



TRPA Code of Ordinances Rules of Procedure



ADOPTED NOVEMBER 15, 2011
EFFECTIVE MARCH 1, 2012
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ARTICLE 1: GENERAL

1.1. PURPOSE OF RULES

These Rules supplement, interpret, and implement both the Tahoe Regional Planning Compact, as amended, and the Tahoe Regional Planning Agency (TRPA) Regional Plan and Code of Ordinances. These Rules should be read together with those documents.

1.2. DEFINITIONS

As used in these Rules, the following terms have the meanings provided below. A complete listing of definitions is in Chapter 90 of the Code.

APC (Planning Commission)

The Advisory Planning Commission appointed pursuant to Article III(h) of the Compact.

Agency

The Tahoe Regional Planning Agency.

Board

The Governing Body of the TRPA whose members are appointed pursuant to Article III of the Compact.

Code

The Code of Ordinances.

Compact

The Tahoe Regional Planning Compact, as amended, P.L. 96-551, 94 Stat 3233, California Government Code Section 66801, Nevada Revised Statutes 277.200.

Emergency

A situation or circumstance that poses immediate danger to life, property, or the environment and demands immediate action to effectuate compliance with the Compact or the Regional Plan, Code, and Rules of the Agency.

Environmental Impact Statement (EIS)

The document defined in Article VII of the Compact.

Regional Plan

The long term general plan for the development of the region and as more specifically described in Article V of the Compact.

Rules

These Rules of Procedure.

TRPA

The Tahoe Regional Planning Agency.

1.3. REFERENCES TO GENDER AND NUMBER

These Rules are written using words of unmarked usage with respect to gender. All references to the singular include the plural and references to the plural include the singular.

1.4. OFFICERS OF THE BOARD

- 1.4.1. The Board shall elect from its own members a Chairman and Vice Chairman, whose terms of office shall be two years, and who may be reelected. Such election shall occur at the November meeting of the even numbered years. If a vacancy occurs in either office, the Board may fill such vacancy for the unexpired term. The Chairman and Vice Chairman shall be from different states and the Chairman position shall alternate between the two states, unless the Board chooses to depart from this schedule.
- 1.4.2. The Chairman shall preside at all meetings, shall execute documents for the Board, and shall perform other duties as provided by these Rules and as the Board may establish.
- 1.4.3. The Vice Chairman shall, in the absence of the Chairman, perform any duties of the Chairman that cannot reasonably wait until the Chairman's return. In the absence of both the Chairman and Vice Chairman, the Board may appoint an acting chairman who shall preside until the return of either officer.
- 1.4.4. In the event either officer is replaced for a particular meeting by his appointing authority, such a temporary absence from the Board shall not affect his term as an officer. Upon reappointment to the Board, that officer shall be deemed reelected and shall complete the original term of office.

1.5. TRPA ADMINISTRATION

- 1.5.1. The Board shall determine the qualifications of, and it shall appoint and fix the salary of, the Executive Director and legal counsel of the TRPA. In accordance with the direction and policies of the Board, the Executive Director shall administer the affairs of TRPA, including appointment of those employees as may be necessary to carry out the functions of TRPA. The appointment of an employee by the Executive Director shall be announced at the next regular meeting and presumed to be approved by the Board unless an objection is made by majority vote of the Board.
- 1.5.2. Legal counsel shall advise the Board, the APC, and the Executive Director. For administrative purposes, legal counsel shall take direction from the Executive Director, except as otherwise directed by the Board.
- 1.5.3. Except as specifically prohibited by Board action, the Executive Director may delegate the performance of any of his functions. Any such delegation shall not affect his responsibility for administering the affairs of TRPA. The Executive Director shall report to the Board on the major functions that have been delegated.

- 1.5.4. The Executive Director shall designate a member of the staff to serve as acting executive director while the Executive Director is absent or unable to perform his regular duties. The acting Executive Director shall have and exercise the same duties, responsibilities and powers as Executive Director. If the Executive Director is absent or unable to perform his regular duties and has not designated an acting executive director, the Chairman shall appoint an acting Executive Director.
- 1.5.5. The Executive Director shall prepare and submit to the Board for its adoption a revised Manual of Administrative, Personnel, and Fiscal Procedures that deals with the day-to-day administrative and fiscal practices and the terms and conditions of employment applicable to TRPA employees. The Executive Director may recommend amendments to this manual from time to time.

ARTICLE 2: GOVERNING BOARD MEETINGS

2.1. DATE AND TIME OF REGULAR MEETINGS

Regular meetings of the Board shall be held on the fourth Wednesday (and Thursday, if necessary) of each month except in November and December when the regular meetings shall be held on the third Wednesday (and Thursday, if necessary) of the month. If a regular meeting day falls on a holiday, the meeting shall be held on the next business day that is not a holiday. Meetings may be continued by those members present on a determination that a quorum cannot be expected on the regularly scheduled day.

2.2. SPECIAL AND EMERGENCY MEETINGS

Special meetings of the Board may be called by the Chairman or by a majority of the Board. Notice of a special meeting, except an emergency meeting, shall be given by:

- 2.2.1. Publication of the date and place for such special meeting at least five calendar days prior to the meeting in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region;
- 2.2.2. By posting an agenda for such meeting at the office of TRPA at least five calendar days prior thereto; and
- 2.2.3. By delivering written notice thereof either personally, by overnight postal service, or by telephonic communication, to each member of the Board and to each newspaper of general circulation, radio, or television station in the region that has a current request for notice of Board meetings on file with TRPA.

2.3. PLACE OF MEETINGS

Meetings of the Board shall be held in the TRPA office unless another meeting place for a particular meeting is designated by the Chairman.

2.4. QUORUM AND VOTE REQUIRED

Four members from each state constitute a quorum for the transaction of the business of TRPA. The vote of each member of the Board shall be individually recorded. No action shall be taken in the absence of a quorum except that a lesser number of members may continue a meeting until a quorum is present. In order to take action on an item requiring an extraordinary vote, as set forth in subsection 2.4.2 below, the presence of at least five members from the affected state shall be required. The voting procedures shall be as follows.

- 2.4.1. For adopting, amending, or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances or rules and regulations, the vote of at least four of the members of each state agreeing with the vote of at least four members of the other state shall be required to take action. If there is no vote of at least four of the members of each state agreeing with the

vote of at least four of the members of the other state on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.

2.4.2. For approving a project, the affirmative vote of at least five members from the state in which the project is located and the affirmative vote of at least nine members of the Board are required. If at least five members of the Board from the state in which the project is located and at least nine members of the entire Board do not vote in favor of the project, upon a motion for approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, that indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

2.4.3. For routine business and for directing the agency's staff on litigation and enforcement actions, at least eight members of the Board shall agree to take action. If at least eight votes in favor of such actions are not cast, an action of rejection shall be deemed to have been taken. If the proposed settlement of litigation will result in the approval of a project, the extraordinary vote required by subsection 2.4.2 above shall be required.

2.4.4. Consistent with the Compact and these Rules, the following matters require the vote set forth below:

A. Any Eight Votes

1. Propose draft plan/Code amendments;
2. Adopt application and review fees;
3. Affirm a notice of violation;
4. Release mitigation/TDA funds;
5. Make litigation, enforcement, or project security decisions (except settlements involving modification or approval of projects);
6. Direct legal counsel to pursue judicial remedies;
7. Continue an agenda item;
8. Act on administrative matters (e.g., budget, personnel, and contracts);
9. Call a special meeting;
10. Affirm Executive Director determination to use project security;
11. Create a committee; or
12. Determine that an appellant lacks standing to appeal.

B. Four Votes from Each State

1. Certify an EIS or make required findings for plan/ordinances adoption;
2. Require an EIS;
3. Adopt or amend thresholds, plans, ordinances, maps, or programs;

- 4. Act upon an Executive Director Code interpretation; or
- 5. Determine the vote required for a matter not specified.
- C. Extraordinary Project Vote (5/9)**
 - 1. Approve a litigation settlement or an offer of resolution in a notice of violation or determination to use project security, which results in project approval or modification;
 - 2. Certify an EIS or make required findings for a project;
 - 3. Grant a land capability challenge (not a plan amendment);
 - 4. Revoke a permit;
 - 5. Approve or modify a project; or
 - 6. Grant an Individual Parcel Evaluation System (IPES) appeal.
- D. Five Votes from Each State**
Deviate from the Rules
- E. Unanimous Vote**
 - 1. Add an emergency item to the agenda.
 - 2. Declare a Rule effective immediately.
- F.** Motions to reconsider require the same vote as the motion being considered.
- G.** Bi-state projects require two extraordinary votes (one from each state) for the project.

2.4.5. A Board member may call for a straw vote prior to action on an item. A straw vote shall not be considered action on an item and shall not be binding on any individual member on a subsequent vote.

2.5. PARLIAMENTARY PROCEDURE

Robert's Rules of Parliamentary Procedure shall govern the conduct of meetings, except as follows:

2.5.1. A motion does not require a second.

2.5.2. A motion to reconsider requires the same vote as the motion to which it relates. Subject to the requirements of subparagraph 2.5.2.A, a motion to reconsider may be made by any Board member but may only be made no later than the next regular Governing Board meeting after the project or matter to be reconsidered was acted upon.

- A.** For a project or matter to be reconsidered at the subsequent meeting, a Governing Board member shall request that reconsideration be placed on the next regular Governing Board agenda not more than seven days after the Governing Board meeting where the action on the project or matter was taken.

- B.** If a motion to reconsider a project or matter is passed, then the project or matter may be acted upon at the same meeting provided that the project or matter was included on the agenda and was re-noticed if notice had been given of the original action on such project or matter.

2.5.3. All motions under subsections 2.4.1 and 2.4.2 of these Rules shall be stated affirmatively.

2.6. OPEN MEETINGS

All meetings of the Board shall be open to the public to the extent required by the law of the State of Nevada or the State of California, whichever imposes the greater requirement applicable to local governments at the time such meeting is held. All actions of the Board shall be in open session.

2.7. VOTING PROCEDURE

The Chairman may take a recorded vote by voice vote, except that any member may request a roll call vote on any item. Roll call votes shall be on a rotating basis, with the Chairman being polled last.

2.7.1. Any member may change his vote prior to the tally having been announced by the Chairman, but not thereafter. Following the roll call but prior to announcing the vote, the Chairman shall give Board members an opportunity to change their votes. Board members may abstain from voting but shall be considered present and voting.

2.7.2. Board members who were not present at the hearing shall not vote on a quasi-judicial matter unless they have reviewed the record on the matter. The contents of the record shall be identified by Agency legal counsel.

2.7.3. An action shall be deemed final at the close of the meeting on the day on which the action was taken unless a motion to reconsider has been passed.

2.8. COMMITTEES

The Board may create committees by resolution. The resolution shall describe the committee's responsibilities and other matters the Board deems pertinent.

2.8.1. Notices of committee meetings shall conform to the Rules for notices of Board meetings.

2.8.2. Minutes shall be kept of committee meetings.

2.8.3. Committees may provide for their own rules of procedure provided those rules are not inconsistent with TRPA's Code and these Rules and the open meeting law requirements.

2.8.4. By conferring with the chair of the Board committees, the Executive Director shall coordinate meetings so that scheduling conflicts are avoided to the extent possible.

2.8.5. The Board Chair shall notify Board members of vacancies and any Board member may make a request for committee participation. The Board Chair shall, in consultation with the Committee Chair, or the Committee Vice-chair if the vacant seat is the Chair, Executive

Director, and legal counsel, make a recommended appointment to the Board. The Board shall vote on the appointment at its next regularly scheduled meeting. If approved, the appointment will be effective immediately. If the selection is not approved, any Board member, including the Chair, may propose an alternative and request a vote on the alternative nomination at that time.

- 2.8.6. Committee positions shall be for a term of two years, subject to reappointment via the process outlined in subsection 2.8.5. Committee members may resign during their term upon written 30-day notice, if feasible, to the Board Chair, copied to the Executive Director.

2.9. MINUTES

Board meetings shall be recorded electronically, except when this is prevented by equipment failure, and the recordings shall be made available upon request at TRPA's offices during regular office hours. The written minutes shall be approved by the Board at a subsequent meeting.

2.10. AGENDA

- 2.10.1. The Chairman, in consultation with the Executive Director, shall determine the official agenda. A Board member's request to place an item on the agenda shall be granted if inclusion of the agenda item is consistent with other TRPA ordinances and rules and the open meeting law requirements.

- 2.10.2. The agenda for regular meetings shall normally include the following

- A. Pledge of Allegiance;
- B. Roll call and determination of quorum;
- C. Approval of minutes;
- D. Approval of agenda;
- E. Consent calendar;
- F. Tahoe transportation district report;
- G. Planning matters;
- H. Project review;
- I. Appeals;
- J. Special determinations;
- K. Show cause hearings;
- L. Litigation;
- M. Resolutions;

- N. Reports;
 - 1. Committees;
 - 2. Governing Board
 - 3. Executive Director; and
 - 4. Agency counsel;
- O. Public comment; and
- P. Adjournment.

2.10.3. The agenda should provide a time certain for an item or series of items involving public comment or a large number of participants. Whenever, possible, time certain items shall be scheduled the first day of the meetings. Items with a time certain designation may not be heard earlier than the noticed time.

2.10.4. Emergency items may be added to the agenda by unanimous vote of the Board members present and voting consistent with open meeting law requirements.

2.11. CONSENT CALENDAR

Items expected to be routine and non-controversial shall be placed on the consent calendar. A vote to approve the consent calendar shall apply to each matter listed as though the matter had been acted on individually, and must be sufficient to approve each item had it been voted on separately. Items withdrawn shall be heard individually in the regular manner and in the order determined by the Chairman. Items may be withdrawn as provided below.

2.11.1. A Board member may withdraw an item on his own initiative or at the request of a member of the public.

2.11.2. Projects that are the subject of a notice to affected property owners may be placed on the consent calendar but shall be withdrawn at the request of any noticed affected property owner.

2.12. CONTINUANCES

2.12.1. Subject to the requirements of the Compact and the open meeting law, the Board may continue or reorder any item on its agenda, including action items.

2.12.2. Prior to the official agenda being determined, the Executive Director may continue an item for good cause one time only.

2.12.3. By a vote of eight members, the Board may continue an item at the meeting upon showing of good cause.

- 2.12.4. An item requiring an extraordinary vote [subsection 2.4.2 of these Rules] shall be continued if at least nine members, including five from the affected state, are not present and voting. A member who has been excused due to conflict of interest shall not be considered present and voting.
- 2.12.5. Good cause includes, but is not limited to, inconvenience or hardship to the applicant or public and possibility or potential for environmental harm.

2.13. BOARD PACKETS

The Executive Director shall prepare a packet for the Board for each regular meeting. The packet should be mailed to the Board with the official agenda. The packet shall include the reports and summaries required by these Rules and other materials deemed appropriate by the Executive Director. TRPA may charge a reasonable fee, as set by the Executive Director for Board packets.

2.14. NOTICES

TRPA shall maintain a list of all persons who have requested notice of TRPA meetings. Requests shall be valid for one year unless renewed. Media organizations and public agencies, on request, shall receive notices free of charge. Reasonable fees for notices shall be set by the Executive Director.

2.15. EX PARTE COMMUNICATIONS

- 2.15.1. Prior to taking action on a quasi-adjudicative matter, a Board member shall publicly disclose on the record the existence and essential content of any material ex parte communications on the matter under consideration. As used in this section, “ex parte” means any communication in any form from a member of the public to the Board member outside of a public hearing. As used in this section, “quasi-adjudicative” matters generally include the application of general rules to a specific factual circumstance (e.g., consideration of a project application or actions related to enforcement proceedings).
- 2.15.2. After the initiation of any litigation involving the Agency, Board members shall not meet with opposing parties without the presence of Agency counsel unless:
- A.** So ordered by a court; or
 - B.** With the consent of the Chairman of the Board, the Executive Director, and Agency counsel.
- 2.15.3. If a member meets with an opposing party pursuant to subparagraph 2.15.2.B, the member shall, in cooperation with Agency cCounsel, first obtain an appropriate waiver or agreement that the meeting or any communication occurring at the meeting shall not be admissible in any court proceeding.
- 2.15.4. When considering quasi-legislative matters, Board members may receive ex parte communications from members of the public without disclosing the existence or content of these communications. As used in this section, “quasi-legislative” matters include the

creation of generally applicable rules without application to any specific factual circumstance (e.g., plan or code amendments).

2.16. TELECONFERENCE/ VIDEOCONFERENCE MEETINGS AND PARTICIPATION

- 2.16.1. While the Governing Board’s strong preference is for in person attendance, TRPA may use teleconferencing for the benefit of the public and the Agency in connection with any meeting or proceeding of the Board under this Article 2 or its associated committees. A teleconference meeting that is otherwise an open meeting under the Nevada Open Meeting Law and these Rules shall be considered an open meeting subject to the Nevada Open Meeting Law as augmented by this Rule.
- 2.16.2. For purposes of this rule, “teleconference” means a meeting, the members of which are in different locations, connected by electronic means, through either audio or video, or both.
- 2.16.3. During the teleconference, a quorum of the members shall participate from within the Tahoe Basin.
- 2.16.4. Teleconference locations shall be identified in the notice and the agenda of the meeting or proceeding. Each teleconference location shall be accessible to the public. The public shall be notified of a teleconference location as soon as practicable, but in no event later than 6:30 a.m. PST on the morning of the meeting or proceeding.
- 2.16.5. At remote locations, the Agency shall post or otherwise make publicly available the agenda no later than the start of the meeting or proceeding. The agenda shall provide an opportunity for members of the public to address the Board or other body contemporaneously from the remote location.
- 2.16.6. All votes taken at a teleconferenced meeting shall be by roll call. Any member participating by proper teleconference shall be counted toward a quorum, and one or more members may participate from any teleconference location. Agency materials that are to be considered at the meeting shall be made available at teleconference locations to the maximum extent practicable. Any known interruption in the teleconference broadcast at a teleconference location that results in loss of a quorum shall result in the suspension of the teleconference until the broadcast is restored.
- 2.16.7. Notwithstanding the foregoing requirements applicable to the monthly meetings of TRPA’s Governing Board scheduled pursuant to TRPA Compact Article III(d), the Agency may utilize teleconferencing among Board members for committee meetings not held on days when the full Governing Board meets. For such meetings committee members need not appear from a publicly-accessible teleconference location. Members properly participating by teleconference shall be counted toward a quorum. TRPA shall designate at least one physical public meeting location to allow for public participation in the committee meeting, and at least one committee member must be physically present at the main public meeting location(s). The Agency shall post or otherwise make publicly available at the public meeting location(s) the agenda and any Agency-prepared materials to be considered by the committee no later than the start of the meeting.

ARTICLE 3: ADOPTION OF RULES OF PROCEDURE

3.1. INTRODUCTION AND PASSAGE

The Rules of Procedure shall be adopted or amended by resolution of the Board. Prior to the adoption, amendment, or repeal of any rule, the Board shall conduct a public hearing at which all interested persons shall be afforded a reasonable opportunity to comment.

3.2. EFFECTIVE DATE

Rules adopted by the Board, and any amendment or repeal thereof, shall become effective at the next regular meeting unless the Board, by unanimous vote, declares the rule to be effective immediately.

ARTICLE 4: ADOPTION OF ORDINANCES

4.1. PURPOSE AND SCOPE

This article describes the procedures for adoption of ordinances. Adoption of the Regional Plan and amendments thereto, shall be by ordinance.

4.2. ENACTING CLAUSE

The enacting clause of an ordinance shall be: “The Governing Board of the Tahoe Regional Planning Agency does ordain as follows:”

4.3. NOTICE OF ORDINANCES

The Board shall conduct a public hearing prior to adoption of a proposed ordinance. Notice of the public hearing shall be given at least 20 calendar days before the hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region. The draft or a summary of the ordinance shall be available for public review at least 20 calendar days before the hearing.

4.4. ADOPTION OF ORDINANCES

Following a public hearing and upon a single reading of the ordinance by title, an ordinance may be adopted by the Board.

4.5. EFFECTIVE DATE

An ordinance adopting or amending the Regional Plan shall become effective immediately upon adoption and all other ordinances shall become effective 60 days after adoption, unless, in either case, a later effective date is expressed in the ordinance.

4.6. SIGNATURES AND ENDORSEMENT OF VOTES CAST

Every ordinance adopted by the Board shall include the names of the Governing Board members voting for and against its adoption and shall be signed by the Chairman.

4.7. PUBLICATION AND NOTICE

Immediately after its adoption, each ordinance shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region, and a copy of each ordinance shall be transmitted to the governing body of each county and incorporated city having territory within the region.

4.8. CONSIDERATION OF PLAN AND ORDINANCE AMENDMENT REQUESTS

Proposals for ordinances and amendments may be made by TRPA or other interested persons or entities, including public interest groups and government agencies. For

Article 4: ADOPTION OF ORDINANCES

4.8 Consideration of Plan and Ordinance Amendment Requests

proposals that the Executive Director deems appropriate for submission to the Board, the Executive Director shall cause the appropriate environmental documents to be prepared and public hearings, if required, to be held.

ARTICLE 5: PROJECT REVIEW

5.1. PURPOSE AND SCOPE

This article sets forth the procedures for applications and permits. The purpose and scope of review for proposed projects shall be to determine compliance with applicable provisions of the Compact; Goals and Policies; Code of Ordinances; other TRPA plans, maps and programs; and the Rules of Procedure, which collectively are referred to in these Rules as the “Regional Plan Package.” The scope of review shall be that deemed necessary by TRPA for accurate determination of compliance.

5.2. COMPLETE APPLICATION

An application shall be on a TRPA form prescribed by the Executive Director and shall be executed by a person having sufficient legal interest to make application. The application form shall include express notice to the applicant that failure to provide complete and truthful information may result in delay in processing the application, denial of the application, or revocation of an approval or other action taken upon the application. A complete application consists of the following:

- 5.2.1. An application fee as required by the fee schedule;
- 5.2.2. A completed TRPA application form;
- 5.2.3. A description and verification of the applicant’s legal interest, and any legal interests held by others, in the real property upon which the project is proposed to be constructed or conducted. Such legal interests include, but are not limited to fee leasehold, options, or authority to acquire the property by eminent domain;
- 5.2.4. A dated signature, by or on behalf of the applicant, attesting under penalty of perjury to the truth, completeness, and accuracy of the contents of the application. If the application is to be signed by a representative of the applicant, the applicant shall either complete and sign the portion of the application form relating to authorization or the application shall be accompanied by a power of attorney as evidence of the representative’s authority to act on behalf of, and bind, the applicant in all matters concerning the application;
- 5.2.5. The assessor’s parcel number(s) of the parcel(s) constituting the project area;
- 5.2.6. Appropriate environmental documentation, in accordance with Article 6 of these Rules;
- 5.2.7. If applicable, the information specified by a packet, approved by the Executive Director, for a complete application for the particular class of project into which the application falls; and
- 5.2.8. All reports or studies necessary to show compliance with applicable provisions of the Compact, Regional Plan, Code, other TRPA plans, maps, programs, and rules.

5.3. DETERMINATION OF COMPLETE APPLICATION

Upon receipt of an application, the application shall be stamped “Received – TRPA,” dated, and signed by the TRPA employee authorized to receive it. If the application has not been acted upon within 30 calendar days of the “Received – TRPA” date, then TRPA shall notify the applicant, in writing, of the information required prior to a TRPA determination that the application is “complete” for purposes of commencing review of the application. The notice shall comply with the requirements of Section 5.7. Upon receipt of the requested information, TRPA shall deem the application complete and shall notify the applicant of such.

5.4. ADDITIONAL INFORMATION

If an unforeseen need for additional information arises as the application proceeds through review (such as environmental, traffic, groundwater, scenic simulations), additional information shall be requested, in writing, from the applicant. The request shall state that review cannot continue until this information has been submitted. TRPA shall maintain a record of the date of the request and the date the information was provided or action on the application was taken. Time used by the applicant to provide additional information shall not be counted as part of the processing time described in Section 5.5.

5.5. PROCESSING OF APPLICATIONS

TRPA shall process applications expeditiously and take final action within the 180-day period prescribed by Article III(g) of the Compact. The 180-day period shall commence on the date the application is deemed complete, less any time excepted by Section 5.4. The applicant may waive the 180-day requirement by making a statement on the record at an APC or Board) meeting, or in writing to the Executive Director. To assure timely responses on applications, TRPA shall strive for the shortest processing time consistent with available resources, information, and seasonal weather constraints. Consistent with this objective, the Executive Director shall include, on each Governing Board agenda, the following information for any applications pending for more than 120 days from the date is deemed complete: 1) a description of the application; 2) the reasons for the delay of action; and 3) the Executive Director’s recommendations regarding further processing.

5.6. FEE SCHEDULE

TRPA may fix and collect reasonable fees for project review services. The Board shall adopt, by resolution, an application fee schedule. Fees shall not be charged for inquiries and requests preceding the filing of an application, except as otherwise required by the fee schedule.

5.7. INCOMPLETE APPLICATIONS

A notice of incomplete application may be given to the applicant. The notice shall state what items are required to complete the application, including environmental documentation, and may state a deadline for completion of the application. Applications not completed by the deadline shall be considered withdrawn on the deadline date, unless the applicant shows good cause for extension.

5.8. SUBSTANTIAL MODIFICATION

If an applicant submits substantial modification to a pending application, the date of application receipt shall be the date of receipt of the substantial modification for determining the processing time described in Sections 5.3 and 5.5.

5.9. WITHDRAWN APPLICATIONS

Applicants may withdraw an application at any time prior to final action of the application by delivering a written statement of withdrawal to the Executive Director or by making a statement on the record at an APC or Board meeting.

5.10. APPLICATION REFUND

5.10.1. If the application is withdrawn by written request by the applicant or by TRPA in accordance with Section 5.7, the Executive Director shall refund the application fee according to the schedule below.

APPLICATION REFUND SCHEDULE	
Task Completed	Refund Amount Due
If there are no actions other than the application is stamped "Received – TRPA," dated, and signed by the TRPA employee authorized to receive it pursuant to Section 5.3	90%
30-day review complete per Section 5.3	75%
If an "incomplete" application is made "complete," or more than one incomplete letter or time extension is issued	65% (less 10% for each additional incomplete letter or time extension issued)
If TRPA review of a "complete" application is less than 50% finished	45%, (but no more than the amount calculated above)
If TRPA review of a "complete" application is more than 50% finished	10%
If final action is taken on a "complete" application by TRPA (other than withdrawal)	No refund

5.10.2. An application fee shall be forfeited if a refund is not requested in writing by the applicant within one year from the date the application is withdrawn.

5.11. STAFF SUMMARY FOR BOARD PROJECT REVIEW

Prior to a Governing Board hearing on a project application, the Executive Director shall prepare a staff summary of the project.

5.11.1. Mailing of Staff Summary

A copy of the staff summary shall be mailed to the applicant and included in the Board packet at least seven calendar days before the Board meeting at which the application is

scheduled to be considered. For good cause, the Executive Director and the applicant may waive the seven-day requirement.

5.11.2. Contents of Staff Summary

The staff summary shall include:

- A. The name of the applicant and the location and nature of the proposed project;
- B. A description of the proposed project, including the relevant facts about the project;
- C. Any maps, drawings, or other exhibits necessary to describe the project;
- D. References to the applicable sections of the Compact, Regional Plan Package, and other applicable documents;
- E. A summary of the environmental documentation prepared for the project; and
- F. A statement of the issues considered relevant for discussion, if any.

5.11.3. Recommendation for Action

A staff summary shall contain one of the following tentative recommendations:

- A. Approval with proposed findings and conditions;
- B. Rejection with proposed findings; or
- C. No recommendation until after the hearing on the application.

5.12. HEARING DATE

For projects to be reviewed by the Governing Board, TRPA shall, in consultation with the applicant, and after the application is complete, establish a tentative processing schedule, including a date for Board consideration and, if applicable, a date for submittal of the list of affected property owners. Scheduling of applications for Governing Board hearings shall occur as part of the agenda preparation process.

5.13. HEARING ON APPLICATION

The hearing on a project application shall proceed as follows, unless the Board takes action, by a routine business vote, to reorder the presentation:

5.13.1. Order of Hearing

- A. TRPA staff presentation.
- B. Applicant presentation and comment on the staff summary, which may include testimony by witnesses and documentary evidence.
- C. Speakers in support of the application.
- D. Speakers in opposition to the application.

- E. Rebuttal by applicant.
- F. Final staff recommendation.
- G. Additional comments as permitted by the Chairman.
- H. Motion to close public testimony.
- I. Board deliberations and action.

5.13.2. Content of Presentations

Staff and applicant presentations shall be brief and to the point. Remarks by others also should be brief and not duplicate those of previous speakers. The Chairman may limit the time for presentations and remarks. Questions by the Board are proper at any time.

5.14. FINAL ACTION OF APPLICATION

An action by the Board or the Executive Director to approve or reject an application shall be final action by TRPA. Finality of Board action is subject to subsection 2.7.3 of these Rules. Any action shall be in writing or stated in the record, and approvals shall be based upon findings as required by the Compact and the Code.

5.15. MODIFICATION OF APPROVAL

Proposed modifications to a TRPA-approved project shall be reviewed and approved as required by the Code, including Section 2.2 in the Code.

5.16. REPORT OF EXECUTIVE DIRECTOR APPROVALS

Projects, including modifications thereof, acted upon by the Executive Director shall be reported to the Board on an annual basis. Project approvals shall be posted at the TRPA office within one working day of approval. The posting shall state the assessor's parcel number(s), county, and the type of environmental document and project.

5.17. ISSUANCE OF PERMITS

Projects approved by the Governing Board or Executive Director shall be issued a permit on a form prescribed and signed by the Executive Director. Notice shall be given to a project applicant if the application is rejected by the Executive Director. Permits shall be mailed or delivered to the permittee no later than the fifth working day following approval. A copy of the permit shall be sent to all persons listed as owners on the application and directly to the permittee if the original permit is sent to a representative.

5.18. PERMIT

The permit shall state:

- 5.18.1. Description of the approved project;
- 5.18.2. Standard conditions of approval, if any, that may be included by reference;

- 5.18.3. Special conditions of approval;
- 5.18.4. The date of project approval;
- 5.18.5. The expiration date of the approval;
- 5.18.6. That the permittee is responsible for all permit conditions;
- 5.18.7. The conditions that shall be satisfied and acknowledged by TRPA prior to commencement of grading or other activity; and
- 5.18.8. That the permittee shall sign the permit and send a copy of the signed permit to TRPA to evidence receipt and acceptance of the permit.

5.19. TRANSFER OF PERMIT

In the event the project or underlying real property is transferred, the transfer of the permit shall not be effective until the new permittee or owner advises the Executive Director of the transfer and acknowledges, in writing, receipt of the permit and acceptance of its contents. Until the new permittee or owner acknowledges receipt and acceptance of the permit, the current permittee or owner shall be responsible for compliance with the permit.

5.20. ISSUANCE OF EMERGENCY PERMITS BY EXECUTIVE DIRECTOR

Emergency permits may be issued by the Executive Director as follows.

5.20.1. Determination of Emergency

An applicant for a project, which requires immediate approval due to the existence of an emergency, may request an emergency permit from TRPA. Upon notification to the Executive Director, by letter if time allows, and by telephone or in person, if time does not so allow, an applicant for an emergency permit shall provide the following information:

- A. The nature of the emergency;
- B. The location of the emergency; and
- C. The work proposed to be performed.

5.20.2. Determination of Emergency

Based upon the above information, the Executive Director shall determine whether, in fact, an emergency exists.

5.20.3. Procedure for Emergency Permits

Upon the determination and an emergency does exist, the Executive Director may issue an emergency permit. Notification of the permit may be given orally. The emergency permit shall be consistent with the Compact, and Regional Plan Package insofar as is practicable. Within ten working days after issuance of the emergency permit, the applicant shall file a complete application, including the required application fee. The Executive Director shall

review the application and determine what conditions, if any, are necessary to effect compliance with the Compact, and Regional Plan.

5.20.4. Report to Governing Board

At each regular monthly meeting of the Board, the Executive Director shall report each emergency permit granted during the period immediately preceding the meeting.

5.20.5. Waiver of Prior Approval

In the event an emergency exists and TRPA offices are closed, or a means of communication is not readily available, the applicant may proceed to take necessary action while continuing, in a diligent manner, to contact the Executive Director. After being so notified, the Executive Director shall follow the procedures of subsections 5.20.2, 5.20.3, and 5.20.4 above.

5.21. ADMINISTRATIVE RECORD

TRPA shall maintain an adequate record of the project hearing, which shall include but not be limited to, the project file, and, in the case of projects reviewed by the Board, the official tape recordings of any relevant Hearings Officer, Advisory Planning Commission, or Board meetings. The project file shall include, but not be limited to, the following:

- 5.21.1. Complete application form.
- 5.21.2. Environmental documentation.
- 5.21.3. Public notice information, if any.
- 5.21.4. Data base information required by Chapter 6, if any.
- 5.21.5. Project plans and specifications.
- 5.21.6. Project reports and supporting data, if any.
- 5.21.7. Permit and conditions of approval, if any.
- 5.21.8. Written findings.
- 5.21.9. Other governmental approvals, if any.

5.22. REFUNDS OF MITIGATION FEES

Mitigation fees may be refunded as provided by the applicable Code provision and subject to the following limitations:

- 5.22.1. Mitigation fees paid on or before July 1, 1987, shall not be refundable. A written request for a refund for mitigation fees paid after July 1, 1987, shall be received by TRPA no later than seven years minus one day from the date of final action by the Agency. In accordance with Article VI(p) of the Compact, in computing the above time periods, any time during which the project is the subject of a legal action which delays or renders impossible the diligent

pursuit of the project shall not be counted. If the request for refund is made by a person other than the owner of the parcel, the request shall include authorization from the owner to refund the fee.

- 5.22.2. TRPA verifies that no site disturbance or construction has occurred, beyond what would normally be allowed as an exempt or qualified exempt activity in the Code, or that no use has commenced, as applicable, under the subject permit. The permittee shall also pass a final inspection and be eligible for a security return in accordance with Chapter 4: *Compliance* of the TRPA Code, and shall submit evidence that notice to all other affected jurisdictions has been given in accordance with subsection 5.22.3, below. Site disturbance includes, but is not limited to, tree cutting, vegetation removal, grading, or excavation. Partial refunds shall not be permitted.
- 5.22.3. The permittee consents, in writing, to the cancellation of the subject permit and to all rights there under. Notice of cancellation of a TRPA permit shall be given to all other local, state, or federal jurisdictions also having jurisdiction over the matter such notice is the responsibility of the permittee. Cancelled TRPA permits shall not be renewable.
- 5.22.4. Refunds shall be made only to the extent funds are available in the applicable city or county mitigation fund. In the event there are insufficient funds in a particular account, TRPA shall pay the balance of the refund as funds become available in that account. Priority for refunds shall be determined based on the date the refund request was received. Refund of the mitigation fee shall not include any interest earned on the fee. The amount of a refund shall be in accordance with the following schedule (calculated from the date of project approval and not the date a mitigation fee was paid to TRPA):

Year	Percent
Years 1 through 4	100%
Year 5	75%
Year 6	50%
Year 7 and afterward	No Refund

- 5.22.5. The Executive Director shall maintain the necessary accounts and fund balances to implement the above policies.

5.23. REAPPLICATION

After final action to deny an application, TRPA shall not accept a reapplication for the same, or substantially the same, project or matter during the 12 months following the final action unless:

- 5.23.1. The reapplication includes a modification of the denied project or matter, which modification relates to the reason for denial; or
- 5.23.2. There has been an intervening change in the plans or ordinances affecting the project or matter, which change relates to the reason for denial.

ARTICLE 6: ENVIRONMENTAL IMPACT STATEMENTS

6.1. PURPOSE

These Rules govern the preparation and processing of environmental documents pursuant to Article VII of the Compact and Chapter 3 of the Code. These Rules must be read and applied in conjunction with Article VII of the Compact and Chapter 3 of the Code.

6.2. JOINT ENVIRONMENTAL DOCUMENTS

For projects subject to the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA) or other state or local environmental review, TRPA shall, whenever feasible, coordinate its environmental review process with the local, state, or federal process. Coordination would include joint activities such as scoping, selection of consultants, notice, and concurrent comment periods.

6.3. PROJECTS EXEMPT FROM ENVIRONMENTAL DOCUMENTATION

Pursuant to Article VII(f) of the Compact, the Board may determine, by ordinance, that certain classes of projects will not have a significant effect on the environment and, therefore, are exempt from preparation of environmental documentation.

6.3.1. Such exempt projects are set forth in subsection 3.2.2 of the Code.

6.3.2. TRPA need not prepare environmental documentation on a TRPA decision to reject or disapprove a project or matter.

6.4. INITIAL ENVIRONMENTAL CHECKLIST (IEC)

The Executive Director shall devise and maintain an initial environmental checklist (IEC) that shall be used, in conjunction with other available information, to determine whether an environmental impact statement (EIS) shall be prepared for a project or other matter. Based on the IEC, and other information known to TRPA, TRPA shall make one of the findings, as appropriate, set forth in subsection 3.3.2 of the Code.

6.4.1. The IEC shall, when completed, provide information identifying the environmental effects of the proposed project or matter. The IEC shall include, at a minimum, the following:

- A. An identification of the environmental effects by use of a checklist, matrix, or other method;
- B. A discussion of proposed mitigation for significant adverse effects, if any;
- C. The name of the person who prepared the responses; and
- D. If applicable, supporting data or evidence to support the responses.

- 6.4.2. IECs shall be completed for projects and matters in accordance with subsection 3.3.1 of the Code.
- 6.4.3. When completed, the IEC shall be reviewed by TRPA to determine the adequacy and objectivity of the responses. When appropriate, TRPA shall consult informally with federal, state, or local agencies with jurisdiction over the project or with special expertise on applicable environmental impacts.

6.5. ENVIRONMENTAL ASSESSMENT (EA)

The Executive Director may determine that the IEC will not provide sufficient information to determine whether a project or matter will have a significant effect and shall then require preparation of an environmental assessment (EA) or an EIS. The Executive Director also may require an EA in accordance with specific provisions of the Code. See Section 3.4 of the Code.

- 6.5.1. EAs shall be prepared and processed in accordance with Section 3.4 of the Code and as set forth in these Rules.
- 6.5.2. The Executive Director shall determine the scope of EAs, in conjunction with subsection 3.4.1 of the Code and, when appropriate, in consultation with federal, state, or local agencies with jurisdiction or special expertise with respect to the project or matter under consideration. The scope of an EA shall include, but not be limited to:
 - A. Range of alternatives to be considered;
 - B. Effects to be analyzed;
 - C. Agencies and persons to be consulted; and
 - D. Mitigation measures to be considered.
- 6.5.3. Adequacy of an EA shall be determined based on the following factors:
 - A. Compliance with Chapter 3 of the Code;
 - B. Sufficiency of analysis; and
 - C. Reasonableness of evaluation.
- 6.5.4. The Executive Director may determine, based on the scope or complexity of the EA, that it is appropriate to present the EA to the APC and request a recommendation from APC as to the adequacy of the EA.
- 6.5.5. Based on the EA, and other information known to TRPA, TRPA shall make one of the findings, as appropriate, set forth in subsection 3.3.2 of the Code.

6.6. FINDING OF NO SIGNIFICANT EFFECT (FONSE)

If, based on the IEC or EA, and other available information, TRPA finds that a project or matter will not have a significant effect on the environment, a statement of such finding

shall be placed in the project file maintained by TRPA and no further environmental documentation shall be required. See Section 3.5 of the Code.

6.7. MITIGATED FINDING OF NO SIGNIFICANT EFFECT

If, based on the IEC or EA, and other available information, TRPA determines that significant adverse effects can be mitigated by revisions to, or conditions on the project or matter, and the applicant agrees, in writing or on the record, to such revisions or conditions, then TRPA may find that the project or matter will not have a significant effect on the environment. A statement of such finding shall be placed in the project file maintained by TRPA and no further environmental documentation shall be required. See Section 3.6 of the Code.

6.8. CONCURRENT REVIEW OF PROJECTS

- 6.8.1. For projects or matters reviewed by the Board, FONSEs or mitigated FONSEs may be made concurrently with the disposition of the project or matter. For projects or matters reviewed by the Executive Director, determination with respect to FONSEs, mitigated FONSEs, and the adequacy of EAs shall be made concurrently with the disposition of the project or matter. In accordance with Section 5.16 of these Rules, project approvals by the Executive Director shall be posted at TRPA offices within one working day of approval.
- 6.8.2. Subsection 2.2.2 of the TRPA Code sets forth those projects and matters that are to be reviewed by the Board. Subparagraphs 2.2.2.G.1 and 2.2.2.G.2 of the Code provide that the Executive Director may review certain other projects and matters.

6.9. NOTICE OF PREPARATION OF ENVIRONMENTAL DOCUMENTATION

Upon a determination that a project or matter may have a significant effect on the environment, an EIS shall be prepared and circulated. Notice of preparation shall be mailed to the Nevada and California state clearinghouses and appropriate local and federal agencies. Notice of preparation also shall be placed on subsequent APC and Board agendas, provided there is an intervening agenda between the decision to prepare an EIS and notice of the draft EIS. (See Section 6.13 of these Rules for notice of draft EISs). Notice of FONSEs, Mitigated FONSEs, or EAs shall be given as follows:

- 6.9.1. If the project or matter requires notice to affected property owners pursuant to Article 12 of these Rules, then TRPA shall include in such notice the type of environmental document being proposed for the project or matter.
- 6.9.2. If an EA is being prepared, the EA shall be available for public review no later than five working days before TRPA takes action on the project or matter. See subsection 3.4.3 of the Code.
- 6.9.3. The Board agenda shall indicate the type of environmental documentation proposed in connection with a project or matter set for action.

6.10. PREPARATION OF EAs AND EISs

- 6.10.1. EAs and EISs shall be prepared using one of the following methods, or a combination thereof, as agreed upon by the Executive Director and the applicant (see also Section 3.7 of the Code):
- A. Preparation of an environmental document by TRPA staff or an independent consultant retained by TRPA.
 - B. At the discretion of the Executive Director, TRPA may accept an EA submitted by the applicant, provided that TRPA independently determines that: (1) an EA is required, and (2) the scope of the EA is adequate. TRPA shall not accept an EIS submitted by the applicant.
 - C. Execution of a contract or memorandum of understanding (MOU) with the applicant and an independent consultant for the preparation of an environmental document by such independent consultant.
- 6.10.2. Before using an environmental document prepared by another person, TRPA shall subject the draft to TRPA's own review and analysis and may require additions or modifications to the document. The document must reflect the independent judgment of TRPA. TRPA shall be responsible for the scope, adequacy, and objectivity of the environmental document.

6.11. DETERMINATION OF SCOPE OF EIS

- After receipt of an application, the Executive Director shall determine the scope of EISs to be prepared by TRPA or its consultants. In determining the scope of an EIS, the Executive Director may consult with other agencies with jurisdiction over the matter, the APC and other interested parties with expertise in such matters. The Executive Director shall give consideration to focusing and tiering in determining the scope of the document. Scoping may be accomplished prior to or after agreement with the applicant on a method of EIS preparation.
- 6.11.1. Focused EISs**
- TRPA may focus an EIS on only those effects that are determined to be significant. TRPA shall identify which effects are determined not to be significant and the bases for such determination. These determinations shall be included in the EIS.

6.12. TIERING

- Tiering refers to the coverage of general matters in broader EISs and subsequent narrower statements incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Therefore, when an EIS has been certified for a project or matter, the TRPA should limit the EIS on a later related or consistent project or matter to effects that were not examined as significant effects in the prior EIS or that are susceptible to substantial reduction or avoidance by revisions in the project or matter through conditions of approval or mitigation.

- 6.12.1. Tiering is limited to situations where a later project or matter is consistent with a program, plan, policy, or ordinance for which an EIS was prepared, is consistent with applicable TRPA plans, and a supplemental EIS is not required.
- 6.12.2. When an EIS is tiered from a prior EIS, the EIS shall incorporate the prior EIS by reference and shall include a summary of the prior EIS. A copy of the prior EIS shall be available for public inspection at TRPA.

6.13. DRAFT EIS

Upon a determination of the scope of the EIS, a draft EIS shall be prepared. The draft EIS shall include, at a minimum, the elements listed in subsection 3.7.2 of the Code and a list of all federal, state, and local agencies or other organizations and individuals consulted in preparing the draft.

6.13.1. Summary

A draft EIS in excess of 30 pages shall include a summary, preferably less than ten pages in length, which identifies at a minimum:

- A. A brief project description;
- B. Each significant adverse effect with a summary of proposed mitigation measures or alternatives that would reduce or avoid that effect; and
- C. Areas of controversy known to TRPA.

6.13.2. Comment Period

The draft EIS shall be circulated for public comment for a period not less than 60 days. TRPA may hold a public hearing on a draft EIS.

6.13.3. Notice of Comment Period

The comment period shall not commence before the date of publication of a notice in a newspaper whose circulation is general through the region. The notice shall include a brief description of the project or matter under consideration, the date the comment period commences, the date by which comments must be received, and that copies of the draft EIS may be obtained by contacting TRPA and are available for public review at TRPA's offices. Copies of the draft EIS shall be mailed to California and Nevada state clearinghouses and appropriate federal agencies, on or before the beginning date of the comment period. Notice of the comment period shall be given to affected property owners pursuant to Article 12 of these Rules.

6.13.4. Request for Comments

TRPA shall request comments on draft EISs from any federal, state or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. Notice of a request for comments shall be given by deposit of the request, in the U.S. Mail, first class mail, postage prepaid. Notice shall be given no later than the date the comment period commences. Separate notice under this section is not necessary if notice of the draft EIS has been given to the Agency pursuant to subsection 6.13.3 above.

6.13.5. Extension of Comment Period

TRPA may extend the comment period for good cause. Notice of extension shall be posted at TRPA offices. TRPA is not required to respond to late comments but may elect to do so.

6.14. FINAL EIS

6.14.1. At the conclusion of the comment period, TRPA shall prepare written responses to all written comments received during the comment period, and may respond to oral or late comments. The response to comments may be in the form of a revision to the draft EIS, or may be a separate section in the final EIS that shall note revisions to the draft EIS, if any. The final EIS shall include, at a minimum:

- A. The draft EIS, or a revision;
- B. Comments received on draft, either verbatim or in summary;
- C. The responses to comments; and
- D. A list of persons, organizations, and agencies commenting in writing on the draft EIS.

6.14.2. The final EIS may incorporate by reference computer data recorded on disk, videotape, slides, models, and similar items provided summaries of such items are included in the final EIS. The final EIS may also include oral testimony given at APC or Board hearings.

6.15. SUPPLEMENTAL EISs AND ADDENDA TO EISs

6.15.1. Supplemental EISs

A supplemental EIS shall be prepared, circulated, and certified in accordance with these Rules in the same manner as a draft EIS. TRPA shall require preparation, circulation, and certification of a supplemental EIS if:

- A. Subsequent changes are proposed in the project that involve new significant adverse effects not considered in the prior EIS;
- B. Substantial changes occur with respect to circumstances under which the project is undertaken, which involve new significant adverse effects not considered in the prior EIS; or
- C. New information of substantial importance becomes available that shows any of the following:
 - 1. The project may have a significant adverse effect not considered in the prior EIS;
 - 2. Significant adverse effects would be substantially more severe than previously discussed in the prior EIS; or
 - 3. Mitigation measures or alternatives, previously not found to be feasible or not previously discussed, would substantially reduce a significant adverse

effect of the project or matter that has not already been reduced to a less than significant level.

6.15.2. Addenda

An addendum need not be circulated for public comment but shall be included in, or attached to, the proposed final EIS. TRPA shall prepare an addendum to an EIS if:

- A. Minor changes or additions are necessary to make the prior EIS adequate; and
- B. The addendum does not raise important new issues about significant adverse effects.

6.16. CERTIFICATION OF EIS

Certification is defined as a finding that the final EIS is in compliance, procedurally and substantively, with Article VII of the Compact, Chapter 3 of the Code, and these Rules of Procedure.

6.16.1. APC Review

Prior to consideration of the proposed final EIS by the Board, the APC shall review the proposed final EIS and make a recommendation to the Board on certification of the proposed final EIS.

6.16.2. Board Hearing

The Board shall provide an opportunity for comment on the proposed final EIS. The Board may limit such comment to the responses to comments or other new information in the proposed final EIS.

6.16.3. Board Action

Prior to action by the Board on a project or matter for which an EIS was prepared, the Board shall certify a final EIS. The Board shall not approve such a project or matter for which an EIS was prepared prior to certification of a final EIS. See also subsection 3.7.4 of the Code.

6.17. INCORPORATION BY REFERENCE

All or part of other documents, including prior EISs, may be incorporated by reference in environmental documents. Documents incorporated by reference and their relationship to the environmental document shall be identified and the documents shall be available for public inspection at TRPA. Documents incorporated by reference shall be briefly summarized, if possible, or briefly described if they cannot be summarized. See also subsection 3.7.3 of the Code.

6.18. STANDARD OF REVIEW

Determinations made pursuant to this article shall be based on substantial evidence in accordance with Article VI(j)(5) of the Compact.

6.19. COST OF PREPARING ENVIRONMENTAL DOCUMENTS

In addition to the application fee for the project and the environmental document review fee, as set by resolution of the Board, the Executive Director shall determine the estimated

cost of preparation of the environmental documentation in the event the environmental document is to be prepared by TRPA or its consultant. The applicant shall be solely responsible for the cost of preparation. Prior to preparation of the environmental documentation, the applicant shall deposit funds with TRPA in the amount of the estimated cost of preparation. The applicant shall agree, in writing, to reimburse TRPA for any costs in excess of the estimate.

6.19.1. Refund of Environmental Document Review Fee

If an application is withdrawn by written request prior to notice of circulation of the draft EIA, the Executive Director shall refund 50 percent of the environmental document review fee. The environmental document review fee shall be forfeited if a refund is not requested in writing by the applicant within one year from the date the application is stamped "Received – TRPA." The Executive Director may waive the one-year deadline provided the applicant shows good cause for the late request. No refund shall be given after the notice of circulation.

6.19.2. Refund of Preparation Costs

If an application is withdrawn by written request prior to final action by TRPA, the uncommitted portion, if any, of the funds deposited for estimated preparation costs shall be refunded.

6.20. USE OF CONSULTANT ASSISTANCE IN PREPARING ENVIRONMENTAL DOCUMENTS

In the event TRPA and the applicant agree to use an independent consultant to prepare an environmental document, selection and management of the consultant shall comply with the requirements below.

6.20.1. Establishment of Consultant List

The Executive Director shall establish and maintain a list of consultants that are available to assist in the preparation of environmental documents for classes of projects or matters. In establishing such a list, the Executive Director shall:

- A.** Solicit from consultants and other appropriate sources, information on the availability of consultants and their qualifications;
- B.** Advise consultants on the list that inclusion thereon does not mean they will be selected to prepare environmental documents, but that they may be eligible for selection; and
- C.** Maintain and update the list from time to time.

6.20.2. Selection of Consultant

The selection of a consultant for the preparation of an environmental document shall be made in accordance with the Agency's Financial and Purchasing Policies.

6.20.3. Management of Consultant

After selection of a consultant, the Executive Director shall:

- A.** Enter into a contract or MOU with the applicant and consultant regarding preparation of the environmental document. The agreement shall include the provision that the applicant is responsible for all preparation costs and that all studies, data, reports and other material prepared for the environmental document shall become the property of TRPA upon final payment. In the event that TRPA determines that the environmental document, although properly prepared in accordance with the contract, is not adequate or certifiable, the applicant also shall be responsible for any costs in excess of the estimated preparation costs;
- B.** Deposit the preparation cost, or the agreed-upon installment portion, submitted by the applicant into an account maintained for such purposes by TRPA; and
- C.** Pay the consultant according to the mutually-agreed-upon schedule of payments.

6.20.4. Selection of Consultant by Another Public or Quasi-Public Entity

In the event a public or quasi-public-entity has selected an independent consultant to prepare an environmental document, either on its behalf or for its review, the Executive Director may elect to waive the selection process set forth in subsection 6.20.2 above and enter into a contract with such entity and the selected consultant to prepare an environmental document for TRPA.

6.21. APPEALS OF EXECUTIVE DIRECTOR DETERMINATIONS

Determinations by the Executive Director pursuant to this article may be appealed to the Board in accordance with Article 11 of these Rules.

ARTICLE 7: ADVISORY PLANNING COMMISSION

7.1. GENERAL

The Compact provides for the appointment of an Advisory Planning Commission (APC) by the Agency and establishes and sets forth certain functions and duties of the APC relating to the Regional Plan and amendments thereto. In addition, it is contemplated that the APC make recommendations to the Agency respecting matters over which the Agency has jurisdiction and exercises powers.

7.2. APC REVIEW

Matters regarding Agency plans and ordinances and other matters the Governing Board determines appropriate for APC consideration shall first be submitted to the APC for review and recommendation. The Board may determine that a particular matter is of such urgency that the public interest requires it to act without delay and without review and recommendation of the APC.

7.3. RECOMMENDATIONS

The APC shall consider each matter submitted concerning conformity with the Tahoe Regional Planning Compact, as amended, the Regional Plan and the ordinances, rules, regulations and policies of the Agency. Based upon such consideration, the APC shall submit a report and recommendation of the pertinent matters to the Board. The report shall show the vote of the members of the APC and may include the position of the minority, if any.

7.4. PROCEDURES

The APC shall be governed by these Rules and Regulations of Practice and Procedure. To the extent practicable, the Rules provided herein for the Board shall also govern the APC, but the APC may provide a different time and place of meeting from that set forth herein for the Board and may also adopt different rules in those cases where these Rules and regulations are not applicable or would be impracticable for the APC to follow. The APC shall notify the Board in writing of any such rule or regulation that the APC has determined to be inapplicable or impracticable when applied to it and the change or substitute for such rule or regulation adopted by the APC.

7.5. TRANSMITTAL OF REPORTS

Copies of reports and recommendations made by the APC shall be mailed or delivered to the Board and to every interested party, including the local government affected by the matter reported upon.

7.6. CONSIDERATION BY GOVERNING BODY

At the next regular meeting of the Board, or at any special meeting that may be scheduled, the Board shall consider the report and recommendations of the APC. The Board may hear

additional testimony and argument concerning any matter or proposal submitted before acting thereon.

7.7. PARTICIPATION BY GOVERNING BODY MEMBERS

Members of the Board may attend and participate in APC meetings, but their presence shall not be counted in determining whether a quorum is present nor shall Board members be entitled to vote.

7.8. CONTINUANCES

The APC may continue to a specific date any matter that it determines lacks sufficient information for proper consideration.

7.9. MEETING DATE

Regular meetings of the APC shall be held on the second Wednesday of the month. Should any meeting day fall on a holiday, the meeting shall be held on the next business day thereafter that is not a holiday.

7.10. QUORUM AND VOTE REQUIRED

A majority of members (not counting vacant positions) of the APC constitutes a quorum for the transaction of the business of the Commission. The quorum shall be calculated on a strictly numerical basis, without regard to the state or entity each APC member represents. A majority vote of the quorum present is required to take action, without regard to the state of representation.

7.11. MEETING ABSENCES

The position of any member of the APC shall be deemed vacant and the position suspended for purposes of obtaining a quorum if such a member is absent from three consecutive meetings of the APC in any calendar year. The Board shall have the authority to reinstate, change, or abolish the position of the non-attending member if that position is not designated by the Compact.

ARTICLE 8: CONFLICT OF INTEREST AND DISCLOSURE RULES

8.1. CONFLICT AND DISCLOSURE RULES FOR GOVERNING BOARD MEMBERS

All members of the Governing Board, whether elected public officials or appointed members, shall abide by the conflict of interest and disclosure provisions set forth in Article III(a)(5) of the Compact. The Agency shall provide a form for said disclosure. New Governing Board members shall complete and file an economic disclosure form with the Agency within ten calendar days after taking his or her seat on the Board. Thereafter, each member of the Board shall annually file a new economic disclosure form with the Agency. The economic disclosure forms shall be due on the first business day in January of each year and shall be overdue after the first business day in April of each year. Acquisition of any new economic interest or modification of a prior-reported interest shall be reported within 30 calendar days after the acquisition or modification of same.

8.2. CONFLICT AND DISCLOSURE RULES FOR DESIGNATED EMPLOYEES

All designated employees shall abide by the conflict of interest and disclosure provisions set forth in Article III(a)(5) of the Compact. The Agency shall provide a form for said disclosure. New designated employees members shall complete and file an economic disclosure form with the Agency within ten calendar days after being employed by the Agency. Thereafter, each designated employee shall annually file a new economic disclosure form with the Agency. The economic disclosure forms shall be due on the first business day in January of each year and shall be overdue after the first business day in April of each year. Acquisition of any new economic interest or modification of a prior-reported interest shall be reported within 30 calendar days after the acquisition or modification of same.

8.3. CONFLICT AND DISCLOSURE RULES FOR ADVISORY PLANNING COMMISSION MEMBERS

Members of the Advisory Planning Commission (APC) shall abide by the conflict of interest and disclosure provisions set forth in Article III(a)(5) of the Compact. The Agency shall provide a form for said disclosure. New members of the Advisory Planning Commission shall complete and file an economic disclosure form with the Agency within ten calendar days after taking his or her seat with the APC. Thereafter, each member of the APC shall annually file a new economic disclosure form with the Agency. The economic disclosure forms shall be due on the first business day in January of each year and shall be overdue after the first business day in April of each year. Acquisition of any new economic interest or modification of a prior-reported interest shall be reported within 30 calendar days after the acquisition or modification of same.

8.4. EMPLOYEE CONFLICTS

Employees shall not accept secondary employment, nor accept present compensation or arrange for future compensation for services already performed or to be performed, that give rise to an actual conflict of interest or that create an appearance of a conflict of interest.

8.5. POST-EMPLOYMENT CONFLICTS

When an employee terminates employment with TRPA and obtains outside employment that will require interaction with TRPA, the employee shall not appear before the APC or the Board on any matter relating to his or her new employment for a period of three months from date of termination. This provision shall not apply to matters in which the employee is representing himself or herself on a project. An Agency employee shall give neither preference nor favor to a former employee.

ARTICLE 9: COMPLIANCE PROCEDURES

9.1. PURPOSE

This article sets forth procedures for Governing Body (Board) review of alleged violations of the Tahoe Regional Planning Compact (Compact), Regional Plan Package, or Tahoe Regional Planning Authority (Agency or TRPA) permits.

9.1.1. These procedures are intended to provide notice and an opportunity to be heard, to promote settlement of the violation without litigation, to facilitate administrative hearings and to promote resolution of violations at the administrative level.

9.1.2. In lieu of the procedures outlined in this article, the Executive Director may authorize Agency counsel to initiate immediate judicial action to seek any available remedies for alleged violations. Prior to any substantive prosecution of a judicial action, the Executive Director shall obtain the consent of the Board to proceed with litigation initiated under this provision.

9.1.3. Investigation

The Executive Director may conduct investigations to determine if sufficient grounds exist for alleging a violation of the Compact, Regional Plan Package, or TRPA permit. Investigations shall be completed as expeditiously as possible.

9.2. ISSUANCE OF CORRECTION NOTICE OR CEASE AND DESIST ORDER

Issuance of a correction notice or cease and desist order (TRPA Code, subsections 5.4.1 and 5.4.2, respectively) shall be given to the property owner and the permittee, if applicable, or other responsible persons known to the Executive Director. Issuance of a correction notice or cease and desist order shall not constitute discovery of a cause of action within the meaning of Article VI(j)(4) of the Compact. Issuance of a correction notice or cease and desist order shall be by one or more of the following methods:

9.2.1. By mail, postage prepared, addressed to the last known address of the party. Issuance by mail shall be presumed effective three working days after deposit in the mail;

9.2.2. If appropriate, given the location and circumstances of the affected parcel, by posting the notice in a conspicuous location on the affected parcel;

9.2.3. By telephone or personal delivery; or

9.2.4. By any method reasonably calculated to give notice.

9.3. NOTICE OF VIOLATION AND VIOLATION REPORT

If the Executive Director determines that sufficient grounds exist to allege a violation so as to constitute a cause of action pursuant to Article VI(j)(4) of the Compact, he shall issue a notice of violation and a violation report to the property owner, the permittee, if applicable,

and other responsible persons (hereinafter referred to collectively as “noticed party”) known to the Executive Director. Service of the notice of violation and violation report shall constitute discovery of the cause of action within the meaning of Article VI(j)(4) of the Compact. Service shall be given as provided in Section 9.5 of these Rules of Procedures (Rules). Service of a notice of violation and violation report is not a final action of the Executive Director subject to appeal pursuant to Article 11 of these Rules.

9.4. SERVICE OF NOTICE OF VIOLATION

- 9.4.1. Service of a notice of violation and violation report shall be by one or more of the following methods:
- A. By personal delivery. Service by personal delivery shall be effective upon actual delivery;
 - B. By mail, postage prepared, addressed to the last known address of the noticed party. Service by mail shall be presumed effective three working days after deposit in the mail; or
 - C. By any method reasonably calculated to give notice.
- 9.4.2. Proof of service shall be made under penalty of perjury.

9.5. CONTENTS OF NOTICE OF VIOLATION AND VIOLATION REPORT

The notice of violation shall state the nature of the violation, the steps necessary to correct the violation, whether a cease and desist order is in effect and the time within which correction shall occur. The notice also shall state the date on which a show cause hearing has been scheduled. In the event that the show cause hearing is re-scheduled, the noticed parties shall be notified no later than five working days prior to the originally scheduled hearing date. The TRPA violation report shall contain the following:

- 9.5.1. The names and addresses of all noticed parties;
- 9.5.2. Copies of the provisions of the Compact, Regional Plan Package, and the TRPA permit that have been violated;
- 9.5.3. A statement of the facts supporting the determination of a violation;
- 9.5.4. Copies or summaries of the documentary evidence supporting the determination of a violation;
- 9.5.5. A proposed resolution of the enforcement action that may include revocation of the permit;
- 9.5.6. The date, time, and place of the show cause hearing; and
- 9.5.7. The date by which a response, if any, shall be filed.

9.6. PERMIT REVOCATION

Violation of a term or condition of approval or the intentional or negligent inclusion of inaccurate, erroneous or incomplete information in a project application, where the inclusion of complete and accurate information would have caused TRPA to require additional or different conditions to the permit or to deny the application, may be grounds for full or partial revocation of the permit after notice and an opportunity to be heard in accordance with this article. If the Executive Director intends to recommend revocation of the permit to the Board, that intent shall be stated in a notice of violation.

9.7. RESPONSE TO NOTICE OF VIOLATION

After service of a notice of violation, the noticed party may serve a written response (hereinafter “responding party”) on TRPA no later than 21 calendar days after service of the notice of violation.

- 9.7.1. Waiver: The Executive Director may waive the 21 calendar day limit provided the responding party shows good cause for the late filing of a response and waives, in writing, the statute of limitations in Article VI(j)(4) of the Compact for a period not less than an additional 60 calendar days.
- 9.7.2. Show Cause Hearing: If none of the noticed parties serves a response, then the Executive Director shall cancel the show cause hearing and proceed with the enforcement action as he deems appropriate, which may include the filing of a civil complaint, pursuant to Article VI(1) of the Compact for declaratory and injunctive relief, civil penalties, and other appropriate relief. If one or more but not all of the noticed parties serves a response, then the Executive Director shall determine, in his sole discretion, whether to hold the show cause hearing.⁵ Notice of cancellation of the hearing shall be given to any responding party and other noticed parties.

9.8. CONTENTS OF RESPONSE TO NOTICE OF VIOLATION

The response to the notice of violation shall contain either: an election to pursue settlement in accordance with Section 9.10, or the following information:

- 9.8.1. The names, addresses, and current contact information (e.g., phone, email) of the noticed parties participating in the response;
- 9.8.2. A statement of facts, positions, arguments, and other information relied upon by the responding party;⁵
- 9.8.3. A response to each of TRPA’s stated facts that either admits or denies the fact;
- 9.8.4. An explanation of the responding party’s defense;
- 9.8.5. Copies or summaries of the documentary evidence or other information relied upon by the responding party;

9.8.6. The names and addresses of witnesses or other persons with knowledge of the matter presently known to the responding party; and

9.8.7. A proposed resolution of the matter acceptable to the responding party, if any.

9.9. ELECTION TO PURSUE SETTLEMENT

If the responding party wishes to pursue settlement of the enforcement action, the response to the notice of violation shall contain an express waiver of the statute of limitation in Article VI(j)(4) of the Compact, an acknowledgement that the show cause hearing procedure will be stayed pending the outcome of the settlement efforts, and an agreement to comply with the terms of any pending cease and desist order. Waiver of the statute of limitations shall be for a definite period of time, but not less than an additional)60 calendar days. An election to pursue settlement shall not relieve the responding party of the requirement to comply with Section 9.9of these Rules in the event settlement is discontinued.

9.10. STAY OF HEARING

In the event the responding party elects to pursue settlement of the enforcement action and the Executive Director determines that a stay is appropriate, the show cause hearing shall be stayed pending the outcome of settlement discussions⁵. Settlement discussions may be discontinued without cause at any time by the responding party or the Executive Director. Upon service of a notice of discontinuance, the Executive Director shall reset the show cause hearing and require the responding party to submit the information set forth in Section 9.9of these Rules. Notice of a stay of the show cause hearing and of the resetting of the hearing, if any, shall be given to the responding party and other noticed parties.

9.11. CONTINUANCE OF HEARING OR WITHDRAWAL OF NOTICE

The Executive Director or the Legal Committee may continue a show cause hearing upon a showing of good cause and upon notice to the responding party and other noticed parties. The Executive Director or the Legal Committee may withdraw a notice of violation at any time. Notice of withdrawal shall be given to the responding party and other noticed parties.

9.12. NOTICE

9.12.1. Generally

Whenever notice or service is required by this article, except as otherwise specified for the issuance of a correction notice or cease and desist order or service of a notice of violation and violation report, it shall be given by personal delivery or by deposit in the mail, postage prepaid, addressed to the last known address of the person. Notice by mail pursuant to this section shall be deemed effective upon deposit in the mail.

9.12.2. Notice to Affected Property Owners

If the proposed resolution of the enforcement action by TRPA would constitute a project, or the equivalent thereof, notice of the show cause hearing shall be given to affected property owners if otherwise required by Article 12 of these Rules.

9.13. HEARING SUMMARY

The Executive Director shall prepare a hearing summary. The summary shall be served on the responding party and other noticed parties five working days before the show cause hearing. The hearing summary shall contain the following:

- 9.13.1. A statement of the uncontested facts in the opinion of the Executive Director;
- 9.13.2. The factual and legal contentions of the Executive Director and the responding party as summarized by the Executive Director;
- 9.13.3. The issues to be determined in the opinion of the Executive Director; and
- 9.13.4. The TRPA violation report and the responding party's response, attached as exhibits.

9.14. SHOW CAUSE HEARING

The show cause hearing shall be conducted as follows.

9.14.1. Conduct of Hearing

The show cause hearing shall be conducted by the TRPA Legal Committee. The Chairman of the TRPA Legal Committee shall preside over the hearing, and may impose guidelines before or at the hearing, including but not limited to time limits for presentations, for an orderly and efficient proceeding. For purposes of this article, the Legal Committee Chairman may designate another member of the committee to serve for him.

9.14.2. Hearing Requirements

The Executive Director and each responding party shall be given the opportunity to present a statement of position and relevant information and evidence. The public, including non-responding parties, shall be given an opportunity to comment.

9.14.3. Legal Committee Recommendation

At the conclusion of the hearing, the Legal Committee will deliberate and recommend a course of action to the Governing Board that affirms, modifies, or withdraws the Executive Director's determination of a violation, authorizes legal counsel to pursue judicial remedies, determines and offers an alternative proposed resolution, or recommends such other action as deemed appropriate by the Legal Committee.

9.15. BOARD ACTION

9.15.1. Generally

The Board may take one or more of the following actions: affirm, modify, or withdraw the Legal Committee's recommended course of action, authorize legal counsel to pursue judicial remedies, determine and offer an alternative proposed resolution, or take such other action as deemed appropriate by the Board. Prior to taking such an action, the Board shall provide an opportunity for public comment.

9.15.2. Vote

To affirm the Legal Committee's recommended course of action, direct counsel to pursue judicial remedies, or determine and offer a proposed resolution a vote of any eight Board members shall be required. If the required vote is not obtained, the Executive Director's notice of violation shall be deemed withdrawn. Revocation of a permit, or an offer of resolution that constitutes a project, shall require the affirmative vote of at least nine members of the Board and the affirmative vote of at least five members of the Board from the state in which the property is located.

9.16. NOTICE OF BOARD ACTION

No later than five working days after the Board action on the hearing, the Executive Director shall serve notice of the Board action on the responding party and other noticed parties. The notice shall contain a verbatim statement of the motion passed by the Board with respect to the show cause hearing. The date of the Board action, not the date of the notice, shall be the final action of TRPA for the purpose of seeking judicial review pursuant to Article VI(j)(4) of the Compact.

9.17. IMMEDIATE JUDICIAL ACTION

If the Executive Director determines that it is necessary for the protection of the public safety, the environment of the Tahoe region, or it is otherwise necessary to prevent prejudice to TRPA's enforcement authority, he may seek immediate judicial relief or take such other action as deemed appropriate. Direction to counsel under this section shall not operate to preclude a show cause hearing. The Executive Director shall report any actions taken pursuant to this section to the Governing Board at the next regular meeting.

9.18. COMMENCEMENT OF LEGAL ACTION

In accordance with the determination of the Executive Director or the Board, as applicable, Agency counsel shall take appropriate action to pursue all available judicial remedies, including declaratory and injunctive relief and civil penalties pursuant to Article VI(1) of the Compact.

9.19. VIOLATIONS OF BEST MANAGEMENT PRACTICES RETROFIT PROGRAM

Violations of the subsection 60.4.4, the Best Management Practices (BMP) retrofit program, shall be resolved as follows:

Article 9: COMPLIANCE PROCEDURES

9.19 Violations of Best Management Practices Retrofit Program

- 9.19.1. Owners of properties identified by the Executive Director to be out of compliance with the BMP retrofit program shall be served a Notice of Failure to Implement BMPs (“Notice”). The Notice shall include, at a minimum, a statement of facts supporting TRPA’s initial determination that the subject property is out of compliance.
- 9.19.2. Property owners receiving Notices shall have 30 calendar days to file with TRPA a Response (“Response”) to the Notice. The Response shall include, at a minimum, a statement relevant to the facts contained in the Notice and any circumstances that may mitigate or excuse the alleged failure to comply.
- 9.19.3. TRPA will not seek monetary penalties if the property owner submits a BMP retrofit plan that is in compliance with subsection 60.4.4 of the TRPA Code and a BMP implementation schedule prior to the end of the 30-day notice period, and then timely installs those BMPs pursuant to a TRPA approved schedule, or if the property owner has completely installed prescribed BMPs in compliance with subsection 60.4.4 of the TRPA Code prior to the end of the 30-day period. The BMP retrofit plan submitted may either be a BMP prescription completed by TRPA staff, a cooperating agency completing BMP prescriptions, or a BMP plan that was designed by a registered engineer and approved by TRPA. The BMP implementation schedule, which must be reviewed and approved by TRPA, shall set forth the timeline in that prescribed BMPs must be installed. TRPA shall require BMP implementation within 60 days unless consideration of the grading season, extent of excavation and cost warrants additional time.
- 9.19.4. Based on the Notice and Response, the Executive Director shall make a determination as to the whether a violation of the BMP retrofit program has or has not occurred on the subject property. If the Response is not timely filed, the Executive Director will make this determination based only on the Notice.
- 9.19.5. If the Executive Director determines that a violation of the BMP retrofit program has occurred, the property owner shall be so informed and an Offer of Settlement of BMP Violation (“Offer”) shall be made by TRPA. Every Offer shall contain a monetary amount to be paid within 30 calendar days pursuant to the penalty matrix set forth below. Every Offer shall also require the submission of a BMP retrofit plan that is in compliance with subsection 60.4.4 of the TRPA Code and a BMP implementation schedule, as described in subsection 9.19.2, within 30 days; property owners shall not be given the option of non-compliance with subsection 60.4.4 of the TRPA Code. Notwithstanding Article 11 of these Rules, a property owner may not appeal the Executive Director violation determination.

PENALTY MATRIX	
Violation	Penalty
Noncompliance for 1 year	\$1,000
Noncompliance for 2 years	\$2,500
Noncompliance for 3 years	\$4,000

- 9.19.6. If the monetary amount and/ or retrofit plan requested in the Offer is not timely received, or if BMPs have not been completely installed within the deadlines set forth in the TRPA-

Article 9: COMPLIANCE PROCEDURES

9.19 Violations of Best Management Practices Retrofit Program

approved BMP implementation schedule, the Agency counsel may initiate litigation pursuant to Article VI of the Compact seeking the civil penalties and injunctive relief to ensure compliance with the BMP retrofit program.

- 9.19.7. The Governing Board shall be informed of all actions taken by the Executive Director or Agency counsel pursuant to this subsection at the Board meeting immediately following any action(s) taken.

ARTICLE 10: MISCELLANEOUS

10.1. APPLICABILITY OF STATUTES

The applicable procedural provisions of the Compact are hereby made a part of these Rules and regulations of practice and procedure by reference as fully and to the same extent as if the same were fully set forth.

10.2. LIBERAL CONSTRUCTION

These Rules and regulations shall be liberally construed to secure just, speedy and economical determination of all matters before the Governing Board.

10.3. DEVIATION

In special cases, and for good cause not contrary to law, the Board may permit deviation from these Rules and regulations to the extent that strict compliance is determined to be impracticable or unnecessary.

10.4. INITIATION AND DEFENSE OF LEGAL ACTIONS

The Board of the Agency and, between its meetings, the chairman of the Agency may request legal counsel to initiate all necessary and proper legal actions and to defend legal actions, as may be required on behalf of the Agency.

10.5. SERVICE ON THE AGENCY

- 10.5.1. Summons may be served on the Agency by delivering a copy of the summons and complaint to the chairman or the executive officer. No other member, employee, agent, or other person is authorized to accept service on behalf of the Agency, except the chairman or executive officer may authorize legal counsel to accept same in individual cases.
- 10.5.2. Whenever the chairman or the executive officer is served, he shall immediately notify legal counsel of the service. If service is upon the executive officer, he shall also immediately notify the chairman.

10.6. PREPARATION ON THE ADMINISTRATIVE RECORD

- 10.6.1. If a legal action is filed against the Agency in relation to an Agency action, judicial review will be based on the administrative record for the Agency action. The administrative record will include all of the documents considered by the Agency in rendering its decision and may consist of some or all of the documents included in the project file, if applicable (see Section 5.21 of the Rules). The administrative record may also include, but is not limited to, the following additional items:
- A. Correspondence related to the Agency action.
 - B. Additional documents or reports relating to the Agency action.

- C. Document referenced in any relevant environmental documentation.
- D. Tape recording and/or minutes from all relevant public meetings.

10.6.2. Any Agency cost related to preparation of the administrative record, including but not limited to the use of resources or staff time to gather documents, organize and create and index to the administrative record, conduct a privilege review of the administrative record, shall be borne by the plaintiff(s) in the legal action.

10.7. FEES FOR SERVICES

10.7.1. Whenever the Agency performs services for members of the public, other than applicants or other public agencies, by providing or mailing copies of documents, the Agency shall collect a reasonable charge for the purpose of recovering costs to the Agency.

10.7.2. The chairman or executive officer shall set, or cause to be set, the service charges for handling, copying and mailing.

10.8. FEES FOR REVIEWS

10.8.1. Basic Fees

Fee schedules for project review and preparation of environmental documents shall be set by resolution of the Body.

10.8.2. Consultant Fees

Under applicable circumstances, in addition to the application filing fee, a fee shall be charged that is equal to the fee estimated by the consultant selected by the Agency pursuant to Section 6.6.

10.8.3. Exception

Whenever, in the opinion of the chairman or executive officer, the basic fee or the consultant fee does not reasonably reflect the actual cost to the Agency of analyzing or preparing required environmental documents, the chairman or executive officer may increase the basic fee or the consultant fee by an amount not exceeding 50 percent of the amount indicated.

10.8.4. Calculation of Fees

Project review fees shall be in accordance with the adopted schedule unless, in the discretion of the Executive Director, the actual cost can be reasonably and accurately calculated and is significantly less than the fee schedule, in which case the actual cost shall be used.

10.8.5. Mitigation Fees

A. Air Quality Mitigation Fee

1. TRPA shall assess a mobility mitigation fee according to the following schedule:
 - a. For new residential units - \$49.90/average daily Vehicle Mile Travelled.

- b. For new tourist accommodation units - \$49.90/average daily Vehicle Mile Travelled.
 - c. For new campground site or recreational vehicle site - \$49.90/average daily Vehicle Mile Travelled.
 - d. For new commercial floor area - \$5.54/average daily Vehicle Mile Travelled.
 - e. For all other development - \$5.54/average daily Vehicle Mile Travelled.
2. TRPA shall review the fee schedules in this subsection in light of the costs of needed improvements and the funds available to support those improvements and recommend adjustments to the fee schedules as appropriate.
 3. Refund: Mobility mitigation fees may be refunded, under certain conditions, in accordance with these Rules.

B. Rental Car Mitigation Fee

Beginning January 1, 2002, the rental car mitigation fee shall be \$4.75 for EACH DAY of the rental transaction. The mitigation fee shall be separately stated in the rental agreement covering the transaction. Drop-off of the rental car outside the Tahoe region shall not be cause for exemption from payment of the fee. The mitigation fee shall be adjusted annually consistent with the annual change in the Consumer Price Index for the San Francisco region, rounded to the nearest quarter-dollar. Any adjustment to the fee shall be reviewed and approved by the Tahoe Transportation District.

C. Excess Land Coverage Mitigation Fee

The excess land coverage fee shall be calculated according to the schedule below:

EXCESS LAND COVERAGE MITIGATION FEE	
Hydrologic Transfer Area	Fee Per Sq. Ft.
Area 1 – Incline	\$20.00
Area 2 – Marlette	\$12.00
Area 3 – Cave Rock	\$25.00
Area 4 – South Stateline (Nevada side)	\$15.00
Area 4 – South Stateline (California side)	\$8.50
Area 5 – Upper Truckee	\$8.50
Area 6 – Emerald Bay	\$8.50
Area 7 – McKinney Bay	\$8.50
Area 8 – Tahoe City	\$8.50
Area 9 – Agate Bay (California side)	\$8.50
Area 9 – Agate Bay (Nevada side)	\$18.00

D. Water Quality Mitigation Fee

The current fee of \$1.54 per square foot shall be increased to \$1.86 per square foot.

1. Mitigation Fee Credit

If a project approval expires and the project is not complete, then a water quality mitigation fee credit may be given for a subsequent similar project approval. This subsection shall not be construed to require a refund of a water quality mitigation fee. Credit shall be given if the following requirements are met:

- a. The prior project approval was granted within the same project area as the project approval for which a credit is sought;
- b. The applicant provides sufficient evidence of the payment of a water quality mitigation fee or implementation of a TRPA approved water quality mitigation project; and
- c. A water quality mitigation fee or project is required as part of the project approval for which a credit is sought.

2. Mitigation Fee Refunds

Water quality mitigation fees may be refunded, under certain conditions, in accordance with TRPA's Rules of Procedure.

E. Shorezone Fees

1. Mooring Fee

The owner of every mooring on, or with access to, Lake Tahoe shall pay a fee to TRPA of \$43 per year.

2. Buoy Scenic Mitigation Fee

All buoys shall be assessed a scenic mitigation fee of \$47 per year.

3. Motorized Boat Rental Concession Fee

Concessionaires shall pay the following fees to TRPA annually for every motorized boat subject to rental:

- a. For every boat with an EPA 3-Star or better rating: \$75 per year;
- b. For every boat with an EPA 2-Star or worse rating: \$150 per year.

4. New Construction and Expansions.

a. Piers. New pier construction and the expansion of the existing piers shall be assessed mitigation fees as follows:

- i. New pier - \$60 per linear foot
- ii. Additional length to an existing pier - \$60 per lineal foot
- iii. Other additions - \$600 per application

b. Boat Ramps. Boat ramp construction and the expansion of existing boat ramps shall be assessed mitigation fees as follows:

- i. New boat ramp - \$60 per lineal foot
- ii. Additional length to an existing ramp - \$60 per lineal foot

- iii. Additional width to an existing ramp - \$200 per lineal foot
- c. Marinas. Marina construction and the expansion of existing marinas shall be assessed mitigation fees as follows:
 - i. New boat slip - \$200 per slip
 - ii. New mooring buoy - \$200 per buoyOther additions - \$500 per application

10.8.6. Monitoring Fees

A. Allocation Monitoring Fees

- 1. The allocation monitoring fee shall be \$100 per allocation issued by a local jurisdiction.

ARTICLE 11: APPEALS

11.1. PURPOSE

This article sets forth procedures for appeals of Executive Director actions on projects or other matters.

11.2. FILING OF APPEAL

Final action by the Executive Director may be appealed to the Board by filing a notice of appeal with TRPA, including the required appeal fee as set by resolution of the Board, no later than 21 days after final action. A written statement of appeal shall be filed by the appellant with the Agency. In order to have the appeal put on the next Governing Board agenda, the written statement of appeal must be filed on or before the fifteenth day of the previous month. If no written statement of appeal is received by the Agency within 30 days after the filing of the notice of appeal, the appeal shall be dismissed. Ordinary administrative matters, such as purchasing, and contracts, may not be appealed to the Board.

11.3. STAY OF PERMIT

An appeal shall not automatically stay the project or matter appealed. The appellant may request, as part of the written statement of appeal, a stay of the project or matter, and any such request shall be by affidavit or under penalty of perjury and shall include credible evidence of the need for a stay pending a hearing on the appeal before the Board at its next regular meeting. The appellee shall be given an opportunity, if possible, to provide written evidence of the hardship caused by a stay. The Chairman of the Board shall review any request for a stay of a project or matter and the evidence submitted therewith, and any evidence of the hardship on the appellee, shall balance the equities and shall determine, within two working days of the request, whether or not a stay shall be issued.

11.4. STATEMENT OF APPEAL

The written statement of appeal shall include the name and address of the appellant and a detailed and specific explanation of the ground for the appeal. (See Sections 11.5 and 11.6 of these Rules.) The statement of appeal may be on a form devised by the Executive Director. Arguments and bases for appeals that are not included in the statement of appeal or staff's position paper shall neither be raised nor considered by the Board. Statements of appeal must be submitted in writing, in final, no later than 30 calendar days after filing of the notice of appeal. Statements of appeal must be submitted in writing, in final, on or before the 15th day of the previous month in order for the appeal to be calendared for the next month's Board meeting.

11.5. APPEAL OF DENIALS

Appeals of denials by the Executive Director shall be by de novo review limited to the statement of appeal or staff position paper of the project or matter by the Board, subject to the same procedure and vote requirements that would apply had the project or matter

originally been reviewed by the Board. Arguments and bases for appeals that are not included in the statement of appeal or staff position paper shall not be raised before the Board.

11.6. APPEAL OF APPROVALS

- 11.6.1. Prior to hearing an appeal of an Executive Director approval the Board may find, by an any eight vote, that, based on the written record before the Board, the appellant does not have sufficient interest in the outcome of the appeal to make an appeal or has not alleged a violation of law, the Compact, Plan Area Statements, Goals and Policies, Code, or other adopted TRPA plan, and, on such basis, decline to hear the appeal.
- 11.6.2. If the Board determines to hear the appeal, it may take action to modify or revoke the approval by the same affirmative vote as would have been required to approve the matter before the Board. Failure to take such action shall be deemed a denial of the appeal.

11.7. IPES APPEALS

Appeals of Individual Parcel Evaluation System (IPES) ratings shall be in accordance with subsection 53.10.4 of the Code and shall be processed insofar as possible in accordance with this article.

11.8. APPEAL SUMMARY AND HEARING

Prior to a hearing on an appeal, the Executive Director shall prepare a staff position paper on the appeal. The staff position paper and the written statement of appeal shall be mailed to the appellant and any real party-in-interest and included in the Board packet at least seven calendar days before the Board meeting that the appeal is scheduled to be heard.

- 11.8.1. The contents of the position paper shall be consistent with subsection 5.11.2 of these Rules insofar as is possible.
- 11.8.2. The hearing on the appeal shall proceed in accordance with Section 5.13 of these Rules.

ARTICLE 12: NOTICE

12.1. PURPOSE AND SCOPE

This article sets forth the notices required for project consideration, amendments to the Regional Plan Package (Ordinance 87-9, as amended), and Board processes.

12.2. GIVING NOTICE

When notice is required by the Compact it shall be given as required by the Compact. When notice is required by the Regional Plan Package, including these Rules, it shall be given as provided for in this article, unless otherwise specified. Notice shall be given by depositing a notice in the U.S. Mail, first class, postage prepaid, addressed to the last known address of the person to be noticed. Notice shall be effective on the date of deposit in the U.S. Mail.

12.3. SUBSTITUTE NOTICE

In lieu of notice by mail, notice may be given by personal delivery of the notice. In the event the manner of notice set forth in this article is determined by the Executive Director to be impracticable or unduly burdensome with respect to a particular application, a substitute manner of notice that is legally sufficient, which shall include publication in a newspaper with circulation in the affected areas, shall be prescribed by the Executive Director.

12.4. ADDITIONAL NOTICE

The Executive Director may determine that additional notice shall be given for a particular matter. Additional notice may include posting notice of the project or matter in the vicinity of the affected area or publication in a newspaper with circulation in the affected area.

12.5. PROJECTS REQUIRING NOTICE TO AFFECTED PROPERTY OWNERS

A list of classes of projects and matters requiring notice to affected property owners is provided in Section 12.14 and may be amended by resolution. The Executive Director shall give notice of TRPA's consideration of such projects or matters prior to final action being taken by the Board or Executive Director. The Executive Director may determine that a specific project or matter not on the list may substantially affect property owners and give notice to affected property owners.

- 12.5.1. Projects located entirely within the boundaries of a state park or a national forest shall be exempt from notice to affected property owners unless any portion of the project is within 300 feet of the boundaries of the state park or national forest, in which case the notice requirements shall apply to those properties within 300 feet of that portion of the project.

12.6. NOTICE TO AFFECTED PROPERTY OWNERS

If notice is required, the proponent of the project or matter shall submit a list to TRPA of the names and addresses of the persons who own property, or a portion thereof, within 300 feet of the project area boundaries. The list shall be compiled from the current county

assessor's rolls and shall be verified by the applicant. The proponent also shall provide addressed envelopes, postage prepaid to the persons listed. Notice shall be given to such persons by TRPA. Notice shall be given reasonably early in the project review process. The benefit of giving notice early in the project review process should be balanced with the potential for renote of the project if significant modifications occur during the review process. Notice to affected property owners may be waived if the applicant provides TRPA with a written waiver of notice from each affected property owner.

12.7. CONTENTS OF NOTICE TO AFFECTED PROPERTY OWNERS

Notice to affected property owners shall state whether the project or matter shall be acted upon by the Board or Executive Director. The notice shall reasonably identify the affected area and describe the proposed project or matter. If applicable, the notice shall state that the application may be viewed during TRPA office hours.

12.7.1. Governing Board Review

For projects and matters requiring notice to affected property owners and that are to be reviewed by the Board, the notice shall be given no later than 14 calendar days before the hearing, shall state the date, time and place of the Board hearing and the opportunity to be heard, and that a staff summary of the proposed project or matter, which may include a staff recommendation, shall be available for review seven calendar days before the hearing.

12.7.2. Executive Director Review

For projects and matters requiring notice to affected property owners and that are to be reviewed by the Executive Director, the notice shall state that written comments may be submitted no later than 14 calendar days after the date of the notice. The notice shall state that there will not be a formal hearing on the application and that final action may occur, without further notice, at any time after the 14 calendar-day comment period.

12.8. NOTICE OF ORDINANCES

Notice of proposed ordinances shall be given by notice of the public hearing required by Section 4.3 of these Rules. The Executive Director or Governing Board may require additional notice, or notice to affected property owners, of plan amendments or other ordinances.

12.9. COMMITTEE MEETINGS

See subsection 2.8.1 of these Rules.

12.10. SPECIAL AND EMERGENCY MEETINGS

See Section 2.2 of these Rules.

12.11. GOVERNING BOARD MEETINGS

Notice of regular Board meetings shall be given by posting notice of the meeting at TRPA offices and at least three other separate, prominent locations within TRPA's jurisdiction. A

copy of the notice shall be mailed to any person who has requested notice of the meetings. The notice shall include the time, place, location, and agenda of the meeting. Notice shall be given at least three working days before the meeting except as otherwise required or permitted by these Rules.

12.12. ADOPTION OF RULES OF PROCEDURE

Notice of the adoption or amendment of the Rules shall be given as part of the Board agenda.

12.13. PROJECT SECURITIES

See Section 13.3 of these Rules.

12.14. PROJECT OR MATTER REQUIRING NOTICE TO AFFECTED PROPERTY OWNERS

12.14.1. General

- A. Land capability and man-modified challenges (including appeals)
- B. Redevelopment
- C. New logging roads
- D. Erosion control projects (major)
- E. Stream diversions
- F. Substantial modifications/demolition of historic resources
- G. Special use determinations
- H. Commercial and multi-residential foundations (pursuant to Chapter 11¹)
- I. Subdivisions of existing structures

12.14.2. Residential (new or increase in density)

- A. Employee housing
- B. Mobile home parks (except for placement of mobile homes on existing pads in existing parks)
- C. Multi-residential
- D. Home occupations - nonexempt

12.14.3. Tourist Accommodation (new or increase in density)

- A. Hotel, motel and other transient dwelling units
- B. Bed and breakfast

¹ Current Ch. 11: Foundations, is proposed for deletion in the reorganized code because it is obsolete.

- C. Timesharing
- D. Additional height pursuant to Chapter 37: *Height* of the Code

12.14.4. Commercial (new or increase in density)

- A. Retail entertainment
- B. Services
- C. Light industrial
- D. Wholesale/storage

12.14.5. Public Service

- A. New facilities (greater than 1,000 square feet of land coverage or floor area)
- B. Additions/modifications (greater than 1,000 square feet of land coverage or floor area)
- C. Additional height pursuant to Chapter 37: *Height* of the Code

12.14.6. Recreation

- A. Facilities (greater than 1,000 square feet of land coverage or floor area)
- B. Additions/modifications (greater than 1,000 square feet of land coverage or floor area)

12.14.7. Shorezone* ²(new and expansions)

- A. Marinas
- B. Structures (except for two buoys per littoral parcel [52.6.A(1)³] and navigational and safety devices on existing structures)

² Includes lakes other than Lake Tahoe

³ Could not find this reference in any version of the Code.

ARTICLE 13: PROJECT SECURITIES

13.1. PURPOSE

This article sets forth the procedures for using a project security to effect compliance with permit conditions. The procedures are designed to provide notice and an opportunity to be heard to the permittee and to promote compliance, if possible, without resort to the use of project securities.

13.2. EXECUTIVE DIRECTOR DETERMINATION

Based on an inspection of the project, a review of the permit conditions and other relevant information, the Executive Director shall determine whether it is necessary and appropriate to use the project security, or a portion, to effect compliance with the permit conditions.

13.3. NOTICE

Upon a determination by the Executive Director to use the project security to effect compliance with the permit conditions, Tahoe Regional Planning Agency (Agency or TRPA) shall give notice to the permittee and the property owner of its intent to use the project security. If the security is a bond, notice shall also be given to the bonding company. Notice shall be served in accordance with Section subsection 5.4.5.C.2 in the Code.

- 13.3.1. The notice shall include the amount of the security to be used and the permit conditions for that compliance is sought.
- 13.3.2. The notice shall include a request for permission for TRPA, or its designated agent, to enter the property in order to take the actions necessary to effect compliance with the permit conditions.
- 13.3.3. The notice shall also advise the permittee of the available response options set forth in Sections 13.4 and 13.5 below.

13.4. RESPONSE TO NOTICE

After service of a notice, the noticed party may serve a written response on TRPA no later than 21 calendar days after service of the notice.

13.4.1. Waiver

The Executive Director may waive the 21 calendar- day limit provided the responding party shows good cause for the late filing of a response.

13.4.2. Show Cause Hearing

If the noticed party requests a hearing before the Governing Body (Board), a show cause hearing shall be scheduled as soon as reasonably feasible. The request for a hearing shall include the information set forth in subsection 5.4.5.G in the Code.

13.4.3. No Response

If no response is served, then the Executive Director shall proceed with the enforcement action as he deems appropriate, which may include the filing of a civil complaint under Article VI(1) of the Tahoe Regional Planning Compact (Compact) for declaratory and injunctive relief, civil penalties, and other appropriate relief.

13.5. ELECTION TO COMPLY

If the responding party wishes to cooperate in the use of the project security, the response shall so state and shall include written permission for TRPA or its designated agent to enter the property. Upon receipt of such a response, TRPA and the responding party shall agree on the work to be accomplished and the work schedule. In the event agreement cannot be obtained in a timely manner, TRPA shall renounce its intent to use the project security but the noticed party shall not have the option to respond under this section.

13.6. HEARING

If a Board hearing is requested under subsection 13.4.2 of these Rules, it shall be noticed and conducted in accordance with Sections 9.13 and 9.14 of these Rules.

13.7. BOARD ACTION

13.7.1. Board Options for Action

The Board may take one or more of the following actions: affirm, modify, or withdraw the Executive Director's determination to use the project security; authorize legal counsel to pursue judicial remedies; determine and offer a proposed resolution; or take such other action as deemed appropriate by the Board.

13.7.2. Vote

To affirm the Executive Director's determination, direct counsel to pursue judicial remedies, or determine and offer a proposed resolution, other than project modification, shall require a vote of any eight Board members. Failure to affirm the Executive Director's action shall be deemed a withdrawal of the notice. An offer of resolution which constitutes a project or a modification of the permit, shall require the affirmative vote of at least nine members of the Board and the affirmative vote of at least five members of the Board from the state in that the property is located.

13.7.3. Notice

No later than five working days after the Board action on the hearing the Executive Director shall serve notice of the Board action on the responding party and other noticed parties. The notice shall contain a verbatim statement of the motion passed

by the Board with respect to the show cause hearing. The date of Board action, not the date of the notice, shall be the final action of TRPA for the purpose of seeking judicial review pursuant to Article VI(j)(4) of the Compact.

13.8. CONTRACTOR LIST

The Executive Director shall establish and maintain a list of available contractors. In establishing a list, the Executive Director shall:

- 13.8.1. Solicit information on the availability of contractors and their qualifications;
- 13.8.2. Advise contractors on the list that inclusion thereon does not mean they will be selected but they may be eligible for selection; and
- 13.8.3. Maintain and update the list from time to time.

13.9. SELECTION OF CONTRACTOR

A contractor shall be selected as follows:

- 13.9.1. If the security amount is \$5,000 or less, then TRPA shall obtain a minimum of three informal bids and shall select the lowest responsible bid.
- 13.9.2. If the security amount is greater than \$5,000, then TRPA shall notify all contractors on the list, shall briefly describe the work to be done and shall request written bids be submitted no later than 14 calendar days from the date of the notice. TRPA shall select the lowest responsible bid.
- 13.9.3. TRPA shall require the selected contractor to provide a proof of adequate insurance and any necessary licenses.
- 13.9.4. TRPA shall enter into a written contract with the selected contractor. The contractor shall, at a minimum, include a schedule of work and payment.

13.10. COMMENCEMENT OF WORK

Prior to commencement of work, TRPA shall give notice to the permittee and the property owner. The notice shall include the name of the selected contractor, the amount of the security to be used and a schedule of work.

13.11. COMPLETION OF WORK

Upon completion of the work, TRPA shall notify the permittee and the property owner and refund or release any unused portion of the security.

ARTICLE 14: HEARINGS OFFICER

14.1. GENERAL

This article sets forth the procedures for the Hearings Officer. The position of Hearings Officer shall be appointed by, and serve at the discretion of, the Executive Director. The purpose of the Hearings Officer shall be to determine application compliance with applicable provisions of the Compact, Goals and Policies, Code, other TRPA plans, maps and programs, and Rules of Procedure, for projects or matters identified in subsection 2.2.2 in the Code as requiring review by the Hearings Officer. For the purposes of these Rules, the Goals and Policies, Code, other TRPA plans, maps and programs, and Rules shall be referred to collectively as the “Regional Plan Package.” The scope of review shall be that deemed necessary by TRPA for accurate determination of compliance.

14.2. ACTIONS

The Hearings Officer shall consider each matter submitted for conformity with the Regional Plan Package and shall make a final decision accordingly. The decision shall be either for project approval (with conditions), project denial, continuance or referral to the TRPA Governing Board.

14.3. PROCEDURES

The Hearings Officer shall be governed by these Rules and Regulation of Practice and Procedure. To the extent practical, the Rules provided herein for Article 5 – Project Review and Article 12 – Notices, shall apply to the Hearings Officer. The Hearings Officer shall review projects or matters in a public hearing and the hearing shall be subject to the Nevada Open Meeting Law.

14.4. NOTICE

All projects or matters reviewed by the Hearings Officer shall require notice to affected property owners. The proponent of the project or matter shall submit a list to TRPA of the names and addresses of the persons who own property, or a portion thereof, within 300 feet of the project area boundaries. The list shall be compiled from the current county assessor’s rolls and shall be verified by the applicant. The proponent also shall provide addressed envelopes and postage prepaid to the persons listed. Notice shall be given to such persons by TRPA. The notice shall be given no later than 14 calendar days before the hearing, shall state the date, time, and place of the hearing and the opportunity to be heard.

14.5. CONTINUANCE

The Hearings Officer may continue any matter for good cause. The Hearings Officer may also refer any item to the Board for action.

14.6. APPEALS

The project proponent, affected property owners (as defined in Section 14.4) and parties who participated in the Hearings Officer hearings may appeal any decision by the Hearings Officer pursuant to Article XI – Appeals, in the Rules of Procedure. Notice of such appeal rights shall be given to the project proponent and to all participants at the Hearings Officer hearings.

ARTICLE 15: PUBLIC RECORDS POLICY

15.1. PURPOSE AND SCOPE

This article sets forth the procedures for public records requests. The purpose of this article is to provide a formal policy regarding public records requests so the public has clear expectations regarding the accessibility of TRPA records and TRPA has a defined protocol for responding to public records requests. This chapter applies to all records requests received by TRPA.

15.2. DEFINITIONS

As used in these rules, the following terms have the following meanings.

Public Record

The product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by TRPA in connection with the transaction of public business and in TRPA's possession and control at the time a public records request is made.

Actual Cost

The direct cost related to the assembly, preparation, and reproduction of public records. The term does not include costs that TRPA incurs regardless of whether or not a person requests a copy of a particular public record.

15.3. PUBLIC RECORDS POLICY

- 15.3.1. In responding to public records requests, TRPA shall adhere to the policies outlined in the Federal Freedom of Information Act (FOIA) (5 U.S.C. § 552), including exemptions and judicial interpretations, with the following exceptions:
- A. TRPA shall respond to public record requests according to the schedule outlined in Section 15.4 of the Rules; and
 - B. The fees set forth in Section 15.6 of the Rules shall apply to all public record requests.
- 15.3.2. In accordance with FOIA, TRPA is not required to answer questions, render opinions, or provide subjective evaluations related to public record requests. Requesters must ask for existing public records.

15.4. PUBLIC RECORDS REQUEST PROCESS AND SCHEDULE

- 15.4.1. Upon receipt of a formal written request for public record(s) TRPA shall issue a Notice of Receipt of Records Request (Notice) to the requestor within ten business days. The Notice shall outline the following:
- A. Status of Incomplete Request - In the event that more information is deemed necessary to respond to the request, TRPA shall alert the requester that additional information is necessary to process the request and that the request will be held until sufficient information to process the request is received.
 - B. Status of Complete Request - If the information received with the request is complete, TRPA shall send notice that the Agency has received the Public Records Request and has begun processing the request.
 - C. The estimated date for assembly and reproduction of the requested public records in accordance with subsection 15.4.2 of the Rules. In the event that a request will require significant time and effort, as described in subsection 15.4.2 of the Rules, the Agency will alert the requestor that additional time and effort will be necessary for processing the request and, in accordance with subsection 15.4.2, outline a timeline for the preparation of the records request.
 - D. The estimated actual cost associated with the assembly, preparation, and reproduction of the requested records in accordance with Section 15.6 of the Rules.
 - E. Notice that the requested records will not be prepared until a deposit covering the estimated cost is submitted to TRPA and that the records will not be released until payment in full of the associated actual cost is received.
- 15.4.2. When a complete request is received by the Agency, the Agency will ordinarily have 21 calendar days from the date posted on TRPA's notice of receipt of records request to prepare requested public records. However, if a public records request will require more than four hours of staff time to assemble, prepare, and reproduce, it is deemed to require significant time and effort, and an extended timeline, up to an additional 60 calendar days, is appropriate for the production of the records.

15.5. REPRODUCTION OF PUBLIC RECORDS

A copy of public records may be requested in any form. However, TRPA reserves the right to charge a fee for the actual cost to the Agency of the reproduction of the requested public records in accordance with Section 15.6 of the Rules.

15.6. FEES FOR PUBLIC RECORDS REQUESTS

Fees for processing public records requests shall be based on the actual cost associated with the assembly, preparation, and reproduction of records, as set forth

in a fee schedule approved by the Executive Director of TRPA. The schedule shall be included in the Agency Fee Schedule for Documents, Publications, and General Services, and shall be posted at the TRPA front counter and available upon request.

- 15.6.1. A deposit covering the estimated actual cost, noted in the Notice of Receipt of Records Request, shall be submitted to the agency no later than ten business days from the date posted on the Notice.
- 15.6.2. TRPA staff shall not begin to assemble a records request until the deposit covering the estimated cost is received.
- 15.6.3. Upon completion of the records request, TRPA shall produce the records and return any remainder of the deposit to the requestor.
- 15.6.4. In the event that additional monies are required to cover the actual cost for production of the records, notice of the additional balance shall be provided to the requestor.
- 15.6.5. No records shall be released until the balance associated with the actual cost of production is paid in full.