NOTICE IS HEREBY GIVEN that the Advisory Planning Commission of the Tahoe Regional Planning Agency will conduct its regular meeting at 9:30 a.m. on Wednesday, February 10, 2010 at the TRPA Offices, located at 128 Market Street, Stateline, NV. The agenda for the meeting is attached hereto and made a part of this notice.

February 3, 2010

Joanne S. Marchetta
Executive Director
AGENDA

I. CALL TO ORDER AND DETERMINATION OF QUORUM

II. APPROVAL OF AGENDA

III. PUBLIC INTEREST COMMENTS

Any member of the public wishing to address the Advisory Planning Commission on any item not listed on the agenda may do so at this time. Public comment on Public Hearing items will be taken at the time those agenda items are heard.

NOTE: THE ADVISORY PLANNING COMMISSION IS PROHIBITED BY LAW FROM TAKING IMMEDIATE ACTION ON, OR DISCUSSING ISSUES RAISED BY THE PUBLIC THAT ARE NOT LISTED ON THIS AGENDA.

IV. DISPOSITION OF MINUTES

V. PUBLIC HEARINGS

A. Status Report on Individual Parcel Evaluation System (IPES) Line in Placer County Page 1

B. Amendments to Chapter 33 of the TRPA Code of Ordinances allowing Re-issuances of Certain Residential and Commercial Permits without Requiring New Allocations Page 7

VI. ADMINISTRATIVE MATTERS

A. Discussion on APC Input Process at the Regional Plan Update Milestone Meetings Page 25

VII. REPORTS

A. Executive Director

B. General Counsel

C. APC Members

VIII. ADJOURNMENT
REGULAR MEETING MINUTES

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Meeting called to order at 9:35 a.m.

Members present: Mr. Angelocci, Mr. Thompson, Mr. Plemel, Ms. Merchant, Mr. Maurer, Mr. LeFevre, Mr. Loftis, Mr. Jepsen, Mr. Kuchnicki, Ms. McMahon, Mr. Tolhurst, Mr. Donohue, Ms. Krause, Mr. McIntyre, Mr. Riley, Mr. Greene

Mr. Goldberg arrived at 10:23 a.m.

Members Absent: Ms. Kemper, Mr. Upton, Mr. Walker

II. APPROVAL OF AGENDA

Mr. Tolhurst moved approval.
Motion carried unanimously.

III. PUBLIC INTEREST COMMENTS

No public comment.

IV. DISPOSITION OF MINUTES

Mr. Greene moved approval with amendments.
Motion carried unanimously.

V. PUBLIC HEARINGS

A. Amendments to the Kings Beach Community Plan to incorporate Parcel #090-126-026 into the Community Plan, create two special areas, and other related amendments; and to the TRPA Code of Ordinances Chapter 21, Density, Chapter 22, Height, and other related amendments. TRPA File PLAN2008-0007, APN 090-064-012.

Ms. Marchetta provided an overview of the project.

Mr. McIntyre stated he was concerned about the loss of CEP projects.

Ms. Marchetta stated the concept of CEP has not been lost because there were still a number of projects to be presented that do not define conclusions on larger policy issues.
Mr. Tolhurst requested the presentation address why this project is no longer a CEP project.

Brenda Hunt presented amendments to the Kings Beach Community Plan.

**Commission Comments & Questions**

Mr. Maurer asked about the process for tourist/residential to meet height requirements.

Ms. Hunt stated a tourist accommodation could be constructed on the site with required findings to meet the 48-feet height requirement.

Mr. Maurer asked if it would be simple to build a tourist accommodation unit at the same height being proposed.

Ms. Hunt stated it could be simple if they chose to make the findings.

Gabby Barrett explained the current ordinance allows for additional height if coverage is reduced or easements were provided.

Mr. Maurer clarified he wanted to know if it was possible for tourist/residential to meet height requirements.

Mr. Barrett replied it was possible.

Mr. Kuchinicki asked why an environmental assessment was found not to be necessary for this project.

Ms. Hunt stated an environmental assessment was found not to be necessary because an initial environmental checklist was completed along with a scenic evaluation.

Ms. Rinke stated an environmental assessment was triggered if there was potential for significant impact, but it was concluded that there was no significant impact with this project.

Mr. Angelocci asked if the expanded environmental checklist was just for the amendments and not for the project.

Ms. Hunt replied that was correct.

Mr. Tolhurst clarified the Board would be voting on the amendments and not the project itself.

Mr. Thompson asked if the current project being proposed meet findings.

Ms. Hunt replied yes.

Jim LeBeau, Placer County Redevelopment Agency, presented the project.
Mr. Donohue asked about the rationale as to why the new facilities would not be deed-restricted in perpetuity for fifty or fifty-five years.

Ms. Marchetta stated the TRPA would require in perpetuity.

Mr. LeBeau stated other funding sources require a minimum of fifty-five years, but the TRPA requires perpetuity.

Mr. Kuchinicki asked if BMPs were currently on the property and if the project proposes to contain water on-site or would contain off-site water flows.

Mr. LeBeau stated there were off-site water flows that would come through the site and they were proposing to capture seven tons of sediment per year primarily from the off-site water flows.

Mia Kong, Domus Development, presented an overview of the proposed Domus projects in Kings Beach.

Mr. Angelocci suggested changing “indoor laundry facilities” to on-site laundry facilities.

Public Comment:

Jerry Dinzes commented that he would prefer to see this project and concept be approved, but requested that all projects are taken into consideration when voting on one project.

Dave Ferrari commented that he was in favor of the project because of the multi-family, residential units it would add to the area plus the management of the facilities it would provide.

Mara Besser commented that she was concerned that the project would not provide housing for illegal immigrants who need the housing. She also expressed concern about parking, the increase in density, and the change in height requirements. She commented that the project had the potential to become a future “slum” and that funding would be better used to provide first-time home buyer incentives and to help individuals purchase and improve homes currently in the area.

Carol Savory commented the project would provide rental, affordable, safe, “green” housing to accommodate the already overcrowded population in the area. She reiterated management of the facilities is an important aspect of the project and that the project seems compatible with other structure heights in the area.

Theresa May Dugan commented that she owns an affordable housing project in the area and has experienced no problems renting units. She recommended the proposed code amendments be supported to facilitate the project’s construction.

Ms. Kong stated for the record that their financing does not require residents be U.S. citizens. Income and household size requirements
need to be met. She also stated many residents surveyed in Kings Beach are unrelated households and households of convenience. Steve Teshara, North Lake Tahoe Chamber of Commerce, stated he would recommend approval of the project because the proposed amendments would provide the first affordable housing units to the area.

Mr. LeFevre asked if changes would be in place for future projects or were solely for this project.

Ms. Hunt stated changes would only be for this project. She noted the TRPA has limited the hearing of any future amendments until the Regional Plan has been updated.

Ms. Krause asked if these types of amendments would be put into the Regional plan.

Ms. Hunt replied yes.

Mr. Tolhurst pointed out these projects may be providing the mixed use that is needed in the Regional plan.

Mr. Angelocci moved approval of the required findings in attachment A. The motion was seconded. Motion carried unanimously.

Mr. Angelocci moved to recommend approval of the proposed draft ordinance amendments with direction to staff to review reduced parking and to add language equivalent to LEED Certification. The motion was seconded. Motion carried unanimously.

B. Recommendation to the Governing Board on Certification of the Kings Beach Commercial Core Improvement Project Final Supplemental Environmental Assessment (EIS).

Ms. Marchetta provided procedural history on the project.

J.P. Harries presented the Final Supplemental Environmental Assessment (EIS) for the Kings Beach Commercial Core Improvement Project.

APC Questions & Comments:

Mr. Tolhurst asked about the use of low-noise asphalt.

Mr. Harries stated it has been used in areas of Tahoe and has been effective therefore there was interest in its effects in the project.

Mr. Thompson asked if the installation of low-noise asphalt will reduce the level of significance to less than significant. He also requested to know the timing of when the low-noise asphalt would be installed.
Mr. Harries stated the low-noise asphalt would reduce the level of significance to less than significant and that the asphalt would be installed right from the beginning of the project and will be maintained.

Mr. Thompson asked who would be responsible for installation of the asphalt.

Mr. Harries stated Placer County. They would also be responsible for the maintenance.

Public Comment:

Dave McClure, Kings Beach Business and Citizens Alliance, stated they were in favor of the project, but there was concern that the lane reduction would cause major issues which have not been adequately addressed by Placer County. He gave a five-minute presentation regarding the negative impact of the use of roundabouts.

Ms. Rinke commented that Mr. McClure’s comments will be considered when the project is reviewed by the TRPA. She stated Mr. McClure’s comments go to the analysis in the FEIS that was already certified and not the analysis in the SEIS, which is before the Commission today.

Mr. McClure respectfully disagreed with Ms. Rinke’s comments. He stated the analysis being considered today is a supplemental analysis that was intended to analyze air quality, noise, and carbon emission impacts in residential neighborhoods which are recipients of all cut-through traffic.

Jim Galloway expressed his opposition to the recommendation of the certification of the SEIS because of the lack of emergency response and the increase in vehicle emissions in the SEIS.

Jerry Dinzes, Lake Tahoe Citizens Media Group, expressed concern with the proposal due to the increase in vehicle emissions and the cut-through traffic through residential areas.

Dan Daniels commented on the changing numbers in the traffic report. He stated his primary concern was the traffic impact on Dolly Vardon and Speckle near the school, the safety of students in the area with the increased traffic, and making sure emergency vehicles can get through the area with the increased traffic.

Mara Besser commented that, in her opinion, the original EIS was flawed therefore the update is flawed and that science proves the area would be turned into a traffic “nightmare”.

Sue Daniels distributed information regarding the cumulative impact from the EIS. She requested the Board consider water
issues with back streets before approving an increase in traffic to the back streets.

Steve Teshara, North Lake Tahoe Chamber of Commerce, noted the roundabout presentation was not submitted during public comment on the project. He commented that the SEIS serves its intended purpose therefore the Commission should recommend that the TRPA certify the document.

Nicole Gergans, League to Save Lake Tahoe, stated the League was in support of the document and the APC recommendation to the TRPA to certify the document. The League urged potential impacts be monitored and addressed as the project is constructed and beyond.

Dave Ferrari echoed Mr. Teshara’s comments. He noted the area had the first four-lane highway and that it would be local residents who would utilize the back streets.

Theresa May Dugan expressed her support of the recommendation because the project exhibits collective goals for the community and for the project.

Carol Savory encouraged the Commission to recommend certification of the SEIS because the neighborhood traffic management plan improves the project by expanding the scope into back streets.

Mr. Harries reminded the APC of some of the assumptions that went into the EIS and used for the noise analysis.

Mr. Tolhurst stated he asked for a presentation of the SEIS because there was discussion regarding technical reports being presented at the last minute.

Mr. Greene commented that the report, which came out in November 2009, should have been presented earlier for review by the Commission and the public.

Mr. Plemel stated what was being questioned was the adequacy of the original EIS.

Ms. Rinke commented that construction of the SEIS was not to imply that the original EIS was inadequate. The SEIS was designed to provide more detail to information already contained in the original EIS. She commented that there is a distinction between the findings that need to be made for certification of the EIS and findings of the project.

Mr. Goldberg moved to recommend the Governing Board certify the final supplemental EIS for Kings Beach Commercial Core Improvement Project and to recommend the Governing Board make the required findings for the final Supplemental EIS on the Project.
The motion was seconded.

Mr. Donohue requested a Placer County representative comment as to whether the traffic circles in the neighborhood have existing right-of-way real estate for emergency vehicles. He also requested more information regarding neighborhood gateway “chokers”.

Ken Graham, Placer County Public Works, commented that the program was developed by the community. He explained traffic circles were intended to slow down traffic within intersections and would stay within the existing right-of-way. Traffic circles would accommodate trucks, but not tractor-trailer rigs because the area is residential. There will be fine tuning of how tight “chokers” should be, but the full width of the pavement is open and for a long distance.

Mr. Plemel pointed out there were some valid concerns brought forth and that the Commission’s support of the SEIS does not mean a decision at the project level.

Motion carried unanimously.

VI. REPORTS

A. Executive Director

Ms. Marchetta gave the Executive Director’s Report.

B. General Counsel

Ms. Rinke gave the General Counsel’s Report.

C. APC Members

Mr. Donohue asked if a set time could be scheduled for the combined APC/TRPA meeting.

Ms. Marchetta stated they would take a second look at that issue.

VII. ADJOURNMENT

Chair Mr. Tolhurst adjourned the meeting at 12:35 p.m.
MEMORANDUM

Date: February 3, 2010
To: TRPA Advisory Planning Commission (APC)
From: TRPA Staff
Subject: Status Report on Individual Parcel Evaluation System (IPES) Line in Placer County

Requested Action: As required under Subsection 37.8.C, TRPA considers adjusting the IPES numerical level defining the top ranked parcels in each jurisdiction on an annual basis. Since the findings could not be made to lower the IPES Line in Placer County, staff is only presenting a status report and no action is requested. Washoe, Douglas and El Dorado Counties have already reached the bottom of the numerical level for those jurisdiction’s and no further IPES line analysis is necessary.

Staff Recommendation: Staff is not requesting a formal action from the Advisory Planning Commission (APC) on this item. Staff will present a current status and progress report on the IPES Line in Placer County which will remain at 726 as the “Vacant Lot Equation” Attachment A, finding 2, cannot be made in that jurisdiction. As the IPES Line analysis failed on the aforementioned finding, the remaining four findings were not evaluated.

Required Motion: None required.

Project Description/Background: The Individual Parcel Evaluation System (IPES) was developed and implemented to respond to the issue of constructing single family dwellings on lands classified as sensitive by the Bailey Land Capability System. This system was created through a consensus process in 1987 to evaluate the suitability of vacant lots proposed for single-family housing development. Parcels were initially scored and ranked; those parcels with scores of 726 and higher were deemed suitable for development. This system also provided a method by which parcels with scores below the cutoff score of 726 could become eligible via an annual analysis and, if appropriate, adjustment of the numerical development level.

Chapter 37 of the TRPA Code of Ordinances sets forth five findings which must be made for the IPES line to be lowered for a jurisdiction (see Attachment A). These findings cannot be made for Placer County. Specifically, Placer County did not meet the minimum criteria for the “Vacant Lot Equation”, the second element of the required Chapter 37 Findings (Attachment A). This finding requires the analysis of the “active” IPES parcel inventory and generates a numerator reflecting the number of active parcels within a given jurisdiction that have an IPES score of 725 or less. This numerator is then divided by the number of vacant parcels deemed sensitive (Bailey Class 1, 2, or 3) on January 1, 1986; for Placer County this number is 1,667 parcels. Once this ratio does not exceed 20 percent, the finding can be made.
This current analysis is based on the 2009 IPES inventory of parcels that are vacant and have a score of 725 or less. TRPA has determined the number of parcels removed from the inventory by retirement, rescoring or other such actions. TRPA also determines the number added by scoring additional lots. The net result is that five parcels were removed from the inventory. The inventory numbers and trends are shown below.

Placer County (2009): 433/1667 = 25.9 percent
Placer County (2008): 438/1667 = 26 percent
Placer County (2007): 454/1667 = 27 percent
Placer County (2005): 504/1667 = 30 percent

Issues/Concerns: The major issue or concern is that after more than twenty years the IPES line has not lowered in Placer County. Placer County is the only county within the Tahoe Basin in which the developable IPES score has not lowered to 1.

The major problem is that the Placer County IPES Line analysis continues to fail to meet the requirements of finding 2, or the Vacant Lot Equation. This finding requires that the ratio of sensitive parcels identified today, as compared to the 1,667 sensitive parcels identified on January 1, 1986, not exceed 20 percent. It is important to note that the 1,667 parcels identified in 1986 were based upon assessor’s parcel numbers (APN) and not legal lots of record.

Even though sensitive parcels are being retired each year, the number of retirements has not kept pace with the number of sensitive parcels originally projected for retirement. There a number of reasons for the slow rate of retirement. Agency buyout program priorities, willing sellers, number of SEZ lots, lack of TDRs and recently the economy are factors affecting the retirement rate.

On the other side of the calculation IPES lots appear to be increasing. Placer has many small lots from pre WWII subdivisions. As has been discovered over the years, it was a common practice for property owners to have multiple legal lots of record embedded within a single APN. These legal lots of record are eligible to be assigned their own individual APN at any point in time. As a result, the numerator of the Vacant Lot Equation (i.e. the number of present day sensitive lots as defined by APNs) has actually been increasing over time.

TRPA has been aware of this issue for the last decade. The IPES line was also the subject of a series of lawsuits in the 1990’s, which in relevant part held that challenges to the findings necessary to lower the IPES line were facial challenges to the Regional Plan that should have been brought upon adoption of the Regional Plan and were thereafter time-barred. In 2006, TRPA staff worked with Placer County officials and the California Attorney General to try to develop a means by which the equation might be adjusted to compensate for the unique problem of the numerator, i.e. the total number of the IPES parcels, increasing in Placer County. After several meetings and hearings, it was decided that the criteria in finding 2 would not be amended.
It was decided that the proper course was to actively work with the local agencies and jurisdiction to do the following.

1. TPRA work with Placer County to implement water quality improvement projects so as to increase the IPES scores within and adjacent to the project. Water quality improvement points constitute 50 of the 1150 points possible for an IPES score.

2. TRPA work with local agencies such as the United States Forest Service and the California Tahoe Conservancy in the retirement of the sensitive parcels within Placer County.

Regional Plan Compliance: The determination not to lower the IPES line in Placer County complies with all requirements of the TRPA Goals and Policies, Plan Area Statements, and Code of Ordinances, including all required findings in Chapters 6 and 37 of the TRPA Code of Ordinances.

Contact Information: If you have any questions, please contact Heather Gustafson, Senior Planner, IPES & Land Capability Program Manager at hgustafson@trpa.org or 775-589-5313

Attachments:
   A. Required Findings/Rationale
Required Findings/Rationale

1. Finding: All parcels included in the top rank are otherwise eligible for development under the applicable state water quality management plan for the Lake Tahoe Basin (the “208 Plan”) and other legal limitations;

Rationale: The TRPA 208 Plan was certified by both California and Nevada, and approved by the US EPA in 1989. The 1990 TRPA amendment to the 208 Plan redefining “in place” monitoring was certified by Nevada in 1990, by California in 1992, and approved by the US EPA in August 1993. Therefore this finding was met in 1993.

2. Finding: For any jurisdiction, the number of parcels having scores below the level defining the top ranked parcels, divided by the number of parcels in that jurisdiction that were identified as sensitive by TRPA on January 1, 1986, does not exceed the following percentages:

   (i) El Dorado County - 20 percent
   (ii) Placer County   - 20 percent
   (iii) Douglas County - 33 percent
   (iv) Washoe County  - 33 percent

Rationale: The finding can not be made since the current calculation as shown below is 25.9% which is greater than the required 20% for Placer County.

Numerator = Number of vacant parcels with IPES scores of 725 or less
Denominator = Number of vacant parcels deemed sensitive (Bailey Class 1, 2 or 3) on January 1, 1986.
Placer County 2009: 433/1667 = 25.9%

3. Finding: The monitoring program for that jurisdiction is in place pursuant to Chapter 32 and the TRPA monitoring plan. "In place" is defined in the 208 Plan, Volume I, and p.119, as amended, as:

... This monitoring program shall be in place in a local jurisdiction, and shall characterize water quality conditions, before the numerical level defining the top rank for the jurisdiction is lowered (Goals and Policies, p.VII-25). The term "in place" means that a TRPA-approved monitoring system, with established procedures and responsibilities, is physically located on the selected tributaries, and samples have been collected and analyzed for the previous water year. The monitoring program, to be effective, should remain in place on a continuing and long-term basis. It is the intent of TRPA to collect, on a long term basis pursuant to stringent QA/QC procedures, improved tributary water quality data which will be used to better assess average and existing conditions and to understand water quality trends and compliance with state and federal water quality standards.
Rationale: This finding was not analyzed as finding number 2 failed.

4. Finding: Demonstrable progress is being made on capital improvement programs for water quality within that jurisdiction.

Rationale:

a. Funding is committed and there is a strong likelihood that construction will commence on one or more high priority watershed improvement projects in the current or upcoming year and construction of one or more high priority projects has taken place in the previous or current year. (High priority projects are projects with substantial water quality benefit.); OR

b. The performance of the local jurisdiction on implementation of SEZ restoration and capital improvement projects is consistent with progress necessary to meet the benchmarks established in the 1996 Evaluation under the Environmental Compliance Form for Water Quality (WQ-2-A). Under WQ-2-A, an indicator for total expenditures on CIP projects is set for each local unit of government. However, since the 2001 Threshold review these quantitative targets were abandoned in favor of the Environmental Improvement program project list.

This finding was not analyzed as finding number 2 failed.

5. Finding: The level of compliance with conditions of project approvals within any jurisdiction is satisfactory. The four criteria listed in the 208 Plan are used as indicators of the level of compliance within a jurisdiction. The Governing Board has set numerical performance standards for the four criteria in Resolution 93-19 (see Attachment B).

Rationale: This finding was not analyzed as finding number 2 failed.
MEMORANDUM

February 3, 2010

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Amendments to Chapter 33 of the TRPA Code of Ordinances allowing Re-issuances of Certain Residential and Commercial Permits without Requiring New Allocations

Proposed Actions: In response to Governing Board members and some TRPA permittees, the TRPA Staff requests that the Advisory Planning Commission (APC) review proposed changes to Chapter 33 of the TRPA Code of Ordinances (Attachment B, Exhibit 1) then consider recommending to the Governing Board the adoption of the attached implementing ordinance adopting the amendments (Attachment B). The proposed changes will allow TRPA to re-issue certain residential and commercial permits that relied on allocations of development without the loss of the original allocations.

Staff Recommendation: Staff recommends that the APC recommend that the Governing Board make the required findings and adopt the implementing ordinance (Attachment B), adopting the proposed amendments to the Code of Ordinances.

Required Motions: To recommend the Governing Board adopt the proposed changes to the Code of Ordinances, the APC must make the following motions based on this staff summary and the complete administrative record:

I. A motion to recommend the Governing Board make the Chapter 6 findings (Attachment A) and a Finding of No Significant Effect for all potential impacts.

II. A motion to recommend the Governing Board adopt the attached ordinance (Attachment B) adopting the Code of Ordinance amendments in Exhibit 1 amending Subparagraphs 33.2.A and 33.3.A of the TRPA Code of Ordinances.

Background: Staff is proposing amendments to Chapter 33 of the TRPA Code of Ordinances which would allow current permit holders of new residential and commercial projects to obtain reissued TRPA permits without the loss of their residential or commercial allocations. This proposal is in response to the current credit crises and poor economy which are forcing many permittees to either let their permits expire or obtain new allocations for previously permitted projects. Currently Article VI (p) of the Compact and Section 4.9 of the Code (Attachment C) establish requirements for permit extensions. The Compact requires permits to expire in three years unless construction has begun and the project is diligently pursued. Section 4.9 of the Code details the requirements for single family residences and other projects.
The proposed amendments, if approved, would also apply to TRPA permits issued through one of TRPA’s delegation Memoranda of Understanding partners (namely, Placer, Washoe, and El Dorado Counties, and the City of South Lake Tahoe.)

TRPA rarely prohibits permittees from reapplying for construction permits before or after these permits expire. For residential or commercial modification projects (those that do not involve “additional development” as defined in Chapter 33 of the Code), permits are relatively simple to reissue provided the projects are not prohibited by any successive changes to the Regional Plan and are updated to reflect changes in mitigation fees, etc. For new residential and commercial projects, however, applicants must re-acquire allocations before a permit can be reissued which can lead to significant delays if allocations are not readily available. These delays can be due to a number of factors such as market competition or time needed by TRPA to “reload” allocation pools. According to comments from some local developers, these delays, especially in the current economic climate, frequently lead to loan cancellations, partnership disinvestments, or similar outcomes.

Residential allocations are “used” once an allocation is submitted with an application for a new residential unit, whether or not a permit is issued for the project. The same rule applies to multi-residential development where allocations are required for each new unit at the time of application. (An analogy for a residential allocation would be a movie ticket. A movie ticket allows the holder to enter a theater and is “used” once the holder enters the door.) Competition for residential allocations varies annually depending on market conditions and allocation availability per TRPA’s performance-based allocation system. This system is described in Subparagraph 33.2.B of the TRPA Code (available on-line at www.trpa.org).

In contrast to the residential allocation system, allocations of Commercial Floor Area (CFA) are returned to a TRPA allocation pool for future reallocation to other commercial projects if unused. CFA allocations, therefore, are not “used” at the time of application, but rather when a project is constructed. CFA is measured on a square-foot basis (rather than a unit basis), and competition for CFA also varies year to year.

Regulation of new development is a fundamental component of the TRPA Compact and is embodied in the current Regional Plan. The residential and commercial allocation systems described in Chapter 33, particularly annual growth rates and caps on total growth, are primary elements of TRPA’s Regional Plan. The proposed Code amendments are consistent with the Regional Plan because they do not result in new residential or commercial development beyond amounts already allowed in the Code, and were analyzed in the certified Environmental Impact Statement (EIS) for adoption of the Regional Plan. In addition, the proposed amendments do not violate the TRPA Compact which limits TRPA approvals to a maximum of three years (See Attachment C, Article VI (p) from the TRPA Compact). Extending TRPA permit expiration dates, as many local jurisdictions have done this year for (non-TRPA) county permits, would violate the TRPA Compact.

For additional background on TRPA permit expiration dates and extensions, please see August 25, 2009, TRPA letter to Bob Hedley, Chase International South Tahoe Realty (Attachment D). Attachments specific to that letter are available from TRPA on request.
Applications for re-issued permits are normally treated as “minor” plan revisions in the TRPA Application Filing Fee Schedule if there are no substantial changes to the previously approved plans. Substantial modifications to the approved plans are treated as “major” plan revisions. The application fee for minor plan revision is 40 percent of the fee that would be charged for a new project. The fee for a major plan revision is 70 percent of the fee charged for a new project.

**Description of Proposed Code Amendments:** The language for the proposed Code amendments can be found in Attachment B, Exhibit 1.

The following elements are common to both proposed Code amendments:

1. The proposed Code amendments would only apply to new residential or commercial projects permitted prior to February 24, 2010 (the expected date of Governing Board action). Staff is proposing the amendments solely in response to the current economic crises and does not want to presuppose or overly influence future Code language in the new Regional Plan currently under preparation.

2. Application for a re-issued permit (which preserves an allocation of development) must be made prior to the expiration date of the permit as defined in Section 4.9 of the TRPA Code. Under this section of the Code, permits which are “diligently pursued” (through construction of a foundation, for example) are not expired and are eligible for re-issuance under this proposal.

3. Re-issued permits must be updated to meet all TRPA requirements when TRPA (or one of its MOU partners) re-issues the permits.

4. Only one reissued permit, and not a series of reissued permits, may occur as a result the proposed Code amendments. Again, staff does not want to presuppose or overly influence future Code language in the new Regional Plan currently under preparation, which might occur if permits are reissued indefinitely into the future.

Please call Lyn Barnett, AICP, at (775) 589-5238 if you have any questions concerning this item. Mr. Barnett may also be reached by e-mail at lbarnett@trpa.org.

**Attachments**

A. Required Findings
B. Adopting Ordinance
   - Exhibit 1: Proposed Amendments to Chapter 33, TRPA Code of Ordinances
C. Copy of Code Section 4.9 and TRPA Compact Article VI (p)
D. Letter to Bob Hedley, dated August 25, 2009 (without attachments)
REQUIRED FINDINGS

Chapter 6 Findings: The following findings must be made prior to amending the Code of Ordinances which constitutes a Regional Plan Amendment.

1. Finding: The project is consistent with, and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code, and other TRPA plans and programs.

Rationale: The proposed amendments to Chapter 33 of the TRPA Code of Ordinances would preserve allocations for new residential and commercial projects one time when application is made for permit re-issuance prior to permit expiration. The proposed Code amendments do not create new allocations of development and do not extend existing permit expiration dates beyond the limits of the TRPA Compact or Regional Plan.

2. Finding: That the project will not cause the environmental thresholds to be exceeded.

Rationale: The proposed Code amendments only modify administrative procedures and processes and have no impacts to environmental thresholds for this reason.

3. Finding: Wherever federal, state and local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V (d) of the Compact, the project meets or exceeds such standards.

Rationale: See Findings 1 and 2 above.

4. Finding: The Regional Plan and all of its elements, as implemented through the Code, Rules and other TRPA plans and programs, as amended, achieves and maintains the thresholds.

Rationale: See Findings 1 and 2 above.

Ordinance 87-8 Findings: Section 2.40 of Ordinance 87-8 requires the following findings prior to Code amendments. The proposed amendment provides for an equal or better means of attainment or maintenance of the thresholds. The required findings and their rationales are:

1. Finding: The amendments are consistent with the Compact and with attainment or maintenance of the thresholds.

Rationale: These amendments were analyzed in a TRPA Initial Environmental Checklist (IEC) for potential environmental
impacts, and no impacts were identified. The proposed Code changes are consistent with the permit expiration limitations in the Compact and Regional Plan.

2. **Finding:** That the amendment provides for an equal or better means of attainment or maintenance of the thresholds.

**Rationale:** The amendments will provide equal or better means of attainment and maintenance of environmental thresholds because reissued permits will comply with the requirements of the original permit and updated Code when the permit is reissued, if applicable.

3. **One of the following findings:**

   a. There is a demonstrated conflict between provisions of the Regional Plan package, and the conflict threatens to preclude attainment or maintenance of thresholds; or

   b. The provision to be amended has been shown through experience to be counter-productive or ineffective and the amendment is designed to correct the demonstrated problem and is an equal or better means of implementing the Regional Plan package and complying with the Compact; or

   c. Legal constraints, such as court orders, decisions or Compact amendments, require amendment of the Goals and Policies or Code; or

   d. Technical or scientific information demonstrates the need for modification of a provision of the Goals and Policies or Code; or

   e. The provision to be amended has been shown, through experience and time, to be counter-productive to or ineffective in attainment or maintenance of the thresholds; or

   f. Implementation of the provision sought to be amended has been demonstrated to be impracticable or impossible because of one or more of the following reasons:

       (1) The cost of implementation outweighs the environmental gain to be achieved;

       (2) Implementation will result in unacceptable impacts on public health and safety; or

       (3) Fiscal support for implementation is insufficient and such insufficiency is expected to be a long-term problem.

Staff proposes to make Finding e, above.
**Rationale:** The Code language that is being amended is currently counter-productive considering the current distressed state of the economy, and does nothing to attain or maintain thresholds.

**Environmental Documentation:** Based on the above analysis, and the Initial Environmental Checklist (IEC) prepared for the Code amendments, no environmental impacts were identified.
TAHOE REGIONAL PLANNING AGENCY
ORDINANCE 2009 –

AN ORDINANCE AMENDING ORDINANCE NO. 87-9, AS AMENDED, BY AMENDING THE CODE OF ORDINANCES, CHAPTER 33 ALLOWING RE-ISSUANCES OF CERTAIN RESIDENTIAL AND COMMERCIAL PERMITS WITHOUT REQUIRING NEW ALLOCATIONS AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

The Governing Board of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.00 Findings

1.10 It is necessary and desirable to amend TRPA Ordinance 87-9, as amended, which ordinance relates to the Regional Plan of the Tahoe Regional Planning Agency (TRPA) by amending the Chapter 33 of Code of Ordinances, in order to further implement the Regional Plan pursuant to Article VI(a) and other applicable provisions of the Tahoe Regional Planning Compact.

1.20 These amendments to Chapter 33 of the TRPA Code of Ordinances will have no negative environmental impacts.

1.30 The Advisory Planning Commission (APC) has conducted a public hearing on the amendments and recommended adoption. The Governing Board has also conducted a noticed public hearing on the amendments. At those hearings and workshops, oral testimony and documentary evidence were received and considered.

1.40 Prior to the adoption of this ordinance, the Governing Board made the findings required by Chapter 6 of the Code and Article V(g) of the Compact,

1.50 The Governing Board finds that the amendments adopted here will continue to implement the Regional Plan, as amended, in a manner that achieves and maintains the adopted environmental threshold carrying capacities as required by Article V(c) of the Compact.

1.60 Each of the foregoing findings is supported by substantial evidence in the record.

Section 2.00 Amendment of the Code of Ordinances, Chapter 33.

Subsection 6.60 of Ordinance No. 87-9, as amended, is hereby further amended as set forth in Exhibit 1, which attachment is appended hereto and incorporated herein.
Section 3.00 Interpretation and Severability

The provisions of this ordinance and the amendments to the Code of Ordinances adopted hereby shall be liberally construed to affect their purposes. If any section, clause, provision or portion thereof is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and the amendments to the Code of Ordinances shall not be affected thereby. For this purpose, the provisions of this ordinance and the amendments to the Code of Ordinances are hereby declared respectively severable.

Section 4.00 Effective Date

The provisions of this ordinance amending the Code of Ordinances shall be effective immediately after its adoption.

PASSED AND ADOPTED by the Governing Board of the Tahoe Regional Planning Agency at a regular meeting held February 24, 2010, by the following vote:

Ayes:

Nays:

Abstentions:

Absent:

Allen Biaggi, Chairman
Tahoe Regional Planning Agency
PROPOSED AMENDMENTS TO CHAPTER 33, TRPA CODE OF ORDINANCES

Note: Language to be deleted is struck out. New (proposed) language is double underlined.

33.2 Allocation Of Additional Residential Units: TRPA shall allocate the development of additional residential units as follows:

33.2.A Requirement Of Allocation: No person shall construct a project or commence a use, which creates one or more additional residential units, without first receiving an allocation approved by TRPA. This requirement does not apply to affordable housing units approved after January 1, 1986, but shall apply to conversions of such affordable housing to nonaffordable status. In order to construct the project or commence the use, to which the allocation or the exemption therefrom pertains, the recipient of the allocation or exemption shall comply with all other applicable provisions of this Code.

(1) Applicable Residential Uses: The following residential uses referred to in Chapter 18 contain residential units: secondary residences; employee housing; mobile home dwellings; multiple family dwellings; multi-person dwellings; nursing and personal care facilities; residential care facilities; single family dwellings; and summer homes.

(2) Definition Of "Additional Residential Unit": Residential unit is defined in Chapter 2. A residential unit is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1986. The conversion of an existing nonresidential use to a residential use constituting a residential unit is an additional residential unit requiring an allocation under this chapter. The following are not "additional" residential units:

(a) The reconstruction or replacement, on the same parcel, of a residential unit legally existing on or approved before January 1, 1986;

(b) The reconstruction or replacement, on the same parcel, of a residential unit which was allocated and approved pursuant to this Code;

(c) Legally established additions and accessory uses to an existing residential structure, that do not create additional residential dwelling units;

(d) A residential unit constructed on a foundation, the use of which is authorized by Chapter 11.

(e) The relocation of residential units legally existing on January 1, 1986, other than mobile home dwellings, through a transfer approved by TRPA;

(f) The relocation of a legally established mobile home dwelling
with existing water, sewer, and electrical services to a mobile home development or to a multi-family dwelling of five units or more, pursuant to a transfer approved by TRPA; or

(g) An existing, legally established mobile home pad with water, sewer and electrical services, whether or not a mobile home is located thereon; or

(h) One or more new residential units permitted by TRPA prior to February 24, 2010, provided that:

(i) Application is made to TRPA prior to the expiration of the permit, as determined in Section 4.9, to re-issue a permit for a project for which an allocation(s) was assigned;

(ii) All permit conditions, fees, securities, building and site design conditions of approval, plan revisions, and other requirements of the original permit, are updated to meet the requirements of the Code and all other applicable TRPA ordinances, rules, or regulations at the time of permit re-issuance; and

(iii) Subparagraph 33.2.A(2)(h) has not previously been used in relation to the same project.

33.3 Allocation Of Additional Commercial Floor Area: TRPA shall allocate the development of additional commercial floor area as follows:

33.3.A Requirement Of Allocation: No person shall construct a project or commence a use, which creates additional commercial floor area, without first receiving an allocation approved by TRPA. In order to construct the project or commence the use, to which the allocation pertains, the recipient of the allocation shall comply with all other applicable provisions of this code.

(1) Applicable Commercial Uses: The commercial uses set forth in Chapter 18 contain commercial floor area. The allocation of additional commercial floor area pursuant to this chapter also applies to commercial activities that are not primary commercial uses, except that accessory uses as to which TRPA makes the following findings shall be deemed not to contain additional commercial floor area:

(a) The accessory use meets all criteria specified by Chapter 18 for an accessory use; and

(b) The accessory use is designed to serve the noncommercial primary use, as determined by reference to the following criteria:

(i) There is no separate entrance for the accessory use;

(ii) The accessory use is compatible with the size and
patronage of the primary use;

(iii) The accessory use does not rely on separate parking;

(iv) The accessory use is not separately advertised;

(v) The use season of the accessory use corresponds to that of the primary use;

(vi) The accessory use does not generate additional vehicle trips; and

(vii) In applicable instances, the accessory use is principally for service or repair rather than sales. The following are examples of accessory uses of a commercial nature not subject to the allocation of additional commercial floor area: ski rental shops in ski areas; gift shops in airports; tackle shops used by patrons of marinas; newsstands in motels; pro shops at golf courses; and cafeterias in hospitals.

(2) "Additional" Commercial Floor Area: Commercial floor area is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1987.

(a) Additional commercial floor area includes, but is not limited to, the following:

(i) The construction of commercial floor area, which did not exist before January 1, 1987; or

(ii) Conversion of legally existing or approved floor area from noncommercial use to commercial use.

(iii) The construction of, or conversion to, floor area that is primarily utilized for commercial enterprise regardless if it is classified as public service or is publicly owned, except when such floor area is for an accessory use excluded in Subsections 33.3.A(1)(a) and (b) or such floor area is excluded by Subsection 33.3.A(2)(b).

(b) Additional commercial floor area excludes the following:

(i) Changes in commercial use per se, not involving any increase in commercial floor area;

(ii) Additions to, or expansions of, legally existing commercial floor area of 500 square feet or five percent of the existing commercial floor area, whichever is less, provided the existing structure and any subsequent additions or expansions physically exist and were completed at least one year prior to an application pursuant to this subparagraph, the exempt addition or expansion is not applied for or built in conjunction with any other addition or expansion, there is no change in use, any increase in traffic is in significant as defined in Chapter 93, the exempt...
addition or expansion occurs within a single project area and the exempt addition or expansion does not occur within the same project area more frequently than once every ten years;

(iii) The relocation, replacement or reconstruction on the same parcel of commercial floor area, which either existed as of January 1, 1987, or which contains floor area allocated and approved pursuant to this Code;

(iv) The replacement, reconstruction or relocation of commercial floor area legally existing as of January 1, 1987, pursuant to a TRPA-approved redevelopment plan;

(v) The TRPA-approved transfer of legally existing commercial floor area; or

(vi) The construction of floor area associated with a publicly owned assembly and entertainment facility with a fire rated capacity of less than 1,100 people; or

(vii) New commercial floor area permitted by TRPA prior to February 24, 2010, provided that:

(A) Application is made to TRPA prior to the expiration of the permit, as determined in Section 4.9, to re-issue a permit for a project for which an allocation was assigned;

(B) All permit conditions, fees, securities, building and site design conditions of approval, plan revisions, and other requirements of the original permit, are updated to meet the requirements of the Code and all other applicable TRPA ordinances, rules, or regulations at the time of permit re-issuance; and

(C) Subparagraph 33.3.A(2)(b)(vii) has not previously been used in relation to the same project.
4.9 **Expiration Of TRPA Approvals:** Approval by TRPA of any project expires three years after the date the approval is granted by TRPA, as defined in TRPA's Rules of Procedure, or December 19, 1980, whichever is later, unless construction is begun within that time and diligently pursued thereafter, or the use or activity has commenced.

4.9.A **Operation Of Law:** Expiration of TRPA approvals shall be by operation of law. Failure to give notice of expiration shall not affect the applicability of this provision.

4.9.B **Commencement Of Construction:** Commencement of construction shall be the pouring of concrete for a foundation, or work of a similar nature upon the permitted structure. Commencement of construction does not include grading, plan preparation, installation of utilities or landscaping.

4.9.C **Diligent Pursuit:** Diligent pursuit is defined as follows:

1. Diligent pursuit shall be defined by the condition of approval relating to completion of the project. Project approvals shall state the time for completion of the project.

2. For projects approved without a condition of approval relating to completion of the project, diligent pursuit shall be defined as reasonable onsite progress toward completion of the project each building season beginning with the building season in which construction is commenced. Failure to accomplish onsite progress toward completion in any building season after construction has commenced and the three year approval period has passed shall result in expiration of the approval for failure to diligently pursue construction. Failure to give notice of such expiration shall not affect the applicability of this section.

4.9.D **Single Family Homes:** Construction of new single family homes shall be completed within two years from the date of the TRPA pregrading inspection. The two year 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, a security is posted to ensure completion or abatement of the project and TRPA makes either of the following findings:

1. The project was diligently pursued, as defined in subparagraph 4.9.C(2), during each building season (May 1 - October 15) since commencement of construction.

2. That events beyond the control of the permittee, which may include engineering problems, labor disputes, natural disasters or weather problems, have prevented diligent pursuit of the project.
4.9.E **Other Projects**: Construction of projects other than new single family homes shall be complete by the date set forth in the conditions of approval. Extension of a completion schedule for a project other than a single family home may be granted provided the request is made in writing prior to the expiration of the completion schedule, a security is posted to ensure completion or abatement of the project and TRPA makes either of the following findings:

1. The project was diligently pursued, as defined in subparagraph 4.9.C(2), during each building season (May 1 - October 15) since commencement of construction.

2. That events beyond the control of the permittee, which may include engineering problems, labor disputes, natural disasters or weather problems, have prevented diligent pursuit of the project.

4.9.F **Completion Of Project**: Completion of a building shall be defined as a fully enclosed structure with all permanent drainage improvements, slope stabilization, and revegetation installed. Completion of projects which do not consist of a building or buildings, shall be defined as commencement of the use or activity permitted and installation of all permanent drainage improvements, slope stabilization and revegetation.
(k) The agency shall monitor activities in the region and may bring enforcement actions in the region to insure compliance with the regional plan and adopted ordinances, rules, regulations and policies. If it is found that the regional plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in court of competent jurisdiction to insure compliance.

(l) Any person who violates any provision of this compact or of any ordinance or regulation of the agency or any condition of approval imposed by the agency is subject to a civil penalty not to exceed $5,000. Any such person is subject to an additional civil penalty not to exceed $5,000 per day, for each day on which such a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

(m) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by State or Federal law.

(n) Each intergovernmental contract or agreement shall provide for its own finding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.

(o) Every record of the agency, whether public or not, shall be open for examination to the legislature and controller of the State of California and the legislative auditor of the State of Nevada.

(p) Approval by the agency of any project expires 3 years after the date of final action by the agency or the effective date of the amendments to this compact, whichever is later, unless construction is begun within that time and diligently pursued thereafter, or the use or activity has commenced. In computing the 3-year period any period of time during which the project is subject of a legal action which delays or renders impossible the diligent pursuit of that project shall not be counted. Any license, permit or certificate issued by the agency which has an expiration date shall be extended by that period of time during which the project is the subject of such legal action as provided in this subdivision.

(q) The governing body shall maintain a current list of real property known to be available for exchange with the United States or with other owners of real property in order to facilitate exchanges of real property by owners of real property in the region.

**ARTICLE VII. – ENVIRONMENTAL IMPACT STATEMENTS**

(a) The Tahoe Regional Planning Agency when acting upon matters that have a significant effect on the environment shall:

(1) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s environment;

(2) Prepare and consider a detailed environmental impact statement before deciding to approve or carry out any project. The detailed environmental impact statement shall include the following:

(A) The significant environmental impacts of the proposed project;
August 25, 2009

Mr. Bob Hedley  
Chase International South Tahoe Realty  
989 Tahoe Keys Boulevard  
South Lake Tahoe, California  96150  

TRPA PERMIT EXPIRATION DATES AND EXTENSIONS

Dear Bob,

It was a pleasure to meet with you and Larry Lohman (El Dorado County Building Official) to discuss expiration dates and extensions for Tahoe Regional Planning Agency (TRPA) and El Dorado County residential building permits. Wendy Jepson, TRPA Senior Planner, also joined us in the discussion. At the end of our meeting you asked me to memorialize our conversation in a letter so that you could accurately inform others on these matters. While I cannot represent El Dorado County in this matter, I am able to summarize TRPA regulations for you.

As we discussed in our meeting, certain residential projects may be reviewed and approved by El Dorado County on TRPA's behalf according to two memoranda of understanding (MOU) between the two governments (see Attachments 1 and 2). These MOUs were developed primarily as a convenience for applicants by creating a "one-stop shop" for certain permissible residential activities. The MOUs allow El Dorado County to concurrently review residential applications for compliance with applicable TRPA and County regulations, and issue a combined TRPA and County permit when projects are consistent with both sets of regulations. When regulations overlap between the two governments the permit issued by the County will reflect the stricter regulation in effect at the time of approval, including permit expiration dates and conditions for allowing construction to occur past the permit expiration date.

TRPA permit expiration dates are established in the TRPA Compact ("the Compact") and Regional Plan. Article VI (p) of the Compact (Attachment 3) sets the expiration date for permits to three years after the date of final action by TRPA unless construction is begun within that time period and diligently pursued thereafter, or the activity has commenced (for a use that does not require construction, for example). In computing the three-year period, any time during which a project is the subject of a legal action that delays or renders impossible the diligent pursuit of the project is not counted against the permit expiration date. Permit expiration dates are included in all TRPA permits (and, therefore, permits issued by El Dorado County pursuant to an MOU) according to Article 5.18 (e) of the TRPA Rules of Procedure (Attachment 4).

Section 4.9 of the TRPA Code of Ordinances ("TRPA Code") also addresses expiration dates for TRPA approvals (Attachment 5). Subsection 4.9.C of the Code defines "diligent pursuit" in the context of permit expiration. Failure to accomplish on-site
progress toward completion of a project in any building season after construction has commenced, and the three year approval period has passed, will result in the expiration of an approval due to failure to diligently pursue construction.

Expiration deadlines for single family home construction are subject to Section 4.9.D of the Code which states, "Construction of new single family homes shall be completed within two years from the date of the TRPA pre-grading inspection." This two-year period may be extended once, up to one year, under certain circumstances (see language in Attachment 5).Expiration dates for projects other than single family homes are established in Subsection 4.9.E of the Code (also in Attachment 5). This provision allows for extensions to construction schedules under certain circumstances (see language in the Code for specific requirements). The minimum requirements for a construction schedule are listed in Section 62.2 of the TRPA Code (Attachment 6).

Finally, Section 4.9.F of the TRPA Code (Attachment 5) defines the amount of construction necessary for a project to be considered "complete" by TRPA. TRPA will not return any project securities until the project is completed in accordance with Sections 4.9.F and 8.8.E of the Code (Attachment 7), plus any standard or special permit conditions specific to the project approval.

In our meeting we discussed three hypothetical single family permit expiration scenarios that I feel are worth repeating in this letter to help clarify the regulations quoted above, specifically for single family home construction.

**Hypothetical Scenario 1:** Property Owner “A” received a TRPA or El Dorado County MOU permit, as the case may be, to construct a new single family home on July 1, 2006. The permit expiration date specified in the permit is July 1, 2009. No construction occurred on the project before July 1, 2009, except for tree removal and some site preparation work, and no events beyond the control of the permittee prevented diligent pursuit of the permit. Is this permit still active or has it expired?

*Answer:* This permit is expired because construction did not technically commence, as defined in Section 4.9.B of the TRPA Code.

**Hypothetical Scenario 2:** Property Owner “B” received a TRPA or El Dorado County MOU permit, as the case may be, to construct a new single family home on July 1, 2006. The permit expiration date specified in the permit is July 1, 2009. However, in this scenario the permittee received a pre-grade inspection on July 1, 2006, and completed a foundation on the property by July 1, 2008, but no other work was completed after the foundation was installed. Is this permit still active or has it expired?

*Answer:* The permit would have been active through July 1, 2009, if a one-time request to extend the two-year construction period described in Subsection 4.9.D was made in writing before July 1, 2008. However, the permit expired on July 1, 2008, if this request was not made.

**Hypothetical Scenario 3:** Property Owner “C” received a TRPA or El Dorado County MOU permit, as the case may be, to construct a new single family home on July 1, 2006. The permit expiration date specified in the permit is July 1, 2009. However, unlike the first scenarios, this permittee received a pre-grade inspection on May 15, 2009 (prior to
the July 1, 2009, expiration date specified in the permit), and completed a foundation on the property before July 1, 2009. Is this permit still active or has it expired?

Answer: The permit is still active and construction may continue for an additional two-year period (ending May 15, 2011) in accordance with Subsection 4.9.D of the TRPA Code. Pursuant to this Code section, this date may be extended one additional year to May 15, 2012, if a written request is made to extend the two-year construction period. In this scenario, the permitted activity is allowed to continue nearly six years from the original date of project approval.

In our meeting we discussed several other permit expiration scenarios which time does not allow me to repeat in this letter. I addressed the three scenarios above because they best illustrate our regulations and because we spent the greater part of our meeting discussing them. I would be happy, however, to respond to any other scenarios that you need us to clarify if you would submit these scenarios to me in writing.

Thank you for your interest in this matter. I hope this information will be useful to you and your clients. Please call me at (775) 589-5239 if I may be of further assistance to you.

Sincerely,

A. Lyn Barnett, AICP
Chief
Environmental Review Services Branch

Copies: Wendy Jepson, Senior Planner, ERS Branch, TRPA
       Mike Cavanaugh, Assistant Branch Chief, ERS Branch, TRPA
       Nicole Rinke, General Counsel, TRPA
       Austin Quinn-Davidson, TRPA Associate Attorney
       Jerry Wells, Deputy Executive Director, TRPA
       Larry Lohman, Deputy Director – Building Official, El Dorado Co.

Attachments:

1. 1992 El Dorado County/TRPA MOU (Appendix W, Chapter 4, TRPA Code)
2. 2000 El Dorado County/TRPA MOU (Appendix JJ, Chapter 4, TRPA Code)
3. Article VI (p), TRPA Compact (Public Law 96-551, 94 STAT. 3233; and California Government Code Section 66800-66801)
4. Article 5.18 (e), TRPA Rules of Procedure
5. Section 4.9, TRPA Code of Ordinances
6. Chapter 62, TRPA Code or Ordinances (Grading and Construction Schedules)
7. Section 8.8.E, TRPA Code
Proposed Action: This item was placed on the APC agenda for discussion at the APC chair’s request, no action is required.

Background: At the Regional Plan Update Milestone meeting on January 28th, the subject matter discussed was Water Quality and Stream Environment Zones. Staff presented a FactSheet containing background information and eleven major policy issues that were brought up during the stakeholder process that preceded the Milestone.

For such a weighty meeting with so many issues (there was even one more added, so there were twelve in all), it was pleasant to see that resolution was reached. The Board gave succinct direction to staff for each of the twelve issues before the meeting adjourned at 4pm.

The APC deserves credit for the success of this process. In its role as advisory to the Board, the APC asked clarifying questions and provided comments during the course of the meeting. These questions and comments facilitated the Board’s thorough understanding of the issues.

The APC also weighed in with technical advice before the Board vote. Though it was difficult for the APC to sum up its technical advice into a synthesized brief that could be presented to the board in just one hour’s time, the APC did this.

Given the difficulty and the newness of the process, the APC Chair decided to place the process on the table for discussion at the next APC meeting. Below are a diagram and a summary of the process for the giving of technical advice to the Board, for reference:

1. Staff presents to GB and APC.
2. Staff takes APC and GB comment and responds to their questions (APC first).
3. General public comment period ensues.
4. GB adjourns for one hour.
5. APC engages in discussion geared towards synthesizing their technical comments to the GB – no additional public comment.
6. GB reconvenes.
7. APC Chair or designee presents a synthesized set of technical comments to the GB.
8. Public comment period ensues – comment limited to items in APC synthesis.
9. GB deliberates and provides direction to staff.

Should you have any questions or comments regarding this agenda item, please contact Harmon Zuckerman, at 775-589-59236 or hzuckerman@trpa.org.