
STAFF REPORT

Date: August 21, 2024
To: TRPA Governing Board
From: TRPA Staff
Subject: Appeal of Denial of Request for IPES Reevaluation, 1341 Tata Lane, City of South Lake Tahoe, California Assessor's Parcel Number (APN) 032-261-002, TRPA File Number ERSP2023-0033, Appeal File Number ADMIN2024-0011

Requested Action:

To consider and take action upon an appeal filed by Ted Wendell, of an Executive Director denial of request for IPES Reevaluation for the property located at 1341 Tata Lane in the City of South Lake Tahoe.

Staff Recommendation:

Staff recommends that the Governing Board deny the appeal and affirm the decision of the Executive Director to deny the Request for IPES Reevaluation.

Required Motion:

1. A motion to grant the appeal, which motion should fail, to affirm the Executive Director's determination.

The motion to grant the appeal will fail unless it receives five affirmative votes from California and nine overall.

Background Facts:

This is an appeal of an Executive Director denial of an application for reevaluation of an Individual Parcel Evaluation System ("IPES") score for an undeveloped parcel in El Dorado County, located at 1341 Tata Lane, APN 032-261-002. In 1987 the site received a score of 0, meaning the site is not buildable. On January 30, 2023, the landowner, Ted Wendell (who purchased the lot in 1991 for \$8,000) filed an application for reevaluation of the IPES score (Attachment A) and submitted supplemental materials on January 18, 2024. (Attachment B.) The application was denied on February 27, 2024 (Attachment C), on the grounds that the parcel is not eligible for reevaluation and that Wendell's submission is a challenge to the application of IPES criteria, which needed to have been filed as an appeal within a specified time period that has long since passed. On May 20, 2024, Wendell submitted his Statement of Appeal (the document is entitled "Statement of Justification") providing the grounds for appealing the denial. (Attachment E.)

Wendell applied for a reevaluation of the entire parcel with the intent of having the IPES criteria re-applied and a new score assigned, replacing a final evaluation completed 35 years ago. The application was based upon an assertion that a recent survey constitutes "new information" showing the parcel had been graded

prior to the IPES evaluation. Staff determined that the original IPES evaluation took previous grading into account, and there is no new information showing that a reevaluation is appropriate.

1. Land Capability Classification Systems.

TRPA has developed two land capability systems for classifying land within the Basin according to its suitability for development - Bailey (Code of Ordinances ("Code") Chapter 30) for developed residential, multifamily, and commercial parcels; and the Individual Parcel Evaluation System (IPES) (Code Chapter 53) for undeveloped residential parcels. These systems are both based, in part, on land capability maps (also known as Bailey Overlay maps) adopted by TRPA, which show the land capability delineations for the entire basin at a broad (1-inch equals 400 feet) scale. These overlay maps identify which land capability class may apply to a particular area. TRPA performs a field verification to confirm whether the land capability as identified by the maps is correct or requires adjustment. Each land capability is associated with a certain amount of coverage that may be allowed on parcels within each class. IPES uses these maps and coverage allocations as a starting point but goes beyond the broad soil mapping to use site-specific data to determine the land capability and appropriate amount of allowable coverage for each parcel on an individual basis.

IPES examines a host of site-specific criteria set forth in the Code, including the site's relative erosion hazard, runoff potential, degree of difficulty to access the building site, the site's ability to revegetate, the condition of the watershed, and the proximity of the parcel to Lake Tahoe, to classify the land capability of an individual parcel. (See Code § 53.6.3.) Based on these criteria the parcel is assigned a score between 0 and 1150. Most of the vacant parcels in the Basin, approximately 13,000, including the subject parcel owned by Wendell, were evaluated and scored under IPES in the late 1980's.

2. The Wendell Parcel.

Mr. Wendell's parcel is located at 1341 Tata Lane in El Dorado County. The parcel is a 16,300 square foot lot in the City of South Lake Tahoe. Wendell's parcel was scored by an IPES team in August 1987. (See IPES Field Evaluation Form, APN 032-261-002, Attachment E.) As set forth in Code section 53.3.2, the IPES field evaluation teams were comprised of qualified professionals - a soil scientist, hydrologist and an engineer or planning professional - the teams scored thousands of lots in the Basin in the late 1980s. The soil profile was described and evaluated based on the IPES criteria outlined in Chapter 53 of the Code and the IPES field manuals. The IPES evaluation verified that the entire Wendell parcel is Stream Environment Zone (SEZ), and the parcel was given an IPES score of 0.

3. The Processes for Challenging an IPES Score.

The TRPA Code provides for two means of challenging IPES scores - reevaluation and appeals. Code section 53.6.3 (reevaluation); and section 53.6.4 and 54.6.5 (appeals). Revaluations are only available if there is new information or information that was not known to, or considered by, the IPES field evaluation teams at the time the evaluation was performed, such as the legal status of the lots. (Code § 53.6.3.) The Code expressly prohibits reevaluation on the basis of whether or not the IPES criteria were properly applied. A claim that the IPES criteria were not properly applied must be raised in an appeal. (*Id.*)

In this case, Wendell argues that the parcel is eligible for reevaluation for two reasons: (1) A new survey of the site indicates that the site had been graded before the IPES scoring took place and that the soil pit used in the IPES scoring was located in the previously graded area; and (2) the IPES field notes indicate that the access and utilities for the site are not located in SEZ, indicating that the IPES team made an error in concluding that the entire site was SEZ.

4. The IPES Team Evaluation.

The 1987 evaluation of this parcel indicated that the grading of a “foundation” existed at that time, and it was marked on the map used by the IPES team. (Attachment D.) The IPES notes indicate that 100% of the parcel is SEZ, giving the parcel a score of 0. The notes also indicate the following: (1) a foundation was graded on the parcel; (2) a 20 by 30-foot seep existed at the front of the parcel, with larger areas having “moist indicators present”; (3) the existence of “wet site vegetation”; and (3) in the soil test pit, “strong bleaching at 32””. (Attachment D.)

Issue on Appeal:

There is one issue raised in this appeal: whether the application for reevaluation represented a challenge to the application of IPES criteria, which should have been filed as an appeal.

Discussion and Analysis:

Wendell’s appeal alleges that the IPES score his parcel received in 1987 is eligible for reevaluation. Based upon the facts and the analysis presented below, the staff determination that the parcel is not eligible for reevaluation should be upheld.

1. The Parcel is Not Eligible for Reevaluation.

A. Wendell’s assertion that the 1987 soil test pit was in a previously graded area does not provide an appropriate basis for reevaluation.

During the initial IPES field evaluations in the late 1980s, the field teams used field methods and tools, including the use of clinometers and tape measures, to determine slope. Today, topographic surveys are generally used, and generally yield results that are slightly different than those obtained with field methods. As a legal matter, this potentially more sophisticated data would not be an appropriate basis for reevaluation because it would represent an impermissible challenge to the application of the IPES criteria, i.e., whether the initial IPES evaluation team properly considered the previous grading. A challenge to application of the IPES criteria cannot be a basis for reevaluation, but only a basis for appeal. (Code § 53.6.3.) In addition, during the last thirty years many sites have been altered, from either manmade or natural changes on the property, such that today’s surveys cannot be relied upon to indicate what the topography of the site was in 1987.

The appellant argues that the soil test pit was improperly located in the previously graded area, resulting in an improper application of the IPES criteria, i.e., the team found soil bleaching at 32 inches and appellant argues that bleaching would have been seen at 62 inches if the IPES team had placed the pit outside of the graded area. (Attachment D, page 1.) As an initial matter, there is no evidence that the soil pit was in fact placed in an area of the parcel that was 30 inches below natural grade. This is speculation. Further, the location of the soil test pit and conclusions drawn from the analysis constitute application of the IPES criteria that could have been the subject of an appeal but does not warrant reevaluation of the IPES score decades after the score was issued.

The location of the soil test pit is not new information, and it is an issue that goes directly to the application of the IPES criteria. Decade’s late challenges to the application of IPES criteria would undermine the integrity of TRPA’s land capability system. The Code provides for the appeal of IPES scores “no later than 180 days” from the date of notification of the parcels score under IPES. Code § 53.6.4. The Code also provided for an alternative appeal procedure until June 29, 1990. Code § 53.6.5. Wendell’s lot was scored

in 1987. Thus, pursuant to the Regional Plan, the window of appeal for their IPES score was closed after June 29, 1990.

At this point, any challenge to the score, beyond that which could be accomplished via reevaluation, necessarily constitutes a challenge to the IPES program and the window of appeal provided by that program. In a series of cases initiated in 1990 and finally resolved in 2003, the United States Court of Appeal for the Ninth Circuit definitively held that challenges to the IPES program were barred by the Compact's 60-day statute of limitations. *TSPC v. TRPA (TSPC III)*, 34 F.3d 753 (9th Cir. 1994) (affirming the district court's holding that takings challenges filed by those with sensitive lots (i.e. those classified as SEZ, land capability 1, 2, and 3) below the IPES line in 1991 and 1992 (first amended complaints) were barred by the 60 day statute of limitations); *TSPC v TRPA (TSPC V)*, 322 F.3d 1064 (9th Cir 2003) (affirming the district court's dismissal of claims filed in 2000 by SEZ plaintiffs as untimely because they accrued in 1989 when the property owners were notified of their classification as SEZ and affirming the district court's dismissal of claims filed by plaintiffs in 2000 with scores below the IPES line as untimely because they accrued no later than the first time the vacant lot equation was calculated in 1990 – the recalculation of the IPES line in 1999 did not retrigger the statute of limitations).

Any argument by Wendell that his parcel should receive a new score, beyond that which may be granted via reevaluation, is foreclosed. The limited window of appeal provided for by the 1987 Regional Plan has not changed. Wendell or his predecessor had all of the information necessary to understand the buildability of his lot over 30 years ago. At that time the regulatory framework, including the limited window of appeals and reevaluation, were evident. As such, any opportunity Wendell had to appeal the IPES score has long since passed.

Mr. Wendell's predecessor like all others receiving IPES scores in the late 1980s, received written notice of their score and ample opportunity to understand the score's implication. TRPA sent a series of notices to all property owners within the basin throughout the late 1980's notifying property owners of implementation of the IPES system and their appeal rights. *See e.g.*, attached letters (Attachment F). During this time, TRPA also held a series of public meetings to discuss the IPES system. In addition, once parcels were scored, the property owner received an IPES score sheet for their parcel and supplemental information regarding the IPES program, including the availability of reevaluation and appeals. Because Wendell, like all other property owners at the time, had notice of the IPES system, including the narrow limitations on appeals and reevaluations, challenges to IPES scores received in the late 1980's are now unequivocally barred.

B. The IPES field notes indicating that the utilities and access were not in SEZ does not provide an appropriate basis for reevaluation.

Mr. Wendell argues that the 1987 field notes indicate that "access and utilities elements of the IPES evaluation were shown as outside of the SEZ, further identifying mistakes made by field crews based on the lack of site information, specifically property corner markers." (Attachment E, page 2.) The argument appears to be that two boxes checked on the field notes indicate the access and utilities for the parcel were not in SEZ (Attachment D), therefore the field team was confused about the property corners or topography. There is no evidence to support this conclusion.

In appropriate situations, TRPA has found that reevaluation is available where substantial evidence suggests that the incorrect lot was scored. *See Administrative Determination/Legal Opinion, El Dorado County, California, Assessor's Parcel Number (APN) 033—821-15, TRPA File N. STD20070146.* The argument

that the field team was confused about the property corners is unsubstantiated and does not provide evidence that the wrong lot was scored.

The field team identified the graded area on the parcel and indicated that the entire parcel was SEZ. There is no evidence to support a conclusion that the field team did not know where the parcel corners were located. Further, the landowner was aware of the checked boxes in the late 1980s, and this is not new information. Accordingly, this issue is a question of whether the IPES criteria were applied correctly, which is only subject to an appeal, not a reevaluation.

C. The reevaluation process may not be used as a way of reaching issues that are only subject to an appeal.

This appeal seeks a finding that present day survey technology on its own provides a basis for challenging an IPES score through reevaluation based upon “new information.”

Limiting the window of appeal for IPES scores is necessary to preserve the land capability system TRPA has developed and put into place in the Region. The Compact charged TRPA with regulating and balancing growth within the Region with environmental quality. (See TRPA Compact Art. I(b).) TRPA developed and adopted the land capability system to meet that charge. The level of development TRPA has allowed in the Region is based directly on the number of sensitive lots that were identified in the initial IPES evaluation and the number of those lots that have since been retired. The underlying policy being that in order to meet the Compact’s mandate, the amount of development allowed should be proportional to the amount of sensitive land preserved. Allowing these initial IPES scores to be challenged now, thirty years later, would undermine this well-settled system and the balance that has been established, as required by the Compact, between development and environmental quality.

Challenges to the application of the IPES criteria is limited to an appeal of the IPES score and is not the proper basis for a reevaluation. Wendell argues that present day survey technology should be found to be a proper basis for challenges to the application of the IPES criteria through a reevaluation rather than an appeal. This approach would allow for the application of IPES criteria to be challenged through the reevaluation process and would negate the Code, decades of legal precedent, and the policy behind the IPES system.

The window for Wendell to appeal the 1987 IPES score has closed and should remain closed. The reevaluation process may not be turned into a second chance to raise issues that should have been raised in an appeal. Any such result would be legally impermissible and would undermine the balance the Compact required between development and environmental protection in the Basin.

Conclusion

For the foregoing reasons, TRPA staff recommends that the Board uphold the Executive Director’s determination and deny Wendell’s appeal, concluding that the 1987 IPES score cannot be reevaluated because there is no new information that was not considered by the initial IPES team or substantial evidence that the wrong lot was scored in 1987.

If you have any questions, please contact Marsha Burch, Associate Counsel, at mburch@trpa.gov or (775) 589-5338 or Julie Roll, Senior Planner, at jroll@trpa.gov or (775) 589-5247.

To submit a written public comment, email publiccomment@trpa.gov with the appropriate agenda item in the subject line. Written comments received by 4 p.m. the day before a scheduled public meeting will be distributed and posted to the TRPA website before the meeting begins. TRPA does not guarantee written comments received after 4 p.m. the day before a meeting will be distributed and posted in time for the meeting.

Attachments:

- A. January 30, 2023, application for reevaluation of IPES score
- B. January 18, 2024, supplemental application materials
- C. February 27, 2024, denial letter
- D. August 19, 1987, IPES Field Evaluation
- E. May 20, 2024, Statement of Appeal/Justification
- F. Examples of letter sent by TRPA in the late 1980s regarding IPES

Attachment A

January 30, 2023, application for reevaluation of IPES score

Attachment B

January 18, 2024, supplemental application materials

Attachment C

February 27, 2024, denial letter

Attachment D

August 19, 1987, IPES Field Evaluation

Attachment E

May 20, 2024, Statement of Appeal/Justification

Attachment F

Examples of letter sent by TRPA in the late 1980s regarding IPES