 or 3 Causes of Action not given leave to amend. He did not dismiss one of the Causes of Action dealing with whether or not our regulations were too strict, so the Complaint is still viable with respect to one or two Causes of Action. Again, I must stress, that the developers position is that the Agency is too strict. Now, the League to Save Lake Tahoe and the Sierra Club, on the other hand, say that we are not strict enough. We are right in the middle of a dilemma. I think that is the purpose of the Agency is to try to solve the dilemma; the purpose of orderly development and environment protection. The League to Save Lake Tahoe, in their allegations, say that we have not complied with the Compact because we have not adopted all of the elements. I submit to you that we have adopted the elements, with exception of the traffic plan which is about to be finalized. In short, the developers and the League do not agree. Therefore, they are directly in opposition to one another.

Mr. Breen also said that the TRPA was intended by the Legislature to be no more than a guiding or a planning agency. It was not to be a police agency. I submit to you that that is not the case. The direct reading of the Compact demonstrates the contrary. Article 6-A which is on page 8, lines 23 through 35 in the Bill, requires ordinance

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to be adopted to effectuate the General Plan. To me, ordinance means something more than mere planning. Ordinance is a law. Secondly, Article 6-A of the Compact requires ordinances on a variety of subjects. Refer to line 29 of page 8 of the Bill. The regulations will include but will not be limited to the following: water purity, clarity; subdivision, zoning, tree removal, waste disposal, land fills, excavations, piers, harbors, shore line developments, air polutions, sedimation controls, to name a few. In short, there are a variety of subjects with which the agency is required to deal, and which it is required to adopt regulations. This is more than just planning.

The third provisions requires the states, counties, cities, and, indeed, the agency to enforce its plan. That is in Article 5-C, page 7, line 45.

The fourth provision under Article 6-B, Page 9, line 14, requires the same enforcement with respect to all ordinances, rules, regulations and policies of the Agency. Again, enforcement is something more than just planning and guidance.

And finally, Article 6-E, Page 9, line 44, it says the Agency shall police the region to insure compliance with the General Plan and it allows it to file a law suit if necessary.

Article 6-F, page 9, line 50 says that a violation of an Agency ordinance is a misdemeanor. That's pretty strong language. I submit then, that the Agency is an Agency with teeth. It's simply not a planning or guidance agency.

I would like to make a short preference to the remainder of my testimony. Mr. Breen referred repeatedly to the Bourne litigation. I submit that his assessment of that litigation was one of an advocate as perhaps mine is tonight. However, I feel that I am an advocate because of the position that he took. He indicated that he would not charge Mr. Bourne a fee. Although, perhaps with his presentation, he could. I would submit that in the weight of the arguments he made you would consider to be irrelevant. I would, at the risk of giving irrelevant testimony myself, try to rebut some of the significant issues that he did raise.

He said that ordinance #3 adopting the General Plan is not valid because the General Plan is not around. We do have in the custody of the Agency the preliminary General Plan Map which is on the wall and adopted the day of the hearing back in December of 1971.

He also stated that there was no Exhibit B to ordinance #3. Ordinance #3 is the adoption of the General Plan. I will indicate to you at this time that there is no Exhibit B attached to Ordinance #3. The summary and findings which Mr. Breen had in his possession were what was designated as Exhibit B. There is no Exhibit B. The summary and findings

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however, are in Mr. Breen's possession. They are set forth verbatim in the ordinance as it appears in the minutes. There is no mystery behind the summary and findings.

Mr. Breen also said that the governing body members testified in their various depositions that they relied upon the staff, and that they could not, in all cases, directly interpret the agency plan and land capability systems. Well, the plan and the systems are complex, there is no doubt about it. But, the circumstances they treat are likewise complex. The Agency has a severe mandate, perhaps a very difficult one, in order to balance environment and development. But, I would submit that many governing bodies, your ordinary planning commission, any regulatory agency which has an appointed or elected body, relies on staff. It's just the situation when people cannot devote their entire time to assessing the applications before them that they have to rely on somebody they presume is acting in good faith. Therefore, there is no problem with a governing body relying on staff. His point in that situation is not well taken. In fact, we have had many projects before us much more complicated than the Bourne situation, or at least as complicated, and we have had no complaints. We have been able to carry them through.

Mr. Breen was also concerned with the land capability system in its relationship between soil and slope. He said there was some vagueness and unconstitutional vagueness in these types of regulations. Judge Thompson dismissed his Cause of Action in his litigation relating to that allegation. There is no mystery to soil and slope, if he had considered the system and considered the deposition of Dr. Robert Bailey who devised it. I recommend that he read it because the answers are there.

Also, apparently, the ordinances are clear enough, for the Board applied for and received a permit in respect to adjustment of land coverage, which solved the very problems which they heard, which Mr. Heikka indicated, while Mr. Breen said they had been trying to work on this for two years, the permit application was received only a few months ago and it was resolved in 20 to 30 days.

Mr. Breen referred to the team needed for review of TRPA development applications, that we needed a variety of experts. Well, I think the Tahoe environment deserves this. I think that there are many considerations apply. This is not just consideration of flat land located some place where there is not going to be run-off, sedimentation and beautification, siltation, and all the possibilities that can occur at Lake Tahoe. So, therefore, it is not a denial of any particular right that you have to have a team to fully explore the ramifications of every development. Besides, all the projects don't need a team of experts of that magnitude; your more complex projects certainly do. The Agency has created a matrix which shows which areas are to be treated specifically.

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Finally, Mr. Breen referred to confidence of the staff to review the applications themselves. I think we must consider, the standards, first of all, were developed by a team of experts; the U. S. Conservation Service, the Forest Service, Dr. Robert Bailey, Dr. Orm, Professional planners, such as Mr. Heikka, Engineers and Legal Counsel. They are reviewed by experts. We have the Advisory Planning Commission, which is composed of nothing but experts except the four laymen. We have the Development Review Committee, in which the developers experts are given the opportunity to provide their testimony. Then we have State, Federal and perhaps local filing or submitting their testimony on the impact of the development. I do submit to you that the standards are specific enough for interpretation and that the staff can adequately with the assistance we have received do that.

Senator Sheerin said that he respected Mr. Owen's expertise, that he wanted to rely on it, he wanted to use it. I would like to get some help in solving the problems -- defining the problems and solving them, by way of legislation. Were you present when I put all the questions to Mr. Heikka. A. Yes

Q If I asked all of those questions of you, you too would simply deny me an answer.

A No Sir, because I believe there are some situations where I can comment. I can't say that I can answer all of them, but I would be glad to give you the answers that I can.

Q Let's start very basically then with what are the reasons for enlarging the Agency membership from 10 to 14?

A You start with a very difficult one. That, as I indicated in my prior testimony to you is strictly a policy consideration. However, as an attorney, I think we can all say - recognize that I can comment on evidence that has been introduced. I am not going to comment on the merits of it. But there was testimony by several witnesses which detailed the reasons or their feeling that the Board should be expanded. Perhaps, because they felt it was now dominated by local interests.

Q I was asking for a reason not someone's opinion.

A Well, what is reason for change, really, except somebody's opinion. I think that is what we are weighing here is somebody's opinion. There is obviously opinion here that says 254 is a bad bill and there is opinion here that says that 254 is a good bill. I am not going to express an opinion. I can point out that there have been opinions here in favor of expanding the Board.

Q Is staff in favor of expanding the Board?

A I can't answer that question, Sir.

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Q What are the reasons for changing the voting procedures?

A I can't answer that. If you will refer to my memorandum, you will find there a discussion of problems we have had with the 60 day rule and the dual majority system. Basically, I think I indicated that as the Attorney for the Agency, under my and Mr. Hanna's administration, we found some problems, with the 60 day rule and the dual majority voting requirement. Regardless of the dual majority voting requirement, the 60 day rule requires a project to be deemed approved if you don't take action within 60 days. Now, what if the information is not complete on the project, but we have something that could be argued could be called a proposal -- the word which is used within the Compact. If that's the case, then there is a dilemma. The staff could go before the Board and say, look, we don't have complete information but we don't have the filing fee and please don't take action. Deny it without prejudice. Well, the fact is, that they could take action or they could refuse to take action, they could approve it or they could not deny it and, therefore, it would be deemed approved, even though there wasn't enough information and even though there hadn't been a filing fee paid.

Q We can solve that problem by expanding the 60 days to 120 days.

A Not necessarily. You can expand the problem -- I think the bill speaks to that problem by saying the 60 days commences to run when the proposal has been submitted in compliance with the rules and regulations. That would solve the problem.

Senator Blakemore:Q Would it be easier just to file the proposal when you pay your fee?

Mr. Owen: A That's a good point, but we have a very detailed matrix a requisite type of information that must accompany each application, and it would be pretty difficult to detail all of that in the law. You could put it in the regulations and then --

Q That, to me, doesn't sound like a very good argument.

A Well, that is some of the dilemma we face.

Q Is that not adjustable within the present --

A I don't think it is. There was some testimony that this was adjustable by modifying applications. Well, I don't read it that way.

Q If this legislation should say that the fee will be filed with the application, would that solve your problem?

A With respect to the fee, yes; but there are other problems and the more significant ones --

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Q Pardon me for interrupting, but you have brought up that fee problem a couple of times and it doesn't seem practical to me to let a guy go around the horn merely for the fact that he didn't pay that fee.

A Senator Dodge asked a very good question in that respect. He asked why the the point has not been litigated? The reason is that we have so much litigation that to litigate a point like that is pretty rough in light of the rest of the burden. But, regardless of the filing fee, the sufficient information question is even more significant. Suppose we get a proposal which doesn't have all the information?

Senator Dodge: Q Well, then it wouldn't be considered a proposal.

A Well, Senator, that's true, you could argue that. But I think you would need a court case to be safe.

Q Somewhere along the way, if I had been in that Agency, I would have gotten some type of definition of a proposal so when it gets to you, it is in the form of a final proposal. Whether you have had time to litigate it or not, I can see personally why there is any great problem. You, as the Agency, as such, right a definition so there are some rules and regulations and standing on them. I'm not sure that you could contest them to that extent. Formulate some ground rules so that people would know what they had to do in order to get the proposal in final form before you.

A I think you have a good point, and I think it could be done. If, I might go on with a few of the problems. Again, these are all in my memorandum; suppose we had the problem of the failure of a dual quorum showing up we needed in order to transact business. A failure of the quorum to assemble renders unconsidered projects approved, 60 days after they are delivered. You can't act on them without a dual quorum. Moreover, if you had a situation where you had a quorum formed and a member leaves and eliminates that quorum you might have some business left to transact that untransacted is deemed approved. In fact, that situation has just occurred. Now, those are just some problems without regard to the dual majority. Now, I have detailed in here the potential abuse of the 60 day rule. Projects being deemed approved, even though they hadn't been reviewed because there is a practical matter which has occurred and I think it is a fair one to state, that the local governments in certain instances have technically applied ordinance standards, made findings, made determinations that the standard has been complied with. But, actually, they deferred to the TRPA, and I think that's fair. They defer to the TRPA for the ultimate action. Now, that's a workable system, except for the 60 day rule. Then, we could get applications

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that possibly could "authorize" an illegal project. And that is where we have reached and have faced a lot of problems. Finally, I feel that dual-majority rule as it deals with the 60 day rule, creates a conflict between what the Legislature intended when the Compact was adopted and what is actually the practice. The Compact itself, appeared to set up an Agency that is to channel development. That is, to actually have a yea or nay say over whether development goes ahead. Now, the practical effect, however, of the dual-majority working with the 60 day rule, interpreted literally, is to work on the inverse fund. If you get by the Federal Government, you are wide open unless TRPA can muster a dual-negative to stop it. Those two things fight one another. It's not resolved in this document, and I think the Legislature could and should decide which way it is going to go.

Senator Sheerin: Q With the voting procedures that you have, you did pass a land-use ordinance, is that not correct. A land capability ordinance; a land-use map; a timber-harvesting ordinance; a grading ordinance; a conservation ordinance. Those, perhaps with others, were passed with the present system. And, the present system was devised to protect Nevada's gaming industry. If we change this system, is somebody wants to go in for a variance, different from your land-use ordinance, shouldn't he have to get a dual-positive vote just as is required to pass all of these ordinances?

Mr. Owen: A That is not how it reads now, Senator. The way it reads now is if the Agency doesn't act within 60 days, the proposal is deemed approved.

Q That's what I'm saying, isn't that an area of change which we might try to legislate?

A It's a possibility, but you still would have the problem of having to deal with the dual-negative as it stands. If you don't deal with the dual-majority system and you leave it as it now stands, you are going to have a system which has been administered that unless you can muster two majorities to stop a project, the project is going to go ahead.

Q Your position is that you would rather have a simple majority rather than the dual-majority?

A No Sir, I'm not taking a position. I'm pointing out to you the problems we have been having. Don't take me lightly, this has been a problem. Your point about the ordinances is right. If you will review those ordinances you will find they are substantial concessions to prior uses. Previous recorded sub-division maps, even though they are in general forest, you can still construct a single family home. That was adopted by the current board, and that was perhaps a balance of orderly development vs. environment. I don't think it is fair to say that because the ordinances were adopted by the same configuration

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of the board that there is now, that there isn't a problem. Because as a lawyer representing the Agency, I have felt there is a problem, because of these two causes, basically, working against each other.

Q How do we solve the problem pertaining to each state and its sovereignty?

A I think each states sovereignty can be maintained and I think this bill does it. The reason that it does, is that it will prohibit any project from going ahead if one state objects to it. Now, the testimony we have heard in opposition to this bill has been that Nevada is giving up its sovereignty. The fact remains that California in this situation is giving up an equal amount. California has almost two-thirds of that basin. If Nevada didn't want to approve a project, the other couldn't cause it to go ahead.

Q And the probabilities that we adopt this law are that both states will stop each other and nothing will be done all to the delight of every environmentalist.

A There is an answer to that. One, if things didn't work out, you call a special session of the Legislature and you disband the compact. Another possibility is I think you must not disregard that the Agency is a public body. It must operate under the standards; it must act reasonably, or it is going to deprive somebody of liberty or property without due process. If it acts arbitrarily, then you can go to court and you can have that action set aside as an abuse of discretion. That's a remedy anytime a public body uses its discretion.

Q A lot of projects, apparently, have been disapproved with the present agency and the present set up. Would you supply us with a list of the projects which have been disapproved?

A I can defer to Mr. Heikka. I don't see any problem there.

Mr. Heikka: Mr. Chairman, in answer to that question, many projects as originally presented and have been approved may have been substantially modified. It isn't a clear denial or approval. The modifications that go in, in many cases, completely change the original project.

Senator Sheerin: Q Well, can you furnish us with some kind of a summary of the denials or the modifications. This would seem to me an indication of how the Compact is working. If you want to stop some project because it is environmentally dangerous, do you have the tools right now to do it. Is there a list of those denials that can be furnished?

A. Such a list can be developed. It will take a few days though, Mr. Chairman.

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Senator Wilson: Well, why don't the two of you confer during the recess and see if there is a practical way of solving it without typing up the staff for a couple of days.

Senator Sheerin: Can we also get a copy of the certified original general plan?

Mr. Heikka: Well, it is a hard-copy colored plan. We would have to reproduce it. It's hard to know what you mean by certified?

Senator Wilson: Is it available to the Committee for examination?

Mr. Heikka: It's available to the Committee for examination on public file within the office.

Senator Blakemore: Q You spoke a while ago about getting a quorum together to vote on certain matters, and sometimes projects have been approved by the 60 day rule because of absenteeism. It sounds like you have an attendance problem?

Mr. Owen: A No, Senator, that is not correct. We had a recent occasion where a governing board member left for whatever reason. My point is, Senator, not that people are playing games, that there is simply a possibility for people to play games and inadvertently people can play games by having to leave and causing a project to be approved.

Q Wouldn't this be personified with a bigger board?

A It's possible.


Q. Well, that seems to be the general rule, in fact we are now in the process of trying to reduce the committees all over the place.

A. Well consider this, when you have a situation at the TRPA. You have five members on each of the Agencies. If you have two not there then your quorum is three. If one of the three doesn't show up or has to depart, your quorum is destroyed. Now, if you have a seven man board, your quorum is going to be four. I suppose the same abuse is there, but I'm not so sure it gets worse by expanding.

Senator Wilson thanked Mr. Owen for his testimony.

Mr. George Abbott from Douglas County asked that a memo from Mr. Roland L. Adams, Douglas County Manager, be entered into the record. (SEE ATTACHMENT B.)

There being no further business the meeting was adjourned.

APPROVED

Senator Thomas Wilson, Chairman

Respectfully submitted,

Molly M. Torvik, Secretary

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18 March 1975

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MEMORANDUM TO: Senate Committee on Environment - Conservation
SUBJECT: Tahoe Regional Planning Agency Activities

The following memorandum is offered in an attempt to correct certain inaccuracies of testimony received by the Committee in connection with SB 254. This memorandum is not an effort to substantiate or provide a staff position on the legislation, but merely to give as complete a picture as possible to the Committee in connection with their deliberations, as to the past activities of the Tahoe Regional Planning Agency.

The following specific points are enumerated relative to testimony of various witnesses:

1. It has been suggested that the Tahoe Regional Planning Agency has never voted for a casino nor never would. The staff wishes to point out the following voting record in connection with resort hotels and casinos in the Tahoe Basin.
 - a. Harrah's Club - First application was a vote of 8 - 2 by the Agency in favor of the approval of the first 250 units of high-rise and other various additions to Harrah's. Clearly, the vote was a dual majority with both states supporting.
 - b. A second Harrah's application for the second phase of construction similarly was approved by a dual majority of both states.
 - c. Harvey's Inn - In the vicinity of Kingsbury Grade was approved by a dual majority of votes of both States in connection with expansion of said facilities.
 - d. Park Tahoe - Was approved by the Agency on a 6 - 4 vote, however, failed to achieve a majority from both States. The majority of California members voting 3-2 to disapprove.
 - e. Harvey's Resort Hotel - identical to Park Tahoe in that a majority of the total voting members voted in favor of the subject application, however, it failed to obtain a majority on the California side.
 - f. Jennings' Tahoe Palace - the vote was 7 - 3 for denial of the applications.

g. Kahle Application - identical to that of Jennings's Tahoe Palace, failing to receive a majority vote for denial in both states.

In summary, out of 7 applications related to gaming which have come before the Agency, 3 votes were clearly a dual majority in favor; 2 were a simple majority of the total voting members for approval, but not receiving dual majority approval and 2 were simple majorities for denial, however, not obtaining a clear dual majority from the membership.

This record tends to refute statements to the committee that the Agency never has voted for a casino.

2. Witnesses allege that the Agency has the power to control the water levels of Lake Tahoe depriving from downstream users in Nevada their proper allocations of water from Lake Tahoe. Congress, in granting its consent to Public Law 91-148, the present TRPA Compact, specifically precluded the Agency from entering into the question of allocation of waters of Lake Tahoe. The witness apparently was referring to recent statements made by the Agency in the form of staff comments and Board resolution that suggested that those agencies having proper responsibility for the regulation of Lake Tahoe, take into account the almost half billion dollars in lake front property values in the States of California and Nevada, and regulate the lake in a manner so as to reduce erosion to these very valuable properties. It in no way suggested that the regulation occur in the manner as to reduce available water rights.

3. One of the most common mistatements in the case of a number of witnesses is to exactly what has the Agency done in the past 60 months. Attached is an addendum outlining the specific regulatory subjects and related matters the Agency has addressed and a Matrix of the adopted ordinances of the Agency that speak to the specific regulatory subjects required by the present compact. From this Matrix it is easy to point out that most of the Compact requirements with few exceptions, have been properly adopted by the Agency in its various ordinances. Those ordinances are under the general heading of: Land Use, Subdivision, Grading, Shoreline, Tree Preservation, and Timber Harvesting. As you can see on the Matrix, a variety of regulatory subjects cut across more than one ordinance. Additionally and presently a draft Sign ordinance has been prepared; a draft Sewage Export Ordinance has been prepared; a draft Solid Waste Disposal ordiannce has been prepared; Design Guidelines have been prepared; and revisions to the Shoreline Ordinance relating to the Shoreline Plan have been prepared.

4. It has been suggested that only a Land Use Plan has been adopted. The Agency has in fact prepared not only the Land Use Plan and adopted same, but also a Conservation Plan, a Recreation Plan, an Open Space Plan, a Land Capabilities Map, a Land Suitabilities Map and all are adopted and a part of the Agency's correlated plans for the Tahoe Basin.

Specific studies and other elements designed to meet the requirements of the Federal Department of Housing and Urban Development and the compact have also been prepared and in some cases adopted. All such plans and studies and their status are listed separately.

Approximately two years ago, a Stateline Transportation and Land Use Study was prepared under a cooperative arrangement with the Lake Tahoe Area Council, various local governments, and major property owners. This plan specifically addressed the question of the extent of an intensity of land use development within the Stateline area and the likely effects of commercial development on various facilities such as roads, housing, utilities, etc. This plan specifically was alluded to by one witness with the suggestion that collusion existed between the existing Stateline clubs and the Agency in the preparation of that plan. It should be pointed out that this study which was coordinated by the Lake Tahoe Area Council included substantial funding from both the City of South Lake Tahoe and Douglas County. The study addressed the need for a loop highway system, and recognized that a properly designed loop highway system, constructed with pedestrian overcrossings could allow for up to 2000 hotel rooms in the immediate Stateline area. The proposal also pointed out that serious deficiencies would exist in highway systems and housing accommodations and utility facilities if a new casino core was created in the vicinity of Kingsbury area. This report probably led to the breakdown in communications between Douglas County and the Agency even though it was Douglas County who issued the initial approvals for the intensive additional casino and hotel development in the vicinity of the immediate South Stateline. The study was never adopted by the Agency by the way.

5. There has been substantial discussion about the Transportation Plan for the Agency. It should be pointed out that the Agency, in its past 5 years, has generally reduced land use holding capacity of the basin from about 800,000 people which was the local zoning allowance, to approximately 300,000 which is in line, in the opinion of the Agency, both with the environmental limitations and such very specific allocations such as water. The result of that reduction and available land use for which there was no water or many utilities, was to effectively remove the need for a second freeway system looping the lake. In essence, this Agency spoke dramatically to the Transportation implications in its Land Use Plan in 1971.

Since that time, an extensive Transportation study in cooperation with both States has been underway and is eminently close to adoption - probably within the next 30 days. This plan will address the needs of the Stateline area as well as the entire Lake basin. It will basically provide for limited additional highway improvements to bring up to minimum standards, those presently overloaded highway systems. A transit study funded by Federal agencies is also underway and will be completed within four months.

6. Mr. Abbott, representing Douglas County attributed to the Executive Officer of the Tahoe Regional Planning Agency, statements that zoning could not be used to depress or withhold lands from development any longer. What Mr. Abbott failed to point out to the committee is that those comments were made in connection with a specific review of several selected recreationally zoned properties along the lake front that for various reasons were considered in the early phases of planning to have substantial potential for public recreation purposes. Because it did not appear eminent at that time that opportunities for public purchase would take place, the Agency Governing Board directed the staff to undertake a study to determine the appropriate land use designations for allowing for some reasonable private use of the property. It is in this context that those statements were made, not in context of the present lake basin zoning plan.

7. It has been suggested that there has been a severe reduction in available building activity in Douglas County as opposed to the balance of the basin. It is easy to twist around data to suggest that building activity has been commensurately greater in South Lake Tahoe in particular, as opposed to Douglas County. In certain areas this is certainly true, particularly in the area of single family dwellings where, by Court Order and Executive Order of the Governor of Nevada, a moratorium has existed for the past few years because of the lack of available sewage export in major portions of Douglas County. This, and this alone, accounts for a substantial reduction in the number of single family dwellings that have been started in Douglas County, compared to the balance of the basin.

Similarly, statistics were offered that the real problems relative to Transportation were not really in Nevada but were in California. Agency staff, in its recent studies in Transportation has determined, as an example that approximately 40% of summer peak traffic coming over Echo Summit identifies its first destination point as the South Stateline area. So while it is true traffic problems diminish greatly into Nevada, we can clearly identify that the source of those transportation problems are not California's but problems of the region and certainly we cannot separate automobiles traveling through South Lake Tahoe with the destination at South Stateline as being solely a California problem.

8. There have been references to the Hilton Hotel approvals, and having same carried as an example of one action occurring in California inconsistent with actions in Nevada. Such is not the case. The Hilton Hotel, consisting of 196 rooms near Heavenly Valley Ski area, came up before the California Agency as a part of a condominium development and subdivision which was approved by that Agency on a consent calendar in 1968. Subsequently the subdivision map was recorded, and most of the condominium units constructed. The Bi-State Agency found itself in a position of not being able to reverse its own ordinances which provide that a recorded final subdivision map may be completed as in the case of the Hilton Hotel. Also, the Bi-State Agency made that decision on the heels of a decision by an El Dorado County Superior Court which reversed TRPA's decision dealing with Stanford Camp, wherein it was clearly established that vested rights allowed the completion of construction.

Any cases of this nature are complex, and the generalizations which have been made are simply not in keeping with the facts of the specific cases that have been reviewed by attorneys before those decisions are reached. In the case of the Hilton Hotel, the attorneys for the developer, the Agency staff, and the Attorney General of California all reviewed the files in great detail before the decision was reached, and this project could proceed without additional public hearing.

9. One witness went into great detail as to the ability of a person to understand the Agency zoning maps. We submit the Preliminary General Plan is in fact on file with the Agency. The 400 scale detailed zoning maps are maintained to assist each and every property owner in determining exactly what his zoning status is. And likewise safeguards have been built into the Land Capability system to insure reasonable interpretation in a manner providing every opportunity by a property owner to obtain a reasonable interpretation.

The Tahoe basin Land Use and Land Capability system is a pioneering effort nationally. This system is an attempt to allow for development yet still be sensitive to the very fragile environment. The suggestion that it is totally based on soils, is simply not the case. It is based on the geomorphology or land form and not only is concerned with soils and erosion but certainly vegetation, revegetation characteristics of the soil and a variety of other environmental factors, all designed with the principal concern of maintaining the pristine qualities of Lake Tahoe.

This system has been used effectively for the past four years, and virtually every local agency working with the Agency staff has adapted to and operated effectively under the system. Douglas County in particular has not had any trouble with the system as certainly their County Manager was one of the principal authors of this system when same was set up by the Agency staff. Mr. Bourne has availed himself of operating within the system in obtaining routine and reasonable classification of the Land Capability system of all his lands west of Highway 50. It was suggested that this had taken 2 years but the staff suggests that the record shows that it occurred in less than 60 days. It was suggested that for the Bourne property east of Highway 50, one could not determine the number of units on the property. This is certainly true, as the whole system of the Land Capability maps is based on a land disturbance or coverage provision and without a property owner knowing whether or not he wishes to build rentals or condominiums, single family dwellings, duplexes, or apartment houses, high rise, low rise, nor amount of floor area per unit, it is impossible for anyone to be able to give an accurate number of units. We could only provide various estimates based on styles of development.

In conclusion, we hope this memo and attached material will provide a better insight to the committee of the Agency's activities.



RICHARD M. HEIKKA
Executive Officer

RMH/jv
Attachments

ISSUE PAPER #4

TRPA PLANS AND ORDINANCESISSUE

Following the ratification of the bistate Tahoe Regional Planning Compact by the States of California and Nevada, and by the United States Congress, the Tahoe Regional Planning Agency (TRPA) was formed. The Agency met for the first time in March of 1970. Its mandate was to adopt and enforce a regional plan of resource conservation and orderly growth. Since that time, the TRPA has undertaken a number of major planning efforts and adopted implementing ordinances based upon the plans developed. The following paper summarizes the various plans and ordinances that have been developed since 1970 by the TRPA.

RESOURCE ANALYSIS

Analysis of the resource base of the Lake Tahoe Basin was one of the first priorities of the Tahoe Regional Planning Agency. Planning teams were established bringing together expertise in various technical areas. The product of these planning teams was a series of planning guides. These guides analyzed the intricacies of various aspects of the Tahoe environment, and suggested specific policies to preserve the unique aspects of that environment. Planning guides were developed for climate and air quality, land resources, fisheries, limnology and water quality, wildlife, soils, and vegetation. These guides were then used in developing plans and ordinances.

LAND CAPABILITIES

The most significant product of the resource analysis phase was the development of the land capabilities system by Dr. Robert G. Bailey and the Tahoe Basin planning team of the U.S. Forest Service. This system translated information on soils, hydrology, geology, geomorphology, and vegetation into a determination of the level of tolerance for disturbance of particular lands. This system was applied to virtually every acre of land in the Tahoe Basin, both public and private, and has been incorporated into TRPA planning as both a zoning consideration, and in determining the amount of impervious surface coverage a proposed project will be permitted. It was officially adopted by the TRPA in December of 1971.

The land capabilities system was followed by development of a land suitability system by the same planning team. That system analyzes the types and intensity of uses suitable to various areas based upon the land capability level. This system is geared principally to identifying non-urban uses such as recreation, timber harvesting, wildlife habitat, etc. Though the land suitability system itself has not been officially adopted by the TRPA, it was incorporated into the recreation, conservation, and open space elements of the TRPA's General Plan.

MANDATED GENERAL PLAN ELEMENTS

LAND USE PLAN

The Land Use Plan integrates traditional zoning considerations with the land capabilities system. It is the base of the TRPA's General Plan, identifying the areas of the Tahoe Basin in which various types of land use are permitted. This element was adopted in December, 1971.

CONSERVATION PLAN

The conservation element of the TRPA General Plan identifies those areas which should be preserved in their natural state because of their unique character, or the danger of environmental degradation

should they be disturbed. The element deals separately with water and land related management questions. It identifies such areas as wetland wildlife habitats, fish and aquatic habitats, broad-leaf wildlife habitats, and alpine vegetation as being areas that should be preserved and managed. The conservation element was adopted by the TRPA in March of 1974.

RECREATION PLAN

The recreation element of the TRPA General Plan identifies various aspects of recreation in the Tahoe Basin and suggests areas suitable for development or utilization for recreation. Both summer and winter recreation activities are considered, ranging from camping and boating, to alpine skiing and snowmobiling. The recreation element was adopted in March of 1974 by the TRPA Governing Board.

PUBLIC FACILITIES PLAN

The public facilities element analyzes storm drainage and surface water runoff, fire services, and power and gas supply in the Tahoe Basin. It identifies existing conditions, and suggests goals, policies, planning criteria, and implementation procedures for improving existing public facilities in the Tahoe Basin. The public facilities element is currently in the public hearing phase.

TRANSPORTATION PLAN

A four year, comprehensive study of the Tahoe Basin transportation situation is currently under way. It is aimed at producing a total basin transportation plan. A short range plan geared to reducing present problems is under consideration by the TRPA. The total long range plan is not expected until 1977 or 1978.

ADDITIONAL PLANS AND PROGRAMS

OPEN SPACE PLAN

The open space element of the TRPA General Plan integrates the conservation and recreation elements and other considerations in identifying those areas that should be maintained as open space. Consideration is given to four primary concerns: preservation of natural resources, outdoor recreation, managed resource potential, and public health and safety (the latter two specifying such things as grazing and pasture areas, unstable soil areas, and flood zones). The open space element was adopted by the TRPA Governing Board in March of 1974.

SHOREZONE PLAN

The Shorezone Plan analyzes the entire Lake Tahoe Shoreline, identifying fish spawning habitat, stream environment zones, high hazard shoreline areas, and other concerns; and develops from that analysis a shorezone

tolerance system (similar to the land capabilities system). It suggests areas where caution should be exercised in development, and mechanisms and policies that should be employed to protect the shore-zone environments. The Shorezone Plan was adopted in principal by the TRPA in June of 1973 (an implementing ordinance is pending).

NATURAL HAZARDS PLAN

The Natural Hazards Plan identifies areas in the Tahoe Basin that may be subject to natural hazards such as flooding, earthquakes, avalanches, landslides, etc. The Natural Hazards Plan is currently in the public hearing phase.

WASTEWATER MANAGEMENT PLAN

A two year, EPA funded study of wastewater management in the Tahoe Basin was begun in January, 1975. The sewage of the Tahoe Basin has already been mandated to be exported from the basin, hence the TRPA study will concentrate on non-point sources of pollution (siltation, erosion and storm water runoff). It is aimed at developing a basin-wide plan for reducing siltation and storm water runoff problems and ordinances and policies designed to minimize the impact of new disturbances.

WATER AND SEWER PLANNING AND PROGRAMMING

Analyzes water availability and the water supply and sewage systems of the Tahoe Basin, assessing the current needs and projected demands, and suggesting policies and implementation programming for meeting those needs. The water and sewer planning and programming study was accepted by resolution of the TRPA Governing Board.

CAPITOL IMPROVEMENT PLANS AND PROGRAMMING

The Capitol Improvement Plan analyses the current capitol improvement plans of the numerous public entities involved in the Tahoe Basin, and suggests possible future demands on capitol improvement dollars and programs for addressing those needs. The Capitol Improvement Plans and Programming Study was accepted by resolution of the TRPA Governing Board.

HOUSING ELEMENT

The Housing Element identifies the current state of housing demand and availability in the Tahoe Basin, and suggests policies and goals for meeting the housing needs in the various portions of the basin. The Housing Element was accepted by resolution of the TRPA Governing Board.

HOUSING AND LAND DATA SYSTEM

The housing and land data system is in the organizational phase. It is intended to be a detailed, up to date resource for current land use and housing information from each of the local government jurisdictions in the basin. The raw data will be provided by the various county assessors, with the TRPA providing the system coordination.

FINANCIAL FEASIBILITY

The financial feasibility study identified a large number of potential mechanisms for generating revenue to finance regional capitol improvement projects such as transportation systems and storm drainage systems. It suggested mechanisms to be explored on a regional basis (such as might be utilized by a regional transit system), and those that might be utilized by local governments. The financial feasibility study was accepted by the TRPA Governing Board and passed along to the local governments of the Tahoe Basin in November of 1974.

TAHOE CITY URBAN DESIGN STUDY

The Tahoe City Urban Design Study suggests policy and study areas aimed at improving the aesthetic and functional environment in the South Tahoe area. It works within existing zoning constraints to identify programs to beautify the area, capitalize to a greater degree on the natural surroundings, and reduce the impact of some of the negative aspects of the South Tahoe environment. It will be turned over to the City of South Lake Tahoe and El Dorado County within two months for their action.

KINGS BEACH URBAN DESIGN STUDY

The Kings Beach Urban Design Study is just commencing. It will examine the area from Carnelian Bay to the North Stateline, and is also aimed at improving the urban environment in the area.

SOUTH TAHOE STATELINE SUB-REGIONAL STUDY

The South Tahoe Stateline Study analyzed the Stateline area traffic and potential development, targeting on the critical peak day traffic problems in the area and the potential impact of new development there. The study was presented to the TRPA Governing Board in April, 1973, but never acted upon.

ORDINANCES

In addition to the plans developed by the TRPA, the Agency has also developed and adopted implementing ordinances. They include a Land Use Ordinance, Subdivision Ordinance, Grading Ordinance, Shoreline Ordinance, Tree Preservation Ordinance, and Timber Harvesting Ordinance. In addition, a Sewage Ordinance is in hearing, and a Sign Ordinance has been drafted. The following matrix indicates the regulatory subjects dealt with by each ordinance.

REGULATORY SUBJECTS

	Land Use Ordinance (Adopted)	Subdivision Ordinance (Adopted) Grading Ordinance	(Adopted) Shoreline Ordinance	(Adopted) Tree Preservation Ord.	(Adopted) Timber Harvesting Ord.	(Adopted) Sign Ordinance (Drafted)	Sewage Ordinance (In Hearing) Disposal Ord. (Drafted)	Design Guidelines	STATUS
1. Water Purity & Clarity	X	X	X	X	X		X	X	Complete and mostly adopted, also consider comprehensive Storm Drainage Ordinance
2. Subdivision		X						X	Complete & Adopted
3. Zoning	X					X		X	Complete
4. Tree Removal		X	X	X	X			X	Complete
5. Solid Waste Disposal							X		Complete may not need adoption
6. Sewage Disposal	X						X		Complete - Pending adoption
7. Land Fills, Excavations Cuts and Grading			X		X			X	Complete and adopted
8. Piers			X						Complete and adopted. Amendments required following completion of Shoreline Plan
9. Harbors and Breakwaters			X						Complete and adopted. Amendments required following completion of Shoreline Plan
10. Channel and other shore- line development			X						Complete and adopted. Amendments required following completion of Shoreline Plan
11. Waste disposal in shoreline			X				X	X	Complete
12. Waste disposal for boats			X						Complete and adopted
13. Mobile home parks	X	X							Complete and adopted
14. House relocation	X							X	Complete and adopted
15. Outdoor advertising						X			Complete and pending adoption
16. Flood plain protection	X	X	X		X			X	Complete and adopted
17. Soil and sedimentation	X	X	X		X		X	X	Complete and mostly adopted also considering comprehensive storm drainage ordinance
18. Air pollution							X		Requires air quality control region designation
19. Watershed protection	X	X	X		X			X	Complete and adopted
20 Design								X	Complete
21. Noise									Consider noise regulation ordinance



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March 13, 1975

COMMENTS PERTINENT TO SB 254

BY: ROLAND L. ADAMS, DOUGLAS COUNTY MANAGER

In order to shed some light as to my direct involvement with the Tahoe Regional Planning Agency, it should be noted that my previous title was "Assistant Executive Director, Tahoe Regional Planning Agency", with specific charge of development control and coordination. Further, I had a responsible role in the development of the "General Plan" and "Ordinances" now in effect.

The Douglas County Commissioners appointed me as their first county manager with full knowledge of my background and I share their concerns relative to this proposed amendment. My comments are directed specifically to the amendment proposing an increase of Governing Board Members on the T.R.P.A. The assumption one must make from the calculated increase of appointed members is dissatisfaction with the elected member representation as a majority group.

The following questions and answers are supplied by me for your further consideration.

QUESTION: 1. What problems are sited to be the cause for increased appointed Governing Board Members?

ANSWER: My guess would be primarily the hotel-casinos.

QUESTION: 2. Can the Agency say that any project or development has been processed by the Agency without regard to their General Plan, Ordinances or environmental controls?

ANSWER: None that would be considered major (including applications at Stateline).

QUESTION: 3. Can the Agency say that the respective local governments administrative or enforcement personnel have not reasonably cooperated with them?

ANSWER: I would say sure "some stones have been thrown", but nothing that hasn't been resolved.

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3-13-75 Comments on SB 254, by R.Adams

QUESTION: 4. Were there any significant state-local partisanship votes recorded prior to the casino-hotel "dual majority" automatic approvals?

ANSWER: The record says no.

QUESTION: 5. Are "high-rise" hotels or motels in urban areas encouraged by the applications of land coverage regulations of the Agency?

ANSWER: On countless occasions, it has been said, "height is preferable to bulk in considering land coverage, particularly in Tahoe". Example: South Tahoe motel sprall compared to Stateline high-rise hotels.

QUESTION: 6. What about "transportation" in the South Tahoe Area?

ANSWER: The endless planning and hearing on traffic and transportation is a great example of "bureaucratic red tape".

QUESTION: 7. Were the Agency basic regulations and standards applied by Douglas County on the casino-hotels?

ANSWER: Absolutely; the record so reflects.

QUESTION: How can one rationalize that legislative authority is proposed to be left with the majority of state appointed officials, yet leaving local governments with such services as garbage, police protection, fire protection, etc.?

ANSWER: I have no answer, but it does seem like the "death sentence" to local governments with respect to the T.R.P.A.

I would conclude that the greatest threat to the Agency has been and still is finding reasonable compensation for devalued lands and that such be considered by all local, state and federal officials as the major "missing link" to the success of the Bi-State Compact, not this amendment.

I think the records will reflect the current Governing Body met their respective responsibilities in applying the rules and regulations and environmental controls which were adopted in 1971. It should also be noted, neither the existing Agency structure or the amendment proposed will satisfy the strong minded environmental interests or the development interests. I urge that you consider the questions which are asked and seek your own independent answers. My guess is, you will conclude, as I, that the existing compact under NRS 277.200 was drafted and adopted with reasonable consideration to all local, state and federal interests.