

MEMO

Date: March 7, 2024
To: TRPA Governing Board
From: TRPA Staff
Subject: Update on Deed-Restriction Process Improvements

Summary:

Effective enforcement and monitoring of deed-restricted affordable and workforce housing properties is key to the success of TRPA's housing programs and environmental threshold attainment, and TRPA places a high priority on continual improvement of these systems. In December 2018, TRPA implemented a major update of its deed-restriction requirements, based on best practices from other mountain resorts, including instituting an annual compliance monitoring system for units that were deed-restricted after that date. In September of 2023, TRPA hired a consultant to help bring older deed-restricted units into this annual tracking and monitoring program as well as make recommendations for improvements to the program as a whole.

Background:

TRPA began issuing deed-restrictions around 1996. Many of these early deed-restrictions were tied to the subdivision of existing "defacto" affordable or moderate-income housing, or to federal or state grants subsidizing the construction of new deed-restricted apartment housing. During this time, TRPA utilized the fact that deed-restrictions carry through on the title of a property and are disclosed through a title search at the time of sale as the mechanism for prompting compliance. Early deed-restrictions did not contain language related to annual compliance reporting, documentation requirements or penalties for non-compliance, although authority and mechanisms for enforcement exist through the Bi-State Compact and Code of Ordinances just as they do for any other violation of the TRPA code. There are just over 250 properties with TRPA deed-restrictions on them, some with multiple units. The vast majority of units (over 300 homes) are in managed, rental apartment complexes such as Kelly Ridge Senior Apartments, or the Aspens in South Lake Tahoe. Other units have been subdivided into individual ownership units. Recently, several deed-restricted accessory dwelling units have been constructed.

In October 2018, TRPA passed code amendments through its Development Rights Strategic Initiative that required all units receiving a bonus unit in exchange for a deed-restriction be part of an annual compliance monitoring program, whereby owners of deed-restricted properties must submit a form each year certifying that the home complies with the requirements of the deed-restriction. These amendments also stipulated that bonus unit property owners may be subject to a fine of up to 1/10 of the current cost of a Residential Unit of Use (RUU) annually for failure to submit the compliance report or deed-restriction disclosure form. Based on the most recent appraisal, an RUU is estimated at \$15,000 for the City of South Lake Tahoe. These deed-restricted properties are also subject to complaint-based investigation or audit in which they are required to furnish documentation demonstrating compliance

with the terms of the deed-restriction. These new rules went into effect December 17, 2018, and apply to all permits for deed-restricted properties issued after that date. The deed restrictions prepared after the effective date include language explaining these requirements.

On September 1, 2023, as part of its on-going improvement process, TRPA brought on HousingInc., a firm with expertise in managing deed-restriction programs, to conduct and certify TRPA’s annual deed-restriction compliance monitoring and deed-restriction audit. As part of its contract, HousingInc. has also made recommendations for program improvements to ensure that the program achieves Regional Plan goals. In addition, TRPA has recently hired new staff in its legal department to assist with matters related to deed-restricted properties and development of the new program.

This report summarizes the status of the 2023 and 2024 annual Compliance Monitoring and Audit processes, and provides next steps on the recommended process improvements from HousingInc.

Discussion:

TRPA’s compliance and monitoring program consists of two discrete parts: 1) Annual Compliance Monitoring of Properties Receiving a Deed-Restriction after December 2018; 2) Audit of a portion of all deed-restricted units.

The status of these is summarized below.

2023 Compliance Monitoring and Audit Status

- *Compliance Monitoring of Post-2018 Units: 2023 Compliance Letter Status*
 - These are the units that were issued permits after the Development Rights Strategic Initiative went into effect in December 2018, and which had constructed, deed-restricted units by the time TRPA sent the letters to engage homeowners in the 2023 compliance monitoring process.
 - Online compliance forms were due April 15, 2023.

| Type | Units | Units in Compliance |
|--|-------|---------------------|
| Achievable ADUs (2 parcels) ¹ | 2 | 2 |

- *2023 Audit:*
 - TRPA audited 71 out of 250 deed-restricted parcels (an audit rate of 28%). This year TRPA focused the audit on four condominium complexes in Incline Village, from which TRPA had received information regarding possible violations of the terms of the deed-restriction. These deed-restrictions were issued prior to 2018, before TRPA began including compliance monitoring language in the deed-restriction and before instituting the annual monitoring program.
 - TRPA staff sent letters requesting documentation showing that the units are compliant with occupancy, rental, and/or sales conditions as written in the deed-restriction. If owners did

¹ TRPA also requested and received a compliance monitoring form from the Tahoe City Marina which has eight deed-restricted moderate units. Although the deed-restriction for this property was issued after December 2018, the permit was issued prior to the new compliance language going into effect, thus this property is not technically part of the annual compliance monitoring process but will be part of the audit process moving forward. The property owner certified that all eight units were in compliance.

not respond to the first letter, TRPA sent a second, certified mail letter. TRPA also sent new letters to homes for which a new mailing address was obtained.

- **Affordable deed-restrictions.** Six out of the 71 units are to be used exclusively for lower-income households (“affordable”) not to exceed 80% of AMI. These deed-restrictions do not cap the sales price but do have enforceable provisions regarding occupancy.
- **Status:** TRPA’s audit found that for these six units, four of the units are compliant with the terms of the deed-restriction, one has missing information, and one letter was returned with no forwarding address.
 - **Next Steps:**
 - Since TRPA has sent three letters to the unit with missing information and has not received a response, TRPA has restricted this unit from further development permits in TRPA’s system. TRPA will work with the owner to come into compliance, with resolution or further enforcement action if necessary by July 31, possibly including fines.
 - HousingInc used a private investigator to locate the owner of the property with no forwarding address, however, the current address appears to be correct. TRPA has sent a final notice to this owner and will take further enforcement action if necessary by July 31, possibly including fines.
- **Moderate deed-restrictions:** Sixty-five of the 71 units have specific language indicating rent rates and/or sales price formulas, but do not have clear, enforceable language on occupancy requirements. These deed-restrictions were originally issued in the year 2000. They had a sales price formula that only allowed the units to be sold for 2.5 x Area Median Income x 120%. In 2006, TRPA updated its definition for “moderate” income to a new sales price formula of 4.2 x Area Median Income x 120%. The owners of twenty-nine of the units in this complex worked with TRPA to update their deed-restriction to take advantage of this new formula. Through the 2023 audit, TRPA has found that ten of the units with the lower sales price formula have sold for more than the allowable amount. None of the units with the higher sales price formula have exceeded the allowable sales price. TRPA has taken compliance action with all homeowners in this complex by working with them to develop updated deed-restriction language that includes newer language on enforcement and compliance, and occupancy requirements.
 - **Next Steps:**
 - Complete new agreements for interested owners, with clear enforceable language and pursue enforcement action if necessary for any remaining non-compliant owners by July 31, possibly including fines.

2024 Compliance Monitoring and Audit Status (January – August)

- *Compliance Monitoring of Post-2018 Units: 2024 Compliance Letter Status*
 - As in 2023, these are the units that were issued permits after the Development Rights Strategic Initiative went into effect in December 2018. TRPA sent 13 letters to deed-restricted properties.
 - In addition to completion of the online Deed-Restriction compliance form, this year TRPA will require documentation showing proof of compliance with the conditions written in the deed-restriction.² On January 22, 2024, an initial letter was mailed to 13 deed-

² At its December 13, 2023 meeting, the Governing Board directed staff to audit 50 percent of units in 2024. Because there are still very few units in the post-2018 compliance monitoring program, staff plans to audit 100 percent of these units this year.

restricted property owners to remind them of the online compliance form and inform them of the request for additional information.

- In March 2024, TRPA staff will send an official request letter to the same 13 property owners asking that they submit the Self-Certification Form online with applicable proof of compliance documentation by April 15, 2024
- **2024 Audit:**
 - Prior to conducting the 2024 Audit, the consultants advised TRPA staff to first complete new deed-restriction Program Guidelines and online forms (see below). This action will ensure the audit can effectively launch using a more well-defined and consistent methodology. The Program Guidelines will include specific program and compliance details, a timeline, and strategies for enforcement of properties out of compliance with the program.
 - TRPA will also send out a letter to all deed-restricted units reminding them of the requirements to comply with the terms of the deed-restrictions on their property. All units receive this letter every year during the month of March, regardless of whether they will be audited.
 - This year, per Governing Board direction, TRPA will audit 50 percent of all deed-restricted units. This may include the 13 units that are part of the annual compliance monitoring program.

Deed-Restriction Program Improvements (March - September)

HousingInc. has recommended that TRPA develop and integrate new tools to improve the deed-restriction compliance processes for existing deed-restricted properties, streamline steps for new properties entering the deed-restricted program, and develop best practices for staff to effectively monitor properties and manage the program.

- **Recommendations for Process Improvements:**
 - Develop and publish Program Guidelines. This action includes Monitoring and Underwriting, and an Operational Manual to provide a well-defined and streamlined process (May 2024).
 - Design a process, workflow, and timeline to resolve compliance issues (May 2024).
 - Develop legal documents to assist with monitoring, enforcement, and compliance, such as new deed-restriction language, a Deed of Trust and/or Promissory Note (July 2024).
 - Develop escrow instructions (July 2024).

New Deed-Restriction Program Implementation (October - ongoing)

- Outreach on new program tools.
- Share Program Guidelines with property owners providing direction on how to comply with their legal agreements.
- Train TRPA staff, local government staff, Homeowners' Associations, and Real Estate Professionals on Deed Restriction Program Best Practices, Guidelines, and Enforcement.
- Annual Compliance Monitoring and Audit.

Budget

TRPA has allocated \$40,000 over two years for compliance and monitoring and program improvements. Long-term, sustainable funding for deed-restriction management is part of the next phase of the agency's work on housing, equity, and climate.

Goals and Policies

The deed-restriction program is consistent with the following Regional Plan Goals and Code of Ordinances sections:

GOAL HS-1

PROMOTE HOUSING OPPORTUNITIES FOR FULL-TIME AND SEASONAL RESIDENTS AS WELL AS WORKERS EMPLOYED WITHIN THE REGION.

GOAL HS-3

REGULARLY EVALUATE HOUSING NEEDS IN THE REGION AND UPDATE POLICIES AND ORDINANCES IF NECESSARY TO ACHIEVE STATE, LOCAL AND REGIONAL HOUSING GOALS.

Code of Ordinances Section 52.3.4. Affordable, Moderate, and Achievable-Income Housing.

All projects receiving a residential bonus unit for affordable, moderate, or achievable housing development as defined in Chapter 90: Definitions shall comply with criteria in Section 52.3.4A-F. TRPA shall report to the TRPA Governing Board biennially on the implementation of the residential bonus unit program for affordable, moderate, and achievable housing development. This report shall include, but is not limited to, the number of housing developments and units awarded and constructed bonus units, number of bonus units awarded to and constructed in each income category, number of bonus units awarded to and constructed in single and multi-family housing developments, location of housing developments,³ and compliance with the program.

Contact Information:

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³ These metrics will be reported in the 2023 Performance Metrics report.