

Chapter 52

EXISTING STRUCTURES

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52.0 Purpose: Policy 11, Goal #1 of the Shorezone Subelement, Conservation Element of the Goals and Policies requires that TRPA regulate the maintenance, repair and modification of piers and other existing structures in the nearshore and foreshore. Since some existing structures do not conform to the Code standards for new structures, the policy requires that, for maintenance, repair and modification, the Code set requirements, appropriate for the situation, to correct environmental and navigational problems. This chapter sets forth standards in accordance with that policy.

52.1 Applicability: Structures legally existing in the shorezone or lagoons in the Region prior to the effective date of the Regional Plan, July 1, 1987, or structures legally constructed after the effective date of the Regional Plan, July 1, 1987, are recognized as existing structures, provided the structure has not been unserviceable beyond the time limits set forth in Subsection 52.3.G. The maintenance, repair, or expansion of existing structures in the shorezone or lagoons shall comply with the provisions of this chapter.

52.2 Definitions: The definitions of the terms listed are as follows.

52.2.A Expansion: An increase in size or extent, including an increase in the dimensions of a structure, change in configuration of a structure, and the addition of any structure or edifice to an existing structure.

52.2.B Major Structural Repair: Replacement or reconstruction of, or modification to, the members of a structure that affect the weight bearing or strength capacity of the structure, and the total cost of materials exceeds \$8,500.00 per year. Structural members of a pier are members such as piling, crib timbers and rocks, stringer and decking. Rocks placed to create jetties or breakwaters are structural members. This amount shall be calculated on an objective market valuation of the materials involved[§]

52.2.C Minor Structural Repair: Replacement or reconstruction of, or modification to, the members of a structure that affect the weight bearing or strength capacity of the structure, and the total cost of materials is less than \$8500 per year. This amount shall be calculated on an objective market valuation of the materials involved. [§]

[§] Amended 08/22/05

52.2.D Unserviceable: Unserviceable shall be defined as a structure that can no longer serve the function for which it was designed. In calculating the time period that a structure has been unserviceable, the period of time shall not be counted when TRPA was restrained from accepting applications for repairs to structures in the shorezone due to the preliminary injunction filed on August 9, 1984 in the matter of State of California/ League to Save Lake Tahoe v. TRPA.

52.3 Existing Structures In The Nearshore Or Foreshore: Activities related to existing structures in the nearshore or foreshore shall be exempt from, or subject to, TRPA review as set forth below:

52.3.A Maintenance And Repair Of Structures: The ordinary maintenance and repair of structures in the nearshore or foreshore shall be in accordance with the following standards:

- (1) Owners of structures in the nearshore or foreshore are responsible for maintaining them in a proper condition and in accordance with the provisions of this Code.
- (2) Repairs to existing structures shall be performed in compliance with the provisions of this Code.

52.3.B List Of Exempt Activities: The following activities are not subject to review and approval by TRPA provided they comply with Subsection 53.10.A, do not result in the creation of additional land coverage, or in an increase in the dimensions of the structure, including height, width and length.[§]

- (1) Ordinary maintenance and repair, which is the replacement of, or modification to parts of a structure that do not affect the weight bearing or strength capacity of the structure, including replacement and repair of windows, doors, and electrical and mechanical equipment.
- (2) The replacement and repair of mooring buoys, excluding replacement of their anchoring devices.
- (3) Parcel consolidations in accordance with Subparagraph 4.2.A(11).

52.3.C List Of Qualified Exempt Activities: The following activities are not subject to review and approval by TRPA provided the applicant certifies, on a TRPA qualified exempt form, that the activity fits within one or more of the following categories and the activity does not result in the creation of additional land coverage or relocation of existing land coverage and complies with all restrictions set forth below. The statement shall be filed with TRPA at least one working day before the activity commences except as required for demolition activities in Subparagraph (4) below, and shall be made under penalty of perjury.

[§] Amended 11/20/02

- (1) Minor structural repair as defined in Subsection 52.2.C and painting, staining, reroofing, residing and the installation or replacement of deck coverings, provided such activities conform to the design standards set forth in Section 53.10 and do not result in a change in use or an increase in the dimensions of the structure, including height, width and length.
- (2) Repair of fences, provided the fence complies with the applicable development standards in Subsection 54.11.B and the design standards in Subsections 53.10.A and 53.10.C.
- (3) The replacement and repair of the anchoring device for a mooring buoy provided TRPA has issued a permit for such mooring buoy pursuant to Subsection 52.3.J.
- (4) Demolition of structures, improvements or facilities in accordance with Subparagraph 4.3.A.(7).
- (5) Construction, reconstruction, repair and modification of piers, floating docks and platforms and shoreline protective structures in lagoons pursuant to memorandums of understanding as provided for in Section 54.10.
- (6) Changes in operation resulting in the generation of less than 100 additional vehicle trips are exempt provided the resulting use is an allowed use and the applicant pays an air quality fee in accordance with Subsection 93.3.D.

52.3.D Loss Of Exemption: An exempt activity shall be considered a project if TRPA finds that, because of unusual circumstances, the activity may have a substantial effect on the land, air, space or any other natural resource in the Region.

52.3.E Projects: An activity in the shorezone or lakezone which is not exempt, pursuant to Subsections 52.3.B or 52.3.C is a project subject to TRPA review and approval.

52.3.F Emergency Projects: Emergency projects shall be reviewed and acted upon in accordance with Article V of TRPA's Rules of Procedure.

52.3.G Major Structural Repair And Expansion: Major structural repair to, and expansion of, existing structures in the nearshore or foreshore shall comply with the following standards:

- (1) Structures That Comply With All Development Standards: Major structural repair and expansions to existing structures that comply with all development standards may be allowed provided the TRPA finds that:
 - (a) The structure, including any expansion, remains in compliance with applicable development standards;

- (b) The repair and any expansion conforms to the design standards in Section 53.9;
 - (c) The project complies with the requirements to install BMPs as set forth in Section 25.2.
- (2) Structures That Comply With Certain Development Standards: Major structural repair and expansions to existing structures that comply with the length standard for piers set forth in Subparagraph 54.4.A(4); the setback standard for piers set forth in Subparagraph 54.4.A(5); the 90 percent open foundation standard for piers set forth in Subparagraph 54.4.B(3); the location standards for jetties, breakwaters and fences set forth in Subsection 54.11.A; and the standards for openings in jetties, breakwaters and fences set forth in Subparagraphs 54.11.B(1), (2), (3), and (4); but do not comply with other applicable development standards, may be allowed if TRPA finds that:
- (a) The repair does not increase the extent to which the structure does not comply with the development standards;
 - (b) The expansion decreases the extent to which the structure does not comply with the development standards and/or improves the ability to attain or maintain the environmental thresholds;
 - (c) The project complies with the requirements to install BMPs as set forth in Chapter 25;
 - (d) The project complies with the design standards in Section 53.10; and
 - (e) The structure has not been unserviceable for more than five years.
- (3) Structures That Do Not Comply With Certain Development Standards: Major structural repairs and expansions to existing structures that do not comply with one or more of the standards set forth in Subparagraph 52.3.G(2) above, may be approved if TRPA makes the following findings based on information contained in the initial environmental checklist (IEC) and other information known to TRPA; the finding in Subparagraph 5.2.B(1); that the structure is not an obstacle to navigation, is not causing significant shoreline erosion or interference with sediment transport, and is not contributing to noncompliance with a scenic threshold; and findings (a), (b), (c), and (d) in Subparagraph (2) of this subsection. In addition it shall be found by TRPA that the structure has not been unserviceable for more than three years. If TRPA determines the IEC provides insufficient information to make the findings cited above, major structural repairs and expansions may be approved by TRPA only in accordance the following provisions:

- (a) Preparation Of Environmental Assessment: TRPA shall prepare an environmental assessment (EA) in accordance with Subsection 5.3.A. In addition to the elements required in Subsection 5.3.A, the EA shall include:
 - (i) The significance of impacts resulting from the structure being an obstacle to navigation, causing shoreline erosion, interfering with sediment transport and contributing to noncompliance with a scenic threshold; and
 - (ii) The modifications to the structure necessary to reduce the impacts identified in paragraph (i) above, to a less than significant level.
- (b) Repairs Less Than 50 Percent Of The Replacement Value: Major structural repair costing less than 50 percent of the replacement value of a structure, including labor and materials, shall not be allowed unless TRPA approves a schedule, submitted by the applicant as part of the project, requiring the structure to be modified to reduce the impacts identified in the EA to a less than significant level by no later than December 31, 1999.
- (c) Repairs More Than 50 Percent Of The Replacement Value Of The Structure: Major structural repair costing more than 50 percent of the replacement value of a structure, including labor and materials, shall not be approved unless TRPA requires the structure to be modified to reduce the impacts identified in the EA to a less than significant level.
- (d) Expansion: Expansions shall not be approved unless TRPA requires the existing structure to be modified in accordance with paragraph (c).

52.3.H Modification Or Removal Of Structures: Modification or removal of structures shall be pursuant to the following provisions:

- (1) Removal Or Modification Due To Navigation Problem Or Shoreline Impacts: By December 31, 1990, TRPA shall prepare an EA, in accordance with Subparagraph 52.3.G(3), for existing structures that do not comply with the development standards cited in Subparagraph 52.3.G(2) and for which an assessment has not been prepared. TRPA shall determine, based on the EA, which existing structures are; (a) not causing a significant impact of a nature described in paragraph (a)(i) of Subparagraph 52.3.G(3); (b) causing a significant impact that can be reduced to a less than significant level by modifying the structure; (c) causing a significant impact that can only be reduced to a less than significant level by removing the structure. TRPA shall notify the owners of such structures, in accordance with TRPA's Rules of Procedure of the determinations made under this subsection no later than December 31, 1994. Structures requiring modifications or removal pursuant to this subsection shall be so modified or

removed by December 31, 1999. Removal of such structures shall be required only if the Governing Board finds that removal is the only feasible method to mitigate the impacts to a less than significant level.

- (2) Removal Of Structures Based On Fish Habitat And Spawning Study: TRPA may require structures, including mooring buoys, to be removed or modified, pursuant to Chapter 9, if TRPA, based on the study required in Section 54.3 finds that such structures have a significant adverse impact on fish spawning. Removal of such structures shall be required only if the Governing Board finds that removal is the only feasible method to mitigate the impacts to a less than significant level. At least five years after notice by TRPA shall be allowed for any such modification or removal.

52.3.I Compliance With Best Management Practices (BMPs): No approval shall be granted under the provisions of Subparagraph 52.3.G(3) or Subsection 52.3.H, unless the project complies with the requirements to install BMPs as set forth in Chapter 25.

52.3.J Relocation Or Removal Of Mooring Buoys: Mooring buoys and their anchoring devices, that have not received a permit from TRPA, shall be removed or modified and have a permit issued by TRPA within two years from the date of notice to the owners of such mooring buoys of the requirement to obtain said permit. Notice shall be given pursuant to TRPA's Rules of Procedure.

52.3.K TRPA approved mooring buoys shall display a TRPA Buoy Identification Tag at all times.[§]

52.4 Existing Structures In The Backshore: Repair, reconstruction, modification, expansion and relocation of existing structures located in the backshore shall be regulated in accordance with the standards set forth in Chapters 18 and 4. When a structure in the foreshore extends into the backshore, that portion of the structure in the backshore shall be regulated pursuant to Section 52.3 and Chapter 55.

[§] Amended 04/24/02