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MEMORANDUM

Date: February 2, 2016
To: TRPA Hearings Officer
From: TRPA Staff
Subject: Foti Single Family Dwelling Addition/Modification; 1054 Apollo Court, Washoe County, Nevada; Assessor's Parcel No: 125-421-09; TRPA File No: ERSP2016-1161

Requested Action: Hearings Officer action on the proposed project and a finding of no significant environmental effect.

Staff Recommendation: Staff recommends that the Hearings Officer make the required findings and approve the proposed project.

Required Motions: To approve the proposed project, the Hearings Officer must make the following motions, based on this staff summary and record evidence:(1) A motion to approve the required findings (see Attachment A), including a finding of no significant effect; and (2) A motion to approve the proposed project subject to the conditions contained in the draft permit (see Attachment B).

Project and Site Description: The proposed project is a single family dwelling addition/modification consisting of a deck replacement and lowering of the existing garage floor. The residence is located at 1054 Apollo Court in Washoe County, Nevada in Plan Area Statement (PAS) #042 – Incline #5. This PAS has the Land Use Classification as Residential. Single family dwellings are considered a special use within the PAS due to avalanche danger. The project site consists of an existing developed residential lot and is consistent with the surrounding uses. This project complies with land coverage and water quality requirements of the TRPA Code of Ordinances.

Issues/Concerns: According to Plan Area Statement #042 – Incline #5, Single Family Dwellings are a special use due to avalanche danger and therefore require Hearings Officer review in accordance with Section 2.2.2 of the TRPA Code.

Regional Plan Compliance: The proposed project complies with all requirements of the TRPA Goals and Policies, Plan Area Statements, and Code of Ordinances, including all required findings in Chapters 4 and 21 of the TRPA Code of Ordinances (see Attachments A and B for details).

Contact Information: If you have any questions, please contact Jennifer Self, Associate Planner, at jself@trpa.org or 775-589-5261.

Attachments:

- A. Required Findings/Rationale
- B. Draft TRPA Permit
- C. Draft Deed Restriction
- D. Site Plan

Attachment A
Required Findings/Rationale

Required Findings/Rationale

1. Environmental Documentation: TRPA staff completed the Initial Environmental Checklist (IEC) and “Project Review Conformance Checklist and Article V(g) Findings” in accordance with Chapter 4, Subsection 4.3 of the TRPA Code of Ordinances. All responses contained on said checklists indicate compliance with the environmental threshold carrying capacities. A copy of the completed checklists will be made available at the Hearings Officer hearing and at TRPA.
2. Plan Area Statement: The project is located within Plan Area Statement #042 – Incline #5. The Land Use Classification is Residential and the Land Use Strategy is Mitigation. Agency staff reviewed the subject Plan Area Statement and has determined that the project is consistent with the applicable planning statement, planning considerations, and special policies. The proposed use (single family dwelling) is listed as a special use.
3. Land Coverage: This project complies with land coverage requirements of the TRPA Code of Ordinances.
4. Height: This project complies with height requirements of the TRPA Code of Ordinances.
5. Required Findings: The following is a list of the required findings as set forth in Chapter 4, 21, 30, and 37 of the TRPA Code of Ordinances. Following each finding, Agency staff has indicated if there is sufficient evidence contained in the record to make the applicable findings or has briefly summarized the evidence on which the finding can be made.

a. Chapter 4 – Required Findings:

- i. The project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code and other TRPA plans and programs.

Based on the findings provided on the Initial Environmental Checklist and the Article V(g) Findings Checklist, there is sufficient evidence in the project file to make this finding. The project, as proposed and as conditioned in the draft permit, is consistent with TRPA regulations.

- ii. The project will not cause the environmental threshold carrying capacities to be exceeded.

TRPA staff has completed the “Project Review Conformance Checklist and Article V(g) Findings” in accordance with Chapter 4, Subsection 4.3 of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. Also, staff has completed an Initial Environmental Checklist (IEC). No significant environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed checklist and IEC will be made available at the Hearings Officer hearing and at TRPA.

- iii. Wherever federal, state or local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(g) of the TRPA Compact, the project meets or exceeds such standards.

All potential effects are temporary and shall be mitigated through temporary and permanent Best Management Practices. The applicant will meet or exceed all federal, state, or local water quality standards. Upon completion of construction, the project will have no impact upon air or water quality standards.

b. Chapter 21 – Special Use:

- i. Modifications may be permitted only when TRPA finds that the modifications do not increase the extent of nonconformity.

The proposed project is a single family dwelling addition/modification. The project is an appropriate use for the parcel and is compatible with the surrounding area. The project also includes the installation of permanent Best Management Practices.

- ii. The project to which the use pertains, will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect against any such injury and to protect the land, water, and air resources of both the applicant’s property and that of surrounding property owners.

The applicant will be required to apply temporary and permanent Best Management Practices to protect land, water and air resources of the subject property and that of the surrounding property owners.

- iii. The project, to which the use pertains, will not change the character of the neighborhood detrimentally affect or alter the purpose of the applicable planning area statement, community plan and specific or master plan, as the case may be.

The project will not adversely affect the Plan Area Statement as the proposed project is a single family dwelling addition/modification. The single family dwelling is located within a residential plan area and is surrounded by residential properties. The project will not change the character of the neighborhood.

c. Chapter 30.4.5 - Relocation of Land Coverage:

- i. The relocation is to an equal or superior portion of the parcel or project area, as determined by reference to the following factors:

- (1) Whether the area of relocation already has been disturbed;
The proposed project involves the relocation of 835 square feet of existing land capability class 1a land coverage. The area for relocation is part of the existing single family dwelling and therefor covers a previously disturbed area.
- (2) The slope of and natural vegetation on the area of relocation;
The relocation of existing coverage will not negatively affect the slope and natural vegetation of the site.
- (3) The fragility of the soil on the area of relocation;
Soil erosion will not increase as a result of coverage relocation.
- (4) Whether the area of relocation appropriately fits the scheme of use of the property;
The area of relocation is appropriate to the scheme of use of the property.
- (5) The relocation does not further encroach into a stream environment zone, backshore, or the setbacks established in the Code for the protection of stream environment zones or backshore;
Not applicable. There is no Stream Environment Zone (SEZ) on the site.
- (6) The project otherwise complies with the land coverage mitigation program set forth in Section 30.6;
There is 4,820 square feet of excess coverage on the site, therefore the permittee shall be required to comply with the excess coverage land mitigation program as a condition of approval.

- ii. The area from which the land coverage was removed for relocation is restored in accordance with Subsection 30.5.3.

The restoration will be completed pursuant to Subsection 30.5.3 of the TRPA Code of Ordinances. Native vegetation will be planted in areas where coverage removal is occurring.

- iii. The relocation is not to Land Capability Districts 1a, 1b, 1c, 2 or 3, from any higher numbered land capability district.

The relocation is to the same land class and type.

- iv. If the relocation is from one portion of a SEZ to another portion, there is a net environmental benefit to the SEZ.

Not applicable. There is no SEZ on the property.

d. Chapter 37- Height

- i. When viewed from major arterials, scenic turnouts, public recreation areas or the waters of Lake Tahoe, from a distance of 300 feet, the additional height will not cause a building to extend above the forest canopy, when present, or a ridgeline; and the additional; and for height greater than that set forth in Table 37.4.1-1 for a 5:12 roof pitch, the additional height shall not increase the visual magnitude beyond that permitted for structures in the shoreland.

The subject property is partially visible from the Mt. Rose Highway scenic corridor; however, the proposed project is not visible any scenic corridor, major arterials, public recreation areas or the waters of Lake Tahoe and it will not extend above the forest canopy.

- ii. When outside a community plan, the additional height is consistent with the surrounding uses.

The proposed residence is located in Plan Area Statement #042 – Incline #5 which has the Land Use Classification as Residential. The proposed project is a single family dwelling addition/modification and is consistent with the surrounding uses.

- iii. The maximum building height at any corner of two exterior walls of the building is not greater than 90 percent of the maximum building height. The maximum height at the corner of two exterior walls is the difference between the point of lowest natural ground elevation along an exterior wall of the building, and point at which the corner of the same exterior wall meets the roof.

The maximum building height at any corner of two exterior walls of the two residences is not greater than 90 percent of the maximum building heights. This project does not propose any change to the existing building height.

- 6. Required Actions: Staff recommends that the Hearings Officer take the following actions:
 - a. Approve the findings contained in this staff summary, and a finding of no significant environmental effect.
 - b. Approve the project, based on the staff summary, subject to the conditions contained in the attached Draft TRPA Permit.

Attachment B

DRAFT PERMIT

DRAFT PERMIT

PROJECT DESCRIPTION: Single Family Dwelling Addition/Modification APN: 125-421-09

PERMITTEE(S): Antonio and Lila Foti

TRPA FILE #: ERSP2016-1161

COUNTY/LOCATION: 1054 Apollo Court, Washoe County, NV

Having made the findings required by Agency ordinances and rules, the TRPA Hearings Officer approved the project on February 9, 2017, subject to the standard conditions of approval attached hereto (Attachment R), and the special conditions found in this permit.

This permit shall expire on February 9, 2020 without further notice unless the construction has commenced prior to this date and diligently pursued thereafter. Commencement of construction consists of pouring concrete for a foundation and does not include grading, installation of utilities or landscaping. Diligent pursuit is defined as completion of the project within the approved construction schedule. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

NO CONSTRUCTION OR GRADING SHALL COMMENCE UNTIL:

- (1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE(S) HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;
- (2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT;
- (3) THE PERMITTEE OBTAINS A COUNTY/CITY BUILDING PERMIT. TRPA'S ACKNOWLEDGEMENT IS NECESSARY TO OBTAIN A COUNTY/CITY BUILDING PERMIT. THE COUNTY/CITY PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS; AND
- (4) A TRPA PRE-GRADING INSPECTION HAS BEEN CONDUCTED WITH THE PROPERTY OWNER AND/OR THE CONTRACTOR.

TRPA Executive Director/Designee

Date

PERMITTEE'S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee(s) _____

Date _____

PERMIT CONTINUED ON NEXT PAGE

APN 125-421-09
FILE NO. ERSP2016-1161

Excess Coverage Mitigation Fee (1): Amount \$ _____ Paid _____ Receipt No. _____

Security Posted (2): Amount \$ _____ Type _____ Paid _____ Receipt No. _____

Security Administrative Fee (3): Amount \$ _____ Paid _____ Receipt No. _____

Notes:

- (1) Amount to be determined. See Special Condition 3.C., below.
- (2) Amount to be determined. See Special Condition 3.D., below.
- (3) \$152 if a cash security is posted, or \$135 if a non-cash security is posted.

Required plans determined to be in conformance with approval: Date: _____

TRPA ACKNOWLEDGEMENT: The permittee has complied with all pre-construction conditions of approval as of this date:

TRPA Executive Director/Designee

Date

SPECIAL CONDITIONS

1. This permit specifically authorizes the replacement of two existing decks with one new deck and the lowering of the existing garage floor to improve driveway access on a single family dwelling located at 1054 Apollo Court in Washoe County, Nevada. The proposed coverage with 3:1 height reductions will not exceed the verified amount of 5,100 square feet. (TRPA File #LCAP2016-0199)
2. The Standard Conditions of Approval listed in Attachment R shall apply to this permit.
3. Prior to permit acknowledgement, the following conditions of approval must be satisfied:
 - A. The proposed project plans shall be revised to include:
 - (1) Indicate staging area for construction equipment and materials.
 - (2) The final elevation drawings shall have notes indicating conformance to the following design standards:
 - a. Color: The color of this structure, including any fences on the property, shall be compatible with the surroundings. Subdued colors in the earthtone and woodtone ranges shall be used for the primary color of the structure. Hues shall be within the range of natural colors that blend, rather than contrast, with the existing vegetation and earth hues.

Earthtone colors are considered to be shades of reddish brown, brown, tan, ochre, and umber.

- b. Roofs: Roofs shall be constructed of non-glare earthtone or woodtone materials that minimize reflectivity.
 - c. Fences: Wooden fences shall be used whenever possible. If cyclone fence must be used, it shall be coated with brown or black vinyl, including fence poles.
 - d. Exterior Lighting: All exterior lighting shall be consistent with TRPA Code of Ordinances, Section 36.8, Exterior Lighting Standards.
- B. The project is located within Plan Area Statement #042 – Incline #5, which states Single Family Dwellings are a special use due to avalanche danger. The permittee shall record a TRPA approved deed restriction to hold TRPA harmless from any and all liabilities.
- a. The permittee shall provide TRPA with the latest recorded grant deed for the subject parcel. Upon submittal of the grant deed, TRPA will provide the deed restriction to be recorded against the parcel.
 - b. The permittee shall record the provided deed restriction with the Washoe County Recorder’s Office.
 - c. A copy of the recorded deed restriction or the original recorded deed shall be provided to TRPA.
- C. The affected property has 4,820 square feet of excess coverage. The permittee shall mitigate a portion or all of the excess land coverage on this property by removing coverage within Hydrologic Transfer Area 1 – Incline or by submitting an excess coverage mitigation fee.

To calculate the amount of excess coverage to be removed, use the following formula:

Estimated project construction cost multiplied by the fee percentage of 1.5% (as identified in Table 30.6.1-2 of Subsection 30.6.1.C.3. of the TRPA Code of Ordinances) divided by the mitigation factor of 8. If you choose this option, please revise your final site plans and land coverage calculations to account for the permanent coverage removal.

An excess land coverage mitigation fee may be paid in lieu of permanently retiring land coverage. The excess coverage mitigation fee shall be calculated as follows:

Coverage reduction square footage (as determined by formula above) multiplied by the coverage mitigation cost fee of \$25.00 per square foot for projects within Hydrologic Transfer Area 1- Incline. If you choose this option, please provide a construction cost estimate by your licensed contractor, architect or engineer. In no case shall the mitigation fee be less than \$200.00.

- D. The security required under Standard Condition A.3 of Attachment R shall be equal to 110% of the estimated BMP cost, and shall be determined upon the permittee's submittal of required Best Management Practices plan and related cost estimate. Please see Attachment J, Security Procedures, for appropriate methods of posting the security and for calculation of the required security administration fee.
 - E. The permittee shall submit three sets of final construction drawings and site plans to TRPA.
4. Temporary and permanent BMPs may be field-fit as appropriate by the TRPA inspector.
 7. The permittee shall prepare and provide photographs to the TRPA Compliance Inspector that have been taken during construction that demonstrate any subsurface BMPs or trenching and backfilling proposed on the project have been constructed correctly (depth, fill material, etc.).
 8. No grading or excavation shall be permitted outside of the approved areas of disturbance. All excavation shall not exceed five feet below ground surface.
 9. To the maximum extent allowable by law, the permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board, its Planning Commission, its agents, and its employees (collectively, TRPA) from and against any and all suits, losses, damages, injuries, liabilities, and claims by any person (a) for any injury (including death) or damage to person or property or (b) to set aside, attack, void, modify, amend, or annul any actions of TRPA. The foregoing indemnity obligation applies, without limitation, to any and all suits, losses, damages, injuries, liabilities, and claims by any person from any cause whatsoever arising out of or in connection with either directly or indirectly, and in whole or in part (1) the processing, conditioning, issuance, or implementation of this permit; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation, or operation of any improvements, regardless of whether the actions or omissions are alleged to be caused by TRPA or Permittee.

Included within the permittee's indemnity obligation set forth herein, the permittee agrees to pay all fees of TRPA's attorneys and all other costs and expenses of defenses as they are incurred, including reimbursement of TRPA as necessary for any and all costs and/or fees incurred by TRPA for actions arising directly or indirectly from issuance or implementation of this permit. Permittee shall also pay all costs, including attorneys' fees, incurred by TRPA to enforce this indemnification agreement. If any judgment is rendered against TRPA in any action subject to this indemnification, the Permittee shall, at its expense, satisfy and discharge the same.

END OF PERMIT

Attachment C

Deed Restriction

RECORDING REQUESTED BY:

Tahoe Regional Planning Agency
Post Office Box 5310
Stateline, Nevada 89449

WHEN RECORDED MAIL TO:

Tahoe Regional Planning Agency
Post Office Box 5310
Stateline, Nevada 89449
Attn: Jennifer Self, Associate Planner
TRPA File: #ERSP2016-1161

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
TO HOLD HARMLESS AND INDEMNIFY (“DEED RESTRICTION”)
TO BE RECORDED AGAINST APN 125-421-09**

This Deed Restriction is made this _____ day of _____, 20_____, by _____ (Hereinafter “Declarant”).

RECITALS

1. Whereas Declarant applied to the Tahoe Regional Planning Agency (hereinafter “TRPA”) for a permit to modify an existing single family dwelling located at 1054 Apollo Court, Washoe County, Nevada, and described as follows:

[insert legal description from provided Grant Deed]

Said parcel description was recorded in the Office of the Washoe County Recorder on _____, _____, as Document Number _____, and having Assessor’s Parcel Number 125-421-09.

2. Whereas, the Property is located within a TRPA Plan Area Statement (PAS) #042 – Incline #5 that has been identified as an avalanche danger area.
3. The Property is located in the Tahoe Region as described in the Tahoe Regional Planning Compact (P.L. 96-551, Stat. 3233, 1980), which region is subject to the regional plan and the ordinances adopted by the TRPA pursuant to the Tahoe Regional Planning Compact.
4. As a Special Condition of TRPA Permit #ERSP2016-1161, TRPA required that an appropriate deed restriction be recorded documenting the Declarant’s agreement on behalf of Declarant and Declarant’s heirs, successors and assigns,

to hold harmless and indemnify TRPA and to record a deed restriction identifying said agreement.

DECLARATIONS

1. Therefore, in consideration of TRPA's issuance of a permit to modify an existing single family dwelling, Declarant hereby assumes any and all risk associated with the construction, maintenance, ownership and use of the Property and the single family dwelling with attached garage, and further agrees to indemnify, defend, hold harmless and release TRPA, the members of its Governing Board, its successors, agents and employees as follows:
 - A. Declarant hereby agree to indemnify, defend and hold harmless TRPA, the members of its Governing Board, its successors, agents and employees (collectively referred to hereafter as "Indemnatee") from any and all liabilities, losses or damages, including court costs and attorney fees, Indemnatee may suffer or incur as a result of claims, suits, actions, demands, damages, expenses, costs of judgments against it as a result of an avalanche arising from or related to TRPA's issuance of a permit to modify an existing single family dwelling on the above-described Property, whether or not the liability, loss or damage is caused by or arises out of, the negligence of permittee, his heirs, executors, successors, assigns, administrators, agents, grantees, lessees, sublessees, guests or invitees.
 - B. Declarant agrees that Indemnatee may employ attorneys of its own selection to appear and defend the claim, action or suit on behalf of the Indemnatee, at the expense of permittee. Indemnatee, at its option, shall have the sole authority for the direction and conduct of its defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against Indemnatee.
 - C. Declarant expressly assumes full responsibility for all damages, losses and injuries which may result to any person or persons or adjoining property by reason of the construction, maintenance, use or ownership of the Property and agree to indemnify Indemnatee against any and all claims, actions, demands, suits, causes of action, damages, injuries or losses which arise from or are related to TRPA's issuance of a permit to modify an existing single family dwelling on the above-described Property.
2. This Deed Restriction shall be deemed a covenant running with the land or an equitable servitude, as the case may be, and shall be binding on the Declarant's, their heirs, successors and assigns all persons hereafter acquiring or owning any interest in the above-described Property.

3. This Deed Restriction shall not be modified or revoked without the prior express written and recorded consent of TRPA or its successor agency, if any.
4. Declarant has read this Deed Restriction and understands all of its terms. Declarant has executed this Deed Restriction voluntarily and with full knowledge of its significance. Declarant has been offered the opportunity to review the terms of this Deed Restriction with an attorney prior to executing this Deed Restriction.

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IN WITNESS WHEREOF, Declarant has executed this Deed Restriction on the day and year written above.

Declarant's Signature:

_____ Dated: _____
[Declarant's Name]

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

STATE OF)
) SS.
COUNTY OF)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

Name: _____
(typed or printed)

Attachment D

Site Plan

