

California Tahoe Conservancy
Agenda Item 2
June 15, 2017

BOARD MEETING MINUTES
JANUARY 13, 2017

January 13, 2017 Board Meeting

The minutes are prepared from the same-day audio recording and transcription by Foothill Transcription Company certified on February 20, 2017.

Agenda Item 1. Roll Call

Chair Sevison called the meeting to order with an 11:12 a.m. roll call at the Lahontan Regional Water Quality Control Board – Annex Hearing Room, 971 Silver Dollar Avenue, South Lake Tahoe, California.

Members present:

Larry Sevison, Chair, Placer County
John Hooper, Vice Chair, Public Member
Tom Davis, City of South Lake Tahoe
Todd Ferrara, California Natural Resources Agency
Karen Finn, California Department of Finance
Paula Frantz, El Dorado County
Lynn Suter, Public Member (arrived at 11:19 a.m.)

Members absent:

Jeff Marsolais, U.S. Department of Agriculture, Forest Service (ex officio)

Others present:

Marian Moe, Deputy Attorney General
Patrick Wright, Executive Director
Jane Freeman, Deputy Director

Ryan Davis, Staff Counsel

Michael Steeves, Staff Counsel

Agenda Item 2. Chair's Report

Chair Sevison said weather and road conditions contributed to the meeting delay.

Agenda Item 3. Attorney General's Report

Deputy Attorney General Marian Moe had no report.

Board Member Davis asked Ms. Moe whether he could participate in the meeting. Ms. Moe responded yes.

Agenda Item 4. Executive Director's Report

Executive Director Patrick Wright thanked Mr. Steve Teshara, Principal, Sustainable Community Advocates and Julie Regan, External Affairs Chief, Tahoe Regional Planning Agency for work on the Lake Tahoe Restoration Act.

Agenda Item 5. Public Comment on Non-Agenda Items

There was no public comment.

Agenda Item 6. Discussion Items

a. Update on Potential Conservancy Board Conflicts of Interest:

The Board discussed the applicability of the common law rule of incompatible offices (Gov. Code, § 1099) to the California Tahoe Conservancy (Conservancy) Board and potential legislative options to remedy the issue.

Marian Moe, Deputy Attorney General, presented the item.

Ms. Moe reminded the Board of the required conflict of interest training and related informational material provided by the Office of the Attorney General on the complex conflict of interest issue of incompatible offices. Ms. Moe provided

background on communication between her office, El Dorado County and the City of South Lake Tahoe (City). Ms. Moe summarized case law on the doctrine of incompatible offices, including opinions issued by the Office of the Attorney General.

In response to a question from Mr. Ferrara regarding an express or implied legislative override, Ms. Moe said, by way of example, that the enabling legislation designating the Board of the San Joaquin Delta Conservancy specifically requires members of the Board of Supervisors for Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties.

Ms. Moe said dual offices may be allowed where it is considered compelled legislatively by statute based on the nature of the functions assigned to specific local agencies which require a member on both agencies, such as in the case of joint powers agencies.

In the event dual offices are authorized, Ms. Moe said the first office is “deemed automatically vacated” in the event of a successful legal action. Ms. Moe said the Office of the Attorney General does not advise individuals on whether they have a conflict in this area, but will explain the law and discuss potential options. Ms. Moe said the typical litigation scenario involves a petition to the Attorney General’s Office referred to under California Code of Civil Procedure section 803 as “Quo Warranto.” If the petition challenges an individual’s ability to hold two offices, the Opinion Unit of the Office of the Attorney General issues a decision on whether it would be in the public interest to allow the matter to proceed to state court. Ms. Moe said the Office of the Attorney General has made no recommendation in terms of the incompatibility issues for the Conservancy and that no advice has been given, because the decision on how to proceed is up to the individual office holder. Ms. Moe said her office had discussed potential options with the City and El Dorado County Board members.

On a related matter, Ms. Moe said if a member holding two offices votes, the De Facto Officer Doctrine applies. Ms. Moe said, under that Doctrine, the officer exercising his or her authority or functions lawfully and with the acquiescence of the public, are considered de facto officers. Accordingly, Ms. Moe said the lawful acts of a de facto officer if done within the scope and apparent authority of the office, are valid and binding. Consequently, until someone is either adjudicated in court as holding an incompatible office or resigns from that office, he or she can continue to vote and hold both positions. Ms. Moe concluded, saying the

Superior Court makes the final decision on potential incompatible office situations.

With specific reference to the Conservancy and the Board discussion item, Mr. Steeves said the Conservancy's enabling legislation does not expressly provide for an elected official from the local jurisdictions to sit on the Board. Mr. Steeves said he and Mr. Wright have discussed potential approaches to address the situation, including legislation to expressly provide for elected officials to sit on this Board, consistent with other conservancies. Mr. Steeves said staff recognizes the importance of having elected officials from the local jurisdictions on the Board.

Mr. Wright said Conservancy staff have had conversations with the California Natural Resources Agency (CNRA) staff and legislative staff on the subject. Mr. Wright reconfirmed the Conservancy's interest in giving elected officials the ability to serve on the Board and noted that having representation from local jurisdictions is fundamental to the Conservancy structure. Mr. Wright noted the significance between having a public member appointed by a local jurisdiction versus somebody who represents that jurisdiction.

Mr. Ferrara commented on the item. He said that the Conservancy's enabling legislation is nearly 35 years old and the length of operating practice shows the legislative intent. Speaking on behalf of the Secretary of the CNRA, Mr. Ferrara said the CNRA recognizes the tremendous benefit from having elected representation on the Conservancy Boards statewide. As noted by Ms. Moe, Mr. Ferrara acknowledged that the conservancies were created at different times and have different makeups, but for the most part, the common thread is that they involve not only State representation but also local representation. Mr. Ferrara said there is public policy value in having that local knowledge and the input that local elected representatives provide as a part of this Board's makeup. Mr. Ferrara said the CNRA is interested in seeking a legislative remedy that would clarify what the discussions have collectively acknowledged and represented as a greater good. Mr. Ferrara said he welcomes the ability to work with any of our partners in achieving that result. Mr. Ferrara asked for Board consideration of steps to resolve this issue as timely and quickly as possible so that there is no ambiguity and that everyone has equal and clear footing for their participation. In conclusion, Mr. Ferrara said he would work on this personally in the coming months.

Chair Sevison commented on the item. Mr. Sevison noted his familiarity with the Conservancy's enabling legislation as a member of the Tallac Commission (Commission). The Commission was unaware of the potential conflict, which it could have addressed if it had known at the time. Chair Sevison said the Commission appreciated the working relationship between local government and the Conservancy and that the potential conflict was very unfortunate. Chair Sevison said he experienced the situation first hand during his tenure on the North Tahoe Public Utility District Board, which resulted in his resignation from that office. Chair Sevison said he assumed staff, the State, and the various officials dealing with the issue on a daily basis would eventually address the issue. Chair Sevison expressed his appreciation for the effort.

Ms. Frantz commented on the item. Ms. Frantz said her appointment to the Board is solely because of this issue. Ms. Frantz said that for 32 years the County has elected to always have the Fifth District Supervisor serve because it is the County's opinion that that the legislative intent is clear within the enabling statute. Ms. Frantz said that the legislative history supports and enables each of the local entities to appoint an elected member of their body, and the authority is reinforced by the fact that every Conservancy adopted since that time has made the intent more clear. Ms. Frantz said that while the Conservancy may have been one of the first conservancies created and the enabling legislation might have been better stated, it was stated in a way that the intent was agreed upon for 32 years. Ms. Frantz said the fact that it took 32 years for somebody to decide that maybe there is perhaps an incompatibility suggests to her that there is no such incompatibility. Ms. Frantz said she is excited to work with her fellow Board members, and specifically Mr. Ferrara. Ms. Frantz said the proposed legislative amendment should state that it is declarative of existing law, is not a change, and that it is what was always intended for the Board to continue to operate with business as usual. Ms. Frantz said she expected to step off the Board as quickly as possible so that the much more qualified Ms. Novasel can return. Ms. Frantz said it is very important that the local agencies be able to pick whoever they consider the most qualified, which could include a non-elected official. Ms. Frantz used Chair Sevison as an example of such an appointment.

Mr. Ferrara agreed. He said the fix would make it clear that it is the local jurisdiction that could appoint a member of their body or a representative from a County.

Ms. Frantz agreed. She said it was intended under the statute and while maybe not perfectly drafted, as somebody who has drafted many pieces of legislation,

the intent was clear. Ms. Frantz thinks it is pretty good evidence of that counsel did not tell the Board to change after 32 years. Ms. Frantz said legal counsel do not hesitate to advise their Board of mistakes.

Vice Chair Hooper said it is immeasurably important to have the direct participation of elected members of the City Council and El Dorado County. Vice Chair Hooper also noted the history of Conservancy projects with local governments as reflected on the meeting agenda. Vice Chair Hooper observed that as soon as Conservancy staff and the Board became aware of this issue, it was clear they wanted to resolve it as quickly as possible and exactly in the words Ms. Frantz is suggesting. Vice Chair Hooper said it is tremendously advantageous to have the elected officials themselves sitting on the Board and participating with their perspective and wisdom, but it is up to those entities. If they want to have somebody else, that is their business. Vice Chair Hooper said the improved language can easily be broad enough to contemplate that. Vice Chair Hooper asked that the Board work cooperatively to resolve the matter as quickly as possible.

Ms. Suter said she was not in attendance at the September 2016 meeting when the matter surfaced. She said she contacted Mr. Wright and Conservancy staff on the matter and noted her 36 years working in the legislative context in Sacramento. Ms. Suter said she and Mr. Wright agreed this is an easy fix and, from a legislative timing perspective, would not require starting from the beginning of a legislative session. Ms. Suter suggested the legislation could involve a committee bill or be part of the State Budget Act effective upon signing by the Governor. Ms. Suter did not believe that any local members of the State Legislature would have concerns with the proposed approach. Ms. Suter said the matter should be addressed as soon as possible.

Speaking from the perspective of the County, Ms. Frantz said the decision to change appointments to the Board was not made easily and is made in light of the potential Draconian results of an incompatible office. Ms. Frantz said the County firmly believes Ms. Novasel has the right to continue to sit on both Boards. Ms. Frantz said she would serve as the County appointee until there is a legislative fix. Ms. Frantz reiterated the Board's 32 year history under the current enabling legislation and described the possibility of a legal challenge as remote but worthy of an abundance of caution.

Board Member Davis commented. He read an email into the record that he received from Mr. Steeves:

Following up on our conversation from yesterday, I've attached a staff report summarizing the conflict of interest discussion for next Friday's board meeting. Given the December 20th article in Lake Tahoe News on the topic, we felt it would be helpful to have an open and transparent discussion on the issue to clear up any misconceptions and discuss legislative remedies. As we discussed yesterday, the Conservancy is not seeking your resignation or recusal and hope you can attend next Friday.

Board Member Davis said he will resign after the meeting until this issue is clarified. He said the City Council does not meet on appointments until next Tuesday, January 17th, at which time he will recommend Mr. Hal Cole as his replacement on the Board. Board Member Davis said Mr. Cole is a former City Councilmember and mayor for many years. While noting his suspicion on the timing of the matter, Board Member Davis said, on behalf of the City, we have had an excellent working relationship with the Conservancy over the years until just recently. Board Member Davis said staff does a wonderful job in this agency, and this agency does a wonderful job for the communities that it serves. Board Member Davis said he will resign immediately after discussion of the item and, based on advice from the City Attorney, intends to return to the Board in the future.

Board Member Davis said he was uncomfortable with the way the subject came up in a one-on-one conversation and felt strongly that it should be a Board discussion, not something we do with members. Board Member Davis said he is suspicious why it has taken 15, 20 years for this to come forward. Mr. Davis said the Board members should be advised on the matter by legal counsel and he put the burden on Conservancy counsel to provide advice on potential conflicts of interest. Board Member Davis said he did not participate because of the potential conflict of interest with the Conservancy in the closed session on threatened litigation with the City, he did not participate. Mr. Davis had similar situations occur on the City Council all the time, including a current case involving a new City Councilmember in litigation with the City. He said he has recused himself on several matters while on the City Council.

Board Member Davis clarified for the record to consider his resignation submitted upon completion of this Agenda Item discussion.

Chair Severson invited public comment on the item.

Ms. Norma Santiago, former Board member and El Dorado County Supervisor, commented on the item. As a former El Dorado County Supervisor, Ms. Santiago said El Dorado County has always valued its relationship with the Conservancy and advancing projects that benefit the area and are consistent with like-minded goals.

Ms. Santiago asked whether a legislative solution would involve the Conservancy working with the CNRA or whether the elected members would work together with the CNRA to develop a legislative proposal.

In response, Mr. Ferrara said he has been working with the CNRA deputy and general counsel to more accurately reflect the proposed changes as discussed which would be to revise what is currently:

- A. One member appointed by the City Council of the City of South Lake Tahoe.
- B. One member appointed by the Board of Supervisors of the County of Placer.
- C. One member appointed by the Board of Supervisors of the County of El Dorado.

Mr. Ferrara suggested redrafting those specific, enumerated terms to reflect the current discussions to expressly allow members of the boards of those bodies and/or their representative.

Mr. Ferrara said the Deputy for the CNRA will be consulting with the Governor's Office and will be submitting proposed legislation to the Office of the Legislative Counsel in the near future.

Mr. Ferrara said the CNRA welcomes input to ensure that everyone is comfortable with the proposal.

In response to a question from Ms. Suter about whether the CNRA would sponsor the legislation, Mr. Ferrara said he did not know if that decision had been made. However, that would be something the CNRA would consider along with several other approaches, including working with a specific legislative committee and the budget process.

In response to Ms. Suter's question on timing, public notice, and possible board action at a future meeting supporting the proposed legislation, Mr. Ferrara said the CNRA would be moving forward on a legislative solution immediately.

Ms. Frantz said she would also like to volunteer to help. Ms. Frantz said the El Dorado County Board of Supervisors authorized staff to work with the Legislature to come up with this clarifying fix and authorized her to work with the Board.

Mr. Ferrara said, based on direction from the CNRA Secretary, he reached out to Senator Gaines' office.

Ms. Frantz said she and the El Dorado County Chief Administrative Officer were planning to take a similar approach and that she planned to communicate with the California State Association of Counties on the issue if necessary.

On behalf of the Board, Chair Sevison expressed his appreciation to Mr. Ferrara and offered the Board's support.

Vice Chair Hooper said his understanding is that Ms. Frantz and Mr. Ferrara will be taking a joint approach.

Ms. Frantz said whatever approach will get this achieved the most quickly and efficiently is what she, as a Board member, and the El Dorado County Board Supervisors are looking for.

Board Member Davis said he will recommend on Tuesday that the City Council join forces with partners in the County and on the Board to resolve the issue. Mr. Davis also said it has been an honor to work with the Board.

Mr. Austin Sass, Mayor of the City of South Lake Tahoe, commented. Mr. Sass said serving the public through public office is about trust and transparency. Mr. Sass said he agreed with Board Member Davis on the suspicious timing.

Ms. Finn responded to the question of timing. She said she recalled the decision by Ms. Novasel at the Conservancy's September 15, 2016 meeting to abstain from voting on the Proposition 1 grant to El Dorado County because she was concerned about a conflict of interest. Ms. Finn said she recalled that the Deputy Attorney General advised Ms. Novasel that it did not appear to be a personal conflict of interest.

Ms. Moe said the conflict of interest may not necessarily be evaluated in isolation. Ms. Moe said some financial conflicts of interest cannot be resolved on a transactional basis by recusal.

Ms. Moe said, for example, ownership interests or contractual issues are often interrelated and connected.

Ms. Sue Novasel commented on the item. Ms. Novasel said she participated in a County discussion about relationships with other agencies. In that course of discussion, she was advised to use caution when voting on a specific issue where the County receives monies from another agency and that there may be a need for recusal. Ms. Novasel said she received a phone call from the Deputy Attorney General, along with a Conservancy counsel, that she interpreted as supporting resignation in advance of the December 2016 meeting. Ms. Novasel said she did not resign at that time and that the appointment of Ms. Frantz occurred in the normal course of County actions at the beginning of each yearly term. Ms. Novasel said the County asked her to serve another term on the Board and she declined on the basis of the current discussion, because it was in her best interest not to accept that appointment. Ms. Novasel said that she requested to have Ms. Frantz act as a temporary replacement on the Board because of her experience with land use in Lake Tahoe and her relationship with Ms. Frantz on the conflict of interest issue. Ms. Novasel said the appointment is temporary until there is a legislative or a court decision to the contrary. Ms. Novasel reiterated that her question was whether she should vote on an item involving funding. Ms. Novasel said the Board of Supervisors felt it was very important that she, as the elected official for the Fifth District of South Lake Tahoe, be on this Board because the Conservancy's enabling legislation provides for elected officials serve on the Board. Ms. Novasel expressed her appreciation for the Board's support and assistance, and specifically recognized Mr. Ferrara and Ms. Suter. Ms. Novasel said she is in the audience and not on the Board because of the threat of litigation and the threat of losing office.

Ms. Moe said, while it may not make any difference substantively, there was no recommendation or advice from the Attorney General's Office to ask the Supervisor to resign. The Attorney General's Office was asked for options to avoid the potential risk of losing the elected office. In response to a specific request for what options are available, there was a discussion that a resignation would avoid that risk. There was no recommendation and no threat of litigation.

Mr. Ferrara thanked Ms. Novasel and Mr. Sass for their comments and questions. Mr. Ferrara recognized the strong individual personalities in the community who are doing the best they can on many levels.

Mr. Ferrara rejected the notion that there is a grand conspiracy afoot to deny participation of certain people on the Board. Mr. Ferrara rejected the comparison to a "House of Cards," and more importantly, said nobody has anything to gain from any confusion. Mr. Ferrara reiterated the previous comments and confirmed that all parties want to make it crystal clear as soon as possible. Mr. Ferrara acknowledged there may be some frustration about whether certain projects have materialized but it ends there.

In conclusion, Mr. Sevison offered the Conservancy's assistance and thanked Mr. Ferrara for his offer of leadership on a solution.

b. Status of Projects and Partnerships with the City of South Lake Tahoe:

The Board discussed present and future projects, partnerships, and commitments between the Conservancy and the City.

Penny Stewart, Resources and Public Access Program Manager, presented the item.

Following the completion of the presentation, Chair Sevison invited Board member and public comment, which was received as follows:

Vice Chair Hooper commented on the presentation. He stressed the importance of the Conservancy maintaining strong relationships with the City. Mr. Hooper emphasized the importance of clarity and direction going forward.

Mr. Sass commented on the item. Mr. Sass disagreed with portrayals that the City did not want to work with the Conservancy. The City Council, subcommittee, or City Manager has never stated that they do not want to work with the Conservancy. This presentation, which suggests that the City does not want to work with the Conservancy, is false. There is no truth in it. Not one City Councilmember has discussed this in open session. There is no subcommittee that made this decision. The City Manager has given no direction to staff not to work with the Conservancy. What was stated at the last Board meeting, which is not in the minutes due to a technical error, he was told, is that when the City works with the Conservancy, they want the final judgment from the Board put into writing, and he stated that the last time he was here. Mr. Sass said the City values its relationship with the Conservancy and wants to work with the Conservancy.

In response to a question from Vice Chair Hooper, Mr. Sass disagreed that there is a connection between the City's rejecting the planning grant authorized by the Conservancy Board in September 2016 and the City's desire to work with the Conservancy on a multitude of projects in the pipeline. He declared that the City has no regrets over any of the past projects.

In response to a comment by Chair Sevison regarding the threat of a lawsuit by the City against the Conservancy, Mr. Sass said no lawsuit has been filed, nor has City Council had any discussions about a definitive lawsuit against the Conservancy. Mr. Sass also said that it is kind of interesting that the City was not invited to come to this meeting on a formal basis. He noted that they happened to get the agenda, and that is why they showed up. He said no one called them to let them know there would be a presentation regarding the City's projects and partnership.

In response to a comment by Chair Sevison regarding a possible City lawsuit, Mr. Sass indicated that no lawsuit has been brought forward by the City against the Conservancy. The City Council has not had any discussions about a definitive lawsuit against the Conservancy. Mr. Sass continued noting that the Conservancy agenda item document says the City's Attorney specifically requested a list of all contractual agreements and, to his knowledge, the City Attorney has not asked for a list of all of the contracts. He said if that took place, the City Council was not aware of it.

Ms. Nancy Kerry, City Manager, commented on the item. Ms. Kerry said she asked the City Attorney if he requested copies of the contracts, to which the City Attorney went through all his emails and said he had not. Ms. Kerry said the City Attorney could not recall a conversation in which he might have asked for the contracts, but may have talked about the contracts in the context of the conflict of interest issue. Ms. Kerry said she found staff's information on contracts interesting.

Regarding the planning grant, Ms. Kerry said it would not make sense to accept a grant for a project that may not move forward. She said the City would not mind getting reimbursed for the environmental document. Ms. Kerry said if the project does move forward then the City would accept the planning grant.

Ms. Kerry said she was disappointed that the City's September 2016 comments on the Knights Inn project were not included in the minutes, and that she heard the reason the City's comments were not included was because there was a glitch

in the recording while they were speaking. Ms. Kerry remarked that the timing seemed odd. She noted that at the September Board meeting, both she and Mr. Sass had raised concerns that, while it may be inaccurate, they do not feel the Executive Director's report is complete with regard to the history of the Knights Inn project. Ms. Kerry requested an update to the Executive Director's report to include all of the history on the project and staff direction. Ms. Kerry said she and Mr. Wright have a good working relationship and noted Mr. Wright's great ideas and ability to look for the outcome, which motivated the City to pursue the Knights Inn project and grant application. She noted that when Mr. Wright came to them with the idea about acquiring Knights Inn, the City was very excited about it. The City spent a couple of years letting the Conservancy explore acquiring the Knights Inn and then when it became apparent that the Conservancy could not acquire the property directly, the City submitted the grant application. It went through the review and was recommended by the Conservancy's External Review Team. Ms. Kerry indicated that only at the last minute did the Conservancy suggest they had to make some pretty substantial amendments, which they did, and then it never came to the Board. Ms. Kerry concluded that, as we requested the last time we spoke, the project should have come to the Board. We want something in writing from now on, because we could not trust what the Conservancy staff said.

Ms. Kerry said the City expended over \$200,000 on environmental document costs to support its grant application. Ms. Kerry summarized the project benefits and current flooding conditions at the site. She said the City and Conservancy should work together on common goals, including well-developed projects, environmental gains, economic development, and beneficial strategies for the town.

In response, Mr. Wright said he is encouraged by the City's comments. Mr. Wright said he agreed with the importance of open conversations going forward. Mr. Wright said he wanted to say a couple of words about the process moving forward and some of the staff's concerns. He believes the Knights Inn was a signature project under the Regional Plan, and something that we all looked forward to. He noted that when the project details began to emerge, it was not consistent with the grant application and what the Conservancy's panelists, Conservancy staff, and others had been led to believe. Mr. Wright said while we can all understand that disagreements happen, he is concerned about the allegation that staff somehow worked inappropriately and that the staff role versus the Board role was not handled the right way. He indicated that the staff felt they should not take a project to the Board for a decision that is not ripe.

Ms. Frantz raised a concern that the discussion had moved beyond the noticed agenda topic and suggested that the Board consider whether some of the specific project items discussed, such as the Bijou Park Creek Project, could be presented to the Board at a future meeting.

Vice Chair Hooper said that it was not uncommon for staff to bring projects as discussion items to the Board as they are being developed. Vice Chair Hooper thanked Mr. Sass and Ms. Kerry for their comments.

Mr. Ferrara commented on the item. Mr. Ferrara said he appreciated the comments and encouraging statements concerning the City's desire to continue to partner with the Conservancy. It is his hope that the relationship would continue to mature. With regard to the Board's planning authorization for the Bijou Park Creek Project, Mr. Ferrara supported the action as evidence of the Board's good faith as well as its desire to support good projects that meet the unique requirements of Proposition 1. Mr. Ferrara noted and reiterated the unique elements of Proposition 1. Mr. Ferrara expressed his hope that in the future we are able to partner on a great project in the City that meets the City's goals and Conservancy and State requirements.

In conclusion, Chair Sevison said he agreed with the Board's expressed desire to improve relationships and pledged his support for future dialogue.

Agenda Item 7. Project and Program Authorizations

a. South Tahoe Greenway Shared Use Trail Project: The Board considered authorizing staff to enter into a Memorandum of Understanding (MOU) with the City and Lake Tahoe Community College District (District) for the South Tahoe Greenway Shared Use Trail (Greenway). The Board also considered expending up to \$30,000 over five years in State Operations Funds for routine and interval maintenance of the Greenway.

Chris Mertens, Associate Environmental Planner, presented the item.

In response to a question from Vice Chair Hooper regarding the commencement date for the potential \$30,000 funding authorization, Mr. Mertens said the funds would be used at any time, recognizing that construction of some phases of the Greenway will not be complete or require maintenance until 2021. Mr. Mertens said authorization for the MOU was needed sooner.

Vice Chair Hooper asked a question about outstanding issues that could impact the City and District's timeline for approving the MOU and specifically the May 1, 2017 deadline in the staff report. Mr. Mertens responded staff are negotiating issues with the City and the District associated with maintenance costs above what Measure R and Measure S would cover and natural resource management in the Trout Creek Corridor. He said the District was ready to move forward on resolving natural resource management issues.

Ms. Frantz commented on the project. She questioned whether it was appropriate to approve the MOU without first reviewing a final draft. She asked whether the final MOU could be presented to the Board in March.

In response, Staff Counsel Ryan Davis said the authorization would give staff the authority to work out the final details on the terms of the MOU and that a specific agreement would not be returned to the Board for approval or review.

Mr. Mertens added that the purpose of the proposed authorization was also to reemphasize the Conservancy's support for the project to both the City and the District prior to their actions. Mr. Mertens said staff had negotiated a framework of an MOU and had ideas about how to resolve the remaining issues with the City and the District.

Ms. Frantz suggested revising the resolution by authorizing staff to continue to negotiate the MOU, with Board support conceptually. She suggested returning the item to the Board in March 2017 with more detail on responsibility for unforeseen costs and for management at Site 4.

Mr. Ferrara commented on the project. He said he supported Ms. Frantz with the understanding that the Board would consider the MOU in March 2017.

Mr. Ferrara emphasized the importance of the project timeline.

Following completion of the presentation, Chair Severson invited Board member and public comment which was received as follows.

Ms. Kerry commented on the project. Ms. Kerry said that, with regard to the allocation of City Measure R or Measure S funding for maintenance of the project, there is a limited amount of funding available for new projects. She said the decision to allocate funds from either Measure R or Measure S is made by the City's Recreation Joint Powers Authority (JPA). Ms. Kerry also said decisions on maintenance of the Greenway will involve the District. The District will likely

also look to the City for maintenance of the Greenway across its property. Ms. Kerry said the cost of maintaining the Greenway could exceed the Conservancy's proposed \$30,000 reimbursement authorization. She also noted that both the City and District are concerned about replacement costs associated with the proposed Greenway bridge.

Ms. Novasel commented on the project. Ms. Novasel said she is a member of the JPA. She said the JPA has a Bicycle Subcommittee (Subcommittee) and that funding is committed for maintenance of trails from Meyers to the City. Ms. Novasel said she was not aware of a formal presentation to the JPA on funding for the specific maintenance being discussed.

Mr. Pete Fink commented on behalf of the Subcommittee and the City Parks and Recreation Commission. Mr. Fink noted that the JPA has \$65,000 to \$80,000 per year in excess funds beyond the \$5,000 per mile provided for current Class 1 bike trails. Mr. Fink said the Subcommittee is aware of the need for funding for the Greenway and expressed support for continuing the process.

Ms. Frantz further commented on the project. She expressed concern over maintenance issues in the areas adjacent to the Greenway and specifically the natural resource maintenance, litter, and homelessness. She said she understood the need for direct trail maintenance.

Ms. Sherry Hao, current board member of the Lake Tahoe Bicycle Coalition, commented on the project. She thanked the Conservancy for embarking on the project and noted the Greenway's importance as a bikeway connector for the community. She expressed her support for the MOU and funding.

Ms. Bonnie Turnbull, member of the Parks and Recreation Commission, commented on the project. She noted the project's location in the heart of the community and proximity to other public facilities, such as schools and developed recreation, including Lakeview Commons.

Vice Chair Hooper commented on the project. He noted the need for clarifications on the possible funding constraints raised by Ms. Kerry and the possible risk of delay jeopardizing the funding, given the May deadline.

Mr. Wright said that while the City and District may not act without knowing the Conservancy's commitment, he is confident staff can stay on schedule and that the action will be interpreted as a step forward, not a delay.

With regard to project operation and maintenance responsibility in general, Mr. Mertens said discussions with the City and District are nearly complete.

Mr. Wright said State agencies such as the Conservancy provide capital construction money through bonds and local agencies are responsible for operation and maintenance costs that are ineligible for bond reimbursement. Mr. Wright said this scenario puts a strain on local agencies as evidenced by the Greenway. Mr. Wright said the Conservancy is not in a position to fund operation and maintenance because its funding is also largely from bonds. In the particular case of the Greenway, however, Mr. Wright said the Conservancy support is justified, given that the trail is largely on Conservancy land and requires close coordination between all parties to avoid putting the capital investment at risk.

With respect to Measure R and Measure S funding, Mr. Mertens said the City is receiving checks from the JPA for maintenance of Phase 1a, which is complete. Mr. Mertens said staff understands funding for bike trail maintenance in the future is a high priority for the JPA.

On the matter of responsibility for long-term capital replacement of the Greenway improvements, Mr. Mertens said the City would not be responsible for replacing the Greenway. Mr. Mertens said the MOU recognizes the Greenway as a State-owned facility and the Conservancy will become contractually obligated to maintain the Greenway for its intended purpose as a condition of the project funding provided by others through grants.

Mr. Mertens said snow removal is specifically not part of the MOU because it is not the City's desire.

Ms. Suter commented on the project. She expressed her strong support for the project and desire that the jurisdictions all work as a team.

Ms. Frantz said she also supports the project and complemented staff on laying out the framework of the MOU.

In conclusion, Mr. Wright recognized the Board's direction to staff to move forward with the City and for the District to complete the MOU. He recognized that staff is authorized to expend the funding and will return to the Board in

March 2017 with a recommendation to authorize the MOU, in lieu of the proposed authorization to work with the City and District to complete the MOU.

Ms. Frantz offered a proposed amendment to the resolution that would authorize staff to continue negotiating an MOU with the framework provided. The amendment would also assign the operations, the maintenance and land management responsibility, and expend up to \$30,000 over the five years for routine and interval maintenance.

Upon completion of the Board and public comment, Chair Sevison called for Board action on Item 7.a. Ms. Frantz moved for approval of Resolution 17-01-01, as amended, to authorize staff to negotiate an MOU within the given framework. Vice Chair Hooper seconded.

The motion passed unanimously by a roll call vote.

Agenda Item 8. Public Comment

There was no public comment.

Agenda Item 9. Board Member Comment

Ms. Suter thanked staff, and specifically Ms. Stewart, for working on building partnerships and relationships with the City. Ms. Suter expressed her agreement with the staff's approach, and information on potential litigation with respect to the City. Ms. Suter said she supported the staff's suggestion to provide similar reports for Placer and El Dorado counties.

Chair Sevison also expressed his appreciation to the staff for the work on building relationships with the City.

Agenda Item 10. Adjournment

Chair Sevison called the meeting adjourned at 1:40 p.m.

California Tahoe Conservancy
Resolution 17-06-01(a)
Adopted: June 15, 2017

APPROVAL OF MINUTES

I hereby certify that the foregoing is a true and correct copy of the minutes of the January 13, 2017, meeting of the California Tahoe Conservancy adopted on June 15, 2017.

IN WITNESS THEREOF, I have hereunto set my hand this 15th day of June, 2017.

Patrick Wright
Executive Director