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STAFF REPORT

Date: May 15, 2024

To: TRPA Legal Committee

From: TRPA Staff

Subject: Discussion on amendment to the Rules of Procedure, Article 9, Compliance Procedures, to document compliance procedures for violations of income- or employment-related deed-restrictions

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Summary and Staff Recommendation:

Staff requests guidance and direction from the Legal Committee on possible amendments to Article 9 of the Rules of Procedure that would document compliance procedures for violations of income- or employment-based TRPA deed-restrictions, or failure to respond to a request for proof of compliance (Attachment A). This is an informational item only.

Project Description/Background:

Effective enforcement and monitoring of deed-restricted affordable and workforce housing properties is key to the success of TRPA's housing programs and environmental threshold attainment, and TRPA places a high priority on continual improvement of these systems. In December 2018, TRPA implemented a major update of its deed-restriction requirements, based on best practices from other mountain resorts, including instituting an annual compliance monitoring system for units that were deed-restricted after that date. Since that time, TRPA has also been conducting outreach, education, monitoring, and compliance efforts on deed-restrictions issued prior to that date and provided a status report on these efforts in a deed-restriction process improvements memo posted to the TRPA webpage in March 2024 (Attachment B). In addition, TRPA has brought on a housing consultant, HousingInc., which has advised on several additional improvements that TRPA can make to its deed-restriction language and program to streamline compliance for deed-restricted units moving forward. TRPA is in the process of implementing these recommendations and expects to have them in place by the end of the year. A description of these recommendations can be found in Attachment B.

In 2023, TRPA began conducting audits of deed-restricted properties, and identified some properties which had sold for more than the allowable price shown in the deed-restriction, while other properties did not respond to TRPA's request for documentation showing proof of compliance. While TRPA has communicated through these outreach efforts that penalties may be imposed in the amount of up to \$5,000 per day for violations in accordance with the Bi-State Compact (Public Law 96-551, Section VI(I)), a more tailored compliance approach depending on the type of violation is needed to effectively proceed with compliance efforts.

TRPA has proposed a compliance procedure which would be added to Article 9, Compliance Procedures, of the Rules of Procedures (Attachment A). The amendment documents TRPA's procedure for issuing a notice of violation, the amount of time that a property owner has to respond, an opportunity for the property owner to avoid monetary penalties if an appropriate plan of action to bring the property into compliance with the deed restriction can be agreed upon (such as an agreement to update out-of-date deed-restriction language to newer language with better compliance controls), and the amount of financial penalties based on the type of violation (failure to respond to a request for information versus non-compliance with the terms of the deed-restriction).

TRPA staff requests guidance and direction on this process, before bringing this item back for a recommendation for approval to the TRPA Legal Committee.

Environmental Review:

TRPA will complete the necessary environmental review before bringing these amendments forward for consideration.

Regional Plan Compliance:

The proposed amendment is consistent with the Regional Plan, and helps the agency implement the Housing Goals in the Goals and Policies, which include:

GOAL HS-1

Promote housing opportunities for full-time and seasonal residents as well as workers employed within the region.

GOAL HS-2

To the extent feasible, without compromising the growth management provisions of the Regional Plan, the attainment of threshold goals, and affordable housing incentive programs, moderate income housing will be encouraged in suitable locations for the residents of the region.

GOAL HS-3

Regularly evaluate housing needs in the region and update policies and ordinances if necessary to achieve state, local and regional housing goals.

Contact Information:

For questions regarding this agenda item, please contact Karen Fink, Principal Planner, at (775) 589-5258 or [kfink@trpa.gov](mailto:kfink@trpa.gov).

To submit a written public comment, email [publiccomment@trpa.gov](mailto:publiccomment@trpa.gov) with the appropriate agenda item in the subject line. Written comments received by 4 p.m. the day before a scheduled public meeting will be distributed and posted to the TRPA website before the meeting begins. TRPA does not guarantee written comments received after 4 p.m. the day before a meeting will be distributed and posted in time for the meeting.

Attachments:

- A. Draft deed-restriction compliance procedure amendments to the Article 9 of the Rules of Procedure
- B. 2024 Deed-Restriction Process Improvements Memo: [https://www.trpa.gov/wp-content/uploads/2024\\_Deed-Restriction-Process-Improvements.pdf](https://www.trpa.gov/wp-content/uploads/2024_Deed-Restriction-Process-Improvements.pdf)

Attachment A

Draft deed-restriction compliance procedure amendments to the Article 9 of the Rules of Procedure

**Article 9: COMPLIANCE PROCEDURES**

9.20 Compliance WITH income- or employment-based deed restrictions

4. Based on the Notice and Response, the Executive Director shall make a determination as to the whether a violation of the BMP retrofit program has or has not occurred on the subject property. If the Response is not timely filed, the Executive Director will make this determination based only on the Notice.
5. If the Executive Director determines that a violation of the BMP retrofit program has occurred, the property owner shall be so informed and an Offer of Settlement of BMP Violation (“Offer”) shall be made by TRPA. Every Offer shall contain a monetary amount to be paid within 30 calendar days pursuant to the penalty matrix set forth below. Every Offer shall also require the submission of a BMP retrofit plan that is in compliance with subsection 60.4.4 of the TRPA Code and a BMP implementation schedule, as described in subsection 2, within 30 days; property owners shall not be given the option of non-compliance with subsection 60.4.4 of the TRPA Code. Notwithstanding Article 11 of these Rules, a property owner may not appeal the Executive Director violation determination.

PENALTY MATRIX	
Violation	Penalty
Noncompliance for 1 year	\$1,000
Noncompliance for 2 years	\$2,500
Noncompliance for 3 years	\$4,000

6. If the monetary amount and/ or retrofit plan requested in the Offer is not timely received, or if BMPs have not been completely installed within the deadlines set forth in the TRPA-approved BMP implementation schedule, the Agency counsel may initiate litigation pursuant to Article VI of the Compact seeking the civil penalties and injunctive relief to ensure compliance with the BMP retrofit program.
7. The Governing Board shall be informed of all actions taken by the Executive Director or Agency counsel pursuant to this subsection at the Board meeting immediately following any action(s) taken.

**9.20. COMPLIANCE WITH INCOME- OR EMPLOYMENT-BASED DEED RESTRICTIONS**

Violations of any income- or employment-based deed restriction issued pursuant to subsection 52.3.1 of the Code, as a condition of a TRPA project approval or other TRPA action, or failure to provide an annual compliance report or otherwise timely respond to a request from TRPA to provide proof of compliance with such a deed restriction, shall be resolved as specified in this section. Violations of deed restrictions issued pursuant to the Code are violations of the deed restriction thereby giving rise to all applicable legal and equitable relief. Such violations shall also be considered separate violations of the Code subject to separate and/or concurrent enforcement under this Article.

1. Owners of properties identified by the Executive Director to be out of compliance with the terms of the deed restriction specific to the property, or who have not provided requested documentation to demonstrate compliance, shall be served a Notice of Violation. (“Notice”) pursuant to subsections 9.4 and 9.5 of these Rules. The Notice shall include, at minimum, a

**Article 9: COMPLIANCE PROCEDURES**

9.20 Compliance WITH income- or employment-based deed restrictions

statement of facts supporting TRPA’s initial determination that the subject property is out of compliance.

2. A property owner who receives Notice shall have 30 calendar days to file with TRPA a Response (“Response”) to the Notice. The Response shall include, at minimum, a statement relevant to the facts contained in the Notice and any circumstances that may mitigate or excuse the alleged failure to comply.
3. Based on the Notice and Response, the Executive Director shall make a determination as to the whether a violation of the deed restriction has or has not occurred on the subject property. If the Response is not timely filed, the Executive Director will make this determination based only on the Notice.
4. If the Executive Director determines that a violation has occurred, the property owner shall be so informed and an Offer of Settlement of Deed-Restriction Violation (“Offer”) shall be made by TRPA. Every Offer shall contain a monetary amount pursuant to the penalty matrix set forth below, to be paid within a specified number of days. Notwithstanding Article 11 of these Rules, a property owner may not appeal the Executive Director’s violation determination.

<b>PENALTY MATRIX</b>	
<b>Violation</b>	<b>Penalty</b>
<u>Failure to provide requested documentation of compliance</u>	<u>\$1,500, applied each year of non-compliance</u>
<u>Year 1 of violation</u>	<u>\$5,000</u>
<u>Year 2 of violation</u>	<u>\$10,000</u>
<u>Year 3 of violation</u>	<u>\$15,000</u>
<u>Year 4 of violation and each subsequent year</u>	<u>\$20,000</u>

5. Each consecutive year that a property is out of compliance (based on the date of the Executive Director’s determination of a violation) shall constitute a separate and independent violation, which TRPA may recover on a cumulative basis. For example, if a property is out of compliance for a third consecutive year, the owner is responsible for three violations and a total penalty of \$30,000 (the sum of penalties for year 1, 2, and 3 violations). A settlement to resolve violations from the preceding year(s) will not reset the violation date. Therefore, if the property owner in the example above settles liability for being out of compliance for three consecutive years, but then remains out of compliance upon year four, the applicable penalty at that point will be \$20,000 rather than \$5,000.
6. Any property owner who violates a requirement to provide an annual compliance report or otherwise fails to timely respond to a request by TRPA to provide proof of compliance with a deed restriction shall be deemed out of compliance with the deed restriction for purposes of enforcement as a Code violation pursuant to the penalty matrix above. The penalty applied to a failure to provide documentation shall be in addition to the penalty of years-

**Article 9: COMPLIANCE PROCEDURES**

9.20 Compliance WITH income- or employment-based deed restrictions

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based violations. For example, an owner who fails to report compliance for year 1 will be deemed out of compliance, subject to a \$5,000 penalty, plus an additional \$1,500 penalty for failing to report.

7. TRPA may forgo monetary penalties if within 90 days of the Notice the property owner and TRPA agree on an appropriate action plan to remedy the deed restriction violation. TRPA shall require implementation of the plan no later than 180 days after the Notice unless extenuating circumstances warrant additional time, and may at its discretion, apply additional penalties for failure to implement the plan within plan timelines.
8. If TRPA does not timely receive the monetary amount identified in the Offer, or if the owner has not implemented the action plan within the agreed upon deadlines, TRPA may initiate litigation pursuant to Article VI of the Compact seeking civil penalties and injunctive relief.
9. The Executive Director shall keep the Governing Board reasonably apprised of all significant actions taken pursuant to this section.

Attachment B

2024 Deed-Restriction Process Improvements Memo:

[https://www.trpa.gov/wp-content/uploads/2024\\_Deed-Restriction-Process-Improvements.pdf](https://www.trpa.gov/wp-content/uploads/2024_Deed-Restriction-Process-Improvements.pdf)