Regional Government for Lake Tahoe

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Recommended Citation
Gary J. Spradling, Regional Government for Lake Tahoe, 22 Hastings L.J. 705 (1971). Available at: https://repository.uchastings.edu/hastings_law_journal/vol22/iss3/10

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On December 18, 1969, the Congress of the United States ratified the Tahoe Regional Planning Compact. The compact, which had previously been adopted by California and Nevada, created the Tahoe Regional Planning Agency (TRPA), a bi-state organization with broad powers to develop and enforce a plan of orderly development and resource control in the Lake Tahoe basin.

Creation of TRPA gives official recognition to the need for comprehensive planning in the Lake Tahoe basin in order to preserve the area's natural beauty and irreplaceable environment. In recent years Lake Tahoe has changed from an isolated summer resort into a year-round residential and recreation area. The task of regulating the development of the basin offers a unique challenge to the regional government concept. A brief overview of the legal and political problems attending the creation of TRPA and the difficulties it faces in fulfilling its legislative mandate will illustrate the general obstacles to any future regional authority that may be created for the conservation of natural resources.

I. The Uniqueness of Lake Tahoe

Controlling the development of the Lake Tahoe basin offers a challenge to any regional authority. The basin covers a region of more than 500 square miles. The 200-square mile lake is surrounded by mountain ranges and a gently sloping rim suitable for moderate human occupancy and development. Within this region are portions of two California


2. CAL. GOV'T CODE §§ 66800-01; NEV. REV. STAT. §§ 277.190-200 (1968) [hereinafter cited as TRPA].

3. CAL. GOV'T CODE § 66801, art. III(a); NEV. REV. STAT. § 277.200, art. III(a) (1968).

4. REPORT OF THE LAKE TAHOE JOINT STUDY COMMITTEE 9 (1967) [hereinafter cited as JOINT STUDY COMMITTEE]. This committee was created in 1965 by the concurrent legislation of California (SB 149) and Nevada (AB 552). It was a nine-man committee, four from each state and a ninth member-at-large selected by these eight, required to study and develop recommendations on an area-wide agency to provide for orderly development of the Lake Tahoe basin. CAL. STAT. 1965, ch. 1231, § 3.
Management of the human population within the basin presents unique governmental problems. There are an estimated 28,100 year-round residents, and three-fourths of these are concentrated on the south shore of the lake. During the summer vacation period the actual population of the basin soars to over 150,000. By 1980 the resident population is expected to rise to 49,000, with a peak of 313,000 summer residents. The region's local economy is geared toward the transient population—the tourists. Since the leading employers in the Tahoe area are the Nevada gambling establishments, the future growth of the population and the economy will probably be determined by the future of the gambling business. This recreation-oriented economy is subject to great seasonal fluctuations. To stabilize the region's economy, local governments can be expected to encourage permanent residential and industrial development that will probably prove detrimental to environmental conservation.

Present local governments are faced with the task of achieving a crucial balance between exploitation and preservation of the varied resources of Lake Tahoe. This task is especially difficult because the sectors of the counties within the basin offer a lucrative tax base for local governments. A disproportionate share of county revenue comes from the basin sector of the county. In California, the Placer County regional sector accounts for 23 percent of the assessed valuation but

5. The committee's map shows the relation of these counties to Lake Tahoe. See Political Geography of Lake Tahoe, Joint Study Committee 10.

6. Joint Study Committee 52. The Nevada gambling casinos are located in this area, just across the border from Stateline, California.

7. Id. at 12.

8. "At the present time, the City of South Lake Tahoe's industrial and economic base has its reliance on tourism, construction, and related services . . . primarily oriented to Nevada gambling." Planning Dep't, City of South Lake Tahoe, Fourteen Thousand Planners: A Planning Program for the City of South Lake Tahoe 53 (1967).


10. Joint Study Committee 52-54. "Traffic counts indicate that the number of automobiles entering the Region during August is four times as great as the number of vehicles coming in January. Gaming receipts in Douglas County are consistently twice as high during the third quarter of each year as during the first quarter, and retail sales in the City of South Lake Tahoe follow the same trend." Id. at 53.

11. See note 180 infra.

contains only 7 percent of the population of the county. The El Dorado County regional sector has 50 percent of the county's assessed valuation and 40 percent of its population. While the Douglas County regional sector in Nevada accounts for more than half the assessed valuation and contains about half the population of the county, the Washoe County regional sector has 2.4 percent of the county's population and 5.5 percent of its assessed valuation.\textsuperscript{13}

To meet the ever-increasing costs of county services, the local governments can be expected to take advantage of the basin to increase their tax revenues.\textsuperscript{14} With pressures for new development projects increasing to meet the needs of the rising population—permanent and transient—a county government exercising loose developmental controls could destroy the region's environmental quality.\textsuperscript{15}

At present, too many separate government authorities have responsibility for controlling development and providing services to the population within the basin.\textsuperscript{16} In addition to the five counties previously mentioned, there is the recently incorporated City of South Lake Tahoe in California's El Dorado County. There are also a dozen federal and state agencies with varying degrees of responsibility and authority.\textsuperscript{17} The situation is further complicated by the geographic barriers which hinder efficient administration of county government. For example, Auburn and Placerville, the respective county seats of Placer and El Dorado Counties, are located as far as 75 miles across the mountains from Lake Tahoe.\textsuperscript{18}

Local governments have tried to respond to the problem. The City of South Lake Tahoe was incorporated especially to deal with the rapid growth in the south shore area.\textsuperscript{19} A study was also initiated to investigate the feasibility of incorporating the Tahoe area of Placer

\begin{itemize}
\item \textsuperscript{13} Joint Study Committee 25. The Ormsby County portion of the basin at the time of this study was virtually unsettled and accounted for only a negligible amount of the total assessed valuation. Recent development may have changed the situation.
\item \textsuperscript{14} Joint Study Committee 19.
\item \textsuperscript{15} See Joint Study Committee 42-48.
\item \textsuperscript{16} \textit{Id.} at 14-21, and App. at 55-56, listing the numerous local, state and federal authorities operating within the basin.
\item \textsuperscript{17} See note 16 supra. Among the federal authorities are the United States Forest Service, Federal Aviation Authority, Soil Conservation Corps, Corps of Engineers, Bureau of Reclamation and the Public Health Service. The major California agencies are the Lahontan Regional Water Quality Control Board, Department of Fish and Game and the State Division of Soil Conservation. From Nevada there are the State Soil Conservation Committee and the Department of Fish and Game.
\item \textsuperscript{18} Joint Study Committee 15.
\item \textsuperscript{19} Technical Supplement ch. 2 at 30. Eighty-seven percent of all land suitable for development is in the south shore area. Interview with Gary C. Chase, City Manager, City of South Lake Tahoe in City of South Lake Tahoe, Sept. 25, 1970.
\end{itemize}
El Dorado and Placer Counties sponsored legislation that would enable them to form a new county from their respective portions bordering on Lake Tahoe, but this measure was vetoed by the Governor of California. These efforts indicate that local governments realize the importance of a unified attempt to guide the development of the basin, but the question of whether they are capable of effectively controlling this development remains unanswered.

II. Creation of the Tahoe Regional Planning Agency

In 1965 a California Assembly Committee reported that the general impact of development to date in the Lake Tahoe basin has been serious, and in some areas thoughtless exploitation has damaged the amenities beyond reasonable hope of recovery. If growth in basin population continues at its present pace in the absence of a responsible pattern of controls, the basin faces the possibility of general and irreversible overexploitation.

The committee found that

the complex pattern of governmental jurisdiction in the basin makes all but impossible the unified, comprehensive approach to basin management which is necessary to prevent overexploitation.

To cope with the region's problems, the committee felt there was "a clear need for the creation of some kind of bi-state regional authority to govern basic development." Recognizing the need for action, the legislatures of California and Nevada concurrently created the Lake Tahoe Joint Study Committee. This committee was required to study and develop recommendations for an area-wide agency that could provide for the orderly development of the Lake Tahoe basin. In its report to the legislatures in March 1967, the committee proposed legislation to enact a regional agency.

20. W. ZION, INCORPORATION FEASIBILITY STUDY—TAHOE AREA OF PLACER COUNTY (prepared for Placer Co. Bd. of Sups. 1966). This study concluded that incorporation would not be justified on the basis of county service deficiencies. Id. at 3. "[T]he primary difficulty is that the county seat is nearly 100 miles away, and the Tahoe area has its own distinct characteristics and feelings." Id. at 4. The study goes on to point out that a disadvantage in incorporation would be the political and governmental responsibilities that would be required of local citizens if the municipality were to be successful.


24. Id. at 10.

25. Id.


27. See note 4 supra.

28. JOINT STUDY COMMITTEE 29-41.
In response to this recommendation, both California and Nevada passed legislation creating TRPA. The proposals of the Joint Study Committee were compromised during the legislative process and the resulting agency is a much weaker regional authority than the committee deemed necessary to effectively regulate development in the Lake Tahoe basin. A comparison of the legislation initially introduced in both states and the measures that were finally adopted illustrates the strength of the forces opposing effective regional government.

A. California Legislation

After the committee released its report, the California legislature responded immediately with Assembly Bill 1362. This bill, following the recommendations of the committee, called for the creation of a strong regional agency to cope with problems in the basin. The bill's legislative mandate expressly recognized the inability of local governments to control basin development:

[The] problems of resource use and deficiencies of environmental control . . . cannot be adequately dealt with by the existing system of governmental planning and administration, [and] the existing local government jurisdictions in the region are in need of assistance and strengthening within a regional framework. . . .

The mandate also declared that the creation of a bi-state agency of regional government was imperative to “prevent irreparable injury to Lake Tahoe as a unique national treasure of the people of the United States [and] a rich natural asset of the peoples of the States of California and Nevada. . . .”

1. Original Proposals

This strong legislative intent to create an effective regional authority was evidenced by the proposed composition of the agency and the powers given to it by the new bill. The decision-making body of the proposed agency was to be a 15-member governing board. The five counties in the region and the City of South Lake Tahoe were to appoint one representative each. The governor of each state was to appoint one representative who was a member of a state agency operating in the region and three members-at-large. The fifteenth member was to be appointed by the President of the United States. Agency action on any matter required a majority vote of the governing board, provided that a majority of the members appointed from each state were present. Approval of fiscal and monetary matters required the ma-

29. Id.
31. AB 1362 § 1, ch. 1.
32. Id. (emphasis added).
33. Id. at ch. 3, art. 1.
majority vote of the members present from each state. Thus, the composition of the board tended to shift control over regulation of the basin from the local governments to a regional authority representing statewide interests.

This governing board was to have extensive powers over any development in the Tahoe basin. All master plans, ordinances and regulations concerning uses within the basin had to be approved by the agency. Local subdivision plans and other possible sources of sedimentation in the lake were required to be submitted to the agency for review. To regulate basin development, the agency was to adopt a comprehensive long-term regional plan, a regional interim plan and "all necessary ordinances, rules, regulations and policies" to effectuate these plans. The bill gave the agency sufficient powers to enforce these comprehensive plans, and any local ordinances, regulations or standards violating the interim or regional plan were void and of no effect. The agency also had the expressed power to enjoin any threatened violation of the plans.

To finance its operations, the agency had the power to tax the respective counties and the power to implement its own program of capital and public works improvements. This power freed the agency from the possibility of a local financial stranglehold and allowed it to operate as an independent, effective force for regional control.

The assembly bill made one significant addition to the original Joint Study Committee proposal; it created the California Tahoe Regional Planning Agency (CTRPA). This California agency was to have the same authority in the California portion of the basin as the bi-state agency would have in the entire region, and its membership was to be the same as California's delegation to the governing body of the bi-state agency. The California agency was an interim agency with the power to deal with regional problems until the bi-state agency was

34. Id.
35. Id. at ch. 4.
36. Id. at ch. 5, art. 2.
37. Id. at ch. 3, art. 3.
38. Id. at ch. 4, art. 1.
39. Id. at ch. 4, art. 2.
40. Id. at ch. 5, art. 3.
41. Id.
42. Id. at ch. 6, art. 1.
43. AB 1362 § 4. Added Title 7.5 (commencing with § 67000) to the CAL. GOV'T CODE [hereinafter cited as CTRPA]. Compare JOINT STUDY COMMITTEE 29-41 with AB 1362. The significance of this California agency becomes apparent when later legislation to create the bi-state agency substantially weakened the original California proposal. See note 188 & accompanying text infra.
44. AB 1362 § 4.
45. Id.
created, at which time CTRPA would dissolve.\textsuperscript{46}

2. \textit{Legislative Compromises}

The assembly bill underwent major changes by amendment before it was finally adopted on August 30, 1967.\textsuperscript{47} The overall effect of these changes was to create a weaker regional authority than originally proposed. The force of the legislative mandate in the original bill was substantially weakened. The final bill no longer expressly recognized the acute need for regional control but merely stated that the region was experiencing problems of resource use and that there was a need to enhance efficiency and governmental effectiveness.\textsuperscript{48} No mention was made of the need to preserve the lake for the "people of the United States" or the "people of the States of California and Nevada."\textsuperscript{49} This last deletion deemphasized national and state-wide interest in the area and tends to make the problems of Lake Tahoe matters of purely local concern.

This emphasis on local regulation also appeared in a second major change in the original bill. The 15-member governing board, with a majority of the members representing statewide interests,\textsuperscript{50} was changed to a locally-controlled body. Five members of the governing body were dropped in the final version—four members-at-large and the federal advisory member. As a result of this change, local representatives now comprise the majority of the governing body;\textsuperscript{51} this same majority is allowed to pass on any matter acted on by the agency.\textsuperscript{52}

The exact authority of the agency over the planning of local governments was blurred by amendments to the original bill. The agency's regulatory power was reduced to supervisory authority. Agency approval of all master plans, ordinances and regulations concerning uses within the basin was not required in the final version, as it was in the original bill.\textsuperscript{53} and local subdivision plans and other possible sources of sedimentation in the lake no longer required agency review.\textsuperscript{54} Still, the agency did retain the authority to adopt regional and interim plans and the necessary regulations to implement those plans;\textsuperscript{55} the agency's control would certainly be more effective if it still possessed the expressed power to review local activity as originally proposed.

\textsuperscript{46} Id. at § 5.
\textsuperscript{47} \textit{Cal. Stat.} 1967, ch. 1589 [hereinafter cited as Ch. 1589].
\textsuperscript{48} \textit{Compare} AB 1362 § 1, ch. 1 \textit{with} Ch. 1589, § 1, art. I(b).
\textsuperscript{49} \textit{Compare} AB 1362 § 1, ch. 1 \textit{with} Ch. 1589, § 1, art. I(c).
\textsuperscript{50} See text accompanying note 33 \textit{supra}.
\textsuperscript{51} \textit{Compare} AB 1362 § 1, ch. 3 \textit{with} Ch. 1589, art. III(a).
\textsuperscript{52} Ch. 1589, art. III(g). A block vote from local representatives alone could halt any agency action.
\textsuperscript{53} \textit{Compare} AB 1362 § 1, ch. 4, art. 2 \textit{with} Ch. 1589, § 1, art. V.
\textsuperscript{54} \textit{Compare} AB 1362 § 1, ch. 5, art. 2 \textit{with} Ch. 1589, § 1, art. VI.
\textsuperscript{55} See text accompanying notes 37-39 \textit{supra}.
The agency's powers to enforce its plans were also somewhat reduced. Local statutes in violation of the interim or regional plans were no longer void, and the injunction power was deleted.\textsuperscript{58} In the final version, the agency can only police the region to ensure compliance with its plans; any violation is now a misdemeanor,\textsuperscript{57} and the agency can bring legal action against violators,\textsuperscript{58} but it cannot enjoin the violation. Forcing the agency to rely primarily on misdemeanor prosecutions to effect its plans substantially reduces its authority to enforce its decisions; the injunction power should have been retained to provide the agency with an immediately effective enforcement tool.\textsuperscript{59}

The agency's power to finance its activity was also limited in the final bill. It no longer has the power to tax but must prepare its annual budget and apportion this amount between the counties within the region. The counties may pay their share from available funds or may levy a tax on taxable property within the county.\textsuperscript{60} Thus, the agency is more dependent on local cooperation for financial support under the final version of the bill than was originally proposed.

One additional change is noteworthy. A technical advisory committee was created to assist the governing body in its planning decisions. It was composed of the planning officers of each of the five counties and the City of South Lake Tahoe, the directors of sanitation of El Dorado and Placer Counties, the executive officer of the Lahontan Regional Water Quality Control Board and TRPA's executive officer.\textsuperscript{61} Although its capacity is stated as advisory only, its influence should not be discounted. The net result of this addition is that the governing body, composed of local citizens, is advised on its decisions by the members of an advisory committee which is also composed of local citizens.

In essence, significant changes in California's legislation resulted in a weaker legislative mandate for regional control, a shift to local control over planning and decision making, a reduction in regulatory powers and financial dependence on local governments.\textsuperscript{62} The strong

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\textsuperscript{56} Compare AB 1362, § 1, ch. 5, art. 3 with Ch. 1589, § 1, art. V.

\textsuperscript{57} Ch. 1589, § 1, art. VI(f).

\textsuperscript{58} Ch. 1589, § 1, art. VI(e).

\textsuperscript{59} Cf. K. Davis, Administrative Law Text 425 (1959). Under the original bill, the agency was not required to allege facts necessary to show irreparable damage or loss, thereby expediting any enforcement action the agency should deem necessary. See AB 1362, § 1, ch. 5, art. 3.

\textsuperscript{60} Compare AB 1362, § 1, ch. 6, art. 1 with Ch. 1589, § 1, art. VII(a).

\textsuperscript{61} Ch. 1589, § 1, art. III(h).

\textsuperscript{62} As could be expected, proponents of AB 1362 attempted to revitalize the original bill. For example, a senate attempt to reestablish the four members-at-large cut by an earlier assembly action returned from committee virtually unaltered. Compare second reading of AB 1362 (3 S. Jour. 3712-13, Cal. Legis., Reg. Sess. (July 14, 1967)) with the bill returned from the committee without the proposed changes (ld. at 4010 (July 27, 1967)).
measure for regional control that was envisioned by the Joint Study Committee was reduced to a local planning agency with supervisory and limited regulatory authority. Contrary to the committee's recommendations, the California legislation left the control of the basin in the hands of the local governments.

B. Nevada's Legislation

Six months after California enacted Assembly Bill 1362, Nevada adopted a comparable proposal; Nevada's agency differed significantly from the California proposal. It was even a weaker regional authority, with greater local controls over its activity. The Nevada legislation, unlike California's, did not require the representatives to the governing body to be members of the board of county commissioners or to own property within the region. Thus, Nevada counties had full discretion in selecting agency members. The Nevada bill also required a majority vote of the members present from each state to take action on any matter, whereas California had placed such a requirement only on fiscal and monetary matters. This change prevented one state from approving any matter over the objection of the other state.

The planning powers of the agency were also somewhat reduced. The Nevada bill required that whenever possible, the agency's regulations and policies be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective states, counties and cities the enactment of specific and local ordinances. This provision did not appear in the California law. The California proposal required that any proposed public works projects be approved by TRPA. Nevada, however, merely stated that such projects should be reviewed by the agency but could be constructed as proposed. Nevada also provided a "grandfather" clause to protect existing businesses or recreational establishments from any new restrictions that the bi-state agency imposed.

To finance TRPA's activities, California had allowed the counties to levy a tax on property within its boundaries. Nevada required that the affected counties pay from a general fund and placed a ceiling

64. Compare Ch. 1589, § 1, art. III(a) with Nev. Rev. Stat. § 277.200, art. III(a) (1968).
65. Compare Ch. 1589, § 1, art. III(g) with Nev. Rev. Stat. § 277.200, art. III(g) (1968).
67. See Ch. 1589, § 1, art. VI.
68. Ch. 1589, § 1, art. VI(d).
71. Ch. 1589, art. VII(a).
of $150,000 on that share of the agency's budget which was to be apportioned to the counties. In addition, Nevada established a general fund in the state treasury to support TRPA.

The Nevada provisions that differed from California's, with the exception of a financial disclosure requirement, generally reduced the power of the agency. For example, the power merely to review proposed public works projects without the power to deny such a proposal is of little practical value. The agency proposed by Nevada was even more a general planning and reviewing body than the one detailed in the California law.

C. Creation of the Bi-State Agency

In order to secure congressional approval of the bi-state compact, the legislation of the two states had to be identical in every respect. California solved this problem by enacting Assembly Bill 1023. This compromise measure was adopted on August 2, 1968, and took effect immediately. The new bill amended the previous California legislation so that the proposed bi-state agency of each state was identical.

To mitigate the weakening effect of the new proposal, some changes were made in CTRPA. First, the California agency was not to terminate upon approval of the bi-state proposal but was to continue until its enacting legislation was repealed. Also, it maintained the power to approve or disapprove proposed public works projects. Its membership was to be the California members of the governing body of TRPA, and $80,000 was appropriated from the general fund to finance TRPA and CTRPA. As a result of this legislation, California had an agency to enforce the dictates of TRPA in the California portion of the Lake Tahoe basin, and according to the provisions of

72. NEV. REV. STAT. § 277.200, art. VII(a) (1968).
73. NEV. REV. STAT. § 277.220 (1968).
74. NEV. REV. STAT. § 277.200, art. III(a) (1968). A person appointed to the governing body shall “disclose all his economic interests in the region, and shall thereafter disclose any further economic interest which he acquires. . . .” California had no such requirement.
76. See Ch. 1589, § 4; NEV. REV. STAT. § 277.190 (1968).
79. Compare Ch. 1589, § 4 with CAL. GOV'T CODE § 67130.
80. CAL. GOV'T CODE § 67103.1.
81. CAL. GOV'T CODE § 67041.1.
82. CAL. STAT. 1968, § 6.1, ch. 988, art. VIII.
83. CAL. GOV'T CODE § 67040. “It is the intent of the Legislature that the
TRPA's legislation, CTRPA could adopt and enforce higher standards of control within the California sector of the basin.84

Pending ratification of the compact, Nevada created the Nevada Tahoe Regional Planning Agency in February 1969.85 This agency was authorized to prepare a regional plan and exercise controls on development in the Nevada portion of the basin, and it was to terminate upon approval of the bi-state agency.86 Finally, over 4 years after the initial legislation was introduced in California, the bi-state agency was approved by Congress.87

As it presently exists, the agency is to prepare, adopt and maintain a comprehensive regional plan of development for the basin. This plan is to include land uses, transportation, conservation, recreation and public services and facilities. In preparing this plan TRPA is to “seek to harmonize the needs of the region as a whole [and] the plans of the counties and cities within the region. . . ."88 The agency is to adopt all necessary ordinances, regulations and policies to effectuate the plan89 and may bring legal action to insure enforcement by local authorities.90

Agency decisions are made by the ten-member governing body, with a majority vote among the five delegates from each state required to take action on any matter.91 A majority of the governing body members are representatives from the local governments, appointed by their respective governing organizations.92

Agency [CTRPA] be considered a 'political subdivision' as that term is used in Article VI of the Tahoe Regional Planning Compact."

84. CAL. GOV'T CODE § 66801, art. VI(a).
86. NEVADA DEPT OF CONSERVATION AND NATURAL RESOURCES, COMPACTS FOR THE FUTURE (1970).
87. See text accompanying note 1 supra.
88. CAL. GOV'T CODE § 66801, art. V(b); NEV. REV. STAT. § 277.200, art. V(b) (1968).
89. CAL. GOV'T CODE § 66801, art. VI(a); NEV. REV. STAT. § 277.200, art. VI(a) (1968).
90. CAL. GOV'T CODE § 66801, art. VI(e); NEV. REV. STAT. § 277.200, art. VI(e) (1968).
91. CAL. GOV'T CODE § 66801, art. III(g); NEV. REV. STAT. § 277.200, art. III(g) (1968).
92. The California delegation consists of two local supervisors appointed by their county boards; one councilman, appointed by the Council of the City of South Lake Tahoe; one nonresident of the region, appointed by the governor, subject to senate approval; and the Administrator of the California Resources Agency. CAL. GOV'T CODE § 66801, art. III(a). Nevada is represented by one member appointed by each of the Boards of County Commissioners of the three Nevada counties, one nonresident of the region appointed by the governor, and the Director of the Nevada Department of Conservation and Natural Resources. NEV. REV. STAT. § 277.200, art. III(a) (1968). In addition to this active membership, there is a nonvoting representative of the United States appointed by the President. Pub. L. No. 91-148, 83 Stat. 360, § 3 at 369 (1969).
III. Operation of the Tahoe Regional Planning Agency

A. The Regional Plan

The first meeting of TRPA was convened on March 19, 1970. Its general purpose was well stated in a recent paper prepared by the agency's staff:

The Tahoe Regional Planning Agency was created to adopt and enforce a regional (basinwide) plan of resource conservation and orderly development, in order that an equilibrium between the region's natural endowment and manmade environment may be maintained, its scenic beauty and recreational opportunities may be preserved, and that the efficiency and effectiveness of its governmental activities may be enhanced.93

The purpose of the agency's regional plan is to control future growth and development in the basin. It will establish general guidelines and criteria to be followed by any development project, and these standards will be enforced by regulations and policies adopted by the agency and the local jurisdictions. Pending final adoption of a regional plan, an interim plan was implemented to provide immediate guidelines for proposed basin development.94

B. Interim Plan

The interim plan sets forth the general goals and policies of the agency in regard to basin development. The provisions of the plan are broad and confined to matters which are general in application. No specific restrictions are mentioned. For example, a land use policy reads: "Land use and other controls must insure the protection of the unique characteristics of the region."95 The enactment of specific controls is accordingly left to the various jurisdictions within the region.96

It is important to note that the interim plan is merely a composite of the master development plans of the jurisdictions within the basin.97 Until specific rules and regulations can be adopted by TRPA to implement the more comprehensive regional plan—which is due in September 197198—existing local regulations remain in full effect.99

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94. CAL. GOV'T CODE § 66801, art. V(d).
95. TAHOE REGIONAL PLANNING AGENCY, Interim Plan 4 (Aug. 26, 1970) (on file at Tahoe Regional Planning Agency, 1052 Tata Lane, South Lake Tahoe, CA 95705)
96. CAL. GOV'T CODE § 66801, art. IV(a).
97. See Hearing on Interim Plan before the Tahoe Regional Planning Agency and the Advisory Planning Commission, Exhibit A (Aug. 26, 1970) (on file at Tahoe Regional Planning Agency, 1052 Tata Lane, South Lake Tahoe, CA 95705) [hereinafter cited as TRPA Hearing].
98. CAL. GOV'T CODE § 66801, art. V(b).
99. See note 97 supra.
development, however, must still satisfy TRPA requirements, and any variance may be disapproved by the governing body. Thus, TRPA is attempting to regulate the development of the Lake Tahoe basin with the present local ordinances acting as temporary regulations implementing the overall policies and objectives of the interim plan.

At first it may seem an unreasonable and unwarranted use of the police power to regulate development of land on the basis of a mere temporary measure such as the interim plan. California courts, however, 100. CAL. GOV'T CODE § 66801, art. VI(b).

101. CAL. CONST. art. XI, § 11 sets forth what is commonly termed the police power: “Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.” For a land-use regulation to be upheld as a valid exercise of the police power it must reasonably tend to promote the public morals, health, safety or general welfare as well as add to the prosperity of the community. Lockard v. City of Los Angeles, 33 Cal. 2d 453, 202 P.2d 38 (1949). The limit on the police power is imposed by section 14, article 1 of the California Constitution which provides that “[p]rivate property shall not be taken or damaged for public use without just compensation. . . .” As applied to zoning restrictions, the essence of this protection is that “[a]n ordinance which permanently so restricts the use of property that it cannot be used for any reasonable purpose goes . . . beyond regulation, and must be recognized as a taking of the property.” Arverne Bay Const. Co. v. Thatcher, 278 N.Y. 222, 232, 15 N.E.2d 587, 592 (1938). In Commissioner of Natural Resources v. S. Volpe & Co., 349 Mass. 104, 206 N.E.2d 666 (1965), the defendant was enjoined from filling marshlands on his property in violation of a Massachusetts ordinance. The court recognized that the protection of marine fisheries was a valid public purpose but remanded the case to the trial court to determine if the ordinance was so restrictive as to prohibit any reasonable use of the property and therefore amount to a taking. Id. at 110-11, 206 N.E.2d at 671. California courts tend to uphold regulations for the public welfare in spite of near total diminution in value of the restricted land. For example, in Consolidated Rock Products Co. v. City of Los Angeles, 57 Cal. 2d 515, 370 P.2d 342, 20 Cal. Rptr. 638, appeal dismissed, 371 U.S. 36 (1962), the court upheld the validity of a zoning ordinance prohibiting lucrative rock and gravel operations on property that was found to have a minimal value for any other purpose, except possibly livestock grazing and certain types of horticulture and recreation. Id. at 530, 370 P.2d at 351, 20 Cal. Rptr. at 647. Accord, Hamer v. Town of Ross, 59 Cal. 2d 776, 787, 382 P.2d 375, 382, 31 Cal. Rptr. 335, 342 (1963). This judicial deference to a legislative enactment for the general welfare of the public is further indicated in decisions upholding the validity of interim zoning restrictions imposed to allow preparation of a comprehensive development plan. In Hunter v. Adams, 180 Cal. App. 2d 511, 4 Cal. Rptr. 776 (1960), the City of Monterey refused to issue building permits in a sector of the city pending a study to develop a comprehensive plan for urban renewal. Seeking a permit, the appellants contended that the interim restriction constituted a “taking” in that they had incurred great expense to prepare plans for construction and any delay would cause further significant expenses. The court found the restriction on permits was reasonably necessary for the general public welfare. Id. at 523, 4 Cal. Rptr. at 784. Furthermore, it stated that the expense of preparing plans and the expense of delay were such incidental injuries as not to constitute a “taking.” Id. at 524, 4 Cal. Rptr. at 784.

The appellants also alleged that the interim restrictions were invalid because there was no assurance that an ultimate plan would be adopted. The court determined that planning is an integral part of community development, and the fact that a redevelop-
have recognized the validity and effectiveness of interim zoning plans that were intended to be operational until a comprehensive scheme could be developed. In *Miller v. Board of Public Works* the California Supreme Court upheld such an emergency zoning ordinance. The court took judicial notice of the long period of time necessary to prepare an extensive zoning plan and stated that "it would be destructive of the plan if, during the period of its incubation, parties seeking to evade the operation . . . should be permitted to enter upon a course . . . which might defeat . . . the ultimate execution of the plan." In 1964 the Attorney General of the State of California issued an interesting opinion that is directly applicable to TRPA and reinforces its position. As an interim measure, to prevent indiscriminate filling of San Francisco Bay while a study of the dangers of bay fill was being prepared, the Association of Bay Area Governments (ABAG) proposed a moratorium on the filling and development of the bay. ABAG had solicited an opinion from the Attorney General to determine whether an ordinance imposing the 3-year moratorium would be a constitutional exercise of the police power. The resulting opinion concluded that the proposed ordinance, which declared that there is a public interest in the bay and that indiscriminate filling is harmful, was a valid exercise of police power because it bears a reasonable relationship to a valid public concern. Further, the requirement that a study be made in order to prepare a comprehensive plan for bay development could be sustained under the rationale of *Miller* and other cases upholding the validity of proposed urban renewal plans.

These holdings establish that TRPA's regulation of basin development through use of the interim plan and existing local ordinances is a valid exercise of police power. The local ordinances are "emergency" ordinances to be used until the regional plan can be adopted. The interim plan is in the interest of the general welfare of the region because indiscriminate development of the Lake Tahoe basin could result in irreversible overexploitation of the area. This reason furnishes sufficient agency had been created, the project area designated, and funds set aside for the project assured that a final plan would be adopted and that the appellants would not be delayed indefinitely. Id. at 520-21, 4 Cal. Rptr. at 782-83.

103. 195 Cal. 477, 496, 234 P. 381, 388 (1925). The court found that regulation of the development of a community under a comprehensive and carefully considered zoning plan tends to promote the general welfare of the community and that incidental damages to property from governmental activity to promote the public welfare are not considered a taking of the property for which compensation must be paid. Id. at 488-89, 234 P. at 385-86. Accord, Hunter v. Adams, 180 Cal. App. 2d 511, 4 Cal. Rptr. 776 (1960); Lima v. Woodruff, 107 Cal. App. 285, 290 P. 480 (1930).
105. See cases cited at note 103 supra.
107. See text accompanying note 23 supra & materials cited at note 195 infra.
cient rational ground for upholding the validity of the interim plan to regulate development in the basin,\textsuperscript{108} pending adoption of the regional plan.

C. Regulation Under the Regional Plan

To regulate the Lake Tahoe basin effectively, the TRPA regional plan will have to be a detailed, comprehensive scheme of development. The enabling legislation requires that the plan "seek to harmonize the needs of the region as a whole,"\textsuperscript{109} and that the "ordinances, rules, regulations and policies ... be confined to matters which are general and regional in application."\textsuperscript{110} The task of enacting specific ordinances is left to local jurisdictions, and specific guidelines will therefore have to be developed and presented to the local governments to regulate their implementation of the plan.

In order to be upheld as a valid exercise of the police power, the regulations of the final plan must set forth extensive criteria\textsuperscript{111} that rationally relate to the overall scheme of development.\textsuperscript{112} As one authority has noted:

California courts have upheld regulations alleged to be burdensome, novel, and otherwise questionable when it was shown that such regulations were part of a comprehensive scheme with each part related to the other.\textsuperscript{113} The regulations enacted as part of TRPA's regional plan will be intended primarily to stabilize the region's economy while conserving its aesthetic values.\textsuperscript{114} This will necessarily require the imposition of coordinated land-use restrictions designed to preserve aesthetic qualities

\textsuperscript{108} Cf. Southern Pac. Co. v. Railroad Comm'n, 13 Cal. 2d 89, 121, 87 P.2d 1055, 1071 (1939), where the court stated that the judiciary will interfere only when legislation is so manifestly unnecessary for the promotion of the public welfare that no rational grounds exist for its enactment.

\textsuperscript{109} CAL. GOV'T CODE § 66801, art. V(b).

\textsuperscript{110} Id. art. VI(a).

\textsuperscript{111} Id. art. V(b). See, e.g., SAN FRANCISCO BAY CONSERVATION AND DEV. COMM'N, SAN FRANCISCO BAY PLAN (1969).

\textsuperscript{112} For an excellent discussion of the legal questions involved in an analogous situation, see I. HEYMAN, POWERS: REGULATION—LEGAL QUESTIONS (San Francisco Bay Conservation and Dev. Comm'n background study vol. 1 for the SAN FRANCISCO BAY PLAN, 1968) [hereinafter cited as POWERS]. A comprehensive plan is required to indicate that individual property owners are being treated fairly and that the restrictions on the use of their property are not arbitrary and capricious in nature. See Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381 (1925).

\textsuperscript{113} POWERS 16, citing, e.g., Zahn v. Board of Public Works, 195 Cal. 497, 234 P. 388 (1925), affirmed, 274 U.S. 325 (1927); Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381 (1925); and other cases.

\textsuperscript{114} CAL. GOV'T CODE § 66801, art. I. See LIVINGSTON & BLAYNEY, LAKE TAHOE REGIONAL PLANNING AGENCY: OVERALL PROGRAM DESIGN 32 (1970) [hereinafter cited as TAHOE DESIGN].
while promoting economic growth, with the various parts of the plan being implemented by the zoning ordinances of the local jurisdictions. The validity of the plan will therefore depend in part upon there being a correlation between these two basic values—aesthetic quality and economic stability.

At Lake Tahoe, economic stability is contingent on an adequate supply of recreational land. Controls are therefore necessary to prevent residential and industrial growth from changing the character of the area. The immediate tendency to label land use restrictions in the basin as a “conflict between the ecological and the constitutional” should therefore be resisted. The natural beauty and splendor of the lake and its surrounding basin is a principal lure to the traveler—the basin economy's mainstay. The aesthetics of the basin are integrally bound not only to property values but also to the general prosperity of the region. This situation is analogous to conditions in several cases dealing with regulation for aesthetic objectives.

The aesthetic purpose has been upheld when coupled with an economic interest. The Louisiana Supreme Court has upheld restrictions on architectural design and neon signs in a historic section of New Orleans to preserve the aesthetic appeal of the area as a tourist attraction. In *City of Miami Beach v. Ocean and Inland Co.* a Florida

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115. *See Joint Study Committee 46-48.*


117. "Despite the changes [accelerated growth resulting from the establishment of year-round casinos and the commercialization of skiing] which have occurred, the beauty of the lake and its surrounding forests is still a major tourist attraction, and the viability of the recreation-based economy of the region still depends on the extent to which this kind of natural environment can be retained." *Joint Study Committee 47-48.* *See notes 8-9 and accompanying text supra.*


120. National Advertising Co. v. County of Monterey, 211 Cal. App. 2d 375, 379, 27 Cal. Rptr. 136, 138 (1962) (county could prohibit billboards to maintain the scenic beauty of the area which attracted tourists).

121. *City of New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 (1953).* The court held the ordinances to be in the interest of the inhabitants of New Orleans generally in that they “[preserved] the Vieux Carre section . . . not only for its sentimental values, but also for its commercial value. . . .” *Id.* at 29, 64 So.2d at 803. *Accord,* *City of Santa Fe v. Gamble-Skogmo, Inc.,* 73 N.M. 410, 389 P.2d 13 (1964).

122. 147 Fla. 480, 3 So.2d 364 (1941).
court found that the success of Miami Beach as a tourist attraction depended on its aesthetic appeal and therefore enjoined the use of property in a hotel zone for purposes of a shop. The gist of these cases is not that zoning for an aesthetic purpose is valid, but that the aesthetic purpose is in fact an economic purpose; that is, the natural beauty must be preserved if the area is to maintain its economic value.

IV. Difficulties Facing the Tahoe Regional Planning Agency

A. Constitutional Challenges to TRPA: The Home Rule Problem

The constitutionality of both TRPA and CTRPA has been challenged on the grounds that their powers violate the various "home rule" provisions of the California Constitution. None of these challenges, however, appear to be well founded.

1. Municipal Affairs: Article XI, Sections 6 and 8(j)

It is contended that the ordinances implementing the regional plan violate sections 6 and 8(j), article XI, of the California Constitution. These constitutional provisions give charter cities the power to "make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters." The provisions thus seek to prevent legislative interference with municipal matters, which have been held to include the issuance of building permits and the adoption of a general plan for a city. Since TRPA's regional plan will restrict development, it seemingly infringes upon these purely local concerns.


124. CAL. CONST. art. XI, §§ 6, 8(j), 11, 12, and 13. These provisions seek to free local governments from the interference of the state legislature in local affairs. For a detailed study, see generally, Peppin, Municipal Home Rule in California, 30 CAL. L. REV. 1 (1941), 32 CAL. L. REV. 341 (1944), 34 CAL. L. REV. 644 (1946). For a critical discussion of the effectiveness of these provisions, prepared for the Cal. Const. Revision Comm'n, see A. VAN ALSTYNE, BACKGROUND STUDY RELATING TO ARTICLE XI: LOCAL GOVERNMENT (1966) [hereinafter cited as A. VAN ALSTYNE].

125. Emphasis added. Section 6 expressly grants charter cities autonomy over municipal affairs, while 8(j) provides that it is competent (but not mandatory) for city charters to provide for such autonomy. This distinction is of little practical importance, because city charters usually contain express language granting autonomy over municipal affairs. A. VAN ALSTYNE at 191-92.

126. A. VAN ALSTYNE at 217.

127. Lindell Co. v. Board of Permit Appeals, 23 Cal. 2d 303, 144 P.2d 4 (1943).

California courts have stated, however, that the scope of "municipal affairs" must be determined on the facts of each case and from the intended legislative purpose. Clearly, the legislative purpose of TRPA is to provide an area-wide planning agency to enact a regional plan. In Santa Barbara County Water Agency v. All Persons the California Supreme Court recognized that the legislature had created an agency to supply water to a county area to solve water problems that existing local districts could not handle effectively. The agency's power transcended the boundaries of any one municipality and therefore was not serving a municipal purpose. It necessarily follows that such an agency as TRPA, created to deal with environmental and governmental problems which transcend the boundaries of several counties, is not serving a "municipal purpose" within the accepted meaning of the term, and, consequently, it does not violate these constitutional provisions.

2. Municipal Regulations Limited Only by General Law: Article XI, Section 11

The agency's power to establish and enforce regulations to implement the regional plan has been challenged as a violation of section 11, article XI of the California Constitution. This section authorizes local governments to "make and enforce within [their] limits all such local, police, sanitary and other regulations as are not in conflict with general laws." This provision has been construed by the courts as a

Cal. 113, 15 P. 380 (1887), where a tax on insurance premiums to be used for a firemen's relief fund was held to be a local matter, regardless of a state interest in the efficiency of fire departments.

129. Ex Parte Braun, 141 Cal. 204, 214, 74 P. 780, 784 (1903) (concurring opinion).

130. Professional Fire Fighters, Inc. v. City of Los Angeles, 60 Cal. 2d 276, 32 Cal. Rptr. 830, 384 P.2d 158 (1963). The court stated that to define municipal affairs it is necessary to determine, under the facts of each case, whether the subject matter is of local or statewide concern. Id. at 294, 32 Cal. Rptr. at 841, 384 P.2d at 169. The court found that the legislature was attempting to deal with labor relations on a statewide basis.

133. Id. at 708-10, 306 P.2d at 881-82.

135. Santa Barbara County Water Agency v. All Persons, 47 Cal. 2d 699, 306 P.2d 875 (1957); Allied Amusement Co. v. Bryam, 201 Cal. 316, 320, 256 P. 1097, 1099 (1927); Gadd v. McGuire, 69 Cal. App. 347, 231 P. 754 (1924), where the court recognized that street and sanitary improvements were local but could only be effected by a single, comprehensive scheme of construction that could not be adequately handled by a single municipal authority and, as such, could not be termed municipal affairs. Id. at 354-58, 231 P. at 757-59.

137. See note 123 supra.
power granted to local government to enact penal regulations; the legislature cannot infringe upon this local power. In Gilgert v. Stockton Port District the California court stated that although the legislature could delegate to the port district the authority to make reasonable rules and regulations, the port district could not declare a violation of such rules and regulations to be a crime because the legislature could not delegate authority to the district to enact penal regulations.

Gilgert, however, is not analogous to TRPA's situation. While regulatory authority has been delegated to TRPA, determination of the penalty for any violation is not within TRPA's discretion. The legislature has itself designated that violation of such regulations is a misdemeanor. Consequently, any violation of TRPA regulations is "tantamount to a violation of the legislation itself." Since the legislature has fixed the penalty, it has not transgressed the constitutional prohibition against delegating this important function to any entity not mentioned in section 11, article XI.

It is well recognized that the legislature may delegate the power to adopt and enforce reasonable rules to enforce the expressed purpose of the legislation. To avoid violation of section 11, however, the legis-

138. Peppin, Municipal Home Rule in California (pt. 3), 32 CAL. L. REV. 341, 368 (1944). This is subject, of course, to the provision that the ordinance does not conflict with general laws.
139. 7 Cal. 2d 384, 60 P.2d 847 (1936).
140. Id. at 392, 60 P.2d at 850-51. The port district had passed an ordinance prohibiting construction of a storage tank or wharf within a specified area and declared that any violation of the ordinance was a misdemeanor. Id. at 387-89, 60 P.2d at 848-49. Accord, In re Werner, 129 Cal. 567, 62 P. 97 (1900).
142. CAL. GOV'T CODE § 66801, art. VI.
143. See CAL. GOV'T CODE § 66801 (determination of the penalty to be assessed for a violation is not mentioned).
144. CAL. GOV'T CODE § 66801, art. VI(f).
145. See Moore v. Municipal Court, 170 Cal. App. 2d 548, 556, 339 P.2d 196, 200 (1959), where directors of a rural fire district, under CAL. HEALTH & SAFETY CODE § 14686, had power to adopt ordinances providing rules and regulations for fire protection. The court held that the sections of the ordinances which did not prescribe penalties may stand. Id. at 557, 339 P.2d at 201.
146. See Moore v. Municipal Court, 170 Cal. App. 2d 548, 339 P.2d 196 (1959). See note 141 supra. A distinction between local powers and general law that clearly applies to TRPA was stated in In re Hubbard, 62 Cal. 2d 119, 396 P.2d 809, 41 Cal. Rptr. 393 (1964). The court stated that chartered counties and cities have full power to legislate in regard to municipal affairs unless "the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the [local government]." Id. at 128, 396 P.2d at 815, 41 Cal. Rptr. at 399.
147. See, e.g., Yakus v. United States, 321 U.S. 414, 423-27 (1944); Stanislaus County Dairymen's Protective Ass'n v. Stanislaus County, 8 Cal. 2d 378, 389-90, 65
lature must provide adequate primary standards to guide the agency in its promulgation of rules and regulations. The regional plan is to provide orderly development and effective environmental control in the region. Admittedly, this mandate gives the agency substantial discretion, but this does not mean that the agency is without a guiding standard. The United States Supreme Court, in National Broadcasting Co. v. United States, upheld a Federal Communications Commission (FCC) licensing statute promulgated pursuant to congressional authority. The guidelines in the federal enabling legislation were the "public interest, convenience or necessity." The Court held that this phrase means much more than a mere general reference to public welfare without any guiding standard, since in this case the FCC had previously completed a thorough and comprehensive investigation of the regulations and the necessary criteria. This is analogous to TRPA's situation. Extensive and detailed background studies will determine the effects of development and land use in the Lake Tahoe basin on the total environment in the region. Thus, specific criteria will be available to judge any proposed development in the basin. These criteria should satisfy the judicial requirement of adequate standards for delegation of regulatory power.

3. Taxation for Municipal Purposes: Article XI, Section 12

To finance its activities, TRPA is to determine the amount of money necessary to support its activities and apportion not more than $150,000 of this amount among the counties within the region. Section 12, article XI of the California Constitution prohibits the state legislature


149. CAL. GOV'T CODE § 66801, art. I.

150. 319 U.S. 190 (1943).

151. Id. at 226.

152. CAL. GOV'T CODE § 66801, art. V(b). See TAHOE REGIONAL PLANNING AGENCY, Tabular Summary of Elements of the Work Program (unpublished compilation of work classifications to be covered in agency planning) (on file at Tahoe Regional Planning Agency, 1052 Tata Lane, South Lake Tahoe, CA 95705).

153. Louis Stores, Inc. v. Dept. of Alcoholic Beverage Control, 57 Cal. 2d 749, 760, 371 P.2d 758, 763-64, 22 Cal. Rptr. 14, 19-20 (1962) (minutely-defined standards are not necessary; sufficient standards may be found by implication from the general purposes of the statute); First Indus. Loan Co. v. Daugherty, 26 Cal. 2d 545, 549, 159 P.2d 921, 923 (1945) (after declaring a policy and fixing a primary standard, the legislature may delegate power to "fill up the details" by specific rules and regulations).

154. CAL. GOV'T CODE § 66801, art. VII(a).
from imposing taxes upon the counties for municipal purposes. This provision is to protect local government from legislative interference in their financial affairs.\textsuperscript{155} California cases have overruled legislation giving administrative officers and agencies the taxation power to finance their activities when the particular officer or agency was delegated the power to prescribe the standard by which the amount of the tax was to be determined.\textsuperscript{166} Although TRPA’s power may be deemed the power to prescribe the standard because it is to determine its operating expenses and then apportion this amount to the counties,\textsuperscript{157} it may be distinguished on the grounds that it is not for a “municipal purpose.”\textsuperscript{168} The limitations of section 12 do not prevent the legislature from authorizing an ad valorem tax on the counties in the Lake Tahoe basin, because the purpose of TRPA transcends the boundaries of the counties and is not of purely local concern.\textsuperscript{159}


The last “home rule” provision requiring consideration is section 13, article XI. This provision prohibits the legislature from delegating power with respect to local or “municipal functions,” but is not violated if the subject matter delegated is statewide,\textsuperscript{160} of statewide concern\textsuperscript{161} or transcends local boundaries.\textsuperscript{162} In Fellom v. Redevelopment Agency, \textsuperscript{163}

\begin{itemize}
  \item 156. Larabee Flour Mills Co. v. Nee, 12 F. Supp. 395, 403 (W.D. Mo. 1935); McCabe v. Carpenter, 102 Cal. 469, 36 P. 836 (1894), where the court held that a delegation to the county superintendent of the schools power to levy such tax for high school purposes as he might deem desirable is illegal.
  \item 157. \textit{Cal. Gov’t Code} § 66801, art. VII(a). Note that TRPA is limited to apportion not more than $150,000 to the counties; whereas, a limit for CTRPA is not mentioned. \textit{Compare} \textit{Cal. Gov’t Code} § 66801, art. VII(a) \textit{with} \textit{Cal. Gov’t Code} § 67120.
  \item 158. See note 135 supra. In McCabe v. Carpenter, discussed at note 156 supra, the court had found that a local school district comes within the provisions of section 12, article XI, as a municipal affair. It is clear from the preceding discussion in the text that TRPA would not be found to be serving such a local function.
  \item 159. Santa Barbara Co. Water Agency v. All Persons, 47 Cal. 2d 699, 306 P.2d 875 (1957); Henshaw v. Foster, 176 Cal. 507, 169 P. 82 (1917); Pixley v. Saunders, 168 Cal. 152, 141 P. 815 (1914). \textit{See also} A. VAN ALSTYNE 321-23, where the author states that section 12, article XI, offers little impediment to legislative action in dealing with major local problems of state concern.
  \item 160. People v. City of Los Angeles, 179 Cal. App. 2d 559, 4 Cal. Rptr. 531 (1960) (condemnation for state highway purposes).
  \item 161. Fellom v. Redevelopment Agency, 157 Cal. App. 2d 243, 320 P.2d 884 (1958) (redevelopment, when enacted by the state, is a matter of statewide concern). Also, \textit{Cal. Const.} art. XIV, § 3 declares a statewide interest in the conservation and beneficial use of the domestic waters of the state: “the general welfare requires that the
Agency appellants sought an injunction against condemnation of their property. They contended that the Redevelopment Law was unconstitutional legislation by the state on matters of purely municipal concern. In denying the injunction, the court stated that "redevelopment, when enacted by the state, is a matter of state interest, and its implementation is in order to effect a state objective." By creating TRPA, the state has made development and conservation of the Lake Tahoe basin a matter of statewide concern and has not contravened this constitutional protection.

B. Organizational Defects

TRPA has met considerable local opposition. At a public hearing prior to the adoption of the interim plan, TRPA was served with a temporary restraining order filed by a development corporation and two local taxpayers associations. The order charged insufficient notice of the hearing as required in the enabling legislation and alleged various constitutional violations by the agency. The injunction was subsequently dissolved due to a procedural defect and the plan was adopted. Local dissatisfaction with the agency and the interim plan, however, has continued.

1. The Interim Plan

There is considerable dissatisfaction because the local governments and developers do not know what to expect from the interim plan. Although the plan is basically a composite of the existing master plans of the local governments, a project approved by a local government utilizing existing regulations may still not satisfy agency requirements. The interim plan does not meet the needs for regional development. It is implemented by the existing ordinances and regulations of the vari-

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162. See note 135 supra.
164. Id. at 247, 320 P.2d at 887.
165. CAL. GOV'T CODE § 66801, art. I. See note 161 supra.
167. CAL. GOV'T CODE § 66801, art. V(a) (20 days notice required).
168. See text accompanying notes 123-65 supra.
169. Temporary Restraining Order, as amended, Jul. 21, 1970. Plaintiffs failed to serve their supplemental memorandum of points and authorities upon defendants at least 2 days prior to the hearing on the Order to Show Cause. Order was dissolved as required by CAL. CODE CIV. PROC. § 527.
170. See note 97 and accompanying text supra.
ous local jurisdictions and was finally adopted in order to fulfill the legislative requirement that a plan be adopted within 90 days after creation of the agency.\(^{171}\) Thus, a project complying with local master plans and the interim plan still may not meet the criteria which must be established if the goals of regional development and resource control are to be attained.\(^{172}\) Because project approval cannot be withdrawn by the agency for the project's failure to comply with subsequently established criteria, regional development is severely limited by exceptions granted by local interests.

A recent study of basin zoning ordinances indicated that California ordinances are basically dissimilar and need standardization;\(^{173}\) the Nevada ordinances need generally tighter controls.\(^{174}\) The rather obvious conclusion is that the local ordinances and plans reflect the individual needs of the various local governments and not the entire region.\(^{175}\) When TRPA reviews a proposed development project, however, it must consider the needs and limitations of the entire region. The regulations of the individual governments must necessarily receive secondary consideration. Any conflicts with local plans must be resolved in favor of regional requirements.

Thus, the interim plan has been justly criticized as not offering adequate criteria for local planners,\(^{176}\) because compliance with local plans—the only guidelines available—offers no assurance that the project will further regional development. In a recent agency meeting meeting the TRPA legal counsel informed a developer seeking a building permit that "his difficulty [in securing a permit] was one of [attempting to build] at the time of organization of a new agency . . . when rules and regulations are not clearly worked out."\(^{177}\) Such guidance is indicative of the nature of the problem.

2. Administrative Staff

This confusion as to the criteria to be applied in reviewing pro-

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171. CAL. GOV'T CODE § 66801, art. V(d).

172. See Staff Paper 4 (1970); CAL. GOV'T CODE § 66801, art. V(b); JOINT STUDY COMMITTEE 42-43 (describing the fragile environment of the Tahoe basin). County-wide ordinances are often inappropriate to make development practices effective in preserving the delicate ecological balance of the region.


174. Id. at 3.

175. TAHOE DESIGN 19. A recent Placer County traffic and road planning study contained proposals for highways which did not always correspond at county or city boundaries.

176. Interview with Gary Chase, City Manager, City of South Lake Tahoe, in City of South Lake Tahoe, Sept. 25, 1970.

177. TRPA HEARING 4.
posed development in the basin is rooted at least partially in the insufficient staff of the agency. At present there are only an executive director and a planning coordinator, who spend most of their time reviewing project proposals instead of planning for regional development. The preparation of detailed criteria to evaluate any proposed development in the basin is necessary to inform local governments and developers of the standards necessary to secure agency approval of future projects. The staff has not been able to prepare these criteria. In addition, the absence of the detailed criteria required to implement the regional plan makes it difficult for any planning expert—much less the present local members of TRPA's governing body—to realize fully the regional impact of a particular development project. An adequate staff would help to insure that the necessary criteria are readily available.

3. The Governing Body

There is another significant organizational defect in the agency—the composition of the governing body. Representatives from the region's local governments constitute a voting majority on the agency's governing board. This local control over agency decisions probably will prevent TRPA from becoming an effective force for regional control. The agency's strongest opposition comes from the local governments, which are under a primary duty to serve the residents within their particular jurisdictions. Even a representative with sincere conservation motives may have to submit to local political pressure to approve a revenue-generating development which expands the jurisdiction's tax base, especially when local sympathy is strongly opposed to the regional authority of TRPA.

TRPA was intended to be a regional form of government with the power to enforce a comprehensive plan of conservation and development


179. Interview with J.K. Smith, Executive Director, TRPA, in City of South Lake Tahoe, Sept. 25, 1970.


181. See Cal. Gov't Code § 66801, art. III(a) & (g).

182. See note 123 supra. See TRPA Hearing, Exhibit C.

183. See Coastline Hearing 80 (testimony of Assemblyman Wood); Joint Study Committee 19.

184. See notes 123, 166-69 & accompanying text supra.
in the Lake Tahoe basin. Local governments will be forced to comply with the rules and regulations approved by the governing body. The weakness appears at this point: Since a majority of the governing body is composed of local members, it is doubtful that this decision-making body will approve any rule or regulation that is not agreeable to the local governments. The end effect may be that no decision will be made by TRPA that would not be voluntarily enforced by the local governments.

An increase in the governing body's membership to include more representatives of statewide interests could prevent local domination of TRPA policy. In January 1970 a bill was introduced in the Assembly of the California Legislature that would have made such a change in the membership of CTRPA's governing body. The bill called for an increase in the number of governor's appointees from one to three. Through amendment, however, this provision was deleted, and all that remained were appropriations for TRPA and CTRPA. Although this attempt failed, increasing the strength or altering the membership of the California agency may be the only way to improve TRPA's effectiveness in California, since Nevada would most likely disapprove of such a change in TRPA.

V. Conclusion

Maintaining the equilibrium between Lake Tahoe's natural endowment and its manmade environment is a demanding task for any form of regional authority. It will be especially difficult for TRPA because the legislature has failed to give it sufficient authority to accomplish the assignment. In fact, weak enabling legislation may well prove to be TRPA's stumbling block to becoming an effective force in the preservation of the basin's resources.

The enabling legislation failed to provide adequate criteria to guide the agency in its review of proposed developments pending adoption of the interim plan; nor did it create an adequate staff to prepare the plan. The legislation required the agency to adopt an interim plan within 90 days after formation, and due to this strict time requirement, the agency had to adopt an inadequate interim plan which has met with considerable local opposition.

The agency's activities prior to the plan's adoption were not well

185. See Cal. Gov't Code § 66801, art. VI(b) & (e).
188. See text accompanying notes 64-75 supra. CTRPA could enforce higher standards of development if it so decided. See text and material cited at notes 83-84 supra.
190. See notes 96-97, 166-177 & accompanying text supra.
coordinated. Some development proposals were tabled pending adoption of the plan, while others were approved without consideration of the future plan's requirements. The enabling legislation should have either specified general criteria to be used for reviewing projects or imposed a moratorium on development in the region. A moratorium would have been more desirable in that it would have allowed the agency's limited staff to devote the full measure of their time to preparing the interim plan.

An effective interim plan was essential to the agency's early success. Not only would it have given local interests a clear picture of the agency's role in basin regulation, but also it would have prevented the deleterious impact of recent development in the region. Although the agency has not been operating under the plan long enough to evaluate its effectiveness, the initial response has been unfavorable.

The agency does not have well-defined powers to enforce its plans. It is without the power of injunction to restrain violations. Instead, it must rely on criminal prosecutions for violations of the plans, the effectiveness of which is at least questionable. Moreover, the agency has no express power of review over the developments of local governments but must rely on them to enforce the plans or be subject to legal action. For TRPA to regulate development in the basin effectively, it should have well-detailed enforcement powers leaving no doubt of the scope of its jurisdiction and authority.

Before the enabling legislation for TRPA was finally enacted, the


193. See, e.g., A.B. 2131, ch. 2, art. II, where the criteria and method of review of proposed projects are set forth for the use of the advisory committee of the proposed Coastal Zone Authority; Cal. Gov't Code §§ 66602-05, 66632, which state the criteria to be used by the San Francisco Bay Conservation and Dev. Comm'n.

194. See text accompanying notes 104-107 supra. See also Powers 47-48, where the author concludes that a moratorium on bay fill would be upheld by California courts as a valid exercise of police power.

195. See Tahoe Design 3, where current proposed developments for the basin are noted. "[C]onsidering present development pressures, it is fair to say that without such regulations [the interim plan] preparation of a regional plan and permanent regulations would be largely academic." Id. at 12. See also Joint Study Committee 46-48.

196. See text accompanying notes 170-77 supra.

197. Cal. Gov't Code § 66801, art. VI(c) & (f).

measure experienced numerous changes. The overall effect of these changes was to place the fate of Lake Tahoe back in the hands of the local governments—a result the initial legislation was intended to avoid. A regional authority that is over-sensitive and responsive to local pressures will probably be unable to make the difficult decisions necessary to effectively regulate basin development. The region is financially dependent on tourism and tourist-related industry, a factor which, when characterized by short-range local interests, conflicts with TRPA's goal of protecting the basin's resources from overuse. This is an inherent defect in the operation of TRPA; Lake Tahoe cannot be effectively preserved as a natural treasure for the people of California and Nevada if decisions concerning its future are based on local priorities.

It is to be hoped that local interests will realize that only through regulation and orderly development of Lake Tahoe's resources will the economic stability of the region be assured. Federal intervention may result if TRPA does not become an effective force for basin control, and local governments will have lost the opportunity for self-determination. Preservation of the region's fragile environment offers a significant challenge to the regional approach to land use management. TRPA's experiences in meeting this challenge will offer guidelines for any future regional authority that may be created to conserve natural resources.

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200. This was the conclusion reached by the JOINT STUDY COMMITTEE 5.

201. S. 2208, 91st Cong., 1st Sess. (1970). This is a bill to authorize the Secretary of the Interior to study the feasibility and desirability of a national lakeshore on Lake Tahoe in the State of Nevada. Considering that 48.2 percent of the land within the Tahoe basin is within National Forests, federal intervention is not unlikely. JOINT STUDY COMMITTEE 48.

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