SENATE NATURAL RESOURCES COMMITTEE

MINUTES OF MEETING
Wednesday, May 4, 1977

The twenty-eighth meeting of the Senate Natural Resources Committee was called to order on the above date at 2:45 p.m.

Senator Gary Sheerin was in the Chair.

PRESENT: Senator Sheerin
Senator Echols
Senator Dodge
Senator Neal
Senator Glaser

ABSENT: Senator Lamb

CHAIRMAN SHEERIN said this meeting had been called to discuss four amendments to SB266 which were put on by the Assembly, plus one other huge factor which has been discovered had been deleted from the bill. Chairman Sheerin said he now was sure this bill would have to go to Conference.

Chairman Sheerin said gaming has been put inside the red line in SB266. Slot machines presently exist outside the red line. In the present bill, those slot machines in the Tahoe Basin outside the red line would be prohibited, which is not the intent or desire of the Committee. The only way to get a new amendment to solve this situation is by going to Conference.

Chairman Sheerin referred to maps of the Tahoe area,exhibited on the wall,of Areas A, B, C and D. He gave a brief overview of the areas as identified on the maps.

AMENDMENT 1221A. Has to do with Bourne's property in Area B. Chairman Sheerin said he felt the Committee should accept this amendment on the grounds that Bourne has been damaged in other lands around Round Hill Village from TRPA general plan downzoning. It is a 2.6 acre parcel.

SENATOR GLASER explained it boxes up the area and makes it cleaner.

Senator Neal moved to concur in Amendment 1221A to SB266, which is represented as the Bourne property.
Senator Glaser seconded the motion.
The motion carried unanimously.

AMENDMENT 1222A. It is the mouth of the "monkey wrench", Area A, owned by the Park Cattle Company which fills a gap and makes the whole thing solid. According to the map, it looks like it encompasses about 10 acres. Lengthy discussion between the Committee and Richard Blakey, attorney for Park Cattle Company.

SENATOR DODGE implied he would like not to concur in the amendment until the Committee can visit with Dick Heikka, immediate past executive director, Tahoe Regional Planning Agency.

Senator Dodge moved not to concur in Amendment 1222A.
Senator Neal seconded the motion.
Aye: Senator Echols
Senator Dodge
Senator Neal
Senator Glaser
Nay: Senator Sheerin
The motion carried.

AMENDMENT 1224A. This amendment relates to the language that keeps TRPA out of the red line. Lengthy discussion between the Committee and Mr. Blakey.

Senator Neal moved not to concur in Amendment 1224A.
Senator Dodge seconded the motion.
The motion carried unanimously.

AMENDMENT 1262A. This amendment covers the area where duty is put on TRPA to get involved in land exchange agency.

CHAIRMAN SHEERIN handed out copies of two letters, one from the Legislative Counsel Bureau indicating that there isn't a problem by doing this; and the other letter from Kenneth Rollston, attorney for TRPA, indicating there is a problem. Letters entered in record, attached EXHIBITS "A" and "B", respectively.

Senator Neal moved not to concur in Amendment 1262A.
Senator Dodge seconded the motion.
Aye: Senator Echols
Senator Dodge
Senator Neal
Senator Glaser.
Nay: Senator Sheerin
The motion carried.

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Billie Brinkman

Billie Brinkman, Chairman

APPROVED:

Gary A. Sheerin

Gary A. Sheerin, Chairman

SENATE

DATE May 4, 1977

PLEASE PRINT — PLEASE PRINT — PLEASE PRINT — PLEASE PRINT — PLEASE PRINT — PLEASE

TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHONE
	Bob Stewart	Gov Ofc	Carson	885 5670
	Edward P. Smith	Retired	P.O. Box 1281 Zephyr Cove, Nev. 89448	588-3701
	Manny S	Self	Cave Rock	5886446
	[illegible] Abbott	[illegible]	[illegible]	882130
no	Russ Nielsen	UPI		
	+ others			

Exhibit "H"

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
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ARTHUR J. PALMER, *Director*
(702) 885-5627

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JAMES I. GIBSON, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 885-5640
DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
John F. Dolan, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
EARL T. OLIVER, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

October 27, 1976

Senator Gary A. Sheerin
P. O. Box 606
Carson City, Nevada 89701

LCO 35

Immunity of state from liability for participation of TRPA in land exchanges

Dear Senator Sheerin:

You have requested the opinion of the legislative counsel upon the question whether enactment of a measure such as your Senate Bill No. 326 of the 1975 session, which would have required the Tahoe Regional Planning Agency to undertake to assist owners of real property in the basin to negotiate for the exchange of such property for property outside the basin now in public ownership, would expose the State of Nevada to liability to such an owner in the nature of inverse condemnation. Since the agency is a separate legal entity, by virtue of paragraph (a) of Article III of the compact, and the party states have shown by paragraph (f) of Article VII their intent not to be bound by any obligation of the agency, it is doubtful whether any liability incurred by the agency for whatever reason could give rise to liability on the part of the State of Nevada, but the converse is quite clear: there could be no liability on the part of the State of Nevada unless the agency were first held liable.

Actions in inverse condemnation brought by property owners against governmental bodies, and based upon a diminution of property value because of regulations promulgated by the governmental body, have been successful only when the governmental body was found to have been acting outside its police power. Thus, zoning ordinances have not given rise to successful actions, except where the ordinance is found to be

patently unreasonable when viewed against the consideration of the welfare of the community, or where it is found to have been adopted in bad faith. In such a case, the relief is invalidation of the ordinance as applied, rather than a money judgment against the governmental body.

The possibility of liability for the agency is even more remote for its activities under your proposal, as distinct from its existing regulatory power, for it would merely participate in a voluntary program, and act to assist property owners in the Tahoe Basin who wish to come forward and take part in land exchanges. It is therefore the opinion of the legislative counsel that there is little possibility of any property owner in the Tahoe Basin pursuing a successful action against the agency by reason of the participation of the agency in land exchange programs, and still less of any such action against the State of Nevada.

Very truly yours,

Frank W. Daykin

Frank W. Daykin
Legislative Counsel

FWD:jll

Exhibit "B"

OWEN and ROLLSTON
ATTORNEYS AT LAW

GARY A. OWEN
KENNETH C. ROLLSTON

(916) 541-7722

May 3, 1977

M.D. Hansen
Executive Officer
Tahoe Regional Planning Agency
Post Office Box 8896
South Lake Tahoe, California 95731

Re: New Language--S.B. 266

Dear Mr. Hansen:

You have requested our views regarding the following language which has been proposed as an amendment to the Tahoe Regional Planning Compact:

> "The governing body shall maintain a current list of real property known to be available for exchange and participate in negotiations with the United States, the State of Nevada and the State of California or with other owners of real property in order to execute exchange of real property by owners of real property affected by the governing body's regulations."

We are opposed to the inclusion of such language in the Compact because we feel it will imperil presently pending suits against the Agency, both states and the affected counties and because it threatens to engender additional lawsuits. We would also question whether TRPA has the expertise to undertake the tasks imposed by such language and whether same is necessary.

LAWSUITS

TRPA is presently a defendant in approximately 25 lawsuits which attack either the General Plan or ordinances of TRPA as being too restrictive. The respective states are a party to the majority of these suits. All of such suits have been successfully defended to date based in large part on the absence of condemnation power in TRPA. Western International Hotels v. TRPA, 387 F. Supp. 429 (D. Nev. 1975), and Lake Country Estates v. TRPA (E.D. Cal. 1975).

California Office: Post Office Box 630, South Lake Tahoe, California 95705

The proposed amendment to the Compact would require TRPA to go directly into the acquisition arena. Indeed, it would require TRPA to become involved in negotiations for acquisition by anyone who deems himself "affected by" TRPA regulations. Since the Compact would require TRPA endeavors in this regard, it is to be anticipated that the plaintiffs will enjoy much greater success in their inverse condemnation actions. The combination of restrictive zoning and participation in acquisition activities has produced inverse condemnation judgments: Eldridge v. City of Palo Alto, 57 Cal. App. 3d 613 (1976) and Arastra Ltd. Partnership v. City of Palo Alto, 401 F. Supp. 962 (N.D. Cal. 1975). Since TRPA has no funds, it is logical to assume that liability for such damages would fall on some other political entity. The states, as the "parents" of TRPA would be the most likely victims.

We are aware of a letter dated October 27, 1976 from the Legislative Counsel of the State of Nevada which finds the likelihood of successful inverse condemnation actions more remote. We would respectfully disagree.

NECESSITY AND PROPRIETY OF TRPA UNDERTAKING SUCH TASKS

We would also question whether TRPA is the appropriate entity to undertake the tasks contemplated by the proposed amendment. TRPA has no expertise in land acquisition nor does it have the funds to hire the people with such expertise. Accordingly, we would question how TRPA would be able to comply with the Compact mandate.

Existing entities within the states and Federal Government (e.g., Bureau of Land Management) have the manpower and expertise to undertake these tasks. We wonder why an additional layer of government is needed here.

These latter concerns are, however, merely secondary. Manifestly, if such Compact duties are imposed on TRPA, no matter how ill-equipped TRPA personnel are to undertake the tasks, such tasks would be undertaken albeit possibly in an incompetent fashion. Our primary concern remains the threat to the existing lawsuits against the Agency and other governmental entities and the additional litigation which such provision would portend.

Respectfully submitted,

OWEN AND ROLLSTON

by Kenneth C. Rollston
KENNETH C. ROLLSTON
Attorneys for TRPA