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MEMORANDUM

Date: March 22, 2018

To: TRPA Hearings Officer

From: Wendy Jepson, Current Planning Manager

Subject: Tunnel Creek Cafe and Flume Trail Bikes Commercial Modification/Addition, 1115, 1125 & 1133 Tunnel Creek Road, Washoe County, Nevada, Assessor's Parcel Numbers 130-311-06 & 07, TRPA File Number ERSP2017-0743

Proposed Action: Hearings Officer action on the proposed project and related findings based on this staff summary and the draft permit (Attachment A).

Staff Recommendation: Staff recommends the Hearings Officer make the required findings and approve the project subject to the special conditions in the draft permit.

Project Description: The project involves a 1,841 square foot addition to an existing 1,328 square foot commercial building known as the Tunnel Creek Café in Incline Village Nevada. The addition will expand sitting, cooking and storage areas and includes a second floor deck that will be used for outdoor dining and is considered commercial floor area. The overall height of the 21 foot tall one story building will not change. Existing coverage will be relocated to accommodate for additional parking and a second driveway access to Tunnel Creek Road. Overall land coverage will be reduced by 17,428 square feet as a result of removing previously verified unpaved parking areas. One 36" diameter at breast height tree will be removed to accommodate the driveway and parking area.

The project also involves the addition of three 320 square foot (960 square feet total) steel storage containers that will be used for the previously approved Flume Trail Bikes rental concession. Customers of the bike concession will park at the site, rent bicycles and be shuttled to the start of the flume trail at Spooner Lake and then ride back to the rental concession. The project requires the transfer of 2,801 square feet of commercial floor area.

Background: On June 24, 2010 the TRPA Hearing's Officer approved a change in use for the existing building to allow for an outdoor amusement use (i.e. bicycle rental concession). The project consisted of modifications to the building, installation of Americans with Disabilities Act improvements and water quality Best Management Practices (BMPs). Since that time, a portion of the building was converted to a restaurant without approval from TRPA. Therefore, this project considers the legally existing use to be the use approved by the Hearing's Officer in 2010 which is an outdoor amusement. The traffic report prepared for the project establishes the outdoor amusement use as the existing baseline use and traffic generator and analyzes the traffic increase generated by the proposed commercial use addition.

Site Description: The 84,414 square foot (1.93 acres) project area consists of three parcels which are verified as land capability class 6. The site is developed with a commercial building and parking lot. A BMP

certificate (#15197) was issued after return of the project security for the previously approved bicycle concession. The project area has 56,026 square feet of legally existing land coverage. Surrounding uses consist of residential to the west, the closed Ponderosa Ranch recreation site to the north and east and residential to the south.

Issues: The proposed project involves a transfer of commercial floor area less than 3,000 square feet and therefore requires Hearing Officer review in accordance with Chapter 2, Subsection 2.2.2.a of the TRPA Code. The project related issues are discussed in the following staff analysis:

Staff Analysis:

- A. 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 and TRPA staff has made the Finding of No Significant Effect. A copy of the completed checklists will be made available at the Hearings Officer hearing and at TRPA.
- B. Plan Area Statement: The project area is located within the Ponderosa Ranch Community Plan (Special Area 1), where outdoor amusements are a special use and eating and drinking places are an allowed use. The special use findings for the outdoor amusement use were previously made by the Hearing’s Officer on June 24, 2010.
- C. Land Coverage: The project will not result in the creation of additional land coverage. All coverage will be relocated. The project area contains 30,638 square feet of excess coverage which will be subject to excess coverage mitigation requirements.
- D. Height: The height of the building is 20 feet 10 inches which is below the 31 foot 3 inch maximum allowed height. The three proposed storage containers are eight feet six inches high which is below the allowed height of 24 feet.
- E. Grading: The maximum depth of excavation is eight feet which is above the 15 foot maximum depth of excavation approved by TRPA (see file LCAP2017-0031).
- F. Scenic Quality: The site is visible from Scenic Roadways Unit 25, Ponderosa Area which has a Threshold Travel Route Rating of 12.5 which is not in attainment with the numerical threshold rating. The project will include update architecture with board and batten siding and colors and materials that will improve the appearance of the structure to be modified and expanded. The height of the 20 foot 10 inch building will not increase. The three eight foot by 40 foot storage containers are eight feet six inches high and will be oriented in an “L” shape at the rear of the southern parking lot and will include roll-up doors and will be painted an earthtone color to ensure they will blend and not contrast with the surrounding landscape. The project includes new landscaping that will enhance the appearance of the site and help to screen the two large parking areas visible form the scenic roadway. Existing and new signage will be brought into conformance with Chapter 38 of the TRPA Code of Ordinances. Increased landscaping and signage improvements are both identified in the TRPA Scenic Quality Improvement Program as recommendations for improving scenic quality along the roadway unit.
- F. Traffic and Air Quality: The applicant prepared an air quality and traffic study. The previous project approved by TRPA for the bike rental concession generated 90 daily vehicle trip ends (dvte). An additional 304 dvte will be generated with the high-turnover sit-down restaurant and

therefore a total of 394 dvte will be generated by the proposed project. No project modifications or roadway improvements were recommended by the traffic study however, the new additional dvte will require the payment of a \$11,004.80 air quality mitigation fee. Daily peak day VMT generated by the project will increase by 403 miles which is an 0.02 increase over regional VMT and is not considered a significant impact.

G. Required Findings: The following is a list of the required findings as set forth in Chapters 4, 30 and 33 of the TRPA Code of Ordinances. Following each finding, agency staff has briefly summarized the evidence on which the finding can be made.

1. Chapter 4 – Required Findings:

- (a) 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.

The project area is located within the Ponderosa Ranch Community Plan (PRCP), Special Area 1, where outdoor amusements are a special use and eating and drinking places are an allowed use. Policy PRCP 2.1 states “Improve and upgrade the Ponderosa Ranch” and the listed improvements include landscaping the parking lots and bringing signage into conformance with the TRPA Code. The project is consistent with Policy PRCP 2.1 and will help implement the Scenic Quality Improvement Program by incorporating new landscaping between the scenic corridor and the parking lots and new signage. Proposed parking conforms to the Signage, Parking and Design Standards and Guidelines for the Community Plans of Washoe County. The project will included updated architecture and water quality Best Management Practices and there is no evidence the proposed project will have an adverse effect on the Land Use, Transportation, Conservation, Recreation, Scenic Quality, Public Service and Facilities, or Implementation sub-elements of the Regional Plan. The project, as conditioned, will not adversely affect the implementation of any applicable elements of the Regional Plan.

- (b) 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 Section 4.4.2 of the TRPA Code of Ordinances and incorporates the checklist into this analysis. All responses contained in the project indicate compliance with the environmental threshold carrying capacities. In addition, the applicant has completed an Initial Environmental Checklist (IEC), which is hereby incorporated into this analysis. 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 offices.

- (c) 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 TPRA Compact, the project meets or exceeds such standards.

The project, as conditioned, will not have an adverse impact on applicable air and water quality standards for the Region. The project includes the installation of permanent water quality BMPs and payment of a \$11,004.80 air quality mitigation fee.

2. Chapter 30 – Relocation of TRPA Verified Land Coverage

- (a) The relocation of land coverage is to an equal or superior portion of the parcel or project area.

Only verified existing land coverage will be relocated within high capability areas of the site to facilitate construction of parking and vehicle and pedestrian access. No trees will be removed as a result of the coverage relocation.

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

The original location for the land coverage to be relocated will be revegetated and restored with appropriate species from the TRPA approved Plant Species List and will be consistent with Subsection 30.5.3. of the TRPA Code of Ordinances. Some areas where land coverage will be removed will be converted to water quality BMPs.

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

All land coverage to be relocated from a Class 6 area to a Class 6 area.

3. Chapter 33 – Grading and Construction

- (a) A soils/hydrologic report prepared by a qualified professional, which proposed content and methodology has been reviewed and approved in advance by TRPA, demonstrates that no interference or interception of groundwater will occur as a result of the excavation.

A soils/hydrologic report which concluded there will be no interference or interception of groundwater as a result of the excavation was reviewed and approved by TRPA. The maximum depth of excavation is eight feet, which is above the 15 foot maximum depth of excavation approved by TRPA (see file LCAP2017-0031).

- (b) The excavation is designed such that no damage occurs to mature trees, except where tree removal is allowed pursuant to subsection 33.6.5 of the TRPA Code of Ordinances.

There are no trees in close proximity to the proposed excavation that could be damaged by the excavation.

- (c) Excavated material is disposed of pursuant to subsection 33.3.4 of the TRPA Code of Ordinances.

A condition of approval requires that all excavated materials be hauled away from the site to a legally acceptable location.

- H. Required Actions: Staff recommends that the Hearings Officer take the following actions:
- I. Approve the findings contained in this staff summary, and a finding of no significant environmental effect.
 - II. Approve the project, based on the staff summary, and record evidence, subject to the conditions contained in the attached Draft TRPA Permit (Attachment A).

Contact Information: For questions regarding this project please contact Wendy Jepson, Current Planning Manager at (775) 589-5269 or wjepson@trpa.org.

Attachments:

- A. Draft Permit
- B. Project Plans

Attachment A

Draft Permit

**ATTACHMENT A
Draft Permit**

PROJECT DESCRIPTION: Commercial Modification/Addition APNs: 130-311-06 & 07
PERMITTEE: Tunnel Creek Properties LLC FILE #: ERSP2017-0743
COUNTY/LOCATION: Washoe / 1115, 1125 & 1133 Tunnel Creek Road, Incline Village

Having made the findings required by Agency ordinances and rules, the TRPA Hearings Officer approved the project on arch **March 29, 2018**, subject to the standard conditions of approval attached hereto (Attachments Q) and the special conditions found in this permit.

This permit shall expire on **March 29, 2021**, 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 *DEMOLITION*, TREE REMOVAL, 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

PERMITTEES' 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 130-311-06 & 07
FILE NO. ERSP2017-0743**

**SECURITY AND MITIGATION FEE
INFORMATION**

Air Quality Mitigation Fee (1): Amount \$11,004.80 Paid ____ Receipt No. ____

Excess Coverage Mitigation Fee (2): Amount \$ ____ Paid ____ Receipt No. ____

Project Security (3): Amount \$5,000.00 Type ____ Posted ____ Receipt No. ____

Security Administration Fee (4): Amount \$ ____ Posted ____ Receipt No. ____

Notes:

(1) See Special Condition 3.C, below.

(2) See Special Condition 3.E, below.

(3) See Special Condition 3.D, below.

(4) \$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-acknowledgement conditions of approval as of this date:

TRPA Executive Director/Designee

Date

SPECIAL CONDITIONS

1. This permit authorizes a 1,848 square foot addition to an existing 1,328 square foot commercial building known as the Tunnel Creek Café in Incline Village Nevada. The addition will expand sitting, cooking and storage areas and includes a second floor deck that will be used for outdoor dining and is considered commercial floor area. Existing coverage will be relocated to accommodate for additional parking and a second driveway access to Tunnel Creek Road. The project also involves the addition of three 320 square foot steel storage containers that will be used for the Flume Trail Bikes rental concession. The maximum depth of excavation shall not exceed 8 feet below ground level. One 36" dbh tree is authorized to be removed.
2. The Standard Conditions of Approval listed in Attachment Q shall apply to this permit.
3. Prior to permit acknowledgement, the following conditions of approval must be satisfied:
 - A. The site plan shall be revised to include the following land coverage calculations:
 - (1) Total verified land coverage per previous TRPA land coverage verifications = 56,026 square feet.

- (2) Parking lot and stormwater runoff conveyance structure elevation details (Sheet C2) that ensure runoff from the parking area to the north is adequately conveyed to Pond 1. The existing stormwater runoff conveyance structure will need to be modified to ensure runoff is adequately conveyed to Pond 1.
 - (3) A note indicating that all unpaved areas shall be mulched and protected from future disturbance with a fence or parking barriers and that parking of vehicles and storage of equipment on unpaved areas is prohibited.
 - (4) Designated snow storage areas that conform to the Signage, Parking and Design Standards and Guidelines for the Community Plans of Washoe County.
 - (5) A note indicating that all electrical lines will be placed underground.
 - (6) Identification of the species and sizes of the two trees located approximately 15 to 20 feet south of the existing building that are to be retained.
 - (7) Identification on all plan sheets of tree to be removed adjacent to parking area entry apron.
- B. The permittee shall submit calculations demonstrating the proposed Best Management Practices are sized accordingly for the slope and soil type of the property and will capture and infiltrate a 20 year/1 hour storm event using the updated spread sheet available at www.tahoebmp.org.
- C. The permittee shall submit a \$11,004.80 air quality mitigation fee. This fee is based on the addition of 304 daily vehicle trip ends at \$36.20/trip.
- D. The Security required under Stand Condition I.2 of Attachment Q shall be \$5,000.00. Please see Attachment J, for accepted methods of positing the security.
- E. The affected property has approximately 30,638 square feet of excess land 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) 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 .0325% (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 \$20.00 per square foot for projects within Hydrologic Transfer 1 (Incline). 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.

- F. The permittee shall provide evidence that a TRPA approved project area deed restriction which permanently assures that the three parcels shall be treated as one parcel for the purposes of land coverage calculations has been recorded in Washoe County.
- G. The permittee shall submit a projected construction completion schedule with completion dates for installation of temporary BMPs installation and winterization of the site prior to October 15 of each year of construction.
- H. The permittee shall provide evidence that 2,801 square feet of commercial floor area has been transferred to the property.
- I. The permittee shall submit an exterior lighting plan and lighting fixture specifications that conform to the Signage, Parking and Design Standards and Guidelines for the Community Plans of Washoe County.
- J. The permittee shall provide evidence that all basic service requirements for minimum fire flow will be met or exceeded in accordance with Section 32.4.A., Table 32.4.2-1 of the TRPA Code. Final plans shall show approval from the applicable fire district.
- K. A BMP INSPECTION AND MAINTENANCE PLAN shall be submitted detailing necessary maintenance activity and schedules for all BMPs installed on the property. All BMPs shall be maintained subject to the INSPECTION AND MAINTENANCE PLAN approved as part of this permit. All maintenance activities shall be recorded in a corresponding maintenance log. This log shall be maintained for the life of the property and made available for inspection by TRPA staff. If this log is not complete, TRPA will assume that maintenance has not been performed and reserves the right to revoke the BMP Certificate of Completion.
- L. Final color and material samples shall be submitted for review and approval. Color and material samples shall be comprised of earthtone colors that ensure the structure will blend with the natural surrounding landscape.
- M. The permittee shall submit a Dust Control Plan to be implemented during construction.

- N. A final landscape and irrigation plan shall be submitted for review and approval that conforms to the Signage, Parking and Design Standards and Guidelines for the Community Plans of Washoe County.
 - O. The permittee shall submit three sets of final plans.
4. Temporary Best Management Practices (BMPs) are to be installed prior to excavation and maintained during all phases of the proposed project.
 5. No signage is approved as a part of this permit. All new signage requires submission of a separate sign application to TRPA.
 6. Excavation equipment is limited to approved construction areas to minimize site disturbance. No grading, excavation, storage or other construction related activities shall occur outside the area of disturbance.
 7. Excavations are limited to 8 feet below ground surface pursuant to the TRPA Groundwater Investigation approval (see LCAP2017-0031).
 8. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal.
 9. Any normal construction activities creating noise in excess to the TRPA noise standards shall be considered exempt from said standards provided all such work is conducted between the hours of 8:00 A.M. and 6:30 P.M.
 10. The permittee is responsible for ensuring that the project, as built, does not exceed the approved land coverage figures shown on the site plan. The approved land coverage figures shall supersede scaled drawings when discrepancies occur.
 11. Construction and use of on-site concrete washout facilities is prohibited unless approved in advance, in writing, by the TRPA Environmental Compliance Inspector.
 12. This site shall be winterized in accordance with the provisions of Attachment Q by October 15th of each construction season.
 13. Grading is prohibited any time of the year during periods of precipitation and for the resulting period of time when the site is covered with snow, or is in a saturated, muddy, or unstable condition.
 14. All Best Management Practices shall be maintained in perpetuity to ensure effectiveness which may require BMPs to be periodically reinstalled or replaced.
 15. Any change to the project requires approval (except for TRPA exempt activities) of a TRPA plan revision permit prior to the changes being made to any element of the project (i.e. structural modifications, grading, BMPs, etc.). Failure to obtain prior approval for modifications may result in monetary penalties.

16. Temporary and permanent BMPs may be field-fit as appropriate by the TRPA inspector. Parking barriers may be required at discretion of the inspector.
17. All excavated materials shall be hauled away from the site to a legally acceptable location. No fills or recontouring, other than backfill for the cut-retaining structures, is allowed.
18. Blasting of rocks should be kept to an absolute minimum to avoid damage to surrounding rocks and vegetation.
19. The permittee shall provide photographs to the TRPA Compliance Inspector taken during construction that demonstrate any subsurface BMPs or trenching and backfilling proposed on the project have been constructed correctly (depth, fill material, etc.).
19. The permittee is responsible for insuring that the project, as built, does not exceed the approved land coverage figures shown on the site plan. The approved land coverage figures shall supersede scaled drawings when discrepancies occur.
20. 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 the 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. TRPA will have the sole and exclusive control (including the right to be represented by attorneys of TRPA's choosing) over the defense of any claims against TRPA and over their settlement, compromise or other disposition. 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.

21. This approval is based on the Permittee's representation that all plans and information contained in the subject application are true and correct. Should any information or representation submitted in connection with the project application be incorrect or untrue, TRPA may rescind this approval, or take other appropriate action.

END OF PERMIT

Attachment B

Project Plans