

Senator Mark Amodei  
Nevada Legislative Committee for the Review and  
Oversight of The Tahoe Regional Planning Agency (TRPA)  
and the Marlette Lake Water Storage System

EXHIBIT <u>L</u>	Tahoe	Document consists of <u>16</u> pages
<input checked="" type="checkbox"/> Entire document provided.		
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.		
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us).		
		Meeting Date <u>12-8-03</u>

Hon. Senator Amodei:

On August 26, 2002 your oversight committee held a well-attended meeting and heard public testimony on the concerns Nevada citizens had with pending TRPA actions. Two major concerns of the citizenry were TRPA's determination to pass "scenic regulations" despite major objections by the community and TRPA's failure to conform to administrative procedure act protections for Nevada citizens.

Time has passed. TRPA's position on each of these critical issues is clear. Now is the time for your committee to take immediate action to protect the lives, property and rights of your Nevada constituents with regard to each of these issues.

**THE SCENIC REGULATIONS –TRPA's scenic regulations are placing the lives and property of Nevada's Tahoe area residents in jeopardy.**

By recklessly adopting its scenic regulations (without the protections afforded by Administrative Procedure Act standards) TRPA now mandates Nevada citizens to act contrary to necessary fire protection practices, standard throughout the United States and Canada. In particular, TRPA has:

- (1) Illegally usurped the fire prevention role and jurisdiction of the responsible local and state fire agencies within the state of Nevada;
- (2) failed to adequately heed the professional advice of local fire agencies; and
- (3) Mandated Nevada citizens to act in direct contravention of universally Established "defensible space" rules.

It is universally accepted that sound management practices dictate never separating authority and responsibility. TRPA wishes to do just that. Contrary to previous practice, TRPA now asserts primary, overriding authority in matters affecting fire safety, but wants no part of any responsibility or costs in protecting or saving lives and property from fire. This makes no sense.

The proper vesting of authority over matters of fire safety is with the appropriate state and local officials within the State of Nevada, who are also responsible for fire prevention and safety. Nothing in the laws of the State of Nevada or in the Compact creating the TRPA cedes primary authority for fire safety matters to the TRPA. See Attachment A, which is a letter signed by the fire chiefs from around Lake Tahoe objecting to TRPA's scenic regulations which force residents to plant combustible material within the 30 foot defensible zone over the objections of the local fire authorities.

Most everyone is familiar with the requirements of defensible space. As universally applied, that concept requires the removal of flammable vegetation within 30 feet of structures, use of non-flammable vegetation, and the thinning of vegetation in a wider area around structures. This is not a new, novel or unusual concept. Substantially all federal, and state agencies, and organizations such as the Sierra Club agree with the concept of creating a defensible space around structures to prevent

the loss of property and lives. Upon request, we can provide your committee with a large number of defensible space requirements promulgated by such agencies and recommended by national environmental organizations.

For the purpose of illustrating the requirements of defensible space, we have attached hereto, as attachment B, the defensible space bulletin of San Diego County, a county all too familiar with the destruction that can be caused by fire. Fire not just in remote areas, but also in densely populated urban areas adjacent to forests or other natural areas. Three major points should be noted in reference to the requirements of defensible space.

First, defensible space requires the cleaning of all flammable material within 30 feet of a structure.

Second, trees such as flammable CONIFERS are not to be allowed within the defensible space.

Third, citizens are directed to seek advice concerning the requirements of defensible space from their local fire departments. (Not a planning agency that has no responsibility to put out a fire.)

We expect TRPA to argue they are only requiring appropriate non-flammable vegetative screening. Do not be fooled. This is not true. TRPA is mandating Nevada citizens plant CONIFERS within the boundaries of defensible space. Dozens of fire, forestry and related organizations have established substantially similar definitions of flammable and non-flammable plants. We will be happy to share these with the committee should this become an issue. The real issue is that those requirements for our region should be established by our local fire agencies not the TRPA.

Ironically, some years ago, TRPA adopted a "Tahoe-Re-Green Treatment Criteria" which required a defensible zone around structures. However, during the entire period it was considering and adopting its new scenic ordinance, TRPA staff failed to disclose this Criteria effectively hiding it from the public and the directors who voted on the scenic ordinance. A copy of the Criteria is appended as Attachment C and provides in pertinent part:

"Parcels with existing structures and development should be treated in accordance with the defensible space guidelines provided by the local fire protection agency. Flammable vegetation determined to be a fire hazard may be removed, thinned, or manipulated, within 30 feet of structures as necessary to prevent the spread of wildfire."

TRPA's ordinance places our citizens in a unique position of not being allowed to create defensible space around their homes despite the fact they live in a high fire risk area. What will happen when fire insurance companies become aware that your citizens are not allowed to create defensible space around their homes and businesses? Surely rates will be increased or coverage denied. If that likely result occurs, mortgages are at risk, as lenders will not waive insurance requirements. Clearly the TRPA did not consider these factors, and if they did, they did not give them any weight in their rush to adopt their admittedly subjective scenic requirements.

Why is TRPA the only agency requiring property owners in a high-risk area to violate defensible space requirements?

Does the TRPA now take the position that the danger of wildfires has lessened to the extent this criteria should no longer be followed? Apparently so.

Is the TRPA still willing, in view of its seemingly conflicting scenic regulations, to allow local fire protection agencies to prescribe defensible space requirements? Apparently not.

It certainly appears the TRPA has discarded its former criteria by forcing through their scenic ordinance. TRPA's new scenic ordinance is wholly inconsistent with the criteria set forth in Attachment C. Is it because the danger has lessened, or our fire agencies are no longer capable of advising us? No, it is plain and simple a power grab by TRPA; one that puts the lives and property of Nevada citizens at unnecessary and unacceptable risk. Recently, the acting TRPA director, speaking at a public forum stated that TRPA threshold requirements trump public safety. Perhaps in response to that statement, the Bonanza ran the editorial attached hereto as Attachment D.

We, who live in the Tahoe region, are constantly threatened by potentially catastrophic fires. We demand the right all other citizens of the United States have to follow our local Fire Protection Agency regulations and guidelines on defensible space in order to protect our lives and properties.

Your committee has responsibility to oversee the actions of the TRPA. You have a clear responsibility to protect the lives and property of your constituents. The question is whether you have the will to act. Should you fail to promptly rectify this situation, you will join the TRPA in being responsible for the potential loss of life and property. We need action now, before the coming fire season.

#### **ADMINISTRATIVE PROCEDURE ACT RIGHTS --Nevada Citizens deserve full administrative procedure rights when regulated by the TRPA**

At your committee's meeting on August 26, 2002, in response to the assertions that TRPA was not following adequate citizen protections as found in Federal and State Administrative procedure acts, you asked John Marshall, counsel for TRPA the following question.

"Does anything substantially resembling (The Nevada Administrative Procedure Act) apply to the TRPA?"

Mr. Marshall answered with one word. "Yes."

You did your duty. You asked the right question. Mr. Marshall's answer was, at best, misleading.

TRPA has consistently refused to follow normal APA requirements when it regulating Nevada citizens. Further in papers filed in Federal District court (Reno) in Case No. CV-N-02-558-ECR, Mr. Marshall stated no federal or state administrative procedure act rules apply to the TRPA, and went on to state the TRPA does not need provide the protections afforded by APA rules to the citizens of Nevada when they come under TRPA regulations.

Given these written statements presented in court, it is simply too much to believe TRPA will suddenly and voluntarily afford our fellow citizens the regulatory protections all 50 states and the Federal Government have found necessary to protect their citizens from unbridled regulation. Why should your constituents be the only citizens in the United States to be regulated without essential APA safeguards? While Mr. Marshall may try to argue that the TRPA generally follows APA type safeguards, its off and on, inconsistent practices, combined its position that it need not follow any

APA safeguards amounts to no protection at all for your citizens. It should not be up to the TRPA to decide when your citizens might be given APA protections and when it is just too inconvenient to follow universally applied citizen protections.

It is time to REQUIRE the TRPA to regulate with the same citizen safeguards as all other governmental regulatory agencies. There is simply no reason why the TRPA can't conduct their affairs as all others do. Had these APA requirements been in effect, the TRPA would have had to take a much more reasoned approach to the adoption of its thresholds and to its fatally flawed scenic regulations.

We respectfully request your committee use its oversight authority to require the TRPA to enact as binding, all the protective provisions of the Nevada APA.

In summary, the undersigned request this committee take immediate, and effective action to assure the safety and essential rights of your Nevada citizens who are subject to the enormous, regulatory power of the TRPA.

Sincerely,



Bob Davidson  
Incline Village

- Attachments: A. Tahoe Basin Fire Chiefs Letter – 4 pages signed in counterpart  
B. County of San Diego – 3 pages  
C. TRPA Tahoe Re-Green Treatment Criteria  
D. North Lake Tahoe Bonanza Editorial November 26, 2003

## Attachment A

August 23, 2002

The Honorable Dean Heller  
Chairman  
Tahoe Regional Planning Agency  
308 Doria Court  
Zephyr Cove, NV 89448

Dear Chairman Heller:


We have just become aware the Tahoe Regional Planning Agency (TRPA) is considering final action to adopt "Amendments to Implement a Shorezone Review System." Under these new regulations, the TRPA seeks to limit the "visual magnitude" of property through new architectural and landscape design standards. The proposed new regulations limit the view of homes through the placement, or retention, of trees and large scrubs in sufficient density and proximity to create a screen.


We take no position on the "scenic issues" addressed in the regulations. However, we are vitally concerned that architectural and landscape standards proposed by these regulations meet the highest fire safety standards. Our greatest concern, as chiefs of the six fire agencies surrounding Lake Tahoe, is the health and welfare of our citizens and visitors. Fires, especially large, difficult to control forest fires, are a great threat to our region. In addition to posing a grave threat to life and property in the Lake Tahoe basin, forest fires present one of the greatest threats to the Lake Tahoe ecological system. We have all witnessed with great horror the recent forest fires all around us and the human and natural resource devastation left in their path. This recent event reminds us to take particular care in forest management and landscape design standards mandated by local building ordinances.

Fire safety experts recommend a "defensible space" around homes. Forest management, including tree and shrub placement at home sites is similarly important. Natural and manmade firebreaks provide additional safeguards. We urge the TRPA to seek input from fire safety experts and to rank fire safety among its greatest concerns.


We extend to you the assistance of our departments as you consider these important issues.

Sincerely

  
James Linardos, Chief  
North Lake Tahoe Fire District

 *Loewin Fire Chief*  
Tim Smith, Chief  
Tahoe-Douglas Fire District

  
Michael Chandler, Chief  
South Lake Tahoe Fire District

  
Brian Schafer, Chief  
Lake Valley Fire District

  
John Pang, Chief,  
Meeks Bay Fire District

  
Duane Whitelaw, Chief  
North Tahoe Fire District

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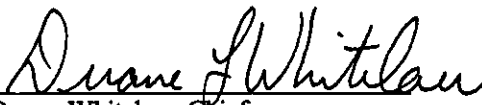
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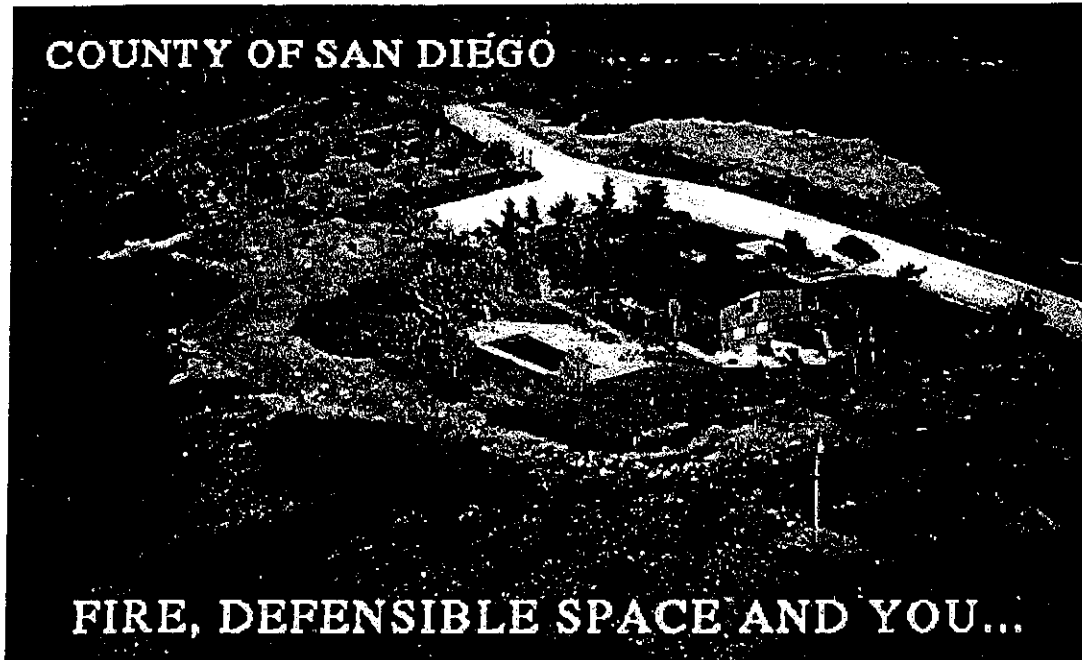




# LAND USE AND ENVIRONMENT

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FIRE, PLANTS, DEFENSIBLE SPACE AND YOU

OTHER PRECAUTIONS TO CONSIDER IN LANDSCAPE DESIGN

AFTER A FIRE

ACCEPTABLE PLANTS FOR A DEFENSIBLE SPACE IN FIRE PRONE AREAS

FIRE AGENCY CONTACT LIST

WILL YOUR HOME SURVIVE A WILDFIRE?



Many portions of the unincorporated areas of the County of San Diego share expansive, rural settings of native plant material. Fire is an important factor in maintaining the healthy status of these native plant species. Since these areas are also highly desirable places in which to live, maintaining a defensible fire

## Attachment B

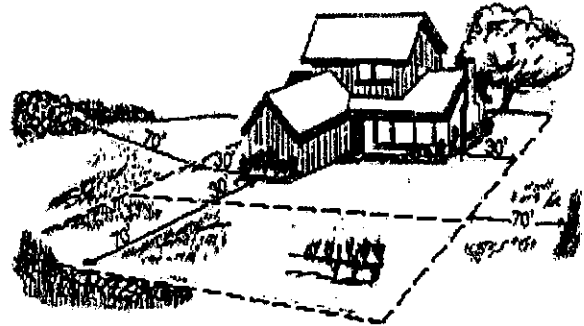
space around structures is essential for protection against fire. Following are some helpful hints to assist you in defending your property:

**DEFENSIBLE SPACE**

Defensible space is the area around a structure, where material capable of causing fire has been cleared, reduced or changed, to act as a barrier between an advancing fire and the structure. This procedure involves the clearing of flammable vegetation to a minimum of 30 feet around the structure and additional clearing to include at least 100 feet from the structure. This clearing severely limits the amount of fuel that a fire needs to sustain itself.

In this area, select plants that:

- grow close to the ground,
- have a low sap or resin content,
- grow without accumulating dead branches, needles or leaves,
- are easily maintained and pruned, and
- are drought-tolerant.



click on drawing to view house in PDF format



click on icon to download Acrobat if you want to view house in PDF format.

**Plants to avoid in this area:**

- trees: evergreen conifers (pines, cypresses, junipers), and eucalyptus,
- shrubs: ornamental grasses, acacias, hopseed (dodonea), and all berry vines.

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- Vary the height of plants and provide adequate spacing. The taller the plant, the wider apart they need to be spaced.
- For trees over 18 feet tall, prune limbs within six feet of the ground to prevent ground fires from spreading up-wards into trees.
- Remove dead limbs overhanging your roof including any limb within 10 feet of your chimney.
- Work with your neighbors to clear common areas between houses, and prune areas of heavy vegetation that are a fire threat to both properties.
- Avoid planting trees under or near electrical lines. They may grow into, or make contact with overhead lines under windy conditions, causing a fire.
- If you have a heavily wooded area on your property, remove some of the trees to decrease tree density which will also decrease the fire hazard. Improve growing conditions by removing dead,

## Attachment B

weak, diseased trees and those with an obvious lean, leaving a healthy mixture of older and younger trees.

- Properly dispose of all cut vegetation by an approved method. Open burning may require a burning permit. Contact your fire department for local requirements.
- Stack firewood and scrap wood piles at least 30 feet from any structure. Clear away any flammable vegetation within 10 feet of these wood piles. Many homes have "survived" - as a fire moved past it, only to burn later from a wood pile that ignited after the firefighters had moved on to protect other homes.
- Clear pine needles, leaves or other debris from the roof of your house and any other buildings on your property. Check and clean your roof gutters several times during the spring, summer and fall to remove debris that can easily ignite from a spark.



**It is urgent to temporarily stabilize any slopes on the property prior to the winter rainy season. Rains can cause slope failure and mudslides, both upstream from you, and downstream to your neighbor. Some preventive methods that can be used singly, or in combination with each other are:**

- **Plastic sheeting** - placed over the slope will divert water. Make sure the water will flow into culverts, brow ditches or other diversions.
- **Straw mulch**
- **Jute mesh**
- **Wood excelsior matting**
- **Geotextiles**
- **Straw bale dikes**
- **Silt fences**
- **Seed planting of native annuals and perennials.**

These methods of erosion control act only as temporary measures to stabilize slopes. If burned slopes have previously been covered with native vegetation, new plants will sprout from the underground roots. As the rainy season progresses, other native plants will germinate also. Man made slopes, interior to many projects, will need to be replanted with deep rooting plant materials. Trees and shrubs are preferred over ice plants to insure long term erosion control.

For further information, contact the California Department of Forestry , Southern Region at 2524 Mulberry Street, Riverside, California, 92501, Phone number: (909) 782-4140, or your local fire district.

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[webmaster@co.san-diego.ca.us](mailto:webmaster@co.san-diego.ca.us)

## Attachment C

## TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court  
Elko Point, Nevada

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

(702) 588-4547  
Fax (702) 588-4527  
Email: tpa@sierra.net

## TAHOE RE-GREEN TREATMENT CRITERIA

Inside the 30' Zone

~~Parcels with existing structures and development should be treated in accordance with the defensible space guidelines provided by the local fire protection agency. Flammable vegetation determined to be a fire hazard may be removed, thinned, or manipulated, within 30 feet of structures as necessary to prevent the spread of wildfire.~~  
Sufficient quantities of residual vegetation should remain in this 30 foot zone to stabilize soil and prevent erosion. Whenever possible, vegetation in this zone should be thinned, tapered, cut back, or otherwise selectively manipulated, rather than removed entirely. Dead trees (those lacking any green needles) located within the 30' zone shall be removed as soon as possible.

Outside the 30' Zone:

The following treatment criteria are applicable to the area beyond the 30' zone, and to parcels without existing development on them. These criteria are consistent with the Tahoe Regional Planning Agency's resource management objectives.

## SENSITIVE RESOURCE MANAGEMENT GUIDELINES

1. Stream Environment Zones (SEZ's) will be evaluated by TRPA staff prior to treatment. General treatment will be removal of dead material only. No healthy SEZ indicator plants (e.g., alder, aspen, cottonwood, lodgepole pine, willow) shall be removed or thinned within SEZs (except within the 30' defensible space zone around structures). SEZs will generally be treated by hand crews. Vehicles are not allowed within SEZs or setbacks as defined in the TRPA Code of Ordinances (ch. 37 and 71), except on existing roads or for over-snow logging where no soil disturbance may occur. Slash and other materials from areas treated under this program (e.g., logs, limbs, brush, and wood chips) shall not be placed, piled, spread, or burned within SEZs.
2. Shoreline zones (generally, the area from the high water line of a body of water and extending 100' landward) shall be evaluated by TRPA staff prior to treatment.
3. Properties located within 300' of scenic corridors (federal and state highways, and Pioneer Trail) State Parks, or public beaches shall be evaluated by TRPA staff prior to treatment.

## Attachment C

4. Snags with cavities and other unique wildlife values will be left unless they pose a safety hazard. Up to 2 other snags per lot which are below the canopy levels and are not considered hazardous may be left for wildlife purposes. Preferable snags include those greater than 16 inches diameter breast height (dbh) and taller than 20 feet.
5. A few individual downed logs per acre in various stages of decay shall be left for wildlife, erosion control, and nutrient cycling unless they are identified as hazardous.

### GENERAL TREATMENT GUIDELINES

#### 1. TREES:

- A. Tree removal will include dead, dying, and thinning of overstocked stands for fire safety purposes. Dead trees and downed logs will be removed, except as indicated in the "Sensitive Resource Management Guidelines". Green trees that are insect infested or diseased and certain to die within one year, and/or suppressed trees will be marked for removal. Additional green trees may be marked if absolutely necessary to provide a reasonable measure of fire safety.  
California Department of Forestry and Nevada Division of Forestry staff must be contacted to mark live trees for removal in accordance with these guidelines in their respective states.
- B. Trees within 30 feet of structures may be pruned to provide ten feet of clearance from the ground or top of understory vegetation. Pruning shall be limited to the lower one third (1/3) of the total height of a tree, except to remove dead limbs or individual green limbs which are too close to structures.

#### 1) CUTTING PRACTICES:

- a. Trees greater than 6 inches dbh must be cut to within 6 inches of the ground, measured on the uphill side of the stump. Trees less than 6 inches dbh will be cut at ground level.
- b. The tops of live tree stumps should be treated with powdered borax to retard the spread of root disease.

#### 2. SAPLINGS: { small trees less than 6" diameter breast height (dbh) }

- A. Sapling thickets not located in SEZ land capability districts will be marked for thinning so that remaining trees will have about a full crown width between them, or about 8 to 12 feet.

Attachment C

- B. Within sapling thickets which are located in SEZ land capability districts and setbacks, the following may be removed: dead material, insect infested trees and/or disease trees which are certain to die within one year.
- C. Elements of visual screening and clumps for wildlife habitat shall be considered in the marking of saplings where appropriate.

3. BRUSH:

- A. Brush, except for low growing types ( e.g., pinemat manzanita, squaw carpet ) will be treated by pruning within 30 feet of structures to remove ladder fuels or vertical continuity with nearby trees, and to break up horizontal continuity. The approach will be to try create a mosaic of openings among the shrub and brush layer. All dead brush within the 30 foot zone around structures should be cut.
- B. Continuity of brush cover and shrub material shall be broken-up and thinned by pruning beyond the 30 foot zone. The severity and extent of the treatment should be based upon fuel loading, slope, surrounding vegetation, distance from structures and travel routes, and fire fuel conditions. The openings created between shrubs shall be no more than 3 times the average height of the brush being treated. Adequate brush cover shall be maintained to protect soil, watershed, and wildlife values.

1) PRUNING PRACTICES:

- a. Root systems of brush shall not be pulled or "grubbed" out of the ground. Leaving root systems in place will reduce the potential for soil erosion.
- b. The height of pruning shall be no lower than 12 inches above the ground and the recommended height is 18 inches.

4. GRASSES AND WEEDS:

- A. Denso patches of dry grasses and weeds may be trimmed to remove the height and volume of these light fuels. Treatments should be completed late in the season after the grasses have produced seed and are starting to turn brown or dry out.

## Attachment D

North Lake Tahoe  
**Bonanza**  
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November 26, 2003

## Safety more important than TRPA

NLTB Editorial

What is more important, the clarity of Lake Tahoe or the health and safety of the people who reside there?

This is a question that has been brought to the forefront in the wake of the wildfires in Southern California and the apparent conflicts over defensible space and Tahoe Regional Planning Agency regulations.

It should be noted that TRPA's lack of leeway for projects that promote public safety became clear a little more than two years ago. At that time, the agency refused to budge on the coverage requirements for a sidewalk project on Oriole Way that was born out of the tragic death of a six-year-old boy. Some residents were stunned that TRPA, the most powerful political entity in the basin, makes no exceptions to its regulations for health and safety.

Fast forward to the present and the desire of fire officials and concerned homeowners to remove trees to reduce wildfire danger. To do an effective job of providing defensible space in this community, a large number of trees would need to be cut, which runs headlong into TRPA's scenic threshold, especially the new rules governing houses along the lake's shore.

While protecting Lake Tahoe's beauty is a noble goal, it should not come at the cost of human life. Wildfire is both a serious safety and environmental concern that must be dealt with now, as opposed to TRPA's glacially slow timetable.

What TRPA needs is one simple ordinance that says that issues of public health and safety take precedence over the agency's environmental regulations. This could be a simple, one-sentence statement that ensures that the agency cares as much about the people who live here as the environment.

It is time for TRPA to prove once and for all what is more important, humans or trees. Let's hope the agency makes the right decision.

Lake  
Vaca  
been

16

## Attachment C

## 5. NEEDLES, LEAVES, AND OTHER GROUND COVERS:

- A. Remove excessive concentrations of needles, cones and fallen limbs. Removal shall not leave areas of bare soil. A 1 - 2 inch layer of needles and decomposing organic material should be left as it is essential to soil production and prevention of erosion.

## FUELS DISPOSAL

1. Material that can be disposed of commercially, fuelwood and sawlogs, will be removed in accordance with the removal methods allowed by the TRPA Code of Ordinances Chapter 71, Tree Removal.
  2. Brush, saplings, branches, tops, and other chippable debris should be chipped. Wood chips can be spread on site as access and conditions allow EXCEPT in SBZ areas. The layer of chips should be no more than 2" deep. Chips may have to be hauled to another suitable location for disposal or use.
  3. If slash material cannot be chipped for various reasons, (e.g., no equipment access, chipper not available) it can be piled and burned as work progresses. Slash piles will not be placed in SBZ's.
- 1) DISPOSAL TIMEFRAME:
- a) All material shall be removed and properly disposed of within 15 days from its generation.

① Missing page  
on Tahoe ReGreen  
for Developed lots

END OF TAHOE REGREEN CRITERIA