

TRPA Issue Sheet #1 - Area Plan Approval and Oversight Process

July 27, 2012

ISSUE SUMMARY

Context/Background: To focus TRPA's resources on regional priorities and streamline the permitting process, the Draft Regional Plan establishes an Area Planning process that would:

- Integrate Regional Plan Policies with the plans of other Public Agencies;
- Identify and update development allowances and requirements;
- Exempt additional development activities within a conforming Area Plan from direct TRPA review.

Area Plans are subject to Threshold findings and must conform to the Regional Goal and Policy Plan and applicable ordinances.

This issue sheet focuses on the process to develop and maintain Area Plans and verify that all permitting is consistent with Regional Plan requirements. Development standards and non-procedural requirements for Area Plans are addressed separately.

RPU Committee: The RPU Committee unanimously endorsed the process to develop Area Plans. The TRPA oversight system, including size limits for exempted permitting and possible appeals, was more controversial and was advanced by a non-unanimous vote. The Area Plan approval standards were unanimously endorsed, except for one standard related to scenic protection. The Bi-State Working Group reviewed non-unanimous actions and recommended compromise language.

EIS Analysis: The EIS did not identify any significant impacts. Mitigation is not required.

Public Comments: Most Agency and public comments involved the TRPA oversight system. Detailed comments focused on the extent that permitting activities would be exempted from TRPA review and on opportunities to appeal local government decisions to TRPA. Some comments supported a more flexible process with increased deferral to other public agencies, while other comments supported more prescriptive procedural guidelines for other agencies with increased TRPA involvement and oversight. Additionally, both States and the U.S. Forest Service supported additional TRPA permitting exemptions for public projects.

Summary of Recommendation:

1. Review and endorse the Bi-State Recommendation (Exhibit A), which would:
 - Reduce the maximum project size that may be exempted from or delegated for direct review to other Agencies under an approved Area Plan; and
 - Establish procedures to appeal final decisions of other Agencies on delegated projects to TRPA.
2. Consider public comments on the Area Plan process.

ISSUE ANALYSIS

Context/Background:

The Draft Regional Plan establishes an Area Planning system for communities and land management agencies in the Lake Tahoe Region.

Area Plans would serve as a single land use plan for specific geographic areas and would be a component of both the Regional Plan and of the Plans for other Agencies. The Area Planning process is intended to provide the following benefits:

- Focus TRPA on regional priorities more than parcel-level permitting activities;
- Establish a more responsive and flexible regional framework for community planning in the Tahoe Region;
- Eliminate inconsistencies between the Regional Plan and the plans of other Agencies; and
- Reduce duplicative permitting requirements.

Area Plans would outline land use allowances and development standards. Area Plans may also establish standards that replace region-wide standards, including area-wide coverage and BMP programs. Local, State and Federal Agencies are authorized to be “Lead Agencies” guiding the development of Area Plans.

All Area Plan provisions are required to conform to the Regional Goal and Policy Plan, Thresholds and the Compact. Once Area Plans are adopted and become part of the Regional Plan, additional development activities could be exempted from direct TRPA review through Memoranda of Understanding (MOU).

To ensure that Area Plans and any development authorized by Area Plans are consistent with the Regional Plan, approval and oversight procedures are established for Area Plans. Key procedures include:

1. **Plan Initiation:** The Area Planning system is voluntary – Local, State and Federal Agencies would provide statements of intent to develop Area Plan(s) by December 31, 2013. The TRPA Governing Board may initiate Area Plans starting in 2014 for areas that are not covered by a Local, State or Federal Area Plan. (See Policy LU-4.5; Code Section 13.4)
2. **Plan Development and Approval Procedures:** Compared with the existing system for Community Plans, Area Plans are subject to more flexible procedural requirements and more specific approval criteria. Procedurally, the Draft Plan requires that “At a minimum, Area Plans shall be prepared in coordination with local residents, stakeholders, public agencies with jurisdictional authority within the proposed Area Plan boundaries, and TRPA staff.” The Draft Plan also requires a sequential plan review and approval process that includes:

1. Applicable Local/State/Federal Government approval;
2. Advisory Planning Commission recommendation; then
3. Final approval of the TRPA Governing Board. (See Policy LU-4.6; Code Section 13.6).

Approval requirements for Area Plans include the standard Chapter 4 “Threshold Findings” for all Regional Plan and Code amendments plus a list of additional review standards that must be met (See Policy LU-4.8 through LU-4.10 and Code Section 13.6.5).

3. Procedures to Address Regional Plan Amendments: If TRPA is considering a plan or code amendment that would affect Area Plans, the following is required (Code Section 13.6.7):
 - o TRPA provides lead agencies with reasonable notice of pending amendments and Area plan topics that may require amendment to maintain conformance.
 - o After approval of a plan or code amendment, Area Plans must be updated within one year to reflect the regional plan/code amendment. The scope of this review is limited to conformity of the amended provisions to the updated Regional Plan.

4. Activities Requiring TRPA Approval: Following approval of Area Plans, most development activities could be exempted from direct TRPA review through Memoranda of Understanding (MOU) if the applicable Area Plan includes necessary safeguards to ensure that development approvals under the Area Plan will not create significant environmental impacts. Activities that are not eligible to be exempted from TRPA review are outlined in Code Section 13.7.3 and include:
 - o Activities in the High Density Tourist District, Shorezone and Conservation District that are not already exempted from review by the Governing Board or Hearings Officer under Code Section 2.2.2; and
 - o Activities that exceed the building floor area increases that are specified in the following table:

TABLE 13.7.3 -1: THRESHOLDS FOR GOVERNING BOARD REVIEW OF PROJECTS IN CENTERS			
(All measurements are new building floor area.)			
	Regional Center	Town Center	Not in Center
Residential	≥ 200,000 sq. ft.	≥ 100,000 sq. ft.	≥ 50,000 sq. ft.
Non-residential	≥ 100,000 sq. ft.	≥ 50,000 sq. ft.	≥ 25,000 sq. ft.

5. Procedures to Verify Ongoing Conformance with the Regional Plan: The Draft Regional Plan establishes a detailed monitoring, review and certification process (Code Section 13.8) with the following key provisions:
- Notification: Lead Agencies include TRPA in all public notifications of public hearings for development within an Area Plan when public hearings are required;
 - Monitoring: On a quarterly basis, Lead Agencies send TRPA information from building permits that were issued, including coverage, residential units, commercial floor area, and tourist accommodation units.
 - Annual Review: On an annual basis, TRPA reviews a sample of permits that were issued under each Area Plan to independently verify compliance with the Area Plan.
 - Certification: Based on the review of permits, TRPA annually certifies that permits are being issued in accordance with the Area Plan. If discrepancies are found, a process of consultation with the lead agency, conditional certification and revocation of permitting authority is outlined.

The Draft Regional Plan does not include any procedures for appeals of Local, State or Federal development approvals exempted under a conforming Area Plan.

RPU Committee Action:

The RPU committee unanimously endorsed procedures and requirements for Area Plan initiation, development, approval, and modification (Procedures 1 through 3 above), except for one of the Area Plan approval standards, which was advanced by a non-unanimous vote (Policy LU-4.9(2) and Code Section 13.6.5.B.1). The topic in dispute involved whether building and site design standards in Area Plans must “consider” or “respect” ridgeline and viewshed protection. This topic involves community design more than the Area Plan process and is addressed in Issue Sheet #3 - Community Character.

The most extensive discussion and debate by the RPU committee involved “Project of Regional Significance” criteria for activities requiring direct TRPA review (Procedure 4) and annual certification and/or appeal procedures to verify ongoing compliance with the Regional Plan (procedure 5).

After significant discussion, the RPU Committee advanced “Project of Regional Significance” criteria for activities requiring direct TRPA review (Procedure 4 above) by a non-unanimous vote and advanced procedures to verify ongoing compliance with the Regional Plan (Procedure 5 above), also by a non-unanimous vote.

Endorsed Plan and Code sections are attached as Exhibit B.

EIS Analysis:

The EIS did not identify any potentially significant impacts. Mitigation is not required.

Bi-State Recommendation:

The Bi-State Working Group reviewed non-unanimous topics and recommended compromise language with the following provisions:

- Reduce the maximum project size that may be exempted from or delegated for direct review to other Agencies under an approved Area Plan; and
- Establish procedures to appeal final decisions of other Agencies on delegated projects to TRPA.

Specific Bi-State Recommendations are outlined in Exhibit A.

Public Comments:

Exhibit C lists comments from Agencies, Organizations, Businesses and Individuals that address the Area Plan Approval and Oversight Process.

Most comments involve the non-unanimous topics from the RPU committee. A strong majority of Public Agencies, Organizations, Businesses and Individuals were generally supportive of the Area Plan framework, although numerous comments to modify the Area Planning process in various ways were received.

More detailed comments focused on the extent that activities would be exempted from TRPA review and on the post-adoption TRPA oversight system. Some comments supported a more flexible process with increased deferral to other public agencies, while other comments supported more prescriptive guidelines for other agencies with increased TRPA involvement and oversight.

Public Agency Comments:

Local Government comments generally supported the Area Plan framework and focused on suggestions to make the Area Planning process more efficient and predictable. Specific suggestions include:

- The TRPA oversight process should be less complex and burdensome. Some comments suggested that existing mechanisms, such as the Area Plan approval findings and the legal system, already require that Local Government permitting be consistent with the Regional Plan. Concerns were raised that excessive procedural requirements could be infeasible or divert available resources away from more important priorities.
- The process and requirements for Area Plan development should be more clearly defined.

- The requirements associated with Area Plan development could be costly and the timeline for adoption will be protracted.
- Ensure sufficient TRPA financial and staff resources are available to assist with Area Plan development, including making the chapter 4 findings, as well as address priority issues identified for future action.
- The Regional Plan should identify topics to be addressed in Area Plans, but should be less prescriptive and allow greater flexibility to address topics through the Area Plans.
- TRPA should avoid duplicative and inconsistent reporting requirements.

Comments from California State Agencies emphasized procedural protections and provided suggestions to make the Area Planning process more efficient and predictable.

Comments from the California Department of Justice focused on “safeguards” to ensure that all exempted and delegated permitting activities maintained consistency with the Regional Plan. Specific suggestions include:

- Exempting development from TRPA permitting may be inconsistent with the Compact because it is not possible for a plan to verify that larger developments will not create significant environmental impacts. Robust “right of appeal” procedures are needed.
- The size limits for “Projects of Regional Significance” are too large.
- A strong recertification process is needed.

The California Tahoe Conservancy (CTC) was concerned that an annual recertification process without an appeals process would only catch non-conforming projects after they were permitted or constructed. CTC also suggested that the requirements for direct TRPA review are more applicable to developed settings than public lands and offered the following suggestion:

- Because many State lands include property in the Conservation District, Area Plans should provide more flexibility for State and Federal agencies to approve permits on Public Land in the Conservation District. The Draft Plan requires direct TRPA review of all (public or private) development in the Conservation District, except for the exempt activities that are currently specified in Code Section 13.7.3. Code language could be updated to require TRPA review of residential, commercial, or tourist development in conservation districts.

The California Department of Parks and Recreation suggested that Area Plans include stronger and more comprehensive urban bear requirements.

The State of Nevada did not submit written comments on policy matters. Staff has met with various Nevada State Agencies and understands the State is generally supportive of the Area Plan process. State of Nevada staff raised the same concern as the California Tahoe Conservancy about permitting requirements on public Conservation District lands.

The U.S. Forest Service did not submit written comments. Staff has met with the U.S. Forest Service and understands the Forest Service is generally supportive of the Area Plan process. Like the California Tahoe Conservancy and State of Nevada, the U.S. Forest Service suggested that the plan provide increased permitting authority to State and Federal agencies on public Conservation District lands.

Comments from Organizations and Advocacy Groups:

Comments from environmental organizations focused on maintaining procedural safeguards to ensure that permits issued by other agencies are in conformance with the Regional Plan. Major concerns include:

- Exempting development from TRPA permitting may be inconsistent with the Compact.
- Appeal procedures are needed.
- All of the environmental impacts of exempted projects would not be addressed through the environmental review of Area Plans.
- The size limits for “Projects of Regional Significance” are too large.
- The criteria for determining if an Area Plan is in conformance with the Regional Plan must be specific and well-vetted.
- Testimony before the Governing Board should not be limited to issues raised before the Advisory Planning Commission.
- Clarify the process for replacing Community Plans with Area Plans and clarify what findings will have to be made to approve a project under an Area Plan.
- There must be a mechanism to stop or remove non-conforming projects if they are permitted under an Area Plan.

Comments from business organizations generally supported the Area Plan framework and focused on suggestions to make the Area Planning process more efficient and predictable. A sample of relevant comments is noted below:

- Provide as much flexibility as possible to local jurisdictions and use the annual review to ensure Area Plans are consistent with the Regional Plan.
- Support shifting more permitting responsibilities to the local jurisdictions to provide more direct connection with residents and businesses, increase accountability and reduce duplication and shorten timeframes.
- Support for TRPA’s shift from local control to Regional planning, empowering local jurisdictions to develop local Area Plans consistent with the Regional Plan and Compact.
- Support for allowing each Area Plan the flexibility to be creative in addressing concerns identified in the Regional Plan.

Comments from Individuals and Businesses:

Comments from individuals and businesses generally reflected the different views expressed by Agencies and Organizations in the Region. Many comments were generally supportive of the Area Plan framework as drafted. Some comments recommended increased flexibility for local government planning, while other comments generally opposed the level of flexibility outlined in the draft plan. Several comments suggested the inclusion of an appeals process and others requested clarification regarding which projects would be reviewed by TRPA. Some comments raised questions about the “trustworthiness” of local governments to properly review development proposals.

Recommendation:

A significant majority of comments received on the Area Plan process address non-unanimous topics debated by the RPU Committee. These topics are addressed in the Bi-State Recommendation.

Both States and the U.S. Forest Service requested that activities within a public Conservation District be eligible for exempted or delegated permitting. These requests were not discussed by the RPU Committee. With the additional oversight provisions in the Bi-State Recommendation and the existing administrative requirements of land management agencies, safeguards appear to be adequate to support delegation opportunities for public land permitting activities that do not exceed the maximum project size limits in the Bi-State Recommendation.

Staff recommends the Update Committee:

1. Review and endorse the Bi-State Recommendation (Exhibit A), which would:
 - o Reduce the maximum project size that may be approved without direct TRPA review; and
 - o Establish procedures to appeal final decisions of other Agencies on delegated projects to TRPA.
2. Consider public comments on the Area Plan process. New policy considerations raised in comments include the Federal/States request to make the Area Plan process and any applicable permitting exemption or delegation fully applicable to Federal and State land management agencies for public land activities in the Conservation District that do not meet the minimum “Project of Regional Significance” size limits.

Exhibits:

- A. Bi-State Recommendation
- B. Draft Plan and Code Text - April 25, 2012
- C. List of Applicable Comment Letters