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**MINUTES OF THE MEETING**  
**OF THE**  
**LEGISLATIVE COMMISSION'S COMMITTEE TO CONTINUE THE REVIEW OF PROGRAMS AND**  
**ACTIVITIES IN THE LAKE TAHOE BASIN**  
**(Assembly Concurrent Resolution No. 5 [File No. 124, *Statutes of Nevada 2001*])**  
**August 26, 2002**  
**Incline Village, Nevada**

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A special meeting of the Legislative Commission's Committee to Continue the Review of Programs and Activities in the Lake Tahoe Basin (Assembly Concurrent Resolution No. 5 [File No. 124, *Statutes of Nevada 2001*]) was held on Monday, August 26, 2002, commencing at 12:30 p.m. The meeting was held in The Chateau, 955 Fairway Boulevard, Incline Village, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda."

**COMMITTEE MEMBERS PRESENT:**

Senator Lawrence E. Jacobsen, Chairman  
Senator Mark E. Amodei  
Senator Maggie Carlton  
Assemblyman Greg Brower  
Assemblywoman Vivian L. Freeman

**COMMITTEE MEMBER ABSENT:**

Assemblyman John J. Lee

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Fred W. Welden, Chief Deputy Research Director, Research Division  
Kimberly A. Morgan, Chief Deputy Legislative Counsel, Legal Division  
Eileen O'Grady, Principal Deputy Legislative Counsel, Legal Division  
Deborah Rengler, Senior Research Secretary, Research Division

**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Commission's Committee to Continue the Review of Programs and Activities in the Lake Tahoe Basin (Assembly Concurrent Resolution No. 5 [File No. 124, *Statutes of Nevada 2001*])

Date and Time of Meeting: Monday, August 26, 2002  
12:30 p.m. to 4:30 p.m.

Place of Meeting: The Chateau  
955 Fairway Boulevard  
Incline Village, Nevada

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## A G E N D A

I. Introduction and Opening Remarks

Senator Lawrence E. Jacobsen, Chairman

II. Concerns of Citizens' Organizations Regarding Proposed Implementation of the Tahoe Regional Planning Agency (TRPA) "Shorezone Scenic Review System" and "2001 Threshold Evaluation Report"

A. Committee for Reasonable Regulation of Lake Tahoe

Bob Davidson, Director  
Robert Crowell, Legal Counsel  
Bob Wheeler, President

B. Tahoe Lakefront Owners' Association

Jan Brisco, Executive Director

C. Incline Village Board of Realtors and Sierra Nevada Association of Realtors

Sara J. Ellis, Government Affairs Director

III. Presentation on Proposed Implementation of the TRPA "Shorezone Scenic Review System" and "2001 Threshold Evaluation Report"

Juan Palma, Executive Director, TRPA  
John Hitchcock, Scenic Quality Threshold Program Manager, TRPA

IV. Public Testimony

\*V. Committee Discussion and Possible Action Relating to Proposed Implementation of the TRPA "Shorezone Scenic Review System" and "2001 Threshold Evaluation Report"

VI. Concluding Remarks and Adjournment

Senator Lawrence E. Jacobsen, Chairman

\*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Deborah Rengler at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the Incline Village General Improvement District, 893 Southwood Boulevard, Incline Village, Nevada and to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at [www.leg.state.nv.us](http://www.leg.state.nv.us).

## **INTRODUCTION AND OPENING REMARKS**

Chairman Jacobsen called the meeting to order at 12:45 p.m. and welcomed those present. He acknowledged the presence of dignitaries in the audience without formal introductions. The Committee members and staff introduced themselves.

Although the final regular meeting of the Committee was held on May 10, 2002, Chairman Jacobsen indicated additional testimony is to be taken at this special meeting relating to the Tahoe Regional Planning Agency's proposed scenic threshold ordinance.

## **CONCERNS OF CITIZENS' ORGANIZATIONS REGARDING PROPOSED IMPLEMENTATION OF THE TAHOE REGIONAL PLANNING AGENCY (TRPA) "SHOREZONE SCENIC REVIEW SYSTEM" AND "2001 THRESHOLD EVALUATION REPORT"**

### ***Robert Crowell***

Robert Crowell, Legal Counsel, Committee for Reasonable Regulation of Lake Tahoe (CRRLT), stated the CRRLT is a recently formed organization of concerned homeowners residing in the Lake Tahoe Basin. He stated the CRRLT is alarmed by the TRPA staff's proposal of certain new regulations ostensibly designed to address the scenic equilibrium of the Basin, and particularly, how those regulations will affect the homeowners' views and property values. Over 20 years ago, an amendment to the Tahoe Regional Planning Compact (Compact) raised the issue of scenic thresholds. Since May 2002, he stated, the TRPA proposed adopting regulations to impose a visual magnitude standard for new homes and structures with non-exempt repairs or remodels. At the May 10, 2002, legislative meeting, the TRPA staff reported it was optimistic the new visual magnitude criteria would be completed in June 2002. It was Mr. Crowell's opinion the staff created the new criteria as a rule to be adopted by the Governing Board without:

- Conducting an analysis of which homes or properties would or would not be in compliance if the rules were adopted;
- A scientific analysis that links the visibility of the home to the degradation of the environment;
- Consideration of the economic impact these rules may have on the homeowner as well as local government; and
- Completing an Environmental Impact Study (EIS) to determine whether the new rules will have a significant effect on the environment.

On behalf of the CRRLT, Mr. Crowell respectfully asked the Committee to request that the TRPA not process this new visual impact system but rather the TRPA abide by its existing rules on this subject.

### ***Bob Davidson***

Bob Davidson, Director, CRRLT, reading from a prepared statement (Exhibit A to these minutes), spoke in opposition to the implementation of the TRPA “Shorezone Scenic Review System” and the “2001 Threshold Evaluation Report.” He presented his opinion relating to nine issues of concern which he stated as follows:

1. This scenic threshold issue is more serious than is being portrayed by the TRPA regulators;
2. It affects more Nevada citizens than just the property holders in the shorezone;
3. The proposed system is not based on a real problem, but on constructs generated by TRPA staff and interest groups;
4. These scenic proposals create real, present, measurable damages and losses;
5. The economic impact of the proposed regulations would seriously harm those in the Basin and in the surrounding areas;
6. This proposal involves massive illegal and uncompensated takings;
7. The proposed scenic system does not conform to an equilibrium between human and natural endowments as set forth in the Compact;
8. The process employed by the TRPA in developing the scenic regulatory system is fatally flawed and not in accord with the fundamental protections the State of Nevada has found necessary to protect its citizens; and
9. The TRPA can easily make quick, meaningful progress toward its scenic threshold goals without taking valuable property rights from Nevada citizens without compensation.

In closing, Mr. Davidson asked the Committee to recommend the TRPA do the following:

- Revoke the portion of the 2001 Threshold Report and Executive Summary dealing with scenic issues pending further review by staff with adequate public review and comment;
- Develop a scenic improvement program focusing on the rapid, substantial improvement, which can be made with colors, textures, and related design modification, while strictly avoiding any provisions calling for confiscation of property rights by virtue of view restrictions;
- Immediately put into place, for this scenic matter and for all future regulatory actions, the appropriate fundamental public protections of the type set forth in the Nevada Administrative Procedures Act; and
- Remind the TRPA that it may not commence use or enforcement of the proposed scenic ordinance or any other ordinance unless and until it is officially adopted.

### ***Bob Wheeler***

Bob Wheeler, President, CRRLT, appeared before the Committee to support the previously outlined CRRLT positions, but did not testify.

### ***Jan Brisco***

Jan Brisco, Executive Director, Tahoe Lakefront Owners’ Association, also spoke in opposition to the implementation of the TRPA “Shorezone Scenic Review System” and the “2001 Threshold Evaluation Report,” providing a memorandum (Exhibit B) outlining the concerns of the Association. She noted the Bistate Compact, which is TRPA’s governing document, recognizes there are significant public and private investments and takes into consideration that the natural and scenic beauty of Lake Tahoe should be balanced against the built and man-modified environment. Ms. Brisco said it is unreasonable to assume that any property at Lake Tahoe, with the exception of those with large

setbacks or natural screening, could comply with the proposed system. She shared examples of numerous properties explaining how each would score on the proposed system (Exhibit C) and expressed her conclusion that 90 percent of the existing shoreline homes will be noncompliant under the new rules.

Ms. Brisco presented a number of recommendations to achieve the equilibrium between the natural and built environments:

1. Develop a master plan system that encompasses the entire Lake from shore to ridge with a cumulative impact analysis;
2. Establish an incentive-based approach to encourage property owners to develop their own plans;
3. Place focus on unique sites, commercial properties, condominium groups, homeowner associations, marinas, and restaurants; and
4. Acknowledge that exceptions for public projects constitute an unfair and biased system.

Expanding on her recommendations, Ms. Brisco said acceptable exceptions should include: (1) shorezone and upland repairs, and (2) projects not visible on a lakefront property such as a garage on the backside of a house that would not be seen. She emphasized the incentive-based approach should be applied fairly and consistently and must be understandable to the average property owner. A comprehensive analysis is necessary before any program is implemented, and this analysis should include a study of cumulative impacts associated with this type of proposal.

Continuing, Ms. Brisco stated when the TRPA's Regional Plan was adopted in 1987, a fish study was expected to be completed by 1989. This study would enable new pier construction to begin again after the long prohibition beginning in 1982. The study is not completed because staff requested that the cumulative impacts of such a program be studied. Ms. Brisco stated that the proposed "Shorezone Scenic Review System" and the "2001 Threshold Evaluation Report" deserves the same level of scrutiny to be consistent.

### ***Sara J. Ellis***

Sara J. Ellis, Government Affairs Director, Incline Village Board of Realtors and Sierra Nevada Association of Realtors, commented that many of the contentious issues included in the most recent ordinance adopted by the TRPA Advisory Planning Commission in July 2002 were not included in previous versions of the proposed "Shorezone Scenic Review System" and the "2001 Threshold Evaluation Report." She reported the proposed system leaves several questions unanswered for homeowners and homebuyers. Ms. Ellis remarked staff has indicated that upon adoption of the ordinance, property owners who have obtained permits but not begun projects (generally referred to as "pipeline projects") will be required to meet the new standards. She noted this was retroactivity in its fiercest form.

Continuing, Ms. Ellis emphasized that it is a choice to live and make a living in the Lake Tahoe Basin and stewardship is part of the deal. The realtors support environmental improvement projects, water and air quality programs, and erosion control activities. Their participation in the scenic discussions is directed towards adoption of a regulatory system that is easily understood, administered, and enforced. Finally, the Fifth Amendment to the *United States Constitution* makes no distinction of the size of homes and property. To the contrary, it saw the granting and protection of private property rights as a great social and democratic equalizer. In closing, Ms. Ellis stated to "carve out a subsection of a subsection of a subsection" of property and home ownership (referring to the shorezone) is a violation of that equalization.

Assemblyman Brower expressed his concern over the lack of a clear explanation of why there is a problem. He remarked he had never heard there was a scenic problem until a few months ago. Continuing, he said it appears the economic impact has not been considered in any meaningful way by the TRPA. Finally, the private property rights issue is a serious component of these regulations; they need to be addressed and considered in this context. Mr. Brower said he has not heard a satisfactory explanation as to how private property rights will be addressed and he looked forward to the presentation by the TRPA.

**PRESENTATION ON PROPOSED IMPLEMENTATION OF THE TRPA**  
**“SHOREZONE SCENIC REVIEW SYSTEM” AND**  
**“2001 THRESHOLD EVALUATION REPORT”**

*The Honorable Dean Heller*

The Honorable Dean Heller, Secretary of State of Nevada, and Chairman of the TRPA, commented that in 1968 it was estimated that, without proper regulation, there would be 600,000 residents in the Lake Tahoe Basin and a freeway would encircle the Lake. He indicated that these expectations have not materialized and the quality of life of those living around the Lake has increased because of the work and efforts of the TRPA in its administration of the Compact.

As the Governing Board Chairman, Mr. Heller reported that the Board has not taken action on the proposed “Shorezone Scenic Review System.” Although scheduled to be adopted on August 28, 2002, that action has been postponed for a month. A copy of a notice (Exhibit D) of the TRPA Public Hearing Scheduled for September 25, 2002, was provided without testimony by Pam Drum, Public Affairs Coordinator, TRPA. He acknowledged there are groups standing in opposition to the proposed system, while others say it does not go far enough. The TRPA takes its direction from the Compact itself. The proposed system is presented in the best interests of the Lake. Mr. Heller agreed more work could be done, but no compromise has been evident.

*Juan Palma*

Juan Palma, Executive Director, TRPA, indicated that a number of the Governing Board members were in the audience, as well as TRPA staff and legal counsel. Quoting author Stephen Covey, Mr. Palma said, “Seek first to understand and then to be understood.” He commented that the TRPA is sincerely attempting to understand exactly what the issues are. As the TRPA seeks to understand and respond to the concerns and questions of the citizens, it is time for the TRPA to be understood. He asked the Committee and the audience to keep an open mind.

In reference to a controversial electronic mail (Exhibit E) sent out by Mr. Palma, he indicated he alone was responsible and that, in retrospect, he would handle the situation differently if given the opportunity.

Mr. Palma read Article I, Section A, subsection 10, and Section B of Public Law 96-551, Tahoe Regional Planning Compact, approved on December 19, 1980:

*(10) In order to preserve the scenic beauty and outdoor recreational opportunities of the region, there is a need to insure an equilibrium between the region’s natural endowment and its manmade environment.*

*(b) In order to enhance the efficiency and governmental effectiveness of the region, it is imperative that there be established a Tahoe Regional Planning Agency with the powers conferred by this compact including the power to establish environmental threshold carrying capacities and to adopt and enforce a regional plan and implementing ordinances . . . .*

Continuing, Mr. Palma remarked it took until 1982 to develop the nine thresholds, which were approved unanimously by the Governing Board. Between 1982 and 1987, litigation prevented activity at the Lake. Upon completion of that litigation, an agreement was reached—the 20-year Regional Plan that governs all activities in the Lake Tahoe Basin. The ordinances that regulate those activities were developed out of that Regional Plan. Since that time, there has been progress related to many of the thresholds, but some of those thresholds have actually declined. He reported the “2001 Threshold Evaluation Report” contains 130 recommendations to improve the environment in Lake Tahoe. Out of those 130 recommendations, the Governing Board has approved 128. Two of those recommendations are pending, including the “Shorezone Scenic Review System” under discussion. A memorandum (Exhibit F) dated August 6, 2002, to the TRPA Advisory Planning Commission, outlines proposed amendments, which constitute the “Shorezone Scenic Review System.”

Further, Mr. Palma said TRPA is aware there is a balance between the environment and the economy. It is not the environment against the economy. In order to make findings and approve projects in the future, there must be a system in place that would allow the TRPA to accomplish those tasks. He further expressed his opinion that

resolution to the problems being addressed is possible.

### ***John Hitchcock***

John Hitchcock, Scenic Quality Threshold Program Manager, TRPA, submitted copies of a PowerPoint presentation (Exhibit G) to enable the Committee members to follow along. To begin his testimony, he also read selected portions of the Compact:

*Article I (a)(1) The waters of Lake Tahoe and other resources of the region are threatened with deterioration or degeneration, which endangers the natural beauty and economic productivity of the region.*

*Article I (a)(6) Maintenance of the social and economic health of the region depends on maintaining the significant scenic, recreational, educational, scientific, natural and public health values provided by the Lake Tahoe Basin.*

*Article I (a)(10) In order to preserve the scenic beauty and outdoor recreational opportunities of the region, there is a need to insure an equilibrium between the region's natural endowment and its manmade environment.*

*Article II (i) "Environmental threshold carrying capacity" means an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region. Such standards shall include but not be limited to standards for air quality, water quality, soil conservation, vegetation preservation and noise.*

*Article V (c)(3) A conservation plan for the preservation, development, utilization, and management of the scenic and other natural resources within the basin, including but not limited to soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.*

Mr. Hitchcock said he would be concentrating on the shoreline scenic corridors. He noted that the maintenance of the Basin's scenic quality depends on careful regulation of the intensity, location, and type of land use. With this in mind, three goals have been established:

1. Maintain and restore the scenic qualities of the natural appearing landscape;
2. Ensure preservation and enhancement of the natural features and qualities of the region, providing public access to scenic views, and enhance the quality of the built environment; and
3. Establish regional building and community desire criteria to ensure attainment of the scenic thresholds.

Using a number of maps and photo examples, Mr. Hitchcock explained that the problem of visual dominance moving toward the "built" environment had first been identified in 1991, again in 1996, and finally as part of the 2001-2002 evaluation. A negative trend was demonstrated related to shoreline units out of attainment. He remarked the current qualitative system of review is not effective in its evaluation of the basic design elements of color, form, line, scale, and texture in contrast to the existing natural landscape. Mr. Hitchcock remarked that 27 meetings with stakeholders in the Basin have been held to discuss scenic issues.

Continuing, Mr. Hitchcock stated the proposed review system would implement the Visual Magnitude/Contrast Rating System, which assigns numerical values to the design elements. He indicated that it is not a new procedure; the TRPA adopted this system in 1992 as part of the design guidelines for accessing impact from roadway scenic corridors. With slight modifications, this system is being proposed for use to evaluate properties along the shoreline. The Contrast Rating Score rates color contrast, perimeter visibility, surface plan, and texture. The Visual Magnitude is the amount of square footage visible from the Lake.

Based on the proposed system, Mr. Hitchcock outlined how property owners would be expected to bring properties into scenic threshold attainment:

- New project on a vacant parcel—Full compliance;
- Regular maintenance and repair, including in-kind replacement—No requirements;
- Exempt and qualified-exempt activities—No scenic requirements; and
- Changes in structure color or placement of metal roof—Compliance with color standards.

Juan Palma, previously identified herein, emphasized that many activities do not require a TRPA permit and can be undertaken with simple documentation submitted as to the extent of the project. Only vacant parcels will be required to attain full compliance.

Questioned as to when regular maintenance or repair becomes a project that triggers threshold requirements, Mr. Hitchcock answered, “If it results in expansion of the structure and does not qualify as an exempt activity, then it becomes a project subject to scenic requirements.”

Asked how many buildable vacant parcels exist within the shorezone, Mr. Hitchcock noted there are 78 lots around the Lake. While the system applies to all properties within the Basin, he remarked a resident is not subject to any scenic requirements if no work is performed on their home. However, there are currently 922 single-family homes within the shorezone that could be subject to scenic requirements if projects were proposed. This constitutes 63 percent of the shoreline properties.

Mr. Hitchcock stated the threshold requirements also apply to commercial and public projects. He indicated there are options, not exemptions, available to projects to earn credits based on mitigation of the increased visual magnitude. Asked whether residential projects were treated the same as commercial and public projects under the proposed review system, Mr. Hitchcock answered, “No.”

As a result of the workshops and input from various stakeholders, Mr. Hitchcock indicated the following changes have occurred in the ordinances (See Exhibit F):

- Partial compliance (0-50 percent);
- Increased maximum limit on visible square footage;
- Exemptions for structures that predate 1950;
- In-kind maintenance and repair exemptions;
- Metal roofs permitted;
- Third-party expert review;
- Alternative scenic panel expert review for one year;
- Options for tourist/commercial projects;
- Different levels of review;
- Mitigation options for large projects;
- Additional square footage of exposed façade for projects on larger parcels;
- Master plan options for marinas;
- Provisions for litigation settlements or prior approvals;

- Provisions for unique site conditions; and
- One-year performance evaluation of the new system.

Mr. Hitchcock explained a number of photos and how each complies with scenic requirements. In summary, he emphasized the Compact requires the TRPA to protect the scenic quality of Lake Tahoe. The TRPA Governing Board has determined that the scenic quality is degrading along the shoreline of Lake Tahoe. In conclusion, Mr. Hitchcock expressed his opinion that, after 27 meetings, a reasonable solution has been proposed.

Asked what would be required of homeowners upon adoption of the proposed system, Mr. Hitchcock said they would not be affected until a mechanism in the ordinance language, like a proposed change to the structure, was triggered. There is no retrofit program.

While agreeing that the proposed scenic requirements do not affect the water quality, Mr. Hitchcock noted that the scenic threshold is not treated any differently than the other eight outlined in the Compact.

Mr. Hitchcock indicated he is willing to conduct further meetings on the topic and to accept additional input until his report is compiled.

### **PUBLIC TESTIMONY**

#### ***Elliot Weinstein***

Elliot Weinstein, resident of Crystal Bay, Nevada, questioned whether a formal economic impact study had been completed.

Mr. Palma reported the in-house economist has not completed the economic impact analysis to date. Parameters need to be discussed as to what the public is expecting to see in the analysis.

Mr. Heller interjected his opinion that the economic issue is a “red herring” brought forward at the 11<sup>th</sup> hour in an effort to delay the process. He said that, based on conversations with the Washoe County Assessor’s Office, the Assessor has taken no position on this issue. He added that previous testimony related to decreased property values and takings are unsubstantiated and market value will continue to be determined by supply and demand. Increasing the scenic beauty of Lake Tahoe will not decrease property values, he said.

Mr. Weinstein commented that the proposed regulations were issued in May; the public became aware of them in June. There have not been 27 meetings since the regulations were issued. In his opinion, the public is not being heard.

#### ***Robert Scott***

Robert Scott, resident of Carnelean Bay, California, remarked he lived across the street from Larry Sevison, TRPA Board Member, who is building a “monster” house and cutting down trees. He asked why the rules do not apply to Mr. Sevison, Nevada’s Department of Transportation, or California’s Department of Transportation. Mr. Scott stated he would promote a ballot initiative to remove the TRPA.

#### ***Sharon Croom***

Sharon Croom, member of CRRLT and resident of Incline Village, Nevada, asked the Committee to listen to the public comments.

Senator Amodei referenced the first sentence of the TRPA Mission Statement where it states “The Tahoe Regional Planning Agency (TRPA) leads the cooperative effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region.” He went on to quote one qualification of the Executive Director, which states, “requires successful consensus building experience in a highly collaborative environment.” As stipulated in A.C.R. 5, the Oversight Committee has the responsibility to “review the . . . activities, responsiveness and

accountability of the Tahoe Regional Planning Agency.” That is the reason the Committee was reconvened, he added.

Continuing, Senator Amodei questioned both Mr. Heller and Mr. Palma as to whether it was “set in stone” to adopt the proposed Visual/Magnitude regulations at the upcoming meeting in September 2002. Both answered, “No.”

Further, Senator Amodei asked John Marshall, TRPA legal counsel, whether anything resembling the Nevada Administrative Procedure Act found in NRS 233B applies to the operations of the TRPA. Mr. Marshall answered affirmatively.

Mr. Heller stated that while he was not “set in stone” regarding adoption of the proposed regulations, the public has not been willing to negotiate. He said that he is waiting for alternatives.

In addition, Senator Amodei remarked the TRPA should take advantage of current concern and consider further work on the proposed regulations . . . leading the cooperative effort to successful consensus building in a highly collaborative environment. If that does not work, then everyone can “lawyer the thing to death” for the next 7 to 10 years which may result in another Supreme Court case. The objective of this meeting, he said, is to attempt to determine the issue and facilitate further discussions.

Assemblyman Brower reiterated his concern regarding how the proposed regulations might affect private property rights of homeowners in the Lake Tahoe Basin. He emphasized these are fundamental rights that cannot be taken away in the name of environmental improvements.

### ***John Marshall***

John Marshall, Legal Counsel, TRPA, commented that when forming public policy almost every regulation affects private property rights. While there may be impacts on individuals, all policy is created for the benefit of the community at large supporting certain public values. The Fifth Amendment to the *United States Constitution* only permits the taking of private property when compensation is paid. It does not say that regulations cannot affect private property. Respectfully disagreeing with previous testimony, Mr. Marshall said the scenic regulations proposed by the TRPA do not result in an unconstitutional taking of private property.

Senator Carlton commented briefly on a correlation between a historic neighborhood’s restrictions and those facing property owners in the Lake Tahoe Basin.

### ***Jim Galloway***

Jim Galloway, Washoe County Commissioner and TRPA Governing Board Member, spoke in opposition to the current proposed “Shorezone Scenic Review System.” He called attention to the following documents submitted to Committee members at the conclusion of his testimony:

- Exhibit H—A memorandum dated August 22, 2002, to TRPA Governing Board Members and Nevada TRPA Legislative Oversight Committee Members; and
- Exhibit I—A memorandum dated August 5, 2002, to Jim Galloway, Washoe County Commissioner, from Madelyn Shipman, Assistant District Attorney, Washoe County District Attorney’s Office.

He stated he was appalled that the TRPA had considered asking property owners to withdraw approximately 150 applications pending the adoption of the proposed scenic regulations. Holding up a copy of the ordinance, which can be accessed within TRPA’s Web site (<http://www.trpa.org/Ordinances/Code.html>), Mr. Galloway commented it is a constantly shifting ordinance and outlined a number of fundamental flaws:

1. The proposed ordinance lacks a sunset clause and has been presented prior to completion of the Shorezone EIS and the 30-year update of the Regional Plan.
2. Retroactive obstacles should not be thrown in the path of a building permit in the “pipeline.”

3. Visual magnitude, fire hazards, landscaping, screening, trees, and “triggering” mechanisms that are wrong or too low are just a few of the content problems.

In his opinion, Mr. Galloway stated the TRPA “2001 Threshold Evaluation Report” is interpretive but has been published as fact in an effort to expedite the approval process. He asked that the Oversight Committee review the management of the TRPA.

Assemblyman Brower referenced a letter from the six fire agencies surrounding Lake Tahoe (Exhibit J) and asked whether any of the respective chiefs were available for comment. There being none, Mr. Brower noted the letter asked the TRPA to “seek input from fire safety experts and to rank fire safety among its greatest concerns.”

### ***Chuck Otto***

Chuck Otto, member of CRRLT and resident of Incline Village, shared three photographs taken from local newspapers noting that August 12, 2002, was the first time the proposed scenic regulations received media attention. He expressed his view that, while there may have been 27 meetings with stakeholders, the visual magnitude issue did not become a concern until July 2002. Mr. Otto stated this is not a “monster house” issue. Besides the 922 lakeshore homes, there could be three or four times that many homes up the hill that will be affected by the proposed regulations. Efforts to bring many of the small homes into compliance will cost those who can least afford it the most. Mr. Otto reported that a petition had been started on August 21, 2002, to kill the proposed “Shorezone Scenic Review System” and the “2001 Threshold Evaluation Report.” In closing, he said it is incomprehensible to make a decision without knowing the economic consequences.

### ***Gregg Lien***

Gregg Lien, Tahoe Sierra Preservation Council, Tahoe City, California, disclosed he had attended all 27 meetings of the TRPA on this issue, but expressed his opinion that further work was needed. He remarked that moving ahead with unanswered questions led to a moratorium 20 years ago. There is a real possibility that a moratorium could be imposed if the TRPA cannot make its findings in relation to the thresholds. Twenty years ago, the main focus was water quality; only lately has scenic quality become a major issue. The process is important but it must be credible. Mr. Lien made the following observations and recommendations:

1. The process is too subservient to the Visual Magnitude concept; it is a great “tool,” but a lousy “master.”
2. A strong third-party panel to independently review properties with other tools is essential.
3. Separate commercial and tourist accommodation projects from residential proposals.
4. Look at this as an interim program as studies are completed; use it as a tool but not exclusively.
5. Any system must look at the potential for loss of property value; encourage good design without loss of economic value.
6. Allow the creative spark, the “good,” architecturally rendered projects to go ahead.

In closing, Mr. Lien expressed his opinion that the current system is working toward visual improvement and change is not needed. One impact of the new ordinance might actually prevent upgrades, he added.

### ***Phil Elbert***

Phil Elbert, resident of Incline Village, read from a prepared statement (Exhibit K) and spoke in opposition to the proposed “Shorezone Scenic Review System.” Two issues that should be concerns for the TRPA are the high-density population growth requiring additional governmental services and expenditures, and maintenance of forests to avoid potential devastating fires. Mr. Elbert expressed his opinion that TRPA needs to reassess its priorities.

### ***Cary Sarnof***

Cary Sarnof, resident of Zephyr Cove, Nevada, spoke briefly on the July 2002 fire near Heavenly Ski Resort. In his opinion, required screening would result in an unrestricted collection of trees around homes and more potential fire hazard for those in the Basin.

### ***Dale Denio***

Dale Denio, resident of Incline Village and lakefront property owner, provided photographs of four homes (Exhibit L) which he said exhibit failing color contrast scores. He indicated that, while the TRPA maintains 27 meetings have been conducted on the proposed “Shorezone Scenic Review System,” he had never received any notices of such meetings. He also expressed his conclusion that the Visual Magnitude/Contrast Rating System is skewed severely to limit the visibility of the house. Mr. Denio also submitted a 4-page document (Exhibit M) outlining his summary of the procedural steps to determine a structure’s Visual Magnitude/Contrast score.

Continuing, Mr. Denio said the TRPA needs to determine the environmental impact planting in the shorezone will have on water quality. In addition, he noted his opinion that the third-party review process is not a fair process if the TRPA selects those to serve on the panel.

### ***Terry Ward***

Terry Ward, resident of Incline Village, informed the Committee that she took a Global Positioning Satellite locator and a navigation map and traveled the entire distance of the lakeshore—103 miles. She shared a map indicating three areas of shoreline: (1) beach, rock, and trees with no structures; (2) commercial developments, and (3) residential homes. Based on her subjective analysis, there are only three miles of architectural structures on the shore. Ms. Ward submitted for the record, a series of 27 photographs (Exhibit N) taken from 300 feet offshore as she traveled the Lake. She asked that the proposed “Shorezone Scenic Review System” be revoked.

### ***Rochelle Nason***

Rochelle Nason, Executive Director, League to Save Lake Tahoe, remarked that the League has been involved in this thorough process and expressed her opinion that the interests of private property owners have been vigorously and effectively represented throughout the discussions. The League has wavered in its support of the proposed “Shorezone Scenic Review System” because it is considered inadequate to protect the scenic quality at Lake Tahoe.

Ms. Nason outlined her view of the responsibilities and procedures of the TRPA relative to this situation. The TRPA is required by law to uphold a regional plan that achieves and maintains the environmental threshold carrying capacities. When the TRPA approves any particular project, it is required by law to make a finding that the project will not adversely affect its ability to achieve and maintain those thresholds. Thus, if as TRPA has found, its current regulations are inadequate to protect the scenic quality threshold, then TRPA loses the legal ability to approve any project at all. What this set of regulations attempts is to allow the TRPA to continue permitting projects to be built. Whether it is adequate over the next few years, the League is skeptical; but at this point, the League is supportive of the ordinance as an interim measure to avoid the current situation, which is absolutely illegal in her opinion.

### ***Tom Trimble***

Tom Trimble, resident of Agate Bay, California, said his major contention is that the committees involved in this process should include residents of the area. At a recent Advisory Planning Commission meeting, two lakefront owner-members, declined from participating in the vote. That is wrong; those members have the most interest in shoreline policies, he stated.

### ***Dale Akers***

Dale Akers, resident of Incline Village, stated that because of the seriousness of this issue, he asked the Committee to withhold funding from TRPA until the proposed “Shorezone Scenic Review System” is withdrawn.

### ***Richard Witzig***

Richard Witzig, resident of Incline Village, said he has completed research regarding the fire service in the Lake Tahoe Basin. He remarked the forest is now ten times denser than in the Comstock period and expressed his conclusion that planting trees to screen a structure in the shorezone is a fire hazard. He emphasized his opinion that the fire district is the only agency to make policy regarding fire danger.

***Michael Burguin***

Michael Burguin, Tahoe Area Sierra Club, expressed his opinion that “topping” trees to enhance the view in an effort to increase property values was absurd. Continuing, Mr. Burguin commented that numerous compromises have already been incorporated into Visual Magnitude/ Contrast Rating system. He stated that the system will work; it needs to be tried. He opposed the provisions that allowed a torn down structure to be rebuilt without 100 percent compliance and the option to mitigate negative impacts through offsite actions if a property cannot attain an appropriate score.

***Daniel C. Holler***

Daniel C. Holler, Douglas County Manager, submitted written comments (Exhibit O). He agreed that compromises have been made. However, he said, the TRPA needs to continue discussions to allow the public more time to address the issues. In closing, he recommended it is better to err on the side of taking more time to end up with a better policy.

***Catherine Colma***

Catherine Colma, resident of Incline Village, voiced concern about structures that are in nonconformance. She said this could affect a homeowner’s ability to obtain loans. Another issue not considered was solar applications. Lake Tahoe is one of the top locations in the United States for the use of solar power. Planting more trees and shrubs reduces the capability of solar applications in their efforts to reduce fossil fuel consumption. Finally, Ms. Colma said nature is full of color, charcoal black or brown is only seen after a fire.

The following exhibits were submitted without remarks:

Exhibit P is a prepared statement provided by Jerry Yeazell, Zephyr Cove.

Exhibit Q is a copy of a *Las Vegas Review-Journal* editorial dated August 24, 2002, provided by Pam Drum, Public Affairs Coordinator, TRPA, Zephyr Cove.

Exhibit R is a copy of a *Nevada Appeal* Opinion drawing dated August 25, 2002, provided by Pam Drum, Public Affairs Coordinator, TRPA, Zephyr Cove.

**COMMITTEE DISCUSSION AND POSSIBLE ACTION RELATING TO PROPOSED IMPLEMENTATION  
OF TRPA “SHOREZONE SCENIC REVIEW SYSTEM” AND  
“2001 THRESHOLD EVALUATION REPORT”**

Assemblyman Brower said the Oversight Committee cannot pass judgment on the proposed regulations but it does oversee the operations of the TRPA. Previous to this meeting, it was his opinion that perhaps the proposed regulations were based on a flawed premise, but he has been persuaded that is wrong. However, he has not been convinced that the fundamental premise upon which the regulations are based is scientifically sound. He said he is troubled by the fact that no economic analysis has been completed. In addition, insufficient consideration has been given to the fire issues raised at this meeting. Further, he expressed his opinion that there is too much disagreement, despite having a written document to review, regarding what “triggers” compliance. He also highlighted that there are still differing opinions among TRPA staff and homeowners as to how the regulations will be interpreted. He urged the Committee to recommend to the TRPA that no further formal action be taken on this proposed regulation until the unanswered questions can be resolved, until the concerns of the homeowners are considered, and until the process can be furthered with respect to additional discussion in an effort to compromise.

Senator Amodei agreed with the view that there is a need for more public participation. He said he would not

presume to tell the TRPA what to do with the regulation, because he is not a planner. He would not presume to tell those who live in the Basin what to do with respect to their homes, because he is not a resident. His concern is that he feels there has not been an adequate amount of public process before this regulation goes forward. He recommended that the Committee recess pending the call of the chair for the purpose of overseeing the continuing public outreach and attempts at coming to a consensus on this issue before it goes formally before the TRPA Governing Board for approval.

### **CONCLUDING REMARKS AND ADJOURNMENT**

Chairman Jacobsen concurred with comments made by his colleagues. He thanked the Incline Village General Improvement District for arranging the use of The Chateau facilities for the meeting.

Chairman Jacobsen recessed the meeting at 4:15 p.m.

Exhibit S is the "Attendance Record" for this meeting.

Respectfully submitted,

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Deborah Rengler  
Senior Research Secretary

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Fred W. Welden  
Chief Deputy Research Director

APPROVED BY:

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Senator Lawrence E. Jacobsen, Chairman

Date: \_\_\_\_\_

### **LIST OF EXHIBITS**

Exhibit A is a copy of the prepared testimony of Robert Davidson, Director, Committee for Reasonable Regulation of Lake Tahoe, Incline Village, Nevada, provided by Mr. Davidson.

Exhibit B is a copy of a letter dated August 19, 2002, to Dean Heller, Chairman, Tahoe Regional Planning Agency, from John L. deBenedetti, President, Tahoe Lakefront Owners' Association, Tahoe City, California, provided by Jan Brisco, Executive Director, Tahoe Lakefront Owners' Association.

Exhibit C is a series of waterfront property photos provided by Jan Brisco, Executive Director, Tahoe Lakefront Owners' Association, Tahoe City, California.

Exhibit D is a notice of the Tahoe Regional Planning Agency Public Hearing Scheduled for September 25, 2002, provided without testimony by Pam Drum, Public Affairs Coordinator, Tahoe Regional Planning Agency, Zephyr Cove, Nevada.

Exhibit E is a copy of an electronic mail dated August 7, 2002, from Juan Palma, Executive Director, Tahoe Regional Planning Agency, Zephyr Cove, Nevada.

Exhibit F is a memorandum dated August 6, 2002, to the TRPA Advisory Planning Commission.

Exhibit G is copy of a PowerPoint presentation provided by John Hitchcock, Scenic Quality Threshold Program Manager, Tahoe Regional Planning Agency, Zephyr Cove, Nevada.

Exhibit H is a memorandum dated August 22, 2002, to TRPA Governing Board Members and Nevada TRPA Legislative Oversight Committee Members, provided by Jim Galloway, Washoe County Commissioner and TRPA Governing Board Member, Reno, Nevada.

Exhibit I is a memorandum dated August 5, 2002, to Jim Galloway, Washoe County Commissioner, from Madelyn Shipman, Assistant District Attorney, Washoe County District Attorney office, provided by Mr. Galloway.

Exhibit J is a copy of a memorandum dated August 23, 2002, to Dean Heller, Chairman, Tahoe Regional Planning Agency, Zephyr Cove, Nevada, from the six fire agencies surrounding Lake Tahoe, provided by Assemblyman Greg Brower.

Exhibit K is the prepared statement of Phil Elbert, Incline Village, Nevada, provided by Mr. Elbert.

Exhibit L is a document titled "Visual Magnitude/Contrast Rating Procedural Steps," provided by Dale Denio, Incline Village, Nevada.

Exhibit M is a series of lakeshore property photos, provided by Dale Denio, Incline Village, Nevada.

Exhibit N is a memorandum dated August 26, 2002, to Legislative Commission's Committee To Continue The Review Of Programs And Activities In The Lake Tahoe Basin, from Daniel C. Holler, Douglas County Manager, Board of County Commissioners, Minden, Nevada, provided by Mr. Holler.

Exhibit O is a series of 27 photographs of lakefront properties taken 300 yards offshore provided by Catherine Colma, Incline Village, Nevada.

Exhibit P is a statement provided without testimony by Jerry Yeazell, Zephyr Cove, Nevada.

Exhibit Q is a copy of a *Las Vegas Review-Journal* editorial dated August 24, 2002, provided without testimony by Pam Drum, Public Affairs Coordinator, Tahoe Regional Planning Agency, Zephyr Cove, Nevada.

Exhibit R is a copy of a *Nevada Appeal* Opinion drawing dated August 25, 2002, provided without testimony by Pam Drum, Public Affairs Coordinator, Tahoe Regional Planning Agency, Zephyr Cove, Nevada.

Exhibit S is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library at (775) 684-6827.