

COMMERCIAL PROJECT FINDINGS

I. INTRODUCTION & PURPOSE OF THIS DOCUMENT

The Tahoe Regional Planning Compact requires TRPA to make findings before taking certain actions, including approval of projects. In addition, the Regional Plan package, including the Goals and Polices, Code of Ordinances, and Plan Area Statements, set forth other findings that must be made. This document is intended to assist applicants in locating and making the required findings for their specific project. Written findings rationale is an application checklist item, meaning findings are required at time of application submittal.

II. HOW TO USE THIS DOCUMENT

This document lists all required findings for linear public service and public service projects, organized by Code chapter and subsection. The applicant must read through the findings (Section IV in this document) to determine which pertain to their specific project. Not all findings will be applicable to every project. It is suggested to copy and paste the applicable findings into a separate document and provide a written response and rationale for making the findings beneath. Examples are provided in Section III of this document. The rationale must include a detailed explanation of how the project meets the required finding. Simply restating the finding is not acceptable.

III. SAMPLE FINDINGS

Finding 22.7 The impacts of the coverage and disturbance are fully mitigated through means including, but not limited to, the following:

- i. Application of best management practices; and
- ii. Restoration, in accordance with Section 22.7.3, of land in Land Capability Districts 1a, 1c, 2, and 3 in the amount of 1.5 times the area of land in such districts coverage or disturbed for the project beyond that permitted by the coefficients in Subsection 30.4

<u>Rationale:</u>	Temporary best management practices (BMPs) will be implemented during construction including sediment barriers and vegetation protection fencing. Permanent BMPs will include revegetation over the entire area disturbed by the project. The project is not adding coverage or new disturbance to the area. Therefore, it is not required to provide 1.5 times the amount of restoration needed. This project will be restoring the proposed disturbed area on a 1 to 1 basis.
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Finding 37.7.1: 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. 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 as set forth in subsection 66.3.7. Additional Visual Magnitude, or Appendix H, Visual Assessment Tool, of the Design Review Guidelines.

Rationale:

The Property is visible from a distance of 300 feet from the highwater mark of Lake Tahoe. The additional height will not cause any part of the building to extend above the forest canopy or any ridgeline as shown in the attached photo. The photo is marked with the proposed height of the addition and clearly shows the forest canopy to be higher than the proposed building addition. The property is not located on a ridgeline. The project proposed additional height for a 5:12 pitch greater than that specified in Table A. A Visual Magnitude analysis was completed for this project and is not increased beyond that permitted for the structures on the shoreland as set forth in subparagraph 30.15.E. See attached visual magnitude analysis.

Finding 30.4.4.A

The relocation is to an equal or superior portion of the parcel.

Rationale:

The project area has been verified as Land Capability Classes 1b, 4, and 5. Coverage relocation will occur within the Class 1b district with a net reduction due to coverage retirement mitigation requirements. The proposed project will consolidate coverage in the areas adjacent to the buildings. No coverage will be relocated from Class 4 or Class 5 into Class 1b.

IV. FINDINGS FOR COMMERCIAL PROJECTS

Chapter 2: Buildings Damaged or Destroyed by Fire or Similar Calamity

Finding 2.2.3.C

The proposed project could not have a significant effect on the environment and a finding of no significant effect shall be prepared in accordance with Rules of procedure Section 6.6.

Chapter 3: Environmental Documentation

Finding 3.2.2.A

The proposed project could not have a significant effect on the environment and a finding of no significant effect shall be prepared in accordance with Rules of procedure Section 6.6.

Finding 3.2.2.B

The project could have a significant effect on the environment but, due to the listed mitigation measures that have been added to the project, the project could have no significant effect on the environment and a mitigated findings of no significant effect shall be prepared in accordance with Rules of Procedure Section 6.7

Finding 3.2.2.C

The proposed project may have a significant effect on the environment and an environmental impact statement shall be prepared in accordance with this chapter and Rules of procedure, Article 6.

Chapter 4: Required Findings

Finding 4.4.1.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.

Finding 4.4.1.B: The project will not cause the environmental threshold carrying capacities to be exceeded.

Finding 4.4.1.C: Wherever federal, state, or local air and water quality standards apply for the region, the strictest standards shall be attained, maintained, or exceeded pursuant to Article V (d) of the Tahoe Regional Planning Compact.

Chapter 21: Permissible Uses

Finding 21.2.2.A: The project to which the use pertains is of such a nature, scale, density, intensity, and type to be an appropriate use for the parcel on which and surrounding area in which it will be located.

Finding 21.2.2.B: 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 the surrounding property owners; and

Finding 21.2.2.C: The project which the use pertains will not change the character of the neighborhood, or detrimentally affect or alter the purpose of the applicable planning area statement, community plan, and specific or master plan, as the case may be.

21.5.2 Nonconforming Uses

Finding 21.5.2.C Uses identified as nonconforming shall not be expanded intensified beyond the use existing on the effective date of the Regional Plan. A nonconforming use may not be changed unless the new use conforms to the use regulations set forth in the Code. Expansions of structures containing a nonconforming use shall not be permitted. Modifications may be permitted only when TRPA finds that the modifications do not increase the extent of nonconformity. Such approval shall occur through direct TRPA review, through the conformance review process for Area Plans, or through Memoranda of Understanding with public agencies.

Chapter 30: Land Coverage

30.4.4 Relocation of TRPA-Verified Existing Land Coverage

Finding 30.4.4.A The relocation is to an equal or superior portion of the parcel or project area, as determined by references to the following factors:

1. Whether the area of relocation already has been disturbed

2. The slope of and natural vegetation on the area of relocation
3. The fragility of the soil on the area of relocation
4. Whether the area of relocation appropriately fits 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
6. The project otherwise complies with the land coverage mitigation program set forth in section 30.6

Finding 30.4.4.B The area from which the land coverage was removed for relocation is restored in accordance with Subsection 30.5.3.

Finding 30.4.4.C. The relocation is not to Land Capability Districts 1a, 1b, 1c, 2, or 3 from any higher numbered land capability district.

Finding 30.4.4.D.1 If the relocation from one portion of a stream environment zone to another portion, there is a net environmental benefit to the stream environment zone.

Finding 30.4.4.D.2 Retirement of land coverage in the affected stream environment zone in the amount of 1.5:1 of the amount of land coverage being relocated within a stream environment zone; or

Finding 30.4.4.D.3 For projects involving the relocation of more than 1,000 square feet of land coverage within a stream environment zone, a finding, based on a report prepared by a qualified professional, that the relocation will improve the functioning of the stream environment zone and will not negatively affect the quality of existing habitats.

30.5.2 Exceptions to Prohibition in Land Capability District 1b (Stream Environment Zone)

Finding 30.5.2.A Stream Crossings. Land coverage and disturbance for projects to provide access across stream environment zones to otherwise buildable sites, if such projects otherwise comply with applicable development standards in Chapter 32: *Basic Services*, may be permitted in Land Capability District 1b (Stream Environment Zone) if TRPA finds that:

1. There is no reasonable alternative, including relocation, that avoids or reduces the extent of encroachment in the stream environment zone, or that encroachment shall be necessary to reach the building site recommended by IPES; and
2. The impacts of the land coverage and disturbance are fully mitigated in the manner set forth in subparagraph 30.5.1.B.5, with the exception that the restoration requirement in such subsection shall apply exclusively to stream environment zone lands and shall include coverage and disturbance within the permitted Bailey coefficients.

30.6 Excess Land Coverage Mitigation Program

Finding 30.6.1.B.5

Projects Within Community Plans

Projects that are located within an adopted community plan may rely on the community plan to mitigate excess land coverage provided TRPA makes findings a and b, below. In lieu of findings a and b being made, TRPA may determine that a project complies with the requirements of this subparagraph by making finding c, below:

- a. The project is located within an area for which a community plan, as originally adopted or subsequently amended, includes a program to mitigate the excess land coverage within the area. Such a program shall ensure that coverage mitigation, when measured for individual parcels affected by the program, meets the standards set forth in subparagraphs 30.6.1.A through C. The options available for mitigating excess land coverage under any such program shall be any combination of those options set forth in subparagraphs 1, 2, 3, or 4 above.
- b. There is an irrevocable commitment for the funding necessary to implement the program for mitigating excess land coverage. For purposes of this subparagraph, “irrevocable commitment” shall mean the following:
 - i. The public entity funding the measure or, when necessary, the electorate has made all discretionary decisions required for the issuance of the bonded indebtedness under applicable state law and that only ministerial acts necessary to the issuance of any such bonded indebtedness and the receipt of funds therefrom remain to be completed. Any such funds shall be finally committed to, and available for, expenditure;
 - ii. The application for state and federal grant monies has received approval, and such grant monies are included in a duly enacted state budget or a legislative appropriation or federal authorization and appropriation. Any such funds shall be finally committed to, and available for, expenditure for the excess land coverage mitigation program in accordance with the approved community plan;
 - iii. Where the funding of the program is the responsibility of a person or persons, TRPA shall ensure that the public entity has received sufficient funds or an acceptable security to fully fund the program;
 - iv. The public entity funding the program has received a funded commitment from another public entity as described in a or b above; or
 - v. Any combination of (i) through (iv) above.
- c. As a condition of approval, the permittee for the project shall post a security with TRPA, in accordance with Section 5.9, in an amount equal to the excess coverage mitigation fee otherwise required under Section 30.6. If a program to mitigate excess land coverage within the community

plan has not been adopted by TRPA and an irrevocable commitment made by the time of final inspection of the project by TRPA, or three years after commencement of construction, whichever is sooner, the security shall be forfeited to TRPA. Securities forfeited to TRPA under this subparagraph shall be forwarded to a land bank to provide land coverage reduction.

Chapter 33: Grading and Construction

33.3.6

Excavation Limitations

Finding 33.3.6.2

TRPA may approve exceptions to the prohibition of groundwater interception or interference if TRPA finds that:

- a. Excavation is required by the International Building Code (IBC) or local building code for minimum depth below natural ground for above ground structures;
- b. Retaining walls are necessary to stabilize an existing unstable cut or fill slope;
- c. Drainage structures are necessary to protect the structural integrity of an existing structure;
- d. It is necessary for the public safety and health;
- e. It is a necessary measure for the protection or improvement of water quality;
- f. It is for a water well;
- g. There are no feasible alternatives for locating mechanical equipment, and measures are included in the project to prevent groundwater from leaving the project area as surface flow, and any groundwater that is interfered with is rerouted in the ground water flow to avoid adverse impacts to riparian vegetation;
- h. It is necessary to provide two off-street parking spaces, there is no less environmentally harmful alternative, and measures are taken to prevent groundwater from leaving the project area as surface flow;
- i. It is necessary to provide below grade parking for projects that qualify for additional height under subsection 37.5.4 or 37.5.9 to achieve environmental goals, including scenic improvements, land coverage reduction, and area-wide drainage systems. Measures shall also be included in the project to prevent ground water from leaving the project area as surface flow and that any groundwater that is interfered with is rerouted into the groundwater flow to avoid adverse impacts to hydrologic conditions, SEZ vegetation, and mature trees; or
- j. It is necessary for a marina expansion approved pursuant to Chapter 14: *Specific and Master Plans*; and the environmental documentation demonstrates that there will be no adverse effect on water quality.

Chapter 34: Driveway and Parking Standards

34.3

Driveways

Finding 34.3.2.B:

In the application of subsection 34.3.3 through 34.3.5, inclusive, TRPA shall encourage shared driveways if TRPA finds that the effect is equal or superior to the effect of separate driveways.

Finding 34.3.2.E:

Slopes of driveways shall not exceed the standards of the county or city in whose jurisdiction the driveway is located. Driveways shall not exceed ten percent slope, unless TRPA finds that the construction of a driveway with a ten percent or less slope would require excessive excavation and that the runoff from a steeper driveway shall be infiltrated as requires in Section 60.4, In no case shall the driveway exceed 15 percent slope.

Chapter 35: Natural Hazard Standards

35.5.4.2

Prohibition of Additional Development, Grading, and Filing of Lands Within the 100-Year Floodplain

Finding 35.4.2.C

Floodplain Crossing

TRPA may permit projects to effect access across a 100-year floodplain to otherwise buildable sites if such projects comply with applicable development standards in Chapter 32: *Basic Services*, and if TRPA finds that:

1. There is no reasonable alternative that avoids or reduces the extent of encroachment in the floodplain; and
2. The impacts on the floodplain are minimized.

Chapter 37: Height

37.5

Additional Height for Certain Buildings

Finding 37.5.2

Additional Building Height for Public Service, Tourist Accommodation, and Certain Recreation Buildings

TRPA may approve building heights greater than those set forth in Section 37.4 for buildings whose primary use is public service, tourist accommodation, or certain recreation uses as follows:

Finding 1: 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. 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 as set forth in subsection 66.3.7. Additional Visual Magnitude, or Appendix H, Visual Assessment Tool, of the Design Review Guidelines.

Finding 2: When outside a community plan, the additional height is consistent with the surrounding uses.

Finding 3: With respect to that portion of the building that is permitted the additional

height, the building has been designed to minimize interference with existing views within the area to the extent practicable.

Finding 4: The function of the structure requires a greater maximum height than otherwise provided for in this chapter.

Finding 37.5.3

Additional Height for Tourist Accommodation Buildings Within Community Plan Areas

In addition to the provisions set forth in subsection 37.5.2, TRPA may approve building heights greater than those set forth in Section 37.4 for buildings whose primary use is tourist accommodation and that are located within an approved community plan as set forth in Chapter 12: *Community Plans*. The maximum heights specified in Table 37.4.1-1 may be increased up to a maximum height of 48 feet in accordance with the following provisions, if TRPA makes findings 1, 2, 3, and 6 in Section 37.7.

Finding 37.5.4

Additional Building Height for Special Height Districts

TRPA may designate special height districts as specified below. These special height districts shall be limited to areas that are within both a TRPA-adopted redevelopment plan and a TRPA-adopted community plan. The boundaries of the special height districts and special standards for the district shall be included in the applicable redevelopment plan.

A. Specification of Special Height Districts

Special height districts may be specified in adopted redevelopment plans if TRPA makes finding 11 of Section 37.7.

B. Findings for Establishing Maximum Allowable Building Heights Within Special Height Districts

In order to establish maximum allowable building heights within special height districts, TRPA shall make finding 12 of Section 37.7.

Prior to approving additional building height for a project within a special height district TRPA shall make findings 1, 3, 5, 6, and 9 of Section 37.7.

Finding 37.5.7

Additional Height for Special Projects within the North Stateline Community Plan

General Requirements

1. TRPA may designate additional height for special projects that are located within the TRPA approved North Stateline Community Plan, and are designated through Resolution 2008-11 to be Special Projects pursuant to subparagraph 50.6.4.D as specified below.
2. The maximum height shall be 75 feet or three-fourths of the maximum height of the tallest trees within the project area, whichever is lower. TRPA shall determine the height of the tallest trees within the project area based on a tree survey provided by the applicant.
3. The area proposed for additional height shall be located on the mountain side of

State Route 28 within the North Stateline Community Plan boundary. Additional height available under this Code subsection shall not be available on lake side of SR 28.

4. Additional height may be specified within the North Stateline Community Plan subject to finding 15 in subsection 37.7.15.

37.6 Height Standards for Structures Other than Buildings

Finding 37.6.2 Additional Height for Certain Structures

The maximum height specified in subsection 37.6.1 may be increased for communication towers, antennas, utility poles, special features of public safety facilities, ski lift towers, wind turbines/renewable power facilities, and other similar projects, excluding buildings and signs, up to the minimum height necessary to feasibly implement such projects. Additional height may be approved under the provisions of this subsection if TRPA makes findings 4 and 7 as set forth in Section 37.7.

Finding 4: The function of the structure requires a greater maximum height than otherwise provided for in this chapter.

Finding 7: The additional building height is the minimum necessary to feasibly implement the project and there are no feasible alternatives requiring less additional height.

37.7 Findings for Additional Building Height

Finding 37.7.1 Finding 1

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. 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 as set forth in subsection 66.3.7, Additional Visual Magnitude, or Appendix H, Visual Assessment Tool, of the Design Review Guidelines.

Finding 37.7.2 Finding 2

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

Finding 37.7.3 Finding 3

With respect to that portion of the building that is permitted the additional height, the building has been designed to minimize interference with existing views within the area to the extent practicable.

Finding 37.7.4 Finding 4

The function of the structure requires a greater maximum height than otherwise provided for in this chapter.

Finding 37.7.5

Finding 5

The portion of the building that is permitted additional building height is adequately screened, as seen from major arterials, the waters of lakes, and other public areas from which the building is frequently viewed. In determining the adequacy of screening, consideration shall be given to the degree to which a combination of the following features causes the building to blend or merge with the background.

A. The horizontal distance from which the building is viewed;

B. The extent of screening; and

C. Proposed exterior colors and building materials.

Finding 37.7.6

Finding 6

The building that is permitted additional building height is located within an approved community plan or Ski Area Master Plan that identifies the project area as being suitable for the additional height being proposed.

Finding 37.7.7

Finding 7

The additional building height is the minimum necessary to feasibly implement the project and there are no feasible alternatives requiring less additional height.

Finding 37.7.8

Finding 8

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. This standard shall not apply to an architectural feature described as a prow.

Finding 37.7.9

Finding 9

When viewed from a TRPA scenic threshold travel route, the additional building height granted a building or structure shall not result in the net loss of views to a scenic resource identified in the 1982 Lake Tahoe Basin Scenic Resource Inventory. TRPA shall specify the method used to evaluate potential view loss.

Finding 37.7.10

Finding 10

The building is no more than two stories above grade (excluding basement) in height.

Finding 37.7.11

Finding 11 (Specification of Special Height Districts in Adopted Redevelopment Plans)

Special height districts may be specified in adopted redevelopment plans if TRPA makes the following findings:

- A. The area is within 2,300 feet of the center point of three or more buildings exceeding the height of 150 feet;
- B. The special height district provides a transition of height from the high-rise area to the surrounding area of lower permissible heights;
- C. The projects within the special height district utilize transit/pedestrian-oriented development principles including, but not limited to, major transit facilities, sidewalks, limited parking, mixed uses, high densities, use of alleys, and pedestrian oriented commercial opportunities; and
- D. The special height district is consistent with Policy 1.B, Goal 2, Community Design Sub element, Land Use Element, of the TRPA Goals and Policies Plan and the TRPA Scenic Quality Improvement Program.

Finding 37.7.12

Finding 12 (Establishing Maximum Allowable Building Heights Within Special Height Districts)

In order to establish maximum allowable building heights within special height districts, TRPA shall make the following finding:

- A. The maximum building height within a special height district is limited to 73 feet, or three-fourths of the maximum height of the tallest trees within the special height district, whichever is lower. TRPA shall determine the height of the tallest trees within a special height district.

Finding 37.7.13

Finding 13 (Additional Height for View Enhancement)

1. The view enhancement is provided in the same threshold roadway travel route as the project in which the building using the additional height is located;
2. For views of the natural landscape and views of major visual features, no building or structure greater than five feet in height is closer than 100 feet from the viewpoint to the resource;
3. For view enhancements of views of Lake Tahoe, no building or structure exists between the viewpoint and Lake Tahoe;
4. For the purposes of creating a view enhancement, TRPA shall find, in addition to the findings in subparagraphs A, B, and C above, that the created view is available for a continuous distance of at least 200 feet as seen from the threshold roadway travel route; and
5. For the purposes of enhancing an existing view, TRPA shall find in addition to the findings in subparagraphs A, B, and C above, that the enhanced view is provided in the same general location as the existing view, is of the same resource as the existing view, and adds at least 30 percent to the existing view.

Finding 37.7.14

Finding 14 (Additional Building Height for Affordable Housing Projects)

- A. The project shall meet findings 1, 3, 6, 8, and 9 in Section 37.7;
- B. The additional height is required because of the increase in density permitted by subsection 31.4.1;
- C. The project meets the Kings Beach Commercial Community Plan improvement requirements and special policies of the Special Area; and
- D. The project meets the security requirements of subparagraph 37.5.4.E.

Chapter 61: Vegetation and Forest Health

61.1.4

Old Growth Enhancement and Protection

Finding 61.1.5.B

Before tree-related projects and activities are approved by TRPA, TRPA shall find, based on a report from a qualified forester, that the project or activity is consistent with this chapter and the Code. TRPA may delegate permit issuance to a federal, state, or other qualified agency through a memorandum of understanding.

Finding 61.1.7.G

Tree Removal for Solar Access

TRPA may approve the removal of healthy trees provided TRPA finds that the trees unreasonably impede the operation of a solar energy system and that the solar energy system is properly located so as to minimize the need for tree removal.

Chapter 67: Historic Resource protection

67.7

Projects Relating to Historic Resources

Finding 67.7.3

Demolition

Historic resources shall not be demolished, disturbed, or removed unless TRPA finds that:

- A. The action will not be detrimental to the historic significance of the resource;
- B. The action is pursuant to a recovery plan approved by the applicable state historic preservation officer; or
- C. It is the only feasible alternative to protect the health and safety of the public.

Finding 67.7.4:

Construction, reconstruction, repair, and maintenance of historic resources shall be in accordance with the U.S. Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

67.8

Exceptions for Historical Structures and Districts: To encourage the protection, maintenance, or rebuilding of sites, structures, or districts designated as a

historic resource, TRPA may grant exceptions to certain provisions of this Code to allow reconstruction or repairs.

Finding 67.8.1

Exceptions may be granted if TRPA finds that:

- A. The site, structure, or district is designated as a historic resource; and
- B. The reconstruction, modification, or repair is in the public interest.