

ORIGINAL

MEMORANDUM OF UNDERSTANDING BETWEEN the TAHOE REGIONAL PLANNING AGENCY and EL DORADO COUNTY

This Memorandum of Understanding (MOU) is entered between the Tahoe Regional Planning Agency (TRPA) and El Dorado County, herein referred to as "Public Entity." TRPA's authority to enter into this MOU with the Public Entity rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 13.7 of the TRPA Code of Ordinances ("Code"). The Public Entity is authorized to enter into this MOU through its Board of Supervisors.

PART 1 – GENERAL PROVISIONS

COMMON OBJECTIVES

TRPA and the Public Entity (the "Parties") have a common objective to conserve the resources of the Lake Tahoe Region, achieve and maintain TRPA's nine environmental threshold carrying capacities and enhance the effectiveness of government through the efficient implementation of the TRPA Regional Plan, Area Plans and other regulations.

TERM OF AGREEMENT

This MOU is effective upon the signing of Attachment "A" by the Parties and shall remain in effect until terminated without cause by either party following a 60-day notice in writing. The Public Entity and TRPA will prepare and agree to procedural guidelines prior to implementing this MOU.

DEFINITION OF TERMS

Terms in this MOU shall have the same meaning as they do in the TRPA Code.

INTERPRETATION AND SEVERABILITY

The provisions of this MOU are subject to the interpretation and severability provisions of Section 1.6 of the TRPA Code.

DISTRIBUTION OF FUNCTIONS

The Scope of Activities to be authorized by TRPA for delegation under this MOU are described in Attachment B (Table of Delegated Activities within Area Plans) and Attachment C (Table of Delegated Activities within El Dorado County Outside of Area Plans).

DELEGATED ACTIVITIES

TRPA will delegate, and the Public Entity will assume official responsibility for, the Activities in Attachment B and C based on the following Schedule and subject to the following Requirements:

Schedule

1. Activities 1-9 in Attachment B and Attachment C: These are currently permitted by the Public Entity under an existing MOU and will continue to be Delegated Activities upon execution of this MOU.
2. Activities 10 – 20 in Attachment B and Attachment C: The Public Entity anticipates a request to TRPA for delegation of review and approval of these Activities within one year of adoption of the MOU.
3. Activities 21 – 29 in Attachment B and Activity 21 in Attachment C: The Public Entity anticipates a request to TRPA for delegation of review and approval of these remaining Activities listed in Attachment B and C, in part or in whole, over the term of the MOU.

Requirements

1. Except for those Activities identified in Section 1 of the Schedule, the Public Entity will not be delegated review and approval of those remaining Activities set forth above and in Attachments B and C until training has been completed, the MOU has been signed specifically, and the Public Entity liaison has identified in writing the specific Activities in Attachments B and C to be delegated and indicated in writing the specific date on which the Public Entity will assume responsibility for reviewing and approving those specific Activities
2. All delegated Activities in Attachments B and C shall be reviewed and approved by the Public Entity in accordance with the TRPA Regional Plan and Code of Ordinances.

Activities in Attachment B may be delegated to El Dorado County for future Area Plans found to be in conformance with the Regional Plan by the TRPA Governing Board following the adoption of this MOU.

Attachments B and C of this MOU will supersede and replace the following existing delegation MOUs currently under the responsibility of the Public Entity:

- Appendix W – (Single- and Multi-Family Development) (1992)
- Appendix JJ (Tourist, Public Service, Multi-person

Residential, Verifications, et.al.) (2000)
Permitting authority for delegated Activities described in Attachments B and C shall not be in effect until the specific date that Public Entity has taken responsibility for Attachments B and C as described in "Distribution of Functions" above. The following existing exempt activity MOU will not be affected by this new MOU:

- Appendix Z - MOU for Public Works (1993)

CONFORMANCE REVIEW

In accordance with Section 13.8.3 of the TRPA Code of Ordinances, TRPA shall annually select and review a sample of permits issued under Attachments B and C of this MOU in order to certify that the permits are being issued in conformance with the Area Plan.

COMMUNICATION

The Parties shall each designate a liaison for direct communication of matters related to this MOU. The Public Entity liaison and the TRPA MOU Coordinator shall meet at least quarterly to review this MOU and to establish policy directives, training needs, and renew communications.

TRAINING

TRPA shall provide initial and ongoing training at no cost to the Public Entity regarding the provisions of this MOU. Training shall be provided for matters affecting this MOU, as determined by MOU liaisons, which may include but is not limited to: changes to the TRPA Code and Regional Plan; policy or procedural changes; and training needed for corrective actions or to clarify MOU provisions. TRPA and Public Entity are dedicated to providing mutual support in all matters related to activities described in this MOU, and shall respond to requests for support in a timely manner.

In order to ensure consistent application of TRPA Code basin-wide, TRPA shall provide to Public Entity records of all Code Amendments and Interpretations made by TRPA staff or Executive Director.

EXAMINATION OF RECORDS

Every record of activity under this MOU shall be open for examination in accordance with Article VI (o) of the TRPA Compact.

PROCEDURES FOR RESOLVING DISPUTES

In the event of a dispute or difference of interpretation regarding the terms or conditions of this MOU, resolution shall first be pursued by the MOU liaisons, and if the liaisons are unable to resolve

the dispute then by the Department Directors of the Agency having jurisdiction. If the Department Directors are unable to resolve a dispute, the TRPA Executive Director or County Chief Administrative Officer may terminate the MOU or recommend that the matter be heard by the TRPA Governing Board and/or Board of Supervisors.

EMERGENCIES

The TRPA Rules of Procedure allows the TRPA Executive Director to issue an emergency permit for a situation or circumstance which poses immediate danger to life, property or the environment and demands immediate action in order to comply with the Compact, Regional Plan, Code and/or Rules of Procedure. This MOU does not change the process for issuing an emergency permit.

AMENDMENT

This MOU may be amended from time to time by mutual agreement of the Parties in writing subject to Governing Board and Board of Supervisors approval. Proposed amendments shall be presented to the liaisons (for approval by their respective agencies) as soon as possible to facilitate timely consideration of proposed amendments.

ASSIGNMENT

None of the authorities, duties or responsibilities set forth in this MOU shall be assigned, transferred or subcontracted to a party other than that named in Attachment A, without written consent by TRPA. TRPA may maintain a list of pre-qualified consultants that have been authorized to review projects on contract for TRPA. The Public Entity may choose to use consultants on the current TRPA list to undertake responsibilities set forth in this MOU on behalf of the Public Entity without further authorization from TRPA, provided the consultant is also on the Public Entity's pre-qualified consultant list.

EXISTING MOU

This MOU supersedes existing MOUs between the Public Entity and TRPA as identified in "Delegated Activities" above.

Part 2 – PERFORMANCE STANDARDS

The following standards shall apply to activities authorized under this MOU. All activities shall be reviewed and approved in accordance with the TRPA Regional Plan, Code of Ordinances and Rules of Procedure. The Parties shall consult with each other regarding any uncertainties about these standards.

ENVIRONMENTAL DOCUMENTATION

Exempt and Qualified Exempt classes of projects are not required to complete a TRPA Initial Environmental Checklist for the activity pursuant to Section 3.3 of the TRPA Code. All other classes of projects shall be reviewed in accordance with the Environmental Documentation requirements of Chapter 3 of the TRPA Code and applicable sections of the Rules of Procedure. Environmental Documents prepared by the Public Entity for those Delegated Activities identified in Attachments B and C shall be made available for comment by TRPA upon request.

SPECIAL CONDITIONS

The Public Entity shall administer all standards of the TRPA Regional Plan and Code as applicable to the activities authorized by this MOU in accordance with the provisions of this agreement. The Public Entity shall include special conditions of approval, as needed, to ensure approved projects are consistent with the Compact, Goals and Policies, Code, Rules of Procedure, and the Area Plan(s). Nothing in this MOU shall be deemed to limit the land use regulatory powers of either the Public Entity or TRPA.

FEES AND SECURITIES

Public Entity shall be authorized to collect application and mitigation fees, security deposits, and other designated fees in accordance with fee schedules to be provided to Public Entity by TRPA ("TRPA Fee Schedules"). Such fee schedules shall be sufficient in detail to provide specific information concerning fee calculation to assist Public Entity in performing fee collection activities.

Furthermore, Public Entity shall be authorized to retain a percentage of all application fees collected to offset all Public Entity's costs of administering the provisions of this MOU. Such percentage shall be mutually agreed upon in writing in the Procedural Guidelines by TRPA and Public Entity, and may be amended from time to time by mutual agreement of the Executive Director and the County Chief Administrative Officer.

TRPA agrees to provide Public Entity with notice of increases in any of the fees set forth in the TRPA Fee

Schedules prior to the effective date so that Public Entity can update its own fee schedule to match the increase.

Public Entity shall transmit TRPA fees collected by the Public Entity, to TRPA, as identified above, on a quarterly basis (within 30 days of the end of the quarter).

FINDINGS

The Public Entity agrees to make all findings required by the TRPA Compact, Regional Plan and Code and Area Plan(s) for each Delegated Activity approved and impose special conditions as necessary to be consistent with the TRPA Compact, Regional Plan, Code, and Area Plan(s). The Public Entity shall retain, as part of their permanent permit file record all written findings herein required for the Delegated Activities approved under this MOU. The Public Entity may retain their permanent permit file records in electronic or hard copy form.

MONITORING

For all permits issued, Public Entity shall record all necessary development information that TRPA needs to measure compliance with the terms of the Regional Plan, such as additional land coverage, commercial floor area, residential units, or tourist accommodation units (TAUs). In maintaining permit files, Public Entity shall utilize hard copy and/or electronic tracking forms provided by TRPA to record all inspections, verifications, land coverage and commodity information and other project review activities.

Public Entity shall make copies of all permits issued available to TRPA via electronic access, electronic report or hard copies. Such permits shall be in a format approved by TRPA and in a timeframe established within the MOU Procedural Guidelines. The MOU Procedural Guidelines, developed under Part 1, shall also include a permit monitoring schedule and permit information reporting requirements.

On at least a quarterly basis, the Public Entity shall send to TRPA an electronic list of all new permits issued during the quarter and an update for all prior permits that changed status during the quarter. As further described in the MOU Procedural Guidelines, the quarterly data shall include the type of permits issued as well as the location of BMPs implemented through permits. The data report shall be made available to the public. Public Entity shall participate in the annual accounting and reporting of Environmental Improvement Program (EIP) Performance Measures resulting from County efforts to implement the EIP. Public

Entity shall also transmit a copy of the NPDES Annual Report (including Pollutant Load Reduction Report) each year when submitted to the Lahontan Water Quality Control Board.

RECORD KEEPING AND REPORTING

The Public Entity shall adhere to all provisions contained within TRPA Code Chapter 6, relating to account file data (TRPA Code Sections 6.5, 6.6 and 6.7), including coverage, allocations, and any other applicable procedures as described in the MOU Procedural Guidelines. All project accounting shall be completed by Public Entity and transmitted to TRPA to be included in its permanent accounting and tracking records. Public Entity shall provide TRPA access to these data in permit tracking system, submit completed tracking forms to TRPA, or enter the data into a tracking system provided by TRPA. Tracking forms related to permits shall be made available to TRPA in a timeframe established within the MOU Procedural Guidelines.

SITE INSPECTIONS

Public Entity shall perform site inspections to ensure that the projects and activities permitted under this MOU are constructed in accordance with the approved project, including installation of BMP's. The Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations, pursuant to Article 9, Rules of Procedure, involving unpermitted activities. TRPA will enforce BMPs associated with permits issued by TRPA and for BMP retrofits not associated with an adopted TMDL Pollutant Load Reduction Plan and Public Entity will enforce BMPs associated with TRPA permits issued by the Public Entity and for properties identified in their adopted TMDL Pollutant Load Reduction Plan(s). Upon final inspection, if the project has been constructed in accordance with the permit, Public Entity shall be authorized to release the security deposit to the project applicant. If the construction includes public improvements to be accepted by the County, the release of the security deposit shall be subject to retention of a portion for the duration of the warranty period.

VIOLATIONS

Upon discovery of a TRPA Code violation associated with a permit issued by TRPA, Public Entity shall immediately notify the designated TRPA Code Administration staff in writing. TRPA may also perform inspections and determine if a violation exists. Settlements of TRPA Code violations involving civil penalties must be approved by TRPA.

Upon discovery of a TRPA Code violation associated with a permit issued by Public Entity, the Public Entity shall have authority and responsibility to take any and all administrative steps to enforce the standards of the TRPA Code as authorized by this MOU, including the processing of Code violations, pursuant to Article 9, Rules of Procedure, involving unpermitted activities. If a TRPA Code violation cannot be resolved by the Public Entity on-site, the Public Entity shall contact TRPA to institute TRPA's formal notice of violation procedure.

APPEAL ALLOWED

Final decisions on projects delegated to a Public Entity may be appealed to the TRPA. An appeal may only be filed by an aggrieved person as defined in Article VI(j)(3) of the Compact. Appeals shall meet the requirements of 13.9 (Appeals) of the Code of Ordinances.

Decisions by the Public Entity under independent local, state, or federal law are not the subject of this appeal process. However, if a final decision of the Public Entity under independent authority is concurrently appealed with a final decision on projects delegated under this MOU, TRPA and Public Entity agree to coordinate, to the extent feasible, the scheduling of the appeal hearings.

NOTICE

The Public Entity shall give notice to TRPA of all projects delegated to the Public Entity that require notice to affected property owners pursuant to Article 12 of the TRPA Rules of Procedure, and shall give notice to TRPA of all applications to amend a policy or ordinance that is part of the Area Plan. The notice shall be sent pursuant to Public Entity notification procedures; however, in all cases the notice shall be sent no less than 10 days prior to the hearing or action in order to provide TRPA with adequate time to review and comment, if desired, on the project.

INCORPORATION OF REGIONAL PLAN AMENDMENTS INTO AREA PLAN

If TRPA approves an amendment to the Regional Plan that would also require amendment of the Public Entity Area Plan and/or Area Plan Implementing Regulations or zoning designations for the Area Plan to maintain conformity, the Public Entity has one year to amend the Area Plan to demonstrate conformity with the TRPA amendment. If the Governing Board finds that the Public Entity failed to demonstrate good faith efforts to achieve conformity with the TRPA amendment following the one-year deadline, then the Board will identify the policies and/or zoning provisions in the Area Plan that are inconsistent and assume lead agency authority under the

Regional Plan to amend those policies and provisions. In the event this occurs the amendments would only be in effect as part of the Regional Plan and not Public Entity regulation.


ATTACHMENT A

**AREA PLAN
MEMORANDUM OF UNDERSTANDING
BETWEEN THE TAHOE REGIONAL PLANNING AGENCY AND
EL DORADO COUNTY**


TRPA's authority to enter into this Memorandum of Understanding (MOU) with local entities rests in Article VI (m) of the TRPA Compact (Public Law 96-551) and Sections 2.5 and 2.6 of the TRPA Code of Ordinances. The authority of El Dorado County to enter into this MOU rests in the Board of Supervisors.


This MOU shall become effective when signed by the parties listed below.

TAHOE REGIONAL PLANNING AGENCY

Date: 11.15.18 
By: Joanne Marchetta
Executive Director

El Dorado County

Date: 10/9/2018 
By: _____
Chair, Board of Supervisors

ATTEST: James S. Mitrissin A
Clerk of the Board of Supervisors
By: 
Kim Dawson, Sr. Deputy Clerk

MOU ATTACHMENT B

TABLE OF DELEGATED PERMITTING AUTHORITY WITHIN EL DORADO COUNTY AREA PLANS

The activities described in this table are delegated to the Public Entity within Area Plans and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as described in Note 1 of this Attachment (below). The Public Entity's delegated authority is subject to the provision of the "Distribution of Functions" section in the MOU.

Line No.	Activity Name	Activity Description
1	Single Family Residential Site Assessment	Verification
2	Single Family Residential Land Capability Verification	Verification
3	Single Family Residential Land Coverage Verification	Verification
4	Single Family Residential Development	New Construction / Additions / Modifications
5	Residential Qualified Exempt Activities	Residential Qualified Exempt Activities
6	Multi-Family Qualified Exempt Activities	Multi-Family Qualified Exempt Activities
7	Multi-Family Residential Development (Four units or less)	New Construction / Additions / Modifications
8	Non-permanent Structure Coverage Exemption	TRPA Qualified Exempt for structures that do not require an El Dorado County Building Permit and that take advantage of TRPA Coverage Exemptions (e.g. shed, green house, etc.)
9	Banking Coverage Associated with a Project	Banking
10	Temporary Activities	Temporary
11	Temporary Structure	Temporary
12	Temporary Use	Temporary
13	Change in Operation	Change in Operation
14	Signs	New / Existing / Modifications
15	Commercial Land Capability Verification	Verification
16	Commercial Land Coverage Verification	Verification
17	Units of Use Verification (TAU, RUU, CFA)	Verification
18	Multi Family Land Capability Verification	Verification
19	Multi Family Land Coverage Verification	Verification
20	Commercial/Tourist Qualified Exempt Activities	Qualified Exempt Activities
21	Multi-Family Residential Development (More than four units)	New Construction / Additions / Modifications

22	Commercial - Small (<3,000 square feet)	Small commercial development involving the allocation or transfer of less than 3,000 square feet of CFA
23	Commercial - Large (>3,000 square feet)	Large commercial development involving the allocation or transfer of 3,000 or more square feet of CFA
24	Public Service - Small	New facilities or additions involving less than 3,000 square feet of building floor area or less than 3,500 square feet of new land coverage
25	Public Service - Large	New facilities or additions involving over 3,000 square feet of building floor area or 3,500 square feet of new land coverage
26	Recreation - Small	New facilities or additions involving less than 3,000 square feet of building floor area or 3,500 square feet of land coverage (except recreation trails); new recreational trails less than one mile in length
27	Recreation - Large	New facilities or additions involving more than 3,000 square feet of building floor area or 3,500 square feet of land coverage (except recreation trails); new recreational trails exceeding one mile in length; and projects requiring an allocation of PAOTs from the overnight pool of 1,000 PAOTs
28	Tourist - Small	New facilities or modifications / additions involving up to 10 Tourist Accommodation Units
29	Tourist - Large	New facilities or modifications / additions involving greater than 10 Tourist Accommodation Units

Notes:

- 1 Projects and matters that meet one of the following criteria shall be reviewed and approved by TRPA:
 - A) All development within the Shorezone of Lake Tahoe;
 - B) All development within the Conservation, Wilderness, and Backcountry Districts;
 - C) All development within the Resort Recreation District;
 - D) All development requiring Scenic Quality Review in the Shoreland;
 - E) All development requiring an Environmental Impact Statement per Chapter 3 of TRPA Code of Ordinances;
 - F) All Transfer Applications;
 - G) All Lot Line Adjustment and Subdivision Applications;
 - H) All development meeting the criteria in the following table:

	Town Center	Not in Center
Residential	≥ 50,000 sq. ft.	≥ 25,000 sq. ft.
Other	≥ 40,000 sq. ft.	≥ 12,500 sq. ft.

(All measurements are in floor area)

MOU ATTACHMENT C

TABLE OF DELEGATED PERMITTING AUTHORITY WITHIN EL DORADO COUNTY OUTSIDE OF AREA PLANS

The activities described in this table are delegated to the Public Entity outside of Area Plans and shall be reviewed and approved in accordance with the TRPA Regional Plan and the Code. The activities do not require TRPA review and approval except as described in Note 1 of this Attachment (below). The Public Entity's delegated authority is subject to the provision of the "Distribution of Functions" section in the MOU.

Line No.	Activity Name	Activity Description
1	Single Family Residential Site Assessment	Verification
2	Single Family Residential Land Capability Verification	Verification
3	Single Family Residential Land Coverage Verification	Verification
4	Single Family Residential Development	New Construction / Additions / Modifications
5	Residential Qualified Exempt Activities	Residential Qualified Exempt Activities
6	Multi-Family Qualified Exempt Activities	Multi-Family Qualified Exempt Activities
7	Multi-Family Residential Development (up to 4 units)	Four units or less: New Construction / Additions / Modifications
8	Non-permanent Structure Coverage Exemption	TRPA Qualified Exempt for structures that do not require an El Dorado County Building Permit and that take advantage of TRPA Coverage Exemptions (e.g. shed, green house, etc.)
9	Banking Coverage Associated with a Project	Banking
10	Temporary Activities	Temporary
11	Temporary Structure	Temporary
12	Temporary Use	Temporary
13	Change in Operation	Change
14	Signs	New / Existing / Modifications
15	Commercial Land Capability Verification	Verification
16	Commercial Land Coverage Verification	Verification
17	Use Verification	TAU, RUU, CFA
18	Multi Family Land Capability Verification	Verification
19	Multi Family Land Coverage Verification	Verification
20	Commercial/Tourist Qualified Exempt Activities	Commercial / Tourist Qualified Exempt Activities
21	Multi-Family Residential Development (> 4 units)	More than four units: New Construction / Additions / Modifications

Notes:

1 Projects and matters that meet one of the following criteria shall be reviewed and approved by TRPA:

- A) All development within the Shorezone of Lake Tahoe;
- B) All development within the Conservation, Wilderness, and Backcountry Districts;
- C) All development within the Resort Recreation District;
- D) All development requiring Scenic Quality Review in the Shoreland;
- E) All development requiring an Environmental Impact Statement per Chapter 3 of TRPA Code of Ordinances;
- F) All Transfer Applications;
- G) All Lot Line Adjustment and Subdivision Applications;
- H) All development meeting the criteria in the following table:

	Town Center	Not in Center
Residential	≥ 50,000 sq. ft.	≥ 25,000 sq. ft.
Other	≥ 40,000 sq. ft.	≥ 12,500 sq. ft.

(All measurements are in floor area)