

Real Estate Transaction BMP Requirements

Overview:

This information sheet addresses the BMP Compliance Working Group discussion items #1 and #2 related to BMP requirements during real estate transactions:

1. Maintain, modify or enhance the TRPA Real Estate Disclosure Process or alternative to improve BMP implementation and maintenance following real estate transactions.
2. Consider requiring BMP installation on properties at the point of sale or post a financial guarantee at the point-of-sale equal to the cost of implementing BMPs or alternatives.

Lake Tahoe has some of the strictest water quality requirements in the country, requiring all properties to comply with Best Management Practices outlined in Section 60.4 of TRPA Code. Triggers for BMP installation include projects permitted by TRPA and MOU partners for new development, redevelopment, and buoys. These projects have to post a security until BMP requirements are met. TRPA also offers coverage incentives for projects who meet BMP requirements in an effort to accelerate environmental redevelopment. TRPA's grant funded BMP retrofit program primarily follows a voluntary approach, but also includes targeted enforcement. Priorities for targeted enforcement are discussed further in Info Sheet #5.

Some proponents support greater means of implementing BMPs to accelerate compliance in the Lake Tahoe Region by requiring implementation of BMPs at the point-of-sale. As described below, point-of-sale programs have been successful in achieving high rates of compliance. Others oppose point-of-sale requirements over concern that it limits potential for redevelopment and incentivizes hasty and inexpensive BMPs with little thought for long-term maintenance. The goal becomes certification for sale only, not quality installation or long term functionality. Additional concern with point-of-sale includes potential inconsistency with implementation of the Lake Tahoe Total Maximum Daily Load (TMDL), where local jurisdictions are targeting resources to the highest pollutant loading areas in the Region. Alternative approaches to point-of-sale include area-wide treatment, improving TRPA's existing BMP Real Estate disclosure process, and continuing voluntary programs. The Regional Plan analyzed alternatives including requiring BMP installations at point-of-sale or posting a financial guarantee, but did not advance these provisions as part of the update, citing costs for property owners and inconsistency with newer TMDL strategies.¹ The Bi-State Consultation process discussed strengthening existing BMP compliance programs but ultimately did not endorse a specific strategy. In response, TRPA initiated a review of BMP compliance options by a work group of the TRPA Governing Board and other interested parties.²

The working group is focused on advancing recommendations that guide TRPA's efforts and limited resources to the most effective stormwater management strategies in a manner that is consistent with the Regional Plan, local Area Plans and TMDL load reduction plans.³ This info sheet provides background data, analysis of options to address the discussion topics and advances a recommendation from TRPA staff and the EIP Parcel Specific Working Group.

¹ TRPA Regional Plan Update Committee Issue Sheet #7 – Water Quality, 2012-07-31

² California-Nevada Consultation, Regional Plan Update Recommendations, July 25, 2012

³ BMP Compliance Options Working Group Meeting #1 – Meeting Notes, March 12, 2014

Summary of Recommendations:

1. Use existing grant funds to update the Real Estate BMP Disclosure process and continue partnering with Real Estate professionals for BMP education and outreach at the point-of-sale.
2. Support the TMDL and focus BMP compliance efforts in coordination with local jurisdiction load reduction plans, which may include areas within approved area-wide treatments. Installation of BMPs and point-of-sale can be revisited as an option if outcomes from TMDL implementation are shown to make insufficient gains towards improving Lake Tahoe's water quality.

Background

2012 Regional Plan

Water Quality Policy WQ-3.11 requires all properties to install and maintain BMPs or participate in area-wide treatment adopted as part of a local Area Plan. However, the policy emphasizes voluntary compliance with all aspects of the BMP retrofit program and highlights technical assistance, public education, and outreach. WQ-3.12 requires application and maintenance of BMPs for all new projects, expansions, and redevelopment projects. For these projects occurring within approved area-wide treatments, improvements shall be installed in accordance with the approved area-wide BMP plan.

TRPA Code of Ordinances

Section 60.44.C of TRPA's Code requires property owners to disclose the BMP status of a property during real estate transactions and the purchaser of the property shall provide the disclosure form to TRPA within 30 days of sale.⁴ The disclosure process tracks property owner education on BMP requirements and allows BMPs to be negotiated as part of the property sale. However, the current paperwork process is cumbersome and the number of disclosure forms received is very low compared to the number of real estate transactions occurring.⁵

Local Area Plans

TRPA adopted the South Shore Area Plan in Douglas County and the Tourist Core Area Plan in the City of South Lake Tahoe since adoption of the Regional Plan in 2012. While both plans include specific provisions on BMP implementation and coordination with TRPA on BMP enforcement, neither includes point-of-sale requirements.

TMDL and Load Reduction Plans

Local Jurisdictions must prepare Load Reduction Plans that outline their approach to meeting TMDL load reduction requirements. Priorities focus on addressing the developed land uses determined to generate highest pollutant loads (roads, commercial and industrial, and multifamily) in order to cost effectively reduce pollutants from urban runoff. The TMDL provides scientific data that identifies single family residences as contributing significantly less pollutant loads to Lake Tahoe compared with other land uses.⁶

⁴ TRPA Code of Ordinances Section 60.4.4.C – Disclosure Requirements

⁵ As of May 31, 2014 TRPA had received a total of 417 disclosure forms.

⁶ Lake Tahoe TMDL Total Maximum Daily Load Technical Report, June 2010: Source Analysis, p. 4-61

Public Comment

Comments received during the Regional Plan Update included those from environmental groups that supported stricter BMP enforcement (including point-of-sale requirements), while other comments (including numerous form letters from individuals and businesses) opposed point-of-sale enforcement. The form letters raised concerns about the efficiency and fairness of point-of-sale requirements for BMPs. Concerns also included potential impacts on real estate transactions, how the requirements would be implemented in the winter, and imposing a shift on real estate professionals from an educational to an enforcement role.⁷

Data Needs – Example Point-of-Sale

The BMP Compliance Working Group requested information on other point-of-sale requirements. One precedent involves the East Bay Municipal Utility District (EBMUD), which has problems with partially treated wastewater being released into the San Francisco Bay after their treatment system becomes overwhelmed from stormwater entering the combined stormwater/sewer system. EPA and the Regional Water Quality Control Board required EBMUD and the Cities to adopt an ordinance and develop a Regional Private Sewer Lateral Program.

The program requires property owners to submit proof that their private sewer laterals are free of leaks at the point-of-sale, when construction or remodeling greater than \$100,000 occurs, or when changing water meter size. EBMUD charges a fee to issue a compliance certificate and the level of repair conducted directly informs the certificate expiration date. If the property owner cannot complete work prior to title transfer, EBMUD requires a deposit to guarantee work is completed, which does not have to be held in escrow and is refunded after the certificate is obtained. The deposit only allows a six month extension to complete the work. Work involves hiring a licensed contractor to inspect, repair, or replace private sewer laterals, acquiring all applicable local jurisdiction permits, and obtaining final verification from EBMUD. Because EBMUD bills customers monthly for services, non-compliance fees are easily added to a property owner's bill.⁸

EBMUD staff indicates initial compliance rates are around 78 percent with 90 percent compliance rates once follow up letters are sent. They have not noticed any obvious impacts to sales.⁹ However, despite the high compliance rates, concerns exist that the program incentivizes the poor quality installation for minimal expense as the goal is compliance to facilitate sale of a property and not long-term functionality.

East Bay Municipal Utility District (EBMUD) has approximately 650,000 properties in its service area and spends roughly \$1.3 million annually to administer the program to support a staff of approximately ten individuals.¹⁰ EBMUD charges a flat \$225 compliance fee to issue a certificate to help offset the cost. However, the program is not self-supporting so fees are increasing this fiscal year.¹¹

Other precedents includes the Berkeley Residential Energy Conservation Ordinance, where residential properties must meet energy conservation standards and obtain a certificate of compliance prior to title

⁷ TRPA Regional Plan Update Committee Issue Sheet #7 – Water Quality, 2012-07-31

⁸ East Bay Regional Private Sewer Lateral Program: <http://www.eastbaypsl.com>

⁹ Email communication between CA Deputy Attorney General Dan Siegel and EBMUD staff Angela El-Telbany, May 23, 2014.

¹⁰ Personal communication with Angela L. El-Telbany, East Bay Municipal Utility District Regional Private Sewer Lateral Program Project Manager, Jun 16, 2014.

¹¹ Personal communication with Angela L. El-Telbany, East Bay Municipal Utility District Regional Private Sewer Lateral Program Project Manager, Jun 16, 2014.

transfer or undergoing renovations, and Ordinance No. 172075 of the Los Angeles Municipal Code which requires installation of water conservation features upon date of change in ownership.¹²

Real Estate Community Alternative

At the first BMP Compliance Working Group meeting in March, Co-chair Aldean requested that working group member Sara Ellis, representing the real estate community, provide an alternative approach for BMP requirements during real estate transactions. The working group discussed the Minnesota Pollution Control Agency (MPCA) program as a precedent, which assesses water quality and conducts TMDLs for the State.¹³ The MPCA manages stormwater through municipal, industrial, and construction permits, similar to the California Lake Tahoe TMDL.¹⁴ They also have performance based requirements for new development and redevelopment.¹⁵

The real estate community supports enhancing the existing BMP disclosure form as an alternative to requiring BMPs at point-of-sale and commits to working with TRPA to help complete the task by year's end. They favor continuing their educational partnership with TRPA by providing BMP informational materials to prospective buyers and sellers and support current requirements to install BMPs for new development and redevelopment projects. They also support area-wide treatment and support voluntary fertilizer reduction programs.¹⁶ Attachment A includes a more detailed response from the real estate community in opposition to the proposition of requiring BMP installation at the point-of-sale.

Options and Analysis

Require BMPs at point-of-sale

TRPA staff analyzed real estate transaction data for the Region over a ten year period from 2002-2012 and determined that residential properties make up the majority of real estate transactions and only Washoe County had more properties that sold with BMP certificates than without.¹⁷ While imposing a point-of-sale requirement may increase the rate of BMP implementation on residential properties, it is controversial and costs for TRPA may be prohibitive to implement the strategy without dedicated funding. TRPA's stormwater program is primarily grant funded currently and needs dedicated general funding as well as fees to implement the strategy when comparing the cost to the EBMUD program. Requiring BMPs at point of sale also focuses BMP enforcement resources on areas with greater residential sales rather than areas with the greatest connectivity or pollutant loading. Requiring BMP installation for a property at the point-of-sale may discourages redevelopment as property owners must expend financial resources to install BMPs for existing properties that would otherwise be demolished and redeveloped with a new use and site layout meeting current code requirements. Requiring

¹² Chapter 19.16 – Berkeley Residential Energy Conservation Ordinance; Los Angeles Municipal Code 98-0185 Water Conservation Ordinance 172075, July 24, 1998.

¹³ Email communication with Hayley Williamson, South Tahoe Associate of Realtors, Thursday March 13, 2014.

¹⁴ Minnesota Pollution Control Agency: <http://www.pca.state.mn.us/index.php/water/water-types-and-programs/stormwater/index.html>

¹⁵ Minnesota Pollution Control Agency –requirements for new development and redevelopment: <http://www.pca.state.mn.us/index.php/water/water-types-and-programs/stormwater/stormwater-minimal-impact-design-standards-mids.html>

¹⁶ Email communication with Hayley Williamson, South Tahoe Associate of Realtors, Thursday March 13, 2014; Personal communication with Sara Ellis, June 12, 2014

¹⁷ Data from Real Quest compiled from 2002-2012 for Douglas, Washoe and El Dorado Counties. Placer County information was not available due to data inaccuracies. Of total properties that changed hands, Douglas County had 36% with certs and 64% without; Washoe County had 62% with certs and 38% without; El Dorado County had 22% with certs and 78% without.

installation of BMPs at the point-of-sale incentivizes inexpensive BMP installation, without considering the long-term maintenance and functionality that the new owner would be more invested in if the design reflected their desired site improvements and property appearance. The goal becomes certification to facilitate sale of the property not quality BMPs.

Enhance the TRPA Real Estate Disclosure Process

TRPA secured funding through the State of California Proposition 50 Supplemental grant to enhance the Real Estate BMP Disclosure process by December, 2014. Funds support streamlining the disclosure form in partnership with interested stakeholders and developing an electronic submittal process. Given the low response rate the efficacy of the current program is questionable, but enhancing the disclosure process may facilitate a greater response and improve the accuracy of data collection required by TRPA Code. Dedicated funding makes this effort feasible and streamlines the process consistent with Working Group objectives. Through this effort, real estate professionals continue partnering with TRPA in an educational capacity and leverage existing resources by providing recently updated BMP outreach materials at the point-of-sale. Enhancing the TRPA Real Estate Disclosure Process documents a property owner's education of BMP requirements. Non-compliant properties would be prioritized for targeted enforcement according to the process outlined in Info Sheet #5 so as to focus efforts in areas with the greatest potential for load reduction and accommodates locations with area-wide treatment.

Recommendations:

1. Enhance BMP Real Estate Disclosure and BMP education at the point-of-sale
Use existing grant funds to update the Real Estate BMP Disclosure process and continue partnering with real estate professionals for BMP education and outreach at the point-of-sale. Enhancing the disclosure process improves TRPA's information system in line with TRPA's Strategic Plan and promoting BMP education at the point-of-sale supports the Regional Plan's voluntary approach for BMP retrofits.
2. Support the TMDL with BMP Compliance Efforts
Continue to focus BMP compliance efforts in coordination with strategies prioritized by local jurisdiction Load Reduction Plans and Area Plans. This focuses TRPA resources in areas that achieve the greatest pollutant load reduction and supports the TMDL in line with working group objectives. For some local jurisdictions strategies include enforcing private property BMPs while others include public-private partnerships for area-wide treatments. See Information Sheet #5 for prioritization of targeted enforcement and Information Sheet #6 for more detail on area-wide treatment. Installation of BMPs and point-of-sale can be revisited as an option if outcomes from TMDL implementation are shown to make insufficient gains towards improving Lake Tahoe's water quality.

DATE: June 24, 2014
TO: TRPA BMP Compliance Options Working Group
 The League to Save Lake Tahoe
FROM: Board of Directors, South Tahoe Association of REALTORS®
RE: Opposition to point-of-sale mandate to enforce BMPs



It has come to the attention of the South Tahoe Association of REALTORS® that the TRPA BMP Compliance Technical Working Group is once again considering point-of-sale as an option for increasing installation of BMPs in the Tahoe Basin. While the Board of Directors supports environmental protection of Lake Tahoe and forest lands in the basin, including BMPs, we respectfully oppose imposition of any point-of-sale mandates to achieve those ends.

I. General Points against Point-of-Sale Mandates

In general, the following reasons are why REALTORS® are against point-of-sale mandates:

- They are highly inefficient in getting all members of a community to comply with new standards. - While some homes are sold only after a few years, many others remain with the same owner for years, or even decades. In reality, while the average number of years a home stays with one owner is somewhere in the neighborhood of four or five, this is only a mathematical average. The fact is that many homes remain with the same owner for more than five years, and in many cases, decades. And with less than 2% of homes changing hands each year even in a robust market, it could take several decades or more for a point-of-sale mandate to impact every home in the community.
- They unfairly burden home sales transactions. To place the burden of the whole community on only homebuyers and sellers is inequitable.
- They add complications to sales transactions. Another step only delays the escrow process and adds more stress to the homebuyer and seller.
- They increase the home purchase cost. - The cost of retrofitting can cause the home sale price to increase drastically, leaving the potential homebuyer with an added expense, and possibly, the inability to purchase a home. Even in the current market, housing affordability in California is abysmal. Every \$1,000 increase in the price of a home disqualifies 26,600 California households from achieving home ownership.
- Government mandates should be implemented, overseen and administered by the appropriate government agency, not by real estate agents.
- Point-of-Sale mandates make REALTORS® into police. - Various retrofitting mandates require the agent or broker's signature for the completion certificate to be validated, and this forces the real estate professional to act as an expert in a field which they are not trained.
- They cause REALTORS® to do the Agency's job. - An obligation by a government agency should be enforced by that government entity, not an individual in the private sector.

- They create unnecessary legal liabilities for REALTORS®. - Usually, despite all factors, the real estate professional is the one that is forced to get directly involved in a lawsuit. The liability is unfair to agents/brokers.

II. General History of Point-of-Sale Mandates in California and California Association of REALTORS® (“C.A.R.”) Response

C.A.R. has historically opposed requirements tied to point-of-sale because they are an unfair addition to home sales transactions and they are highly inefficient in getting all members of a community to comply with new standards. Over the years California has seen various types of point-of-sale measures. Many have failed, such as sidewalk repair, replacement of non-releasing windows, water and energy conservation and various home safety and environmental improvements.

III. Examples of why Point-of-sale Mandates are Unfair, Costly, and Ineffective

A. Water conservation retrofits: During the late 1980’s and early 1990’s, California went through a significant drought and water agencies surveyed their various options for reducing water consumption. SB 1224 (Killea) introduced a provision that would require a point-of-sale retrofit of ultra-low flow toilets statewide. Also, during this same time frame, the Building Industry of Southern California (BAISC) drafted a similar proposal that was sent to several elected officials in Southern California. C.A.R. vigorously opposed both bills, lobbied strongly against them and assisted in their ultimate defeat, but not before their concept could be adopted by several localities.

Throughout California, cities have followed the example set by SB 1224 and BAISC, adopting similar versions of low flow toilet retrofitting at the point-of-sale. The new toilets, in theory, use as little as 1.6 gallons per flush, whereas the older models use up to five, resulting in a savings of up to 3.5 gallons of water per flush. However, low-flow toilets often require several flushes, causing them to use just as much water as regular toilets. Furthermore, retrofitting adds costs and complications to the sales transaction. The cost of retrofitting low-flow toilets varies depending on the number of toilets, the model installed, if a licensed plumber is used, whether flooring has to be replaced and the possibility of needing a permit from the city. A new low-flow toilet is about \$150, a plumber costs from \$100-\$200, flooring and permits can cost up to several hundred dollars, with the overall cost of retrofitting approximately \$500. An increase of this amount can affect a home’s affordability, causing a buyer to no longer be able to afford a particular home.

There are some questions as to whether or not the installation of low-flow toilets on a widespread basis can have an adverse impact on the sewer system. With less water per flush, research has indicated that some local sewer systems may not have a sufficient amount of water to work well.

B. Building code inspections: A number of cities require the inspection of homes by a city inspector prior to transfer of title. The scope of these inspections varies from an exterior inspection only, to an

extensive inspection of both exterior and interior of the house. In some cases the seller/agent is responsible for ensuring the inspection has been completed, while in others the seller/agent is only required to disclose to the buyer that a presale inspection is an option prior to the transfer of the home.

Both voluntary and mandatory inspections may help to alleviate major concerns about the condition of a property or may provide a source of negotiating strength if substantial flaws are identified which may affect the sales price of a property. While many REALTORS® agree that mandatory inspections are helpful in maintaining the housing quality, many are opposed to requiring inspections at the point-of-sale. They argue that voluntary inspections and other safeguards already protect buyers and sellers from existing code violations and ensure that housing quality is maintained much better and more equitably than with point-of-sale mandates.

C. Sewer lateral inspections: In the city of Alameda, regulations require testing of sewer laterals connecting the residence to the main sewer prior to the transfer of property. The purpose of the test is to determine if the lines have leaks, which permit extraneous groundwater to get into the sewer system and sewage to leak out. Properties over 25 years old must have their sewer lateral tested for infiltration prior to sale. If the property is tested and passes, it is certified for 5 years and need not be re-tested if resold during that period. If it fails, the lateral must either be repaired or replaced and then re-tested. Replaced laterals are certified for 25 years and those that have been repaired are certified for 5 years. The owner/seller is responsible for having the mandatory test performed, obtaining the permit and providing the certification.

The cost for sewer lateral testing is approximately \$275 per hour. Sewer inspectors view the sewer lines with video cameras and check for damage. Most properties need minor repairs, which can range in price from a \$100 to \$1000 for the entire job. However, if major repair or replacement work is needed, then the cost can increase significantly from \$1,000 to \$15,000. Many homeowners have been hugely burdened by the cost and time associated with the sewer lateral inspections at point-of-sale.

In South San Francisco, instead of instituting a rigid point-of-sale requirement for sewer laterals, the City Council considered more effective and less expensive alternatives. Additionally, the City of El Cajon (East San Diego County) proposed the city prioritize where the problems were cropping up ("hot spots") due to failing sewer lines and is focusing their efforts on replacing the older lines.

IV. Alternatives to Point-of-Sale Mandates

A. Voluntary programs: Develop a more effective program that will educate homeowners on the need to inspect and retrofit Best Management Practices ("BMPs") and allow them to do so on a voluntary basis. Most individuals will do what is best for them. If they are given information on the benefits of a program, many will follow it.

B. Incentive programs: Offering an incentive program will encourage a greater participation among homeowners. For example a number of cities/water agencies are currently offering incentives to encourage homeowners to replace outdated models. Los Angeles Department of Water and Power, the cities of Santa Monica and Carlsbad issue \$100 rebates to homeowners who install new low-flush toilets. The city of Lompoc not only provides \$80 for the purchase of a toilet, but also \$50 towards the installation.

C. City assisted programs: Many localities offer assistance to pay for the inspections or retrofitting, taking the burden off the property seller. Assistance can be offered through direct city funding or through some third party organizations, such as non-profits. For example one of the most common mechanisms used to fund or facilitate the retrofit of low-flow toilets is the “water conservation offset” program. Under this program, as a condition of approval for a water meter or building permit, the builder/developer must save a specified amount of water by either retrofitting existing homes or paying fees into a retrofit fund to allow the local agency to provide rebates for low-flow toilets. In some cases, the offset funding is supplemented by other sources.

D. Citywide standards inspected at specific intervals: By creating universal standards for the entire city, local governments are ensuring that everyone is protected and sharing the cost of mandates. Many cities conduct inspections either at annual intervals or another yearly time frame. They can also impose laws that state all retrofitting must be done by a specific date to all properties.

V. BMPs Are More Effective On an Area-Wide Level than Parcel-By-Parcel, as Recognized by TRPA and Lahontan Regional Water Quality Board

As part of the TRPA’s new Regional Plan Update (“RPU”), the TRPA published the *Area Plans Framework*, in which the TRPA states that an Area Plan may establish area-wide BMPs in lieu of site-specific BMPs, provided that the area-wide BMPs can be shown to achieve equal or greater effectiveness than a parcel-by-parcel approach. The RPU was very recently adopted and Area Plans are being created for the Tahoe Basin. It seems logical to allow Area Plans to include area-wide BMP projects and to try these projects for at least a few years before even considering a point-of-sale mandate. The new RPU was the first update to TRPA’s Regional Plan since the 1980’s. The new RPU is based on new and better science. Since the new RPU allows for area-wide BMPs, it seems backwards and counter-productive to impose BMPs at point-of-sale when a new, likely better method is in the works right now. Point-of-sale for BMPs is an outdated, politically controversial solution to a scientific problem.

In an article published on laketahoenews.net on July 30, 2012, Bob Larson of Lahontan said, “*Fifteen percent of fine sediment is from atmospheric deposition,*” Bob Larson with Lahontan told the TRPA board. “*But we don’t know exactly where it is from.*” He said it is most likely dust from paved and unpaved roads. Joann Marchetta, Executive Director of TRPA, stated in the same article, ***the***

introduction of parcel-by-parcel best management practices “was not driven by science. It was driven by policy.”

VI. BMPs Cannot Be Installed in the Winter

It would be impossible to install BMPs in the winter, or during TRPA’s 6-month moratorium on breaking ground in the Tahoe Basin. Having a point-of-sale mandate for BMPs would effectively stop all home sales in the basin without the ability to install BMPs in the winter. This would be devastating to the local economy and to individual home buyers and sellers.

For more information, or to discuss this with our organization further, please contact:

Natalie Yanish, 2014 President

natalie@realtordeb.com | 530.542.2912

Craig Woodward, 2013-2014 Local Government Relations Committee Chair

craig@realtordeb.com | 530.542.2912

Hayley Williamson, Government Affairs Director

Hayley.a.williamson@gmail.com | 608.516.6028

Sharon Kerrigan, Executive Vice President

Sharon@staor.org | 530.541.7007