

## **Compliance Procedures and Enforcement Options**

### **Overview:**

This information sheet addresses the BMP Compliance Working Group discussion items #3 and #4 related to compliance procedures and enforcement options:

3. Revise BMP compliance procedures for permitted projects to provide flexibility in the use of forfeited securities and/or in imposing penalties.
4. Consider enforcement options, such as recording a notice of noncompliance to a property deed under certain circumstances.

TRPA and local jurisdictions permitting projects under a MOU collect a security that gets returned after the project meets various TRPA requirements including, but not limited to, installation of BMPs. Projects that do not meet requirements are given a chance to comply and as a last resort TRPA may use the security to effect compliance. However, this process is impractical because the forfeited securities cannot be used to install any improvements including BMPs without authorization from the non-compliant property owner. TRPA staff drafted proposed amendments to Chapter 5 of TRPA Code and Article 9 and 13 of Rules of Procedure to provide greater flexibility in the use of forfeited securities to implement the highest priority water quality projects.

Article 9 outlines processes and penalties for properties failing to meet TRPA requirements, including installation of BMPs. Granting additional enforcement authority, such as recording a notice of non-compliance to a property deed under certain circumstances, may increase compliance rates with TRPA requirements, including but not limited to, installation of BMPs.

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.<sup>1</sup> This info sheet provides background data, analysis of options to address the topic, and advances recommendations from TRPA staff and the EIP Parcel Specific Working Group.

### **Recommendation Summary:**

1. Refer topics to the TRPA Legal Committee of the Governing Board to review possible amendments to the TRPA Code and Rules of Procedure and develop final recommendations.
2. Improve tracking process to accurately reflect the number of parcels TRPA has actively under enforcement.

### **Background**

#### 2012 Regional Plan

Water Quality Policy WQ-3.11 states that all properties shall meet BMP requirements and WQ-3.12 states that all new projects, expansions, and redevelopment projects shall meet BMP requirements.

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<sup>1</sup> BMP Compliance Options Working Group Meeting #1 – Meeting Notes, March 12, 2014

TRPA Code of Ordinances

Chapter 5 of TRPA Code outlines compliance requirements for projects. Permitted projects for new development, expansions and redevelopment must post a security that gets returned after meeting various TRPA requirements, including but not limited to installation of BMPs.

TRPA Rules of Procedure

The Rules of Procedure set standards for how Agency operations and processes are to be carried out. Article 9 addresses compliance procedures including those related to violation of BMP requirements. Article 13 addresses securities for permitted projects.

Local Area Plans

New development, expansions, or redevelopment projects permitted by TRPA or local jurisdictions within Area Plans must post a security until all BMP requirements are met. Area Plans may authorize area-wide or neighborhood scale stormwater treatment systems if they can more effectively reduce pollutant loading. Forfeited securities could be used to fund the installation or maintenance of area-wide stormwater treatment systems.

Data Needs

The BMP Compliance Working Group requested information on the effectiveness of TRPA's BMP enforcement approaches. Chapter 5 of TRPA Code and Article 9 of TRPA Rules of Procedure outline TRPA compliance requirements and procedures. TRPA Compliance staff apply these regulations to projects permitted by TRPA and, if needed, to projects permitted under delegation MOUs. TRPA Compliance staff also respond to complaints regarding non-compliance of BMPs.

TRPA has received grant funding to support targeted enforcement of BMP retrofits since 2003. TRPA has met all grant deliverables, which typically involve sending a Notice of Failure to Implement BMPs to targeted properties and providing technical assistance to facilitate compliance. Since 2003, TRPA has issued 1,826 Notice of Failure letters to non-compliant properties in the Lake Tahoe Region. The following breakdown summarizes the resulting compliance rates for enforcement efforts to date:

BMP Accelerated Implementation Data from 2003 to 2013<sup>2</sup>

Commercial		
CA/NV BMP Compliance		43%
Multi-Family( >4 units)		
CA/NV BMP Compliance		34%
Single Family		
CA/NV BMP Compliance		35%

<sup>2</sup> Accelerated Implementation Statistics compiled by TRPA staff June 5, 2014. Please note these data reference the number of BMP enforcement files not the parcels associated with them (some commercial and multi-family files have multiple APNs linked to one file number).

Higher compliance rates occur in Nevada reflecting TRPA's priority watershed system, focused education and outreach and early enforcement efforts occurring in these areas.<sup>3</sup> Most recent enforcement in California targeted commercial properties. TRPA compliance staff is in the process of initiating a second phase of enforcement to follow up with non-compliant properties which received a Notice of Failure to Implement BMPs by priority.

### **Options and Analysis**

#### Update Code and Rules of Procedure related to penalties and forfeited securities

TRPA staff drafted possible revisions to the Compliance Section of TRPA Code and Articles 9 and 13 of the Rules of Procedure in an effort to improve processes and better reflect current practices. Attachment A outlines the proposed revisions in track changes, which provide greater flexibility in the use of forfeited securities and/or in imposing penalties. Article 9 outlines processes and penalties for properties failing to meet TRPA requirements, including installation of BMPs. Bringing individual properties into compliance following issuance of a notice requires a high level of compliance staff resources and are therefore pursued by TRPA based on priority. Granting TRPA additional enforcement authority, such as recording a notice of non-compliance to a property deed under certain circumstances, may increase compliance rates with TRPA requirements, including installation of BMPs. The drafted revisions to TRPA Code and Rules of Procedure impact many projects, not just those installing BMPs.

### **Recommendations**

1. Request the TRPA Legal Committee of the Governing Board review possible amendments to the TRPA Code and Rules of Procedure and develop final recommendations.  
TRPA staff and the EIP Parcel Specific Working Group recommend referring this topic to the TRPA Legal Committee of the Governing Board since the proposed revisions to TRPA Code and Rules of Procedure impact projects other than just those installing BMPs. Both co-chair Aldean and Shute sit on the Legal Committee and can communicate between the groups.
2. Improve enforcement tracking  
Update Agency enforcement tracking processes to improve accuracy of data reported. Specific recommendations include linking each APN to a BMP enforcement file in a manner that facilitates tracking of total parcels under enforcement.

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<sup>3</sup> TRPA code section 60.4.4 outlines the priority watershed system. Much of TRPA's early enforcement efforts occurred in Incline Village because of available funding and its ranking as a priority 1 watershed.



# TRPA

## Code of Ordinances

**Adopted by Governing Board  
December 12, 2012  
Effective February 9, 2013**

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# CHAPTER 5 COMPLIANCE

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## 1.1. PURPOSE

This chapter provides enforcement mechanisms concerning project applications, project approvals, conditions of approval, provisions of the Compact, Goals and Policies, and the Code of Ordinances

## 1.2. APPLICABILITY

This chapter applies to all projects and activities. As used in this chapter, the term "provisions of law" means provisions of the Compact, Goals and Policies, and Code.

## 1.3. PROJECT INSPECTIONS

Projects approved by TRPA shall be subject to inspections by TRPA at any reasonable time until the project passes a final inspection. The permittee shall be responsible for making the project area accessible for inspection purposes. TRPA shall not be liable for any expense incurred by the permittee as a result of TRPA inspections.

### 1.3.1. ~~Required~~ Inspection

TRPA shall conduct the following inspections, as appropriate:

- A. Pregrade: For projects that require grading, TRPA shall conduct a pregrading inspection to determine if the permittee has satisfied pregrading conditions of approval, including installation of temporary erosion control and vegetation protection, and construction site boundary fencing. Other than actions to satisfy pregrading conditions of approval, no grading or construction shall be undertaken in the project area by the permittee until ~~TRPA has notified the permittee that, based on the pregrading inspection,~~ TRPA has verified that the pregrading conditions of approval have been satisfied.
- ~~B. For all projects, TRPA may conduct inspections as necessary to assure that the permittee has complied with the project approval and provisions of law.~~
- B. Final: Prior to ~~issuance of a local certificate of occupancy,~~ the scheduled date of project completion, ~~or project completion, whichever is earliest,~~ TRPA shall conduct a final project inspection to ensure that all conditions of project approval shall be satisfied. Section sets forth provisions regarding release of securities at the time of final project inspection. With the cooperation of local jurisdictions, a certificate of occupancy may be withheld until applicable conditions are satisfied.
- C. Other Inspections: In addition to the above inspections, TRPA may require, or make, other inspections of any project or activity to determine compliance with provisions of law or conditions of approval. If a grading and construction schedule is required, TRPA shall conduct the inspections set forth in the approved schedule.

**1.3.2. ~~Other Inspections~~**

~~In addition to the above inspections, TRPA may require, or make, other inspections of any project or activity to ensure compliance with provisions of law or conditions of approval. If a grading and construction schedule is required (see Chapter 62), TRPA shall conduct the inspections set forth in the approved schedule.~~

**1.3.3. 1.3.2. Permittee Inspection Requests**

The permittee shall notify TRPA, by telephone, in person, or in writing, when the project is ready for required inspections. TRPA shall conduct these inspections expeditiously. Notification of readiness for inspection should be given at least ~~two days~~one week in advance of the desired date for inspection. Inspections may be delayed by TRPA when the project area is covered with snow ~~and~~or if ~~such~~ conditions prevent proper inspection. ~~The permittee shall be responsible for providing access to, and the means for, conducting the inspection.~~

**1.3.4. ~~Inspection Records~~**

~~TRPA shall maintain a record of all inspections made. The record shall include the date, time, place, and scope and results of the inspection, the reason for the inspection, and the name of the person who conducted the inspection.~~

**1.3.5. ~~Inspection Card~~**

~~TRPA may post an inspection card within the construction site boundary and require the permittee to maintain the card until the final inspection. The inspection card shall state the date and comment on any inspection made, and be initialed by the TRPA employee making the inspection.~~

**1.4. NONCOMPLIANCE**

In the event a person fails to comply with provisions of law or conditions of project approval, TRPA may take any or all of the following actions:

**1.4.1. Correction Notice**

TRPA may issue a correction notice for any project or activity in violation of provisions of law or the conditions of project approval. The correction notice shall describe the action which shall be taken to ~~effect~~to bring the area or activity into compliance. Notice pursuant to TRPA's Rules of Procedure shall be given. The correction notice shall require compliance with its term by a specific date ~~certain~~ and state that failure to comply shall result in issuance of a cease and desist order, revocation of the permit, if applicable, or other enforcement action.

**1.4.2. Cease and Desist Orders**

TRPA may issue a cease and desist order for any project or activity in violation of provisions of law or conditions of project approval. The cease and desist order shall describe activities that must stop immediately, and states the action which shall be taken before the cease and desist order will be withdrawn. Notice pursuant to TRPA's Rules of Procedure shall be given. The order shall require compliance with its terms by a specified date and state that failure to comply ~~shall~~may result in revocation of the permit, if applicable, or other enforcement action.

1.4.3. [Notice of Non-Compliance: TRPA may record a notice of non-compliance for any project or activity in violation of provisions of law or conditions of project approval. The notice shall be filed with the appropriate County Recorder. Prior to recording a notice of non-compliance, the property owner of record shall be notified by a cease and desist order, correction notice, or a security return inspection letter. When the violation has been corrected, TRPA shall record with the appropriate County Recorder a notice of cancelation certifying that the notice of non-compliance has been rescinded. Non-compliant party shall be responsible for all costs associated with recording such notice.](#)

## **1.5. PERMIT SUSPENSION AND REVOCATION**

In the event that the permittee fails to comply with the terms of a correction notice or cease and desist order, ~~TRPA the Executive Director~~ may ~~proceed to~~ suspend or revoke the permit. ~~TRPA shall provide notice and an opportunity to be heard on the suspension or revocation to the permittee pursuant to its Rules of Procedure.~~ Upon revocation of a permit, the permittee shall have no further rights under the permit. ~~Upon suspension of a permit, the matter shall be scheduled for the next Governing Board meeting for which notice can be given pursuant to the Rules of Procedure.~~

## **1.6. PENALTIES**

TRPA may establish a monetary penalty for the resolution of a compliance matter. TRPA also may adopt, by resolution, a schedule of such monetary penalties. [Upon the Executive Director's determination that a violation has occurred, TRPA may impose additional filing fees or a penalty up to \\$5,000 with Executive Director approval. 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. All violations with penalties over \\$5,000 shall resolved pursuant to Rules of Procedure.](#)

## **1.7. (RESERVED)**

## **1.8. (RESERVED)**

## **1.9. SECURITIES**

As a condition of approval, permittees may be required to post a security with TRPA to ensure compliance with certain conditions of approval. The approval shall state which conditions are the subject of the security.

### **1.9.1. Types of Securities**

Acceptable types of securities are:

- A. Cash;
- B. Assignment of a personal savings account;
- C. Letter of credit;
- D. Hold on a personal savings account or certificate of deposit;
- E. Certificate of deposit; or



- F. Faithful performance bond.

**1.9.2. Calculation of Security**

Securities shall be calculated as follows:

- ~~A. Except as provided in this chapter, a security shall be posted in an amount equal to 110 percent of the cost of the approved BMPs and other erosion control and water quality improvements required as a condition of approval, pursuant to a schedule established by resolution of the TRPA. Multiple security deposits may be required where applicable.~~
- ~~B. TRPA may require other project conditions of approval to be secured by the posting of a security in an amount to be determined by TRPA.~~

**1.9.3. Security Exemptions**

The following projects shall be exempt from posting securities required in subparagraph 5.9.2.A:

- A. Projects in the TRPA Water Quality Capital Improvement Program with the exception of the BMP Retrofit Program;
- B. Projects in the TRPA Stream Restoration Program;
- C. Projects in the TRPA Regional Transportation Plan for the Lake Tahoe Basin;
- D. BMP retrofitting of the project area outside the construction site boundary which is to be accomplished following the completion of the project; or
- ~~E. Projects which do not require or include BMPs or other erosion control and water quality improvements; or~~
- ~~F.E. Project for which P~~performance of the conditions of approval required to be secured is assured through an equivalent alternative mechanism.

**1.9.4. ~~Forfeiture~~ Disposition of Security**

Securities may be released, forfeited, or abandoned in either of the following ways:

- A. Release Of Security: A security shall be released to the permittee by TRPA after a final inspection, provided that all conditions of approval have been satisfied. Where revegetation is a condition of approval, the security shall be retained until the vegetation is established.
- ~~A.B. Non-compliance~~ **Forfeiture of Security:**  
~~TRPA shall monitor compliance with secured conditions of approval pursuant to Section 5.3. A security, or portion thereof, shall be forfeited if to TRPA if finds that a secured conditions of approval has have not been timely complied with completed, or a final inspection has not been requested, one year after the construction completion deadline, and that the security, or a portion thereof, is necessary to achieve compliance. After notice and an opportunity to be heard are given to the permittee pursuant to the Rules of Procedure, TRPA may use the security to accomplish the condition of approval which was found to be not in compliance. Any portion of the security not used by TRPA shall remain posted until release pursuant to Subsection 5.9.5. the security may be forfeited.~~

**B.C. Abandonment of Cash Securities**

Securities posted in cash may be ~~forfeited~~ abandoned after TRPA has mailed a check for the security amount, or sent the appropriate IRS form to allow the release of a check, to the person who posted the cash security (of a completed project), and received one of the following responses:

1. the check or IRS form was returned with no forwarding address,
2. the person who posted the cash security did not respond to the request to complete and return the IRS form necessary to release the check;
3. the person who posted the cash security did not cash the check within one year of receipt, or;
4. The person who posted the cash security refused to claim the security. Prior to ~~forfeiture~~ abandonment of a cash security, TRPA shall publish a notice of ~~forfeiture~~ abandonment, which notice shall name the person who posted the security. The notice shall be published one time in a newspaper of general circulation in the Tahoe Region. If the person who posted the cash security does not claim the security within one year after the publication of the notice, the cash security shall be deemed ~~abandoned and forfeited to a fund designated by the Governing Board.~~

**~~C. Release of Security~~**

~~A security shall be released to the permittee by TRPA after a final inspection, provided that all conditions of approval have been satisfied. Where revegetation is a condition of approval, apportion of the security shall be retained until the vegetation is established.~~

**1.10. JUDICIAL RELIEF**

Nothing in this chapter shall be construed to prevent TRPA from filing a legal action in an appropriate court and pursuing judicial relief, including, but not limited to, injunctive relief, declaratory relief, or civil penalties as provided for in Article VI(l).

**1.11. CORRECT INFORMATION/NAMES ~~AND ORIGINALS REQUIRED~~**

All applications, authorizations, and other information or documents filed with provided to TRPA ~~by applicants or their agents~~, shall be truthful and accurate. ~~No applicant or agent shall sign a false or incorrect name, or shall forge another's name. No applicant or agent shall knowingly, intentionally, or recklessly provide any untrue information on an application, authorization, or other document. Each false, untrue name or forged name on any application, authorization or other document filed with TRPA shall be a separate violation of this Code. Each piece of false information provided knowingly, intentionally, or recklessly on an application, authorization or other document filed with~~ to TRPA shall be a separate violation of this Code.

All applications, authorizations and other documents filed with TRPA by applicants or their agents shall be originals or accurate. ~~However, photocopies or facsimiles of such applications, authorizations, or other documents may be submitted (along with the requisite filing fee) as long as the originals are received by TRPA within fourteen (14) days of filing such photocopies or facsimiles. If the originals are not received within~~

~~fourteen (14) days of filing the photocopies or facsimiles, the application, authorization, or other document shall be deemed in complete and shall not be processed until the original is received.~~

## **1.12. REMEDIAL ACTION PLANS**

### **1.12.1. Purpose**

In conjunction with other provisions of Chapter 5, this section provides procedures to prepare and enforce remedial action plans which correct environmental degradation.

### **1.12.2. Applicability**

TRPA may request or require a remedial action plan after identifying a significant environmental problem as set forth in Section 5.12.3.

### **1.12.3. Environmental Problem Assessment**

TRPA shall develop, adopt, and maintain problem assessments which identify existing situations which adversely impact attainment or maintenance of the thresholds or constitute violation of a threshold, the Goals and Policies, or the Code. The problem assessments shall identify affected property owners, abatement measures, estimated costs, and sources of funding for implementation of abatement measures.

#### **A. Consultation**

In development of problem assessments, TRPA shall consult with affected local governments and state and federal agencies.

### **1.12.4. Contents of Remedial Action Plans**

After adoption of a problem assessment, TRPA may either request or direct the preparation of a remedial action plan. TRPA may either assist in, or take responsibility for, the preparation of a remedial action plan. Remedial action plans shall include provisions for, and methods of, problem abatement, implementation schedules, and cost estimates.

#### **A. Action Plan Guidance**

TRPA may assist persons preparing an action plan with respect to plan contents, technical requirements for abatement practices, and other matters.

### **1.12.5. Preparation of Voluntary Remedial Action Plan**

At any time, a person may prepare a remedial action plan and submit it to TRPA for review and approval. In the event TRPA adopts a problem assessment, TRPA may advise the responsible person and either request the preparation and submittal of an action plan or prepare an action plan itself. A request to prepare a remedial action plan shall include a response date. Notice of a request shall be given in accordance with TRPA's Rules of Procedure. TRPA shall emphasize consultation with the person involved to achieve preparation of a voluntary remedial action plan.

### **1.12.6. Preparation of a Mandatory Action Plan**

In the event TRPA adopts a problem assessment, TRPA may advise the responsible person and require the preparation of a mandatory action plan. Notice of the requirement to prepare shall be given in accordance with TRPA's Rules of Procedure.

**1.12.7. Approval of Action Plans**

Upon submittal of a remedial action plan, TRPA shall review and take action to approve, require modification, or reject the proposed plan. In the event of a rejection, TRPA shall prepare and approve an appropriate action plan.

**1.12.8. Failure to Deliver a Mandatory Action Plan**

Failure to prepare a mandatory action plan constitutes a violation of the Code. If a person fails or refuses to prepare and submit a mandatory action plan to TRPA within the time limits set by TRPA, TRPA may enforce the terms of this chapter pursuant to Chapter 8 and the Rules of Procedure.

**1.12.9. Compliance with Action Plans**

A person shall comply with all provisions of an approved action plan including, but not limited to, the schedule for implementation in the plan. TRPA shall monitor implementation of action plans and may provide technical assistance and guidance on implementation.

**1.12.10. Other Requirements, Permits, Or Procedures**

Approval of an action plan by TRPA shall be subject to other applicable chapters of the Code. An action plan shall be processed by TRPA as a project, pursuant to its applicable Rules of Procedure.

**1.12.11. Relationship to Chapter 5**

Nothing in this section shall be construed to limit TRPA's ability to enforce compliance with the Compact, the Goals and Policies, or the Code pursuant to Chapter 5.

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# ARTICLE 9. COMPLIANCE PROCEDURES

## 1.1. PURPOSE

This article sets forth procedures for Governing Body (Board) review of alleged violations of the Tahoe Regional Planning Compact (Compact), Regional Plan Package, or Tahoe Regional Planning Authority (Agency or TRPA) permits.

1.1.1. These procedures are intended to provide notice and an opportunity to be heard, to promote settlement of the violation without litigation, to facilitate administrative hearings and to promote resolution of violations at the ~~administrative~~ staff level.

1.1.2. In lieu of the procedures outlined in this article, the Executive Director may authorize Agency counsel to initiate immediate judicial action to seek any available remedies for alleged violations. Prior to any substantive prosecution of a judicial action, the Executive Director shall obtain the consent of the Board to proceed with litigation initiated under this provision.

1.1.3. Investigation

The Executive Director may conduct investigations to determine if sufficient grounds exist for alleging a violation of the Compact, Regional Plan Package, or TRPA permit. Investigations shall be completed as expeditiously as possible.

## 1.2. ISSUANCE OF CORRECTION NOTICE OR CEASE AND DESIST ORDER

Issuance of a correction notice or cease and desist order (TRPA Code, subsections 5.4.1 and 5.4.2, respectively) shall be given to the property owner and the permittee, if applicable, or other responsible persons known to the Executive Director. Issuance of a correction notice or cease and desist order shall not constitute discovery of a cause of action within the meaning of Article VI(j)(4) of the Compact. Issuance of a correction notice or cease and desist order shall be by one or more of the following methods:

1.2.1. By mail, postage prepared, addressed to the last known address of the party. Issuance by mail shall be presumed effective three working days after deposit in the mail;

~~1.2.2. If appropriate, given the location and circumstances of the affected parcel, b~~ By posting the notice in a conspicuous location on the affected parcel;

~~1.2.2.1.2.3.~~ By electronic mail.

~~1.2.3.1.2.4.~~ By telephone or personal delivery; or

~~1.2.4.1.2.5.~~ By any method reasonably calculated to give notice.

## 1.3. NOTICE OF VIOLATION ~~AND VIOLATION REPORT~~ (NOV)

If the Executive Director determines that sufficient grounds exist to allege a violation so as to constitute a cause of action pursuant to Article VI(j)(4) of the Compact, he/she shall issue an ~~a notice of violation and a violation report~~ NOV to the property owner, the permittee, if applicable, and other responsible persons (hereinafter referred to

collectively as “noticed party”) known to the Executive Director. Service of the ~~notice of violation and violation report~~ **NOV** shall constitute discovery of the cause of action within the meaning of Article VI(j)(4) of the Compact. ~~Service shall be given as provided in Section 9.5 of these Rules of Procedures (Rules).~~ Service of a ~~notice of violation and violation report~~ **NOV** is not a final action of the Executive Director subject to appeal pursuant to Article 11 of these Rules.

#### 1.4. SERVICE OF NOTICE OF VIOLATION

1.4.1. Service of a ~~notice of violation and violation report~~ **NOV** shall be by one or more of the following methods:

- A. By personal delivery. Service by personal delivery shall be effective upon actual delivery;
- B. By mail, postage prepared, addressed to the last known address of the noticed party. Service by mail shall be presumed effective three working days after deposit in the mail; or
- C. By any method reasonably calculated to give notice.

1.4.2. Proof of service shall be made under penalty of perjury.

#### 1.5. CONTENTS OF NOTICE OF VIOLATION (**NOV**) ~~AND VIOLATION REPORT~~

The ~~notice of violation~~ **NOV** shall ~~state the nature of the violation, the steps necessary to correct the violation, whether a cease and desist order is in effect and the time within which correction shall occur. The notice also shall state the date on which a show cause hearing has been scheduled. In the event that the show cause hearing is re-scheduled, the noticed parties shall be notified no later than five working days prior to the originally scheduled hearing date. The TRPA violation report shall contain the following:~~

1.5.1. The names and addresses of all noticed parties;

1.5.2. A description of the alleged violation(s) committed including ~~Copies of~~ the provisions of the Compact, Regional Plan Package, and the TRPA permit ~~that alleged to~~ have been violated;

~~1.5.3. A statement of the facts supporting the determination of a violation;~~

~~1.5.4. Copies or summaries of the documentary evidence supporting the determination of a violation;~~

1.5.3. A proposed resolution of the enforcement action that may include revocation of the permit;

~~1.5.5.1.5.4. The date by which a response, if any, shall be filed; and~~

~~1.5.6. The date, time, and place of the show cause hearing; and~~

~~1.5.7.1.5.5. The date by which a response, if any, shall be filed.~~

## 1.6. PERMIT REVOCATION

The Executive Director may fully or partially revoke a permit due to a violation of a term or condition of approval or the ~~intentional or negligent~~ inclusion of inaccurate, erroneous or incomplete information in a project application, where the inclusion of complete and accurate information would have caused TRPA to require additional or different conditions to the permit or to deny the application, ~~may be grounds for full or partial revocation of the permit after notice and an opportunity to be heard in accordance with this article. If the Executive Director intends to recommend revocation of the permit to the Board, that intent shall be stated in a notice of violation.~~

## 1.7. RESPONSE TO NOTICE OF VIOLATION

After service of a notice of violation, the noticed party may serve a written response (hereinafter "responding party") on TRPA no later than 21 calendar days after service of the notice of violation.

- 1.7.1. Waiver: The Executive Director may waive the 21 calendar day limit provided the responding party shows good cause for the late filing of a response and waives, in writing, the statute of limitations in Article VI(j)(4) of the Compact for a period not less than an additional 60 calendar days.
- 1.7.2. Show Cause Hearing: If none of the noticed parties serves a response, then the Executive Director shall cancel the show cause hearing and proceed with the enforcement action as he deems appropriate, which may include the filing of a civil complaint, pursuant to Article VI(1) of the Compact for declaratory and injunctive relief, civil penalties, and other appropriate relief. If one or more but not all of the noticed parties serves a response, then the Executive Director shall determine, in his sole discretion, whether to hold the show cause hearing.<sup>5</sup> Notice of cancellation of the hearing shall be given to any responding party and other noticed parties.

## 1.8. CONTENTS OF RESPONSE TO NOTICE OF VIOLATION

Should the violating party choose to respond, ~~the~~ response to the notice of violation shall contain either: an acceptance of the proposed settlement contained in the NOV or an election to pursue settlement in accordance with Section 9.10, ~~or~~ the following information:

- 1.8.1. The names, addresses, and current contact information (e.g., phone, email) of the noticed parties participating in the response;
- 1.8.2. A statement of facts, positions, arguments, and other information relied upon by the responding party;<sup>5</sup>
- 1.8.3. ~~A response to each of TRPA's stated facts that either admits or denies the fact;~~
- 1.8.4. An explanation of the responding party's defense;
- 1.8.5. Copies or summaries of the documentary evidence or other information relied upon by the responding party;

~~Amended 12/21/05~~



- 1.8.6. The names and addresses of witnesses or other persons with knowledge of the matter presently known to the responding party; and
- 1.8.7. A proposed resolution of the matter acceptable to the responding party, if any.

### **1.9. ELECTION TO PURSUE SETTLEMENT**

If the responding party wishes to pursue settlement of the enforcement action, the response to the notice of violation shall contain an express waiver of the statute of limitation in Article VI(j)(4) of the Compact, an acknowledgement that the show cause hearing procedure will be stayed pending the outcome of the settlement efforts, and an agreement to comply with the terms of any pending cease and desist order. Waiver of the statute of limitations shall be for a definite period of time, but not less than an additional 60 calendar days. ~~An election to pursue settlement shall not relieve the responding party of the requirement to comply with Section 9.9 of these Rules in the event settlement is discontinued.~~

### **1.10. STAY OF HEARING**

In the event the responding party elects to pursue settlement of the enforcement action and the Executive Director determines that a stay is appropriate, the show cause hearing shall be ~~stayed~~ continued pending the outcome of settlement discussions<sup>5</sup>. Settlement discussions may be discontinued without cause at any time by the responding party or the Executive Director. ~~Upon service of a notice of discontinuance, the Executive Director shall reset the show cause hearing and require the responding party to submit the information set forth in Section 9.9 of these Rules. Notice of a stay of the show cause hearing and of the resetting of the hearing, if any, shall be given to the responding party and other noticed parties.~~

### ~~1.11. CONTINUANCE OF HEARING OR WITHDRAWAL OF NOTICE~~

~~The Executive Director or the Legal Committee may continue a show cause hearing upon a showing of good cause and upon notice to the responding party and other noticed parties. The Executive Director or the Legal Committee may withdraw a notice of violation at any time. Notice of withdrawal shall be given to the responding party and other noticed parties.~~

### ~~1.12.1.11. NOTICE~~

#### ~~1.12.1.11.1. Generally~~

Whenever notice or service is required by this article, except as otherwise specified for the issuance of a correction notice or cease and desist order or service of a notice of violation ~~and violation report~~, it ~~notice~~ shall be given by personal delivery, electronic mail, or by deposit in the mail, postage prepaid, addressed to the last known address of the person. Notice by mail pursuant to this section shall be deemed effective upon deposit in the mail.

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~~Amended 12/21/05~~

**1.12.2:1.11.2. Notice to Affected Property Owners**

If the proposed resolution of the enforcement action by TRPA would constitute a project, or the equivalent thereof, notice of the show cause hearing shall be given to affected property owners if otherwise required by Article 12 of these Rules.

**1.13:1.12. HEARING SUMMARY**

The Executive Director shall prepare a hearing summary. The summary shall be served on the responding party and other noticed parties five working days before the show cause hearing. The hearing summary shall contain the following:

~~1.13.1. A statement of the uncontested facts in the opinion of the Executive Director;~~

~~1.13.2. A description of the violations alleged to have been committed and a statement of the related facts. The factual and legal contentions of the Executive Director and the responding party as summarized by the Executive Director;~~

~~1.13.3:1.12.1. The issues to be determined in the opinion of the Executive Director~~ Staff recommendation regarding appropriate resolution; and

~~1.13.4:1.12.2. The TRPA violation report and the responding party's response, attached as exhibits.~~

**1.14:1.13. SHOW CAUSE HEARING**

The show cause hearing shall be conducted as follows.

**1.14.1:1.13.1. Conduct of Hearing**

The show cause hearing shall be conducted by the TRPA Legal Committee. The Chairman of the TRPA Legal Committee shall preside over the hearing, and may impose guidelines before or at the hearing for an orderly and efficient proceeding, including but not limited to time limits for presentations, ~~for an orderly and efficient proceeding~~. For purposes of this article, the Legal Committee Chairman may designate another member of the committee to serve for him or her.

**1.14.2:1.13.2. Hearing Requirements**

The Executive Director and each responding party shall be given the opportunity to present a statement of position and relevant information and evidence. The public, including non-responding parties, shall be given an opportunity to comment.

**1.14.3:1.13.3. Legal Committee Recommendation**

At the conclusion of the hearing, the Legal Committee will deliberate and recommend a course of action to the Governing Board that affirms, modifies, or withdraws the Executive Director's determination of a violation, authorizes legal counsel to pursue judicial remedies, determines and offers an alternative proposed resolution, or recommends such other action as deemed appropriate by the Legal Committee.

**1.15.1.14. BOARD ACTION**

**1.15.1.14.1. Generally**

The Board may take one or more of the following actions: affirm, modify, or withdraw the Legal Committee's recommended course of action, authorize legal counsel to pursue judicial remedies, determine and offer an alternative proposed resolution, or take such other action as deemed appropriate by the Board. Prior to taking such an action, the Board shall provide an opportunity for public comment.

**1.15.2.1.14.2. Vote**

To affirm the Legal Committee's recommended course of action, direct counsel to pursue judicial remedies, or determine and offer a proposed resolution a vote of any eight Board members shall be required. If the required vote is not obtained, the Executive Director's notice of violation shall be deemed withdrawn. ~~Revocation of a permit, or an e~~Offer of resolution that constitutes a project, shall require the affirmative vote of at least nine members of the Board and the affirmative vote of at least five members of the Board from the state in which the property is located.

**1.16.1.15. NOTICE OF BOARD ACTION**

No later than five working days after the Board action on the hearing, the Executive Director shall serve notice of the Board action on the responding party and other noticed parties. The notice shall contain a verbatim statement of the motion passed by the Board with respect to the show cause hearing. The date of the Board action, not the date of the notice, shall be the final action of TRPA for the purpose of seeking judicial review pursuant to Article VI(j)(4) of the Compact.

**1.17.1.16. IMMEDIATE JUDICIAL ACTION**

If the Executive Director determines that it is necessary for the protection of the public safety, the environment of the Tahoe region, or it is otherwise necessary to prevent prejudice to TRPA's enforcement authority, he may seek immediate judicial relief or take such other action as deemed appropriate. Direction to counsel under this section shall not operate to preclude a show cause hearing. The Executive Director shall report any actions taken pursuant to this section to the Governing Board at the next regular meeting.

**1.18.1.17. COMMENCEMENT OF LEGAL ACTION**

In accordance with the determination of the Executive Director or the Board, as applicable, Agency counsel shall take appropriate action to pursue all available judicial remedies, including declaratory and injunctive relief and civil penalties pursuant to Article VI(1) of the Compact.

**1.19.1.18. VIOLATIONS OF BEST MANAGEMENT PRACTICES RETROFIT PROGRAM**

Violations of the subsection 60.4.4, the Best Management Practices (BMP) retrofit program, shall be resolved as follows:

**1.19.1.18.1.** Owners of properties ~~identified by the Executive Director to be out of compliance with the BMP retrofit program~~ shall be served a Notice of Failure to Implement BMPs

**0 ARTICLE 9. COMPLIANCE PROCEDURES**

**1.18 Violations of Best Management Practices Retrofit Program**

(“Notice”). ~~The Notice shall include, at a minimum, a statement of facts supporting TRPA’s initial determination that the subject property is out of compliance.~~

~~1.19.2.1.18.2.~~ Property owners receiving Notices may file a response within 30 days of the date of notice which may ~~shall have 30 calendar days to file with TRPA a Response (“Response”) to the Notice. The Response shall include, at a minimum, a statement relevant to the facts contained in the Notice and~~ any circumstances that may mitigate or excuse the alleged failure to comply.

~~1.19.3.~~ TRPA will not seek monetary penalties if within 30 days of notice the property owner submits a BMP retrofit plan and an implementing schedule that is to bring the property into compliance with subsection 60.4.4 of the TRPA Code, ~~and a BMP implementation schedule~~ This plan and implementation schedule are subject to TRPA approval. Failure to implement and install BMP’s according to the approved timeline shall result in the imposition of monetary penalties. ~~prior to the end of the 30 day notice period, and then timely installs those BMPs pursuant to a TRPA approved schedule, or if the property owner has completely installed prescribed BMPs in compliance with subsection 60.4.4 of the TRPA Code prior to the end of the 30 day period. The BMP retrofit plan submitted may either be a BMP prescription completed by TRPA staff, a cooperating agency completing BMP prescriptions, or a BMP plan that was designed by a registered engineer and approved by TRPA. The BMP implementation schedule, which must be reviewed and approved by TRPA, shall set forth the timeline in that prescribed BMPs must be installed. TRPA shall require BMP implementation within 60 days unless consideration of the grading season, extent of excavation and cost warrants additional time.~~

~~1.19.4.1.18.3.~~ Based on the Notice and Response, the Executive Director shall ~~make a determination as to the~~ determine 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.

~~1.18.4.~~ If Upon the Executive Director’s ~~determines~~ determination that a violation of ~~the BMP retrofit program~~ Chapter 60 has occurred, TRPA may impose a penalty up to \$5,000 per parcel ~~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~~ and 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~~ pursuant to subsection 9.19.2, ~~within 30 days;~~ pProperty owners shall not be given the option of non-compliance with subsection 60.4.4 of the TRPA Code. 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.

~~1.19.5.~~ ~~Notwithstanding Article 11 of these Rules, a property owner may not appeal the Executive Director violation determination.~~

PENALTY MATRIX	
Violation	Penalty

**0 ARTICLE 9. COMPLIANCE PROCEDURES**

1.18 Violations of Best Management Practices Retrofit Program

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<del>Noncompliance for 1 year</del>	<del>\$1,000</del>
<del>Noncompliance for 2 years</del>	<del>\$2,500</del>
<del>Noncompliance for 3 years</del>	<del>\$4,000</del>

~~1.19.6.1.18.5.~~ 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~~ [Chapter 60](#).

~~1.19.7.~~ ~~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.~~

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# ARTICLE 13. PROJECT SECURITIES

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## 1.1. PURPOSE

This article sets forth the procedures for using a project security to effect compliance with permit conditions. The procedures are designed to provide notice and an opportunity to be heard to the permittee and to promote compliance, if possible, without resort to the use of project securities.

## 1.2. EXECUTIVE DIRECTOR DETERMINATION

Based on an inspection of the project, a review of the permit conditions and other relevant information, the Executive Director shall determine whether it is necessary and appropriate to ~~use the project security, or a portion, to effect compliance with the permit conditions~~ impose forfeiture of the security.

## 1.3. NOTICE

Upon a determination by the Executive Director to ~~forfeit~~use the project security ~~to effect compliance with the permit conditions~~, Tahoe Regional Planning Agency (Agency or TRPA) shall give notice to the permittee and the property owner of its intent to use the project security. If the security is a bond, notice shall also be given to the bonding company. Notice shall be served in accordance with Section subsection 5.4.5.C.2 in the Code.

1.3.1. The notice shall include the amount of the security to ~~be used and the permit conditions for that compliance is sought~~ forfeited and the basis for forfeiture.

~~1.3.2. The notice shall include a request for permission for TRPA, or its designated agent, to enter the property in order to take the actions necessary to effect compliance with the permit conditions.~~

~~1.3.3.~~1.3.2. The notice shall also ~~advise~~advise the permittee of the available response options set forth in Sections 13.4 and 13.5 below.

## 1.4. RESPONSE TO NOTICE

After service of a notice, the noticed party may serve a written response on TRPA no later than 21 calendar days after service of the notice.

### 1.4.1. Waiver

The Executive Director may waive the 21 calendar- day limit provided the responding party shows good cause for the late filing of a response.

### 1.4.2. Show Cause Hearing

~~If~~The noticed party ~~may~~ requests a show cause hearing before the Governing Body (Board); If a show cause hearing is requested the hearing shall be scheduled as soon as reasonably feasible. The request for a hearing shall include the information set forth in subsection 5.4.5.G in the Code.

**1.4.3. No Response**

If no response is served, ~~then~~ the Executive Director shall proceed with ~~the~~ enforcement action as he/~~she~~ deems appropriate, which may include the filing of a civil complaint under Article VI(1) of the Tahoe Regional Planning Compact (Compact) for declaratory and injunctive relief, civil penalties, and other appropriate relief.

**~~1.5. ELECTION TO COMPLY~~**

~~If the responding party wishes to cooperate in the use of the project security, the response shall so state and shall include written permission for TRPA or its designated agent to enter the property. Upon receipt of such a response, TRPA and the responding party shall agree on the work to be accomplished and the work schedule. In the event agreement cannot be obtained in a timely manner, TRPA shall renounce its intent to use the project security but the noticed party shall not have the option to respond under this section.~~

**~~1.6.1.5. HEARING~~**

If a Board hearing is requested under subsection 13.4.2 of these Rules, it shall be noticed and conducted in accordance with Sections 9.13 and 9.14 of these Rules.

**~~1.7.1.6. BOARD ACTION~~**

**~~1.7.1.1.6.1. Board Options for Action~~**

~~Upon conclusion of a hearing, the~~The Board may take one or more of the following actions: affirm, modify, or withdraw the Executive Director's determination to use the project security; authorize legal counsel to pursue judicial remedies; determine and offer a proposed resolution; or take such other action as deemed appropriate by the Board.

**~~1.7.2.1.6.2. Vote~~**

To affirm the Executive Director's determination, direct counsel to pursue judicial remedies, or determine and offer a proposed resolution, other than project modification, ~~a vote of any eight board members shall be required~~~~shall require a vote of any eight Board members~~. Failure to affirm the Executive Director's action shall be deemed a withdrawal of the notice. An offer of resolution which constitutes a project or a modification of the permit, shall require the affirmative vote of at least nine members of the Board and the affirmative vote of at least five members of the Board from the state in that the property is located.

**~~1.7.3.1.6.3. Notice~~**

No later than five working days after the Board action on the hearing the Executive Director shall serve notice of the Board action on the responding party and other noticed parties. The notice shall contain a verbatim statement of the motion passed by the Board with respect to the show cause hearing. The date of Board action, not the date of the notice, shall be the final action of TRPA



for the purpose of seeking judicial review pursuant to Article VI(j)(4) of the Compact.

### ~~1.8. CONTRACTOR LIST~~

~~The Executive Director shall establish and maintain a list of available contractors. In establishing a list, the Executive Director shall:~~

- ~~1.8.1. Solicit information on the availability of contractors and their qualifications;~~
- ~~1.8.2. Advise contractors on the list that inclusion thereon does not mean they will be selected but they may be eligible for selection; and~~
- ~~1.8.3. Maintain and update the list from time to time.~~

### ~~1.9. SELECTION OF CONTRACTOR~~

~~A contractor shall be selected as follows:~~

- ~~1.9.1. If the security amount is \$5,000 or less, then TRPA shall obtain a minimum of three informal bids and shall select the lowest responsible bid.~~
- ~~1.9.2. If the security amount is greater than \$5,000, then TRPA shall notify all contractors on the list, shall briefly describe the work to be done and shall request written bids be submitted no later than 14 calendar days from the date of the notice. TRPA shall select the lowest responsible bid.~~
- ~~1.9.3. TRPA shall require the selected contractor to provide a proof of adequate insurance and any necessary licenses.~~
- ~~1.9.4. TRPA shall enter into a written contract with the selected contractor. The contractor shall, at a minimum, include a schedule of work and payment.~~

### ~~1.10. COMMENCEMENT OF WORK~~

~~Prior to commencement of work, TRPA shall give notice to the permittee and the property owner. The notice shall include the name of the selected contractor, the amount of the security to be used and a schedule of work.~~

### ~~1.11. COMPLETION OF WORK~~

~~Upon completion of the work, TRPA shall notify the permittee and the property owner and refund or release any unused portion of the security.~~