

Chapter 11

FOUNDATIONS

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11.0 Purpose: This chapter sets forth the provisions relating to completion of structures which do not have current TRPA approvals.

11.1 Applicability: This chapter applies to foundations of structures as set forth below and as this chapter may be amended from time to time.

11.2 Definitions: The definitions are:

11.2.A Foundation: Foundation is the structural system, including footings, designed to accommodate all superimposed live, dead and other loads of the project.

11.2.B Residential Foundation: Residential foundation is a foundation for a detached single family residence.

11.2.C Complete Construction: Complete construction is a fully enclosed structure and roof, installation of all permanent drainage improvements and slope stabilizations, and revegetation of the site.

11.2.D Duplex, Triplex or Fourplex Foundation: A duplex, triplex or fourplex foundation is a foundation for a residential project of two, three or four attached residential units, respectively.

11.2.E Multi-residential Foundation: A multi-residential foundation is a foundation for a residential project of five or more residential units.

- 11.2.F Commercial Foundation: A commercial foundation is a foundation for a commercial project. Commercial uses are defined in Chapter 18 of the Code.
- 11.3 One Year Period For Application For Exemption From Residential Allocation System: Beginning on the effective date of this ordinance, and ending one year from that date, owners of residential foundations without current TRPA approval, built on or after January 1, 1976, may apply to TRPA to continue and complete construction on the residence without a new residential allocation Construction permitted by this ordinance shall be subject to the conditions set forth in Section 11.6.
- 11.3.A Exemptions: This ordinance shall not apply to:
- (1) Approved After February 28, 1987: Residential foundations approved on or after the effective date of this ordinance, February 28, 1987.
 - (2) Approvals Valid On February 28, 1987: Residential foundations whose TRPA approvals have not expired as of the effective date of this ordinance, February 28, 1987.
- 11.3.B Abatement: Any residential foundation for which an application for exemption has not been filed or which has not received a new residential allocation, within the time set by this ordinance, shall be subject to abatement by the appropriate governmental agency as further described in Section 11.8 of this ordinance.
- 11.4 Notice To Owners: TRPA, in cooperation with the city and county governments, shall provide notice of the provisions of this ordinance to owners of property that may be affected by the ordinance as follows:
- 11.4.A Notice Posted: Notice shall be posted at least once a month during the one year application period in at least two public locations in the Tahoe region in each city and county.
- 11.4.B Noticed Published: Notice shall be published for one week each month during the one year application period in at least one newspaper of general circulation in the Tahoe region.
- 11.4.C Additional Notice: Additional notice shall be given by deposit of a notice in the United States mail, postage prepaid first class, addressed to the last known address for the owner of the property as shown on the assessor's tax roll. It is the intent of the Governing Board that the notice provided for in this Subsection shall be given expeditiously.
- 11.4.D Failure To Notice: Failure to give the notice provided for in Subsection 11.4.C, or failure to receive actual notice, shall not affect the applicability of this ordinance.
- 11.5 Procedure: The applicant shall file a complete application with TRPA no later than 5:00 p.m. on February 29, 1988, the date one year from the effective date of this ordinance.

- 11.5.A Complete Application: A complete application shall include:
- (1) A completed TRPA residential foundation exemption form. The form shall be devised by the Executive Director.
 - (2) Proof of a construction date of the foundation.
 - (3) A filing fee of \$250.00.
 - (4) Final construction plans.
- 11.5.B Presumption: Foundations shall be presumed to have been built prior to January 1, 1976, unless the applicant provides documentation or other credible evidence that the foundation was built on or after January 1, 1976.
- 11.5.C Notice Of Qualification Of Exemption: Upon receipt of items (1), (2) and (3) in Subsection 11.5.A, and a determination by the Executive Director that the Sub section has been complied with, the Executive Director shall issue a notice of qualification of exemption. The notice shall state that it is subject to the condition that a complete application, as defined in Subsection 11.5.A, shall be filed no later than February 29, 1988, one year from the effective date of this ordinance.
- 11.5.D Permit: Upon acceptance of a complete application and a determination that the residential foundation is qualified for an exemption under the terms of this ordinance, the Executive Director shall issue a permit, in compliance with the terms of this ordinance, for recommencement of construction. Permits shall be mailed or delivered to the applicant no later than the fifth working day following issuance. Copies of permits issued shall be sent to the appropriate county or city. The permit shall state:
- (1) The conditions of the permit.
 - (2) The date the residence must be completed.
 - (3) That the permittee is responsible for any and all conditions of the permits.
 - (4) That no construction shall commence until all preconstruction conditions of approval are satisfied and until TRPA receives a copy of the permit upon which the permittee(s) has acknowledged receipt of a copy of the permit and acceptance of the contents of the permit.
- 11.5.E Transfer of Ownership: In case of transfer of ownership of a parcel identified as having an exempt foundation, the transfer of the notice of qualification or permit shall not be effective until the new owner advises TRPA of the transfer of ownership and acknowledges receipt of the notice or permit and acceptance of the contents.

- 11.5.F Notice of Denial: Notice of denial of a notice of qualification or permit shall be mailed to the last known address of the applicant and to the affected county or city. Notice shall be effective on the date of deposit of the notice in the United States mail, postage prepaid first class. The notice shall state the reasons for denial of the notice of qualification or permit.
- 11.5.G Other Permits: Upon receipt of a permit, the applicant shall obtain a valid city or county building permit before recommencing construction on the project. Nothing in this ordinance shall be construed to affect any city's or county's discretion in the issuance of building permits or other matters related thereto.
- 11.6 Conditions Of Permit: All foundations determined to be exempt under this ordinance from the residential allocation system shall comply with the following standards and conditions:
- 11.6.A Original Plans: The construction shall be in accordance with the original building approval or permit, except for modifications that may be approved by TRPA pursuant to Subsections 11.6.C, 11.6.D and 11.6.E, below.
- 11.6.B Original Plans Unavailable: If no original plans are available, the allowable coverage shall be the Bailey coefficients, or the foundation perimeter plus the coverage necessary to provide access to the residence, whichever is greater.
- 11.6.C Construction Conditions: All construction shall be in accordance with TRPA's Design Review Guidelines, as deemed appropriate by TRPA under the circumstances. All construction shall also be subject to the Standard Conditions of Approval adopted by Resolution 86-8, except as those conditions may be modified by the terms of this ordinance.
- 11.6.D Energy Conservation And Heaters: All construction shall be subject to current TRPA standards for energy conservation, fireplaces, woodstoves, gas, space, and water heaters.
- 11.6.E Best Management Practices And Securities: All owners of exempt foundations shall be required to implement erosion and drainage control measures on the property in accordance with the Handbook of Best Management Practices, and shall post a security to insure implementation. Credit shall be given for any security currently on file with the TRPA for the residential project.
- 11.6.F Mitigation Fees: All construction shall be subject to current TRPA water and air quality mitigation fees. In the event an applicant has paid a TRPA water quality mitigation fee as part of the original approval, the amount previously paid shall be deducted from the current water quality fee for the project. This Subsection shall not be construed to require a refund in the event the current water quality fee is less than the previous water quality fee.

- 11.6.G Complete Construction: All construction shall be complete, as defined in Subsection 11.2.C, within two years from the date of issuance of the permit pursuant to Subsection 11.5.D.
- 11.6.H Extensions: The two year construction period may be extended once for up to one year, provided the request is made in writing prior to the expiration of the two year period and the Executive Director makes either of the following findings:
- (1) The project was diligently pursued as evidenced by substantial construction of the residence during each building season (May 1 - October 15) since recommencement of construction pursuant to the notice of exemption.
 - (2) That events beyond the control of the permittee have prevented diligent pursuit of the project.
- 11.6.I Extension Of Security: The granting of a one year extension shall be conditioned upon the posting of a security to insure that the structure is completed.
- 11.6.J Notice Of Denial: Notice of denial of a request for an extension pursuant to Subsection 11.6.H, shall be mailed to the last known address of the applicant and to the affected city and county. Notice shall be effective on the date of deposit of the notice in the United States mail, postage prepaid first class. The notice shall state the reasons for denial of the request.
- 11.7 Modifications To Original Plans: Applicants wishing to modify the originally approved plans should submit modifications at the time of application for exemption.
- 11.7.A Complete Application: A complete application for modification shall include, in addition to the information and fees otherwise required by Subsections 11.5.A and 11.5.B, the following:
- (1) A completed residential modification form, including original plans, if available and if necessary, and proposed plans for construction. The form shall be devised by the Executive Director.
- 11.7.B Modifications: Modifications to the structure or foundation may be permitted provided that the project's coverage, as modified, does not exceed the coverage originally approved, or the Bailey coefficients, whichever is greater. Nothing in this ordinance shall be construed to limit TRPA's discretion to approve or disapprove modifications.
- 11.8 Abatement of Foundations: Abatement of foundations shall be as follows:
- 11.8.A Presumptions: Owners of foundations who do not qualify for and obtain a permit, or who fail to comply with the conditions thereof, or who do not have a valid residential allocation, for whatever reason, are presumed to have a foundation which constitutes an attractive nuisance or hazard to the public, and shall be subject to abatement as provided below.

11.8.B Abatement: Abatement of such nuisance or hazard may be by:

- (1) Removal: Removal of the foundation or portions of the foundation (if necessary), regrading and recontouring, revegetation, and any other erosion control, slope stabilization, or drainage improvement deemed necessary by TRPA to control runoff in accordance with the adopted 208 Plan;
- (2) Burial: Where removal of the foundation is found to have more adverse environmental impacts than burial, and adjoining property owners have been given notice and opportunity to be heard, burial, regrading and recontouring, revegetation, and any other erosion control, slope stabilization, or drainage improvement deemed necessary by TRPA to control runoff in accordance with the adopted 208 Plan;
- (3) Civil Remedies: Pursuit of civil remedies as appropriate under the laws of the state in which the foundation is located or Article VI(1) of the Tahoe Regional Planning Compact;
- (4) Other Ordinances: Application of appropriate city or county ordinance provisions and the civil or criminal penalties provided for therein.

11.9 Appeals: Appeals shall be subject to the following provisions:

11.9.A Approvals: Approvals of notices of exemptions or permits may be appealed by filing a written notice or request for appeal with TRPA no later than fifteen (15) working days after the issuance of the notice or permit. An appeal shall not automatically stay the notice or permit appealed. The appellant may request, as part of the written notice of appeal, a stay of the notice or permit and any such request shall be by affidavit or under penalty of perjury, pending a hearing on the appeal before the Governing Board at its next regular meeting. The Chairman of the Governing Board shall review any request for a stay of a notice or permit and the evidence submitted therewith, and shall balance the equities and shall determine whether or not a stay of the notice or permit shall be issued. Appeals shall be scheduled for the next Governing Board meeting for which the Agency is able to give proper notice of the appeal.

11.9.B Denials: A staff denial of a notice of exemption, permit or request for extension pursuant to Subsection 11.6.H, may be appealed to the Governing Board by filing a written notice of appeal with TRPA no later than fifteen (15) working days after the effective date of the notice of denial. Appeals shall be limited to determining compliance with the terms of this ordinance. Appeals shall be scheduled for the next Governing Board meeting for which the Agency is able to give proper notice of the appeal.

11.9.C Advisory Planning Commission: Appeals shall not be considered by the Advisory Planning Commission under Section 7.10 of the TRPA Rules and Regulations of Practice and Procedure.

11.10 Provision For Duplexes, Triplexes And Fourplexes: Beginning October 26, 1987, the effective date of this section, and ending one year from that date, on October 26, 1988, owners of foundations for residential duplexes, triplexes, and fourplexes, without current TRPA approval, built on or after January 1, 1976, may apply to TRPA to continue and complete construction on the duplex, triplex or fourplex without new residential allocations. All the provisions of this chapter shall apply to such applications and permits, except as set forth above in this section.

11.11 Provision for Commercial and Multi-residential Foundations: Beginning on the effective date of this section, which date is June 28, 1988, and ending one year from that date, owners of commercial or multi-residential foundations without current TRPA approval, which foundations were built on or after January 1, 1979, may apply to TRPA to continue and complete construction on the project without new allocations, subject to the conditions set forth below.

11.11.A Exemptions: This section shall not apply to:

- (1) Commercial or multi-residential foundations approved on or after the effective date of this section; or
- (2) Commercial or multi-residential foundations whose TRPA approval had not expired as of the effective date of this section; or
- (3) Commercial or multi-residential foundations whose owners were advised by TRPA, prior to the expiration of the permit, that diligent pursuit requires substantial construction each building season once construction has commenced.
- (4) Commercial or multi-residential projects which were the subject of litigation to which TRPA was a party.
- (5) Commercial or multi-residential projects located in the South Tahoe Public Utility District service area.

11.11.B Hearing and Findings: Prior to approval of permits for commercial and multi-residential foundations under this section, the Governing Board shall hold a hearing with notice to affected property owners in accordance with TRPA's Rules of Procedure. TRPA shall not approve a permit unless TRPA finds that:

- (1) The original project, plans for which are produced and included in the record, had received all required discretionary approvals; and
- (2) The county or city permits for the original project were valid or renewed through at least May 1, 1984; and
- (3) The proposed project substantially complies with Chapters 22, 24, 27, 30, 64 and 78; and
- (4) The proposed project substantially complies with the interim standards of Section 4.20 or Ordinance 87-8; and

- (5) The proposed uses are in compliance with Chapter 18 and the applicable plan area statement; and
- (6) In the case of commercial projects, the proposed project area coverage complies with the Bailey coefficients or, if the project was previously approved in excess of the Bailey coefficients, that excess coverage shall be mitigated by a transfer of coverage in conformance with Chapter 20 and that in no event shall coverage exceed 70 percent; and
- (7) In the case of multi-residential projects, the proposed project area coverage complies with the Bailey coefficients or, if the project was previously approved in excess of the Bailey coefficients, that excess coverage shall be mitigated by a transfer of coverage in conformance with Chapter 20 and that in no event will coverage exceed 50 percent; and
- (8) The proposed project is located in land capability district 4, 5, 6 or 7 or that, if the project is not located in land capability district 4, 5, 6 or 7, the project shall be deemed existing development pursuant to Chapter 34 and shall be transferred to a project area in land capability district 4, 5, 6 or 7 and that the transfer shall be in compliance with Chapter 34 and the application for the transferred project shall be in compliance with the Regional Plan and ordinances; and
- (9) The proposed project complies with the applicable provisions of Subsection 11.11.C; and
- (10) The proposed project complies with Chapters 1 through 13, inclusive, 23, 25, 27, 62, 65, 75, 77, 81, 82, 91 and 93.
- (11) There is a reasonable possibility, based on a factual summary prepared by the Executive Director with the assistance of Agency Counsel, that the applicant would prevail on a claim of vested rights. For purposes of this finding only, evidence of construction in each building season shall not be a prerequisite to making this finding. In making this finding the Board shall consider the following factors:
 - (a) Extent of construction;
 - (b) Expenditures in connection with the project;
 - (c) Extent of reliance on governmental communications; and
 - (d) Other relevant considerations as defined by applicable case law.

11.11.C Notice and Procedure: Notice of the provisions of this section shall be given as set forth below. The procedure for application and permit issuance, and related matters, shall be as set forth below:

- (1) Notice: Notice shall be given to owners of property that may be affected by this section pursuant to Section 11.4.
- (2) Procedure: The applicant shall file a complete application with TRPA no later than 5:00 p.m. on June 28, 1989, the date one year from the effective date of this section. A complete application shall include a completed TRPA commercial/multi residential exemption form as devised by the Executive Director, proof of a construction date of the foundation, a filing fee consistent with the adopted filing fee schedule, and original plans or, if modifications to the project are necessary to comply with Subsection 11.11.B, preliminary plans in conformance with the requirements for new multi-residential and commercial projects, as applicable.
 - (a) The provisions of Subsections 11.5.B, 11.5.C, 11.5.D, 11.5.E, 11.5.F and 11.5.G shall apply except that the date for filing a complete application in Subsection 11.5.C shall be June 28, 1989, the date one year from the effective date of this section.
 - (b) The provisions of Section 11.6 shall apply except as set forth below:
 - (i) Construction shall be complete, as defined by Subsection 11.2.C, within three years from the date of issuance of the permit.
 - (ii) One extension, of up to one year, to the three-year construction period may be granted provided the request is made in writing prior to the expiration of the three-year period and the Executive Director makes either of the two findings set forth in Subsection 4.12.E.
 - (c) Modification to original plans may be permitted as set forth in Section 11.7 if the project, as modified, will not result in an increase in the amount of commercial floor area or number of residential units over the original project unless the appropriate allocation is obtained pursuant to Chapter 33 and further provided that:
 - (i) TRPA makes the findings set forth in subparagraphs (3) through (10), inclusive, in Subsection 11.11.B and finds that the component of the project to be modified results in a net improvement in the environment with respect to that component; or
 - (ii) Except for the allocation requirements of Chapter 33, TRPA finds that the modified project complies with all provisions of the Regional Plan Package, including the Code.

- (d) A complete application for transfer of existing development pursuant to Subparagraph 11.11.B(8) shall be filed no later than July 27, 1996. Transfers of commercial floor area shall be restricted to receiving parcels within a community plan area identified in the plan area statements. Transferred commercial floor area shall be considered additional development for purposes of the mitigation requirements of Chapter 93.
- (e) For purposes of Chapter 34, projects approved for construction shall be considered existing development and eligible for transfer in accordance with Chapter 34.
- (3) Abatement of Foundations: Abatement of foundations shall be pursuant to Section 11.8.
- (4) Appeals: Appeals shall be pursuant to Section 11.9.
- (5) Applications: Applications may be lodged with TRPA 30 days prior to the effective date of this section. Lodging an application shall be at the risk of the applicant and shall not be construed to stop TRPA from amendment or revocation of this section prior to the effective date.
- (6) In accepting and acknowledging the conditions of a permit issued pursuant to this section, the permittee shall waive, in writing, any claim of vested rights which may then exist such that any future claims with respect to the permitted project shall be limited to claims arising solely out of the permit issued pursuant to this section.