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## STAFF REPORT

Date: May 18, 2022

To: TRPA Local Government and Housing Committee

From: TRPA Staff

Subject: Semi-Technical Code Updates to Improve Housing Delivery Under Existing Programs

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### Summary and Staff Recommendation:

Staff is preparing a set of draft code changes to address technical concerns brought up during the Phase 1 Housing Amendment approval process. Staff requests discussion and direction on the proposed amendments. The code amendments relate to updates to the achievable housing definition and deed-restriction compliance program.

### Background:

TRPA follows a policy of adaptive management when implementing new code. That means that following approval of new code changes, upon implementation at the permit level, TRPA often identifies and processes improvements to the code that are necessary to ensure that new code sections are meeting stated goals.

Two major code amendment packages related to housing have been implemented in the past four years:

- Development Rights Strategic Initiative (DRSI) (effective January 2019)
- Phase 1 Housing Amendments (effective September 2021)

As these amendments have become more widely understood within the community, TRPA has seen increased utilization of these new code sections. The Development Rights Strategic Initiative (DRSI) has led to approved projects that have made use of the achievable bonus unit pool, and local jurisdictions and private property owners are making use of the conversion provisions that were part of that initiative to facilitate construction of multi-family housing and accessory dwelling units (ADUs). The Phase 1 Housing Amendments package has facilitated the approval of eight ADU permits, while an additional eleven applications for ADUs have been submitted to TRPA as of the date of this staff report.

In working directly with applicants and the California jurisdictions on accessory dwelling unit permits and implementation of “achievable” housing project applications and inquiries, as well as noting comments received during the approval process for the Phase 1 Housing Amendments, TRPA has identified two areas of the code that should be amended to ensure that the underlying intent of the DRSI and Phase 1 Housing Amendments is realized.

Discussion:

Attachment A includes draft code modifications shown in “track changes” for each of the following issue areas.

Item #1 - Clarification of the Achievable Housing Definition and updates to the Deed-Restriction Compliance Program

Utilization of the “Achievable” bonus unit pool is ramping up (TRPA currently has received applications for 95 achievable units with more in the pipeline), and TRPA continues to consider and approve new amendments that confer significant public benefits and cost reductions to “achievable” projects. Given this increasing public investment in these units, over the past year and one half the Tahoe Living Working Group has discussed needed amendments to the “Achievable” housing definition to ensure that this housing is primarily occupied by local workers, or by those below a certain income level. The current wording of the achievable definition would allow remote workers to be eligible for deed-restricted achievable housing, and members of the Working Group and the public have identified that this use is out of line with the intent of the achievable program.

Additionally, over the course of the last several years, TRPA has received multiple inquiries, reports, and complaints on the relative effectiveness of existing deed-restrictions that TRPA has issued, including 302 deed-restrictions put into place prior to 2019, and in the deed restrictions issued under the current “achievable” definition after 2019. This proposal also addresses some of those issues.

Summary of proposed changes to the Achievable Housing Definition and Deed-Restriction Compliance Program:

- Update definition to limit the achievable income category to include permanent residents who meet at least one of the following criteria:
  1. Have a household income not in excess of 120 percent of the respective county’s area median income (AMI) (moderate income households and below); or
  2. At least one occupant of the household works at least 30 hours per week or full-time equivalency for an employer with a business license or tax address within the Tahoe region or Tahoe-Truckee Unified School District; or
  3. Is a retired person who has lived in a deed-restricted unit in the Tahoe Basin for more than seven years.
- Update compliance requirements in the deed-restriction template to state that TRPA may conduct a random audit whereby owners of deed-restricted properties may be required to furnish documentation that the unit is being utilized in accordance with the deed-restriction.

The achievable deed-restriction would also maintain provisions that the unit cannot be used as a short-term rental.

See Attachment A for proposed amendments to the Code of Ordinances in “track changes.”

Next Steps:

Once TRPA has incorporated input into the proposed changes shown in Attachment A, TRPA will attach these amendments in the next Code update package that is ready to come forward. These amendments can be included in either the Phase 2 Housing Amendments, Sustainability Amendments, or the next package of Technical Code amendments. If additional technical modifications are identified in the meantime, they may be included in the staff report as it moves forward for hearings and recommendations for approval.

Contact Information:

For questions regarding this agenda item, please contact Karen Fink, at (775) 589-5258 or [kfink@trpa.gov](mailto:kfink@trpa.gov).

Attachments:

- A. Technical Code Amendments in Track Changes
- B. Employment Area for Achievable Definition – Greater Tahoe-Truckee Area
- C. Affordable, Moderate and Achievable Deed Restriction Template and Compliance Form in Track Changes

Attachment A

Technical Code Amendments in Track Changes

## Attachment A – Phase 2 Technical Amendment Element – draft code changes

### Item #1 - Clarification of the Achievable Housing Definition and updates to the Deed-Restriction Compliance Program

Code of Ordinances

#### **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, and compliance with the program.

- A. Residential bonus units may be awarded to single or multi-family housing developments.
- B. The owner of the parcel, through a deed restriction running with the land, shall restrict the unit for which the bonus unit was awarded from being used as a second home or a vacation rental.
- C. A bonus unit may be used for an accessory dwelling unit as defined by Section 21.3.2, notwithstanding 52.3.4.A above, provided it is consistent with all provisions of the applicable area plan or this Code of Ordinances.
- D. The owner of the parcel, through a deed restriction running with the land, shall limit the unit for which the bonus unit was awarded to the approved use and restrict the occupants' household income to affordable, moderate, or achievable housing limits set forth in Chapter 90: Definitions, depending on the applicable income level for which the bonus unit was awarded. The restriction shall also include the requirement to disclose the restrictions associated with the unit at the time of sale of the unit, the requirement to submit an annual compliance report to TRPA, and the potential to be fined up to 1/10 of the current cost of a residential unit of use annually for failure to submit the compliance report or comply with these requirements.
- E. An owner-occupant of a unit who has provided all required annual compliance reports and who has had an increase in income or change in circumstances so that they are no longer eligible for the bonus unit may apply to TRPA and receive an exemption to the income requirement until the unit is sold. The owner must continue to be the occupant, provide annual compliance reports to remain eligible for the exemption and not be subject to the annual fine, rent the unit only to an income qualified renter if no longer the occupant, or sell the unit only to an income qualified buyer.
- F. A renter household which has had an increase in income or change in circumstances such that they no longer meet the qualifying criteria may remain in the home for up to one year, after

which time the household is required to re-locate if qualifying factors have not been re-established.

F. The project awarded a residential bonus unit shall be within ½ mile of a designated Town Center; within ½ mile of an existing transit stop or a transit stop that will be existing concurrent with the completion of the project; or located in an area where multi-family dwellings are an allowed or special use.

## 90.2. OTHER TERMS DEFINED

### Achievable Housing

Single or multi-family residential development to be used exclusively as a residential dwelling by permanent residents who meet one or more of the following criteria:

1. Have a household with an income not in excess of 120 percent of the respective county's area median income (AMI) (moderate income households and below);
2. At least one occupant of the household works at least 30 hours per week or full-time equivalency for an employer with a business license or tax address within the Tahoe region or Tahoe-Truckee Unified School District. Full-time equivalency may be confirmed by employer. n household achievable area median income (AMI) percentage, using the following methodology:
  1. Determine the county's median income where the housing development will be located using income limits for a family of three published annually by the US Department of Housing and Urban Development and, if applicable, the California Department of Housing and Community Development.
  2. Determine the county's median single or multi-family housing price, as applicable, where the housing development will be located using median housing prices published annually by the TRPA.
  3. Divide the median single or multi-family housing price, as applicable, (determine in Step 2) by 3.79 (buying power) to determine the annual income needed to afford an achievable housing unit.
  4. Divide the annual income needed (calculated in Step 3) by the median income (determined in Step 1) to determine the achievable AMI percentage.
3. Is a retired person who has lived in a deed-restricted unit in the Tahoe Basin for more than seven years.

The employment requirement for occupants with incomes over 120 percent of AMI may be waived for accessory dwelling units when the unit is occupied by a family member.

### Example:

• Median Single Family or Multi-family Home Price (Step 1) / 3.79 = Annual Income Needed

Annual Income Needed (Step 3) / HUD County AMI (Step 2) = Achievable AMI Percentage

- ~~El Dorado Median Multi-family home price of \$330,000 / 3.79 = \$87,071 Annual Income Needed~~

~~87,071 Annual Income Needed / \$65,500 HUD El Dorado AMI = 127% maximum AMI per household to be eligible for an achievable residential bonus unit~~

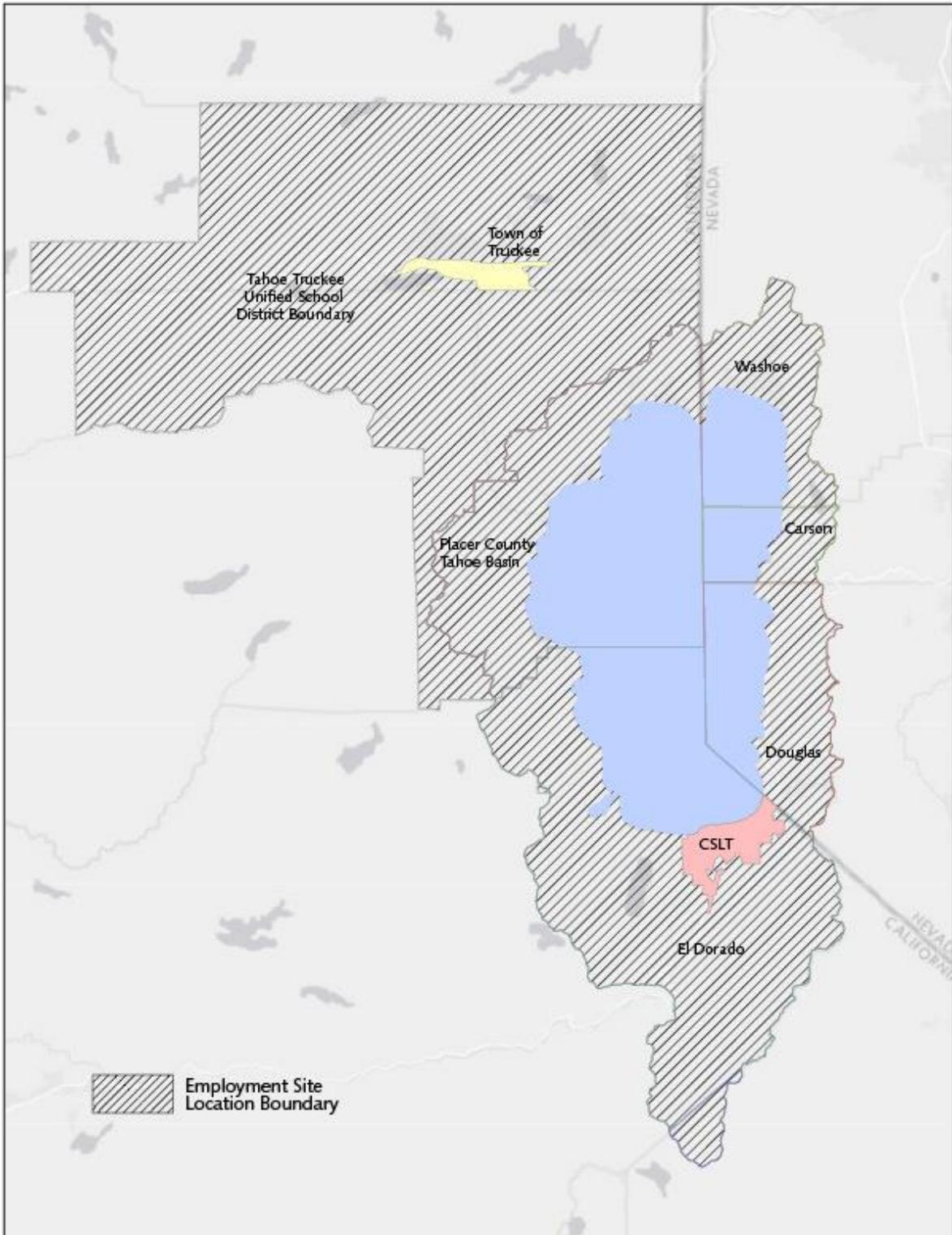
~~This calculation may be periodically adjusted to reflect changes in the affordability gap between median income and median home price within the Lake Tahoe Basin. Maximum AMI per county per household to be eligible for an achievable bonus unit will be available upon request from TRPA.~~ Achievable housing units shall meet the criteria and restrictions in accordance ~~with~~ Chapter 52: *Bonus Unit Incentive Program*.

Achievable deed-restrictions issued before [the date this code amendment goes into effect] may utilize this definition or the definition of “achievable” in effect from December 20, 2018 to [the date this code amendment goes into effect].

Attachment B

Employment Area for Achievable Definition – Greater Tahoe-Truckee Area

Attachment B - Map of Proposed Boundary for Employment Location Eligibility



Attachment C

Affordable, Moderate and Achievable Deed Restriction Template and Compliance Form in Track Changes

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Tahoe Regional Planning Agency  
Attn:  
P.O. Box 5310  
Stateline, NV 89449

TRPA File No. \_\_\_\_\_

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
ACHIEVABLE AREA MEDIAN INCOME HOUSING ("DEED RESTRICTION")  
TO BE RECORDED AGAINST APNS XXX-XXX-XX**

This Deed Restriction is made as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by  
\_\_\_\_\_ (hereinafter "Declarants").

**RECITALS**

A. Declarants are the owners of that certain real property located at \_\_\_\_\_, \_\_\_\_\_  
County, State of \_\_\_\_\_, commonly known as Assessor's Parcel No. \_\_\_\_\_, and more  
particularly described in the attached Exhibit A (the "Property").

The Grant Deed conveying the Property to Declarant was recorded on \_\_\_\_\_, as Document  
No. \_\_\_\_\_, in the \_\_\_\_\_ County Recorder's Office.

B. The Property is located in the Tahoe Region as described in the Tahoe Regional Planning Compact  
(P.L. 96-551, State. 3233, 1980), which region is subject to the regional plan and the ordinances  
adopted by the Tahoe Regional Planning Agency ("TRPA") pursuant to the Tahoe Regional  
Planning Compact.

C. Declarants received approval from TRPA on \_\_\_\_\_ (TRPA File No. \_\_\_\_\_), to  
\_\_\_\_\_ (on that certain real property formerly known as Assessor's Parcel  
No. \_\_\_\_\_), subject to a special condition that \_\_\_\_\_ of the \_\_\_\_\_  
residential units be deed restricted as Achievable Area Median Income housing units.

D. For purposes of this deed restriction Achievable Area Median Income Housing is defined as:

Single or multi-family residential development to be used exclusively as a residential dwelling by  
permanent residents who meet one or more of the following criteria:

1. Have a household with an income not in excess of 120 percent of the respective  
county's area median income (AMI) area median income (AMI) (moderate income households  
and below); or

~~2. At least one occupant of the household works at least 30 hours per week or full-time equivalency for an employer with a business license or tax address within the Tahoe region or Tahoe-Truckee Unified School District. Full-time equivalency may be confirmed by employer; or~~

~~3. Is a retired person who has lived in a deed-restricted unit in the Tahoe Basin for more than seven years. achievable area median income (AMI) percentage, using the following methodology:~~

~~1. Determine the county's median income where the housing development will be located using income limits for a family of three published annually by the US Department of Housing and Urban Development and, if applicable, the California Department of Housing and Community Development.~~

~~2. Determine the county's median single or multi family housing price, as applicable, where the housing development will be located using median housing prices published annually by the TRPA.~~

~~3. Divide the median single or multi family housing price, as applicable, (determine in Step 2) by 3.79 (buying power) to determine the annual income needed to afford an achievable housing unit.~~

~~4. Divide the annual income needed (calculated in Step 3) by the median income (determined in Step 1) to determine the achievable AMI percentage.~~

~~\*\*Please note that the AMI percentages will be rounded to increments of 5%, so the percentages generated using the above methodology may differ slightly from those reported TRPA documentation.~~

## DECLARATION

1. Declarants hereby declare that, for the purpose of partially satisfying TRPA's (DATE) \_\_\_\_\_ conditions of approval, the (#) \_\_\_\_\_ residential unit(s) on the Property shall be permanently restricted to Achievable Area Median Income Housing and shall not be used as a vacation rental.
2. The restrictions associated with the Property shall be disclosed to the buyer at the time of sale of the Property, through a Real Estate Disclosure form, a copy of which shall also be filed with the Tahoe Regional Planning Agency.
3. The owner of the Property shall submit an annual compliance report to TRPA. Failure to submit the required report, or failure to comply with the requirements of this deed-restriction may result in an annual fine of up to 1/10 of the current cost of a residential unit of use. TRPA may conduct an audit at any time requesting additional documentation to verify the responses submitted in the compliance report.
4. An owner-occupant of a Property who has provided all required annual compliance reports and who has had an increase in income or change in circumstances so that they no longer meet the income eligibility requirements for Achievable Housing may apply to TRPA and receive an exemption to the income requirement until the unit is sold. To receive the exemption, the owner

must either continue to be the occupant and provide annual compliance reports to remain eligible for the exemption and not be subject to the annual fine; or rent the unit only to an income qualified renter if no longer the occupant. When the unit is sold it may only be sold to an income qualified buyer.

5. A renter household which has had an increase in income or change in circumstances such that they no longer meet the qualifying criteria may remain in the home for up to one year, after which time the household is required to re-locate if qualifying factors have not been re-established.

56. This Deed Restriction shall be deemed a covenant running with the land or an equitable servitude, as the case may be, and shall be binding on the Declarants and Declarants' assigns, and all persons acquiring or owning any interests in the Property.

76. The owner of the parcel shall restrict the unit for which the bonus unit was awarded from being used as a second home or a vacation rental.

87. This Deed Restriction may not be revoked or modified without the prior express written and recorded consent of the Tahoe Regional Planning Agency or its successor agency, if any. TRPA is deemed and agreed to be a third party beneficiary of this Deed Restriction, and as such, can enforce the provisions of this Deed Restriction.

IN WITNESS WHEREOF, Declarants have executed this Deed Restriction this the day and year written below.

Declarant's Signature:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name, Title  
Ownership Entity

*A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.*

STATE OF                    )  
                                  ) SS.  
COUNTY OF                )

On \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_  
(typed or printed)

APPROVED AS TO FORM:

\_\_\_\_\_  
Tahoe Regional Planning Agency

Dated: \_\_\_\_\_

*A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.*

STATE OF NEVADA     )  
  ) SS.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_  
(typed or printed)



TAHOE REGIONAL PLANNING AGENCY
AFFORDABLE, MODERATE, OR ACHIEVABLE DEED-RESTRICTION
COMPLIANCE FORM

Per Chapter 52, Bonus Unit Incentive Program of the Tahoe Regional Planning Agency Code of Ordinances, property owners in the Tahoe Region have the option to deed-restrict their parcel to different affordability levels in exchange for a bonus unit. On these parcels, through a deed restriction running with the land, occupants' household income is restricted to affordable, moderate, or achievable housing limits set forth in Chapter 90, depending on the applicable income level for which the bonus unit was awarded, and the unit may not be used as a second home or a vacation rental. Deed-restrictions issued per Chapter 52 also include the requirement to disclose the restrictions associated with the unit at the time of sale of the unit, and the requirement to submit an annual compliance report to TRPA.

This form must be submitted by April 15 each year following the year in which the home was purchased.

- This form can be digitally signed and submitted electronically by clicking below or
Print, sign and submit via: EMAIL to info@trpa.org, FAX to 775-588-4527, MAIL to PO Box 5310, Stateline NV 89449 or IN PERSON at the TRPA front counter located at 128 Market Street, Stateline

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, deed-restriction disclosure form, or otherwise comply with the requirements of Chapter 52.

Property Information:

Check one:

Single-Family Residence/Main House Single-Family Residence/Accessory Dwelling Unit (secondary residence). For Single-Family residences, if both the main house and the accessory dwelling unit(s) are deed-restricted, one compliance form may be submitted for all units.

Multi-Family Residence. For Multi-Family Residences, one compliance form may be submitted for multiple units on one parcel.

Physical Address:
City: State: County: Zip:
Assessor's Parcel Number (APN):

1. Deed-restriction affordability level:

Affordable, number of units: \_\_\_\_  Moderate, number of units: \_\_\_\_  Achievable, number of units: \_\_\_\_

2. Units by number of bedrooms:

The deed-restriction covers these units:

Number of studio units: \_\_\_\_ Number of 2-br units: \_\_\_\_ Number of 4-br units: \_\_\_\_

Number of 1-br units: \_\_\_\_ Number of 3-br units: \_\_\_\_ Number of units with 5 or more bedrooms: \_\_\_\_

Total number of units: \_\_\_\_

3. The unit was occupied by the owner throughout the last year:  Yes  No

3a. If yes, the owner meets the income, employment and/or rent limits established by the deed-restriction, and noted in #1, above.

Yes  No

4. The unit or units was/were rented:  Yes  No.

4a. If yes, the renter(s) meet(s) the income, employment and/or rent limits established by the deed-restriction, and noted in #1, above.

Yes  No

5. The unit HAS NOT been used as a second home or vacation rental throughout the course of the last year:

Yes  No

6. The unit has been used exclusively by a permanent resident or seasonal worker throughout the course of the last year:

Yes  No

If you are not able to answer yes to either of 3a. or 4a. above, please contact TRPA.

DECLARATION: I hereby declare under penalty of perjury that all information submitted as part of this compliance form is true and accurate to the best of my knowledge and I understand that should any information submitted be inaccurate, erroneous, or incomplete, TRPA may take appropriate action.

Deed Holder(s)/Property Owner(s):

Printed Name(s) \_\_\_\_\_ Date: \_\_\_\_\_  
Signature(s): \_\_\_\_\_