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Memorandum

Date: January 11, 2012

To: RPU Committee

From: John L. Marshall

Re: Regional Plan Subdivision Prohibition

Please find attached a 1995 memorandum from TRPA agency counsel setting forth the background and operation of the Regional Plan's prohibition on subdivisions and the exception for so called "two-step subdivisions." This 1995 memorandum is provided for education purposes as staff does not intend to change either the subdivision prohibition or the two-step process (see e.g., LU 2.3). Staff is proposing an implementation measure to permit the subdivision of existing residential and tourist units within mixed-use facilities (see LU 3 Implementation Measures), a measure not inconsistent with the conversion of existing structures to divided interested already allowed by the Regional Plan.

If you have any questions, please do not hesitate to contact me at 775.303.4882 or jmarshall@trpa.org.

TAHOE REGIONAL PLANNING AGENCY

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MEMORANDUM

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August 22, 1995

To: TRPA Governing Board

From: TRPA Legal Division

Subject: TRPA's Two-Step Subdivision Process for Post-1987 Residential Projects

The Governing Board has requested a written analysis and explanation of TRPA's two-step subdivision process for post-1987 residential projects. TRPA's two-step subdivision process was one of the 1986 amendments to the Goals and Policies Plan, adopted as part of the consensus building workshops and the settlement of litigation with California and the League to Save Lake Tahoe. The implementing ordinances (Chapters 41 and 43) were adopted in 1990, with further amendments in 1991, 1993 and 1994.

The Land Use Subelement, Goal #2, Policy 7, of the 1986 Goals and Policies Plan reads: "No new divisions of land shall be permitted within the Region which would create new development potential inconsistent with the goals and policies of this Plan." A list of seven exceptions follow this prohibition. The so-called "two-step" subdivision process is the last exception listed and exempts the following category of projects from the general prohibition:

"[d]ivisions of land through condominiums, community apartments or stock cooperatives within an existing urban area in conjunction with the approval of a project associated with an approved transfer of development, or otherwise in accordance with the provisions of this Plan. In order to subdivide a project under this provision, the project itself shall be approved prior to the approval of the division and in no case shall the division result in a greater amount, a different location, or a greater rate of development than otherwise permitted by this Plan."

PURPOSE: One of the tenets of the 1987 Regional Plan was that development potential (e.g., residential development rights or allowable land coverage) would be limited to what existed in 1987. The Regional Plan permits the relocation or transfer of development potential but does not permit projects that would create new development potential. Subdivisions, which have the potential to create new vacant parcels and to increase the number of residential development rights, were prohibited, with some exceptions.

The two-step subdivision process was designed to be consistent with the policy of no new development potential while it served several goals of the Regional Plan. Those regional plan goals are: promoting the infill of development on high capability (non-sensitive) lands; redirecting development to more suitable areas; being consistent with the Bailey coverage coefficients; limiting IPES to single-family development; retiring sensitive parcels through development transfers; and avoiding the creation of new street networks.

One of the management strategies for the 1987 Regional Plan is "redirection of development," which is designed to improve environmental quality through rehabilitation, redevelopment and relocation of development. The 208 Plan, adopted by TRPA in 1988, stated that TRPA's subdivision policies will "maintain the existing boundaries of the urban areas within the Region, and will generally result in the infill of property within land capability districts 4 - 7 with urban land uses, consistent with TRPA's plan area statements." The 208 Plan went on to point out that the subdivision policies do not allow new subdivisions in undeveloped areas and that no new street networks would be established.

The two-step subdivision process achieves these goals by:

- 1) Insuring that post-1987 subdivisions do not create the potential for more coverage than that permitted by the Bailey coverage coefficients;
- 2) Limiting post-1987 subdivisions to high capability lands (land capability districts 4 - 7);
- 3) Prohibiting subdivisions of land in non-urban areas;
- 4) Limiting subdivisions of post-1987 projects to PASs which permit multi-residential and single-family uses;
- 5) Creating receiving projects for transfers of development; and
- 6) Limiting development potential, as measured in residential development rights, to that existing in July 1987;

WHAT IS THE TWO-STEP SUBDIVISION PROCESS? The two-step subdivision process requires a project to first be approved as a multi-residential project. A multi-residential project, in TRPA's Code, is any residential project with more than one residential unit per parcel. Multi-residential projects can be attached or free-standing units. Given the coverage limitations, it is assumed that there is no environmental difference between detached and attached units. Examples of multi-residential projects are duplexes, triplexes, apartments, and dormitories.

After receiving approval for a multi-residential project, the project can be transformed into a subdivision (either condominiums, community apartments, or stock cooperatives), in a subsequent project action.

There are several reasons behind this two-step process. The first is that a multi-residential project can only be approved in plan area statements that permit multi-residential uses. This requirement limits new subdivisions to the more densely urbanized areas in the Basin. Further, since a subdivided project is classified by TRPA as a single-family use, the plan area statement must be one which also permits single-family uses. There are approximately 45 PASs that permit both multi-residential and single-family uses and are thus eligible for subdivisions of post-1987 residential projects. Of these 45 PASs, multi-residential uses are limited to special areas in 23 of them.

Second, the requirement that a subdivision be approved first as a multi-residential project insures that subdivisions of post-1987 projects are in conformance with the Bailey coverage coefficients and are limited to high

capability lands (capability districts 4 - 7). This is a crucial point. If the Code were to allow the subdivision of land, prior to multi-residential project approval, then the resultant parcels could be permitted coverage beyond the Bailey coverage coefficients using IPES or other transfer provisions. Further, the two-step process insures that subdivisions will be limited to high capability lands and will not be permitted on sensitive lands using IPES.

Third, by limiting coverage under the Bailey coefficients and reviewing the project as a multi-residential use, the developer of a subdivision for a post-1987 project must utilize shared driveways and parking areas, consider cluster-style development, engineer integrated BMPs and include an overall landscaping plan. This type of integrated development and design achieves community design goals, as well as environmental goals.

Fourth, by requiring a multi-residential project to go first, TRPA insures that the developer already has allocations for the units and will be required to transfer development rights before construction begins. This avoids the creation of vacant parcels without allocations, which might create demand for allocations beyond those permitted by Chapter 33.

Fifth, by limiting the available subdivision forms, the multi-residential projects and the resultant subdivisions, include common area with common facilities. Common area shared by several condominium owners is less likely to be illegally covered or otherwise encroached upon. Further, the condominium association provides a mechanism for joint maintenance of common facilities, including BMPs.

Sixth, by having private access to the multi-residential projects, there is less pressure to build new streets and roads to the "paper" subdivisions discussed below.

THE TWO-STEP SUBDIVISION PROCESS ASSISTS IN THE RETIREMENT OF SENSITIVE LOTS AND THE REDIRECTION OF DEVELOPMENT: The 1987 Regional Plan recognized that many inappropriate and poorly planned subdivisions were created in the non-urban areas and on sensitive lands (steep or SEZ areas) in the Tahoe Basin. Many of these subdivisions are so-called "paper" subdivisions that were created prior to the 1969 Compact or TRPA's 1972 Land Use Ordinance. A "paper" subdivision is a subdivision for which a map was recorded but roads, utilities or other infrastructure were not constructed. Many paper subdivisions are in sensitive areas and the parcels have low IPES scores. Building access roads may be infeasible due to current coverage limitations, restrictions on disturbance of sensitive lands or the local jurisdiction's reluctance to build new public roads.

While the prior regional plan permitted multiple densities, the 1987 Regional Plan limited density to one residential unit per parcel and required the transfer of development rights for all multi-residential projects. Thus, the 1987 Regional Plan created a regulatory program to encourage individuals to permanently retire sensitive lots or paper subdivision lots by selling and transferring the development rights from those parcels to parcels which are permitted multiple densities.

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In other words, to build a four-plex (four residential units) requires four allocations and four development rights. Since a parcel only has one development right, the developer of a four-plex must transfer three development rights from vacant parcels in the Region. Thus, although there are then four units on one parcel, three parcels elsewhere in the Region are permanently retired from development. There is an alternative way to create a four-plex, which is transferring existing residential units by tearing down and relocating the units. In this way, parcels which are sensitive, or are otherwise inappropriate for construction, are retired from development and the densities are moved to existing urban areas.

The annual distribution of 30 allocations to parcels with scores below the IPES line and the provisions for coverage transfers, were also designed to encourage transfers from, and retirement of, sensitive parcels. Retirement of parcels below the IPES line is an important aspect of lowering the IPES line.

In order for the incentives in the Regional Plan to work, it is important that there be a market for the transfer of development rights, allocations, existing units, and the related assignment of multi-residential bonus units from Chapter 35. In investigating the market for such transfers, TRPA has learned that one of the markets for transferred development rights and allocations, and the related bonus units, is developers purchasing these commodities for use in subdivisions of post-1987 projects in urban areas.

The Governing Board should keep the two-step subdivision process in mind when it is asked to amend the urban boundaries or to add multi-residential or single-family uses to plan areas. In order to maintain the limitations on subdivisions of post-1987 projects, plan area statement amendments should be carefully scrutinized.

SUBDIVISION OF PRE-1987 AND AFFORDABLE HOUSING STRUCTURES DISTINGUISHED:

TRPA's subdivision policies treat the subdivision of pre-1987 (existing) structures and affordable housing projects differently from the subdivision of post-1987 projects. This distinction is based on the policies in the Land Use Subelement of the 1986 Goals and Policies Plan. This memorandum does not discuss these aspects of the Regional Plan or Code.

If there are any questions concerning this memorandum, please contact Susan Scholley or R.J. Nicolle at (702) 588-4547.